

## Supplement to the Submission of the Barbra Schlifer Clinic

September 26, 2016

### A Federal Plan Needs Ongoing Dialogue

We are aware that the Minister has convened a table of experts to advise her on the plan. We feel that an advisory function has fundamental value beyond the life of the plan formation in to an ongoing dialogue with community experts to ensure that the plan is having the desired effects on the ground. This may include previous successful models such as an annual “get-together” (virtual or otherwise) with national players in VAW and the Status office.

### A Federal Plan Needs Provincial Buy-In

At our meeting with you we discussed Incentivizing provincial governments to adopt “promising practices” from other jurisdictions, and/or scaling up successful programs and policies within their jurisdictions. We discussed matching funds as a way of incentivizing local responses in the absence of a national framework with mandatory targets. This will go some distance to address the question of sustainability of the local responses.

### A Federal Plan sees prevention as part of response

Often, prevention and response are seen as opposite poles of a VAW continuum. In our work, prevention goes hand in hand with response as children are seen to intervene in the cycle of violence; mothers are given access to a full range of determinants of safety in order to build lives without violence; and girls and institutions –including policy makers and legal decision makers-- are given the tools to adjust the contexts in which violence is allowed to flourish.

### A federal Plan Can't Ignore the conduct of the Courts

We still see a deep reluctance in the Canadian courts to engage in advanced international thinking about violence against women and the law, including CEDAW and its Optional Protocol. Whereas there is growing in international consensus that the prevention of violence against women is a state responsibility and, along with torture, slavery and capital punishment, should be considered *jus cogens*,<sup>1</sup> even as a signatory to CEDAW, Canadian courts still make their

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<sup>1</sup> 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

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.<sup>2</sup> However, according to the interpretations of the treaties Canada has signed to protect the rights of women, 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.<sup>3</sup>

## A federal Plan Can't Ignore Women and Gun Violence

**Beginning in 2012, the Barbra Schlifer Clinic made an application to challenge the federal government's destruction of the gun registry on the basis that it violated the Charter rights of women who experience violence<sup>4</sup>.** Our pursuit of this matter through the courts was unsuccessful at halting the erosion of gun control on those guns which are most often used to kill women in Canada. The presence of absence of guns in the household remains the single most determinant factor in our assessment of risk for lethality in every case of domestic violence we assess. We assess close to 4,000 cases a year as women call or drop into our Clinic.

In recent years, women have been all but forgotten in the debate about gun owners' rights. Progressive erosion of Canada's gun control law have taken their toll with the first increases in women killed with firearms in more than 2 decades. Research has shown that access to a firearm is one of the top five risks an abused woman will be killed but our national commitment to addressing gun violence against women has been dramatically eroded in the face of vocal opposition from a small minority of gun owners.

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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).

<sup>2</sup> See especially *Barbra Schlifer Commemorative Clinic v. Canada*, 2014 ONSC 5140 (CanLII), paras 25-27.

<sup>3</sup> Committee on the Elimination of Discrimination against Women

Thirty-second session, 10-28 January 2005, 2/2003, Ms. A.T. v. Hungary; see also CEDAW, General Comment 21, 'Equality in Marriage and Family Relations' A/49/38 thirteenth session, 1994; CEDAW General Comment 19 'Violence Against Women', A/47/38 eleventh Session, 1992; CEDAW General Recommendation 12, 'Violence Against Women', A/44/38 eighth session, 1989.

<sup>4</sup> Shaun O'Brien, Nadia Lambek, Amanda Dale. 2016. "Accounting for Deprivation: The Intersection of Sections 7 and 15 of the Charter in the Context of Marginalized Groups." 35 *National Journal of Constitutional Law* 163. Online: <http://schliferclinic.com/wp-content/uploads/2016/05/Accountingfor-Deprivation.pdf>. See also: Laurie Monsebraaten. 2013. "Toronto's Barbra Schlifer Clinic files evidence in Charter case to restore Canadian gun registry." *The Toronto Star*. Online: [https://www.thestar.com/news/canada/2013/05/30/torontos\\_barbra\\_schlifer\\_clinic\\_files\\_evidence\\_in\\_charter\\_case\\_to\\_restore\\_canadian\\_gun\\_registry.html](https://www.thestar.com/news/canada/2013/05/30/torontos_barbra_schlifer_clinic_files_evidence_in_charter_case_to_restore_canadian_gun_registry.html).

