

**VIOLENCE AND THREATS AGAINST
FAMILY LAWYERS:
OUR PROFESSION UNDER SIEGE**

INTRODUCTION

The potential danger associated with the practice of family law is a topic that most practitioners avoid, and, when it does come up, we often minimize our experiences. Several theories exist to explain why we do this, but in doing so we may be cutting off our noses to spite ourselves and exposing ourselves to the risk of harm. By not sharing our thoughts and experiences openly, we have helped to frame this issue both individually and collectively as an isolated and infrequent problem that affects only the odd lawyer. We also see the problem as deriving from outside ourselves in the sense that the cause lies in the emotional or mental instability of the perpetrator rather than in anything we as individual lawyers or collectively as a profession are doing.

Looking at the problem of violence and threats of violence against lawyers, and in particular family lawyers, in this isolated and highly individualized way has meant that the problem has remained relatively hidden and is seen not as an issue to be dealt with as a collective but rather as something that falls on the shoulders of the individual lawyer to deal with. Accordingly, it has received little attention and has been afforded few resources by our various professional associations. Not surprisingly, the limited resources allocated to this issue have been used to provide lawyers with generalized information to help them better assess risks and with personal safety tips.

In this paper I postulate that we may be completely wrong in our understanding of the nature and extent of the problem of violence and threats in the legal profession and in particular, in the practice of family law. I argue that as a result, our response (both as individual lawyers and as a profession) to the problem has impeded thoughtful consideration, development, and the implementation of measures necessary to protect

family lawyers and lessen the potential risk of harm. My theory is based upon existing research which clearly shows that the risk to our personal safety is very real and the experience of violence or threats of violence is frequent and widespread. The available data also indicates that family lawyers are at particular risk. Assuming the problem is as serious and extensive as the research suggests, then, if we are to have any hope of actually redressing the problem of violence in the legal profession, we are going to have to revisit our assumptions and hypotheses about the reasons behind the violence.

At this point there is no definitive method to determine the reasons for violence against lawyers and, in particular, in family law. The hypothesis I explore in this paper is that the causes of violence in the legal profession have significantly more to do with our actions, both as individuals and collectively as a profession, than we think. If this hypothesis is correct, then it may be within our power, individually and collectively to lessen the risks of violence against us and resolve the issue by making changes to the way we operate and conduct business. The latter part of this paper offers a variety of measures that can be taken at the individual and organizational level.

The overall objective in this paper is to expose the problem of violence in the legal profession and in particular family law, and to challenge the current perception and assumptions about the nature and extent of the problem as well as our perception of the reasons behind it. I also hope to showcase the need for more comprehensive research in Canada into the area of violence in the legal profession as well as in the specific area of family law in order to move from the realm of conjecture and hypotheses to that of thoughtful consideration, development, and the implementation of effective measures necessary to protect family lawyers.

VIOLENCE AND THREATS DISCUSSED IN THIS PAPER

What Constitutes Violence Against Lawyers

The threats and violence discussed in this paper have two intertwined elements. First, they include “any and all behaviour that departs from reasonable conduct and involves the misuse of physical or psychological strength”¹ to explicitly or implicitly challenge another’s safety, well-being and health². “Threats may include the peril of death, or some form of communiqué representing an aim to harm a person or damage their personal property. Assault on the other hand, could include any effort to inflict physical damage on an individual or cause harm to his/her property. Additionally there are specific forms of non-physical violence such as mobbing or bullying”³.

The second key element of what is meant when we talk about threats and violence against lawyers is that the incidents must be work-related. Work related violence is defined in the literature as “incidents where persons are abused, threatened or assaulted in circumstances related to their work”⁴. Thus, to qualify as an act of violence against or a threat towards a lawyer, the threat or act must be made against someone who is licensed to practice law and the violence is linked in some way to the performance by the lawyer of his or her duties as a lawyer.

Consider the following incidents of threats and/or acts of violence provided by members of the Idaho State Bar, in response to a request for examples when they were

¹ Brown, Karen N. and MacAlister, David. *Violence and Threats against Lawyers Practising in Vancouver, Canada* (Canadian J. Criminology & Crim. Just. 2006) Vol. 48 at 546.

² *Ibid.* at 545.

³ Martino, Vittorio. *Work-Related Violence* (In Wilhelm Heitmeyer & John Hagen (Eds.) *International Handbook of Violence Research*, 2003) at 885. Kluwer Academic Publishers, The Netherlands; Brown, *supra.* note 1 at 546.

