

**Civil Legal Rights of Abused Women: A Transformative Public
Legal Education Project**

Final Project Report

**To
Law Foundation of BC**

**From
West Coast LEAF,
BC Institute Against Family Violence,
and
Vancouver Custody and Access Support Advocacy Association**

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A. Executive Summary

West Coast LEAF (WCL) undertook this transformative public legal education project in order to assist women’s advocates to serve women who are leaving abusive situations without legal assistance, or with inadequate legal assistance. The contractors, BC Institute Against Family Violence (BCIFV) and Vancouver Custody and Access Support Advocacy Association (VCASAA), interviewed key stakeholders, identified issues, developed resource materials, organized workshops in seven communities, presented workshops prepared by VCASAA, analyzed the issues raised in the workshops, interviewed workshop participants, and prepared this report.

The project found that:

- in the absence of legal counsel, advocates are inappropriately forced into the position of assisting unrepresented or underrepresented women with very complicated legal issues;
- the work of these advocates can be enhanced by education and training;

- those working in the justice system and other professionals do not have an adequate understanding of the dynamics of violence against women in relationships;
- there is a shortage of support services, such as supervised access, so that women are inappropriately forced to come into regular contact with their abusive ex-partners;
- often the requirements set out by child protection workers do not take into consideration court orders that a woman must follow; women are being inappropriately asked to keep their children away from their ex-partner in the absence of assistance to deal with access arrangements;
- women are being coerced into using mediation, and other alternative measures that are inappropriate in situations of family violence;
- women are being forced to send their children to visit an abusive ex-partner even when they suspect he is abusing the children; in situations where women are reporting suspected child abuse, their claims are being dismissed as mere courtroom tactics;
- abusive men are using the court system as a tool to continue to harass their ex-partners;
- women who are leaving abusive relationships continue to be in danger of ongoing abuse after leaving the relationship whenever they come into contact with their ex-partners during access visits or in court; and
- marginalized women face greater, compounded obstacles in seeking custody and access assistance.

B. Project Description

Overview

On August 1, 2000 West Coast LEAF (WCL) received a grant of \$50,000 from the Law Foundation to carry out the Civil Legal Rights of Abused Women: A Transformative Public Legal Education Project. The Project provided workshops to advocates assisting abused women engaged in civil litigation. 160 participants attended workshops held in Prince George, Castlegar, Victoria, Queen Charlotte Islands, Surrey, Nanaimo and Cranbrook.

The BC Institute Against Family Violence (BCIFV) managed the project on behalf of WCL, with the assistance of a community based advisory committee (see Appendix). The Advisory Committee identified key legal information and

education needs of women's advocates assisting abused women when they require help. BCIFV surveyed key stakeholders, prepared the resource materials, organized the workshop locations and registered participants. Members of the Vancouver Custody and Access Support and Advocacy Association (VCASAA) facilitated the workshops, based on their 13 years of experience in this field (see Appendix). Joan Braun, a Vancouver-based lawyer, analyzed the legal issues arising from the workshop interactions as documented on flip charts and in written evaluations, and assisted in preparing the legal analysis portion of this report.

During the two-day workshops, facilitators documented the experiences of abused BC women in resolving legal issues related to custody and access. Through the collective experiences and expertise of the workshop facilitators and participants, issues were discussed from the perspective of community-based advocacy. Issues identified by participants were documented using flip charts and evaluation reports. In addition, facilitators provided a brief report about each workshop. BCIFV surveyed participants to evaluate the extent they carried forth the information and skills presented at the workshops at their jobs. This information was collected and analyzed to prepare this final project report.

Purpose and Objectives

Overall Objective:

The overall objective of the Project was to ensure that BC women who experience violence in intimate relationships have access to legal information and education that can assist them in resolving civil legal issues related to custody and access.

Specific Objectives:

- to document the experiences of abused BC women, without legal representation, in resolving legal issues related to custody and access,
- to review the literature and recent research data
- to identify essential legal information and education needs of women's advocates to whom abused women turn when they are unable to obtain civil legal representation, including identifying key women's advocacy representatives and conducting structured interviews
- to prepare resource materials, including trainer materials and handouts, addressing vital legal information needs of women's advocates relating to abuse, custody and access
- to pilot test the resource materials with women's advocates in urban and rural communities
- to revise materials based on the pilot workshops (in Prince George and Castlegar)
- to provide Train-The-Trainer workshops at various areas in the province.

Project activities included:

- forming an advisory committee of key women’s advocacy representatives
- hiring BCIFV to manage the project;
- conducting a literature review and collecting research data;
- establishing an advisory committee to develop and discuss the project work plan, content of resource materials and workshops;
- conducting structured telephone interviews with key women’s advocacy representatives to determine public legal education training needs;
- preparing resource materials and handouts;
- hiring VCASAA to conduct workshops;
- contacting community organizers and arranging workshops at seven locations;
- advertising workshops to women’s advocacy organizations;
- conducting seven public legal information workshops;
- providing on-going support to women’s advocates requiring legal information;
- conducting an evaluation of user satisfaction with the workshop and materials;
- composing the final project report.

Role of West Coast LEAF

West Coast LEAF’s overall mission is to promote women’s equality in through litigation, law reform and public legal education. WCL’s public legal education programs assist individuals in understanding, respecting and promoting equality for all women, as well as promoting a just and equitable society.

In 1999, WCL conducted a broad consultation and presented a National Forum on Equality Rights, “Transforming Women’s Future: Equality Rights in the New Century.” The Forum plenary “Violence, Abuse and Misuse of Power in Gendered Relationships” and the workshops “Civil Legal Aid in Canada and Gender Equality,” “Legal Challenges in Family Law for Battered Women,” “Providing Legal Services for Women Who Have Been Battered,” and “Towards Transformative Public Legal Education for Women’s Equality” identified violence and abuse against women as a significant challenge for women’s equality rights and transformative public legal education as an important strategy for promoting women’s equality.

As a result of the National Forum, West Coast LEAF adopted a five-year education plan based on the concept of transformative public legal education. Transformative public legal education provides a mechanism in which all parties actively participate, learning from each other. Violence against women, economic equality and the intersectionality of areas of discrimination were some of the issue areas identified by the Forum.

Role of BC Institute Against Family Violence

The purpose of the BCIFV is to carry out research and education in order to eliminate family violence. BCIFV works to end emotional abuse, psychological abuse, neglect, financial exploitation, destruction of property, injury to pets, physical assault, sexual assault and homicide in relationships of family, trust or dependency. The institute's goal is to eliminate victimization of all family members, particularly those who are more vulnerable than others because of their gender, sex, race, ethnicity, religion, physical condition, developmental capacity, mental health, age, sexual orientation, socio/economic status or related condition. Its work is carried out by undertaking research, disseminating results through education for identified client groups. It also facilitates and co-ordinates interaction among various community, university and government agencies.

WCL hired the Institute to:

- manage the “Civil Legal Rights of Abused Women: A Transformative Public Legal Education Project” on behalf of West Coast LEAF;
- conduct a literature review and collect research data;
- recruit and prepare background material for the advisory committee
- hire legal advisor for project to review the literature and prepare an analysis of the legal issues raised in the workshops;
- conduct structured telephone interviews with key women's advocacy representatives to determine public legal education training needs;
- prepare interview analysis and report to Advisory Committee,
- prepare draft resource materials and handouts;
- hire workshop facilitators, VCASAA;
- print the materials
- promote the workshops to women's advocacy organizations;
- organize facilities and refreshments for workshops;
- co-ordinate registration for workshops with local co-ordinators;
- make travel arrangements for facilitators;
- collect flip charts and evaluation forms from participants and write a report of workshop proceedings;
- pay invoices and prepare financial statements;
- provide on-going support to women's advocates requiring legal information;
- conduct an evaluation of user satisfaction with the materials;
- write the final report.

Role of Vancouver Custody and Access Support Advocacy Association

VCASAA is the first group in Canada to identify how cycles of abuse are perpetrated beyond intimate relationships through custody and access mechanisms. Its extensive knowledge, gathered over 13 years of grassroots

organization, primarily comes from its work with women and children through member groups and workshop activities, and through provincial and national networking with advocates and system workers. Its knowledge is also gleaned from extensive research of the available literature and community resources, and through systemic change and political advocacy work. Most notably, members of VCASAA are either survivors of abuse and/or have used custody and access mechanisms themselves and/or work as advocates for women and children surviving violence. VCASAA remains British Columbia's only organization specifically mandated to work on custody and access issues as it affects women who are in, leaving or have left abusive relationships.

As such, in conducting its workshops, VCASAA works to ensure its analysis is consistently grounded in the realities of women's intersecting experiences, and that strategies and policies advanced do not place socially and politically marginalized women at greater risk. Central to VCASAA's philosophy is the need for greater weight given to the perspectives of Aboriginal, Inuit and Metis women, women of colour, lesbians, women with disabilities and other groups of women marginalized by more than gender.

Current projects of the VCASAA include: a National Crime Prevention project *Mobilizing Marginalized Communities: Increasing Personal Safety For Women and Children By Reducing Crimes Of Intimate Partner Violence and Child Abuse Project*; and a Law Foundation Project, *Navigating Legal Waters: A ground-breaking project to address civil legal advocacy needs within communities of people marginalized by gender and other factors*. It also has a leadership role within the *BC Ad Hoc Custody and Access Coalition* working for several years to raise awareness and advocate on changes to the *Divorce Act* and related family law legislation.

In this project, the VCASAA's role included:

- providing advice to the *Civil Legal Rights of Abused Women: A Transformative Public Legal Education Project*;
- participating on Project Management and Advisory Committees;
- assisting in the development of content of resource materials;
- adapting VCASAA workshop materials to meet the specific needs of advocates attending the workshops in seven communities in BC;
- facilitating two-day workshops for women's advocates on custody and access issues in the seven communities in BC;
- writing summaries and reports on workshops proceedings;
- assisting in the writing of the final report.

Role of Advisory Committee

The Community Advisory Committee provided overall direction for the development of the project. The Advisory Committee met three times to brainstorm content, review materials and provide feedback and input for the workshops.

Role of Project Management Committee

WCL formed a project management team consisting of representatives of WCL, BCIFV and VCASAA. The project management team provided the day-to-day supervision of the project, based on the Advisory Committee's advice and direction. The Project Management Committee met every few months throughout the course of the project to plan implementation of project task.

Development of Resource Manual

An essential task of the Advisory Committee was to identify the content for the workshop participants' resource manual. BCIFV reviewed literature on abused women's legal needs in relation to civil custody and access applications, developing a list of legal issues for possible inclusion in the proposed training. The Advisory Committee prepared an expanded list of topics and resources.

Subsequently, BCIFV prepared a collection of existing public legal education materials, including material from the Legal Services Society. Topics in advocacy, systems and reference included: issues of power and control, mediation, myths and realities, custody, supervised access, civil and criminal protection orders, peer counselling skills, going to court, children exposed to violence, safety planning, legal aid, immigration status and violence, Aboriginal women and violence, child abuse, child protection, child support, tips on finding custody and access information, proposed changes to *Divorce Act*, assisting abused lesbians, women with disabilities and violence, racism, and contacting services.

All workshop participants received copies of the resource materials and found this resource to be a very helpful and an effective tool. Comments included: "very helpful and useful," "a great resource," and "I have already begun to use pieces of information from the binder."

