

CRIMINALIZATION OF WOMEN FORUM



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MANDATORY CHARGING

This section will address the following:

1. What are mandatory charging policies?
2. How are women criminalized through mandatory charging?
3. What resources are available for women?
4. What are the gaps in services for criminalized women?
5. What type of recommendations are there in the areas of law reform, service provisions and the media?

1. What are mandatory charging policies?

- Mandatory charging policies across Canada require the police to lay charges in family violence cases where the officer believes there is a reasonable likelihood of getting a conviction.
- The provincial, territorial, and federal legislation requires officers to lay charges where there is evidence that a crime has been committed, regardless of the wishes of the victim.
- The State will lay charges, rather than the victim of the criminal offence.

2. How are women criminalized through mandatory charging?

- Women may be inappropriately charged because the police rely on inaccurate (or dishonest) information and testimony from their partners.
- When women are charged with domestic violence related offences, police often focus on individual incidents of violence while ignoring patterns and proof of ongoing violence.
- Police do not see women who respond to abuse with aggression as survivors of violence using violence as a form of self-defence.
- Police often silence or disregard women's narrative of abuse and minimize the harm that the violence has done to the women.
- Police disproportionately charge men and women who belong to marginalized communities, including newcomers, people whose first language is not English, Indigenous, LGBTQ, Black, and Caribbean communities.
- Racialized women are often charged with assault when they "talk back" or "disrespect" police officers.
- Police lay charges irrespective of the wishes of the woman who is being subjected to the violence.
- Women are charged and told to leave their children behind (often with the abuser) while their case is being processed. Additionally, Victim Services often fails to do their job.
- Charges against women and men often differ severely. For women, the charges for "assault with a weapon" read something like "threw Smarties pack at victim" or "threw water in their face" whereas charges for men include weapons such as knives, guns etc.
- The no-contact orders put in place often create situations where women are charged because they allow contact for a variety of reasons including financial help. Additionally, if a woman is charged and the children are in the abusers care and there is a no contact order, it will likely be broken, as women will often try to see their children.
- Sometimes women react very intensely to losing children after a charge and can be punished for those reactions. Even when charges are withdrawn, Children's Aid Society (CAS) may keep the children in care.
- Women become homeless when they are kicked out of their homes due to dual charging.
- Women who report domestic violence are often not believed and instead given psychiatric evaluations, are threatened to take lie detector tests, or are charged with "mischief".

- Child service agencies often cite mental health issues to justify taking children away from the mother in a domestic violence situation.
- In the Yukon, women have to plead guilty to assault to access domestic violence treatment options.
- When women report their abusive partner, their partner often threatens to charge them if they continue the process. Women are pressured into making KGB video statements after a domestic incident, which can then be used in court if they don't appear or used against them if they decide to withdraw charges or decide not to testify.
- When women contact their abusers to keep themselves safe and try to track the abuser, they end up being questioned by police about why they contacted them and are charged.
- Women with HIV are at a heightened risk of being charged with aggravated sex assault and put in the sex offender registry for disclosing their HIV positive status.
- Because of disclosure laws that force some agencies to disclose to CAS, women who seek out support for their children are often reported to CAS and have their children taken away.
- In some cases, abusive partners will lie to get a woman charged, coerce them into making a guilty plea, and then use that against them in family court.
- Child protection agencies fail to consider alternative options women take to protect a child in domestic violence situations and immediately resort to removing the child from the home. For example, a mother may set the children up to watch TV or have them play outside when she suspects abuse is about to happen.

3. What resources are available to women?

Legal Aid – Women who have been charged can obtain Legal Aid certificates, which give them full access to a lawyer who can give them legal advice and represent them in court. Alternatively, women who are not eligible for a full certificate can obtain a Special Duty Counsel certificate through front-line duty counsel, which allows duty counsel to give them legal advice for a certain number of hours.

- ♀ These certificates can be given based on domestic violence, Indigenous identification, a continuing family matter, refugee status and merit-based criteria.
- ♀ While women no longer have to be facing jail time to receive a certificate, front-line workers are not aware of this change and are still denying certificates on this basis.
- Elizabeth Fry & the Partner Assault Response (PAR) program – a community-based group psycho-educational and counselling program designed to help participants stop their violent, abusive, and controlling behaviours
 - ♀ A domestic violence court can mandate that an offender who is charged with a criminal offence involving domestic violence attend the program.
- Free four hours of interpreting, free legal services/advice.

- Barbra Schlifer Clinic/ILA program- A legal clinic that specializes in women survivors of violence. The Clinic offers:
 - Legal help in family, immigration, criminal and sexual assault law;
 - Counselling, information and support through group-based and individual counselling programs from compassionate and skilled counsellors employing diverse and culturally appropriate methodologies; and
 - Multi-lingual interpretation and translation including over-the-phone interpretation (access to an interpreter in less than five minutes) and video remote interpreting through a deaf interpreter.
- Women's College Hospital, Rape Crises Center and Assaulted Women's Helpline.
- Provincial funding for paid time off work to survivors of domestic violence (select Provinces).
- Family services association – Provides family counselling services.

4. What are the gaps in services for criminalized women?

- The legal system lacks understanding of the problems that women face in domestic violence situations.
- Due to funding, there is a tremendous wait list for meaningful services for women. In the face of funding cuts, programs are even more restrained.
- Accused women are not provided with information from the police or the Crown. Processes can take a very long time.
- There is a lack of consistency across the legal and police system when it comes to mandatory charging, including what the mandates are, and when and how it should be used.
- Many women face language barriers and do not have access to trained interpreters.
- The Children's Aid Society (CAS) gets involved inconsistently.
- Criminalized women's lack knowledge of the legal system and the services available to them.
- Court-ordered counselling mostly focuses on women, and generally does not require her abusive partner to go to counselling. There is a need for partner counselling.
- Lack of trauma-informed response and testimonial assistance in court.

