

September 9th, 2016

Status of Women Submissions

Background on the Barbra Schlifer Commemorative Clinic

The Barbra Schlifer Commemorative Clinic is the only Clinic of its kind in Canada. It has been providing legal representation, counseling and language interpretation to women who have experienced all forms of violence since 1985. We assist about 4,000 women every year. We also engage in various educational initiatives, including public legal education, professional development for legal and non-legal professionals and clinical education for law students. We work on various law reform activities both within Canada and internationally, and consult broadly with all levels of government on policy or legislative initiatives that impact on women survivors of violence.

Since opening in 1985, the Clinic has assisted over 55,000 women. We have been part of numerous legal test cases, are represented at public policy tables and in law reform efforts related to violence against women. We work in over 100 languages, provide a variety of innovative counseling services and are the go-to for community mobilization, public legal education/information and legal representation for gender-based violence across the lifespan nationally and internationally, perpetrated by non-state actors such as family and spouses, stranger and acquaintance sexual assault, state sponsored violence, forced marriage and so-called "honour"-related violence.

1. Gaps and Challenges in Current Responses to Gender-Based Violence

Need for a National Strategy on Violence Against Women

Canada should develop a comprehensive, accountable, and sufficiently resourced National Action Plan as a policy and community response to eliminating violence against women and girls. A gender analysis should be broadly included in all aspects of Canada's immigration, health, environment, and foreign policy. Institutional expertise of women's organizations should be integrated into the Action Plan to come up with a durable strategy for empowering women, encouraging early detection of violence, supporting women through the court system, and engaging in systemic multidimensional reform.

Within the context of a declaration that violence against women constitutes a global health pandemic,¹ the United Nations had called on all countries to have a National Action Plan on Violence Against Women (VAW) by 2015. National Action Plans provide a framework for strengthening systems that prevent and respond to violence against women. They establish national standards and collaboration between all levels of government, civil society, survivors, and service responders.

A comprehensive national strategy must provide a framework for strengthening the systems that respond to violence against women. This strategy must place women's knowledge, experiences and needs at the centre of a range of forms of evidence to inform plans and measure success. Adequately funded community based responses are critical to the success of any plan. Adequate must be defined in the context of the scope of pandemic proportions, and resourced accordingly.

Recommendations from the UN Handbook on National Action Plans² include the following considerations, which are highlighted here as being especially relevant for Canada's National Action Plan:

- Use a human rights based approach
- Define VAW according to international norms
- Draw on international research on the root causes, nature and impact of violence against women worldwide
- Collate and communicate data and research on the nature, prevalence and impact of different forms of violence against women in each geographic area
- Include the direct and meaningful participation of civil society and other stakeholders
- Ensure leadership, oversight, support and engagement at the highest political levels and across all levels of government
- Review and revise existing legislation
- Provide standardized, accredited and comprehensive pre-service and in-service training on the issues surrounding violence against women, its causes and consequences for relevant professionals that respond to violence against women
- Collect, communicate and analyze comprehensive statistical and qualitative data, disaggregated by sex, race, age, ethnicity and other relevant characteristics, on the nature, prevalence and impact of all forms of violence against women
- Support independent research on emerging issues related to violence against women
- Include a primary prevention strategy

¹ The World Health Organization. 2013. "Violence against women: a 'global health problem of epidemic proportions.'" Online:

http://www.who.int/mediacentre/news/releases/2013/violence_against_women_20130620/en/

² UN Women. 2016." Handbook for National Action Plans on Violence against Women." Online:

<http://www.unwomen.org/en/digital-library/publications/2012/7/handbook-for-national-action-plans-on-violence-against-women>

- Include measures to build/ strengthen, fund and support an integrated, system-wide response to incidents of violence against women that includes the following key elements:
- Care, support and empowerment of victims/survivors;
- Protection and justice;
- System coordination and integration;
- Clearly define indicators and targets to monitor progress in the plan's objectives, within the timelines set forth in the plan, and evaluate the effectiveness of its activities