⁴ *Ibid.* at 545.

completing survey questions related to violence against the legal profession:

- "The wife of a man I was prosecuting came to my office and threatened to "slit my throat" if I didn't drop the case";
- "Written bomb threat";
- "I twice was physically attacked by an opposing party, once in the hallway of a courthouse and once at a private residence";
- "Death threat via telephone";
- "Received a toy replica of my car torched. It was after collecting a judgment in a case";
- "Opposing counsel grabbed me by the neck in the hallway during a break in a jury trial";
- "Client killed two people, tried to kill the other attorney and committed suicide";
- "I was attacked in the restroom by the girlfriend of a party who was opposed to me in a case";
- "Followed in vehicle by opposing party";
- "Bullet holes in office windows most recently";
- "Dead fish heads left in mailbox";
- "A *pro se* defendant lunged at my throat with his hands while I was a prosecuting attorney handling a pre-trial conference";
- "Police contacted me about a reported contract to harm me. The person who was hired to perform the act reported it to police";
- "Dissatisfied client left voicemail message threatening physical violence";
- "I was punched in the mouth by another client while in the courtroom"⁵.

Use of the terms Lawyers and Family Lawyers

The terms lawyers and family lawyers are for the most part used interchangeably throughout this paper. The reason for this is that all of the findings, conclusions,

⁵ Kelson, Stephen D. *Violence against the Idaho Profession: Results of a 2008 Survey* The Advocate. (Idaho State Bar, January 2009) Vol. 52, Issue 1 at 28-35.

theories, proposals etc.... made in relation to lawyers in general also apply to family lawyers. The key difference between the violence and threats experienced by family lawyers in particular and lawyers in general, is that family lawyers belong to a sub-set of lawyers who practice in areas that are more prone to violence and threats. In other words, because of the nature of their area of practice family lawyers are more likely to experience abuse and to experience it more frequently as their careers mature. The reasons why this may be the case are more fully explored elsewhere in this paper. Suffice it to say that wherever the discussion is about "lawyers" generally, the reader should infer that whatever is said applies to family lawyers too. The reader should also understand that the issue of finding a solution to violence and threats against family law practitioners is even more significant and pressing in this area of practice than in many others.

RETICENCE AT THE INDIVIDUAL LEVEL LEADS TO INADEQUATE RESPONSE AT THE PROFESSIONAL LEVEL – A VICIOUS CYCLE

There are likely many reasons why the matter of violence against family lawyers is met with reticence both at the individual and professional level. Some of the reasons offered are as follows:

- a. Family lawyers have become quite accustomed to "violence and threats" in the profession, to the extent that they do not consider these factors to be risks at all but merely components inherent in their profession⁶;
- b. Because family lawyers deal with misery, anger and pain on a daily basis, they:
 - i. Tend to underestimate the emotional toll a separation or divorce can take

⁶ Brown, *supra*. note 1 at 543.

and to discount the significance of an angry gesture or threatening remark; or,

- ii. See it as just part of the "cost of doing business"⁷;
- c. Family lawyers have a real sense of bravado arising out of:
- i. The need to ignore risks to personal safety, in order to do our jobs (i.e. if we allow ourselves to experience the feelings of fear that these threats and acts of violence provoke in us, we would not be able to do our jobs);
 - ii. A lack of awareness or understanding among lawyers of the nature and extent of the violence and threats and of the potential severity of some actions;

The lack of empirical data with respect to the prevalence and frequency of acts of violence or threats only serves to further compound the problem. This lack of empirical data is directly related to the fact that there is no established system, in either Canada or the United States, for reporting threats or acts of violence against lawyers to our respective professional associations. Also, adding to the lack of information about this issue is the fact that there has been only one study in Canada and only a handful of studies in the United States that have focused upon the particular issue of violence and threats of violence against lawyers. Further, while some of this limited research has included the collection and analysis of data that relates to family lawyers' specific experience of these acts, only one survey, an informal facsimile survey done by the

⁷ Hansen, Mark. *Lawyer's in Harm Way* (American Bar Association Journal, March, 1998) Vol. 84, at 93

Family Law Section of the American Bar Association in 1997, focused specifically on family lawyers.

The reticence at the level of the individual lawyer is replicated somewhat in the way that our governing bodies and professional associations conceptualize and respond to the issue. By way of illustration consider the responses of the Ontario chapter of the Canadian Bar Association, the Law Society of Upper Canada and the Family Lawyers Association to the issue.