When compared to the US, Canadians are complacent. But our position among industrialized countries is slipping. As Iain Overton from the UK based Action on Armed Violence wrote in the *Globe and Mail* (April 16, 2016),

*If Canada were included as part of the 31 countries that make up the wider European region, it would rank fourth in terms of gun-homicide rates. In terms of sheer numbers, only France, Germany and Italy have more gun deaths a year. Suddenly it seems as if Canada isn't the haven of peace and gun harmony that people might think. And this is just homicides we're talking about.*

*There is another darker, hidden toll that blights Canada – gun suicides. As the [Department of Justice](#) notes: "In Canada, about 80 per cent of firearm-related deaths are suicides." According to [gunpolicy.org](#), in the 35 countries in the Americas only the United States, Uruguay and Argentina have more recorded gun suicides per capita than Canada.*

In Alberta, the epicentre of opposition to gun control, Provincial Court Judge Marlene Graham noted gaps in the firearms licensing program and called for stricter screening. In response to domestic violence concerns the Province of Manitoba tried to strengthen its laws. But we need national leadership on this issue. And while we lost our bid to protect women and children from gun violence with our challenge under the Charter, the consensus among women's organizations and public safety groups on the critical importance of keeping guns away from violent and suicidal individuals has never been stronger.

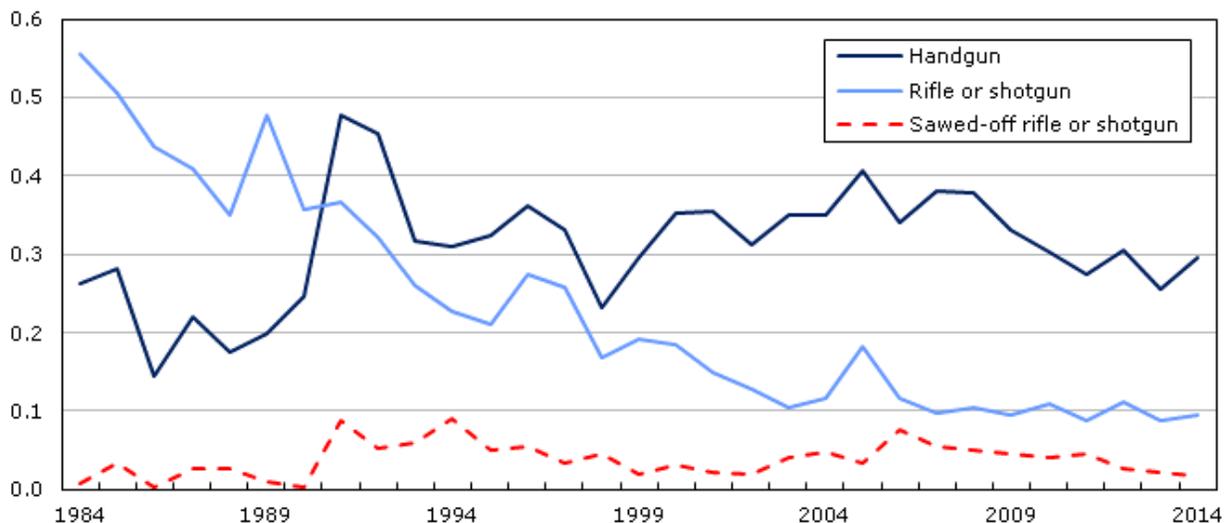
And of course where there are more guns, there are higher rates of gun death and injury, and guns are more likely to be used in violence against women and children as testimony research from the Alberta Council of Women's Shelters, Provincial Association of Transition Houses, the Ontario Association of Interval and Transition Houses and YWCA of Canada shows. In contrast, Quebec which not only has implemented added layers of control – for example, Anastasia's law - or more recently, the reinstatement of a provincial firearms registry – has one of the lowest rates of gun death and injury.

