

**The Impacts of Recent Law Reforms On Abused
Women Involved in The Family Court Process in
Ontario: An Environmental Scan of Violence Against
Women Service Providers**



*Luke's Place
Support and Resource Centre
for Women and Children*

In collaboration with:

Action ontarienne contre la violence faite aux femmes
Barbra Schlifer Commemorative Clinic



Funded by the Ontario Women's Directorate

Funding for this project was provided by the Government of Ontario, Ontario Women's Directorate. The views and opinions expressed in this publication do not necessarily reflect those of the Government of Ontario.

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October 12, 2011

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The Impacts of Recent Law Reforms on Abused Women Involved in the Family Court Process in Ontario

A. Introduction

The relationship between women who have experienced violence and the family law system is complex and has been a focus of attention for women's equity organizations, frontline violence against women (VAW) workers, advocates and the Ontario government for many years.

Women who are forced to find their own way through the maze of family law and family court often find that things seem backwards or upside down or inside out. They search and search for that one elusive bit that they think will make sense of everything else, that everyone else seems to know about, but they seldom find it.

(Cross, 2008, p. 4)

Over the last eight years, there have been significant legislative, policy and process changes in family law and in criminal and immigration law that directly impact women who have experienced violence. Increasingly women can find themselves in both family court and criminal court at the same time. They can also find themselves dealing with other institutional impacts once they are part of the family court system (e.g. being investigated by child welfare, being required to do mandatory counseling services, having to access income supports from Ontario Works, etc.).

Like many reforms, these changes are intended to improve the situation, but have unintended consequences.

This confluence of family, criminal and immigration law has created a number of situations for women who have experienced violence and who venture into the family law system. This report explores the intersection of some of the legal issues women face (e.g. mandatory charging practices, dual charging practices, and impacts related to changes to immigration and refugee processes as the result of Bill C-11) and the family court experiences of women who have experienced violence.

The work of this project was completed by Luke's Place in collaboration with Action ontarienne contre la violence faite aux femmes and the Barbra Schlifer Commemorative Clinic. The report is based primarily on the survey results from 101 service providers in Ontario that work with women who have experienced violence. (See Appendix A for the methodology.) The survey was developed to build on the Barbra Schlifer Commemorative Clinic's project, *Justice Done: Crafting Opportunity from Adversity for Women Who Have Experienced Violence* and was informed by the pre- forum survey and subsequent stakeholder consultations during the Forum held in Toronto on May 25th, 2011.

The report examines nine areas that have been changing in the various legal systems that have an impact on women experiencing violence:

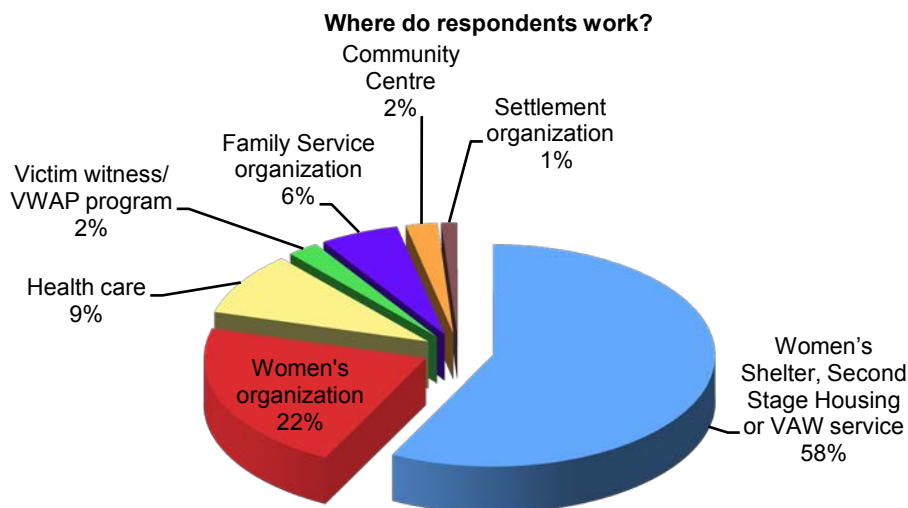
- mandatory charging
- dual charging
- changes to the immigration and refugee processes (Bill C-11)
- restraining orders
- custody and access and “best interests of the child”
- intersection between Child Welfare, Family Court and VAW
- changes to Legal Aid Ontario
- changes in the Family Court process
- intersection of Family Court and Criminal Court

For each area, an examination of the current state of the issue is taken from two documents:

- *Justice Done: Crafting Opportunity from Adversity for Women Who Have Experienced Violence*, Barbra Schlifer Commemorative Clinic forum (2011)
- *With the Disruptive Force of a Hand Grenade: Women’s post-violence experiences of recent legal and process reforms in Ontario*, which was the background paper for the Schlifer Clinic

The report then relies on the service delivery responses from the survey. In some cases, they have identified best or promising practices, models of service delivery, and training protocols for service providers. In most areas, VAW service providers identified issues that need further monitoring to fully understand the impact of family law and other changes to laws and policies in their effectiveness in responding to the needs of women who have experienced violence.

The chart below provides a breakdown of survey respondents by sector.



B. The Context of Violence Against Women

As described in the report *Transforming our Communities* by the Domestic Violence Advisory Council, the family law system has been under scrutiny by the violence against women sector. There have been ongoing conversations about improving this system between the Ontario government and the VAW sector, and as a result of negotiations between the two, there have been a number of significant changes to the legal system intended to address systemic issues that have undermined women's confidence and safety in being part of that system.

Over the last 25 years there have been significant changes to how violence against women is addressed.

- increased awareness and more education programs about violence against women
- police training programs about domestic violence/family violence/women abuse
- police affirmative action hiring programs to increase the number of women officers
- mandatory charging policies
- an increase in the number of shelters and transition houses
- creation of domestic violence courts
- a growth in batterers' programs
- resources and services for children who have witnessed domestic violence
- an increase in coordinated, community-based approaches

(DeKeseredy and McLeod, 1997)

Most recently in Ontario there have been a number of reforms and new programs/services, including:

- reforms to Family Court process
- creation of the Family Court Support Worker Program
- creation of specialized training for Family Court Support Workers
- changes to restraining orders as part of amendments to the *Family Law Act*

Despite all of these changes, the issue of violence against women in their intimate relationships remains a significant social problem. The system put in place to respond to this issue is in continuous need of improvement. In the end, changes need to ensure that the family law system is a system that facilitates and increases the safety of women who use it. The consequences of not improving the system are sobering.

C. Key Themes from the Survey

General Themes

1. The VAW sector is often the first to identify the unintended consequences of a change in legislation, policy or process that is intended to support women.
2. The first response by the VAW sector to these impacts is to find ways to most appropriately deliver services to women and their families.
3. As an under-resourced sector, this is often only a short-term solution. Organizations then divert resources to establish relationships that ensure that the unintended impacts can be addressed (e.g. they meet with the police when they see an increase in dual charging or create a cross-organization committee that can support case management).
4. Social and economic determinants, race and poverty ALL play a role in how family violence is addressed: who gets arrested, how people are treated, what services are available and how responsive the justice system will be. This uneven experience of the justice system is of central concern to the VAW sector.
5. Immigration law and its impact on women as they go through the family law system are currently the least understood and addressed in the system.
6. The issue of access continues to be a key variable depending on the specific characteristics of the woman. There is a need to rethink services specifically from the perspective of women from some communities – women who do not speak English or French; who speak French in some parts of Ontario; who are not able to easily access or use the computer; who are in isolated communities; who are Aboriginal or who are immigrants or refugees – in order to ensure equitable services for them.

Best or Promising Practices

There were a number of practices that were highlighted as promising:

- 1. The establishment of working relationships between the VAW sector and parts of the justice system.** These collaborative relationships have facilitated meeting the needs of specific women and provide an ongoing forum to be able to identify and respond to trends and patterns that both the VAW and justice sectors are seeing.
- 2. The training of staff** that provides support to women as they go through the justice system has become a vital part of an effective response. The organizations having done training consistently identified a number of organizations that they relied on to deliver training with Luke's Place being the primary organization. The others were: VWAP, AOcVF, METRAC, FLEW, CLEO, Woman Abuse Council, Community Justice Program, BOOST, ARCH, Springtide, FLIC, provincial ministries and the Court Advisory Committee.

3. Increasing the information that is provided to women as they proceed through the justice system. In particular, the commitment by the VAW sector to make information accessible to the diversity of women in Ontario.

Models of Service Delivery

Models of service delivery that recognize the multiplicity and complexity of the issues that women face are often the most effective because they reduce the time that women have to repeatedly explain their story to different service providers and allow the service providers to see the intersection of their different services. This is often the place where unintended consequences emerge because we often develop improvement to services looking only at the service that we provide and not the impact of the improvements on other service systems.

1. Coordination models: The communities where the VAW sector works in coordinated committees and other forms that promote collaboration and joint problem-solving with the justice system and the child welfare system have seen effective outcomes.

2. Overlapping services so that women only have to go to one location and get both legal and VAW services. Many VAW services have established working relationships with legal services so that women have:

- access to a lawyer who has an understanding of VAW issues
- regular (e.g. weekly) access to an on-site lawyer
- VAW services at legal services, including counseling and information services.

Training Protocols for Service Providers

As stated above, the VAW organizations rely on a wide range of places for training. When looking at the range of workers who are providing information and advocacy related to the legal system, it is clear that there will be a continuous need for training, and the establishment of training protocols and approaches for service providers is necessary.

The continuous call for training throughout the system does not suggest that this area is, of yet, a best practice.

Monitoring and Research

The monitoring of systems and the identification and impact of unintended consequences tends not to be formalized. The VAW sector, because it deals directly with women, often is the first to become aware of the impacts of other systems on women. Without a more formal system of monitoring, much of the information will be lost and women will continue to be exposed to negative and unintended consequences.

The Details

From the Survey

D. Mandatory Charging

In the 1980s, government at both the federal and provincial levels began to recognize that violence against women was a serious social problem requiring a legislative response. Over that decade, various "mandatory charging" policies came into effect across Canada. Under mandatory charging policies, police officers are directed to lay charges in domestic violence cases where the police officer believes there was evidence to support such a charge. This approach removes the responsibility for making this decision from the woman and places it with the responding police officer. . . .

The unintended negative consequences growing from mandatory charging practices have been identified by violence against women advocates and others...

One of the most important concerns about mandatory charging is that many women simply do not know that once they call the police (or, the police are called by a third party, such as a child or a neighbour) they will lose control over what happens. Many women call the police because they need assistance in the moment, but have no intention of having their partner charged with a criminal offence.

