



# **Women Charged with Domestic Violence in Toronto: The Unintended Consequences of Mandatory Charge Policies**

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Mandatory Charge Policies***

**EXECUTIVE SUMMARY  
March 2005**

**THE RESEARCH TEAM**

The study was conducted by the Woman Abuse Council of Toronto (WACT), Dr. Shoshana Pollack, Faculty of Social Work, Wilfrid Laurier University and our research assistant, Anke Allspach. The project was also guided by members of our Research Advisory Committee (RAC): representatives from the Family Service Association, the Elizabeth Fry Society of Toronto and a member of the Accountability Committee (women who have experienced domestic violence) at the WACT. The RAC helped to develop the interview guide, provided feedback on preliminary findings and assisted with data analysis and the final report.

**METHODOLOGY AND FINDINGS**

Data were collected through focus groups with nine Crown Attorneys specializing in domestic violence cases and through nineteen in-depth interviews conducted with women charged, either dually or solely, with domestic violence. There were four main findings resulting from these interviews.

- 1) Women arrested, either solely or dually, were living with men who were abusive.
- 2) The "gender neutrality" of mandatory charge policies de-contextualizes abused women's use of force.
- 3) There are serious socio-economic and emotional consequences of criminalizing women's self-protective use of force for both women and their children.
- 4) Criminalizing women's responses to male violence increases their vulnerability to further abuse.

**RECOMMENDATIONS**

**Recommendation One**

The criminal justice system and the judiciary must develop an understanding that women's use of force is not the same as men's. Women's use of force in domestic violence situations must be gendered in that it is often a response to a sustained pattern of abuse by male partners.

**Recommendation Two**

Policy needs to be developed for both dual and sole arrests in domestic violence situations that enables police to identify the dominant aggressor in a relationship and that identifies the type of force and motivation for women's use of force. These policies need to include investigation and documentation techniques.

**Recommendation Three**

Abused women and those who work with and for abused women must be provided opportunities for meaningful participation in the development of criminal justice policy around domestic violence.

**Recommendation Four**

A workable mechanism must be developed, in collaboration with women who have been abused and those who work with and for them, such that women are able to tell their stories, separate from the male partner. This will allow women to contextualize their use of force.

**Recommendation Five**

As new policy and practice develops, unanticipated outcomes need to be tracked and monitored to assess their impact on women's safety. This tracking and monitoring should be done within the context of a community co-ordinating body, including criminal justice representatives and community organizations.

**Recommendation Six**

Because they are categorized as "offenders," women arrested for domestic violence are often not eligible for support from a variety of victim services. It is imperative that there be increased support and advocacy for women arrested in domestic violence situations, such as help negotiating an unfamiliar court/legal system and access to community and social services. In order to ensure a thorough investigation in domestic violence situations, the use of professional translation services must be provided when needed.

**Recommendation Seven**

Research needs to be conducted that documents and compares the criminal justice sanctions given to men and women convicted in domestic violence situations.

**Recommendation Eight**

There needs to be improved access to legal aid for women charged in domestic violence situations and training for lawyers to better understand the context and motivation behind women's use of force in domestic violence situations.

## ***Women Charged with Domestic Violence in Toronto: The Unintended Consequences of Mandatory Charge Policies***

### **INTRODUCTION**

Advocates, service providers, and researchers have indicated a disturbing trend in both the United States and Canada; since the application of mandatory charge policies there has been a startling increase in the numbers of women arrested, either solely or dually, in domestic violence situations (Aboriginal Justice Implementation Commission Final Report, 2001; Chesney-Lind, 2002; Das Gupta, 2001; Department of Justice Canada, Final Report of the Ad Hoc Federal - Provincial - Territorial Working Group Reviewing Spousal Abuse Policies and Regulations, No date; Finn, Blackwell, Stalans, Studdard & Dugan, 2004; Hirchel & Buzawa, 2002; Martin, 1997; McMahon & Pence, 2003; Miller, 2001).

Since 1983, the Ontario provincial government has promoted mandatory charge policies for domestic violence cases. The purpose of this policy directive was to better protect women when abuse is taking place. The spirit of the policy was both to hold the abusive partner accountable and to reduce the likelihood of putting women at a greater risk of abuse by having to press charges. Although, in Ontario, the policy direction was initiated in 1983, it has only been since the creation and wide scale implementation of specialized domestic violence courts (in 1996-1997) that the policy has been put into practice in a more consistent manner. Since these changes, however, there has been an alarming increase in the number of women arrested in domestic violence situations.

Initially, the increase was manifested through dual arrests; both the male and female were arrested in domestic violence situations. After much discussion and concern in the community, and analysis within the police service, the number of dual arrests went down considerably. This change, however, resulted in a noticeable trend of women being *solely* arrested.<sup>1</sup>

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<sup>1</sup> Elizabeth Fry Society of Toronto, 2004: 7

## **The Study: Women Arrested in Domestic Violence Situations in Toronto**

Research on dual arrests indicates that: 1) women's use of force is most often a response to ongoing abuse from male partners (Finn et al., 2004; McMahon & Pence, 2003); 2) charging abused women with domestic violence increases their risk of subsequent victimization by abusive partners (Das Gupta, 2001; Hirshel & Buzawa, 2002; Martin, 1997); 3) the legal definition of "domestic violence" focuses only on a single incident, rather than the presence of ongoing efforts to control, coerce, and exert power over a partner (Hirshel & Buzawa, 2002; McMahon & Pence, 2003; Miller, 2001); 4) enhanced knowledge of how the criminal justice system operates allows abusive men to "use" the criminal justice system against their female partners (Bohmer, Brandt, Bronson, & Hartnett, 2002); and 5) there are serious consequences when women's responses to violent partners are criminalized, such as loss of employment, deportation, child custody issues and increased numbers of incarcerated women (Chesney-Lind, 2002; Das Gupta, 2001). Building upon previous research, this study asked five central questions:

