

For information, please contact:

Executive Director
The London Abused Women's Centre
217 York Street, Suite 107 London, Ontario N6A 5P9
phone: 519-432-2204 fax: 519-679-3918
e-mail: info@lawc.on.ca

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London Abused Women's Centre
217 York Street, Suite 107
London, Ontario
N6A 5P9

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Author:
Megan Walker and Pam Hanington

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**“I believe domestic violence -
whether its verbal or physical -
is related in some way to every
social problem facing this country.
If we could get a handle on domestic
abuse, we could get a handle on
a lot of social problems that
we’re spending millions of
dollars on today.”**

**(Casey Gwinn, San Diego City Attorney,
The Toronto Star, March 16, 1996)**

Statement of Principles

1. Men's violence against women in intimate relationships is a serious community problem requiring a coordinated response by criminal justice service providers, medical and social services professionals and by the public.
2. Victims are never responsible for the violence. A man's violence towards his partner is a result of his personal choice and he is entirely responsible and accountable for his violence.
3. Men's violence against women within their intimate relationships is a criminal act which requires an effective and rigorous legal response.
4. It is the responsibility of the Police, Crown Counsel, judiciary and all other criminal justice service providers to seek ongoing professional development opportunities to familiarize themselves with the distinct dynamics and complex issues of men's violence against women within their relationships.
5. Crown Attorneys, Police, judiciary and all other criminal justice service providers must understand the social, political and economic factors inherent in men's violence against women.
6. It is the responsibility of the Police to investigate men's violence against women and to lay appropriate criminal charges wherever reasonable grounds exist.
7. It is the responsibility of the Police to assist in providing adequate protection for the victims and for the children who have witnessed the abuse.
8. It is the responsibility of the Police to fully investigate and to gather sufficient evidence to assist in the conviction of the offender.
9. It is the responsibility of Crown Counsel to vigorously and consistently prosecute all cases of men's violence against women using all available resources and evidence, and to initiate an early interview with the victim.
10. It is the responsibility of the Police, Crown Counsel, judiciary and all other criminal justice service providers to be familiar with community resources that provide services to victims of men's violence against women.

(Adapted from: A Protocol Dealing With Wife/Partner Assault and Criminal Harassment in the County of Renfrew (1995), the Community Accountability Principles of the London Coordinating Committee to End Woman Abuse (1994) and the Best Practice Guidelines of the Metro Woman Abuse Protocol Project (1995)).

Executive Summary

“Each year on average in Canada, nearly 80 men kill women - their partners or former partners - most often when a woman is attempting to leave or has left an abusive relationship with the murderer.”

(Johnson, 1996)

The work of ending men’s violence against women in their intimate relationships is complex and daunting. The expectation of a criminal justice system response is relatively recent in our history and, to date, the reviews are mixed.

Currently in Canada, the state cannot effectively intervene to prevent further incidents of violence without the woman’s express cooperation. The present laws under which perpetrators are charged, and the ensuing processes, are simply not adequate for responding to the distinct dynamics present in cases of domestic violence.

It is acknowledged that intervention by the criminal justice system is not preventative. Even at initial contact, the violence has already occurred. The best possible outcome is that further incidents of violence will be averted through rigorous investigation, prosecution and sentencing practices which reflect the seriousness of the crime. To date, this is not the usual outcome.

This document is the result of the London Abused Women’s Centre’s investigation of the criminal justice system’s response to men’s violence against women within their intimate relationships. The investigation, funded by Status of Women Canada, was initially undertaken to develop a model protocol and training materials for the criminal justice system to respond more effectively to domestic violence. During the investigation, it became apparent that many formal aspects and current practices of the criminal justice system are incapable of responding effectively to the distinct dynamics involved when crimes are committed within intimate relationships. This document is intended to generate discussion, initiate further research and inspire continued advocacy on behalf of women who utilize the criminal justice system in response to men’s violence.

Goal of the Project

The goal of this project is to prevent the murder of women by:

1. **Enhancing the safety of women** who utilize the criminal justice system in response to the violence within their intimate relationships. This can be accomplished through uniform information, standards, procedures and practices for training, investigation, prosecution, sentencing and supervision;
2. **Increasing the knowledge of criminal justice system personnel,** specifically the distinct dynamics of men's violence against women within their intimate relationships. This will facilitate justice for women without re-victimization and will promote more effective solutions to domestic violence;
3. **Proposing the development of specific legislation on domestic violence** to be introduced into the Criminal Code of Canada. This should include sufficient standards, procedures and practices that capture the distinct dynamics of men's violence against women within their intimate relationships.

Table of Contents

| | |
|--|----|
| INTRODUCTION | 1 |
| CHAPTER ONE: | |
| Model Murder Prevention Protocol | 6 |
| POLICE | 6 |
| Investigation | 7 |
| Monitoring | 10 |
| Bail Hearings | 10 |
| Intervention Order | 11 |
| DOMESTIC VIOLENCE COURTS | 12 |
| CROWN ATTORNEYS | 13 |
| Procedures to be used by Crown Attorneys | 14 |
| Case Preparation | 14 |
| Videotaped Testimony | 14 |
| Expert Testimony | 15 |
| Preliminary Hearing | 15 |
| Trial | 15 |
| Sentencing | 16 |
| JUDGES AND JUSTICES OF THE PEACE | 17 |
| CORRECTIONS | 17 |
| Pre-Sentence Reports | 17 |
| Post-Sentence Supervision | 18 |
| Breaches of Conditions | 18 |
| Parole Board | 19 |
| VICTIM/WITNESS SERVICES | 19 |
| Victim Impact Statements | 19 |
| PROGRAMS FOR MEN WHO ABUSE | 19 |
| Marriage Counselling | 21 |
| CHAPTER TWO: | |
| The Context of Men’s Violence Against Women Within Their Intimate Relationships | 22 |
| Violent Men’s Beliefs About Women | 23 |
| Abuse in Intimate Relationships | 24 |
| Common Misconceptions About Woman Abuse | 26 |
| Excuses Used by Men Who Are Violent Towards Women | 29 |
| CHAPTER THREE: | |
| Men’s Violence Against Women and Its Impact on Children Who Witness | 31 |
| Effects on Children Who Are Exposed to Violence Against Women | 31 |
| LCCEWA Submission to the Special Joint Committee on Custody and Access | 33 |

TABLE OF CONTENTS

(continued)

CHAPTER THREE:

Men's Violence Against Women and Its Impact on Children Who Witness (continued)

| | |
|--|----|
| LCCEWA Submission to IER Planning, Research & Management Services Federal/Provincial/Territorial Consultation Re: Custody, Access and Child Support in Canada Feedback Booklet | 42 |
| Woman Abuse - The Impact on Children | 72 |

CHAPTER FOUR:

| | |
|--|----|
| Additional Issues for Consideration | 79 |
| Police | 79 |
| Faculties of Law | 79 |
| Domestic Violence Act | 79 |
| New Identities Act | 79 |

| | |
|------------------------------|----|
| RECOMMENDATIONS | 80 |
|------------------------------|----|

| | |
|-----------------------------|----|
| KEY INFORMANTS | 89 |
|-----------------------------|----|

| | |
|------------------------|----|
| RESOURCES | 90 |
|------------------------|----|

| | |
|------------------------------------|----|
| WORKS CITED/CONSULTED | 92 |
|------------------------------------|----|

APPENDIX I:

Policing Standards Manual (2000)

- Domestic Violence Occurrence
- Criminal Harassment
- Bail and Violent Crime
- Preventing or Responding to Occurrences Involving Firearms

APPENDIX II:

Personalized Safety Plan for Abused Women

Introduction

“Productive, coordinated responses to men’s violence against women within their intimate relationships based on common knowledge, consistent approaches and effective remedies have been demonstrated to be effective in preventing murder.”

(San Diego Murder Prevention Unit, 1995)

Men’s violence against women in their intimate relationships is a social problem of epidemic proportions. It occurs in every society and in every culture. Its causes are largely unchallenged, and it is overtly and covertly condoned, permitted and justified through a complex system of politics, ideology, socialization and enforcement. Men’s violence against women in their intimate relationships is a form of social control, enacted by both individuals and systems and sanctioned in many contexts - institutions, communities and relationships.

Simply stated, men’s violence against women in their intimate relationships is both a product and cause of societal inequality based on gender. To some degree, violence against women is condoned, excused and glorified in our society. Men’s violence against women, and others with less power, is a primary obstacle to societal equality (Economic and Social Council, 1992). A gender-based analysis of violence is crucial for understanding that the violence is gender-biased, that the perpetrators are usually men (Statistics Canada, 1998) and that violence is used by men as a form of social control over women (Canadian Panel on Violence Against Women, 1993).

In recognition of this persistent condition, the United Nations Commission on the Status of Women adopted a declaration vilifying violence against women (1993). This declaration offers an official definition of gender-based abuse. Article 1 of the declaration states, “*violence against women includes: any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivations of liberty, whether occurring in public or private life,*” (Economic and Social Council, 1992).

Further, the declaration describes the persistence of men’s violence against women as, “*a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and which have prevented women’s full advancement. Violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared to men,*” (Economic and Social Council, 1992).

Additionally in 1981, Canada ratified the Convention on the Elimination of All Forms of Discrimination Against Women which condemns discrimination against women in all its forms and requires that signatories pursue all means possible to, “*take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women,*” (Article 2, section f).

In spite of the clear messages and intentions of these United Nations documents, men’s violence against women continues to constitute a barrier to the goal of equality for women. Even though

men's violence against women is a barrier to women's equal participation in society, men continue to enact violence against women in all facets of society, particularly in relationships where there is no fear of consequences. In fact, according to a nationally representative Statistics Canada study of 12,300 women in 1993, 25% of women reported being physically assaulted by a current or former male partner since age 16 (Statistics Canada, 1993).

Statutes and charters, which guarantee rights to safety and protection and freedom from discrimination, should be exercised to govern social relations, to inform legislation and to designate reasonable behaviour in order to enhance the ability to respond rigorously and effectively to men's violence against women.

Initiatives which aim to respond to and ultimately prevent men's violence against women rest on the assumption those individual women should take personal action in response to the violence being perpetrated against them. Throughout the system of services which respond to this issue, it is the women who are the victims of men's violence who continue to be compelled to take action to ensure that they acquire the safety and protection guaranteed under the Canadian Charter of Rights and Freedoms (Section 15.(1), (2) and 28).

It is recognized that intervention by the criminal justice system is not preventative. Even at initial contact, the violence has already occurred. The best possible outcome is that further incidents of violence will be averted through rigorous investigation, prosecution and sentencing practices that reflect the seriousness of the crime.

The costs of men's violence against Canadian women are enormous, not only in personal costs to well-being and safety but also in monetary terms. According to a study examining the costs of violence against women, it is estimated the criminal justice system spends in excess of \$871 million annually in response to violence against women (Greaves et al, 1995).

In Canada, the state cannot seek to ensure the safety of the woman in her home, nor can it effectively intervene to prevent further incidents of violence without her express cooperation. The current laws under which perpetrators are charged, and the ensuing processes, are not adequate to respond to the distinct dynamics present in cases of domestic violence.

FOCUS

The focus of this document is to analyse the criminal justice system's response to men's violence against women within their intimate relationships. It aims to offer insight and direction to enhance and formalize criminal justice system responses to men's violence against women in order to prevent further domestic violence and murder.

The document offers a model protocol featuring methods, standards, procedures and practices for investigation, prosecution and sentencing for relevant facets of the criminal justice system. It also offers a contextual and analytical framework designed to aid in the development of training materials that will provide a comprehensive and practical understanding of this issue.

Finally, the document provides recommendations to improve the criminal justice system's

response to men's violence against women.

The document has been developed using current information of men's violence against women in relationships. This includes a review of current court and police policies, practices, model protocols and legislation developed in other Canadian jurisdictions, and the recommendations of women's advocates, relevant investigations and recent inquests and reports on domestic violence.

For the purpose of this document, criminal justice system personnel includes Police Officers, Crown Attorneys, Justices of the Peace, Criminal Court Judges, Probation and Parole Officers, Victim/Witness services and the personnel of male abuser programs.

LIMITATIONS

The content in this document has been compiled using predominately urban research and information sources. It does not contain comprehensive information about the particular barriers faced by abused women living in rural communities, women with disabilities, aboriginal women, lesbian women, women who do not speak either official language, poor or elderly women, or women in conflict with the law.

CONTRADICTIONS

Advocacy for abused women who utilize the criminal justice system is often complicated by the contradiction that arises when practices that aim to enhance the safety of women as a group override choices for individual women. Some of the recommendations offered, promote changes to the criminal justice system's response which strengthen its accountability to the detriment of some individual women. For example, while the decision to collectively support mandatory charging policies has resulted in a practice that removes the onus to charge from individual women, promotes a consistent approach to domestic violence incidents, and sends a clear message to the offender that his behaviour is unacceptable and will not be tolerated, it has also negated individual women's choices about engaging with the criminal justice system.

When working for political and social change, the desire to respect individual women's choices and utilize their expertise must be framed by the understanding that while the safety of an individual woman is the fundamental priority of intervention, enhancing the rights of women as a group must be the fundamental priority of advocacy.

TERMINOLOGY

While it is recognized that men can be victims and women can be perpetrators of what is called "domestic violence" and that violence is perpetrated in both heterosexual and same-sex relationships, the overwhelming majority of domestic violence cases that comes to the attention of the criminal justice system involve men perpetrating violence against women in heterosexual relationships (Statistics Canada, 1998).

The term “domestic violence” has been criticized for its failure to accurately capture the fact that domestic violence most often involves men’s abuse of women. The term “woman abuse,” currently applied to this situation, may serve to conceal the reality that it is men’s violence against women in their intimate relationships that results in the abuse of women as a social problem. Other terms commonly used to characterize and delineate men’s violence against women in relationships such as spousal assault, conjugal violence and “victim” have been challenged as misleading, erroneous and dis-empowering (Hester, Kelly and Radford, 1996).

However, the terms “men’s violence against women in their intimate relationships,” “domestic violence” and “woman abuse” are currently understood terms used to characterize the unique dynamics of this issue. These terms are therefore, used interchangeably throughout this document. Where references to victims and perpetrators occur, the use of gender-specific pronouns reflect the reality that it is overwhelmingly men who assault women (Statistics Canada, 1998).

The terms selected for use in this document aim for accuracy, clarity and to be clearly comprehended by intended readers, including members of the criminal justice system, advocates for women and relevant decision-makers at both provincial and federal levels of government.

DEFINITION OF KEY TERMS

Men’s Violence Against Women Within Their Intimate Relationships: Men’s violence against women within their intimate relationships is the intentional and systematic use of tactics to establish and maintain power and control over the thoughts, beliefs, and conduct of a woman through the inducement of fear and/or dependency. The tactics include, but are not limited to, emotional, financial, physical and sexual abuse, as well as intimidation, isolation, threats, using the children and using social status and privilege (adapted, the Domestic Abuse Intervention Project, 1993). Men’s violence against women includes the sum of all past acts of violence and the promise of future violence that achieves enhanced power and control for the perpetrator over the partner (Hart, 1986). Abusive behaviour does not result from individual, personal or moral deficits, diseases, diminished intellect, addiction, mental illness, poverty, the other person’s behaviour or external events (McGrath & Zubretsky, 1997; Heise, 1994).

The London Abused Women’s Centre, 1998

The definition includes acts and behaviours considered to be crimes under the Criminal Code of Canada such as physical assault, sexual assault, threats of injury and death, forcible confinement, criminal harassment or stalking and femicide (murder of women).

The definition also includes the pattern of systemic behaviours and conduct that constitute abuse such as emotional torment, threats to third parties including children, relatives and pets, destruction of personal property, economic or financial abuse, psychological coercion and manipulation, humiliation and ridicule, violations of trust and threats to legal status, safety and liberty.

Intimate Femicide: The killing of women by their current or former intimate partners (Woman Killing: Intimate Femicide in Ontario, 1992).

Relationships: Relationships include marriage, common-law and similar partnerships, regardless of legal sanction, duration or current status, or where the violence is committed.

Reasonable Grounds: Reasonable grounds for the purpose of criminal charges are *“a set of facts or circumstances which would satisfy an ordinary, cautious and prudent person that there is reason to believe a crime has been committed and which goes beyond mere suspicion,”* (Ontario Provincial Police, 1996).

Chapter One: Model Murder Prevention Protocol

This model murder prevention protocol is a compilation of investigative and prosecutorial practices utilized by police departments and court officials in a number of districts in Ontario and across Canada, and the recommendations of the Province of Ontario's Chief Coroner's Inquest into the deaths of Arlene May and Randy Iles. It is also informed by the follow-up recommendations to the May/Iles inquest made by the Joint Committee on Domestic Violence.

NOTE: The Risk Indicator Tool referred to in the following section is one aspect of the Model Police Response to Domestic Violence which was written by the Ontario Ministry of the Solicitor General in order to ensure a standardized approach to police investigations of domestic violence. The Risk Indicator Tool is currently being field tested by the Ontario Provincial Police. The Policing Standards Manual (2000), is attached as Appendix I.

POLICE

All incidents of woman abuse are potentially lethal situations and as such, all woman abuse calls to the police communications centre should be designated as Code 1 and responded to by Police accordingly (May/Iles Coroner's Inquest: Jury Verdict and Recommendations, 1998). As communications clerks do not receive specific training on woman abuse, they should not be expected to determine the seriousness of the threat. This is true even if clerks have received previous, non-life threatening calls from particular women or households.

Officers must utilize the Canadian Police Information Centre(CPIC) and the Integrated Justice System (IJS) at the first available opportunity to assess the dangerousness of the situation for the victim(s) and for the attending Officers. In particular, information about the possible presence of lethal weapons should be readily available to them. If this information is not available, Police Officers should make every effort to discover whether the perpetrator owns, possesses or has access to weapons or a Firearms License by requesting information from family members (other than the partner), neighbours, employers and colleagues as part of their risk assessment procedure and investigation.

Police Officers are usually the woman's first encounter with the criminal justice system. In cases of men's violence against women, initial police response is crucial for the woman's safety, her satisfactory experience of the criminal justice system, and for the successful prosecution of the case (May/Iles Coroner's Inquest: Jury Verdict and Recommendations, 1998).

The decision to contact the Police is difficult to predict because it is affected by factors unique to each woman's situation (Harris et al, 1999). However, studies indicate that women are more likely to contact Police if they have been physically injured as a result of the abuse, if their children have witnessed the violence, if the perpetrator used a weapon or if they have previously experienced a number of violent incidents (Statistics Canada, 1993).

Because most women have little or no contact or knowledge of the criminal justice system prior to its intervention in cases of woman abuse, dedicated and trained Police Officers should respond to, and follow up on, each case from beginning to end and act as the woman's contact

for the duration. A respectful and consistent professional relationship with a Police Officer can alleviate much of the trepidation experienced by victims of crime. Women who experience men's violence in relationships have particular and tangible reasons to fear the intervention of the criminal justice system. All criminal justice system personnel should be dedicated to ensuring practices that promote safe and respectful responses to women. (May/Illes Coroner's Inquest: Jury Verdict and Recommendations, 1998).

Prepared packages, which have been collaboratively developed and produced, ideally by local coordinating committees, should go to all police departments for use in woman abuse cases. Packages should include pamphlets from the women's shelter, health, counselling and advocacy services for women, and information about safety planning. An example of a safety planning form is contained in Appendix II of this document.

Mandatory arrest and charge policies must be followed in every case where there are reasonable grounds to do so. If charges are not laid, Police must be compelled by written policy to explain why charges are not laid in each case.

Investigation

NOTE: Many of these procedures are currently practised in Canadian jurisdictions.

Interviews with the perpetrator and the victim must be conducted separately. In particular, the perpetrator should not be visibly or audibly present when the woman is interviewed. Where either, or both, of the parties speak a language other than English, French or the first language of the Officers, Police must obtain the services of a professional cultural interpreter to conduct the interviews. Under no circumstances should children or relatives be allowed to interpret for either party. To ensure that the needs of women with diverse cultural backgrounds are met, training on men's violence against women within their intimate relationships must include how cultural factors impact both the understanding and the responses to violence. Cultural interpreters should receive training about both men's violence against women and the criminal justice system's response to this crime.

Police should utilize a standardized protocol, such as the practices outlined in this model murder prevention protocol, to ensure a thorough investigation. Many women seek other types of assistance from the Police that only the Police can provide, such as protection from the abusive partner, removal of the partner, having the partner charged, and threatening the partner about the legal consequences of violence (Harris et al, 1999). Police should apprise women of the scope, limitations and consequences of police intervention and ensure that the woman is provided with the Officer's name and a contact phone number regardless of whether or not charges are laid.

As part of every woman abuse investigation, Police Officers should utilize a Risk Indicator Tool as a standardized measure. Furthermore, the results of the Risk Indicator Tool should inform bail briefs, be included as trial evidence and inform both sentencing and supervisory decisions about the perpetrator, including his suitability for conjugal visits, family visits and temporary absences.

NOTE: Risk assessment tools should be used with caution because findings can be subjectively

interpreted and can lead to varying conclusions. Moreover, risk assessment tools are only effective when there are clear procedures and concrete provisions for the safety of women and children when the assessment indicates they are in a high risk situation. Currently, the results of risk assessments do not compel the state to act. Until that is the case, the Risk Indicator Tool is best utilized as a measure of the perpetrator's capacity and likelihood of repeated violence, and as information that can inform the decisions of criminal justice system personnel. Additionally, it may be necessary to utilize a more comprehensive and in-depth risk assessment that corresponds directly to a particular intervention (supervision, family visits, etc.) at any time during the perpetrator's association with the criminal justice system.

Police should act to increase the safety of a woman and her children in every case by providing information that is developed in collaboration with local women's services or shelters, women's advocates and/or relevant community services. All Officers should be supplied with a package of information that emphasizes safety planning and resources. The information package should contain a safety planning form, pamphlets from services such as women's shelters and accurate information about the limitations of the criminal justice system, including no-contact orders. In all cases, Police should warn all victims of domestic violence about the risks of their situation stressing the importance of safety planning. In addition, women should be informed that the 1-800 number for the nearest shelter is also printed on the inside front cover of the phone book. Police Officers should encourage women to contact these services for advocacy, support and guidance and underscore the value of making this contact.