In December 2003, the Ontario Bar Association, then comprising approximately 15,000 lawyers, drafted the following resolution⁸:

“Whereas access to justice in a democratic society requires that lawyers be able to carry out their duties in representing individuals and groups without fear of harm: And whereas the Ontario Bar Association is committed to the safety of lawyers who are placed in danger in the course of their duties;

Therefore be it resolved that: The Ontario Bar Association develop in conjunction with all levels of government and policing services a risk assessment protocol and other measures that may be deemed necessary to protect all lawyers, their families, associates and staff from harm or threat of harm.”

The consequences of this resolution appear to have been minimal. No reports on its progress have been released by either the Canadian Bar Association or any of its chapters, including the Ontario Bar Association. The only sign of any action in regard to this resolution was in 2005 when the Ontario Bar Association first published a personal security handbook (entitled “Personal Security Handbook - Minimizing Risks to Personal

⁸ Ontario Bar Association. *Ontario Bar Association Calls on Governments to Act on Lawyer Safety* (Ontario Bar Association, Dec. 5, 2003, Toronto)

Safety for You, Your Family, Friends and colleagues”)⁹. That handbook was released and updated in 2009.

A review of the handbook reveals that the Ontario Bar Association formed a Lawyer Safety Taskforce whose work seems to have culminated in the original publication of that handbook, and in its 2009 update. A similar handbook was published by the Alberta Chapter of the Canadian Bar Association and a review of that handbook (entitled “Personal Security Handbook 2006 – How you, your family and colleagues can minimize risks to personal safety.”) reveals that the Ontario Bar Association shared its publication and working documents with the Alberta Bar Association.

The Law Society of Upper Canada’s (“LSUC” or “Law Society”) efforts to specifically address the issue of violence against lawyers is even more limited. I spoke with Roy Thomas, Director of Communications for the LSUC and asked him whether the LSUC has to date, set up a taskforce or committee to deal with the issue, He advised me that it had not and that he was not aware of any resolutions or initiatives to address the problem. Although Roy Thomas did suggest that I contact Cynthia Peterson, The Law Society’s Discrimination and Harassment Counsel, as well as the Director of The Ontario Lawyers’ Assistance Program. The only assistance he advised me that he knew of that would be available to a member lawyer who calls the Law Society for information about violence and threats of violence towards lawyers is a referral to the Ontario Bar Association for a copy of its personal safety handbook¹⁰.

⁹ McKiernan, Michael. *Lawyers Suffering Violence Alone* (Law Times, Publication, Aug. 9 2010) at 1

¹⁰ Interview with Roy Thomas, Director of Communications, Law Society of Upper Canada, November 19, 2010

I did contact Cynthia Peterson (Discrimination and Harassment Counsel, Law Society of Upper Canada) as well as John Starzynski (Volunteer Executive Director of the Ontario Lawyers Assistance Program) and Robert Mitchell (Director of Communicators for the Ontario Bar Association). However none of these individuals were aware of initiatives or material available on this specific topic of violence against lawyers. It therefore appears that with the exception of one research project involving the British Columbia Law Society (discussed below) neither the Canadian Bar Association nor any of its provisional divisions, nor the Law Society of Upper Canada has commissioned research studies into the issue.

The Family Lawyers Association represents family lawyers across Ontario. Through my involvement as an elected board member for the past several years and as current Chair of the Association, I am not aware of any initiatives by that association to address the issue. The issue is however on the agenda for discussion by the association in the new year.

The combination of lawyers' false bravado and distorted perception of the problem due to the lack of empirical data all conspire to create a climate where threats and violence against lawyers and family lawyers in particular are minimized and individualized. Consequently, it is not at all surprising to learn that what little action there has been by our professional organizations in Ontario to raise and address the issue has focused on offering lawyers tips on how to protect themselves through better assessment of the credibility of a threat, through the adoption of safe practice guidelines, and through

advice regarding how to defuse potentially violent situations¹¹

WHAT THE DATA WE DO HAVE SAYS ABOUT HOW WIDESPREAD AND FREQUENT THE EXPERIENCE OF VIOLENCE IS

As already noted, there has been only one study done in Canada and only a handful of studies done in the United States on the issue of violence and threats against lawyers. The first study appears to have been done in 1997. This was a study by the American Bar Association and it specifically related to violence against family lawyers. The study consisted of a survey of the family law section of the association, which was conducted by facsimile. It is not clear how many members were sent the survey but 253 lawyers responded. The survey revealed that:

- 60 percent had been threatened by opposing parties¹²,
- 17 percent reported having been threatened by their own client¹³; and
- 12 percent stated they were victims of violent acts perpetrated by either a client or an opposing party at least once¹⁴.

