



# **Protection for Victims of Domestic Violence**

**Comments by the**

**New Brunswick Advisory Council on the Status of Women**

**on the discussion paper**

***Protection for Victims of Domestic Violence:  
Options for Law Reform in New Brunswick***

**April 2004**

The Advisory Council applauds the Department of Justice initiative in launching consultations on civil domestic violence legislation in New Brunswick. Violence against women remains a serious social problem, despite advances in public awareness, support services, and judicial and policing responses over the past 20 years. It is important to improve the tools that can help women who are victims of intimate partner violence.

We will offer suggestions based on our knowledge of the needs of New Brunswick women and what we have learned about the experience of other jurisdictions.

Existing civil and criminal options do not provide adequate protection for victims of domestic violence. There is a need for new measures, along the lines of the protection orders available on a round the clock basis in some provinces.

The ACSW believes that while protection orders are important, they are *only one* of many tools that interveners should have to help victims of domestic violence. Protection orders are a significant new tool but they will not revolutionize the provision of services in cases of wife assault. More attention must be devoted to prevention, with public awareness efforts targeting men and women at the top of the list. Ongoing training and monitoring of police and judicial interveners in all aspects of domestic violence responses is also essential. Nor can we afford to neglect the larger gender equality issues, including poverty of women and children and barriers to accessing training, education and employment opportunities.

## **1. LEGAL OPTIONS CURRENTLY AVAILABLE IN NEW BRUNSWICK**

### **▪ Is the Criminal Justice System an effective tool in dealing with domestic violence? What are its weaknesses?**

In November 2003, ACSW representatives met with the Department of Justice Public Prosecutions Domestic Violence Committee to express concerns about the effectiveness of current prosecution practices in promoting zero tolerance of violence against women,

in addressing the victim's safety issues and in discouraging repeat offences in New Brunswick. Progress has been made since the introduction of mandatory charging and pro-prosecution policies in the 1980s and the first *Woman Abuse Protocols* in 1990, yet there is still much work to be done. Our recommendations included:

- the provision of ongoing sensitivity training to all Crown prosecutors;
  - the creation of a specialized domestic violence court in at least one of N.B.'s major cities;
  - more rigorous application of the duty to prosecute and greater consistency across the province with regards to Crown decisions to proceed with cases;
  - improved investigative techniques and evidence collection practices in spousal abuse cases to collect evidence beyond that supplied by the victim/witness;
  - recommendation by Crown prosecutors of sentences (including appropriate conditions) that reflect the serious nature of the crime;
  - research on the use and impact of conditional sentences in New Brunswick.
- **Are existing prevention measures (such as peace bonds, firearms prohibition orders, incarceration of suspects and no contact/communication orders) effective in domestic violence situations?**

Procedural delays and enforcement difficulties with regards to peace bonds and other existing prevention measures cause much frustration and suffering to victims. In many ways, these measures merely serve to relieve tension in the short-term. Police can incarcerate an individual for up to 24 hours without charging them. This may either defuse tension in the short-term or delay a violent incident. Conditions set for bail may be effective in some circumstances but if an individual has decided to be violent, these preventative measures do nothing to eliminate his violence.

Information pertaining to bonds should be available to peace officers on a national scale via the Canadian Police Information Centre, regardless of whether the peace bond is accompanied by additional criminal charges.

We must add some mention of our concern for the provincial government's decision not to prosecute offenders of the federal gun registration laws. We understand the only time provincial prosecutors will pursue charges associated with gun registration is in cases where the same individual is also being charged with a Criminal Code offence. 11 of the 24 women murdered in New Brunswick by their current or ex-partners since 1990, were killed with firearms. For every woman killed with a firearm, there are hundreds more who

are threatened or live in fear. A recent study found that rural and farm women experiencing family violence commonly described a cycle of intimidation with guns, often including their pets and farm animals.<sup>1</sup> There is evidence that the licensing of gun owners and registration of firearms is working in Canada. It has helped to reduce the number of firearm deaths and helped police remove guns from potentially dangerous people. It is therefore important to support the provisions that will help keep guns out of the hands of potentially abusive spouses.

