

Domestic Abuse and the Law- Confronting Systemic Impacts

A Review of the Criminal Justice System, the Police Policies and the Court Process in Canada

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Introduction

The Criminal Justice System and Domestic Abuse in Canada

Understanding police policies, the criminal code, court processes and support systems in place to deal with domestic abuse, and their effectiveness in protecting victims.

Even in Canada, domestic abuse continues to permeate all cultures, social classes, age groups, and financial and educational status, despite legislation and law enforcement agencies being increasingly empowered to protect victims. Domestic abuse is insidious, long term and surfaces in many guises, from the obvious violence of physical attacks to the less noticeable emotional bullying that erodes self-esteem and independence. In a culture that rewards the sociopathic personality traits of an abuser: namely risk taking, lack of empathy, grandiose sense of self and success at all costs to name a few, we find the very people to whom we look for protection: lawyers, police and judges, to be embodiments of these traits. The authoritarian cultures of courtrooms and police stations are precisely the environments where abusive and sociopathic personalities thrive. As Marie Thomas informs us in her book *“Confessions of a Sociopath,”* “one in four high achieving Chief Executives in society today, show pronounced symptoms of sociopathy.

We also live in a culture that automatically questions a woman’s motives, her honesty and integrity when making accusations of abuse and sexual violence. The recent Jian Ghomeshi case illustrated this with the immediate torrent of angry disbelief and hatred to which the victims were subjected by Ghomeshi’s Facebook fans. The women who have now come forward, admitting to having been abused by Ghomeshi in the past, gave the following reasons for not exposing him earlier: fear that they would be disbelieved- he is famous and has a huge and powerful corporation behind him, fear that they would be sued or would be the object of internet retaliation, as has proven to be the case. Added to this culture of disbelief, we must also recognize the culture of “victim-blame” within which we live. When a judge and jury can consider the importance of a victim’s skirt length, whether or not the victim had been drinking or even if the victim was flirtatious with her attacker as more important factors than the attacker’s ability to respect another human being’s boundaries and their right to say and mean no, we have to recognize that we live in a biased culture that treats women as liars.

In 2013, Statistics Canada published a report, *“Measuring violence against women: Statistical trends”* adding to the body of evidence of gender-based violence in Canada. The report highlighted the following statistical data:

In 2011, the five most common violent offences committed against women were common assault (49%), uttering threats (13%), serious assault (10%), sexual assault level I (7%), and criminal harassment (7%). Women were eleven times more likely than men to be a victim of sexual offences and three times more likely to be the victim of criminal harassment (stalking) (p.8).

The report goes on to say that the most common offence: common assault, has a conviction rate of only 17% of convicted spouses receiving prison sentences, compared to 21% of other violent, non-domestic offenders. The difference was similar for aggravated assault: 32% for family violence offenders and 36% for other violent, non-domestic offenders. Criminal harassment was the only violent offence where spousal violent offenders were more likely to be sentenced to a term of imprisonment.

The first criminal harassment legislation was introduced into Canada in 1993 in response to high profile cases of women being murdered by their estranged partners following periods of harassment.

Police and court recorded data captured in 2011, in *The Handbook for Police and Crown Prosecutors on Criminal Harassment* states that,

Between 1997 and 2009, criminal harassment was the precipitating crime in a total of 68 homicides—for example, a female was stalked (and subsequently killed) by a recently separated intimate partner. This translates to an average of five such homicides per year over the 13-year period (p.1.3.1).

Considerations:

Under these circumstances, how can we ensure that our legislation adequately protects victims, and that our enforcement agencies are fair, unbiased and sensitive to the unique complexities of domestic abuse in all its manifestations?

In order to understand the issues and potential points of intervention within the system, we must first understand the workings of the system. In the appendix of this paper, I have provided detailed summaries of the historical context of domestic abuse legislation in Canada, the development of the pro-charge policy, the arrest process and the current judicial system including the use of specialist courts, with corresponding systems flow charts. This illustrates the systems and their linkages involved in the protection of victims and the rehabilitation or prosecution of abusers.

This research focuses on domestic abuse and the law in Canada, but it also draws on information from the UK and USA. These judicial systems have a lot of similarities due to the historical development of their governance processes. All three countries are currently developing similar policing and criminal code responses to family violence and domestic abuse.

Domestic Abuse Legislation

Legal Definitions:

The criminal code is a federal statute that has been enacted by parliament, providing the federal government exclusive jurisdiction to legislate criminal offences in Canada.

The code defines the types of conduct that constitutes criminal offences and establishes the kind and degree of punishment that may be imposed. Approximately 40% of the criminal code deals with procedure, whilst the remaining 60% defines the offences, the charging definitions and the sentencing options available to the presiding judges.

The legislative act is a defined action passed into law, describing and prohibiting an act.

Violence versus Abuse:

The Ministry of Justice describes domestic abuse as “Family Violence.” Under the umbrella of family violence, the ministry then goes on to define the acts of violence as various forms of “abuse”, i.e. sexual abuse, physical abuse etc. The police force documentation uses the wording in the same way.

Family Violence:

Most judicial and police policy focuses on domestic violence, as there is usually concrete evidence to support the fact that violence has occurred, i.e. bruises or damaged property. However, domestic abuse covers many other types of non-violent abuse. The Ministry of Justice, Canada recognizes five main types of family violence.

Their five definitions of family violence are:

1. Physical abuse
2. Sexual abuse
3. Psychological and emotional abuse
4. Neglect
5. Financial abuse

Each area of abuse has a detailed list of actions that describe the behavior and informs the criminal code and resulting legislative acts with which family violence is policed:

Physical abuse, including assault, is the intentional use of force against a person without that person’s consent. It can cause physical pain or injury that may last a long time. Physical abuse includes pushing or shoving, hitting, slapping or kicking, pinching or punching, strangling or choking, stabbing or cutting, shooting, throwing objects at someone, burning, holding someone down for someone else to assault, locking someone in a room or tying them down and finally, killing someone.

Sexual abuse of an adult can include sexual touching or sexual activity without consent, continued sexual contact when asked to stop and forcing someone to commit unsafe or humiliating sexual acts. All sexual contact with anyone without consent is a crime. This includes sexual touching or forcing sexual activity on a spouse, a common law partner or a dating partner. Even when married, a spouse cannot be forced to have sexual contact.

Emotional abuse happens when a person uses words or actions to control, frighten or isolate someone or take away their self-respect. Emotional abuse is sometimes called psychological abuse. It can include threats, put downs, name calling or insults, constant yelling or criticism, controlling or keeping someone from seeing friends or family, making fun of preventing someone from practicing their faith or religion, destroying belongings, hurting pets or threatening to do so, bullying: intimidation or humiliation (including on the Internet). Many subtle forms of emotional abuse are not listed as crimes but they can be early signs that the abuse might get worse. Some forms are crimes such as threats to harm the person or someone else, stalking, which involves

following or repeatedly contacting a person when they don't want contact and they're afraid.

Financial abuse happens when someone uses money or property to control or exploit someone else. It can involve taking someone's money or property without permission, withholding or limiting money to control someone, pressuring someone to sign documents, forcing someone to sell things or change a will. Most forms of financial abuse are crimes, including theft and fraud.

