

*Needs Assessment and Gap Analysis For Abused Women
Unrepresented in the Family Law System:
Final Report and Recommendations*



Prepared by Luke's Place Support and Resource Centre for The Denise House

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INTRODUCTION

Partner abuse does not end just because a woman leaves her abusive partner. An abusive man frequently continues or even escalates his abuse at the point of separation and for some time after. Abused women involved with family law must deal with a complicated legal process while also dealing with their abuser's attempts to harass, control and intimidate them, using the court process itself as an instrument of control.

Woman abuse survivors and their children are severely disadvantaged when they do not have adequate legal representation, especially in the current climate that emphasizes mediation and shared parenting. Women who are unrepresented must complete complex paperwork and negotiations without a foundation of legal knowledge, often in the presence of the abuser and while dealing with fear, change and transition for themselves and their children.

The outcomes obtained by an abused woman in the family law process have a serious impact on her ongoing health, well-being and safety and that of her children.

Luke's Place Support and Resource Centre is a unique resource centre that provides support and information for abused women within the family law process. The Centre provides professional and peer support services to women and their children free of charge in a comfortable, accessible and confidential environment.

This project was undertaken by Luke's Place working with The Denise House 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.

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.¹ This data was assessed and analyzed for common themes to support the development of recommendations.

¹ A Needs Gap Assessment. Molly Dragiewicz and Walter DeKeseredy. 2008. 15 – 20.

This report summarizes these findings and draws heavily on two reports prepared for Luke's Place:

- i. Through the Looking Glass: The Experiences of Unrepresented Abused Women in Family Court, by Pamela Cross²
- ii. A Needs Gap Assessment Report on Battered Mothers Without Legal Representation in the Family Courts, by Molly Dragiewicz and Walter DeKeseredy³

Both of these reports are attached to this report for information purposes.

² **Pamela Cross** is a feminist lawyer with many years of experience in the violence against women sector. At the time of this project, she was the Director of Advocacy and Public Policy with YWCA Canada. She has been the Legal Director of the Ontario Women's Justice Network and the Executive Director of the National Association of Women and the Law. She has written extensively on the topic of violence against women and the law and is a frequent media and public commentator on the legal barriers faced by abused women. She is the 2001 recipient of the Linda Clippingdale Award from the Canadian Research Institute for the Advancement of Women and of the 2006 YWCA Toronto Woman of Distinction Award.

³ **Dr. Molly Dragiewicz** is an assistant professor of Criminology, Justice and Policy Studies at the University of Ontario Institute of Technology. Her interdisciplinary research interests include domestic violence, violence and gender, perpetrator narratives, media representations of crime and violence, critical criminology, human rights and globalization. She is currently revising her dissertation, *The Batterer's Voice: Equal Protection, Gender, and Domestic Violence Discourse*, for publication. *The Batterer's Voice* explores connections between batterer and other accounts of domestic violence and their impact on policy and services. Other current projects focus on the anti-feminist father's rights movement, child custody and domestic violence and discourses on human trafficking.

Dr. Walter S. DeKeseredy is a professor of Criminology, Justice and Policy Studies at the University of Ontario Institute of Technology. Included in the *Canadian Who's Who* (published by University of Toronto Press), Dr. DeKeseredy has published over 60 refereed journal articles and scores of book chapters on woman abuse, crime in public housing, and criminological theory. In 2004, he jointly (with Martin D. Schwartz) received the *Distinguished Scholar Award* from the American Society of Criminology's (ASC) Division on Women and Crime and in 1995, he received the *Critical Criminologist of the Year Award* from the ASC's Division on Critical Criminology. In 1993, he received Carleton University's *Research Achievement Award*.

SETTING THE CONTEXT

*[You] walk into the family court and you feel strangled
and you hit a brick wall and someone is stepping on your throat.*⁴

When an unrepresented abused woman walks into family court in Durham Region, she does so within the broader context of violence against women, which remains a serious and entrenched social problem in Durham Region, in Ontario, in Canada and around the world. 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.

The numbers of women killed by men who say they love them are shockingly high: “In the seven years between 2000 and 2006, . . . more than 500 women were killed by their partners or former partners in Ontario.”⁵ Compare this to the 101 deaths of Canadian military and law enforcement personnel in the same period of time.

In 2003/04, 58,486 women and 36,840 dependent children spent time in battered women’s shelters in Ontario, 40% of whom had been in a shelter the previous year.