▪ **Do the preventative measures reflect and accommodate the reality that the large percentage of the victims and accused continue in their relationships after the interventions?**

The reality that the accused and victim continue their relationship after interventions indicates *we must address the reasons for the continuation of the relationship*. Financial issues, children and the hope that the accused can get help are a few of the reasons that victims stay with their abuser.

▪ **To what extent are civil remedies available under the law today (such as supervisory, custody and guardianship orders for children or senior or disabled adults, restraining orders, Marital Property Act division of property provisions, orders for exclusive possession of marital home and/or household goods and Domestic Legal Aid) helpful to victims seeking to prevent violent incidents and/or escape a violent partner? Are there other civil remedies that we should consider?**

In common-law situations, division of property is not regulated by law, as it is for married couples under the province's *Marital Property Act*. Common-law couples in N.B., including same-sex couples, should be able to register their union and opt into some basic property division rules. If violence is later a factor in their union, the victim might act more quickly to seek help if she knows that her interests, and those of the children, are somewhat protected.

The *Marital Property Act* also does not apply to Aboriginal women living on reserve, since reserve lands fall under federal jurisdiction. The federal *Indian Act* is silent on the issue of division of marital real property or exclusive possession of the marital home on relationship breakdown and no other law addresses this problem for women living on reserve. The Standing Senate Committee on Human Rights that recently held hearings

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<sup>1</sup> Deborah Doherty and Jennie Homosty, "Abuse in a Rural and Farm Context" in Mary Lou Stirling *et al.*, eds., *Understanding Abuse: Partnering for Change* (Toronto: University of Toronto Press, 2004), p. 55-81.

on this question characterized this situation as “morally wrong”, and affirmed that it “can no longer be tolerated in Canada.”<sup>2</sup> In its interim report, the Committee provided evidence of the hardships experienced by Aboriginal women ending violent relationships who all too often were forced to leave their family home and their community with their children and start over in a non-Aboriginal environment. Representing the National Aboriginal Women’s Association, New Brunswick-born Pam Paul noted:

Other problems are Aboriginal spouses, most often older women who have abusive and addicted spouses who hold the lawful possession to the family home. These women fear for their physical safety and are often advised to leave their homes. At this stage of their life, a lengthy and acrimonious court battle for compensation may not be an option, or advisable for health reasons. Leaving the home may not even be an option in some cases due to the housing shortage, lack of financial resources, and isolation of Aboriginal communities.<sup>3</sup>

The Committee recommended immediate action to amend the *Indian Act* so that provincial/territorial laws with respect to the division of both personal and real matrimonial property can apply. In the longer-term, the Committee recommended that large and thorough consultations be undertaken with Aboriginal women, First Nations governments and Band councils in order to find permanent solutions that would be culturally sensitive while respecting human rights protected under the Canadian Charter and international law<sup>4</sup>.

The ACSW urges the New Brunswick authorities to consult with First Nations communities in the province on the ways that civil protection could be extended to on-reserve marital property in cases of relationship breakdown. Jurisdictional conflicts should not be an excuse for inaction on this important matter.

Current legal remedies fail some victims in another way. In some cases following separation or divorce, the abuser continues to exercise control, harasses and hurts his victim through the legal system. For some batterers, the court system becomes a new arena of combat. All the laws dealing with family affairs can be used as a weapon against the victim: for example, the abusive ex-partner seeks custody or access to the children, when his only goal is to punish his ex-wife. Such tragic situations, which occur all too frequently, underline the importance of training for judges, Crown prosecutors, police and other interveners. It is essential that they have a solid understanding of the

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<sup>2</sup> Standing Senate Committee on Human Rights, *A Hard Bed to Lie In: Matrimonial Real Property on Reserve*, Interim Report (November 2003), p. 10.

<sup>3</sup> *Ibid.*, p. 17-18.

