

January 30, 2017

Submissions to the UN Special Rapporteur on Violence Against Women on Protection Orders in Canada and Their Consequences

Background on the Barbra Schlifer Commemorative Clinic

The Barbra Schlifer Commemorative Clinic is the only clinic of its kind in Canada. It has been providing legal representation, counseling, and language interpretation to women who have experienced all forms of violence since 1985. We assist about 4,000 women every year. We also engage in various educational initiatives, including public legal education, professional development for legal and non-legal professionals and clinical education for law students. We work on various law reform activities both within Canada and internationally, and consult broadly with all levels of government on policy or legislative initiatives that impact on women survivors of violence.

Since opening in 1985, the Clinic has assisted over 60,000 women. We have been part of numerous legal test cases and are represented at public policy tables and in law reform efforts related to violence against women. We work in over 100 languages, provide a variety of innovative counseling services, public legal education/information, and legal representation. We are subject-matter experts for gender-based violence. We work with women who have experienced violence both in the nationally and international contexts. That includes acts perpetrated by non-state actors such as family and spouses, stranger and acquaintance sexual assault; state-sponsored violence; forced marriage and so-called “honour”-related violence.

The Clinic has aided hundreds of women to obtain criminal and civil protection orders and reduce their risk of violence. Canadian law has developed a relatively comprehensive framework of protection orders with the aim of keeping individuals safe from many forms of violence. However, the efficacy of protective orders in preventing gender-based violence is limited by weaknesses in their legislative framework, as well as systemic challenges in their implementation. These shortcomings are especially detrimental for marginalized women, who often experience intersecting social inequalities including poverty, racism, and discrimination on the basis of sexual orientation, country of origin, immigration status, mental health, and disability.

These submissions include the legislative framework governing protection orders in Canada, logistics of availing protection orders their efficacy in protecting women against violence, and good practices for their implementation to aid the UN Special Rapporteur on Violence

Against Women in the report for the 34th Human Rights Council session.

Background on Protection Orders

A protection order is an order signed by a judge or Justice of the Peace in the province where one resides, which protects from the fear of actions of another person. This fear can be actual or presumed. It can be granted for real or perceived threats to person or property. A protection order can be applied for and awarded in cases where a perpetrator repeatedly follows a victim or a member of his family from place to place, threatens her, or hurts her. It can also be granted if a victim's property or her family member's property is damaged, or the perpetrator repeatedly attempts to contact the victim when the contact is unwanted, or repeatedly shows up at victim's home, school, or place of work.¹

In such situations, one can get a protection order, also called a no contact order, which is "a decision by a judge that puts restrictions on someone's behavior."² Such orders can limit the amount of contact allowed between the parties and when and if they are allowed to communicate. The order may go as far as to ban one party from contacting another or impose a specific distance between the parties, their homes and workplaces.

For women and their children who are victims of domestic violence, protection orders offer a sense of safety. Protection orders can give women the safety and comfort of knowing they can leave their homes and live their lives without the fear of their partners, or any other person whom they feel is dangerous, harassing or threatening them. It allows such victims to be able to fully engage in daily tasks they would otherwise fear, such as going to work, buying groceries, and picking up their children from school. It allows victims to feel normalized in their lives and within their communities. Protection orders are of particular importance in situations where an abused woman is contemplating leaving the relationship, as it not only provides them with protection and security to be able to leave an unsafe situation.

Legislative Framework Governing Protection Orders in Canada

Canada is a constitutional monarchy with provinces and territories. The federal government has jurisdiction over certain exclusive domains, such as criminal law, trade, and commerce, banking, and immigration. The federal government also reserves the power to enact legislation necessary for Canada's peace, order, and good government.³ Alternatively, the

¹ Ontario Women's Justice Network. Protection Orders. Retrieved from: http://owjn.org/owjn_2009/legal-information/criminal-law/264-no-contact-orders-part-1-how-to-protect-yourself

² *Ibid.*

³ Munroe Eagles; Larry Johnston (2008). *Politics: An Introduction to Modern Democratic Government*. University of Toronto Press. p. 262.

provincial government has jurisdiction over family law, hospitals, municipalities, property and civil rights.⁴ Due to Canada's federal and provincial breakdown, it can be unclear as to where to get a protection order issued. For example, a judge issues a restraining order in the family court system.⁵ Alternatively, a judge or Justice of the Peace issues a peace bond and bail conditions in the criminal judicial system.⁶ The orders can also only be varied or terminated by judges in the same court system in which the initial order is issued. These rules are consistent for all the provinces and territories in Canada.

