

Issues Arising when Victims of Woman Abuse are Involved in both the Family and Criminal Law Systems

Justice Options for Women Phase 3: Linking Criminal and Family Law Issues in Woman Abuse
January, 2003

Following is a list of issues with regard to situations where parties are involved in both the criminal and family law systems due to violence in the relationship. These issues were identified through focus groups with women held in Phase 1 of the Justice Options Project and informal interviews with representatives of various components of both the family and criminal law systems and victim support organizations, including;

- Transition House Association
- Rape/Sexual Assault Crisis Centre
- Victim Services
- Supreme Court Justices
- lawyers in private family and criminal practice
- Family Support Orders Program
- Maintenance Enforcement
- Family Court Counsellors
- Police
- Child Welfare lawyers
- Criminal Law Legal Aid
- Probation Services
- Crown Attorney's Office
- Provincial Court Judges
- Turning Point Program

A summary of the issues identified are as follows;

1 Avenue for Further Abuse

The family law system provides an additional way for the abuser to be in contact with and control his victim. The abuser can use the system to continue financial and emotional abuse through the prolonging of proceedings by filing motion after motion. When children are involved, the abuser can use the system to be a threatening presence in the woman's life for years.

Other ways that the abuser can use the system to further abuse and control his victim are through his right to cross-examine his victim if he is representing himself or through cross-examination techniques used by some lawyers either in a family court proceeding, a criminal court hearing or an application for a Victim Assistance Order, even when there is a no contact order in place.

Court rooms are not safe places for many women to be if they are required to sit in the same room or take breaks in the same hallways with their abusers. Similarly, if women are requested to meet together with their abusers for a home study or mediation when there is an Emergency Protection Order or other no contact order in place, women's safety can be jeopardized if they feel that they must comply in order to give a favourable impression to the courts, if they are not in an emotional position to refuse or if they are being pressured by the abusive spouse to participate.

2 *Timeliness of Proceedings*

Because family court has a different time line than criminal court, women are often left with a frustrating feeling of being in limbo even after the criminal court issues have been dealt with. In other cases, the criminal disposition can take longer than it has to if there is a request for an adjournment until custody and access issues are decided in Supreme Court.

The longer the system takes to settle a matter, the more danger women face. Women are statistically in greater physical danger when they leave abusive relationships, and the longer the family court system takes to sort out separation issues, the greater the danger for women. In some cases, the length of time that it takes to receive a decision from Family Court can give rise to further abuse as some women are forced to go back to the abusive relationship due to financial constraints. Police have noted that the extended relationship created by a prolonged amount of time in the family law system can lead to further stalking, damage to property, assaults, threats and murder.

3 *Family Law Legal Aid*

Access to family law legal aid is limited. The aid that is available to women who have been abused by their partners is not reasonable in terms of the time that it will take to decide the issues in a case involving a family in high conflict. Many of the precious hours are often used by the family lawyer trying to assist the client to find out what is happening or has happened with charges or stay away orders in the criminal law system

The inadequate access to family law legal aid can be extremely overwhelming for those with low incomes and may cause some women to stay in an abusive relationship longer. There are additional expenses that must also be taken into consideration. For instance, in small communities where there are a limited number of lawyers, women may have to go to another community, and bear that travel expense, to find a lawyer that her spouse has not dealt with.

For judges, parties representing themselves is a problem as they don't know the law or their rights well enough to articulate the issues. This makes it more difficult for the judge to remain impartial.

4 *Overwhelming System*

Dealing with more than one support person, in more than one system, can be overwhelming for women leaving an abusive relationship and already dealing with so many issues, including her own safety and the safety of her children. This overwhelming feeling may cause a woman to "give in" and go back to the relationship which is, at least, familiar.

5 *Supervised Access*

Difficulties arise when it becomes necessary to make an order for supervised visits as there are no resources to ensure properly supervised visits within the province and private 3rd parties are difficult to find. When supervised visitation is ordered, the parties are sometimes left to figure out how to arrange that, giving rise to a potential for contact between the parties and further violence. Some parents are forced to access the services of a private PEI business which is expensive and often inconvenient since the service is only offered during regular business hours. There also exists concern that there are no provincial standards in place to ensure safety for women with regard to issues such as contact between the parties during drop off and pick up, or confidentiality of contact information.

Not having a way to ensure safe and appropriate supervised access so as to reduce the contact between the parents is a serious issue in cases of family violence as, very often, that contact between the parties to arrange access can ignite a recurrence of violence.

6 *Education*

There is an issue of education for women, offenders, support workers and justice system personnel when parties are involved in both the family and criminal law systems as a result of family violence. For example;

- Many women do not understand the difference between family and criminal court systems. For example;
 - women often think that the Crown or police are acting on their behalf in criminal as well as family matters and will expect that they will enforce or facilitate non-criminal orders involving the dividing of family assets or access arrangements.
 - Victim Impact Statements can only deal with the specific incident that the abuser is being charged with. Women sometimes find it difficult to understand why the years of abuse that they have suffered is not considered relevant.
- Support workers may not be able to provide the information that women are requesting because they are not as familiar with the family system.
- Non-custodial parents who are ordered to pay support are sometimes under the wrong impression that support is linked to access and that if access is being denied, either because of a no contact order or because the children are in the care of the Director of Child Welfare, they are justified in refusing to pay support.
- Justice System personnel needs education about woman abuse and the cycle of violence to have a better understanding of the issues that are involved as well as to alleviate frustration that they may feel when women return to the relationship and/or ask to have orders they have requested set aside.
- Judges are sometimes not kept informed about what programs are available in the province, information they need if they are expected to order treatment of abusers.
- Police need clearer direction about what role they are expected to play, if any, in enforcing family court orders.
- Family law lawyers need more information about the Victims of Family Violence Act and the criminal law system as it relates to their client's family law issues.

