

Article



BY **ZARA SULEMAN KC**
TLABC Member

Zara (she/her) is the founder of Suleman Family Law where she practices family law and fertility law. Zara is a certified family law mediator and collaborative law practitioner. She has also been an adjunct instructor for family law at the University of Victoria and has presented at Harvard Law School on Collaborative Law.

Zara earned her LL.M. from the University of Victoria, her Law degree from the University of Ottawa and her Bachelor of Arts from Simon Fraser University. Zara is a former Board of Governor for the Law Foundation of BC. She was also the Chair of the BC Law Institute Research Project on the Review of Legal Parentage under the Family Law Act. She is on the Advisory for the FREDA Centre for Research on Violence Against Women and Children.

Prior to law school Zara was a front-line community advocate. Zara has been working on issues of violence against women and children for over 30 years. She has been actively involved in presenting, training, writing, and editing materials on family law issues, trauma informed practice, gender-based violence, and anti-racism/critical race theory.

Zara was the 2018 Equality & Diversity Award Recipient from the CBA (BC) and she was designated a King's Counsel (KC) in 2022.

She can be found on Instagram @thebusinessofbreakups™ and @sulemanfamilylaw

DO NO HARM

Reducing Risk for Survivors of Gender Based Violence in Family Law: Insights from the World Health Organization

In 2013 when the *Family Law Act* (BC) came into effect, there was much lauded about the more comprehensive definition of “family violence” that conceptually moved the long rooted notion of abuse as only physical and the documentation of bruises as the primary “evidencing” of violence in intimate partner relationships.

This journey took several decades to reach with much advocacy and activism from front-line anti-violence workers, survivors of violence and supportive lawyers, judges and legal scholars. To have a family law bar and judges educated on the more far reaching and expansive impact and forms of abuse and violence experienced by survivors was and still remains a challenge.

The FLA also crystalized our positive duty as dispute resolution providers to assess/screen for family violence:

Duties of family dispute resolution professionals (bold emphasis added)

8 (1)A family dispute resolution professional consulted by a party to a family law dispute **must assess**, in accordance with the regulations, **whether family violence may be present**, and if it appears to the family dispute resolution professional that family violence is present, **the extent to which the family violence may adversely affect**

- (a) **The safety of the party or a family member of that party**, and
- (b) **The ability of the party to negotiate a fair agreement.**

Any lawyer that will attempt to settle a family law matter or advise a client on a family law matter is subject to this positive duty — it is not just mediators and family justice counsellors or those engaged in collaborative or settlement-oriented practice. The definition of “family dispute resolution professional” includes “(c) a lawyer advising a party in relation to a family law dispute.”

It would seem that if we have a positive duty to “assess” for family violence then we are also tasked with having knowledge and/training on this issue — training that should be mandated for all family law lawyers, judges, courthouse staff, etc. This continues to remain inconsistent.

The conversation, understanding and analysis about “safety” and “family violence” is not a peripheral consideration but fundamental.

Our assessment is our mandated requirement to assess for the extent, potential adverse effect and most importantly “safety” of the “family member or party.”

But once we assess and determine that family violence exists — that adverse effect is present and safety is an issue — then what? Then what do we do?

How can we take these key reforms and in daily practice make their application consistent? What can we do practically with each of our family law clients to ensure their safety and minimize their risk and harm?

This made me think about other parallel institutions that were large in scale with the desire to transform their systems to better serve and centre the wellness of their clients while still navigating many bureaucratic challenges. What were some models of change that people can make on the ground, day-to-day? This exploration took me to the medical system, in particular to surgical practice where the prevention of harm and death are very real issues.

**WORLD HEALTH ORGANIZATION (WHO)
SURGICAL SAFETY CHECKLISTS**

In 2010 the World Health Organization (WHO) developed a safety checklist to address surgical safety precautions in order to reduce surgical infection rates of sepsis and the rate of incorrect surgical procedures i.e. surgery or removal of incorrect body parts.

After implementation of these safety checklists — which addressed both the most basic of cleaning procedures and additional verification /confirmation processes of what surgery was to occur and on which body part, rates of such things as surgical site infection (SSI) were significantly reduced. In hospital patient mortality also significantly declined.

WHO had identified three key problems in surgical safety, they were:

1. Unrecognized as a public health issue
2. Lack of data on surgery and outcomes
3. Failure to use existing safety know-how (*World Health Organization: Surgical Public Health : WHO and the Safe Surgery Saves Lives Campaign 2009 WHO*)

The creation of a checklist was done to improve the quality of care for surgical patients and to easily reduce infections by increasing protocols and assuring adherence to the surgical safety checklist by all. As the WHO noted in their public education and training:

Reality Check

Currently, hospitals do MOST of the right things, on MOST patients, MOST of the time.