The second study was carried out in December 2000 by the Davis County Bar Association (a county in Kansas U.S.A.). In this instance a survey of 161 of its members was conducted. In total, 130 members, representing 81 percent of the Davis County Bar, responded¹⁵. In his analysis of the data Stephen Kelson (a lawyer who has written extensively on the issue of violence against lawyers) notes that:

- 13 percent of the respondents advised they had been physically assaulted at least once;

¹¹ *Ibid.* at 1

¹² Hansen, *supra*, note 7

¹³ Hansen, *supra*, note 7

¹⁴ Kelson, Stephen. *An Increasingly Violent Profession* (Utah Bar Journal, Mar. 2001), Vol. 14, Issue 2, at 8; Brown, *supra*, note 1 at 549.

¹⁵ Kelson, *supra*, note 14 at 9

- 59 percent reported having been threatened at least once by a client, opposing party or other interested persons in a legal action; and;
- 41 percent of those threatened considered the incident serious enough to report to police authorities¹⁶.

The results of the Davis County Bar Association survey also showed that violence occurs in numerous areas of the profession but the majority of incidents involved criminal cases and family disputes.

In his 2001 article, *An Increasingly Violent Profession*, Stephen Kelson notes that Pamela Horn, the Kansas Bar Assistant and Director of Membership had the following to say about this study:

"The most volatile area appears to be the domestic forum. The types of conflicts engendered by divorces, child custody disputes, termination of parental rights, and & their highly charged emotional circumstances create a particularly fertile environment for potential violence to occur. "

The next study undertaken in North America in relation to this issue was published in 2005. This was and is still the only Canadian study. The data was culled from an Internet survey conducted on 5,539 practicing members (59.7%) of the Law Society of British Columbia. 1,152 lawyers responded and of that 59.2 percent (583 lawyers) reported varying degrees and numbers of threats¹⁷.

The researchers, Karen Brown and David MacAliser summarize some of the findings and conclusions as follows:

- a. Initially, and unequivocally, it can be stated with certainty that lawyers are experiencing abuse, threats, and injuries as a result of discharging legal responsibilities;

¹⁶ *Ibid.* at 9

¹⁷ Kelson, Stephen D. *Violence Against The Idaho Legal Profession: Results Of A 2008 Survey*. The Advocate. (Idaho State Bar, May 2006) Vol. 52, at 28

- b. The idea of random violence can be nullified. Lawyers acting in their professional capacity are targets of violence, and the longer a lawyer practices, and as (s)he ages, the more the potential for abuse increases.
- c. Substantiating the American literature on this subject, family lawyers, prosecutors, and criminal defense lawyers are vulnerable to enhanced threats¹⁸.

The next study was conducted in 2006, and consisted of a survey of the 8,737 members of the Utah State Bar. In total, 984 members, representing 11.3 percent of the Bar, responded to the survey. Of this number, 452 (45.9) of the respondents reported they had been threatened or physically assaulted at least once. Many of these threats and acts of violence included death threats, assaults, and vandalism to the lawyer's property. The results showed that violence against the Utah legal profession is not as uncommon as was previously believed¹⁹.

From March 6 through April 9, 2008, the Idaho State Bar permitted a statewide survey concerning violence against its members. The results of the Survey revealed that members of that Bar are not only not insulated from violence; but, in fact, regularly experience threats and violence from opposing parties, interested parties, and their own clients; at any place and at any time²⁰.

What these studies illustrate is that lawyers in several different jurisdictions are experiencing abuse, threats, and injuries as a result of acting in their professional capacity²¹. This raises the very real possibility that lawyers in Ontario may also be experiencing similar abuse at a similar rate as the lawyers who participated in the

¹⁸ Brown, *supra*. note 1 at 566 to 567

¹⁹ Kelson. *Supra*, note 17 at 28; *Ibid.* at 20

²⁰ *Ibid.* at 28

²¹ Brown, *supra*. note 1 at 567

various studies conducted to date²². If this is true, then we are incorrect in our understanding of the nature and extent of the problem of violence and threats in the legal profession. If the conclusion about family lawyers being one of the groups which is particularly at risk holds true for family lawyers in Ontario, then family lawyers are targets of violence and threats specifically because of their professional role in the conduct of a family law dispute.

