

**Appendix 2**

**THROUGH THE LOOKING GLASS:  
The Experiences of Unrepresented Abused Women  
in Family Court**

**FINAL REPORT AND RECOMMENDATIONS**

**Completed by Luke's Place Support and Resource Centre for The Denise House  
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*It takes all the running you can do  
to keep in the same place.<sup>i</sup>*

## INTRODUCTION

For women without legal representation their experience in family court is not unlike Alice's experiences through the looking glass. They, like Alice, feel that they are running and running, only to stay in the same place if not move backwards.

As Alice said when she first looked through the mirror: "First, there's the room you can see through the glass – that's just the same as our drawing room, only the things go the other way. I can see all of it when I get up on a chair – all but the bit behind the fireplace. Oh! I do so wish I could see that bit!"<sup>ii</sup>

Women who are forced to find their own way through the maze of family law and family court often find that things seem backwards or upside down or inside out. They search and search for that one elusive bit that they think will make sense of everything else, that everyone else seems to know about, but they seldom find it.

As two of the women who were part of this project's focus groups told us:

*The court system is so long with all of those procedures and you have to file these papers and there are too many procedures.*

*[You] walk into the family court and you feel strangled and you hit a brick wall and someone is stepping on your throat.*

Increasing numbers of people, in particular women, find themselves in family court with little or no legal representation. They are expected to figure out for themselves what lawyers and judges spend years studying and practicing, to fill out endless forms correctly and file them on time, to appear in court and make complicated legal arguments, to understand the rules of evidence, and to do all that while maintaining a pleasant and cooperative attitude.

For most, it is like trying to speak a new language with no chance to learn it first.

A 1996 British Columbia study noted: "Few of us in this society are knowledgeable about how the legal system works. People who are new to the country are at a particular disadvantage. So are people who are marginalized by poverty or by this society's racism or heterosexism or discrimination on the basis of ability. When circumstances bring us into contact with the system, we usually count on a lawyer to help us find our way through it."<sup>iii</sup>

Difficult enough under any circumstances, the task becomes all but impossible for women who are fleeing abusive relationships. In addition to the challenges faced by any non-lawyer representing herself, abused women must deal with:

- fear of their abuser, without the protective shield offered by having a lawyer

- insecurity and lack of self-confidence brought on by the years of abuse
- safety concerns for themselves and their children
- lack of understanding of violence against women by many in the court system
- lack of appropriate services and supports
- 

This project was undertaken to learn more about the needs of abused women in Durham Region who are unrepresented through their family court experiences in order to be able to better develop and support appropriate services for them. According to the most recent statistics available from Durham Region Superior Court from January to July 2006, the total number of applications filed under the *Family Law Act*, the *Children's Law Reform Act* and the *Divorce Act* were 4,100. Of these, 2,662 parties were unrepresented – a total of 64.9% of all family court litigants.

According to a research study of Unified Family Court sites in Ontario, between 2001 and 2006, Oshawa experienced a steady increase in the number of Family Court applications, reaching a total of 5,300 applications in 2005/06. Oshawa ranked second only to Ottawa in the increase in number of applications. As well, Oshawa had the highest total number of “events” (trials, pre-trials, settlement conferences, motions and case conferences) heard over those 5 years – 11,200.<sup>iv</sup>

The primary purpose, as set out in the project proposal, is “the completion of a needs assessment/gaps analysis of service delivery for abused women who are without legal representation within the family law process. . . [the project] will gather information about the frequency, causes, difficulties and needs of unrepresented women with specific attention to marginalized women, women in ethno-racial communities, rural women and Deaf and disabled women.”

Information and data were gathered by way of focus groups with a variety of stakeholders: women survivors of violence who were or are unrepresented in family court, community workers, legal support workers and lawyers as well as through interviews with family court judges. In addition, all focus group participants and interview subjects completed a detailed questionnaire.

This data was assessed and analyzed for common themes to support the development of recommendations, which appear at the end of this report.

We have created an Appendix that sets out issues that go beyond the scope of this project, including the role of women’s advocates, legal bullying, the appropriate place of legal self-help materials and services and related but separate issues that have an impact on women’s experiences in family court.

## SETTING THE CONTEXT

In order to set the context, this report begins with a look at the reality of violence against women, work done by the Domestic Violence Death Review Committee of the Office of the Chief Coroner of Ontario, historic and recent law reform initiatives and provincial public policy initiatives, before moving on to examine the research and recommendations of this project.

While the focus of this project is on women's experiences in family court, we also present information about recent policy initiatives in criminal court that relate to woman abuse. Women's court experiences are not neatly parceled into "family" and "criminal." They are, rather, one big messy experience of "going to court." As the women told us, they are frustrated by the lack of communication and coordination between the two courts and, sometimes, even find orders from one conflict with orders from the other. A woman's abuser may try to "trade off" what happens in one court with the other. For example, it is not uncommon for a woman whose husband has been criminally charged to have him promise to "give" her custody if she will have the criminal charge against him dropped.

The information we provide about criminal court serves to further enrich the context in which women experience family court.

### ***The Reality of Violence Against Women***

Violence against women, often called domestic violence, family violence or, increasingly, intimate partner violence (IPV), remains a serious and entrenched social problem in Durham Region, in Ontario, in Canada and around the world.

*It's the world's most pervasive human rights violation. It's the violation most often ignored. Every minute of every day, women and girls around the world are assaulted, threatened, raped, mutilated, killed.<sup>v</sup>*

While great strides have been made to increase services to victims of woman abuse and their children, the sad reality is that levels of male violence against women remain as high as ever. Indeed, the numbers of women and children killed by men who say they love them are shockingly high.

In an important new book called The War on Women<sup>vi</sup>, author Brian Vallee compares the numbers of murdered women to the numbers of police and military deaths:

**In the seven years between 2000 and 2006, there were 101 deaths of Canadian military and law enforcement personnel. In the same period of time, more than 500 women were killed by their partners or former partners.<sup>vii</sup>**

As Vallee says: "There is another war – largely overlooked but even more deadly – with far more victims killed by "hostiles." But these dead are not labeled heroes,

nor are they honoured in the national media or informal ceremonies. From time to time they may attract a spate of publicity as the result of a high-profile trial, or an inquest that will likely conclude that society let them down once again and recommend changes to prevent future deaths, though these recommendations will be mostly ignored. This war is the War on Women.”<sup>viii</sup>

These fatality numbers are serious and cause for much concern. However, the numbers of women and children who use the services of battered women’s shelters and the even higher numbers of women and children who simply remain in abusive homes is perhaps of even greater concern.

To quote Brian Vallee again: “Wars usually produce large numbers of refugees: witness the United Nations camps scattered around the world. And the War on Women has its own refugee camps, in the form of the 2,500 or so shelters for battered women across North America . . . In Canada, the number [of women and children using shelters] is between 90,000 and 100,000 [a year].”<sup>ix</sup>

Here are some of the numbers:

- globally, at least one of every three women reports being beaten, coerced into sex or otherwise abused in her lifetime, usually by a member of her family or someone known to her (Amnesty International)
- the Council of Europe has stated that domestic violence is the major cause of death and disability for women between the ages of 16 and 44 (Amnesty International)
- only 79 countries have laws against domestic violence and only 16 have laws against sexual assault (Amnesty International) and, even in those countries, appropriate charging and prosecution remain a challenge for many women, especially those marginalized by race, immigration status, class, disability or age
- in Canada, in 1998, approximately 80% of victims in reported cases of sexual assault were women and 98% of the accuseds were men (Juristat, Canadian Crime Statistics)
- Women constitute 88% of all reported spousal violence victims in Canada (Family Violence in Canada: Statistical Profile, 1999)
- Violence often escalates after separation (Canadian Social Trends, Statistics Canada)
- Young women under 25 years of age are at greatest risk of spousal homicide in Canada (Family Violence in Canada)
- There are 543 shelters providing services to battered women and their children in Canada
- In 2003/04, 58,486 women and 36,840 dependent children spent time in battered women’s shelters in Ontario. Of these, 40% had been in a shelter in the previous year and 38% had used a shelter two to four times previously. One-third of the women using shelters were between the ages of 24 and 35. (Juristat: Canada’s Shelters

for Abused Women, reported in Statistics Canada's publication, *The Daily* on June 15, 2005)

- The statistics for 3 of the 4 Durham area shelters report that during 2006/07, 664 women and children used their residential services, 1,069 women received outreach services and 5,117 made crisis calls to shelters. The fourth area shelter was not able to provide statistics for 2006/07 at the time of this report. (Durham Region Shelter statistics collected to reflect their client services in 2006/07)
- In 2006, 4,401 domestic violence incident reports (366 per month) were filed by Durham Regional Police Services. Of these, 1,148 led to a criminal charge being laid; 83.4% against men
- In the first nine months of 2007, 3,646 incident reports (405 per month) were filed. 1,169 were charged with a criminal offence, 81.4% of these against men
- These figures show that more charges were laid in the first nine months of 2007 than in all of 2006
- Since 1995, 271 women and 45 children have been killed in Ontario as a result of domestic violence. The figures for 2006 are particularly high showing 27 women and 12 children killed as a result of domestic violence in that year alone. (OAIH report on Women/Children Murdered Since June, 1995)
- Only approximately 28% of women report spousal assault to the police

It is also worthy of note that, according to Amnesty International, violence against women in Canada costs approximately \$4.2 billion/year, including the costs of police and government services, medical care and lost productivity.

