

MEMORANDUM

To: Ministry of the Attorney General
Attention: Barbara Kane, Anne Marie Predko
Re: Court support workers
Date: December 18, 2010
From: VAW stakeholders (see end of paper for list of names)

Introduction:

In fall 2010, Attorney General Chris Bentley announced his plan to introduce reforms to family court process in Ontario. He framed those reforms under 4 pillars:

- Mandatory information sessions for all parties involved in family court litigation
- Intake and triage
- Increased early access to legal information and advice
- Streamlined case management

The violence against women (VAW) sector provided the Ministry of the Attorney General with a position paper in early January 2010, in which we identified both key concerns with the Attorney General's initiatives and those areas of the initiative which we supported. Since then, MAG has consulted several times with the sector.

Throughout the process, MAG has been clear that the process reforms do not have a specific focus on the needs of women who have left abusive relationships but, rather, are aimed at improving the family court process for families in general.

The concept of a provincial court support worker program to assist women through the family court process was raised a number of times during the MAG/VAW consultations.

At the December 1, 2010 consultation, MAG specifically asked VAW stakeholders to provide some input about what such a program could look like. MAG was clear that there is no funding nor has a decision been made to proceed with such a project at this time, but that it is interested in preparing for such a possibility.

This memorandum provides our initial input. We greatly appreciate this opportunity to share our thoughts and look forward to the opportunity for ongoing conversation about this important potential initiative.

Background:

It is well established that the time of separation is one of high lethality for women leaving abusive relationships. The annual reports of the Domestic Violence Death Review Committee continue to identify "actual or pending separation" as one of the highest risk factors, along with ongoing, pre-existing domestic violence, in the homicides

of women by their partners/former partners. The 2009 Report finds that on average, each of these was a factor in 78% of the homicides reviewed from 2003 to 2009. As stated in the report of the Domestic Violence Advisory Council: "Abuse does not end at the point of separation. In fact, significant evidence exists to demonstrate that the risk of abuse and lethality heightens with separation, as the abused woman defies the control of her abuser. . . . Separation is a critical time when many divorcing parents negotiate post-divorce parenting plans. At the most dangerous juncture in their relationship, abused women enter the family law system to make decisions about their children." (p. 64)

For an abuser, the family court is simply a new arena in which he can pursue his need for power and control over his former partner. Abusive men are more litigious than non-abusive men, and they use the court process itself as a weapon of intimidation. They are willing to deplete all their superior resources, even representing themselves, to extend the family court proceedings until the woman is exhausted – emotionally, physically and financially – and concedes to what he wants. This reality adds a considerable lawyer of anxiety and duress for the woman that affects her ability to participate effectively in the process.

Inquests into the deaths of Arlene May (1998) and Gillian Hadley (2002) raised concerns about family law process, and the juries in both these inquests supported recommendations made by the Ontario Association of Interval and Transition Houses for an independent, community-based, government-funded system of women's advocates across the province to support women in both criminal and family court.

In fact, province-wide research conducted by Luke's Place Support and Resource Centre for Women and Children for the Ontario Women's Directorate ('Study on the Experiences of Abused Women in the Family Courts in Eight Regions in Ontario, Molly Dragiewicz and Walter DeKeseredy, November 2008), found that 63.5% of respondent women were in fear for their lives at the hands of their abuser during the separation process. 74.6% reported that their abuser continued with his jealous and controlling behaviour and 73.6% said he followed or kept an eye on them in other ways after separation.

The research also asked women to identify whether or not they felt safe when they were in court. Just over half the women (53.1%) indicated that they did. 46.9% said they did not, with 48.8% reporting their level of risk from the abuser as high, 45.5% as moderate and only 5.8% as no risk.

When women were asked what would make them feel safer in court, 70% said that having someone to sit with them would increase their feelings of safety. Court accompaniment, however, is only one aspect of what women need to have confidence in the family court process.

The present high rates of unrepresented parties in family court (percentages across the province range from 50% to more than 60%) place women leaving abuse in particularly compromised situations. Without a lawyer, they are extremely vulnerable to being manipulated, intimidated and/or coerced into agreeing to or accepting outcomes that are not in the best interests of the children and that do not ensure the ongoing safety of either the women or their children.