- 1) What is leading to the increase in sole and dual domestic violence charges against women?
- 2) Was there a history of woman abuse in cases where a woman was charged, either solely or dually, with domestic violence?
- 3) What type of force did women use and in what context?
- 4) How did the police and the courts respond?
- 5) What are the consequences for abused women of being solely or dually charged with domestic violence?

The current study was undertaken to understand the context in which women's force occurs within domestic violence situations and to provide policy recommendations to enhance the criminal justice response to this group of women. This study collected data through two primary means:

individual and focus group interviews with Crown Attorneys in the Domestic Violence Courts and individual interviews with 19 women in the Toronto area who were either solely or dually charged in heterosexual domestic violence situations.

Women were asked to participate through social service agencies and probation services. Six of our participants were dually charged and thirteen women were the sole person charged for domestic violence. Seventeen women had children, and four of these women had lost custody of their children while going through the criminal justice process. Fourteen women were Canadian citizens, four were landed immigrants or permanent residents and one participant was neither a Canadian citizen nor a landed immigrant/permanent resident. Ten participants were women of colour, two were of Aboriginal descent and five women spoke English as their second language. Eighteen interviews were conducted in English, and one was conducted with the assistance of an interpreter. The average age of the participants was 38.4 years.

## **Methodology**

Before beginning data collection a Research Advisory Committee (RAC) was established. It consisted of four WACT staff members, a research consultant (Dr. Shoshana Pollack), a research assistant (Anke Allspach), a member of the WACT Accountability Committee (survivors of domestic violence) and representatives from the Elizabeth Fry Society of Toronto and the Family Service Association of Toronto. Members were selected based upon their expertise in the area of women charged with domestic violence. The purpose of the RAC was to provide input and guidance into all phases of the research process.

### **Interviews with Crown Attorneys**

Three individual interviews and one focus group, with a total of nine participants, were conducted with Crown Attorneys specializing in domestic violence cases. Participants were asked questions about how they make decisions to convict and/or withdraw charges against women, sentencing options for women, and challenges the courts face when dealing with these cases. Interviews were conducted by the WACT project co-ordinator and information from these interviews was handwritten.

### **Interviews with Women Charged in Domestic Violence Situations**

Nineteen women were individually interviewed for this study. The interview guide was developed through a review of the literature on women arrested for domestic violence, front-line experience of those working with the women, and from the guidance of the RAC. The interview guide was semi-structured and used open-ended questions. The general areas covered in the interview related to the context of the woman's relationship with her partner and the incident that prompted her arrest, her experience with the police and the courts, the impact and consequences of being criminally charged, and recommendations for improving the criminal justice response to women's use of force in domestic violence situations. Interviews were conducted by WACT staff and the research assistant, who were trained by the consultant in qualitative interviewing skills. Interviews lasted 1 1/2 – 3 hours and were tape recorded with the permission of the participants.<sup>2</sup>

## **KEY FINDINGS**

### **Interviews with participants revealed four primary findings:**

- 1) Women arrested, either solely or dually, were living with men who were abusive.

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<sup>2</sup> Two participants did not wish to be tape recorded and therefore hand written notes were taken.

- 2) The “gender neutrality” of mandatory charge policies decontextualizes abused women’s use of force.
- 3) There are serious socio-economic and emotional consequences of criminalizing women’s self-protective use of force for both women and their children.
- 4) Criminalizing women’s responses to male violence increases their vulnerability to further abuse.

### **Key Finding # 1**

#### **Women’s Use of Force Occurs within the Context of Woman Abuse**

When asked about the context in which their use of force took place, ninety percent of the women we interviewed (17 of the 19 participants) stated they had a history of physical, emotional and sexual abuse by the same male partner against whom they were charged with using force. In fact, 6 of the 19 participants called the police in order that they might obtain protection from their male partner. However, they were themselves arrested.

Women in this study had been living in relationships in which they felt fearful, coerced, controlled, dominated, and physically, verbally, and sometimes sexually abused. The physical act for which they were charged (eg. pushing partner away from her, throwing plastic bottle or phone, biting when being held down, and in one case using a knife against her partner) was women’s attempts to protect themselves from further abuse. The following quotes typify the control, domination and violence exerted by the male partners of the women who participated in this study.

*“There was an incident when I was pregnant with my son and I didn’t know I was pregnant...and then he gets the knife and he came at me and then I fell on the bed and then he was like...if I try to leave him, he would kill me.” (Maria) <sup>3</sup>*

*“He had been drinking all day long, hard liquor, not eating, and that night, he comes home, and I’m in bed with the kids, and he turns around and says that he’s gonna kill*

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<sup>3</sup> In order to ensure confidentiality, pseudonyms have been used when referring to the participants in this study.