### ***Findings of the Coroner of Ontario's Domestic Violence Death Review Committee***

As the result of one of the recommendations made by the jury in the inquest into the murder of Gillian Hadley by her estranged husband, Ralph Hadley, the Office of the Coroner of Ontario established the Domestic Violence Death Review Committee (DVDRC).<sup>x</sup> The Committee's mandate is to contribute to the reduction in domestic violence generally and domestic homicides in particular by:

- thoroughly reviewing all intimate partner and ex-partner homicides;
- identifying systemic issues, problems, gaps or shortcomings of each case and making recommendations to address these concerns;
- creating and maintaining a comprehensive database about the perpetrators and victims of domestic violence fatalities and their circumstances;
- helping identify trends, risk factors and patterns from the cases reviewed in order to make recommendations for effective intervention and prevention strategies;



- reporting annually on domestic homicides to enhance public understanding and awareness of the issues; and
- conducting and promoting research where appropriate.

To date, the Committee has reviewed 47 cases involving 75 deaths.<sup>xi</sup>

Women are the predominant victims in the cases reviewed by the DVDRC, although children are increasingly the targets of abusive men, who kill them in retaliation against their wife or ex-wife. As stated in the 2006 Report, there were 148 “domestic violence” homicides in Ontario between 2002 and 2005, with 99 women victims, 9 child victims and 48 male deaths, 41 of which were perpetrator suicides/deaths by law enforcement. Women are the victims and men the perpetrators in 95 percent of the cases.<sup>xii</sup>

While each report is unique and reflects the realities of the deaths it has reviewed, all four reports note a common and disturbing reality, which is summarized in the opening pages of the 2004 Report:

***An important concern to the DVDRC as a result of our review is the extent to which these homicides appear both predictable and preventable based on an analysis of well-known risk factors. . . . In the majority of cases reviewed, ten or more risk factors associated with potentially lethal violence were present in the circumstances.***<sup>xiii</sup>

The DVDRC consistently identifies key trends or factors present in the homicides it reviews:

- ❑ prior history of violence (92%)
- ❑ actual or pending separation (85%)
- ❑ escalation of violence (77%)
- ❑ prior attempts to isolate the victim (62%)
- ❑ prior threats to kill victim or himself (46%)

As well as analyzing each homicide in detail and identifying trends and factors, the reports include a number of recommendations grouped into three categories:

- ❑ suggestions to improve awareness about violence against women through training for professionals and public education campaigns
- ❑ strategies to improve on assessment and intervention
- ❑ the need for increased resources

The DVDRC has provided many important recommendations for change, as have the three inquests held into the murders of women by their intimate partners.<sup>xiv</sup> In particular, the reports speak to the importance of collaborative community-based approaches to ensure early identification and intervention in cases of woman abuse, especially high-risk cases.

### ***An Overview of Past Law Reform***

Over the past 20 years, Canada and Ontario have instituted a number of important measures intended to improve the response to violence against women, including:

- mandatory charging policies in cases of spousal violence, introduced across Canada in the early to mid 1980s, took the responsibility of deciding whether or not to lay charges away from the victim and gave it to the police. As a result, the rate of charging increased significantly;
- specialized Domestic Violence Courts were introduced in many parts of the province
- the creation of the Victim/Witness Assistance Program (VWAP) provided important support for victims of domestic and sexual violence who are involved with the criminal court process
- amendments to many of the sexual assault provisions in the *Criminal Code* made it illegal for men to rape their wives, clarified the issue of consent, limited the accused's access to the private records of the victim and eliminated the defense of intoxication

Unfortunately, in some cases, the outcomes of these well-intentioned measures have proven to be negative.

For instance, despite the positive intentions of policymakers, mandatory charging policies have not helped all women. Many women do not want their partners charged criminally – they may depend on them financially, may want to try to effect a reconciliation or may fear increased violence if he is charged. Immigrant women may be concerned their spouse will be deported if he is charged with a criminal offence. Racialized women report differential treatment for themselves as victims and for their abusers, if they are men of colour. Aboriginal women have had very negative experiences with mandatory charging.

For some women, mandatory charging policies have led to *them* being charged if the police officer has not taken the time to conduct a thorough investigation to determine who the primary aggressor is over the life of the relationship.

One of the most challenging and controversial legislative changes in the area of violence against women has been the amendments to child protection provisions across the country. While there is little or no argument with the contention that children who witness violence in the home are affected negatively as a result, there is considerable disagreement about what to do about it.

Between 1998 and 2000, child protection authorities experienced a 318% increase in reported child abuse, primarily because of child exposure to woman abuse. This, in turn, led to a decrease in the numbers of women with children who came to battered women's shelters for safety and support.<sup>xv</sup> Furthermore, child protection involvement has tended to focus on holding the abused woman accountable for "failing to protect" her children, while largely ignoring the

perpetrator. Neither of these outcomes is effective in keeping women and children safe.

In 2007, the tool used by child protection workers to determine the appropriate response (the Eligibility Spectrum) was revised to state that exposure to woman abuse alone should not be defined as requiring a child protection response, but rather that the presence of woman abuse in the home should be considered a risk factor among others.

This new “differential” response also includes an increased focus on holding the perpetrator, rather than the mother, responsible and accountable.

While both of the above changes offer positive possibilities, other amendments in 2006 encourage the use of mediation both before and during court proceedings. This is not generally appropriate in woman abuse cases because of power differences between the parties.

Similarly, the focus on family-centred conferencing must also be approached with extreme caution in woman abuse cases out of concern for the woman’s safety.

### ***Recent Law Reform Initiatives***

In February 2006, the provincial government passed two important amendments to existing legislation, both of which will have an immediate and significant positive impact on women who are leaving abusive relationships.

i. *Children’s Law Reform Act*

Custody and access decisions in Ontario, as well as in the rest of Canada, are made using the “best interests of the child test.” The factors to be considered are listed in the *Children’s Law Reform Act (CLRA)*, a provincial law. Until 2006, there was no requirement that woman abuse be considered in custody and access cases. Women who wished to raise the issue of their abuse within the context of a custody and access case had to make the explicit argument that the abuse they were experiencing was having a direct, demonstrable and negative impact on the children, which often was difficult to do.

Amendments to the *CLRA* in February, 2006, changed this. Judges are now required to consider acts of violence or abuse by anyone seeking custody of a child. Importantly, the amendments also identify that acts taken in self-defense or to protect another are not to be considered acts of violence or abuse.

Evidence of the abuse or violence must meet the civil standard (on a balance of probabilities) rather than the criminal standard (beyond a reasonable doubt). For example, criminal charges would not have to have been laid for a woman to argue successfully in a custody case in family

court that her husband's abuse of her was a factor to be considered. She would, however, have to have some evidence beyond a simple statement that she had been abused.

Coupled with a 2005 Ontario Court of Appeal ruling<sup>xvi</sup> that joint custody is not appropriate in cases where the parents cannot communicate, these amendments to the *CLRA* will help ensure more appropriate outcomes for women and children who leave abusive situations.

ii. *Arbitration Act*

The *Arbitration Act* governs the private arbitration of legal disputes, including family law disputes, in Ontario. In 2003, concerns were raised about the use of religious laws in the arbitration of family law, particularly the impact on women's equality rights.

The *Arbitration Act* was amended in 2006 to prohibit the use of religious or any other private system of law in the arbitration of family law disputes. Only Canadian law can be used, if the arbitration is to be legally binding and enforceable. Ontarians are free to consult with and get support and guidance from their religious leaders, if they choose to do so, but any legal agreement must be based only on Canadian public law (*Family Law Act*, *Children's Law Reform Act*, etc.)

Regulations to govern arbitration in Ontario under this new regime are now in place. A community outreach and education campaign to help women know what Canadian law offers them and what their rights are under Canadian law is expected to be completed in Fall 2008.

### ***Public Policy Initiatives***

#### **Domestic Violence Action Plan**

In December 2004, Premier Dalton McGuinty announced his government's Domestic Violence Action Plan (DVAP), which he described as a "long-term, comprehensive and collaborative approach" to preventing violence against women and improving supports for women and children when it does happen.

