



Battered Women Support Services

Response to:

White Paper on *Family Relations Act*:
Reform Proposals for a new Family Law Act

Introduction

Battered Women Support Services (BWSS) recognizes the value and importance of the family law modernization initiative the provincial government has committed to undertaking and appreciates the opportunity to provide a response to its proposals. Together with other interveners, we support the White Paper's overall position that, "it is important that court and non-court processes are effective and responsive to families' needs." We appreciate the White Paper's citation that, "One of the strongest indicators of mounting social problems appears to be the failure to successfully and permanently resolve legal issues. Escalation in these [family law] cases invariably impacts children, and often other extended family members."

From our perspective, access to justice and effective legal representation on issues related to family law and particularly with regard to violence against women in relationships, is fundamentally intertwined with access to family law legal aid and a stable community service sector that has the needed capacity to strongly support women dealing with violence, relationship and family break down. Equally important, is the requirement to support a comprehensive training regime for family justice professionals, judges, crown attorneys and law enforcement officers.

Women's access to legal aid

Adequate legal representation for women engaged in the family legal system in British Columbia is integral to building strong communities. We consider the failure of the provincial legal aid system to ensure meaningful access to justice by ensuring proper funding for family law legal aid to be a violation of women's constitutional rights to be considered equal before and under the law. In our August 2008 report on family law legal aid, we argued that, "Effective legal representation in the area of family law is especially important for women who are considering leaving or who are in the process of leaving an abusive relationship." Despite this, our research consistently found that women seeking to access the B.C. legal aid system struggled with eligibility criteria that largely excluded them from coverage and were frustrated by inadequately funded legal representation and with representation that left them feeling unheard and disrespected, particularly as regards the effect of violence on them and their families.

Our recommendations for improving access to legal aid for women are urgent and include: allocating more funding to legal aid family law and poverty law, raising the income allowances for women who are accessing legal aid, educating family law lawyers and the justice system at large about the effects of violence, and specifically about the dynamics of power and control in abusive relationships. Our report also called for implementing fee scale approaches that allow women to pay what they can afford with subsidized assistance from legal aid.

As we trust is well understood, the ability to effectively provide support and counseling services to women victims of violence is pivotal in addressing violence against women in all forms. While the reform of the B.C. family law regime means the provincial government is taking a vital step towards improving women's access to justice and addressing the grave consequences of family violence, these efforts will certainly flounder if women can not access the critical community supports they need to successfully navigate the justice system.

In our view, the provincial government must work far more consistently to provide leadership that supports and assists the work of women's and community organizations in preventing and eliminating violence against women and their children. Broadly speaking, we argue that the development and implementation of a strategic, cross-ministerial and cross government approaches to tackling violence against women is fundamental to enabling governments to work effectively in tackling violence against women.

Provincially, this includes our government taking a leadership role to provide stronger support for legal aid and anti-violence women's services, and ensuring a more focused and better defined profile for these issues within government policy, funding streams, program delivery and communication. This also means supporting the needs of culturally and linguistically diverse communities by establishing responsive policies, practices and training together with funding professional interpreters and multi-language public legal education materials that improve access to justice and services.

The necessity for and the benefit of training

As regards family law reform, there will be an urgent requirement to support a comprehensive training regime for family justice professionals, judges, crown attorneys and law enforcement officers that is aimed at transforming justice system approaches and attitudes on violence against women and family violence generally.

A wide range of factors influences women's experience of family violence. In addition, Aboriginal women, immigrant and refugee women, women of color and poor women all face particular issues and most experience real difficulties in accessing responsive justice services. Most will find it harder to leave a violent situation when the support they seek is compromised by a lack of awareness and knowledge.

Effective training must be based on relevant and up-to-date feminist and intersectional theories, research and discourse on key family violence and violence against women issues with a view to providing a solid foundation and the essential building blocks that support ongoing training and service provision. Training must present an in-depth understanding of the causes, dynamics and impacts of family violence. Central to that understanding is detailing the terminology and rationale of a gender based analysis of family that outlines the gendered legacy, context, meanings and impact of family violence and places these within a wider contextual framework of women's inequality and violence against women.