Many provincial/territorial family law acts also allow for emergency protection orders and other emergency interventions, such as giving the woman exclusive possession of the family home for a specified period. Similarly, provincial child protection statutes also allow orders prohibiting contact with the child (and in Ontario prohibiting contact with the person who has lawful custody of the child) to be granted preventively, pursuant to child protection statutes.⁷ Since the *Family Homes on Reserves and Matrimonial Interests or Rights Act* and *Emergency Protection Orders Regulations* were enacted in 2013, courts can now also grant emergency protection orders on First Nation Reserves in family violence cases.⁸

Types and Length of Protection Orders:

There are three different types of protection orders available to the public: A) restraining orders, B) peace bonds and C) bail conditions, which are also known as 'terms of release.'

A. Restraining Orders

Restraining orders are the most commonly used method of protection for victims of domestic abuse. They become especially necessary once the victim decides to leave the home of the abuser. They are used to keep the abuser away from her residence and workplace so that she can distance herself from the physical and emotional abuse.

In Ontario, a restraining order is an order that is issued by the family courts. This order prohibits certain behaviors such as contacting the applicant or coming near her and her

⁴ OECD (2007). Linking Regions and Central Governments Contracts for Regional Development: Contracts for Regional Development. *OECD Publishing*. p. 173.

⁵ Ministry of the Attorney General. Restraining Order. Retrieved from: https://www.attorneygeneral.jus.gov.on.ca/english/family/guides/restraining_order/. See also: *Family Law Rules*, r. 25; *Family Law Act*, R.S.O. 1990, c. F.3, s. 46

⁶ *Criminal Code* (R.S.C., 1985, c. C-46) s. 810

⁷ Enhancing Safety: When Domestic Violence Cases are in ..., <http://www.justice.gc.ca/eng/rp-pr/fl-lf/famil/enhan-renfo/p6.html> (accessed January 29, 2017).

⁸ *Family Homes on Reserves and Matrimonial Interests or Rights Act* (S.C. 2013, c. 20), s. 16(1).

children.⁹ A woman may obtain a restraining order against a current or former partner, regardless of whether or not the parties were ever married in the past, and whether or not they cohabitated.¹⁰

A restraining order can be temporary or final. A temporary order may end on the date specified in the order by the judge, when both parties return to court, or if the family law case is not completed within 365 days and no future court date is scheduled.¹¹ Upon returning to court, "the judge may continue the temporary order, make the order final or, if the other person opposes the restraining order and the judge agrees with their arguments, end the restraining order."¹² The 365-day limitation period is set out in the *Family Law Rules*, and unless a judge extends this timeline, the case will be dismissed automatically.¹³ This would result in the temporary order being dismissed as well. The *Family Law Rules* are supplementary to the *Family Law Act*, which governs several family law proceedings in Ontario. One specific note is that the *Family Law Act* does not govern divorces. As a result, if a woman is seeking a protection order along with a divorce, she would have to bring an application under the *Divorce Act* as well as the *Family Law Act*.¹⁴

Upon the issuance of a final restraining order, either of the parties are free to file a variation to change the order or eliminate it. The courts will grant this change if there has been any material change in relationship and circumstances surrounding the parties.¹⁵

B. Peace Bonds

A peace bond is a signed promise in which a person undertakes "to be on good behaviour and can put restrictions on a person's behaviour."¹⁶ Although a peace bond sounds similar to a restraining order, it is issued in the criminal court system. Also, a peace bond can be obtained against "anyone that you are afraid will harm you, your family or your property,"¹⁷ and is not restricted to your former partner like in the family law context. A peace bond is also broader