The DVAP, a four-year plan, is an important piece of public policy for a number of reasons. First, it shows leadership at the highest provincial level. Second, the Premier clearly identifies the issue as one of violence against women and makes the connection between this violence and women's inequality. Third, the plan encourages a community-based, collaborative approach to both ending violence against women and providing support to women and children who have experienced violence.

The Plan is based on a number of principles:

- the right to safety on the part of all women
- working for women's equality

- the role of public leadership
- sharing responsibility to address violence against women
- holding abusers accountable for their actions
- providing a holistic response
- bringing a balanced approach
- monitoring progress

The DVAP focuses on five areas where it is committed to making change. The legal response commitments are of the greatest interest to this project, but all are of importance.

1. Community-based supports for victims: This includes increasing funding to community counseling services, transitional housing for women, social housing, interpretation services, community coordinating committees and community-based sexual assault centres.
2. Early identification and intervention: This includes training for professionals and service-providers, the development of expert training advisory panels, a provincial conference on domestic violence held in the fall of 2005 and development of a clearinghouse of resources and programs.
3. Violence Prevention: A four-year, public education and prevention campaign will target young people as well as the public at large in an effort to end violence against women and girls.
4. Legal Response: There are a number of initiatives aimed at making both the criminal and family law responses to violence against women more effective. These include amendments to provincial custody and access legislation, increased funding to Partner Assault Response Programs (PARS), changes to the present family court restraining order system, increasing coordination between the family and criminal court systems, expanding the bail safety pilot programs (see below for details), working with the federal government to improve funding for family law legal aid, working with stakeholders to examine other models to better support abused women in family law disputes, using community legal education publications to increase awareness of family law, domestic violence and civil rights, encouraging the federal government to retain the concepts of custody and access in the *Divorce Act* and instituting domestic violence training for judges
5. Access to French Language Services: A French-language services strategic plan is to be developed, which will include increased funding for French language sexual assault centers, development of a French-language component of the public education campaign and training for French-language professionals.

One of the strongest threads running through the entire Domestic Violence Action Plan is a commitment at the provincial government level to supporting and expanding community-based, collaborative approaches to both ending violence against women and providing supports and services to those who experience it. This commitment provides a strong foundation on which communities can build their strategies for addressing this issue.

### Bail Safety Pilot Program

This program brings the victim, Victim/Witness Assistance Program (V/WAP), the police and the Crown together to work collaboratively at the bail stage of a criminal case where there has been partner abuse.

Currently running as a pilot in nine Ontario communities, the program recognizes that the way in which bail has been handled in partner abuse cases in the past has often left the victim exposed to ongoing, high risk of more serious harm or even death. It is committed to allowing victim input at the bail hearing as well as to offering victims access to support immediately upon charges being laid.

VWAP's role in the program is to have immediate contact with the victim and to conduct an in-depth interview to gather her input with respect to appropriate bail arrangements. The VWAP worker also discusses safety planning with the victim, introduces her to the court process and provides referrals to community agencies for counseling and support.

The role of the police is to participate in the in-depth interview with the victim and to complete a "risk factor checklist" which will support making appropriate bail recommendations. The police will obtain past occurrence reports, prior charges, prepare a complete Crown package and lay additional charges when required, as well as liaise with relevant community partners.

The Crown's role is to review and screen the Crown package and, if available, conduct the bail hearing using information gathered during the in-depth interview conducted with the victim by V/WAP and the police.

Evaluation of the first three pilot projects is positive and a report is expected in the near future.

### Neighbours, Friends and Families

In June 2006, the provincial government launched a province-wide campaign to help the public recognize the early signs of woman abuse and know how to help. The Neighbours, Friends and Families campaign (NFF) provides information in pamphlet form, a series of public service announcements, posters, wallet cards and a website.<sup>xvii</sup> The campaign is intended to provide communities with information about how to:

- ❖ recognize the warning signs of woman abuse
- ❖ support women and other members of the community who are affected by woman abuse
- ❖ find supportive resources in the community
- ❖ look for opportunities to promote and work collaboratively on the Aboriginal and Francophone communities' campaigns.

As stated on the NFF website:

The Neighbours, Friends and Families campaign is based on principles of community organization and recognizes that communities have the assets, strengths, natural leaders and untapped talent to greatly impact change, growth and restoration in their communities.

## THE FOCUS GROUPS

Focus groups were held with a variety of stakeholders – abused women, community support workers, community legal workers and lawyers -- to gather experiential data from those who know most about unrepresented abused women in family court.

All of these individuals were also asked to complete a detailed questionnaire to provide demographic and statistical data as well as qualitative information.

In addition, one on one interviews were conducted with family court judges.

This section of the report summarizes the data gathered from all these sources.

### ***Women Survivors:***

Note: For many women, the abuse continued or even escalated after separation. In particular, there was a continuation of stalking type activities such as jealous/controlling and following behaviours. Repeated unwanted telephone calls actually increased post-separation. While just under 50% of women (46%) reported that their ex-partner's behaviour made them fear for their lives before they separated, this number increased to 54% who reported this fear after separation.

***Any consideration of the needs of abused women in family court must bear in mind the reality that more than half of them are in fear for their lives. This has a profound impact on their ability to participate in the process at all, let alone to do so effectively and without adequate legal representation.***

Three focus groups were held with abused women who have been involved with the family court without legal representation. Women were first given the opportunity to talk generally about their experiences and then were asked to focus their comments on specific questions about their lack of legal representation, their perceptions about its impact on the outcomes of their cases, the difficulties they encountered in handling their cases and services they turned to for assistance and support. They also completed a questionnaire.

### What Women Say:

We think women's own voices are the most powerful way to understand the impact on them of dealing with family court without a lawyer. Their words appear throughout this report, along with the words of workers, lawyers and judges. Here, though, are some short comments made by women when they were asked what it was like to go to court without a lawyer.



### **Women's Voices**

*Intimidation, overwhelming, hard to focus, lack of confidence, talked down to, not given credibility, very rude people at court, feel stupid, frustrated, tossed around, discouraged, kills self-esteem, weak, defeated, re-victimized*

*Betrayed because I was robbed of time to spend with my children.*

*It's abusive all over again.*

*I just wanted to curl up into a ball and sleep.*

#### Legal representation:

The vast majority of women – 84% --reported that they had started out their case with legal representation but had lost it before their case was completed, others had never had legal representation and still others had representation at some times and not at others.

Thirty percent of the women were without legal representation because they did not qualify for Legal Aid, despite the fact that, for the women involved in this study, their average household income fell from \$75,000 before separation to \$22,500 after.

Almost half of the women (49%) were without legal representation for strictly financial reasons:

- did not qualify for legal aid
- ran out of legal aid because of length and complexity of case
- ran out of money for privately retained lawyer because of length and complexity of case

Another 6% of women reported that they were without legal representation because they had been unable to find a lawyer who understood their issues.

More than one-tenth (12%) of the women were unrepresented when they went into court because the emergency nature of their situation did not allow them enough time to get a lawyer.

### **Women's Voices**

*The lawyers always win. They always get paid and the kids always lose.*

*I could not afford her. I just didn't have the support and so I decided to go it on my own and I would stay up all hours of the night working on it because I had no other choice.*

Legal Aid Ontario (LAO):

Forty percent of the women in the study were not aware of Legal Aid Ontario's eligibility requirements, which may have had an impact on whether or not they even applied --of the 23% who did not apply, half gave as their reason "I didn't think I would qualify."

Many women expressed high levels of frustration with LAO's financial eligibility requirements and with the small number of hours that appear on most certificates.

Women also told us that they think they should be allowed to hire a lawyer on a LAO certificate even if they have seen that lawyer at the FLIC or as Duty Counsel. They feel their choice of lawyers, already limited because so few take legal aid clients, is reduced to almost none if these lawyers are excluded.

***Women's Voices***

*You want me to sell everything that I own before I get it . . . How are we supposed to get ahead if you are putting us right in where we are locked, we're stuck. That makes absolutely no sense to me, because it's a vicious circle going, and there's no break and there's no way out as far as I'm concerned.*

*One day I went down there [LAO office] in a panic and they said there's more people in front of you and we won't be able to see you today and at that time I waited a few hours and they said the workers are leaving for the day so you will have to come back again because it's a first come first served basis. It took a lot of courage to go in there because everyone is looking at you wondering what you are there for.*

*I don't qualify for legal aid because I make too much money and on paper it looks like a lot of money but when you're not getting child support and you're paying the mortgage and everything else it's not a lot.*

Family Court and Community Services:

Women without legal representation rely on a variety of court-related services to assist them with their cases. Unfortunately, the experiences of the women in this study report less than positive experiences with many of those services:

- while 70% used the Family Law Information Centre at the family courthouse, only 44% found this helpful
- 73% used duty counsel lawyers, but only 38% found it helpful
- 46% used mediation services, with just 23% finding it helpful
- 64% used Legal Aid Ontario's 2-hour legal advice certificates; 40% found this helpful

Women's experiences with community services were more positive:

- all of the 74% of women who used Luke's Place to assist them found it to be helpful
- all of the 48% of women who worked with shelter advocates found that to be helpful

Not surprisingly, because their experiences with community services were so positive, women wanted to see a bigger role for them in family court.