*me, cut me up, feed me to the pigs, there would be no evidence left over...Ever since then, it was like, this is just charming, what is he going to do? Is he going to kill me, or is he not?" (Warrior)*

*"I used to go to 2 jobs! I was not able to take care of home at that time! So he hit me, he was on the couch, and he hit me...with a crutch." (Beta)*

In addition, women described being raped, demeaned, degraded, controlled, and isolated by their partners. Their partners used verbal abuse, calling them, as one woman reported, such things as □ a slut, and a cunt, a fucking cunt □ any name in the book □ In addition, women stated that their partners often enforced stereotypical gender roles and isolated the women from friends and family.

*"When I moved in, things started changing... nothing was to his standards... No matter what you try to keep the place clean, cook, you know nothing... but I kept at it. I get up at six in the morning. I kept at it, take care of my son, you know..." (Maria)*

*When they came to Canada, he did not want her to go to school or to attend English classes. She wanted to take more courses to become a professional personal support worker, but he would not let her... he was very controlling about money (Jane, hand written interview).*

*"It was a control thing for him, big time. I even went as far as to leave the meals on the weekends, when I wasn't there. All he had to do was warm it up...But that wasn't good enough, he complained that I never did anything, that the house was a mess. . . . And I did it all on my own, I cleaned the house, I did the groceries, I took care of the children... And it was just...nothing I did was good enough, no matter what I tried, what I did" (Warrior).*

Participants readily acknowledged that they had used force □ whether it was biting, throwing a bottle, or pushing □ towards their partners. In describing the incident that led to their arrest and subsequent criminal charge, women reported that they were attempting to protect themselves from their partners □ aggression and violence:

*"I couldn't think of any other way to get him off of me. I couldn't push him off of me because he had my arms pinned behind me, so the only way I could think of was to bite him and the pain would probably get him up off of me. Obviously that didn't work, you*

*know, because he was still sitting on me.” (Renee)*

*“...when I walked in the apartment, he was physically pushing me away, and I was trying to grab the phone...while he was pushing me, I grabbed the phone and I hit him with the phone, which is my ‘assault with a weapon’. I tried to run from him, and he grabbed, and got me on the ground, and smashed my head onto the ground...”(Coco)*

*“He started hitting me, throwing me on the floor. I grabbed the empty bottle and hit him on the side of his head.”(Jane)*

*“And that’s when the big fight started, and... I know that he hit me first, because I actually thought to myself ‘I might end up having to call the police here’. And he hit me in the jaw, in the face, and then at a certain point I hit him back, and I hit his nose and it started to bleed.” (Harmony)*

*“He punched my windshield, and broke my windshield, when I stopped in the parking lot...So then I started yelling at him, and then he punched me in the face.” (Meg)*

Six women were charged with “assault with a weapon” because they grabbed a readily available object (such as a telephone, water bottle, and in one case a kitchen knife) in an attempt to defend themselves from the abuse their male partner was inflicting on them at that moment. This suggests that their use of force was defensive, rather than offensive, in nature.

Although many (10) of the women’s partners had a documented history of domestic assault (“My husband was also charged twice for criminal harassment and 3 breaches after the original arrest” he was convicted for 2 years, and put on house arrest” and was mandated to the PAR program”), none of the participants in this study were provided an opportunity to provide a context for their own actions. Rather, they were treated by the police and the courts as “offenders” and “batterers”.

## **Key Finding #2**

### **The Response of the Police and the Courts: The Problem of a Gender Neutral Mandatory Charge Policy**

A second key finding that emerged from this study is that the criminal justice system often fails to place women’s use of force in domestic violence situations in the context of an ongoing abusive

relationship where the predominant aggressor is the male partner. This appears to be due to the incident-based nature of criminal law, wherein the system treats most cases of domestic violence as isolated, separate occurrences and allows little room for a gendered analysis of domestic violence.

*“Nothing was brought to court. No. Absolutely nothing. It was just the charge on me. That’s it. And that’s what I didn’t agree with, still don’t.... His record, his past record should’ve been looked in more. Who he assaulted in the past.” (Maria)*

*“I went with the police, they were asking me all these questions, if I had weapons and guns...I’m like ‘I’m not the one with the weapons, he is.’ I said ‘This is a man who has threatened to kill me, and he’s the one who has guns...’” (Warrior)*

Ten of the women’s male partners had a criminal record. In addition to non-domestic violence related charges, such as drug possession, drunken driving charges, and even manslaughter among others, nine men had a record for domestic violence related offences. In one additional case, he had a record of police incidents for domestic violence assaults with no charges laid.

However, particularly in situations where there was some type of object used by the woman and in which both the man and woman had visible injuries, interviews with domestic violence Crown Attorneys revealed reluctance to contextualize women’s use of force. Several Crowns took the position that an “assault is an assault” and should be criminally sanctioned. This sentiment is reflected in the perspective that the courts should operate from, as one Crown stated, “a paradigm of non-violence”—an approach that, by omitting gender inequalities and the nature of women’s force, renders invisible women’s lived experience of being abused by their male partners. Further, as Crowns noted, it is the function of the court to determine the level of risk posed by the “accused.” However, without the ability and willingness to contextualize a woman’s use of force within the dynamics of her relationship, women’s (and men’s) risk will inevitably be misunderstood and inappropriately assessed.

One of the problems with providing women no opportunity to contextualize their use of force is that, in general, the men are able to convey their perspective more effectively and are able to better negotiate the legal system. Ten women reported that their male partner used his knowledge of the criminal justice system (including how mandatory charge policies work) to portray her as the primary aggressor and have her arrested and charged. For instance, they either self-inflicted injuries, phoned the police themselves or got to the police before her once they were called, accusing her of assaulting him first.<sup>4</sup> One woman, after going to the hospital to have her injuries examined, went to the police station to give her statement only to find that she herself was arrested and charged with domestic violence.