Durham Region is not immune to the reality of violence against women. Three out of four of the Durham area shelters report for 2006/07 that 6,664 women used their residential services, 1,069 women received outreach services and 5,117 made crisis calls to them.

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 with 83.4% of those charges laid against men. In just the first nine months of 2007, more than 405 reports per month were filed, with 1,169 charges laid – more than for the whole of 2006.⁶

Over the past 20 years, Ontario has seen no shortage of inquests, studies, and law reform and public policy initiatives to address the issue of violence against women. While all of these efforts have provided some measure of improvement, none has succeeded in either ending the violence or in ensuring a thoroughly effective response.⁷

⁴ Project focus group participant

⁵ Vallee, Brian: *The War on Women* Key Porter Books. 2007.

⁶ Durham Region Shelters statistics collected to reflect their client services in 2006/07

⁷ *Through the Looking Glass*. Pamela Cross, 2008. 9 – 16.

THE FAMILY LAW PROCESS IN DURHAM REGION

Family law – custody, access, support, restraining orders and division of property -- is the main focus for many abused women who leave or try to leave their abuser. This can be a complex and difficult process for anyone. When issues of abuse are added to the mix, the stakes go up and the complexities increase.

Navigating this process is difficult enough under any circumstances. For abused women who do not have legal representation, the task becomes all but impossible, as they must deal with:

- fear of their abuser, without the protective shield of 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.

Durham Region has a very busy family court:

- i. between 2001 and 2006, Oshawa experienced a steady increase (second only to Ottawa) in the number of new family court applications, reaching a total of 5,300 applications in 2005/06⁸
- ii. in the same time period, Oshawa had the highest number of family court “events” (trials, pre-trials, settlement conferences, motions and case conferences) at 11,200
- iii. in the first six months of 2006, 64.9% of all family court litigants in the Durham Region Superior Court were unrepresented⁹.

⁸Mamo, A., Jaffe, P. and Chiodo, D. Recapturing and Renewing the Vision of the Family Court. Unpublished. 2007

⁹ Durham Region Superior Court statistics about applications filed under the *Family Law Act*, *Children’s Law Reform Act* and *Divorce Act*.

RESEARCH SUMMARY

The focus groups, one on one interviews and questionnaires provided a wealth of information about the experiences of unrepresented abused women in family court in Durham Region from many perspectives:

- the women themselves, some of whom had completed their family court experience and others of whom were still engaged with the process
- frontline service providers
- legal support professionals from a variety of community and institutional settings
- lawyers
- judges

Despite the uniqueness of each woman's experience, common themes abounded.

Survivors' Perspectives:¹⁰

Twenty-seven women participated in the study. Their ages ranged from 22 to 55 years. Significantly, almost half (48%) reported having a psychological disability of the sort often associated with abuse – anxiety, depression or post-traumatic stress disorder. The women were equally likely to have been married to or to have lived common-law with their abuser for periods of time ranging from one to 34 years. All but one of the women had children.

Not surprisingly, the women reported substantial downward changes in their incomes post-separation. On average, their before-separation family income was \$75,268. Their post-separation income dropped to an average of \$22,587.50, with 44% reporting that they were relying on social assistance for income support and 52% on family and friends.¹¹

Violence and Abuse Before and After Separation:¹²

Women who participated in the study described in detail the violence and abuse that caused them to leave their partners and how that abuse continued and even increased post-separation. **More than half of the women told us they were in fear for their lives while they were going through family court.**

This reality alone has a profound impact on women's ability to participate in the process at all, let alone to do so effectively and without adequate legal representation.

¹⁰ Cross. Ibid. 17 - 24. Dragiewicz and DeKeseredy. Ibid. 21 - 45

¹¹ Dragiewicz and Dekeseredy. 21 - 24

¹² Dragiewicz and Dekeseredy. 32 - 35

Women's Voices

When we first separated, it was very, very violent and he scared me and he never physically hit me but he threatened a lot.

That's when I said OK I am not going to fight anymore and that's it and whatever I'm getting I will just get. . . those fears were coming back with a lot of trauma so I said I'll let go of this in court.

Legal Representation/Legal Aid Ontario (LAO):

Many women (84%) had started their case with legal representation, but had not been able to keep it, most commonly for financial reasons.¹³

The financial requirements of LAO created a significant barrier for women, who often disposed of the few assets they had in their attempt to qualify only to find out they were still ineligible.¹⁴

40% of the women were not even aware of LAO's eligibility requirements. Some of these women did not apply because they assumed they would not qualify.