5. Recommendations in the areas of law reform, service provisions and the media

- Call on the Government of Canada to review mandatory charging policies and their consequences for women who have been victims of domestic or sexual violence;
- Increase training for police officers, service providers, and Crown attorneys on gender relations and the gendered nature of family violence;
- Ensure that an appropriate and thorough risk assessment is created that includes questions about the history of violence and incorporates an intersectional, gendered analysis of family violence. Simply put, 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;

- Require police officers to consult with a Crown attorney before laying charges against women in family violence situations;
- Relax bail terms for charged women;
- Create diversion or counselling programs for women who are charged with family violence related offenses;
- Increase funding for front-line support workers to attend criminal court with women who are charged with domestic violence related offenses;
- Require both partners to attend Partner Assault Response (PAR) programs together when at least one partner is charged with a domestic violence related offense;
- Train police about the nature of substance abuse for women subjected to violence;
- Create alternative community-led diversion programs that allow a woman to have access to community support and services rather than being incarcerated;
- Increase funding for Legal Aid certificates for women facing family violence;
- Ensure that women charged with a family violence offence can acquire legal representation through a specialized clinic or other legal avenues;
- Lift publication bans for domestic violence cases to allow victims to communicate their story;
- Require police officers to take into consideration the effects of trauma and ongoing violence before laying charges against women in family violence situations;
- Increase public education on sexual assault.



In September 2018, women representing organizations from across Canada met for a forum to discuss issues related to the criminalization of women.

IMMIGRATION LAW

This section will address the following:

1. How are women criminalized through immigration law?
2. What what we learned from our research?
3. What resources are available for women?
4. What type of recommendations are there in the areas of law reform, service provision and the media?

I. How are women criminalized through immigration law?

Women are particularly vulnerable to criminalization and involvement with the law depending on their immigration status in Canada. Women with precarious immigration status who are criminalized are often thought of as being “doubly punished” – once through the criminal justice system for their alleged illegal behaviours and once through the immigration law regime. Abusive men often utilize the legal system as a site of continued control over women. For instance, abusive men may threaten to not go ahead with, or withdraw, a spousal sponsorship application, or threaten to report women with precarious immigration status to immigration authorities. When women with precarious immigration status encounter the criminal legal system, the risk of deportation is significantly increased, and being found criminally inadmissible is a possibility. The aims of the criminal legal system are also at odds with the goals outlined in the discretionary applications for residency based on humanitarian and compassionate (H&C) grounds. Refugee women are often criminalized in Canada, and experience the hardship of being accused of making “bogus” refugee claims, operating in a context where gender-based violence is often unbelievable. They risk being deported back to their home countries only to end up back in abusive situations.

Mandatory Charging

If a woman who does not yet have permanent status in Canada is inappropriately charged and convicted as a result of mandatory charging policies, she faces the possibility of deportation.

Misrepresentations

At the Criminalization of Women forum, participants discussed how women may make misrepresentations during their sponsorship or temporary visa processes impulsively if they believe that such misrepresentations will enable them to access certain services or protections. Sometimes, the misrepresentations are a result of misinformation that women receive about the immigration process. Where misrepresentations are later discovered or admitted, they can have serious detrimental impacts on a woman’s immigration status or status petition.

Fear of Being Reported to Immigration Authorities

Women who do not yet have permanent status in Canada have stated that they are fearful that if they report their abusive partner to authorities, their partner may retaliate in way that impacts their or their children’s immigration status. In our forum brief, we discussed how an abusive partner may report a woman’s immigration status to the Canadian Border Services Agency (CBSA), which can lead to her detention and deportation. The women’s abusive partner may even call or threaten to call the CBSA on her or her children if she tries to leave the relationship. At the Criminalization of Women Forum, participants discussed how the abusive partner may view the CBSA as a mechanism of control, which they can utilize to ensure a woman’s compliance or silence. Where an abusive partner does call CBSA, women are often put into a state of limbo as the investigation process for immigration fraud is often lengthy. Moreover, some women are afraid that if they report an abusive partner or if they are scrutinized by CBSA, then they may be accused of being in a ‘fraudulent marriage.’ Fraudulent marriages also carry the penalty of detention and deportation. Where abusive partners do not call the CBSA, they may call other authorities, such as the police. An abusive partner may allege that the woman is actually the abusive partner or that she has engaged in criminal activity, in order to maintain their power and control over the woman.

The forum participants queried how women might be supported and encouraged to report abusive partners in light of their immigration concerns. Forum participants acknowledged that for women in such circumstances, receiving support or encouragement from a counsellor, mental health practitioner, or community resource may be extremely difficult. Some women may also have their pasts used against them, which can further complicate their willingness to report. For example, some women may be pressured into not reporting an abusive partner. These women may be coerced by their abusive partner or portrayed as someone who has “lost her mind” who is unfit to raise her children. For some women, their traumas may also be used against them as further evidence that they have mental health concerns and are therefore unfit to raise their children. The forum participants questioned whether a re-framing of reporting issues within a woman’s community may help to break down her fear and resistance to reporting.

Notably, the forum participants stated that this re-framing was particularly important because a woman may also be

reported by people other than her abusive partner. The immigration system can also be triggered when neighbours, teachers, or other community members report a woman's immigration status, which adds an additional layer of fear and mistrust for women who have been abused.

Bars from Entry

A survivor of violence may be prevented from gaining entry into Canada if she is considered inadmissible due to a criminal conviction. That crime may have occurred in or outside Canada. For alleged crimes that have occurred within Canada, women may be negatively impacted by the nation-wide mandatory charge policies (see 'Mandatory Charging' section, above).

Evidentiary Burdens

The requirements for evidence are different across different courts and systems. It is very difficult to prove abuse and "hardship" for women applying for status. It is also very difficult to prove violence in any court of law (whether family, immigration or criminal law). Each system has its own specific standards of proof, rules and procedures, as well as different lengths of time it takes to reach a decision.

Women who apply for status have to provide evidence of establishment in Canada. Most often this evidential requirement means women have to show proof of having a job, a steady income, and a place to live. All of this is hard to come by without status.