*“... I went to the police station to give my victim witness statement, and video statement...and I was greeted by a female police officer, in plain clothes, at the desk. And I said ‘Hi, I’m here to give my video statement on what happened’, and she said ‘that won’t be necessary, your husband’s filed a complaint, and so we need to arrest you now...’ And I said ‘What? He assaulted me’. And she said ‘Well, he filed a complaint, and we have to charge for this complaint, and I’m sorry, but...it’s out of our hands, and you’ll have to go to the Crown and you’ll have to tell them, and they’ll have to decide.’” (Dora)*

Another woman reported that since she was unfamiliar with the criminal justice system, her partner convinced her to plead guilty.

*“I pled guilty. (Her partner) told me to do that. He said, ‘this is easier, you’ve got no record, you’ll just get probation or something. Otherwise, a trial could take 2 years, you’ll be going back to court... they’ll just keep putting it over and putting it over...’ he knows the system well, so he advised me.” (Amanda)*

Of the 10 cases where the women reported he set her up, three of the men called the police. One of these men self-inflicted injuries and then told the police that his partner assaulted him. As a result, she was charged with domestic violence.

*“No police came to the house, there was no altercation between my husband and I, and it said that I had assaulted him... I was charged... I think they should hear from*

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<sup>4</sup> This finding is consistent with the research on dual arrest conducted by Bohmer, Brandt, Bronson, & Hartnett (2002) who also found that abusive male partners use the system as a tool to continue their control over their female partners.

*both sides... not someone just coming to the police station with a mark on his face and saying 'She assaulted me'” (Sisco).*

Eleven of the nineteen women said that they themselves had injuries as a result of the incident for which they were charged with domestic violence. These ranged from bruising, fat lips, black eyes, cuts/scratches/bite marks, hair ripped out, and a swollen forehead to one woman who was assaulted to the point where she was bleeding and unconscious. In seven of the cases where the woman suffered injuries, she was the only person charged.

*“I know I tried to tell them that the marks on me were from the incident, that it was a mutual incident... they just automatically assumed I was guilty, and threw the book at me... they didn’t ask me at the time if I wanted to press...charges.” (Coco).*

Women experienced the inability to contextualize their use of force as extremely disempowering and as causing them to be very sceptical that the criminal justice system will protect them from abuse. All of the women we interviewed stated that they felt the criminal justice system should have provided them with a greater opportunity to tell their side of the story. Nine of the nineteen women we interviewed were not given the opportunity to provide a statement, either at the scene of the incident or at the police station, or even share their side of the story.

*“The funny thing is nobody asked me what happened. They just took everything he said and that was it.” (Renee)*

*“ When I got there [to the police station], they strip-searched me, they put me in front of a guy while I was emptying my pockets... they didn’t ask me a statement at all. I had bruises all over my body, visible bruises, big bruises, they didn’t even ask where they came from....” (Coco)*

*“They’re [the Crown] not willing to listen, they have too much on their plate, they don’t have enough time, they don’t really care, they just want to get it through the system... when that lady finally did listen - it was literally - she ran past me. She goes ‘Oh, you’re the one that wants to speak with me’, sat down, listened to me for 2 minutes, and then she goes ‘Ok, let’s go to the courtroom’. Even then, she didn’t really listen; it was just like ‘Ok, now I can drop this off my plate.’ That’s the way it felt.” (Red)*

*[The Court and Crown]... weren’t getting a chronology of what was going on outside*

*of the courts with him, with the stalking, with the...other issues at hand. They didn't have the context for the relationship, they were incident-oriented.” (Dora)*

*“Nobody actually talked to me. They just put me in a room. And he just said that ‘I’ll let you know when we’re going to transfer you over to the court house.’” (Maria)*

### **Pressure to Plead Guilty**

The domestic violence court process is separated into two different streams. The Crown Attorney’s office holds discretion as to which cases are screened into each of the streams. One is the Early Intervention process and the second is Coordinated Prosecution. The Coordinated Prosecution stream involves cases where the participant decides not to plead guilty or their actions in the incident are found to be incompatible for inclusion in the Early Intervention process. The Early Intervention stream is meant for first time incidents of domestic violence in which there were no weapons used and no significant harm done to the victim. In this process the participant pleads guilty to the offence and is mandated to participate in the Partner Assault Response (PAR) program. If an accused cannot afford to retain a lawyer (which often costs thousands of dollars), to assist them in deciding how to proceed with their charges, duty counsel is available on-site. Duty counsel provides general advice, free of charge for those who have not retained private counsel. An accused may also attempt to obtain a legal aid certificate; however, as seen below, it is often difficult for persons charged due to incidents of domestic violence to obtain assistance from legal aid; in part because the charges have a low chance of resulting in a period of incarceration.

In addition to a lack of opportunity for women to contextualize their relationships, participants in this study identified a number of pressures influencing their guilty plea, such as a desire to return home to their children, lack of financial resources, and pressure/manipulation from their partners. Nine women accepted responsibility and pled guilty early on as they lacked the financial resources to go to

trial.