Police should endeavour to ensure the safety of minor children and other family members. The Child and Family Services Act (72(2)) stipulates that it is the responsibility of adults to contact the Children's Aid Society (CAS) when they believe on reasonable grounds that a child is or may be in need of protection. Further, as professionals, Police must contact CAS when they have reasonable grounds to suspect that a child is or may be suffering or may have suffered abuse (Child and Family Services Act, (72(3))).

It is crucial that Police Officers recognize that the perpetrator is responsible for exposing children to his violence. Police should reiterate to the CAS staff that they should endeavour to work towards alleviating the danger to the children by protecting them from the perpetrator. This is invariably best accomplished by working towards enhancing the woman's ability to secure safety by assisting the woman with finding a safe place or incarcerating the perpetrator.

Police should examine every case of domestic violence for evidence of stalking (criminal harassment) behaviour. Where there is evidence of criminal harassment, (such as the Risk Indicator Tool would indicate) additional charges should be laid.

Where there is an indication that the perpetrator is involved in more than one intimate relationship, Police should make an effort to contact all intimate partners to warn of the potential risk to herself and her children.

Where the offender has departed the scene prior to the arrival of the Police, the Officers must assess whether the suspect is likely to return and must act in order to protect the woman. This should be accomplished by trying to locate the suspect for the purpose of arrest or by making an immediate request to the Crown for an arrest warrant.

Invariably, it is in the woman's interest to be examined by a medical professional as soon as possible to lessen any effects that the assault may have on her health and well-being.

Where there is an indication that a woman has been or may have been physically injured, Police should be compelled by a "duty to transport," to provide the woman with transportation to a hospital or to a Domestic Violence Treatment Centre where they exist. Even if there are no current signs of physical injury, Police Officers must photograph the woman both at the time of intervention and again after 48 hours to ensure that evidence of soft tissue damage, that may not be immediately apparent, is assessed.

Where allegations of counter assault occur, Police must investigate fully to determine the primary offender in order to distinguish between assault and self-protection. Because self-defensive action may not be recognized as such, Police must be directed, by written policy, not to lay charges against women who assert they have attempted to protect themselves pending a full investigation. Police training should include information to assist officers with determining the primary aggressor (Lavoie, p29), and Police should be directed to seek a Crown opinion before charges are laid against any other party (Schulman, 1997). Counter charges are rarely, if ever, required in cases of men's violence against women. In cases where a charged perpetrator insists that counter-charges be laid against the woman involved, the perpetrator should be directed to approach a Justice of the Peace.

After first contact with the woman, Police should contact appropriate services to ensure that the woman receives appropriate support from the earliest possible involvement with the criminal justice system.

Police must pursue the investigation in every case of domestic violence with a view to obtaining sufficient evidence to allow the case to proceed to conviction without the woman's testimony. This evidence includes:

1. Physical evidence such as physical trauma, torn clothing, broken furniture, damage to the dwelling, etc.
2. Findings of the Risk Indicator Tool.
3. Photographs of the crime scene including the woman's injuries, and damaged or destroyed property.
4. 911 audio tapes.
5. Answering machine tapes of the woman, accused, witnesses (calls to people other than the police).
6. Statements of the woman (including videotaped testimony where appropriate).
7. Statements of the accused.

8. Statements of any witnesses to the crime.
9. Statements of any witnesses to the injuries.
10. Statements of witnesses who were aware that violence was occurring.
11. Admissions of the accused of past or present occurrences.
12. A complete history of the accused's criminal and violent activities including emotional coercion and controlling behaviours.
13. Reports on previous breaches of court orders.
14. Data from CPIC and the IJS regarding past occurrences, calls and offences.
15. Hospital records, medical reports.
16. Utterances to police not captured in accused or witness statements and any and all other information that would alleviate the need for the woman to provide testimony.

Police should prepare summaries of the important evidence from their investigation through the use of a standardized protocol and the Risk Indicator Tool for the benefit of the Crown Attorney who will deal with the case in bail court. Police must provide the woman with a copy of any information and statements collected from the woman as soon as possible.

Monitoring

As men's violence against women within their intimate relationships usually involves recurring offences, it is important that the details of all calls to a police service be recorded (May/Illes Coroner's Inquest: Jury Verdict and Recommendations, 1998). All woman abuse complaints should be coded in such a manner that case trends and dispositions are retrievable through CPIC, and IJS. Police Officers who respond to domestic violence calls should input and access this information in every case.

It is imperative that governments work collaboratively to ensure that all police services in Canada have access to the Integrated Justice System.

Bail Hearings

Once arrested and charged, an offender should be held for a bail hearing before a Justice of the Peace or Provincial Court Judge. An intervention order should be considered in every case. Where there is a history of violence, either within the current relationship or elsewhere, where the woman expresses fears for her safety, or where there is a history of non-compliance with an order, the onus should be placed on the offender to demonstrate that he will not constitute a threat to the woman or children involved. Offenders who have engaged in any threatening or controlling behaviours after the incident should be remanded in custody until trial. If the offender is released on bail, the arresting officer should contact the woman immediately to inform the woman of the conditions of release.

A dedicated Police Officer at every bail court should be assigned to ensure the completeness of bail briefs which would include information about outstanding charges, warrants, past history of violence and convictions, current and past Risk Indicator Tool assessment findings and other relevant information including the woman's fear for her safety (Joint Committee on Domestic Violence, 1999).

A standardized bail opposition form would ensure the Courts consistently receive all relevant information and that the information is readily transferable and comprehended in every jurisdiction. A bail opposition form would include the likelihood of an accused failing to appear for trial or committing a further offence, the accused's criminal record, outstanding warrants, current court orders, whether the accused has a firearm or a Firearms License, an indication of the woman's fear for her safety, and a clear recommendation either for or against bail (Schulman, 1997).

Intervention Order

There is clear evidence from several sources, including the Coroner's Inquest into the deaths of Arlene May and Randy Iles (July, 1998), that intervention orders are ineffective for preventing further contact and are difficult to enforce for a variety of reasons. When a perpetrator is released on bail and believes he has every right and expectation to return to his home, even when an intervention order is issued, the results can be terrifying and confusing for the woman. However, there is no current provision or workable solution for the fact that many men do not have any place else to go but to their homes until trial. The current solution in such cases is to advise the woman to remove herself and her children from the home she shares with the perpetrator and go to a women's shelter. As well as placing the onus on the woman to respond to the actions of the perpetrator, the continued expectation that women and children are best protected by being, for all intents and purposes, incarcerated in response to men's violence works to reinforce the unequal standard in criminal law which presumes that the alleged perpetrator's right to a presumption of innocence is more important than the woman's right to liberty (Canadian Advisory Council on the Status of Women, 1989).

Studies have shown that women are at greatest risk of being murdered by men during the immediate period after an order has been served on the perpetrator (Joint Committee on Domestic Violence, 1999). Additionally, because these orders have not traditionally been enforced, women are at even further risk because they may experience the false sense of security associated with the belief that the criminal justice system has "done something" to protect them. Problems with intervention orders include the possibility that some orders are poorly worded or confusing, leading to conflicting interpretations. Worse, they can be contradictory. For example, orders which specify no contact between partners with an access order for the perpetrator to his children. This requires contact between the parents and places the woman and her children in danger by allowing the perpetrator to breach the conditions with impunity.

Women have indicated that this aspect of the system heightens their risk as intervention orders appear to offer little, if any, protection from harassment from the perpetrator after separation. As well as having difficulty obtaining orders, women are surprised to learn that perpetrators are not monitored in any way when released on bail. Additionally, the perpetrator's right to access to the children forces contact between the woman and the perpetrator, increasing her exposure

to his violent behaviour (Harris et al, 1999).

It is imperative that the appropriate government ministries in all jurisdictions undertake research to determine if intervention orders can be rendered effective through changes in policies and practices. Within the current system, information must be shared between criminal and family courts to ensure that custody and access decisions are made with all available pertinent information to determine the best interests of the children involved. Intervention orders should stand alone and take precedence over orders made in family court. Pursuant to the Family Law Act and the Children's Law Reform Act (Ontario), a breach of an intervention order is a serious affront to the administration of justice, and should be pursued through criminal court. Police should respond to reports of breaches of court orders as they would to any domestic violence call and Crowns should vigorously prosecute breaches of court ordered behaviour under the guidelines of the murder prevention protocol.

DOMESTIC VIOLENCE COURTS

Domestic Violence Courts such as Toronto's K Court (Old City Hall) were initiated to reduce the pressure on victims to testify in court and to improve conviction rates (Ontario Ministry of the Attorney General, 1997). The North York (Ontario) model was designed to provide intensive intervention to first time offenders through mandatory participation in a program for men who abuse women. According to interim evaluations, both the North York project and Toronto's Old City Hall have demonstrated some effectiveness in these areas (Alderson-Gill & Associates, Interim Evaluation, 1997).

Currently, there are 16 Domestic Violence Courts running in Ontario, with the announcement of 8 new sites to be roled out in the new fiscal year. However, there is little evidence available that demonstrates these courts are operating according to the originally proposed guidelines. In particular, some cases are not being heard by designated Judges nor handled by designated Crowns. Preliminary inquiries have revealed that a lack of sufficient resources is most often cited as the reason for this situation.

An ideal Domestic Violence Court would consist of specially trained Police Officers, Crown Attorneys, Judges, Justices of the Peace, court workers and women's advocates. A Domestic Violence Court would encompass the entire criminal justice process relating to domestic assault including a designated bail court. Police officers and crown attorneys would have a dual mandate in that they would be trained to utilize specialized investigative and prosecutorial techniques and to provide support, assistance and referrals to women who are utilizing the criminal justice system in response to men's violence. Specifically, Domestic Violence Court personnel would consult with and utilize the expertise of women's advocates. Trained Judges would hear cases. Trained Justices of the Peace would preside over bail hearings. Trained Probation and Parole Officers and staff from programs for men who abuse women would work closely with Domestic Violence Court personnel and women's advocates to ensure the safety of the women. Additionally, Domestic Violence Court personnel and women's advocates would work collaboratively to ensure that accountability mechanisms are accessible and effective. All of these sectors would participate in collaborative community efforts to end violence against women.

NOTE: It is important to recognize that, like others who work directly with women who have experienced men's violence in intimate relationships, Police, Crowns, Justices of the Peace, Judges and support staff who are designated to Domestic Violence Courts and similar situations, will require ongoing training and support. Ongoing, appropriate funding must be allocated for this purpose.

CROWN ATTORNEYS

Given the incidence of men's violence against women within their intimate relationships in Canada, the successful prosecution of such offences is invariably in the public interest.

Crown Attorneys are significant decision-makers in the criminal justice system and are pivotal to the effective prosecution of domestic violence cases (Joint Committee on Domestic Violence, 1999). Accordingly, it is crucial that Crown Attorneys receive comprehensive training, not only about the distinct dynamics of men's violence when committed within intimate relationships and the importance of the woman's safety in criminal proceedings, but also to demonstrate leadership on this issue as representatives of the state.

Case preparation should include:

1. Notification to Police Officers to attend the trial.
2. Statements of the woman and the accused.
3. Statements of corroborating witnesses.
4. Medical records.
5. Findings of the Risk Indicator Tool.
6. Data from CPIC and IJS regarding past occurrences, calls and offences.
7. Photographs of the crime scene.
8. Photographs of the woman's injuries.
9. Photographs of children, where appropriate.
10. A complete history of the defendant's violent behaviour and criminal activity including emotional coercion and controlling behaviours.
11. 911 audio tapes.
12. Copies of defendant's conditions of release and no-contact orders.
13. Information or access to expert testimony about the distinctive dynamics of men's violence in relationships.
14. The testimony of an expert witness on domestic violence when deemed necessary for conviction.
15. General information about the prevalence of men's violence against women in Canada and its related consequences for individual women and society as a whole.

Procedures to be Utilized by the Crown

NOTE: Many of the following procedures are consistent with the British Columbia Attorney General's Policy on Violence Against Women in Relationships, the recommendations of the Joint Committee on Domestic Violence in response to the recommendations of the Coroner's Inquest into the Deaths of Arlene May and Randy Iles and with the recommendations of the Manitoba Commission of Inquiry into the Deaths of Rhonda Lavoie and Roy Lavoie.

Crown Attorneys should treat each case of woman abuse/domestic violence as though it were attempted murder - in many cases, that is the intent of the violence (Durham Region Protocol, 1995).

- < Designated and trained Crown Attorneys should be assigned to prosecute cases of men's violence against women in relationships and should make every effort to maintain involvement in the case until its conclusion. If the woman consents, a support person, preferably a women's advocate, should be present.
- < All independent evidence should be carefully considered with a view to providing corroborating evidence and with a view to proceeding in the absence of the woman as a witness, particularly if there is a videotaped statement available to present to the court in her absence.
- < Where it is determined that the witness has been subjected to threats or interference, the matter should be referred back to Police to lay additional charges with particular reference to criminal harassment legislation.
- < Crown Attorneys should be sensitive to the needs of individuals from diverse communities and be aware of available accommodation procedures and support services including, but not limited to, Victim/Witness programs, cultural interpretation services and services for women with disabilities.

Case Preparation

In every case possible, the Crown Attorney should be prepared to proceed without the in-person testimony of the woman. In all cases, the testimony of the investigating officers is crucial and must be mandatory. Additionally, Crowns should contact an officer with knowledge of the case who should be required to attend the Crown interview with the woman. This is particularly important given the high rate of recantations in domestic violence cases (Joint Committee on Domestic Violence, 1999).

In the limited circumstances where proceeding is not possible due to insufficient evidence, the Crown should pursue the possibility of obtaining a videotaped statement from the woman with the provision that she is fully apprised of the process and consequences. In cases where a woman consents to having her statement videotaped, it should be prepared with the support of a women's advocate.

Videotaped Testimony

Videotaped statements and their consequences should be clearly explained to the woman in the presence of, and with the support of, a women's advocate. In particular, it must be made clear

to anyone who provides a videotaped statement that providing false testimony in any format can result in charges of perjury or obstruction of justice. Videotaped statements should not be used against a woman who has, for whatever reason, chosen to deny the veracity of the statement contained on the videotape. This practice makes her vulnerable to charges of perjury and again, blames the woman for the actions of the perpetrator. When a woman recants the contents of her videotaped statement, it is imperative that an investigation be initiated to determine whether she has been threatened, coerced or intimidated in any way. It is important to distinguish between the rare instance when a woman lies about a crime and when a woman feels she has no choice but to deny a crime in response to the threats of reprisal that have profound veracity in cases of domestic violence.

Videotaped statements should be considered in lieu of a woman's in-person testimony, when the investigation has not produced sufficient evidence to proceed without the woman's presence, and when there is clear indication that presentation of a videotaped statement in court would likely result in a guilty plea. Videotaped statements should be taped at the police station as soon as possible after the incident. Finally, it is crucial that the woman should have the final say as to the content of the videotape and participate in and consent to any editing that occurs or written summary of the tape that is produced (London Abused Women's Centre, 1998).

Expert Testimony

The use of expert testimony in domestic violence cases is relatively rare. Crown Attorneys should be encouraged to develop criteria for when and how to include expert testimony in all proceedings (bail, trial and sentencing), especially to address the potential "dangerousness" of the perpetrator, the dynamics that are distinctive to men's violence against women within their intimate relationships and why women may be compelled to recant their statements, particularly in cases where a woman has recanted or is likely to fail to appear (Joint Committee on Domestic Violence, 1999).

Preliminary Hearing

When the evidence available is indisputable and the Crown is prepared to proceed without the testimony of the woman, the offender may be advised by his attorney to enter a guilty plea. While eliminating potential hardship to the woman, and the additional expense of proceeding to trial, where a Crown's case is well prepared the value of a guilty plea should not result in a substantial discount or an opportunity for excessive leniency.

Plea bargains that result in a fine or a conditional discharge are rarely appropriate (Durham Region Protocol, 1995). However, Crown Attorneys may consider accepting a guilty plea to fewer or lesser charges when the offender has initiated participation in a recognized male abusers program and the program staff, as well as the woman and her advocate, are confident the offender will successfully complete it. Additionally, the offender must agree to a period of mandatory supervision and to adhere to the terms of an intervention order. It is imperative that an offender's participation in a male abusers program be accompanied by the offender's genuine and expressed desire to change his attitudes and behaviours.

Trial

The goal of a murder prevention protocol is to alleviate the need to go to trial in as many cases as possible. When a case proceeds to trial, it is imperative that women be supported by

advocates regardless of whether or not her testimony, either in person or on videotape, is utilized. Being prepared to proceed to trial without the woman's testimony (or presence, when a statement is videotaped) will alleviate the need for material witness warrants or contempt charges against the woman.

Sentencing

Sentencing in domestic violence cases must reflect the seriousness of the crime. Currently, sentences for offences involving domestic violence are inconsistent and frequently do little or nothing to make the offenders accountable for their actions (Schulman, 1997).

Since men's violence against women is a persistent problem in Canada, the goal of deterrent sentencing should be followed. When making submissions for sentencing, Crown Attorneys should reiterate the distinct dynamics present in cases of men's violence against women and the magnitude of the problem in Canada.

Crown Attorneys should seek appropriate conditions of probation including a no-contact order and reporting conditions. Additionally, a mandatory program for men who abuse women and a period of supervised probation is usually appropriate given the recurring nature of men's violence against women in relationships.

Where there are children involved, the no-contact order between the perpetrator and the woman must be respected by facilitating the perpetrator's access to children in a supervised setting to ensure the safety of both the woman and her children.

In order to ensure that due respect is given to the woman's sense of liberty and her ability to pursue her life unrestrained by the offender's current or future actions, the Crown should submit the information regarding the offender's abusive non-criminal behaviour that is relevant to sentencing, particularly when there is a history of violence that involves the controlling behaviours that are common to men's violence perpetrated against women within their intimate relationships.

Fines and conditional discharges should not be considered appropriate sentences in cases of men's violence against women within their intimate relationships. In all cases, a victim impact statement should be presented at sentencing.

Reference should be made to both the Canadian Charter of Rights and Freedoms and to the United Nations Declarations, to which Canada is a signatory, that describe the individual's right to safety and recognize the barrier to women's safety and liberty that is erected by men's violence.

Regardless of the results of the trial, the Crown Attorney prosecuting the case should explain the case outcome to the woman.

NOTE: If there are family court issues involved, information about the case, regardless of outcome, must be communicated to the family court. Access to children must be court-ordered and supervised until there is a clear indication that the offender's threat to the woman and children involved is trivial or non-existent.

JUDGES AND JUSTICES OF THE PEACE

Judges and Justices of the Peace should consider the submissions of the Crown regarding the distinctive dynamics of men's violence against women within their intimate relationships and the specific behaviour of the individuals whose case is before any court in the criminal justice system. In addition, Judges should give thoughtful consideration to the impact of men's violence in relationships on the individual women and children involved as well as the impact that the failure to respond vigorously to an individual case will have on other women who are victims who may be considering invoking the intervention of the criminal justice system.

Judges should participate in specific training on men's violence against women within their intimate relationships. Education and training on this issue may be best provided through the establishment of a Violence Against Women Institute with materials and programs developed specifically for Judges by women's advocates, others with specific expertise in this area, and criminal justice system personnel with training and experience in both civil and criminal responses to men's violence against women.

Newly appointed Judges and Justices of the Peace should receive training about domestic violence as part of their orientation.

Judges would benefit from the experience of local women's advocates in their jurisdictions by participating in coordinated community responses to this issue.

CORRECTIONS

Diversion is not appropriate for cases of men's violence against women in relationships, given the concern of past or further assaults on women.

Probation and Parole Officers should receive specific training regarding the distinct dynamics of men's violence against women within their intimate relationships. Both community and institutional corrections must establish protocols to ensure that the woman is informed of court orders, their contents and implications, and to ensure that the officers are fully apprised of the specific tactics used by an abuser to aim for continued safety of the women and children involved.

Probation and Parole Officers, in the course of their work, will need to establish contact with the offender's partner. The information provided by the woman can assist in enforcing conditions and thereby aid in the protection and safety of women and their children. Officers can support women by actively educating them about the role and process of probation or parole and assist with linking her to appropriate services.

Pre-Sentence Reports

The Probation or Parole Officer assigned to supervise a domestic violence offender should contact the woman during report preparation in a manner which does not compromise her safety. The Probation Officer should explain the function of a pre-sentence report, obtain relevant information about the relationship, the woman's experience of the offence and the extent of the

impact on her and others, and to discuss possible court recommendations vital for her safety. Risk assessment findings must be included in this report.

Post-Sentence Supervision

In all cases, the woman must be contacted prior to the development of the supervision plan in order to strive for her continued safety. The purpose of this contact is to gather information that may be beneficial to establishing a supervision plan that will aim to increase the safety of the woman and children involved for the duration of the probationary period. It is important that the woman have input into determining the offender's participation in a program for men who abuse women and participate in assessing the level of risk he poses to her and the children. The woman should be supplied with the Probation Officer's name and telephone number if she wishes to establish contact at any time during the probationary period. Where contact with the woman cannot be established, the Probation Officer must clearly document and explain the circumstances in the case notes.

Post-sentence supervision of an offender should be informed by the completion of an in-depth and comprehensive risk assessment which would contribute to decisions about the suitability of conjugal visits, family visits and temporary absences.

Women should be made aware that no specific information regarding the terms of the post-sentence supervision can be divulged by the Probation or Parole Officer in accordance with the Ontario Freedom of Information and Privacy Act. Officers should advise and discuss with each woman the confidentiality of the information she provides and the limits of confidentiality.

The Probation or Parole Officer is responsible for ensuring that offenders attend court-ordered programs. Where specific rehabilitation is not ordered, Probation and Parole Officers should work with the offender to identify and promote the necessity for participation in programs for specific concerns such as violence against women.