(Cross, 2011, p. 15)

Summary of the Survey Results

About half of the organizations surveyed answered questions about mandatory charging and many of these had noticed impacts from this practice. Over half said:

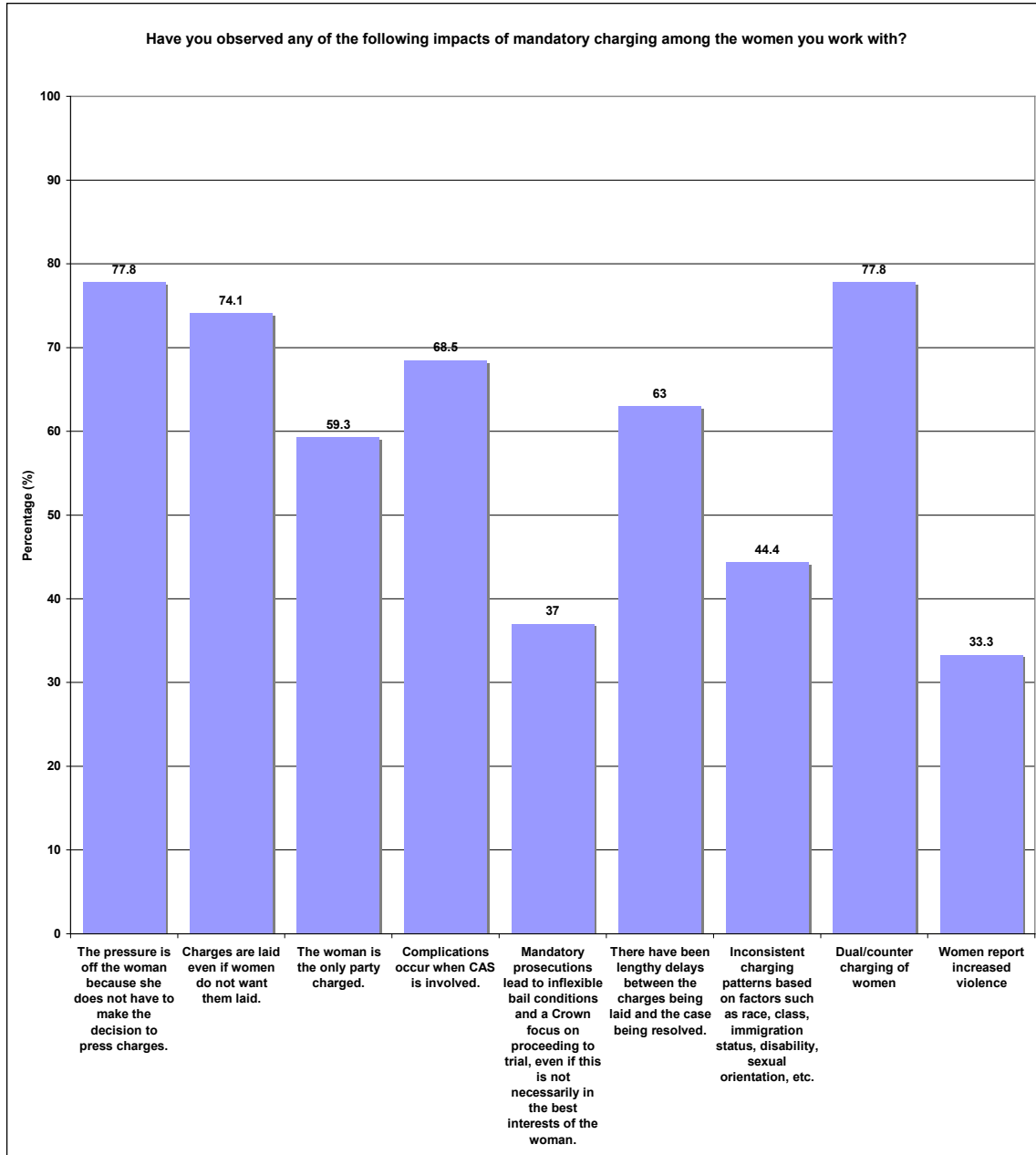
- the pressure is off the woman because she does not have to make the decision to press charges (77%)
- there is dual/counter charging of women (77%)
- charges are laid even if women do not want them laid (74%)
- complications occur when CAS is involved (68%)
- the woman is the only party charged (68%)

Women who are charged or countercharged are greatly disadvantaged, and re-victimized. They often "plead out" in order to be able to return to their children or avoid CAS involvement. CAS involvement becomes a negative consequence of involving the police. (Barbra Schliker Clinic Pre-Forum Survey results p.3)

- there have been lengthy delays between the charges being laid and the case being resolved (63%)

The comments from the service providers indicate that women are also less likely to call for help in the future, and women may rescind their testimony. The survey responses are supported by data from other sources. In *With the Disruptive Force of a Hand Grenade*, several concerns are raised about mandatory charging, including:

- the phenomenon of "dual" or "counter" charging. In these situations, overzealous or inadequately trained police officers charge the woman because of comments made by her partner who is, in fact, the primary or dominant aggressor. In the survey, there is an overlap between dual charging and mandatory charging comments by service providers, as dual charging is the key unintended impact of mandatory charging
- differential, and sometimes inappropriate, police response to same-sex partner abuse
- inconsistent charging patterns based on social location factors of the victim and/or the abuser such as race, class, immigration status, disability, etc.
- mandatory prosecutions lead to inflexible bail conditions and a focus by the Crown on proceeding to trial, even if this is not necessarily in the best interests of the woman
- lengthy delays between the charge(s) being laid and the case being resolved can put women in increased danger, particularly in the North where the two parties often must continue to co-exist in small, isolated communities



What Service Providers are Currently Doing

Most respondents (about two-thirds) have not made changes to their practices to respond specifically to mandatory charging. Those who have made changes reported a range of activities they have added or adjusted. The most common were:

- increased education and advocacy with partners in the justice system, particularly on individual cases
- education of women about the implications of calling the police, including warning women that they may be charged

Charges are being laid in cases where women explicitly do not want them laid for any of a number of reasons – potential immigration problems for themselves or their partner, involvement of child protection authorities, a fear that the abuser’s violence will increase because of the criminal charges, past negative experience with the criminal court, concern about a loss of family income if the abuser goes to jail, etc.

(Modified from Cross, 2011, p. 16)

Mandatory charging takes the control out of women’s hands, with both positive and negative consequences. Still, it is an important change to how the law addresses domestic violence.

(Barbra Schlifer Clinic Pre-Forum Survey Results, 2011, p.3)

Once a woman does call and is part of the justice system, VAW services provide:

- court support (accompaniment, access to lawyer, etc.)
- information on the court process
- case management on an individual basis that often involves working with multiple institutions
- monitoring of police involvement by documenting the different points and experiences of contact
- education to CAS and other institutions that are also involved with the woman at this time

The comments of many of the service providers assumed that dual charging and mandatory charging were automatically linked and thus the changes in practice they reported often dealt with both situations:

- shifting the working relationship with the police to directly address high or rising dual charge rates
- establishing closer working relationships with key parts of the justice system: Domestic Violence Unit, Victim Witness, legal advocates and Probation

“We have a Chief’s Advisory Committee that meets quarterly to discuss problems and we have a close relationship with the Family Violence Resource Unit, Probation and Child Welfare.” (survey respondent)

There were comments that mandatory charging has had positive benefits and that it is important to not to revert to the previous system while addressing the unintended consequences.

There have been some calls for a review of mandatory charging policies including the report of the Domestic Violence Advisory Council which has such a recommendation.

(Modified from Cross, 2011, p. 16)

Suggestions for Moving Forward

A. The most common suggestion for addressing mandatory charging was to strengthen education and training for the police, and specifically to assist the police to better identify the primary aggressor; understand the history of violence in the family; do a proper risk assessment; and understand concurrent orders that women may experience and how this could influence the situation.

Gender analysis is badly needed, as the court system does not distinguish between the different contexts and impacts for men and women facing similar charges.

(Pre-survey for Schlifer Clinic consultation, 2011)

B. There needs to be a recognition that abusive men are extremely skilled at using whatever strategies serve them; including using the system to their own advantage, and so constant improvements will be needed. In addition to training for service providers working with men, there needs to be a critical examination of processes and practice to ensure that they don't inadvertently bias the process towards the man who can abuse the system.

C. Increasingly, the situation that women face is complex as they simultaneously deal with multiple institutions (in some cases as being both the victim and being charged with domestic violence, dealing with CAS, dealing with Ontario Works and Ontario Housing, etc.) while having to deal with the impact of the abuse. There is an urgent need for case management approaches and coordinated regulations and policies among agencies.

D. An emerging issue is the inappropriate arrests of older women. Police and other service providers need to look at other options to address the complexity of elder violence.

"We have seen an increase in charges to seniors who, because of physical and health issues, may become so frustrated they push away or strike their partner who is trying to assist them. When charges are laid, the elderly couple is devastated, completely embarrassed and are reluctant to accept or reach out for support. They become afraid to call the ambulance for other issues." (survey respondent)

E. The complexities and contradictions of intimate relationships, with or without violence, are not always well understood by the legal system which seeks to have a logical process occur. This issue arises in many stages of the legal process, including when women do not call in breaches of restraining orders or if their actions interfere with the abuser's ability to follow his bail conditions. Women can be charged or can be made to feel that they are being impediments to the systems. Victims who maintain contact with their partners may be seeking to maintain emotional, economic, cultural and familial ties and are balancing those needs with their safety needs.

F. Areas that need monitoring include (the first two were mentioned much more frequently):

- outcomes for women (e.g. pre and post mandatory charging violence)
- frequency of dual charging and women being charged, and their sentencing
- bail, restraining orders, conditions of release, and breaches

- involvement of CAS
- impact on women with mental health issues and racialized women
- training and education of police officers on this issue
- police investigation processes

Each of these areas requires more thoughtful investigation in order to assess whether the legal system is unintentionally discriminating against women or putting them at increased risk.

E. Dual Charging

Dual or "counter" charging occurs when, in a case of domestic violence, police officers charge both the man and the woman or only the woman because of comments and accusations made by her partner. It is a direct consequence of mandatory charging. In some cases the police have been shifting their practice to differentiate the response.