⁹ Ontario Women's Justice Network. Protection Orders. Retrieved from: http://owjn.org/owjn_2009/legal-information/criminal-law/264-no-contact-orders-part-1-how-to-protect-yourself

¹⁰ *Ibid.*

¹¹ Ministry of the Attorney General. Restraining Order. Retrieved from: https://www.attorneygeneral.jus.gov.on.ca/english/family/guides/restraining_order/. See also: *Family Law Rules*, r. 40(5)-(6)

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ Ministry of the Attorney General. Selected Family Law Legislation. Retrieved from: <https://www.attorneygeneral.jus.gov.on.ca/english/family/famleg.php>

¹⁵ *Ibid.*

¹⁶ Ontario Women's Justice Network. Protection Orders. Retrieved from: http://owjn.org/owjn_2009/legal-information/criminal-law/264-no-contact-orders-part-1-how-to-protect-yourself

¹⁷ *Ibid.*

than a restraining order, as it can include additional clauses such as restricting the person from carrying a firearm. Although broader in its applicability, a peace bond has limitations, as it can only be issued for up to one year, after which the victim can apply for another one if the danger still exists.¹⁸ In most cases, a peace bond is not the best option for survivors of domestic or family violence because of the inherent procedural delays involved in the application process.

C. Bail Conditions

Bail conditions, also known as terms of release, are a specific criminal court order, which “puts restrictions on a person’s behaviour when they are released from police custody into the community.”¹⁹ Therefore, bail conditions are specifically applied to those whose cases are pending a trial, who are on probation, or engaged in community service. Bail conditions offer the same type of protection as restraining orders and peace bonds, but they often specifically include a clause to stay away and not directly or indirectly contact the victim, their families, or any witnesses. Bail conditions may apply until the accused is acquitted, sentenced, or even until the end of their sentence, based on the severity of the offense and the conditions imposed on the accused.²⁰ In Ontario, restraining orders and peace bonds will remain on a criminal record search for the duration of time they are in place, but bail conditions will not. Regardless of this, police officers have access to this information, should a distressed victim ever call in with a concern.

The above explanations are specific to the law of Ontario but are aligned with other provinces in Canada, such as British Columbia,²¹ Alberta,²² and New Brunswick.²³ Some provinces have similar legislation with minor variations, such as Manitoba, where a restraining order can be issued for a term of three years.²⁴

In contrast, there are provinces such as Newfoundland, which differ in the applicability and language used for protection orders. They refer to protection orders as Emergency Protection

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ *Criminal Code (R.S.C., 1985, c. C-46) s. 496-503*

²¹ Government of B.C. Information on Protection Orders. Retrieved from:

<http://www2.gov.bc.ca/gov/content/safety/crime-prevention/protection-order-registry/qa>

²² Alberta Courts. Restraining and Protection Orders. Retrieved from: <https://albertacourts.ca/resolution-and-court-administration-serv/family-justice-services/family-self-help/restraining-and-protection-orders-general-information>

²³ Public Legal Education and Information Service of New Brunswick. Peace Bonds and Restraining Orders. Retrieved from: http://www.legal-info-legale.nb.ca/en/peace_bonds_and_restraining_orders

²⁴ Government of Manitoba. Legal Options for Protection from Domestic Violence and Stalking: Protection Orders. Retrieved from: https://www.gov.mb.ca/justice/victims/pubs/factsheets/protection_orders.pdf

Orders (“EPOs”). These orders are similar to restraining orders. They apply to partners and ex-partners who may or may not have children together. However, the conditions imposed are much broader. These conditions may include temporary ownership and control of the personal property of the applicant, such as the matrimonial home, vehicles, and may give temporary custody of the children to the applicant or a third party.²⁵

The variances across Canadian provinces are due to the fact restraining orders fall under family law jurisdiction which differs from province to province. Protection orders under criminal law fall under federal jurisdiction and are uniform across Canada.

Legal Consequences Breaching Protection Orders

Although protection orders vary in their applicability based on the type of court system they are applicable under, the legal consequences of the non-respect of protection orders are similar.