For a National Action Plan to be predictive and preventative in nature, it must anticipate policy interventions, as well as potential and existing harms that make women more vulnerable to violence in a structured, intersectional framework that accounts for the interrelatedness of policy areas and their sometime contradictory requirements. The Blueprint for Canada's National Action Plan on Violence Against Women and Girls states that:

"Canada needs a coherent, coordinated, well-resourced National Action Plan on Violence Against Women. This will require the leadership of the federal government, along with the cooperation of provincial, territorial and municipal governments, as well as on and off-reserve First Nations/Aboriginal governments."³

Crucial to the understanding of what a human rights based approach entails are recent human rights and anti-discrimination developments at the national and international levels. Specifically, it is widely agreed that this view of women's human rights must be "intersectional" in nature, and that Canada's international treaty obligations expressly call for an intersectional approach to women's rights⁴. An "intersectional approach" recognizes that groups often experience distinctive forms of stereotyping or barriers based on a combination of race and gender, gender identity, ability or status.

Despite the Schlifer Clinic's successes in individual cases, we still see a deep reluctance in the courts to engage in the most advanced international thinking about violence against women and the law. Whereas there is growing in international consensus that the prevention of violence against women is a state responsibility up there with torture, slavery and capital

³ Canadian Network of Women's Shelters and Transitional Housing. 2015. "A Blueprint for Canada's National Action Plan on Violence Against Women and Girls." Online: <http://endvaw.ca/wp-content/uploads/2015/10/Blueprint-for-Canadas-NAP-on-VAW.pdf>

⁴ UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1249 UNTS 13, signed 18 Dec. 1979; entered into force 3 Sept. 1981; CEDAW/C/GC/28; Radhika Coomaraswamy, 'Identity Within: Cultural Relativism, Minority Rights and the Empowerment of Women' (2002-2003) 34 Geo. Wash. Int'l L. Rev. 483; Kimberle Williams Crenshaw, Gender-Related Aspects of Race Discrimination, Background Paper submitted to the Expert Group Meeting on Gender and Racial Discrimination, U.N. Doc. EGM/GRD/2000/WP. 1 (2000); CEDAW General Comment 19 'Violence Against Women', A/47/38 eleventh Session, 1992; CEDAW. Kell v. Canada. Committee on the Elimination of Discrimination against Women, 2012.

punishment, what is called in law *jus cogens*,⁵ Canadian courts still make their decisions about violence against women in an archaic liberal model of protection of privacy from state interference, placing violence against women by their partners outside state responsibility.⁶

According to the interpretations of the treaties Canada has signed to protect the rights of women, this is not the case. Violence against women is a matter the state can be held accountable for failure to protect against non-state actors from perpetrating it within its borders.

2. Key Priorities of a Federal Strategy against Gender-Based Violence

Schlifer clinic's work for over 30 years has informed us that for holistic strategy for domestic violence and support for survivors, there are guiding principles and frameworks that must be applied when determining key priorities and areas for reform. We believe that these should include but are not limited to feminist, human rights approach, including a respect for Urban/Rural differences in the country, survivor focused, trauma informed, self-determination framework for responses in service provision and the criminal and civil court system, Indigenous Centered Response including the right to self-determination and a "broad determinants of safety" approach to integrated prevention, response, and remedy. While the literature regarding violence against women cites numerous indicators and measures of violence against women (e.g., rates/measures of prevalence, incidence, severity, impact, etc.), little has specifically been written regarding the indicators or measures of safety for women who experience violence. There are, however, a number of useful international documents to draw upon, such as the Millennium Development Goals,⁷ the World Health Organization's Prerequisites for Health,⁸ and the Global Indicators for Women, Peace and Security,⁹ which identify indicators and/or dimensions that contribute to women's health, wellbeing and safety:

