Barbra Schlifer Commemorative Clinic

Freedom From Violence.

Justice Done: Crafting Opportunity from Adversity

BARBRA SCHLIFER COMMEMORATIVE CLINIC FORUM

FINAL REPORT

United Way Toronto

A United Way member agency

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Table of Contents

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Introduction

The legal systems with which a woman who is leaving an abusive relationship must deal are complex. Family, child protection, criminal and immigration law all present both the possibility of benefits, and serious challenges to women who turn to them. Increasingly, women are interacting not just with one system but with an intersection of them, which further complicates matters.

Family court in particular presents major problems, in part because it is one legal system that women, especially those with children, cannot easily avoid. It is cumbersome, slow, expensive and seems to meet the needs of few, if any, of those who turn to it for assistance at a very vulnerable time in their lives.

> *The family-law system in this country is a wreck. A study by the Law Society of Upper Canada found that, on average, it takes three years for a litigated Ontario divorce involving children to stumble through family court, and by then, in addition to the heartache and turmoil, a good chunk of retirement savings and college funds has disappeared.* [1]

As Ontario Court of Appeal Chief Justice Warren Winkler said:

> *"In the area of family law, I question the effectiveness of the slow and steady approach of fine-tuning and rationalizing the present system. I think the time has come for a fresh conceptual approach to resolution of family disputes in Ontario."*[2]

While family court is clearly problematic for "regular" litigants, it is far worse for women leaving abusive relationships. Court process(es) present concerns for both the immediate and future safety of women and their children. Orders made can have a devastating and long-term impact on families.

Recent years have seen a steady flow of legislative and process changes in family law, but also in criminal and immigration law. In some cases, the reforms focus specifically on the issue of violence against women with the intention of improving the systemic response and women's access to services. In other cases, the reforms are not so focused, but nonetheless have a particular impact on women who have experienced violence.

In many cases, these reforms have resulted from years of advocacy by women's equality and frontline violence against women activists, who have tracked women's experiences with various legal systems and court processes and then worked collaboratively with the government to develop new approaches. Often, the reforms have initially appeared positive

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[1] "Why Canada needs a split from its messy divorce laws," Erin Anderssen, The Globe and Mail. March 25, 2011.
[2] Ibid.

but, once implemented, unintended negative consequences have been reported at the service delivery level, particularly with women's advocates in the violence against women sector (VAW), necessitating service adaptations.
The VAW sector has also been clear about the increase in complexity of legal matters they encounter in their service provision to women experiencing violence. Coupled with the implications of recent reforms, increasing numbers of women are experiencing multiple legal systems at the same time. For example, a newcomer woman may find herself involved with immigration, family and criminal law; a woman whose partner is charged with assaulting her is dealing with criminal, family and possibly child protection systems; a woman who calls the police to report her husband's violence and who is inappropriately charged herself then must deal with the criminal law as an accused, while also possibly facing child protection proceedings.

As a result of both the legislative and process reforms, intended and unintended consequences and the increased intersectionality of women's legal issues, women's service needs have changed. Violence against women service providers and government need to consider new ways of delivering services so we can meet the changed and changing needs of the women who turn to us for support.

The Project Lead

Opened in September 1985, to commemorate Barbra Schlifer, who was sexually assaulted and murdered on the day she was called to the Bar in 1980, the Barbra Schlifer Clinic (The Clinic) offers legal representation, professional counselling and multilingual interpretation to women who have experienced violence. Our diverse, skilled and compassionate staff accompany women through personal and practical transformation, helping them to build lives free from violence.

We are a centre by, for and about women. We amplify women's voices, and build on their skills and resilience. Together with our donors and volunteers, we are active in changing the conditions that threaten women's dignity and equality.

Programs and services include:

i. Counselling, legal, language interpretation and information and referral services for women;

ii. Public education and professional development programs for diverse individuals, service providers and professionals working in the GTA that focus on root causes and impacts of violence, legal rights and options for victims of violence and systemic responses to women's experiences of violence;

iii. Clinical educational programs for social work and law students;

iv. Advocacy on behalf of women who are victims of violence with legal, medical and social welfare professionals;

v. Consultations with professionals, institutional policymakers and government on issues relating to violence against women;

vi. Development of service and advocacy partnerships with other agencies and organizations delivering services and/or working on social issues connected to women's experiences of violence, and

vii. Ongoing assessment of gaps in services for women within the community, and strategies for resource-sharing among service providers across the GTA.

The idea for this project developed as it became increasingly clear that women using the Clinic's services were facing more and more intersectional and complex issues related to their interactions with various legal systems and institutions. We noted a strong desire within the VAW sector to acknowledge, gain a clearer picture of the scope of, and address these matters at both service and systemic levels.

About this project

The Clinic brought together representatives of the violence against women sector to explore key emerging justice sector issues for women who experience violence. This was made possible with funding from the Ontario Women's Directorate (OWD).

The work of this project was led by a planning committee that consisted of the Executive Director of the Clinic, Amanda Dale, the Clinic's long-time Legal Director, Mary Lou Fassel, the Executive Director of Luke's Place Resource and Support Centre, Carol Barkwell, the author of the discussion paper and final report, Pamela Cross and the forum facilitator, Joan Riggs. It built on research done over the past several years, both within the violence against women sector and beyond.[3] The project sought to take that work, update and expand on it

[3] In addition to the research individually referenced elsewhere in this report and the discussion paper, this project built on the following: Transforming our Communities. Domestic Violence Advisory Council, 2009; Connecting Across Language and Distance: Linguistic and Rural Access to Legal Information and Services. Law Foundation of Ontario, 2009; Life Beyond Shelter: Toward Coordinated Public Policies for Women's Safety and Violence Prevention. YWCA Canada, 2009; Threat Assessment and Risk Management in Domestic Violence Cases. Centre for Research and Education on Violence against Women and Children, 2010; Through the Looking Glass: The Experiences of Unrepresented Women in Family Court. Luke's Place Support and Resource Centre, 2008; Study on the Experiences of Abused Women in the Family Courts in Eight Regions of Ontario. Luke's Place Support and Resource Centre, 2009. Amanda Dale, Beyond Shelter Walls: system change, Best practices and policy initiatives to address violence against women in Canada. Literature Review, YWCA Canada, November 2007; 'No More Running in Circles': best practices and policy initiatives to address violence against women in Canada policy. Discussion Paper, YWCA Canada, March 2008. Pamela Cross, Life Beyond Shelter: Toward coordinated public policies for women's safety and violence prevention. YWCA Canada, October 2009.

first through a discussion paper and then through a survey and a facilitated discussion among sector representatives. A further survey will be circulated after the forum.

The goal of the forum was to identify recommendations for service delivery reform that respond to these emerging issues, particularly the increased complexity and intersectionality of women's experiences of legal systems to assist government and the VAW sector in the development of needed initiatives.

What we did

To support discussions at the forum, a pre-forum discussion paper was prepared and circulated to all participants. It is attached to this report as Appendix A. The discussion paper examined the following issues:

- access to legal representation
- family court process reforms
- mandatory charging policies and the implications for women
- reforms to immigration law
- custody and access
- reforms to restraining order legislation
- child protection
- legal system intersections

A pre-forum survey was conducted with participants to explore pressures on services, changes in the justice system, responses to those changes, and areas for exploration and discussion.

The survey results are attached as Appendix B.

The one-day forum in Toronto was attended by 31 organizational leaders, who represented a cross-section of agencies and organizations working with women who have experienced violence.

The survey responses and discussions at the forum confirmed anecdotal data about the challenges related to the legal systems and laws (particularly family law and the family law process) faced by women and service providers, and are summarized below.

We were encouraged by the number of innovative strategies that have been developed by organizations and agencies providing services to women who have experienced violence and their children. It is clear that, even with limited funding and resources, in the face of complex systems and, too often, working in isolation from others both within and beyond the violence against women sector, agencies and organizations are committed to doing what is necessary to ensure that women who turn to them for support are served as well as possible.

The commitment and initiatives demonstrated again and again by this sector are inspiring and offer great hope for future possibilities, "scaling up" of pilots that show promise, and further knowledge and promising practice exchange.

However, this innovative approach should not be seen as a sign that the sector requires no further support. Our discussions also made apparent what we all knew before the forum: agencies are experiencing considerable stressors, resources are seriously over-extended, organizations are operating at and beyond capacity and are unable to meet the escalating demand for services and, because many agencies rely on project funding, administrative supports are inadequate. Through their leadership, workers are reporting high levels of personal stress and compassion fatigue because of the complexity of the situations women are dealing with and because of the inevitable hopelessness as the result of constant interaction with systems that fail to respond adequately to violence against women.

(Lists of those invited and those were able to attend is attached as Appendix C and the forum agenda as Appendix D. A summary of the discussions at the forum appears as Appendix E.)

Building on the pre-forum survey and discussions at the Barbra Schlifer Clinic forum, Luke's Place has developed and distributed an extensive survey to 500 violence against women and related service providers in Ontario. Luke's Place is conducting this environmental scan in order to augment The Clinic's research focusing on impacts related to mandatory charging practices, dual charging practices, and impacts related to changes to immigration and refugee processes as the result of Bill C-11. The scan examines the intersectionality of these issues and women's family court experiences. These findings will be gathered in a supplementary report that together with stakeholder consultations will support the identification of best practice guidelines, models of service delivery and training protocols for service providers supporting women. This supplementary report will be completed by September 2011 and submitted to the Barbra Schlifer Clinic, the Ontario Women's Directorate and to our stakeholders.

Principles for analysing the issues and making recommendations

An analysis of women's experiences of the legal system must encompass the following principles.

Not all women engage with the legal system

Solutions need to acknowledge that increasing numbers of women are not using the legal system at all because of the challenges and barriers they anticipate facing. Some women remain outside the legal system because they fear the backlash from their partners, others because they do not have information about the legal system and are afraid of it, others because they fear they will not be supported in the system, others because they simply cannot afford it, and others still because the legal system is the gateway to further intrusion on their bid to live free from violence. This latter point is made in both Dale and Cross, sited earlier, and further developed with data from a recent study (Jenney, 2011), which found that the main work of mainstream social work practice with abused women is convincing them there is a problem with one solution, which is to leave their partner. Women who admitted to experiencing abuse but were reluctant to leave were seen as requiring education and influencing – because they don't "know any better"; similar to social worker viewpoints elicited decades ago (Loseke & Cahill, 1984). This finding points to a lack of progress made in terms of viewing abused women from a strengths-based rather than deficit-model perspective. This deficit perspective assumes women who remain in abusive relationships are lacking something (e.g., the correct cultural interpretation of the role of women) or some other resource that would facilitate leaving, rather than considering her skills of survival within that context as highly functional. This has been termed 'the leave ultimatum' posed by service criteria.[4]

It should be noted here that women who are unrepresented because they cannot afford a lawyer and do not qualify for legal aid, have challenges that are distinct from those litigants who choose to self-represent for a variety of reasons. In violence against women cases, abusers often self-represent even though they could afford a lawyer because this gives them the opportunity to unleash ongoing harassment, including legal bullying, against their partners.

At the forum, we were told that women who do not engage with the legal system 'fly under the radar for as long as possible': they resign themselves to making do on their own, hope their ex-partner won't make an application for custody or won't refuse to return the children after an informal access visit; hope they can manage without regulated child or spousal support; attempt to sort out any property division on their own, and hope they can keep themselves and their children safe.

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[4] See Angelique Caroline Jenny, Doing the Right Thing: Negotiating risk and safety in child protection work with domestic violence cases' (Unpublished PhD Thesis: University of Toronto) 2011.

Unfortunately, while some women are successful using this approach, many are not because the ex-partner's behaviour remains abusive and even escalates. These women are then forced to turn to the legal system for protection and assistance, often at a time of serious crisis, when it is much more difficult for the system to respond effectively.

Collaboration is important

Collaboration must sit at the heart of any solutions: collaboration within the violence against women sector and collaboration among sectors. As various approaches to collaboration are considered, it is critical that workers, especially new workers, in the violence against women sector remember their roles to support women's choices in order to prevent unintended collusion with the most unhelpful aspects of other systems such as police, child protection and courts. By this, forum participants meant that the violence against women sector must not confuse its role with the mandate of state responses, and stay grounded in its separate role as advocates, VAW experts and system 'translators'.

We need to expand our understanding of violence against women

The forum gave us a clear indication that solutions must address the range of issues to which VAW services are actually being asked to respond. Diverse forms of patriarchal violence designed to control a woman's movement, sexuality, life choices and sometimes her ability to remain alive, are not addressed by conventional definitions of 'domestic violence' (intimate partner abuse). Forms of violence that are intended to control women's behaviour and sexuality (such as those named as "honour-based") are increasingly challenging the 1980s definition of partner assault as the most salient form of violence against women. As a result of staid paradigms, some communities of women find themselves either under-responded to or inappropriately responded to by a reflexive attribution of violence to 'culture': this manifests equally as either a reluctance to 'interfere', or as an over-intrusive response that's demands severance from her community, her culture and community. This is a serious issue that can leave a woman in an impossible position of having to choose between safety and her community. The continuum of violence that women experience must be seen as such, and our services need to adapt openly and with nuance to this changed environment. Funding paradigms that wed us to old modes of defining what forms of violence we can legitimately respond to, also need to adapt.

Survivors' voices must be included

The experiences of survivors of violence against women must play a central role in the development of solutions. There is no "one" experience of violence; women's experiences are as diverse and unique as they are. Not all women who experience violence emerge with a feminist analysis or with a critique of the state and social service response. For instance, some women have good experiences with police and the courts; others do not. Some women find

shelters to be the refuge they need; others do not. Incorporating the voices of survivors is a challenging undertaking: Whose voices do we invite? To what tables are they invited? Where does their expertise lie? However challenging, there was no doubt among forum participants that this is a critical component of the work.

There are always unintended negative consequences

As we were gathered to reflect on ongoing, cumulative, often unintended effects of legal reforms, we restated the insight that brought us together: Thinking about possible solutions must include evaluation and discussion about possible unintended negative consequences at the front end. Built-in monitoring, evaluation and adaptation must inform our interventions and innovations.

We must work within political realities

Violence against women service delivery innovations must take into account the political and economic climate at provincial, federal and global levels --where violence-induced waves of migration and policy-induced forms of violence often originate.

Women's equality and ending violence against women are not priorities in a time of general political conservatism and fiscal restraint, despite pockets of innovation and change (for example, important law reform in Ontario in the areas of arbitration, the best interests of the child test and restraining order, the development of new programs such as the Family Court Support Worker).

Working within these realities will have an impact on the approach to service delivery innovation. In particular, it leads to the necessity of creating new collaborations and collective action both within the violence against women sector and across various social justice sectors to address the increasing disadvantage of marginalized people.

The issues

Note: Each of these eight issues is explored in depth in the forum discussion paper, which is appended to this report for the reader's review. We strongly encourage that it be read as it is not the intention of this report to repeat that level of exploration, but rather to provide a brief synopsis and analysis of each issue before exploring what we learned from the survey and forum discussion, what we are already doing and what we would like to do.

1. Access to Legal Representation

Background

Lack of access to legal information, services and representation has been amply researched and documented in Ontario in recent years in a number of reports[5].
While none of these focuses specifically on the issue of violence against women, they all note the additional barriers faced by socially isolated populations.

Women who experience abuse face the same issues as other Ontarians who live in rural and remote communities: long distances to courthouses and lawyers, limited or no public transportation to get them there, few legal services available in their communities, lower incomes and fewer employment opportunities[6]. Many women find that the only lawyer in town has already acted for their partner or does not take legal aid, so they are left with no option for legal representation.

What we learned

Access to legal representation was identified as one of the three "most significant pressures on the services you provide to women who have experienced violence" by those who completed the pre-forum survey.

A recent survey of Ontario shelter executive directors conducted by the Ontario Shelter Research Project also found that 97% of shelters "routinely or often provide services to women to help them navigate family law systems," because their residents either do not have lawyers or have lawyers who do not understand the issues related to violence against women. This survey also found that shelters were providing significant support to women involved in the criminal law process (78%) and that 25% of shelters were routinely offering support to women

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[5] Cohl, Karen and George Thomson. *Connecting Across Language and Distance: Linguistic and Rural Access to Legal Information and Services.* Law Foundation of Ontario, 2008; *Listening to Ontarians: Report of the Ontario Civil Legal Needs Project.* 2010; *Moving Forward on Legal Aid: Research on Needs and Innovative Approaches*. Karen Buckley, Canadian Bar Association. 2010

[6] Ibid. pp 31 – 35.

involved with immigration issues. All shelters surveyed indicated they assist women with child protection related issues.[7]

Survey respondents and forum participants identified the lack of French-language lawyers as a serious problem for Francophone women.

At the forum, participants repeatedly expressed the frustration of providing support to women who did not have any or adequate legal representation in both criminal and family court.

The lack of legal representation for women at the litigation stage of their family law case was identified as a serious problem because community-based services are not adequately resourced to assist women with this.

Recent changes to Legal Aid Ontario (LAO) have resulted in considerable turmoil and uncertainty for women and service providers who can no longer turn to their area officer or Area Director for assistance. While wait times for telephone service have significantly reduced, the fact that women must identify themselves as survivors of violence without being asked an invitational question about this means that many women continue to wait in the general queue rather than being fast tracked as they should be. We have also heard anecdotally that fewer certificates overall are being issued in family law.

What we are already doing

Violence against women organizations and agencies have developed a wide array of services to support women who have no or inadequate legal representation. Many of these programs and services focus on legal information and support, not representation. Information about family court process is as important as information about family law – women need to have realistic expectations and to know what their role is in the process in order to participate as effectively as possible.

> **While these resources are important for women, it is important to stress that none of them is a replacement for legal representation. Women who have left an abusive relationship must have adequate legal representation, regardless of their financial situation.**

Many programs are already in place across the province that warrant ongoing support and expansion, and these programs often have unique approaches that should be shared across the sector. They include:

i. Specialized services delivered by the Barbra Schlifer Commemorative Clinic as outlined at the beginning of this report

ii. Legal information drop ins for women at a community-based (non-shelter) location (Jared's Place)

iii. Lunch and learn sessions for service providers to increase their level of knowledge about the law (Jared's Place)

[7] Ontario Shelter Research Project, Violence Against Women Executive Directors Survey of Supports and Services. 2011.

iv. Client information sessions to provide women with initial information and take-away resources about safety planning and family court process as they await their first one-to-one appointment with a legal support worker (Luke's Place)

v. Legal information workshops: 2-hour skills-development sessions, with take-away resources, co-delivered by a lawyer and a legal support worker. Topics include how to start a custody application, how to apply for a restraining order, how to complete a financial statement and how to work effectively with a lawyer (Luke's Place)

vi. Pro Bono Summary Advice Clinic, in which community lawyers donate their time to meet with women and legal support workers to review their legal situations and provide summary legal advice (Luke's Place)

What we would like to do

A number of ideas for new programs were generated at the forum, including:

i. Delivering monthly drop-in legal information sessions for women on family, immigration and other legal system processes, and for service providers to develop intervention strategies/supports to women who are involved in legal systems processes (Barbra Schlifer Commemorative Clinic and others)

ii. Expanding on the use of law students to assist women who do not have lawyers, to facilitate, where necessary , the delivery of 'unbundled' legal services (Barbra Schlifer Clinic, Downtown Legal Services and other student law clinics)

iii. Developing a coherent role for technology to provide ongoing legal education for workers, to assist women in the completion of court documents and to provide online moderated mentorship for workers who are supporting women through the legal process (Luke's Place, CLEO, Springtide, Barbra Schlifer Clinic, METRAC)

iv. Increasing the capacity of all frontline workers to support their clients by sharing existing legal information tools and resources. Considerable expertise and material exists within the sector and beyond (Luke's Place CLEO, Schlifer, FLEW and others)

v. Working collaboratively with Legal Aid Ontario and regional Family Bar Associations to develop a protocol that would allow women to use legal aid certificates to hire a lawyer they have already seen at the Family Law Information Centre or as Family Court Duty Counsel to address a significant barrier for many women, especially in smaller communities where the number of lawyers practicing family law and who accept legal aid certificates is extremely limited.