C. Workshop Description

Overview

The intent of the *Civil Legal Rights of Abused Women Project* was to promote discourse among BC women's service providers on issues relating to abused women, as well as custody and access. This goal was achieved through a series of workshops held throughout the Province of BC. 160 service providers attended the workshops, beginning in May 2001. Participants received a copy of an extensive resource manual.

Under the supervision of the Project Management Committee, VCASAA and BCIFV delivered seven successful workshops addressing the needs of service providers and women's advocates. Evaluation forms distributed to workshop participants were later collected by BCIFV. Feedback indicated that participants were very eager to attend workshops and share their own experiences.

Much of the successes within the workshops can be attributed to the support of local agencies assisting the coordination of workshops. These agencies provided invaluable knowledge by indicating which advocates in their communities would be interested in participating. One goal of the project was to encourage networking between various advocacy groups serving women and children. This was achieved by improving information sharing and building communication bridges between a variety of service providers.

Facilitators assisted service providers in discussing access to existing community resources, encouraging service providers to share information by developing networks designed to bring together individual agencies. Prior to the workshops, many of these agencies worked in isolation from one another.

Interviews were conducted with key women's advocates to identify training needs, contacting over 500 service providers with invitations to participate in workshops. Although we could not reach all of these advocates, workshops were scheduled in a variety of regions throughout the province. Attendance was initially limited to 15-20 participants per workshop but space was added, accommodating the overwhelming interest by advocates. The final phase of the project saw the completion of all seven workshops and subsequent follow up telephone surveys with participants.

Workshop Summaries

The following workshop summaries are background information provided by VCASAA workshop facilitators. They demonstrate community-specific issues and needs.

Prince George
May 2-4, 2001

21 participants from the Prince George region attended this two-day workshop. Participants represented the following service providers:

Elizabeth Fry Society, Victim Assistance Program (E. Fry),
Prince George Sexual Assault Centre,
South Peace Community Resources Society – Dawson Creek,
Phoenix Transition House,
Elizabeth Fry Women’s Shelter,
Teen Mother’s Resource Centre (E. Fry),
Northern Women’s Wellness Information Centre,
Canadian Mental Health Association – Williams Lake,
Immigrant and Multicultural Services Society,
Omineca Safe Home Society – Vanderhoof,
Quesnel Women’s Resource Centre.

Workshop participants included a diverse group of South Asian, Metis and/or Aboriginal and Caucasian women. This particular group was highly representative of the racial and cultural diversity of the region, second only to the participants of the Surrey workshop.

Prince George advocates identified custody and access as perhaps *the* most important site of violence against women by intimate partners. They discussed how severely under-resourced they were in their struggles to advocate on these issues. For example, most workshop participants were not mandated by their organizations to work on issues of custody and access. Admirably, they still did so “off the side of their desks,” despite unsympathetic supervisors, unaccommodating budgets for these issues of advocacy, and hostile service providers who regard such advocacy as “interference.” Their commitment was further demonstrated through in their openness and eagerness to engage in discussion, and their appreciation of the resource materials provided by the facilitators.

While many participants in the Prince George workshop had not previously interacted, within a short period of time they were working together as an effective community. This is exemplified by their consistent and supportive feedback shared with each other, the lack of conflict, and the ease of which they reached agreement and set goals for follow-up action. Facilitators speculate that

this could be in part due to the high-ratio of advocates working directly with women and children, thus shared knowledge and analysis of issues abused women face and what can be done to implement progressive social change. In addition to this, a local community worker who convened the workshop had a solid reputation as an organizer, creating an atmosphere of trust and safety. These factors were significant in enabling facilitators to assess workshops with similar and dissimilar factors that are more effective in community building.

As a result, large segments of workshop discussions focused on issues of community mobilization. Participants were keen to maintain contact, networking beyond the workshop. Some strategies employed were creating phone lists, forming a VAWIR Coordination Custody and Access Sub-Committee and pledging to actively participate in upcoming events regarding changes to the *Divorce Act*. In fact, Prince George was one of six communities in BC chosen as a site for oral consultations of the Federal-Provincial-Territorial Committee on changes to the *Divorce Act*. The workshop provided participants the opportunity to identify vital issues and discuss how to work together during the consultations themselves, which occurred shortly after the conclusion of the workshops. This was of critical importance, particularly as Prince George is known to be represented by a local politician who is vocally supportive of the “Fathers’ Rights” movement.

Another characteristic of this community are the consistently identified issues specific to geographically isolated communities. The isolation felt by workers is compounded by other factors such as the lack of support from supervisors and employers for networking needs. This is especially true as many in management positions seem not to have yet made connections recognizing that post-separation issues of violence against women and children occur through custody and access of children. Advocates called for more funding, enabling them to end isolation by facilitating greater communication between advocates. One example of this would be the use of conference calling.

Key substantive issues discussed included the difficulties of finding lawyers who accept legal aid, the high turnover of said lawyers, provincial cutbacks as disincentives for lawyers to accept legal aid, and the low levels of awareness of the dynamics of violence among the few that do accept legal aid. Another community-specific issue was how abusive ex-partners exploit geographic vulnerabilities by consulting legal-aid lawyers without necessarily retaining them. When a lawyer has consulted with one party, a conflict is automatically created when a woman seeking to actually retain him/her later makes contact. In this way, women are often forced to travel great distances, at considerable expense, to find lawyers to take their cases.

It was noted that Prince George lacks a pro bono legal clinic, increasing women’s reliance on under-qualified and overburdened community advocates for support regarding complex legal matters. Advocates repeatedly spoke of heavy

workloads due to the high demand for their services, urging a need for funding for more advocates, particularly specialized advocates trained in civil legal advocacy work. [Note: this workshop took place a year before the recently announced 40% cut to legal aid.]

Another issue specific to this community was the commonality of grandparents and relatives of abusers challenging custody of children by mothers. In examples from one community, women had to deal with several consecutive custody challenges from different members of the abuser's family over several years, depleting her financial and emotional resources and making it harder to keep herself and her children safe.

Advocates reported the local politician, being a staunch advocate of "Father's Rights," has had an adverse effect in local communities where a backlash against feminism is extremely strong. Advocates called for further research and statistics on dynamics specific to northern/rural communities to help them counter myths and address the true impacts and prevalence of post-separation violence against women and children.

Prince George participants extensively discussed, with great concern, new family court rules coming into practice in the region. They noted that while some new measures are being pushed, such as Parenting After Separation classes, availability and quality is highly inconsistent from community to community and even within communities. Overall, advocates reported women's negative experiences with PAS classes and mediation. In the case of mediation, there were little standards for who mediates, including no required levels of legal qualifications or knowledge of the dynamics of abuse. Advocates told of pastors at churches in Prince George and Dawson Creek providing mediation. More positively, they noted that some Family Justice Counsellors were astute enough to not force mediation where violence exists.

There were a number of concerns raised regarding child apprehension. Advocates said social workers and supervisors showed a high intolerance for working with women's advocates, and overall activities indicated a greater focus on punishing mothers than on reuniting them with their children. They noted high levels of disregard for women's needs and preferences for replacements, and little awareness among workers of specific geographic limitations women face. For example, social workers often set conditions requiring women to seek services that are unavailable in their communities, making it impossible for women to meet the conditions to get their children back. Regional financial aid workers also showed insensitivity to abused women, typically refusing to grant exemptions to them. Instead, they threatened the denial of benefits when women decided not to pursue maintenance and child support from abusive ex-partners.

Recent developments reported in these communities include a sudden increase in joint custody applications and greater access being sought by abusive men

since amended Child Support Guidelines were announced in 1997. *[Note: The Guidelines stipulate that higher levels of access require smaller amounts of child support to be paid.]* Advocates also reported sudden increases in supervision orders, which had previously been much more scarce. They noted supervised access services in the region tend to be limited and inconsistent in quality; the sole supervised visitation centre in Dawson Creek is Aboriginal-only and in Prince George, services are private and cost over \$20/hour, well beyond the reach of most women who are often then forced to accept new girlfriends of abusers and family members to act as supervisors. Advocates noted that this has often severely compromised the safety of their clientele and gave examples.

Castlegar

May 7-9, 2001

17 participants from the Kootenay region attended this two-day workshop. Participants represented the following service providers:

Special Needs Children Care Worker
Specialized Victim Services,
Family Justice Counsellor,
Director – Advocacy Centre
Social Worker,
Specialized Victim’s Assistance Program,
Police Based Victim Assistance Program,
Stopping the Violence Counsellor,
Fernie Women’s Centre,
Counsellor/Advocate,
Women’s Centre,
Women’s Assault Counsellor,

While most communities had similarities, the Castlegar workshop for advocates of the Kootenay region stood out. Unlike other workshops, more than a third of the participants in the workshop had taken a prior similar VCASAA workshop. As this was not apparent beforehand, materials and information could not be adapted to meet the needs of attendees expecting a different workshop. Note: a reason why some evaluations complained that the information provided was “nothing new,” was because similar information had been previously conveyed to several participants.

Nonetheless, evaluations indicated an interest in and the need for more training on custody and access issues, suggesting a critical need for support and training for advocates finding themselves increasingly overwhelmed in their efforts to meet the complex needs of women seeking assistance in the custody and access arena. Overwhelmingly, participants shared appreciation for the networking opportunity with the purpose of minimizing the isolation of workers

struggling with various aspects of custody and access advocacy, values of strategizing for change, of sharing stories and of giving each other validation and support that refuels their energies. In this regard, Castlegar participants were in sync with those at the other workshops, rating networking high on their list of priorities.

This particular workshop was attended by a diverse range of service providers from community and/or feminist to formal systems such as family justice counsellors and social workers. This may account for the wide range of philosophical differences of opinion and experiences resulting in, for example, long discussions of the pros and cons of mediation, with some participants touting its value for empowering women while others disparaged it for its negative impacts on women and children. Another outcome of having workers from the spectrum of anti-violence systems is that while some participants evaluated the facilitators' information as "biased" and painting existing systems as "too negative," others did not.

Another characteristic is that all the participants were Caucasian. In response to facilitators inquiring about racial diversity among workers, advocates said there is very little representation, as it is their perception that the Kootenay region is not racially or culturally diverse. Statistics for the region indicate otherwise, and thus facilitators were conscientious in raising issues relating to women from Aboriginal and other cultures throughout the workshop. One aspect of diversity seen as unique and significant to the region is the substantial number of immigrants coming from the United States. Participants testified at length for the need of services for American women dealing with immigration processes.

Another issue discussed at length raised aspects of political work for social change. Workers reported heavy workloads and mandates not including advocacy for systemic change are obstacles to social change. A consensus was reached among advocates, including women's advocates, mediators, PAS facilitators and the family court counsellor, that such barriers to organizing systemic change were huge and insurmountable.

It was also noted that most communities in the Kootenay region do not have women's advocates, identifying the need for funding for more advocates. As in other regions, most workers currently providing regional custody and access related services tended to do so "off the sides of their desks," as it is not specified in organizational mandates. As in Nanaimo and Surrey, Castlegar participants highlighted problems with psychological assessments not addressing the impact of family violence, especially in situations where assessors are brought in from Vancouver.