Refugees

Refugees are often criminalized as "bogus refugees" making "fraudulent" refugee claims. Oftentimes refugees are not believed to be fleeing from sexual violence and are at risk of deportation. Women therefore face the risk of deportation to their home country where they would end up back in an abusive situation and where the abuser is waiting for her. As in other systems, survivors of gender-based violence face the difficulty of not being believed by the system. In this context, given the difficulty of proving gender based-violence, this also goes to the issue of evidence as a barrier to having a successful claim for refugee claimants on basis of gender-based violence.

Unpredictability of the Immigration Regime

The immigration regime often involves a multitude of legal systems which do not always coordinate or share information about a person's immigration status, bail conditions, custody orders, or other important legal matters. Women are often forced to navigate competing and conflicting expectations and mandates within each of these systems. Moreover, the processing times of the legal systems can be unpredictable. Where women are not fully informed of the competing or unpredictable nature of the legal systems, they may not be able to adequately prepare for their engagement in those systems. As above, if a woman errs in engaging with those legal systems, her errors may be perceived as intentional misrepresentation or she may fall out of legal immigration status.

Community Contributions to Fear

Women are often required to navigate their community carefully in order to protect themselves from criminalization. Women need to be aware that neighbours, teachers, or other community members can sometimes contribute to their criminalization. For example, where a neighbour suspects that there a woman is out of status or that there is violence in the home, they may be the ones to call the police or other relevant authorities. As a result, women are forced to grapple with the idea that the immigration system can also be triggered by neighbours, teachers, or other community members, in addition to their abusive partner.

During our Criminalization of Women Forum, the participants also discussed the ways in which child welfare/protection agencies and healthcare service providers can contribute to a woman's criminalization. For example, where a woman may be disciplining her child and the child is accidentally hurt, the woman may have the police or child welfare/protection agencies called on her for child abuse when she takes her child to the doctor. This type of intervention impacts whether she is viewed as an unfit mother, and may have further consequences that result in the criminalization of the woman, and may impact on whether women choose to seek such services, particularly for women with precarious immigration status.

Social Barriers

- ♀ Homelessness: Women are at risk of becoming homeless due to being kicked out of their homes by abusive partners.

Sponsorship breakdown

Women who experience sponsorship breakdown may be afraid to access social assistance because it can impact their ability to stay in Canada and obtain permanent residence. Such women may be unemployed or underemployed, and are at risk of working in precarious, unsafe work environments.

- ♀ For example, when a woman is sponsored through a family class sponsorship agreement and decides to leave her abusive situation, she will likely have to apply for social assistance to support herself and her children. However, because she arrived in Canada through the family class sponsorship agreement, both social assistance and Citizenship and Immigration Canada (CIC) must contact her abuser to verify her request. The risk of becoming homeless, broke, and alone drives many women to stay in abusive relationships.
- ♀ Even if a woman has applied for status on H&C grounds, her lack of status will make finding a job difficult and may have a negative impact on her family law case for custody of her children.

Language Barriers

A language barrier may increase difficulty for women.

For example: A couple from Columbia, arrived in Canada and started a business and the woman was supporting the man, but she was not getting paid. She was abused for several years, and eventually left for a shelter. The man had good financial status but the woman did not and he ended up getting custody of their child. The Police removed the child from the woman's care. She could not speak English well, and the trauma and complexity of the situation made it harder. Present themes in this scenario included isolation, economic factors, low self-esteem and the effects of trauma, how women are seen in the courts and in the system, and separation from children.

Partner's Criminality

During the Criminalization of Women Forum, participants noted that a partner's criminality may implicate a woman. Where the abusive partner is involved in criminal matters, the abused woman may be perceived as participating in those criminal matters as well and may be jointly criminalized. In instances where the woman is a victim of human trafficking and reports her abusive partner for human trafficking, her partner may retaliate by reporting her for a different, usually minor crime, such as theft. In doing so, the partner continues to exert their control over the woman through the criminal legal system, even as she attempts to flee his abusive behaviour and criminality.

Self-Esteem and Trauma-Representation

Participants at the Criminalization of Women Forum expressed that self-esteem and the effects of trauma on immigrant women can vastly affect how the women are perceived within the court and immigration systems. Some women may question or doubt themselves when sharing their story, which can lead to disbelief from authorities within the criminal justice or immigration systems. Such women may not fit with the court's expectation for a traumatized victim who tells her story in a specific way.

These systems do not understand how people who experience trauma may talk, process, and present their trauma, which can then trigger certain responses in women as a result. A re-framing of evidence expectations and training for those involved with the criminal justice or immigration systems may help to circumvent the negative impacts of a woman's self-esteem or her representations of her trauma.

2. What have we learned from our research?

FACTORS DRIVING THE CRIMINALIZATION TREND	
Sensitivity and Knowledge of Service Providers	<p>The lack of sensitivity and knowledge of service providers in dealing with a serious situation like criminalization of women</p> <ul style="list-style-type: none"> • Education and training are needed for service providers. • More sensitivity training will make workers/service providers/police/doctors more aware, more sensitive and more proactive.
Survivor’s Knowledge of their own Rights	<p>A survivor must spend time figuring out their rights. However, they are occupied with issues that take priority, such as employment and housing. It is useful for women as refugees/PR to have guidance/workshops/education sessions where they are told about their options. They are less likely to be criminalized when given advice. Women are experts of their own reality and service providers should empower them but it’s difficult to empower them if they don’t know their own rights.</p>
Knowledge of Resources	<p>Women are often unaware of available resources:</p> <ul style="list-style-type: none"> • Women are unaware of the existence of services they usually hear through word-to-mouth or neighbours, therefore there needs to be more community education programs. • Newcomers to Canada lack basic knowledge of resources. Newcomers need resources to get a sense of how Canadian society operates.
State’s Role in Women’s Experiences of Violence	<p>In many cases, the state refuses to recognize women as survivors of violence, and may even perpetrate violence against women.</p> <ul style="list-style-type: none"> • Systemic issue but needs to be broken down into pieces to understand state’s role. • State institutions need training in their policy framework • Currently, service providers are taking up state’s role. Small funding given to service providers from state but A LOT of responsibility.
Fear of Police	<p>Some women, including women who are survivors from war zones, may be afraid of police. They may experience pressure from others, including their own children, to call police on perpetrator but women may have previously been targeted by police or fear the impact of their involvement.</p> <ul style="list-style-type: none"> • Need for non-voluntary police training that is feminist and anti-oppressive.
Fear of CAS	<p>Many women may feel significant distrust of the CAS and do not view the process as collaborative.</p>