Proper training will enable justice system participants to respond to women who are survivors of family violence far more effectively, as it specifies the impact of family violence on the women who experience it and the men who perpetrate it and how violence affects women's behavior and choices. Training means people are able to identify symptoms of trauma in women together with the range of impacts of trauma and signs of recovery. Training provides awareness of the psychological and mental health impacts of living with a violent partner and, most critically, what survivors most need at different stages in their process of recovery.

Within this, an understanding of how children and youth experience family violence is another vital benefit of training. Training addresses children's experiences of living with family violence by providing a critical analysis of theories around learned behavior, the cycle of violence, attachment and resilience and gaining insight into the coping strategies children and youth develop.

Finally, training also helps participants understand the necessity for and dynamics of successful safety planning, the overlap of family violence and child protection, the broad implications for system responsibility and the continuing need for system innovation and change.

BWSS White Paper Responses and Recommendations

BWSS fully appreciates the effective completion of a new family law regime will require system-wide change including changes to existing processes and relationships together with the implementation of new policies, regulations and procedures to guide activities such as professional accreditation, justice and service provider training and staff recruitment. As well, a host of other strategies and mechanisms will be necessary, not the least of which will be to determine how to most coherently communicate these important changes within the justice system and to the people of British Columbia.

Recommendation 1 – Implementation Task Force

The provincial government assume responsibility to establish a broad-based committee representing key government, justice system and community-based stakeholders that will act as a centralized task force to provide overall guidance and direction for the design and implementation of all activities that flow from the enactment of these reforms. Ideally, such a task force would also include representation from other government ministries engaged in efforts to improve outcomes that are directly related to family law, among the most important of which would be the Ministry of Public Safety and Solicitor General Domestic as regards its Domestic Violence Action Plan and the Ministry of the Attorney General as regards its efforts in improve access to family law legal aid coverage.

We move now to our recommendations on specific issues discussed in the White Paper.

As we indicated in our July letter to Attorney General Michael de Jong, BWSS has serious concerns about the potential impact of the proposed reforms on women, and particularly on women who are dealing with violence in their relationships. As is well known, these reforms are long overdue and it is no exaggeration to say that it will be tragic if they do not play a strong role in improving safety for women and children.

Recommendation 2 – Purpose of the Act

The reformed *Family Relations Act* symbolically support its intended efforts to prevent conflict and improve safety by including within the stated purpose of the legislation the two truly complementary goals of ending violence against women in relationships and ensuring the best interests of the child in family law disputes. Embedding such an opening statement in the purpose of the Act would importantly underline the law's ability and intent to make ending family violence a reality.

Inclusion of family violence and definition of family violence

BWSS appreciates that in keeping with the direction provided through its consultations, the White Paper recognizes family violence as a dominant family law issue. We are pleased with the recommendation that family violence be regarded as “an explicit best interests factor” and with the adoption of a broad definition of family violence. While we fully acknowledge that family violence absolutely does - not “can,” as the White Paper suggests - have serious impacts on children, we believe the justice system and society at large must understand violence against women in relationships is the central presenting issue in family violence. Moreover, while the impacts of family violence may be equally grave on women and children, it is women who must manage these impacts, which invariably include: dealing with multiple sources of stress, including court processes and safety planning, financial insecurity, an unexpected shift to single parenting and, often times, sharing custody with their abuser. All the while, the women taking up these demanding roles and duties are attempting to heal themselves and their children from physical and emotional abuse.