- Income security/employment, access to training
- Safe and affordable housing/shelter
- Proper rooms in shelters

⁵ See Hilary Charlesworth and Christine Chinkin 'The Gender of Jus Cogens' (1993) 15(1) Human Rights Quarterly 63; see especially, Gemma Connell, "Survivors Of Domestic Violence In The Gaza Strip: Living In A Lacuna Of International Law?" (Dissertation submitted for the Master of Studies Degree in International Human Rights Law University of Oxford: unpublished) 2011, pp. 6-26; and Zarizana Abdul Azizi and Janine Moussa, Due Diligence Framework: State Accountability Framework for Eliminating Violence against Women, International Human Rights Initiative, 2014, Malaysia, at <http://www.duediligenceproject.org>, accessed 28/12/14; Special Rapporteur on Violence Against Women, The Due Diligence Standard as a Tool for the Elimination of Violence Against Women, 35, U.N. Doc. E/CN.4/2006/61 (2006).

⁶ See especially Barbra Schlifer Commemorative Clinic v. Canada, 2014 ONSC 5140 (CanLII), paras 25-27.

⁷ United Nations.2006. Millennium Development Goals. Online: <http://www.unmillenniumproject.org/goals/>

⁸ World Health Organization.2009. "Prerequisites for Health: Milestones in Health Promotion," Online: http://www.who.int/healthpromotion/Milestones_Health_Promotion_05022010.pdf.

⁹ United Nations. "Global Indicators for Women, Peace and Security." Online:

http://www.un.org/womenwatch/daw/egm/IndicatorsVAW/IndicatorsVAW_EGM_report.pdf. See also

http://www.who.int/hpr/NPH/docs/ottawa_charter_hp.pdf and

http://www.peacewomen.org/security_council_monitor/indicators#The_Global_Indicators

- Transitional housing for women leaving correctional facilities
- Access for people with disabilities Freedom from racism and discrimination and from persecution/criminalization
- Access and Custody of Children
- Access to supports and services (e.g., legal representation)

In the absence of safety indicators, these dimensions can be used as proxy indicators for women's safety.

A. Legislative Changes and Policy Issues

Canada presents itself as an international leader on women's issues. For example, Canada has committed to the United Nations 2030 Agenda for Sustainable Development, which includes a target to end child, early, and forced marriage.¹⁰ However, there are profound gaps in its legislative frameworks concerning women, especially those from marginalized communities such as refugees and sponsored spouses that the Schlifer Clinic currently works with.

Newcomer women face particular barriers to accessing justice and services. This often takes the form of lack of access to information on their legal rights and recourse, as a result of isolation or language barriers. Newcomer women in situations of violence also sometimes fall through the cracks between women's organizations and settlement organizations due to a lack of awareness and training of front-line workers regarding the particular vulnerabilities and problems they face.

Conditional Permanent Residence

Currently, the government has announced that it is reviewing the conditional permanent residence provisions in immigration law, which puts a condition on the sponsored spouses to cohabit with the sponsor in a conjugal relationship for two years before they become permanent residents. While an exception to conditional permanent residence has been carved out in cases of domestic violence or spousal abuse,¹¹ in which women who have experienced violence can apply to have the conditional permanent residence requirement waived, women's organizations continue to express concerns. Making permanent residence conditional on staying in the marriage for two years traps abused partners (mainly women) into staying in abusive relationships for fear of losing their status. Abused partners, especially women, have not been able to take advantage of the exemption because of: barriers to access information on the exemption (e.g. language, isolation); burden of proving their own abuse; cost of providing evidence of abuse. The application of the exemption provision does not take the power away

¹⁰ Government of Canada. 2016. 'Child, early and forced marriage.' Online: http://international.gc.ca/world-monde/aid-aide/child_marriage-mariages_enfants.aspx?lang=eng

¹¹ Government of Canada. 2012. "Backgrounder – Exceptions from Conditional Permanent Residence for Victims of Abuse or Neglect." Online: <http://www.cic.gc.ca/english/department/media/backgrounders/2012/2012-10-26b.asp>

from the hands of an abuser regardless of it being a good exit strategy on paper. Children also have been hurt when they remain with their parent in an abusive home, or if they face being separated from one parent if the sponsored parent is removed from Canada.