### **Women's Voices**

*You have to go back and stand in line [at the FLIC office] for two hours and then when it's lunch, you have to go somewhere else and wait while they are eating lunch and then come back and you can only file at 2 o'clock a motion and it's just really confusing.*

*I don't understand why it has to be a legal person . . . she [advocate] could probably articulate [my case] better than I could because I am in the room with a guy who abused me and the sheer presence of him in the room means I can't think normally.*

#### Difficulties Encountered:

The vast majority of women told us their greatest difficulties were: not understanding the procedure (84.6%), dealing with their abusive ex-partner and/or his lawyer (80.8%) and the paperwork (76.9%).

Women also told us how difficult it was dealing with the judges, who often did not seem to understand the realities of violence or how hard it was to come into court without a lawyer.

### **Women's Voices**

*I'm fairly well educated and if I can't fill out these forms, I can't imagine [how] others [do.]*

*One of the hardest parts of not having someone stand beside you is he's across the room and he's got his lawyer and you're standing there by yourself and you feel like you have nobody with you and you're intimidated.*

*[T]hat's what they [the abuser] do and they bully and they bully and they bully until you will break.*

*The cultural awareness and religious sensitivity of the judges were amazingly low.*

*Then the judge says you have to call a motion. For the love of God, if I have to call another motion, I might as well bring my sleeping bag. . . what motion do I bring, what motion do I need for abuse, what motion do I need for this and that and the other thing? Like, honestly, I'll be on their doorstep forever.*

*I looked him [the judge] right in the eyes and said I'm not a lawyer. I'm not duty counsel. I'm not him. I am me and I don't understand this. I don't understand your language. . . . Your Honour, with all respect to you, have you ever tried to go and file information and tried to get information from the family information centre?*

### Challenges/Barriers:

Women reported a number of challenges in working through their family court experience without legal representation. Perhaps most notably, 80% of them told us that they feared they would not be believed and their abuse would not be taken seriously.

Seventy-three percent identified “feeling less powerful than the abuser” as a barrier during their time in family court. Sixty-five percent said they had the feeling they were supposed to be compliant and not challenge people.

Other challenges were also reported:

- difficulty accessing legal help (65%)
- not enough supports (65%)
- feeling isolated (57%)
- fears about losing their children, to their ex and/or others (46 – 69%)

Women from marginalized communities – especially those from other cultures -- experienced even more barriers, particularly within their own communities.

### **Women's Voices**

*You left an abusive situation and your confidence level is certainly not at its highest and you're going to these people to seek help and you're reaching out and then when they come and say to you there is nothing they can do. So you suck it all up and minimize what's happened. I can see why so many women will go back.*

*I didn't have any family and the community kept us very sheltered. Because it is not just the mainstream I am dealing with. It's also my cultural aspects and perceived ideas of the mainstream about certain cultures.*

*And what's difficult is when you're doing this by yourself, you're writing a book and they don't want to read a book. They only want to read two paragraphs and that's pretty much it. So you feel that you aren't heard.*

*I did not even wear pants at the time or skirts and I had my Pakistani clothes and a big wrap and I went to court with those things on and here he is in a black-tie suit and clean-shaven and I didn't have any idea about how I should have dressed and what I should have looked like in front of the judge.*

*Family law says you are entitled to represent yourself but you are looked down upon and frowned upon when you decide to do so. I really believe it is the money aspect of it. Because you are not paying into the system, therefore you are not getting what you are entitled to.*

#### Family Law Issues:

Not surprisingly, the vast majority of women (88.9%) listed custody and access as the number one issue they were dealing with in family court. This was followed by child support (70.4%), with restraining orders the third most common issue (59.3%). Of course, many women were dealing with more than one of these issues at the same time.

Other research clearly establishes the volatility of these issues. In particular, the 2004 report of the Domestic Violence Death Review Committee noted the presence of custody and access disputes in 44% of the homicides it reviewed that year.

#### Outcomes:

It is difficult, if not impossible, to make absolute connections between the outcomes women achieved and the presence or absence of legal representation, because there are many other variables that play a role. However, we can report that:

- 72% of the women received joint custody orders
- 68% were able to obtain child support orders
- 58% received restraining orders

Every woman with joint custody (100%) told us she was not happy with this outcome. This was largely because of ongoing harassment by the abuser. Joint custody orders are like an invitation to harass because the parents are required to consult on all decisions affecting the children. Even if the children live primarily with the mother and even if the father's contact with them is superficial, he can use the joint custody order to insist that the mother discuss all schooling, recreational, religious, health and other matters with him. Abusive men often refuse to consent to plans the mother and child wish to make, not because they oppose the plan, but because it is a way to harass and control the mother. For example, an abusive man might insist the child participate in baseball if the mother has proposed soccer or might refuse to allow the child to attend French Immersion classes or to go on a school trip just to make sure both the mother and child know who is still in charge – him. Abusers often bring minor custody and access disagreements back into court over and over again. This has the

effect often of wearing the mother down, who has to hire a lawyer again and again or take time off work to represent herself and who becomes exhausted by the ongoing harassment and intimidation. Once again, the abuser is able to keep control.

It is to be hoped that joint custody orders will become less common with the recent change to best interests of the child test in the *Children's Law Reform Act* requiring courts to consider family violence in custody and access cases.

### ***Women's Voices***

*When it came time for trial. I was out of money. I ran out of money. I simply ran out of money so I went into settlement for status quo. Joint custody we had to keep just because I didn't have the money.*

#### Post-Court Issues:

Women reported ongoing difficulties with access:

- 73% feared their ex-partner would be abusive with the children during the visits
- 74% felt their ex-partners used access visits as an opportunity to criticize them to the children
- 65% reported continuous conflict about child-related issues
- 65% said they felt unsafe at access exchanges
- 65% thought their ex-partners used access to get information about them from the children
- 60% have to force their children go on access visits, even when they have said they don't want to go and are crying
- more than half (52%) of ex-partners change access arrangements without consulting with the mothers
- just under half (48%) of ex-partners do not show up for access visits when the children are expecting them

As reflected in the statistics above, those women who had completed the family court process, especially those with children, told us in no uncertain terms that their difficulties with their abusive ex-partners did not end with the end of family court proceedings. The abuser who had learned how to change abuse within the relationship into legal bullying then learned how to become an abuser through his access to the children. For many women, it appeared no end was in sight as long as the children remained young and at home.

### ***Women's Voices***

*It just comes down to this is the law that he must see them at all costs.*

Positive Experiences:

Despite the serious challenges and barriers experienced by virtually all the women at times throughout their family law case, some women reported to us that there were positive elements as well. For these women, there was a sense of empowerment in telling their own stories.

**Women's Voices**

*The legal system made me feel that I couldn't [do it herself] but I always knew I could. There were a lot of times I felt like I was going mad, but it's the legal system.*

*I think I've accomplished more on my own than with any lawyer because I know the case and because I have my voice back.*

**Community Advocates**

Seventeen community advocates participated in a focus group and completed questionnaires related to the family court experiences of the women with whom they worked. Participants were solicited from the women's shelters, counselling agencies, multicultural community services, rural outreach agencies, community mental health agencies, agencies serving women with disabilities and others.<sup>xviii</sup>

Legal Situations of Clients:

For almost two-thirds (64%) of advocates, abused women make up all or almost all of their work. Most of those clients are involved with family court proceedings.

As with the women, most advocates identified custody and access and restraining orders as the two most pressing legal issues for their clients.

Legal Representation:

Many advocates have clients who do not have a lawyer:

- for 30% of advocates, 10 – 25% of their clients are unrepresented
- for 24%, between 25 and 50% are in this situation
- for 23%, more than 50% of their clients have no legal representation

Advocates identified a number of barriers to women finding legal representation:

- a lack of lawyers who accept legal aid certificates
- a lack of lawyers who can be retained quickly enough to handle emergency situations
- coordinating the lawyer's time with the interpreter's time

### Legal Aid Ontario:

Advocates saw many aspects of LAO as a critical barrier for women – the application process, the criteria and LAO-supported services such as the two-hour advice certificate. In particular, they told us:

- the amount of time on women's LAO certificates is too low for the complexity of family law cases involving woman abuse
- the legal aid office is too open for women to feel safe and private
- the financial criteria are so restrictive that many women who need legal aid assistance do not qualify
- legal aid for family law is under-funded generally
- the legal aid appeal process is too long

More than 60% of advocates told us that their clients did not qualify for Legal Aid but could not afford to pay for a lawyer themselves.