Women's Voices

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, and there's no break and there's no way out as far as I'm concerned

I don't qualify for legal aid because I make too much money. 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:

While unrepresented women rely on a variety of court-related services for assistance, their experiences are less than positive. Of the 70% of women who used the Family Law Information Centre (FLIC), only 44% found it helpful.

Women's experiences with community-based services were more positive: 74% of the women had used Luke's Place and all found it helpful; 48% had worked with shelter advocates and all found it helpful.

¹³ Cross. 18

¹⁴ Dragiewicz and DeKeseredy. 22 - 26

Difficulties of being Unrepresented:

More than 80% of women told us that their greatest difficulties were not understanding the procedure, dealing with their abusive ex-partner and/or his lawyer and the paperwork. They also had difficulty dealing with the judges. Women felt they were characterized as difficult, crazy, selfish or uncooperative if they stood their ground, especially when talking about their concerns about their children's safety.¹⁵

Women's Voices

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

I wish there were more people out there who could see the red flags instead of looking at us like we're the vindictive mothers who are trying to stop our kids from going [to see their fathers].

Family law says you are entitled to represent yourself but you are looked down upon and frowned upon when you decide to do so.

If they know you are not represented, they will try and use big words to undermine and intimidate you. It's very intimidating.

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, followed by child support and restraining orders.

Joint custody was the most common custody outcome (72%) for the women in the study. Every one of these women told us she was not happy with this outcome, largely because of ongoing harassment by the abuser related to child-related decisions and access arrangements.

Nearly three-quarters of the women (73%) reported a variety of ongoing difficulties with access.¹⁶ These included:

- fears about the abuser's treatment of the children (73.9%)
- concerns that he will use access to criticize her to the children (73.9%)
- feeling unsafe at exchanges (65.2%)
- ongoing conflict over child-related decisions (65.2%)
- angry scenes at exchanges (60.9%)
- having to force children to go on access visits when they don't want to go (60.9%)

¹⁵ Dragiewicz and DeKeseredy. 27

¹⁶ Cross. 23. Dragiewicz and DeKeseredy. 30 - 32

Community Advocates' Perspectives¹⁷

Seventeen community advocates participated in the study. They were solicited from women's shelters, counselling agencies, multicultural services, rural outreach agencies, community mental health agencies and agencies serving women with disabilities, among others.¹⁸ They had the highest level of involvement with unrepresented abused women of the service providers involved in the study.¹⁹

Legal Representation:²⁰

Most notably, these advocates told us:

- Legal Aid Ontario requirements provide a significant barrier to women who require assistance – the application process itself, as well as the financial eligibility criteria and the limited number of hours provided on certificates
- More than 60% said that while their clients did not qualify for legal aid assistance, they could not afford to pay for a lawyer themselves²¹
- There is a lack of lawyers who accept legal aid certificates, so even when women can obtain a certificate, they may not be able to find a lawyer to represent them
- There are not enough lawyers who can be retained quickly to deal with emergency legal issues.

A particular problem noted by these and other stakeholders was that women cannot hire a lawyer on an LAO certificate if they have seen that lawyer at the FLIC or as Duty Counsel. This rule limits even further the number of lawyers available to women using legal aid certificates.

Family Court and Community Services

Advocates said that many women still don't know what services are available to them.

They see informing women about these services and making referrals for them as an important part of their work – 80% either assist the women themselves or refer them (most often to Luke's Place) for legal support.²²

Difficulties Encountered:²³

All advocates felt that a lack of understanding of the procedure was a significant difficulty for unrepresented women, as well as feeling overwhelmed by the complexity of the process, the paperwork and having an inadequate knowledge

¹⁷ Cross. 24 - 27. Dragiewicz and DeKeseredy. 46 - 57

¹⁸ Participants were told that their participation would be kept confidential, so we cannot provide a list of the specific agencies and organizations that participated in the study.

¹⁹ Dragiewicz and DeKeseredy. 46

²⁰ Ibid. 47 - 48

²¹ Cross. 25

²² Dragiewicz and DeKeseredy. 50

²³ Dragiewicz and DeKeseredy. 48 - 49

of the law. Dealing with the abusive ex-partner and/or his lawyer was another frequently reported difficulty.²⁴

They reported that the lack of representation meant women often did not get the outcomes to which they were legally entitled.