Neglect happens when a family member, who has a duty to care for you, fails to provide you with your basic needs. This can involve not providing proper food or warm clothing, failing to provide adequate health care, medication and personal hygiene (if needed), failing to prevent physical harm, failing to ensure proper supervision (if needed)

While there is no specific offence describing family violence in the criminal code, the federal legislation addresses family violence in Canada in the following legislative acts:

Offences related to the use of physical and sexual violence are:

- Assault (ss. 265-268)
(Within acts 265-268 acts include assault, assault with a weapon or causing bodily harm, aggravated assault and unlawfully causing bodily harm)
- Kidnapping & forcible confinement (s. 279)
- Trafficking in persons (ss. 279.01)
- Abduction of a young person (ss. 280-283)
- Homicide - murder, attempted murder, infanticide and manslaughter (ss. 229-231 and 235)
- Sexual assault (causing bodily harm, with a weapon and aggravated sexual assault) (ss. 271-273)
- Sexual offences against children and youth (ss. 151, 152, 153, 155 and 170-172)
- Child pornography (s. 163.1)

The most common domestic abuse charge is within the assault act: criminal Act 265: common assault. This act accounts for 49% of all domestic abuse prosecutions. (Department of Justice, 2006) The criminal justice system also attempts to address the non-violent offences within the parameters of domestic abuse. Offences related to some forms of psychological or emotional abuse within the family are contained within the following acts:

Emotional Abuse:

1.) Criminal harassment (sometimes called "stalking") (s. 264)

Criminal harassment or stalking is described as the following actions:

- Repeatedly following from place to place the other person or anyone known to them;
- Repeatedly communicating with, either directly or indirectly, the other person or anyone known to them;
- Besetting or watching the dwelling-house, or place where the other person, or anyone known to them, resides, works, carries on business or happens to be; or
- Engaging in threatening conduct directed at the other person or any member of their family.

2.) Uttering threats (s. 264.1)

Act 264.1 covers the following behaviour: to knowingly utter, convey or cause any person to receive a threat.

Threats are described in the following ways:

- To cause death or bodily harm to any person;
- To burn, destroy or damage real or personal property; or
- To kill, poison or injure an animal or bird that is the property of any person.

3.) Making indecent and harassing phone calls (s. 372)

4.) Trespassing at night (s. 177)

5.) Mischief (s. 430)

These are all charges that correspond to concrete actions and results that can be measured. However, in a society where bullying behavior is perceived to be within the parameters of social acceptability, emotional and psychological abuse must be visible, extreme and documented over a period of time, to be taken seriously by the authorities.

As criminal harassment is often the most common resulting behavior of the abuser, after being charged with domestic abuse, it's important to understand how the system attempts to protect victims and their children once an arrest has been made and subsequently, throughout the duration of the court process, bearing in mind that a case can take upwards of two, three or more years to come to completion.

Acts that enforce restraining orders:

Conditions of bail, continuing restraining orders and peace bonds may all be used to ensure victim safety. The criminal code punishes breaches of these orders with the following acts:

- Disobeying an order of court (s. 127)
- Failure to comply with condition of undertaking (s.145(3))
- Failure to comply with probation order (s. 733.1)
- Breach of recognizance (peace bond) (s. 811)

Domestic Abuse and the Policing Policy

The way in which the criminal justice system in Canada has responded to domestic abuse has evolved considerably over the last three decades. Whereas domestic abuse was once considered a private family matter, the instigation of pro-charge and prosecution policies was a deliberate attempt to protect the victim by treating family abuse as seriously as any other crime of assault. Many women also failed to press charges against their abuser, for fear or further victimization, so the pro-charge policy was designed to take this responsibility out of their hands.

The pro-charge policy was introduced in 1981, but didn't become widespread or consistently enforced until the "mandatory charging policy" was introduced into the Policing Standards Manual in 1994. This slow acceptance of the policy appears to have been due to cultural indifference towards domestic abuse within the law enforcement agencies. Buzawa, Buzawa and Stark (2012) state that,

Regardless of reality, it has been a truism that police were socialized from their earliest training into a culture that did not highly value social work. A new recruit, to be an accepted member of the police or as 'one of the boys' was required to adopt this occupational code. Key elements of the cultural norm included the protection of other officers, admiration of a 'good pinch' or a 'good collar' by a fellow officer, and explicit acceptance of the same normative framework as other officers as to what constitutes a 'serious crime' (p.125).

It's questionable as to whether the culture of the police force has changed, and this in turn continues to affect the way these policies are enforced. There is also a surprising ambiguity around the definition of terms such as "mandatory charging", "pro-charge", "primary aggressor" and "cross-charging," as can be seen in the different ways each police jurisdiction interprets the process. There is a large degree of individual judgment to be used by the police when attending a domestic abuse call, and this is where many factors come into play: from age, experience, personal bias and local policy interpretation, that define exactly how the pro-charge policy will be enforced. (See A. Satterthwaite's forthcoming research paper on the culture of abuse.)

The intention of the pro-charge policy was to protect the victim by taking responsibility for pressing charges away from the abused person, thus protecting them from acts of retribution. However, the resulting chain of legal events often fails to protect or worse, it penalizes the victim and children as well as the abuser. Whilst these policies were intended to promote the social unacceptability of domestic abuse, the justice system has struggled to adequately legislate for the distinct differences between family abuse and violence by strangers. There is a failure to recognize that, unlike other crimes, domestic abuse means that the victim and perpetrator often share an ongoing emotional relationship and financial obligations; sharing a home and parenting children together. This is described as *the Battered Mother's Dilemma*. This refers to the choices an abusive partner forces a mother to make between her own interests; physical safety, and the safety and interests of her children. Buzawa et al, (2012) give the following example:

" In custody disputes, common examples involve abusive husbands who threaten extended custody battles unless the wife abandons all claims for financial support or threaten her with physical harm if she pursues custody" (p. 421).

Abusive behavior is usually a cyclical and recurring event, as partners are unable or unwilling to leave for a variety of reasons ranging from fear of reprisals, financial dependence, lack of alternative accommodation to fear of losing custody of children and a misguided desire to stay and fix the relationship. For all these reasons and many more, the police intervention and charging policies of domestic abuse cases are more challenging than other crimes. Statistics show that victims attempt to leave their abuser on average seven times before finally leaving (Robinson, 2013)

The first line of formal contact in a domestic abuse situation is the 911 calls to the police force. Unfortunately, studies have shown that police officers are the highest offenders of domestic abuse, abusing their partners at double the rate of the general population (Neidig, Russell & Seng, 1992). This is attributed to the dehumanizing effect of the work and the authoritative and punitive culture of the police force. Although officers regularly receive training in handling domestic abuse situations, the police culture and attitude towards women and spousal abuse remains largely unchanged. There are many contributing factors to why police have historically considered domestic abuse not to be worthy of "real" policing. Not least the unintentional organizational disincentives created by considering domestic abuse to be a minor misdemeanor, not worthy of an officer's time, promotion or recognition. The researcher, Stanko in 1989, states that,

Many officers trivialized such offences, and arrests were typically infrequent. Because the offender was known and domestic violence was a 'minor' misdemeanor offence, any arrest that resulted would be considered a 'garbage arrest' not worthy of recognition (Buzawa et al, 2012, p. 125).

Consequently officers preferred not to make domestic abuse arrests if possible, as the time required to complete

the paperwork was considered valuable time that could have been spent on other, more important or career enhancing activities.

The pro-charging policy may have gone some way to addressing this, but it has also brought about an unexpected increase in dual charging. This describes the process of arresting both the victim and the abuser. When undergoing the standardized police training for domestic violence situations, police officers are trained to “read” a situation in order to decide who is the primary aggressor. However, when this is unclear the pro-charge policy has created an increased incidence of dual arrests. Research also shows that women who have been attacked and then used a weapon defensively, to self-protect from further injury are often arrested. (Buzawa et al. 2012, p. 203). Leading us to believe that the police generally perceive acts of self-defense by women to be worthy of arrest. This increase in dual arrests has resulted in complicated and expensive legal situations with disruptive alternative family arrangements being implemented for the care of any children involved. It also further punishes the victim and has acted as a deterrent to calling the police. It’s interesting to note that older, more experienced police officers are less likely to make dual-arrests, suggesting that maturity and experience in navigating complex family dynamics is an essential skill set for the police, in these situations (Buzawa et al, 2012, p. 187). As a result, victims of abuse don’t feel confident that the police will adequately protect them, and they fear that they may be in a worse position, once the police are involved.