Victoria
May 21-23, 2001

31 participants from the Victoria area attended this two-day workshop. Participants represented the following service providers:

The Cridge Centre for the Family,
Cowichan Women Against Violence Against Women (WAVAW),
Victoria Women's Transition House – Children Who Witness Abuse Program (CWWA),
Family Violence Project,
Victoria Women's Transition House – Stopping the Violence Program (SVP),
Pacific Centre Family Services Association – Stopping the Violence Counsellor,
Dovetails Programs,
Family Violence Intervention Program – Duncan,
Cowichan Women Against Violence Society – Transition House,
Victoria Immigrant and Refugee Centre – Settlement Program,
Cowichan Family Life,
Comox Valley Transition Society,
Separation and Divorce Resource Centre,
Port Alberni Transition House,
Port Alberni Women's Resource Society,
Cridge Centre – Hill House – Transition House,
Intercultural Association of Victoria.

A high percentage of the Victoria workshop participants were identified as workers in frontline advocacy capacities, such as at transition houses, Children Who Witness Violence programs and rape crisis centres. As such, they worked with women in the initial stages of leaving abusive relationships, meaning these women were in the preliminary stages of involvement with custody and access mechanisms. As well, their work tended to focus on day-to-day issues and immediate crisis-oriented activities. This focus tended to limit their experiences of how custody and access issues for women and children play out. It also limited their opportunities to get a sense of “the bigger picture” and limited the time available to them to organize politically. As a result, as the evaluations indicate, much of the material presented was fairly new to the participants and thus received with great appreciation.

This workshop was noteworthy for the emphasis participants placed on the isolation they experience in their advocacy work. Advocates stressed that few opportunities present themselves that enable workers to network or work in coalitions. They particularly expressed concern about lack of coordination on issues of violence against women and custody and access. Facilitators were struck by the fact that participants were unaware of existing resources within the community and learned of many for the first time at the workshop. One success of this workshop was that it provided a rare opportunity for community workers to

gather, share information and expand or develop networks. For example, only four participants of the workshop were members of the Victoria VAWIR Coordination Committee prior to the workshop. As a direct result of the workshop, several participants were recruited to join the Committee and membership of that Committee grew.

A common theme at this workshop was the strong desire among advocates to organize politically. Participants noted that few activities and little coalition work have centred on lobbying for systemic and/or policy change. This was attributed more to the lack of opportunities to work collaboratively than a lack of resources or of advocates doing anti-violence work. The workshop helped advocates overcome some of these problems. Initiatives were set up to enable networking to continue beyond the workshop; for example, concrete plans to share lawyer referral information were made, to which end a practicum student attending the workshop volunteered her time. Another example was that a date was set for the first coalition meeting of the Children Who Witness Violence and childcare workers.

This aspect was also of special importance when it became evident that most participants had not heard about the intended federal changes to the *Divorce Act*, let alone about the then-upcoming Federal-Provincial-Territorial Consultations on Child Custody And Access and Child Support. This was startling evidence not only of the limited avenues for information sharing between workers in the community, but of existing barriers to democratic participation of women and survivors of violence in affecting legislative change. It was discovered that five participants of the workshop would be attending the Roundtable Consultations. Participants seized the opportunity to make plans to meet and strategize prior to the consultations while others chose to join the BC Ad Hoc Coalition on Custody and Access e-mail listserv to facilitate networking on a provincial level.

An interesting characteristic of this workshop was that it provided context for participants to look keenly at issues of race and oppression as they play out in the region. Participants expressed appreciation for the opportunity greater understanding and awareness on these issues. Many spoke of how they would take back to co-workers what they had learned, initiate new hiring practices to encourage participation by diverse workers, and conduct outreach activities to broaden the constituencies of women they serve. While a couple of evaluations complain that the emphasis on racialization and issues of marginalized women went too far, most evaluations name this aspect as a strong point of the workshop presentation. Perhaps most encouraging were comments by immigrant service workers that issues of concern to the women they work with were adequately and respectfully addressed.

Of note is that all participants indicated some level of involvement with custody and access support work in the course of their duties. At the time of the workshop, a custody and access support group was in existence in Victoria and it

was discovered that another agency was actively looking for support to establish a supervised access centre.

A key concern in this region were the long delays for women awaiting Section 15 evaluations (a court-ordered custody and/or access assessment by an independent third party) which some advocates reported could take longer than one year. There were also long delays in getting to see Family Justice Counsellors. One advocate from a community on Vancouver Island said that although the community was designated for two Family Court Counsellors, it in fact had only managed to attract one, resulting in further backlogs.

Another substantial issue participants were grappling with was that the women for whom they advocate face apprehension of their children by social workers if they do not leave their abusive ex-partners and move into transition houses. These women (and their advocates) thus find themselves dealing with the impacts of leaving before they have put in place adequate supports for themselves and their children.

Another characteristic issue had to do with the military base on the Island and the particularities of custody and access facing women in the military in situations where families may be separated and/or moving around the country at all times.

Queen Charlotte Islands

October 22-23, 2001

11 participants from the Queen Charlotte Islands (Skidegate and Masset) attended this two-day workshop. Participants represented the following service providers:

Substance Abuse Counsellor,
Skidegate Ban Council -Social Development,
Haida Gwaii Legal Society,
Legal Information Counsellor,
Victim Assistance Program,
Stopping the Violence Counsellor,
Therapist,
Lawyer,
Art Therapist,
Community Member/Facilitator,
Specialized Victim Assistance Program – North,
Addictions Counsellor.

Observations:

The Workshop in the Queen Charlotte Islands was held on reserve at Skidegate. Approximately two-thirds of the participants were of Aboriginal descent, and

those that were not worked with Aboriginal people. As a result, many specific issues relating to Aboriginal women and children were discussed. As a side note, none of the advocates identified themselves as or as working with immigrant or refugee women. Also, issues specific to those communities were minimally discussed. In terms of size, this was the smallest workshop. The size enabled facilitators to effectively adjust the content and flow of the workshop to respond to the immediate needs of the group. The issues and needs of a small northern community, with well-defined on and off-reserve cultures are vastly different from most other communities. As a result, being able to focus on their community-specific issues was of great benefit to participants. Furthermore, the issues of custody and access for Aboriginal women, both on and off reserve, are more layered and complex.

While it is true for all communities, next to the women themselves, the workers tended to be the experts in the issues of custody and access and family violence. This was particularly true in the Queen Charlotte Islands/Haida Gwaii. Facilitators were also experiencing a learning curve. VCASAA's growing work with Aboriginal communities in the Lower Mainland and nationally provided a foundation of knowledge and awareness, enabling facilitators to quickly adapt appropriately as the workshop progressed.

The Skidegate and Masset advocates worked together quite well. They had a clear analysis of their community requirements. Oral and written feedback indicated a great appreciation for workshopping these specific issues. Participants relished the opportunity to devote time and space to congregate, evidenced by greater participation on the second day of the workshop.

Facilitators were particularly impressed with the communication within the group. When differences of opinion arose, advocates openly listened to each other, allowing the opportunity for disagreeing opinions.

Advocates discussed the strong, community-wide, holistic remedies often employed in the Queen Charlotte Islands, especially its reserves, beyond more common individual remedies. Therefore, the effects of abuse are contextualized on numerous levels, considering the impacts of abuse on the woman herself, historical abuse commonly perpetuated *on* offenders who are also victims of abuse, historical experiences of abuse of both offenders and victims families, and collective abuses inflicted on the entire community.

The small size of these Island communities presented itself to be an additional issue. Most advocates spoke of women bumping into their abusers at local supermarkets, while others spoke of difficulties in lodging complaints or obtaining supervised access from people who are not in some way intimately connected with the parties involved.

Another significant issue on the Islands is the transience of service providers such as social workers, RCMP officers, teachers, doctors and lawyers. A heavy burden is placed on more stable community workers of orienting these uninformed, yet powerful, justice system representatives who have had mostly little exposure to Aboriginal societies or isolated communities.

Advocates were generous in their appreciation of what actually worked well as a result of the nature and makeup of the Islands. For example, the one Crown counsel tended to be diligent about laying charges for breaking peace bonds. The legal aid lawyer at the Native Community Law Office was highly experienced, committed to working to end violence against women and children, and sympathetic to the particular issues of women and children on the Islands. [Note: the office has now been closed.] There was no access to Family Justice Centres and so women were not being pushed into accepting dangerous mediation arrangements, nor being forced into taking Parenting After Separation workshops that are unavailable. Both developments were identified as problematic at workshops in the more resourced communities.

Surrey

December 3-4, 2001

25 participants from the Surrey and Lower Mainland attended this two-day workshop in cooperation with the Surrey Delta Immigrant Services Society. Participants represented the following service providers:

Evergreen Transition House,
Options – CWWA Program,
Virginia Sam Transition House,
Surrey Delta Immigrant Services Society,
Abbotsford Community Services,
Atira Women's Resource Centre,
Shimai House,
Battered Women's Support Services,
Abbotsford Women's Support Services,
MOSAIC,
UBC Women's Centre.

This project focused on an area of Surrey characterized by large immigrant communities, most notably a South-Asian Punjabi community.

Advocates attending the workshop came from a cross-section of organizations working both exclusively and partially with these populations, from transition houses to immigrant-serving agencies. There were also two Aboriginal women

advocates working primarily with a sizeable and increasing Native population in Surrey.

Participant feedback indicated the greatest value of the workshop was that the material provided them with an analytic framework with which to re-examine, better understand and contextualize the day-to-day issues they encounter daily in their work with women and children. For example, transition house workers talked about how they actively and vocally strive to show their respect for mothers in front of their children, yet had never understood this as an important aspect of anti-violence work countering the negative perception mothers leaving abusive relationships see often have of themselves, particularly within the realms of custody and access. Through the workshop, advocates understood more directly, for example, how mothering takes on a different significance post-separation and the importance of working consciously towards rebuilding mothers' confidence in their parenting abilities. In another example, a marriage counsellor commented on having gained new insights into her current work. In fact, she was learning how to improve upon it, because she could now see both "the individual trees and the forest."

Most advocates noted that while they all had substantial knowledge of different aspects of custody and access such as separation agreements, they had limited knowledge of other aspects such as family maintenance or child support. As well, they had sketchy knowledge of how the various laws worked (or don't) in tandem with each other, for example how principles of the Family Relations Act conflict with the Child, Family and Community Service Act. They recognized that they would be able to better advocate for women if they knew what principles a particular court held in greater esteem, for example, "best interests of the child" versus the "child's safety and well being."

The facilitators noted how complex, intersecting issues played out in similar but also very dissimilar ways for immigrant and Aboriginal communities. Similarities were found regarding women and children's vulnerabilities post-separation. Immigrant landed or refugee women, status or non-status women, and/or on reserve or off-reserve Native women experienced custody and access issues in different ways. In particular, facilitators learned that Surrey is now home to many Native women becoming homeless as a direct consequence of separation and/or divorce from on-reserve partners. Advocates overwhelmingly cited poverty as the most critical issue for off-reserve Native communities, especially for single women and their children. Advocates also talked of the necessity of understanding intimate partner violence within the context of the historical abuse that has been inflicted on Aboriginal populations in a variety of ways. During a discussion of the high levels of child apprehension in Surrey, examples of how violence continues beyond relationships emerged. Participants stressed the experience of a woman's drop in come through reductions in welfare and/or child benefits when her children are taken away. In turn, this compromises her struggle to meet conditions, undermining her ability to maintain a home for the

children she may have possession of or be trying to regain access to. As a result, the cycle of loss and violence is perpetuated.

A prominent issue raised by Surrey advocates echoed one raised by workers in smaller non-urban settings, namely issues of personal safety of advocates working in areas of intimate partner violence. Facilitators heard how workers were not only well known to each other in the Surrey area but to the particular sub-communities in Surrey they worked with. It was not unusual for an abuser and/or his family to know the advocate's family and her place of residence. It is common for advocates to be intimidated at court or in their own homes with the purpose of discouraging their advocacy of abused women.