If a restraining order is breached and reported to the police or police becomes aware of a violation of a restraining order perpetrator faces possible arrest and a new criminal charge. Disobeying an order of the court is an offence under s. 127 of the *Canadian Criminal Code*. If convicted, individuals may face a fine or jail time.²⁶

The consequences of breaching a peace bond are similar,²⁷ yet differ slightly for bail conditions. If bail conditions are breached, it is recommended that the victim immediately contact the police. The offender can then be charged for breaching such bail conditions or violating their probation order: “the individual can be arrested, and brought in front of the court for a new hearing where new conditions of release may be negotiated or it may be decided that the person should be held in jail.”²⁸

To ensure protection orders are followed thoroughly, women survivors of violence are routinely recommended to make copies of the order and keep one on hand to show to the police, should a situation arise. Also, the women survivors of violence are advised to consider giving a copy to her workplace, her children’s school, daycare, tutoring center, and anyone in charge of the extracurricular activities the child may be attending. This action ensures the

²⁵ Government of Newfoundland and Labrador. Family Violence Protection Act: Applying for Emergency Protection Orders (EPOs). Retrieved from:

http://www.justice.gov.nl.ca/just/publications/family_violence_protection_act_booklet_english.pdf

²⁶ *Criminal Code* (R.S.C., 1985, c. C-46) s. 127

²⁷ *Ibid.*

²⁸ Ontario Women’s Justice Network. Protection Orders. Retrieved from: http://owjn.org/owjn_2009/legal-information/criminal-law/264-no-contact-orders-part-1-how-to-protect-yourself

children's safety as others responsible for them throughout their daily activities will be aware of the conditions, and hopefully be able to keep them safe if necessary.

In practice, we find breaches are tough to have enforced and among many barriers including reporting a breach, collecting evidence of the violation and heightened sense of risk after reporting. We have repeatedly observed a reluctance in the judicial system of issuing orders in favour of the women due to criminalization nature of the breach of a protection order. Also, police enforcement is uneven, and the gaps can cost women their lives²⁹. In rural areas, geographic challenges mean perpetrator can be reasonably assured that their breach will go unreported and sometimes that can be lethal for the women.

Shortcomings in Legislation Governing Protection Orders in Canada and Best Practices

In Canada, “[p]olicy regarding violence against women is becoming increasingly neutral,”³⁰ in that it frames violence as a gender-neutral problem, even in government action plans and legislation that specifically address gender-based violence. The neutral framing of violence in Canada’s anti-crime and anti-violence legislation, including statutory provisions for protection orders, obscures the gendered reality of many forms of violence. Largely, the relevant statutes do not expressly define gender-based violence or comprehensively address its causal factors and the needs of women affected by it.

A more gender-based approach would address “the differences in women’s and men’s lives, and identif[y] the potential impact of policies and programs in relation to these differences.”³¹ It would also “examine the intersection of gender and sex with other identity factors such as income, race, age, religion, etc.”³²

Interprovincial variations in family law also create unevenness in the protective scope and application of protection orders. Women residing in different regions who seek these orders are subject to procedures of varying onerousness, and some have fewer interventions available to them. For example, while some family law statutes provide for emergency protection orders, other jurisdictions do not.³³ Many also limit the extent to which protection

²⁹ See for example the triple killings of women in Renfrew County in September 2015 : Liam Casey, “Ontario man charged with murder in deaths of three women,” *The Toronto Star*, 23 September 2015, Online: <http://www.thestar.com/news/canada/2015/09/23/wilno-manhunt-ends-in-arrest-of-suspect-in-three-murders.html>

³⁰ http://ywcacanada.ca/data/research_docs/00000307.pdf

³¹ *Ibid.*

³² Woman Abuse Council of Toronto, (2013), “Policies Matter: Addressing Violence Against Women Through Reflection, Knowledge and Action”. Retrieved from: http://www.efrytoronto.org/userfiles/files/PoliciesMatter_Final.pdf

³³ Department of Justice, “Family Violence Laws” :