Advocates' Voices

The most common concern we have when they're unrepresented or underrepresented is [when they] concede on issues. First, its property, that's the first thing that goes; they give up on rights to property and use that to bargain. 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 abuse 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:²⁵

Advocates who worked with rural women told us those women often felt isolated and had difficulty with transportation needed to attend lawyer appointments and go to court.

Immigrant, refugee and non status women faced language barriers and difficulties coordinating the schedules of their lawyers and interpreters. They also feared that their partner would remove the children from Canada.

Aboriginal women face a lack of services that understand traditional ways of healing from violence within the family.

The greatest difficulty for women with disabilities and Deaf women reported by the advocates was the fact that often their abusive partner was also their primary caregiver.

Community Legal Workers' Perspectives²⁶

Fifteen community legal workers participated in the study, solicited from a number of legal services within the community, including child protection agencies, court workers and professionals working in court support programs.²⁷

²⁴ Cross. 26

²⁵ Dragiewicz and DeKeseredy. 52 - 57

²⁶ Cross. 27 – 30. Dragiewicz and DeKeseredy. 58 - 70

²⁷ See note 17 above.

Not surprisingly, given that many of these participants worked within or were closely connected to the family court system, they reported the least critical view of the state of the system and noted a number of positive changes over the past 20 years.²⁸

Legal Representation:

Three-quarters of these workers reported that those of their clients who were unrepresented found themselves in that situation because they did not qualify for legal aid and could not afford to pay for a lawyer themselves. Like other participants, they identified the financial eligibility criteria as a critical barrier.

Community Legal Workers' Voices

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

[I]t's cumbersome to gather all this financial information and go to legal aid and arrange for child care.

Women have come to me about the length of time that it takes at legal aid. They have kids and they can't afford a babysitter or they have to pick them up at lunch from kindergarten.

Family Court System:²⁹

These service providers identified a number of problems with the family court system for abused women, among them:

- The fear felt by women for their safety and the safety of their children (84.6%)
- not having enough money to live on while waiting for court-ordered financial support (84.6%)
- dealing with ongoing harassment and control by the abuser during the family court process (83.3%)
- dealing with threats by the abuser that he will get custody of the children (76.9%)

Also identified as problematic were women's lack of understanding of the procedure (80%) and the complex paperwork (73%).

The lack of coordination and communication -- among and between the family and criminal courts, court staff, legal aid, community advocates and others -- was seen as a serious challenge for women negotiating the system without representation.³⁰

²⁸ Dragiewicz and DeKeseredy. 58

²⁹ Ibid. 58 - 66

³⁰ Ibid. 63

Women from Marginalized Communities:

The concerns of and issues for women from marginalized communities as described by community legal workers were similar to those as discussed by community advocates.³¹

Lawyers' Perspectives:³²

Eight lawyers participated in the study. Two-thirds accept legal aid certificates, and 80% of them assist women with legal advice certificates.

Legal Representation:

They identified the difficulties for women in finding a lawyer who understands abuse issues, especially if the matter is urgent.

They also talked about the frustrations they experienced trying to represent abused women with insufficient time on the legal aid certificate.

Lawyers' Voices

It is very hard to find somebody who knows anything, let alone is specialized in abuse issues.

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 . . . things don't work that fast.

I deliberately screen when people call me so I can see whether I can take their case because I can only take so many difficult cases at once. I mentally can't handle them all so I'm trying to restrict the number of [those] cases that I take on.

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

Legal Issues:

All lawyers saw custody and access as the most pressing family law issue facing abused women, with two-thirds identifying restraining orders as the second most pressing issue.

Difficulties Encountered:

All lawyers felt that the greatest difficulties for unrepresented women were not understanding the procedure and having an inadequate knowledge of the law.³³

Also difficult for women were:

- threats by their abuser that he would get custody of the children
- safety concerns

³¹ Cross. 29 - 30. Dragiewicz and DeKeseredy. 66 - 70.

³² Cross. 30 - 32. Dragiewicz and DeKeseredy. 71 - 76.