Also, whilst the pro-charge policy has been in effect for twenty years, it isn’t widely known beyond the police community. It comes as a huge shock to couples, who, finding themselves in the midst of a domestic altercation reach out and call 911. Often the victim wants immediate assistance to stop or prevent the threat of physical violence, but has no desire to see their abuser arrested. Proceeding directly to arrest can result in acts of violent retribution from the abuser and can mean that partners become enemies for life, locked in a spiteful and expensive battle over child support and custody.

The only coordinated review of the pro-charging policy to be undertaken in Canada was in the year 2000, by the Department of Justice, Canada: *The Final Report of the Ad Hoc Federal-Provincial-Territorial Working Group Reviewing Spousal Abuse Policies and Legislation*. As outlined in the document, the focus of the review was the implementation and status of the mandatory or pro-charging and prosecutorial policies related to spousal abuse. The preface stated,

The working group conducted an extensive review of research, including statistical data. In addition it endeavored to obtain input from frontline justice personnel to assess the perspectives on how the policies are working, as well as to identify any inconsistencies between the policies as written and adopted and their day-to-day operation (p. 5).

The review asserted that the policies were having a positive impact on the numbers of arrests, and were broadly supported by victims, but recommended that much work still remained to be done within the charging and court processes. It is also worth noting that this research is now 14 years old, and was mainly conducted with input from criminal justice personnel. Whilst victims’ opinions were anecdotally included, via the police interviews, victims of abuse who had experienced the pro-charge policy process weren’t directly interviewed.

Evidence suggests that first time offenders are often deterred from re-offending by the pro-charge policy but hardened re-offenders continue to offend, and are often unable to control their temper in domestic and non-domestic situations, exhibiting aggressive behavior with strangers as well as family (Babcock, Green and Robie, 2004).

Considerations:

Is a policy that only works for first time offenders, and creates huge family hardship, the right approach when it has little deterrent effect on long-term re-offenders?

Should there not be a more flexible approach?

Are police officers the right people to make this judgment?

Shouldn't the views of the victims of abuse be included in reviews of policy effectiveness?

Whilst probation, restraining orders and rehabilitation programs may prove to be an appropriate approach for first time abusers, it compounds the cultural police view that domestic abuse arrests are "social work" rather than real law enforcement.

Domestic Abuse and the Consequences of Calling 9-1-1

As there is no criminal act called domestic violence in the criminal code, an abuser will commonly be charged with assault, which then starts a chain of events that will ultimately be disruptive to the abuser, the victim and any children in the family. The financial implications to the family are enormous. The stigma of domestic abuse can lead to loss of employment, loss of reputation, loss of home and limited visitation rights to children.

The abuser will be arrested, taken to the police station and the decision to press charges will be discussed between the police and the Crown Counsel.

If the abuser is charged, they may be detained or bailed with conditions not to return home. In this case the abuser may be escorted home once, to collect their effects. They may then be required to find alternative accommodation. The abused will have to provide a statement to the Domestic Violence Unit detectives, and so may any children that witnessed the abuse. Once the Crown Counsel has laid a charge, it is highly unlikely that it will be rescinded.

The victim is now potentially at even greater physical risk, as the abuser may be on bail, but back in the community. The victim may have the legal right to stay in her home, but she may not be safe, even with bail restrictions. In this situation, the Domestic Violence Safety Co-ordinator is available to assist the victim with any necessary referrals to shelters, counselling or available local support agencies. There are also Victim/Witness Assistance programs to help the victim through the future court process.

Considerations:

How effective or readily available these services are requires further investigation?

If the Crown Prosecutor deems there is not enough evidence to press charges and the abuser is released, the victim will this time be referred to the Victim Services Unit to, again, determine the need for a place of safety or alternative accommodation. If children are involved, the Children's Aid Society may be notified. Not only is the victim now concerned to ensure her children are safe and remain in her custody, but, this is also the time that she is at most risk of further violent reprisals (Statistics Canada, 2011). Consequently, it's imperative that support services are readily available to provide victims with a safety plan and secure shelter. However, availability of services varies from area to area as many Government organizations have budgetary constraints. These services are supplemented by charities and privately funded organizations, but most services are grossly over-subscribed and availability is patchy.

Recent reports in the UK have highlighted the impact of government budget cuts on support services for women fleeing domestic abuse. A lack of safe accommodation for women and children has resulted in a huge increase of children being taken into child welfare services, children's homes and foster care. Data suggests that domestic violence has outstripped parental mental illness or drug and alcohol misuse as the most common underlying

factor behind child protection intervention in the UK (Butler, 2014).

Immigrant women and children are particularly vulnerable, as they have limited housing options available to them. Without independent legal status many women find themselves ineligible for sheltered accommodation and risk being homeless or deported, if they leave their partners.

Initially friends, families and employers can be an immediate source of support, but they will inevitably begin to experience compassion-fatigue as time goes by and the informal support systems invariably begin to diminish. So it's not surprising that safe alternative accommodation is the number one major crisis point for victims of abuse. Many shelters run at capacity and are regularly turning women and children away due to lack of space or their inability to support victims' complex needs. Few agencies are equipped to respond to women with multiple issues, such as those whose experiences of violence are compounded by mental illness or substance abuse (Acalde and Caragate, 2007, p.9).

In " *The Case for a National Action Plan on Violence Against Women*, " a document prepared by the Canadian Network of Women's Shelters and Transition Houses in October 2013, it states,

On a single day, 4,645 women and 3,611 children were residing in shelters in Canada and 426 women were turned away; half due to lack of space, one-fifth because the shelter was unable to accommodate their mental health or substance abuse problems (p.18).

(See L. Dempsey's forthcoming research papers on trauma and survivors of domestic abuse.)

Government budget cuts also reduce support for domestic abuse victims. More research is required into the current funding levels and availability of safe shelter for women and children fleeing from abuse in Canada.

Once an abuser has been bailed or released pending a court appearance, the only forms of legal protection the victim can apply for through the courts are peace bonds or restraining orders to ensure the abuser doesn't contact them. This is wholly inadequate as there is nothing preventing the abuser from transgressing a restraining order and intimidating, frightening or harming the victim. Any legal repercussions will be as a result of the violation of the order, after the event.

Many victims experience criminal harassment for the first time, following the arrest and charging of their partner in a domestic abuse situation. An American study revealed that intimate partners stalked 43% of women immediately after they had ended their relationship (U.S Dept. of Justice, 1998, p. 11). This is often a form of retaliation for the consequences of being arrested. Abusers continue to blame their victims for the consequences of arrest, despite the pro-charge policy. Abusers blame their victims for a myriad of actions or perceived transgressions that justify continuing the abuse, and an arrest or charge can become the major focus for further abusive contact.

The efficacy of restraining orders is also difficult to judge, due to the wide variety of individual circumstances. However, an American study in 1993, found that, whilst a restraining order might curtail physical violence, the victims reported that harassment, threats of violence and stalking behavior increased. A total of 52% of victims reported receiving unwanted phone calls and 21% said they were stalked, stating that the abuser also entered their homes in violation of the restraining order (Harrell, Smith and Newmark, 1993). Several studies examining the effectiveness of restraining orders in preventing further violence have shown mixed results, but overall, little positive impact. A study by Mears, Carlson, Holden and Harris in 2001, found that re-victimization occurred, ranging between 23% and 50% of the time (Buzawa et al 2012, p.296). Research on the efficacy of restraining orders has highlighted the fact that families with young, dependent children and custody issues have the highest

incidence of violations, as well as being in the lower socio-economic and minority groups.

