

Women Take Action

An Injustice of the Criminal
Justice System



counterpoint



Counselling and Educational Cooperative



CANADIAN
WOMEN'S
FOUNDATION

counterpoint



Counselling and Educational Cooperative

Counterpoint was founded by a group of nine women and men in 1995 and incorporated in 1997 as a not-for-profit Co-operative. This Co-operative is governed by the Co-operatives Act and the Not-For-Profit Corporations Act. Its Board of Directors is drawn from its membership base and is accountable to the same body. The Board of Directors is a working Board which is responsible for the organization in its entirety.

Funder

Thank you to the Canadian Women's Foundation for funding this initiative.



Release Date

March 2023

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Acknowledgements

We can't thank enough the women who shared their stories for this project. In many cases, the experiences they shared were chilling. We can only imagine the trauma that the women feel, as well as the heightened sense of vulnerability that is a long-term consequence of these experiences.

We want to acknowledge the selfless commitment these women demonstrated when they spoke about their gratitude for this project, and about their hope that this project will contribute to changes that would ensure other women don't have to undergo the same experience of being wrongfully charged.

Thanks also to those working in the community who agreed to be interviewed for this project, including members of police services, community agencies and lawyers. These individuals shared their insights, frustrations, and in many cases, recommendations for change and promising practices.

Particular thanks to the Barbra Schlifer Commemorative Clinic and Elizabeth Fry Toronto for supporting this work, from distributing notices of the research to reviewing recommendations.

Thanks to Counterpoint for their support for this work and to the staff, Board and community members who sat on the eight-person Project Advisory Committee. They were invaluable in providing consultation and ongoing support.

Finally, thanks to the Canadian Women's Foundation for funding this initiative and having the interest and commitment to researching key issues related to gender-based violence.

We look forward to working with our partners in the community and criminal system to ensure that the voices and stories we have collected inform actions within the criminal justice system and to implement the project's recommendations.

Vivien Green

Project Coordinator and Lead Researcher
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Executive Summary



In response to a concern that increasing numbers of women were being charged for domestic violence-related offences, Counterpoint secured a grant from the Canadian Women's Foundation to undertake qualitative research with women who experienced this. The intention of the project was to get a better understanding of the context of these charges, identify systemic problems that contributed to increasing the risk to survivors, and make recommendations to ensure women survivors of Intimate partner violence are **not** charged when they are attempting to defend themselves from an abusive partner.

Counterpoint carried out interviews with 21 women who had been criminally charged with domestic violence-related offences during the last three years. Most of the women lived in Toronto, with a small number living in the GTA and Haliburton. The participants were diverse in age and economic status, and included English, Spanish and Tagalog-speaking women. Ten community agency staff and people working within the criminal justice system from the City of Toronto and York Region were also interviewed.

From the information gathered in the interviews, recommendations are offered relating to different sectors.

We want to acknowledge that this initiative was painful at times: interviewing the women was a difficult process both for the women who had to relive traumatic experiences and for the interviewers who were greatly disturbed by the unprofessional, discriminatory, and unjust actions that women had to endure throughout their involvement with the criminal legal process.

The intention of the project was to get a better understanding of the context of these charges, identify systemic problems that contributed to increasing the risk to survivors, and make recommendations to ensure women survivors of Intimate partner violence are not charged when they are attempting to defend themselves from an abusive partner.

Background



Counterpoint is a non-profit community agency accredited by the Ontario Ministry of the Attorney General to provide Partner Assault Response (PAR) Programs to individuals charged and/or convicted of domestic violence-related crimes. Attendance at PAR programs is mandated by the provincial criminal court either as a condition of bail, within the specialized early intervention court process, or as a condition of probation, after a conviction. Counterpoint has been providing PAR programming in Toronto to 420 people annually for over 20 years. Although the vast majority of those mandated into PAR are men, approximately 15% of those mandated each year into a PAR program at Counterpoint are women.

This research was inspired because of concerns about a perceived trend in Toronto that increasing numbers of women were being criminally charged with domestic violence-related offences.

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For a number of years, Counterpoint staff identified that the overwhelming majority of women who were criminally charged were, in fact, not the primary aggressor in the relationship, but were survivors of intimate partner violence. In many situations, it appeared to staff that the behaviour the women were charged for was actually self-defence. As the agency worked with women who were mandated to attend a PAR program, the short and long-term negative impacts of this experience became all too apparent.

Among the most concerning was that the real primary aggressor, her abusive partner, was emboldened when his partner, the survivor, was criminally charged, thus increasing her vulnerability and risk.

This trend appeared to continue during COVID, and Counterpoint was therefore gratified when the Canadian Women's Foundation (CWF) funded this research initiative in 2019, through federal COVID-related funding provided to CWF.

Goals of the research:

- To identify the extent of this issue.
- To better understand the context of these incidents.

Objectives of the research:

- To collect information about whether women who were charged were the primary aggressor in the relationship.
- To assess the short and long-term impacts on the women who were charged.
- To identify strategies for change to better ensure that the primary aggressor is charged in cases of intimate partner violence.
- To promote implementation of these changes to improve the safety of women survivors of intimate partner violence.
- To create and circulate a resource, based on the findings, for violence against women agency staff to educate them about the issue and enable them to better support women who are criminally charged.