7 *Contradicting or Inefficient Orders*

There does not appear to be a protocol in place for sharing information between courts systems and some service providers. This can result in various orders referring to the same people saying different things. It is not be unusual for people in high risk situations to be subject to orders from Child Protection, Police, family court, probation and the Victims of Family Violence Act at the same time. Unless there is way to share information about the orders automatically between those with the power to make the orders, it is possible that there could be several contradicting orders at the same time. For example, there have been times where a no contact order is in place in the criminal system at the same time that an access order that requires contact between the parties is put in place by the family court system.

As well, there is confusion created for the parties involved and for those working in the system when different systems order slightly different conditions or use different language, particularly when that language is not plain language, in orders which may have the same intent. This can cause confusion for those involved and for those expected to enforce the orders when they are not sure which order takes precedence.

Some orders are worded without consideration of issues that may arise in the other system. For instance, an order may name the person who will supervise the access visits. If that person becomes ill or otherwise unavailable, it can cause conflict between the parties while they attempt to negotiate other arrangements. Once the order is written, it can be difficult and time consuming to vary them.

8 *Protection of Children*

Access with the abuser is sometimes ordered in cases where the children are being exposed to family violence and women have noted that children need protection from emotional and other abuses during ordered access with the abuser. However, the Director of Child Welfare does not have any long term jurisdiction to put any conditions on the access by the abusive former partner. All the Director can do is to instruct the custodial parent that if they have “knowledge or reasonable and probable cause to suspect that a child has been abandoned, deserted or abused” they must protect their children by denying access and applying for a variation of the access order, which the Director could then intervene in to support the custodial parent. This creates issues with regard to legal aid deficiencies.

Women have noted that children are often not heard from when issues of custody and access are being decided.

9 *Taking Family Violence into Consideration in Access Orders*

Women have noted that family violence is not often taken into consideration when deciding custody and access. Courts have noted that the case law does not appear to regard inter spousal violence as relevant to access, unless there is a direct threat to the children.

10 *Family Support*

Both women and those working in the justice system have noted that there is a lack of support for families when there are issues of family violence. Families are impacted when parents separate as a result of violence and when decisions are made in either the family or criminal law systems. The justice system needs to recognize that and do something to lessen the impact of court outcomes on families in family violence cases. Recognizing that each family has different circumstances may allow for solutions that meet the needs of each family. For example, in some cases, it may not be necessary for a victim's safety to place an offender in jail and may actually have negative consequences for her if it negatively impacts on the financial well-being of the family or the emotional well-being of the children thru lessened contact with the offender.

11 *Root Causes of Violence*

While there are certainly those offenders who must be incarcerated for the protection of victims and the community, jail sentences, undertakings and other remedies available in criminal law for family violence offences may not address the root causes of family violence and therefore do little to prevent further violence and thus will lead to re-offences and breaches of orders and undertakings. There is no quick, easy answer to family violence and we need to spend the time to deal with the underlying issues.

12 *Enforcement of Orders*

Civil court orders are not easily enforced and woman are often left with the choice of paying more money to have the order enforced or forgetting about it.

Because civil and criminal matters are often so enmeshed in cases of family violence, it can create confusion for both police and the general public about the role of the police. There are times when it is obvious that police involvement is necessary, such as when there are criminal activities like assault, and child abuse or neglect. However, there are other times, when it is important to have clear guidelines about what is expected with regard to police involvement, such as issues of custody and access and division of assets. It is not unusual for the general public to ask the police to enforce family court orders for access or division of assets.

13 *Women Giving Up Options*

Sometimes a woman who has left a violent relationship is fearful that enforcing an order for support or applying for a division of assets will increase the violence. In many cases, she will not pursue family law options.

14 *Systemic Barriers to Communication Between Systems*

There may be times when communication between the systems is not allowed, inappropriate or difficult. For instance, clients who have experienced family violence often want their family lawyer to assist them to find out what is happening or has happened with charges or stay away orders in the criminal law system, and, indeed, that information is often very relevant in terms of working out family law issues. However, it is inappropriate for the prosecutor to speak directly with the family law lawyer and this can make information gathering difficult and inefficient.

15 *Facilitation of Access*

If supervised access is not ordered in a case where there has been violence in the relationship, facilitation of that access can often cause further conflict between the parties. When minor changes to an ordered schedule arise, as they generally will for any parent from time to time, negotiating that change for parents with a violent relationship can involve lawyers and police and will certainly escalate the conflict and abuse, placing women in greater danger.