LEGISLATIVE INTERSECTIONS

<p>Reinstatement of Conditional Permanent Residency</p>	<p>Federal government had conditional permanent residency reinstated. This impacted women victims of violence because they couldn't separate if they wanted to keep their status unless they could access proper information and support. This legislation put women at risk of criminalization.</p> <ul style="list-style-type: none"> • For women who are going through process that doesn't allow them to get work right away (refugee, H&C), this puts them at risk. This leads women to have to rely on abuser for support. If they work, they break the law. • Legislative policies and changes can keep women trapped.
<p>Undocumented Women</p>	<p>Undocumented women not able to receive support so they do what they have to do. Housing is especially hard to get. They don't qualify for services they need and even the services they can receive are potentially being taken away.</p>
<p>Family Law Concerns</p>	<p>Women told to go to Family Law Court to keep their financial support, but they are fearful of going to court because of risk escalation by going to court. So they end up going to their abuser. Police then don't believe her because she went back to her abuser.</p> <ul style="list-style-type: none"> • In some cases, if the woman wants to keep her children, they are told they have to go back to the abuser (sometimes because they have criminal charges against her pending).
<p>Restraining Orders</p>	<p>Sometimes women defend themselves from abuse and this leads to them getting charged, they get restraining orders placed against them which prevents them from connection with their children (e.g. woman who was defending herself from abuser scratched abuser's face, ended up getting charged herself). This may result in them making choices out of desperation to get reunited with their children.</p>
<p>Aggravating Sentencing Factors</p>	<p>Statutory provisions once you are convicted for sentencing can have devastating effects on women. For instance, if you are accused and convicted of harming your intimate partner, this is considered an aggravating factor for sentencing.</p>
<p>Domestic Abuse Legislation</p>	<p>There are statutory provisions which sentence individuals for being a domestic abusive partner. The collateral of the rule is counterintuitive as it is meant to help women in abusive situations but can work against women.</p>
<p>Mandatory Charging</p>	<p>Women are being targeted and charged.</p>
<p>Police Training</p>	<p>Police do not have sufficient training.</p>

POLICY SYSTEMS	
General Issues	Policy/systems have failed women in different ways. Legislators don't seem to care - we can't say that it's a lack of education on their part because judges also fail to understand the dynamics and complexities of gender-based violence.
Corporate Issues	The immigration system is driven by profit. Clients are saying I do not want my spouse to have work authorization, etc. but when working in corporate system, not allowed to rethink or question those ideas.
Sponsorship Program	<p>Policy and sponsorship programs seem to reflect the power imbalances from the beginning.</p> <ul style="list-style-type: none"> • System sets up victims so that they must "prove" abuse. • Puts women from an early point into a place of economic dependency. • Current policy is not trauma-informed.

RACE AND CRIMINALIZATION	
Colonialism	As a result of colonialism, there are high rates of criminalization of Indigenous women, including attacks on non-profit centers and funding.
Class	Class is also an intervening factor. There is often a lack of funding for non-profit service providers.
Service Distribution	Many services exist in the Toronto area but few services exist elsewhere.



[above]
 Collaboration by front-line workers with diverse backgrounds and who have experience with women who have been criminalized, broaden the depth and value of the conversation and recommendations.

[below] Barbra Schlifer Clinic staff



3. What resources are available for women?

- **Women's College Hospital**
 - ♀ If a woman comes in for assault but then reveals she is raped, refer her to Women's College Hospital
 - ♀ When women experience physical and sexual assault and the consequential trauma, Women's College Hospital can support them
 - ♀ Schlifer Clinic does drop-in clinic at Women's College Hospital, all services offered to women irrespective of status
 - ♀ Good for women w/o status
- **Women's Health in Women's Hands**
 - ♀ Welcoming environment for women; for non-status women especially
 - ♀ Access Alliance
- **Barbra Schlifer Commemorative Clinic**
 - ♀ We have a drop-in clinic at Women's College Hospital and the Canadian Centre for Victims of Torture (CCVT)
 - ♀ Both services are delivered to women irrespective of status
 - ♀ We do not work with a woman trying to get someone off status → we give them resources but won't assist them directly.
 - ♀ Other partnerships: Counterpoint, Elizabeth Fry
 - ♀ Internal resources → Clinic offers low-barrier counselling groups for women and participants do not need to provide any personal information
 - ♀ Counselling is a huge gap for women without status.
- **Transitional Housing Support Workers Network**
 - ♀ No housing. Very overwhelming because of the lack of resources and systemic issues women face
 - ♀ Identify women's needs and work with this network to support women & connect them with all the resources they may need
 - ♀ Workers are very connected with each other about new trends
 - ♀ Housing is complex and there is a lack of resources
- **Toronto Human Trafficking Network**
 - ♀ There are more than 30 agencies connected to this network, they do other things like family violence, legal services, shelter, healthcare
 - ♀ They work together to provide a spectrum of services once a woman has been identified as trafficked.
 - ♀ Within this network, the members try to help each other to provide services when other members cannot.
- **Assaulted Women's Helpline**
 - ♀ Women can call to have direct emotional assistance and get directed to local resources such as local police.
 - ♀ Provincial resources.
- **No One Is Illegal/FCJ Refugee Centre for immigration support**
- **Rights of Non-Status Women Network**
 - ♀ Does 2-3 forums every year
 - ♀ This is a service-provider training → we have gone through same topics: health, housing, childcare.
- **Ontario Council of Agencies Serving Immigrants (OCASI)**
 - ♀ Workers are trained to support women; public education projects carried out.
 - ♀ Training for service providers and public education campaigns for community members.
- **Social Planning of Toronto**
 - ♀ Used to put a resource guide together, but hasn't been updated in about 10 years. Still has relevant and helpful information.

