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# EXECUTIVE SUMMARY – PROVINCIAL CONFERENCE

ON FAMILY LAW AND DOMESTIC VIOLENCE

Ottawa (Ontario) Conference, October 8-9, 2019



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**Executive Summary for the Provincial Conference on Family Law and Domestic Violence, held on October 8-9, 2019**

Action ontarienne contre la violence faite aux femmes (AOCVF) is a provincial feminist Francophone organization whose mission is to prevent and eliminate inequalities and violence against Francophone women in Ontario. For over 30 years, AOCVF has been providing the community with educational material and resources in French and advocating for access to quality services in French for survivors of violence.

*The present executive summary is an abridged version of the full report for the Conference on Family Law and Domestic Violence. Both versions are available online on the AOCVF website at [www.aocvf.ca](http://www.aocvf.ca).*

# INTRODUCTION

This conference was a first dialogue on the fundamental issue of access to justice in French for women subjected to domestic violence in a context of separation. It brought together over a hundred professionals from the fields of law and violence against women. The conference was an opportunity to promote reflection on the best interests of Francophone women and their children. The conference also sought to increase legal professionals' awareness of violence against women and favour a cross-sectoral approach. These discussions are particularly relevant considering imminent changes to the federal *Divorce Act* (expected to come into effect in July 2020). These changes will have repercussions for many provisions of Ontario family law. A number of recommendations are made to improve access to justice for Francophone women subjected to violence, particularly to the Ministry of the Attorney General of Ontario and the Government of Canada. They are listed below, not necessarily ranked by order of priority.

# RECOMMENDATIONS

## 1 TRAINING FOR JUSTICE SYSTEM PROFESSIONALS

It is urgent and essential that professionals in the justice system involved in cases of domestic violence have a thorough understanding of the dynamics of domestic violence and coercive control in order to improve access to justice for women and children. Judges, lawyers, legal experts and paralegals should receive two or three days of mandatory training delivered by domestic violence experts in the course of their work. The Law Society of Ontario should namely require a minimum number of annual training hours.

## 2 TRAINING FOR OTHER PROFESSIONALS

Professionals from all fields encountering violence against women must have access to the knowledge required to provide appropriate responses. As they often take on the role of first responders, other professionals such as doctors, police officers, nurses, teachers, professors and early childhood educators should receive a minimum number of training hours on domestic violence.



### 3 COMPLETE REVIEW OF THE JUDICIAL SYSTEM TO ENSURE WOMEN AND CHILDREN'S SAFETY

Women and children's safety is cause for grave concern. The judicial process can contribute to abusers retaining influence and control over women, adding to existing difficulties (for example, limited financial resources, health problems, stress, mental health issues, stigmatization, etc.). This results in serious revictimization of women.

Credibility remains an important challenge affecting access to justice for women subjected to domestic violence, particularly for women from minority groups<sup>1</sup>. The judicial process asks women to prove the veracity of their claims again and again—for the production of evidence, when requesting emergency motions, during testimony in court, and before immigration authorities. Emphasis is placed on evidence and the fear of falsely labeling the partner an abuser; however, in cases of domestic violence, false accusations are rare (Shaffer and Bala, 2003; Trocmé and Bala, 2005).

Perhaps the most perverse effect of the judicial process is that women are encouraged to favour a positive relationship between father and child. Women are expected to show goodwill and efforts to ensure co-parenting, even in contexts of domestic violence or a father's lack of respect for clauses established in the final agreement. The mechanisms that should be protecting mothers and their children instead place them in dangerous and precarious situations. Furthermore, exhaustion, powerlessness and disillusion often push women to abandon their efforts along the way or to waive many of their rights (material goods, support payments, etc.). Finally, the lack of French-speaking legal experts and lawyers practicing family law, in particular in Northern Ontario, is a major issue for women.

Therefore, a comprehensive review of the judicial system must imperatively be carried out to better take into account the issue of domestic violence, in order to better protect women and children subjected to violence, namely within institutions where family law is practiced. Women's credibility and the burden imposed on them by the judicial process must feature in this discussion. Furthermore, the safety of women subjected to violence—and that of workers accompanying them—must be protected by urgent government measures and important procedural changes (for example, protecting physical access to the Court for victims of violence, banning makeshift courts in public spaces). Police officers should accompany women to ensure their safety (especially in Northern Ontario).