Six provinces and three territories have civil domestic violence legislation allowing emergency protection

orders can respond to dating violence, violence in complex family structures and stalking or monitoring.³⁴

Despite the prevalence of long-term mental health difficulties experienced by domestic violence survivors, civil and criminal protection order statutes throughout Canada lack provisions to ensure that targeted women can access counselling and parenting support.³⁵ As reported by Statistics Canada, 53% of women victimized by a spouse describe most of their days as "quite a bit or extremely stressful," and over one-quarter of them use medication to treat sleep problems or depression.³⁶ Civil and criminal protection order statutes throughout Canada also lack provisions to ensure that violators can access rehabilitative programs.³⁷

Criminal Code provisions for peace bonds and bail conditions also do not address special considerations in gender-based violence, such as risk factors specific to domestic violence that should be considered when issuing these protection orders. Also, the maximum twelve-month duration of peace bonds forces women who remain at risk to apply for another once the peace bond is no longer in effect. Perhaps this problem can be ameliorated by including a statutory presumption that peace bonds should *prima facie* be re-instated in high-risk cases.

Also, a disproportionately large number of domestic-violence victims are foreign-born women.³⁸ Newcomer women face barriers to accessing justice and services. Often, they lack access to information on their legal rights and recourse, as a result of isolation or language barriers. Newcomer women in situations of violence also sometimes fall through the cracks between women's organizations familiar with violence against women, and settlement organizations familiar with migration issues, due to a lack of the uneven knowledge of front-line workers regarding the vulnerabilities and problems newcomer women face.

orders to be issued.. They are: Alberta: Protection Against Family Violence Act, Manitoba: Domestic Violence and Stalking Act, Newfoundland and Labrador: Family Violence Protection Act, Northwest Territories: Protection Against Family Violence Act, Nova Scotia: Domestic Violence Intervention Act, Nunavut: Family Abuse Intervention Act, Prince Edward Island: Victims of Family Violence Act, Saskatchewan: Victims of Domestic Violence Act, and Yukon: Family Violence Prevention Act.

³⁴Linda C. Neilson, (2015), "Enhancing Civil Protection in Domestic Violence Cases: Cross Canada Checkup" Retrieved from: :

https://www.unb.ca/fredericton/arts/centres/mmfc/_resources/pdfs/2civil_protection_information_chapter_footnotes_for_mmffvc.pdf

³⁵ *Ibid.*

³⁶ Statistics Canada, "Impact of Violence Against Women". Retrieved from: :

<http://www.statcan.gc.ca/pub/85-002-x/2013001/article/11766/11766-3-eng.htm>

³⁷ Linda C. Neilson, (2015), Enhancing Civil Protection in Domestic Violence Cases: Cross Canada Checkup"). Retrieved from: :

https://www.unb.ca/fredericton/arts/centres/mmfc/_resources/pdfs/2civil_protection_information_chapter_footnotes_for_mmffvc.pdf

³⁸RV Law, (2013), "Service Barriers for Immigrant Women Facing Violence". Retrieved from: :

<http://www.rvlaw.ca/Service-Barriers-for-Immigrant-Women-May-29-13.pdf>

Challenges in Implementation and Enforcement

“In the act of seeking protection, a victim is placing her trust and safety in the hands of numerous professionals: from the advocates and attorneys who explain the system and assist the victim in obtaining an order; to the judge who crafts an order appropriate to the victim's unique needs to the law enforcement officers who serve and enforce the order; and to the prosecutor who prosecutes violations. Anywhere along that complex chain, a victim can find that the promise of the civil protections order system is either kept or broken.”³⁹

- National Council of Juvenile and Family Court Judges

More data is needed on the efficacy of protection orders in preventing further violence in Canada.⁴⁰

However, as noted in a federal Department of Justice report, “[r]esearch continues to document the legal system's failure to offer adequate support and protection to families, particularly to children, in domestic violence cases.”⁴¹ There continues to be a high rate of non-compliance in domestic violence cases, and thorough enforcement of protection orders has been shown to increase victim safety.⁴²