4. Recommendations in the areas of law reform, service provisions and the media

- **Mandatory Charging Policies and Legislation**
Guaranteeing Rights

Immigration laws must be amended for women who are convicted of a charge that stemmed from mandatory charging policies. Legislation must guarantee the rights of immigrant women who are victims of violence. This includes access to comprehensive and integrated support and assistance. At the Criminalization of Women forum, participants stressed the importance of expanding existing supports and assistance services through more government-provided resources and increased access to services. Participants advocated that a woman's eligibility for services should not be dependent on her immigration status and that legislation should enable immigrant women who are victims of violence to access the support that they need.
- Immigration officials and CBSA officials must have training in the dynamics of intimate partner/ gender-based violence against women;
 - ♀ Provide role and space for women and feminist organizations to inform immigration processes with a proper and consistent gender-based analysis
 - ♀ Mandatory training and education at different institutional levels on gender-based violence and trauma (school, professional development, etc)
 - ♀ Family Service Toronto creating project called trauma-informed lawyering
- It's important that communities mobilize together to support women and not just rely on a system that is interested in incarceration and deportation to resolve social issues that are created and sustained by Canadian society and institutions.
- Develop policies with regard to economics and criminalization (women having a lack of resources and services)
 - ♀ Economic recommendations → provide re-distributive wealth policies like basic income projects that guarantee wages regardless of immigration status. Also, healthcare policies that provide healthcare regardless of immigration status
- This is the state's role and service providers can provide advocacy and solid rationale for the implementation of these policies
 - ♀ There needs to be a basic income policy regardless of status.
 - ♀ A race and gender-based analysis should be included throughout the Immigration and Refugee Protection Act.
 - ♀ A pathway for survivors of gender-based violence to citizenship or permanent residence (i.e. the capacity to stay)
- Race and gender-based analysis → supposed to be in place on federal level. Immigration policies/practices create social conditions of vulnerability for women (e.g. women coming as sponsored spouse), yet lack of federal accountability
 - ♀ Gender-based analysis is inconsistent: how can we expand on the recommendation to make a gender-based analysis achievable? Track, monitor, hold policy-makers accountable, and do social reports on findings.
- The H&C application process should include an expedited category for women who are fleeing GBV.
- The definition of hardship within the H&C process should be reformulated. There is no definition of or test for hardship in IRCC's policies or procedural manuals. There are, however, listed factors that may be considered. This list includes family violence. The scope of family violence considerations expressly discussed is limited to family violence that has occurred in Canada, but a woman may also be fleeing domestic violence in her country of origin.
 - ♀ Recognize and understand the complexity and intersectionality of issues in this area.
- Women who have experienced gender-based violence should be exempt from having to prove "establishment."
- A risk assessment that enables women fleeing gender-based violence to fully explain their circumstances should be used when making decisions about granting status to survivors of violence.

SEXUAL ASSAULT AND THE CRIMINALIZATION OF WOMEN

This section will address the following:

1. How are women criminalized through sexual assault law?
2. What resources are available for women?
3. What are the gaps in services for criminalized women?
4. What type of recommendations are in the area of law reform, service provision and the media?

I. How are women criminalized through sexual assault law?

- Women can be criminalized when they report a sexual assault. This can happen in at least two ways:
 - ♀ A woman is reverse charged when her assailant alleges to the police that she assaulted or sexually assaulted him;
 - ♀ She is charged, or threatened to be charged, if the police do not believe her statement.
- Criminal law is a very blunt and limited instrument with which to address the complexity of sexual assault cases.
- Survivors have a lack of faith in the system. They are forced to re-live and re-enact their trauma and are questioned as though they were complicit in their sexual assault.
- The principles and structure of the criminal system are not survivor-centred in its pursuance of justice for survivors of sexual assault.
- Reasons why women who try to access justice through the criminal system often don't receive justice:
 - ♀ Competing interests within the criminal system;
 - ♀ Lack of nuanced understanding of the gendered nature of sexual assault by key players in the criminal system;
 - ♀ The burden of proof emphasizes material evidence that is challenging to meet in the unique circumstances of most sexual assault cases;
 - ♀ The criminal process does not take into account the impact of trauma on a survivor's ability to remember events in a manner that is easily understandable to a court of law; and
 - ♀ Competing ideas about consent mean many victims are re-traumatized, blamed for their assault or accused of lodging a false accusation or of being the aggressor.
- Women are charged when the police do not believe their stories. These charges can fall under the "mischief" section of the Criminal Code, and a percentage of charges are just labeled "unfounded".
- Women are treated like criminals during the questioning period.
- Women with positive HIV status do not come forward when they have been sexually assaulted. They are scared of the other person saying it was consensual and then saying they didn't know the woman had HIV. This can lead to a charge of aggravated assault.
- Women can be counter-sued in civil court. They can also be sued for defamation.
- In the review of "unfounded" files, it was discovered that there is a forensic team that exists to challenge the survivors documents/evidence. They exist to disprove claims of the assault.
- The police allude to consequences when women make reports if they were to pause or stop the process.
- There is often a threat of criminalization.
- During a police training, it was discovered that half a day is spent on false allegations training and another half on child sex abuse. The starting place for the police with sexual assault is false allegations. It was also discovered that:
 - ♀ There is a mushing together of human trafficking and sex work;
 - ♀ Women who are charged never met with the Crown until the day of and it is often a rushed process;
 - ♀ The police are sometimes frustrated after doing the work because the Crown won't move forward with the legal work;
 - ♀ There is no access to testimonial aids;
 - ♀ There is a difficulty when there is a need for an interpreter, as there needs to be quality service or the woman can suffer from the consequences.
 - ♀ Enforcing sexual assault as another charge is difficult because women are afraid to go back again to the police after an initial report due to previous experiences.
 - ♀ We know police officers assess reports based on their beliefs and viewpoints. How do we provide recommendations based on this?
 - ♀ There seems to be real segregation of services, there is specific talk to specific people which can sometimes isolate services or help.
 - ♀ The rate of criminalization is low but the possibility remains. That information needs to be provided otherwise ILA sessions are incomplete. There is the possibility of going the civil route but what if the accused has no money? We need to explore restorative justice because the options of criminal, civil, or nothing at all are not enough options to offer survivors.