REFRAMING THE ISSUE IN LIGHT OF THE RESEARCH AND IN ORDER TO ADDRESS IT EFFECTIVELY

If my hypothesis, that the findings of the existing studies would be replicated by similar studies conducted using Ontario lawyers (including family lawyers) as subjects, then violence in the legal profession may be directly related to how we in Ontario operate and conduct business both as individual lawyers and collectively as a profession.

The first step, then, in crafting a solution to the problem of violence is to gain some understanding into the possible motives behind the violence directed at lawyers.

THEORIES ABOUT THE ORIGIN OF VIOLENCE AGAINST LAWYERS

It is difficult to determine the motives, behind violence against lawyers, let alone family lawyers, and the logic (if any) underpinning it. Numerous theoretical explanations (with much overlap between them) may merit investigation.

²² In August 2010 I was interviewed by a reporter for the Law Times who was doing a piece on violence and threats of violence against lawyers. The article identified me as a family lawyer who has been the target of a death threat as well as several more subtle and indirect threats of harm. Within days of the publication of the article, I started to get calls from, and be approached by, other family lawyers who had seen the article. In each instance the lawyer told me that they had seen the article in the Law Times, had themselves, or knew of a family lawyer who had, either been the target of violence or threatened with violence. The threats or acts of violence had come from the client, opposing party, or a relative or friend of the client or opposing party; and in one instance, the targeted lawyer believed the threat had come from the opposing counsel.

One such theory noted by Brown is the revenge theory put forward by Bies, Tripp, and Kramer in 1997. This theory suggests that, in response to a perceived personal harm or violation of the social order, individuals may seek revenge on those whom they feel are responsible²³.

"In other words, when events occur that seem unjust or appear to disrupt professed equity in their social relationships, avengers may attempt to restore balance and equity through their own actions. The revenge theory also suggests that, although revenge frequently emerges as an impulsive response to a particular event, most acts of revenge are entrenched in a "protracted history of perceived injustices or conflict"²⁴.

Both Brown and Puma identify an alternative approach to explaining violence against lawyers. That alternate approach involves a focus on the organizational dynamics of the legal profession. Here, violence and threats are seen as an outlet for the public or an individual to express dissatisfaction with the legal profession arising out of such things as the manner in which lawyers have conducted business and provided legal services. The lack of lawyer professionalism is itself seen as a cause of violence and threats of violence committed against lawyers²⁵. Puma notes:

"The lack of attorney professionalism may be described as an all encompassing condition, juxtaposing the ideal of fairness and equality in our legal system with the actions taken by some members of the legal profession, who are perceived to counteract and stand as an obstacle to achieving that ideal. The attorney is the public's means to access justice in the legal system, but through lack of communication and diligence, excessive fees, and the perceived lack of morals displayed by some attorneys in overzealously representing clients, the public views lawyers as deliberately hindering equal and fair application of the law. This frustration with lawyers and the legal system may later manifest itself in various forms of lawyer-bashing."²⁶

²³ *Ibid.* at 551

²⁴ *Ibid.* at 551

²⁵ Puma, Cris. *The Missing Link: Does Lawyer-Bashing Warrant Additional Protection for Lawyers* (The Journal of the Legal Profession, 1994-1995) Vol. 19, at 227

²⁶ *Ibid.* at 228

Brown reports that a further theory is that the shift to a business paradigm may have created heightened lawyer abuse and threats. She points out that “as a result of this shift lawyers now tend to treat their profession as a trade, plying their goods and services as commonly as a commercial exchange, openly and notoriously for profit. The losers in such a situation are the public, who suffer and continue to endure poor and insufficient legal, services”²⁷:

Puma further raises the possibility that violence and threats against lawyers are a medium to express dissatisfaction with the legal profession arising out of such things as:

- a. Real or imagined corruption in the legal profession; and
- b. A feeling of helplessness within a supposedly unjust legal system²⁸.