Sufficient funding and resources must accompany legislation and policy surrounding protection orders for implementation, training, consultation, education, coordination, and monitoring. However, legal systems across Canada are “costly, inaccessible and fragmented,” especially for marginalized women.⁴³ A recent study by the federal Department of Justice found that the primary hurdle for battered women who wish to obtain peace bonds is the slow processing time.⁴⁴ Delay is also a pervasive problem for women seeking family law

³⁹ National Council of Juvenile and Family Court Judges, Family Violence Department (2010) “Civil Protection Orders: A Guide for Improving Practice” at page 1. Retrieved from: https://www.ncjfcj.org/sites/default/files/cpo_guide.pdf

⁴⁰ Ending Violence Association of Canada, (2016), “Federal Strategy on Gender-Based Violence Briefing Notes for Status of Women Canada and the Department of Justice Canada”. Retrieved from: <http://endingviolencecanada.org/wp-content/uploads/2016/11/Fed-Briefing-Note-8-Protection-Orders-2016.pdf>

⁴¹ Department of Justice, “Enhancing Safety: When Domestic Violence Cases are in Multiple Legal Systems (Criminal, family, child protection)”. Retrieved from: <http://www.justice.gc.ca/eng/rp-pr/fl-lf/famil/enhan-renfo/p1.html#p13>

⁴² BC Association of Specialized Victim Assistance & Counselling Programs, (2016), “Critical Elements of an Effective Response to Violence Against Women”. Retrieved from:

⁴³ Action Committee on Access to Justice in Family and Civil Matters (2013) http://www.cfcj-fcj.org/sites/default/files/docs/2013/AC_Report_English_Final.pdf

⁴⁴ Department of Justice, “Peace Bonds and Violence Against Women: A Three-Site Study of the Effect of Bill C-42 on Process, Application and Enforcement”. Online: http://www.justice.gc.ca/eng/rp-pr/csj-sjc/crime/rr03_1/p11.html

protection orders. Administrative delays and back-up in overburdened criminal and family courts leave targeted women at risk while waiting for their applications to be processed.

The major issues facing marginalized women include inaccessibility of existing services and resources and lack of specialized services that target their particular needs. These barriers place marginalized women at greater risk. The British Columbia Association of Specialized Victim Assistance & Counselling Programs identified the numerous gaps for marginalized women, such as lack of specialized domestic and sexual violence services, services geared toward newcomer and aboriginal women, women with disabilities, and women in rural or isolated areas.⁴⁵

Also, enforcement of civil restraining orders, peace bonds, and bail conditions would be more efficient if their terms were more readily accessible to justice professionals. The “cataloguing and tracking of peace bonds [is] ad hoc and not standardised at the local level and, for detailed peace bond information, almost non-existent at the national level.”⁴⁶ The document management system in courts does not provide criminal courts access to family court and child protection orders (and vice versa).⁴⁷ Criminal courts instead rely on Crown lawyers and complainants to relay accurate information about the existence and status of civil proceedings, which significantly burdens Crown lawyers tasked with ensuring that courts have adequate information to inform their decisions about bail release.

Some effort has been made to integrate the court systems. For example, Toronto introduced the Integrated Domestic Violence Court in 2011. The court, which sits every two weeks, provides a single judge to hear both the criminal and the child custody, access, and support matters that relate to one family where the domestic violence is an issue. The court aims to provide a “more integrated and holistic approach to families experiencing domestic violence, increased consistency between family and criminal court orders and quicker resolutions of the judicial proceedings.”⁴⁸ In 2011, the domestic violence court in Moncton, New Brunswick which combines domestic violence specialization with coordinated community-based resources for victims, became permanent after a four-year pilot project.⁴⁹

⁴⁵ *Ibid.*

⁴⁶Department of Justice, “Peace Bonds and Violence Against Women: A Three-Site Study of the Effect of Bill C-42 on Process, Application and Enforcement”. Retrieved from: http://www.justice.gc.ca/eng/rp-pr/csj-sjc/crime/rr03_1/p11b.html