Recommendation 3 – Definition of violence against women in relationships

The reformed *Family Relations Act* incorporate a stand alone definition of violence against women in relationships that acknowledges that violence by an intimate partner is one of the most common and devastating forms of violence against women, and that many women do not seek help or report relationship violence when it occurs. The definition should broadly situate violence against women within an intersectional analysis that recognizes the social, economic and political inequality of women and, in particular, notes that violence against women in relationships often has more complex causes and impacts for Aboriginal women, immigrant and refugee women and women of color, poor and other marginalized women. The definition should note that women's longstanding and systemic

inequality must be acknowledged in any effort to improve women's access to rights and protection within the justice system, and society at large. And finally, that violence against women is:

- A violation of women's human rights;
- A major public health issue that directly causes a wide range of physical, mental, sexual and reproductive, and maternal health problems; and,
- Directly linked to women's lack of access to education and opportunity, and low social status.

Further, that consideration be given to referencing the definition in all relevant sections of the Act, including but not limited to the following sections: non-court dispute resolution and agreements – all divisions, best interests of the child, guardianship and parenting arrangements, protection and conduct orders, etc.

Recommendation 4 - Explicit references to family violence

We note that the White Paper does not include a reference to family violence in all relevant sections and urge a thorough review to ensure it is included, where appropriate. A reference to family violence should be included in the following sections:

Part 2 – Non-Court Dispute Resolutions and Agreements

INSERT: explicit reference to the proposed definition of family violence (page 150)

Part 2 – Non-Court Dispute Resolutions and Agreements Purposes of Part 3

The purposes of this Part are as follows:

INSERT: (d) To enable family justice professionals to screen for family violence.

Court may order family dispute resolution expenses Section 5

AMEND: 5 (b) knowingly failed to disclose relevant information respecting property or debt or **past incidences of family violence** and, as a result of the undisclosed information, an order is made under section 18 [*setting aside or varying agreements generally*] to set aside or vary an agreement arising from the family dispute resolution process.

PART 10 – Court Processes Division 3 - Orders the Court May Make Generally Court may order disclosure

INSERT: 170 (1) (d) To obtain information on past incidences of family violence.

Note: As an alternative, it may be worth considering including provisions that require the parties undergo a civil/criminal records check.

Section 178 Division 4 – Conduct Orders

INSERT: 178 (1) (h) To protect the rights or interests of a spouse or other family member who has been the victim of violence by one of the parties.

BWSS Opposition to Non-Court Dispute Resolution

BWSS notes the government has presented proposals calling for a clear shift away from a court-centered approach to legislation that will “recognize a full continuum of dispute resolution options.” We state here our adamant opposition to this approach, which, among other concerns, we consider a retreat from a commitment to women’s equality within family law.

In reporting on the results of consultations on this approach, the White Paper acknowledges, “Feedback was also received expressing strong reservations about encouraging the use of dispute resolution processes.” BWSS fully shares those reservations because our direct experience together with a wide range of research on these issues demonstrates that dispute resolution processes, including various approaches to mediation-centered processes, are not safe for women and this is particularly true where there is a history of relationship violence. In our view, there is a bias within dispute-based processes to treat participants as equals ignoring the obvious and, often profound, power differences between men and women that work to put women at a disadvantage in negotiations with the men who were their former partners. Clearly, such power differences are strongly exacerbated when violent perpetrators are given the opportunity to influence and control their victims in a process where a woman is told she is on a level playing field with her abuser.

While under these proposals family justice professionals will be obligated to screen for violence and cannot offer dispute resolution options “without first considering family violence,” we believe the impact of such provisions can be compromised within a system that prioritizes a disputes resolution process. Indeed, we note the White Paper does not even clearly communicate its intent as to the role of family justice professionals on this question, which only reinforces our concern on this issue. We also note that many women, including most particularly Aboriginal women, women of color and immigrant women, do not disclose violence and that supporting women to do so requires both highly specialized expertise and a compelling commitment to validating women’s experience.

Related to the above, as regards section 1(a) is the lack of any specific direction on what would constitute “appropriate assistance.” Further, in section 1 (c) we see a lack of any information on referral services, including their appropriateness as regards family violence or accessibility for those with cultural or language barriers.

Proposals for family law reform must not include non-court dispute options.