The police response to concerns about dual/counter charging has been to introduce what is called the dominant aggressor model of investigation. This model is contained in an investigative aid used by a number of Ontario police forces and sets out a definition of dominant aggressor as well as the factors the police must consider and a protocol for oversight of police decisions. By way of example, Waterloo Region Police Services defines it as follows:

The dominant aggressor is the person in a Domestic Violence incident who through physical or sexual force, actual or threatened, including emotional and/or psychological abuse or harassing behavior (historical and/or incident related) is the overbearing or forceful person. It does not necessarily refer to the individual who initiated the violence but the individual who is the principal abuser.

As useful as this tool may be when used well and consistently, it is only one piece of the solution. Related issues such as rigid prosecution and judicial understanding (or lack thereof) also need to be addressed. This requires a review of the Crown Policy Manual, which contains protocols for the prosecution of domestic violence cases.

(Cross, 2011, p. 17)

Summary of Results

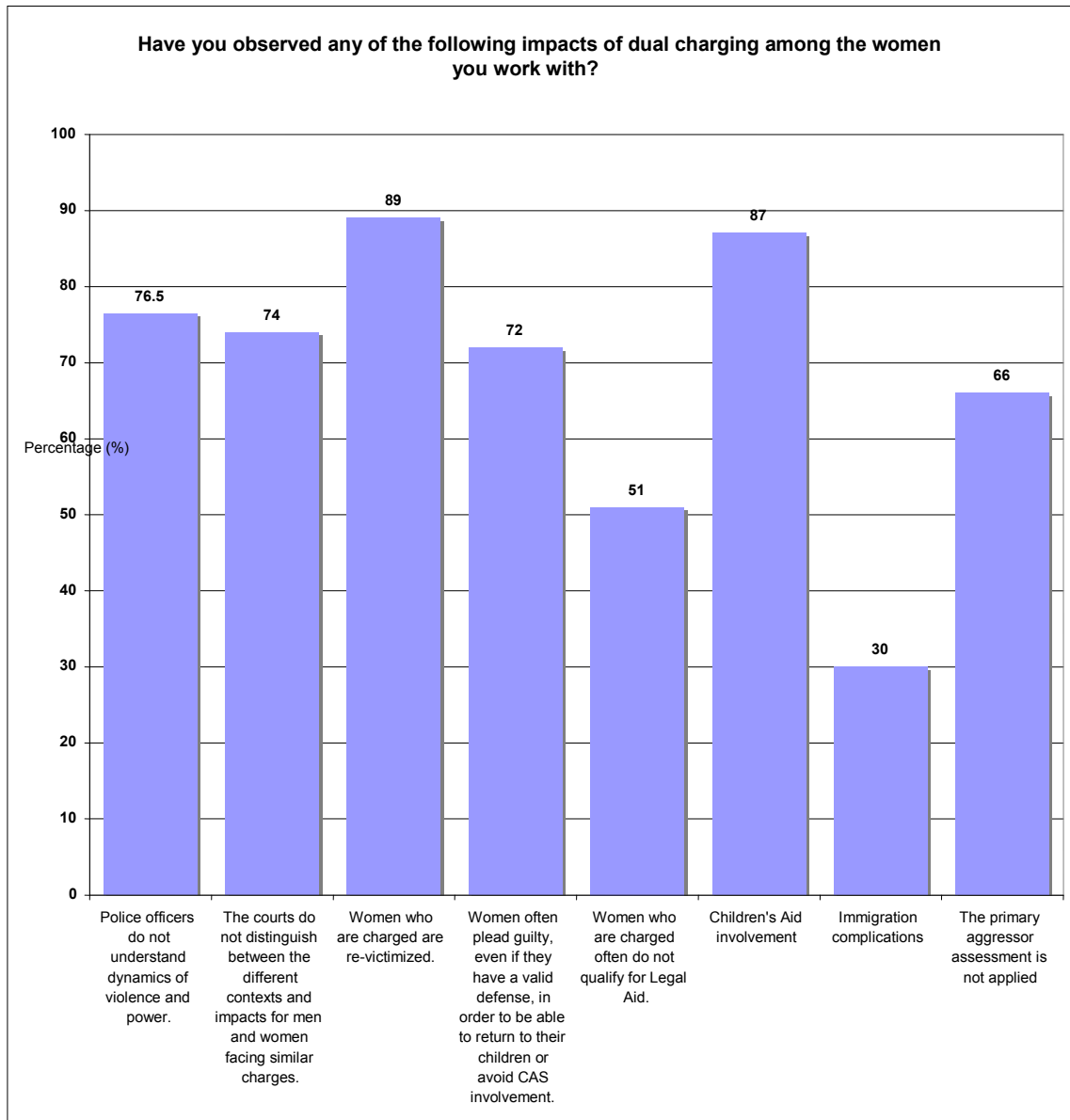
Half the respondents replied to questions in this area. More than half the respondents have noticed all of the impacts listed, with the exception of immigration complications:

- women who are charged are re-victimized (89%)
- Children's Aid involvement (87%)
- lack of police understanding of dynamics of violence and power (76%)
- failure by courts to distinguish between the different contexts and impacts for men and women facing similar charges (74%)
- women pleading guilty, even if they have a valid defense, in order to be able to return to their children or avoid CAS involvement (72%)
- non-use of primary aggressor assessment (66%)

- lack of legal aid for women who are charged (51%)
- immigration complications (30%)

There appear to be a number of other significant impacts on women when dual charging occurs, including: women do not understand the implications of being charged, charging undermines the healing work of the woman, and women who are charged lose access to specific services.

“Women no longer are eligible for VQRP financial support; specifically lock changes or accommodations or transportation.” (survey respondent)



What Service Providers are Currently Doing

A third of the respondents who noticed impacts of dual charging have made adjustments in their services to respond to these impacts. The changes made include:

- educating women on the implications if they are charged
- providing ongoing support to women through the court process
- working with police and Crowns to educate them and to obtain improvements, e.g. “In the past she would come up at a different time as his charge so we worked with the Crown’s office to ensure that they come up relatively at the same time so that he will not get the benefit of using her plea as a way to get off his charge”
- working more closely with CAS (this sometimes involved “pushing” their way into CAS)
- adjusting counselling services to work with men and women
- increasing the level of service to respond to the growing need

Two respondents commented that sole charging of women has been on the increase, and is more of an issue than dual charging. Another challenge for some VAW organizations is that their mandate does not include women who have facing criminal charges.

“If there is a dual charge we can no longer support the victim as there isn't one by our mandate.” (survey respondent)

Suggestions for Moving Forward

A. Provide greater education and training for the police and Justices of the Peace, and assist them to better identify the primary aggressor, apply a proper risk assessment and do a more thorough investigation.

B. Permit women to be eligible for Victim Quick Response Program (VQRP) financial assistance and VWAP assistance even if they have been charged.

C. Ensure police have time to review domestic violence cases and are not overloaded with other responsibilities.

D. When a woman has received a dual charge, legal aid needs to be more open to making an exception and approving a certificate for her.

E. Areas to be monitored include:

- the frequency of dual charging, number of cases withdrawn, conviction rates
- the race, class, orientation, etc. of women being charged
- the impact on the woman and on the family, including involvement of CAS
- the number of repeat offenders
- the frequency of police training on primary aggressor and the impact of that training
- is dual charging being used as a way to continue the abuse?
- are women pleading guilty and for what reasons?
- is the primary aggressor being identified in all situations of dual charging?

F. Changes to Immigration and Refugee Processes (Bill C-11)

Bill C-49, still in the legislative process, and Bill C-11, enacted in June 2010, both have an impact on the rights of refugees and migrants and carry particular implications for women who have experienced violence, whether at the hands of their partner or by the state of their country of origin.

As described in *Justice Done: Crafting Opportunity from Adversity*, Bill C-49 is intended to target human smugglers and will, if enacted, punish those who flee persecution. It grants broad discretion to the Minister to designate certain migrants as “irregular,” based solely on the circumstances of their arrival in Canada. The rights of those migrants are then severely curtailed by other changes proposed by the Bill.

Bill C-11, already enacted, introduces changes that will mean a much faster refugee process. The information will now be gathered in an interview to take place within 15 days of a claim being referred to the Immigration and Refugee Board (IRB), whereas in the past information was gathered in 28 days through the Personal Information Form (PIF) completed by the claimant. This new process requires a claimant to be ready to immediately tell her story to an official, which is unrealistic for women fleeing violence.

In addition, changes to sponsorship of immigrants may adversely affect women.

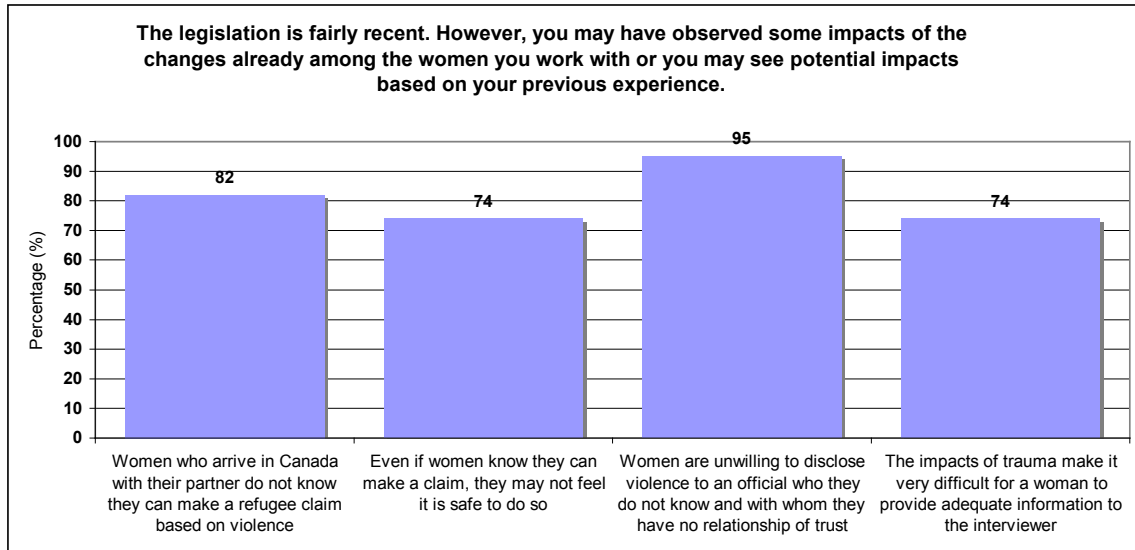
Most recently, the proposed introduction of a conditional residence period of two years or more for some sponsored spouses has the potential to increase the vulnerability of women and place them at risk of ongoing abuse.

(Cross, 2011, p. 19-20)

Summary of Survey Results

Fewer respondents answered questions in this area (just under 40%), compared to the other areas in the survey. Of these, a large majority noticed all four of the possible impacts listed in the survey.