Abusers who violate restraining orders also have predominantly the most violent and abusive histories, the highest rates of substance abuse and the highest rates of re-offending.

Over the past decade the USA and Canada has experienced several “family suicides” where an abuser violated a restraining order, entered the family home and killed the family, several police officers attending the scene and then the abuser finally committed suicide. These terrible events were usually preceded by warning signs from the abuser and requests for additional support from the families, but in these instances, the police failed to follow up with additional protective action. Consequently, the enforcement of restraining orders by police departments seems to be a complex situation that varies from police department to department. These situations are extreme, but they highlight the inadequate approach to ongoing family protection.

Research on the subject of restraining orders to date has failed to take into account the higher income, educated, manipulative offender who consistently breaches a restraining order in small ways, as a continuous methodology for control and threat to the victim. Many abusers, whose psychological profile fits a borderline or sociopathic personality disorder are articulate and fully capable of minimizing or justifying small breaches of a restraining order, ensuring that the police then become complicit in failing to protect the victim, by ignoring what they perceive to be minor and inconsequential breaches.

Considerations:

How might we monitor, evaluate and legislate against this manipulation of the system that allows for continuous subtle psychological abuse?

Domestic Abuse and Criminal Harassment

The first criminal harassment legislation was introduced in Canada, in 1993 in response to high profile cases of women being murdered by their estranged partners following periods of harassment behavior including stalking. The two charges of criminal harassment and uttering threats combined, account for 20% of domestic abuse prosecutions, and highlights a growing acknowledgement of the seriousness of stalking as a phenomenon of domestic abuse. Harassment is also the only non-violent offence where spousal offenders are more likely to be sentenced to a term of imprisonment (Department of Justice, Canada, 2014). It's also a crime predominantly carried out by men, against women. 80% of victims are women and there is a strong link between criminal harassment and domestic abuse. 57 % of stalkers are ex-intimate partners of their victims (Logan, 2010).

Investigating and prosecuting criminal harassment differs from investigating other non-violent crimes in that it often involves conduct that, in isolation, appears to be innocent and harmless, but can escalate to violence or homicide. It's usually a progressive crime that wears down the victim over time. Unfortunately, the nature of this crime means that the victim must collect evidential data of the continuous acts of harassment, whilst also trying to protect themselves and ensure their own safety at all times. Often victims aren't taken seriously or believed, because the nature of the harassment appears to be minor. Police are slow to support victims, even when the harassment is happening regularly. Legal counsel are also complicit in this behaviour, usually advising victims against taking action, as the courts often perceive women to be manipulative for raising these issues. This reluctance to act on minor transgressions leaves the victim feeling powerless and vulnerable and in turn increases the stalkers' perception of power and continuing control over the victim. The inference that women use restraining orders as methods of manipulation has no evidentiary support. In fact it is just as likely that an articulate abuser can eloquently minimize or justify his aberrant behaviour.

Buzawa et al argue that:

Enforcement of restraining orders is extremely important. If they aren't enforced, it's obvious that their value is limited. Furthermore, batterers might interpret enforcement failure as a continued lack of societal concern for their abusive behaviour (2013, p.300).

Considerations:

The inadequate policing of restraining orders perpetuates the cultural norm that minor victimization of women is socially acceptable. Coupled with this is the judicial attitude that a woman who wishes to enforce actions related to the contravention of a restraining order is motivated by malice rather than fear for her safety. The laws exist but are not enforced. This judicial attitude leaves women unprotected and in very real and persistent danger.

Collating evidence on criminal harassment can eventually result in arrest, which is usually followed by fines, more restraining orders and in serious cases, imprisonment. Most usually the perpetrator will have yet more restraining orders enforced against them or are charged with lesser crimes than stalking, such as assault or vandalism. This behavior of downgrading the implications of stalking to minor infractions of restraining orders can become a vicious cycle of harassment and yet more proof of the abusers' power over the victim and a continuing form of abuse. Leaving a relationship doesn't always end the abuse.

The police depend on the Victim Services program, to assist in on-going protection of the victim whilst a case is going through the court process. Victim Services run two programs for high-risk abuse cases. The Domestic Violence Emergency Response Program (DVERS) provides a personal alarm and case management to women who are high risk when there has been a restraining order against the abuser. The Support Link Program has criteria that are a little less strict than the DVERS program (e.g., no restraining order against the abuser). Women have access to the Support Link program if they are at a lower risk than those in the DVERS program, yet still of sufficient risk to need protection. Risk assessment in these cases is unclear but seems to depend on previous records of abuse, the severity of the existing circumstances and the victims' judgment of her situation in discussion with the detectives. Women in the Support Link program are given cell phones linked directly to 911.

Considerations:

Interviews in the field are required to determine the determination process for defining sufficient risk to the victim as well as the efficacy and timeliness of this approach to protecting the victim. There is also an issue of availability and cost that requires more research. The DVERS program appears to be outsourced to private security firms.

Domestic Abuse and the Court System (Family and Domestic Violence Courts)

The judicial system isn't a process for the faint-hearted or unprepared. All too often victims find themselves going through the courts, ignorant of the legal landscape and without adequate professional support, whilst struggling to maintain safe accommodation, a stable environment for children and financial security as well as their own personal safety. An "Environmental Scan of Services and Service Coordination for Woman Abuse in Toronto" prepared for Toronto Public Health by Acalde, J. and Caragata, L. highlighted inadequate funding for legal assistance for women fleeing abuse as a serious problem, resulting in a rising number of self-represented applicants in family courts (2007). Research has highlighted that many victims of abuse exhibit symptoms of PTSD. Under these circumstances, it's hardly surprising that victims often self-medicate with alcohol or drugs. This in turn can be misunderstood, and have a negative effect on their eligibility for shelters and result in losing access to their children.

The Victim/Witness Assistance Program (VWAP's) was created to assist victims through the criminal justice process, by providing information on the court process, including court updates. They also assess for safety and refer, if needed, back to the Victim Services for the DVERS or Support Link programs, or to other agencies for counselling and community supports. So the process exists, but recent research suggests that collaboration and communication is a problem between agencies (Acalde and Caragata, 2007, p. 17).

Considerations:

Expert interviews may provide a deeper understanding of how and where this manifests in the system, and may provide insights for improved protection of victims.

Criminal Courts:

Under the laws set out in the Criminal Code, domestic violence charges will be tried in a criminal court, in all circumstances unless the perpetrator agrees to a guilty plea. Trials are long, arduous, expensive and nerve-wracking. Domestic violence cases that do make it to the criminal court rarely result in a prison sentence unless the abuse was particularly violent or a homicide resulted. Most cases end with restraining orders or periods of probation for the abuser.

Family Courts:

All other aspects of a domestic violence situation, such as financial negotiations, support payments and child visitation rights will be heard in a family court. This necessitates two very different approaches with two separate groups of professionals. Most often the two processes will run on different time schedules and will very often

produce conflicting outcomes. This is an added aggravation and expense in an already difficult family situation. Inconsistencies between the two court systems have been known to create situations where abusers are granted access to children, thereby contradicting the bail and sentencing conditions and consequently increasing the risk of violence.

