



**Bill 133: An Act to amend various Acts in relation to
certain family law matters and to repeal the
*Domestic Violence Protection Act, 2000***

Ontario Association of Interval and Transition Houses (OAITH)
Phone: 416-977-6619
Email: oaith@web.ca

March 19, 2009

Submission on Bill 133: An Act to amend various Acts in relation to certain family law matters and to repeal the Domestic Violence Protection Act, 2000

Introduction

The Ontario Association of Interval and Transition Houses (OAITH) is a 65-member coalition primarily of first-stage shelters for abused women and their children across the province. It is the largest women's shelter association in Canada. Since its inception in 1977, OAITH has been monitoring the progress of governments and systems with regard to programs, policies and legislation to address women's equality issues, with specific emphasis on those affecting women who experience intimate violence and their children.

The Association has always taken a keen interest in legislation and wants to thank the standing committee for the opportunity to respond.

There are elements of this Bill that have the potential for significant positive impact on women and children.

Restraining orders

We support the intent of this Bill to strengthen the effectiveness of family law restraining orders. We know from frontline work with women who experience violence that historically these orders have been often ineffective in protecting women and children and that many women have described them as "not worth the paper they're written on." Our hope is that this legislation will in part make women who apply for them safer in that they will be enforceable. There are a number of positive points in this regard:

- **Enforcement:** Amendments proposed to jurisdiction of restraining orders is a positive change in that breaches of these orders can now be enforced under the Criminal Code, section 127. We are hopeful that this change will clarify enforcement of the orders by police and courts and to reduce the confusion about enforcement which has had safety impacts for women and children.
- **Eligibility for restraining orders:** With regard to amendments to the *Family Law Act*, the Bill will broaden access to restraining orders for abused women who have cohabited or are cohabiting with abusive partners for any length of time as noted in the amendment to the *Family Law Act* stating: 46 (2) "(b) a person other than a spouse or former spouse of the applicant, if the person is cohabiting with the applicant or has cohabited with the applicant for any period of time. This is a progressive change that will offer the protections of the court via restraining orders to more women in abusive relationships and offers a vehicle for holding abusers accountable in a more effective way, if enforced.
- **Conditions on contact:** The addition of a number of conditions to the restraining orders that allow the court to restrict behaviour of the person on whom the order is filed is also important for the safety of women and children. Therefore, expansion of the conditions on orders within the Acts outlined in Bill 133 is will make it easier for women to expect protections from family law courts, whether or not an order is made through the *Children's Law Reform Act* or the *Child and Family Services Act*. Conditions specific to each situation will allow the court to fashion the orders in such a way as to be clear about contact meant to prevent harm.

Confidentiality

Women have experienced harassment and danger as a result of some court situations in which their locations have been inadvertently disclosed to abusive and stalking ex-partners by court officials or within court documents that are shared between parties. New sections allowing the court to protect confidentiality of sensitive information, in particular with regard to recognition of safety issues and possible harm, are also welcome. Our hope is that these sections will be used to protect this information in the future.

Non-parental Custody

We support changes to the legislation to ensure that when non-parental custody is ordered, there is sufficient investigation to ensure that children will not be harmed or neglected within the custody arrangement. We would support basic background checks with regard to involvement in criminal courts or child protection matters.

Child Support

Changes to child support legislation making annual financial information disclosure mandatory will greatly assist women in accessing the financial support needed to care for their children and will take the responsibility to seek adequate child support payments away from the custodial parent. For women who experience violence, the current system is difficult and dangerous. Women often have to give up pursuit of their legal rights to child support because of the jeopardy they face if they must seek out the financial information from abusive ex-partners. The requirement to automatically file and have child support recalculated based on the new information will be a positive step forward.

Ensuring that the support is received, of course, continues to be an issue for women and children when ex-partners hide assets and income or when the Family Responsibility Office is not able or sufficiently eager to pursue child support orders.

Repeal of the Domestic Violence Protection Act

OAIH supports the repeal of the *Domestic Violence Protection Act*. Although there were some positive elements within the *Act*, it was apparent that there were also serious flaws in the legislation and serious resistance to it from a number of areas, including from women's advocates working with the women the *Act* was intended to protect. Perhaps in future further discussion and consultation with regard to the positives in the *Act* might be revisited. In the meantime, however, it is best that this *Act* be repealed.

Some Cautions

While much of the change that is envisioned within Bill 133 is positive for women and children who require the protection of the courts with regard to either their safe or equality rights, it is critical that the family law system ensure that the impact of the changes actually result in positive change.

As women's advocates we are sadly aware of how abusive men use the family law system to control women and children and how the system itself can re-victimize women using the very laws that were meant to support them. We would make these cautions on the amendments:

1. It is critical that the tendency to order “mutual” restraining orders within family law be stopped. Just as well-intentioned policy within criminal law to lay charges in “domestic violence” cases has led to “mutual” charging of both men and women, and more often in recent years, of abused women, we want to ensure that we don’t repeat these failures in the family law systems as progressive reforms are introduced. It is important therefore that education, regulation and additional advocacy support for women within the family law system provides for monitoring and correction of any tendency to continue these “mutual” restraining orders that if breached, for example, by an abuser, could result in mutual charges under the *Criminal Code* against abused women.
2. While additional conditions on contact and behaviour under restraining orders is a positive addition to the law, it will be important to ensure that these conditions are not then used against women. For example, women with custodial rights could be required to “change residence” to a shelter if at risk of violence. It is critical that courts understand the dynamics of violence in order to ensure that a move to a women’s shelter, for example, would not be characterized as a change of residence without permission.
3. Under the *Children’s Law Reform Act*, there will now be a mandatory provision for presentation of parenting plans in custody and access matters for all parents and non-parents seeking custody. The matter of requirement of parenting plans can obscure the nature of the primary caregiving of children, usually by their mothers. In addition, the ability to create an impressive parenting plan may depend in whether or not the parent has the financial means and connections to create such a plan. This would limit the ability of low-income women and women whose access to services providing these plans and supports is restricted by their income, language, race, age and ability, for example.

We would caution that the ability to present such a plan for the future is less an accurate indication of appropriate parenting than past behaviour and caregiving. And yet we do not have an amendment in this Bill to require that the history of primary caregiving of the children be a primary determinant of future care and custody in the best interests of the child.

While we have some cautions with regard to this Bill, we are supportive generally of the direction and actions that are suggested in it. We hope that the legislative changes in this Bill will be another step toward a full review of family law, and in particular its impacts on women and children, that must take place in Ontario if family law is to be just and fair.

Respectfully

Ontario Association of Interval and Transition Houses (OAITH)