- ♀ Women trust the system and believe it will offer them some relief, but they end up experiencing heartbreak.
- ♀ When women are supported by services and the system, they feel better even if there is no guilty charge.
- ♀ Racialized communities go to the police as a last resort. Service providers need to meet people where they are.
- ♀ OCASI had a project where survivors wrote stories with resolutions, none of the stories included the justice system as a solution.
- ♀ There needs to be a process of accountability within the community. Due to the power dynamic that happens with a sexual assault, survivors don't always want to engage with perpetrators in this setting. On the other hand, some survivors want to engage but perpetrators don't. How do we convince perpetrators to come to the table?
- ♀ Demonizing perpetrators is flawed because they are still part of the community. We need to allow for space for perpetrators to come forward, otherwise they don't come forward because they don't want labels or to be demonized but they continue to participate in rape culture

2. What resources are available for women?

- Independent Legal Advice (ILA) program at the Barbra Schliker Clinic and the Ministry of Attorney General
- Women College Hospital and the ILA program
- Toronto Rape Crisis Centre
- Different services across the province within communities
- New programs/services on college and university campus
- Counselling
- Non-traditional methods rooted in various forms via communities and practices
- Standardized kits in Ontario
- Paid time off for survivors of domestic violence or sexual assault.
- Alberta: Specialized Police and Court Support Programs

In the review of "unfounded" files, it was discovered that there is a forensic team that exists to challenge the survivors documents/evidence. They exist to disprove claims of the assault.

3. Recommendations in the areas of law reform, service provisions and the media

- Survivors of sexual assault should have access to informed and skilled legal representation regardless of their financial situation;
- Sexual assault survivors must have access to a diverse range of support services when they report a sexual assault;
- Police officers, the Crown and Judges within the criminal legal system must be educated about the dynamics of sexual assault;
- Police officers must conduct thorough investigations of sexual assault complaints, including a risk assessment and safety planning;
- Alternative resolution methods such as transformative/restorative justice models should be explored as a woman-centred alternative to the traditional, adversarial criminal system;
- Mandatory advocate reviews;
- Media needs to do better in the following areas: not demonizing women, inflated coverage of stranger assaults. We as service providers also need to find a better way to engage with the media;
- We can't conflate mental health with the abuse of power;
- The services for child sexual abuse is very inclusive and wrap around. It is not the same for adult sexual abuse, this needs to be worked on;
- Spend money and funding on social services;
- Engage in the grassroots approach;
- As bigger organizations having access to more funding, we should engage and support grassroots projects/organizations.

4. What are the gaps in services for criminalized women?

- Inconsistent funding,
- Waiting lists for services,
- No legal representation
- Rural gaps: women in rural areas of Ontario have difficulty accessing services.
- There is a strong focus on strangers rather than date rape.
- There is no counselling or analysis for perpetrators.
- HIV+ survivors are stigmatized and won't get help as a result because of said stigma.
- No financial services offered for practical issues such as transport, daycare help etc.

EMERGING ISSUES

This section will address the following:

1. Which emerging issues have been observed?
2. How are women criminalized through identified emerging issues?
3. What resources are available for women?
4. What are the gaps in the services?
5. What type of recommendations are in the areas of law reform, services provisions and the media?

I. Which emerging issues have been observed?

- Cyber sexual violence involving sexual advances, coercion, threats and harassment using technology is on the increase. Cyber violence, including threats, allow an abuser to control and manipulate his target. This can be especially effective in intimate partner cases, where the woman does not want her family law case – especially her application for custody – to be threatened in any way.
 - ♀ Forms of cyber sexual violence as identified by WomenACT include: cyber stalking, sexual blackmail, revenge porn, virtual sexual assault, threats to use intimate images online if the woman leaves the relationship, human trafficking, paedophilia/child porn
 - ♀ At this time, cyber-bullying falls under some sections of the Criminal Code, which can make enforcement challenging.
- Child protection authorities are too quick to hold women responsible when their children are exposed to family violence even though, often, women do not have the power to control this. Children’s Aid Societies (CAS) also disproportionately targets marginalized communities (i.e. Indigenous and Black communities) as evidenced in a Star investigation released in 2016. This means marginalized women have a higher risk of losing their children when criminally charged. Survivors have a lack of faith in the system. They are forced to re-live and re-enact their trauma and are questioned as though they were complicit in their sexual assault.
- Stakeholders within the criminal system do not understand the effects of trauma on survivors of violence who may react “aggressively” to the presence of police.
- Anti-trafficking laws contribute to the enforcement of by-laws that are discriminatory towards sex workers, i.e. concentrating on massage parlours that result in targeting migrant women – both those engaged in their authority and those coerced. This allows vulnerable groups to be criminalized.
- Agencies have recognized the following issues:
 - ♀ Funding issues, particularly in this political environment;
 - ♀ Political situations in many countries leading to more people becoming refugees;
 - ♀ Culture of violence in the world as a whole;
 - ♀ Housing insecurity, especially for refugees;
 - ♀ Lack of sensitivity, to which women and children are most exposed.

2. How are women criminalized through cyberviolence?

Cyber Bullying → Tech as a Gateway	
Lack of education	<ul style="list-style-type: none"> • The local population will become more of an issue in the current political climate → especially regarding reverting the school curriculum back, will be harder to identify cyber-bullying and prevent it. • Sex education being taken away → we've lost a long-term strategy to preventing cyber violence. • Sex Education Curriculum Appeal → leaving high school curriculum but attacking elementary school curriculum (2010 curriculum but sexual growth and development section is taken from 1998 aka before gay marriage, etc.). Challenges in courts and human rights tribunals. • Great information on types of consent and teaching children about boundaries. Need step-wise, gradual learning. • Implication: women share these pictures when the relationship is good, but then are threatened once the relationship sours. The result will be that women will get charged, i.e. own material and gadgets will be used to charge you and go against you. • Corporations that run the technology do not actually own anything → e.g. Uber doesn't own the cars. Need to be educated on coding programs → differential access for girls.
Posting picture as point of control	<p>Dating websites: some women post provocative pictures and a relationship forms. The fact that provocative picture was posted can then become a point of control and then the woman is forced into trafficking and sex work. Person is afraid that family will get involved.</p>
Privacy Violations	<p>Some clients getting threatened that they have visited porn sites and that third parties will post this information online</p> <ul style="list-style-type: none"> • Airbnb's: reports of cameras being found; unregulated industry • Needs to be regulated top-down.
Funding Issues	<ul style="list-style-type: none"> • There's a need for Internet safety and technology training. • Technology is a significant risk, but need resources to deliver that information. Also, tech training needs constant research and updating. • Resource-intensive: costs us a lot of money that can go elsewhere • Beginning early, keeping up with the times. • Expanding field. • This issue does not have resource funding. Lack of resources to do work on any level (public education, state level). If we get money for this issue, it will come out of another issue.