As well, advocates spoke at length about how similar their own personal issues were to those of the women they assist. In fact, facilitators repeatedly became aware of how much more grassroots the connection between worker and abused woman was than in some other communities. These advocates were passionate and vocal, making many observations revealing a deep understanding of the range of issues and lived experiences of their clientele.

Nanaimo

February 5-6, 2002

30 participants from the Nanaimo and upper island region attended this two-day workshop in cooperation with Haven: A Society for Women and Children. Participants represented the following service providers:

Stopping the Violence – Haven Nanaimo,
Specialized Victim Assistance Program (SVAP) – Nanaimo,
Haven Transition House – Nanaimo,
Children's Counsellor – Nanaimo,
Children Who Witness Abuse – Nanaimo,
Nanaimo Women's Centre,
Nanaimo Non-Violence Society,
Duncan Somenos Transition House,
Cowichan WAVAW – STV,
Duncan Bridging Program,
Powell River SVAP,
Multi-Cultural Society – Nanaimo,
Nanaimo First Nations,
Port Alberni Women's Centre,
Nanaimo Family Life Society.

Nanaimo was an exemplary community for having the highest level of existing community education and advocacy work relating to specific issues in custody and access and abuse. For example, the Nanaimo Violence Against Women in

Intimate Relationships Coordination community identified custody and access as a critical site of violence against women and children, establishing a Custody and Access Sub-Committee. Our workshop with this community came about as a result of an invitation by the Nanaimo VAWIR Custody and Access Sub-Committee to VCASAA to facilitate a workshop helping members strategically organize on issues of custody and access. This workshop took place one month before the VAWIR Sub-Committee met with VCASAA, affording advocates a useful opportunity to gather, share information and prioritize critical issues for follow-up at the VAWIR sessions.

The Nanaimo workshop's advocates primarily worked with women-serving agencies or with women clientele. They were deeply invested in exploring issues of abuse as it intersects with custody and access. This was different from communities whose advocates came from a broader cross-section of service provider organizations with a variety of mandates, leaving advocates more reluctant to add women's custody and access concerns to existing workloads and/or experiencing greater levels of frustration and vicarious trauma from being unable to be more helpful or useful to women (*Note: the Nanaimo, Prince George and Surrey workshops were strongly advocate-centred versus Castlegar, which was mixed and in fact had more people employed directly by the Justice system than any other workshop. Issues and discussion were greatly dependent on who was in the room.*)

Racially and culturally diverse advocates were present, as well as lesbian advocates. There were no women with visible disabilities present. This diversity among workers did not mirror the diversities of the local communities. However, there was little discussion regarding issues of cultural diversity affecting women, perhaps because of the notable sense of urgency by local advocates to address issues such as the impact of impending cutbacks to legal aid, among other services, on abused women and their children.

Nanaimo advocates expressed a keen interest in learning how to assist women in self-representation in court and drawing up informal separation agreements. They were especially excited to learn, through the facilitators that a Vancouver-based lawyer was available to conduct skills-building workshops on how to write affidavits. As a result, such a workshop was held in the following months.

Advocates also expressed an interest in establishing a much-needed supervised access centre in Nanaimo and received suggestions from the facilitators regarding the kinds of resources that are involved.

Advocates identified the role played by psychologists in family law matters as a significant problem. They spoke of poor psychological assessments conducted by psychologists with little training and a limited appreciation and analysis of the dynamics of intimate partner violence. As well, most advocates said such psychologists are hired to conduct alternate dispute mechanisms, such as forced

mediations between women and their abusive ex-partners. Furthermore, it was added that Nanaimo is a community without any checks in place requiring standards of training in family violence dynamics for psychologists making their livings from providing these services.

Another substantive issue was the rampant apprehension of children from women who were in, or leaving, abusive relationships by the then-Ministry of Children and Families. This was dramatically demonstrated to facilitators as several workshop participants arrived late one morning and left early specifically to advocate for a woman using their transition house whose her children had been apprehended because she was in a transition house.

Cranbrook

April 17-18, 2002

25 participants from the East Kootenay region attended this two-day workshop in cooperation with the Cranbrook Women's Resource Centre. Participants represented the following service providers:

Kootenay Region Metis Association,
Child Care Society of Cranbrook,
Family Resource Centre – Invermere,
Safe Homes Program – Golden,
Ktunaxa Kinbasket Child and Family Services,
Community Action Program for Children – Cranbrook,
Elk Valley Safe Homes,
Cranbrook Women's Resource Centre,
Kootenay Haven Transition House,
Cranbrook Family Centre,
Golden Family Centre,
Youth Centre – Fernie,
Ministry for Children and Family Development – Cranbrook,
East Kootenay Alcohol Drug and Counselling,
Better Babies.

Facilitators were struck by the intensity with which the Cranbrook participants expressed concern about the cuts to services in Cranbrook and their serious and adverse impacts on women and children. As one participant put it, the level of concern in the room was due to the fact that participants believed "Cranbrook has been particularly hit hard."

These advocates had been contacted for the workshop prior to the cuts being implemented. Advocates cited cuts to transportation in particular as taking the greatest toll, severely impacting women struggling to keep themselves and their children safe. Women tend to have more difficulty traveling to keep appointments

with lawyers, counsellors and other service providers, as well as with finding childcare support for the longer time spans they are now required to be away.

Many discussed their work from the perspective of the dynamics of abuse and in custody and access issues as well as issues of parenting and child protection/apprehension. One pivotal discussion involved analyzing the community's remarkably low the levels of awareness of women's equality issues and dynamics of violence. Workers previously involved in establishing women's centres and transition houses fondly recalled earlier days of building awareness of women's issues in the community, noting that a focus on service provision has had an adverse effect on the community, diverting efforts from implementing systemic change and greater social awareness to direct service concerns. Advocates also noted that people employed by the Justice system aware of the dynamics of abuse have either moved onto other things or retired in the last decade, leaving behind a new generation of service providers who "just don't get it" and require much education. The need for consciousness-raising on women's and anti-violence issues was a repetitive theme at this workshop.

Among outcomes of this discussion, some immediate actions decided upon at the workshop included a decision by the lone male in the workshop to revive the White Ribbon campaign in the community, and to work towards reviving the region's unfunded VAWIR Coordination Committee. The latter decision was the source of much excitement in the room and was directly attributed as an outcome of the workshop.

For the most part, participants were highly appreciative of the materials the facilitators contributed to their community. Geographic isolation was a repeated concern in the room, including its effect on access to training and education. Although this workshop had greatly exceeded the preferred size (27 participants attended), advocates expressed that many more regional workers would have relished the opportunity to attend such a workshop. Advocates noted that Cranbrook is "off the beaten path" of most training and educational workshops being offered, and they must often travel to the Castlegar region to take advantage of such opportunities.

Three of the 27 attendees identified as women of colour, one of whom was a particularly well-known and respected anti-racist organizer in the region. There were no self-identified Aboriginal women in the room, but a worker from an Aboriginal service agency was in attendance. Several women identified as lesbian, bringing up issues particular to that community. A woman with a hearing impediment made a point of thanking the facilitators for raising awareness of issues of disability, noting the importance of having facilitators who are also women marginalized by more than gender. (One of the facilitators of this workshop also has a hearing impediment).

Overall Workshop Summary

The Issues

Advocates in all seven communities indicated, via written and verbal evaluation, that the strongest aspect of the workshops was the networking opportunities created. In these communities, the workshops were an essential opportunity for participants to assemble together, many meeting for the first time, to share information about resources and strategies. They also received much-needed affirmation for the work they are doing, and established coalitions and/or joined existing networks. Throughout the communities, advocates took full advantage of the opportunity for the latter. For example, most advocates chose to join BC's Ad Hoc Custody and Access Coalition email listserv moderated by the workshop provider group, VCASAA.

Participants indicated the workshop provided them with information to better assist them with their work with women and children requiring their support and advocacy. In particular, they noted that information and analysis had helped fill in the "blanks" of their knowledge of custody and access policies and practices, enabling them to better understand connections between the various systems and policy areas, providing a "bigger picture" of the multitude of issues impacting women and children leaving abusive relationships. It also provided a deeper understanding of the intricacies and complexities of such issues, facilitating knowledge of legal terminology and concepts, enabling workers to better realistically prepare women for their interactions with the various systems.

Facilitation

Comments and evaluations spoke of a strong anti-racist focus by facilitators and workshop materials, and an emphasis on issues faced by women by factors such as disability, sexual orientation, age, income status, on and/or off-reserve status, and so on. These were seen as strengths of the workshop. It should be noted that the facilitators ensured at least one of two facilitators at each workshop came from communities marginalized by more than gender. This meant co-facilitators identified as lesbian and/or women of colour and/or immigrant women and/or working class women and/or women with disabilities. The positive impact of this was most evident when workers from those communities of women gave thanks and directly attributed participation in discussions to the presence, support and analyses of these facilitators.

Negative feedback, while far outweighed by positive feedback, focused on the length of time of workshops and the lack of "quick fixes." Comments discussed the great lengths of sitting time and the need for more time to delve deeper into the issues, with some participants expressing they would have liked to have seen a third day added to the workshops. Most participants appreciated the interactive format of the workshops and considered the flexible style of presenters to be a

strongpoint, while a few complained of the lack of formulas and lists of To-Do's. In particular, comments referred to a lack of "easy answers" to the complex and time-consuming work of supporting women through custody and access situations.

Other comments by advocates highlighted the delivery style and format of materials—from the ability of facilitators to adapt information to meet the needs of the communities to the extensive written information contained in the binders. On the former, comments such as "presenters were knowledgeable and aware of issues," "were friendly and experienced," and "invited dialogue," summarize overall sentiment. On the latter, participants appeared to greatly appreciate the practical, hands-on information on how to work with women, as well as the handouts they could give women to use.

Lessons learned

Participant feedback contains information and carries implications for future such projects and may be of use to facilitators, project partners and funders.

Some participants called for more preparatory work prior to workshops, better enabling them to prepare for what is to come, or example, time to read materials ahead of time, as well as helping facilitators prepare more relevant and focused workshops to their community-specific needs. One participant suggested the use of a pre-workshop questionnaire, filled out by participants to provide information regarding their expectations to allow facilitators to better assess the levels of current knowledge in the room.

While most participants appreciated the opportunity to see the commonality of issues faced by workers and women that could help alleviate some of their feelings of isolation doing this work, many stressed the benefits of better understanding the different ways communities and women experience issues based on their geographic location. Specifically, participants called for the emphasis on the differences for women in rural and urban settings, stressing the importance of educating service providers and policy makers about the impact of urban-rural factors on women and children.

An oft-expressed suggestion by participants in all seven communities was that workshops be lengthened to enable more time for interaction and incorporate more visual tools and aids, as well as more participatory exercises.

Also worth mentioning is the presence of lone males in three of the seven workshops, demonstrating that all-women workshops are not necessary to ensure an emphasis on gender equality issues and feminist practice. In fact, the gender of participants had less to do with concerns that workshop materials and facilitators were "too feminist," than the system a participant represented. The rare comment that the perspective of facilitators and materials were "too feminist"

came from a couple of women working in formal systems and not from the male participants. It is, however, important to emphasize that most women working in formal systems attending these workshops do emphasize feminist best practices in their own work arenas.