2. Family Court Process Reform

Background

The rollout and implementation of recent family court process reforms are in their early days, so it may not be possible to draw many conclusions about implications and consequences for women who have experienced violence. However, these reforms are significant and will, without a doubt, have an impact on women, so they are worthy of some review and discussion.

In 2008, Attorney General Chris Bentley announced his intention to overhaul family court process. He identified what he called the "four pillars of family court process reform:"

- To provide more information to families up front about the steps they need to take and the impact on children of relationship breakdown
- To enhance opportunities to identify challenges, ensure early disclosure and provide community referrals to better support families in reaching resolutions
- To improve access to legal advice as well as less adversarial means of resolving challenges such as mediation and collaborative family law
- To streamline and simplify the steps involved for those cases that must go to court.

These reforms are aimed at all those who turn to the family court at the time of relationship breakdown and, as a result, do not necessarily meet the particular needs of women leaving abusive relationships.

In its initial response to the introduction of family court process reforms, the violence against women sector identified a number of overarching principles that needed to guide this work:

1. A clear definition of violence against women must be developed for use in family court.
2. Cases involving violence against women must be seen as unique and as requiring a different approach from cases where the parties have a relatively equal balance of power.[8]
3. Family law and family court processes must respect and reflect the reality that violence does not end at the point of separation but rather changes to new strategies, including stalking (both physical and emotional) and legal bullying and often increases, sometimes to the point of lethality.[9]
4. One size does not fit all when it comes to family court processes. Reforms must be based on an equity framework in order take into account the different realities of families in different circumstances. In particular, reforms must acknowledge the

[8] We continue to be concerned by the commonly held belief that all cases, including those involving violence, can be effectively managed using alternative dispute resolution such as mediation and collaborative law, simply by implementing screening tools and professional training. It is our opinion that these are **not** appropriate options in violence against women cases.

[9] The reports of the Domestic Violence Death Review Committee, the Domestic Violence Advisory Council and other research shows that violence often escalates for at least several months post-separation. Women are often murdered by their former partner at the point of separation or while family court proceedings, especially those involving custody and access, are underway. The phenomenon of legal bullying is well explored in the Luke's Place Support and Resource Centre for Women and Children research paper, *Through the Looking Glass.*

unique realities of Aboriginal and Francophone families, newcomer and refugee families, families living in rural, Northern and remote communities, families dealing with disability issues and families that do not speak English or French.[10]

5. Reforms to family court processes need to reflect the province's commitment to ensuring that family law disputes are dealt with in a public, not private, arena.[11]
6. Family court processes must understand the differences between unrepresented and self-represented parties.[12]
7. Any reforms to family court processes must respect the right of abused women to access family court litigation without penalty.[13]
8. Process reforms cannot be used as a replacement for an infusion of monies specifically for family law legal aid certificates. Women leaving abusive relationships have a right to high-quality legal representation, regardless of their financial situation.[14]

It would seem these principles continue to provide an effective framework and starting point to examine the process reforms as they are implemented, and to discuss their impact on service delivery.

What we learned

The continued focus on alternative dispute resolution was identified as a serious challenge in both the pre-forum survey and forum discussions. Concerns were expressed that the pressure to mediate or use dispute resolution officers leaves some women feeling as though these are mandatory with the result that they agree to a process that may not be in their best interests. Too often these professionals present themselves inaccurately as having the skills needed to mediate cases involving violence against women, which further increases the pressure women feel to engage with these processes. Further, these professionals often re-conceptualize spousal violence as cases of 'high conflict' giving rise to assumptions about mutual engagement in these dynamics between the spouses and/or that the problems are essentially about poor communication.

[10] This includes ensuring that processes acknowledge the lack of lawyers who speak French, the uneven application of legislation dealing with French-language services, the jurisdictional issues that arise on reserve with respect to enforcement of provincial court orders, the isolation in rural, Northern and remote communities and physical and other access issues for people with disabilities.

[11] The Premier and the Legislature demonstrated this commitment when, in 2006, legislation that restricted the use of private laws, ensuring they are legally non-binding, and imposed a system of public accountability in the arbitration of family law disputes. As we found at that time, there is significant public support for this "public vs private" approach to family law.

[12] We define unrepresented parties as those who wish to have a lawyer but do not because they cannot afford one and they do not qualify for legal aid, and self-represented parties as those who could have a lawyer but choose to represent themselves. Self-representation is a strategy used by some abusers to maintain control over their former partner, who may be unrepresented. This presents significant safety concerns for the woman as well as serious trial management issues for the court. Process reforms cannot treat these two very different kinds of litigants as though they are the same.

[13] For instance, any information sessions provided to litigants must include information about all forms of dispute resolution equally, no incentives should be introduced to encourage parties to move their cases out of the litigation stream and parties who wish to remain in the litigation stream should not face financial or other penalties.

[14] We are concerned by the notion that we can achieve a level of excellence without more lawyers, that paying for more lawyers is not the right choice, that we can fix the problems in family court without spending more money. Put simply, all women dealing with family law issues with an abusive ex-partner have a fundamental right to legal representation.

What we are already doing

The violence against women sector has been actively engaged with the family court process reform process at both the systemic and individual advocacy levels.

At the systemic level, for example, we have submitted analysis briefs, participated in consultations, sat on advisory committees and provided feedback on revisions to the Mandatory Information Program curriculum.

At the service level, we provide women with information about family court process and with a variety of supports as they move through this system (emotional support, debriefing, assistance with paperwork, court accompaniment, etc.)

What we would like to do

We look forward to the opportunities presented by the recently announced Family Court Worker Program to increase our collaborative efforts. Family Court Support Workers will be able to work collaboratively among themselves but also with others providing similar services in communities. In particular, training resources can be shared and built upon to enhance the capacity of those in all sectors who are supporting women through family court.

3. Mandatory charging

Background

Before the 1980s, violence against women was not well understood by Canadian society generally. It was largely considered to be a private matter, best kept behind closed doors. Legislation -- both criminal and family -- to respond to or address violence against women was limited. Few, if any, professionals (including police, lawyers, court staff, judges, child protection workers, medical personnel, etc.) had received any kind of training or education on the issue of violence against women and appropriate responses to it.

As a result, when a woman did report the violence she was experiencing -- whether to a family member, friend, religious leader, police officer or family doctor -- she was often treated with disbelief, scorn or the suggestion that she must have contributed to the problem and/or was responsible for solving it.

Often, the police response tended towards the dismissive with the responding officer asking the woman, while she was in the presence of her abuser, whether she wanted to lay charges against him. For reasons that are obvious to us now, many women declined, and few perpetrators of woman abuse were arrested or charged.

In the 1980s, government at both the federal and provincial levels began to recognize that violence against women was a serious social problem requiring a legislative response. Over this decade, various “mandatory charging” policies came into effect across Canada. These policies directed police officers to lay charges in “domestic violence” cases where the police

officer believed there was evidence to support such a charge. This approach removed the responsibility for making this decision from the woman and placed it with the responding police officer, as is the case in other areas of criminal law.

Through the 1980s,1990s and early 2000s, the issue of violence against women received considerable attention. During this period of time when awareness and education about violence against women has increased, unintended negative consequences growing from mandatory charging practices have been identified by violence against women advocates and others. Perhaps most important among these have been the phenomena of dual charging, when, as well as the man being charged, the woman is charged for an act of self-defence or protection. Counter or sole charging, when only the woman is charged as a result of acting to protect or defend herself or her children from the abuser, has also increased at alarming rates.

What we learned

The lack of control that women feel because of these policies and practices has both negative and positive implications: for some women, it is an enormous relief to let someone else have the power to decide to charge their abuser; for others, this loss of control results in multiple problems involving not just criminal court, but also immigration, child protection and family law. The negative impacts of mandatory charging policies and practices are felt most strongly by racialized women, Aboriginal women and others who have experienced uniquely problematic relationships with the criminal justice system. The issue of mandatory charging is a complex one for the VAW community as well. While the community supports women's autonomy and empowerment and advocates on women's behalf for greater input into the decision to charge or not to charge an abuser, we have also advocated for decades for criminalization of partner assault and believe that the prosecution of abusers should not necessarily be determined by individual women.

It was clear from the survey responses and discussion at the forum that mandatory charging continues to challenge the violence against women sector and there is no one opinion about its value.

What we are already doing

Frontline workers provide women with information about both the positive and negative aspects of calling the police so women have as much information as possible if and when they need to make this decision. Workers also provide women with support and advocacy as they move through the criminal system, whether as witnesses or as accused.

What we would like to do

A cross-sectoral discussion about how to improve mandatory charging so it has the desired affect and fewer unintended negative consequences should be held, as recommended by the Domestic Violence Advisory Committee:

Recommendation LR16: A provincial consultation be held to discuss the effectiveness, limitations and challenges related to mandatory charging and the possibility of other approaches that would increase the safety of women and children while also holding perpetrators accountable for their behaviour.[15]

There was strong support for reconvening of the forum participants at a further session to begin to address this matter head on.

4. Immigration law reforms

Background

A number of recent Canadian immigration policy initiatives and legislative amendments to the *Immigration and Refugee Protection Act* raise serious concerns for women who are in or fleeing abusive relationships.

Most recently, the proposed introduction of a conditional residence period of two years or more for some sponsored spouses has the potential to increase the vulnerability of women and place them at risk of ongoing abuse. While not all sponsored women are in abusive relationships, many are, and the present proposal would increase the existing power imbalance in the sponsor relationship. Further, many immigrant women are not aware of their right to seek protection from abuse or are unable or unwilling to do so for many different and legitimate reasons.

The proposed change would, in effect, force women and their children to remain in an abusive situation, contrary to other statements from the federal government that violence against women will not be tolerated.

Bill C-49, still in the legislative process, and Bill C-11, enacted in June 2010, both have a potentially devastating impact on the rights of refugees and migrants and carry particular implications for women who have experienced violence, whether at the hands of their partner or the state in their country of origin.

Bill C-49 will, if enacted, punish those who flee persecution while purporting to target 'human smugglers', which is so broadly defined as to catch those legitimately working to secure the freedom of those who require informal means of escape from prosecution –a time-honoured aspect of asylum-seeking. It grants broad discretion to the Minister to designate certain migrants as "irregular," based solely on the circumstances of their arrival in Canada. The rights of those migrants are then severely curtailed by other changes proposed by the Bill, which lacks a gender based analysis and consequently will have disproportionate negative consequences for women attempting to flee violence.[16]

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[15] *Transforming our communities*. Report of the Domestic Violence Advisory Council for the Minister Responsible for Women's Issues. May 2009. 81.

[16] Barbra Schlifer Commemorative Clinic Press Release, November 3, 2010.

Bill C-11, already enacted, introduces changes that, in the name of increasing efficiency of the immigration and refugee process, will severely impact victims of violence and domestic violence. Most importantly the new system provides for the identification of the substance of a woman's claim via a 4-hour "interview" that will take place within 15 days of a claim being made. This interview will replace the Personal Information Form which was typically prepared with great care by a legal representative experienced in the solicitation of violence-related information that would form the foundation of a viable refugee claim. Faced with an official of the federal government conducting this interview, it is likely that there will not be an opportunity provided for the uncovering or identification of violence-based information. Other provisions such as those enabling the Minister to designate "safe" countries with accompanying compressed timelines for the determination of refugee claims, will create undue hardship on women who are fearful to disclose such personal information or who do not understand the importance of doing so. Claims based on Humanitarian and Compassionate grounds also present new challenges for abused women as their fear of violence or persecution will no longer be considered relevant to these determinations.

In order to support women through this new process, community organizations need to be well informed about it and trained in supporting newcomer women in preparing for these interviews.

As well, women need early access to legal information and assistance to reduce the likelihood that their interview statements will compromise their credibility.

What we learned

We learned from the survey responses and forum discussion that negative outcomes have already been seen as a result of Bill C-11 with respect to both temporary foreign workers and women who have been sponsored by a spouse/partner. According to one survey respondent, there has been an increase in the number of women who become stranded in the shelter system because they are unable to access proper channels to obtain status.

Other survey respondents identified the lack of understanding of immigration law by family court judges as problematic to just outcomes in cases where abuse is present; in particular in custody and access decisions that do not recognize the unique challenges in families where the abuser has the ability to remove the children easily from Canada.

Forum participants pointed out that refugee women will experience unique disadvantages when the new amendments are fully implemented in December 2011. It is anticipated that the expedited procedures of the new system will result in significant numbers of women being held in detention and then deported without benefit of legal representation.

What we are already doing

Supporting women who do not have legal status in Canada or who are making their way through the immigration/refugee process is becoming an increasingly significant part of the work of many shelters and violence against women agencies, especially, but not exclusively, those in large urban areas.

i. Some shelters have noted the challenges of doing this work for shelter workers. According to one Executive Director, there has been talk in some shelters of establishing quotas for the numbers of women without documentation they can sustain. Because there are so few options for women without documentation, working with them can tie up significant resources and be very frustrating. This shelter has developed a "script" to ensure that women get a uniform, non-judgmental message about going underground or going home. It is also working with women who come to the shelter to become knowledgeable about where they can look for jobs and housing without documentation.

ii. Women need assistance in presenting evidence about abuse in their refugee process. A number of legal clinics make use of a series of "expert witness" affidavits about various aspects of violence against women that could also be used by women with private lawyers or with no lawyers. The Barbra Schlifer Clinic uses expert psycho-social assessments created by its counselling staff in support of women's refugee claims. These reports are designed to provide objective, reliable opinions to corroborate women's reports of violence, and to identify the impacts of violence. The infusion of VAW expertise into these legal processes is critical both to the feasibility of individual women's claims and to the development of expertise amongst decision-makers in the refugee determination process. In Europe, some immigration advocates are working on an international charter to address what they are terming 'destitute migrants' as a category of vulnerable populations. As women's migration is deeply entwined with gender-specific forms of violence (state, migratory and domestic), this is an area of work the VAW sector in Canada is showing keen interest in advancing.

What we would like to do

i. Circulate expert witness affidavits to violence against women organizations across the province

ii. Develop a list of health care professionals and social workers who could provide expert evidence in immigration matters.

iii. Develop programs to identify and outreach to women in immigration detention who have experienced violence to begin an action-research approach to the deteriorating conditions that women's international human rights are suffering in Canadian institutions (Barbra Schlifer Clinic; Elizabeth Fry Toronto).

5. Custody and access

Background

Custody and access is often the single most important legal issue for women who leave abusive relationships. The issue of what role violence against women should play in custody and access determinations has been battled out for more than a decade at both the federal and provincial levels, with the terms of the battle largely being set by the fathers' rights movement, which

has attempted, with some success, to insist on a legal presumption in favour of arrangements that allow each parent to spend equal amounts of time with the children.

Much is made by those who favour equal parenting regimes of the changing role of fathers in Canadian families and of stay at home dads who spend at least as much time with the children as do the mums. However, the law must reflect and acknowledge reality and not individual exceptions or hopes for future change. Family law must take account of the fact that women continue to hold most of the responsibility for child rearing and general household management and tasks in most Canadian families, both before and after separation. It must promote women's equality within the family and in society at large.

The law must also take into account the reality of violence against women and children, which remains a deeply entrenched reality of Canadian life even as its pervasiveness continues to be denied.

Recent efforts to claim that violence within families is gender-neutral, bi-directional, mutual, or occurring at similar levels for women and men is misleading and does not reflect the substantive research.

Unfortunately, many judges, lawyers and other professionals continue to underestimate the impact of woman abuse on children. For women who are leaving abusive relationships, the extensive contact which collaborative shared parenting requires can be dangerous and life threatening. Many abusive men commence custody/access applications and/or manipulate their children as a strategy to get back at their ex-partners for having left the relationship. Shared parenting gives men more power and control over their children and their children's mother without requiring them to participate in a meaningful way to their children's upbringing.

Ontario's move to require judges to consider violence within the family as part of the best interests of the child test was welcomed by violence against women advocates.

These legislative changes, combined with case law, offer a significant improvement to women who have experienced violence and are seeking an appropriate custody and access order.

Nonetheless, courts continue to order joint custody inappropriately in cases involving woman abuse, with the result that women and children are exposed to ongoing abuse, including lethal violence.
Parenting affidavits, a new component of family law applications for anyone involved in a custody and access case in Ontario, requires a woman to swear to the existence of any violence against herself, children or others within the family. This imposes a clear obligation on women to disclose violence as a factor that judges must consider. Many women welcome this, as it takes the responsibility for deciding whether or not to raise the issue of violence out of their hands. However, it creates a problem for women who wish to pursue their custody claim without raising the issue of violence. Women understand that public disclosure of violence often inflames a case that might be amenable to resolution otherwise.

Recently, custody cases have become increasingly complicated by the resurgence of allegations of so-called parental alienation, which, despite ample scientific evidence that largely debunks it, still finds favour with some judges.

When women raise the issue of abuse, including the post-separation impact on children, in an attempt to limit access by the father or refuse to follow court ordered access arrangements, sometimes even disappearing with their children, parental alienation can become a convenient defence for the father to make.

If courts are to better respond to violence within the family, the court process and professionals (including mental health professionals who are often called as experts in these cases) must understand and acknowledge the reality and prevalence of violence within families – both violence against women and violence, including sexual abuse, against children.

What we learned

Almost all survey respondents and many forum participants indicated that there has been an increase in joint custody orders, particularly in courts outside of the City of Toronto in violence against women cases. There is concern that the best interests of the child test is not being properly applied, and has become synonymous with the presumption that maximum involvement by both parents in a child's life, is in the children's best interests. Further, violence within the family is being consistently discounted by both lawyers (who may discourage women from putting this evidence in their pleadings because they do not believe the woman, assume the violence is a thing of the past to be "moved on from" or fear it will annoy the judge) and by judges (who may continue to think violence ends at separation, does not have an impact on post-separation parenting) and/or is otherwise unrelated to parenting capacity.

A serious concern expressed at the forum was the lack of a substantive analysis of violence against women by many of the professionals who play a role in custody and access determinations and/or who provide supports to families after court processes have been concluded: the Office of the Children's Lawyer, custody assessors, mediators and parenting coordinators, among others. This lack of analysis limits their ability to understand women's concerns about custody and access proposals and their assessment about what is in the best interests of the children, both in the short and long term. It can even lead them to see the woman as the problem for raising what, to the uninformed professional, are irrelevant or exaggerated concerns.

As one survey respondent said, despite recent reforms: "No change – system still broken."

What we are already doing

Frontline workers provide a significant amount of support, both formal and informal, to women who are dealing with custody and access issues. Examples of formal programs include:

i. The Barbra Schlifer Commemorative Clinic
ii. Luke's Place Resource and Support Centre
iii. Jared's Place

iv. Legal support workers/advocates at a number of Ontario shelters

v. Transitional support workers who have a segment of their time formally ascribed to family court support

Both formally and informally, frontline workers assist women in a number of ways:

i. Providing emotional support

ii. Providing information about custody and access law and how the court process works

iii. Assisting with gathering evidence and completing paperwork

iv. Accompanying women to lawyer appointments and to court

v. Assisting with safety planning with the women for her court experience and to make her post-court custody and access arrangements as safe as possible

What we would like to do

i. Enhance the knowledge and skills of frontline workers. In particular, we heard that workers would like to receive training to increase their capacity to write effective reports for use in custody and access cases and to expand their knowledge of family law and court process

ii. Increase the capacity of frontline workers to appear as expert witnesses in custody and access proceedings

iii. Anecdotal evidence indicates that there is an increase in joint custody orders outside the GTA and, even where the order is not for joint custody, increased reliance on the concept of shared parenting. Province-wide research needs to be conducted to gather hard data on this and on whether or not the reforms to the best interests of the child test are playing a role in this area of vulnerability for women experiencing continuing violence, with recommendations for next steps

iv. Establish a template for groups for women who have joint custody orders. These groups can function as support, but also as a place to do action-based research and develop advocacy strategies

6. Restraining order reforms

Background

The sections of Ontario's *Family Law* Act dealing with restraining orders have recently undergone significant change.