The Luke's Place research asked unrepresented women to list the greatest difficulties they faced in their family court process. Women identified "understanding the procedure" as their greatest difficulty (75.9%), followed by paperwork (69%), then dealing with their ex-partner and/or his lawyer (66.7%).

In the same research, women were asked to list the issues and barriers they faced in the family court process. Of the court-related responses, the highest ranked response was "not enough support services and resources" (48.3%)

Some women, however, did find services to support them. 76.5% reported that they used the services of shelter advocates and, of those, 94.5% said that they found this helpful during the family court process.

In terms of overall changes to family court that women felt would have been helpful, 89.4 said they would like to see a bigger role for women's advocates.

Based on this and other research, the Domestic Violence Advisory Council made the following recommendation in its final report:

"Continue to invest and build on innovative community models of legal advocacy that provide a comprehensive range of family law services to women based on addressing barriers and needs identified by women who have been abused."

Purpose of Court Support Worker Positions:

The overarching purpose of an independent, community-based, government-funded program of court support workers would be to provide non-legal, specialized services to women who have experienced abuse in order to enhance their safety and increase their

knowledge and confidence levels so they are better equipped to negotiate the family court process.

Rationale:

The research noted above clearly identifies that women feel they would have a better family court experience if they had the support of an advocate/support person.

There is every reason to assume that the rates of unrepresented parties will continue to increase, which further supports the notion of government-funded support workers to assist vulnerable parties through court.

Current services such as the Family Law Information Centres (FLICs), while providing important services, are inadequate to meet the quantity of need and are not appropriate for providing the specific, in-depth services required by woman abuse survivors.

An uncoordinated system of legal support workers/legal advocates already exists in Ontario. Luke's Place Support and Resource Centre for Women and Children (Oshawa) and Jared's Place (Hamilton) offer explicitly defined services through legal support workers.

The Barbra Schlifer Commemorative Clinic in Toronto provides a blend of counselling, legal and interpretive services primarily in the area of family, as well as immigration and criminal law for women who have experienced abuse. Transitional support workers, articling students, interpreters, counselors and lawyers work together to create family court support and accompaniment, according to level of need for support, summary advice, representation, litigation and linguistic access.

Action ontarienne contre le violence faite aux femmes is working to build the capacity of francophone support workers to accompany women through the legal system.

A number of shelters have created specific legal support positions. In other shelters, transitional support workers, children's advocates and outreach workers find their time increasingly occupied with legal support responsibilities.

All of these services are over-extended and under-resourced. Most have waiting lists. And, they exist in a limited number of communities, with the result that women in most parts of Ontario have no access to family court support.

Women leaving abusive relationships need and deserve access to a coordinated system of community-based court support workers, with shared best practices. Ontario

is in a strong position to develop such a program, building on the programs already in existence, as noted above.

Why Gender-Specific Services are Needed and Appropriate:

While we acknowledge that there are unrepresented men dealing with family court as well as men who, for various reasons of marginality, would benefit from support, we are proposing a program that is gender-specific to women.

The research, including that conducted by the Domestic Violence Death Review Committee and the Domestic Violence Advisory Council, establishes that women are overwhelmingly the victims of violence within the family, including of lethal violence.

Women are also overwhelmingly the caregivers of children within these families, both during the relationship and post-separation. Research shows that the well-being of the primary caregiver is a crucial element in determining the well-being of the children. Hence, support for women in abusive situations is essential to the best interests of the children in the family court process.

As noted above, violence against women often continues and even escalates at the time of separation. Further, women are more likely to be unrepresented because of their financial situation.

A gender-specific program would ensure that the program – its structure, its analysis, training for its workers, etc. – reflects the gendered reality of violence within families, which is essential if it is to offer the appropriate kinds of support to women.

Offering a program to both women and men would dilute its impact because it would have to bring a gender-neutral analysis to its work, thus misidentifying the crucial dynamics and high-risk aspects of violence against women.