Other recommendations by participants included the necessity for workshops for specialized victim's assistance workers and for legal counsel, more coalitions and networks on custody and access issues, handouts with practical information and tips, lists of community contacts, greater emphasis on collaborative community work such as through VAWIR Coordination Committees, and more specific information on how to meet the needs of women from immigrant and Aboriginal communities. Finally, perhaps the most emphasized recommendation was the call for restoring financial support for services such as legal aid in areas of family law and the need for more funding for advocates to train and learn to provide custody and access related advocacy to women, most particularly in smaller, isolated communities.

Telephone Surveys

20 participants were contacted after the workshops and posed 6 evaluation questions to measure if and how the participants had utilized the information presented at the workshops.

When asked: *"How have you applied/incorporated what you learned at the training session into your present advocacy work?"* and *"What, if anything, has changed in your community as a result of this workshop?"* some participants viewed the workshop as a refresher course, or others were previously active in their communities. Also, some commented that they are incorporating the new material, as well as sharing it with non-attending colleagues. They did not elaborate or give examples. However, they also answered that they were better equipped to empower women and apply a feminist analysis as a result of this workshop.

Some common responses included:

- Has allowed me to explain the process clearer to other women
- Ability to caution women about the realities of court and other "systems"
- Give guidance for talking to/selecting a lawyer
- Better able to support women through the process
- Using theory learned and applying it in daily work
- More info to offer clients
- Heads up on info to clients re: changes about legal aid and *Divorce Act*
- More able to give women more accurate info regarding custody and access issues
- Learned more about other services/programs available
- Being able to better serve the community

- More knowledge to advise other women and community groups
- The presentation enabled me to bring up/raise issues representing visible minorities
- Level of awareness has increased
- Agency has more confidence in dealing with the issues
- Connecting with others in the community, supportive for the community
- Simply an awareness of the language within custody and access

When asked: *“Have you participated or organized any particular political actions resulting from this workshop?”* and *“Are there any new issues that have risen for you and or in your work/or/community since this workshop?”* we expected this workshop/training would motivate advocates to become more active, however, we learned that this was not the outcome. The most common reason given for this lack of political mobilization was the impact of funding cut. Advocates state they cannot put any more time into an already overloaded schedule. The 40% cut to legal aid services was the biggest new issue facing advocates.

Some common responses included:

- Just informing clients and helping them move out of abusive relationships
- Continuing issues concerning representation in the community – minority representation
- Cutbacks in legal aid are the biggest new issue
- General concern regarding increase in the information women will be seeking regarding changes to government policies surrounding custody and access
- New issues: legal aid issues that are happening right now
- Cutbacks in legal aid and budget restraints
- New issues: poor response from police regarding abuse situation with Iranian women

When asked: *“Have you found the resource manual binder helpful in your work? If not, what was missing?”* the responses were primarily positive. Most participants found this resource to be a very helpful and effective tool.

Conclusions

The evaluation form and telephone survey responses indicate that The *Civil Legal Rights of Abused Women Project* achieved many of its goals. Negative responses to questions about participants’ expectations are largely the result of complexities of specific issues, as well as the current funding constraints. Advocates indicated they are overwhelmed with changes to legal aid and the impacts on custody and access. Many of their concerns did not have straightforward legal information solutions, however, we were able to provide them with some valuable tools and strategies as well as acknowledging that there is much work ahead. Overall, participants were very grateful for the opportunity to attend these workshops.

D. Legal Issues Faced By Women Leaving An Abusive Partner (as identified by participants)

At each workshop, advocates participated in specific exercises and discussions. Facilitators documented their responses on flip charts. Their answers, particularly those related to identifying issues of custody and access, were examined and analyzed by the participants. At the workshop completion, they were asked to complete evaluation forms, soliciting the following feedback: name, what they liked/enjoyed the most, what they liked/enjoyed the least, what they viewed as the most important custody and access issue, whether they found the content appropriate, and whether they had any suggestions regarding the workshop. Responses documented on the flip charts or evaluation forms which relate to a legal or policy issue are discussed in further detail in the following section.

a) Overview

Previous studies have shown that the legal system is inadequate in protecting women who are fleeing abusive relationships. The results of this project mirror the conclusions of previous studies.

For example, a 1992 report of the BC Task Force on Family Violence (Ministry of Women's Equality, 1992) concluded (pg. 93) that

[o]nce a battered woman leaves her abusive husband, one effective way for him to maintain power and control may be through the children. Batterers can use the legal system to achieve this by court orders. Increasingly, battered women are losing custody of their children to their abusive former partner. Others are given joint custody, which enables the batterer to have ongoing contact and to continue the abuse.

Information gathered throughout this project demonstrates the lack of change regarding these issues since 1992. As prior research has shown, the legal system does not make any accommodation for the realities of women who are leaving abusive partners.

Previous studies establish a well-documented pattern of escalation of violence after separation. The national *Violence Against Women Survey* reports that in 35% of cases, violence escalates after the woman leaves the relationship (Statistics Canada, 1999). This project, and previous research, clearly demonstrates the highly problematic nature of custody and access arrangements for women fleeing an abusive relationship.

The research is unequivocal. Both this project, and established studies clearly show that the legal system is not protecting women who have experienced

violence in a relationship. Contrarily, these women often experience ongoing harassment and abuse throughout the legal process. In this project, advocates' comments clearly reveal the legal system as not working for women who have experienced violence in a relationship. Legal issues, as identified through the comments of workshop participants (henceforth called advocates), will be described in this section. Those issues will then be compared to previous research, demonstrating the similarities between the results of this project, and previous study. It is worth noting that all but two of these workshops were completed prior to 2002 legal aid cutbacks in British Columbia. Many of the issues identified by advocates will become more serious by decreased access to legal assistance.

b) Summary of Issues Identified By Advocates Participating in This Project

Participants attending the workshops were asked to reflect on their experiences advocating for women, identifying the key issues for women leaving relationships in which they had been abused. These identified issues can be divided into three categories: a) issues of judicial interpretation, b) issues of legal policy, and c) issues of access to legal representation and resources. These will each be discussed in the following section.

1. Issues of Judicial Interpretation

Advocates identified some specific problems arising from statutory requirements, and judicial interpretation of those statutes. Family courts routinely enforce orders that cause great difficulty for women with abusive ex-partners. Participants identified one of the most significant problem situations to be court-ordered contact between fathers and their children. In general, courts consider the "best interests of the child" as having contact with both parents. Therefore, contact is ordered, even in situations where an abusive man subsequently uses contact as an opportunity to continue harassing and abusing the mother of his children. Court orders for payment of child support and spousal support are routinely ignored, forcing women without legal representation to face abusive partners in court if they want to pursue enforcement.

The courts do not duly recognize issues of safety. Four specific examples provided by workshop participants demonstrate this reality. First, women with "no contact orders" are forced to have contact to accommodate an abuser's court-ordered access to his children. Second, women are forced into unsafe situations due to required court procedures. For example, when women do not have money to pay for a process server, some lawyers ask them to serve the court documents on their abusive ex-partners without any recognition that this places women in unsafe situations. Third, court-ordered visitation prevents women from protecting their personal safety by not allowing them to move to a distant geographical location where they would be able to start a new life. Courts will

often not grant permission for a mother to move with her children as it impedes the father's access rights. Fourth, joint custody orders create particularly volatile situations, as contact between a woman and her abusive ex-partner is increased. Advocates expressed concern about any movement towards increasing the number of joint custody orders – such as through proposed changes to the *Divorce Act*.

Advocates also routinely told of situations where a woman believed that her abusive ex-partner was abusing her children. According to advocates, courts routinely dismiss such concerns, ordering access even when children do not want to see their father. In some cases, allegations of abuse made by the mother are detrimental to her court application, because she is then characterized as merely vindictive or out to deny the father of his rights.

Many of the legal issues facing women who are victims of abuse are very complex. These include “conflicts of laws” such as custody and access orders from different jurisdictions, or situations where Aboriginal living on-reserve have to deal with the requirements of two levels of government.¹ Many women who do not have adequate legal representation give up their rights in the face of seemingly incomprehensible and conflicting legal requirements and issues.

2. Issues of Legal Policy and Practice

There is a need for education for lawyers and other legal professionals in the areas of custody and access. An examination of the issues raised by advocates makes it clear that lawyers and many other professionals do not understand the dynamics of abuse. Advocates expressed concern about the growth of alternative measures, such as mediation and “Parenting After Separation” courses. Not only do these measures potentially bring the mother into contact with her abusive partner, but the reality that many women can not afford legal representation increases the likelihood of women being forced to participate in alternative measures against their will, as a substitute for court hearings. From the advocates’ perspective, these problems stem from the court system’s systemic racial and gender bias demonstrated in judicial treatment of abused women.

This lack of understanding of the dynamics of abuse is applicable, not just to legal professionals, but to a cross section of other professionals. Many advocates reported situations where women had been forced to participate in psychological assessments of themselves and their children. All too often in these cases, psychologists did not take the trauma experienced by the woman into account, or the likelihood that the ex-partner was using custody and access as a tool of control. Consequently, psychologists often misdiagnosed women as having poor coping skills or other problems. Custody reports or court orders rarely take into account the effects of exposure to violence on children. Instead,

¹ Provincial law for division of property and federal law in regard to property on reserve land

such reports focus on the psychological benefit of a child retaining contact with both parents.

Advocates frequently identified the importance of the issue regarding the lack of understanding of the dynamics of abuse by child protection workers². According to them, child protection workers routinely threaten women with apprehension of their children if they allow contact with their abusive ex-partner. However, workers do not recognize that it may be impossible for women to enforce no contact, due to court orders for access. There is also no recognition of the inappropriateness of expecting an abuse victim to prevent her abuser from having contact with his children. Child protection workers also routinely discount women reporting concerns that their children are being abused while visiting their fathers, assuming that these concerns are a tactic being used to get a better outcome in family court (regarding the custody and access dispute). Women are left in the position of having to send their children to visit their fathers when it may be unsafe because child protection workers are so reluctant to investigate claims of abuse when there is a custody and access dispute.

Advocates also told of women having difficulties obtaining access to their children in situations where child protection workers had apprehended them. In addition, they reported women being placed in unsafe positions by financial aid workers forcing them to seek child maintenance in order to receive social assistance. This resulted in the abusive man later punishing the woman (physically or emotionally) for seeking maintenance.

3. Issues of Access to Legal Representation and Resources

The most common concern stated by advocates was that women who have been abused have inadequate access to legal counsel and other necessary resources. This conclusion is significant given the radical cutbacks to legal aid just before the final two workshops were completed. Prior to the cutbacks, some women were “falling through the cracks” by making too much money to qualify for legal aid but not enough to hire legal counsel. Even when a woman was eligible for legal aid, coverage may not have existed for her particular legal problem, or may not have provided enough hours for the lawyer to offer adequate representation. Lack of legal representation will be an even greater issue after the recent legal aid cutbacks.

Problems with legal representation do not end when a woman’s legal aid application is approved. According to advocates, even when a woman is eligible for legal aid, it does not guarantee adequate legal representation. In small communities, women often cannot find a lawyer who provides legal aid, or are in a situation where the only legal aid lawyer in town may already be representing her ex-partner. Legal aid lawyers often use up all the eligible hours before the problem is resolved. Women who are victims of abuse often feel that the lawyers

² In BC, the Ministry of Families and Child Development employs child protection workers.

are not sensitive to their issues, and do not provide them with important information, such as how to change court orders. Although women who have been abused by a partner can have problems in court even when represented by a lawyer, the situation is worse when they are under-represented. Women, and the advocates representing them, believe that the service provided by legal aid is marginal in comparison with the service provided by a lawyer to a paying client. This places poor women at a greater disadvantage in court when their abusive partners have hired experienced and expensive lawyers.