In spite of its avowed commitment to gender equality the Federal Government has been surprisingly feeble in its response to gun violence, explicitly refusing to reinstate the firearms registry in spite of the evidence of its efficacy from public safety groups across the country and around the world. While in power, the Conservatives steadily eroded controls on firearms. They eliminated many of the controls on Canada's restricted firearms – handguns and assault weapons – and undermined the ability of the RCMP to take action against new types of military weapons. The number of legally owned restricted weapons – handguns and assault weapons – has almost doubled in the last decade. These guns are not used for hunting or farming but and dramatically increasing their numbers also increases the risks they will be misused or diverted to illegal markets.

Paralleling the strengthening of firearm laws we saw murders of women with firearms decline more rapidly than murders of women without guns, highlighting the importance of regulation. However, over the last decade this progress has stalled: murders of women and murders with rifles and shotguns have plateaued in spite of the evidence that many of these deaths are preventable.

**Chart 4**  
**Firearm-related homicides, by selected type of firearm, Canada,**  
**1984 to 2014**

rate per 100,000  
 population



**Note:** Excludes homicides committed with the use of other types of firearms, such as fully-automatic firearms or firearm-like weapons (i.e. nail gun, pellet gun).

**Source:** Statistics Canada, Canadian Centre for Justice Statistics, Homicide Survey.

Description for chart 4

Not only did the Conservatives eliminate the need to register rifles and shotguns, and destroy the data on more than 5 million guns that were registered, but they also eliminated records of the sales of those firearms, a requirement that had been in place since 1977. **Currently New York State has better controls on gun sales than we do and Canada is no longer compliant with international agreements to combat the illegal gun trade.** What is even more concerning is the extent to which the legal chill has extended to research and discussion on gun control. We have lost many of the critical mechanisms essential to keeping guns away from potentially dangerous individuals with no move in sight for alternatives. Even the commitments the Trudeau Liberals did make to repeal changes introduced by the Conservatives appear to have been stalled. At a minimum, the federal government to:

- 1) Repeal C-42 – restore authorizations to transport handguns, strengthen screening and routine licensing checks for all firearms and reinstate verification when firearms are purchased
- 2) Eliminate the amnesties for failure to renew licenses and reinstate strict screening measures on renewal as well as continuous eligibility checks
- 3) Ban military assault weapons – update the prohibited and restricted lists consistent with the advice of police experts.

- 4) Strengthen controls on handguns and other restricted weapons – the number of restricted firearms has almost doubled in the past 10 years and as these guns become more present in homes so does their use in violence against women
- 5) Establish as quickly as possible, a system to track all gun sales, reestablishing and modernizing measures that were introduced in 1977 but eliminated in 2005.
- 6) Ratify important international agreements – the OAS Inter-American Convention against the illicit manufacturing of and trafficking in firearms, ammunition, explosives, and other related materials, the 2001 Program of Action, the Marking and Tracing Convention all of which are aimed at reducing violence generally and violence against women globally
- 7) Invest in an evidence based strategy to combat the illegal gun trade – the preoccupation with smuggled guns often masks the fact that a substantial proportion of illegal guns are diverted from legal gun owners and that in terms of violence against women, legal guns not smuggled guns are the principal problem
- 8) Along with restoring the long form census, restore detailed analysis and sharing of justice statistics including firearms death, injury and crime; imports/exports, firearms used in crime.
- 9) Bring experts on the prevention of violence against women and suicide back into the policy development process.
- 10) Work on an integrated public awareness campaign to address many of the misconceptions surrounding firearms risks and regulations and ensuring they are implemented across the board – the failure to remove firearms from abusive partners has lethal consequences. (Ask the Question. Save a Life. Is there a gun?)

We also expect the Government to honour its promise to become a party to the Arms Trade Treaty and to honour other international obligations aimed at combatting the global illegal gun trade. Canada is now a laggard – one of the few countries in the world that has relaxed its controls. Several American states have more rigorous controls than we do. It is time that the Canadian Government stood up to the gun lobby and reinstated legislation that is consistent with international norms. Because its 2016.