Although woman abuse and substance abuse frequently co-exist, substance abuse does not cause men's violence against women within their intimate relationships (National Clearinghouse on Family Violence, 1994). However, studies have shown that substance abuse can exacerbate the intended outcomes of men's abuse programs (Addiction Research Foundation, 1989). When there is an indication that the perpetrator abuses a substance, it is important to ensure that substance abuse is recognized as a distinct problem and that both problems are addressed (National Clearinghouse on Family Violence, 1994).

The goal of enforcement is to ensure the offender is held accountable for his actions and works toward correcting the abusive behaviour. Enforcement includes increased supervision, warnings, criminal charges and revoking the probation order. It is important that Officers discuss the enforcement actions with the woman prior to choosing an enforcement option.

Breaches of Conditions

A breach of conditions of an offender's interim release or probation increases the risk to the woman and children involved. Crown Attorneys must prosecute breach charges vigorously so that offenders take them seriously. Penalties imposed on offenders who breach their conditions should reflect the danger to the woman and children involved and the affront to the criminal

justice system that breaches of conditions demonstrates.

Parole Board

When the parole board receives an application for parole, the board should seriously consider the circumstances of the offence and the impact on the woman. In all cases of domestic violence/woman abuse, the parole board should automatically review the woman's original victim impact statement. The parole board should inform the woman in writing of the impending hearing and advise her of her right to submit a victim impact statement which includes the risk or danger to her.

It is imperative that the abused woman be informed of the offender's conditions of probation or parole and that she be encouraged to contact the Probation or Parole Officer at any time if she is aware that the offender has broken any of the conditions of probation or parole. Probation and Parole Officers should contact the woman as soon as possible and work to establish the belief that her right to safety will be upheld.

VICTIM/WITNESS SERVICES

Victim/Witness Assistance Programmes provide information about legal issues, court procedures and practices, and referrals to appropriate services for victims/witnesses. Accordingly, victim/witness services should be available in all jurisdictions and staff should be specially trained to provide information, advocacy and appropriate referrals for abused women whose cases are being heard in Domestic Violence Courts.

Since women who have experienced men's violence within their intimate relationships may be subject to a myriad of abusive tactics by the perpetrator, including threats and mis-information about the criminal justice system, victim/witness personnel should be fully trained about the distinct dynamics of men's violence against women in relationships. Moreover, all personnel should be fully informed about services available to abused women outside of the criminal justice system. Abused women should be actively referred to women's advocates for ongoing support. It is vital that victim/witness services and community-based services for women work collaboratively to provide comprehensive information and support about criminal proceedings and community services that respond to men's violence.

Victim Impact Statements

Victim Impact Statements provide meaningful information to Judges for determining offender sentences. These are usually prepared with the assistance of victim/witness programs, where they exist. Given the often horrendous nature of men's violence, and its impact on women and children, a woman should be permitted to choose the assistance of a women's advocate outside of the victim/witness office to prepare a victim impact statement.

PROGRAMS FOR MEN WHO ABUSE

Programs for men who abuse women are interventions designed to respond to men's violence against women in intimate relationships. These are now mandated as an integral aspect of the

criminal justice system's response to men's violence through some domestic violence court project models (North York Project, 1997). However, there seems to be considerable inconsistency in philosophy, approach and method in these programs and even less agreement among experts and advocates about their effectiveness. Not only is the evaluation data on program efficacy relatively limited, but the debate as to whether or not they work has been exacerbated by continuing disagreements about what constitutes success for these programs (Edelson, 1991).

Generally, programs that aim to change men's violent behaviour against women perpetrated in intimate relationships tend to presume that anger is the cause of men's violence against women. However, it has been demonstrated that it is not anger which either motivates or causes men to be violent, but rather their perceived need for power and control. Programs which operate on the premise that anger is the cause for men's violence focus on strategies that aim to control anger and assume success when men who complete the program no longer engage in activity which violates the criminal code. While anger management programs may assist a man to develop skills for controlling his anger, it will not teach him to be respectful, empathetic or insightful. Anger management programs obscure the root causes of violence against women and rarely include critical examinations of violence, masculinity, cultural domination, male privilege or misogyny (Women's Issues and Social Empowerment, 1991).

Conversely, some men's programs theorize that men's violence against women within their intimate relationships is caused by men's low self-esteem. However, if low self-esteem were the underlying cause of violence, one would suspect that women would be the primary perpetrators. Even if we accept that women and men express their insecurities differently, there is no evidence that increasing a man's self-esteem will lead him to be less violent (Connell, 1995).

Some male abuse programs have integrated a gender-analysis into its programs. While this is a step in the right direction, gender-analysis must do more than merely suggest that there are costs to rigid gender roles for men. Reassigning gender traits is a meaningless exercise if programs operate without the premise that societal defined masculinity generates and reinforces inequality based on gender, and consequently, men's violence against women (Connell, 1995).

Moreover, the promotion of treatment programs over more traditional criminal justice system responses may result in fostering the notion that perpetrators of violence against women within their intimate relationships are mentally ill and in need of treatment rather than in need of punishment. Formal evaluations of existing programs must be completed before any decision is made to expand programs.

To further complicate matters, Correctional Services of Canada conducted a study which indicated that 83% of men incarcerated in the federal system for a variety of crimes were also violent towards their partners (Gough et al, Correctional Service of Canada, 1994). While further research is required to determine if this is the case for provincially sentenced inmates and to investigate the preventative value of pro-active anti-violence programs in prisons, this may indicate that "either/or" debates about jail vs treatment programs should be set aside in favour of responses that address both the criminal nature of men's violence against women within their intimate relationships and the possibility of changing attitudes and behaviours through educational initiatives.

The criminalization of domestic violence and the institution of mandatory charge policies are relatively recent in the history of men's violence against women. Since that time, relatively few studies have been conducted on recidivism rates in relation to sentencing. In fact, there is no available research on the impact of sentencing as a deterrent, and little can be expected while courts continue to fail to apply the full weight of the law in these cases. Most available information indicates that level one assault rarely results in jail time, that many cases are stayed and, as in the case of Arlene May and Randy Iles, successive charges resulted in fewer sanctions. Men, whose violence against women within their intimate relationships has brought them to attention of the criminal justice system, must be held accountable for these criminal actions and should be penalized accordingly. The decrease in drunk driving has been significant since the introduction of strict penalties for breaking this law. Harsh sentences may act as a deterrent in domestic violence cases but it is unlikely that this can be ascertained given current sentencing practices. Finally, the field of intervention with men who abuse women is in its infancy (Joint Committee on Domestic Violence, 1999). That is why it is crucial not to limit research into effective responses to treatment programs alone.

Regardless of the outcome of research, accountability principles developed by women's advocates and services should play a direct function in the development and provision of services for all programs for men who abuse (Woman Abuse Council of Toronto, 1997) regardless of their location. Because the success of men's programs is most often measured through program contact with abused women, men's anti-abusing programs should ideally be operated by women's advocates to ensure that the safety of women and their children remains the first priority of intervention with an abuser (Burkell, Gough et al, 1996).

Marriage Counselling

Conflict resolution or marriage counselling is never an appropriate recommendation when a man is perpetrating violence against a woman in an intimate relationship, even if she has developed self-defence or retaliation strategies. Moreover, conflict resolution models presume relative equality between parties and that each is in a position to negotiate with some leverage. This is simply not the case. When men use violence against women in relationships, it is an enactment of power and control that is deliberately used to establish dominance, making fair and equitable negotiation impossible. Similarly, marriage counselling presumes that the culpability for problems within marriages is more or less equally distributed between the partners. Furthermore, they often operate on the premise that keeping the marriage together is the most laudable goal - even though it has been clearly demonstrated that these situations are highly dangerous for women (Canadian Panel on Violence Against Women, 1993).

Chapter Two: The Context of Men's Violence Against Women Within Their Intimate Relationships

According to recent findings, one in five men admitted to being violent towards their female intimate partners (Canadian Panel on Violence Against Women, 1993). Men's violence against women is both a product and a cause of societal inequality based on gender. To some degree, violence against women is condoned, excused and glorified in our society. Men's violence against women, and others with less power, is a primary obstacle to societal equality (Economic and Social Council, 1992). A gender-based analysis of violence is crucial for understanding that violence is gender-biased, the perpetrators are usually men (Statistics Canada, 1998) and the violence is used by men as a form of social control over women (Canadian Panel on Violence Against Women, 1993).

In a society whose very structure condones men's violence, all men - whether violent or not - derive substantial benefit from its institutionalization (Canadian Panel on Violence Against Women, 1993). All women pay the price of male violence. While not every woman has directly experienced violence, there are few who do not fear it and whose lives are not in some way affected and restricted by its pervasive presence (Hart, 1988).

Persistent societal inequality based on gender - exacerbated by tenacious and detrimental sexist and misogynist stereotypes and beliefs - underlie every violent man's rationalization for using violence against a woman. Accordingly, some men determine that it is one of the most effective means of ensuring the preservation of their birthright as men, to have control, especially of others (Stoltenberg, 1996). Ironically, the most tenacious sexist stereotype, and one that is rarely acknowledged or challenged, is that men are naturally and inevitably violent. As a result of this belief, society teaches that women must expect some men to commit violence and, consequently, women must take measures to protect themselves from it. This precept allows women to be blamed for failing to anticipate men's violence and then for failing to respond to it appropriately. However, violence is not natural or inevitable. It is a learned behaviour (Bandura, 1973; Dutton, 1988), and is always the result of a choice.

Men are generally socialized to believe that the most important measure of masculinity is the ability to be in control. This is demonstrated and reinforced through society's main socializing domains, the family, school, work, peers and the media. All of these work to sanction and justify men's violence against women in intimate relationships. Men learn about violence everywhere, from school yard bullies to action film heroes, from organized sports to pornography - and what they learn is that the use of violence is an incontrovertible way to prove manhood. Coupled with the fact that violence is a socially sanctioned means of maintaining control, it should be of no surprise that men utilize it where it has been most condoned - in their intimate relationships. As long as these messages are generated and reinforced through society's socializing domains, women will continue to be targets for men's violence (Connell, 1995).

Men and women are socialized by the same forces. The cultural practices that sanctions, condones and glorifies men's violence against women have been accepted by some women, too. However, this does not mean that women permit, enjoy or excuse the violence. The argument that these are the reasons women remain in intimate relationships with abusive men works to

reinforce both acceptance of men's violence and societal inaction on this issue.

Men use violence because they know it works - it is advanced in every aspect of our social world as the most effective method of obtaining and maintaining power and control (Connell, 1995).

VIOLENT MEN'S BELIEFS ABOUT WOMEN

Generally speaking, violent men justify their violence and abuse of women by evoking excuses that refer to her behaviour as causes for their violence. Violent men use these as reasons why women are to blame for the abuse men inflict on women in relationships.

These beliefs include that women are supposed to be:

- < **obedient** - "she doesn't do what she's told"
- < **nurturing** - "she doesn't care about my needs"
- < **faithful** - "she's always flirting with someone else"
- < **acquiescent** - "she's always bitching at me"
- < **deferential** - "she's always arguing with me"
- < **responsible for the household** - "the house is a mess"
- < **responsible for the children** - "she's a bad mother"
- < **sexually available** - "she doesn't make an effort to please me"

All of these beliefs focus on men's perceptions of women's behaviour and assign no responsibility to the violent men for their actions. There is no acceptable justification for the use of violence under these or any circumstances. Men's excuses for violence are just that because they usually emerge after they have perpetrated violence against women. These excuses work to obscure men's intentions that - regardless of men's perceptions of the problems in the relationship - they have chosen to use violence as a method of gaining power and control over their intimate partner (Adapted from "Domestic Violence for Beginners," Alsia Deltufo, New York Writers, 1995).

When we scrutinize women's behaviour in response to men's violence, we reinforce the dangerous stereotype that women are individually responsible for provoking and tolerating men's violence and we diminish both the perpetrator's and the state's responsibility for stopping it.

ABUSE IN INTIMATE RELATIONSHIPS

Woman abuse in adult relationships is generally defined as: The intentional use of tactics to establish and maintain power and control over the thoughts, beliefs and conduct of a woman. The tactics can include, but are not limited to, the examples below.

Using Isolation:

- controlling what she does, who she sees and talks to, where she goes, limiting her outside involvement
- using jealousy to justify actions
- sabotaging of friendships, new relationships

Using Emotional Abuse:

- putting her down, calling her names, making her feel badly about herself
- playing mind games, making her think she is crazy
- humiliated her in front of friends and/or co-workers

Using Children:

- using visitation (access) to harass her
- using children to relay messages telling them bad things about her
- threatening to take children away
- making her feel badly about her parenting

Using Intimidation Coercion & Threats:

- making her afraid by using looks, actions, gestures
- smashing things
- threatening to report her to welfare, immigration, etc.
- purchasing or displaying weapons
- abusing pets or destroying cherished items

Minimizing, Denying & Blaming:

- making light of the abuse
- saying the abuse didn't happen
- saying the woman caused the abuse
- blaming stress as the problem

Physical Abuse:

- hitting, slapping, punching, biting, kicking, pushing or harming woman in any way
- confining, holding or preventing woman from leaving
- withholding/preventing a woman's access to physical care, food or medication

Using Social Status & Privilege:

- reinforcing control over her by the use of gender, race, class, sexual orientation, immigration status, age, occupation, wealth, physical or developmental ability
- using institutions to reinforce power or privilege

Using Economic Abuse:

- preventing her from getting or keeping a job
- taking her money
- making her ask for money or an “allowance”
- not allowing her to participate in financial decision making

Sexual Abuse:

- any sexual activity that is unwanted or coerced
- sexual name calling or accusations
- uninformed sexual activity, i.e. non-disclosure of STD/HIV status
- forced pregnancy or termination of pregnancy

COMMON MISCONCEPTIONS ABOUT WOMAN ABUSE

Myths and stereotypes about woman abuse often isolate abused women and prevent them from accessing and receiving appropriate services.

MISCONCEPTION: *Is woman abuse a private family matter?*

FACT: Woman abuse is not a private family matter. Woman abuse is a widespread societal problem that has devastating effects for individual victims, their children and their communities (National Clearinghouse on Family Violence). Further, some of the tactics of woman abuse including physical and sexual abuse, threats, harassment, and stalking are criminal offences and therefore not a private matter. Keeping woman abuse private only serves to support the perpetrator of abuse and does not protect the women and children who are subjected to it.

MISCONCEPTION: *Is woman abuse a new problem?*

FACT: Woman abuse is a chosen act against a chosen victim. The abuser intends to seek compliance from or control over the victim. It is an act which has been condoned by society for centuries. In 18th century England, laws gave husbands the right to “discipline” their wives. One law, the Rule of Thumb, gave men the right to whip their wives with a switch no thicker than their thumb. Also, until 1965, in Canada, a husband would not be charged with assaulting his partner unless the woman could prove sufficient bodily harm (Dobash and Dobash, 1979). Moreover, it was not until 1985 that a man could be charged with sexually assaulting his wife. The historical unequal power relations between men and women have led to domination over and discrimination against women by men.

MISCONCEPTION: *Does woman abuse only happen to poor or uneducated women?*

FACT: Women from all ages, socioeconomic, ethnic, cultural, educational, occupational and religious groups are abused. Perpetrators of woman abuse can be found in all age, cultural, socioeconomic, educational occupational and religious groups.

MISCONCEPTION: *Is woman abuse a rare occurrence inflicted upon only a few women?*

FACT: Woman abuse is often referred to as an epidemic in our society. In 1993, Statistics Canada found that 3 in 10 married or common-law women reported experiencing abuse where criminal charges were warranted. These statistics do not include women in dating relationships and non-criminal behaviour such as emotional abuse or using isolation. Between 1974 and 1993, the number of Canadian women murdered by their partners has been approximately 78 women per year.

MISCONCEPTION: *Is a “Domestic Dispute” a dispute/argument which has gone too far?*

FACT: Woman abuse is not a dispute which has become out of hand. It is the intentional action of one individual to gain and maintain power and control over another. It is

about gaining control over an individual, not losing one's control. Abusers are making choices about their actions even when they are claiming that they "lost it" or were "out of control." Many women at the London Abused Women's Centre report that if the abuser gets angry in the grocery store, the abusive partner waits until they are home before abusing her. Also, women report that when the abusive partner smashes things in the home, it is usually something belonging to her, rather than the abuser. These are two examples that show the intentionality and decision-making of abuse and not the escalation of anger and out of control behaviour.

MISCONCEPTION: *Can an incident of woman abuse be a minor, isolated incident?*

FACT: Woman abuse is rarely an isolated incident but rather a repeated pattern of tactics used to gain and maintain power and control over a woman. Woman abuse includes a wide range of coercive tactics that can include physical, sexual and emotional abuse as well as threats, intimidating, and use of the children. Abused women report that often the tactics of control increase in severity over time. Woman abuse causes serious and sometimes permanent injuries including death. Emotional abuse can also be as debilitating as physical abuse and as psychologically damaging as other types of abuse (World Bank, 1996).

MISCONCEPTION: *Do women provoke abuse in most cases?*

FACT: No one deserves to be abused. Provocation is an excuse that places responsibility and blame for violence on the victim rather than on the perpetrator. This misconception fails to hold abusers responsible and accountable for their own actions. It also clearly fails to protect the victim. Clients of the London Abused Women's Centre identify that they often deliberately alter their own behaviours, choices or decisions, in order to avoid negative reprisals from their abusive partners.

MISCONCEPTION: *Are abusers sick or mentally ill?*

FACT: Woman abuse is too widespread to be explained by mental illness. It is a learned behaviour that is intentional. It is also observed and reinforced in society. Woman abuse is not caused by genetics or illness (Bandura, 1973; Dutton, 1988). The socially sanctioned belief that men have the right to control women in relationships and the right to use force to ensure that control is reinforced by society's major institutions such as, social, legal, religious, educational, mental health, medical, entertainment/media, and the family (Ganely 1989). These institutions facilitate the use of violence as a legitimate means of controlling women.

MISCONCEPTION: *Do drugs or alcohol cause abuse?*

FACT: While it is sometimes true that abusers may be under the influence of drugs or alcohol during abusive incidents and that these substances may contribute to the severity of the abuse, drugs and alcohol do not cause the abuse (Rodgers, 1994).

Abused women often say that their partners are also abusive when sober. Stopping the substance abuse will not end the violence. Both issues must be addressed.

MISCONCEPTION: *Is woman abuse really spousal abuse? Both partners can be abusive.*

FACT: Some people suggest that woman abuse is really spousal abuse because both parties have been abusive. Careful assessment must be undertaken in these situations to determine who is the primary aggressor and who is the victim. Often this assessment will reveal that one person starts the violence while the victim's violence is used in self-defence. To help assess this situation, two good questions to ask are: "Who is afraid of the other?" And "Who changes their behaviour for fear of negative reprisals?"

MISCONCEPTION: *Does witnessing woman abuse harm children?*

FACT: Yes. Studies have shown that children often experience symptoms associated with witnessing woman abuse such as nightmares, flashbacks, anxiety and fear. Children who witness or who are exposed to woman abuse are also at greater risk for behavioural problems such as outbursts of anger and aggression and conflict with the law. In fact, the level of emotional and behavioural problems found in children who witness or are exposed to woman abuse is similar to that of children who are themselves directly physically abused (Hughes, 1988; Jaffe et al, 1985).

MISCONCEPTION: *Do women stay because they like the abuse?*

FACT: There are many very real reasons why women stay. The primary reason given by victims for staying with their abusive partner is fear of escalating violence and the lack of real options to be safe with their children. The fear of violence is realistic. Abusers will often threaten the woman's safety or that of her family's if she leaves the relationship. Strong societal and cultural messages create barriers for women who seek safety for themselves and their children. Some of these messages include "you made your bed, now lie in it," "it is a woman's responsibility to make a marriage work," and "children need two parents in the home." Statistics also show that 70% of women who do leave an abusive relationship experience an escalation in abuse, sometimes resulting in serious injuries or death (Wilson and Daly, 1994).

(London Abused Women's Centre, 1998)

EXCUSES USED BY MEN WHO ARE VIOLENT TOWARDS WOMEN IN INTIMATE RELATIONSHIPS

When we scrutinize women's behaviour in response to men's violence, we reinforce the dangerous stereotype that men are naturally and inevitably violent and we diminish the seriousness of their criminal actions.

PROVOCATION:

The most common excuse that men use to explain their violence towards women in relationships is provocation. Acceptance of this excuse proclaims that men can be understandably and righteously provoked into using violence in response to women's behaviour. This excuse rests on the conclusion that men do not have the ability to control themselves in certain situations and that there is some behaviour that, when enacted by women, deserves a violent response. In fact, abusive men often demonstrate their self-control by appearing to be polite and accommodating when Police arrive, only to continue to abuse their partner when the Police leave the scene.

STRESS:

Another common excuse is stress, usually the result of work pressures. This excuse also rests on the false assumption that violence is a natural outlet for men and that we can't realistically expect any other reaction from them.

ALCOHOL:

Violent men often blame alcohol for their violence against women and, at first glance, it may appear that alcohol plays a role in causing violent behaviour. While alcohol may often be present when violence is enacted, it is not the alcohol which causes it (National Clearinghouse on Family Violence, 1993). Alcohol may lessen the inhibition to use violence but the acceptance of violence as a means of exercising control is invariably perceived to be permissible to the perpetrator - even when the perpetrator is sober.

VIOLENCE IN THE FAMILY OF ORIGIN:

Violence is learned behaviour and because the family is one of the main socializing domains, at first there appears to be validity to the argument that perpetrators are simply enacting what they learned as children. However, many people have lived through personal experiences of violence and many do not perpetrate violence as a response. Even though studies suggest that male children who are exposed to woman abuse are more likely to become abusive adults, it is crucial to recognize that men's violence against women is perpetrated in a social context that allows it to some degree and that the use of violence is always a choice.