Methodology



To achieve these objectives, Counterpoint undertook a qualitative research study, interviewing 21 women who had lived experience of being charged for domestic violence-related offences between 2018-2022. The interviews were carried out by a small number of Counterpoint staff trained in interviewing. Counterpoint contacted PAR programs and women-serving agencies to identify suitable interviewees. A flyer was circulated among these agencies inviting women with this lived experience to participate in phone/zoom interviews. Interviews took place in Spanish and English. The primary focus of this research was Toronto, augmented by data from York Region, Peel, and Muskoka.

The interviews generally lasted between one to 2.5 hours, with a few interviews requiring two sessions. The interviews were audio-taped and transcribed. In a few instances women were contacted with follow-up phone calls to clarify their comments.

Interviewees were also asked to complete a demographic survey to give us a profile of the sample. This survey was completed by 15 participants

Each woman who agreed to be interviewed was given an honorarium for sharing their experiences. Many of the women interviewed said that they appreciated the honorarium but that it wasn't necessary because they hoped that the work could lead to changes so that other women would not go through the same trauma.

Research Demographics



21 women interviewed

Women who had lived experience of being charged for domestic violence-related offences between 2018-2022



Interview times between 1 to 2.5 hours



Research data from Toronto, York Region, Peel, and Muskoka

A number of service providers in both the criminal system and community agencies were also interviewed to help gather information on systemic issues and proposed changes. These included police, nurses at sexual assault and domestic violence centres, staff working in domestic violence justice hubs, and defence lawyers.

A small number of community agencies in the GTA work directly with women who have been criminalized and Counterpoint contacted them at the start of the project to elicit their support. Elizabeth Fry Toronto provides the bulk of PAR programming for women and the Barbra Schlifer Commemorative Clinic has implemented a Criminalization of Women Project where they provide legal services for women who have been charged. Both of these agencies made significant contributions to this project and were key in helping us find participants.

The project was led by a Project Coordinator, and a Project Advisory Committee was created at the start of the initiative that included Board, staff, and community members.

From the information we gathered in the interviews, recommendations are offered that relate to different sectors. Counterpoint is committed to working for systemic change to increase the safety of women survivors of intimate partner abuse and recognizes the importance of research to inform policy and practice reform. We are pleased to be able to have carried out this project which, we hope, will contribute to meaningful change.

A number of service providers in both the criminal system and community agencies were also interviewed to help gather information on systemic issues and proposed changes. These included police, nurses at sexual assault and domestic violence centres, staff working in domestic violence justice hubs, defence lawyers etc.

Findings



Overview

Through our research, we contacted a number of police services to find out if the number of women charged with domestic violence offences had actually increased. This was an important question, as many people working in the community felt that this was the case, but we had no data to inform us. After speaking to a few different police services, we were able to get information from one police service and they confirmed that there had been a significant increase in the number of women charged over the past few years. Although this data is from only one police service, it seems reasonable to assume that other police services have seen a similar increase.

Context of the incident

Twenty out of 21 women identified that they were NOT the primary aggressor in the relationship but were attempting to defend themselves against their abusive partner or ex-partner. The majority had been in the abusive relationship for over five years.

Impact of being charged

All of the women (100%) faced **long-lasting negative social and emotional consequences** and experienced negative impacts on their housing (48%), employment and/or education (67%).

For almost 75% of the women, the consequences of being charged put them at a **higher risk for further violence and abuse**.

Over half of the women said they *“will not ever call the police again”*. This not only increases their risk of harm from an abusive partner but could jeopardize their safety in other situations. In one case, the woman’s daughter said she *“would never go to police”* because of her experience with the police when her mother was charged.

Some 57% of women reported negative impacts on their children’s mental health and access to their children.

Non-English speakers and Indigenous women experienced the system as biased and racist, and particularly punitive. With no interpretative services offered to them, they had little or no understanding of what was happening throughout the process.

Experiences with Various Groups



Police interactions

More than half of the women said they did not have the opportunity to talk about the context of the incident: they weren't able to explain what had led to the incident or talk about the history of abuse from their partner. When they were charged, women felt criminalized and lost trust in the system that they thought was meant to protect them.

In a majority of cases, women reported that the police did not check for a **prior history of abuse**, did not **identify self-defensive injuries**, and did not **take photos to track changes in injuries** over time. At least 30% of the women reported that their abusive partners had a **previous history with the police** related to domestic violence against the same victim.

The responses indicated that police officers did not follow best practices in police policy that direct officers to charge the *primary aggressor*, namely the individual who poses the most serious and ongoing threat to safety and wellbeing in the relationship.

At least 30% of the women reported that their abusive partners had a previous history with the police related to domestic violence against the same victim.



Court process

Every woman experienced the criminal process as being **chaotic, confusing, and disempowering**, leaving them with no trust in the system meant to protect them.



Crown attorneys

Crown attorneys do not seem to be using the tools available to them **to ensure women defending themselves against their abuser are NOT charged**, namely their ability to drop charges if the charge is **not in the public interest**.

Sentences proposed by the Crown attorneys for at least three of the women were **significantly higher** than typical sentences for male offenders (40 days and 60 days for very minor injuries).

(In both of these cases, the Judge did not impose the recommended sentence, but each case was resolved by a peace bond.)

Less than half of the women interviewed tried to access women's services; however, those that did, said that these services did not understand nor want to support women who were criminally charged.



Women's services

Less than half of the women interviewed tried to access women's services; however, those that did, said that these services **did not understand nor want to support** women who were criminally charged, even when the woman tried to explain that she was a survivor of intimate partner abuse.