The government should repeal conditional permanent residence of sponsored spouses. Conditional permanent residence represents a major step backwards in Canadian immigration policy, increases inequalities in relationships between spouses, and puts women in particular at heightened risk of violence. The government should also increase access to information and recourses for immigrant, sponsored, and non-status women experiencing domestic violence. The government should carve out protection for Forced Marriage victims (currently included in the exception to conditional permanent residence status) to be extended to them for protection from any possible investigation of misrepresentation and fraud. The government should also investigate sponsoring spouses who abuse and abandon spouses abroad and advise them of their rights and the supports available to them at the time of arrival in Canada. The government should also lift the 5 year sponsorship ban on the sponsored spouses in case of domestic violence situations.

Countries that Otherwise Appear Democratic

Women fleeing gender-based violence are particularly affected by the policy of deeming certain countries “safe,” since violence against women is widespread in many countries that appear stable and democratic. For example, countries such as Mexico, with very high incidence rates of SGBV and violence against women, remain on the DCO list.¹² However, presuming that any country is “safe” for all its citizens does not take into account the complex realities of women experiencing domestic violence. Women fleeing these situations are restricted by extremely tight timelines (between 30-45 days) to find and retain counsel, gather evidence, and present their traumatic cases before the Immigration and Refugee Board.

Following a decision of the Federal court which found some of these measures discriminatory,¹³ the Liberal government promised to institute an “expert human rights panel” to determine DCO designations.¹⁴ As of August 2016, the specifics of such a panel’s composition and the process for DCO designation (and de-designation) have not been announced.

Women fleeing violence should not be punished by the unreasonable timelines inherent in the DCO regime and the presumption that their country is “safe.” The government should repeal the DCO regime in its entirety, and guarantee all refugee claimants, including victims of SGBV and domestic violence full access to appeal rights and reasonable timelines.

¹² For more information, see IHRP. 2016. “Unsafe and On the Margins: Canada’s Response to Mexico’s Mistreatment of Sexual Minorities and People Living with HIV” Online:

http://ihrp.law.utoronto.ca/utfl_file/count/PUBLICATIONS/Report-UnsafeAndOnMargins2016.pdf

¹³ YZ v Canada (Minister of Citizenship and Immigration), 2015 FC 892, [2015] FCJ No 880.

¹⁴ Prime Minister of Canada Justin Trudeau. 2015. “Minister of Immigration, Refugees and Citizenship Mandate Letter.” Online: <http://pm.gc.ca/eng/minister-immigration-refugees-and-citizenship-mandate-letter>

Priority Issues

Forced Marriage and Trafficking of Women¹⁵

In 2014, the former Federal Government tabled *Bill S-7: Zero Tolerance for Barbaric Cultural Practices Act*. This Act made participating in and supporting forced marriage a criminal act in Canada.¹⁶ The Government made numerous statements in support of these changes, including the need to guard against “barbaric cultural practices.” The government particularly focused on the need to “protect women” from the practices of polygamy and forced marriage in immigrant communities.

There are a number of issues with Bill S-7 which are detrimental to women who have experienced violence. For example, the Bill criminalizes a wide range of activities associated with forced marriage under the guise of providing “protection” to the survivors and victims of forced marriages. However, criminalization has the potential to become a tool to further target and over-policed racialized communities. Victims and survivors of gender based violence will be discouraged from coming forward if disclosing that they have experienced forced marriage or trafficking will mean criminal sanctions or deportation for their own family. While prevention is important in the discussion of forced marriage in Canada, a multisectoral approach coupled with an intersectional education strategy is the most effective preventative tool as we have been guided by the young women leaders in our path breaking work on the issue of forced marriages and “honour” based violence (Outburst!).