The Checklist helps us do ALL the right things, on ALL patients, ALL the time.

(World Health Organization: Surgical Public Health: WHO and the Safe Surgery Saves Lives Campaign, 2009)

In the journal article, *Surgical Safety Checklist to Reduce Morbidity and Mortality in a Global Population* (New England Journal of Medicine 360:491-9. (2009), found that:

The origins for most of the safety issues that emerged for surgical patients was a failure of teamwork and ultimately, the “root cause” determined that in nearly 70% of events that occurred for surgical patients was due to a lack of communication in the surgical team. (Communication is a root cause of nearly 70% of the events reported to the Joint Commission from 1995-2005.¹)

With a checklist, post-operative surgical infections and complications were reduced by almost a third. As the WHO recorded:

Easy Math

234 million people are operated on each year, and >1 million of these individuals die from complications
 + At least 1/2 are avoidable with the Checklist
 500,000 lives on the line each year

FAMILY LAW: A WAKE-UP CALL TO ASSESS FOR SAFETY AND REDUCE RISK FOR SURVIVORS

The medical system and legal system are similar institutional beasts. They often rely on stayed notions of truth, of outdated models of practice, and of procedures and operations that do not put the patient or client at the centre of their delivery of services.

What I found hopeful in this successful WHO project, was that even in the slow moving structure of the medical system, the implementation of very basic measures of a checklist that required everyone in the surgical team to follow a set list and to communicate and listen to each other and to patients could result in actual lives saved.

Basic information such as: were all cleaning measures were conducted? Was the correct body part identified? What is the follow up care? And

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being attentive to post-surgical responses of the patient — just these few consistent measures used by all in a surgical team fundamentally altered and substantially reduced harm and death rates.

It made me reflect on the practice of family law and the family law system broadly to demand that we do better, all of the time, for all of our clients and most importantly for all survivors of gender-based violence.

Our inconsistency in practice, procedure and protocols; our unpredictable and varied optional education and assessments for gender based violence risk, results in the family law legal systems record of errors, harm and yes, deaths. (See: Recent Femicides in BC)

For the lawyers that do engage an assessment process with clients, this may lead to a determination that the file cannot proceed by mediation or for some it may mean that it will not be a file that the lawyer or a law firm make take on...but then what? Once safety becomes an issue what do we do to ensure that survivors of gender based violence are safe?

Similar to the WHO, family law professionals have the benefit of an abundance of research on the intersections of family law and gender based violence (intimate partner violence, and femicide).

Organizations such as Rise Women's Legal Centre, West Coast LEAF, Battered Women's Support Services, Ending Violence Association (EVA) BC, BC and Yukon Society of Transition Houses, Lower Mainland Multicultural Family Support Services, YWCA, Downtown Eastside Women's Centre, FREDa (SFU) Research Centre on Violence Against Women, and so many others have documented in various and numerous reports the critical impact and risk survivors face post-separation.

The most recent report, *Independent Systemic Review: The British Columbia Legal System's Treatment of Intimate Partner Violence and Sexual Violence* by Dr. Kim Stanton (June 2025) summarizes the massive research to date and provides guidance on how the legal system needs to respond.

We have a lot of information.

We have always had a lot of information.

So what is our checklist?

What is our tool that will minimize harm? Will reduce risk? Will save lives?

The starting place is clearly laid out in these reports. Gender-based violence is at pandemic/epidemic levels. It is not rare. On a weekly basis women/gender diverse folks and their children are murdered in the context of intimate partner violence — much of this during and following post-separation disputes.

Having worked in the area of gender-based violence for almost 35 years, from front-line work to having sat at various tables of consultations, inquests, committees, task forces, training development, law reform committees, adhoc groups and frontline activism (placards in hand on courthouse steps), I have seen the same points made again and again.

The key points that survivors continue to raise to family law practitioners and the family law system are:

1. Listen to us.
2. Believe us.
3. Require Mandatory training and assessment tools
4. Provide appropriate referrals to community resources - minimize the gaps of support and advocacy.
5. Assure access to legal services.

When I worked as a front-line sexual assault support worker, I would get a page at any time of the day and or night and show up at hospitals or police stations to be with a survivor of violence I had never met.

I was meeting them at the most traumatic time of their life.

I was supporting them in a system that they knew and I knew would have many questions for them — Why were you out at that time?

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What were you wearing? What did you say? What did you do? Why didn't you make it stop?