Partner Assault Response (PAR) programs

A common practice since the introduction of the specialized domestic violence courts in Ontario's criminal courts is to mandate offenders into a socio-educational program called the Partner Assault Response (PAR) Program. This is a 12-week program designed to facilitate behaviour change in abusers. Although two-thirds of the women reported having a positive experience in the PAR program, the majority felt that they should not have been forced to attend the program given that they believed that they did nothing wrong.



In Women's Own Words: The Context for the Findings

Since 2018, staff at various women's agencies perceived an increase in the number of women being charged in domestic violence incidents. However, without access to police data on charge rates, this impression could not be validated. The need to explore this apparent trend was part of the inspiration for Counterpoint's research. Witnessing women charged in these scenarios seemed particularly unjust as the majority were defending themselves against their abuser and had contacted police to obtain protection because they feared for their safety.

As part of our data collection, we contacted a number of police services to collect data on the incidence of women being charged in domestic violence-related crimes. Only one police service was able to provide us with this information, and confirmed that there has been a 25% increase in the number of women charged for domestic violence-related offences between 2019 and 2021.

This qualitative research involved open-ended interviews with 21 self-selected women with lived experience of being criminally charged with domestic violence-related offenses. **None** of these incidents involved both parties being charged or situations where there were dual charges. The incidents took place across the GTA and in Huntsville.



Significant findings

- Twenty out of 21 women who participated felt that the wrong person had been criminally charged.
- All but one of the women interviewed were survivors of a long-term abusive relationship.

Long-Lasting Impacts

Twenty out of 21 women (95%) reported feeling unjustly charged.

“I was fighting for my life today and see, I ended up in a cell for defending my life.”

“I thought that I’m in a country that they care about women, their rights and actually when I called to them to ask for help, how they could do that to me.”

“She’s (the lawyer) like, “Did you scratch him?” I said, “Of course, and I would do it again if I have to fight for my life.”

A majority of women felt at increased risk of abuse from their abusive partner after being charged. Women felt that the criminal justice process emboldened their abuser and further silenced their voice.

“After all of this experience actually, with the police, I’m terrified.”

“I called police ... to help me ... how could they do that to me? Am I crazy?”

Women indicated that they felt even more vulnerable to their partner’s abuse because of their reluctance to contact police again, for fear of having further charges laid against them. Women expressed a fear of calling police again – in the case of further abuse or for any other issue.

“I just feel like I was automatically labelled, regardless of what I was saying to them about the situation, no matter what my ex-husband said to them they believed him. I was being truthful. I was calling for my safety and the safety of my daughter.”

“I felt powerless. I ended up doing the PAR program. He laughed at me, and he told my daughter, ‘Your mother will never work with seniors again for what she’s done.’”

53% of the women reported they have little to no trust in the police. Some women reported that this fear was also expressed by their children.

“I feel like I don’t really trust the police. I feel like they’re very close-minded... you’re supposed to be innocent until proven guilty, but they make you feel like you’re guilty right away.”

“Even if my daddy hurt me, I will never call the police.”

Comments from the daughter of a women interviewed.

All of the women (100%), experienced negative impacts on their housing (48%), employment and/or education (67%).

“I’m thinking this is finally going to be over. Oh, my God, I just want this over. I’m still nervous, I’m still technically on a peace bond, you know what I mean.? I’m on eggshells, and I’m really stressed with this.”

“I’ve gone two months with no income. I don’t know who can live like that. It’s like, that’s a stress on top of it.”

“They (the college) were like, ‘Okay, P, if you do this, we will offer you a placement in practical nursing.’ But after the charges, it was just like, I don’t know.”

This participant had been accepted into a placement within a nursing program. After the charge, the placement was retracted, and she lost her place in the program.

57% of women reported negative impacts on their children’s mental health and access to their children.

“What is on my head is my daughter saying ‘I will never call the police. Police destroy families. Police don’t help... I will never call the police.’”

“Even my daughter up until now, she cries, “Mommy, I’m so sorry. I need to speak with the judge. My daddy asked me to say this and this...”

“It’s also hard like when you’re leaving to a different house. It’s so hard to move and everything. You’ll really see the impact, not only for me but for my daughter. The adjustment like changing her school, the routine, everything.”

More than half of the women expressed that they did not have the opportunity to tell their story, explain what had happened in the incident, or talk about their history of abuse from their partner.

53% of the women explained that they were told NOT to tell their story and 57% felt they were not listened to. As a result, women felt criminalized by the very systems meant to protect them (i.e. police, lawyers, and court processes).

“I’m trying to understand. Did you not look at how many times you guys were dispatched to my apartment (for domestic violence incidents). This person has been harassing me forever.”

“They didn’t care too much about ... my story, and what was going on to try to help me when I got released. They just slammed me with all these restrictions when I came out, like probation and attending programs and doing this and that which keep leading me back to reoffending.”

(The re-offences related to her trying to have contact with her child, charges that were all eventually withdrawn).

“As far as I remember, I just stood there... You didn’t have the chance to say the side of your story because I think it’s like you’re entering – I remember they call it, you’re entering a peace bond... You go to the court and that’s it. You don’t even say your side of the story.”

Police Response

In 86% of the interviews, the women reported that the police officers did not charge the person who was the abuser within their relationship. They felt that the police did not take the time to find out the context of the incident, and fully investigate the incident, which resulted in the primary aggressor not being identified. They also felt the police listened to the person who was calm, and seemed to write off the person who was emotional as not to be trusted.

“I told my story, and he told the story, that’s why my in-laws, my brother-in-law, my sister-in-law were so shocked too that they didn’t grab him. Why me?”