Immigration Detention of Women and Children

As a legal rule, children and youth should not be held in immigration detention. Canada has ratified the *United Nations Convention on the Rights of the Child*, which insists that “the best interests of the child” always be a primary consideration and that detention must be a complete “last resort.”¹⁷ Pregnant women are also being detained and some have been forced to give birth while in immigration detention.¹⁸ Despite knowledge of their legal responsibilities as well as the

¹⁵ Forced Marriage as a form of human trafficking is about the local, national and international movement of women, men and children from one location to another through the formal institution of “marriage.” SALCO. 2014. “Forced Marriage as a Form of Human Trafficking.” Online: <http://www.sawc.org/wp-content/uploads/2015/04/Forced-Marriage-as-a-Form-of-Human-Trafficking-Resource-Guide.pdf>

¹⁶ Canada is also a signatory to several international consensus documents including the *Universal Declaration of Human Rights*, the *Convention on the Elimination of All Forms of Discrimination against Women*, and *Convention on the Rights of the Child*. However, Canada has not signed or ratified the *Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages*.

¹⁷ As per Art. 37 of the *United Nations Convention on the Rights of the Child* (1577 UNTS 3, 20 Nov.1989 (entry into force: 2 Sep. 1990). Section 60 of *Immigration and Refugee Protection Act* (“IRPA”) affirms “as a principle that a minor child shall be detained only as a measure of last resort, taking into account the other applicable grounds and criteria including the best interests of the child.

¹⁸ Amnesty International. 2014. “Canada Submission to the United Nations Human Rights Committee.” 112th Session of the Human Rights Committee, London. Online:

<https://www.amnesty.org/en/documents/amr20/1806/2015/en/>

harms experienced by detained children,¹⁹ CBSA detains children with their families. The detention of children has been condemned by The UN Special Rapporteur on the Human Rights of Migrants, Francois Crepeau.²⁰

The Federal Government's August 15, 2016 announcements of wide-ranging changes to Canada's immigration detention policy²¹ are welcome, but it is still unclear how these changes will be implemented. However, the Government should stop the practice of detaining children and pregnant women, implement alternatives to detention, such as community release and supervision or tracking mechanisms, and increase oversight and implement independent and effective complaints and monitoring mechanism of CBSA detention policies.

Cyber Violence as a New form of Violence Against Women

The Federal Government's commitment to focus on cyber violence is a welcome direction for combating violence against women.²²

The unique dimensions of cyber violence are not well understood. Cyber violence uses communication technologies such as the Internet, social networking sites, websites, email, text messaging and instant messaging to repeatedly intimidate or harass others. It can include harassing text messages or emails, posting embarrassing or intimate photos online, and identity theft or fraud.

A gender-neutral approach to cyber violence is not appropriate. Cyber violence should not be trivialized and should be seen as a serious form of violence against women. Women who seek our support report numerous instances of cyber rape photos being used to extort ongoing sexual favours and to protect abusers from women reporting or seeking assistance. In some cases, specifically racialized forms of sexual violence involve "striping" observant women of their religious garb, and shaming them into excommunication from their communities. There is a need for education and training of enforcement officers: Cyber Violence like any other form of violence that exacerbates unequal power relations and extends the control of the abuser over the woman who experienced violence, even long after she has fled the abusive situation. Cyber violence can also repeatedly be used to intimidate a woman as she starts family or civil court proceedings against the abuser. Cyber violence needs to be integrated with other services and it should be prioritized and properly investigated. It is not sufficient to deal with cyber harassment violence by counseling women to "not pick up their phones" or "change their