<sup>1</sup> Intersectionality is an important concept that helps to understand the diversity of experienced realities. Crenshaw, who developed this concept, defines it as "[...] a conceptualization [...] that attempts to capture both the structural and dynamic consequences of the interaction between two or more axis of subordination. It specifically addresses the manner in which racism, patriarchy, class oppression and other discriminatory systems create background inequalities that structure the relative positions of women, ethnicities, classes and the like. Moreover, it addresses the way that specific acts and policies create burdens that flow along these axes constituting the dynamic or active aspects of disempowerment" (Crenshaw, 2000, as cited in Harper, 2012, pp. 5-6). This conceptualization of intersectionality implies that "1) ... oppressions are experienced simultaneously and are hardly distinguishable from one another; 2) systems of oppression feed into each other and support one another while remaining autonomous; 3) consequently, this struggle cannot be conceptualized as a fight against a single system of oppression - systems must be combated simultaneously without being hierarchized." (Free translation from Pagé, 2014, p. 203)

## 4 JOINT AND CROSS-SECTORAL ANALYSIS OF DOMESTIC VIOLENCE

The diverse methods, principles, values and knowledge on which various professionals rely in cases of domestic violence and family law pose a problem, as they diverge greatly from one field to another. The different stakeholders must better collaborate in order to identify common solutions for women and their children. This collaboration must begin with recognition for each participant's expertise. A provincial working group must be established to reach a consensus around key terms relating to domestic violence and its impacts, and to analyze the implications of the definition of domestic violence (this analysis should be gender-based, thus recognizing the power imbalance between women and men). Sharing the results of this effort with those concerned will be a key step. Only through a change of attitudes and a joint understanding of domestic violence will the system be able to truly improve.

## 5 DEFINITION OF THE CHILD'S BEST INTERESTS

It is necessary to reflect on the interpretation of *the child's best interests* in a context of domestic violence. This reflection must integrate the notion that children are also victims of violence, not only when they themselves endure it but also when they are exposed to violence, physical or otherwise, inflicted by the abuser on their mother or any other family member, such as a brother or sister<sup>2</sup>.

## 6 RESTRAINING ORDERS IN CASES OF DOMESTIC VIOLENCE

The legal context favouring maximum contact with both parents is not appropriate in a context of domestic violence as it places both mother and child in a situation of increased vulnerability. Ontario legislation must provide for restraining orders limiting an abuser's contact with his ex-partner and any children that may be involved to ensure safe judicial procedures.

## 7 COMMUNICATION BETWEEN THE CRIMINAL COURT AND FAMILY COURT

The lack of communication between the Criminal and Family Courts and the fact that they can make contradictory orders represent serious obstacles for women and children's access to justice<sup>3</sup>. A man accused of assaulting his spouse in a criminal case may be granted custody or access to his children in Family Court, which raises deep concern for the safety and wellbeing of women and children. Given that the process is already distressing and difficult for women, the task of navigating between two systems becomes nearly impossible.

It is recommended that Criminal and Family Courts ensure fluid communication between them in order to facilitate the judicial procedures undertaken by women. Rather than forcing women to adapt to the criminal and family systems, the judiciary system should adapt to women subjected to domestic violence and ensure their protection.

<sup>2</sup> See Whidden v. Ellwood, 2015 CanLII 41263 (ON SC), pp. 20-21. (Ontario Superior Court of Justice, 2015)

<sup>3</sup> Women are encouraged to file a complaint in Criminal Court before undertaking family law procedures. However, once the complaint is filed in Criminal Court, they completely lose control of their own case. If they choose to proceed the other way around, they are accused of trying to push ahead their family law case.

## 8 LEGAL AID

The lack of funding for resources and services aimed at women and children, including budget cuts to legal aid, is a major issue impeding access to justice for women. This lack of funding seems difficult to justify when the costs of domestic violence in Canada reach several billion dollars per year.<sup>4</sup> The government must take measures to allocate funds to support the services required by women and children.