THE PSYCHOLOGY OF WOMEN:

Men who use violence also tend to utilize and reiterate some psychological theories which are manifest in various forms in popular culture that claim to explain women's behaviour. Many of these theories, such as co-dependency, work to reinforce the belief that women behave in ways that permit men's violence against them. They do not take into account that men who seek to exercise power and control through violence also seek access to women and opportunities to use violence.

THE SOCIAL ROLES OF WOMEN:

Men who use violence against women generally subscribe to rigid gender roles and the belief in male superiority and privilege. These men tend to seek women whom they perceive will assume the duties and responsibilities of wife, partner and mother as traditionally rendered. As well as absolving the perpetrator of responsibility for his actions, this excuse often exacerbates woman-blaming by incriminating women as wives and partners who fail to obey their husbands and partners, and as mothers who fail to protect their children. Interestingly, there is very little discussion about men's social responsibility or expectations of men as husbands, partners and fathers used to challenge men's violence against women in relationships.

(Adapted from "Common Misconceptions About Woman Abuse,"
London Abused Women's Centre, 1998)

Chapter Three: Men's Violence Against Women and Its Impact on Children Who Witness

EFFECTS ON CHILDREN WHO ARE EXPOSED TO VIOLENCE AGAINST WOMEN

The detrimental effects on children who are exposed to violence in their home are of grave concern. It has been established that children who witness the violent behaviour of either their father or their mother's partner toward their mother are emotionally abused. Moreover, 30 to 40 percent of children who witness woman abuse experience direct physical abuse themselves. Further, there is overwhelming evidence that children, especially boys, who are exposed to men's violence against women in their families are more likely to abuse women within their intimate relationships as adults (Jaffe et al, 1990).

When the legal system and Police effectively protect women and their children, the trauma for children is lessened. Appropriate penalties for domestic violence will directly affect the children's safety, sense of security and adjustment after abuse (Health Canada, 1996). Current issues include effective and easily obtained no-contact orders, possession of the matrimonial home with the perpetrator removed and the strict enforcement of probation conditions and criminal harassment laws.

To work towards minimizing the effects of exposing children to violence, the Divorce Act should be amended to stipulate that men who have been convicted of violence against their intimate partners should not be awarded sole, shared or joint custody of the children involved. Supervised access programs should be considered the most appropriate means for perpetrators to maintain a relationship with their children until it can be established that the risk posed to both the woman and the children involved is trivial or non-existent.

Additionally, the provincial Children's Law Reform Act, and like legislation, should be amended to include a definition of domestic violence, a definition and description of the detrimental effects on children of exposure to violence, consistent standards making it clear that perpetration of domestic violence is relevant to a person's ability to parent and should be considered in determining the "best interests of the child" (Section 24). When a parent has been convicted of criminal charges in relation to his violence, custody should not be an option and access must be supervised.

Furthermore, men who are convicted of violence against women in a relationship where children are exposed to the violence should have their names placed on the Child Abuse Registry. This provision would formalize the universally recognized harm to children that exposure to domestic violence inflicts and would allow women to have access to a source of information which may assist her in determining the safety of potential intimate partners.

For further discussion on this issue, please see attached:

- The London Coordinating Committee to End Woman Abuse Submission to the Special Joint Committee on Child Custody and Access, April 1, 1998 and the Joint Committee on Domestic Violence, 1999 (pg. 34); and,
- London Coordinating Committee to End Woman Abuse Submission to IER Planning, Research and Management Services, Federal/Provincial/ Territorial Consultation Re: Custody, Access and Child Support in Canada (pg. 38).

THE LONDON COORDINATING COMMITTEE TO END WOMAN ABUSE SUBMISSION TO THE SPECIAL JOINT COMMITTEE ON CUSTODY AND ACCESS

BACKGROUND:

The London Coordinating Committee to End Woman Abuse (LCCEWA) supports the mandate of the Special Joint Committee on Child Custody and Access to examine and analyse issues relating to custody and access arrangements after separation and divorce, and in particular, to assess the need for a more child-centred approach to family law policies and practices that would emphasize joint parental responsibilities and child-focused parenting arrangements based on children's needs and best interests. The LCCEWA supports **a child-centred approach to family law policies and practices that specifically acknowledge the significance of woman abuse to custody and access issues.**

LCCEWA believes strongly that it is in the best interests and needs of children that any changes in legislation or policy include an analysis on the impact of violence against women and children. Women and children have the right to live free from abuse. Violence against women and children in custody and access cases is not an exception and must not be ignored. In fact, the LCCEWA contends that legislation should be drafted to better protect abused women and their children. The LCCEWA further believes that subsequent legislation and policy making should specifically acknowledge the significance of woman abuse to custody and access issues so that legislation and policy will NOT expose women and children to continued violence. In keeping with this initiative, the London Coordinating Committee to End Woman Abuse is submitting the following report and recommendations.

The LCCEWA was established in 1980 and is a network of organizations, groups and individuals in London dedicated to ending woman abuse. Membership is drawn from people involved in the justice, health, education and social service fields. While members of the LCCEWA bring different perspectives, the goal is common:

To end woman abuse through leadership and actions that achieve:

- social justice for women
- an integrated response to abused women and their children.

(See Appendix A for the LCCEWA belief statements and Appendix B for the composition of the LCCEWA).

INTRODUCTION

In 1993, the Canadian Panel on Violence Against Women reported that:

“Each day Canadian women are maligned, humiliated, shunned, screamed at, pushed, kicked, punched, assaulted, beaten, raped, physically disfigured, tortured, threatened with weapons and murdered. Some women are indeed more vulnerable than others, but all women, simply by virtue of their gender, are potential victims of violence. Moreover, the violence is often directed at them by those whom they have been encouraged to trust, those whom they are taught to respect, those whom they love. Violence against women cuts across all racial, social, cultural, economic, political and religious spectrums” (1993, pg.5).

In 1993, Statistics Canada conducted a national survey on behalf of Health Canada, on men's violence against women. The results of the survey suggest that violence against women is widespread and has serious consequences for the victims. The survey results state that twenty-five percent of all women have experienced physical or sexual violence at the hands of a marital partner (marital partners include common-law relationships). Additionally, one in five violent incidents reported to this survey were serious enough to result in physical injury. Tragically, the number of Canadian women murdered by their partners has remained relatively stable between 1974 and 1993 at an average of 78 per year (Johnson, 1996 cited in Status of Women Canada, 1998). Violence against women is a serious issue deserving of national concern and action.

Children of abused women are also negatively impacted as a result of the atrocity of woman abuse. There is a growing body of clinical experience and research that suggests that children who witness woman abuse suffer emotional trauma from that experience. Studies find that children who witness domestic violence exhibit more aggressive and antisocial, as well as, fearful and inhibited behaviours (Jaffe et al., 1986). Children are also at great risk of physical harm in families with domestic violence. In a survey of over 6,000 American families (Straus and Gelles, 1990), the researchers found that 50% of the men who frequently abused their wives also frequently abused their children. In addition, studies show that there is a greater likelihood of becoming involved in abusive situations as adults – boys as abusive partners and girls as abused women (Davidson, 1995). There is however evidence that for most children there will be substantial improvements in behaviour and emotional state if the child ceases to live with the abusive parent, and that therapy for the child is often helpful. (Mertin, 1995).

RELEVANCE OF WOMAN ABUSE FOR THE SPECIAL JOINT COMMITTEE ON CHILD CUSTODY AND ACCESS

The context of woman abuse is crucial and should be of particular interest to the Special Joint Committee on Child Custody and Access. For many abused women and their children there are dangers specific to the time of separation and divorce and dangers specific to custody and access issues that family law policies and practices should address:

1. Increased danger at time of separation:

In woman abuse situations, the time of separation is particularly dangerous. As part of the abusers' pattern of control and domination, their victims have usually been told for years that if they ever dare to leave, they, their children, or their families will be seriously hurt or killed (Browne, 1987). The resulting fear for the woman is well founded, Browne and Williams (1989) report that when an abuse victim takes the first steps toward freedoms, the abuse frequently escalates to deadly intensity. An abused woman may be most at risk of femicide when she leaves or when it becomes clear to her spouse that she will be leaving for good (Hart, 1988).

Abusers also murder, or attempt to murder, their own children for revenge when victims try to get away (Brodeur, 1987: Johnson & Spano, 1987).

2. Prevalence of woman abuse in custody and access disputes:

Violence does not end with separation. Many professionals working with women in abusive situations wrongly believe that when women leave abusive relationships, the violence ends. It is essential to recognize that custody and access disputes often become an extension of the abuse, continuing long after the couple has separated (Taylor, G., Barnsley, J. & Goldsmith, P., 1996).

Many women fear losing their children, as many abusers have threatened to take away the children and prove them to be unfit mothers. These fears are well-founded. Many American states have conducted studies finding that the courts treat women's custody claims far less favourably than men's (Abrams and Greany, 1989).

The general literature on the impact of divorce stressed the negative impact of conflict on children and the positive impact of a co-parenting relationship where the children maintain an ongoing, supportive relationship with both parents (Wallerstein and Kelly (1980). It is important to note however, that court-ordered joint custody, against the wishes of one parent and particularly in abusive relationships, is opposed by the same author (Wallerstein,1988).

Liss and Stahly (1993), found that abusive fathers are far more likely to fight for custody and not pay child or spousal support than are non-abusive fathers. In addition, Geffner & Pagelow (1990) report that recent trends in the courts, especially those regarding joint custody and mediation, may benefit abusive spouses who want to maintain domination and control of their wives seeking escape.

At the present time, the Canadian family law systems do not adequately deal with custody and access disputes. Canadian custody and access statutes (with the exception of Newfoundland) make no specific reference to violence as a factor to be considered in determining custody and access arrangements (Status of Women Canada, 1998). Continuing to award custody and access rights to abusive men jeopardizes the safety of, and sometimes the lives of, women and children.

The Federal government must take an active role in ending violence against women and children in the family law systems. It is a testament to the many abused women and their children,

advocates and concerned citizens that some changes have been occurring. This committee has an opportunity to make a difference in the lives of the many Canadian women and children who are abused by their husbands/partners/fathers. It is imperative that in addressing change in Canadian family law and policy that you specifically acknowledge the significance of woman abuse to custody and access issues.

RECOMMENDATIONS FOR LEGISLATION AND POLICY REFORMS OF CUSTODY & ACCESS LAWS IN CANADA

RECOMMENDATION #1:

Legislation and policy reforms of custody and access law in Canada should specifically acknowledge the significance of woman abuse to custody and access issues.

The London Coordinating Committee to End Woman Abuse (LCCEWA) supports the recommendation that “all Canadian jurisdictions should enact statutes that specifically recognize the significance of domestic violence for all child-related proceedings, as has occurred in Newfoundland, most American states, Australia, New Zealand and England and Wales” (Status of Women Canada, 1998). The LCCEWA further agrees that the enactment of such legislation would clarify the law, and facilitate the education of Judges, Lawyers and other professionals, as well as the public. Such legislation would also have important educational and psychological value for victims of domestic violence, and may hopefully deter abusive behaviour by the perpetrators of domestic violence.

RECOMMENDATION #2:

All legislation and policy reforms for custody and access law in Canada should be founded on a common, comprehensive definition of woman abuse.

Currently, there are many differing discourses regarding woman abuse. Critical to creating effective legislation and policy reform for custody and access law is the articulation of a national definition of abuse that is based on a comprehensive understanding of the complexities of woman abuse and child abuse. This is paramount given that the ideology used to define woman abuse informs the conceptualization of the cause, the myths, and in turn, directly influences interventions and solutions.

RECOMMENDATION #3:

There should be a presumption that custody should not be awarded to the perpetrators of woman abuse.

The LCCEWA believes that it is not in the “best interests” of a child to be placed in the custody of a parent who has perpetrated acts of abuse against the child or a parent of the child. The LCCEWA supports the Status of Women Canada’s recommendation that as in New Zealand and some American States, there should be a statutory presumption that it is not in the “best interests” of a child to be placed in the custody of a parent who has perpetrated acts of domestic

violence against the child or a parent of the child (1998). The LCCEWA agrees further that the presumption against placing a child in the custody of a parent with a history of domestic violence should be rebuttable, in particular, if that person has been the primary caregiver of the child and does not pose a risk to the safety of the child; this presumption might, for example, be rebutted in some of the relatively rare cases where a primary caregiver mother is the primary aggressor spouse. For example, women who have been subjected to years of abuse by their partners and have been charged and convicted of crimes of violence against their partners should have the opportunity to rebut the presumption. This would be especially important in the cases where women have been the primary care-giver and have participated in counselling and education.

RECOMMENDATION #4:

There should be a presumption against joint custody in cases of woman abuse.

Joint custody is not in the “best interests” of a child when there has been a history of woman abuse. Joint custody guarantees continued contact between the abuser and his victim perpetuating the possibility of ongoing abuse and thus, jeopardizing the safety of the non-offending parent and child. Polikoff, (1987) reports that joint custody works best when both parents respect each other and can cooperate about decisions concerning the child. When one parent abuses or tries to control the other parent or child however, joint custody, whether physical or legal, is unlikely to work and may endanger the abused parent and any children in the family. Research shows that some children in these types of families fare better when sole custody is awarded, even when there is little or no paternal contact (Furstenberg, Morgan, & Allison, 1987; Johnston, Kline, Tschann, & Campbell, 1988). The National Council of Juvenile and Family Court Judges declares: “Judges should not presume that joint custody is in the best interest of the children” (Family Violence Project, 1990, p.26). The report further notes “that Court orders which force victims to share custody with their abusers place both victims and children in danger....Continued aggression and violence between divorced spouses with joint custody has the most adverse consequences for children of any custody option” (Family Violence Project, 1990, p. 26).

Joint custody creates a situation where both parents must have frequent contact and communication with each other and must make mutual decisions for their children. It is in the experience of the LCCEWA that joint custody only works well when there is a lengthy history of this kind of sharing and communication between the parents during the relationship. In relationships where men have been abusive, this sharing does not exist. Court orders forcing the artificial creation of mutual decision-making in abusive situations not only send a message to the abuser that his violence is permissible but the court orders also provide the abuser with the opportunity to control his partner with state sanctions. Not only do the children suffer when exposed to this constant abuse, but they learn that there is nothing their mother can do to get away. They also learn that ongoing violence is to be expected and this violence is normalized. Often, the award of joint custody to the abusive partner gives him permission to act as the sole custodial parent in situations where he would not have been awarded sole custody.

RECOMMENDATION #5:

The “Friendly Parent” rule should not apply in cases where there has been woman abuse.

The “Friendly Parent” rule of the Divorce Act S.16 (10) is problematic in cases that involve woman abuse. This provision requires the court to give effect to the principle that a child should have as much contact with the non-custodial parent as is consistent with the best interests of the child, and that in deciding on custody the court should consider the willingness of each person to facilitate such contact. While the principle of facilitating contact with the non-custodial parent is appropriate in many situations, it should not apply in cases where there has been woman abuse.

As a result of the “friendly parent” rule, many abused women are placed in situations where they are advised to promote a relationship and set aside their past conflicts with someone who may be a danger to themselves and their children. If they are unable to comply they may be deemed to be unfriendly parents and lose custody to an abusive father (Zorza, 1992).

It is in the experience of the members of the LCCEWA that the “friendly parent” rule often results in lawyers giving advice to abused women to facilitate access quickly, prior to the interim custody order. Facilitating access prior to an interim custody order is frightening and often dangerous for abused women and their children. Many abusive partners threaten to abduct the children, hurt the children, turn the children against the woman or otherwise use the children to retaliate back at the woman for leaving. Women are understandably frightened to facilitate access prior to custody being declared in these circumstances. If women do not comply however, the “friendly parent” rule can work against them. Abused women have been accused of failing to facilitate the parent-child relationship with the abusive spouse. This has resulted in women losing custody of their children.

RECOMMENDATION #6:

Leaving the home to escape abuse should not be a factor in custody and access disputes.

It is in the experience of members of the LCCEWA that when an abused woman takes the courageous step of leaving the abusive relationship to seek safety for herself and her children in a shelter or safe place, she is often punished by the courts by being required to return the children to the matrimonial home. Courts often view the action of the woman as irresponsible and unnecessarily disruptive to the children. Abused women have been accused of taking the children from the home in order to establish a status quo of sole custody to themselves. Ordered to return the children, women feel that the only effective way to protect their children is to return with them. In effect, this order creates a situation where women and children are forced back into the home and under the control of the abuser. Legislation should specify that if a woman leaves the matrimonial home to escape abuse of herself or a child, this should not be a factor held against her in a custody or access dispute.

RECOMMENDATION #7:

There should be a presumption that access should not be awarded to the perpetrator of woman abuse unless and until, he has demonstrated reform.

For abused women and their children access and exchanges can be particularly dangerous. It is in the experience of members of the LCCEWA that women have been abused during access visits and that their children have witnessed this abuse. Women report that they have been terrorized by their abusive partner's threats to abduct their children. Heger and Grief (1991) report that half of all abductions occur during court-ordered visitations, and fathers abduct their children mainly to hurt mothers. The logistics of picking up and dropping off the children can also be dangerous. Adams (1989) reports that many abusive fathers physically and/or emotionally abuse the mother when the children are picked up or dropped off. Legislation should specify that in making arrangements for access, that the safety of women and children should be of paramount consideration. The Domestic Violence Act of New Zealand states that "If the violent allegation is proved, the violent party must not be granted custody of the child or allowed access (other than supervised access) to the child, unless the court is satisfied that the child will be safe. (s. 16 B(c) as cited in Family Violence News, 1996). The LCCEWA believes that there must be a provision for supervised access that is independent and outside of the control of the abuser. It is also imperative that the supervisors are fully trained in the issues and dynamics of woman abuse and child abuse and that supervised access centres are properly funded to effectively undertake the supervision. If the abusive partner continues to abuse the mother or the child, supervised access should be terminated.

RECOMMENDATION #8:

Legislation should prohibit mediators from dealing with cases where woman abuse is present.

Legislation should specify that a custody or access dispute should only be referred to mediation if satisfied that there is no history of woman abuse. The Family Violence Project (1990, pp.28) unequivocally states that "mediation should never be required when there has been family violence." The report objects to the use of mediation for custody, stating:

The pattern of power, control, and dominance by the abusive spouse which emerges over time in such relationships, leaves the victim in a position of fear, dependence, and weakness. Even if the mediator is aware of the situation, it may be impossible to overcome the power imbalance between the two, such that any agreement reached will not truly have been voluntary (Family Violence Project, 1990, pp.28).

The report of the Judicial Council Advisory Committee on Gender Bias in the Courts (Welling et al., 1990, Sec.6, p. 42) concludes that mediation should not be attempted, citing Pagelow's oral testimony that "Mediation is based on two assumptions...that the parties come to negotiations with relatively equal bargaining powers and that they come together voluntarily. Neither assumption is met when a couple with a history of violence are mandated into mediation." Marks (1988) notes that "mandatory mediation" is a contradiction in terms and may stigmatize a person who does not cooperate.

Actual scenario:

A woman spoke of her husband who accompanied her to joint counselling and, eventually, mediation. If he touched his belt buckle, she knew she should lie...if he clenched his jaw, she knew she would be beaten when they left the office. There were several unspoken signals of this type.

Mediation Centres attached to the Ontario Court (General Division) (Family Court) have a clear mandate to refuse service to families where abuse exists. The mother and father are interviewed separately and at separate times to create as much safety as possible for the woman to be able to express whether or not abuse occurs in her relationship.

RECOMMENDATION #9:

Education programs designed as prerequisites to court action should not be mandatory for abused women.

The mandatory education programs designed as prerequisites to court applications focus on issues of joint parenting and facilitating contact with the other parent, conflict resolutions, open communication and other issues which are not appropriate in abusive relationships. Therefore, these programs should not be mandatory for abused women.

RECOMMENDATION #10:

There must be provision of services and funding for programs designed specifically to deal with the needs of abused women and children in custody and access disputes.

Custody and access assessments: Custody and access assessments are an important tool because they can provide an in-depth review of the parenting history, the children's wishes and important psychological and emotional issues. It is important that assessors are well trained in issues of violence and that there be a minimum criteria for professional qualifications for assessors which include training on violence.

Shelters and advocacy/counselling organizations: Shelters and advocacy/ counselling organizations are vital in attaining the goal of ending violence against women and children. They provide women and children with places of safe shelter, advocacy and counselling.

Properly funded legal aid: In order to ensure that women have quality representation in the courts for custody and access disputes, it is vital that the federal and provincial governments fully fund the family law sections of provincial legal aid programs. Too often low income women are relegated to clinic lawyers or duty counsel while their male partners are able to afford the lawyer of their choice. Women who have experienced abuse require lawyers who are trained and sensitive to the issues of abuse. These lawyers must be paid well enough to encourage them to continue with what is often thankless, hard work. Without adequate representation, women face the prospect of appearing in court alone against their abuser and/or his lawyer. Women will often consent to court orders for joint custody or low spousal and child support awards out of fear of reprisal from the abusive partner.

Educational and counselling programs for abusive men: Men who are genuinely interested in changing their abusive behaviour should have the opportunity to participate in educational and counselling programs. The primary mandate of programs for abusive men should be the safety of women and children.

Comprehensive training for service providers on issues of abuse: For any policy changes to be adequately addressed, comprehensive training on issues of woman abuse is necessary for all service providers. For example, the National Council of Juvenile and Family Court Judges began to try to find ways to develop a more effective system in 1987, and finally adopted official recommendations for improving court practices in family violence cases (Family Violence Project, 1990). One of the first recommendations in the report is that all Judges must be trained in the dynamics of family violence on an ongoing basis, and in how to address it fairly and properly. Lawyers also require comprehensive training in woman abuse issues. In Ontario, there have been only two programs regarding woman abuse offered by the Law Society of Upper Canada in the last ten years. They were attended by approximately 500 lawyers. 1000 new lawyers graduate each year in Ontario. In their bar admissions course they receive only a two-hour lecture on domestic violence.