Perhaps the most important aspect of the reform relates to enforcement of a restraining order. Breaches of a restraining order are now a criminal offence (*Criminal Code of Canada,* section 127). Someone who breaches a restraining order can be arrested by the police, charged with

a criminal offence and held for a bail hearing in criminal court. The case proceeds in criminal court and, if he is convicted, the abuser faces up to 2 years in prison.

Other important elements of the reforms include:

- Anyone who is married or who has cohabited for any period of time may apply for a restraining order. In the past, people had to have cohabited for at least 3 years to apply
- A standard form order has been developed for restraining orders.
- The order is automatically entered into CPIC by court staff
- Court staff will prepare the order if a woman is unrepresented

These are positive changes and offer the potential for women to be better protected by obtaining a restraining order.

What we learned

The discussion at the forum confirmed that these reforms also carry with them some challenges. We heard that, in some communities, the police continue to lay charges under the *Provincial Offences Act* when a restraining order is breached.

We also heard that some women are not comfortable seeking a restraining order now that a breach leads to a criminal charge because, while they want to be kept safe from their abuser, they do not want him to become involved with the criminal court.

Forum participants expressed some concern that, because there are now criminal consequences for a breach, judges in family court may informally impose a higher standard of proof, making it more difficult for women to obtain restraining orders.

Forum participants had anecdotal information, supported by direct comments from one judge, that some judges are reluctant to use the new restraining order provisions because of the criminalization of breaches and are, instead, using section 28 of the *Children's Law Reform Act* (Powers of the Court) to make orders requiring good behaviour. These orders, which are enforceable under the *Provincial Offences Act,* present the same enforcement challenges that the reforms were intended to address.

The implementation and use of the revised restraining order regime clearly requires ongoing monitoring, evaluation and analysis to determine whether it has achieved its goal of protecting women and holding abusers accountable.

What we are already doing

The violence against women sector was very involved in the process to reform restraining order legislation. As with custody and access, frontline workers provide a wide range of support for women who may need restraining orders, including:

i. Providing emotional support
ii. Providing information about restraining order law and how the court process works
iii. Assisting with gathering evidence and completing paperwork

iv. Accompanying women to court

v. Assisting with safety planning whether or not she is successful in obtaining a restraining order

vi Liaising with /advocating on behalf of women with police about enforcement of protection orders

What we would like to do

i. Province-wide research needs to be conducted to assess the impact of reforms to restraining order legislation. In particular, the research should focus on whether there has been a decrease in orders issued under the *Family Law* Act and whether the judges' endorsements make any reference to the impact of criminalizing breaches on their orders

ii. Develop a common approach, supported by training, to the use of any risk assessment tools/protocols that courts may rely upon as valid, objective evidence of risk.

7. Child protection

Background

It is not news that challenges exist between the child protection and violence against women sectors. The two sectors have long had a difficult relationship, which was brought to a head in the late 1990s with changes to the duty to report provisions of the *Child and Family Service Act.*

Over the intervening years, communities have developed collaborative protocols between the sectors; both sectors have undergone training and education, some of it joint; the Ontario Association of Children's Aid Societies has produced various procedural and protocol guidelines for its sector and conferences have been held to explore how to improve the child protection response to woman abuse. These initiatives have had mixed results.

Difficulties remain. Many community protocols are out of date and do not reflect current law, regulation, protocol or practice. Training, especially in the child protection sector, remains inadequate. Different philosophies and principles continue to create both tension and conflict between the sectors. Most importantly, these difficulties result in an inconsistent approach to responding to child protection concerns in cases involving woman abuse. There are inconsistencies at the agencies, where individual workers bring different approaches based on their personal experiences and biases, as well as between sectors within a community, and at the provincial level where communities take very different approaches one from another.

What we learned

As one survey respondent put it: “Continues to be one of the worst systems for women and children.”

According to the survey, women report to services that they often feel pressured into signing voluntary agreements that provide for monitoring of both parties rather than focussing more centrally on the need to hold the abuser responsible (as stated in the CAS- VAW protocol). Further, immigrant women are more likely to come to the attention of child protection agencies and experience more aggressive interventions.
Forum participants spoke about the lack of an intersectional analysis of violence against women on the part of many CAS workers (and child welfare agencies as a whole), as well as the overwhelming caseload workers must carry as contributing to the lack of an appropriate response to violence against women cases.

The need for CAS support to women in their custody and access cases was seen as critically important by forum participants. They pointed out that the CAS, once it has identified violence as a concern, should provide evidence/testimony to confirm the nature of their protection concerns and/or their findings of violence in relation to child witnessing of woman abuse.

What we are already doing

The violence against women sector has played at active role in developing, maintaining and participating in collaborative efforts with child protection agencies at the community and provincial level. We have been involved in the development of protocols, training with both sectors and public education about the relationship between child protection and woman abuse and the appropriate role for child protection to play in this. MCSS-funded agencies in both sectors have reconvened for renewal of these agreements or other solutions to these on-going difficulties.

At the frontline level, workers have provided individual advocacy and support for women in a number of ways, including:

i. Providing information about child protection law
ii. Assisting with women’s interactions with child protection workers
iii. Supporting women’s responses to child protection interventions
iv. Providing advocacy as part of a case management approach to child protection
v. Assisting women with safety planning

What we would like to do

i. Work with child protection authorities to develop a protocol whereby the evidence and information they gather during any investigation involving woman abuse is automatically entered into or made available to custody and access proceedings

ii. Pilot some service responses that integrate small scale joint support to women experiencing violence to build capacity and concrete positive working relations between the sectors.

8. Legal system intersections

Background

The lack of coordination between family and criminal law has long been a concern for the violence against women sector and others. When women are involved in both systems, they assume and expect that the two are communicating with one another, that information provided in one will be shared with the other and that, at a minimum, orders will not conflict. It does not take long for them to realize their expectations are not going to be met: while the woman's story intersects between the two systems, the systems themselves do not.

For many women, the intersections are more complex: they may be involved with immigration law as well as family and/or criminal. There may be child protection proceedings also underway.

These intersections are complex: a woman may have multiple lawyers, be represented in some systems and not others, the standards of proof are different from one court system to another, information is not shared from one system to another, delays are inevitable and outcomes can conflict with one another.

What we learned

Survey respondents and forum participants saw the lack of communication between family and criminal court, leading to conflicting orders, as a serious problem. In particular, survey respondents noted the conflicts and difficulties that arise when police interventions (as the result of, among other factors, mandatory charging) custody, access and child protection matters are occurring simultaneously. For example, the abuser will attempt to delay the family court proceedings until the criminal case is concluded, thus leaving the woman and children in a state of uncertainty, perhaps with an inadequate or inappropriate interim order in place, for a long period of time.

Discussions at the forum revealed the increasing challenges for women who have experienced violence that arise as a consequence of intersections between family and immigration law. Women whose refugee claims have failed, or are not likely to succeed, face additional despair related to the potential loss of custody of their children when abusers claim custody based on the perception that it is in the children's best interests to remain in Canada with their father rather than be deported to another country with their mothers.

What we are already doing

Working with women who are involved in multiple legal systems is complicated and demanding. The violence against women sector supports women in this situation by:

i. Providing them with legal and process information, including information about the differences from one system to another and how to manage this complexity

ii. Assisting women with safety planning

iii. Providing emotional support

iv. Accompanying women to lawyer and court appointments

v. Offering intersectional legal support, representation and litigation (BSCC)

What we would like to do

i. Develop cross-training for lawyers so they understand better the implications of one process on another in cases involving violence against women

ii. Develop protocols related to confidentiality to increase the ability of all systems to share information in a collaborative way with one another to enhance safety for women and children (building on the Centre for Excellence results, forthcoming).

Collaboration

The need for networking and collaboration both within the sector and among sectors was identified as a key strategy, independent of any specific issue area, to increase ways in which women and their children can be supported. A number of ideas for collaborative initiatives appear in the discussion of specific issues, but other more general ideas surfaced in the forum discussion. Indeed, the discussions themselves sparked commitments from forum participants to engage in further and ongoing information and resource sharing.

Collaboration was seen as a spectrum ranging from simple information sharing at one end to close working relationships across sectors at the other. Participants felt strongly that, especially when considering collaboration among sectors, it is important to move slowly and to ensure that those involved share an understanding of what collaboration is being undertaken to minimize the possibilities of miscommunication, misunderstanding, unintended or unwarranted breaches of confidentiality and other unintended outcomes.

What we are already doing

i. The Temiskaming Domestic Violence Coalition is developing a DVD to support women who are reluctant to access or may not know about services. The DVD will be a resource for service providers, police and workers in the criminal system to use with women. It is intended to strengthen the community network, improve communication and reduce barriers for women by providing them with information about services available to them.

ii. CLEO's Connecting Communities Project addresses barriers to accessing legal information and services for people who do not speak English or French or who live in rural or remote areas. It identifies, develops and supports creative training projects that bring together legal and non-legal community organizations, thus enhancing their ability to provide legal information and referrals. This project will establish a provincial network for community and legal workers to share information, research and innovative approaches to providing public legal education

iii. Criminal court-watch programs exist in a number of communities. The information gathered in these programs are used to support women in their family court cases. For instance, the Thunder Bay Women's Court Watch Program, run by the Northwestern Ontario Women's Centre and Faye Peterson Transition House, helps track family court restraining order breaches. Volunteer notes also provide information about whether bail conditions make any reference to access orders and whether or not abusers are following their bail conditions.

iv. While not directly related to women's legal experiences, forum participants heard about an exciting collaborative initiative in place at a number of Toronto shelters to provide respite care for women with children. While each model is slightly different, the essential elements are the same: The shelter offers residents a set number of days when their children can be cared for overnight by providers in the community. All adult members of the provider's home undergo a police reference check. They

must have experience with children who have been exposed to violence. They are paid a per diem plus expenses, which is provided by the shelter so there are no costs to the woman using the service. Shelters developed this program as an alternative to women calling on child protection services when they needed a break from their children. In fact, Toronto children's aid societies have been using the program at one shelter, but the shelter is now declining CAS referrals until such time as the CAS can pay for the respite care. This program provides women who are managing multiple crises including, often, legal proceedings, with important support.

What we would like to do

i. Advocates in many parts of the province report that not all lawyers allow them to accompany women into their meetings, citing concerns about lawyer-client privilege breaches. Representatives of the violence against women sector, Legal Aid Ontario and the Law Society of Upper Canada, could collaborate on a protocol to encourage such accompaniments while also fully protecting privilege and confidentiality of the client and lawyer. This initiative could refer to research presently being conducted by the Centre for Research and Education on Violence Against Women and Children on the issue of confidentiality and community-based threat assessment/risk management teams.

ii. Existing criminal court-watch programs could be expanded and made more collaborative by bringing their findings together to create a provincial "snapshot" that would provide both practical and research development support.

iii. Existing use of technology to support women and workers could be enhanced and expanded through collaborative efforts both within the violence against women sector and across sectors. Online training initiatives, document assembly and legal information resources are just a few examples of the kinds of online activity already underway. Organizations such as CLEO, Springtide Resources, Pro Bono Law Ontario, Legal Aid Ontario and government ministries such as the Ministry of the Attorney General who are already working in this area could lead such an undertaking.

Systemic change

While the purpose of this project was to focus on ideas for service delivery innovation, discussion inevitably also touched on areas for systemic change. Among the many suggestions made, the following stand out as having the greatest potential for cross-sectoral impact and collaboration:

i. The two-hour advice certificates currently provided by shelters and some other violence against women agencies are extremely helpful to women who need some legal information and advice before they make initial decisions about their case or while they are waiting to be approved for a legal aid certificate. These should be available from any agency providing services to women who may have experienced violence, even if this is not the primary mandate of the agency. FLIC staff and family court Duty Counsel should also be able to provide women with these certificates rather than having to refer them to another agency

ii. We would be negligent if we did not represent the demand for more legal aid for family law. The present rate of unrepresented parties in family court – in excess of 60% in many parts of the province – leads to poor outcomes for many, and is especially problematic for women who have left an abusive relationship

iii. Women in remote parts of the province often have to leave their community in order to get legal representation. Women should not be deprived of their right to legal representation just because they cannot afford the cost of getting to meetings with their lawyer. Travel money should be available for these women, whether from Legal Aid Ontario as part of a certificate, the Ministry of Community and Social Services if the woman is a shelter client or the Ministry of the Attorney General as part of its commitment to access to justice.

iv. Women continue to receive information from their lawyers, from judges and from others in the family court process in such a way that they feel they have no choice but to engage with mediation. Cross-sectoral discussion at the policy and protocol levels is needed to address this concern.

v. Ontario's Unified Family Courts need to be expanded to all court jurisdictions in the province. The scope of decision-making within these courts (on all issues relevant to separating families) prevents those difficulties currently associated with the separate jurisdictions of the OCJ and the SCJ (i.e. custody and access matters in one court, property division, exclusive possession of the matrimonial home and divorce in another). Blending of the jurisdiction of the courts has the potential to allow women to have all matters disposed of in a holistic fashion. Further, spouses who are so inclined would be prevented from prolonging and encumbering family law processes by "trumping" a woman's claim in the OCJ by a divorce or other claim in the SCJ. It is also generally believed that the Unified Family Courts possess greater familiarity with, and sensitivity to, the issues experienced by low income families and marginalized individuals.

vi. Many forum participants raised serious concerns about the tendency of some of those within the family court system (mediators, assessors, the Office of the Children's Lawyer, parenting coordinators, court services staff, child protection workers, and others) to focus on holding women accountable because this is easier than trying to hold abusers accountable for their actions and the violence in the family. This attitude can have a profound affect in many ways: women feel their experiences of violence are not believed or are dismissed as unimportant, they feel pressured into entering into mediation and joint custody orders, they are made to feel it is unreasonable if they raise ongoing concerns about their own or their children's safety and well-being after court proceedings are complete and so on. Training about the ongoing impact of violence that has occurred in the relationship as well as about the reality of post-separation violence is needed for these professionals as well as an accountability and complaints process that is accessible to women.

vii. In the area of child protection, a number of systemic changes were suggested at the forum, including:

- Changes to the eligibility spectrum, including changing the definition of domestic violence
- More education for CAS workers on how to interview and intervene with abusers
- Ending the use of parental alienation language
- Putting files in the name of the abuser (this has had a vigorous pro and con discussion at the VAW/CAS tables convened by MCSS)
- More cross-training
- A review of the foster care system
- Addressing the issue of mandating women into shelters
- Entrenching ongoing violence against women consultation to the child protection sector, with mandate to make changes, following the OAITH model
- A thoughtful re-consideration of the issue of maintaining the strict confidentiality of all parties in child welfare matters that impacts on the willingness of child welfare authorities to release information relevant to custody/access proceedings

Next steps

There are a number of next steps that can easily be taken to follow up on the forum discussions:

- Instituting an annual forum similar to this one to monitor, advance and innovate practice in the sector
- Asking individual organizations to take on coordination of specific ideas generated at the forum, as reflected in the participant commitments made at the conclusion of the forum
- Developing a template so all participants can provide a brief written description of their innovative projects, including resources, tips, lessons learned etc. This information could be developed into an online handbook of innovative practices
- Providing detailed information about the CLEO project and how to apply for funding to all forum participants
- Circulating templates such as the refugee affidavits and expert counselling letters described in the immigration section of this report to forum participants to broaden their usefulness
- Completion of the post-forum survey in development by Luke's Place, which will explore issues raised at the forum and more at a deeper level, thus adding to the data available for further discussions

Conclusion

Evaluation of the Justice Forum revealed

The participants who completed the post-forum evaluations of the Justice Done Forum reveal that overall the majority of participants found it very useful. Survey participants were also asked to rank elements of the forum including the background paper, process, location, agenda, exercises, food, and facilitators. The evaluation revealed that the majority felt that they were very satisfied with these elements. As a result of the forum, many participants have noted that they or their agencies have already initiated collaboration and others are interested in exploring further conversations with other forum participants, leading to service and/or system innovation. Evaluation participants also revealed the most productive thing that came from their forum for their agency and their top-recommendation for follow-up arising from the forum.

The survey results are attached as Appendix F.

The Barbra Schlifer Clinic has seen many changes in its 25-year history as the only legal, counselling and interpretation clinic devoted to assisting women to build lives free from violence. Recent discussions within the sector have revealed a matrix of legal reforms, many of which we have been part of, that have had contradictory results for women who seek assistance from the justice and related systems. The objective of the Justice Done forum was to gather the leading advocates, service providers and thinkers in VAW and, first, constructively assess these recent changes to family and related areas of law and process that have radically altered the context of our work with women who turn to the family court for settlement of their family matters then, to constructively assess what on-the-ground responses we have already developed, and collate these and then, to imagine what new responses we could bring to a collaborative responsibility to making reality more just in concrete ways, within existing means.

In order to focus our work on solutions, we prefaced it with a background paper, a survey and a plenary at the forum which summarized those findings, so that for the remainder of the forum, we could explore the development and use of diverse resources to assist women in an innovative way, responsive to this new reality, leading to recommendations of service delivery reform within the Barbra Schlifer Commemorative Clinic and other agencies at the table. Research, best practice guidelines, models of service delivery, collaborative approaches and new training protocols have been summarized in our recommendations. These findings are here recorded and made available to any service providers who work in the justice system or with women using such systems.

Naturally, not all the good ideas of the forum were exchanged in recorded sessions. Much creativity and commitment to collaborate took place at break time, between sessions and at lunch. It is also true that this was a first step, not a scientific process, and that not all ideas that rose to report level were vetted, evaluated or prioritized by the whole group. Nevertheless, we were energized, amazed and inspired by the collective commitment to new solutions and ongoing assessment and collaboration. We hope it proves a spur to further development, and that the list of service recommendations and approaches serves as a collective road map, where ownership of good ideas is shared, and new projects arise as the ripples of the day spread out across our planning cycles and fiscal years. The Barbra Schlifer Clinic's own commitments to service change and collaborative piloting of new approaches are explicit in the report, and derive in no small part from the good ideas of the forum. We look forward to an annual process to update, advance and continue the good work and innovative solutions to the deep challenges that women confronting adversity and seeking justice, face.