Pilot Court Programs

Domestic Violence Courts:

In 1997 the Ontario government recognized that the criminal court was not necessarily the most productive environment for dealing with domestic violence cases, and established the Domestic Violence Court (DVC). The DVC provides specialist legal intervention designed to hear these cases in a more effective and sensitive way. The courts can insist on Partner Assault Response programs, counselling and rehabilitation programs to support victims and hold abusers responsible for their behavior. Although rehabilitation may not always be suitable for hardened reoffenders, statistics show that men who go through counselling are four times less likely to reoffend than abusers who don't receive counselling. (Babcock, Green & Robie, 2004).

Despite the fact that these programs reduce offences in situations of minor or first time offences and reduce court appearances and corresponding expenditure, they are always vulnerable to budget cuts and program funding in Toronto hasn't increased since 1999. In 2013 Justice Minister Darin King, cut the \$500,000 funding for Domestic Violence Courts from the provincial budget in Newfoundland and Labrador (CBC News, King, D. Oct. 2013). Consequently these courts no longer exist.

Integrated Domestic Violence Courts:

In 2011, the Ontario Justice system went one step further in developing focused court support for domestic abuse cases, by piloting the Integrated Domestic Violence Court (IDVC).

Designed to deal with all the disparate related aspects of domestic violence and corresponding family law that would otherwise be heard in separate courts. The intention was to speed up the resolution of the family issues

with less conflict and more affordably with a one-case, one-judge approach. The criminal and family cases are heard on the same day in the same courtroom. The IDV court judge has more complete information about the family and having one judge ensures consistency between family and criminal court orders. However, participation in the court is voluntary and as it's not a trial court, the abuser must agree to plead guilty to be eligible for this court process. If the person charged with domestic violence wants to go to trial instead of pleading guilty, the case would be heard through the traditional criminal court system. This pilot project has been rolled out into other provinces and replicated as similar pilot projects.

Considerations:

More research needs to be done in the field, to understand how many of these courts are still sitting and their success rate and current thinking on the pilots.

Conclusions :

Whilst the policing policies, criminal, family, civil law and child welfare policies, are designed to protect victims of abuse, they all inadvertently seem to further victimize or hold survivors accountable in the following ways:

- When police apply a strict interpretation of the pro-charging policies, women are charged with their abusers.
- Failure-to-protect policies are gender-neutral yet they invariably hold women, not their violent partners, responsible for preventing harm to children.
- Inconsistencies between criminal and family courts is an ongoing problem; custody orders that grant abusers access to children often contradict bail and sentencing conditions and can put victims into risk situations on a regular basis.
- Women can lose their homes, immigration status and their children as a result of the repercussions of reporting domestic abuse to the police.
- Resulting heightened tension between partners often puts the victim at greater risk of escalating violence or instigates activities such as stalking, abusive phone-calls and threats.
- Restraining orders and victim support services don't adequately protect victims from stalking and other harassment activities or ensure victims have timely information to prepare or protect themselves.
- Protecting women from the immediate threat of violence is paramount, but the subsequent consequences of a victim being homeless and unable to financially support herself and her children or pay for accommodation remains a low priority for government funding.
- Charges are mainly restricted to domestic violence and not to other forms of abuse.

Despite the fact that the first priority of the police and judicial system is to ensure that women and children are safe from the immediate threat of domestic violence, the system fails to acknowledge the factors that tie women into the cycle of abuse. By almost wilfully refusing to recognize the systemic societal and cultural biases and economic and financial inequalities that force women to stay with their abuser the authorities are being naïve and negligent in their duties to protect. This refusal to acknowledge these societal barriers again victimizes the victim and often forces the victim to return to the abuser. The victim often has to choose between a life of violence and a life of poverty. Most likely if the victim never leaves, she will continue to experience abuse on a financial, physical and psychological level. Unfortunately, if she leaves, the same may also be true.

The organizations authorized to protect victims from abuse are themselves cultures of aggression and dominance, employing personalities that gravitate towards control and power. It's ironic that women suffering from abuse have to seek help from people who rank the highest as perpetrators of domestic abuse. Whilst training programs go some way towards re-education of front line staff, recent public events such as the now, infamous Ray Rice incident highlight the fact that attitudes remain unchanged.

Considerations:

Is there a way that we can begin to address this inherent bias in our society?

Can we educate our children to think differently about sexual boundaries?

Can we make changes to our legislation to protect victims from the further abuse of “trial by social media?”

How do we ensure our police and judicial systems enforce these laws adequately and appropriately, to ensure greater safety for women and children?

These are questions that will be considered within A. Satterthwaite’s forthcoming research on the culture of abuse.

As the time immediately after separation is the most dangerous for the victim, protecting them from acts of harassment and stalking, being inflicted as a form of revenge, whilst the court case and ongoing child custody/visitation agreements are in progress is a major issue. That being said, continuous protection from stalking relies heavily on the support systems that are activated after the arrest and conviction of abusers. There are a variety of services to assist victims to remain safe and, if possible, provide the necessary support to leave relationships in which they and their children have been abused. However, there aren’t enough services and they’re a complicated mixture of private and public organizations and charitable foundations with no consistent approach and no guarantee that services will be continuously funded or available to everyone. There seems to be much anecdotal evidence of a general lack of communication and collaboration, meaning that even the professionals working within the system struggle to navigate the processes.

Considerations:

There are many opportunities for intervention within this long and complex system, but to fully understand the how and where to effectively intervene, more research is required to understand the services, their funding, managerial issues and their connections. This would be best served by in-depth research into the support services as well as proceeding to expert interviews in the field.

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18. Works Cited

Stakeholders

The following stakeholders may be useful specialists to consider for expert interviews.

Their insights into current issues within the system may provide user-centric information of relevance to the mapping process.

Judicial System:

- Family Law Judges
- Defense Attorneys
- Crown Counsel
- Victim Witness Support staff
- Probation or Parole officers

Police Services:

- Domestic Violence Detectives
- Domestic Violence Safety Coordinators
- Police officers

Support Services:

- Victim/Witness Assistance Program (VWAP) Staff
- Women's Crisis Services
- Children's Aid Society
- Child Witness Centre
- Women and Children's Shelters and Transition Houses

Important Sources

- **The Ontario Women's Justice Network**

OWJN promotes an understanding of the law with respect to violence against women, providing accessible legal information to women and their supporters in a way that reflects the diverse experiences and realities of women. OWJN contains information on relevant legal issues, including written law (legislation) and case law (court decisions).

- **The Metropolitan Action Committee on Violence Against Women and Children (METRAC)**

METRAC works collaboratively with a broad range of partners to develop strategies to end violence against women and build safer communities for every one. Funded mainly by the City of Toronto, with some funding from the Law Foundation of Toronto.

- **Victim Services Program of Toronto:**

This is a non-profit organization that helps victims of crime, with a focus on restoring and enhancing the victim's quality of life and preventing re-victimization. Works closely with criminal justice system. Funded by the MAG and the City of Toronto.

- **Children's Aid Society of Toronto:**

Provincially mandated child protection agency. Funded primarily by the Ministry of Children and Youth Services (MCYS), plus other funders for specific programs.

- **Woman Abuse Council of Toronto:**

This is a policy development and planning body with the mandate to develop a coordinated community response to women's abuse in Toronto. The stated goal of the organization is to facilitate systemic change so that the community can be more effective in protecting women and holding abusers accountable for their behavior.

Federal Legislation on Domestic Abuse in Canada - A Summary

Historical context of legislation and police pro-charge policy:

Between the years 1981 and 1986 the federal and provincial Attorneys General and Solicitors General adopted several policy directives that required police and Crown prosecutors across Canada to charge and prosecute all incidents of spousal abuse where there was reasonable and probable grounds to believe that an offence had been committed. This was in response to a gradual awareness that domestic violence was becoming socially unacceptable.