CONCLUSION

To ensure a more child-centred approach to family law policies and practices that really meet the children's needs and best interests, woman abuse must be effectively addressed. Woman abuse situations are not exceptions to custody and access law. In fact, they are far too common. We must make sure that men who are abusive are not rewarded by our society with custody of their children or offered any further opportunity to abuse their spouses and/or children on access visits. The government must assume a leadership role in advocating for Canadian laws and practices that ensure women and children can live free from violence and have access to justice. Women and children depend on this.

**SUBMISSION TO
IER PLANNING, RESEARCH AND MANAGEMENT SERVICES
FEDERAL/PROVINCIAL/TERRITORIAL CONSULTATION
RE: CUSTODY, ACCESS AND CHILD SUPPORT IN CANADA
FEEDBACK BOOKLET FROM
THE LONDON COORDINATING COMMITTEE TO END WOMAN ABUSE**

Background

The London Coordinating Committee to End Woman Abuse (LCCEWA) supports the mandate of the Family Law Committee to evaluate the family law system in Canada by the provincial, federal and territorial governments. Of particular concern to the LCCEWA is a child-centred approach to family law policies and practices that ensures that the best interests and needs of children are promoted by specifically acknowledging the significance of woman abuse to custody and access issues.

The London Coordinating Committee to End Woman Abuse (LCCEWA) believes strongly that it is in the best interests and needs of children that any changes in legislation or policy include an analysis on the impact of violence against women and children. Women and children have the right to live free from abuse. Violence against women and children is estimated to occur at such a high rate that prominent organizations such as the American Psychological Association and the U.S. Surgeon General have declared that this violence is an epidemic. Because of this reality, woman abuse must be an essential consideration in custody and access cases. More specifically, in the context of disputed custody cases, research has clearly demonstrated that the presence of woman abuse occurs at a rate between 75 - 85% of cases (Johnston, 1994). It is the position of LCCEWA that legislation should reflect the reality of abused women and children by protecting them. Legislation and policy must not compromise the safety of women and children post-separation. Canadian laws must ensure that men who are abusive are not rewarded by our society with custody of their children or offered any further opportunity to abuse their spouses and/or children on access visits.

It is the position of LCCEWA that a child's opportunity to benefit from the strengths of both parents post-separation should be safeguarded in family situations that are not violent and/or highly conflictual. The LCCEWA acknowledges that in circumstances where there has been no woman abuse, parents of both genders can enrich, nurture and support the well-being of their children after the adult union has dissolved. Awarding custody and access rights to abusive men jeopardizes the safety of, and sometimes the lives of, women and children. Furthermore, it does not support those non-violent men for whom liberal and generous custody or access arrangements would be in the best interests and needs of their children. Specifically acknowledging the significance of woman abuse to custody and access issues will benefit all Canadian citizens.

The London Coordinating Committee to End Woman Abuse is submitting the following report and recommendations in response to the request for consultation.

The LCCEWA was established in 1980 and is a network of organizations, groups and individuals in London dedicated to ending woman abuse. Membership is drawn from people involved in the justice, health, education and social service fields. While members of the LCCEWA bring different perspectives, the goal is common:

To end woman abuse through leadership and actions that achieve:

- social justice for women
- an integrated response to abused women and their children.

(See Appendix A for the LCCEWA belief statements and Appendix B for the LCCEWA membership)

Introduction

Research during the past twenty-five years has shown what abused women have always known, home can be a very dangerous place.

In 1993, the Canadian Panel on Violence Against Women reported that:

“Each day Canadian women are maligned, humiliated, shunned, screamed at, pushed, kicked, punched, assaulted, beaten, raped, physically disfigured, tortured, threatened with weapons and murdered. Some women are indeed more vulnerable than others, but all women, simply by virtue of their gender, are potential victims of violence. Moreover, the violence is often directed at them by those whom they have been encouraged to trust, those whom they are taught to respect, those whom they love. Violence against women cuts across all racial, social, cultural, economic, political and religious spectrums” (The Canadian Panel on Violence Against Women, 1993, p. 5).

A national study in Canada involving telephone interviews with over 12,000 randomly chosen women found that 29% experienced physical or sexual abuse by an intimate partner over their life time (Rodgers, 1994). The definition of violence used in this study was consistent with the Criminal Code of Canada and therefore, could have resulted in criminal charges being laid if the Police had reasonable and probable grounds to believe that this abuse had taken place. Ten percent of women in this study stated the nature and severity of the abuse made them fearful for their personal safety to the degree they feared for their life.

More recently, in a study conducted by the Canadian Centre for Justice Statistics (2000), 690,000 women and 549,000 men reported being victims of some form of violence during a five-year period in Canada. This study defined violence more broadly than is consistent with the Criminal Code of Canada. Also, what these descriptive statistics mask is that the nature, severity and consequences of the violence are different for men and women. Women were four times more likely to experience the most serious and potentially lethal violence, such as being threatened or assaulted with a gun or a knife, being choked, and being sexually assaulted. Women who had experienced violence were three times more likely to report suffering a physical injury and twice as likely to report chronic ongoing assaults, defined as more than ten separate incidents. With respect to fearing for one's life, women victims were five times more likely to report that they feared for their lives (Johnson & Bunge, 2001). One half a million children have heard of witnessed a parent being assaulted during the five year period (Canadian Centre for Justice Statistics, 2000).

Consequences for Women

Abuse can have long-lasting and serious physical, emotional, psychological, financial and spiritual consequences. Virtually every domain of an abused woman's life can be impacted by the violence she has endured (e.g. see Heise, Pitanguy, & Germain, 1999; The Canadian Panel on Violence Against Women, 1993). Tragically, the consequences of violence can result in death. Women in Canada, as well as in many other countries, are most likely to be killed by their intimate partner. In 1999, 75 women were killed at the hands of their intimate male partner (Canadian Centre for Justice Statistics, 2000). Four of five victims of spousal homicide are female (Canadian Centre for Justice Statistics, 2000). During the period of 1967 to 1973, approximately 17,500 women and children were murdered in their homes while 39,000 U.S. soldiers lost their lives in Vietnam during the same period (Grusznski, Brink, & Edleson, 1988). Collectively, we can no longer deny the potential lethality of woman abuse.

Consequences for Children

It is estimated that in the U.S. alone, between 3.3 and 10 million children witness violence in their home annually (Davidson, 1994). Children can be profoundly affected by the atrocity of woman abuse. There is a growing body of social science research and clinical experience that suggests that children exposed to woman abuse can suffer a range of behavioural, cognitive, emotional and social difficulties (e.g. Rossman, Hughes, & Rosenberg, 2000; Ammerman & Hersen, 1999; Edleson, 1999a; Osofsky, 1999). This research does not define children's exposure as limited to directly observing their mother's abuse. Children who see their mother's injuries or the blood stains on the carpet or hear the smashing and cries for help while hiding under their bed are also victims of violence.

The homes in which women are being abused can also be a perilous environment for the children (Edleson, 1999b). In a survey of over 6,000 American families (Straus & Gelles, 1990), the researchers found that 50% of the men who frequently abused their wives also frequently abused their children. In addition, studies show that there is a greater likelihood of becoming involved in abusive situations as adults – boys as abusive partners and girls as abused women (Davidson, 1995). There is however evidence that for most children there will be substantial improvements in behaviour and emotional state if the child ceases to live with the abusive parent, and that therapy for the child is often helpful (Mertin, 1995).

Relevance of Woman Abuse in the Determination of Child Custody and Access

Notwithstanding years of professional and public education about violence and its detrimental effects on women and children, the family court system and applicable legislation has been slow to operationalize this vast body of knowledge. Instead it seems that the best interests of children has been equated with the maximum contact even in woman abuse cases. Resistance, in the form of pressure by father's rights advocates, has distracted public attention and political will away from the serious issue of woman abuse. Determining a child's best interest within the current highly charged political context is extremely challenging. Legal and social issues surrounding child custody disputes have become highly politicized and divisive with the battles lines being drawn along gender. The special joint commons/senate committee did little by way of quelling this passionate gender clash. Diversions, such as "false allegations", "parental alienation syndrome" and "malicious mothers" have stolen the headlines in the mass media. The highly political context and polarized viewpoints of the current dialogue is highlighted in the following chart.

| ISSUE | FATHER'S RIGHTS ADVOCATES | DOMESTIC VIOLENCE ADVOCATES |
|--|---|--|
| Post Separation Parenting Arrangements | Shared Parenting | Shared Parenting Endangers Abused Women |
| Prevalence of Domestic Violence | Domestic Violence is Exaggerated | Domestic Violence is Under-reported |
| Nature of Violence | Women as Violent as Men | Men's Violence More Severe, More Injurious, Fear for Life |
| Allegations of Domestic Violence | Allegations are False Bolster Custody Claim | Mothers Punished for Raising Allegations Counter Accused Alienator |
| Family Court Bias | Bias Against Men | Bias Against Women and Domestic Violence |

(Jaffe, Lemon, & Poisson, in press)

It is unlikely that the overall politicized context will alter meaningfully even in these current consultations. Notwithstanding the divergent viewpoints, the LCCEWA remain uncompromising in its position that the relevance of woman abuse in the determination of child custody and access can not be minimized. The following three points highlight the seriousness of this issue.

1. Separation Does Not Mean an End to Violence:

Many people erroneously believe that separation results in the cessation of violence. Empirical evidence would suggest otherwise. Physical abuse, stalking and harassment continue at significant rates post-separation. In a Canadian study (Leighton, 1989), one quarter of the women reported that their lives were threatened during access transfers. In a U.S. National Crime Survey report found that 70 percent of the reported domestic violence occurred after separation (Liss & Stahly, 1993).

2. Separation is a Particularly Lethal Time:

As part of the abusers' pattern of control and domination, their victims have usually been told for years that if they ever dare to leave, they, their children, or their families will be seriously hurt or killed (Browne, 1987). The resulting fear for women is well founded. There can be no doubt about the dangers of separation. Fatality reviews and inquests around the world have dramatically underscored the plight of abused women and children who attempt to leave the abuser (e.g. Miami-Dade County Domestic Violence Fatality Review Team, 2000; May-Illes - Ministry of the Attorney General, 1998). The rate of spousal homicide in 1996 for separated women was 79 per million, compared to 3 per million for married women (Johnson et al., 2001). This statistic clearly suggests that separation can be a particularly dangerous time for victimized women leaving their abusive partners. The act of leaving is a direct challenge to an abuser's need for control. This sense of loss of control is compounded by concern about possibly losing a relationship with his children. An abused woman may be most at risk of femicide when she leaves or when it becomes clear to her spouse that she will be leaving for good (Hart, 1988). Given that custody disputes often occur during this particularly dangerous window, the safety of the children and mother must be given priority. Abusers also murder, or

attempt to murder, their own children for revenge when victims try to flee the abuse (Brodeur, 1987; Johnson & Spano, 1987). Collectively we have possessed the knowledge that women are at serious risk within their homes for over twenty years, however, politically and legislatively we have been painfully slow to act. Questioning a woman's motive for raising concerns or fears for the safety of herself or her children should not be reduced to legal strategizing.

3. Perpetual Litigation as a Form of On-Going Control:

It is essential to recognize that custody and access disputes often become an extension of the abuse, continuing long after the couple has separated (Taylor, Barnsley, & Goldsmith, 1996). Many women fear losing their children as their abuser has repeatedly threatened to gain custody of the children if she dare leave him. Liss and Stahly (1993) found that abusive fathers are far more likely to fight for custody and not pay child or spousal support than are non-abusive fathers. Despite the father's right advocates assertions that the family court system is biased in favour of women, research suggests the opposite. Abusers are twice as likely to apply for custody and equally likely to convince the court to award them custody as are non-violent fathers (Bowermaster & Johnson, 1998; Zorza, 1995). In a more recent study, O'Sullivan, using a random sample of family cases in New York State found that when no protection orders were applied for, fathers were granted visitation 53% of the time. When protection orders were sought and granted, these abusive fathers actually had an increased chance of being granted visitation (63% of the cases) (O'Sullivan, 2000).

At the present time, the Canadian family law systems do not adequately deal with custody and access disputes. Canadian custody and access statutes (with the exception of Newfoundland) make no specific reference to violence as a factor to be considered in determining custody and access arrangements (Status of Women Canada, 1998b). The *Divorce Act* was premised on social science research conducted in the 1970s and early 1980s. This preliminary research failed to adequately define or examine the context of high conflict and abusive families. Research which has been conducted since 1985 has shown that the best predictors of children's adjustment following their parents' separation relates to the psychological adjustment of the primary caregiver, usually mothers, and the freedom from on-going conflict and abuse. The current legislative vacuum has, at times, resulted in abusive men being awarded custody and access rights.

The Federal Government has an extraordinary opportunity to play an active role in ending violence against women and children in the family law system. It is imperative that the chorus of abused women, social science researchers, clinicians, advocates and concerned citizens not be drowned out by erroneous assertions. Father's rights advocates would have policy makers, legislators and the public believe that men are equally likely to be the victims of intimate violence. They commonly site the research of Richard Gelles to substantiate this point of view. Dr. Gelles refutes this and has stated that his research has been "distorted - to 'prove' the position on violence against men." According to Dr. Gelles, "it is categorically false to imply that there are the same number of 'abused' men as there are abused women. Research shows that nearly 90 percent of abuse victims are women and only about ten percent are men.... The most brutal, terrorizing and continuing pattern of harmful intimate violence is carried out primary by men" (Gelles, 1995).

The guiding principles (outlined on page 4 of the Consultation Paper) established by the federal, territorial and provincial governments to guide reforms in the area of child custody, access and child support create the foundation for all proposed legislative changes. The LCCEWA concurs with these guiding principles. Given our area of expertise, LCCEWA believes that if the following three principle are not fully integrated and adhered to, any future reform will be dire.

- Support measures that protect children from violence, conflict, abuse and economic hardship.
- Recognize that children and youth benefit from the opportunity to develop and maintain meaningful relationships with both parents, when it is safe and positive to do so.
- Recognize that children and youth benefit from the opportunity to develop and maintain meaningful relationships with their grandparents and other extended family members, when it is safe and positive to do so.

The LCCEWA believes that the principles regarding women's and children's safety must not be subverted, compromised or stratified. In fact, the LCCEWA believes that for those three guiding principles to be properly integrated into policy development three recommendations must be met:

Recommendation #1: Legislation and policy reforms of custody and access law in Canada should specifically acknowledge the significance of woman abuse to custody and access issues.

The LCCEWA supports the recommendation that "all Canadian jurisdictions should enact statutes that specifically recognize the significance of domestic violence for all child-related proceedings, as has occurred in Newfoundland, many American states, Australia, New Zealand, England and Wales" (Status of Women Canada, 1998b). The LCCEWA further agrees that the enactment of such legislation would clarify the law, and facilitate the education of Judges, lawyers and other professionals, as well as the public. Such legislation would also have important educational and psychological value for victims of domestic violence, and may hopefully deter abusive behaviour by the perpetrators of domestic violence.

Recommendation #2: All legislation and policy reforms for custody and access law in Canada should be founded on a common, comprehensive definition of woman abuse.

Currently, there are many differing discourses regarding woman abuse. Critical to creating effective legislation and policy reform for custody and access law is the articulation of a national definition of abuse that is based on a comprehensive understanding of the complexities of both woman abuse and child abuse. This is paramount given the ideology used to define woman abuse informs the conceptualization of the cause, the myths, and in turn, directly influences interventions and solutions. The LCCEWA is not in support of the threshold of "proven" abuse as proposed by the report *For the Sake of The Children (1998)*.

Recommendation #3: Utilize a gender-based analysis to create informed, effective and

equitable policies and legislation in the area of family law reform.

Canada's commitment to implementing a gender-based analysis is articulated in *Setting the Stage for the Next Century: the Federal Plan for Gender Equity (1995-2000)*. The Federal Plan was prepared through collaboration among 24 federal departments and agencies, led by the Status of Women Canada. Using a gender-based analysis means exploring how policy options could impact on individual women and men and on societal structures. The LCCEWA believes that family law reform must address the systematic economic and social inequalities experienced by women, the specific inequalities experienced by marginalized women and the issues of violence/abuse against women and children by intimate partners. This contributes to an enhanced knowledge base for decision-makers.

It is the position of the LCCEWA that the context of woman abuse articulated in pages 1 to 7 of this document can not be excluded from the following feedback and all child custody and access law reform.

CUSTODY AND ACCESS AND CHILD SUPPORT IN CANADA CONSULTATION FEEDBACK

Part 1: Parenting After Separation or Divorce

Roles and Responsibilities of Parents

Looking at the Law

Option 1: Keep Current Legislative Terminology

LCCEWA's Recommendation: disagree

Option 2: Clarify the Current Legislative Terminology: Define Custody Broadly

LCCEWA's Recommendation: agree

Despite concerns about the words "custody" and "access", the continued use of these terms does ensure more legislative stability and clarity. Another advantage is that there is little indication that changing terminology will actually result in benefits for children or parents. In a discussion paper prepared for the Ministry of the Attorney General in British Columbia, it is reported that there is a strong belief that the existing terminology in and of itself is responsible for promoting conflict and litigation among separating parents. However, the experiences of other jurisdictions suggest changing terminology and the model of post-separation parenting may not reduce conflict or litigation. In fact, changing terminology may actually result in an increase rather than a decrease in litigation. In addition, the experience in other jurisdictions, such as the

UK and Australia, suggests changes in terminology that are intended to encourage parents to focus on their children's best interest rather than parent's rights may result in some parents more vigorously asserting their rights in relation to their children. For these parents, a focus on parental responsibilities or shared decision-making may lead to more opportunities for conflict (Custody and Access Terminology: Options for Legislative Change in British Columbia, 1999).

The LCCEWA believes that Option #2 builds on the positive components of Option #1 by increasing the clarity of the terms custody and access. Lack of clarity exacerbates the problems for violent/high conflict families. It is important to note however, in deciding the level of detail that should be required in the custody and access plan, the benefits of more specificity must be balanced against the fact that requiring more detail may create potential for more disagreement and confusion.

Option 3: Clarify the Current Legislative Terminology: Define Custody Narrowly and Introduce the New Term and Concept of Parental Responsibility.

LCCEWA's Recommendation: disagree

The LCCEWA believes the term and concept of "Parental Responsibility" is not appropriate in custody and access legislation. There is no question that the notion of altering the associated language is superficially attractive however, it is the position of the LCCEWA that these cosmetic alterations will result in women and children being at risk. The LCCEWA understands that there are concerns with respect to the terminology of custody and access because the terms have been associated with property and criminal law concepts and tends to foster a win-lose paradigm. However, the draw backs to the current terminology need to be weighed against any real and/or perceived benefits of proposed changes. For example, a change of terminology would have a significant impact on numerous provincial statutes, regulations and programs (please see Custody and Access Terminology: Options for Legislative Change in British Columbia, 1999, for an example of the impact). The LCCEWA is also concerned that although current legislation does not specifically define woman abuse as a determining factor in custody and access cases, progress in case law has increasingly taken the relevance of woman abuse into account. This progress could potentially be undermined with a change in terminology. In addition, there has been a lack of positive results of legislative reforms in other jurisdictions. The available research suggests that the reforms in Washington, Oregon, the United Kingdom and Australia have not yet been effective in reducing litigation and conflict between parents. In these four jurisdictions there is no clear indication that changing terminology and/or the model of post-separation parenting has resulted in less litigation, less parental conflict, or better outcomes for children. In fact, the reforms appear to be generating more opportunities for conflict. In addition, the principle of encouraging children to have maximum contact with both parents appears to have resulted in less attention being paid to woman abuse and other considerations affecting the best interests of children (Custody and Access Terminology: Options for Legislative Change in British Columbia, 1999).

Option 4: Replace the Current Legislative Terminology: Introduce the New Term and Concept of Parental Responsibility.

LCCEWA's Recommendation: disagree

The LCCEWA would be very concerned if this change in terminology were implemented. It is in the experience of the LCCEWA that many separating couples are able to make decisions regarding the many specific aspects of raising a child utilizing the terms currently available. A form of Option 4 has been tried in Washington (Parenting Act in 1987). The evaluative results indicate that the Parenting Act has not yet succeeded in meeting its ambitious goals (Custody and Access Terminology: Options for Legislative Change in British Columbia, 1999). In fact, in some circumstances, it appears that the Act may have increased conflict between parents, since the mutual decision-making provisions contained in most parenting plans provide a fresh source of conflict for some parents. In addition, recent statistics obtained from the UK government suggest that after introducing "parental responsibility," litigation concerning access and contact did not decrease in the longer term (Custody and Access Terminology: Options for Legislative Change in British Columbia, 1999). Secondly, the emphasis on contact seemed to entail a corresponding lack of emphasis on family violence as a relevant. Additionally, it did not reduce conflict between parents but is instead reinforcing a tool for harassing and controlling the other parent. The LCCEWA believes that the Canadian government needs to pay heed to the hard-learned lessons from other jurisdictions who have struggled with similarly complex issues.

Option 5: Replace the Current Terminology: Introduce the New Term and Concept of Shared Parenting

LCCEWA's Recommendation: opposed

The LCCEWA opposes this option. The disadvantages of implementing this option significantly outweigh the assumed advantages. The intention of Option 5 is noble and ideal in circumstances that are not conflictual and do not involve violence, however the reality is that the very parents that will turn to this legislation are the parents who need the intervention of courts to help resolve their conflict. In addition, although some parents may not need the authority of the legislation to resolve their disputes, many parents look to the law for guidance about how to work out arrangements for themselves. The terminology "shared parenting" suggests a model of post-separation parenting that is very similar to "joint custody." As well, there seems to be a public perception that shared parenting means joint custody. The experience in other jurisdictions show that perceptions about the meaning of legislative changes can have a significant influence on how legislation is interpreted by parents and their advisors regardless of the intended meaning of the legislative provisions. The starting point of this option is that children would have extensive and regular interaction with both parents and that parental rights and responsibilities, including all aspects of decision-making would be shared equally or nearly equally between the parents. Parents wishing to begin from another starting point would have to show that shared parenting would not be in the children's best interests. The onus would then rest with abused women to demonstrate that shared parenting is untenable. In these circumstances, battered women's efforts could readily be perceived as illustrating characteristics of an "unfriendly parent."