Technology Surveillance	Digital gadgets in the house like firearms, laptops, and alarm systems → can get hacked, and they can watch women at home. Software downloaded on the laptop so the abuser can watch what their spouse is doing. An option is to cover webcams with tape, but for instance, an abuser might control the internal conditions of the house like temperature etc. to remind woman she is not in control at home.
Beyond Intimate Partner Violence	When women are living in shared rooming houses, their roommates or landlords can be the perpetrators.
Other Issues	<ul style="list-style-type: none"> • Risk of using free resources for women. When you pay for something, there's accountability versus when you download something online: it's easy to access, and there's no accountability. • Location tracking → permanence of use of Google Docs. Why do we use these? Why the need to always feel connected? • Double-edged sword: beneficial effects because they can track loved ones, etc.
Criminalization through cyber violence	The picture she shared is flipped back on her or online content is used against her, or she is threatened to stay quiet because she doesn't know how the content will be used.
Child Protection Concerns	<p>For instance, if a woman sees her children while they are at daycare, dads can get access to that information to get custody of children. Issues include:</p> <ul style="list-style-type: none"> • Surveillance of children → how it affects custody • Remote parenting <p>How will abusers utilize these tools? Child protection criminalizes women: gives them two options: 1) leave child; or 2) leave an abuser. Issues include:</p> <ul style="list-style-type: none"> • Paedophilia. • Political strife has proliferated child porn and trafficking → extended family acting as parents of children and bringing them to Canada and subsequently abusing children. • The huge impact that also relates to the idea that a lot of women who have lost fathers, husband etc. get involved with men outside of the country to save their lives. <p>General Child Protection</p> <ul style="list-style-type: none"> • Child protection and immigration law • Women with deportation orders are put in prisons. It also happens that women are deported and kids stay back → children either stay with family or are apprehended • Children born in Canada are kept here rather than going to jail • Child detention • Options given to parents: the child goes in care or child stays with you in prison • Often children who go into care are abused • Women with mental health issues and addictions being criminalized

Cyber Sexual Violence

<p>Bill C 75</p>	<p>The Bill hyper-criminalizes women by changing mandatory minimum sentences to 6 months for summary convictions. For women who are not yet citizens, they are eligible for deportation and removal proceedings because of the new minimum sentencing.</p>
<p>Virtual Sexual Assault</p>	<p>What does that mean? Went on Google: when in the virtual world, inappropriate acts done against someone’s avatars; unsolicited penis pics; etc. We are taking laws that exist in the physical world and apply then in the virtual world.</p>
<p>Criminal Code and Sexual Violence</p>	<p>Some clients getting threatened that they have visited porn sites and that third parties will post this information online</p> <ul style="list-style-type: none"> • Airbnb’s: reports of cameras being found; unregulated industry • Needs to be regulated top-down.
<p>Growing Gaps</p>	<ul style="list-style-type: none"> • Sex education curriculum. • Increase in level of suicides. • Lack of shelter space. • Lack of interpreter/counselling services. • Law Foundation has Canadian Law Primer for new immigrants. • Program for newcomer women → family law services for women. • Gaps are growing for trans women → in practice, women’s groups are not trans-inclusive. • Young parents charged with child porn for putting children’s pictures on Facebook → also triggers the involvement of Children's Aid Society. Particularly affects low-income, marginalized communities.
<p>Emerging issues</p>	<ul style="list-style-type: none"> • Cracking down on human trafficking making an unsafe space for women in the sex industry to get safe work <ul style="list-style-type: none"> ♀ No more “back-page” → white saviour complex dismissing sex workers and the validity of their work • Family context – partners fighting with one another, abuser will have chat histories to show she is unstable and shouldn’t have the child (tracking the messages) • Protecting children and themselves • Tracking of women in the abuser • Targeting younger women earlier on (giving people passwords) • Societal pressures and traumas that younger girls are facing and thinking that exchange of passwords is normal and okay (lack of privacy) • Partner manipulation to giving passwords Geo-tagging of photos and abusers following them • Reversion of the sexual education curriculum <ul style="list-style-type: none"> ♀ Control through revenge porn ♀ Snitch line – to report teachers for teaching the newer curriculum • Phone messages that if they were said out loud would be considered harassment but on the phone they are dismissed • Vulnerability and the need to please him (sending money over the phone); sending money to keep status in the immigration context