- women are unwilling to disclose violence to an official they do not know and with whom they have no relationship of trust (95%)
- women who arrive in Canada with their partner do not know they can make a refugee claim based on violence (82%)
- even if women know they can make a claim, they may not feel it is safe to do so (74%)
- the impacts of trauma make it very difficult for a woman to provide adequate information to the interviewer (74%)



Comments from service providers included:

- women do not see officials (police officers, courts) as potentially helping them or understanding their situation, because that is not their experience in their country of origin

Police do not have good reputations in their homeland and it makes it difficult for the women to open up to someone in "power." (survey respondent)

- women fear they will be deported
women are reluctant to speak out for fear of being alone in a strange country without a means of support
- language barriers are an issue
- cultural differences make it difficult for women to understand the process and their options in it

The Connection Between Violence Against Women, Family Law and Immigration

About 10% of all respondents indicated they had observed cross-impacts when working with immigrant women. Concerns raised include:

- difficulty finding family court lawyers knowledgeable about immigration issues
- difficulty getting access to an immigration lawyer at no cost
- men convicted of abuse use family court process to delay their deportation
- lack of translation leads to a complete misunderstanding of the woman's testimony
- women are fearful to advocate on either immigration or family court issues because it may impact their case in the other court. Even if they are not in an immigration process, they are afraid taking action on abuse may jeopardize their immigration status
- women with no status have limited options

- no coordination or communication between the family and immigration legal processes
- women are unable to withdraw their sponsorship of abuser

The Schlifer Clinic report also identified that negative outcomes are already being seen as a result of Bill C-31.

According to one survey respondent, there has been an increase in the number of women who become stranded in the shelter system because they are unable to access proper channels to obtain status.

Other survey respondents identified the lack of understanding of immigration law by family court judges as problematic to just outcomes in cases where abuse is present; in particular in custody and access decisions that do not recognize the unique challenges in families where the abuser has the ability to remove the children easily from Canada.

Forum participants pointed out that refugee women will experience unique disadvantages when the new amendments are fully implemented in December 2011. It is anticipated that the expedited procedures of the new system will result in significant numbers of women being held in detention and then deported without benefit of legal representation.

(Barbra Schlifer Commemorative Clinic, 2011, p. 21)

What Service Providers Are Currently Doing

Just under 30% of respondents reported they had made changes in their services to address these issues. The following changes to support immigrant and refugee women to maneuver the system included:

- providing interpreters or volunteers who speak the woman's language
- connecting the woman with an immigration lawyer and providing accompaniment to the meetings with the lawyer
- hiring counsellors or support workers who specialize in working with the immigrant and refugee community
- educating other service providers
- informing immigrant and refugee women
- providing workshops on domestic violence to newcomers highlighting their rights
- collaborating with settlement service

"We try to get a woman an immigration lawyer ASAP to provide her with the right information and also work with our settlement services to help create a support system around her."

A number of immigrant and refugee-serving organizations are working actively to advocate on the anticipated consequences of the proposed legislation.

Suggestions for Moving Forward

A. Greater outreach and education to women in immigrant communities, to inform them about the legal process and their rights under Canadian law.

- create pamphlets and material in various languages and place them where women go (doctors, settlement services, etc)
- up-front, user-friendly material

B. Continued advocacy to ensure there are changes to the laws in existence and being proposed. For example, women who are sponsored have to be married for two years before they can claim for status which leaves them in a vulnerable situation. This advocacy was seen as something that should involve all VAW agencies.

C. Greater education of service providers is needed on how to work effectively with immigrant and refugee women and settlement services. In addition, service providers need to have a better understanding of the emerging issues related to human trafficking.

D. Changes to police processes so that there are investigators who can speak the woman's language or are trained to work with interpreters. Before women "tell their story" they need to have their rights and Canadian law explained to them.

E. Areas to monitor going forward were identified by respondents as:

- number of immigrant women involved in court processes
- number of immigrant women who obtain a legal aid certificate
- outcomes for the women: number deported, number where the abuse continues

G. Restraining Orders

The VAW sector was actively involved in the process to reform restraining order legislation.

The sections of Ontario's Family Law Act dealing with restraining orders have recently undergone significant change. Perhaps the most important aspect of the reform relates to enforcement of a restraining order. Prior to the revisions, the breach of a restraining order was prosecuted under the Provincial Offences Act. This made enforcement difficult – police were less inclined to lay charges and, even if they did, penalties were minimal...

A significant change is that a breach of a restraining order is now a criminal offence (Criminal Code, section 127). Someone who breaches a restraining order can be arrested by the police, charged with a criminal offence and held for a bail hearing in criminal court. The case proceeds in criminal court and, if he is convicted, the abuser faces up to 2 years in prison.

Other important elements of Bill 133 related to restraining orders include:

- anyone who is married or who has cohabited for any period of time may apply for a restraining order. In the past, people had to have cohabited for at least 3 years to apply*
- a standard form order has been developed for restraining orders*
- the order is automatically entered into CPIC by court staff*
- court staff will prepare the order if a woman is unrepresented*

(Cross, 2011, p. 31)

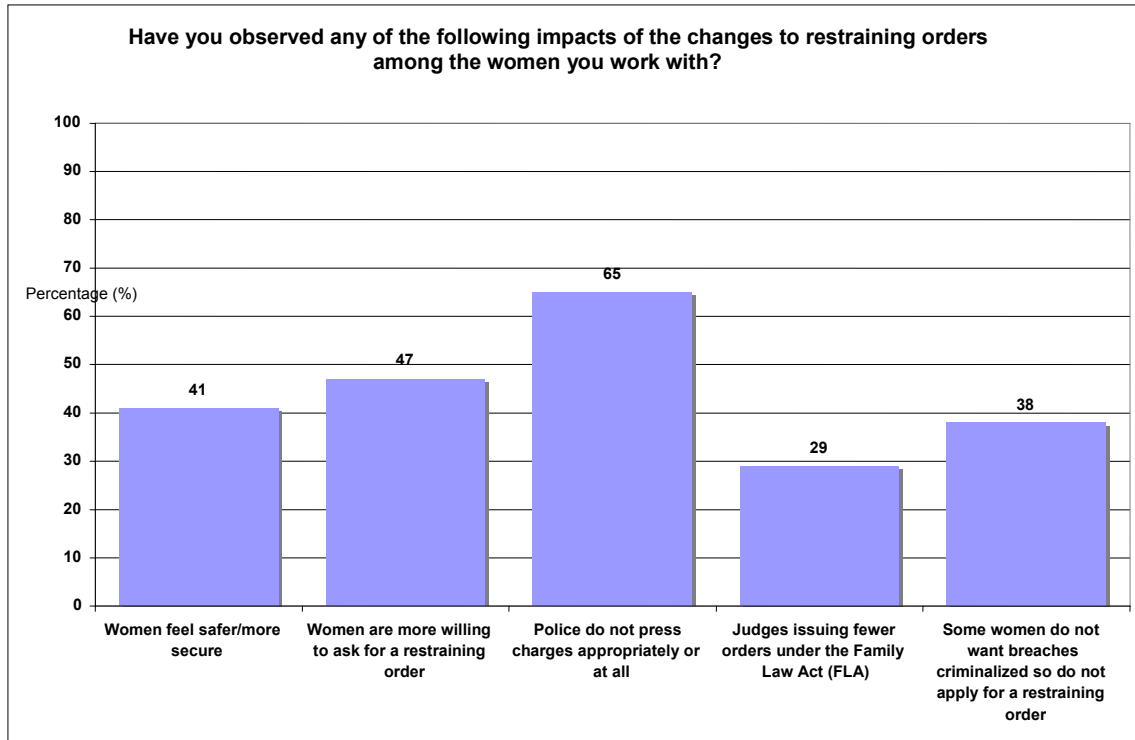
Summary of Results

A third of respondents replied to questions about restraining orders. Of the five possible impacts listed in the survey, only one was selected by more than half of respondents: Police do not press charges appropriately, or at all. The chart below summarizes the responses.

The comments highlighted that it is difficult for women to obtain restraining orders and the amount of evidence required is daunting.

Implementation is uneven – sometimes it is very simple to get an order and other times not at all. Physical abuse is easier but verbal abuse or stalking is not as easily viewed as a legitimate reason to get a restraining order. Lawyers are not always well-educated about changes and the process of obtaining an order is not as difficult as they are telling their clients.

*“Some women are asked to collect a lot of evidence and on the other hand some women get a great, respectful response and no-contact order is easy to get and helpful.”
(survey respondent)*



The uneven implementation of the new legislation on restraining orders manifests itself in different ways.

- numerous breaches do not result in charges or the abuser is brought in and then released again to harass the woman
- women do not appear to be believed
- the woman or the police do not understand what constitutes a breach and so no action is taken

A number of people indicated that they had seen no changes since amendments to the law were made.

There is also a concern is that women are agreeing to mutual restraining orders on instruction from judges or lawyers.

What Service Providers Are Currently Doing

One-quarter of respondents answering questions in this area indicated that they have made changes in their services.

- the most common change reported was that organizations are providing more education and tools for women, including the creation of specific workshops for women explaining criteria for granting restraining orders, pros and cons of restraining orders, how to apply for one, self-assessment tool for pros and cons, template for tracking breaches, difference between restraining orders and peace bonds, etc.

- there has been increased advocacy with police on behalf of women who report breaches. There has also been an increase in advocacy with lawyers to get them to apply for restraining orders on behalf of their clients
- agencies are working more closely with clients who want to pursue a restraining order because of the potential for resistance by the system and increased need for a safety plan in anticipation of how the abuser might respond to the order
- there is increased training and partnerships to educate staff on this issue

A practice was reported by one community as working quite effectively to support the shift that needs to happen throughout the justice system. One survey respondent said, “The Crown is reviewing all the domestic violence applications for restraining orders in order to understand when they were given and when they were not. It will help educate the system to expose their decision-making rationale and address any training needs.”

Suggestions for Moving Forward

A. Greater education of police, judges and lawyers so that restraining orders are applied for, issued and reinforced. There needs to be consistency in implementation including:

- at what point does a breach constitute charges? (the severity of a breach, number of breaches)
- is there a graduated response to breaches?

B. Change some of the provisions related to restraining orders:

- the time it takes to issue an order
- women not having to face her partner in court
- proving a breach

C. Establish Domestic Violence Teams within each police service so that the police women are dealing with have specialized knowledge.

D. Conduct research on whether restraining orders are a real deterrent to violence. If they are not, identify what else needs to be put into place.