*“I was charged with something that was never looked into because I don’t have the money to pay a lawyer to look into...the police...reports and stuff.” (Maria).*

*“I spoke to a lawyer, it was too much money, he wanted \$4500, I said ‘No, even if I wanted, I cannot afford.’ I pay a high rent, my kids...I can’t. I went to Legal Aid, I was not approved, because they said ‘you don’t go to jail for this problem, that’s why you can’t get a lawyer’... Because I just want to finish the problem, to finish the court, that’s why I said ‘Ok, I’m going to plead guilty, just to finish this.’” (Blaca)*

*“They never asked me what happened. They didn’t ask me what you’re asking me, how the whole situation...did he hurt you first, or what, they didn’t know anything...all they said was ‘Guilty plea’, the judge looks at whatever and says ‘Ok, this is what you’ve got: a year’s probation, you have to report to probation and you have to go to an anger management course’. That was it.” (Sonia)*

*“The only way you can get a speedy trial is to plead guilty. And then they do it the same day, you get sentenced, and either thrown back in jail or...released.” (Coco)*

*“Overall, I didn’t get to say my side of the story to anybody, honestly, from my point of view. I didn’t get to give them my version, ‘cause everybody has their own stake. Duty counsel is not there to hear my side, they’re just there to hurry up and get me out. So they can get the next person in. That helped me to just say, “forget it, I don’t wanna be in this courtroom any more.” (Renee)*

Most women experienced the police as being intimidating and as being allied with their male partners (eg. one woman stated that the arresting officer said to her that he “was just trying to put myself in his situation. Imagine how he feels having to leave his home”). Several women reported that the arresting officers made racially and culturally biased and discriminatory statements. For example, Renee stated that when the officers asked her “where she was from” she told them she was a Canadian citizen. However, she stated that the police continued to say:

*“Where are you from? Like I’m a citizen. That’s all you need to know. Doesn’t matter where I’m from. Point is I’m a citizen.”*

Another woman of colour experienced the police as particularly intimidating:

*“The one that took me to the station, he just told me – he pushed me against the wall – and he told me ‘Stand there, if you try to run or anything, I’m going to shoot you.’”*  
(Patricia)

Tactics such as threats of violence and persistent inquiries into women’s cultural/ethnic origins reflect institutional uses of power that are particularly racialized and culturally situated. In addition, interviews with Crown Attorneys also revealed that there are cultural biases embedded within the court system. In particular, there seems to be a perception that immigrant and racialized women are more prone to using violence and weapons. This perception was framed in terms of “cultural differences” that render certain racial/ethnic women “more violent” than others.

Women experienced the police and the courts as disempowering and gender biased. They perceived the police as believing their partner’s claims that he was abused, without investigating further and/or asking for the women’s perspective. They often felt that, in cases of dual charges, the men received less harsh treatment. Although women accepted responsibility for using force against their partners, they were frustrated by being categorized only as a “batterer” or an “offender” and by not being provided with the opportunity to explain the context of abuse in which they were living. In some of the cases, the perception that the police were not able to distinguish self-defensive injuries and actions and that they often believed the male partners’ versions of events caused women to be quite sceptical of the willingness of the criminal justice system to protect them from abuse. This was reinforced by the various pressures they received from the police and judicial system to plead guilty. Not only were women in this study not protected from abuse, but they also suffered grave consequences as a result of being criminalized as a “batterer.”



### **Key Finding #3:**

## **Consequences of Criminalizing Women's Self-protective Responses**

### **Jail and the Court Experience**

This study found that the biggest indicator in deciding whether to release or detain a woman was her use of a weapon. In six cases women were charged with "assault with a weapon" In five of those cases the woman was solely charged and in one case it was a dual charge. Four of the women charged with "assault with a weapon" were detained and held for a minimum of 1 day with the longest period being one week. In one case, she was released from the station on her own recognizance. As stated previously, the "weapons" used by these women were usually items such as empty plastic bottles, their teeth, and a telephone. An additional example of an "assault with a weapon" given by one of the Crown Attorneys interviewed was of a woman who threw an empty tape dispenser.

Of the seven women held at least one night in custody, five required a surety to release them. For the most part, the women had additional support such as family and friends to assist them with their release:

*"I stayed in there for a week, before I finally begged someone to bail me out.... I think it was \$1000 or \$2000. It was a surety... I got my kids' grandmother...because she's a Canadian citizen, and she had a clean record in Canada, they let her let me out."* (Coco).

However, the police eventually released one woman on her own recognizance after three days, as she could not obtain a surety:

*"But after 3 days, that's when I got bail and went home... they were waiting for somebody to come and bail me out, but my mum didn't show up, because she wasn't able to, so I guess they just decided to give me....so I could bail myself out."* (Tanya).

Of those five women who originally required a surety, four had been charged with assault with a weapon. In the remaining case where it was a dual assault charge, it appears that her overnight

detainment was a harsh reaction to her being a woman who used force, as her husband was released from the station within a few hours:

*“He was released, like, at that time, they took him down and then he was sent home. They never give me any explanation as to why. At that point I was really scared to ask them any questions... they had another officer that came... she asked me ‘Why are you here?’ And at this point I couldn’t even talk. And while she was searching me, she goes ‘that’s because you hit your husband.’” (Patricia).*

Of the thirteen women who retained a lawyer, either privately or through legal aid, over 50% were satisfied with their legal representation:

*“I think he (criminal lawyer) charged me about \$6000 and something, but he brought his fees down, and I get to pay him on a monthly basis, and he’s quite good. I wish he was the matrimonial lawyer! He’s very good. He listens.” (Sisco)*

The remaining half was not happy with their representation:

*“...he was the worst lawyer I’ve ever had in my entire life, and he didn’t show up to court, he didn’t do what I asked...took a very brief synopsis...and when I tried to fire him, Legal Aid refused me... because he already had the Legal Aid certificate, and it’s too much hassle, unless I had some reason to disbar him. I had to have grounds for disbarment to change a lawyer. Him not showing up wasn’t good enough...” (Coco).*

Six of the women said they were relieved and grateful that they had a judge who seemed fair and reasonable.