¹⁹ See International Detention Coalition (IDC). 2012. "Captured Childhood: Introducing a New Model to Ensure the Rights and Liberty of Refugee, Asylum Seeker and Irregular Migrant Children Affected by Immigration Detention." Online: <http://www.refworld.org/docid/510a604c2.html>

²⁰ Francois Crepeau. 2016. "Any Detention of Migrant Children is a Violation of their Rights and Must End. Online: <https://theconversation.com/any-detention-of-migrant-children-is-a-violation-of-their-rights-and-must-end-64985>

²¹ CBC News. 2016. "Canada's immigration detention program to get \$138M makeover." Online: <http://www.cbc.ca/news/canada/montreal/goodale-immigration-laval-1.3721125>

²² Simran Singh. 2016. "'It was deeply frightening': Federal strategy will aim to fight cyber violence against women." CIC News. Online: <http://www.cbc.ca/news/canada/gender-violence-women-1.3668361>

numbers”, as we have so often heard enforcement officers say. The method of violence does not detract from the fact of violence.

Continuing to Work on Pay Equity

A National Action Plan to combat violence against women must also include a continuing commitment to pay equity. The gender wage gap in Canada is a persistent concern. Women in Canada earn an average of 66.7 cents for every dollar earned by men.²³ A 2015 UN Human Rights report raised concerns about “the persisting inequalities between women and men” in Canada, including the “high level of the pay gap” and its disproportionate effect on low-income women, visible minority women, and indigenous women.²⁴ Out of 34 countries in the OECD, Canada had the 7th higher gender wage gap in 2014.²⁵ The gender wage gap also exacerbates the effects of violence against women. Inequitable earnings perpetuate the unequal power hierarchy between abusers and their victims, and women are often forced to remain in dangerous situations because of very real financial pressures. Overwhelmingly, women’s financial worth is negatively impacted by separation and divorce, particularly in instances of domestic violence and when children are involved.²⁶ As a result, in addition to rectifying the gender wage gap in Canada, targeted employment supports for women experiencing domestic violence are also necessary.²⁷ Additionally, the gendered wage gap reveals and communicates to society more generally the relative valuing of the genders. Undervaluing women, exemplifying and maintaining women’s subordinate positions in such a material way, contributes to an overall vulnerability to violence and disrespect.

3. Key Promising Practices

A. Primary Prevention: Family Law – Family Court Support Worker Program

The Family Court Support Worker (FCSW) Program was funded in the fall of 2011 by Ontario’s Ministry of the Attorney General. It is available in 49 locations across the province. In the Toronto family court system, the program is provided by the Schlifer Clinic. The goal of the FCSW program is to help those experiencing violence to understand and fully participate in the family court process.

²³ Statistics Canada. 2011. “Average female and male earnings.” Online: <http://www5.statcan.gc.ca/cansim/a26?lang=eng&id=2020102>

²⁴ United Nations Office of the High Commission for Human Rights. 2015. “Concluding observations on the sixth periodic report of Canada.” Online: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FCAN%2FCO%2F6&Lang=en

²⁵ OECD.2014.“Gender Wage Gap.” Online: <http://www.oecd.org/gender/data/genderwagegap.htm>

²⁶ See for example, Anna Aizer. 2010. “The Gender Wage Gap and Domestic Violence,” *American Economic Review* 100(4). .

²⁷ See for example Government of Ontario.2016. “Gender Wage Gap Strategy Consultation.” Online: <https://www.ontario.ca/page/gender-wage-gap-strategy-consultation>

The program keeps survivors of violence informed and protected throughout the family court process by:

- Explaining the family court process
- Working with women who have experienced violence to document history of abuse
- Referrals to specialized services and supports in the community
- Helping with safety planning related to court appearances
- Accompanying women to court proceedings

The FCSW program is of key importance because it increases women's safety as they access the courts, thereby enhancing their access to justice. Women who have experienced violence are at an increased risk of further violence during separation or divorce. In fact, this is a key risk factor for lethality identified by the Domestic Violence Death Review Committee. The FCSW program forms a crucial link in the province's successful portfolio to respond to and ameliorate the highest risk women in this province.