E. Areas to monitor in the future include:

- the number of restraining orders being issued
- the number of breaches and the police response to the breaches
- penalties issued to abusers who breach

H. Custody and Access and the “Best Interests of the Child”

Where children end up living and what shared arrangement, if any, can be established while still maintaining safety is pivotal for women who have left abusive relationships.

The issue of what role violence against women should play in custody and access determinations has been battled out for more than a decade at both the federal and provincial levels, with the terms of the battle largely being set by the fathers’ rights movement, which has attempted, with some success, to insist on a legal

presumption in favour of arrangements that allow each parent to spend equal amounts of time with the children.

(Barbra Schlifer Commemorative Clinic, 2011, p. 18-19)

Legal decisions about custody of and access to children are made using the best interests of the child test. This principle is set out in both the Divorce Act and Ontario's Children's Law Reform Act, although only the CLRA provides criteria to guide its application. Ontario has introduced revisions to require judges to consider violence within the family as part of the "best interests of the child" test.

(Cross, 2011, p. 25)

Recent efforts to claim that violence within families is gender-neutral, bi-directional, mutual, or occurring at similar levels for women and men is misleading and does not reflect the substantive research.

Unfortunately, many judges, lawyers and other professionals continue to underestimate the impact of woman abuse on children. For women who are leaving abusive relationships, the extensive contact which collaborative shared parenting requires can be dangerous and life threatening. Many abusive men commence custody/access applications and/or manipulate their children as a strategy to get back at their ex-partners for having left the relationship.

Shared parenting gives men more power and control over their children and their children's mother without requiring them to participate in a meaningful way to their children's upbringing.

Parenting affidavits, a new component of family law applications for anyone involved in a custody and access case in Ontario, requires a woman to swear to the existence of any violence against herself, children or others within the family. This imposes a clear obligation on women to disclose violence as a factor that judges must consider. Many women welcome this, as it takes the responsibility for deciding whether or not to raise the issue of violence out of their hands. However, it creates a problem for women who wish to pursue their custody claim without raising the issue of violence. Women understand that public disclosure of violence often inflames a case that might be amenable to resolution otherwise.

(Barbra Schlifer Commemorative Clinic, 2011, p. 19)

An ongoing observation of the survey respondents is that some lawyers and judges are leaning more towards joint custody and downplaying abuse and emphasizing the need for children to have access to both parents. This shows a serious lack of understanding of the impact of violence on women.

*"My impression is that the courts are aware of family violence but that there is a bias in favour of men maintaining contact with their children, even when they have been violent toward a partner."
(survey respondent)*

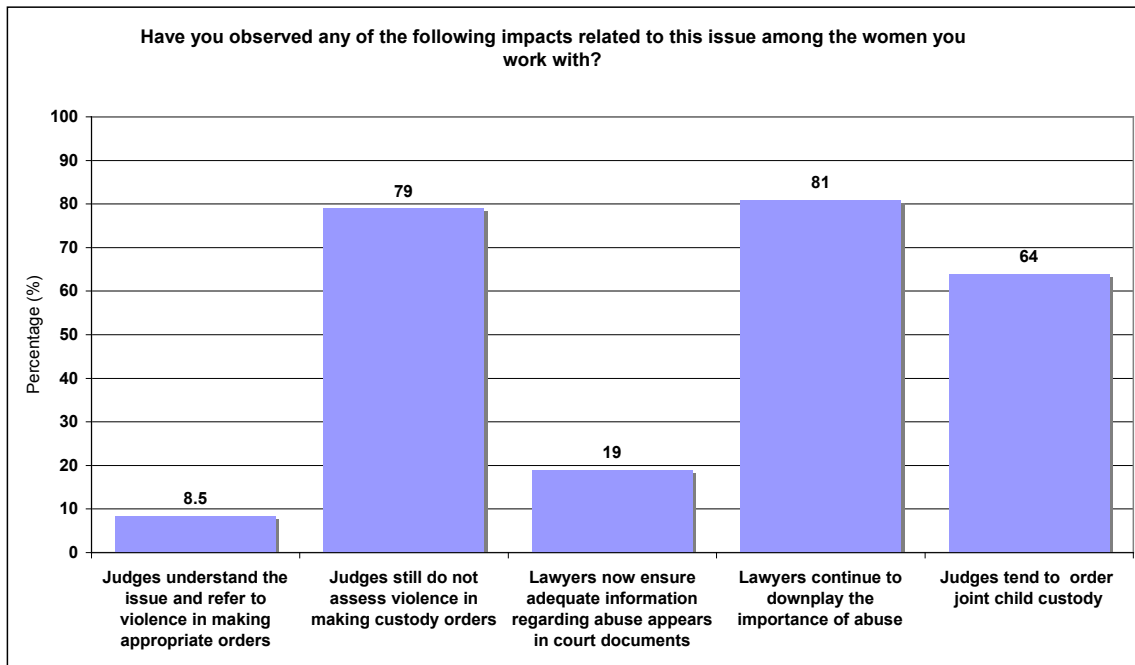
The Impacts on Women Observed by Service Providers

In their comments, respondents highlighted that although some judges and lawyers are better informed about the impact of abuse in family court decisions, many are not and much more needs to be done. On a related note, there seems to be a lack of communication between criminal court and family court, and family court orders are often contrary to bail or probation conditions. Survey respondents identified a number of impacts.

1. Violence continues not to be consistently considered in decision-making as part of child custody and access.
 - lawyers continue to downplay the importance of abuse (81%)
 - Judges still do not assess violence in making custody orders (79%)
2. The system is biased toward joint custody.
 - judges tend to order joint child custody (64%)
 - the system acts as if there is no option other than joint custody
 - pressure on women to settle for joint custody “on consent” (75%)
 - inappropriate use of joint custody orders (69%)
3. There is a gender and class bias in the system.
 - women protecting children are accused of parental alienation (75%)
 - women must sometimes forego support in order to get full custody
 - the fact that the men can often afford better lawyers also plays into the dynamic, so that even when the courts are aware of the violence, its importance is downplayed

“There is no balance: men can breach restraining orders or custody orders and there are no consequences, while women must constantly accommodate their abusive partner and protect their children, and yet are accused of parental alienation.” (survey respondent)

4. Abuse and the risk of abuse for the woman and children remains part of the process
 - abuse occurs during access exchanges (71%)
 - exchange of children is being ordered at unsupervised locations (e.g. Tim Horton’s)
 - joint custody arrangements are not properly enforced
 - joint custody is used by abusive parent to block a child’s access to therapeutic assistance
 - joint custody forces women to have more communication with the abuser and can continue the cycle of violence
5. Other impacts
 - there is too much focus on what the parents want rather than what is in the best interests of the child, given the history of abuse
 - grandparents who want access are not always given needed information



What Service Providers Are Currently Doing

Approximately 22% of the respondents have made changes to their services in light of these challenges, including:

a) further supports with women

- doing education with women (resource materials, workshop) to help them document the violence, encouraging them to request involvement of Office of the Children’s Lawyer and ensuring family court is aware of actions ongoing in criminal court
- helping them prepare beforehand what they would like to see in their custody agreement
- helping women find an appropriate lawyer with VAW experience
- providing court support

b) increased relationship building, advocacy and education

- doing advocacy and education with mediation centres and lawyers on parental alienation
- strengthening and establishing more positive relationship with CAS

c) changing organizational policies and protocols

- allowing children to participate in a children’s group with permission of one parent. The parent signs a form that they agree to inform the other parent, but they can note if they feel unable to do so because of safety needs

d) new areas of work

- research

Suggestions for Moving Forward

The suggestions for service impact every level of service delivery.

A. When the VAW sector is working with women

- encourage women to document the violence

B. Improve court and justice processes:

- education for judges and lawyers was suggested most frequently
- change provisions so that parental alienation is not allowed in cases where violence is present, the abuser is required to change before being granted access, exchange is ordered at supervised locations when there is a history of violence, etc.
- more thorough evaluation of the case by the judge, including interviewing the children away from either parent
- templates or briefs for the court
- make it mandatory for both parties to complete the process of the Office of the Children's Lawyer
- increased collaboration between criminal and family courts

C. Better support for children:

- CAS needs to be more engaged in addressing these concerns

D. Monitoring and research:

- periodically review custody arrangements
- create a compendium of up-to-date research and case law on the effects of witnessing/experiencing violence
- frequency of joint custody orders and number of times this happens in cases where the woman is abused
- outcomes for women and children including the impacts of joint custody (e.g. number of children injured or killed because family violence was ignored in the court decision)
- frequency of parental alienation allegations, and outcomes
- number of situations where women do not qualify for legal aid, and the outcomes
- number of cases where there are breaches of custody and access orders
- changes in how the court views history of violence in custody cases
- Improvements in communication between criminal and family court systems
- changes in attitudes and knowledge of lawyers and judges about abuse issues in custody decisions
- number of instances where the Office of the Children's Lawyer does not become involved because a parent has not completed the forms

I. The intersection of VAW, Family Law and the Child Welfare System

Almost half of respondents answered this question, and 63% of them said there were cross-impacts. The major cross-impact listed was that CAS does not support the woman in family court. If the abuse was central to the child welfare concerns, CAS needs to back up the woman in family court, through a letter of support or other means, but this seems to happen rarely. For example, if CAS closes the file, the man then uses this to argue that the violence has stopped.

Another frequent comment was that the onus seems disproportionately placed on the woman to protect the children, rather than holding the abuser accountable. (For example, “Why didn’t you leave sooner?”) Also, the file is opened in the name of the woman, even if it is the man who is the abuser.

Other concerns included:

- women are afraid they will lose their children if they report the abuse
- CAS sometimes gives incorrect legal information
- CAS forces a woman to leave a situation before she is ready, to take the children and go to a shelter rather than removing the abuser
- although one respondent indicated her agency generally has a positive relationship with CAS, there are still instances where the worker is manipulated by the abuser
- inadequate service in French disadvantages francophone women in this situation.