*“I figure that the way my case was presented to the judge...he was definitely fair with me. I could have got much worse...just on the way it was presented to him, it was...horrible. There were more statements from them than from me, so if you were to build a case, I would automatically be guilty, so I think he was very lenient with me, and I think he read between the lines, which helped me out a lot.” (Coco)*

*“Actually the judge, she was very, very good. I was lucky to have a good judge.” (Mariah)*

For the majority of the women though, the lack of coordination, time delays, constant court appearances and remands were time consuming and emotionally, financially, and physically draining:

“Every time I would go to court they would set the date 2 weeks later, or a week after, I was like ‘Oh my God’ and finally I said to him ‘I want to plead guilty’ (Tanya). Another woman, Maria, made thirteen court appearances before she signed the peace bond and has spent \$30,000 on criminal court fees and \$15,000 on family court fees to date. Similarly, another woman we interviewed made almost 20 court appearances before they withdrew the charges. Finally, another woman was three months pregnant when she was charged and by the time the courts finished processing her case her child was two years old.

## **Children**

A serious consequence of criminalizing women’s self-protective responses is the impact it has on the children. Women who had children (15 of the 19) reported that their arrest and charge, particularly being removed from their home (12 of the 15 women with children), impacted their children in a variety of ways. One of the most difficult issues for the women was feeling as though leaving the children in the care of their father put them at risk for abuse, neglect, and/or manipulation. Many women said their partners were physically or sexually abusive to their children and that the children had witnessed episodes during which their father had been physically assaultive to them. Furthermore, women stated that since their charge, their abusive partner used their children as pawns in the conflict between them.

*“My child went to school, he had friends, but ever since he’s been with my ex, he’s lost contact with everybody, no one sees him anymore. He goes and he hides, he’s always in, at home.” (Sisco).*

*“He is trying to have control still through the children, and I’m not allowing it, so it’s bothering him, and he keeps using them, and it’s going to damage them. He’s going to damage them really badly. That’s why I’m trying to get the help that they need. So in the shelter, it was good, because I felt safe, because they knew we were in a safe home.” (Warrior)*

*“My kids, the other day, he went to my house and my daughter, she was very upset at me. She said ‘Mummy, I don’t want to see this man in our house again! She said ‘I never want to see this man again, and next time I call the police, because I don’t want to see this man over here’. She even calls him ‘this man’, she doesn’t call him ‘dad’, because she says ‘He didn’t think twice to put you in jail, and you’re going to accept*

*this man in the house? He cheated on you, he hits you, he calls you all kinds of names in front of the neighbours, in the middle of the street, he didn't care about your feelings, he didn't care about us.'” (Blaca)*

In addition, almost half of the women had child welfare involvement since being charged with domestic violence. Ironically, it was these women □ rather than their abusive partners - who had to negotiate the child welfare system in order to prove that they were not violent batterers and were not a risk to their children.

*“I was scared of them (The Children's Aid Society) 'cause they're like, 'you're charged with abusing your spouse, how do we know you're not abusing your children?' So that kinda scared me, that's two different things.” (Renee)*

*“I'm trying to get the first one out, I kept the second one out of there, as much as the Children's Aid wanted to jump in and try and...you know? Because they heard through the grapevine that I was an alcoholic, and I'm a Native woman, and I'm an abuser....and I proved them that no, I am a good person, I proved them a lot, and that's how I got access on seeing my daughter and got her overnights on the weekends now.” (Mariah)*

*“So they had to phone Children's Aid, so there was an investigation. I'm like, whatever, I know I'm doing no wrong, and at that point I had explained to the intake worker, I said 'No. I am dealing with a lot here, I have left an abusive situation, I'm trying to get this counselling, I'm trying to get this counselling for the kids...' I told her, and she even sent me a letter back stating some numbers for me to contact.” (Warrior)*

## **Employment**

In addition to impacting children, the criminalization of women □ self-protective strategies has serious consequences in regard to employment. All of the women reported that their arrest and charge impacted on their employment in some way. Several women lost their jobs and for many women their criminal record now impacts the ability to find employment.

*“...the other day I went to the employment centre one time, and on the computer, there was a job on it, and they say that...and it's something that I was looking into, and the woman said that they looked into your record.” (Tanya).*

*“...and you’ve got this...this...charge, this criminal record, on your record, when you didn’t do it. No. And if you can’t afford to fight, to go on through this, it’s so unjust, it’s not right.” (Sisco)*

*“...they’re not going to hire you for the medical field if you have a violent criminal record. Right? No old age home, no hospital will hire me because I have an assault on my record.” (Coco).*

Given that many of the women in this study were financially dependent upon their partners before their charge, and that the legal process is expensive, women’s criminalization has serious economic consequences. For immigrant women, this is particularly difficult, as lack of financial resources and employment opportunities combined with lack of familiarity with community resources render them more vulnerable. Five of the women interviewed did not speak English as a first language and had few family or support systems in Canada. Their abusive partner further isolated them.