SUMMARY OF FORUM RECOMMENDATIONS

Next steps

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- Instituting an annual forum similar to this one to monitor, advance and innovate practice in the sector
- Asking individual organizations to take on coordination of specific ideas generated at the forum, as reflected in the participant commitments made at the conclusion of the forum
- Developing a template so all participants can provide a brief written description of their innovative projects, including resources, tips, lessons learned etc. This information could be developed into an online handbook of innovative practices
- Providing detailed information about the CLEO project and how to apply for funding to all forum participants
- Circulating templates such as the refugee affidavits and expert counselling letters described in the immigration section of this report to forum participants to broaden their usefulness
- Completion of the post-forum survey in development by Luke's Place, which will explore issues raised at the forum and more at a deeper level, thus adding to the data available for further discussions

A number of ideas for new programs were generated at the forum, including:

i. Delivering monthly drop-in legal information sessions for women on family, immigration and other legal system processes, and for service providers to develop intervention strategies/supports to women who are involved in legal systems processes (Barbra Schlifer Commemorative Clinic and others)

ii. Expanding on the use of law students to assist women who do not have lawyers, to facilitate, where necessary , the delivery of 'unbundled' legal services (Barbra Schlifer Clinic, Downtown Legal Services and other student law clinics)

iii. Developing a coherent role for technology to provide ongoing legal education for workers, to assist women in the completion of court documents and to provide online moderated mentorship for workers who are supporting women through the legal process (Luke's Place, CLEO, Springtide, Barbra Schlifer Clinic, METRAC)

iv. Increasing the capacity of all frontline workers to support their clients by sharing existing legal information tools and resources. Considerable expertise and material exists within the sector and beyond (Luke's Place CLEO, Schlifer, FLEW and others)

v. Working collaboratively with Legal Aid Ontario and regional Family Bar Associations to develop a protocol that would allow women to use legal aid certificates to hire a lawyer they have already seen at the Family Law Information Centre or as Family Court Duty Counsel to address a significant barrier for many women, especially in smaller communities where the number of lawyers practicing family law and who accept legal aid certificates is extremely limited.

vi. Training resources can be shared and built upon to enhance the capacity of those in all sectors who are supporting women through family court.

vii. A cross-sectoral discussion about how to improve mandatory charging so it has the desired affect and fewer unintended negative consequences should be held, as recommended by the Domestic Violence Advisory Committee

viii. Circulate expert witness affidavits to violence against women organizations across the province

ix. Develop a list of health care professionals and social workers who could provide expert evidence in immigration matters.

x. Develop programs to identify and outreach to women in immigration detention who have experienced violence to begin an action-research approach to the deteriorating conditions that women's international human rights are suffering in Canadian institutions (Barbra Schlifer Clinic; Elizabeth Fry Toronto).

xi. Enhance the knowledge and skills of frontline workers. In particular, we heard that workers would like to receive training to increase their capacity to write effective reports for use in custody and access cases and to expand their knowledge of family law and court process

xii. Increase the capacity of frontline workers to appear as expert witnesses in custody and access proceedings

xiii. Anecdotal evidence indicates that there is an increase in joint custody orders outside the GTA and, even where the order is not for joint custody, increased reliance on the concept of shared parenting. Province-wide research needs to be conducted to gather hard data on this and on whether or not the reforms to the best interests of the child test are playing a role in this area of vulnerability for women experiencing continuing violence, with recommendations for next steps

xiv. Establish a template for groups for women who have joint custody orders. These groups can function as support, but also as a place to do action-based research and develop advocacy strategies

xv. Province-wide research needs to be conducted to assess the impact of reforms to restraining order legislation. In particular, the research should focus on whether there has been a decrease in orders issued under the *Family Law* Act and whether the judges' endorsements make any reference to the impact of criminalizing breaches on their orders

xvi. Develop a common approach, supported by training, to the use of any risk assessment tools/protocols that courts may rely upon as valid, objective evidence of risk.

xvii. Work with child protection authorities to develop a protocol whereby the evidence and information they gather during any investigation involving woman abuse is automatically entered into or made available to custody and access proceedings

xviii. Pilot some service responses that integrate small scale joint support to women experiencing violence to build capacity and concrete positive working relations between the sectors of Child Welfare and VAW

xix. Develop cross-training for lawyers so they understand better the implications of one process on another in cases involving violence against women

xx. Develop protocols related to confidentiality to increase the ability of all systems to share information in a collaborative way with one another to enhance safety for women and children (building on the Centre for Excellence results, forthcoming).

xxi. Advocates in many parts of the province report that not all lawyers allow them to accompany women into their meetings, citing concerns about lawyer-client privilege breaches. Representatives of the violence against women sector, Legal Aid Ontario and the Law Society of Upper Canada, could collaborate on a protocol to encourage such accompaniments while also fully protecting privilege and confidentiality of the client and lawyer. This initiative could refer to research presently being conducted by the Centre for Research and Education on Violence Against Women and Children on the issue of confidentiality and community-based threat assessment/risk management teams.

xxii. Existing criminal court-watch programs could be expanded and made more collaborative by bringing their findings together to create a provincial "snapshot" that would provide both practical and research development support.

xxiii. Existing use of technology to support women and workers could be enhanced and expanded through collaborative efforts both within the violence against women sector and across sectors. Online training initiatives, document assembly and legal information resources are just a few examples of the kinds of online activity already underway. Organizations such as CLEO, Springtide Resources, Pro Bono Law Ontario, Legal Aid Ontario and government ministries such as the Ministry of the Attorney General who are already working in this area could lead such an undertaking.

Systemic change

While the purpose of this project was to focus on ideas for service delivery innovation, discussion inevitably also touched on areas for systemic change. Among the many suggestions made, the following stand out as having the greatest potential for cross-sectoral impact and collaboration:

i. The two-hour advice certificates currently provided by shelters and some other violence against women agencies are extremely helpful to women who need some legal information and advice before they make initial decisions about their case or while they are waiting to be approved for a legal aid certificate. These should be available from any agency providing services to women who may have experienced violence, even if this is not the primary mandate of the agency. FLIC staff and family court Duty Counsel should also be able to provide women with these certificates rather than having to refer them to another agency

ii. We would be negligent if we did not represent the demand for more legal aid for family law. The present rate of unrepresented parties in family court – in excess of 60% in many parts of the province – leads to poor outcomes for many, and is especially problematic for women who have left an abusive relationship

iii. Women in remote parts of the province often have to leave their community in order to get legal representation. Women should not be deprived of their right to legal representation just because they cannot afford the cost of getting to meetings with their lawyer. Travel money should be available for these women, whether from Legal Aid Ontario as part of a certificate, the Ministry of Community and Social Services if the woman is a shelter client or the Ministry of the Attorney General as part of its commitment to access to justice.

iv. Women continue to receive information from their lawyers, from judges and from others in the family court process in such a way that they feel they have no choice but to engage with mediation. Cross-sectoral discussion at the policy and protocol levels is needed to address this concern.

v. Ontario's Unified Family Courts need to be expanded to all court jurisdictions in the province. The scope of decision-making within these courts (on all issues relevant to separating families) prevents those difficulties currently associated with the separate jurisdictions of the OCJ and the SCJ (i.e. custody and access matters in one court, property division, exclusive possession of the matrimonial home and divorce in another). Blending of the jurisdiction of the courts has the potential to allow women to have all matters disposed of in a holistic fashion. Further, spouses who are so inclined would be prevented from prolonging and encumbering family law processes by "trumping" a woman's claim in the OCJ by a divorce or other claim in the SCJ. It is also generally believed that the Unified Family Courts possess greater familiarity with, and sensitivity to, the issues experienced by low income families and marginalized individuals.

vi. Many forum participants raised serious concerns about the tendency of some of those within the family court system (mediators, assessors, the Office of the Children's Lawyer, parenting coordinators, court services staff, child protection workers, and others) to focus on holding women accountable because this is easier than trying to hold abusers accountable for their actions and the violence in the family. This attitude can have a profound affect in many ways: women feel their experiences of violence are not believed or are dismissed as unimportant, they feel pressured into entering into mediation and joint custody orders, they are made to feel it is unreasonable if they raise ongoing concerns about their own or their children's safety and well-being after court proceedings are complete and so on. Training about the ongoing impact of violence that has occurred in the relationship as well as about the reality of post-separation violence is needed for these professionals as well as an accountability and complaints process that is accessible to women.

vii. In the area of child protection, a number of systemic changes were suggested at the forum, including:

- Changes to the eligibility spectrum, including changing the definition of domestic violence
- More education for CAS workers on how to interview and intervene with abusers
- Ending the use of parental alienation language
- Putting files in the name of the abuser (this has had a vigorous pro and con discussion at the VAW/CAS tables convened by MCSS)
- More cross-training
- A review of the foster care system
- Addressing the issue of mandating women into shelters
- Entrenching ongoing violence against women consultation to the child protection sector, with mandate to make changes, following the OAITH model
- A thoughtful re-consideration of the issue of maintaining the strict confidentiality of all parties in child welfare matters that impacts on the willingness of child welfare authorities to release information relevant to custody/access proceedings

Justice Done: Crafting Opportunity from Adversity

BARBRA SCHLIFER COMMEMORATIVE CLINIC FORUM

APPENDICES

APPENDIX A

With the Disruptive Force of a Hand Grenade: Women's post-violence experiences of recent legal and process reforms in Ontario

May 25, 2011

For the forum *Justice Done: Crafting Opportunity from Adversity for Women who have Experienced Violence* held by the Barbra Schlifer Commemorative Clinic.

Prepared by Pamela Cross,
for the Barbra Schlifer Commemorative Clinic
March 2011

APPENDIX A

TABLE OF CONTENTS

A INTRODUCTION

Background

Everyone involved with family law and/or family court – families, lawyers, mediators, judges – knows there are major problems with the system, which is cumbersome, slow, expensive and seems to meet the needs of few, if any, of those who turn to it for assistance at a very vulnerable time in their lives.

"The family-law system in this country is a wreck. A study by the Law Society of Upper Canada found that, on average, it takes three years for a litigated Ontario divorce involving children to stumble through family court, and by then, in addition to the heartache and turmoil, a good chunk of retirement savings and college funds has disappeared." [1]

"The adversarial system, which is our traditional court system, it inflames a lot of these emotions that people have when they separate," said Judith Huddart, a family lawyer and president of the Ontario Collaborative Law Federation. "It really isn't working, period. And it hasn't been working for some time."[2]

This article continues with a quote from Ontario Court of Appeal Chief Justice Warren Winkler who, when speaking at the opening of the current court session, said:

"In the area of family law, I question the effectiveness of the slow and steady approach of fine-tuning and rationalizing the present system. I think the time has come for a fresh conceptual approach to resolution of family disputes in Ontario."[3]

As another family law lawyer, Michael Cochrane, sees it: "Day in and day out our justice system drains the spirit, energy and life savings out of tens of thousands of Canadians who are going through separation and divorce."[4]

Recent years have seen a steady flow of legislative and process changes in family, criminal and immigration law. In some cases, the reforms focus specifically on the issue of violence against women with the intention of improving the systemic response and women's access

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[1] "Why Canada needs a split from its messy divorce laws," Erin Anderssen, The Globe and Mail. March 25, 2011.
[2] "Calls grow for major overhaul of family law system," Allison Jones, Hamilton Spectator. March 24, 2011.
[3] Ibid.
[4] Ibid.

to services. In other cases, the reforms are not so focused, but nonetheless have a particular impact on women who have experienced violence.

In many cases, these reforms have resulted from years of advocacy by women's equality and frontline violence against women activists, who have tracked women's experiences with various legal systems and court processes and then worked collaboratively with the government to develop new approaches. Often, the reforms have initially appeared positive but, once implemented, unintended negative consequences have surfaced, with the result that outcomes for women have not been positive and service needs have increased and changed.

Coupled with the implications of recent reforms, increasing numbers of women are experiencing multiple legal systems at the same time. For example, a newcomer woman may find herself involved with immigration, family and criminal law; a woman whose partner is charged with assaulting her is dealing with criminal, family and possibly child protection systems; a woman who calls the police to report her husband's violence and who is inappropriately charged herself then must deal with the criminal law as an accused while also possibly facing child protection proceedings.

As a result of both the legislative and process reforms and the increased intersectionality of women's legal issues, women's service needs have changed. Violence against women service providers and government need to consider new ways of delivering services so we can meet the changed and changing needs of the women who turn to us for support.

Project Overview

The Barbra Schlifer Commemorative Clinic has received funding from the Ontario Women's Directorate to host a province-wide forum at which representatives of the violence against women sector can explore key emerging justice sector issues for women who experience violence. In particular, the forum will examine the fact that most women are dealing with more than one legal system at a time; most notably, some combination of criminal, family and/or immigration law.

The goal of the forum is to identify recommendations for service delivery reform that respond to these emerging issues and the increased complexity and intersectionality of women's experiences. These recommendations are intended to assist government and the violence against women sector in the development of needed initiatives.

Purpose of paper

This paper forms the basis for discussions to take place at the provincial forum. It identifies and analyzes a number of key issues to support a discussion about law and court process reforms where their implications and consequences have already been felt by women and where changes to service delivery are needed.

This paper will form the basis of the final project report, which will also include a report of the discussions held and the recommendations developed at the forum.

It does not cover all the issues related to legal and process challenges faced by women who have experienced violence. It also does not address areas for future law reform or of funding in this paper, although either or both of those issues may surface in the discussion and will be duly noted in the forum report.

Note: The agenda and facilitation of the forum will assume that all participants have read this paper and begun to think about relevant service delivery reforms.

Key Issues

This paper examines and briefly analyzes the following issues:

- Access to legal representation
- Family court process reforms
- Mandatory charging policies and the implications for women
- Reforms to immigration law
- Custody and access
- Reforms to restraining order legislation
- Child protection
- Legal system intersections

APPENDIX A

B ACCESS TO LEGAL REPRESENTATION

Lack of access to legal information, services and representation has been amply researched and documented in Ontario in recent years in a number of reports[5].
While none of these focuses specifically on the issue of violence against women, they all note the additional barriers faced by socially isolated populations.

Women who experience abuse face the same issues as other Ontarians who live in rural and remote communities: long distances to courthouses and lawyers, limited or no public transportation to get them there, few legal services available in their community, lower incomes and fewer employment opportunities[6].

As noted in the Canadian Bar Association report, legal aid funding in Canada has dropped by 10% at a time when funding for health spending has increased by 33% and for education by 20%.[7]

Legal Aid Ontario (LAO) has recently undergone a "transformation" of its service delivery model. Area offices have been closed, and services are now primarily delivered through a 1-800 number and the LAO website. Some court services have been expanded as part of this process. Although these changes are recent, the impact on women experiencing violence has been immediate:

- Initial wait times to access services through the LAO telephone line were extremely long. Women reported waiting up to several hours. In one study, one woman reported waiting more than 4 hours, only to be told, when she finally reached a live person, that she would have to call again the following day, because office hours were about to end for the day8
- LAO offers expedited service to women who identify that they have experienced violence, but this question is not asked; women must volunteer the information themselves.9
- Many low income women only have access to pay as you go cell phones and cannot afford to use up precious minutes while on hold
- LAO's new practice of returning calls is problematic for women who are using someone else's phone or for whom receiving a call back is unsafe

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[5] Cohl, Karen and George Thomson. *Connecting Across Language and Distance: Linguistic and Rural Access to Legal Information and Services.* Law Foundation of Ontario, 2008; *Listening to Ontarians: Report of the Ontario Civil Legal Needs Project.* 2010; *Moving Forward on Legal Aid: Research on Needs and Innovative Approaches*. Karen Buckley, Canadian Bar Association. 2010

[6] Ibid. pp 31 – 35.

[7] Buckley, Karen. P. 3

[8] *Navigating with the wandering lost: Providing access to justice in rural and linguistic minority communities in eastern Ontario*. Five County Connecting Region Project. March 2011

[9] Anecdotal comments from women attending legal information workshops delivered by Luke's Place Support and Resource Centre, Oshawa in February and March 2011 and from service providers attending focus groups as part of the Five County Connecting Region Project in eastern Ontario in Fall 2010.

- Women are less likely to disclose abuse and other relevant details over the telephone than in a face to face meeting
- Service providers report that they had better success working with their Area Director if a woman required an exception or "bending of the rules" to obtain a certificate or other service. Area Directors were in a better position to use their discretion based on their ongoing working relationship with the service providers and others in the community10
- Not all Ontarians, in particular those with lower incomes and who do not live in urban centres, have ready access to computers or the internet

People prefer to receive legal information and services in person. Online or telephone hotline services do not replace in-person support. "Telephone legal advice hotlines do not replace the value of a person-to-person exchange when people are seeking out legal advice and information . . . To be effective, a telephone advice hotline must be more than a pre-recorded message."[11]

Criminal Court

Only women who have been charged are parties and have the right to be represented by a lawyer[12]. However, despite the rate of inappropriate charging of women in cases where they are not the dominant or primary aggressor, few qualify for legal aid assistance, rendering their right to representation largely meaningless. This is because legal aid certificates are only available where there is a significant possibility the accused will go to jail if convicted, and this applies to few of the women charged in these circumstances.

This means that women are often left to deal with their criminal charges on their own, relying on the limited services that can be provided by duty counsel. The fear that women have of possible incarceration coupled with the lack of legal representation results in many women entering guilty pleas when they may have a valid defence against the charges laid against them.

Quick guilty pleas, while they may lead to a less onerous penalty, also create difficulties. The guilty plea may become evidence against a woman in a custody battle, in a child protection proceeding or in an immigration process.

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[10] Ibid.
[11] *Listening to Ontarians.* 22
[12] The one exception is that complainants/witnesses in sexual assault criminal proceedings are parties and have the right to be represented (including the right to legal aid assistance where they qualify financially) to respond to an application for production of third party records.

Those women who, despite the lack of legal representation, make the decision to enter a not guilty plea and proceed to a trial, face a higher likelihood of incarceration if they are convicted. This is partly due to their lack of representation but is also a reflection of the generally unspoken but deeply held bias in the criminal system that a woman who has broken the law deserves a more serious penalty than a man who has broken the same law. Women from marginalized communities, including Aboriginal women, are even more likely to be incarcerated on being convicted.

The violence against women sector has lobbied Legal Aid Ontario for many years to conduct a gender analysis of the assumptions about the likelihood of incarceration, but no such analysis has been undertaken to this date.

Family Court

Family relationship problems were identified by the Civil Legal Needs Project as the most frequently mentioned by low and middle-income Ontarians who had experienced a civil legal program in the previous three years.[13] Indeed, these problems were identified more than twice as frequently as the next most reported civil legal needs problem.

According to the report:

> *"Of the various problems for which respondents sought legal assistance, the statistics for family law stood out. Of those surveyed who indicated they had experienced a family law problem, 81 per cent sought legal assistance, and 30 per cent of that group indicated they had difficulty obtaining that legal assistance."*[14]

Research conducted by Luke's Place Support and Resource Centre has found that, across Ontario, more than 60% of women who have been abused are making their way through family court with no legal representation.[15] This lack of representation places women and their children in an extremely vulnerable position. Women accept outcomes that are less than their legal rights would ensure, that are not necessarily in the short or long term best interests of their children, that expose them to ongoing abuse and violence, sometimes at lethal levels, at the hands of their former partner and that prohibit them from ever truly leaving the relationship and moving on to a life free from violence.

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[13] *Listening to Ontarians.* p. 11.
[14] Ibid. p. 25.
[15] Dragiewitz, Molly and Walter Dekeseredy. Study on the Experiences of Abused Women in the Family Court in Eight Regions in Ontario. Luke's Place Support and Resource Centre for Women and Children. 2008.

Financial eligibility criteria are too low

In order to qualify for a legal aid certificate, a woman with no children must have a gross family income of less than $10,800. For a woman with one child, her income must be less than $18,684, with two children, less than $21,299, with three, less than $24,067 and with 4 or more children, less than $26,714.

Even to qualify for assistance from duty counsel or summary legal advice through LAO's toll-free number or at a Family Law Information Centre, the financial eligibility criteria are stringent: less than $18,000 for a woman with no children, less than $26,999 if she has one child, less than $31,999 if she has two, less than $36,999 if she has three and less than $43,000 if she has 4 or more.

There are various ways of determining the poverty line. The two most common -- the Low Income Measure (LIM) and the Low Income Cut-Off (LICO) set the 2008 poverty rate for a two-person family in Canada between $22,000 and $26,000 per year.[16] Under either system, it is immediately clear that even families under the poverty line may be considered by LAO to have too much money to qualify for assistance.

Not enough lawyers accept family law legal aid certificates

According to Michael Trebilcock's review of Legal Aid Ontario services[17], there is a significantly lower and slower rate of acceptance of family law certificates compared to criminal law: only 69% of family law certificates are accepted by lawyers, while 79% of criminal certificates are accepted. While 2/3 of criminal certificates are accepted within 14 days, less than 50% of family certificates are accepted in this amount of time. Trebilcock's report also notes that there has been an astonishing 29% decrease in the number of lawyers participating in the family law certificate system over the past decade.