“They basically came to charge me. I didn’t really get to say anything. It was they already had it that I was going to be charged.”

“He (the husband) was very calm and could speak English ... they did not ask me anything else but listened to him.”

In a majority of cases, women reported that to their knowledge, the police did not check for a prior history of abuse, did not identify self-defensive injuries, and did not take photos to track changes in injuries over time.

“There was fresh blood on his face when police arrived. He must have done that to himself.”

The woman had called police because her husband pushed her down the stairs and attacked her. The police came 45 minutes after her initial call. When police arrived her partner had fresh blood on his face. It was clearly NOT from the incident that had happened 45 minutes earlier. However, the woman was arrested and charged.

In at least 30% of the cases, interviewees reported that their abusive partners had a previous history with the police related to domestic violence against the same victim, but that this was never raised or identified by the police or the Crown’s office.

“For seven years, it was continuous with abuse. You can think about what abuse he was that type of man, I was emotionally, financially, verbally, physically abused.”

“One day, he split one of my ribs and almost pierced my lung. I told the doctor, “Please do not take notes about that.” Thankfully, I found out 11 years later, there was the history. My psychologist knows about this. That’s why I’m very upset, that at this point, what I said was the accumulation of things, not the isolated incident.”

In this women’s case, she did have a psychologist who was able to speak to the history of abuse she experienced from her partner who was now identified as the ‘victim’.

Women reported that police officers made racist, harassing, and discriminatory comments about them and their situation with impunity.

“The officer told me no judge will believe you.”

After a discussion where the woman explained she did not have Canadian citizenship or landed status.

“Your daughter speaks really good English (for an immigrant).”

A woman was told “You will never get custody of your child if you aren’t working.”

One interviewee explained how her abuser had a family connection to a police officer; this resulted in that officer harassing the woman before and after she was charged.

Criminal System Response

57% of women found the criminal justice system, confusing and disempowering. The stories described a chaotic and dehumanizing experience.

“...The male police officer said, ‘No, I’m arresting her.’

She’s [female police officer] like, ‘Wait, wait, wait.’ She put her hands up and she said, ‘Don’t arrest her yet. You didn’t even read her rights.’

[male police officer] ‘No, I’m arresting her.’ Then he gave me one hard push, pushed me backwards.

...The female said, ‘No, no, no.’ Then I heard she turned around and told the other male officer, ‘Don’t turn the camera on. Don’t turn the camera on yet. Turn the camera on when you’re reading her rights to her.’

“I did the (police) interview. They pushed me, they recorded everything. I asked for a lawyer on duty. I was cold. The experience itself was very bad, staying at the cell, no shoes, no nothing, shaking, without eating, throwing up.”

“Once you’re this (accused) you go to a holding cell, I had to find my own way back home. At 2:00 in the morning. I didn’t even have shoes.”

After going through the criminal process system, 57% of women said they no longer trust anyone in the system to protect them from their abuser.

“My lawyer told me, ‘They’re not going to waste the time listening to you.’ Why not? I have to take this burden my entire life. We need to be heard. We need to break the cycle. They need to be trained. They need to look out for OUR best interests, not just take notes...”

Legal Representation

Women identified that the majority of lawyers appeared to have little or no understanding of the dynamics of intimate partner violence and the kind of situation that could lead to women being wrongfully charged.

When I brought up the fact my ex had been abusive for seven years, the lawyer's response was 'why didn't you just leave?' (The lawyer) certainly had no idea of what it's like to live with an abuser who is constantly threatening you."

Unethical behavior by lawyers was reported by 24% of women. Defence lawyers, particularly those working for women with limited funds, appear to take advantage of, harass, and mistreat their clients with impunity.

"It's like I'm pulling teeth just to be heard (by the lawyer) and I told him, "I'm not asking you to lie for me... this is criminal court, my livelihood, my reputation. Everything is on the line."

We heard from one interviewee how her criminal lawyer told her on the day of her final court hearing that he needed an additional \$1,000 to defend her. When she frantically said she didn't have this money, he finally relented and told her that if she gave him a good review on his website, he wouldn't charge the extra \$1,000.

Another woman provided her lawyer with a flash drive full of evidence of her ex-partner's abusive behavior, including threats and harassment over a three-year period. The lawyer never opened the flash drive to look at the evidence, nor did he use it in his submissions.

Although 43% of women reported having some positive experience with their lawyer, the cost of a competent and effective lawyer was prohibitive and duty counsel was not provided or available.

Examples of poor practice by lawyers:

We heard from one interviewee:

"... See when you have a (private, not duty counsel) lawyer, then the Crown really listens to what the lawyer has to say about your story, and that's how I found I got more help."

Another woman described the situation as:

"If you need to speak your truth, you need \$10,000."

Language Interpreter Services

During police interventions, language interpretation services were routinely NOT USED, despite the existence of government-funded interpreter programs province-wide for use by criminal justice sector staff. Without interpreters, non-English speaking women at higher risk.

Using accredited language interpretation services would ensure that all women fully understand and participate in the process.

Four women who required interpretation services reported no access to a language interpretation service.

“I was so traumatized. When the police came and asked me what happened, I told them ‘We were fighting.’ I guess that was my mistake. Because in Farsi, when somebody attacks someone and the other person fights back, we said ‘We were attacking each other.’ That’s the word in Farsi we use, but I didn’t know in English. I should have used, ‘I was defending’, I didn’t know that. At first, I didn’t know. I didn’t think about it. I was just so scared; I was begging for help. That was the only thing I wanted at that time.”