As with almost every other group of stakeholders, advocates identified as a barrier to women the fact that they cannot hire a lawyer on a LAO certificate if they have seen that lawyer at the FLIC or as Duty Counsel.

#### **Advocates' Voices**

*When we've gone with women it's rarely ever been two hours. Especially when women go on their own, they come back and say he [the lawyer] took my two-hour form and I think he's going to be my lawyer but it was only a 20-minute appointment and he rushed through and he told me he's done this a million times and just to leave it with him. So they are left completely in the dark not knowing what's going to happen, what's coming next and when their next anything is.*

### Family Court and Community Services:

Perhaps the most troubling information we heard from advocates was that many women still don't know what services are available to them.

#### **Advocates' Voices**

*There are pockets of women who aren't aware or are not educated or knowledgeable of the fact that there are support services and agencies in place to help them. And it really hurts me when I hear from someone that they had no idea that there was a place to help.*

### Referring Women:

It was clear that community advocates do their best to assist unrepresented women who come to them for help. More than 80% told us they assist the woman themselves by discussing her case with her and providing emotional support and/or by referring them to Luke's Place and/or to LAO to apply for legal aid.



Approximately 70% send unrepresented women to the Family Law Information Centre, slightly more than 60% provide women with a two-hour legal advice certificate and slightly less than 60% refer them to duty counsel.

Difficulties Encountered:

All advocates identified that understanding the family court procedure was a significant difficulty for unrepresented women. Following closely were such difficulties as feeling overwhelmed by the complexity and the paperwork and having an inadequate knowledge of the law (all at 88%), knowing what evidence about abuse to submit and how (82%) and dealing with the ex-partner and/or his lawyer (76%).

Advocates also reported that their clients felt frustrated by the many motions brought by their ex-partners, and felt emotionally and financially drained by their family court proceeding.

There was concern expressed by advocates that unrepresented women concede on important legal issues too quickly because they don't understand the issues, the process or their rights.

In the opinion of advocates, unrepresented women had many non-legal difficulties during their family court experience, including dealing with ongoing harassment and control by the abusive ex-partner and threats that he will get custody of the children (76.5% saw each of these problems "often"), fearing they won't be believed ("often" for 70% of women) and fearing for the safety of themselves and/or their children ("often" for 70% of women).

**Advocates' Voices**

*The most common concern we have when they're unrepresented or underrepresented is [when they] concede on, first, its property, that's the first thing that goes, they give up on rights to property and use that as bargaining. Then it's conceding on access to hopefully get primary care or custody. If they were represented they would not have to concede on that, because if there is any kind of documentation that this is either high conflict or abusive the case law is that they get custody. But women don't understand that or don't show their evidence properly because they are unrepresented.*

*It keeps coming back to the fact that if the person who is abusing the system is not being held accountable there are so many loopholes in the system that allow him to get away with it.*

### Women from Marginalized Communities:

Advocates were asked to comment on the experiences of women from various marginalized communities – rural women, immigrant, refugee and non-status women, Aboriginal women and women with disabilities and Deaf women.

Advocates told us that **rural women** often felt they did not have access to enough support services and resources (70%) and had difficulty with transportation due to their geographic location (76%). They also felt isolated ((64%).

According to advocates, **immigrant, refugee and non status women** also faced unique barriers: language (92%), fears that the partner would remove the children from Canada (78%), isolation (71%), accessing culturally appropriate services (64%) and concern about their immigration status (57%), among others. We also heard that it is often difficult to coordinate the schedules of lawyers and interpreters for women who require this.

For advocates working with **Aboriginal women**, not enough services (75%), transportation (75%), lack of trust in the police (87%), lack of services that understood traditional ways of healing (87%) and discrimination (87%) were key challenges.

Those working with **women with disabilities and Deaf women** told us that the most difficult experience for these women is leaving the abuser because he is also her caregiver (91%).

### Post Court Issues

We heard from advocates that many women (76%) continue to experience ongoing harassment and difficulties post-court when the abusive ex-partner has access to the children.

### **Community Legal Workers**

Fifteen community legal workers participated in a focus group and completed questionnaires related to the family court experiences of the women with whom they worked. Participants were solicited from a number of legal services within the community, including child protection, court workers and professionals working in court support programs.

### Legal Situations of Clients:

For 46% of legal workers, women who have experienced abuse make up at least 50% of their workload. Surprisingly, 20% reported not knowing whether their clients had experienced abuse.

Some work with men who have perpetrated abuse – for one-third, these clients make up at least 50% of their workload.

The vast majority of them (93%) felt that woman abuse should be a relevant factor in family court proceedings.

Custody and access and restraining orders emerged once again as the two most pressing family law issues for most women who had experienced abuse.

Legal Representation:

Many clients of legal workers do not have legal representation:

- for 26% of workers, this is true for between 25% and 50% of their clients
- for 26%, more than 75% of their clients do not have a lawyer

Legal Aid Ontario:

More than three-quarters (77%) of workers reported that their clients were unrepresented in family court because they did not qualify for legal aid and could not afford to pay for a lawyer themselves.

Workers saw the lack of funding as a significant barrier for women, but also identified the financial eligibility criteria as problematic. They told us that women worry about running into their abuser at the legal aid office when they go there to apply for a certificate.

These workers, like other stakeholders, identified the fact that women cannot hire a lawyer on a LAO certificate if they have seen that lawyer at the FLIC or as Duty Counsel as a barrier.

***Legal Workers' Voices***

*Some women haven't even tried to go for legal help because they are overwhelmed, stressed out of their brains and it's really difficult for them.*

Family Court Services:

Legal workers had comments about many different court and court-related services.

They commented on the limited resources generally available at family court, which makes it very difficult to meet all of the needs of litigants.

Shared waiting rooms are inappropriate for women who must sometimes wait for long periods of time in close proximity to their abuser and/or his family and friends.

The legal workers had much to say about the Family Law Information Centre. The Durham FLIC has the highest number of users in the province at

approximately 17,000 people. Its services were seen as very important, but a number of workers felt that women did not get enough time (just 10 – 15 minutes) with the FLIC staff.

Workers commented that the use of staff duty counsel made for better, more consistent service for women.

Difficulties Encountered:

While unrepresented women face many difficulties in the opinion of their legal workers, once again, a lack of understanding of the procedure (80%) and the paperwork (73%) consistently rank as the most frequent challenges. High numbers of workers also report dealing with the ex-partner and/or his lawyer (67%) and inadequate knowledge of the law (60%) as significant difficulties.

Other common difficulties included:

- dealing with ongoing harassment and control by the ex-partner (“often” for 83%)
- women’s fear for the safety of themselves and/or their children (“often” for 84%)
- dealing with threats from the ex-partner that he will get custody of the children (“often” for 77%)

Both the gaps and overlaps between family and criminal court were seen as difficulties for everyone, but especially for women who did not have legal representation. In particular, workers commented on the lack of communication between the two systems.

Workers also told us that rotating judges are a problem because women have to tell their story again and again to different people and no one judge becomes familiar with the case. They pointed out that the four family court judges in Durham are very good.

***Legal Workers’ Voices***

*Women should not have to be responsible for making sure the systems [criminal and family] communicate.*

Women from Marginalized Communities:

Legal workers told us that **rural women** do not have enough services and supports (66%), that they feel isolated (58%) and that they have concerns about their partner’s access to firearms (58%).

**Immigrant, refugee and non status** women, according to the legal workers, experience language barriers (77%), have difficulty finding an effective translator (92%) and fear that their ex-partner will take the children out of the country (84%).

Workers with **Aboriginal women** as clients were few in number so their information may have little statistical relevance. They reported that their clients had difficulty with travel to court or support services because of the distances involved and the lack of transportation (85%). Women also found the lack of anonymity/confidentiality a problem and felt isolated (each at 71%). There was also a fear that chiefs and council members would support the abuser (71%).

According to the legal workers, **women with disabilities and Deaf women** have difficulty leaving the abuser because he is her caregiver (75%) and have difficulty accessing appropriate support services (75%).

### **Lawyers**

Eight lawyers participated in a focus group and completed a questionnaire about the experiences of unrepresented abused women in family court.

#### The Lawyers:

Seventy-one percent of the lawyers are in private practice. All represented at least some women who had experienced abuse in their relationship.

Two-thirds of them accept legal aid and 80% assist women with two-hour legal advice certificates. More than 80% offer payment accommodations to women who require it.

#### Legal Situations of Clients Who are Abused Women:

The most pressing family law issues for most of their clients who are abused women, once again, were custody and access and restraining orders.