Option number five negates the issue of woman abuse and therefore counters the very principles outlined in the framework for consultation.

Further, joint custody, which is implied in "shared parenting" is not in the "best interest" of a child when there has been a history of woman abuse. Joint custody guarantees continued contact between the abuser and his victim perpetuating the possibility of ongoing abuse and thus, jeopardizing the safety of the non-offending parent and child. Polikoff (1987) reports that joint custody works best when both parents respect each other and can cooperate about decisions concerning the child. When one parent abuses or tries to control the other parent or child however, joint custody, whether physical or legal, is unlikely to work and may endanger the abused parent and any children in the family (Polikoff, 1987). Research shows that some children in these types of families fare better when sole custody is awarded, even when there is little or no paternal contact (Furstenberg, Morgan, & Allison, 1987; Johnson, Kline, Tschann, & Campbell, 1988). The National Council of Juvenile and Family Court Judges declares: "Judges should not presume that joint custody is in the best interest of the children" (Family Violence Project, 1990, p.26). The report further notes "that Court orders which force victims to share custody with their abusers place both victims and children in danger....Continued aggression and violence between divorced spouses with joint custody has the most adverse consequences for children of any custody option" (Family Violence Project, 1990, p.26)

Joint custody creates a situation where both parents must have frequent contact and communication with each other and must make mutual decisions for their children. It is in the experience of the LCCEWA that joint custody only works well when there is a lengthy history of this kind of sharing and communication between the parents during the relationship. In relationships where men have been abusive, this sharing does not exist. Court orders forcing the artificial creation of mutual decision making in abusive situations not only send a message to the abuser that his violence is permissible but the court orders also provide the abuser with the opportunity to control his partner with state sanctions. Not only do the children suffer when exposed to this constant abuse, but they learn that there is nothing their mother can do to get away. They also learn that on-going violence is to be expected and this violence is normalized. Often, the award of joint custody to the abusive partner gives him permission to act as the sole custodial parent in situations where he would not have been awarded sole custody.

Roles and Responsibilities of Parents

Looking at Services

Of the various services listed, all of them have a utility under specified circumstances. Similarly, all of them can inadvertently or directly compromise the safety and well being of abused women and their children. The LCCEWA believes that all proposed services that do not explicitly identify the issue of woman abuse and child abuse need to be approached with considerable caution.

The LCCEWA is resistant to endorsing or rejecting the service option choices in light of the scope and magnitude of the information not provided. For each of the service options listed, the LCCEWA has the following concerns:

1. the training and qualifications of the service providers

2. the knowledge base of providers with respect to woman abuse
3. the awareness of the providers with respect to anti-oppression
4. the adherence to the guiding principles - specifically in regard to the issues of woman abuse and child abuse
5. the aim, objectives and values promoted in the service
6. the assurance of adequate funding for services
7. the structure, duration, and criteria eligibility
8. the monitoring and accountability mechanisms

If the service options favourably address the eight concerns, these service options could have utility. With that precursor, the LCCEWA has the following comments and concerns:

Information Services

The LCCEWA believes that women's advocates, children who witness woman abuse counsellors, front-line anti-violence/abuse workers and interpretation services must be added to the services that are "most important" with separation and divorce.

' Parent education

The LCCEWA could endorse parent education programs that favourably address the outstanding eight concerns listed above. Increasing parents' awareness of the detrimental effect of conflict, the emotional turmoil of separation and the support needed for transition may be a positive intervention for families. Given the relevance of woman abuse in these cases information about woman abuse and available resources would be a necessary inclusion.

The LCCEWA is opposed to mandatory education programs designed as prerequisites to court applications with a focus on issues of joint parenting and facilitating contact with the other parent, conflict resolutions, open communication and other issues because they are not appropriate in abusive relationships.

' Public and family law information centres

Similarly for this service, education is not neutral. Written material, videos and services could be of benefit if the centres had staff trained to identify issues of woman abuse and information available on woman abuse. If one of the mandates of such centres is to stream cases into mediation and away from court applications then it is even more vital that there be staff trained to recognize woman abuse and to understand the possible inappropriateness of mediation in most cases of abuse. Information extolling the virtues of reconciliation, mediation, and ongoing communication etc. are not innocuous and can be detrimental to abused women and their children.

' Self-help materials, kits or public information documents on parenting roles

same as above

Information programs for children

The LCCEWA believes that children whose parents have separated are in need of assistance during this transition. Examples of some of the services LCCEWA supports are the Community Group Treatment Program for Child Witnesses of Woman Abuse, In the Middle, Mom's House/Dad's House (see Appendix B for reference information).

Support Services or Approaches

Counselling services for parents

The LCCEWA supports counselling services such as the ones offered through shelters, advocacy centres and sexual assault centres. Again, the types of interventions and treatment suggested may have value under specific circumstances. That being said, LCCEWA believes that in circumstances of violence, that couple counselling and anger management programs are not appropriate. Rather LCCEWA supports feminist based programs such as Changing Ways (see Appendix B for reference information).

Legal Aid

In order to ensure that women have quality representation in the courts for custody and access disputes, it is vital that the federal and provincial governments fully fund the family law sections of provincial legal aid programs. Women who have been subjected to abuse require lawyers who are trained and sensitive to the issues of abuse. It is much more difficult and time consuming to represent abused women and the legal issues involved require more time and attention. Hence, it is essential that there be adequate legal aid funding for family law cases involving abused woman. Without adequate representation, women face the prospect of appearing in court alone against their abuser and/or his lawyer. Women will often consent to court orders for joint custody or low spousal and child support awards out of fear of reprisal from the abusive partner.

Child advocates or child legal representatives

Like other options, child's legal counsel may prove beneficial in some cases. However, the role of child's counsel is the subject of considerable debate. In circumstances wherein a child's expressed wish is to reside with an abusive parent, the role often taken by child's counsel to advocate for the child's wishes would not be in keeping with the child's best interest. Child's counsel or social workers assisting such counsel must also be trained in understanding the impact of abuse on children. Many now make recommendations for access or even custody with little or no knowledge or understanding of the impact on children of witnessing or being subjected to abuse.

Special Courts

The LCCEWA does support the expansion of the unified family court system and appropriate community based resources. The personnel associated with these courts must be properly

trained in the areas of woman abuse and child abuse. The importance of judicial training in this area can not be underestimated. Although there are some who argue that judicial training is tantamount to bias, the LCCEWA believes that appropriate judicial education is imperative to the administration of justice.

Supervised access and exchange centres

In order to maintain the safety of women and children, the LCCEWA believes that this service option needs to be more readily available across the country. These services must have associated standards in which the safety of the mother and child is paramount. More emphasis must be placed on ensuring not only their physical well-being but also the children's emotional well-being. Currently there are many centres, which due to a number of factors, are not able to monitor visits closely enough to prevent the infliction of psychological harm. Supporting on-going, safe contact is only possible with the existence of this vital service.

Dispute Resolution Services

Mediation

The LCCEWA is against mandatory mediation. The Family Violence Project (1990, p.28) unequivocally states that "mediation should never be required when there has been family violence." Mediation is based on two assumptions that the parties come to negotiations with relatively equal bargaining powers and that they come together voluntarily. Neither assumption is met when a couple with a history of violence are mandated into mediation. Marks (1988) notes that "mandatory mediation" is a contradiction in terms and may stigmatize a person who does not cooperate.

The LCCEWA agrees with the concerns raised in the Status of Women Canada's report: *Family Mediation in Canada: Implications for Women's Equality (1998a)*. The report states that critical issues need to be addressed in order to ensure that mediation does not replicate the inadequacies of the court-based justice system or, even worse, become a service that is inferior to other dispute resolution mechanisms. The report raises several concerns. One key criticism of mediation is that these programs are introduced without sufficient evaluation, study or analysis of their effectiveness. Also, there is a concern that there is subtle and not-so-subtle pressure on individuals to choose mediation over other forms of dispute resolution. Of particular concern is the appropriateness of mediation for women who are exiting violent or abusive relationships or for women who have been controlled and dominated by their partners. Mediation is designed for parties who enter into negotiations voluntarily and who share equal bargaining power. Women leaving relationships where there is an imbalance of power because of violence or abuse may not enter into mediation voluntarily nor with equal bargaining power. There is also a concern that efficiency will be allowed to overshadow effectiveness. Many of the attractive claims regarding family mediation are not realized when examined and evaluated more closely. The report cites that many critics argue that instead, many of the same problems inherent in the court system are simply being reproduced in a private, less visible forum - the mediation room. Finally, although women still encounter barriers within the family justice system, they have fought for and won legal recognition of many of their rights. Family mediation must therefore be approached cautiously and with a view to ensuring that women's equality rights are broadened and not diminished. The seriousness of these criticisms suggest the large-scale implementation

of family mediation is undesirable from the perspective of women's equality. The LCCEWA concurs with the report's recommendations:

- that the prevailing assumption that family mediation is beneficial to all family law consumers, with only a limited number of exceptions, be removed. Despite widespread acknowledgment of the prevalence of woman abuse and the difficulties inherent in its detection, family mediation services remain confident that the screening tools that have been developed effectively identify cases that are inappropriate for mediation. In light of the profound criticisms and concerns identified by front-line workers and academics, the safer assumption is that mediation is appropriate for only a limited number of prospective clients.
- measures should be implemented to ensure that prospective clients are not pressured to engage in or continue with mediation
- if a client chooses to terminate mediation for any reason, there should be no repercussions
- parent education program should be assessed to determine whether or not parents are pressured, subtly or otherwise, into choosing mediation to resolve their disputes
- access to legal counsel must be a required component of family mediation services

Assessments

Custody and access assessments are an important tool because they can provide an in depth review of the parenting history, the children's wishes and important psychological and emotional issues. Individuals providing assessment services should be required by Canadian statutes to be well trained in issues of woman abuse, child abuse and children who witness woman abuse. Recently the state of California has implemented such standards with woman abuse training as an essential component. The LCCEWA would support such regulation of assessors. There is a trend in family law cases away from custody and access assessments due to their cost and the length of time required to properly prepare a good assessment. In addition, some family court Judges are reluctant to have experts making recommendations to them. This is an unfortunate trend because a qualified assessors can often recognize woman abuse and make recommendations which will protect the woman and children involved.

Case managers and workers

The LCCEWA questions the effectiveness of this option and believes that resources could be better utilized in other areas.

Section B: Best Interests of Children (BIOC)

Looking at the Law

“Do you think that adding factors to the ‘best interests’ section of the *Divorce Act* would help people make decisions about children that are in the children's best interests?”

LCCEWA's response: yes

The LCCEWA believes that the paramount purpose of child custody and access legislation should be to promote the safety, best interests and well-being of children. It is the view of the LCCEWA that the safety of the primary caregiver and the child should be the first consideration in determining the BIOC. This “safety test” must include a comprehensive definition of woman abuse as highlighted in recommendation number two. If this threshold is met, only then should the other criteria related to the BIOC as outlined in the consultation paper be considered. The LCCEWA supports detailing criteria related to BIOC as outlined in the feedback booklet i.e. [children’s age and stage of development, children’s health, children’s special needs, children’s cultural, ethnic, and religious or spiritual background, children’s views and preferences, children’s personalities and abilities to adjust to the new way their parents have arranged to care for them, children’s current and future education requirements, relationships to siblings, relationships with parents, relationships with other members of the family, relationships with any person involved in the children’s care and upbringing, relationships with the community, history of the parenting of the children and past conduct of parents that is relevant to their parenting abilities \(including violence and abuse in intimate relationships\)](#). In addition, the LCCEWA supports the inclusion of an explicit statement that the sexual orientation of the parents are irrelevant in the determination of the BIOC. When criteria regarding the BIOC are in conflict, the LCCEWA believes that a child’s right to safety must be paramount. For example, the discussion paper *“Custody and Access Terminology: Options for Legislative Change in British Columbia (1999)*, refers to the experience in Australia which indicates that contact is being ordered even where it is inappropriate e.g. situations involving family violence because of the general principle that children have a right to regular contact with both parents. This is occurring despite the fact that the BIOC test includes family violence as a relevant consideration. The report further states that it would seem, the principle of maximum contact is trumping the family violence factor listed in the BIOC test.

The last section of the feedback booklet’s BIOC section lists several important criteria vital to the safety and well-being of children namely: [ability of parents to meet ongoing and developmental needs, ability of parents and other involved people to co-operate, potential for future conflict and potential for future violence affecting the child](#). Training and guidance would be necessary in the interpretation and implementation of these criteria to ensure that inadvertent results do not occur in woman abuse cases. For example, a parent’s ability or willingness to be “co-operative” in cases involving woman abuse is contra-indicated in relation to a child’s best interest. The “Friendly Parent” rule of the Divorce Act S. 16 (10) requires the court to give effect to the principle that a child should have as much contact with the non-custodial parent as is consistent with the best interests of the child, and that in deciding on custody the court should consider the willingness of each person to facilitate such contact. While the principle of facilitating contact with the non-custodial parent is appropriate in many situations, it should not apply in cases where there has been woman abuse. As a result of the “friendly parent” rule, many abused women are placed in situations where they are advised to promote a relationship and set aside their past conflicts with someone who may be a danger to themselves and their children. If they are unable to comply they may be deemed to be unfriendly parents and lose custody to an abusive father (Zorza, 1992).

It is in the experience of the members of the LCCEWA that the friendly parent rule often results in lawyers giving advice to abused women to facilitate access quickly, prior to the interim custody order. Facilitating access prior to an interim custody order is frightening and often dangerous for abused women and their children. Many abusive partners threaten to abduct the children,

hurt the children, turn the children against the woman or otherwise use the children to retaliate back at the woman for leaving. Women are understandably frightened to facilitate access prior to custody being declared in these circumstances. If women do not comply however, the “friendly parent” rule can work against them. Abused women have been accused of failing to facilitate the parent child relationship with the abusive spouse. This has resulted in women losing custody of their children.

Similarly, when children refuse to attend court ordered access out of fear, their mothers are blamed and held accountable for not facilitating access. Explicit guidance for child custody and access decision makers, for example Judges, lawyers and assessors, must be available regarding how to reconcile the contra-indication between any maximum contact provision and the presence of woman abuse.

In terms of the factor “potential for future conflict”, it is encouraging that this option is being listed as a factor related to the BIOC. However, an inadvertent result may hold victims of violence equally accountable for the on-going harassment, threats and violence perpetrated by abusers. For example, many women find themselves in a catch-twenty-two situation if they try to protect their children from future harm. If they report their concerns to child protection services, assessors, or Judges, they can be labelled “vengeful”, “malicious” wives. However, if they do not report their concerns, they run the risk of being labelled “neglectful” moms. Any future legislation must ensure that its inadvertent implementation does not victimize children by creating untenable choices for their mothers. Furthermore, there must be legislative congruence between the provincial child welfare legislation, the provincial custody and access law and the Divorce Act. Currently in the province of Ontario, adult conflict could be deemed as an indicator of a child in need of protection. However, if that mother finds herself in family court proceedings, her unwillingness to permit unsupervised access may reflect negatively on her.

Part C: Family Violence

Looking at the Law

‘ **Make No Change to the current law.**

LCCEWA’s recommendation - disagree

‘ **Include a general statement in the law that acknowledges that children who are victims of violence are negatively affected, and that family violence poses a serious safety concern for parents and children.**

LCCEWA’s recommendation - cautionary comment

Yes, the LCCEWA agrees that statements to this affect should be included, however, this option can not stand in isolation. Instead, it must work in conjunction with the other options discussed in the following section because in isolation, this option fails to provide the necessary framework to affect change.

Make family violence a specific factor that must be considered when looking at children's best interests, and when making parenting decisions. The degree to which contact and decision-making are limited could be set out in the law or left to the judge to decide.

LCCEWA's recommendation - cautionary comment

The LCCEWA believes that woman abuse is relevant to the determination of a child's best interest. However, making it a specific factor to be weighted at a judges' discretion will not likely result in the consistency and predictability required to adequately respond to this serious issue. Furthermore, the issue of woman abuse could be insufficiently weighted against the other potentially competing best interest criteria.

Establish a rebuttable presumption of limited parental contact and limited decision making role for a parent who has committed family violence.

LCCEWA's recommendation - agree

The LCCEWA believes that it is not in the "best interests" of a child to be placed in the custody of a parent who has perpetrated acts of abuse against the child or a parent of the child. The LCCEWA supports the Status of Women Canada's recommendation that as in New Zealand and some American States, there should be a statutory presumption that it is not in the "best interests" of a child to be placed in the custody of a parent who has perpetrated acts of domestic violence against the child or a parent of the child (1998b). The LCCEWA agrees further that the presumption against placing a child in the custody of a parent with a history of domestic violence should be rebuttable, in particular, if that person has been the primary caregiver of the child and does not pose a risk to the safety of the child; this presumption might, for example, be rebutted in some of the relatively rare cases where a primary caregiver mother is the primary aggressor spouse. For example, women who have been subjected to years of abuse by their partners and have been charged and convicted of crimes of violence against their partners should have the opportunity to rebut the presumption. This would be especially important in the cases where women have been the primary care-giver and have participated in counselling and education.

The success of this option rests on several issues, among them, the need for a comprehensive definition of woman abuse as previously highlighted. Another important consideration is the standard of proof required to trigger this rebuttable presumption. In other jurisdictions, the standard of proof has varied widely from beyond a reasonable doubt to the presentation of credible evidence. The LCCEWA is opposed to a standard akin to beyond a reasonable doubt and in support of a standard of the presentation of credible evidence. Woman abuse by its very nature tends to occur in private, rarely with the required evidence to meet the threshold of beyond a reasonable doubt. It is a commonly held belief that women who have been victims of violence exaggerate their claims to give a legal advantage in custody proceedings. However, the research would suggest that many women often hide or deny their abuse. In a national study involving over 12,000 randomly selected women, 29% reported that they had been subjected to criminal code definitions of assault. Of these women, only 26% reported the abuse to the Police, most told non-professionals, such as friends, and nearly a quarter told no one (Rodgers, 1994). This type of disclosure pattern does not lend itself readily to the high standards of proof such as

beyond a reasonable doubt. As well, woman abuse is a pattern of power and control tactics, including intimidation, emotional abuse, isolation and threats in relation to the children, which are not deemed criminal activities. In addition, legal conceptualizations of abuse limited to incidences or actions fail to properly analyze the history of the abusive relationship, the pattern, frequency and severity of behaviour and the associated consequence for the victims and their children. In these common circumstances there could not be a criminal conviction to substantiate the standard of beyond a reasonable doubt. Therefore this provision of “beyond a reasonable doubt” does not adequately address the intention of the guiding principles related to protecting children from violence.

Restrict the impact of “maximum contact” provision by moving the principle from section 16 (10) of the Divorce Act in to the section that deals with the “best interests of the child.”

LCCEWA’s recommendation - cautionary note

A child’s safety and the safety of the non offending care-giver should be the paramount consideration in relation to the best interest criteria. The assumption that it is always beneficial for children to have on-going contact with both parents post-separation should not apply in cases of woman abuse. This option fails to adequately and comprehensively ensure the safety of women and children.

Looking at Services

Information and Education Service:

The LCCEWA believes that women’s advocates, children who witness woman abuse counsellors, front-line anti-violence/abuse workers and interpretation services must be added to the services that are “most important” with in this section.

Education on family violence for parents and children.

The LCCEWA supports this service option. We believe that these services should be created and provided in concert with domestic violence advocates. This education must be feminist based and take into consideration the central themes of abuse of power and control.

Information for professionals

For any policy changes to be adequately addressed, comprehensive training on issues of woman abuse is necessary for all service providers. For example, the National Council of Juvenile and Family Court Judges recommended that all judges must be trained in the dynamics of family violence on an ongoing basis, and in how to address it fairly and properly (Family Violence Project, 1990). Lawyers also require comprehensive training in woman abuse issues. In Ontario, there have been only two programs regarding woman abuse offered by Law Society of Upper Canada in last ten years. They were attended by approximately 500 lawyers. One thousand new lawyers graduate each year in Ontario. In their bar admissions course they receive only a two hour lecture on domestic violence which is not mandatory to attend. Although family law is taught in law schools, very few family law courses include a component on family

violence. Training for judges who sit in provincial or federal courts is also limited in the area of family violence. Judges are reluctant to study these issues for fear they will be perceived as biased.

Failure to adequately train any given group of professionals associated with the area of custody and access, from staff at supervision centres, to mediators, to judges, creates a potentially lethal gap. The overall system is only as effective as its weakest link.

Support Services

The LCCEWA supports all the service options proposed and believes that there is currently insufficient financial resources committed to these valuable services.

' Counselling for children

The LCCEWA supports this option for example the Community Group Treatment Program for Child Witnesses of Woman Abuse (see Appendix B for more information).

' Counselling for parents - (see page 53 of this document)

' Legal Aid - (see page 53 of this document)

' Psychological assessments

Psychological assessments can be a very valuable tool in the resolution of cases and /or significant evidence to be considered by a judge. These services must be adequately funded and accessible to all women in abusive situations. Assessments are generally fee for service and this limits the accessibility for many abused women. When assessments are Legal Aid funded the resources are insufficient. All assessors must have woman abuse training. (See also page 61 of this document.)

' Supervised access and exchange centres - (see page 54 of this document)

' Psychological Services for Parents and Children

' Partner Assault Response Programs

Partner Assault Response Programs must meet stringent accountability requirements as outlined in the Government of Ontario's Interim Accountability & Accessibility Requirements for Male Batterer Programs (1992), which places the highest priority on the safety of the women and children who are involved with the abuser. Partner Assault Response Programs must view woman abuse as encompassing a broad definition of behaviours abusers use to control the women and impact the children in their lives. Partner Assault Response Programs must also be accountable to the broader community which includes Violence Against Women services and women in general. It is the belief of the LCCEWA that to fall short of these minimum requirements is to place women in further danger and miss essential components of the intervention Partner Assault Response Programs.