*“I did not know about shelters. I had no information. I am scared of the police. I lived in fear every day. I thought nobody would believe me. I wanted to die. I isolated myself. I was ashamed that I was abused.” (Jane)*

Given the isolation and lack of opportunities for many immigrant women, the material consequences of having a criminal record —such as severely reduced likelihood of finding employment —are quite serious. For all women in this study, however, the criminalization of their self-protective actions has made them wary of the police and as a result increased their vulnerability to further abuse from their partners.

### **Social and Emotional Consequences**

As a result of being charged and jailed and of the lengthy, expensive and humiliating court experiences, women reported feeling isolated, depressed, mistrusting, suicidal, and turning to drugs and alcohol to cope.

*“I won’t fight anymore... It’s made me a very stand- off person too, like, I stay home most of the time, I don’t go out, fear of confrontation or something, and it’s just too much... I’m not going to go forward with my goals and my job, because I know that there’s walls up everywhere I turn, as soon as they ask me for a criminal record, for one, I have to say ‘Yes.’” (Coco)*

*“It’s totally destroyed my life! I feel like I’m living in a shoebox now. You know? It’s just been awful.” (Sonia)*

*“I thought I was losing my mind, and I had to go there, because I was wondering ‘Am I going crazy? Am I insane? Am I bringing this on my family, for no reason at all??’... I did not expect it to be this way. I never thought a human would treat another human that way.” (Patricia)*

*“I wanted to die. I isolated myself. I was ashamed that I was abused.” (Jane)*

Many participants experienced isolation and desperation due, in part, to the lack of accessible community resources and supports for abused women charged in domestic violence situations. This lack of resources combined with the expensive and destructive criminal justice process, led to feelings of paralysis and self-blame. It is a sad irony that many of these women □ many of whom were mandated into □ anger management □ programs and/or counselling - experienced for the first time support, resources and a non-judgemental environment in which they could at last tell their story. It is resources such as those provided by Native Child and Family Services and the Elizabeth Fry Society of Toronto that have helped these women deal with the impact of being abused and the various consequences of being criminalized, and have provided supports for both themselves and their children.

#### **Key Finding # 4**

#### **Criminalizing Abused Women for Domestic Violence Increases their Vulnerability to Subsequent Abuse**

Participants in this study expressed concern, anger and confusion over how self-defence is conceptualized within the criminal justice system. In particular, their concerns reflect the ramifications of failing to conceptualize domestic violence as gendered and of mandatory charge policies that are

gender neutral. The following comments illustrate women's perceptions that abused women should not fight back.

*"I won't fight anymore... I will never hit anybody ever again, even if it means my death. Because where is the line of self-defence? If I hit him back, automatically I go to jail, I break my probation. I break everything, right? So I'm already guilty, just for defending myself... Where is the line where self-defence becomes primary aggression and who decides that?" (Coco)*

*"I guess the thing for a woman is you just have to take it and not hit back." (Harmony)*

In addition to feeling as though the risk of physically protecting themselves is too high - especially now that they have a criminal record - women also specifically said they would not call the police again.

*"I wouldn't call the police, that's for sure. ..I don't even know if there's a help phone number for women to call someone... But I would try to contact someone. But I would not call the police, that's for sure." (Tanya)*

*"Here are the people that I confide in, I called for help. Here are the people that are supposed to be the law, and if you guys are going to mess up... I don't care if someone is killing me. The next time I am not calling the police!" (Patricia)*

*"[T]he message is that if you hit back at any point, you're going to get charged, and that is a big fear that I wouldn't put myself through that anymore." (Harmony)*

*"And if I couldn't run, I'd just go down into a ball. What other options do you really have, if you can't get to a phone, you can't get to a door...the best way that I can defend myself is to go down into a ball and hope that he doesn't kick me in the face, or kick me...permanent internal abuse or...that's all I would do..." (Coco)*

Clearly, the intent behind mandatory charge policies □to better respond to the needs of abused women □has not been realized in these cases where women are charged for domestic violence. In fact, it appears that, rather than send a message that violence against women is a crime and that the law will protect abused women, the gender neutral approach does in fact increase some women's vulnerability to

further abuse: many women in this study stated they are unlikely to call the police again if they were being physically abused.

Arresting women victims has been found, in both this current study and other research studies (Das Gupta, 2001; Hirshel & Buzawa, 2002; Martin, 1997), to increase women's risk of being further victimized. Women are also receiving the message that retaliating and/or protecting oneself from the abuse of one's male partner is a criminal act; they are therefore unlikely to turn to the police in the future for fear that their self-protective actions will lead to their own arrest. As such, our current criminal justice response "rewards" women who present as "passive victims" and punishes those who are active and fight back (Das Gupta, 2001). This is a particular risk for women who are financially dependent upon their male partners, whose socio-economic status prevents them from leaving and/or accessing resources and supports, and/or immigrant women who may be isolated due to language, little family support and lack of resources.

The charging and arrest of abused women in domestic violence situations is a serious problem that needs urgent attention. The immediate goal should be the reduction in numbers of women arrested, either solely or dually, for responding to violence from their male partners. Below is a discussion of the policy implications of the findings from this study and recommendations for reducing the number of women solely or dually charged and for making the criminal justice system more responsive to abused women who find themselves charged with domestic violence.