In 1981 the London Ontario police service was the first service to initiate the pro-charging policy for domestic abuse. (They were then, and remain now, a police service at the leading edge of domestic violence interventions in Ontario.)

In 1982 Margaret Mitchell (Vancouver East MP) was one of the first politicians to raise the issue of violence against women in Parliament. Male MPs laughed when she demanded that the government take action to stop domestic violence, but the resulting public outrage began to change Parliamentary attitudes.

In 1983 Canadian legislation was finally changed so that sexually assaulting one's wife was considered a crime.

By 1986 all Canadian police forces had established a pro-charge procedure for dealing with incidents of domestic violence. The "pro-charge" or "no-drop" policies were designed to counter the idea that domestic violence was a private matter. In the past, many victims dropped the charges before trial, and the police considered most domestic incidents to be private matters. The "no drop" policy was adopted to ensure there would be mandatory follow-through with the charges, thereby ensuring that violence against spouses would begin to be perceived as socially unacceptable. However, police forces didn't seem to be implementing the procedures to any great extent.

In 1994, the Solicitor General of Ontario published the Ontario Policing Standards Manual, which contained a province-wide guideline for police officers. This guideline required the police to lay criminal charges against an abusive partner in all cases of abuse where reasonable grounds exist. This guideline is referred to as a "mandatory charging policy" and was the first part of a three-stage government process to combat domestic violence.

The three stages are as follows:

Stage One:

A direction that police are required to lay charges in all cases of domestic violence where there are reasonable grounds (Mandatory Charging Policy)

Stage Two:

A direction to the prosecuting Crown that charges should only be withdrawn in "exceptional circumstances."

Stage Three:

An expectation that the judicial sentence should reflect the gravity of the offence.

The mandatory charging policy was intended to take the onus off the victim to charge her abuser. In reality it led to an increase in dual charges where police arrest both parties. Some critics have termed this "lazy policing." The execution of the policy is dependent on police discretion and is therefore open to interpretation (Cross, 2004 & Elizabeth Fry, 2013).

Criminal Charges for Domestic Abuse

The law related to domestic violence, sometimes also called domestic abuse is written in the Canadian Criminal Code. While there is no single offence relating specifically to family violence in the Criminal Code, offences related to the use of physical, emotional, financial and sexual violence are used to charge abusers.

The following acts are described in the criminal code and are outlined in the family violence laws, by the Department of Justice, Canada, updated in 2013.

These are the acts used to prosecute perpetrators of domestic abuse:

(Numbers relate to the charge number and legislative act references.)

Physical and sexual abuse:

- (265- 268) assault and aggravated assault (wounding with a weapon)
- (27) Kidnapping and forcible confinement
- (279.0) Trafficking in persons
- (280-283) Abduction of a young person
- (229-231 and 235) homicide, murder, attempted murder, infanticide and manslaughter
- (271-273) Sexual assault (causing bodily harm with a weapon and aggravated sexual assault
- (151,152, 153, 155, 170,172) sexual offences against children and youth
- (163.1) Child pornography

Psychological and emotional abuse:

- (264) Criminal harassment, sometimes called stalking * (introduced in 1993)
- (264.1) Uttering threats
- (372) Making indecent and harassing phone calls
- (177) Trespassing at night
- 4(30) mischief, this relates to damaging property

Neglect:

- (215) Failure to provide the necessities to maintain life (food, shelter etc)
- (218) Abandoning a child
- (219-221) Criminal negligence, including negligence that causes bodily harm and death

Financial abuse:

- (322,328-330, 334) theft
- (331) Theft by person holding power of attorney
- (332) Misappropriation of money held under direction
- (342) Theft of or forgery of credit cards
- (346) Extortion
- (366) Forgery
- (380(1)) fraud

The Arrest Process - A Summary

The police may be involved in one of the following ways: as the result of a 9-1-1 call, the victim may report the incident to the police by telephone or in person or a witness to an event may contact the police.

Initially police officers must conduct a thorough investigation and submit a report. If the officer has reasonable grounds to believe that an offence has occurred, the suspect will be arrested and a charge or charges may be laid. If the suspect is not present, attempts will be made to locate and arrest the accused. If the accused cannot be found, an arrest warrant will be obtained. The victim will be advised once the suspect has been arrested. If the police decide to lay charges, the abuser will be informed that the police will lay charges, not the victim.

The Victim's Journey:

The victim's process after charges have been laid:

The victim may be asked to come to the police station to participate in a video interview with detectives from the Domestic Violence Unit (DVU). This video may be presented in court as evidence. Detectives from the Domestic Violence Unit will take over the investigation of the incident. If the victim has suffered an injury, photographs of the injury will be taken with consent. Photographs may also be taken a few days later as more bruising occurs. Police may take photographs of other evidence such as destruction of furniture, the home, vehicle or other damage done. If there are children in the household that witnessed the abuse they may be interviewed. This is done with great care and skill to minimize further stress on the children. They will also provide the victim with support and referrals to agencies that may be of assistance to the specific situation. The victim's safety and that of any children will be discussed. If the victim requires a place of safety or a shelter, a Domestic Violence Safety Co-ordinator will determine the need for a safety plan and advise on the various available shelters, counselling and support agencies in the area. When it has been deemed that there is not enough evidence to lay charges, this service will still be provided to victims, but it will be through the Victim Services Unit. If children are involved, then the Children's Aid Society will be notified of the occurrence so that they may offer the victim assistance.

The Police Charging Process:

Following an arrest and charges being laid, the accused may be kept in custody pending trial or more usually they will be released with conditions in the form of an Undertaking or Recognizance, pending the trial. A member of the Victim Services Unit will inform the victim of the release conditions. This means that the police place the accused on conditions that they must obey while awaiting trial. These conditions often include no contact with the victim and directives not to attend the residence of the victim even if the residence is the matrimonial home or shared residence. This means the accused must find immediate alternative accommodation and will be accompanied by the police to the family home to collect any emergency belongings. They will also be advised to secure legal counsel. However, the police may decide to hold the accused for a bail hearing. The victim does not have to attend the bail hearing, but in certain circumstances the officer may request that the victim attends the court for a bail hearing. The court may then decide to hold the accused in custody until the trial or may release the accused on conditions similar to those of an Undertaking. The victim will be notified of the release of the accused and of the conditions that are in place. When a charge has been laid the case will be prosecuted by a lawyer from the Crown Attorney's office at no cost to the victim. Once a charge has been laid, neither the police nor a victim can withdraw the charge. If the case goes to trial, the victim will be required to attend court and, if necessary, give evidence.

Release Conditions Pending Trial:

Release conditions are designed to protect the victim from contact with the abuser.

The most common conditions include the following directives:

- Not to communicate directly or indirectly with the victim and children
- Not to attend within 500 meters of any known work place or school of the victim or children
- Not to be within 500 meters of the victim's residence except on one occasion with police to remove belongings.
- Live with a surety at an approved residence and abide by the rules of that residence.
- Abstain from the purchase, possession, or consumption of alcohol and/or do not attend at any place where alcohol is sold or dispensed.
- Do not possess, ingest or inject any drug, controlled substance or precursor as defined by the Food and Drugs Act or the Controlled Drugs and Substances Act except in accordance with a medical prescription.
- Do not possess any firearm, crossbow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance or any such things intended for use as a weapon as defined by the Criminal Code.