Other Services

Expedited Court Procedures

The LCCEWA believes that expediency for all family court cases should be a goal. Although it would be good to expedite woman abuse cases this does not support woman in abusive situations in which woman abuse has not been disclosed. Streaming implies that family law cases are a dichotomous variable where by there either is or is not woman abuse. This simplistic categorization is problematic because in reality violence occurs along a continuum of severity and frequency which does not fit into a yes/no paradigm. The establishment of a status quo arrangement that is not in keeping with a child's best interest can be detrimental in all cases. However, this can be particularly detrimental in cases of woman abuse.

In terms of the Parent Education Program, rather than streaming the woman abuse cases into specific parent education programs, education regarding woman abuse should be infused into all parent education programs.

High Conflict Relationships

Looking at the Law

The LCCEWA's concern about the descriptor "high conflict" is the inclusion criteria utilized to discern "high conflict" from woman abuse cases. It is in the experience of the LCCEWA that at times women in abusive situations have been incorrectly labelled as being in mutually abusive or high conflict situations. When an analysis of a "high-conflict" situations appraises abuse in terms of isolated acts or behaviours it fails to examine the social context. For example, in a situation in which a man and woman have struck each other during a particular incident, it would be grossly inaccurate to suggest that this was a case of mutual abuse. Without examining whether the violence was in self-defence, the relational history, the severity and frequency of the violence, the consequences and injuries, and the intent of the infliction of violence faulty conclusions will be drawn. Appropriately discerning "high-conflict" cases from woman abuse cases is onerous challenge for all professionals involved in difficult child custody dispute cases. However, this discernment is pivotal to ensure resolutions and interventions which are in keeping with the best interest of the children.

Properly identifying cases is complicated by several factors. Parents of both genders report feeling pressured by limited access to financial resources or by professionals to abandon claims which may falling outside what is deemed typical for most families. For example, women may feel pressured to not disclose her history of abuse or pursue denial and/or restrictions on access. Similarly men speak of pressure to not pursue joint or full custody. Related to this is the finding that information about abuse and irresponsible parenting is excluded or omitted at each stage of the legal process. Thus by the time cases reach judges much of the evidence of abuse and irresponsible parenting has been screened from the legal process (Neilson, 2001).

An additional complicating factor in properly discerning woman abuse case from high-conflict cases is the reality that some victims of violence may actually aggress on occasion. Survivors of woman abuse may resort to the perpetration of violence, particularly at the time of separation

(Neilson, 2001). Their abusive partners can successfully convince the courts that they themselves are the victims of violence. The success of these abusers hinges upon the exclusive focus on an isolated act rather than an analysis which contextualizes the genuine victim's behaviour. Several questions must be answered prior to making a finding about violence: who is the primary aggressor? what is the frequency, nature, and intensity of the abuse? what is the effect of the abuse? what is the prognosis for re-occurrence of abuse? What is the effect of this abuse on children? (Bala, 2001)

Mislabeling woman abuse cases as "high-conflict" can lead to interventions that are detrimental to the woman and the children. The London Family Court Clinic (1995) found that in 75% of the cases that came to the clinic for an assessment violence was identified as an issue (Jaffe & Austin, 1995). By definition, cases which reach the point of needing an assessment are considered "high conflict." The symbiotic relationship between woman abuse and high conflict cases warrants the need for careful and thoughtful analysis and the associated sufficient resources and services.

The LCCEWA will not specifically comment on the services and legislative options for purely high-conflict cases. The cases which are aptly identified as high-conflict fall outside the mandate of the LCCEWA and therefore will not be commented upon.

Children's Perspectives

In this section, the LCCEWA would like to highlight the work of Judge R. James Williams. In his report, *Child Preferences and Custody/Access Proceedings 1999*, Judge Williams comments on the competing and often ambiguous issues related to the role children's wishes should play in custody proceedings (Williams, 1999). Judge Williams comments on the importance of including the perspective of the child as outlined in the United Nations declaration but he also highlights the inconsistencies, differences and problems in the way the legal system handles children's perspectives. The LCCEWA agrees with the concerns raised in his document including:

- how to reasonably ascertain the wishes of the child and at what age and maturity level would this be considered
- how informed is the wish, what is the overall context and circumstances of the preference
- how to weigh the child's wishes with other evidence given the strength, longevity and clarity of the wish
- how the child's preferences get presented to the court e.g. through testimony, child's lawyer or assessment
- how to ensure that no overt or inadvertent harm comes to the child for voicing his/her perspective i.e. what and how much of a child's statement should be revealed to the parents
- how to deal with undue influence on the child
- how to balance the need for the child's input without burdening the child with this decision making process
- how not to confuse a child's wishes and preferences with their best interests.

The LCCEWA is most concerned about children's wishes in woman abuse cases. It is a widely held assumption that children who have grown up in a household where woman abuse was present would not hold a wish to go with the perpetrator post-separation. However, this occurs quite regularly. Professor Bala (2001) reports that in some cases the abused parent may be seen by the child to be weak and ineffectual and the child may wish to align themselves with the stronger, more powerful, abusive parent. He further reports that in some cases an abusive spouse can be very manipulative and the denigration of the other parent may influence a child's relationship with a victim of abuse, and the abusive parent may coerce or intimidate the child to express views favourably to himself.

The LCCEWA agrees with Judge Williams that we can improve upon the visibility and predictability of the legal processes that we use in dealing with children's wishes and preferences. Consistent with the tenets of the feedback form, families are unique and Judge Williams advocates for flexibility in responding to diverse circumstances.

The LCCEWA therefore supports a range of services like those outlined in the feedback booklet. However, similarly in regard to the options listed in the section "parenting after separation and divorce," the LCCEWA has the same eight concerns for this section.

Meeting Access Responsibilities

The LCCEWA fully supports the notion that on-going, meaningful contact between children and both parents following separation is beneficial. However, support for on-going contact is premised on the condition that such contact does not expose children to continuing conflict or abuse. When parents accept and fulfil responsibilities to their children and their children take pleasure from the positive relationships, there is no question that such benefits ought not to be denied. This condition of safety is not present in cases involving woman abuse.

For abused women and their children access and exchanges can be particularly dangerous. It is in the experience of members of the LCCEWA that women have been abused during access visits and that their children have witnessed this abuse. Women report that they have been terrorized by their abusive partner's threats to abduct their children. Heger and Grief (1991) report that half of all abductions occur during court-ordered visitations, and fathers abduct their children mainly to hurt mothers (Heger & Grief, 1991). The logistics of picking up and dropping off the children can also be dangerous. Adams (1989) reports that many abusive fathers physically and/or emotionally abuse the mother when the children are picked up or dropped off. Such abusive post-separation conduct should be given significant weight in an application to terminate access.

Legislation should specify that in making arrangements for access, that the safety of women and children should be of paramount consideration. The Domestic Violence Act of New Zealand states that "If the violent allegation is proved, the violent party must not be granted custody of the child or allowed access (other than supervised access) to the child, unless the court is satisfied that the child will be safe" (s. 16 B(c) as cited in Family Violence News, 1996) (Phipps, 1996). The LCCEWA believes that there must be a provision for supervised access that is independent and outside of the control of the abuser. It is also imperative that the supervisors are fully trained in the issues and dynamics of woman abuse and child abuse and that supervised

access centres are properly funded to effectively undertake the supervision. If the abusive partner continues to abuse the mother or the child, supervised access should be terminated. No access must be considered a viable option by custody and access decision-makers in some cases. Repeatedly giving abusive fathers additional chances for improvement risks the safety and well-being of children and women.

Looking at Services - See previous comments in this report

Looking at the Law

The legislative options appear to be geared exclusively to being punitive to custodial parents, who are in the majority of cases, mothers. The LCCEWA questions the premise of needing consequences which are legislatively dictated. Although acknowledging that in some cases non-custodial parents may be unjustly denied contact, the overemphasis on these cases is unwarranted. It is the experience of the LCCEWA that mothers, including those who have been subjected to abuse wish that their children have ongoing contact with their fathers when it is safe to do so. In terms of the prevalence of these phenomena: mothers denying access versus fathers who do not exercise court ordered or agreed to access, the former is overshadowed by the latter.

The LCCEWA is appalled and opposed to any legislative options which threaten to utilize or utilize incarceration as a mechanism of compliance. There seems to be a focus on punitive measures for not supporting access without options that acknowledge the safety risks in access and the legitimate rationale for denying access in some cases. Currently there exist remedies for parents who are being denied access. The LCCEWA believes that the existing remedies are sufficient.

The LCCEWA finds it interesting the feedback booklet itself outlines that it is the prevailing view that it is not generally in the best interest of children to force an unwilling parent to visit them. And yet, proposes legislative options which include jailing children's primary care givers who do not comply with access orders. The juxtaposition of these two notions speaks for itself.

PART 2: Child Support

The LCCEWA feels that the child support legislation is an important measure in providing economic independence for women and children from abusive partners. The law is quite clear however, that child support and custody and access issues are to be determined independently of each other. Our report is therefore focussed on the issues of custody and access. The LCCEWA supports a thorough analysis of the child support guidelines with a view to ensuring the economic well-being of children and their primary care providers.

Conclusion

To ensure a more child-centred approach to family law policies and practices that really meet the children's needs and best interests, woman abuse must be effectively addressed. Woman abuse situations are not exceptions to custody and access law. In fact, they are far too common. We must make sure that men who are abusive are not rewarded by our society with custody of their children or offered any further opportunity to abuse their spouses and/or children on access visits. The government must assume a leadership role in advocating for Canadian laws and practices that ensure women and children can live free from violence and have access to justice. Women and children depend on this.

APPENDIX A - LCCEWA belief statements

WE BELIEVE....

1. A feminist approach to woman abuse,
2. In the equitable access to quality services, resources and justice for abused women and children,
3. That the community must assume responsibility for the safety of women,
4. That abusers must be held accountable for their actions,
5. In a diverse LCCEWA, that supports inclusiveness and full participation,
6. In working in a manner that challenges all forms of oppression and fosters an openness in identifying and responding to emerging issues and needs,
7. That a coordinated network is the preferred basis for the sharing of resources and information and relationship building,
8. That the LCCEWA has the right and responsibility to demand the accountability of its members to these beliefs.

Appendix B: LCCEWA membership and web sites:

(Please note that not all LCCEWA members have web sites)

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| Across Languages: | www.acrosslanguages.org |
| At^lohsa Native Family Healing Centre | |
| Centre for Research on Violence Against Women and Children | www.uwo.ca/violence |
| Centre for Children and Families in the Justice System of the London Family Court Clinic | www.lfcc.on.ca |
| Changing Ways (London) Inc. | www.changingways.on.ca |
| Children's Aid Society of London & Middlesex | www.caslondon.on.ca |
| City of London, Ontario Works | www.city.london.on.ca/Cityhall/CommServices/cssse.htm |
| Ministry of the Attorney General - Crown Attorney's Office, Victim/Witness Assistance Programme | www.attorneygeneral.jus.gov.on.ca |
| Family Service London | |
| London Abused Women's Centre | www.lawc.on.ca |
| London Police Service | http://police.city.london.on.ca |
| London InterCommunity Health Centre | |
| London East Community Mental Health Services | |
| Madame Vanier Children's Services | www.vanier.com |
| Merrymount Children's Centre | www.merrymount.on.ca |
| Middlesex-London Health Unit | www.healthunit.com |
| London Interfaith Counselling Centre | www.licc.on.ca |
| Ministry of Community, Family & Children's Services | www.cfcs.gov.on.ca/CFCS/en/default.htm |
| Family Consultants | http://police.city.london.on.ca/Organization/Uniformed/UDfamcons.htm |
| Ministry of Public Safety & Security - Probation & Parole | www.mpss.jus.gov.on.ca |
| Mission Services - Rotholme Women's & Family Shelter | www.missionservices.ca |
| St. Joseph's Sexual Assault and Domestic Violence Program | www.sjhc.london.on.ca |
| Sexual Assault Centre London | www.sacl.on.ca |
| United Way | www.uwlondon.on.ca |
| WIL Counselling & Training for Employment | www.skillcentre.on.ca/wil |
| Women's Community House | www.shelternet.ca |

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WOMAN ABUSE - THE IMPACT ON CHILDREN

The scope and seriousness of woman abuse is increasingly becoming known in our society. Thirty percent (3 in 10) of Canadian women reported at least one incident of physical or sexual violence at the hands of a marital partner in a large-scale 1993 national survey on violence against women conducted by Statistics Canada. Of the women who had been abused, one-third had feared for their lives during the abusive relationship. ¹ Forty-eight percent of women with a previous marriage reported having been subjected to abuse.

The profound negative effect on children who witness their mother being abused is now being recognized. Children are affected in their emotional development and behaviour, as well as in their educational adjustment. Children, especially boys, who witness violence are more likely to be violent when they grow up. Witnessing violence in childhood increases the likelihood of a man becoming an abusive husband and causing severe injuries. ²

How many children are affected?

Estimates of the proportion of children of abused women who witness the violence range from 40 to 80 percent. ¹⁻³ The consensus of opinion is that children see, overhear or are aware of the majority of violent incidents. Best estimates indicate that three to five children in every Canadian school classroom have witnessed their mother being abused. ³ In many cases children witness severe violence. For example, in the 1993 Statistics Canada study, ¹ children were reported to have witnessed violence in more than half of the cases in which women feared for their lives. Children who witness physical violence toward their mother almost invariably witness a great deal of psychological abuse, including verbal abuse, belittling and threats toward her.

What are the links between woman abuse and child abuse?

- Children who witness the violent behaviour of their father or their mother's partner toward their mother are being emotionally abused.
- There is 30 to 40 percent overlap between children who witness woman abuse and children who experience direct physical abuse themselves. ²
- Women are often abused during pregnancy and miscarriage sometimes results. ^{1, 2}
- Abuse and the resultant trauma and stress on the mother lessen the coping resources that mothers have available for parenting. This can result in less effective parenting by the mother and neglect or child abuse in some cases. ^{2, 4}
- A pattern of physical and emotional abuse of mother by father or other male partner is common in families in which children are sexually abused by fathers or male partners of mothers. ^{5, 6}

What are the emotional and behavioural effects on children?

- Children who witness their mother being abused by their father or mother's partner frequently experience Posttraumatic Stress Disorder (PTSD).⁷ The symptoms of PTSD include re-experiencing the trauma (nightmares, intrusive thoughts or images, flashbacks); fear, anxiety, tension and hyper-vigilance; irritability and outbursts of anger

and aggression; and efforts to avoid being reminded of the abuse.

- If the mother takes her children and leaves, the children suffer disruption of their home, routine, relationships with their friends, and often their school. These children may be pre-occupied with fear that violence will re-occur and are often aware of threats and attempts at renewed contact, or stalking, by their fathers. At the same time the children may be relieved to be in a safer place.
- Children who have witnessed their mothers being abused display greatly elevated rates of depression, withdrawal, low self-esteem and other emotional problems. ^{2, 8-12}
- These children who witness woman abuse have a much greater risk of behaviour problems, such as aggression with peers, non-compliance with adults, destructive behaviour, and conflict with the law. ⁸⁻¹²
- These children who witness woman abuse and whose parents separate may have ambivalent feelings toward their father. They may miss him, and worry about his well-being, but also be afraid of him at the same time.
- Children, as they enter adolescence, may also have mixed feelings about their mothers. They may feel sympathy and support, but also be resentful and disrespectful, because of their opinions about their mother's choices.
- Their level of emotional and behavioural problems is of a magnitude similar to that of children who are themselves physically abused. ¹²

What is the impact on education and social skills?

- Children who witness their mother being abused by their father or other male partner tend to have lowered school achievement. They may have increased school absences because they are needed at home to look after siblings when the mother is incapacitated, or they may refuse to go to school because they do not want to be separated from their mother. At all ages, they may not pay attention at times because they are preoccupied and anxious. They are more often truant. When at school they may be withdrawn and/or aggressive.
- Children from violent homes tend to have lowered social skills. ¹¹
- Abusive homes are often socially isolated and children may be taught to be secretive about the abuse. ²

What are specific effects at different ages, and for girls and boys?

- Very young children, even infants, are seriously affected, and may suffer problems with sleeping, weight gain and excessive crying.
- Pre-schoolers display effects such as anxiety, clinginess and aggressive behaviour.

- Children beyond the infant or pre-school age often feel responsible to try to intervene in the abusive situation.
- Children aged 6 to 10 tend to have school and peer relationship problems.
- Teenage children tend to be truant, run away or drop out of school, and they tend to become involved in violent dating relationships. Teens may, in some cases, use denial as a coping method.
- Some, but not all, studies find that girls who witness violence have a greater tendency to become withdrawn and depressed, while boys have a greater tendency to act aggressively. However, these problems are present in both boys and girls. ¹³
- Boys, especially at age 11 or older, who identify strongly with their fathers may imitate his actions by being aggressive towards their mother and other women.

Are all children affected to the same degree?

- Children whose mothers cope especially well and have strong social support will fare better.⁴ Children who have areas of strength in school, social relationships and sports activities are also better off.
- Children who witness abuse and are also themselves abused tend to fear the worst. ⁹

Links between witnessing violence and learning to be violent

- Children from violent homes are being taught that violence is an effective way to gain power and control over others. ²
- Children from violent homes are more prone to accept excuses for violent behaviour, and have increased risk of acting aggressively toward peers and adults. ²
- Witnessing violence greatly increases the chances that a boy will grow up to act violently with dating and/or marital partners. For girls, it increases the chances that she will accept violence which occurs in her dating and/or marital relationships. ¹³

What can be done to help children who witness woman abuse?

A coordinated community response, with all professionals and service agency personnel trained to understand issues of woman abuse and its effects on children, is needed if abused women and their children are to be adequately protected. Public awareness of the issues involved is also important.

Early identification and appropriate referral of abused women can assist in preventing future harm to these women and their children.

Legal/policing issues

When the legal system and Police effectively protect women and their children, the trauma for children is lessened. Current issues include effective and easily accessed protection orders; quick access to the matrimonial home with the abuser removed; and the enforcement of

probation conditions and anti-stalking laws. Appropriate penalties for woman abuse all directly affect children's safety, sense of security and adjustment after abuse.

Child protection

Recognizing that witnessing woman abuse constitutes emotional and psychological abuse is an important first step in protecting children. At the same time, support to the mother, without victim blaming, is essential. Six of ten provinces in Canada stipulate in legislation that children who witness woman abuse can be found in need of protection.¹⁴ (However, child protection agencies are overwhelmed with existing caseloads and may not have adequate resources for these cases.)

Child custody/access

After separation, many abusers use the issue of legal child custody as a means to threaten and control their former spouses.¹⁵ The period immediately after separation is a very high-risk period for abuse and killing of mothers. In a recent study, it was found that of 1,157 woman abuse cases tracked through the Nova Scotia justice system, 24 percent of victims suffered abuse while their male partners were exercising court-ordered child visitation.¹⁶ Woman abuse should be considered a major factor in child custody cases, as the effects on mothers and children are so serious.¹⁷

Children's mental health/Children's groups

The high incidence and serious effects of witnessing woman abuse make it a prime issue in children's mental health. Groups for children who have witnessed violence are an important service. In group situations, children can learn safety skills for themselves in abusive situations. They can learn that no one has the right to abuse another and that they are not responsible for the abuse. They can also learn alternative ways to handle conflict without violence.¹⁸⁻¹⁹ Individual treatment, and treatment for depression, fear, post-traumatic stress disorder and aggressive behaviour may also be needed, depending on the child's adjustment.

Shelters and advocacy for abused women

Support services for abused women, through shelters, legal, housing and financial supports, all have a major positive impact on the accompanying children. Without such services, many more children will continue to witness abuse.

Schools

Schools are in contact with hundreds of thousands of child witnesses of woman abuse in Canada each year. Professional development for teachers, as well as the development of school protocols to deal with and assist such children are very important.

Prevention

Schools and community resources cooperating in awareness programs constitute the best hope to educate all community members about the effect of witnessing abuse on families and children. Effective programs are available and can be implemented at low cost.

Resources for prevention

For educators:

A.S.A.P.: A School-based Anti-Violence Program. M. Sudermann, P. Jaffe, E. Schieck. 1993, London Family Court Clinic, London.

A.S.A.P. provides a comprehensive and evaluated plan to implement violence prevention programs in schools with a special emphasis on violence in relationships. It is designed for teachers, students and parents. Community involvement is an important component. Wife assault, dating violence, bullying, racism and sexism, and other forms of violence are addressed. The manual includes information about handling disclosures from children. Many reproducible materials are also included. A curricular resource document, *65 friendly lessons on violence prevention*, accompanies the manual. Available from: The London Family Court Clinic, 254 Pall Mall St., London, ON N6A 5P6. Tel: (519) 679-7250.

Thumbs Down – A Classroom Response to Violence Towards Women. Canadian Teacher's Federation, Ottawa, 1990.

Thumbs Down is a violence prevention program for Kindergarten to Grade 12 which encourages classroom discussion and age-appropriate activities. This is a valuable resource with suitable in-class exercises, individual exercises, handouts and read-aloud books and videos. The manual is available in English and French.

Suggested readings

Ending the Cycle of Violence: Community Responses to Children of Battered Women. E. Peled, P. Jaffe, J. Edleson, Eds. Sage Publications, Thousand Oaks, CA, 1995.

This is an excellent resource book for community workers and professionals working in the social service, legal, policing and advocacy fields. Issues addressed range from assessment, child custody and advocacy to prevention.

A Handbook for the Prevention of Family Violence: Child Abuse, Wife Assault and Elder Abuse. S. Mulligan, S. Barrs, D. Mitchell, R. Pickering, J. Pritchard, J. Quinn, Eds. Family Violence Prevention Project, The Community Child Abuse Council of Hamilton-Wentworth, 1991.

This handbook has good information about both wife assault and its effects on children, among other topics. It also deals with child physical and sexual abuse and elder abuse.

Children of Battered Women. P. Jaffe, D. Wolfe, S. Wilson. Sage Publications, Newbury, Park, 1990.

This is a good source book on the effects of wife assault on the children who witness it. It also contains a description of a group treatment program for children.

