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Cross-examination in Family Law Matters Involving Violence

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New [amendments](#) to the *Family Law Act* have recently been passed that, among other things, prevent perpetrators of family violence from questioning their victim during cross-examination in family law proceedings. This feature of the court process is traditionally feared by victims, and is found to be confronting and fraught with tension.

The amendments are aimed at ensuring victims of family violence are not put in a position where they are either personally cross-examined by their perpetrator or required to cross-examine their perpetrator directly.

These changes are important because when someone is a victim of family violence and does not have a lawyer, their fear of the perpetrator may reduce their capacity to appropriately and fully question, or answer questions by that person. This can then result in unfair outcomes by compromising the victim's evidence and can pressure them into withdrawing from the proceedings.

What is family violence?

The *Family Law Act* [defines family violence](#) very broadly. It means any violent, threatening or other behaviour that coerces, controls, or instils fear in a member of the family.

Family violence can include such things as an assault, denying financial autonomy and even causing harm to a pet.

How do the amendments affect me?

As the new bans work in a reciprocal fashion, they forbid an unrepresented party from directly questioning, or being questioned personally by, another party where there is an allegation of family violence between them.

For these protections to be automatically implemented in any family law proceeding, one of the following circumstances must also exist:

- Either party must have been convicted of, or charged with, an offence involving violence to the other party;
- A family violence order must apply to both parties;
- An injunction for the personal protection of either party must be directed against the other party; or
- The court must otherwise order that the ban shall apply.

Where one of these circumstances apply, instead of a personal cross-examination, a lawyer must conduct the questioning on behalf of that party regardless of whether they are the perpetrator or victim.

What if those circumstances don't apply to me?

The new laws also apply to protect people other than the perpetrator or victim, such as witnesses who have been involved in the family violence.

As the court is given the power to order a ban, a witness you can apply to the court to be questioned by the other person's lawyer. They will then be unable to question the other person directly if the order is made.

For example, if you are the sibling or friend of someone who has been involved in the family violence, you can still ask the court to grant you the same protections from being questioned personally by the perpetrator.

Explaining the amendments in a scenario:

Kelly has previously been harassed and stalked by her ex-husband, John. In family law proceedings for the making of parenting orders, Kelly and her sister, who witnessed these events, are to testify in court.

Although John and Kelly have not been charged or convicted of a violent offence, nor is there a family violence order or injunction between them, both Kelly and her sister can apply to the court for an order that John does not personally cross-examine them.

This order can then be made, forbidding Kelly and her sister from questioning John and from John questioning them. Instead, all questions will be posed by lawyers.

Given the important role that cross-examination plays in testing evidence, the aim of the amendments to reduce potential trauma to victims and other people involved in family violence in family law proceedings is a positive step toward reforming family law.

Today's blog article was cleared by Head of Family Law, [Ryan Thomas](#). For more information on this topic, get in touch with Andersons' [Family Law Team](#).

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