In addition, the potential for conflicts of interests and the difficulties that would arise in situations where counter allegations of abuse were made by the male partner could render the program impotent.

Terms of Reference/Responsibilities of Court Support Workers:

Of course, the scope of responsibilities of court support workers in such a program could be endless. We suggest, as a starting point, that there be four primary areas of responsibility:

- Increasing women's understanding of the family court process
- Increasing women's ability to put their case forward effectively

- Increasing women's and children's safety during the court process
- Increasing the system's understanding of violence against women and thereby enhancing the court's ability to respond effectively and appropriately

The following tasks would support these four primary areas of responsibility:

- Providing women with information about the family court process
- Assisting women in recording their history of abuse and ensuring that history and its impact on children is included in court documents throughout the process
- Assisting women in the completion of some paperwork
- Assisting women through the legal aid process
- Safety planning and referring women for formal risk assessments where appropriate
- Sitting with women when they are at the family court
- Supporting women with follow-through tasks arising from their various court-related appointments
- Debriefing with women after lawyer appointments (where represented), FLIC meetings, consultations with duty counsel and court appearances
- Making referrals to community services where appropriate
- Assisting her in communications with the criminal court, if there are proceedings in that court
- Accompanying her into the courtroom
- Serving as a liaison between women and court staff, thereby facilitating communication and relationships
- Accompanying her, where possible, to appointments with her lawyer

It is important to note that the court support worker role would also increase the effective operation of the family court itself by assisting women to engage with the court process more effectively.

We believe it is critically important that court support workers be able to accompany women into the courtroom. Their role would be to provide the woman with emotional support and to take notes during the proceeding to assist in debriefing with the woman and helping her identify next steps and follow up tasks. Their role would not be to provide advocacy in the courtroom.

Orientation/Training:

Appropriate training – both orientation and ongoing – for court support workers is a critical component of ensuring a successful project. This training would cover the following topics, among others:

- Family court: the process, the people, the paperwork

- Family law: an introduction and overview
- Criminal court: an overview, particularly of its intersections with family court
- How to record the history of violence and abuse
- Violence against women, including the impact on children
- The need for an intersectional analysis and framework
- The impact of systemic discrimination on women, particularly women dealing with multiple legal issues
- How to provide emotional support
- How to conduct a risk assessment and develop a safety plan
- Women's rights to French language services
- Community-specific information about resources and services, including multi-lingual interpretation
- Protocols of the program (once developed)

Protocols:

Protocol development is crucial to the successful implementation of a provincial program of court support workers. These protocols should address a number of areas:

- Clarity about roles and responsibilities of court support workers and others already working in the family court system, such as FLIC staff, Information and Referral Coordinators, mediation staff, etc.
- Communication systems
- Accountability measures
- Minimum training standards
- Terms of courtroom accompaniment
- Access to private working space at the courtrooms, etc.

Leadership by the Chief Administrative Judge at each site is extremely important to ensure consistency of service across the province.

We propose that protocol development be led by whomever has responsibility for implementation of the court support worker program, working with a provincial inter-sectoral planning committee of violence against women workers, court staff and senior court administrators, leveraging existing networks and personnel into a flexible but consistent role.

Program Administration/Management:

We see the primary program administration/management responsibilities as including:

- Setting of minimum standards and quality assurance
- Budget management
- Protocol development, monitoring and engagement

- Development of position descriptions, job postings and hiring
- Development and delivery of initial and ongoing training
- Ongoing supervision/support/mentorship for court support workers
- Ongoing evaluation of the program

In order to ensure both the independence and perception of independence of the program, we believe responsibility for program management/administration should be based in the community, within the VAW sector, where there is already a wide variety of experience in providing family law/court support to women who have experienced abuse.

Endorsing Organizations

Action ontarienne contre la violence faite aux femmes

Barbra Schlifer Commemorative Clinic

Centre for Research and Education on Violence Against Women and Children

Deborah Sinclair, consultant

Luke's Place Support and Resource Centre for Women and Children

Metropolitan Action Committee on Violence Against Women and Children

North York Women's Centre

Ontario Association of Interval and Transition Houses

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