## **POLICY IMPLICATIONS**

### **"An Assault is an Assault?": 'Gendering' Domestic Violence**

The criminal justice system focuses upon single discrete "acts" or "incidents" of violence. However, this conceptualization in regard to domestic violence is not congruent with that which is



understood by researchers, advocates, and practitioners in the field of violence against women. Domestic violence is understood as an ongoing process encompassing a constellation of abusive behaviours motivated by an attempt to control and coerce one's partner (Dobash & Dobash, 2004; Hirshel & Buzawa, 2002). Overwhelmingly, studies indicate that in heterosexual relationships it is the male partner who has been found to be using these types of behaviours.

Research comparing men and women's use of violence, force and/or aggression in domestic relationships reveals several important differences in nature, frequency, motivation, and context that support an argument *against* a gender neutral approach to domestic violence (Busch & Rosenberg, 2004; Dobash & Dobash, 2004; Henning & Feder, 2004; Perilla et al, 2003; Swan & Snow, 2002). The most important difference is that in the vast majority of cases women's use of force against their male partners is in response to a sustained pattern of coercion, violence and control inflicted on them by their male partners. In other words, in the majority of cases, women are reacting to being psychologically, verbally, and/or physically victimized by their male partners. Furthermore, the character of women's use of force does not meet the criterion for being a "batterer" as women's motivation and type of force does not reflect efforts to control, coerce or dominate, but rather to respond, protect, defend or retaliate against male batterers (McMahon & Pence, 2003). For example, in studies where women have been charged in domestic violence situations, findings illustrate that men do not feel powerless or fearful of their female partners, do not feel that their autonomy is constrained by their partners or that they are isolated or that their phone calls, activities, socialization or clothing are controlled by their female partners (Dobash and Dobash, 2004; Miller, 2001).

In order to better respond to women's use of force in domestic violence situations, domestic violence policy must take into account all forms of gendered power: physical, psychological and economic power (Busch & Rosenberg, 2004). Furthermore, "[s]elf defence as it is legally defined may

not explain all instances of a woman's use of physical force, especially when there is no apparent, imminent threat to her bodily integrity (Das Gupta, 2001, p. 6).

### **Policy and Practice: Shifting from Gender Neutrality to a Relational Context-Based Approach**

Mandatory charge policies were implemented in order to send a social message that male abuse of women is not only unacceptable, but it is also a crime. However, the response of the criminal justice system (discourse, policies, court and police procedures, interventions) in domestic violence cases assumes gender equality. That is, the policy is thought to be objective and neutral and therefore applicable to both men and women. However, such an approach ignores the reality that gender inequality exists and in the vast majority of cases it is male partners who are abusing women. By ignoring and obscuring the reality of gender inequality, such an approach decontextualizes women's experiences by failing to take into account women's motivations for aggressive behaviour and the nature of the relationship (i.e. whether or not she is herself a victim of male violence).

Research shows that police officers sometimes have difficulty determining the dominant aggressor in domestic violence cases, particularly if there are visible injuries on both parties and if there is no official record of prior abuse in the relationship (Hirschel & Buzawa, 2002; Finn et al., 2004; Martin, 1997; Miller, 2001). This study conducted in Toronto suggests that the inability to determine a dominant aggressor and/or the sole charging of abused women may be a result of two interrelated factors: mandatory charge policies are implemented in a gender neutral way and criminal justice practices rely upon a notion of violence that is "act-based" or "incident-based," rather than relational and contextually-based. Both these issues need to be addressed to improve the criminal justice and judicial responses to women who use force in response to male violence. The following recommendations address these issues

## **RECOMENDATIONS**

### **RECOMMENDATION ONE:**

The criminal justice system and the judiciary must develop an understanding that women's use of force is not the same as men's. Women's use of force in domestic violence situations must be gendered in that it is often a response to a sustained pattern of abuse by male partners.

### **RECOMMENDATION TWO:**

Policy needs to be developed for both dual and sole arrests in domestic violence situations that enables police to identify the dominant aggressor in a relationship and that identifies the type of force and motivation for women's use of force. These policies need to include investigation and documentation techniques.

### **RECOMMENDATION THREE**

Abused women and those who work with and for abused women must be provided opportunities for meaningful participation in the development of criminal justice policy around domestic violence.

### **RECOMMENDATION FOUR**

A workable mechanism must be developed, in collaboration with women who have been abused and those who work with and for them, such that women are able to tell their stories, separate from the male partner. This will allow women to contextualize their use of force.

### **RECOMMENDATION FIVE:**

As new policy and practice develops, unanticipated outcomes need to be tracked and monitored to assess their impact on women's safety. This tracking and monitoring should be done within the context of a community co-ordinating body, including criminal justice representatives and community organizations.

### **RECOMMENDATION SIX**

Because they are categorized as "offenders," women arrested for domestic violence are often not eligible for support from a variety of victim services. It is imperative that there be increased support and advocacy for women arrested in domestic violence situations, such as help negotiating an unfamiliar court/legal system and access to community and social services. In order to ensure a thorough investigation in domestic violence situations, the use of professional translation services must be provided when needed.

### **RECOMMENDATION SEVEN**

Research needs to be conducted that documents and compares the criminal justice sanctions given to men and women convicted in domestic violence situations.

### **RECOMMENDATION EIGHT**

There needs to be improved access to legal aid for women charged in domestic violence situations and training for lawyers to better understand the context and motivation behind women's use of force in domestic violence situations.

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