J. Changes in Family Court process

In 2008, the Attorney General of Ontario announced his intention to overhaul family court process. The rollout and implementation of recent family court process reforms are in their early days, however some elements have been or are being implemented:

1. *Mandatory Information Programs (MIPs)*: These programs are being expanded to all family court sites in the province over the Summer of 2011. As well, Legal Aid Ontario has launched an online information program that covers the same topics as the in-person MIP. It is offered only in English and French.
2. *Dispute Resolution Officers (DROs)*: These officers are available in 5 court locations across Ontario to meet with parties who are involved with motions to change final orders. The role of the DRO is to help the parties identify, narrow or resolve disputes. If settlement is not possible, the DRO will ensure the parties’ paperwork is in order so their case can move to a “meaningful appearance before a judge.”
3. *Information and Referral Coordinators (IRCs)*: Initially, the family court process reforms promised a triage step that would allow cases involving violence to be identified and fast tracked to appearances in front of a judge. This appears to have been left behind and, instead, a system of IRCs is to be implemented in all family courts by Summer 2011. IRCs will serve as a point of contact for families entering the family court and will help connect them with services and supports in the community, including alternatives to litigation.
4. *Family Mediation Services*: Family law clients will be provided with “quick resolution” of issues such as custody and access, child and spousal support, possession of the matrimonial home and equalization of net family property through the use of mediation. This program will be implemented in all courts by Summer 2011.

(Cross, 2011, p. 11-12)

Summary of Results

Two major issues arose in the survey responses:

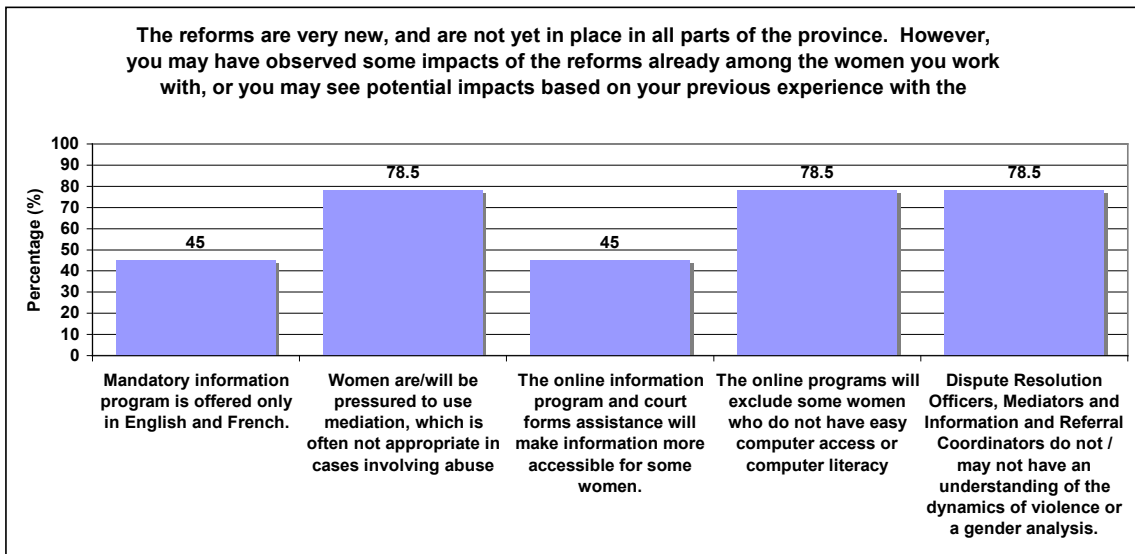
1. Issues related to mediation

- women are/will be pressured to use mediation, which is often not appropriate in cases involving abuse (78.5%)
- abusive partners refuse to follow the conditions established by the mediators
- the complexity of domestic violence is such that Dispute Resolution Officers and mediators may not have an adequate understanding of the dynamics

2. Access Issues

- the online programs will exclude some women who do not have easy computer access or computer literacy (78.5%)
- Dispute Resolution Officers, mediators and Information and Referral Coordinators do not / may not have an understanding of the dynamics of violence or a gender analysis (78.5%)
- the mandatory information program is offered only in English and French
- the whole program seems like more red-tape
- the French language service providers in at least one region were not aware of the changes to the Family Court process

*“It’s not everybody who has access to a computer and internet. And it is not everybody who knows how to use a computer and internet. Do we really expect people to learn how to use a computer while they are in a crisis situation?”
(survey respondent)*



What Service Providers Are Currently Doing

Only 10% of respondents reported changes they have made in light of these challenges, including:

a) information and resources

- updated our information and resources to better inform women of the changes and how to navigate the system, including warning of the hidden risks of mediation

b) increase access

- offer accompaniment to MIP
- advocate for translation, plain languages, child care, transportation, etc.

c) diverted staff resources

- applied for a Family Court Support Worker program
- will transfer staff time to other priorities and have clients access the resources with support of a volunteer

Suggestions for Moving Forward

A. When the VAW sector is working with women:

- educate women about the changes and potential dangers

B. Better supports by family law

- ensure information is available in both print and electronic format
- have computers available at the courts
- link family court services with other services for abused women

C. Monitoring – areas to monitor in the future are:

- the prevalence of mediation
- whether women identify as being forced into mediation
- women's experience with the online tools
- access for marginalized and isolated women, including Aboriginal women
- level of availability of materials and services in multiple languages
- does the process speed up or slow down the court process?

K. Legal Aid

Whether a woman can access legal aid and whether the legal aid service is appropriate continues to be an ongoing frustration.

Participants [at the Barbra Schlifer Clinic Forum] repeatedly expressed the frustration of providing support to women who did not have any or adequate legal representation in both criminal and family court. The lack of legal representation for women at the litigation stage of their family law case was identified as a serious problem because community-based services are not adequately resourced to assist women with this. . . ."

(Barbra Schlifer Commemorative Clinic, 2011, p. 10)

Violence against women organizations and agencies have developed a wide array of services to support women who have no or inadequate legal representation. Many of these programs and services focus on legal information and support, not

representation.

(Barbra Schlifer Commemorative Clinic, 2011, p. 10)

Legal Aid Ontario (LAO) has recently undergone a “transformation” of its service delivery model. Area offices have been closed, and services are now primarily delivered through a 1-800 number and the LAO website. Some court services have been expanded as part of this process.

(Cross, 2011, p.6)

Recent changes to Legal Aid Ontario (LAO) have resulted in considerable turmoil and uncertainty for women and service providers who can no longer turn to their area office or Area Director for assistance. While wait times for telephone service have significantly reduced, the fact that women must identify themselves as survivors of violence without being asked an invitational question about this means that many women continue to wait in the general queue rather than being fast tracked as they should be. We have also heard anecdotally that fewer certificates overall are being issued in family law.

(Barbra Schlifer Commemorative Clinic, 2011, p. 10)

Summary of Results

There are conflicting messages at this time about the results of the family law reforms. Some respondents indicated that they have seen some improvements, while others have seen none.

“The legal aid office in our region just disappeared. We and the women had no idea what had happened!” (survey respondent)

“Initially there were long waits, however some clients have had excellent interaction from the new service. “(survey respondent)

The concerns raised focused on four areas:

1. Access

- LAO’s new practice of returning calls is problematic for women who are using someone else’s phone or for whom receiving a call back is unsafe (94%)
- not enough lawyers accept legal aid certificates (94%)
- the financial eligibility criteria are too low (92%)
- long wait times are especially a problem for low income women who have pay as you go cell phones (85%)
- initial wait times to access services through the LAO telephone line were extremely long (71%)
- in smaller, more isolated communities, the lack of legal aid lawyers creates another fraction between the abuser and the woman

“The 1-800 line is not the best solution...the waiting period is awful...especially when one of my clients is doing the application over the phone... The reason some of my clients do the application over the phone in my office is because they need to be guided on what to say and they get nervous on the phone when they do not understand a question.”(survey respondent)

“If a woman comes in our centre and needs to access the legal aid lawyer and it is non-office hours, staff are trained to leave a message on the lawyers answering machine so that the woman is first to legal aid service before the abuser, as we only have one legal aid lawyer. If the abuser gets there first, she has to go out of the region to access a lawyer.” (survey respondent)

2. Lack of information

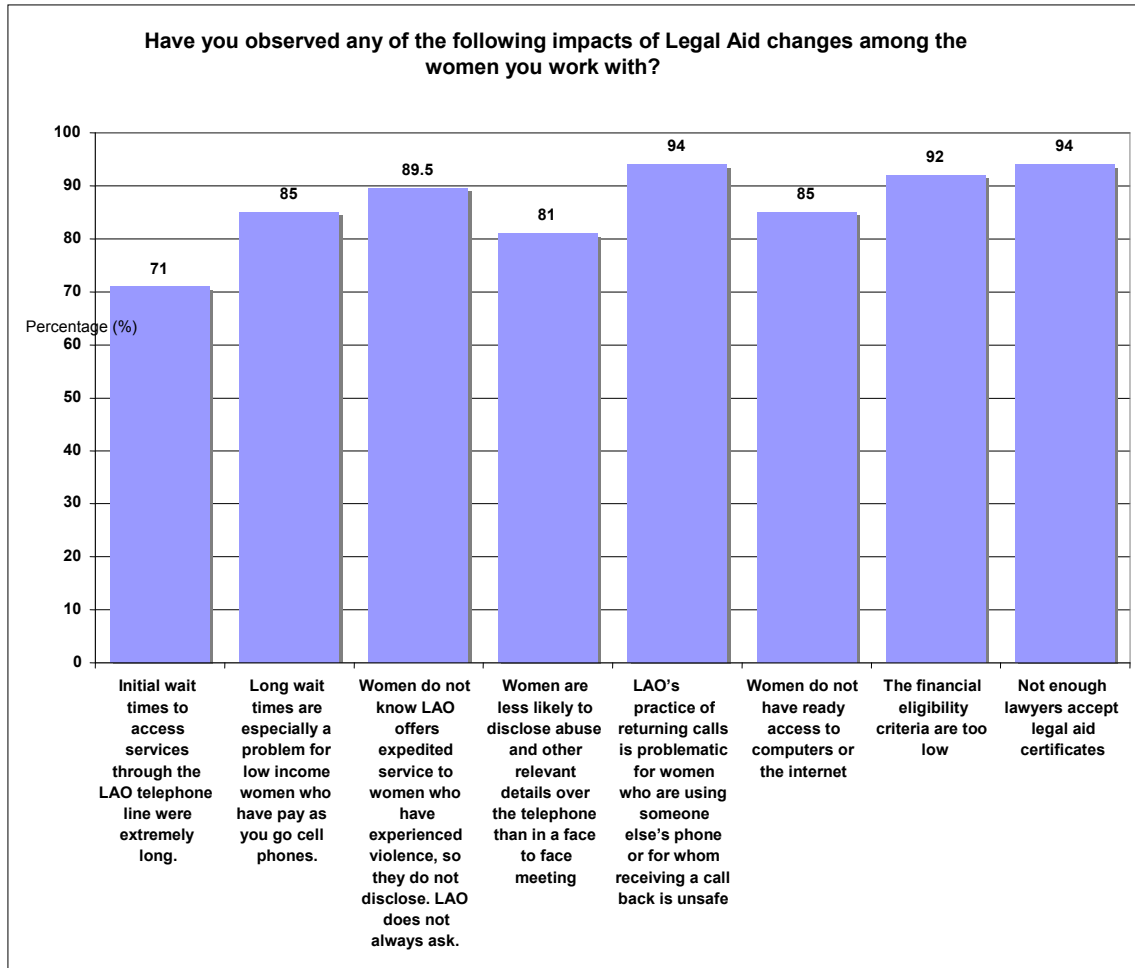
- women do not know LAO offers expedited service to women who have experienced violence, so they do not disclose. LAO does not always ask (89.5%)
- women who have joint assets but have no ability to access those assets and are denied legal aid are being discriminated against
- lack of services in French