Advocates expressed frustration at the lack of resources available in situations where a woman is being abused and harassed by her former partner. There is a chronic lack of supervised access services. In situations where courts order supervised access, the parties are often left to find their own services. These services are often highly inappropriate. Advocates described situations where the abusive partner's family members or new girlfriend acted as supervisors. Such arrangements cannot be guaranteed to provide safety. There are also very few services that can act as a pick-up and drop-off point. Women have no choice but to see their abusive ex-partners every time there is an access visit.

Advocates commented that this situation is particularly difficult for women who have specialized needs. For women who are immigrant, disabled, or have language barriers there may be no suitable services, especially outside the urban centres.

c) Comparison of Issues Raised By Advocates to Previous Research

Previous studies indicate that abusive men commonly use access and visitation arrangements to continue to harass their ex-partners (Saunders, 1994). Judicial interpretation of family law statutes, combined with public policy, create situations that allow this to happen. In addition, studies have shown that poverty makes it difficult to access justice. Many women cannot afford to hire legal counsel, but may be ineligible for legal aid.

An extensive qualitative study done in 2000 concluded there are systemic inequalities in the legal aid system in BC, with dire consequences for women (Bain, Chrest & Morrow). According to the report, women with abusive partners are particularly at risk, and in some cases are even being forced back into abusive situations because of a lack of access to legal aid. This, and related research, will now be examined in more detail. Clearly, such existing research shows that the problems revealed by advocates in this project are not new. If there has been any change it has been that these problems have escalated. Without immediate intervention, women leaving abusive situations will continue to be left vulnerable and at risk of further abuse.

1. Issues of Legal Interpretation

i) Best Interests of the Child

Advocates complained that women were losing custody to their abusive partners, and that these men were being granted access to their children, despite their past history of abusing the children's mothers. This is, at least partially, the result of the judicial interpretation of the "best interests of the child."

In recent times, family law has changed to reflect the egalitarian views of our society. Some of these changes have a profound impact on women and children experiencing violence. In the past, custody of small children was almost always given to the mother according to the "tender years" doctrine. Today, this legal principle no longer applies. A child's age still may be considered as a matter of common sense, however it is no longer the deciding factor. See, for example, *Williams v. Williams* (1989) 24 R.F.L. (3d) 86 (B.C.C.A); *Young v. Young* (1993) 2 S.C.R. 3. According to the court in *Williams*, neither the "tender years" doctrine, nor the arguments that the needs of female children are best served by their mother are of any validity today. According to the court in *Young*, the sole consideration is the "best interests of the child."

In contested custody disputes, judges make custodial determinations based on what is in the "best interests of the child." In Canada, federal legislation does not stipulate the factors to be considered, and therefore, judges exercise discretion based on the facts of the case, relying on principles followed in previous cases. In BC, provincial legislation sets out a number of factors that must be considered when determining "best interests." However, in practical terms these factors are so broadly stated that "best interests" is left to judicial discretion. By looking at previous court decisions, we can determine which factors are the most often considered by judges. According to the results of one study, in nearly every case, and eclipsing virtually all other factors, access of the non-custodial parent (usually the father) was considered paramount to the "best interests of the child." This was irrespective of the quality or regularity of his parenting (Bourke, 1995). Studies have shown that domestic violence is not typically taken into account when considering "best interests" (Kahn, 1991). It is usually only taken into consideration if the court considers the safety of the child to be at risk, such as instances of a proven history of child abuse.

The "best interests of the child" standard has been criticized for being subjective, and leaving open the possibility that the court's decision will be influenced by the judge's own personal biases and beliefs. In addition, the view that it is always in the "best interests of the child" to retain contact with both parents can be criticized for being simplistic. Often the result is that violence and conflict between the parents continues every time there is contact through shared custody/ visitation arrangements. What is missed in the analysis is the negative effect of the exposure to violence can have on children.

Research concerning children exposed to marital violence is recent, and has some methodological limitations. However, while more research is needed into the specific effects, there is agreement that witnessing violence is harmful to children. Witnessing violence is a significant predictor of post-traumatic stress disorder (Kilpatrick & Williams, 1997), and may contribute to the development of depression in children. In one study, 11 children had been witnesses to violence. Of these children, 64% were diagnosed with depressive disorders and 36% had attention deficit hyperactivity disorder (Quesrshi & Maloney, 1997). In the long term, children witnessing violence may experience a higher incidence of relationship problems and substance abuse (McNeal & Amato, 1998).

ii) Who Wins Custody

Studies support the observation of advocates in this project who were outraged that men who abused their partners later were awarded custody. Many of the advocates personally knew of women who had lost custody of their children to abusive partners. This observation is supported by previous research, although it may surprise many in our society, given the common belief that courts always grant women custody. Although, overall, more women have custody than men, this is usually because of a mutual agreement between the spouses. In contested cases, men receive custody just as frequently as women. One study showed men receiving custody as high as 74% of the time in provincial court, and 91% of the time in Supreme Court (Goundry, 1998; Bertoia & Drakich, 1993).

iii) Past Conduct Deemed Irrelevant to Parenting

How is it that men who have abused their wives win custody of their children? Of great significance is the judicial interpretation of s. 16(9) of the *Divorce Act* that stipulates the court shall not take into consideration the past conduct of any person unless the conduct is relevant to the ability of the person to act as a parent to that child. According to research, domestic violence is usually not included in the consideration of best interests of the child (Keenan, 1985; Lehrman, 1996). The results of one Canadian study affirmed that s. 16(9) is being interpreted by judges to render domestic violence irrelevant past conduct (Rosnes, 1997).

iv) Friendly Parent Presumption

Advocates repeatedly spoke of situations where women were forced to send their children on access visits, despite their concerns that the children were being abused. This fits with previous research on this topic. Studies indicate courts as being reluctant to deny access in situations of family violence. If the abuse is directed at a child, supervised access will usually be ordered if the abuse is proven. If unproven, supervised or unsupervised access will be ordered

depending on whether or not the court believes the child to be at risk (Zarb, 1994). Access is rarely completely denied.

Unfortunately, raising allegations of child abuse can actually work against the parent raising them. S. 16(10) of the *Divorce Act* states that, in making custodial determinations, the courts are to consider the willingness of the party with custody to facilitate contact with the other parent. This has been called the “friendly parent presumption.” Abuse can be extremely difficult to “prove.” If a woman raises safety concerns, but is unable to prove her allegations, she risks having the court conclude that she is merely being vindictive (or “unfriendly”) in order to prevent her ex-partner from having contact with his child. On the other hand, if she does not raise legitimate concerns she is putting the child’s safety at risk (Rosnes, 1997; Lehrman, 1996).

v) Ongoing Harassment and Abuse Through the Court Process

Women continue to experience ongoing abuse from their ex-partners throughout all stages of the court process, according to the advocates. This harassment takes at least two forms. First, an abusive partner often continues to threaten, or even physically abuse, a woman after she leaves the relationship. Second, an abusive man may use litigation to harass his former partner.

A woman is in danger of harm after leaving a relationship where she has been abused. There is well-documented pattern of escalation of violence after separation. The national *Violence Against Women Survey* reported in 35% of cases found that violence escalated after the woman left the relationship (Statistics Canada, 1999). One study found that almost 25% of women killed by their partners were murdered after leaving, and another 8% while attempting to leave (Hart, 1990). For these women, custody and access arrangements are often very unsafe. The danger is multiplied for women who are representing themselves, as they may have to face their abusive partner in court or in mediation.

Even after the divorce is granted, an abusive man may continue to use litigation as a tool to harass his former partner. The *Divorce Act* allows applications to be made to vary orders when familial circumstances change. This makes it possible for the abusive partner to use the threat of repeated court proceedings as a way of punishing his ex-partner, wearing down her energy and resources. The BC Law Society reports one case where a woman was brought into court over one hundred times during a six year period to deal with applications for variations of maintenance or access (Gender Bias Committee, 1992). Goundry presents the results of an extensive study on repeated courtroom litigation, which she terms “court-related harassment” (1998). This study examined family court records in British Columbia, concluding that repeated applications for custody variations are a tactic of harassment used by some abusive partners.

2. Issues Related to Legal Policy and Practice

i) Movement Towards Shared Parenting

The advocates were opposed to any potential changes to the *Divorce Act* that would make joint custody a legislated preference. Joint custody is a shared parenting arrangement where both parents are responsible for the care of the child and are involved in making decisions related to the care of that child. The child may primarily live with one parent, or physical custody may be divided. Advocates stated that joint custody arrangements place women with abusive ex-partners at risk of harm. This concern is supported by research.

According to Johnson & Campbell, the best prognosis for shared parenting is where there has been no domestic violence (1993). The author of one literature review concludes that joint custody works against women in abusive relationships (Bruch, 1988). Pagelow states that attitudes towards joint custody may help win unfair financial advantages, and/or continued control over victims after divorce (1993).

Joint custody has become the preferred option in some American jurisdictions. Currently in Canada, courts are reluctant to impose joint custody unless the separating couple is in favour of it (Young, 1994). However, there is increased public pressure in favour of shared parenting. As a result, there has been public debate about making changes to the *Divorce Act*, including introducing a legislated preference for shared parenting. Some of the public pressure has come from father's rights groups. These groups advocate solutions such as shared parenting, the abolition of spousal maintenance, and legal sanctions against those who make false allegations of abuse (Kaye & Tolmie, 1998).

Making joint custody a legislated preference would place women who are victims of domestic violence at risk. A review of Australian legislation, where shared parenting was recently implemented, revealed that the legislation increasing parental responsibilities actually increased the rights of the access parent to be involved in this decision making (Crossman & Mykitiuk, 1998). If non-custodial parents are given more involvement in day-to-day decision-making, it sets up a situation where an abusive partner has more control over his spouse. In essence, a custodial mother is responsible for all the day-to-day care of the child, and the non-custodial father will have a veto over all the major decisions. This significantly reduces the autonomy and flexibility of the custodial parent (Delory, 1989). This arrangement makes it very difficult for women who are trying to escape the control of abusive partners.

ii) Use of Alternative Measures (ex. Mediation)

Advocates were concerned about the use of mediation to resolve custody and access disputes between parties who have experienced abuse. Some American

jurisdictions have mandatory mediation. Presently, there is no jurisdiction where mandatory mediation has been implemented for family law disputes in Canada. However, mediation is becoming an increasingly popular alternative to litigation, and advocates expressed concern that women would be pressured into using mediation – especially in the absence of legal representation.

Despite the increased popularity of mediation, many studies have shown that it is completely inappropriate where there has been family violence. For example, Hart's extensive literature review on custody mediation in the context of domestic violence concluded that there are problems with using mediation in this context (1990). These problems include the imbalance of power, the lack of true consent to the principles of mediation on the part of the perpetrator, the burden placed on the victim to be in the same room as the perpetrator, and the physical danger the woman may be placed in (Astor, 1994). In some cases there can be problems with confidentiality. A frightened woman may say things in mediation, only to have her statements used against her in court (Bruch, 1988).

