



BC Association of
Specialized Victim
Assistance &
Counselling Programs



B.C./Yukon
Society of Transition
Houses



BC Institute
Against Family Violence

CRITICAL ELEMENTS OF AN EFFECTIVE RESPONSE TO VIOLENCE AGAINST WOMEN

BRIEFING DOCUMENT

ISSUE: Barriers to Women's Participation in the Criminal Justice Process

Policies, programs, practices and training regarding domestic violence should focus on barriers to women's participation in the justice system and on understanding and addressing women's "reluctance"¹ to report to police or to proceed with prosecution.

KEY POINTS

- Women who face particular barriers to participating in the justice system and are "reluctant" to report to police or proceed with prosecution in cases of domestic violence are at high risk of future violence.
- The barriers to abused women's participation in the justice system are often within the justice system itself or within relevant health and social service systems, or may be related to access to support services. These women need more rather than less support, including proactive referral to specialized support and counselling services.
- Innovative strategies are being used in many jurisdictions to prosecute domestic violence cases while reducing reliance on victims as witnesses, including: introduction of 911 tapes, use of KGB² statements (out-of-court statements that allow victims to avoid testifying); and use of expert witnesses.
- Underlying successful prosecution, especially where women are "reluctant," is a thorough police investigation, including retention of 911 tapes, collection of all available physical evidence, photographs of the scene and injuries and interviewing of independent witnesses. Such investigations can result in stronger cases for the prosecution and more guilty pleas, eliminating the need for a victim to appear as a witness at a trial.
- Effective responses to domestic violence victims who are "reluctant" to proceed with prosecution must take account of reasons *why* women might be "reluctant" to proceed:
 - Material needs and economic dependency, especially for some groups, including poor women, immigrant women, aboriginal women and women with disabilities
 - Fear of escalating violence resulting from their partner's anger if they leave, which is confirmed by experience and research (Statistics Canada 2005)

¹ Women who are "reluctant" or too fearful to participate in the criminal justice system have variously been called "uncooperative," "hostile" or "recalcitrant" witnesses. All of these terms have a negative connotation. In this document, no negative connotation is implied by the term "reluctant". Rather, there is an acknowledgement that women may be "reluctant" to participate in the criminal justice system *for good reasons*.

² The initials KGB refer to the case in which this strategy was first successfully used in court (R. v. B. (K.G.), [1993] 1 S.C.R. 740).

- Fear of the court process and fear of authorities, including police and child protection authorities
- Dependency of immigrant women on husbands as sponsors
- Pressures from the woman's family or cultural community, especially if she is an immigrant or aboriginal
- Lack of information about available emotional and material support services
- Commitment to keep the family together and ensure a father for their children
- Police and Crown must re-define success, to recognize that *any* involvement with the criminal justice system is a significant step forward for a victim. Helping women see the justice system as their ally is a necessary first step, so that when women are next at serious risk they will be willing to come forward again for help.

THE CONTEXT

- “Reluctance” may take many forms. Women may: be “reluctant” to report to police, request that no charges be laid or that charges be dropped, be frustrated with no-contact conditions, be unwilling to testify or remain in the abusive relationship.
- Women’s “reluctance” has consistently been a key challenge for justice personnel responding to domestic violence and is often put forward as justification for a less proactive justice system response to spousal assault.
- A number of justice system practices cause concern: inadequate response to 911 calls; women being asked if they want to proceed, despite policies mandating charging where legal grounds exist; pursuing peace bonds rather than proceeding with charges; referring the accused to alternative measures rather than proceeding to trial; high rates of stays of proceedings; and laying of obstruction of justice charges against victims for refusing to testify or changing their evidence, sometimes without adequate consideration of a victim’s reasons for doing so.
- Children who remain in these situations and who witness violence against mothers who are “reluctant” to cooperate with prosecution are considered to be at risk and have been the subject of specific policy initiatives in the Ministry of Children and Family Development (Ministry of Children and Family Development 2004).
- Many women who initially opposed proactive charging of their partner come to support a pro-charge approach after participating in a successful prosecution, or after experiencing continued violence when prosecution is dropped (see, for example, Russell 2002).

SUGGESTED ACTIONS

- Police, Crown counsel, child protection workers, health care personnel and others who respond to the needs of domestic violence victims, should be specially trained on:
 - Possible reasons why abused women might be “reluctant” to proceed with prosecution,
 - The particular barriers faced by many marginalized women such as immigrant women, aboriginal women and women with disabilities

- Appropriate responses to women who are “reluctant” to proceed, including intensive support, proactive referral to community-based support and counselling services, practical assistance, information provision and proactive coordination
- Innovative investigation and prosecution strategies, including use of KGB statements to enable prosecution of cases even where the victim is “reluctant”
- All relevant policy and procedures should be reviewed to ensure they are adequate to encourage and support victim safety and prosecution even when victims are “reluctant.”
- The private bar should be encouraged to include in their Code of Ethics clear guidelines or safeguards to help prevent situations in which domestic violence victims are contacted by defence counsel and inappropriately counselled to seek alternatives to prosecution.
- Adequate funding is required to ensure that Victim Services, Stopping the Violence Counselling programs, police and Crown can provide the intensive support and risk assessment necessary to keep women and their children safe and to encourage women to use the criminal justice system when they are at risk. If necessary, such funds should come from the Victim Surcharge Special Account designated for initiatives serving needs of victims.

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