<sup>4</sup> *Ibid.*, p. 12-13.

dynamics of violence in intimate relationships so that they may understand the characteristics of violent men and the challenges facing their victims.

## **2. CIVIL DOMESTIC VIOLENCE LEGISLATION IN OTHER CANADIAN JURISDICTIONS**

### **▪ Are interim orders under a Domestic Violence Act better protection than the existing restraining orders under the Family Services Act? Why? What are the weaknesses of the restraining orders?**

Usage rates for emergency protection orders in other jurisdictions are low, probably because of lack of knowledge regarding their existence and their use and lack of training for peace officers and others in a position to offer the emergency protection order. These orders are not for all victims: some prefer to run to a transition house or family because they fear the aggressor's return to the family home and his anger at being barred from "his house".

N.B. should have emergency protection orders as one tool in a kit of tools. We suggest that these orders are better described as *Interim Protection Orders*, since the need for protection does not necessarily stem from an emergency situation but from the violence. The IPOs should be implemented with a built-in monitoring system and evaluation process. We need to determine if and how it is being used, why it is or is not being used. Key players should be monitored and consulted when it comes to evaluating usage regarding interim protection orders.

Interim protection orders must include common-law couples and same-sex couples. The restraining orders which are currently available under the Family Services Act cannot be used in cases of unmarried partners. Steps must also be taken to ensure that IPOs be made available to Aboriginal women living on reserve. We have been informed that in Saskatchewan, protection orders are used on reserves by using section 81 of the Indian Act which deals with the situation as a residence issue as opposed to a land issue (federal).

### **▪ If New Brunswick were to amend its law to provide for interim orders similar to those available elsewhere:**

**▪ Given that the criminal justice system in New Brunswick does not have JPs, who should receive applications for orders: Provincial Court judges? (sits at 14 permanent and a number of satellite sites, and sits on weekends and holidays as needed) Newly appointed JPs? Queen's Bench judges? (note that the Queen's**

**Bench only sits at 8 sites and only Monday through Friday) Other regional court officers? Other officials? What are the pros and cons of the various options?**

The power to grant interim protection orders should be given to persons in position(s) where:

- They are available 24 hours a day;
- They are respected and trusted by the community, including victims;
- Their status (independence from government), training and power to deliver these orders is adequate and uncontested; and
- There is a fair representation of women.

**▪ Should interim protection orders be restricted to use in situations where family violence has actually occurred or should they also be allowed in situations where violence is threatened? Or where a person is subjected to emotional abuse? Or economic abuse?**

Interim protection orders should be used in situations where family violence has occurred and where violence is threatened. This is in line with other provinces where such protection orders are issued. They should also be used where the person is subjected to severe economic or emotional abuse. This would mean a definition of family violence that includes different types of abuse including physical, sexual, emotional and financial. Prince Edward Island includes emotional and financial abuse in their definition of family violence. New Zealand reportedly includes psychological abuse, which includes "a child witnessing domestic abuse". Also a standard clause of New Zealand protection orders "specifies that a respondent may not encourage another person to engage in behaviour against a protected person where that behaviour, if engaged in by the respondent, would be prohibited by the order." Finally in New Zealand a non-contact clause is typically included as part of a protection order, stating there should be no contact with the child unless the court is satisfied that the child's and the victim's safety is not at risk."

**▪ Should legislation require that respondents (usually the husband) be notified of an application before the application is heard?**

Respondents do not need to be notified of an application before it is heard. This is in line with other provinces offering such protection orders. *Considering the criteria that must*

*be met for an interim protection order, this would work against the needs of the applicant.*

**▪ Should victims be provided assistance in applying for orders? If so, by police? Counsel provided under Domestic Legal Aid? Victim Services personnel? (What are the pros and cons associated with the various options?)**

Victims should be provided assistance in applying for interim protection orders by persons in a situation to recommend these orders, including peace officers, victim services personnel and transition house workers. These people deal with family violence situations and are well placed to offer information about all the options including interim protection orders.