#### Legal Representation:

The lawyers talked about challenges for abused women and for the lawyers who represent them. They told us that some lawyers still do not understand the dynamics of woman abuse, including the extent to which women remain tightly controlled by their abuser after separation.

They acknowledged that it can be very difficult to get a lawyer in time, especially when there is an emergency situation.

One lawyer spoke about the issues for women from culturally marginalized communities and the need for awareness by lawyers.

### **Lawyers' Voices**

*It is very hard to find somebody who knows anything let alone is specialized in abuse issues because they don't have little captions under their names saying, well, this person deals with abuse issues and this person only looks after husbands.*

*The fact of the matter is that if you were a woman in crisis you would not have enough time to retain a lawyer and prepare affidavit material and get it filed with that lawyer . . . things don't work that fast.*

*We have to be aware not to impose our Canadian standards always on another family. Obviously, different cultures have different levels of abuse.*

#### Legal Aid Ontario:

Lawyers had very different perceptions of LAO. Some felt they were able to receive sufficient hours on their certificates; others did not. Some said they had no trouble getting additional time from LAO when they requested it; others disagreed.

Some do not take LAO certificates at all because they know they will not get enough coverage to let them handle the case appropriately.

### **Lawyers' Voices**

*If the hours are up, I get off the file. I cannot afford to work for free.*

*Unrepresented abusers use up women's legal aid money – it can drain the certificate.*

#### Family Court Services

Lawyers had few comments about court-related services, which is to be expected since their clients would not be using these services to the same extent as unrepresented women.

The lack of private waiting room space was identified as a problem.

#### Difficulties Encountered:

All the lawyers (100%) said they thought the greatest difficulties for unrepresented women were understanding the procedure and having inadequate knowledge of the law.

Seventy percent identified that knowing what evidence about abuse to submit and how and dealing with the ex-partner and/or his lawyer in court were significant difficulties.

Most lawyers (85%) reported that threats from the abusive partner that he would get custody of the children and feeling overwhelmed by the complexity of the legal proceedings were serious issues “often” for abused women in family court.

The lawyers also talked about the impact on them of unrepresented parties. They discussed the challenges in representing women whose abusive ex-partners were representing themselves. Specifically, they mentioned that they can take control of the case, that settlement is unlikely in these cases and that judges let the abuser get away with behaviour they would not allow in lawyers.

They also reported that unrepresented people are expected to know as much as lawyers do, which is unrealistic and leads to bad outcomes for many.

### ***Lawyers’ Voices***

*[Judges] bend over backwards for unrepresented parties.*

*Abusers who understand the system and are unrepresented can be quite difficult.*

### ***The Judges***

Three family court judges participated in one-on-one interviews to provide their comments on the experiences of unrepresented abused women in family court.

#### Legal Aid Ontario:

The judges were frank in expressing their concerns about legal aid. They told us:

- time limits mean lawyers don’t want to take legal aid clients and clients don’t get adequate representation
- legal aid is not available quickly enough
- the whole legal aid system needs to modernize
- legal aid should operate as a triage system, with established priorities
- a new duty counsel system should be put in place

### ***Judges’ Voices***

*[Lawyers] are better off to work as duty counsel rather than on legal aid certificates because they don’t have to do the same amount of paperwork.*

*These are really difficult cases and some people don’t want to do them.*

*I know when I was a practicing lawyer, I got to the point where I would rather do things for free than bother with legal aid because it was too much bother – you spend too much time trying to bill them. We got out of it and just did things pro bono and it was more satisfying.*

*We are really having a problem with legal aid not being available and not being available quickly enough which is ridiculous in the circumstances.*

Difficulties Encountered:

Judges told us about many difficulties for unrepresented women. In particular they said that many women don't know what to ask for and so often don't get the order they should. They also said many women don't provide adequate evidence to help the judge make the appropriate order. Proper filing of documents was another challenge.

Many unrepresented litigants also have other issues: language and literacy barriers, mental health problems and cultural differences, among others.

Judges worried about lethality for abused women having to deal with their abusive ex-partner without the protection of lawyers.

The judges also talked about difficulties for them in dealing with unrepresented parties. Cases take more time because parties don't understand the procedure and may not file the correct materials or documents.

Judges struggle with how not to appear biased and how to keep the case moving along without providing legal advice.

***Judge's Voices***

*There are impacts [of unrepresented parties] from the front counter right through to the job that I ultimately do.*

*You need to give us the information so that we can provide the protections that are there.*

*They [the women] are being asked to participate in a system that they don't understand and that ultimately works against them because they don't understand.*

*How am I supposed to administer justice when there is a power imbalance between the parties?*

*I am supposed to level the playing field without looking biased.*



## **ANALYSIS:**

The information gathered through the focus groups, questionnaires and one on one interviews provides much fuel for thought and analysis.

The stakeholders involved with this project reflected very diverse perspectives and interests. Despite this, it is striking how often they all identified the same concerns and issues.

### Legal Representation:

All stakeholders identified the lack of legal representation as a critical issue. Of course, the perspectives on this were different for different groups – women were primarily concerned about the impact on them personally of not having a lawyer, whereas judges had a significant concern about the impact on the system as a whole.

Stakeholders identified a number of reasons for the lack of legal representation. These are mostly financial:

- most women do not have enough money to pay for their own lawyer
- the financial eligibility criteria of Legal Aid Ontario are too restrictive
- few lawyers take legal aid certificates because the rate paid is too low and the hours provided too few

A number of stakeholders also identified time as an issue for women who were unrepresented. Many abused women come to the family court with emergency and/or time sensitive matters. For those who require legal aid assistance, the time involved in making an application, having it approved and then finding a lawyer who will take the certificate, is simply too long for the matter with which they need assistance. While two-hour advice certificates can be helpful in these situations, most stakeholders commented that few lawyers accept them.

Finally, a number of stakeholders told us that, even when a woman is able to retain a lawyer (whether paying privately or with a legal aid certificate) she often has trouble finding one who understands abuse issues.<sup>xix</sup>

### Legal Aid Ontario:

Legal Aid Ontario came under attack by all stakeholders. Women told us, and their advocates confirmed it, that they often did not know what the requirements were for legal aid. This was enough of a factor that many women did not even apply for legal aid because they believed, without actually knowing the requirements, that they would not be eligible. While certainly some of these women would not have qualified for legal aid support – perhaps for financial reasons, perhaps because their legal issue was not one of those covered – it is also certainly true that some of them would have qualified and would have been able to have legal representation for their case.

All stakeholders (except the judges, who may not have been aware of this issue) identified as extremely problematic the fact that women using legal aid certificates are not permitted to hire a lawyer if they have previously seen that lawyer either as advice counsel at the FLIC office or as family court duty counsel.

Women often find it very difficult to share their story of abuse with a stranger. Once a woman has done so, she is likely to want to continue working with that person. If the FLIC or duty counsel lawyer has been supportive, understanding and helpful to her, she will feel an additional level of trust and confidence in that person. Using her legal aid certificate to hire that lawyer will seem much more attractive to her than having to find a new lawyer and start over with him/her.

Further, because few lawyers accept legal aid certificates, there is little choice available for women who are relying on legal aid to pay for their legal representation.

#### Family Court and Community Services:

It is important to note that although women reported a low level of satisfaction with family court services such as the FLIC, advocates and others continue to refer women there for legal assistance.

Also of concern is the fact that, according to many service providers, many women remain unaware of the services that are available to them.

#### Difficulties Encountered:

There is a striking commonality among all stakeholders about the greatest difficulties encountered by unrepresented abused women. **Every group** identified the following as key challenges:

- not understanding the procedures
- the paperwork
- dealing with the ex-partner and/or his lawyer
- not knowing enough about the law (rights, available options, evidence requirements)

Women in particular also spoke about their fear of not being believed or not having the abuse taken seriously.

These difficulties all lead to the same basic outcome: **women do not receive appropriate outcomes in their cases.**

Of course, bad outcomes are a problem in any situation. However, bad outcomes in family court can have significant negative impacts on everyone involved, including children. The consequences can be extreme – literally life and death -- when woman abuse is involved.

For example:

- improperly completed and filed paperwork can create delays and frustrations for everyone involved in the process – the woman, court staff and the judge – which can negatively affect the outcome
- if a woman does not know that she can apply for a restraining order, she can be left at risk of ongoing harassment and violence by her ex-partner with no protection
- if a woman does not know that family violence is a required consideration in the determination of custody and access, she may not provide evidence about the abuse she has experienced. Without that evidence, she is not likely to get a custody/access order that is appropriate and safe for her and her children
- if a woman fears she will not be believed or her abuse will not be taken seriously, she may not even mention this important information
- a woman without legal representation who is intimidated by her ex-partner during the family court process is more likely to make concessions that are not in her best interests and/or the best interests of the children
- women can find themselves in breach or violation of a legal requirement if they don't understand the law itself or the procedures involved in the family court process

The project focused on issues for unrepresented abused women, but judges and lawyers also told us about the problems when the abuser is unrepresented.