Clare Huntington, associate professor at the University of Colorado, sees the increased risk of physical violence to family law lawyers as a symptom of the harm that arises from a legal system that is at odds with the emotional experience of intimacy. She argues that the traditional model of family law only recognizes two emotions (love and hate) in what is otherwise a 4 emotion cycle (love, hate, guilt and reparation) and in so doing freezes family members at the moment of hate, rather than helping the relationship move on to the guilt and reparation²⁹. Huntington does not explain how this translates into violence against family lawyers but it seems logical to conclude from her comments about the difficulties with the Love – Hate model and from her comments about violence towards lawyers being a symptom of the system's failure to address the entire range of human emotions, that the frustration, pain and loss experienced as a result of a

²⁷ Brown, *supra*, note 1 at 552

²⁸ Puma, *supra*, note 25 at 207

²⁹ Huntington, Clare. *Repairing Family Law* (Duke Law Journal, Mar. 2008) Vol. 57, Issue 5, at 1286

process that does not recognize or allow for guilt and reparation, can at times become so difficult for family members that their frustration manifest in violence towards the lawyer. Professor Huntington's explanation is, I suggest, that the violence towards the family lawyer is akin to "shooting the messenger".

There is a common thread in each of the theories discussed above, which is that the perpetrator of the violence is angry and frustrated by the way that the system copes with his or her matter, and he or she acts out on his or her frustrations with physical or verbal violence against one of the lawyers involved in the case. The sources of anger may be different, in that some are angry because of perceived or real deficiencies in the legal system; some from real or imagined deficiencies in with the legal profession; and still others are angry because they feel harmed or wronged by the lawyer himself or herself. Regardless of the source of the anger and frustration, it is the lawyer who becomes the targeted outlet for that anger or frustration.

Building on this common thread, no doubt the central reason why family lawyers as a group are particularly at risk is because family law disputes have some unique characteristics, not the least of which being that the parties involved are often emotionally volatile as a result of being in a constant state of "fight or flight". Some of other unique the characteristics of a family law disputes which conspire to keep emotions high over a prolonged period of time are these:

- a. What is at stake for the parties to a family law dispute often goes to the core of the party's identity, dignity and sense of self worth.

- b. Family law has its focus “hot-button” issues: love, money, sex, children³⁰;
- c. A family law dispute is often acrimonious and divisive and as a result, the people involved constantly feel strong emotions such as shame, guilt, anger, pain, loss, fear etc...;
- d. Unlike other areas of practice where the harm that gives rise to the dispute has been done, long before the legal part of the dispute starts the harm in family law disputes remains alive for most of the case and is compounded with new harms;
- e. People rarely get a chance to start to heal in family law matters until after the dispute is over.

Aside from the highly emotional nature of family law disputes, we should not overlook the fact that there are significant “access to justice” issues in this area of law. These issues arise in relation to such things as an overloaded court system and an inefficient and inexpedient process that quickly eats up a party’s emotional and financial resources. Because of what is at stake for the family law client, an inability to access justice only heightens the participant’s anger and frustration.

Unlike judges, the family lawyer is both easily accessible and physically vulnerable. Accordingly, a family lawyer is an easy target for any individual involved in the family law dispute who has reached their breaking point.

RESPONDING TO THE RECONCEIVED PROBLEM OF VIOLENCE EFFECTIVELY

Ensuring that our response to the problem of violence and threats against lawyers is

³⁰ Curtis, Diane. *Lawyering Can Be a Dangerous Job* (California Bar Journal., Mar. 2004) at 18

serious, timely and effective is of utmost importance. If the violence is systemic in Ontario and if family lawyers are particularly at risk, then ensuring that we are responding appropriately should be a priority for family lawyers and for the professional associations that represent and serve them. The need for a practical and appropriate response to violence and threats of violence against family lawyers is only going to become more pressing, particularly as a result of the significant increase in self-represented litigants. That is, as more and more lawyers go toe to toe with the opposing party himself or herself rather than against another lawyer (who presumably, would have been able to remain objective), more and more family lawyers will be at risk of harm.

If what we do as individual lawyers and collectively as a profession can influence the degree of risk we face as the “motive” theories suggest, then our current response to the problem (one of denial, silence or minimization by focusing solely on providing the lawyer with personal safety tips) is inadequate. It is inadequate because it fails to place any significance on how we operate and conduct business as individual lawyers and as a profession both of which may influence the nature and extent of the violence we face as we do our jobs. The balance of this paper explores some of the possible ways we can respond to the issue of violence both at the individual and organizational level, particularly that violence arising out of the reasons proffered above.

What the individual Lawyers can do to protect themselves

The first step that individual lawyers can take to protect themselves is to have a zero tolerance policy toward violence. That means never ignoring a physical threat and

taking all threats at face value³¹. Lawyers need to become aware of safe practice tips and develop and implement individualized safety protocols and plans; work on improved civility and improved client service.