There are a number of reasons for this reluctance to pick up family law certificates:

- The low tariff – both the low hourly rate and the few hours provided on a certificate -- discourages many lawyers
- Lawyers have learned that clients in family law cases, especially those involving violence, bring with them more legal and emotional needs than the certificate will cover. In fact, most lawyers doing family law work where violence is an issue report that as much as 50% of their time is pro bono because of the inadequacy of LAO certificate coverage
- Family law cases involving violence are complex. Lawyers must consider safety issues not only for their clients but for themselves and their staff, they have to deal with the abuser who, if he represents himself, can take up considerable time and they must

[16] 2010 Report Card on Child and Family Poverty in Ontario. Campaign 2000. 2010.
[17] Trebilcock, Michael. *Report of the Legal Aid Review.* 2008

deal with the inevitable vicarious trauma of supporting women who have experienced serious abuse

Karen Cohl and George Thomson note in their report that those who live in rural communities are especially challenged in finding any lawyer, let alone one who will accept a legal aid certificate and note that the largest gap is in family law.[18]

This can have a devastating impact on a woman who, as a result, needs to proceed without representation, perhaps on an urgent or emergency basis, to ensure the best interests of her children are protected and/or to secure her safety.

Not enough lawyers understand the complex dynamics of woman abuse

Even for women who are able to retain a lawyer, whether paying for it themselves or with the assistance of a legal aid certificate, there is no certainty that the lawyer will understand the complex dynamics of woman abuse and the impact these have on the woman's participation in the family court process

Conflict of interest barrier

The present conflict rule that prohibits someone from hiring a lawyer on a legal aid certificate if she has already seen that lawyer at the Family Law Information Centre or as duty counsel can make it very difficult for a woman, especially if she lives in a small community where there are not many lawyers, from hiring a lawyer even if she qualifies for a certificate.

QUESTIONS FOR REFLECTION

1. How have the changes in this area of law affected your clients?
2. How has your service adapted to the changes?
3. Are there new areas of collaboration that you would like to explore with other partners in the VAW sector?

[18] Cohl. p. 34

C FAMILY COURT PROCESS REFORM

The rollout and implementation of recent family court process reforms are in their early days, so it may not be possible to draw many conclusions about implications and consequences for women who have experienced violence. However, these reforms are significant and will, without a doubt, have an impact on women, so they are worthy of some review and discussion.

In 2008, Attorney General Chris Bentley announced his intention to overhaul family court process. He identified what he called the "four pillars of family court process reform:"

- To provide more information to families up front about the steps they need to take and the impact on children of relationship breakdown
- To enhance opportunities to identify challenges, ensure early disclosure and provide community referrals to better support families in reaching resolutions
- To improve access to legal advice as well as less adversarial means of resolving challenges such as mediation and collaborative family law
- To streamline and simplify the steps involved for those cases that must go to court

These reforms are aimed at all those who turn to the family court at the time of relationship breakdown and, as a result, do not necessarily meet the particular needs of women leaving abusive relationships.

As of March, implementation of the reforms is as follows:

Mandatory Information Programs (MIPs)

These programs have been piloted in courts in Brampton and Milton and will be expanded to all family court sites in the province by Summer 2011. As well, Legal Aid Ontario has launched an online information program that covers the same topics as the in-person MIP.

While the curriculum of the MIP was amended following a review by violence against women advocates, a number of concerns remain:

- The program is offered only in English and French, making its content virtually inaccessible to anyone who does not communicate in one of these two languages

- The content continues to place a heavy focus on the use of non-litigation strategies such as mediation and collaborative law, which are not appropriate in cases involving abuse
- The in-person program is not readily accessible by those who live in rural and remote parts of the province
- The online program, while of some assistance, requires the person to have high speed internet access and some computer literacy
- Many women would be more comfortable accessing this program if it were offered away from the courthouse and delivered by workers with whom they are already familiar.

Dispute Resolution Officers (DROs)

These officers are available in 5 court locations – the Superior Court of Justice in Toronto, Brampton, Barrie, Milton and Newmarket – to meet with parties who are involved with motions to change final orders. The role of the DRO is to help the parties identify, narrow or resolve disputes. If settlement is not possible, the DRO will ensure the parties' paperwork is in order so their case can move to a "meaningful appearance before a judge."

There are a number of concerns about this process for women who have left abusive relationships, including:

- Adequate and appropriate training for DROs on violence against women, the dynamics of power and control and the reality of post-separation violence
- Accountability and transparency of the process
- Safety for women who participate
- Ensuring that participation is voluntary
- Screening process before parties enter the process

Information and Referral Coordinators (IRCs)

Initially, the family court process reforms promised a triage step that would allow cases involving violence to be identified and fast tracked to appearances in front of a judge. This appears to have been left behind and, instead, a system of IRCs is to be implemented in all family courts by Summer 2011. IRCs will serve as a point of contact for families entering the family court and will help connect them with services and supports in the community, including alternatives to litigation.

Again, there are concerns for women who have experienced violence:

- Adequate and appropriate training for IRCs on violence against women, the dynamics of power and control and the reality of post-separation violence
- The continued focus on alternatives to litigation
- Ensuring that participation is voluntary

Family Mediation Services

Family law clients will be provided with "quick resolution" of issues such as custody and access, child and spousal support, possession of the matrimonial home and equalization of net family property through the use of mediation. This program will be implemented in all courts by Summer 2011.

Violence against women advocates have long critiqued mediation as inappropriate in cases involving abuse and violence. These concerns have not lessened over time, so this program appears highly problematic and raises a number of questions:

- Will the mediation services be voluntary?
- Will there be violence against women screening?
- What training will mediators have?
- What safety measures will be put in place?
- What services will be available to women who choose not to use mediation?

In its initial response to the introduction of family court process reforms, the violence against women sector identified a number of overarching principles that needed to guide this work:

APPENDIX A

1. A clear definition of violence against women must be developed for use in family court.
2. Cases involving violence against women must be seen as unique and as requiring a different approach from cases where the parties have a relatively equal balance of power.[19]
3. Family law and family court processes must respect and reflect the reality that violence does not end at the point of separation but rather changes to new strategies, including stalking (both physical and emotional) and legal bullying and often increases, sometimes to the point of lethality.[20]
4. One size does not fit all when it comes to family court processes. Reforms must be based on an equity framework in order take into account the different realities of families in different circumstances. In particular, reforms must acknowledge the unique realities of Aboriginal and Francophone families, newcomer and refugee families, families living in rural, Northern and remote communities, families dealing with disability issues and families that do not speak English or French.[21]
5. Reforms to family court processes need to reflect the province's commitment to ensuring that family law disputes are dealt with in a public, not private, arena.[22]
6. Family court processes must understand the differences between unrepresented and self-represented parties.[23]
7. Any reforms to family court processes must respect the right of abused women to access family court litigation without prejudice and without penalty.[24]
8. Process reforms cannot be used as a replacement for an infusion of monies specifically for family law legal aid certificates. Women leaving abusive relationships have a right to high-quality legal representation, regardless of their financial situation.[25]

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[19] We continue to be concerned by the commonly held belief that all cases, including those involving violence, can be effectively managed using alternative dispute resolution such as mediation and collaborative law, simply by implementing screening tools and professional training. It is our opinion that these are **not** appropriate options in violence against women cases.

[20] The reports of the Domestic Violence Death Review Committee, the Domestic Violence Advisory Council and other research shows that violence often escalates for at least several months post-separation. Women are often murdered by their former partner at the point of separation or while family court proceedings, especially those involving custody and access, are underway. The phenomenon of legal bullying is well explored in the Luke's Place Support and Resource Centre for Women and Children research paper, *Through the Looking Glass.*

[21] This includes ensuring that processes acknowledge the lack of lawyers who speak French, the uneven application of legislation dealing with French-language services, the jurisdictional issues that arise on reserve with respect to enforcement of provincial court orders, the isolation in rural, Northern and remote communities and physical and other access issues for people with disabilities.

[22] The Premier and the Legislature demonstrated this commitment when, in 2006, legislation that banned the use of private laws and imposed a system of public accountability in the arbitration of family law disputes was introduced and passed. As we found at that time, there is significant public support for this "public vs private" approach to family law.

[23] We define unrepresented parties as those who wish to have a lawyer but do not because they cannot afford one and they do not qualify for legal aid and self-represented parties as those who could have a lawyer but choose to represent themselves. Self-representation is a strategy used by some abusers to maintain control over their former partner, who may be unrepresented. This presents significant safety concerns for the woman as well as serious trial management issues for the court. Process reforms cannot treat these two very different kinds of litigants as though they are the same.

[24] For instance, any information sessions provided to litigants must include information about all forms of dispute resolution equally, no incentives should be introduced to encourage parties to move their cases out of the litigation stream and parties who wish to remain in the litigation stream should not face financial or other penalties.

[25] We are concerned by the Attorney General's statements that we can achieve a level of excellence without more lawyers, that paying for more lawyers is not the right choice, that we can fix the problems in family court without spending more money. Put simply, all women dealing with family law issues with an abusive ex-partner have a fundamental right to legal representation.

It would seem these principles continue to provide an effective framework and starting point to examine the process reforms as they are implemented and to discuss their impact on service delivery.

QUESTIONS FOR REFLECTION

1. How have the changes in this area of law affected your clients?
2. How has your service adapted to the changes?
3. Are there new areas of collaboration that you would like to explore with other partners in the VAW sector?

APPENDIX A

D MANDATORY CHARGING POLICIES AND THE IMPLICATIONS FOR WOMEN

Before the 1980s, violence against women was not well understood by Canadian society generally. It was largely considered to be a private matter, best kept behind closed doors. Legislation -- both criminal and family -- to respond to or address violence against women was limited. Few, if any, professionals (including police, lawyers, court staff, judges, child protection workers, medical personnel, etc.) had received any kind of training or education on the issue of violence against women and appropriate responses to it.

As a result, when a woman did report the violence she was experiencing -- whether to a family member, friend, religious leader, police officer or family doctor -- she was often treated with disbelief, scorn or the suggestion that she must have contributed to the problem and/or was responsible for solving it.

Often, the police response tended towards the dismissive with the responding officer asking the woman, while she was in the presence of her abuser, whether she wanted to lay charges against him. For reasons that are obvious to us now, many women declined, and few perpetrators of woman abuse were arrested or charged.

In the 1980s, government at both the federal and provincial levels began to recognize that violence against women was a serious social problem requiring a legislative response. Over this decade, various “mandatory charging” policies came into effect across Canada. These policies directed police officers to lay charges in “domestic violence” cases where the police officer believed there was evidence to support such a charge. This approach removed the responsibility for making this decision from the woman and placed it with the responding police officer, as is the case in other areas of criminal law.

Through the 1980s,1990s and early 2000s, the issue of violence against women received considerable attention. For example:

- increased training became available to police officers and others involved in the criminal system
- many police forces developed specialized domestic violence units, which were staffed by police officers who had had extensive training and who had indicated a particular interest in working on this issue
- communities developed collaborative working agreements among those involved in responding to violence against women -- shelters, hospitals, child protection authorities, the police and others
- the laws themselves became more responsive to violence against women. For example, in the mid-1990s the behaviour of stalking became criminalized as the offence of criminal harassment
- public awareness about the issue of violence against women increased enormously over this period of time

- child protection authorities began to recognize that there was a negative impact on children who lived in homes where their mothers were being abused

During this period of time when awareness and education about violence against women has increased, unintended negative consequences growing from mandatory charging practices have been identified by violence against women advocates and others. These include:

- mandatory prosecutions leading to inflexible bail conditions and a Crown focus on proceeding to trial, even if this is not necessarily in the best interests of the woman
- lengthy delays between the charge(s) being laid and the case being resolved, particularly in the North where the two parties often must continue to co-exist in small, isolated communities
- the phenomenon of "dual" or "counter" charging. In these situations, overzealous or inadequately trained police officers charge the woman because of comments made by her partner, who is, in fact, the primary or dominant aggressor
- differential, and sometimes inappropriate, police response to same-sex partner abuse
- inconsistent charging patterns based on social location factors of the victim and/or the abuser such as race, class, immigration status, disability, etc.
- charges being laid in cases where women explicitly do not want them laid for any of a number of reasons -- potential immigration problems for themselves or their partner, involvement of child protection authorities, a fear that the abuser's violence will increase because of the criminal charges, past negative experience with the criminal court, concern about a loss of family income if the abuser goes to jail, etc.

One of the most important concerns about mandatory charging is that many women simply do not know that once they call the police (or, the police are called by a third party, such as a child or a neighbour) they will lose control over what happens. Many women call the police because they need assistance in the moment, but have no intention of having their partner charged with a criminal offence.

There have been some calls for a review of mandatory charging policies. The report of the Domestic Violence Advisory Council includes such a recommendation:

"Recommendation LR16: A provincial consultation be held to discuss the effectiveness, limitations and challenges related to mandatory charging and the possibility of other approaches that would increase the safety of women and children while also holding perpetrators accountable for their behaviour."[26]

A research paper examining the failures of advocacy for domestic violence victims also questions the appropriateness of mandatory charging and rigid prosecution strategies:

[26] Transforming our communities. Report of the Domestic Violence Advisory Council for the Minister Responsible for Women's Issues. May 2009. 81.

"As early as 1990, Buzawa and Buzawa argued that mandatory arrest and no-drop policies were flawed in a number of ways – one of the most important of which was that they deprived the victim of choice."[27]

Dual charging

The police response to concerns about dual/counter charging has been to introduce what is called the dominant aggressor model of investigation. This model is contained in an investigative aid used by a number of Ontario police forces and sets out a definition of dominant aggressor as well as the factors the police must consider and a protocol for oversight of police decisions. By way of example, Waterloo Region Police Services defines it as follows:

"The dominant aggressor is the person in a Domestic Violence incident who through physical or sexual force, actual or threatened including emotional and/or psychological abuse or harassing behavior (historical and/or incident related) is the overbearing or forceful person. It does not necessarily refer to the individual who initiated the violence but the individual who is the principal abuser."[28]

As useful as this tool may be when used well and consistently, it is only one piece of the solution.

Related issues such as rigid prosecution and judicial understanding (or lack thereof) also need to be addressed. This requires a review of the Crown Policy Manual, which contains protocols for the prosecution of domestic violence cases.

An examination of the outcomes in the specialized domestic violence courts would also assist in understanding the impact of the issues related to mandatory charging. For instance, how effective is the focus on giving women maximum input in the early plea court?

Although not the subject of this paper or the upcoming forum, it is worth noting that a pilot Integrated Domestic Violence Court is being launched in Toronto in June 2011. In this court, criminal and family matters will be heard by the same judge, as long as both parties consent and the criminal matter can be dealt with by way of a guilty plea. An evaluation of this court will be an important component of any review of mandatory charging, rigid prosecution policies and other criminal responses to violence against women.

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[27] Mcdermott, M. Joan and James Garofalo. When advocacy for domestic violence victims backfires. Violence Against Women, Volume 10, No. 11, November 2004, 1245 – 1266. 1254

[28] www.wrps.on.ca/investigative-services/domestic-violence-unit/provincial-direction. Information retrieved March 28, 2011.

Until there is a systems-wide understanding that the issue is violence against women rather than domestic violence, women will be inappropriately charged and convicted and men will not be charged when they should be.

QUESTIONS FOR REFLECTION

1. How have the changes in this area of law affected your clients?
2. How has your service adapted to the changes?
3. Are there new areas of collaboration that you would like to explore with other partners in the VAW sector?

E REFORMS TO IMMIGRATION LAW

A number of recent Canadian immigration policy initiatives raise serious concerns for women who are in or fleeing abusive relationships.

Most recently, the proposed introduction of a conditional residence period of two years or more for some sponsored spouses has the potential to increase the vulnerability of women and place them at risk of ongoing abuse. While not all sponsored women are in abusive relationships, many are, and the present proposal would increase the existing power imbalance in the sponsor relationship. Further, many immigrant women are not aware of their right to seek protection from abuse or are unable or unwilling to do so for many different and legitimate reasons.

The proposed change would, in effect, force women and their children to remain in an abusive situation, contrary to other statements from the federal government that violence against women will not be tolerated.

Bill C-49, still in the legislative process, and Bill C-11, enacted in June 2010, both have a potentially devastating impact on the rights of refugees and migrants and carry particular implications for women who have experienced violence, whether at the hands of their partner or the state in their country of origin.

Bill C-49 will, if enacted, punish those who flee persecution while purporting to target human smugglers. It grants broad discretion to the Minister to designate certain migrants as "irregular," based solely on the circumstances of their arrival in Canada. The rights of those migrants are then severely curtailed by other changes proposed by the Bill, which lacks a gender based analysis and consequently will have disproportionate negative consequences for women attempting to flee violence.[29]

Bill C-11, already enacted, introduces changes that, in the name of increasing efficiency of the immigration and refugee process, will severely impact victims of violence and domestic violence.

The much faster process, which can appear attractive, actually places women who are fleeing violence in a vulnerable position.

The information will now be gathered in an interview to take place within 15 days of a claim being referred to the Immigration and Refugee Board (IRB), whereas in the past information was gathered in 28 days through the Personal Information Form (PIF) which was completed by the claimant.

This new process requires a claimant to be ready to immediately tell her story to an official, which is unrealistic for women fleeing violence:

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[29] Barbra Schlifer Commemorative Clinic Press Release, November 3, 2010.

- women who arrive in Canada with their partner will not know they can make a claim based on violence and, even if they do, may not feel it is safe to do so
- the short time frame and the interview requirement make it unlikely that women will disclose violence. It is well established that women are reluctant to share information about abuse with strangers and that it can take some time (certainly more than is provided by one interview) to build a relationship of trust
- the impacts of trauma will significantly exacerbate a woman's capacity to describe and/or provide adequate information to the interviewer about the basis of her refugee claim

While women can add new information at the time of their hearing, which takes place within 90 days of the interview (60 if she is from a "designated" country[30]), there is a high probability that this will be used against her, as any inconsistencies in the two stories will be said to prove her dishonesty or lack of credibility.

The pace of the appeal process, which is an important check and balance on the exercise of judicial and quasi-judicial discretion) is unrealistically fast. Appeals will take place within 15 days of the hearing, which simply does not provide adequate preparation time, especially for women who are unrepresented.

In the likely event of failure at the appeal, the woman must wait one year to file her Pre-Removal Risk Assessment (PRRA), during which time she is likely to be removed from the country.

The grounds of persecution and risk to life have both been removed from the criteria for a humanitarian and compassionate grounds application, further decreasing the likelihood that women will be able to have their experiences of violence support their attempt to stay in Canada.

In order to support women through this new process, community organizations need to be well informed about it and trained in supporting newcomer women in preparing for these interviews.

As well, women need early access to legal information and assistance to reduce the likelihood that their interview statements will compromise their credibility.

[30] Bill C-11 empowers the government to designate countries of origin as being legitimate or illegitimate for the purpose of making a refugee claim. We have already seen countries designated as safe (meaning there is no basis on which to make a refugee claim) which are clearly not safe for women (for example, Mexico).

APPENDIX A

QUESTIONS FOR REFLECTION

1. How have the changes in this area of law affected your clients?
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F CUSTODY AND ACCESS

Custody and access is often the single most important legal issue for women who leave abusive relationships. It is impossible to have an effective discussion about this topic without first establishing both a legal and a political framework because fighting for joint custody or, in some cases, sole custody, is a common strategy by abusers who seek to maintain power and control over their former partners.

The legal context:

Legal decisions about custody of and access to children are made using the best interests of the child test. This principle is set out in both the *Divorce Act* and Ontario's *Children's Law Reform Act*, although only the CLRA provides criteria to guide its application.

When these criteria were introduced to the CLRA in 1978, they were intended to extricate custody and access determinations from the assumptions used by many judges to decide what was best for children. The test was supposed to create a neutral starting point that would require the court to consider the specifics of each child custody case in deciding on the best custody and access arrangements for those particular children.

However, these intentions have been largely set aside as a consequence of the efforts of so-called "fathers' rights" activists.

The political context:

The issue of what role violence against women should play in custody and access determinations has been battled out for more than a decade at both the federal and provincial levels, with the terms of the battle largely being set by the fathers' rights movement.

This special interests constituency became extremely active in 1997, in response to the introduction of the Federal Child Support Guidelines. Many fathers, who are most often the parent paying support and who faced increased child support obligations as a result of the guidelines, were deeply resentful.