Most of the survivors knew that there would be no charge or conviction of their perpetrator. I knew this too.

But we showed up, we listened, we believed survivors, we walked with them through a complex and often treacherous system and we let them know what was happening and worked for them to have a space to speak and be heard and understand what was going on. We made sure they were seen by us and supported by us. We did this each time, every day or night we were called, with every survivor.

LISTEN TO YOUR CLIENT — REALLY LISTEN

Universally, survivors of violence say in almost every report that they do not feel heard or listened to by players in the family law legal system: lawyers, judges, etc.

But the work of the WHO resonates — communication underpinned the ability to save lives. It is no different in family law.

Our training in family law is to solve, spot issues, engage in law and fact intersections but in that process we fail to listen, truly listen for what our clients are saying, but more importantly listening for what is not being said. What is being felt and feared? What is being silenced? We need to create safe spaces to foster trust and compassion and to allow for survivors to share their concerns and questions.

BELIEVE YOUR CLIENT

“Believing women is prevention.” — Support worker
(Dr. Kim Stanton, *Independent Systemic Review*, June 2025 p.61)

The other consistent message survivors echo is that they do not feel believed, from the family law legal system (and legal systems in large) and very often by their own lawyers. Many of us are trained to conflate the ability to believe and the need to prove; rather than to maintain the capacity to hold both independently.

Again, legal education that is not trauma-informed, that does not root itself in social context and power relations, and that focuses solely on the need to evidence and proof, silences survivor experiences.

Most survivors expect the system to neither listen nor believe them — because that has been the lived experience for most women and gender diverse folks when they have had the courage to share their truth.

However, believing your client's fear, safety concerns, experiences of abuse is essential.

MANDATED GENDER-BASED VIOLENCE TRAINING/EDUCATION AND ASSESSMENTS

“Train all judges and masters on gender-based violence and control and coercion. Only trained judges



I was supporting them in a system that they knew and I knew would have many questions for them — Why were you out at that time? What were you wearing? What did you say? What did you do? Why didn't you make it stop?

Most of the survivors knew that there would be no charge or conviction of their perpetrator. I knew this too.

with gender-based violence training should make decisions on these cases.” — Survivor

(Dr. Kim Stanton, *Independent Systemic Review*, June 2025 p.149)

Everyone in the family justice system that will have contact with a survivor of gender-based violence needs to be trained and we need ongoing, consistent training for family law lawyers and judges.

Without consistent and mandatory training, we increase the likelihood of harm for survivors.

Without assessment tools that are consistently used with all of our clients, we cannot appropriately address risk and our client's safety needs.

Without consistent mandatory training we fail to all have the necessary tools, understanding and knowledge to help our clients address the violence.

PROVIDING APPROPRIATE REFERRALS

As family lawyers we know the people to contact for valuations, for tax advice for child focused therapy, for financial matters. Often we can pick up a phone and call such referral sources and directly connect our clients to those that have the expertise to provide them what they require. We have the skills to make meaningful referrals to many other professionals and organizations.

However, we often fail in providing referrals and support services to our clients in meaningful way. Many lawyers also do not have knowledge of services in the community for survivors of gender based violence and many more lawyers do not have ongoing communication or working relationships with front-line advocates and support workers in the community.

These relationships are critical. They minimize the gaps that so many survivors fall through. They provide a community of care that will very often be in a survivors' life long after a lawyer has closed their family law file.

Having personally worked with the support of advocates and front-line workers in transition houses, women's centres, etc., I can attest that having reciprocal relationships are necessary to enhance our legal services and to reduce harm for survivors of violence.

Learn more, connect more, and build more relationships with those that do the everyday work of advocating and supporting survivors of gender based violence.

ACCESS TO LEGAL SERVICES

Access to lawyers, legal aid and accessible family law services remains an ongoing struggle. If we do not have consistent legal coverage for survivors of violence, we place them in vulnerable and precarious situations.

Survivors are tasked, at the worst times in their lives, to patch together an advocacy team, to get some legal services here and some there. The impact of such unreliability is that survivors may agree to things they would not have accepted if they had competent legal services; some may opt out of any legal representation and try to represent themselves; and some may even go back to their abusers.

LAST THOUGHTS

I remember a survivor I worked with saying to me that the most important thing about her ability to get through the legal system and work toward healing was not the hope of her rapist being held accountable by the legal system, but that someone would believe her, see her, tell her what was going on and make sure she was heard. I think about this every day.

Law reform, transforming a whole legal system can seem overwhelming and unreachable, but supporting survivors of violence, each client we see, each time, everyday can start right now. ■



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