If mediation is inappropriate for situations of family violence, then mandatory mediation programs should only be implemented if they are able to effectively screen out any situations where domestic violence exists. However, it is not always possible to identify situations of domestic violence because couples do not always disclose (Astor, 1994). Furthermore, critics say that screening processes are flawed. For example, in one study as few as 5% of all referred families were screened out of programs because of domestic violence (Thoennes, 1995). Since studies show that 50% of all referrals to mediation are families with violence issues, this number is very low (Cohen, 1991; Pearson, 1997).

iii) The Legal System's Failure to Understand the Dynamics of Abuse

Advocates stated that legal professionals need education about the dynamics of abuse. They suggested that such education would benefit judges and lawyers. Previous studies confirm the need for education. The adversarial legal system presumes that both parties in a dispute have equal opportunity to present their position, thereby enabling an impartial judge to weigh out contradictory evidence and make the best decision possible based on the facts. However, in situations where there is family violence, this fails to take into account the power differential between the two parties. In an abuse situation, the power imbalance between the victim and her abusive partner can be enormous.

In addition to using physical violence, an abusive man often emotionally abuses his partner to try to control her. This may include limiting her access to money, and isolating her from family and friends. When the relationship ends, an abused woman often finds herself building a new life from scratch with few resources, financial or otherwise. Her circumstances can have an adverse effect on her case. First, out of fear, she may not insist on her legal rights because of potential

repercussions. This is particularly the case if she can't afford a lawyer, and, as a consequence, is forced to come into contact with her abusive partner in court or in mediation. Second, the woman may be suffering from post-traumatic shock and may appear unstable or emotionally wrought. In contrast, her abusive partner may appear calm, rational, and stable, and may seem more believable to a court (Lehrman, 1996; Pagelow, 1993; Taylor, Barnsley & Goldsmith, 1996; Goundrey, 1998).

iv) Gender Bias

The advocates participating in this project firmly believed that abused women were not getting justice because of gender bias in the legal system. This allegation is supported by previous research.

The report of the Law Society's Gender Bias Committee made note of the fact that gender inequality is pervasive in the justice system, and that family law is a particular problem (1992). Women and men have different ways of communicating, placing women at a disadvantage in a justice system using male communication styles and beliefs (Gray & Merrick, 1996). In attempting to correct for sex-based stereotyping in family law, law reformers have, perhaps inadvertently, reinforced the lack of recognition by the legal system of women's childcare and household labour (Boyd, 1990). Gender bias in the courts is one additional factor that women who have been abused have to contend with during custody hearings.

v) Lack Of Understanding of the Dynamics of Abuse by Other Professionals

Advocates repeatedly referred to problems caused by the failure of professionals to understand the dynamics of abuse. In particular, this manifested itself in lack of sensitivity by psychologists doing custody evaluations and social workers investigating child protection concerns.

Psychologists (Custody Evaluations)

Advocates expressed concern about the reliability of custody evaluations done by psychologists in situations where family violence has occurred. According to the advocates, custody evaluations are inherently unreliable without recognition of surrounding circumstances. Previous studies support the conclusion that inherent weaknesses in child custody evaluation methodology exist.

One problem is that there is great latitude for subjectivity in custody evaluations, leaving open the possibility of determinations being made based on the biases of the person doing the testing. Although the American Psychological Association has published guidelines, they do not extend as far as stipulating the particular

tests that are to be used, or the procedures that are to be followed (Practice Directorate, 1994). According to one study, psychologists who perform the evaluations often do not have specific training for doing custody evaluations, relying heavily on interviews and observation (La Fortune & Carpenter, 1998). One study found little empirical evidence supporting the efficacy of methods typically used by professionals (Hysjulien, Wood & Benjamin, 1994).

Other concerns about the effectiveness of custody evaluations have been discussed in academic literature. These include a concern that evaluators may be unaware of the law and may make recommendations that are actually contrary to the law of the state, and that interviewing may not be a reliable means for doing evaluations (Deed, 1991; Hynan, 1998). The greatest concern is that custody evaluation tools can be misused. The legal system may put pressure on evaluators to provide answers that are more definitive than proven methodology supports. This may result in psychologists putting too much reliance on tests whose validity is not proven in that particular situation (Brodzinsky, 1993; La Fortune, 1998).

Social Workers (Child Protection Workers)

According to advocates interviewed in this project, social workers often do not understand the dynamics of abuse. This leads to two problems. First, social workers may expect women to keep their abusive ex-partners away from the children, without any recognition of the limits of the woman's ability to do so, either because of fear, or because of the existence of court orders requiring the children to have contact with their fathers. Second, when women report concerns that ex-partners are abusing the children during visitation, social workers may dismiss the concerns as vengeful due to ongoing custody disputes.

The unwritten policy of dismissing child abuse claims as merely vindictive contrasts statistics regarding abuse allegations. Studies have shown that marital violence is a statistically significant predictor of physical child abuse. One study found that the greater the amount of violence against a spouse, the greater the probability of physical child abuse by the physically aggressive spouse. The probability of child abuse by a violent husband increased from 5% with one act of marital violence to near certainty with 50 or more acts of marital violence. The probability of child abuse by a violent wife is not as strong as it is for violent husbands (Ross, 1996). Another study found child abuse in 40% to 60% of cases where there was marital violence (Geffner & Pagelow, 1990).

There is a common myth that allegations of physical or sexual abuse are routinely made by women in an effort to deny custody to their children's father. However, research shows us that the total number of allegations of child abuse during contested custody disputes is small. Two major studies found that child sexual abuse allegations are only made in 2% of all litigated custody cases (Thoennes & Tjaden, 1990; MacIntosh & Prinz, 1993). Some researchers have

suggested a higher amount of allegations are made, but still in less than 10% of all litigated cases (Bala, 1999). It is almost certain that some false allegations are made. However, these may often be the result of mistrust or miscommunication between the parents rather than maliciousness (Green, 1991; Etterman & Ehrenberg, 1991; Schudson, 1992).

3. Issues of Access to Legal Representation and Resources

Despite the inadequacies of the family law system and related policy issues, justice might still prevail if women have adequate legal representation. However, according to the information provided by the advocates in this project, many women leaving abusive relationships are significantly under-represented. In many cases women are unable to obtain legal representation at all, and where a woman is successfully in obtaining legal representation, the number of hours that the lawyer is available to work on her case may not be enough to adequately resolve her problem.

This parallels the findings of previous studies. This problem will become more acute in the near future, given the recent cutbacks to legal aid in British Columbia. These cutbacks, which occurred as this project was nearing completion, will result in many more women being ineligible for coverage for family law issues.

Following is a summary of some of the literature on the topic of legal coverage for women.

i) Overview of Previous Research on Access to Justice for Women

A 2000 report of a qualitative study of legal aid access in BC, entitled “*Access to Justice Denied: Women and Legal Aid in B.C.*” (Bain, Chrest & Morrow, 2000), drew the following conclusions (at ix)

Cutbacks and restrictions to accessing legal aid mean that women are increasingly representing themselves in complicated legal matters, or are failing altogether to access their legal rights and the rights of their children. The personal and financial consequences for women are far reaching. One of the most serious consequences are the number of women who are losing custody of their children because they lack adequate legal representation, or even basic information about their rights. Single mothers who are particularly vulnerable to threats by their partners frequently abandon claims for child maintenance rather than face the possibility of losing custody. As a result of intimidation and lack of

representation, women often forfeit property and income, surrendering themselves and their children to poverty

The 2000 study entitled *Access to Justice Denied* is not the only study on this topic. In 2000, another study was completed, commissioned by the Access to Justice Committee of the Law Society of British Columbia. It examined the effects of legal aid cutbacks in 1997 on women (Trerise, 2000). The following conclusions were drawn by the author of the study in regard to the effect of legal aid cutbacks, and of women's inability to obtain legal assistance (at 1-3)

There are many problems concerning assets, regarding both eligibility and coverage; this tends to be particularly problematic for women from traditional marriages, especially immigrants.

The availability of counsel to represent legal aid clients... has become an issue due to the combined effect of payment restrictions and tariff administration.

Those parties who are provided with counsel receive a restricted level of service. Some of the noted results are that women may not be able to pursue their share of family assets, and women who are trying to leave violent partners may have to deal with their spouses directly on issues of access enforcement and access to basic household assets, as well as divorce.

[W]omen dealing with violence issues... are appearing in court unrepresented on variation applications and custody and access matters, as well as restraining orders.

...Supreme Court judges [who participated in interviews] identified custody and access as particularly difficult to manage when there is an unrepresented party... there are serious difficulties for self-representers on matters of spousal support and division of assets; some lawyers observe that women are walking away from these claims rather than pursue them on their own.

Advocates in this current project reported similar problems. They reported regularly having clients who lost custody of their children, or, alternatively, clients who refused to participate in the legal system out of fear.

This situation is, at least partly, caused by the reality that, across Canada, there is typically more coverage provided by legal aid plans to criminal matters than there is to civil law matters. Civil legal aid provision is very limited in some provinces, and as a result women often find their particular legal problems fall outside the very limited civil law coverage offered. Even in provinces where there is legal aid coverage for family law issues, women may be ineligible. In some

cases, a woman's income level falls above the extremely low level for eligibility in the province in which they reside. However, while these women earn too much to be eligible for legal aid, their income is too low to be able to afford legal counsel.

Mary Jane Mossman's article *Legal Aid Services* (at 46) aptly explains the reason behind priorities set by provincial legal aid plans.

Existing research about legal aid services in Canada has demonstrated some priority for legal aid services in criminal matters, particularly in the context of diminishing government resources... In practice, the priority accorded to legal aid for criminal matters has resulted from the existence of federal-provincial cost-sharing agreements in criminal and young offender legal aid. According to these agreements, the federal government reimburses provincial legal aid schemes for 50 percent of the cost of providing such services. Such a contribution to the funding of provincial legal aid schemes makes such services more attractive than civil legal aid services in cost/ benefit terms, especially in provinces where funding for legal aid services may otherwise be scarce.

The result is that, across Canada, legal aid coverage often does not extend to civil law issues that are of crucial importance to so many women. According to the conclusions of one study (Bain, Chrest & Morrow, 2000 at ix),

[a]s a result of priorities set by legal aid plans across Canada eligible criminal law applicants receive coverage in situations where there is the potential of imprisonment. However, "[n]o similar safety net exists for women who face serious and even life threatening consequences of relationship breakdown, related child custody issues, and other serious civil law matters".

It is worth noting that, although the shortage of legal services for civil law matters affects all women, there is a particularly serious impact on women who are victims of family violence. Vicki Trerise explains this (at 29) in the following words:

Lack of coverage for variations and for access enforcement has a particular significance for these women: there is a common phenomenon of abusive husbands using access as a tool to continue to try to control and/ or harass their spouses. The woman is left in an extremely vulnerable situation, with her children in the middle of it, if she cannot address this problem if it arises. Often she will need to apply for restrictions on access, which is a very difficult order to obtain, even with the assistance of counsel.

ii) Previous Research in Regard to Specific Concerns of Advocates

The advocates participating in this project raised many specific issues related to lack of access to legal representation and resources. Most of these specific concerns have appeared in previous research. It is worth noting, once again, that not only are the problems longstanding, but they will unquestionably become more serious once the effects of the recent legal aid cuts are felt.

Some of the key concerns raised by the advocates are as follows:

Lack of Access to Legal Services for Women in Rural Areas

Advocates reported legal aid access was a particular problem in rural communities where women often have to travel to another community to find a lawyer who would take legal aid cases. This serves as a formidable obstacle for women who have no car and no money for transportation.