As already discussed, the Alberta Bar Association as well as the Ontario Bar Association publishes a personal safety handbook that can be purchased by any lawyer for less than \$15. While both of these booklets are helpful, they pale in comparison with that put out by the United States Marshals' Service booklet entitled "Personal Security Handbook ... How You and Your Family Can Minimize Risks to Personal Safety"³². Individual lawyers should obtain and review one of these booklets (preferably the United States Marshals' Service booklet). There are also some excellent articles such as Margaret Graham Tebo's article entitled, "Keeping It Safe: Measures are Being Taken to Curb Violence Against Judges and Lawyers, But Will They Be Enough?"³³

Tebo sets out a slew of safety tips echoed in the various personal safety handbooks but which she attributes to security expert David Z. Kaufman. Here is a sampling of the tips I found most relevant to family lawyers:

1. Keep your personal information private;
2. If you work from home:
 - a. Do not tell your clients you do;
 - b. Meet clients at a neutral place, such as a library or a borrowed conference room;
 - c. Use a mail drop or executive suite as your mailing address;

³¹ Hansen, *supra*, note 7 at 93

³² (United States Marshals Service, Jan. 1, 2000)

³³ Tebo, Margaret Graham. "Keeping it Safe: Measures Are Being Taken To Curb Violence Against Judges and Lawyers, But Will They Be Enough?" (ABA Journal 91, 2005) at 1

- d. Remove your home address from as many places as possible.
3. When you are on the street:
 - a. Be aware of your surroundings;
 - b. Avoid walking too closely to the curb or to the buildings so that you do not become boxed in;
 - c. Use different routes going to and from work and other regular activities;
 - d. Park in different places, but always where there are people around;
 4. With office staff, spouses and other adults, work out a code word that can be used to let someone know you are in trouble;
 5. If you or your client are afraid of an opposing party, notify the court before each hearing at which the party will be present so that extra officers can be assigned to that courtroom.
 6. Obtain security systems for your home and office;
 7. Install a push-button panic signal in your car and office and home (which should include Global Positioning System technology so the signal can be traced)³⁴.

Valerie Mutton adds to the list by suggesting that it is important to have an office security plan, which might include not being as open and accessible as the traditional law office has been and possibly having a glassed-in reception area. Putting some thought into mapping out an intruder-escape route at the office and avoiding working late at the office and electing instead to work remotely from home are also suggested³⁵.

Mark Hansen, quoting Mathis, who has lectured, written and counseled firms on workplace violence, says, "lawyers who are in the business of taking something away - be it children or property - can avoid becoming an easy target for violence by treating

³⁴ *Ibid.* at 43

³⁵ Mutton, Valerie. *Handling Workplace Violence* (Lawyers Weekly, Oct. 30, 2009 Issue) at 1

opposing parties with kindness and respect³⁶. How counsel deal with the opposing party should also include reporting to opposing counsel any client who shows animus toward the opposing counsel or opposing party³⁷.

Cris Puma says that members of the legal community should focus on eradicating the cause of violence by repairing the clients' stereotype of attorneys³⁸. He goes on to illustrate some very specific ways in which individual lawyers can improve how the client's perceive lawyers. First, he directs that we tailor what and how we give advice to suit our client listeners just as we do when structuring an argument for a particular judge to hear. For Puma this means taking the *legalese* out of our communications and by being careful to ensure that the client has understood what we have said. Puma suggests that we also watch to make sure that our fees are not excessive, as excessive fees incite public anger at the legal profession. The reason as Puma points out is that: "attorneys and the legal system lose their credibility and trustworthiness when persons are prevented from gaining access to the courts or from retaining the services of an attorney due to unreasonably high attorney fees"³⁹.

Responding to Violence at the Professional Level

Our professional associations exist primarily to speak out on the need for something. So far our professional associations both at the level of all lawyers and at the level of family lawyers specifically have not been particularly concerned with the need to address the issue of violence and threats of violence towards lawyers and in particular

³⁶ Hansen, *supra*, note 7 at 93

³⁷ *Ibid.* at 93

³⁸ Puma, *supra*, note 25 at 209

³⁹ *Ibid.* at 229-230

family lawyers. As a result, our associations have done little in terms of advocating for what is needed at the professional level to respond to the problem. The balance of my paper focuses on some suggestions as to where they can start.