They quickly seized on one of the exceptions: the guidelines allowed for a very different calculation of the amount of support to be paid if the children were spending at least 40 per cent of their time with each parent.

The fathers' rights lobbyists began to call for a presumption of joint custody or shared parenting. They mounted an emotional media campaign and argued that family courts discriminated against fathers by systematically granting custody to mothers. They legitimated their claim by representing themselves as the objects of sexual discrimination, in a legal system that they claimed held biases in favour of women. Using a "personal troubles discourse,"[31] they successfully positioned themselves as victims. They also organized a vigorous and strong-armed lobby on both national and provincial levels, as well as a network of local grassroots groups.

Much is made by those who favour equal parenting regimes of the changing role of fathers in Canadian families and of stay at home dads who spend at least as much time with the children as do the mums. Those of us who work for women's equality know such men and hope for continued and meaningful movement towards increased equality for family and home responsibilities between the sexes.

However, law reform must reflect and acknowledge reality and not individual exceptions or hopes for future change. Family law reform must take account of the fact that women continue to hold most of the responsibility for child rearing and general household management and tasks in most Canadian families, both before and after separation. It must promote women's equality within the family and in society at large.

"A woman with children is always a mother, whether in the work force or at home with her children. The presence of children affects women's lives differently from the way it affects most men, in terms of both her life choices and her life chances."[32]

Law reform must also take into account the reality of violence against women and children, which remains a deeply entrenched reality of Canadian life even as its pervasiveness continues to be denied.

According to a 2000 Statistics Canada report, women were 5 times more likely than men to have been injured during an assault and to require medical attention, 5 times more likely to fear for their lives, 5 times more likely to have been choked and 3 times more likely to require time off from work because of partner-perpetrated violence or abuse.

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[31] C. Bertoia, J. Drakich, "The Fathers' Rights Movement: Contradictions in Rhetoric and Practice" (1993) Journal of Family Issues 592

[32] Christa Freiler, Felicite Stairs and Brigitte Kitchen with Judy Cerny 2001 *Mothers as Earners, Mothers as Carers: Responsibility for Children, Social Policy and the Tax System* Status of Women Canada. 5

Even a cursory glance at the findings of this report indicates that the violence experienced by women and men is neither similar nor equivalent. Further, women are more likely to be victims of stalking and sexual assault, and to experience substantial psychological impacts from whatever forms of violence they experience.[33]

Gendered differences are clearly apparent in cases of homicide. The 2007 General Social Survey reported that perpetrators of spousal homicide or attempted homicide were overwhelmingly male (82% compared with 18% who were female).

Recent efforts to claim that violence within families is gender-neutral, bi-directional, mutual, or occurring at similar levels for women and men is misleading and does not reflect the substantive research.

This move to use gender-neutral or bi-directional language reflects an intense political struggle to change the understanding of violence against intimate partners. It has serious practical implications because it promotes certain responses to violence and abuse and precludes others. It affects research, policy, legislation and public understanding of violence.

Violence experienced by women in their intimate relationships does not end the day the relationship ends. There is an ongoing legacy that can last for many years. The violence takes on new forms such as stalking, criminal harassment and legal bullying as the abuser attempts to maintain his power and control over his former partner; ideally, to have her return to him.

Even where the legislation itself acknowledges the reality of violence, as is the case with the recent revisions to Ontario's *Children's Law Reform Act,* too often the court's interpretation of it continues to perpetuate myths and stereotypes when making custody and access decisions that require ongoing and intense contact and even collaboration between a woman and her abuser.

Unfortunately, many judges, lawyers and other professionals tend to underestimate the impact of woman abuse on children. For women who are leaving abusive relationships, the extensive contact which collaborative shared parenting requires can be dangerous and life threatening. Many abusive men hold their children as "hostages" in their attempts to get back at their ex-partners for having left the relationship. What shared parenting does is give men more power and control over their children and their children's mother without requiring them to contribute to their children's support or upbringing.

In principle, the concept that both parents have ongoing responsibilities towards their children is unquestionably a good one. Many women struggle on a daily basis to convince their spouses that they do in fact have parenting responsibilities with respect to their children, both during the marriage and after separation or divorce. Unfortunately, it is still women who do the majority of housework, provide most of the day to day care for the children, who arrange their work schedules to accommodate their children's needs and who take time off from work to care for sick children.

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[33] Holly Johnson, *Measuring Violence Against Women Statistical Trends, 2006* Statistics Canada p. 7

In fact, post-separation, many women must also ensure that their children have what they need in the way of clothing, books, toys and such when they are in the care of their father.

Most mothers would welcome increased parental involvement from fathers after a divorce, on the condition that it does not threaten their children's well-being or security.

Revisions to the best interests of the child test

Ontario's move to require judges to consider violence within the family as part of the best interests of the child test was welcomed by violence against women advocates.

Section 24(2) of the *Children's Law Reform Act* now contains the following provision:

(g) the ability of each person applying for custody of or access to the child to act as a parent;

Sections 24(3), (4) and (5) were added:

(3) A person's past conduct shall be considered only

(a) in accordance with subsection (4); or

(b) if the court is satisfied that the conduct is otherwise relevant to the person's ability to act as a parent.

(4) In assessing a person's ability to act as a parent, the court shall consider whether the person has at any time committed violence or abuse against:

(a) his or her spouse

(b) a parent of the child to whom the application relates

(c) a member of the person's household, or

(d) any child.

(5) For the purposes of subsection (4), anything done in self-defence or to protect another person shall not be considered violence or abuse.

These provisions offer a significant improvement to women who have experienced violence and are seeking an appropriate custody and access order.

As well, a number of cases decided just before the introduction of these amendments indicated that courts were beginning to move away from joint custody orders in cases where there was abuse or where the parties had no ability to communicate effectively: *Kaplanis v Kaplanis* [2005] OJ No 275 (CA), *Ladisa v Ladisa* [2005] OJ No 276 (CA), *Ursic v Ursic* [2006] OJ No 2178 (CA).

Nonetheless, courts continue to order joint custody inappropriately in cases involving woman abuse, with the result that women and children are exposed to ongoing abuse, including lethal violence.

Sometimes, this is because judges do not understand the issue: the ongoing nature of the violence itself, its impact on the mother and her ability to engage meaningfully in a joint custody arrangement, its impact on the children and what it says about the abuser's parenting abilities.

Sometimes, judges do not have the opportunity to consider the violence because they have not been provided with adequate information about it.

This may be because the woman has not told her lawyer about the abuse: she may be afraid the lawyer won't believe her, she may not understand that what has happened to her is abuse or that the abuse is a relevant factor, she may be afraid that if she tells anyone the abuse will escalate, she may be embarrassed and not want this information to be made "public," etc.

However, it may also be the case that the lawyer, having heard the woman's story of abuse, decides it is not relevant and simply declines to include this information in the woman's court documents.

As noted earlier in this paper, increasing numbers of women find themselves without legal representation in family court. This has a serious, negative impact on their cases in a number of ways, including their ability to provide the courts with a history of their abuse. Completing court documents is not a simple task for someone who has no legal background. It is more difficult for a woman who is experiencing trauma as a result of being abused or who is in a state of crisis. It is no surprise that paperwork completed by unrepresented women is often incomplete, incorrect, missing important components and lacking supporting documentation about abuse from third parties.

Ontario's legislation requiring judges to consider abuse and violence in custody and access cases and recent case law provide strong tools for women who have experienced abuse. However, the fact that joint custody orders continue to be made in these cases clearly shows that work remains to be done in educating family court officials (in particular, lawyers and judges) and in supporting women to provide evidence of their abuse to the court.

APPENDIX A

Parenting affidavits

Recent revisions to the *Children's Law Reform Act* include the requirement that all people seeking custody of or access to a child complete a parenting affidavit (Form 35.1). This form explicitly asks parties to include information about violence in the relationship. This provides a clear opportunity for women to disclose violence and would seem to imply a requirement that judges consider that violence to at least some extent. Many women welcome this, as it takes the responsibility for deciding whether or not to raise the issue of violence out of their hands.

However, it creates a problem for women who wish to pursue their custody claim without raising the issue of violence. A woman in such a position may feel that acknowledging the violence in the affidavit will inflame and complicate the case. Further, should she not raise the issue in her Form 35.1 and then need to do so later in the proceedings, this inconsistency may well be used against her.

"Parental alienation"

"While professionals may not agree on the exact nature of alienation or on what the best responses should be, it is crystal clear that in alienation and other high conflict cases the stakes for children are extremely high. . . the court process itself may exacerbate the conflict."[34]

The issue of parental alienation (PA), put to bed once in the 1990s, has resurfaced as a serious issue in custody and access cases where abuse is an issue. Even if the term parental alienation is not used overtly, the concept is being raised and considered by the courts in too many cases; in particular, when a mother makes an allegation that the father has sexually abused the child/children.

Despite ample scientific evidence that largely debunks the notion of PA, it still finds favour with some judges.

When women raise the issue of abuse, including the post-separation impact on children, in an attempt to limit access by the father or refuse to follow court ordered access arrangements, sometimes even disappearing with their children, PA can become a convenient defence for the father to make.

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[34] Martinson, Hon. Donna L. *One Case – One Specialized Judge: Why Courts have an Obligation to Manage Alienation and Other High-Conflict Cases*. Family Court Review, Vol. 48, No. 1, January 2010, pp.180 – 181.

This is especially problematic if the custody proceeding forms part of a divorce action, because section 16 (10) of the *Divorce Act* (known as the "friendly parent rule") requires the parent seeking custody to demonstrate her commitment to facilitating a relationship between the children and the access parent.

Once raised, the case becomes about the mother's alleged bad behaviour and not about the underlying issues in the family that have led to this point. It makes it even more difficult to raise legitimate issues of abuse, violence and control.

Janet Johnston has developed a continuum of children's post-separation relationships with their parents that is a helpful tool to be used in this discussion.

She sets out three overarching categories on this continuum, each of which has subcategories:

1. Child prefers contact with both parents:
   - Child has equally positive relationship with both parents
   - Child has a greater affinity with one parent

2. Child prefers one parent, with ambivalent feelings:
   - Child has an alliance with one parent
   - Child is estranged from the other parent, because of abuse, violence or neglect "justifiable estrangement"

3. Child rejects one parent, with no ambivalent feelings:
   - Child is estranged from the other parent, because of abuse, violence or neglect
   - Child is alienated from the other parent, for no realistic reason: "alienated child"

As Johnston points out, even in this final category, a child may be alienated from one parent **for her or his own reasons,** whether or not they are reasonable, and not because of any action or behaviour on the part of the non-alienated parent.[35]

Nicholas Bala and others have recently published a paper examining parental alienation cases in Canadian courts between 1989 – 2008.[36] He reaches some interesting conclusions:

- There has been a significant increase in the number of cases that raise the issue of parental alienation but not in the rate of findings of alienation
- Since 2003, judges have been reluctant to assign the status of "syndrome" to this issue

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[35] Johnston, JR, MG Walters and NW Olesen. *Is it alienating parenting, role reversal or child abuse? An empirical study of children's rejection of a parent in child custody disputes.* Journal of Emotional Abuse, 5, 191 – 218. 2005

[36] Bala, Nicholas, Suzanne Hunt and Carrie McCarrey. *Parental Alienation: Myths, Realities and Uncertainties.* Family Court Review. Volume 28, Issue 1, January 2010. 164 – 179.

- Mothers are twice as likely as fathers to have allegations of alienation made against them, but this is consistent with the much higher rates of maternal custody – it is rare for an access parent to be accused of alienating behaviour
- Fathers make more than 3 times as many unsubstantiated claims of alienation as mothers
- Courts often found that children were "justifiably" estranged from the rejected parent – in almost half of the cases in which the court declined to make a finding of alienation
- In about 25% of those cases, the court found that the child was not alienated but simply wanted less contact
- Judges tend to follow the opinions of court-appointed mental health experts, but not party-retained experts
- Where the court found parental alienation, the most common response was to vary custody either to give the alienated parent custody or to change the order from sole to joint
- In 9% of the cases, the court suspended contact with the alienating parent
- In just over 25% of the cases, the court ordered counselling or some other form of therapeutic intervention for either the children or the entire family

Women and children who have experienced abuse face serious challenges if, when they raise these issues, the response is an allegation of parental alienation.

If courts are to better respond to violence within the family, the court process and professionals (including mental health professionals who are often called as experts in these cases) must understand and acknowledge the reality and prevalence of violence within families – both violence against women and violence, including sexual abuse, against children.

QUESTIONS FOR REFLECTION

1. How have the changes in this area of law affected your clients?
2. How has your service adapted to the changes?
3. Are there new areas of collaboration that you would like to explore with other partners in the VAW sector?

G REFORMS TO RESTRAINING ORDER LEGISLATION

The sections of Ontario's *Family Law* Act dealing with restraining orders have recently undergone significant change.

Perhaps the most important aspect of the reform relates to enforcement of a restraining order. Prior to the revisions, the breach of a restraining order was prosecuted under the *Provincial Offences Act.* This made enforcement difficult – police were less inclined to lay charges and, even if they did, penalties were minimal.

While restraining orders under this regime offered some modicum of protection to some women, they were largely ineffective in controlling the behavior of a persistent abuser.

As a result of Bill 133, which contained the restraining order reforms, breaches of a restraining order are now a criminal offence (*Criminal Code,* section 127). Someone who breaches a restraining order can be arrested by the police, charged with a criminal offence and held for a bail hearing in criminal court. The case proceeds in criminal court and, if he is convicted, the abuser faces up to 2 years in prison.

Other important elements of Bill 133 related to restraining orders include:

- Anyone who is married or who has cohabited for any period of time may apply for a restraining order. In the past, people had to have cohabited for at least 3 years to apply
- A standard form order has been developed for restraining orders. These are stand-alone orders so the terms of the restraining order will no longer get lost in an order also containing provisions dealing with custody, access, support, division of property, etc. The standard form order also contains a clause mandating enforcement and advising that a breach leads to a criminal charge, so women no longer have to seek an enforcement clause in their order
- The order is automatically entered into CPIC by court staff
- Court staff will prepare the order if a woman is unrepresented

These are positive changes and offer the potential for women to be better protected by obtaining a restraining order.

However, there are some early indicators of challenges:

- In some communities, the police continue to lay charges under the Provincial Offences Act when a restraining order is breached

- Some women are not comfortable seeking a restraining order now that a breach leads to a criminal charge because, while they want to be kept safe from their abuser, they do not want him to become involved with the criminal court. This may be because he has threatened her with increased violence if this happens, because he is the breadwinner for the family, because his immigration status is insecure or because she is concerned about the impact on the children if their father goes to jail
- There is some criticism that criminal court is not the best place to deal with the issue of family violence and that its involvement will only complicate matters for the family, especially in terms of potential conflicts between criminal court outcomes and orders in the family court for custody and access
- Even though the standard of proof required for a restraining order is the same as for any other family court proceeding – on a balance of probabilities – there is concern that, because there are now criminal consequences for a breach, judges in family court may informally impose a higher standard of proof. This would require a woman to provide more evidence and could lead to fewer restraining orders being issued. It may also make judges reluctant to issue ex parte restraining orders in emergency situations
- We have heard anecdotally, and directly from one judge, that some judges are reluctant to use the new restraining order provisions because of the criminalization of breaches and are, instead, using section 28 of the Children's Law Reform Act to make orders requiring good conduct, which are enforceable under the Provincial Offences Act

The implementation and use of the revised restraining order regime clearly requires ongoing monitoring, evaluation and analysis to determine whether it has achieved its goal of protecting women and holding abusers accountable.

QUESTIONS FOR REFLECTION

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H CHILD PROTECTION

It is not news that challenges exist between the child protection and violence against women sectors. The two sectors have long had a difficult relationship, which was brought to a head in the late 1990s with changes to the duty to report provisions of the *Child and Family Service Act.* It is not the purpose of this paper to revisit those early days other than to say that the struggles between the sectors interfered with women and children receiving the best possible response in situations of woman abuse within the family.

Over the intervening years, communities have developed collaborative protocols between the sectors; both sectors have undergone training and education, some of it joint; the Ontario Association of Children's Aid Societies has produced various procedural and protocol guidelines for its sector and conferences have been held to explore how to improve the child protection response to woman abuse. These initiatives have had mixed results.

As we enter 2011, difficulties remain. Many community protocols are out of date and do not reflect current law, regulation, protocol or practice. Training, especially in the child protection sector, remains inadequate. Different philosophies and principles continue to create both tension and conflict between the sectors. Most importantly, these difficulties result in an inconsistent approach to responding to child protection concerns in cases involving woman abuse. Those inconsistencies exist at the agency level, where individual workers bring different approaches based on their personal experiences and biases, as well as between sectors within a community and at the provincial level where communities take very different approaches one from another.

The Toronto Children's Aid Society has a specialized team that responds to cases involving domestic violence and child protection concerns. This team has developed an approach that has the potential to effectively address the principal issues: ensuring that women are not blamed for the abuse they are experiencing, keeping children safe by keeping their mothers safe and holding abusers accountable for their violence.

However, women's experiences are often markedly different from these positive sounding goals. Mothers are still held accountable for their partner's behaviours, and many CAS workers continue to demonstrate a serious lack of understanding of violence and its impacts. Too often, women, especially those from marginalized communities, encounter high levels of intolerance and suspicion when they are involved with child protection authorities.

APPENDIX A

QUESTIONS FOR REFLECTION

1. Have there been changes in this area of collaboration either positive or negative?
2. How has your service adapted to the relationship with child protection?
3. Are there new areas of collaboration that you would like to explore with other partners in the VAW sector?

I LEGAL SYSTEM INTERSECTIONS

Perhaps the best way to frame a discussion about the challenges women face when they must deal with both the family and criminal courts concurrently and identify service delivery implications is to consider a recent Ontario case[37]. This particular case also provides an excellent illustration of the potential dangers to women when the courts do not bring a gender based analysis to cases involving violence against women. While this particular judgement worked in favour of a woman who had been inappropriately charged, there is no analysis of the gendered nature of violence, so the principles set out by the judge could just as well be used by a man who has been appropriately charged.

Mr. and Ms Shaw did not have a good marriage. The history of abuse is unknown, at least to the courts, other than one episode when Ms Shaw allegedly hit Mr. Shaw while they were out drinking. Their children were not present.

We do know that some months before this, Mr. Shaw had secretly installed a tracking device on the family computer so he could spy on his wife's private email correspondence. This would seem to be an indicator of his need for power and control over Ms Shaw.

Mr. Shaw did nothing at the time of the alleged assault by his wife. Some 10 days later, he intercepted some of Ms Shaw's emails to a close friend, who was also experiencing difficulties in her marriage. Unfortunately, in the course of this correspondence, Ms Shaw made some references to wishing her husband was dead. Mr. Shaw shared this correspondence with his lawyer, who he had retained for the purpose of family law issues, claiming that he was frightened by the email. A few weeks later, apparently on the advice of his lawyer, Mr. Shaw gave a statement to the police, who arrested Ms Shaw and charged her with assault.

The criminal court placed Ms Shaw on very strict bail conditions. She required a surety in the amount of $5,000, was prohibited from having any contact with her husband or her children and was restricted in her contact with her daughter from a previous marriage who did not live with the Shaws. Mr. Shaw was also granted, via the bail conditions, what amounted to exclusive possession of the matrimonial home. Ms Shaw had to live with her surety, was required to abide by a curfew and was not allowed to use the Internet.

Mr. Shaw moved quickly to ensure he had custody of the children through a family court order. His initial motion, which he brought on a without notice basis, was heard in record time – just one day after the charges were laid against his wife.

Because of the outstanding charge against her and the onerous bail conditions, he received a sympathetic hearing and was given ongoing residential care of the children. The family court judge, however, ordered that Ms Shaw have immediate and generous time with the children. In Mr. Shaw's mind, ½ hour over the following week met this requirement.