Division 2 – Parenting Coordinators

One effective way of measuring the success of the family law reform effort will be to determine whether the individuals who are playing key roles in the system are meeting overall performance goals, one of which will be to work effectively with the parties to a dispute. Given this, we are very concerned by the absence of any direction or information on issues relating to the supervision and evaluation of the Parenting Coordinator. We are equally concerned that no information is provided on the rights the parties have in relation to the Parenting Coordinator and neither is there any information on whether the parties have any option to raise any concerns they may have about Parenting Coordinator performance. Moreover, while a Parenting Coordinator may at any time discontinue a parenting coordination process on the grounds that the process is inappropriate for any reason, the parties do not appear to have the option to withdraw.

Recommendation 6 – Parenting Coordinator

The Parenting Coordinator section provide detail on:

- How Parenting Coordinator performance will be measured and evaluated;
- How the parties engaged with a Parenting Coordinator can provide feedback on Parenting Coordinator performance; and
- On what grounds, the parties can withdraw from a Parenting Coordinator process.

Division 4 – Agreements Section 25

Recommendation 7 - Training

Under the new family law regime, established feminist anti-violence against women agencies with demonstrated experience and capacity in the provision of training will play a key role in the development and delivery of professional training and the establishment of required practice standards and professional qualifications.

Part 4 – Guardianship and Parenting Arrangements

Division 2 – Best Interests of the Child

Recommendation 8

INSERT: s.1 (b)(i) threats concerning deportation or immigration status.

INSERT: s.43 (3)(b) unconditional acceptance that violence against a child or their family member is a fundamental violation of a child’s best interest

INSERT: s.45 the best interests of the child will be paramount in determining the duties assigned to a guardian.

INSERT: s.48 (2) The Court has the authority to appoint one parent as the final decision maker where the parents, despite their best efforts, cannot reach an agreement on important decisions. The non-decision-making parent can request the Court review the decision if they reasonably doubt the decision meets best interests of the child.

Division 3 – Guardianship and Parental Responsibilities

BWSS supports Professor Susan Boyd analysis and recommended **Option A** in regard to her concerns that White Paper proposals on guardianship “overlook the extent of situations where serious conflict characterizes the relationship between the parents and consequently over-estimates the extent to which cooperation can happen,” in assuming that joint guardianship is the best starting point for separating parents.

Recommendation 9 - Joint Guardianship

“Option A: A far preferable route to ensuring the safety and security of children and their caregivers is to preserve the current starting point, whereby a child is under the guardianship of the parent with whom they reside. Under such a system, we assume that reasonable parents will agree to a more joint arrangement if it is workable. We would then oblige others to negotiate or, if necessary, litigate for a more joint arrangement, with the burden of showing this arrangement is in the best interests of the child – using the helpful new best interests factors that would emphasize safety and security as well as history of care.”

Division 5 – Failure to Comply with Agreements or Orders for Parenting Time or Contact

Recommendation 10 – Reasonable belief

INSERT: s.64 (4), the guardian reasonably believed that they might suffer family violence if the parenting time or contact was exercised.

Recommendation 11 – Social worker accompaniment

AMEND: s.65 (1)(b) provide language to ensure that a social worker will always accompany a peace officer when a child is being apprehended.

Part 9 - Protection Orders:

Recommendation 12 – Reasonable doubt standard onerous

Eliminate any provision that requires women to show evidence of a breach of an order by meeting a beyond a reasonable doubt standard as this onerous standard has the potential to compromise a woman’s safety.

AMEND: s.146 A protection order expires one year after the date it is made, unless a different term is provided for in the order, **including an indefinite term.**

General recommendations

Recommendation 13 – Financial capacity

In all matters where the court orders the parties to obtain counseling or any other support services, the judge must fairly determine whether the parties have the financial capacity to contribute to the cost of such services.

Recommendation 14 – Accompaniment

In all dispute resolution processes, individuals should be able to choose who will accompany them, regardless of whether they have formal representation. This will particularly assist and comfort individuals who may be dealing with age, cultural or language barriers.

Recommendation 15 - Translation

Where individuals are not able to afford translation services, the government must fully fund accredited translation services at all stages of court and non-court processes.