Support Services Including Women’s Services

Women reported that support services for abused women generally did not understand nor have the resources to effectively support and protect women who had been criminally charged.

“Agencies, police, shelters, violence against women agencies, everybody. There is not a lot of information about this and that puts us in risk.”

Partner Assault Response (PAR) Programs

Two-thirds of the women reported having a positive experience participating in the PAR program and appreciated the information they received.

100% of participants, however, indicated the program was not targeted to their needs. For example, it did not address their experience of abuse and the reality that they were defending themselves during the incident.

“I would say 80% or 90% of it had been things that I had already been through even just in like high school classes and things like that. I think it was nice to be in a group of women, talking about our experiences.”

Responses from Interviews with Workers in the Field



Exploratory interviews were conducted with a number of workers, including staff of a hospital-based Domestic Violence Care Centre, a police officer who had been a DV coordinator, and staff at two PAR-providing agencies, including one that serves women.

Comments from a forensic nurse at a hospital-based Domestic Violence Care Centre

Extent of the problem

She estimates that in the two or three days a week she works, she sees one victim a month who has been charged.

Were charges warranted?

The vast majority are women charged are living in abusive relationships. She feels they should never have been charged as they were not the aggressor.

How did they arrive at the DV Care Centre?

Brought by police to the centre or another hospital that then contacts the DV Care Centre. Some women come on their own, saying it's a last resort when no one else has listened to them.

Referrals for legal help?

Primary referrals are to the Barbra Schlifer Clinic criminalization program or to a defence lawyer the staff trust. Her feeling is that most defence lawyers do not know how to deal with these cases.

Why are the women charged?

She thinks that police “stereotype women” and do not get their full story.

What is needed?

Education for police about intimate partner violence and all its complexities.

She supports the practice of a senior officer reviewing each case where a woman is charged with intimate partner violence.

Education for child welfare agency staff is also important, given the significant power they have over a family and they often penalize/ discriminate against women because of poverty, race, or substance abuse issues, and refuse to see the father as abusive.

Comments from the manager of PAR program serving women

How often are the charges inappropriate?

This has changed over time; originally PAR clients would describe police officers attending the scene, talking with both parties, then deciding who to charge.

In the past few years, clients increasingly say they were not given the opportunity to “tell their story” resulting in the wrong person being charged.

Almost all women have the same experience where they weren’t interviewed, and the police decision to charge was made without hearing the full story. The women repeatedly said they had no chance to talk about the context of the incident and their actions were in response to abuse from their partner.

Is PAR appropriate?

She feels that PAR programs are not appropriate for women who have acted to save themselves and/or their children. In these circumstances, the woman’s actions must be recognized as self-defence.

PAR for women who are appropriately charged

For some women, the charges and subsequent referral to a PAR program are appropriate. However, the program must be different from a men’s PAR program and must recognize the difference in social norms and values that impact women. Programs for women offenders should ideally have a different name, not PAR, to distinguish them from programs for males.

Referrals for legal help?

The primary referral is to the Barbra Schlifer Clinic Criminalization of Women Program that provides lawyers trained in working with victims who have been charged. The clinic uses a model that is highly effective to have charges dropped when the woman agrees to take counselling.

Impact of increased numbers of women being charged

Staff noted that many PAR agencies in Toronto are now working with women who are charged, whereas originally Elizabeth Fry Toronto received the bulk of referrals given their expertise in working with women in conflict with the law. Concern was expressed that many of the agencies don’t understand the need for a different approach that recognizes the experience and realities for women.

She also noted that because of COVID, women are waiting a long time to enter a PAR program, which is terribly stressful.

Comments from staff from Indigenous Agency offering the PAR Program

What is rate of referrals for women charged?

The agency has seen a significant increase in the number of women charged and mandated into their PAR program over the past two years.

The agency provides 60 PAR seats annually. Usually, they hold one women's group per year (for six to eight women); in 2021-22, they held three groups for 20 women.

Differences in treatment of women and men charged

Her experience is that women are being much more harshly dealt with by the system, as follows:

- Women are being held in custody and are not offered bail prior to being charged.
- Women's cases are resolved by conditional discharges, rather than peace bonds (the most common resolution for men). A conditional discharge includes the possibility of probation and is more serious than a peace bond.
- Women remain in the criminal system for a much longer period of time than men. Men are usually out of the system within a year (even during COVID). Her experience is that women are involved in the criminal process for two or three years because of probation.

She feels that there should be further study into the difference in disposition of cases of Indigenous women and men charged with DV-related offences.

Comments from a police officer with past experience as a domestic violence specialist

She rarely sees a woman accused of any crime, where there hasn't been some sort of historical trauma, intimate partner abuse, or other forms of abuse.

When women are charged, it is often where there has been mutual violence that results in dual charges against both the woman and the man. (This was NOT the case in any of the interviews we carried out; none of the men involved were charged.)

One of most important actions that can ensure appropriate charges are laid is to take time and not rush to decide who to charge. Each charge should be investigated thoroughly, and officers need to take the time to understand the incident, the context, and identify the dominant or primary aggressor.

Having a senior officer review cases has been helpful in ensuring the appropriate person is charged.

Another development that has been helpful is an anonymous phone line where anyone can call the police and ask questions about domestic violence. Many women call to find out what will happen when and if police are called.