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[37] *Shaw v Shaw* [2008] O.J. No. 1111, 2008 ONCJ 130

APPENDIX A

The matter came before Justice Pugsley a week later, who reviewed the file and had a number of scathing comments to make about what had happened thus far:

> *"The events after the arrest of Ms. Shaw do not, in retrospect, show the police, the Crown, counsel or the criminal judicial system in a good light, although her story is commonplace. . . Spouses of every walk of life and often with completely unblemished prior character are routinely detained for a formal bail hearing for such assaults. Invariably, the defendant (not yet convicted) is excluded from his or her home and prevented from exercising custody of or access to the defendant's children without any consideration of the factors this court must apply by law before determining incidents of custody or access. This is not for one moment to diminish the impact of spousal abuse on family members and children in Canada. Spousal assaults are by nature serious and there are very sound policy reasons to lay such charges and have them proceed through the judicial system to ultimate resolution if not diverted. . . .The way that the criminal justice system approaches the commencement of these matters, however, often wreaks family law havoc with the family unit of the defendant and the complainant, and in particular the children of those parties. Family courts decide custody and access issues on the basis of statute and case law defining the best interests of the children. The criminal justice system pays no attention to such interests because it is not geared up to do so nor are the participants widely trained in how the actions of the system – from the officer who refuses to release the defendant at the station, to the duty counsel who allows the defendant to agree to inappropriate conditions of release out of expediency – effect the lives of the members of the defendant's family. . . Routine orders excluding a party from the common home of the parties until the end of the criminal matter without thought to the consequences thereof, and without a remedy short of a bail review, place one party in a position of immediate superiority over the other party for as long as it takes (perhaps a year) for defended criminal charges to be resolved. Such rote treatment of all matters of domestic assault can lead, on the one hand, to concocted or exaggerated claims of criminal behavior or, on the other hand, to innocent defendants pleading guilty at an early stage out of expediency or a shared desire with the complainant to start to rehabilitate the family unit."*

At this point, Justice Pugsley made no order as to custody, but made a temporary order placing the children equally with each parent on a week by week basis, pending resolution of the criminal proceeding which prohibited Ms Shaw from communicating with Mr. Shaw or from entering the matrimonial home. In making this order, he said:

> *"If the criminal charges did not impact this family with the disruptive force of a hand grenade, the parties would likely be in a position to share their children's custody between them in a child focused way.*

> *Such a conclusion is, however, impossible at this time because of the highly intrusive bail terms faced by the mother."*

Of course, as noted above, Justice Pugsley's remarks can cut both ways. Indeed, while the *Shaw* case is not cited, a case the following year[38] supports the notion that the initial criminal response, in particular, the need for an accused in a domestic violence case to be held for a bail hearing, is not appropriate.

Mr. Rashid was arrested and charged with assaulting his wife and his son, with his daughter witnessing the assaults. The police held him for a bail hearing the following day, at which time he was released. He was later found guilty of both assaults, but then sought an order from the court to allow an appeal on the basis that he had been improperly held at the time of arrest.

Justice Sosna, in hearing the case, did not overturn the convictions. However, he did support the trial judge's finding that the routine practice of the police in that jurisdiction to detain anyone charged with domestic violence was a violation of the accused's section 9 *Charter* rights. In so doing, he said:

> *"The unofficial practice/policy of the Durham Regional Police Service in detaining those charged with domestic violence without regard to the provisions of the Criminal Code and Charter is a matter of public record, criticized and disapproved of by the trial justice. The remedy granted and the denunciation of the aforementioned detention practice properly addresses the seriousness of the breach, the prejudice to the accused, and the public interest, in order that unwarranted detention of those accused of domestic violence not be perpetuated."*

In a paper written for a National Judicial Institute program for family court judges, the Honourable Justice Donna Martinson discusses the need for increased coordination between the family and criminal courts.[39]

She acknowledges the differences between the courts:

- Different standards of proof
- Different focuses: criminal court addresses the issue of the guilt (or not) of the accused, while family court is focused on the best interests of the children
- More stringent application of the rules of evidence in criminal than in family court
- Different disclosure obligations.

She identifies a number of similarities between the two sets of proceedings:

- the details of the alleged assault

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[38] *R. v. Rashid*. [2009] O.J. No. 957 OSCJ

[39] Martinson, the Honourable Justice Donna. *One Assault Allegation, Two Courts: Can we do a Better Job of Coordinating the Family and Criminal Proceedings?*, National Judicial Institute 2010.

- the witnesses and evidence
- the ongoing nature of the relationship between the two individuals
- the need for a timely resolution
- safety for the victim

Martinson sets out a number of the issues that can arise when there are concurrent criminal and family (including child protection) proceedings. In so doing, she relies on two earlier papers.[40] Martinson identifies the following issues:

- Delays in resolving all outstanding issues, which can result in escalations in the dispute and increased risk of harm to the woman and children
- Inconsistencies between bail and restraining order conditions, leading to confusion, difficulties in enforcement, breaches and increased risk
- Lack of awareness by each court of orders from or even of proceedings in the other
- Lack of knowledge by one court of the expiry date of bail/restraining order
- Contradictory disclosure orders
- Ineffective resolution efforts because they are not coordinated
- Ineffective use of court resources

Martinson sees the problems as serious enough to warrant what she calls "bolder moves."[41] She suggests joint management/resolution conferences between the two courts as an option, with the goal of managing the concurrent proceedings fairly and effectively, without undermining the integrity of each process.

Her conclusion is worthy of quoting directly:

> *"I posed this question at the outset: Should Judges be communicating with courts and judges within their own jurisdictions when there are concurrent family and criminal cases involving allegations of domestic violence? In my respectful view there will be cases where it is appropriate to do so, so long as the purpose is to coordinate and harmonize the proceedings in an appropriate way, with the necessary safeguards in place, in a manner that ensures the integrity of each proceeding."*[42]

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[40] Kehoe, Kate. *Intersection of criminal and family proceedings in domestic violence cases – suggestions for criminal court judges*. National Judicial Institute Program: Managing the Domestic Violence Criminal Case, 2008, and Paul H.A. Korpan, *Parallel Proceedings in the Family and Criminal Contexts: Managing Conflict and Chaos*. Prepared for the Federation of Law Societies' National Family Law Program, 2010.

[41] Martinson. 9

[42] Ibid. 10

QUESTIONS FOR REFLECTION

1. How have the intersections affected your clients?
2. How has your service adapted to the intersections?
3. Are there new areas of collaboration that you would like to explore with other partners in the VAW sector?

APPENDIX A

J CONCLUSION

This paper identifies and briefly reviews a number of the many challenges faced by women who have experienced violence when they turn to "the law" for assistance. It also identifies areas where law reform has been potentially helpful to women.

The paper does not propose solutions, because its purpose is to stimulate thoughts and ideas for the forum to be held in April, where discussions will focus on recommendations for service delivery reform, including the development of best practice guidelines, possible new models of service delivery and new training protocols.

We encourage you to consider these directions when reflecting on issues identified in this paper and when thinking about the forum discussion.

APPENDIX B

BARBARA SCHLIFER CLINIC – SURVEY RESULTS

May 19, 2011

Catalyst Research and Communications • catalyst@bellnet.ca

A. Response Rate

The survey was sent to approximately 25 people invited to participate in the May 25th forum. A total of 13 responses were received (about 50%), which is a very good response rate given that only one week was provided to reply.

B. Pressures on Services

Question: What are the three most significant pressures on the services you provide to women who experience violence?

Two respondents did not answer this question. Of the remaining 11 who did complete it, some listed factors specific to their own sector (the reader can almost tell the type of agency responding by the answers they give), while others named factors that go across sectoral boundaries.

The top two issues were:

- affordable housing (5 out of 11 mentioned this) and
- access to legal representation (4 out of 11), including obtaining an appropriate LAO certificate, assisting women who do not qualify for legal aid and finding lawyers with a good understanding of VAW issues.

Several more issues were mentioned by more than one respondent:

- custody and access issues (3),
- poverty/inadequate income supports (3),
- inadequate funding (including for advocacy) (3),
- intersecting areas of criminal and family law (including criminalized women in patterns of violence, and women being charged) (3)
- access to French language services/understanding of francophone rights in Ontario (2),
- increase in women with more complex issues (undocumented, mental health concerns, child welfare involvement) (2),
- Family Court reforms (2).

The following were each raised by one respondent: lack of services for criminalized women, lack of affordable child care and difficulty in recruiting staff.

Many of the issues are inter-related, for example, poverty is closely linked to issues of affordable housing and childcare.

C. Changes in the Justice System

Question: What changes have you noted in the following areas of the justice system with respect to women experiencing violence? Eight areas were listed under this question, and respondents' comments under each area are summarized below.

1. Access to Legal Representation

Eight (8) respondents answered this question. The following issues were each raised by two to four respondents:

a) Many women are unrepresented, either from the outset or later in their case, for several reasons. Fewer lawyers are accepting legal aid clients. Many women do not qualify for legal aid, and some of those cannot afford their own lawyer. Those who are able to hire representation often find their funds are quickly used up through protracted processes or legal bullying.

b) Women have difficulty navigating the process of finding an appropriate lawyer, and working with them effectively.

c) Quality of representation is problematic. The issues associated with these cases are complex, and few lawyers have a good understanding of VAW issues, or a gender analysis of the situation at hand, or an understanding of trauma and its legacy.

d) It is difficult, and in some regions impossible, to find French language representation.

e) Some women have specific situations or requirements and need representation to assist them, e.g. women needing legal support around immigration issues while they are dealing with a situation of violence, women challenging the child welfare system, and women who themselves are facing charges.

2. Family Court Process Reform

Five respondents answered this question, and highlighted the following issues:

a) Increasing pressure to used mediation or dispute resolution officers, to the extent that it is almost seen as mandatory and women increasingly agree to inappropriate mediation.

b) History of abuse and separation violence are increasingly ignored, and the system does not do a good job of identifying these cases and bringing the relevant issues of violence to light. The "best interests of the child" test is not always applied in a way that takes account of violence.

c) Dual charging complicates the cases.

d) Criminalized women are seen as "guilty" in all domains of their lives, and considered "bad mothers" because of their struggles with addictions or criminal involvement.

3. Mandatory Charging Policies

Five respondents provided comments under this area, and they raised the following key points:

a) Women who are charged or countercharged are greatly disadvantaged, and re-victimized. They often "plead out" in order to be able to return to their children or avoid CAS involvement. CAS involvement becomes a negative consequence of involving the police.

b) Gender analysis is badly needed, as the court system does not distinguish between the different contexts and impacts for men and women facing similar charges.

c) The courts can only "help" once a woman is in the justice system. True diversion would intervene before that point, and thus is outside of the court's jurisdiction.

d) Mandatory charging takes the control out of women's hands, with both positive and negative consequences. Still, it is an important change to how the law addresses domestic violence.

4. Reforms of Immigration Law

Six respondents answered this question, raising the following points:

a) With changes in legislation and with the current federal government's plans, there is heightened concern about this area. Some have seen abuses related to Bill C-11 and Temporary Foreign Workers, and one feels the new sponsorship regulations will be bad for women. One commented there has been an increase in the number of women deported or who are unable to access the proper channels to obtain status and thus become "stranded" in the shelter system.

b) Family Court judges often do not understand immigration law, and do not have a gender analysis with respect to situation of immigrant women, and thus there are often unintended consequences of their judgments.

5. Custody and Access

There were five comments in this area and four of them emphasized that the courts increasingly favour joint custody while discounting violence in the family. Some have seen an increase in joint custody arrangements and unsupervised access even where there is a history of violence. The "best interests of the child" test is rarely applied.

The fifth comment simply said, "No change – system still broken."

6. Reforms to Restraining Order Legislation

Four respondents commented under this section. Two indicated that restraining orders are more difficult to obtain, and two suggested that they are not effectively enforced, leading the women to live in constant fear. One commented that they had not noticed any reforms.

7. Child Protection

"Continues to be one of the worst systems for women and children"

Four respondents commented in this area.

a) Three respondents commented that CAS often does not have a clear analysis of gender, race or class, or an understanding of the dynamics of violence. They need training on how to manage these cases. Also, the caseload is overwhelming, making it difficult to properly understand each situation.

b) Women are often pressured into signing voluntary agreements monitoring both parties, rather than holding the abuser responsible. Conversely, if women take action in family court to pursue the abuser, CAS does not back them up.

c) Issues related to criminalized women as highlighted above.

d) On a positive note, the involvement of CAS helps highlight for the public the seriousness of domestic violence.

8. Legal System Intersections

a) Family court and criminal court contradict each other.

b) Intersection of mandatory charging, CAS and custody and access is highly problematic.

c) Criminalized women, especially Aboriginal women, are highly disadvantaged in all systems and the intersection of these systems: fewer supports in all aspects of their lives, minority within the male-dominated charged population, etc.

d) Intersection of family law and immigration law is challenging; need to add immigration law in the discussion.

D. Response to Changes in the Justice System

Question: How has your service adapted to the changes in the Justice System?

In the question on ways in which services have adapted to the changes, respondents were given 11 possible answers to choose from, plus "other". Of these, no respondents chose the following options:

- serve fewer women
- turn women away
- provide supervised access visits

Responses to the remaining options are summarized in the chart below; respondents may have selected multiple choices.

The full wording of each option is:

- pay for applications for client with agency money
- work around legal rights to find non-legal solutions
- work around Child Protection
- operate with wait lists
- provide court support without legal representation or advice
- train our workers to respond to legal questions
- try to fill gaps even where not funded to do so
- refer to othersx\

The two respondents who selected "Other" offered several comments:

- fund-raise to meet gaps in service,
- advocacy on a wide range of issues,
- engage in prevention work,
- widen range of services and therefore funding sources,
- working to develop a mentoring program to help women navigate the system.

Question: Have you initiated any services or programs in direct response to the changes in the Justice System? If yes, what program or service did you initiate?

Three respondents replied and among them, they had initiated several new programs:

- Pro Bono Summary Advice Clinic, legal information workshops
- Implemented our own respite care program to help women avoid respite use of child welfare
- Funded a legal worker for one year

- Work with employers and landlords to help women without Canadian documentation
- Legal education program: develop material and training for francophone workers, offer legal information sessions to francophone women across the province.

E. Areas for Exploration and Discussion

Question: Are there any new programs or projects you would like to explore with other Violence Against Women partners? If yes, what program or service would you like to initiate?

There were proposed initiatives related to both advocacy and service provision.

Joint advocacy initiatives were suggested on: legal bullying, access to representation, pressure to use mediation/ADR, and custody and access issues.

Services where partnership would be advantageous included: pre-trial and trial support for unrepresented women, mentoring to help women navigate legal and other services, supports for criminalized women (e.g. access to expert lawyers), joint support of women with complex needs or supports that bring an intersectional approach (e.g. undocumented women, criminalized women dealing with immigration issues, etc.) rather than putting women in "boxes". Some of these are related services and may possibly be combined.

Question: Please specify any topics that you would like to discuss at the May 25th Forum.

Three respondents suggested topics to discuss at May 25th meeting:

1. criminalized women,
2. women without documentation,
3. integrated court program,
4. issues with child welfare,
5. building system capacity to provide seamless services for women involved in the legal system.

APPENDIX C

Justice Done: Crafting Opportunity from Adversity

Date: Wednesday May 25, 2011

Invited Participants

	Name	Organization
1.	Abi Ajibolade	The Redwood
2.	Alia Hogben	Canadian Council of Muslim Women
3.	Angelique Jenney	Child Development Institute
4.	Barb MacQuarrie	Centre for Research and Education on Violence against Women and Children
5.	Betty Kennedy	Ontario Native Women's Association
6.	Carol Barkwell	Luke's Place
7.	Clare Freeman	Jared's Place Hamilton
8.	Dawn Harvard	Ontario Native Women's Association
9.	Deborah Sinclair	Consultant
10.	Eileen Morrow	Ontario Association of Interval and Transitional Houses
11.	Eman Ahmed	Canadian Council of Muslim Women
12.	Fran Odette	Springtide
13.	Georgette Lacroix	Pavilion Family Resource Centre
14.	Ghislaine Sirois	Action Ontarienne Contre la Violence Faite aux Femmes
15.	Gwen O'Reilly	Northwestern Ontario's Women Centre
16.	Harmy Mendoza	Women Abuse Counsel of Toronto
17.	Heather McGregor	YWCA Toronto
18.	Iris Fabbro	North York Women's Centre
19.	Jill McNall	Legal Aid Ontario
20.	Johanne Ouimette	Action Ontarienne Contre la Violence Faite aux Femmes
21.	Josee Guindon	Action Ontarienne Contre la Violence Faite aux Femmes
22.	Joy Lang	Centre for Research and Education on Violence against Women and Children
23.	Julie Lassonde	Maison D'hebergment pour Femmes Francophone
24.	Julie Mathews	Legal Aid Ontario
25.	Leighann Burns	Harmony House
26.	Linda Ense	Native Women's Centre Hamilton
27.	Lisa Cirillo	Downtown Legal Services
28.	Lisa Van Ness	Women at the Centre
29.	Lynne Cheliak	Pavilion Family Resource Centre
30.	Mandy Berglund	Aboriginal Health Centre
31.	Mandy Bonisteel	George Brown College
32.	Marianne Park	DAWN Ontario
33.	Marsha Sfeir	Springtide
34.	Mary Lou Fassel	Barbra Schlifer Commemorative Clinic
35.	Melanie Clement	Action Ontarienne Contre la Violence Faite aux Femmes
36.	Michelle Coombs	Elizabeth Fry Toronto
37.	N.Neka	Women at the Centre
38.	Nora Currie	Toronto Region VAW Shelter Network
39.	Pamela Cross	Consultant
40.	Penny Krowitz	Jewish Women International of Canada
41.	Rhonda Roffey	Women's Habitat
42.	Sarah Blackstock	YWCA Toronto
43.	Shallen Murray	The Redwood
44.	Sharlene Tygeson	Ernestine's Women's Shelter
45.	Silvia Samsa	YWCA Toronto
46.	Sly Castaldi	Guelph-Wellington Women in Crisis
47.	Susan Harris	Catholic Family Services – Peel Dufferin
48.	Terry Swan	Aboriginal Healing and Wellness Strategy
49.	Wendy Komiotis	Metropolitan Action Committee on Violence Against Women and Children

APPENDIX C

Justice Done: Crafting Opportunity from Adversity

Date: Wednesday May 25, 2011

Participants

	Name	Organization
1.	Abi Ajibolade	The Redwood
2.	Alia Hogben	Canadian Council of Muslim Women
3.	Amanda Dale	Barbra Schlifer Commemorative Clinic
4.	Angelique Jenney	Child Development Institute
5.	Carol Barkwell	Luke's Place
6.	Clare Freeman	Jared's Place Hamilton
7.	Dawn Harvard	Ontario Native Women's Association
8.	Deborah Sinclair	Consultant
9.	Eileen Morrow	Ontario Association of Interval and Transitional Houses
10.	Georgette Lacroix	Pavilion Family Resource Centre
11.	Gwen O'Reilly	Northwestern Ontario's Women Centre
12.	Harmy Mendoza	Women Abuse Counsel of Toronto
13.	Iris Fabbro	North York Women's Centre
14.	Jennifer Wall	Downtown Legal Services – Volunteer Note Taker
15.	Joan Riggs	Facilitator
16.	Josee Guindon	Action Ontarienne Contre la Violence Faite aux Femmes
17.	Joy Lang	Centre for Research and Education on Violence against Women and Children
18.	Julie Lassonde	Maison D'hebergment pour Femmes Francophone
19.	Julie Mathews	Legal Aid Ontario
20.	Kristina Tesser	Downtown Legal Services – Volunteer Note Taker
21.	Leighann Burns	Harmony House
22.	Lisa Cirillo	Downtown Legal Services
23.	Lynne Cheliak	Pavilion Family Resource Centre
24.	Mandy Bonisteel	George Brown College
25.	Marsha Sfeir	Springtide
26.	Mary Lou Fassel	Barbra Schlifer Commemorative Clinic
27.	Melanie Clement	Action Ontarienne Contre la Violence Faite aux Femmes
28.	Michelle Coombs	Elizabeth Fry Toronto
29.	Pamela Cross	Consultant
30.	Penny Krowitz	Jewish Women International of Canada
31.	Rhonda Roffey	Women's Habitat
32.	Shallen Murray	The Redwood
33.	Sharlene Tygeson	Ernestine's Women's Shelter
34.	Silvia Samsa	YWCA Toronto
35.	Wendy Komiotis	Metropolitan Action Committee on Violence Against Women and Children
36.	Devina D'Silva	Barbra Schlifer Commemorative Clinic (volunteer)
37.	Maricela Lozano	Barbra Schlifer Commemorative Clinic (volunteer)
38.	Victoria Nhan	Barbra Schlifer Commemorative Clinic (volunteer)

APPENDIX D

Agenda

Justice Done: Crafting Opportunity from Adversity

Barbra Schlifer Clinic Forum
May 25, 2011
Harbourfront Community Centre – Dance Studio
627 Queens Quay West
Toronto, ON M5V 3G3

Intended Outcomes

a) Examine and report on justice impacts for diverse communities of women who have experienced violence, particularly in the areas of recent changes to the legal system and the law.
b) Identify the need for a diversified set of collaborative efforts, resources and tools to assist service providers who work with women who have experienced violence.
c) Identify recommendations around service delivery.