<p>Organizations</p>	<ul style="list-style-type: none"> • Some organizations have not really seen this come up as much, probably comes up more with organizations that work with youth specifically • Safety assessment often includes cyber issues (e.g. turn off GPS) and discussions about how women can protect themselves by taking steps on technology and social media • There is a tension here because we might be asking women to cut themselves off from their supports and friend networks and family by asking them to get off Facebook and Snapchat, need to be sensitive to this <ul style="list-style-type: none"> ♀ There is a program for youth to get support for this issue if they face it, but many organizations support women who are not youth. Many women don't have resources to deal with this because the youth-based services are age restricted. Safety planning is what organizations can do right now, but what else happens after that? ♀ Some are not understanding how women become criminalized through this. ♀ E.g. Woman concerned that her abuser had pictures of a minor on his computer, police did not investigate because they said they couldn't check without warrant and said she was over-exaggerating, made the woman seem not credible. ♀ E.g. Client charged with sending images of his girlfriend to other people. Victim is able to eventually get photos erased by contacting the people who got it. The police were going to get her charged for interfering with a criminal investigation by getting evidence erased. Once this becomes criminalized, the photos become like property of the police or state. ♀ Backpage website, human trafficking and sex work which could expose women to criminalization. ♀ Lack of accountability/anonymity → need for user accountability ♀ Exposure/popularity on the Internet leads to threats of violence → politicians getting death threats
<p>Child Protection Concerns</p>	<p>For instance, if a woman sees her children while they are at daycare, dads can get access to that information to get custody of children. Issues include:</p> <ul style="list-style-type: none"> • Surveillance of children → how it affects custody • Remote parenting <p>How will abusers utilize these tools? Child protection criminalizes women: gives them two options: 1) leave child; or 2) leave an abuser. Issues include:</p> <ul style="list-style-type: none"> • Paedophilia • Political strife has proliferated child porn and trafficking → extended family acting as parents of children and bringing them to Canada and subsequently abusing children. • The huge impact that also relates to the idea that a lot of women who have lost fathers, husband etc. get involved with men outside of the country to save their lives. <p>General Child Protection</p> <ul style="list-style-type: none"> • Child protection and immigration law • Women with deportation orders are put in prisons. It also happens that women are deported and kids stay back → children either stay with family or are apprehended • Children born in Canada are kept here rather than going to jail • Child detention • Options given to parents: the child goes in care or child stays with you in prison • Often children who go into care are abused • Women with mental health issues and addictions being criminalized

<p>Refugees</p>	<ul style="list-style-type: none"> • Family refugee program: Woman wanted to access the program but experiencing violence in the family, so have to stay with family to come here. Finances distributed to the family as a unit, so when the person fled the money was taken away from her. The abuser was left with receiving the finances through that program. • Emerging trends might be around Syrian refugees. Come across one or two instances to help them, but no central research and process already in place. Intersectionality is top of mind with this <ul style="list-style-type: none"> ♀ Syrian refugee women experiencing health issues could be driving factors that lead to criminalization as it leads them to being extra vulnerable
<p>Workplace Violence</p>	<ul style="list-style-type: none"> • Connection to criminalization through intersectionality • Workplaces have a duty to protect women, but there is no process or system to oversee that • Sometimes domestic violence situation seeps into workplace as abuser knows where woman works, so she has to stop working. This affects her income, this increases risk of criminalization. • Workplaces are places where people get killed because that's where they can be found. • Need to have legislative changes instead of just policies that don't get enforced. • The case where abuser and woman worked in the same place, the abuser was management. She did not want to do anything because of fear of losing her job and her friends at work. • Employers starting to take more responsibility for workplace violence, especially where people are in relationships within the same workplace (Bill 148) • Changing workplace culture, employers obligated to do something if there are signs of violence between people in the workplace. This is emerging, and the connections to criminalization are not as direct but create vulnerabilities that lead to criminalization. • Live-in caregiver program: migrant workers vulnerable, could be subject to criminalization if their employer fires them for speaking up about abuse. <ul style="list-style-type: none"> ♀ This program does benefit some people who want to come and work here. The regulations are also there. But it's about who has access to information about rights, who actually follow through on enforcement of the rights, who oversees this. ♀ If a woman is in this program, she essentially can't get pregnant and get maternity leave because there is a two-year term for the program, after which time she has to go back. Might force women to go to the abuser to get support. <ul style="list-style-type: none"> ○ Conservative agenda: prevent birth tourism → , but the reality is that it is a small percentage of people who can afford to come here. The issue is that non-status women give birth to status children → hospitals refusing to give care to these children because it takes time for them to get their paperwork ♀ Caregivers get illnesses like cancer because of cleaning products used, stress. Long wait time for them to get status and they get sick <ul style="list-style-type: none"> ○ Issue of what happens to them comes down to who they know, who their contacts are, what groups are they connected to
<p>LGBTQ+</p>	<ul style="list-style-type: none"> • Rates of suicide are higher than others because of the lack of support

3. Recommendations in the areas of law reform, service provisions and the media

That the Government of Canada, through the Minister of Justice, urge all jurisdictions to create a National Cybercrime Coordination Centre, which would provide a coordinated Canadian law enforcement response to address cybercrime and cyber violence;

- Continual involvement of people from different sectors of society to address arising issues. Voices of the people from the policy and technological sectors in tangent with experiences of survivors must be included in the creation of a comprehensive action plan designed to end cyber sexual violence. The responsibility of the action plan and subsequent implementation can be decided upon by parties involved;
- Reinstatement of the sex-education curriculum;
- Better education on tech and cyber issues for everyone
 - ♀ Knowledge of social media sites and how they function;
 - ♀ Better education on safe use of technology;
 - ♀ There is a working document related to education on safety issues of technology at the Schlifer Clinic, which will be sent around with disclaimer that it is not a legal opinion;
 - ♀ Rapidly changing field;
- Accountability for developers of apps and games
 - ♀ E.g. take away the options and game goals related to the sexual assault of avatars;
- National Cyber Crime Coordination Centre;
- Need to keep track of emerging themes, on a continuum of training and education for the sector
 - ♀ Things are shifting quickly, the terminology is changing;
- People working in this sector need to connect, network, keep track of themes and issues;
- Improving user accountability given anonymity;
- Figure out tensions between freedom of speech and safety online;
- Creation of a platform for service providers so communication can be securely shared
 - ♀ Uses of technology for good, to make our services more effective and helpful for women;
- Law Foundation of Ontario accepting applications for \$100,000 grant for access to justice and technology projects.

MISSION

The Barbra Schlifer Clinic offers legal representation, professional counselling and multilingual interpretation to women who have experienced violence. Our diverse, skilled and compassionate staff accompany women through personal and practical transformation, helping them to build lives free from violence.

We are a centre by, for and about women. We amplify women's voices and cultivate their skills and resilience. Together with our donors and volunteers, we are active in changing the conditions that threaten women's safety, dignity and equality.

VISION

We envision a world where all women:

- * Build lives free from violence
- * Work together to create a more just world
- * Live their own lives in respectful communities that provide meaning and belonging

A CLINIC BY WOMEN, FOR WOMEN