Recommendations



Police Services

Police services should have in place the following best practices that have been identified as important to ensuring comprehensive investigations that effectively identify the primary aggressor in the relationship:

- **Two officers attend** every reported domestic violence incident.
- The officers check police database, in advance of arriving at the scene where possible, to check for **previous domestic violence incidents, charges, weapons** etc.
- The officers immediately **separate the parties**, and **interview them separately**.
- Carry out a full investigation to identify **the primary aggressor in the relationship and to ensure that the officers understand the context of the incident before laying charges**.
- The officers should treat both parties (and their children) with **compassion and respect**.

Recommended Changes

- **A senior officer must review every case where a woman is charged with domestic violence-related offences to ensure compliance with all policies and procedures, including a full investigation that identifies the primary aggressor.**
- Internal police oversight bodies, such as **Professional Standards**, **should ensure staff compliance with current policies**. When policies and procedures for responding to domestic violence calls are not followed, there must be meaningful consequences.

- All police services should introduce the successful model of a specialized DOMESTIC VIOLENCE TEAM with officers trained in the complexities of intimate partner violence. This model was implemented in the Toronto Police Service in the late 1990s with a DV team in each division. However, it was dismantled over 10 years ago. We strongly recommend that this model be re-introduced in Toronto, and put into place as fully as possible in all other police services.



Crown Attorneys

When Crown attorneys are screening domestic violence cases, they should use their discretion to:

- **dismiss claims “not in the public interest”** and,
- consider the **context of the incident**, specifically the history of abuse, before proceeding with the case.



Legal Representation

- Defence lawyers must understand that the **early Intervention court process is not appropriate for women who are not the primary aggressor**. Women in this situation should NOT be advised to agree to participate in the Early Intervention Court, and lawyers themselves, should challenge any decision by Crowns to screen such cases into this court process.
- Charges against women who are defending from an abusive partner or ex-partner should be **challenged by defence lawyers** as “**not being in the public interest.**”
- Defence lawyers should adopt the **Barbra Schlifer Clinic approach** to defending women wrongfully charged with domestic violence-related offences which entails resolving the **case by dropping the charge with the agreement that the woman attends counselling.**
- Defence lawyers should take the free, **online training offered by Barbra Schlifer** to increase their understanding of intimate partner violence and the best practices for defending women who have been charged in domestic violence incidents.

- The province should increase funding to the Barbra Schlifer Clinic for their program working with women who have been criminalized, to adequately meet the need.
- **Defence lawyers must explain any resolution** that the Crown offers to their client, so she understands how the decision will impact her life. Many of the women we interviewed had no understanding of the court process, how the outcome of their case was reached, and did not discuss the resolution with their lawyer.



PAR Agencies

- Agencies that are offering PAR program groups should **never include both women and men** in the same group.
- Women in a PAR program require a specialized PAR program that reflects their experience and addresses the gendered nature of intimate partner violence.



Agencies Serving Women

- Agencies serving women experiencing intimate partner violence **must offer their services to all survivors of abuse**, including those **charged with a criminal offence**. Adequate resources should be provided to these agencies so that they can provide appropriate support and services.



Case Studies



Research reports distill personal experiences into sentences, findings, and at times, recommendations. When the data collected in this research was organized into a report, we felt the words were not able to adequately describe the violence, trauma, and pain that of the women we interviewed. In order to give further voice to these brave women, we are providing a select number of profiles and short case studies from the stories we heard.

Women's Experiences

Although we have attempted to give voice to the women through the many quotes used to inform the findings and subsequent recommendations, we feel that the quotes cannot adequately reflect the actual trauma of some of the experiences we documented. Among the experiences we heard from women were:



A participant was **brought to the police station at 11:00 at night with her two children** under the age of 6, where she was held in custody until the following day. Her children were picked up by the male partner around 2:00 am.



A participant was released from a police station at 2:00 am in the morning **without shoes and forced to make her way to a shelter** that was a distance away.



Officers arrested and **held a woman in custody for more than four hours** before they told her who had laid the complaint against her.



A woman was held in custody overnight, after being charged, even though she had been seen by paramedics who had advised her to go to the hospital because of a concussion. **She remained in custody for over six hours, vomiting, with a terrible headache and without medical help.**

To open, we invite you to consider the following four examples of **egregious practices** by criminal justice players:

- A Crown attorney asked for a sentence of six months for a first-time offender where the victim had a scratch on his arm. The ‘victim’ had five prior criminal court appearances for domestic violence offences. The judge resolved the case by imposing a peace bond on the woman.

The request for six months jail time is highly unusual and disproportionate.

- The arresting police officer said explicitly to the woman he charged that he didn’t care about the past or her relationship, and that he was ONLY interested in this particular incident.

Best practice requires identifying the primary aggressor within the context of the relationship.

- A charge was resolved by a conditional discharge, and probation for 18 months with monthly reporting to a probation officer. She was told after that if she went three years without a further incident, she could have the charge expunged.

It is highly unusual for a conditional discharge to include a probation requirement.

- When one woman told her lawyer that her partner had been abusive for seven years, the response was, *“Why didn’t you just leave him.”* She went on to say, *“The lawyer clearly has no idea of what it’s like to live with an abuser who is constantly threatening you if you dare to challenge him.”*

It is apparent the lawyer has no training in understanding domestic violence and how trauma affects victims.



Ava came to Canada as an immigrant with the hope of living in a society where women are safer than her country of origin. Ava and her partner were married for 17 years and have three children.