Court Trial:

If the abuser pleads not guilty and the case proceeds to trial, the victim will receive a subpoena to appear in court. The victim must attend court or they will also be liable for prosecution. A Crown attorney will present the case in court. The victim is the complainant in the criminal process and therefore does not need a lawyer. The victim may be required to testify. If children witnessed the incident it may be necessary to have them testify in court. The Child Witness Centre offers services to child witnesses that include impartial pre-court preparation, advocacy and referrals. Children are given information about how the court works, how to reduce their anxiety about testifying, and are supported emotionally throughout their court experience. If the abuser pleads guilty to a criminal offence, the judge will decide on the sentence. This may be a fine or probation. They may also have to agree to some form of counselling. The judge might also order time in jail. In deciding on a sentence, the judge will consider whether this is a first offence and how severe the abuse was.

Convictions:

If the person is convicted of a crime they might receive a custodial (jail) sentence and/or be placed on a Probation Order. The victim may feel that certain conditions need to remain in place to keep them safe, such as a continuing no contact order. The victim will have the opportunity to raise these issues in a victim impact statement prior to sentencing. Assistance in preparing this documentation will be provided by the Victim Witness Assistance Program. The victim may also receive a copy of the Probation Order outlining the conditions imposed upon the accused. It is a criminal offence for the accused to breach any of the conditions outlined in the Probation Order. (Probation orders appear on file as a criminal record)

Inadequate Grounds for Police Charges:

If there are no reasonable grounds to believe an offence has been committed, the involved parties have the following options in order to make a private complaint or action:

- **Private Complaints**

When police have not formed reasonable grounds that an offence has been committed and no charges have been laid, the victim may appear before a Justice of the Peace and request that a private information be sworn charging the abuser with the appropriate offence.

- **Peace Bonds**

Peace bonds are criminal law orders designed to protect victims from fear that another person, not restricted to a family member, may harm them or their children or property. A Crown prosecutor will receive the victim's statement from the police. If there is reason to be afraid, the police will go before a Provincial Court judge to "swear an information". Afterwards, the police will serve a summons or a promise to appear on the defendant. These documents will require the defendant to appear in court on a specific date. When the defendant goes to court he or she can agree to sign the peace bond voluntarily. The victim does not have to be there. Court officials will notify the victim that the peace bond has been issued. If the defendant will not agree to be bound by a peace bond, the judge must hold a hearing to decide whether to make an order for the peace bond. The court will summons both the victim and the defendant to give evidence at the hearing. The Crown prosecutor will ask the victim to take the stand. The defendant will also have a chance to give evidence under oath. The judge will decide right away after listening to both sides. If the defendant does not show up, the judge can issue a warrant for his or her arrest. If the defendant refuses to sign the peace bond after it is ordered by a judge, he or she can go to jail for up to 12 months. Obtaining a peace bond can take several months. The hearing for a peace bond usually takes 4 to 8 weeks after the initial police contact. Peace bonds are free and can last for up to one year. To get another peace bond after that year, there must be new evidence. (Peace bonds appear on file as a criminal record, whilst they are current. On completion of a 12month peace bond, they are expunged from the record.)

- **Restraining Orders**

A restraining order is a civil law order, not a criminal law order. Restraining orders must have a family connection. A restraining order is an order of the court that requires the abuser to stop molesting, annoying, or harassing the victim and any children. Obtaining a restraining order under the Family Law Act, section 46, is done through the Family Court or Superior Court. It is advisable to consult with a Family Court lawyer, as the police cannot assist a citizen in obtaining this type of order. The general procedure when somebody disobeys a condition of a restraining order is to go back to court and ask the court to find the person in contempt. A person who is found in contempt by the Court may be fined and in some cases sent to jail. Unlike peace bonds, which are criminal law orders, the police generally do not have the authority to enforce restraining orders. However, the police will deal with any behaviour that is of a criminal nature, such as threats to harm you or assaults.

Victim Support

Support immediately following police charging process:

Family and Children's Services of the local area will be notified if children were present during a domestic violence incident or if either involved person has access to children or are in a care-giving role. With the victim's consent, the victim will then be contacted by the local division of Women's Crisis Services to offer assistance with Safety Planning or finding a place of safety, if necessary.

The Victim/Witness Assistance Program will become involved soon after the police lay the charges. Staff will make contact and provide the victim with information about the criminal court process and their specific case.

The Victim Witness Assistance Program

The VWAP serves victims who are involved in a judicial process as a result of being a victim of a crime. It provides information about the criminal and family court systems, court accompaniment where requested, relays information to the office of the Crown Attorney and undertakes victim advocacy. It also informs victims of the outcome of hearings and monitors the processes.

Criminal courts deal with domestic violence charges, as they are annotated under the Criminal code. Family law matters related to separations, home ownership and child visitation rights are dealt with through family law courts.

Dual arrests

In domestic violence incidents police are now trained to attempt to identify who the dominant aggressor is in a situation. This helps to determine the difference between assault and defensive self-protection. It does not necessarily refer to the individual who initiated the violence, but the individual who is the principal abuser. Identifying the dominant aggressor reduces the likelihood of dual charges being laid and more specifically, prevents the likelihood of a victim being charged.

Police now recognize that dual charging has a negative impact on the victim and any children involved in the situation. It further victimizes the victim by having to go through the judicial system. The victim will also be less likely to seek police assistance in future, thereby putting the victim in more danger in future. If victims are dissuaded from seeking assistance then children are also put in danger, psychologically and possibly physically. If both parents are arrested then it necessitates the immediate involvement of Family and Children's services and the children being taken from their primary caregiver. Both parties being arrested weakens the effect of the judicial system, as women will often plead guilty in order to speed up access or custody of their children. Trials are also more difficult when both parties are being convicted.

Criminal Harassment- A Summary

Criminal harassment, more commonly known as stalking, can be defined as harassing behavior including repeatedly following, communicating with or watching over someone's work place, dwelling or home. This sort of behavior is against the law.

The Law

In August 1993 harassment was recognized in the criminal code and criminal harassment was made an offence punishable by summary conviction or by indictment. In 1998 the maximum penalty was increased from 5 years to 10 years imprisonment. As outlined in the *Department of Justice, Canada, Criminal code documentation* (2013) Section 264. (1) Of the Criminal Code specifies:

264. (1) Criminal harassment - No person shall, without lawful authority and knowing that another person is harassed or recklessly as to whether the other is harassed, engage in conduct referred to in subsection (2) that causes that other person reasonable, in all circumstances, to fear for their safety or the safety of anyone known to them.

(2) Prohibited conduct - The conduct mentioned in subsection (1) consists of repeatedly following from place to place the other person or anyone known to them;

(a) Repeatedly communicating with, either directly or indirectly, the other person or anyone known to them;

(b) Repeatedly communicating with, either directly or indirectly, the other person or anyone known to them;

(c) Besetting or watching the dwelling-house, or place where the other person, or anyone known to them, resides, works, carries on a business or happens to be;

Or

(d) Engaging in threatening conduct directed at the other person or any member of their family.

(3) Punishment - Every person who contravenes this section is guilty of

(a) An indictable offence and is liable to imprisonment for a term not exceeding ten years; or

(b) An offence punishable on summary conviction.

This is covered by the following criminal acts which refer to offences related to some form of psychological or emotional abuse that involve using words or actions to control, isolate, intimidate or dehumanize someone such as:

- Criminal harassment (sometimes called "stalking") (s. 264)
- Uttering threats (s. 264.1)
- Making indecent and harassing phone calls (s. 372)
- Trespassing at night (s. 177)
- Mischief (s. 430) (mischief is commonly known to describe damaging property)

Who are the victims?

Approximately 80% of the 4,450 stalking victims in Canada in 1996 were women. Eighty eight percent of the persons accused of stalking in these cases were male (Bunge and Levett, 1998). There is also a strong link between stalking/criminal harassment and domestic violence. Fifty seven percent of stalkers are intimate partners or ex-intimate partners of the victims, and most women know their stalkers.