Unlike women, who are virtually always unrepresented because they cannot afford a lawyer, do not qualify for legal aid or cannot find a lawyer quickly enough, some abusive men choose to represent themselves as a way of continuing to intimidate and control their ex-partner (See Appendix Four for information about legal bullying). Judges and lawyers saw this as a serious challenge for women but also for them.

Lawyers representing women with self-representing partners commented that this can slow the process down and eat up all the money available on a legal aid certificate or that a woman has available if she is paying for her lawyer herself.

Some said that they never talk to the ex-partner because they are so concerned about him misrepresenting any such conversations. All communication is done in writing, which is time consuming, slows down the process and limits the possibility of any meaningful negotiation.

Judges told us that a self-representing abuser also creates challenges in the courtroom. In addition to potentially problematic behaviour on the part of the abuser, the judge must be concerned about appearing biased if s/he gives any information to the self-represented party.

All women identified difficulties separate from the family court process – housing, poverty, ongoing harassment by the abuser, issues relating to marginalization -- as having a significant impact on their court experience (see Appendix One for a discussion about this).

#### Post-Court Experiences:

This project is focused on the experiences of unrepresented abused women in family court. Nonetheless, it is important to note that the court experiences of these women often have a long-term impact on them and their children.

In particular, the issue of access remains problematic for women, often for many years after their case has made its way through the family court.

Unrepresented women are more likely to accept a negotiated joint custody/relaxed access outcome or be given such an order for a number of reasons, among them:

- a lack of knowledge of their legal rights and a lack of awareness of the law, in particular the best interests of the child test, can mean evidence of the abuse is not provided and therefore is not considered by the judge,
- intimidation by and fear of the ex-partner makes women vulnerable to conceding to outcomes that are less than they are entitled to,
- women who represent themselves can become exhausted and accept settlement offers, even if they are not what they want or have a right to, simply to bring an end to the process.

A joint custody order or a liberal access order can create years of difficulty for a woman whose abusive partner is intent on maintaining his control over her. The following are only a very few of the many strategies abusive men use:

- challenging every decision she wants to make as an intimidation and harassment tactic
- using access exchanges as an opportunity to harass, intimidate and possibly physically assault her
- refusing to allow any flexibility in the children's scheduled time with him if that is requested by her or the children
- showing up late/early to pick up/return the children
- threatening to not return the children from an access visit
- using the children to try to get information about their mother
- insisting on visits even when the children clearly do not want to go or when there is a legitimate reason (for example, sickness) for them not to go
- using the custody and access order as an excuse to call/email her constantly
- returning to court over and over with frivolous motions

Of course, most importantly, he may threaten to or actually extend his abuse to include the children directly. This can become the greatest nightmare for a mother, because she often has difficulty having her concerns taken seriously by child protection and other authorities.

### Post-Separation Violence

It is imperative to reiterate that many women who leave an abusive partner continue to experience that abuse post-separation. While the form of that violence might change, its presence does not.

Women who leave abusive men must continue to deal with their harassment, their intimidation and their violence in very real ways. Levels of physical violence, including the risk of lethality, often increase in the first 6 months after separation.

As noted earlier in this report, recent separation is a common factor in the domestic homicides of women by their male partners. It was present in 85% of the cases reviewed by Ontario's Domestic Violence Death Review Committee.

It is staggering that more than half the women who took part in the project's focus groups said they feared for their lives, and many of those providing services to them agreed.

This reality must be considered when analyzing the experiences of abused women in family court, looking at their needs and identifying recommendations for moving forward.

## RECOMMENDATIONS:

### **Women have a fundamental right to legal representation in family court.**

Any strategy to deal with the experiences of abused women in family court must see this as an overarching right to be addressed before examining any other possible recommendations for law reform, policy change or service delivery.

If it is not given this position of prominence, it will be too easy for law and policy makers to focus on improving services and supports at the expense of increasing access to legal representation.<sup>xx</sup>

As noted in Women and Children Last: “It is critical that women receive the level of legal advice and representation they’re entitled to – namely information about the legal process, adequate time and respect from lawyers and recognition of the impact of abuse, in each and every step in the process of dealing with custody and access disputes.”<sup>xxi</sup>

#### Getting a Lawyer:

**Recommendation One:** Increase funding for civil legal aid immediately.

**Recommendation Two:** Change the financial eligibility criteria for legal aid so people with moderate/middle incomes are eligible.

**Recommendation Three:** Revise policies regarding ownership of property and money in savings accounts so women can obtain legal aid based on their income rather than on assets that may not be entirely theirs.

**Recommendation Four:** Review and increase the hourly rate paid to lawyers so those who want to work with legally aided clients can afford to do so.

**Recommendation Five:** Review and increase the maximum number of hours provided on legal aid certificates to reflect the complexity of these cases.

**Recommendation Six:** Provide additional legal aid compensation for cases involving woman abuse, in recognition of the particular complexities of those cases.

**Recommendation Seven:** Streamline and shorten the application and appeal processes associated with legal aid so women can get a lawyer in a timely manner, especially in emergency situations involving serious and immediate safety concerns.

**Recommendation Eight:** Develop a “triage” team of lawyers to handle emergency legal crises either on a pro bono basis or with the expectation that legal aid compensation will follow.

**Recommendation Nine:** Develop an ongoing regional training for lawyers that would be tied to the ability of lawyers to be placed on the LAO family law list.<sup>xxii</sup>

**Recommendation Ten:** Work with faculties of law to develop either consistent components within family law curricula or a stand-alone course on violence against women

In addition to these ten recommendations intended to increase women's access to legal representation, we make the following recommendations to improve the experiences of abused women in family court.<sup>xxiii</sup>

As noted in "Voices from the Front Lines:"

While much attention has been paid to the criminal response to woman abuse since the 1980s, the family law system and the potential pitfalls it holds for abused women have been largely ignored.<sup>xxiv</sup>

Law reform:

**Recommendation Eleven:** Advocate that the provincial government not pass Bill 10 "*An Act in memory of Lori Dupont to better protect victims of violence.*" While no doubt well-intentioned, this Bill is not needed. It is a recycled version of Ontario's *Domestic Violence Protection Act*, passed in 2000 but never implemented. The safety of abused women and their children can better be effected through policy changes to existing legislation (see Public Policy below).

**Recommendation Twelve:** Advocate for changes to the custody and access provisions of the federal *Divorce Act*. Criteria for the best interests of the child test should be specified and should include language similar to that found in Ontario's *Children's Law Reform Act* with respect to violence within the family. Section 16, known as the "friendly parent" rule, should be removed or revised to explicitly exclude situations involving woman abuse.

Public policy:

**Recommendation Thirteen:** Remove the conflict barrier that prevents women on a legal aid certificate from being able to retain a lawyer they have seen at FLIC or as Duty Counsel.

**Recommendation Fourteen:** Develop an information sharing/communication system between family and criminal court that respects privacy rights of parties. While not all women are involved in both courts, many are. A flow of information between the two courts, particularly with respect to orders relating to contact between the parties, could increase women's safety and feelings of security.

As noted in Child Custody and Domestic Violence: "Child custody disputes in which domestic violence is a factor demand the highest level of coordination within the justice system."<sup>xxv</sup>

*See Appendix One for more recommendations related to criminal court.*

**Recommendation Fifteen:** Increase the number of family court judges to ensure smaller caseloads and to allow a family to work with the same judge for the entire case.

**Recommendation Sixteen:** Institute a special fast-track system for cases involving woman abuse so these cases can move more quickly through the court. As noted by Jaffe et al: “[V]ictims of domestic violence and their children need significantly speedier access to family law courts. This would require more judges who are prepared to deal with these cases, with enough calendar time to adequately address each case. Family law calendars need to be a much higher priority than they are currently in most jurisdictions.”<sup>xxvi</sup>

**Recommendation Seventeen:** Acknowledge the importance of and develop an appropriate role for women’s advocates in family court. *See Appendix Two for a more detailed discussion of this recommendation.*

**Recommendation Eighteen:** Address the serious issues raised by legal bullying. *See Appendix Four for a more detailed discussion of this recommendation.*

**Recommendation Nineteen:** Work with the Ministry of the Attorney General for implementation of changes to the *Family Law Act* system of restraining orders, including:

- development of a standard form restraining order
- automatic and immediate placement of a restraining order on CPIC
- enhancing enforcement measures when restraining orders are breached

Service delivery:

**Recommendation Twenty:** Increase the scope of supports available at the family court and FLIC, including:

- increasing the amount of waiting room space
- developing separate waiting room space so abused women do not have to wait alone in close proximity to their abuser and/or his family
- implement a free child care program
- provide free photocopying services
- place an LAO office in the courthouse
- provide space for community supports and services

**Recommendation Twenty-One:** Develop legal information for women<sup>xxvii</sup> and model forms, including affidavits for use by advocates with women who do not have legal representation. *See Appendix Two for a more detailed discussion of this recommendation.*



**Recommendation Twenty-Two:** Investigate the details of the London project of having a lawyer provide women with legal advice and support where the women are already receiving other services – the shelter, immigrant services agency, mental health agency, etc.<sup>xxviii</sup>

**Recommendation Twenty-Three:** Develop a self-assessment for lawyers to complete which reviews their familiarity with woman abuse issues as well as gathers information about whether or not they accept legal aid certificates and two-hour advice certificates, whether or not they do pro bono work etc.<sup>xxix</sup>

**Recommendation Twenty-Four:** Increase the amount of time women can spend with the FLIC advice counsel.

**Recommendation Twenty-Five:** Make changes to the LAO office to increase privacy for women and to minimize the likelihood they will encounter their abuser while at the office.