To alleviate the lack of access to justice for women subjected to domestic violence, the Ontario government must significantly increase legal aid funding and review eligibility criteria to allow women to receive it. Legal aid is often a last resort for persons falling through the social safety net who find themselves abandoned, even by the legal system. It is also crucial that legal aid experts be familiar with and understand the dynamics of domestic violence. Furthermore, it is important that more lawyers practicing family law be able to serve in legal clinics or accept legal aid certificates to mitigate current shortages.

## 9 CHILDREN'S ABILITY TO MAKE DECISIONS AND CHALLENGING ALLEGATIONS OF PARENTAL ALIENATION

At several occasions during the conference, the question of children's participation was raised as an important element of the judicial process in contexts of domestic violence. For children to better participate in this process in Ontario, more services in French must be made available to them, including those with disabilities and/or special needs. In this regard, children's aid societies seem disengaged and women's shelters lack the resources to support women and their children. Therefore, to uphold their participation in the judicial process, funding must be increased to ensure children's adequate representation in court in a way that mitigates the shortage of French-speaking social workers, namely at the Office of the Children's Lawyer.

Furthermore, professionals must learn to believe children and recognize their ability to make decisions. Allegations of parental alienation made by a violent parent must therefore be challenged, as they are often based on what are presumed to be children's lies. A child must be able to answer freely and be heard without coercion by the professionals involved.

<sup>4</sup> A national study assessed that the economic impact of domestic violence in Canada reached 7.4 billion dollars in 2009 (Zhang *et al.*, 2012).



## 10 USING EXISTING KNOWLEDGE AND RESOURCES

Research in the field of violence against women must be the foundation for important decisions affecting women and children made by those in positions of power, including legal professionals. Many existing studies are available online<sup>5</sup>, including for training purposes<sup>6</sup>.

The Canadian Victims Bill of Rights<sup>7</sup> is also largely unknown. Since 2015, this Bill grants rights to victims at each step of criminal justice proceedings. It must receive more visibility to bring better knowledge and recognition of victims' rights and available remedies.

## 11 RECOGNIZING EXPERTISE IN THE FIELD OF VIOLENCE AGAINST WOMEN IN ONTARIO

The expertise developed by shelter workers and those that attend to women (such as Family Court support workers or other services specialized in violence against women) must be recognized, and their knowledge must be valued. It is recommended these experts be consulted when decision-making affects women, and that they be included at various levels of legislation. For this expertise to be recognized, the power relations that exist between different participants in the system must be acknowledged (for example, police and judicial institutions still favour children's aid societies' decisions over those of women's shelters').

## 12 PREVENTION

Domestic violence and violence against women are structural issues that affect all of society: they are found in all socioeconomic, religious and cultural spheres and realities. To remedy this social issue, early intervention is key. Domestic violence prevention must begin at an early age. Children should be made aware of issues surrounding violence against women and domestic violence from elementary school onward. It is critical that proper responses be offered when school workers or early childhood educators detect domestic violence.

5 See, for example, the non-exhaustive list at the end of the full Conference report.

6 For example, A0cVF offers many French-language online training opportunities, freely accessible to all through the website of the [Institut de formation en matière de violence faite aux femmes](#) (Training Institute on Issues Related to Violence Against Women – in French only). [Some modules are also accessible for justice system professionals](#) (in French only).

7 Department of Justice Canada, 2020b.



## 13 PROVINCIAL STRATEGY TO END DOMESTIC VIOLENCE AND VIOLENCE AGAINST WOMEN

Women subjected to domestic violence face many challenges beyond what they experience in family law proceedings. Housing shortages constitute a major challenge for these women, whether in urban or rural communities, as they must provide their children with proper housing and living conditions. In court, some fathers argue to obtain sole custody or access to their children on the grounds that their spouse resides in a women's shelter, which they claim is not a healthy environment for children.

In order to truly and effectively improve access to justice for Ontario women subjected to domestic violence, particularly Francophone minority women, a provincial strategy to end violence against women must be developed by involving participants from all relevant fields. Only a comprehensive cross-sector strategy can meet the different challenges women face. Increased funding for safe and accessible housing services must be a priority. Furthermore, access to basic needs (clean drinking water, housing, food, safety, transportation, wellbeing, education, mental health services, etc.) as well as specialized domestic violence services (shelters, legal aid, intervention, etc.) must be ensured.