8:30am – 9:am	Breakfast
9:15am – 9:30am	Introductions to the day and each other (Amanda Dale and all)
9:30am – 10:00am	The context of the discussion (Presentation: Pam Cross) • The legal system that women face today when addressing violence • Recurring issues • Recent changes and initial impact
10:00am – 10:15am	What you told us (Presentation: Mary Lou Fassel)
10:15am – 11:00am	Mapping the relationships (Exercise) • The key service providers that are part of the working system • Describing their role and relationship to the legal system.
11:00am – 11:15am	Break
11:15am – 12:30pm	Identifying the service issues facing the overall system in responding to VAW.
12:30pm – 1:00pm	Lunch
1:00pm – 2:15pm	Strategies and ideas to address the issues. • Tools, resources • Service Delivery recommendations for legal advocates
2:15pm – 2:30pm	Break
2:30pm – 3:45pm	Strategies to better support specific constituencies of women.
3:45pm – 4:30pm	Next Steps
4:30pm	Close of meeting

APPENDIX E

Justice Done: Crafting Opportunity from Adversity

Barbra Schlifer Clinic Forum
May 25, 2011

AM Session Summaries

Results of Survey (Presentation by Mary Lou)

What are people's perceptions of women's areas of greatest concern?

1. **Pressure on services? Top two issues: affordable housing and access to legal representation**
   a. Other issues were: custody/access, poverty, language, criminalization of women, mental health, child welfare, court reform, lack of services for criminalized women, lack of child care, difficulty recruiting workers
2. **Changes noted in justice system?**
   a. Access to Representation: Escalating problem of women being unrepresented, blame on lawyers for relationship breakdown for abused women, fewer lawyers accept legal aid certificates, gap between women poor enough to qualify for legal aid and modest-income women who cannot afford a private lawyer, women have difficulty finding/working with lawyers, French-language representation is hard to find, access to representation problematic when issues multi-factional.
   b. Family Court Process: pressure to use ADR, continuing difficulties during post-separation ignored, best interest tests are "complicated", dual charging results in criminalized women assumed to be bad mothers.
   c. Mandatory Charging: women re-victimized, courts do not provide gendered analysis, diversion options not considered/available.
   d. Reforms of immigration law: increasingly discriminatory/problematic, temporary foreign workers, new sponsorship regulations, family court/criminal court judges do not understand immigration laws.
   e. Custody/Access: courts seem to be increasingly favouring joint custody and unsupervised access for abusers, discounting violence in the family, lack of gendered analysis/misogyny is an underlying problem, the Schlifer Clinic is trying to promote relevance to violence.

f. Restraining Order Legislation: more difficult to obtain, family law judges use CLRA rather than FLA, ongoing problem of no/poor enforcement.

g. Child Protection: CAS attention does not have a clear analysis of gender/race/class or understanding of dynamics of violence, women often pressured to sign voluntary agreements, challenging for criminalized women when CAS gets that information.

h. Legal System Intersections: Family and criminal courts contradict criminalized women, Aboriginal women particularly disadvantaged.

3. How has your service adapted to the changes?

a. No one serves fewer women/turns women away, the largest response was training to workers and use of referrals, agencies are filling gaps with no funding by creative programming.

4. Have you initiated services/programs indirect response to challenges in the justice system?

a. Summary advice referrals, respite care, PLE, work with landlords/employers/ undocumented lawyers.

5. Program/Service Opportunities: joint initiatives on legal bullying, access to representation, access to ADR, custody/access issues

6. Topics for Forum: Criminalized women, undocumented women, IDVC Court, child welfare, integrated services.

Six Trends

1. Women moving away from family law system.
2. Women get involved when a crisis arises (man has initiated action).
3. Getting pressure from Ontario Works to pursue legal action for child support.
4. Large numbers of women are not connected to VAW agencies as they go through family court.
5. Immigration system is not the most capable to address VAW issues.
6. When culture contact has equal relevance as the violence.

What agencies are currently doing…

1. Education for women
   a. Client information sessions
   b. Resource materials
   c. 2hr workshops with lawyer and legal support worker (Luke's Place)
   d. Educational sessions

2. Sliding capacity for frontline workers, other service providers
   a. Training
   b. Educational sessions

APPENDIX E

3. Support Legal Programs
    a. Drop-ins
    b. Peer support
    c. Legal advocate
    d. Court support workers
    e. Advice clinics
    f. Legal advice for related legal issues (eg. Criminal lawyer)

4. Required Rosters of Lawyers (referrals)

5. Work outside the system
    a. Provide “quotations” for women with no papers
    b. Outreach to her community to support her (employment, landlords)

6. Records
    a. OAITH – women tell their story, how does it get translated into the system, what is lost/picked up during that step?

7. Francophone women need assessments

8. Relationship Building
    a. Find individual champions within the systems (CAS/OW)
    b. Connect with the audiences to understand issue (youth)

9. Systemic limitations
    a. Legislation on the creation of refugee board for cases where VAW exists

Solutions and Responses

Solutions…?

→ Drop-ins regarding legal information (lunch and learns for women and service providers);

→ Peer support;

→ Individual accompaniment and advocacy;

→ Criminal court watch;
- o Helps with family settlement;
- o Link charging to changes of family;

→ Training for workers on legal support.

Responses

→ Women not wanting to use legal system(s).

→ Roster of women lawyers.

→ Crisis-driven legal responses.

→ Ducking the system as long as possible.

→ Complex negotiations with the abusers.

→ Education materials for navigating the systems/sectors.

→ Respite – care program;
- o Kids overnight volunteers;
- o 2 days per 6 months;
- o Women can stay to save money for immigration processes;
- o Hook up with informal sector.

→ 5 day respite.

→ Examine legal documents to see how the story gets "processed" through the system to see where the breakdown is – is it judges, lawyers, etc.?

APPENDIX E

→ Pro bono clinics.

→ Client information sessions (information for women who are out of the 2 hour certificates.

→ Legal information workshops;
- o 2 hours more interactive;
- o Custody;
- o Financial statement;
- o Co-delivered by legal support workers and lawyers.

→ Summary advice clinics.

→ OWD pressures for child support;
- o Pressuring OWD not to break own rules.

→ Francophone women need assessment;
- o 49 recommendations for Francophone women across the province.

→ DNA testing requests in court.

→ Law students programs.

→ "Expert" support in court using the bail pilot program to ask for consistency.

→ In-house expertise on immigration.

→ Working with mandated clients.

→ IRB draft for VAW-cases only broad.

→ Connect with "Rebel" pan-Canadian feminists.

→ CAS collaborative agreements/letters of support for family court proceedings

→ Brokering nuanced small scale negotiations for women ascribed with "cultural" violence.

→ Aboriginal population, provide specific legal support.

APPENDIX F

Evaluation of the Justice Done: *Crafting Opportunity from Adversity Forum* Tabulation

by: Catalyst Research and Communications • catalyst@bellnet.ca

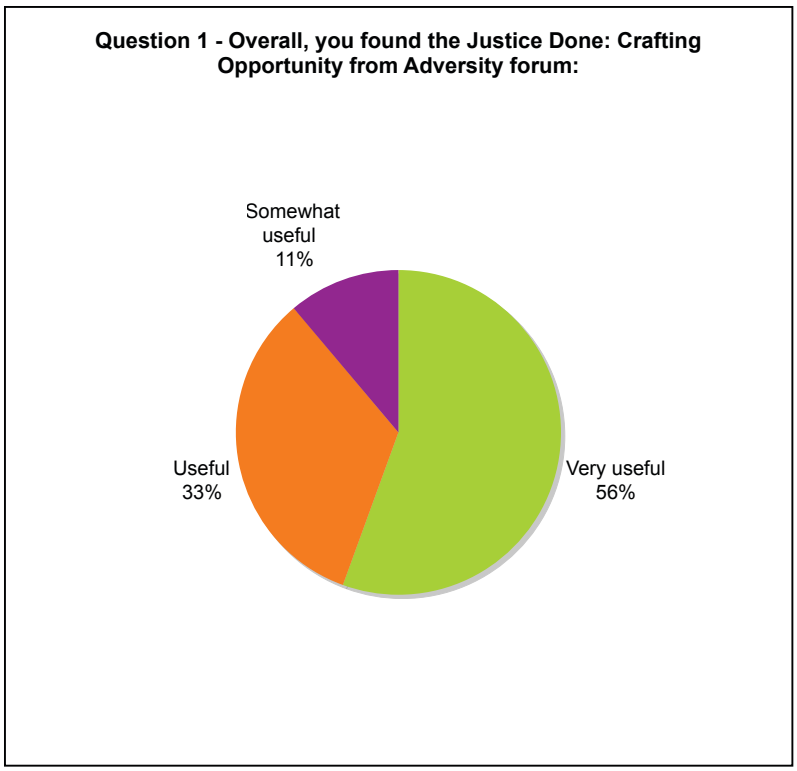
Total responses: 9

Q1

1. Overall, you found the Justice Done: Crafting Opportunity from Adversity forum:

Answer Options	Very useful	Useful	Somewhat useful	Not useful at all
Responses	5	3	1	0

Answered: 9
Skipped: 0

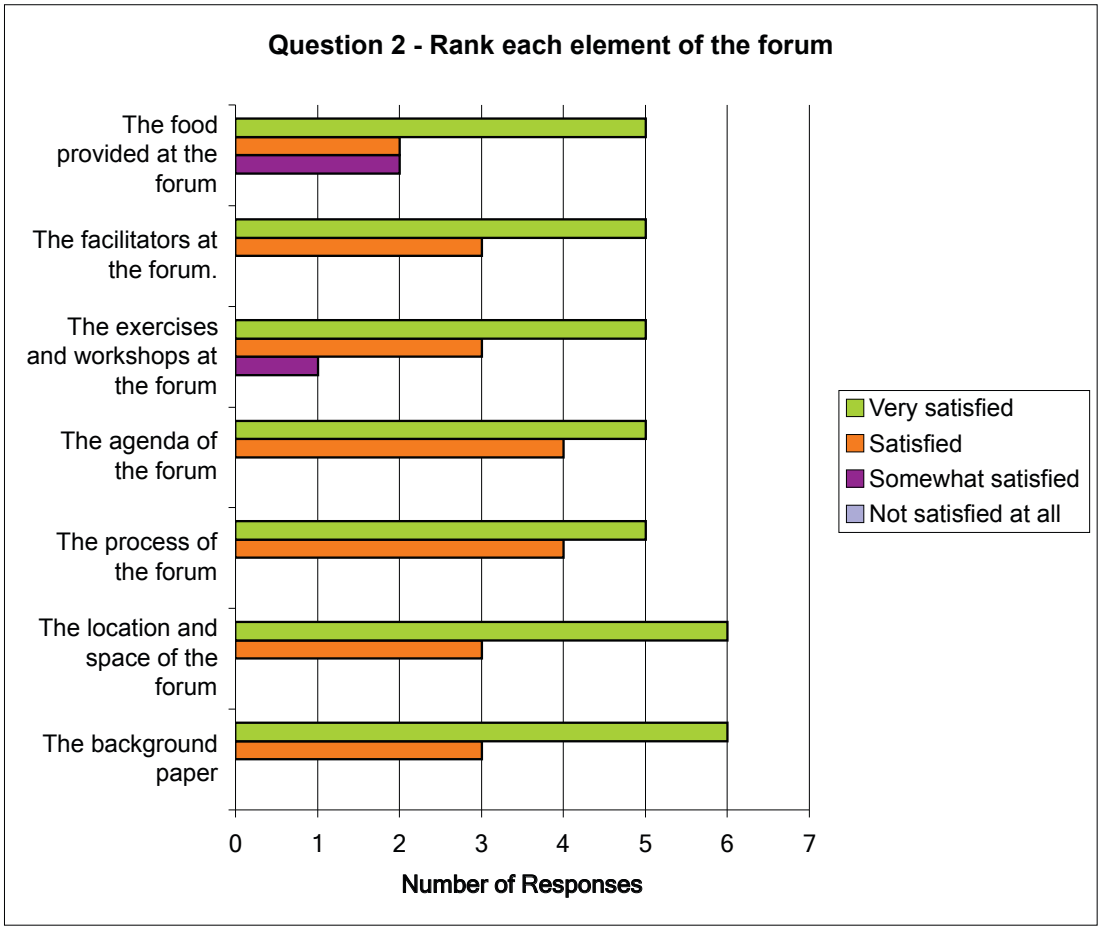


APPENDIX F

Q2.
2. Rank each element of the forum.

Answer Options	Very satisfied	Satisfied	Somewhat satisfied	Not satisfied at all	Number of responses
The background paper	6	3	0	0	9
The location and space of the forum	6	3	0	0	9
The process of the forum	5	4	0	0	9
The agenda of the forum	5	4	0	0	9
The exercises and workshops at the forum	5	3	1	0	9
The facilitators at the forum	5	3	0	0	8
The food provided at the forum	5	2	2	0	9

Answered: 9
Skipped: 0

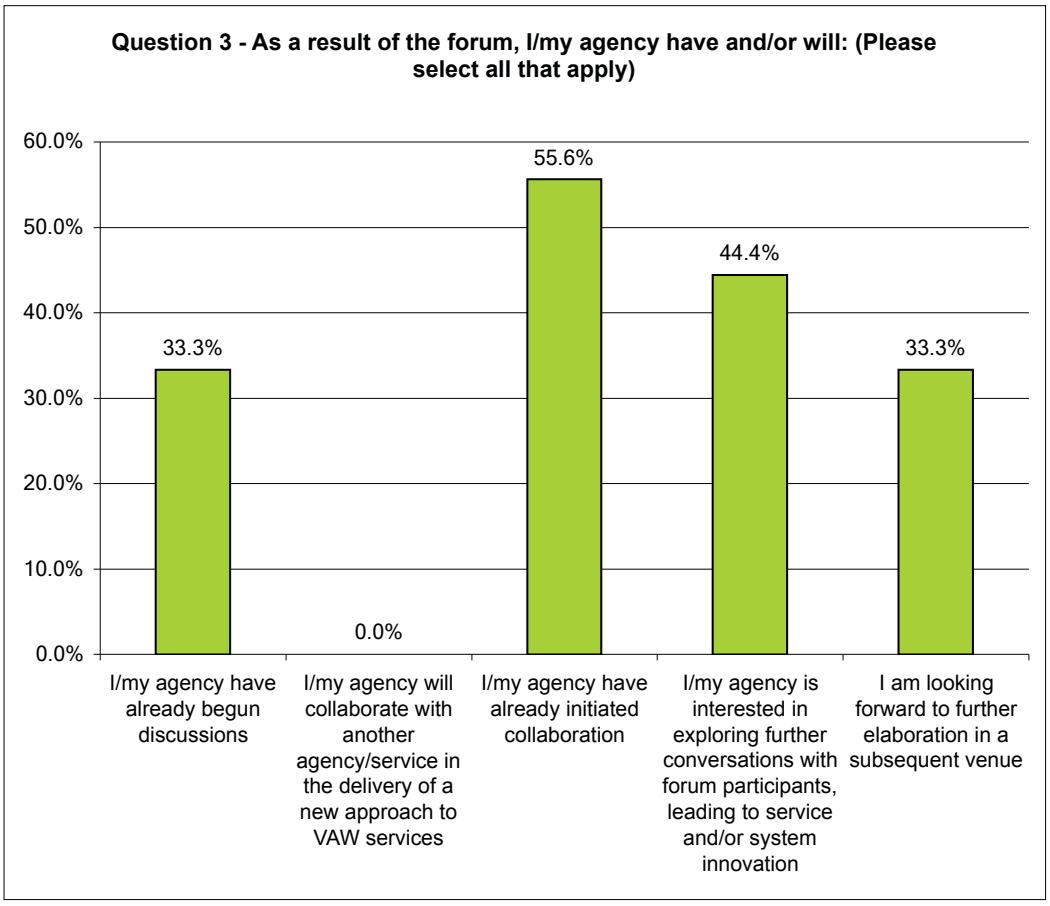


Q3.

3. As a result of the forum, I/my agency have and/or will: (Please select all that apply)

Answer Options	Responses
I/my agency have already begun discussions	3
I/my agency will collaborate with another agency/service in the delivery of a new approach to VAW services	0
I/my agency have already initiated collaboration	5
I/my agency is interested in exploring further conversations with forum participants, leading to service and/or system innovation	4
I am looking forward to further elaboration in a subsequent venue	3

Answered: 9
Skipped: 0



Q4.
My top recommendation(s) for follow-up arising from the forum is:

Answered: 4
Skipped: 5

- Custody & Access and Legal Systems Intersections and Family Court Process Reform are the areas where we seem to have some political interest and will to address so I would seize on these. If we could think of how we could make best use of the knowledge and experience of the advocates in that room in documenting challenges and strategies used and outcomes that would be interesting to me.

- "Barbra Schlifer clinic lead legal collaborations re VAW and work with other convenors r/e other VAW issues to address systemic failures re VAW services and interventions. Barbra Schlifer and other agencies/leaders that have the capacity to think strategically, broadly and about long-term interventions come together as a think-tank and/or a leadership body around this issues to prevent sector fragmentation (due to 'silos', egos, personal politics) Involve women with lived experience whereever possible in visioning exercises."

- The development of an action plan. We identified several solutions (possible solutions) and I believe we have a fair grasp on the landscape. Based on this foundation and meeting #1 I feel that moving into planning for action would be a great next step. Given that the support for programs may diminish through our Government Funding bodies it will be critical for us within the Province to mobilize and support each other.

- Creation of an Action Plan for women in Ontario on family law reform that includes women outside of Toronto and from disadvantaged communities of women, especially women who have experienced family courts in Ontario.

Q5.
The most productive thing to come from the forum for my agency is:

Answered: 5
Skipped: 4

- Looking creatively at options within the political/economic reality we face and exploring creative coalition work on that basis.

- I want able to attend afternoon -not sure if the issues impacting our client groups were realized? Will see when the report comes out. The facilitation of the day allowed positive, solution focused thinking instead of anger and frustration (at the issues)

- The opportunity to get together with others to share successes and challenges and explore ways in which we can work together more effectively.

- The validation that the problems, barriers, issues and situations we encounter are not just a 'remote' or 'Northern Ontario' issue. This means we have common ground upon which to build, work, support and mobilize.I also feel the position paper written by Pam Cross was an amazing summary which provides an accessible tool for us to clearly understand the legal changes and guides the work we need to do to improve service delivery.

- Shared discussion of the issues.