

Linking Criminal and Family Law Issues in Woman Abuse: Justice Options for Women - Phase Three

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Summary Report and Recommendations

When woman abuse happens in relationships there are often two areas of law involved: criminal and family. And, when children are affected by the abuse Child Protection law may also be involved. While these are distinct areas with distinct purposes and processes, there is often confusion and implications for the participants. The fact that these are distinct processes sometimes means that information from one process is not available to the other process. For example, information about abuse that resulted in criminal charges is often not considered in custody decisions in family law. This lack of relationship between the different courts may mean a “no-contact” order in criminal court, and “shared custody” in family court at the same time. This situation could mean further abuse suffered by a woman and her children.

As the Justice Options Steering Committee summarized in a recent meeting: Women don’t make the distinction (between criminal and family), and the system doesn’t make the connection (between criminal and family). During this project, opportunities were created for women, victim advocates and the system to evaluate and dialogue about potential models for use in cases of woman abuse for both criminal and family law.

Issues Identified

To develop a list of issues that arise when parties are involved in both systems due to violence in a relationship, we spoke with women who have experienced violence, as well as those working in the family and criminal law systems and victim support organizations. The issues identified include:

- Education about the various systems and about the dynamics of family violence is necessary for women, offenders, support workers and justice system personnel.
- The overwhelming feeling of dealing with many people in many systems may cause a woman to “give in” and go back to the relationship which is, at least, familiar.
- The family law system provides an additional way for the abuser to be in contact with, control and continue to abuse his victim.
- Access to legal aid is very limited.
- The disconnected time lines of the different systems and the length of time each process takes may increase the danger women face in cases of violence.
- Some women will not pursue family law options for fear this will increase the violence.
- Children need protection from emotional and other abuses during ordered access with the abuser.

- The lack of a protocol for sharing information between courts systems and with some relevant service providers can result in inconsistent orders and confusion for the parties and those working in the system.
- Lack of safe and appropriate supervised access in cases of family violence can increase direct contact between the parties and ignite a recurrence of violence.
- The impact of court outcomes on families experiencing violence needs to be recognized and lessened.
- Currently available remedies in criminal law do not deal with the root causes of family violence and can lead to re-offences and breaches of orders and undertakings.
- Family violence is not often taken into consideration by courts when deciding custody and access.
- 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.

Recommendations

For the Justice Options for Women Project:

- That the Justice Options for Women Steering Committee bring together criminal and family law system working groups to develop options for criminal and family law in cases of family violence. The groups should focus on either family or criminal law systems as well as ensure that links are made between the two systems and that an agreed upon set of values will guide the work of both.
 - The first working group will develop options for a Domestic Violence Court in PEI for recommendation to the province. This piece should be Phase 4 of the project, commencing in the Fall of 2003.
 - The second working group will develop family law options in cases of Family Violence for recommendation to the province. This will be Phase 5 of the project.

For the Office of the Attorney General and the Province of Prince Edward Island:

Family Law System

- That the Province expedite the process of creating the Family Law Section.
- That the Office of the Attorney General participate in subsequent phases of the Justice Options for Women Project by naming representatives of the Family Law Section to participate in the working groups.
- That the Province develop alternative dispute resolution models, in collaboration with community, and support the use of approaches such as mediation and collaborative law for disputes not involving violence against women. This will remove non-violent parties from the adversarial system and focus family litigation resources where there is violence.
- That the Province work with the Canadian Bar Association, PEI Branch and the PEI Law Society to

find ways to increase the numbers of lawyers willing to do family law legal aid, including Victim Assistance orders.

- That the Province increase funding for family law legal aid, including alternative dispute resolution options.
- That the Province increase the number of family court counsellors in sites across the Province.
- That the Province work with community organizations to develop safe supervised access for child visitation in appropriate locations across the Province.

Criminal Law System

- That the Province participate in subsequent phases of the Justice Options for Women Project by naming representatives of the criminal law system and Child and Family Services to participate in the working groups.
- That the Province implement a Domestic Violence Court which includes treatment options for offenders and victims.
- That the Province develop alternative dispute resolution models, in collaboration with community, and support the use of approaches such as victim offender mediation and other restorative processes for disputes not involving violence against women. This will remove non-violent parties from the adversarial system and focus criminal law resources where there is violence.

Linking Systems

- That the Province, through its participation in subsequent phases of the Justice Options for Women Project, work with community to facilitate communication and links between the family and criminal law systems in PEI.
- That the Province work with victim advocates, children's support services and others to design programs specific to family violence for parents, children, youth and extended families building on the Positive Parenting from Two Homes Program.
- That the Province bring together the Children's Secretariat, the Premier's Action Committee on Family Violence Prevention, the Child Protection system, those working on the implementation of the Youth Criminal Justice Act and the Provincial Treasury to commission and steer a study modelled on the Genuine Progress Index¹ on the real costs of family violence in PEI.

¹The Genuine Progress Index (GPI) is an index of well-being that goes beyond economic growth measures to include social and environmental components. Genuine Progress Indicators include crime and family breakdown which impose large economic costs on individuals and society, in the form of legal fees, medical expenses, and lost productivity.

For the Canadian Bar Association, PEI Branch and the PEI Law Society:

- That the Canadian Bar Association, PEI Branch and the PEI Law Society work with the Province to find ways to increase the numbers of lawyers willing to do family law legal aid, including Victim Assistance orders.
- That the Canadian Bar Association, PEI Branch and the PEI Law Society participate in subsequent phases of the Justice Options for Women Project by naming representatives to participate in the working groups.
- That the Canadian Bar Association, PEI Branch and the PEI Law Society find ways to recognize and promote pro bono work to assist victims of family violence.

About the Project Partners

This is a project of the Justice Options for Women who are Victims of Violence Steering Committee, with representatives from the PEI Advisory Council on the Status of Women, Individual Survivors of Abuse, Transition House Association, Victim Services, PEI Rape/Sexual Assault Crisis Centre, Community Legal Information Association, Interministerial Women's Secretariat, Restorative Justice Network, Office of the Attorney General, Child and Family Services and Family Law Branch, Canadian Bar Association.

For more information about this project visit our website at:

www.isn.net/~tha/justiceoptions

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