# CONCLUSION

For the first time in Francophone Ontario, this conference brought together professionals concerned with family law and domestic violence. This novelty, and the objectives set by AOCVF, made the conference a great success. There is no doubt the conclusions reached will be crucial in improving the fate of women and children subjected to this type of violence.

This first dialogue brought to light the importance of a joint analysis of domestic violence from a gendered perspective, recognized by the professionals involved. The conference raised the need to make many changes to legislation, both in the interpretation and the application of the law (namely the *Divorce Act*). It also underscored the fact that family law, as it currently interprets domestic violence, revictimizes women. The changes brought to the *Divorce Act* should

remedy this situation, at least partially. Furthermore, the conference highlighted the need to take into account women and children's point of view in the judicial process, including regarding contact orders and challenging allegations of parental alienation. It is also critical that participants in the judicial system recognize domestic violence as such: cultural changes must take place within institutions that deal with domestic violence.

The conference and the writing of this report happily coincide with upcoming changes to the *Divorce Act*. The foreseen modifications are encouraging in many regards and the hope is that they will truly improve the wellbeing and protection of women and children. It will be critical that the provincial and federal governments follow up on the recommendations developed at the conference.

## REFERENCES

Ontario Superior Court of Justice. (2015). *Whidden v. Ellwood*, 2015 CanLII 41263 (ON SC), Ontario Superior Court of Justice (Family Court). 2015-05-29, File Number : FC-14-3136. Retrieved from: <http://canlii.ca/t/gk4n0>

Crenshaw, K. W. (2000). *Background Paper for the Expert Meeting on the Gender-Related Aspects of Race Discrimination* (III. Summary of the debate, C. Intersectional subordination of women, paragraphe 5). United Nations, Division for the Advancement of Women (DAW), Office of the High Commissioner for Human Rights (OHCHR), United Nations Development Fund for Women (UNIFEM) Expert Group Meeting on "Gender and Racial Discrimination", 21 – 24 November 2000, Zagreb, Croatia. Retrieved from <https://www.un.org/womenwatch/daw/csw/genrac/report.htm>

Harper, E. (2012). *Regards sur l'intersectionnalité*. Collection Études et Analyses (no 44). Retrieved from [https://www.criviff.qc.ca/sites/criviff.qc.ca/files/publications/pub\\_06112012\\_83352.pdf](https://www.criviff.qc.ca/sites/criviff.qc.ca/files/publications/pub_06112012_83352.pdf).

Institut de formation en matière de violence faite aux femmes. (2020). *Formations pour les professionnels de la justice*. Action Ontarienne contre la violence faite aux femmes. Retrieved from <https://institutdeformation.ca/course/index.php?categoryid=27>

Department of Justice Canada. (2020a). *Divorce Act, L.R.C. Divorce Act R.S.C., 1985, c. 3 (2nd Supp.)*, Act current to 2020-01-27; last amended 2019-06-21. Retrieved from <https://laws-lois.justice.gc.ca/eng/acts/D-3.4/FullText.html>

Department of Justice Canada. (2020b). *Canadian Victims Bill of Rights*, S.C. 2015, c. 13, s. 2, Assented to 2015-04-23, L.C. 2015, ch. 13, art. 2. Retrieved from <https://laws-lois.justice.gc.ca/eng/acts/c-23.7/page-1.html>

Pagé, G. (2014). Sur l'indivisibilité de la justice sociale ou Pourquoi le mouvement féministe québécois ne peut faire l'économie d'une analyse intersectionnelle. *Nouvelles pratiques sociales*, 26(2), 200-217. DOI : <https://doi.org/10.7202/1029271ar>.

Shaffer, M. & Bala, N. (2003), Wife Abuse, Child Custody and Access in Canada. *Journal of Emotional Abuse* 3(3-4), 253-275. DOI: 10.1300/J135v03n03\_05.

Trocmé, N. & Bala, N. (2005). False allegations of abuse and neglect when parents separate. *Child Abuse & Neglect*, 29, 1333-1345. DOI: 10.1016/j.chiabu.2004.06.016.

Zhang, T., Hoddenbagh, J., McDonald, S. & Scrim, K. (2012). *An Estimation of the Economic Impact of Spousal Violence in Canada, 2009*. Department of Justice Canada. Retrieved from [https://www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/rr12\\_7/index.html](https://www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/rr12_7/index.html)