Ava was not happy in her marriage but stayed given the expectations of her community and extended family. Ava experienced emotional abuse throughout their marriage. *“Everything is his right and he can decide about everything, even my feelings, even my decisions, even my own bank, my job, whatever, my relationships with my friends, my family. Whatever, he wanted to control everything.”*

The incident that led to Ava being charged happened when she spoke against her in-laws moving in. Her husband became verbally abusive and raised his hand to hit her. Ava told him she would call the police if he touched her and he responded, “You’re [too] scared to do that.”

He then physically attacked her and pushed Ava down the stairs. She tried to save herself and in doing so, hit out at him to protect herself. She managed to escape and call 911.

When the police arrived 45 minutes later, they did not address the fact that English was not Ava’s first language, nor did they ask if she would like an interpreter.

Ava explained that the word in her language for fighting is ‘attacking’ and so when she was asked by an officer to explain the situation, she used the wording that “she and her husband were attacking each other.”

Ava also noticed that her husband had a fresh bloody scratch on his face that she didn’t think was there at the time of the incident. Seeing the fresh scratch, Ava recognized that if the scratch had happened during the incident, the blood on her partners face would not be fresh – as they had been waiting 45 minutes. She realized that her husband must have scratched himself just as the police arrived to have such a raw injury, and that his intent was to blame her. When asked whether she caused the scratch – she said she didn’t know and reiterated that she was just defending herself against him.

Her partner was extremely calm when talking with the police and his English was much better than hers. Ava’s experience was that the police discounted everything she said and listened to her husband.

Upon hearing his story, they did not investigate any further and arrested Ava. They asked no questions about whether her husband had been abusive in the past, and gave Ava no chance to tell her story (to explain that he pushed her down the stairs and that she was, in fact, defending herself from his abusive actions.)

Ava was forced to leave her family home; their children left with Ava. Ava went to Mackenzie Hospital where they documented injuries to her hand and shoulder that the police had not seen. However, from fear of retaliation from her husband and his family, Ava did not use this information in court. The case was eventually dropped. However, Ava has been left feeling isolated and traumatized by the whole experience.



Faith was charged with assault 21 months after an incident with her ex-partner. He contacted police almost two years after the incident to lay a complaint. His evidence was a video of someone walking toward him and hitting his phone out of his hand. This video, however, had no identifying information – no faces are visible and it is impossible to identify anyone including Faith or her ex-partner. The ex-partner also complained that he and his new partner had been receiving harassing texts from Faith.

Faith explained that at the time of the incident she was afraid that her ex-partner was going to hit her. Faith had called the police three times, over a period of three years because she was afraid of violence from her partner. She had ended the relationship two years earlier. However, since ending the relationship, her ex-partner had been harassing her and her family through constant vitriolic text messages and emails.

In preparation for her court date, Faith compiled extensive evidence on a flash-drive of the abuse that she had experienced from her ex-partner. This included the harassing text messages and emails she had received from him, information about the times and dates she had contacted police in the past and contact information for the building manager who could give additional evidence from camera footage about a number of the abusive incidents she documented in the drive.

Her lawyer never looked at the flash-drive, never spoke to the Crown nor used any of the evidence on the drive. When Faith asked why he didn't use the information, he told her that if the judge saw the video from the day of the incident, she would face a more severe sentence. He then told Faith that she didn't have to attend her court date.

Faith did attend the court date and was shocked to hear that the Crown suggested that Faith accept a peace bond and attend a Partner Assault Response (PAR) course. Faith had been concerned from the time of the arrest about being put on a peace bond. She works in health care and was extremely worried that a peace bond would threaten her job. She had explained all of this to her lawyer; however, against her wishes and her direction, he suggested a resolution by peace bond.

Her lawyer insisted she take the peace bond. Faith felt he was doing this just to resolve the case. Faith said she was not able to tell her story in court, and felt that everyone wanted to resolve the case as quickly as possible, because the courts were overloaded. Faith went on to complete the PAR course but insisted she could not accept a peace bond. Her lawyer at the last minute, said he would do the work to get rid of the peace bond, but would have to charge her an additional fee of \$1,000. She was frantic because she didn't have that kind of extra money. Her lawyer finally agreed to waive the fee only **IF** she would write a good review on his website.

Faith's case was still unresolved at the time of her interview. She is convinced that as result of being charged, she will lose her job. She described her experience with her lawyer and the legal process as horrific, traumatic and like she was *"pulling teeth just to be heard."*



Catherine had been with her partner for 11 years, with a history of abuse, drugs and alcohol. She came to Canada about seven years ago. Since the birth of her daughter, four years ago, he has been very possessive of the child, trying to “take her away from me.”

The first time she contacted police, was when she was trying to pick up her 4-year-old daughter from her ex-partner. They were on the street and he was arguing that he wouldn't give the daughter back to Catherine. The argument ended with her partner assaulting her on the sidewalk. Catherine called police and when they arrived among the questions they asked was whether she worked. After explaining that she did not work, the officer responded, “You will never get custody if you aren't working.” Police did not charge her partner in this incident, but let him keep their daughter, saying he should make sure and bring daughter back the next day. Her partner continued to harass her over the next few days in retribution for her calling the police saying, “You're going to pay for this.”

The second incident took place at her home; her partner was high on drugs, berating her and took her phone. When she tried to get the phone back, he grabbed her by the throat pushed her against the bed and kneeled on her chest while he strangled her. She fought back and said that “*I was fighting for my life.*” Her daughter (then 6) ran into the room asking her father to let her mother go. Catherine managed to escape, after her daughter came into the room, ran to neighbours, and called 911. Police took 45 minutes to arrive. She explained that her partner was talking to their daughter during the entire time they were waiting for police to arrive.