Nova Scotia allows transition house employees to assist victims in applying for interim protection orders. Application for an interim protection order is a lengthy and involved process. A transition house worker's knowledge of such matters as the cycle of violence and the various emotions and feelings survivors experience is an asset in assisting women in applying for the interim protection order.

**▪ Should victims be able to get an order for custody and access of children as part of the interim protection order?**

Victims should be able to get an order for custody and access of children as part of the interim protection order. If a spouse is violent and the victim feels she needs an interim protection order, then the children should remain with the applicant. Witnessing a parent be violent to another parent is harmful to children and should not be tolerated.

**▪ What should be the duration of an interim order?**

Maximum length for interim protection orders varies across the provinces. Women entering transition houses typically stay 30 days but this is a not sufficient period to get their affairs in order. 60 days with the option to renew the interim protection order for another 30 days would give the victim more time.



**▪ In light of the fact that the majority of domestic violence occurs in the shared home of the accused and the victim, do you have concerns that such interim orders will give a false sense of security? Does the rural nature of New Brunswick intensify this risk? Should the legislation attempt to define situations in which a victim of family violence should not be encouraged to remain in their family home? What else can be done to minimize the risk?**

Interim protection orders are not recommended in all cases. In order for these orders to work, the respondent has to stay away. The victim usually has a good sense of whether such an order is worth trying. The problems of security and of enforcement of these orders are intensified in a rural province such as New Brunswick. In P.E.I. interim protection orders are not offered when the woman lives in a rural area because too much time would pass before peace officers could get to the victim. An interim protection order has limited use for women living in rural areas and for women in all areas whose aggressor is unlikely to respect the order.

**▪ Should New Brunswick law be amended to provide for Victim Assistance Orders as are available elsewhere? If so:**

**What would the purpose of the orders and what range of provisions should they contain?**

**Who should receive applications for orders?**

**Who should assist victims in applying for the orders: Police? Lawyers provided under Domestic Legal Aid? Victim Services personnel?**

**Should lawyers be available to the respondents?**

**Should orders be reviewed for confirmation or variation and by whom?**

**Since they are already used in other jurisdictions, what could we do differently to make them more useful?**

Victim Assistance Orders are usually similar to interim protection orders but of longer duration. They may contain clauses to deal with longer-term issues, such as requiring the respondent to pay compensation for monetary losses due to domestic violence and requiring or recommending the respondent or other family members to receive counseling or therapy. VAOs can play a valuable role but they are often not used in other provinces because the process requires a lawyer. Orders should be confirmed or varied by judges.

## Conclusion

### ▪ Should the development of domestic violence legislation be the priority approach to enhancing New Brunswick's response to domestic violence? Are there other priorities?

The Advisory Council favours the introduction of domestic violence legislation. At least as important, however, is real prevention of violence.

As indicated at the outset, we strongly support increased investment in public education, ongoing training, monitoring and accountability for interveners and broader gender equality measures. We also advocate a specific initiative that could provide us with valuable insights into the weaknesses of our current system: mandatory inquests into intimate partner murder-suicides, as exist in some jurisdictions. Such "domestic death reviews" have the potential of giving us an understanding of contributing circumstances and factors leading up to the incident that might be addressed by policies and programs. New Brunswick's Silent Witness project has identified at least 8 murder-suicides among the 24 women killed by their partners between 1990 and 2003.<sup>5</sup>

We should note, finally, that the Department of Justice and its representatives must be prepared to be criticized by men who speak from what they call a "father's rights" or "men's rights" perspective. Protection orders may be characterized as part of a conspiracy, aimed at throwing men out of their homes and depriving them of contact with their children. This backlash is part of a larger problem of denial of male responsibility for violence. That is why it is important to involve more representative and positive men's groups, such as New Brunswick's Menswork Network for Change. As noted researcher Dr. Peter Jaffe has said about the intimidation being felt in domestic violence intervention circles, "many in this field, whether judges, assessors, arbitrators, or guardians ad litem, are being immobilized by the prospect of accusations of bias."

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<sup>5</sup> N.B. Silent Witness Project factsheet, November 2003.