3. Appropriate service approach

- women are less likely to disclose abuse and other relevant details over the telephone than in a face-to-face meeting (81%)
- we allow women to use our phone to make the call but cannot provide the privacy they often need to disclose abuse
- almost impossible for someone to get through the legal aid application process due to issues with phones and wait times

4. Capacity of the system

- it is difficult for women to find legal aid lawyers who know domestic violence issues well
- it is difficult for women to change their legal aid lawyer
- accountability of lawyers and LAO conflict rules are not clear



What Service Providers Are Currently Doing

a) educating Women

- the most common change was to inform and educate women about changes; how to access the system, how to fill out an application, etc.

b) increasing working relationships with Legal Aid

- advocating with them
- inviting the district director to dialogue with service providers
- establishing a relationship with LAO that allows women to make their application at a community organization
- have an LAO advice lawyer and worker on-site one day per week to process applications and provide summary advice

“Partner with LAO once per week. It offers safety and security for the woman. It also fosters understanding between the lawyer and the VAW sector. LAO staff lawyers supervise the duty counsel lawyers thereby relaying information from the VAW sector to the legal system.”(survey respondent)

c) increasing services

- recruited a former legal aid employee as a volunteer who assists clients

- provide access to phones for women, including allowing the women to use their office as a callback number, and sitting with women while they call to walk them through the process

Suggestions for moving forward

A. VAW sector

- partner with LAO to come on-site and work collaboratively
- accompany the women through the telephone call, as they are often nervous and need to be guided about what to say

B. Legal Aid changes

- provide a print resource in many languages explaining the process, what to expect, information that the woman will have to provide, etc.
- raise the income threshold for Legal Aid
- allocate more hours for cases

C. Monitoring – areas to monitor moving forward were identified as:

- is the new approach working?
- how many women are denied and why?
- are people giving up because the service is so inaccessible?
- number of certificates being issued
- number of lawyers who accept certificates
- number of hours lawyers work on legal aid cases and do not charge
- number of lawyers who take the certificate and do not work on the case because the time is used up on consultations

L. Intersection of Family and Criminal Courts

In instances of domestic violence, a woman may find herself in both criminal and family court, yet these two systems are not well coordinated.

Summary of Survey Results

Respondents highlighted that the courts do not communicate or take into account what is happening in the other court system, with sometime disastrous results, including:

- conflicting orders issued by the two courts, e.g. settlement conferences ordered by family court at the same time that there is a bail order prohibiting contact, conflicting access and bail/probation orders
- family lawyers discouraging the woman from referencing the abuse in family court
- lack of attention to the victim's safety
- delays in family court proceedings by abuser's lawyer until criminal case is concluded.
- claims by defense lawyers that the woman is lying about abuse to make her case look good in the other court
- use of the silos of the two court systems by abusers to escape accountability, e.g. "on the advice of counsel he cannot address [the abuse] while it is before a criminal court"

- reference in family court documents to “alleged abuse” even after the abuser has been convicted

M. The Unmet Needs of Women

The respondents of the survey were asked an open question about the unmet needs of women beyond the specific issues that were identified.

- financial Issues (93%)
- transportation issues (86%)
- income support (86%)
- housing (86%)
- legal representation (84.5%)
- advocacy in court (70%)
- information on how family court operates, what to expect, etc. (78%)
- access to language interpretation services (40%)
- support groups and other services to assist in dealing with the emotional stress
- Aboriginal specific processes and resources/services
- services in rural and Northern areas
- cultural competency among court and legal aid officials
- a group/service for women considering divorce to share information on the process, the cost, their rights, how to prepare the children, etc.
- a change to the law or the court system that could stop legal bullying

It is clear that the basic determinants of life remain an unmet need for many women and directly impact their ability to access and present in the legal system. A woman that cannot afford a bus ticket to attend a court appearance or the printing costs to produce necessary documents cannot be said to have fair access to the system as it is now established.

N. Moving Forward

In moving forward, there are three areas that were identified for improved investment:

1. Continued investment in training for:
 - the VAW sector
 - the justice system
2. Formal and informal monitoring of the changes, systems and processes and research on areas that require further investigation
3. Collaborative models to respond to unanticipated consequences and which does not leave the burden of response on the VAW sector.

Appendices

Appendix A: Methodology

Surveys were sent through Survey Monkey to **510** Ontario based organizations. The organizations were chosen if they met one of the two criteria: they provide services to women who experience violence against women and/or they do work as researchers and advocates in the field of violence against women. The surveys were offered in English and French.

The organizational breakdown of where surveys were sent is indicated below. Because there was an overlap between lists, particularly the shelter list, women’s organizations and the two organizational lists, the total number of organizations sent surveys was 510.

Organizational Type	Numbers	Comments
Shelters	170	Shelter list included violence against women shelters, second stage housing, transition housing and homeless women shelters.
Health Centres	135	Some of the community health centres overlapped with the Community Centre lists.
Women’s organizations in Ontario	36	Overlap between shelter list, Action ontarienne and Barbra Schlifer list.
Family services	44	
Student services in post-secondary Institutions	45	
Victim Services	37	
Community centres	63	Some of the community health centres overlapped with the Community Centre lists.
Action ontarienne list	52	Overlap between shelter list, Action ontarienne and women’s organizations list.
Barbra Schlifer Clinic invitation list to the May consultation	53	Overlap between shelter list, Action ontarienne and women’s organizations list.
Totals	635	Consolidated into 510 organizations.

The survey was sent out on July 5th and closed on September 1st. One hundred and one (101) surveys were returned for a **20% return rate**. A reminder note was sent to all survey recipients in early August to encourage them to fill out the survey.

Organizational returns are broken down based on how they described their organizations. Again, the numbers do not add up because an organization may have identified under an organizational option provided in the survey and also described themselves under other so they would have been double counted

Organizational Type	Response Count (as the survey respondent identified)	Based on their descriptions, have added them into categories.	Organizations included.
Women's Shelter, Second Stage Housing or Violence Against Women service	50	53	Outreach Program for women who are or have been victims of family violence
Victim witness/VWAP program	2	14	Victim Services Police Services
Health care	8	10	Mental Health Services Mental Health Support Unit
Women's organization	19	20	Rape Crisis Centres
Family Service organization	5	6	
Community Centre	2	3	Community Counselling Service
Settlement organization	1	1	
Aboriginal organization	0	1	Aboriginal Health Access Centre (could have also gone to Health Care)
University or College	0	1	Individual Instructor
Other	28	6	Family Violence Project Legal Resource Centre Family Lawyer Independent Consultant Car Dealership (volunteer in a VAW organization)
Totals	116		

Appendix B – Summary of Suggestions for Moving Forward

The tables below provide a summary of the suggestions provided as part of the survey. The suggestions from the Barbra Schlifer Commemorative Clinic forum (May 2011) has been integrated into this table and are in blue.

Training

Suggestions	To address the issue of
<ul style="list-style-type: none"> strengthen education and training for the police, and specifically to assist the police to: better identify the primary aggressor; to understand the history of violence in the family; to do a proper risk assessment; and to understand concurrent disorders that women may experience and how this could influence the situation. there needs to be recognition that abusive men are extremely skilled at using whatever strategies serve them, including using the system to their own advantage, and so constant improvements will be needed. In addition to training for service providers working with men, there needs to be a critical examination of processes and practice to ensure that they don't inadvertently bias the process towards the man who can abuse the system. 	Mandatory charging
<ul style="list-style-type: none"> provide greater education and training for the police and Justices of the Peace, and assist them to better identify the primary aggressor, apply a proper risk assessment and do a more thorough investigation. 	Dual charging
<ul style="list-style-type: none"> greater education of service providers is needed on how to work effectively with immigrant and refugee women and settlement services. In addition, service providers need to have a better understanding of the emerging issues related to human trafficking. 	Changes to immigration and refugee processes
<ul style="list-style-type: none"> greater education of police, judges and lawyers so that restraining orders are applied for, issued and reinforced. There needs to be consistency in implementation including: <ul style="list-style-type: none"> at what point does a breach constitute charges? (the severity of a breach, number of breaches?) is there a graduated response to breaches? 	Restraining orders
<ul style="list-style-type: none"> develop a common approach, supported by training, to the use of any risk assessment tools/protocols that courts may rely upon as valid, objective evidence of risk. 	Restraining Order Forms Barbra Schlifer Forum
<ul style="list-style-type: none"> education for judges and lawyers was suggested most frequently 	"Best interests of child"
<ul style="list-style-type: none"> more education for judges and lawyers 	Custody and access
<ul style="list-style-type: none"> enhance the knowledge and skills of frontline workers. In particular, we heard that workers would like to receive training 	Custody and Access Barbra Schlifer

<p>to increase their capacity to write effective reports for use in custody and access cases and to expand their knowledge of family law and court process.</p> <ul style="list-style-type: none"> • increase the capacity of frontline workers to appear as expert witnesses in custody and access proceedings. 	<p>Forum</p>
<ul style="list-style-type: none"> • develop cross-training for lawyers so they understand better the implications of one process on another in cases involving violence against women. 	<p>Legal System Intersections Barbra Schliker Forum</p>