Ontario partnered with the Schlifer Clinic along with other service providers such as Luke's Place to deliver the FCSW program because our clinic has taken a leading role in violence against women advocacy and is recognized for our excellence and expertise in preventing and responding to gender based violence.

B. Support For Victims and Survivors: The Independent Legal Advice for Sexual Assault

The Schlifer Clinic is the only Clinic in Ontario spearheading the new independent legal advice ("ILA") pilot project for sexual assault survivors. Launched in June 2016, the creation of this project was one of 13 commitments made by the Ontario government in 2011 as part of its "It's Never Okay" Action Plan to Stop Sexual Violence.

Survivors of sexual assault living in Toronto, Ottawa, and Thunder Bay receive up to four hours of free, confidential advice from a lawyer, over the phone or in person. Survivors can choose from a roster of lawyers or may access the service directly through our clinic. The Schlifer Clinic was selected to participate in the program because of its expertise in sexual assault law and its wrap-around services beyond the limits of the law for women who engage in the criminal justice and other legal systems to redress sexual violence.

Sexual assault complainants do not have the right to legal representation in criminal courts. The criminal process is often described as daunting, isolating, overwhelming, and re-traumatizing for sexual assault complainants. The ILA program helps address the feeling of being "ousted by the process and unprepared to give evidence at trial or face cross-examination" described by many survivors of sexual assault who have gone through the criminal justice system.

The ILA project enhances women's agency and access to justice by giving them the information they need to make informed choices about reporting to police, what they can expect from the criminal justice system, and what other legal options they might have to seek redress (such as

the Criminal Injuries Compensation Board, the Human Rights Tribunal, or pursuing a civil lawsuit). Importantly, is also serves their healing needs first, ahead of the requirements of the state's case against the accused, through provision of counseling and other supports.

C. Justice-Related Responses

The Liberal government has announced that it is reinstating the Court Challenges Program of Canada,²⁸ recognizing that there need to be more safeguards for Canada's language and equality rights, including protecting the rights of women and minorities. However, while there is some allocation specifically for increasing access to justice for women, it is unclear how many resources will be devoted to this. The Government should prioritize women's rights and increase the capacity of the Court Challenges Program earmarked specifically for women and other marginalized groups. As the "party of the Charter", it must be of grave concern to the current government, as it is to us as legal service providers, that Canadian legal scholars and activists have begun to conclude that Section 15 of the Charter, protecting the equality of women, is a poor tool of protection in the hands of the courts.²⁹ A robust and express reinvestment in sectional 15 claims' support would go a long way to correct that record.

There are also continuing gaps in judicial and police education and accountability when dealing with women who have experienced violence or who are bringing forward a sexual assault complaint. As the Inquiry into the conduct of Justice Robin Camp highlights, and in which the Schlifer Clinic is a co-intervenor, more resources must be devoted to educating law and policy makers, police officers, and court personnel about the intersecting modes of violence experienced by women, especially those from marginalized backgrounds or who are Indigenous.

D. Rehabilitation Programs for Perpetrators

A comprehensive and accountable National Action Plan must also consider how best to rehabilitate perpetrators of domestic violence and violence against women. Effective rehabilitation strategies should consider different approaches to justice, such as restorative justice principles and community reconciliation, in appropriate cases. There is already some consideration of these factors in the criminal context, with the existence of the *Gladue* courts and their impact on sentencing of Indigenous offenders.³⁰ However, the results are, at best mixed,³¹

