



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: Provincial Justice Policies on Violence Against Women and Children

There is urgent work to be done by the Ministries of Attorney General (MAG) and Public Safety and Solicitor General (MPSSG) to: 1) update the *Violence Against Women in Relationships (VAWIR) Policy*; 2) update and implement the *Sexual Assault Policy*; and 3) update and implement the *Violence Against Children and Youth Policy*.

KEY POINTS

- The justice system's *Violence Against Women and Children Policy* was intended as an overarching policy to guide police and other justice system responses to domestic and sexual violence. However, despite years of work by inter-branch committees, the *Sexual Assault* and *Violence Against Children and Youth* components of this policy were never implemented.
- In the 1990s, there was a trend toward dual arrests, in which both men and women in domestic violence incidents were arrested, in spite of the fact that in most of these incidents women were the primary victims and men were the primary aggressors. As a result of concern about this trend, the RCMP incorporated a "primary aggressor" section into its *Violence in Relationships Policy*. However, despite continuing concern about dual arrests in domestic violence cases, the provincial VAWIR policy has not been amended to incorporate a similar section.
- In 2003, Criminal Justice Branch of MAG withdrew from the *VAWIR Policy* and developed its own spouse assault policy, emphasizing Crown discretion in determining public interest. In addition, the change enabled referral for "alternative measures consideration" in "low risk" cases where the offence is not "serious." BC became one of only two provinces (the other being PEI) to allow pre-charge diversion to alternative measures in domestic violence cases.
- In 2004, the Ministry of Children and Family Development (MCFD) introduced *Best Practice Approaches: Child Protection and Violence Against Women*, to guide child protection workers on the protection of children who witness violence against their mothers. These guidelines form the basis for a collaborative approach between those working for the safety of the mother and those focused on the safety of the children. A primary assumption is that the safety and well-being of the children often depend upon the safety of their mother.

THE CONTEXT

- The *VAWIR Policy* was first implemented in 1984 as the MAG *Wife Assault Policy*. This pro-arrest, pro-charge policy applied to all components of the criminal justice system, including RCMP and municipal police. This policy was re-issued in 1993 as the *VAWIR Policy*. In 1985 the MAG's *Child Sexual Abuse Policy* was implemented.

- During the 1990s, inter-branch committees and police representatives worked over a period of six years to develop a justice system *Sexual Assault Policy*, which was never implemented, and to update and broaden the *Child Sexual Abuse Policy* to create the *Violence Against Children and Youth Policy*, which was not implemented either.
- The term “zero tolerance” to domestic violence has been used by some to describe a pro-arrest, pro-charge approach. However, despite good intentions of this approach to take an aggressive stance against domestic violence, many experts argue that its unintended consequence has been increased arrests of women who may have been defending themselves against their partners’ violence, as well as arrest on material witness warrants of women required to testify. Therefore, a “zero tolerance” approach to domestic is not recommended.
- The terms “mandatory arrest” and “mandatory prosecution” have sometimes erroneously been applied to domestic violence policy in BC. BC has never had a “mandatory” approach to arrest and charging in domestic violence cases. BC policy has always acknowledged the responsibility of police and Crown to use their discretion in these cases, within the limits of the *Criminal Code*, Crown counsel policy and the direction provided by the provincial VAWIR policy.
- The Crown section of the 1993 VAWIR policy stated, “Given the incidence of violence against women in relationships in Canada, the prosecution of such offences is almost invariably in the public interest”. This statement was included to reinforce the view that domestic violence cases are to be treated as serious crimes and not as private disputes. The 2003 Crown policy change does not adequately address the ongoing need to regard all such cases as serious, despite the fact that there may not be a reported history of violence to assess.
- In 2000, the BC Association of Specialized Victim Assistance and Counselling Programs, BC Women’s Hospital, BC Institute Against Family Violence and BC/Yukon Society of Transition Houses consulted with relevant ministries to produce a discussion paper: *Developing a Dialogue: A Preliminary Discussion Paper on Child Protection Issues in Cases Involving Violence Against Women and Children*. MCFD subsequently went on to collaborate with these provincial organizations to develop best practice guidelines.
- While Police Services Division (at that time part of MAG, now part of MPSSG) at one time undertook Special Surveys to report publicly on statistics on spouse assault and sexual assault cases progressing through the criminal justice system, these reports have not been produced since 1999. These reports, the *Key Indicator Reports*, were extremely helpful in terms of understanding case attrition and enhancing transparency and accountability regarding justice system handling of domestic and sexual violence cases in general and regarding VAWIR policy implementation. *Key Indicator Reports*, once published on a regular basis by the Ministry of Attorney General, have not been produced for many years.

SUGGESTED ACTIONS

- Update and implement the *Sexual Assault Policy* and *Violence Against Children and Youth Policy*.
- Add a “primary aggressor” section to the provincial VAWIR policy.
- Incorporate Crown Counsel policy back into the provincial VAWIR Policy and amend Crown policy provisions to restrict use of alternative measures in domestic violence cases,

prior to a charge being laid and only to those cases where strict safeguards are in place and monitored, post-charge, to enable a full assessment of all the circumstances. This is consistent with the FPT report on *Spousal Abuse Policies and Legislation* (2003) recommendation to retain pro-prosecution policies for domestic violence.

- Reinstate the 1993 provincial VAWIR Crown charging provision that stated that, “Given the incidence of violence against women in relationships in Canada, the prosecution of such offences is almost invariably in the public interest.”
- Include reference to MCFD’s *Best Practice Approaches: Child Protection and Violence Against Women* in the *VAWIR Policy* and in other justice policies as appropriate.
- Include reference to the importance of inter-sectoral coordination in all policies addressing domestic and sexual violence, across the justice, health, social service and education systems.
- Include directives in all domestic and sexual violence policies to ensure appropriate coding of cases in both the police and Criminal Justice systems to facilitate monitoring, evaluation and research.
- Policing and Community Safety and Criminal Justice Branches should develop and publish statistics and statistical analyses on a regular basis, as well as special surveys on domestic violence and sexual assault cases from police reports through to disposition. This will enhance public understanding of the criminal justice process and facilitate monitoring of policy implementation and of the use of extra-judicial measures in domestic and sexual violence cases.

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