³³ Ibid. 71 - 73

- dealing with ongoing harassment and control by the abuser
- feeling overwhelmed by the complexity of the process

The lawyers, like others, were frustrated by the extent to which abusers can manipulate the system.³⁴

Judges' Perspectives:³⁵

Three judges – two family law specialists and one who cycles in and out of Durham family court – participated in the study.³⁶

Legal Representation:

The judges were frank in expressing their concerns about legal aid. In some cases, these concerns reflected their own past experiences as lawyers as well as their current experiences as judges:

- the LAO time limits mean many lawyers don't want to take legal aid cases
- legal aid is not available quickly enough
- the whole legal aid system needs modernization
- cases involving woman abuse are time consuming and difficult, which is why lawyers don't always want to take them

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.

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

It's a real challenge because they're not easy cases. They are really tough. There was a time when every young lawyer started out doing legal aid work and I think that they got away from that to some extent. And part of it is the limits of time – the time limits of legal aid pales in comparison to what most people can earn.

Difficulties Encountered:

The judges told us about the impact of lack of representation on the abused women but also on the court system and on them. In particular, they noted that women often don't know what to ask for so don't get the outcome they should.

³⁴ Cross. 32. Dragiewicz and DeKeseredy . 75

³⁵ Cross. 32 - 33. Dragiewicz and DeKeseredy. 77 - 82

³⁶ Dragiewicz and DeKeseredy. 77

Unrepresented women often provide inadequate evidence and file documents improperly, both of which make a good outcome less likely.

Judges' Voices

[I]t takes more time and that has kind of a snowball effect. [Y]ou don't get to other things and everybody's case here is important. . . So the unrepresented take up a significant amount of time . . . a larger proportion of time than if both parties were represented.

There are impacts from the front counter right through to the job that I ultimately do.

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.

There are definitely risks. I find that the number one problem is that people don't even know what to ask for so they come to court the first time and everything is wrong.

Cases involving women and children are [challenging]. Nobody wants their name in the paper. Nobody wants to put somebody at risk.

ANALYSIS:³⁷

The information gathered through the focus groups, questionnaires and one on one interviews provides much food 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 of not having a lawyer on them personally, 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 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.³⁸

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

³⁷ Cross. 34 - 38

³⁸ Legal Aid Ontario, working in partnership with the Barbra Schlifer Commemorative Clinic, is concluding a three-year project to deliver “domestic violence” training to family lawyers who accept legal aid. Through this training, seven half-day trainings, which include presentations by frontline violence against women workers, will have been offered to lawyers across Ontario.

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 have a negative impact on 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. Judges and lawyers saw this as a serious challenge for women but also for them.

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.

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. Women leave their partners to protect the children only to have the courts then allow the children to visit the father without any added supervision.

Post-Separation Violence³⁹

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.

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 of 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.

³⁹ Dragiewicz and DeKeseredy. 83

RECOMMENDATIONS⁴⁰

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 establish 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.

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.”⁴¹

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.

⁴⁰ Cross. 39 - 42. Dragiewicz and DeKeseredy. 85 - 87

⁴¹ Women and Children Last. 48

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.⁴²

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.

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.⁴³

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 affected 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.

⁴² This training could be modeled on the Legal Aid training noted above.

⁴³ 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. p. 75

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."⁴⁴

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 screening process within 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."⁴⁵

Recommendation Seventeen: Acknowledge the importance of and develop an appropriate role for women's advocates in family court.

Recommendation Eighteen: Address the serious issues raised by legal bullying.

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:

- increase the amount of waiting room space

⁴⁴ Jaffe, Peter G., Nancy K.D. Lemon, Samantha Poisson. Child Custody and Domestic Violence: A Call for Safety and Accountability. Sage Publications. 2003. p. 155

⁴⁵ Ibid. 155

- develop 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 women⁴⁶ and model forms, including affidavits for use by advocates with women who do not have legal representation. .

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, etc⁴⁷

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 advice certificates, whether or not they do pro bono work etc.⁴⁸

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.

⁴⁶ Note: Ontario’s Family Law Education for Women 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

⁴⁷ “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 deal 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.) McQuarrie. 77 – 78.

⁴⁸ The Ontario Women’s Justice Network has developed a prototype questionnaire and introductory letter. See www.owjn.org/info/intro.htm

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.

CONCLUSION⁴⁹

This project has provided an opportunity to take a snapshot look, through the lens of the women themselves and those they encounter along the way, at the experiences of unrepresented abused women as they move through the family court in one Ontario community. 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 family 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.

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 creating new services to support women as they move through family court.

⁴⁹ Cross. 43