⁴⁷ *Ibid.*

⁴⁸ Ontario Court of Justice, “Integrated Domestic Violence Court”. Retrieved from: <http://www.ontariocourts.ca/ocj/integrated-domestic-violence-court/>

⁴⁹Canadian Network of Women’s Shelters and Transition Houses, (2013), “The Case for a National Action Plan on Violence Against Women”. Retrieved from:

http://endingviolence.org/files/uploads/BN_6_PROTECTION_ORDERS.pdfhttp://ywcacanada.ca/data/research_docs/00000307.pdf

Further integration of courts will also help address other overlapping family and criminal issues, such as cultural 'blind spots' across legal and service sectors (for example, policies and practices that ignore forms of domestic violence associated with culture), complex family circumstances associated with domestic violence, such as drug and alcohol abuse and mental health issues, and orders made in different legal systems that do not complement each other or have a common purpose.⁵⁰

Mandatory Mediation and Impact on Protection

Mandatory mediation programs are designed for the resolution of a conflict between two private parties to settle their dispute, with the goal of saving time and money for essential services of the justice system provided by the state. Unfortunately, mandatory mediation programs completely ignore the basic reality of power imbalances in cases of gendered violence. Currently, government funded family mediation services are available in all family courts in Ontario.⁵¹

In addition, Legal Aid Ontario has a provision for special services to help people experiencing domestic violence. However, services are not as widely available, clearly communicated, or accessible as they need to be, and many women find themselves without access to legal representation. In addition, the financial eligibility criteria for a legal aid certificate are too low. For example, a woman with no children must have a gross family income of less than \$21,438; even families under the Low Income Cut-Off may be considered to have too much money to qualify for assistance.

Given the lack of policy coordination and the complexity of the policy environment, a woman experiencing violence may be dealing with up to four legal battles at the same time (e.g., family court, criminal court, child protective services, and immigration) without adequate representation. A 2008 Ministry of the Attorney General Funded Report showed that while the legal system generally, and family law particularly, sees a concerning increase in self-represented litigants; who are unable to afford lawyers; and who make slightly more than the Legal Aid cutoff. Poor, marginalized, and abused women engaged in the family process without representation face particular barriers and obstacles that make their situation potentially lethal.⁵² In our experience, self-represented women are routinely sent for mediation and feel obligated to go through the process because otherwise they are labeled as bad mothers or vexatious litigants by the system.

It is therefore our position that the government has tapped into resources and expertise of organization working on ending violence against women and has not provided adequate training

⁵⁰ *Ibid.*

⁵¹ https://www.attorneygeneral.jus.gov.on.ca/english/family/family_justice_services.php#fms

⁵² (*Needs Assessment and Gap Analysis For Abused Women Unrepresented in the Family Law System: Final Report and Recommendations*, at <http://www.lukesplace.ca/pdf/MAG-Research-Summary-Report-Apr-13-08.pdf>)

tools to government-funded mediators to use appropriate screening mechanisms for abuse and risks associated with conducting a mediation in situations of violence.

Conclusions

In Canada, there are some protection orders available under its provincial and federal legislation. However, Canada's commitment to providing an effective protection system to women survivors of violence would be strengthened with a normative shift towards recognizing the multiple intersecting forms of violence experienced by women. We wish to acknowledge that violence against women is experienced in a continuum and across the lifespan, and in different life situations, often by individual women who may not see the benefit of strict policy and strategy separation.

Importing international gender-based analyses into Canadian domestic policy and strengthening international cooperation on improving state protection mechanisms and making existing safeguards available would allow for a critical examination of the differences in women's and men's lives, and identify the potential impact of policies and programs in relation to these differences. Such commitments to gender-based analyses also examine the intersection of gender and sex with other factors such as income, race, age, and religion. While there are common, trans-cultural threads linking women and children who are victims of domestic violence, blanket solutions do not effectively resolve the complex issues stemming from the breakdown of families.

A deeper understanding of victims' lived experiences, intersecting marginalizations, and their particular background, as well as a commitment to support effective services and protection mechanisms, will help to develop a comprehensive national approach to identify and effectively combat domestic violence issues.

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