²⁸CCPC. 2016. "Reinstatement News." Online: <http://www.cppcj.ca/en/news.php>

²⁹Sherene Razack, *Canadian Feminism and the law*, (Toronto: Second Story Press, 1991) ; Melanie Randall, "Equality Rights and the Charter: Reconceptualising State Accountability for Ending Domestic Violence", in Fay Faraday, et al, 2006; Fay Faraday, Margaret Denike & M.Kate Stephenson, eds, *Making Equality Rights Real: Securing Substantive Equality Under the Charter* (Toronto: Irwin Law, 2006); Fay Faraday, Judy Fudge & Eric Tucker, eds, *Constitutional Labour Rights in Canada* (Toronto: Irwin Law, 2012); Shaun O'Brien, Nadia Lambek and Amanda Dale, "Accounting for Deprivation: The Intersection of Sections 7 and 15 of the Charter in the Context of Marginalized Groups", N.J.C.L, 35.

³⁰*R v Gladue*, [1999] 1 SCR 688, 1999. This 1999 decision underscored that "one of the unique circumstances of aboriginal offenders is that community-based sanctions coincide with the aboriginal concept of sentencing and the

and Indigenous legal scholars and system designers have been quick to point out that “Restorative Justice” is only one aspect of a more comprehensive indigenous approach to harms, and must not be taken out of context.³²

Indigenous legal traditions should also be integrated into rehabilitation programs for perpetrators to address the structural factors which exacerbate the ongoing and persistent violence against women particularly from indigenous communities. Similar approaches can then be adapted to other cultural groups, such as new immigrant communities.

Conclusions

We wish to express that a siloed approach to separating domestic and sexual violence has been shown to have limitations. Though we recognize the challenges in creating a more comprehensive approach, we wish to acknowledge that violence against women is experienced in a continuum and across the lifespan, and in different life situations, often by individual women who may not see the benefit of strict policy and strategy separation.

Any “whole of government” approach to addressing violence against women will be necessarily complex. This submission cannot capture the detail and nuance of every aspect of that strategy. Instead we have strived to cover the broad range of issues that must be addressed, and point to the important lessons and recommendations already made. Many of the catalogues of standing recommendations and promising practices across the country have yet to be implemented. In particular we suggest you see the annotated bibliography of the same in Policies Matter: Addressing Violence Against Women Through Reflection, Knowledge and Action (2013).³³

As a final thought, we note with concern that policy regarding violence against women is becoming increasingly neutral on the one hand and punitive on the other. This is seen in the discourse and use of terminology such as ‘domestic assault’ whereby victims of violence – women – are rendered invisible. This is also reflected in the penalization women experience when, in trying to create safety in their lives, they are required by intersecting and contradictory program and eligibility requirements to, in effect, give up their homes, their communities and sometimes their children. Gender-based analysis is a process that examines the differences in women’s and men’s lives, and identifies the potential impact of policies and programs in relation to these differences. Gender-based analysis also examines the intersection of gender and sex with other identity factors such as income, race, age, religion, etc. The aim is that this

needs of aboriginal people and communities,” in order to correct the overrepresentation of Indigenous people in Canada’s carceral institutions.

³¹ Toni Williams, “Intersectionality Analysis in the Sentencing of Aboriginal Women in Canada: what Difference Does it Make?” in Emily Grabham with Didi Herman, Davina Cooper and Jane Krishnadas [Eds], *Intersectionality and Beyond: Law, power and the politics of location* (Oxon: Routledge, Cavendish, 2009) 79-105.

³² Val Napoleon and Hadley Friedland, “From Roots to Renaissance,” in Markus Dubber, ed., *Oxford Handbook of Criminal Law* (Oxford: Oxford University Press, 2015).

³³ See “Policy Analysis, an Annotated Bibliography”,

http://womanabuse.ca/policiesmatter/docs/PoliciesMatter_Final.pdf at 22-30.

information will support more informed decision-making by both policy makers and service providers, resulting in efficient and effective programs and services that are responsive to the realities of women's lives. A Gender-based analysis identifies how policies can create barriers to the determinants of safety for women.

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