

Submissions to the Standing Committee on the Status of Women on Bill C-205, An Act to amend the Criminal Code and to make consequential amendments to another Act (interim release and domestic violence recognizance orders)

Thank you, honourable chair and committee members. I am Deepa Mattoo, Lawyer and Executive Director of the Barbra Schlifer Commemorative Clinic. I appreciate the opportunity to address you today and to present these submissions on behalf of the Clinic.

The Clinic offers trauma-informed legal services and representation, counselling, multilingual interpretation, and system transformation to support women and gender-diverse people who have experienced violence. Our efforts are rooted in the foundational principles of intersectionality, trauma-informed care, and a resolute dedication to a client-centred approach.

In my submissions, I want to focus on the voices of our clients. I will articulate four key points in response to the proposed amendments. I will talk about how these changes relate to the experiences of survivors of gender-based violence, the implications for marginalized communities, an assessment of the current conditions of our system, and finally, a recommendation for evidence-based law reform.

VOICE OF SURVIVORS I'd like to begin by expressing my support for the proposed amendment Section 515 sub section 3.1 - We think it is a step in the right direction to require the justice overseeing a bail hearing to inquire with the prosecutor about whether the accused's intimate partner has been consulted regarding their safety and security needs.

This underscores the importance of taking into account the well-being and concerns of the intimate partner, and provides an opportunity for survivors to explain what they are afraid of and what court orders might help them. We question, however, whether the provision goes far enough. Is there a way to ensure that survivors are not only *consulted*, but that their concerns are actually presented to the court to assess how the conditions address them?

With a similar view, s. 515(14.1) helpfully requires the judge to ask if the survivor has been informed of their right to a copy of the court's order. We submit the amendment could also require that a copy be provided to the survivor. In the Clinic's experience, survivors can wait for weeks to obtain a copy of bail conditions which are usually very general in nature, rather than tailored to the specific safety concerns during the ongoing legal proceeding.

With respect to amendment s. 810.03 that creates a recognizance specifically for situations of intimate partner violence, we recommend additional survivor-centred perspectives. Protections should be available for both current and previous intimate partners, as our experience shows that violence can persist after partners

separate. In addition, informants seeking a recognizance should be given the option to attend court on a different day than the defendant.

POTENTIAL NEGATIVE IMPACTS

I want to emphasise that many of the amendments in Bill S-205 are a step toward empowering individuals who fear potential harm from their intimate partners and reflect our commitment to creating a safer and more responsive legal environment. However, I submit that there are inadvertent repercussions for historically marginalized communities. From our observations, these consequences may include:

Misuse or False Accusations against Survivors

While empowering individuals to report genuine concerns, there is a risk of the system being misused, leading to false or exaggerated accusations against survivors in relationships of complex abuse. Safeguards must be in place to ensure the integrity of the legal process.

Chilling Effect on Reporting

The fear of legal repercussions may unintentionally deter those genuinely in need from reporting concerns. It is vital to address any barriers that might discourage individuals from seeking the protection they require.

Strain on already limited Legal Resources

The increased reporting and court appearances, whether valid or not, may strain our legal resources. Adequate measures should be implemented to manage potential backlogs and maintain the efficiency of the legal system.

Stigmatization of Accused Individuals

We must be vigilant about the unintended societal stigma that accused individuals may face, even if later proven innocent. Public perceptions can have lasting impacts on personal and professional lives.

- it can likely lead to increased criminalization of marginalized communities, including survivors.

I submit that changes to the legal landscape like this need to go hand in hand with additional legal aid support for survivors and options for free independent legal advice to ensure a fair and informed process.

ENFORCEMENT AND OVER-ENFORCEMENT

Interim Release and Recognizance conditions are a crucial component of our legal framework, designed to increase public safety while respecting the rights of individuals involved in legal proceedings.

While acknowledging the importance of these conditions, it is essential to critically examine their impact, particularly on vulnerable communities and individual rights. There is growing evidence suggesting that bail conditions may disproportionately affect marginalized and vulnerable communities and criminalized women and gender diverse people due to mandatory charging policies. I submit that in our experience there are potential biases in the application of these conditions and there is a need to ensure fairness and equal treatment under the law.

Privacy Considerations:

Conditions such as electronic monitoring and bodily substance sampling raise legitimate concerns about individual privacy. Striking a balance between public safety and the protection of liberty is paramount. While we support meaningful enforcement of court-ordered conditions, we stress that invasive procedures must be taken with great caution and without bias.

Rehabilitation and Support:

The current recognizance conditions lack a comprehensive approach to address the root causes of criminal behavior. It is crucial to explore ways to integrate access to mental health services, addiction treatment, and social support to facilitate rehabilitation.

Legal Clarity and Consistency:

Ambiguities in the interpretation and application of recognizance conditions can lead to legal challenges and procedural delays. A concerted effort should be made to refine and clarify the legal language for more consistent and transparent application.

Evidence Based Approach - Any reforms made should rely on evidence

- In addition to the amendments discussed in this submission, any broader reforms made to the Criminal Justice system need to rely on an evidence-based approach. Any change should also consider, and be responsive to and compatible with, related necessary infrastructure. This includes:

- funding of appropriate research
- completion of an impact assessment of Bill C-205's potential unintended consequences
- implementation of an external, independent evaluation
- funding of community supports and social services to disrupt the larger relationship between incarceration, mental health, addiction, discrimination, poverty, and other social disadvantages.

Conclusion

In conclusion, the voices of survivors echo with an urgency that demands our attention. The fear of domestic violence is not just physical, it's a pervasive threat that lingers in the shadows of survivors' lives. Recognizance conditions must be more than legal safeguards; they should be beacons of safety, understanding, and empowerment. As you shape these conditions, let us center them on survivors' experiences, incorporating trauma-informed approaches that acknowledge the enduring impact of domestic violence.

It's a commitment to transforming fear into a promise—a promise of support, accountability, and a legal system that listens. In this pursuit, collaboration with survivor advocacy organizations is crucial, and continuous education for justice personnel is paramount. Our conclusion is not just the end of a speech; it's a call to action. Let our legal framework be a testament to our collective dedication to breaking the cycle of fear and building a future where survivors find justice, security, and the support they deserve.