What behaviours comprise stalking?

Stalking can include a number of different behaviours intended to control and frighten the person being stalked. Most commonly, this can involve:

- Repeated telephone calls (the caller may hang up or remain silent on the line) to your home, cell phone or workplace in order to “track” your whereabouts
- Repeated letters or stealing mail
- Repeated emails [threatening or obscene e-mail or text messages; spamming (in which a stalker sends a victim a multitude of junk e-mail); live chat harassment called flaming; leaving improper messages on message boards or in guest books; sending electronic viruses; sending unsolicited e-mail; and electronic identity theft
- Sending unwanted gifts (flowers, candy, etc.)
- Showing up uninvited at work or home
- Following, watching, tracking
- Threatening harm to the person being stalked, her family, friends, pets
- Harassing her employer, colleagues or family
- Vandalizing her car or home
- Harming pets
- Assault (physical, sexual, emotional)
- Kidnapping, holding hostage

Investigating and Prosecuting for Criminal Harassment:

Investigating criminal harassment cases differs from investigation of other violent offences in that criminal harassment often involves conduct that, in isolation, appears innocent and harmless. As criminal harassment is often a progressive crime that wears down its victims over time, early, effective intervention can go a long way toward preventing more serious psychological harm and escalation of the harassment into violence or homicide. The objective of a police investigation in these cases is two-fold: to stop the harassment, as well as any other acts of violence, at an early stage; and to collect evidence to present a compelling case for prosecution. Since criminal harassment is a crime that may include a pattern of behaviour carried out against the victim over an extended period, an investigation can be time consuming and may involve numerous police reports.

Many targets of harassment say that one of the most frustrating aspects of being harassed is “not being taken seriously” by those whom they tell about the harassment. “Many stalking victims spend an inordinate amount of time attempting to convince others that they are being stalked and that they are in danger. Stalking victims need their experience and their response validated as normal reactions to a very abnormal situation. They also need the risk they face, and their requirement for protection, to be taken very seriously.

Contacting the police:

Criminal harassment varies in intensity, seriousness and aggression. The police recommend the following steps be recommended for anyone believing they are being stalked.

Call the police, contact community help centres and talk to friends, neighbours and work colleagues. Immediately take steps to protect yourself by creating a safety plan.

Gather proof, take notes and keep records of the stalking incidents that can be shared with the police. Take basic steps to ensure your general day-to-day safety.

The Police Interview:

Early police intervention is key. Data gathering and a full understanding of the context and relationships are required. This may be especially pertinent in the case of domestic abuse or spousal separation cases. A detailed chronology of all harassment incidents will be requested. This is particularly important, as an assessment of the severity of the situation is required to evaluate the level of harassment and potential dangers involved. In depth interviews with specialist police officers that will attempt to determine the potential level of threat, and gather as much data as possible.

What actions are the police empowered to take?

Police document all warnings given to a stalker (in order to prove recklessness if the harassment continues). The stalker must have been clearly told that their attentions are unwanted, and then a “no-response and no-contact” protocol is required. The victim should not interact with the stalker in any way. Police must help the victim gather evidence by documenting the changes a victim has made to their life as a result of the harassment. Local police can flag your telephone number on their dispatch system. If a 911 call is received from your number, a patrol car is immediately sent to your address.

The level of police intervention must then be determined:

The police may determine that there is enough evidence to lay a charge, in which case they will charge the stalker with one or more of the activities outlined above in the criminal code 264

The police will assess each situation and take the appropriate action under the circumstances. For example, if the police do not arrest the person, they may require him or her to sign a “promise to appear” in court to answer the charge. If the police do make an arrest, victim support services will let the victim know if they release the person from custody. If the person goes before a judge or a Justice of the Peace, which usually happens within hours, he or she might be:

- Released on an “undertaking” (a promise that usually has conditions to stay away from the victim and other related persons);
- Released on bail after signing a “recognizance”(a promise to appear in court which includes a financial penalty for not showing up and perhaps restrictions like promising not to contact you)
- Or kept in jail until the trial. This might happen if the crime was serious and the court believes the person may not show up, or will commit another offence before the trial.

If charges are laid, the police will turn the file over to the Crown prosecutor’s office. The Crown prosecutor is responsible for taking the case to court. If the accused person pleads guilty, the victim may not have to go to court. If he or she pleads not guilty, the Crown prosecutor would summon the victim as a witness at the trial to prove that the person committed the crime.

It may be decided that a formal method of restraint may be required. In this case peace bonds, protection and restraining orders may be instigated. In a small number of cases, it may be best to monitor the situation without taking action. This is particularly true for cases involving mentally disordered stalkers who may escalate their activity if the victim or police respond. While monitoring the situation, consider consulting criminal police threat assessment specialists, forensic psychiatrists, or other professionals who can provide insights and additional information.

The Specialist Court System- A Summary

Domestic Violence Courts

In 1997, the Ontario government created the Domestic Violence Court (DVC) Program, starting with two pilot projects in the Toronto area. By 1998, the program had expanded to six additional locations (Brampton, Durham Region, Hamilton, London, North Bay and Ottawa) and is now available in all fifty four-court jurisdictions of Ontario and has extended into Manitoba, Alberta and the Yukon.

The objectives of the DVC Program are to:

1. Prosecute and manage domestic violence cases more effectively;
2. Intervene early in domestic violence situations;
3. Provide better support to victims of domestic violence throughout the criminal justice process; and
4. Increase offender accountability.

The DVC program is comprised of two components:

1. Early Intervention
2. Coordinated Prosecution

They consist of a Domestic Violence Court Advisory Committee, specially trained domestic violence Crowns, VWAP staff, Probation and parole staff and interpreters. Case management procedures are designed to coordinate prosecutions and ensure the earliest possible interventions. A common intervention provided is the Partner Assault Response program. This consists of specialized counselling and educational services offered by community-based agencies to people who have assaulted their partners. Offenders are ordered to attend the PAR program by the court. PAR programs are designed to support victim safety and hold offenders accountable for their behaviour. It is a 16 week long program giving offenders the opportunity to examine their beliefs and attitudes towards domestic abuse, learning non-abusive conflict resolution strategies. Whilst the offender is in the PAR program, their partner will receive help with safety planning, referrals to community resources and information about the offender's progress.

The Integrated Domestic Violence Courts

In 2011, the Ontario Justice System piloted a new initiative; the Integrated Domestic Violence Court (IDVC), designed to serve people who are dealing with several family court issues as well as criminal charges related to domestic abuse. The intention was to speed up the resolution of several complex family issues often found in these difficult situations, with less conflict and more affordably with a one-case, one-judge approach. The family will appear before a single dedicated judge for both the domestic violence criminal charge and any family (custody, access or support) matters. The court does not handle divorce, property division or child protection issues.

The criminal and family cases will be heard on the same day in the same courtroom. The IDV court judge will have more complete information about the family and having one judge will ensure consistency between family and criminal court orders.

The court is held in the two courthouses at 47 Sheppard Avenue and 311 Jarvis St. in Toronto, and it is thought to be unique in Canada at the current time. It was developed based on a model in place in New York.

In family cases, the IDV Court will conduct conferences, make temporary orders where appropriate, and make final orders on consent of the parties. In criminal cases, the IDV Court will hear bail variation applications, conduct pre-trial meetings and accept guilty pleas.

It should be noted that participation in the court is voluntary and it is not a trial court. So if the person charged with domestic violence wants to go to trial instead of pleading guilty, that case would have to be sent back to the criminal court. The IDVC in Toronto is still working today. In order to have a case heard in the IDV court instead of a standard court an application and consent form must be completed, in consultation with your family lawyer.

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