Two officers attended at the house and, after speaking to her husband and daughter, spoke to Catherine. They did not ask her about the incident, but just said, “We're going to have to arrest you.” They didn't explain the reason, just took her away, and put her in a cell. She had been diagnosed with a concussion by paramedics who showed up at the house, and had substantial bruises that showed up two days later. She was kept in the cell for more than six hours – with a terrible headache, vomiting, and freezing cold.

The police interviewed her daughter who was 6 at the time, without an adult in the room. When police interviewed Catherine she was asked, “Did you scratch him?” Her response was, “*Of course, and I would do it again if I have to fight for my life.*”

Catherine was released but told she couldn't go home and that there was a restraining order against her. She explained, “*I was traumatized. I (...called police because I...) thought police would help but they did nothing (to help me) but were horrible to me.*”

Catherine eventually ended up in a shelter with her daughter. Her daughter has been tremendously impacted by the experience. Catherine talks about the fact that her daughter cries a lot now, saying, “Mommy I’m so sorry, I need to talk to the judge. My Daddy asked me to say this.” She has also said to Catherine, “It was my fault, I will never call the police – police destroy families they don’t help.” In retrospect, Catherine feels that her partner coached her daughter at the time of the incident and used her to get the charge laid against her.

Catherine had an equally horrible time with her lawyer who didn’t show up at court and didn’t share any information about the case. Catherine told the lawyer that she wanted to “speak my truth”. The lawyer’s response was, “If you need to speak your truth, you need \$10,000.”

The lawyer told her not to say anything or she would screw things up. Catherine wanted to fight the charge; however, when she talked to her lawyer about this, he got angry citing that he has been doing these cases for years and that he knows how things are done. He said told her that they don’t want to “waste their time” listening to you.

Catherine signed a peace bond but didn’t want to because, *“Entering into a peace bond is admitting that I did something wrong.”* She found the program helpful, however, was extremely troubled that she was forced to take it.

Catherine was hoping to work in a hospital; however, because a police check is required, and she still has the peace bond, she could only get a job as a cleaner. She is deathly afraid of police, and afraid that she will never be able to get a better job due to the peace bond.

Catherine had a Family Court hearing to decide custody of her daughter. Catherine was hoping to get a restraining order against her ex-partner as well because she continues to be afraid of him. Her lawyer, however, did not bring up any evidence of the intimate partner abuse that Catherine had experienced. The judge granted joint custody and saying, *“He saw no reason for a restraining order. She still has to see her partner regularly during access visits. Catherine feels traumatized by the entire process and says, My voice was pushed down all the time.”*



Debra's charges arose out of an argument where her partner dragged her by the hair and pushed her down, attacking her on the floor. She fought to get him off of her and then ran the stairs in the apartment building to escape. Her partner came after her and she threw a cat carrier bag that was on the stairs, to keep him from catching her.

Although her partner had been convicted of an assault upon her only a year earlier, there was no reference to this nor did the police seem to take this into account when considering who to charge.

Once the police decided to arrest her, the police could have arrested her at her home, or given her a summons. Instead, they waited until she was at her workplace as a nanny and then arrested her and put her in the police car in front of the children she was caring for.

She was able to get a good lawyer and after completing PAR, the charge was dismissed; however, the lawyer cost about \$11,000. She is lucky to have a supportive family who knew how to handle the system: her mother is a forensic nurse, and her father was a police officer.

Even though the charge was dismissed, there was no discussion of self-defence. She thought that she should defend herself and say that she did nothing wrong. However, because she never got an opportunity in court and says she felt she had to remain silent and "trust the system". She felt she had no voice at all.

She says that she would never involve police in any future abusive incidents, putting her at higher risk in the future. The charges have had a significant impact on her employment making it impossible for her to get further employment as a nanny. She is also a model, and the charge and peace bond have made it difficult for her to travel.

Demographic Profile of Interviewees



Demographic Summary

- In total, 23 women were interviewed; two others did not fit the criteria of women charged with domestic violence-related offences in the last 3 years.
- Of the 21 women interviewed, 15 women completed a demographic survey providing us with their profile
- Seven of the interviews were in Spanish and one in Tagalog

Aggregated information from those women who filled out the survey:



Ages

- 53% were aged 25-39 years old
- 33% were aged 40-55 years old
- 13% were aged 56-70 years old



Country of Origin

Majority were immigrants to Canada:

- 73% were not born in Canada
- 80% have been in Canada for more than 10 years



First Language

- Majority use English as their primary language
- Two women do not use English as their primary language



Race and Racial Background

- Latin American: 3
- Black: 3
- White: 3
- Indigenous: 1
- Middle Eastern: 1
- Southeast Asian: 1
- Not listed: 2
- Did not answer



Children

Majority had children under 18 years old:

- 60% reported having at least one child at home under 18 years old
- 37% have children over 18 years old



Employment

Majority were employed:

- 73% employed
- 3 on fixed income



Household Income

Total household income of the participants before taxes:

- Less than \$29,999: 5
- From \$30,000 - \$49,999: 2
- From \$50,000 - \$69,999: 5
- More than \$70,000: 2



Location

- Toronto: 7
- York Region: 3
- Peel Region: 1
- Outside the Greater Toronto Area: 1
- Did not report: 3



counterpoint



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