Video resources

Preventing Family Violence: A Catalogue of Canadian Videos on Family Violence – lists videos which can be borrowed for a small administration fee through the offices of the National Film Board of Canada. The Catalogue is available through the National Clearinghouse on Family Violence. Tel: 1-800-267-1291.

Make a Difference: How to Respond to Child Witnesses of Woman Abuse (1995). The London Coordinating Committee to End Woman Abuse, c/o C.A.S. of London & Middlesex. Tel: (519) 455-9000.

A 20-minute video produced for educators and children's service providers. Topics include the effects on children of witnessing wife assault, identifying child witnesses, and how to respond to disclosures.

The Crown Prince (1989). National Film Board of Canada (also available in French).

A 37-minute video that depicts the feelings and problems of two children (Billy, 15, and his younger brother) who live in a home where their mother is a victim of wife assault.

Break the Cycle (1991). Esprit Films Ltd., Tel: (905) 685-8336.

This 25-minute video addresses issues related to wife battering. The film includes interviews with a battered woman, a violent husband and several teenagers who witnessed violence against their mother.

Tulip Doesn't Feel Safe (1993). Kinetic, Inc. Tel: (416) 963-5979.

An animated 15-minute video which teaches children aged 6 to 8 how to deal with various unsafe situations, most specifically wife abuse.

Kid Stuff (1990). National Film Board of Canada (also available in French).

A non-verbal 6-minute video which combines drawings and puppet animation to convey the impact on a young boy of his parents' quarrel.

Seen but Not Heard? (1993). Friday Street Productions and the BC Interval and Transitions Houses. Available through the National Film Board of Canada.

A 29-minute video on the effects on children of witnessing woman abuse at home.

Books for children

Hear My Roar: A Story of Family Violence, by Ty Hochban & Vladyana Krykorka, Annick Press Ltd., Toronto, 1994.

Hear My Roar is to be read to children aged 5 and up who live in a family where there is wife abuse. It provides a framework for discussion with a child who witnesses woman abuse at home.

Mommy and Daddy are Fighting, S. Paris, Seal Press, Seattle, 1986.

Never, No Matter What, by M. Oho & C. Clarke, Women's Press, Toronto, 1988.

Something is Wrong at My House: A Book about Parents' Fighting, by Diane Davis, Parenting Press, Inc., Seattle, 1984.

A good book about feelings and ways to cope when living in a violent household.

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*(Health Canada - The National Clearinghouse on Family Violence, 1996)
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Chapter Four: Additional Issues for Consideration

POLICE EDUCATION

The curriculum in Police Foundation Programs offered at 22 of Ontario's Colleges should be enhanced to include comprehensive information and analysis of men's violence against women within their relationships as a social problem and as cases to which they will respond as Police Officers. Given that it has been estimated that Police Officers may spend up to 30% of their time responding to criminal code offences by investigating cases of domestic violence, both academic and practical educational and training materials, and the duration of the training on this issue, should be adjusted accordingly.

FACULTIES OF LAW

Law school curriculum should be enhanced to include comprehensive information and analysis of men's violence against women within their intimate relationships as social, criminal and civil problems. In particular, emphasis should be placed on the issues to consider when defending a person accused of assault and/or criminal harassment against a spouse, partner or former partner. These include safety, accountability and civil liability.

DOMESTIC VIOLENCE ACT

Legislation which provides remedies to victims of violence through emergency intervention orders should be adopted. As in Saskatchewan and British Columbia, these orders should be available 24 hours a day from a select number of specially designated Justices of the Peace. This legislation should include provisions that can restrain a perpetrator from contacting the woman or members of the woman's family, grant women who have been abused by a partner or former partner the right to sole possession of the matrimonial home, direct a Police Officer to accompany a woman to her home to retrieve personal property, give Police the right to enter and remove vulnerable persons from homes where access is denied, and make provisions for economic support for women and children who are in financial need as a result of the abuser's incarceration.

Additionally, women who have been abused by their partners require priority access to legal services, with particular regard to continuity between family and criminal court proceedings. Accordingly, government funding to Legal Aid should include resources for programs that provide direct legal services, advocacy and education related to domestic violence, family law, and other relevant areas including housing, immigration and compensation for the impact of violence.

NEW IDENTITIES ACT

Currently an ad-hoc program exists at the federal level, run by Revenue Canada, that provides new identities for people who find themselves in threatening situations. There is currently a private member's bill that seeks to gain funding and a formal mandate for this program by bringing it under the Witness Protection Program run by the RCMP. This program would provide a remedy of last resort to women and their children who seek to escape from violent and life threatening partners and should be vigorously supported.

Recommendations

The following nine recommendations should be incorporated by Police, Lawyers, Crown Attorneys and Judges, in order to help end violence against women. It is recommended that:

1. Specific domestic violence legislation be researched and integrated into the Criminal Code of Canada.

“Domestic violence cases are different than other criminal cases. In most situations the accused and the victim would normally never meet again. With domestic violence, the accused often must have contact with the victim due to property, support and child issues. The criminal justice system will have to be changed to deal effectively with these differences.”

*(Inquest Touching the Deaths of Arlene May and Randy Joseph Iles:
Jury Verdict and Recommendations, 1998)*

The Criminal Code offence that comprises the majority of charges against men who use violence (Section VIII: 266 - level one assault) does not adequately encompass the context that is distinct to men’s violence against women within their intimate relationships. For example, while criminal prosecution usually proceeds in relation to singular or specific incidents of violence, most domestic violence cases involve a succession of incidents and a pattern of behaviours enacted by the perpetrator that establish the conditions in which he perpetrates the crime.

Rules of evidence do not currently allow for the inclusion of the history or the pattern of the perpetrator’s violence except under limited and restrictive circumstances. This information is crucial for comprehending the breadth of the crimes committed in intimate relationships. Moreover, while the charge of criminal harassment (Section VIII: 264) does acknowledge a pattern of violence, it is rarely used in domestic violence cases when the actions that constitute criminal harassment are perpetrated in the home.

Men’s violence against women within their intimate relationships is unlike any other crime because, in many cases, the victim is required to continue to engage in a relationship with the perpetrator, especially if there are children involved. Specific domestic violence legislation would allow the state to provide increased safety and protection for women and children and a greater role in deterring and preventing a form of violence that is destructive to individual women, their children, and society as a whole.

Given the incidence and prevalence of men’s violence against women in Canada, it is recommended that a Parliamentary Committee be struck to investigate, produce and institute Domestic Violence Legislation into the Criminal Code of Canada.

2. Murder prevention strategies be established in every court catchment area.

“A total of 551 women were killed by their current or estranged intimate partners between 1974 and 1990 in Ontario. Intimate femicides accounted for between 61% and 78% of all killings of women where an offender was identified. On average, between 32 and 41 women were victims of intimate femicide each year in Ontario between 1974 and 1990.”

(Woman Killing: Intimate Femicide in Ontario 1974 - 1990, 1992)

Men’s violence against women in their intimate relationships is a preventable crime. The criminal justice system must shift its focus to the prevention of intimate femicide by developing murder prevention strategies in every court catchment area that includes:

1. Murder prevention police units dedicated specifically to the safety of abused women and their children.
2. Specialized investigative and prosecutorial techniques.
3. Designated and specially trained Police Officers, Crown Attorneys, Judges, Justices of the Peace, Probation and Parole Officers, Victim Services staff, male abuser intervention program staff and women’s advocates.
4. Thorough and comprehensive investigation procedures; rigorous prosecution standards and sentencing practices.
5. Programs and prevention initiatives developed collaboratively with community coordinating committees.

The Role of the Domestic Court as a Murder Prevention Strategy:

“Police and prosecutors in San Diego, California, have a zero-tolerance approach to domestic violence. They collect better evidence, build better cases, and generally take spousal abuse more seriously than any other city in North America. Ten years after this initiative began, San Diego has an almost perfect conviction rate, the number of repeat offenders is low and the domestic murder rate has dropped.”

(The Toronto Star, March 16, 1999)

The San Diego model is based on a commitment to three elements:

1. Vigorous prosecution by the criminal justice system.
2. Ongoing support and advocacy for victims through the criminal justice system.
3. Coordinated and integrated responses within the community and between all sectors.

All three elements are crucial to an effective response, one without the others leads to re-victimization, and jeopardizing the safety of the woman and her children.

(Education Wife Assault, Pilot Project Overview, Metro Woman Abuse Council)

Domestic violence courts should function with a dedicated team of Crown Attorneys who would prosecute all domestic violence cases. These cases should be presided over by designated and trained Judges. Ideally, all domestic violence trials would be held in permanently designated locations within each court house.

All Police Officers, designated Crown Attorneys, Judges, support staff and all other criminal justice service providers should receive mandatory training regarding policies and investigative procedures and techniques.

3. The courts be prepared to proceed in domestic violence cases without the participation of the woman.

“Photographs. 911 tapes. Every possible witness.

But the victim is not relied on to testify because of the emotional complexities.

The work of sending an offender to jail is up to police and prosecutors - not the battered woman.”

(Gael Strack, Deputy City Attorney, San Diego, California, 1996)

The current practice within the justice system is to place the onus for successful prosecution on the testimony of the abused woman. It is only rarely that evidence corroborating the assault is collected and if collected, it is seldom entered into the record.

The reasons that women recant or fail to appear at trial are complex and are often dependent upon how individual women perceive their own experience within the relationship and within the criminal justice system. Many women fear retaliation from the men who abused them. Abused women know only too well the risk they are exposing themselves and their children to if they openly confront their abuser in a trial. Men who abuse women may threaten, intimidate and pressure these women from testifying. Further, abused women have little faith, often based on previous experience, that a criminal conviction will accord safety to them and their children (Canadian Panel on Violence Against Women, 1993).

The current practice of relying on the woman for successful prosecution has actually exacerbated the intended outcome of the mandatory arrest policy which was to detach blame from the woman for the charges against the man who assaulted her (Education Wife Assault Newsletter, Vol. 8 #1, 1997). Prosecution of domestic violence cases should not rest on the presence, testimony or perceived credibility of the woman. Prosecution of domestic violence cases should proceed with the understanding that effective criminal justice system intervention may potentially prevent homicide.

The three central tenets to the prosecution of an abuser without the use of the woman's testimony are:

1. **Photographs.** The police must take pictures of the victim's injuries.
2. **911 Tapes.** The victim or her children's first call for help must be used in court. These tapes can provide the court with a sense of the victim's terror.
3. **Witnesses.** All witnesses must be called to the stand. These include police, neighbours, family members, friends and any other individual(s) who could provide evidence.

The Provincial and Territorial Attorney General Policies on Wife Assault/Woman Abuse should be updated and revised to include a direction that Officers will pursue the investigation with a view to obtaining sufficient evidence to proceed even without the cooperation of the woman and that the decision to charge or continue the prosecution shall not be governed by the wishes of the woman.

NOTE: It is imperative that abused women be encouraged to seek the assistance of women's advocates. An abused woman should not be penalized if she refuses to cooperate through the court process.

4. The 'Best Evidence Rule' for domestic violence cases include information particular to both the perpetrator's past and current incidents of domestic violence.

"The trial judge held that the discreditable conduct evidence could be relevant to the explanation by the complainant for her failure to leave the relationship and to report the abuse earlier. The complainant was vigorously challenged in cross-examination about the delay in reporting some of the allegations and her delay in leaving the marriage. The complainant's evidence about the pattern of ongoing abuse and her fear of the appellant were important parts of her explanation for her conduct in this regard. The evidence of discreditable conduct was also relevant for this purpose."

(Regina v. Campbell et al. [Indexed as: R. v. Campbell], Court File No. 24831, Supreme Court of Canada, Lamer C.J., L'Heureux-Dube, Gonthier, Cory and Iacobucci JJ., Page 106)

Specific information about the distinct dynamics of men's violence against women must be entered into the record. This information includes the history of the abuse, the strategies and tactics used by the perpetrator including emotional coercion and controlling behaviours, the

perpetrator's past convictions and the ongoing and continued threats to the woman.

Justice P.W.L. Martin in his decision January 28, 2000, *Regina (respondent) v. E.M.B. (applicant/accused)*, Indexed as *R. v E.M.B. (Action No. 9901-0207-S4, Alberta Court of Queens Bench, Judicial District of Calgary)*, stated: "in dealing with bail applications, the court depends on the Crown to place before it all of the information relevant to the matter. Judges believe the Crown has all the information and will report every concern. Judges expect the Crown will know whether there is a history of battery in the relationship between the accused and complainant, and assume that the failure of the Crown to comment means that the offence before them represents an isolated incident. That faith is sometimes misplaced and the Crown's silence on the point is reflective of a lack of knowledge, not a lack of assaultive history." Justice Martin further stated, "In my opinion, in cases of spousal or intimate partner assault, the Crown cannot address bail without having certain vital background information in hand, in addition to the circumstances of the offence and the criminal record of the accused. This includes, at a minimum, the following:

1. Whether there is a history of violence or abusive behaviour, and, if so, details of the past abuse;
2. Whether the complainant fears further violence if the accused should be released and, if so, the basis for that fear;
3. The complainant's opinion as to the likelihood of the accused obeying terms of release, in particular no contact provisions; and,
4. Whether the accused has any drug or alcohol problems, or a history of mental illness."

Clearly there are precedents for the introduction of similar fact evidence in cases involving violence committed by intimate partners (above and *Regina v S.B. O.J # 1187, 1996*), and inclusion of this evidence should be standard practice in all domestic violence cases.

5. Men with a history of violence, suicidal ideations, and/or pose a threat to the woman and her children be held until trial.

A construction labourer (Victor Luis) has admitted killing his estranged wife by repeatedly smashing her in the upper chest with a heavy pickaxe. Luis had been convicted of assaulting his wife in the past and at the time of her death he was under a court order to stay away from her and the family home," the prosecutor said.

(Toronto Star, 1988, Woman Killing: Intimate Femicide in Ontario 1974 - 1990, April 1992)

Violence perpetrated by a man against a woman in an intimate relationship is unlike any other circumstance in which the criminal justice system intervenes. In cases where there are children and/or property involved, the perpetrator often must have contact with the woman. Many women are forced to drastically alter their lives in response to stalking behaviour. Others are forced to endure a permanent fear of continued abuse, serious injury or death because they are compelled to maintain relationships with abusive men. This constitutes a serious and persistent threat to both women and children and consequently requires specific measures to alleviate as much risk as possible.

The safety and protection of women and their children from further incidents of violence should be the criminal justice system's first priority. Where there is evidence that the perpetrator's actions constitute a pattern of violence, the onus should be placed on the perpetrator to demonstrate that he does not pose a significant threat to the woman and children involved. If the perpetrator, after he is arrested and charged, cannot demonstrate that he does not pose a meaningful threat to the woman and children involved, or that he will not be able to abide by a no, or limited contact order because he does not have access to alternative living arrangements or for any other reason, he must be detained in custody pending trial.

Many relevant factors should be examined when determining whether a perpetrator poses a significant or meaningful threat to the woman and her children, including:

- His history of violence.
- His past failure(s) to comply with orders.
- The woman's fears for her safety and the safety of her children.
- His pattern of violent or harassing behaviour against other individuals.
- His history of escalating violent behaviour against the current victim or other individuals.
- The termination by the victim of the marriage or partnership.
- Any other findings indicated by a risk assessment tool.

6. The courts respond to the charges quickly, and that sentencing be immediate and reflect the seriousness and societal abhorrence of the crime.

“When I left him finally, the first court appearance was scheduled for September. The thought of being in the same room with him scared me. He had been watching me, following me and shouting obscenities at me. At the last minute, the case was remanded to late October. I had to get ready all over again and psych myself [up] to follow through with it. Had I known then that my husband would be allowed to manipulate the court system for four years, I would have [just] gone back to him. It would have been easier.”

(Changing the Landscape: Ending Violence - Achieving Equality, The Canadian Panel on Violence Against Women, 1993, pg.220)

The courts need a process to allow for an immediate response to all domestic violence cases. Sentences for offences involving domestic violence offenders are currently inconsistent and frequently do little or nothing to hold the offenders accountable for their actions. Offenders who breach the no-contact, no-communication conditions are often released from custody a second time. Offenders who do not maintain contact with their Probation Officers or refuse to attend the required male abusers program are typically ordered to pay only a minimal fine. Incarceration is rare. The current system fails to acknowledge that breach of a condition of an offender’s interim judicial release or probation may well jeopardize the victim (A Study of Domestic Violence and Justice System in Manitoba, 1997).

Mandatory periods of probation and parole must be coupled with mandatory participation in a male abuser treatment program. These programs should be evaluated regularly to ensure they have demonstrated their effectiveness in changing both misogynist attitudes and violent behaviours. The priority of the supervision should be the continued protection of women and children. Early termination of supervision should not be recommended unless it is evident that further risk to the woman and children involved is non-existent.

Programs for men who abuse women should be provided in both provincial and federal penal institutions. In addition to teaching new skills and modelling appropriate attitudinal and behavioural changes, programs for men who abuse women should integrate an analysis of the oppression and dominance that results from socially honoured masculinity and offer concrete strategies that will teach men how to resist challenges to their newly formed attitudes and behaviours (Burkell & Ellis, 1995).

- 7. Information about the distinct dynamics of men’s violence against women be incorporated into the mandatory training curricula for all criminal justice system personnel. Mandatory training should include murder prevention, investigative and prosecutorial techniques that are supported at the provincial level through consistent policies set by the Attorney General of each province and territory.**

“Help, when it is available, often comes from those who do not understand wife abuse and have little or no training... They often believe the myths.”

(Canadian Panel on Violence Against Women, 1993)

It is the responsibility of the criminal justice system to enforce the act of assault as a criminal offence, to ensure the abuser is held accountable for his behaviour, and to provide deterrents for the individual and society at large. The provision of safety and protection for abused women and their children be the priority (Creating a Community Response to Abused Women and Their Families - The Durham Region Experience, Mathes, Farquhar, McMurray and Sider, page 1-2, 1995). Training content and provincial policies should reflect this priority. Consequently, existing training curricula and provincial policies should be reviewed and adjusted for consistency so that all women receive consistent treatment regardless of where in Canada she is assaulted.

Woman Abuse training is key to both the effective investigation and the prosecution of cases that require specific knowledge and insight, especially when that information contradicts conventional presumptions about men and women that are based on myths and stereotypes. Men’s violence against women is a gender-based crime. The vast majority of perpetrators are men and the vast majority of victims are women (Statistics Canada, 1998). Hence, a gender-based analysis of men’s violence against women challenges the presumptions that have served to condone men’s violence against women throughout most of history. These include presumptions that some men have the right to use violence, that men are naturally violent and consequently cannot control their violent impulses, that violent men are mentally ill, that women want or deserve violence, and that only certain ‘types’ of men and women are perpetrators and victims. A gender-based analysis of violence offers explanations which centralize the experiences of women and provide a perspective which recognizes the intent and effects of men’s violence against women. A gender-based analysis does NOT look to the victim to explain the actions of the perpetrator.

8. The Bar Admissions courses incorporate mandatory comprehensive information about men’s violence against women within their intimate relationships into its curriculum.

“If Crown Attorneys and lawyers are more highly sensitized to the particular form of violence being addressed in the trial process, their knowledge of the issues will help them handle the trial process with the best interests of the survivor in mind.”

(Canadian Panel on Violence Against Women, 1993)

While there are some courses available at Faculties’ of Law across the country on the subject of men’s violence against women and gender inequality, these courses are not mandatory. Inserting relevant information about men’s violence against women and systemic discrimination against women into the Bar Admissions course would help to ensure that every practising lawyer is aware of the relevance of the distinct dynamics of men’s violence against women in their intimate relationships for the prosecution of domestic violence cases. Moreover, since all Judges begin their education as lawyers, mandatory education that aims to increase understanding of gender equality and women’s safety issues would benefit the entire system.

9. Accountability principles be developed for women accessing the criminal justice system.

“Only in domestic violence cases do the victims love the offenders. Domestic violence cases are therefore different from other criminal cases and require a different approach to prosecution.”

*(Commission of Inquiry into the deaths of Rhonda Lavoie and Roy Lavoie:
A Study of Domestic Violence and the Justice System in Manitoba, 1997)*

Accountability measures should be developed in cooperation with women who have experienced violence in their intimate relationships, women’s advocates, community services for children, health, and social services that respond to violence in relationships within a coordinated community framework. Mechanisms are required to ensure that practices and policies developed in response to men’s violence against women in their intimate relationships are followed. In addition, accountability practices should include clear and accessible mechanisms for feedback, complaints, and redress that are sensitive to the needs and requirements of individuals who utilize the criminal justice system.

Key Informants

The following key informants played a vital role in informing the process and the outcome of this work:

- Bev Coultson-Simon - Law & Security and Police Foundation Program Professor, Fanshawe College
- The Honourable Mr. Justice Donald G. Fraser - Ontario Court of Justice, Northwest Region
- Mike Gobeil - Basic Constable Training Coordinator, Ontario Police College
- Michele Hansen - Executive Director, Women's Shelter and Counselling Services of Huron
- Ruth Hislop - Collective Member, North York Women's Shelter
- Julie Lee - former Executive Director of the London Abused Women's Centre
- The Honourable Madame Justice Deborah K. Livingstone - Ontario Court of Justice, West Region
- Pat Marshall - Special Advisor, Ontario Ministry of the Solicitor General
- Anne O'Dell - Domestic Violence Consultant, San Diego CA., retired Detective Sgt., San Diego Police Department
- Peter Rollings - Assistant Crown Attorney, London
- Terry Streefkerk - Detective Constable, Ontario Provincial Police
- Arlene Timmins - Status of Women Canada
- Clients and staff of the London Abused Women's Centre, London, Ontario.

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Appendix I: Policing Standards Manual (2000)

Policing Standards Manual (2000)
(attached)

- Domestic Violence Occurrences
- Criminal Harassment
- Bail and Violent Crime
- Preventing or Responding to Occurrences Involving Firearms

Appendix II: Personalized Safety Plan for Abused Women

Personalized Safety Plan for Abused Women
(attached)