**Recommendation Twenty-Six:** Support permanent, core funding for Luke’s Place through the development of a regional fundraising strategy and government and foundation financial support.

Training:

These recommendations are intended to supplement numbers 9 and 10 above.

**Recommendation Twenty-Seven:** Develop training and education opportunities for women’s advocates to increase their legal knowledge

**Recommendation Twenty-Eight:** Encourage information sessions for family court judges to increase their awareness of woman abuse and cultural issues.

**Recommendation Twenty-Nine:** Develop legal information sessions for abused women to increase their knowledge of their legal rights as well as of basic legal information related to family law.

## CONCLUSION

This project has provided an opportunity to take a snapshot look at the experiences of unrepresented abused women as they move through the family court in one Ontario community through the lens of the women themselves and those they encounter along the way. Unfortunately, the story told by that snapshot is not new, is not unique to Durham Region and is not encouraging.

We learned that abused women are still unrepresented in alarming numbers. We were reminded that this lack of representation has an enormous impact on the women's experiences in the court system and on the outcomes of the court process.

These women enter the family court process in fear for their lives. They move through the system confused about or even unaware of their legal rights, the legal options available to them, what paperwork to file and when, how or even if to tell the judge that they have been or are being abused, how to handle their abuser through the process. In short, they often don't know what they are doing.

As was Alice's experience with the Red Queen, they may feel that they are being issued orders and instructions always, with no one to explain why:

"Look up, speak nicely and don't twiddle your fingers all the time."

"It's time for you to answer."

"Curtsey while you're thinking."

"Faster! Faster! Don't try to talk."<sup>xxx</sup>

Small wonder these women conclude, as did Alice, that "it's all in some language I don't know."<sup>xxxi</sup>

It would be unacceptable if just the process itself were the problem. However, it is clear that many of these women continue to fear for their lives after the formal process is over, sometimes for many years, and that this is a direct result of the orders imposed by the court.

The recommendations proposed in this report provide the first steps to changing this reality by first, working to ensure that all women have access to proper legal representation and second, enhancing existing and created new services to support women as they move through family court.

## ENDNOTES

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<sup>i</sup> Alice Through the Looking Glass. Lewis Carroll

<sup>ii</sup> Carroll.

<sup>iii</sup> Women and Children Last: Custody Disputes and the Family “Justice: System. Georgina Taylor, Jan Barnsley, Penny Goldsmith, Vancouver Custody and Access Support and Advocacy Association, 1996, pages 45 – 6.

<sup>iv</sup> Mamo, A., Jaffe, P. and Chiodo, D. Recapturing and Renewing the Vision of the Family Court. (Unpublished) 2007

<sup>v</sup> Amnesty International Canada Stop Violence Against Women Campaign

<sup>vi</sup> The War on Women. Brian Vallee, Key Porter Books, 2007. Vallee has written on violence against women before, mostly notably in Life with Billy and Life After Billy, which told the story of Jane Hurshman, the Nova Scotia woman who, after five years of severe abuse by her common-law husband, shot him to death while he was passed out drunk in his truck.

<sup>vii</sup> Vallee’s figure for police and military deaths includes all soldiers killed in Afghanistan, including those killed in accidents and by “friendly fire” and all police killed in the line of duty as well as from “non-hostile” causes, including vehicle accidents.

<sup>viii</sup> Vallee, *ibid*, pages 28-9.

<sup>ix</sup> Valle, *ibid*, page 30.

<sup>x</sup> All reports of the Domestic Violence Death Review Committee can be found on the website for the Office of the Coroner of Ontario

<sup>xi</sup> The Committee does not review cases that are before the courts. This means there is sometimes a time lag between a murder and its review by the Committee.

<sup>xii</sup> Domestic Violence Death Review Committee Annual Report to the Chief Coroner 2006, page 5.

<sup>xiii</sup> Domestic Violence Death Review Committee: Annual Report to the Chief Coroner 2004

<sup>xiv</sup> Public inquests have been held into the 1996 murder of Arlene May, and the 2000 murders of Gillian Hadley and Bohimila Luft. In all three cases, their partners/former partners also killed themselves. In the case of Ms Luft, her husband killed their four children as well. Each inquest resulted in numerous recommendations for changes to the criminal and family court systems, the delivery of frontline services, police services and public awareness about the issue of violence against women.

<sup>xv</sup> A 2006 Statistics Canada report on use of shelters makes note of the fact that the numbers of women with children using battered women’s shelters decreased following these legislative reforms.

<sup>xvi</sup> *Kaplanis v Kaplanis*

<sup>xvii</sup> [www.neighboursfriendsandfamilies.on.ca](http://www.neighboursfriendsandfamilies.on.ca)

<sup>xviii</sup> We have not identified the specific individuals or organizations that participated in the focus groups for reasons of confidentiality.

<sup>xix</sup> Legal Aid Ontario, working in partnership with the Barbra Schliffer Commemorative Clinic, is concluding a three-year project to deliver “domestic violence” training to family lawyers who accept legal aid clinics. Through this project, seven half-day trainings, which include presentations by frontline violence against women workers, will have been offered to lawyers across Ontario.

<sup>xx</sup> See Appendix Three for a discussion of self-help approaches vs proper funding of legal aid.

<sup>xxi</sup> Women and Children Last. 48

<sup>xxii</sup> This training could be modeled on the domestic violence training developed by Legal Aid Ontario in 2007.

<sup>xxiii</sup> This report draws from recommendations and suggestions contained in the reports of the Domestic Violence Death Review Committee (DVDRC), recommendations of the various domestic violence inquest juries, “Voices from the Front Lines: A Report of the Middlesex County Coordinating Committee to End Woman Abuse and the London Coordinating Committee to End Woman Abuse,” February 2005, Barbara MacQuarrie and “Child Custody and Domestic Violence, A Call for Safety and Accountability,” Sage Publications, 2003, Peter G. Jaffe, Nancy K.D. Lemon, Samantha E. Poisson

<sup>xxiv</sup> MacQuarrie. p. 75

<sup>xxv</sup> Jaffe. 155

<sup>xxvi</sup> *Ibid*. 143

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<sup>xxvii</sup> Note: Ontario's Family Law Education Project (FLEW) will have extensive family law materials available on a wide variety of topics in 10 – 12 languages and in a number of formats by fall 2008. See the FLEW website for more information: [www.familylawforwomen.com](http://www.familylawforwomen.com)

<sup>xxviii</sup> “In 1998, a local lawyer who had represented primarily women, many of whom were abused, changed the nature of her practice. She met with representatives of front line services to propose that she work on-site in shelters and other agencies that assist abused women to provide one on one legal advice on family matters. Her fees were paid through LAO at the Duty Counsel rate. Feedback from women and from agencies indicated that this service was helpful because it was onsite. It dealt with women's specific situations and information was kept confidential. The service encompassed more than straight legal information. The lawyer was aware of a lot of resources and made whatever referrals might be most helpful. [The program is still running, but the legal services are delivered by a number of lawyers and in only two locations.] This is a unique program that has not been replicated elsewhere. It has been carefully planned to address the significant gaps in service for women in the family law system. It has been informed by a sound knowledge of the dynamics of woman abuse. It deals with abused women empathetically and recognizes the significant structural barriers they have in the system. **While it cannot make up for inadequate legal aid allocations and the difficult access to committed and qualified family law lawyers**, it does offer women a significant degree of support in dealing with their legal situation when they separate from a controlling partner. “(Emphasis added) (pages 77/78)

<sup>xxix</sup> The Ontario Women's Justice Network has developed a prototype questionnaire and introductory letter. See [www.owjn.org/info/intro.htm](http://www.owjn.org/info/intro.htm)

<sup>xxx</sup> Carroll.

<sup>xxxi</sup> Ibid.