Changes in practice

<ul style="list-style-type: none"> • increasingly, the situation that women face is complex as they simultaneously deal with multiple institutions (in some cases as being both the victim and being charged with domestic violence, dealing with CAS, dealing with Ontario Works and Ontario Housing, etc.) while having to deal with the impact of the abuse. There is an urgent need for case management approaches and coordinated regulations and policies amongst agencies. • an emerging issue is the inappropriate arrests of older women. Police and other service providers need to look at other options to address the complexity of elder violence. 	<p>Mandatory charging</p>
<ul style="list-style-type: none"> • ensure police have time to review domestic violence cases and are not overloaded with other responsibilities • when a woman has received a dual charge, legal aid needs to be more open to making an exception and approving a certificate for her 	<p>Dual charging</p>
<ul style="list-style-type: none"> • changes to police processes so that there are investigators who can speak the woman’s language or are trained to work with interpreters. Before women “tell their story” they need to have their rights and Canadian law explained to them. 	<p>Changes to immigration and refugee processes</p>
<ul style="list-style-type: none"> • establish Domestic Violence Teams within each police service so that the police women are dealing with have specialized knowledge 	<p>Restraining orders</p>
<p>Improve court and justice processes:</p> <ul style="list-style-type: none"> • education for judges and lawyers was suggested most frequently • change provisions so that parental alienation is not allowed in cases where violence is present, the abuser is required to change before being granted access, exchange is ordered at supervised locations when there is a history of violence, etc. • more thorough evaluation of the case by the judge, including interviewing the children away from either parent • templates or briefs for the court • make it mandatory for both parties to complete the process of the Office of the Children’s Lawyer • better collaboration between criminal and family courts 	<p>“Best interests of child”/ Custody and Access</p>

<p>When the VAW sector is working with the women:</p> <ul style="list-style-type: none"> encourage the women to document the violence 	<p>“Best interests of child”</p>
<ul style="list-style-type: none"> periodically review custody arrangements CAS needs to be more engaged in addressing the concerns 	<p>Custody and access</p>
<ul style="list-style-type: none"> along these lines, it was mentioned that it was important to have “courageous, vocal, politicized advocates on the local implementation committee” have computers available at the courts 	<p>Changes in Family Court process</p>
<p>VAW sector</p> <ul style="list-style-type: none"> partner with LAO to come on-site and work collaboratively accompany the women through the telephone call, as they are often nervous and need to be guided about what to say <p>Legal Aid Changes</p> <ul style="list-style-type: none"> provide a print resource in many languages explaining the process, what to expect, information that the woman will have to provide, etc. raise the income threshold for Legal Aid allocate more hours for cases 	<p>Legal Aid</p>
<ul style="list-style-type: none"> circulate expert witness affidavits to violence against women organizations across the province. develop a list of health care professionals and social workers who could provide expert evidence in immigration matters. 	<p>Immigration and Law Reform Barbra Schlifer</p>
<ul style="list-style-type: none"> establish a template for groups for women who have joint custody orders. These groups can function as support, but also as a place to do action-based research and develop advocacy strategies. 	<p>Custody and Access Barbra Schlifer</p>

Outreach and Public Education

<ul style="list-style-type: none"> greater outreach and education to women in immigrant communities, to inform them about the legal process and their rights under Canadian law. 	<p>Changes to immigration and refugee processes</p>
<ul style="list-style-type: none"> ensure that information is available in both print and electronic format have computers available at the courts link family court services with other services for abused women educate women about the changes and potential dangers 	<p>Changes in Family Court process</p>

Changes to specific regulations/policies/protocols

<ul style="list-style-type: none"> • permit women to be eligible for Victim Quick Response Program (VQRP) financial assistance and VWAP assistance, even if they have been charged 	Dual charging
<ul style="list-style-type: none"> • change some of the provisions related to restraining orders: • the time it takes to issue an order • women not having to face partners in court • proving a breach 	Restraining orders
<ul style="list-style-type: none"> • templates or briefs for the court • make it mandatory for both parties to complete the process of the Office of the Children’s Lawyer 	“Best interests of child”
<ul style="list-style-type: none"> • change provisions so that parental alienation is not allowed in cases where violence is present, the abuser is required to change before being granted access, exchange is ordered at supervised locations when there is a history of violence, etc. 	Custody and access
<ul style="list-style-type: none"> • raise the income threshold for Legal Aid • allocate more hours for cases 	Legal Aid
<ul style="list-style-type: none"> • work with child protection authorities to develop a protocol whereby the evidence and information they gather during any investigation involving woman abuse is automatically entered into or made available to custody and access proceedings 	Child Protection Barbra Schlifer
<ul style="list-style-type: none"> • develop cross-training for lawyers so they understand better the implications of one process on another in cases involving violence against women • develop protocols related to confidentiality to increase the ability of all systems to share information in a collaborative way with one another to enhance safety for women and children (building on the Centre for Excellence results, forthcoming) 	Legal System Intersections Barbra Schlifer
<ul style="list-style-type: none"> • advocates in many parts of the province report that not all lawyers allow them to accompany women into their meetings, citing concerns about lawyer-client privilege breaches. Representatives of the violence against women sector, Legal Aid Ontario and the Law Society of Upper Canada, could collaborate on a protocol to encourage such accompaniments while also fully protecting privilege and confidentiality of the client and lawyer. This initiative could refer to research presently being conducted by the Centre for Research and Education on Violence Against Women and Children on the issue of confidentiality and community-based threat assessment/risk management teams. 	Collaboration Barbra Schlifer

Changes to Legislation

<ul style="list-style-type: none"> continued advocacy to ensure there are changes to the laws in existence and being proposed. For example, women who are sponsored have to be married for two years before they can claim for status which leaves them in a vulnerable situation. This advocacy was seen as something should involve all VAW agencies 	<p>Changes to immigration and refugee processes</p>
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Research and Pilot Projects

<ul style="list-style-type: none"> create a compendium of up-to-date research and case law on the effects of witnessing/experiencing violence 	<p>“Best interests of child”</p>
<ul style="list-style-type: none"> compendium of research and case law on this issue 	<p>Custody and access</p>
<ul style="list-style-type: none"> develop programs to identify and outreach to women in immigration detention who have experienced violence to begin an action-research approach to the deteriorating conditions that women’s international human rights are suffering in Canadian institutions. (Barbra Schliifer Commemorative Clinic Forum; Elizabeth Fry Toronto) 	<p>Immigration and Law Reform Barbra Schliifer</p>
<ul style="list-style-type: none"> anecdotal evidence indicates that there is an increase in joint custody orders outside the GTA and, even where the order is not for joint custody, increased reliance on the concept of shared parenting. Province-wide research needs to be conducted to gather hard data on this and on whether or not the reforms to the best interests of the child test are playing a role in this area of vulnerability for women experiencing continuing violence, with recommendations for next steps 	<p>Custody and Access Barbra Schliifer</p>
<ul style="list-style-type: none"> conduct research on whether restraining orders are a real deterrent to violence. If they aren’t, then identify what else needs to be put into place 	<p>Restraining Orders</p>
<ul style="list-style-type: none"> province-wide research needs to be conducted to assess the impact of reforms to restraining order legislation. In particular, the research should focus on whether there has been a decrease in orders issued under the <i>Family Law Act</i> and whether the judges’ endorsements make any reference to the impact of criminalizing breaches on their orders. 	<p>Restraining Orders Barbra Schliifer</p>
<ul style="list-style-type: none"> pilot some service responses that integrate small scale joint support to women experiencing violence to build capacity and concrete positive working relations between the sectors 	<p>Child Protection Barbra Schliifer</p>
<ul style="list-style-type: none"> existing criminal court-watch programs could be expanded and made more collaborative by bringing their findings together to create a provincial “snapshot” that would provide both practical and research development support 	<p>Collaboration Barbra Schliifer</p>

Collaboration

<ul style="list-style-type: none">• a cross-sectoral discussion about how to improve mandatory charging so it has the desired affect and fewer unintended negative consequences should be held	Mandatory Charging Barbra Schlifer
<ul style="list-style-type: none">• existing use of technology to support women and workers could be enhanced and expanded through collaborative efforts both within the violence against women sector and across sectors. Online training initiatives, document assembly and legal information resources are just a few examples of the kinds of online activity already underway. Organizations such as CLEO, Springtide Resources, Pro Bono Law Ontario, Legal Aid Ontario and government ministries such as the Ministry of the Attorney General who are already working in this area could lead such an undertaking.	Collaboration Barbra Schlifer

Monitoring

Mandatory charging	<ul style="list-style-type: none"> • outcomes for women (e.g. pre and post mandatory charging violence) • frequency of dual charging and women being charged, and their sentencing • bail, restraining orders, conditions of release, and breaches • involvement of CAS • impact on women with mental health issues, and racialized women • training and education of police officers on this issue • police investigation processes
Dual charging	<ul style="list-style-type: none"> • the frequency of dual charging, number of cases withdrawn, conviction rates • the race, class, orientation, etc. of women being charged • the impact on the woman and on the family, including involvement of CAS • the number of repeat offenders • the frequency of police training on primary aggressor and the impact of that training • is dual charging being used as a way to continue the abuse? • are women pleading guilty and for what reasons? • is the primary aggressor being identified in all situations of dual charging?
Changes to immigration and refugee processes (Bill C-11)	<ul style="list-style-type: none"> • number of immigrant women involved in court processes • number of immigrant women who obtain a legal aid certificate • outcomes for the women: number deported, number where the abuse continues
Restraining orders	<ul style="list-style-type: none"> • the number of restraining orders being issued • the number of breaches and the police response to the breaches • penalties issued to abusers who breach
“Best interests of child”/ custody and access	<ul style="list-style-type: none"> • frequency of joint custody orders and number of times this happens in cases where the woman is abused • outcomes for women and children including the impacts of joint custody (e.g. number of children injured or killed because family violence was ignored in the court decision) • frequency of parental alienation allegations, and outcomes • number of situations where women do not qualify for legal aid, and the outcomes • number of cases where there are breaches of custody and access orders • changes in how the court views history of violence in custody cases • improvements in communication between criminal and family court systems • changes in attitudes and knowledge of lawyers and judges about abuse issues in custody decisions • number of instances where the Office of the Children’s Lawyer does not

	become involved because a parent has not completed the forms
Changes in Family Court process	<ul style="list-style-type: none"> • prevalence of mediation • whether women identify as being forced into mediation • women's experience with the online tools • access for marginalized and isolated women, including Aboriginal women • level of availability of materials and services in multiple languages • does the process speed up or slow down the court process?
Legal Aid	<ul style="list-style-type: none"> • is the new approach working? • how many women are denied and why? • are people giving up because the service is so inaccessible? • number of certificates being issued • number of lawyers who accept certificates • number of hours lawyers work on legal aid cases and do not charge • number of lawyers who take the certificate and do not work on the case because the time is used up on consultations

Appendix C: Sources

Barbra Schlifer Commemorative Clinic. *Justice Done: Crafting Opportunity from Adversity*. Toronto, 2011

Cross, Pamela. *With the Disruptive Force of a Hand Grenade: Women's post-violence experiences of recent legal and process reforms in Ontario*, Barbra Schlifer Commemorative Clinic Forum, May 2011

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