Responding as a profession must include working to modify the deficiencies in how the legal profession is perceived by the public. The Law Society of Upper Canada is already exerting much effort in this regard as both it and many lawyers see the public's negative perception of lawyers as, among other things, a real threat to our ability as a profession to continue as a self regulating or governing profession. Continuing in these efforts will indirectly benefit the cause of eradicating violence against lawyers.

Raising lawyer awareness of the nature and extent of the problem and about the measures lawyers can and should take to protect themselves is another logical step as this builds upon what we already have in the form of personal safety handbooks. It seems somewhat absurd in this day and age when material can be reproduced electronically at no increased cost to our associations, for associations to charge lawyers for these handbooks. These handbooks should not only be free but that they should be accessible on all our professional associated websites, and as well be distributed to members of the bar regularly. This latter step should commence with a lawyer's call to the Bar (just as we do with literature on civility and the Rules of Professional Conduct).

Our associations should also be developing education modules that deal with personal safety tips and protocols as well as about what it means in practical terms to deal with opposing parties and lawyers in a civil and courteous way. Some of these materials

already exists (such as in the case of the Advocates Society which provides all its members, free of charge with a booklet on civility entitled "Principles of Civility" as well as a DVD). I think it is important to go further and to incorporate training on both safety protocols and tips, and on civility and courtesy into our continuing education programs and as well to include some training at the law school level and as part of the admission to the bar program.

Our associations should also be advocating for the implementation of adequate supports for those lawyers who find themselves the target of threats or acts of violence. Just as the Ontario Bar Association runs programs such as "French without Tears" and the Law Society of Upper Canada's Ontario Lawyer Assistance Program runs programs on wellness and work life balance over the lunch hour, these associations should support lawyers by offering self defense or safety tip classes.

Support for its members could also include improved court security for lawyers. For example, each courthouse could designate one of its personnel as the contact person for any lawyer fearing for his or her safety while at court. The designated individual would be responsible for arranging for whatever is needed to make sure that the lawyer is safe while in the courthouse and when leaving.

One critical area where the Law Society could better support its members is by setting up personnel whose job would be to act as liaison between the individual member and the police. What I have in mind is something akin to the Discrimination and Harassment Counsel currently offered by the LSUC to support members who are victims of workplace harassment or discrimination.

Making the personal safety handbook as well as various articles on how to stay safe available electronically and free of charge to all lawyers in Ontario is a realistic expectation to have in terms of how our professional associations should respond to the problem of violence and threats against lawyers. Without empirical data establishing that acts of violence and threats against lawyers in Ontario is as frequent, prevalent and systemic as it is elsewhere, few if any of the other measures I have mentioned are likely to be discussed let alone developed and implemented. Given this reality and the significance of what is at stake for the individual lawyer, perhaps one of the first things we need to do is gather data specific to Ontario lawyers. We could do this by including the key questions we need to ask lawyers as part of the questions that all practicing lawyers are required to answer when completing their annual member report to the Law Society. Having the Law Society, the Ontario Bar Associations' Task force on lawyer safety or the Family Lawyers Association commission a private study or conduct an informal survey of their respective members on the issue of violence against lawyers is another approach to getting the research done that we need.

CONCLUSION

The existing research on the issue of violence and threats of violence against lawyers challenges the current understanding and assumptions of the Ontario legal profession about the nature and extent of the problem as well as our perception of the reasons behind it. The existing research clearly identifies that violence in the legal profession is pervasive and not at all random.

While the bulk of the existing research has not focused on either the Canadian or Ontario lawyers' experience of violence and threats, the one Canadian survey and study of lawyers practicing in British Columbia revealed results similar to those done in the United States. While more comprehensive research is required before we can move from the realm of conjecture and hypotheses to certainty, the similarities between the different studies done in the United States and the British Columbia study do move us into the realm of the "highly likely".

Given that the personal safety of Ontario lawyers, and in particular Ontario family lawyers, is likely at stake, it is time that family lawyers across Ontario as well as the professional organizations that represent them take this problem seriously, both at the individual level and collectively. Armed with the knowledge that violence against lawyers is systemic and directly tied to our duties as lawyers, we, as a collective, need to find a way to shift the responsibility for coping with violence from the shoulders of the individual lawyer who may be affected and have nowhere to turn, to one of shared responsibility in which lawyers, organizations and professional societies are active participants in the process of thoughtful consideration, development, and the implementation of effective measures necessary to protect family lawyers.