This problem was reported in studies as early as 1992. *A Review of Legal Aid Services in British Columbia* (Agg, 1992 at 83) found that women outside of large urban centres often find it difficult to find lawyers to act on their behalf, leaving women in the position of finding lawyers outside their community to act on their behalf, a difficult situation for many who are on social assistance and cannot afford transportation expenses.

Cutbacks in Services Lead to Situations Where Women are Placed in Danger

Advocates expressed concern that women are being placed in unsafe situations by being forced into contact with their abusive ex-partners, either because they were representing themselves, or because their lawyers asked them to serve legal documents papers in an effort to save money. These problems are not uncommon when legal services are cut back. A report prepared in 1997 for the Ontario Association of Interval and Transition Houses (OAITH) also made note of situations where, because of time restrictions placed on legal aid coverage, women were asked to serve their own papers or where women were abandoned by counsel in the middle of the case because maximum time permitted had expired.

Similar situations have been noted in other jurisdictions. Bain, Chrest & Morrow (2000) tell of a case where a woman went to a transition house because she could not get a restraining order. Her lawyer would not serve papers because there was no money. She was told that she would have to do it or find someone else to do it. The authors of this report described the impact of legal aid cutbacks on victims of violence in the following words (at 41)

As a result of inadequate representation women often settled for less money than they were entitled to, such as giving up rights to benefits and pensions. Further, that women were often “up against the wall” and do not realize the ramifications, that they are often willing to do whatever the men or their lawyer says in order to get the process over with and to keep food on the table. Additionally, that due to a lack of adequate representation women either end of [sic] representing themselves or giving up and going back to their ex-partner (who is often abusive).

Cutbacks to Legal Services Result in Forced Mediation

Advocates expressed concern about the potential for women to be pressured into using mediation or other alternative dispute processes rather than having their case heard in court. Previous studies have highlighted situations where women who were poor were directed towards mediation as a cost-saving measure to the system. This is particularly true when funding for legal services is reduced. The OAIH report, written after legal aid cutbacks in Ontario, documented situations where legal aid personnel used various tactics to coerce abused women into mediation.

In *Where the Axe Falls*, Vicki Trerise concludes by stating “the trend in the system toward settlement-focused procedures may place abused women in a disadvantageous situation, especially if they are not represented” (at 29).

Lack of Access to Justice Demonstrates Gender Inequality and Racial Inequality

Advocates repeatedly expressed the opinion that the injustice women face in the legal system is an indicator of gender bias and, in some cases, racial bias. Lack of coverage for family law profoundly affects women – particularly those fleeing abusive relationships. As the author of a background paper entitled *The Gendered Nature of Legal Aid* aptly points out, women who have been abused, or who want to leave domestic relationships want legal advice to understand their options. However, understanding ones legal rights is not enough. According to the author (at 30)

[a]ccess to the legal system is crucial to the enforcement of legal rights. To state the obvious, rights by themselves mean little – it is the ability to enforce them... [A]ccess to the legal system to enforce legal rights of particular concern to women is... less than the access to enforce legal rights enjoyed by a criminal accused... [T]his differential access results from women’s greater need for civil (and particularly domestic) legal aid and men’s greater need for criminal legal aid, while more resources are allocated to criminal legal aid than to civil legal aid.

The background paper goes on to conclude that cutbacks to legal aid, which have resulted in limited provision for family law issues, is example of systemic sex discrimination (at 34).

The 1992 report of the Gender Bias Committee of the Law Society of British Columbia concluded that:

Gender inequality is pervasive in the legal and justice systems in this province... the laws, for the most part, are gender neutral, [however] the application of many of these laws creates a situation of systemic bias against women, particularly women of low income status, aboriginal women, lesbians, women with disabilities, and women who are members of visible and immigrant minorities.

We believe that the family law system in our province fails to provide women and children with adequate means of economic support upon marriage breakdown.

These problems are worse for women who face cultural or language barriers. According to previous studies, women who do not speak English as a first language often do not get the interpretation services that they need to access the legal aid system. For example, interpretation services may not be provided for the intake interview. (Bain, Chrest & Morrow, 2000 at x).

4. Key Issues Regarding Access to Justice

Some key issues raised by advocates in this project are as follows:

- Women are being forced back to abusive partners because of lack of access to legal counsel.
- Advocates and front line workers are under increased pressure to provide information and help to women who are having difficulty accessing the justice system.
- Women are losing custody of their children because they lack legal representation.
- Women are being forced to represent themselves in court, even in difficult and complicated matters.
- Even when a woman is able to get legal representation through legal aid, it may be inadequate. The coverage often runs out before the legal issue is resolved, or the coverage may only extend to some aspects of a woman's case leaving her in the position of leaving some

issues unresolved, or returning to court to represent herself on those matters.

None of these issues are new. They have all been described in previous literature, and have shown up in previous studies. What is surprising is that governments have so little will to address such well-documented problems. In fact, the policies of some provincial governments will exacerbate, rather than relieve, these problems. For example, the recent severe cutbacks to legal aid in British Columbia will make the dire situation described by advocates in this project even more serious.

Prior to the recent British Columbia legal aid cutbacks, women could get coverage for family law issues, provided they qualified. Eligibility was based on income. Legal aid would be granted if a woman's income were low enough. However, the scope of coverage was limited. Legal aid lawyers had rigid time restrictions placed on their files and could only provide assistance in resolving specific legal problems.

Subsequent to the legal aid cutbacks, coverage is only provided for family law disputes under exceptional circumstances (such as when a woman needs a restraining order) and only for interim orders, not for trials. Since the cutbacks occurred after most of the workshops were completed, advocates were not able to document the effect of these recent budget cuts. However, it is safe to say that the result of these cutbacks will be the denial of access to justice for more women and more women losing custody to abusive partners and being left in unsafe situations.

It is clear from the surveys, that the advocates in this project were being called upon to help women with a broad range of legal problems. Advocates talked about providing support, information about the legal system and assistance in finding legal counsel. Many of the legal issues of the women that they help on a regular basis have profound legal complexity. It is unrealistic to think that abused women without legal representation will be able to resolve these issues on their own with the assistance of an advocate. Nonetheless, advocates are already being asked to play this role in cases where a woman cannot obtain legal counsel.

With the additional cutbacks to legal aid, it is inevitable that women will be turning to advocates in increased numbers when they are unable to obtain the assistance of a lawyer. It would be a tragedy if the willingness of advocates to help, and the government's desire to save money, lead to a situation where advocates become a de facto substitute for legal counsel for women who are poor. Advocates can serve an important purpose, but this should be as a compliment to legal counsel, not as a replacement for it. Similarly, training for advocates greatly assists them in their work (according to the results of surveys filled out by advocates in this project). However, this education cannot prepare

them to act as lawyers. Competent legal counsel is needed for women who are escaping a situation where they have been abused. Without the assistance of legal counsel it is very difficult for these women to resolve their legal issues, and to ensure that they are as safe as is possible within the constraints of the legal system.

E. Conclusions and Recommendations

Conclusions

1. Women who are leaving abusive situations are regularly left without legal assistance, or with inadequate legal assistance.
2. In the absence of legal counsel, advocates are inappropriately forced into the position of assisting unrepresented women with very complicated legal issues.
3. Advocates provide a valuable service complimentary to legal assistance. This project clearly demonstrates that the work of legal advocates can be enhanced by education and training.
4. Those working in the justice system and other professionals do not have an adequate understanding of the dynamics of violence against women in relationships.
5. There is a shortage of support services, such as supervised access, so that women are inappropriately forced to come into regular contact with their abusive ex-partners.
6. Often the requirements set out by child protection workers do not take into consideration court orders that a woman must follow. Women are being inappropriately asked to keep their children away from their ex-partner in the absence of assistance to deal with access arrangements.
7. Women are being coerced into using mediation, and other alternative measures that are inappropriate in situations of family violence.
8. Women are being forced to send their children to visit an abusive ex-partner even when they suspect he is abusing the children. In situations where women are reporting suspected child abuse, their claims are being dismissed as mere courtroom tactics.
9. Abusive men are using the court system as a tool to continue to harass their ex-partners.
10. Women who are leaving abusive relationships continue to be in danger of ongoing abuse after leaving the relationship whenever they come into contact with their ex-partners during access visits or in court.
11. Marginalized women face greater, compounded obstacles in seeking custody and access assistance.

Recommendations

The partners in this project recommend that:

1. Legal aid coverage in Family Law and Poverty Law matters be restored and expanded.
2. Legal service to assist community-based advocates be restored, and that advocates not be used by government on a de facto basis to fill a gap in legal service provision.
3. Funds be made available to continue to train and educate advocates for women so that they can carry out their work effectively.
4. Funds be available for more advocates.
5. Education be given to social workers about the dynamics of family violence, the legal constraints on non-abusive parents where there is an access order and the need to respond to child abuse disclosures in situations where there is a custody dispute.
6. Federal and provincial statutes be redrafted so that the impact of family violence must be considered by courts when determining the “best interests of the child”.
7. Education about violence against women in relationships be provided to workers in the justice system, to the legal profession, to social workers, to child custody assessors, and to other professionals.
8. Specialized support services be put into place to ensure the safety of abused women and their children, such as services that provide supervised access.
9. Mediation not be made a mandatory service, and that women retain the right to refuse to participate in mediation.
10. The *Divorce Act* not be rewritten so that joint custody/ shared parenting is made the preferred option, and that joint custody only be applied in situations where both parents are in agreement.
11. The *Divorce Act* and *Family Relations Act* be rewritten to create a presumption against unsupervised access where there is violence in the relationship.

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G. Appendix A

Advisory Committee Members

Jessie Basra
Threshold Outreach Program

Jane Coombe
Victim Services Division
Ministry of Public Safety and Solicitor General

Carol McEown
Legal Services Society

Shahnaz Rahman
BC/Yukon Society of Transition Houses

Ruth Lee Taylor
Barrister and Solicitor

Susan Ellis
Barrister and Solicitor

Melody Augustine
Children Exposed to Violence Counsellor

Judith Kerr
Stopping the Violence Counsellor

Tracey Porteous
BC Association of Specialized Victim Services and Counselling Services

Project Management Group

Penny Bain, Jenny Fry, Tracey Moropito
BC Institute Against Family Violence

Audrey Johnson, Alison Brewin
West Coast LEAF

Nancy Drewitt, Ajax Quinby, Veenu Saini, Fatima Jaffer, Sheryl Burns, Zara Suleman
VCASAA

Workshop Presenters

Nancy Drewitt, Ajax Quinby, Veenu Saini, Fatima Jaffer, Sheryl Burns, Zara Suleman
VCASAA

Legal Advisor

Joan Braun
Barrister and Solicitor

Editor

Jean Stadnicki
BC Institute Against Family Violence

H. Appendix B

These are examples of the results given during a workshop exercise called, “If you ever had a woman, please step forward.”

Workshop – Cranbrook – “If you ever had a woman”

26 participants were asked to step forward if the following applied to them.

- 25 had a woman have an assessment that ignored their partners abuse while labelling the woman.
- 23 had a woman who wasn’t believed about abuse.
- 22 had a woman lose custody of her children.
- 21 had a woman have to force her children to go on access visits when they didn’t want to go.
- 19 had a woman who was told that now the marriage is over and they just need to learn to get along.
- 18 had a woman who was threatened by the Ministry they’d apprehend her children if she didn’t leave, then the Ministry did nothing to help her get no/or supervised access.
- 16 had a woman who lost Custody to an abuser.
- 13 had a woman whose children returned from access visits with clothes that were in poor shape and the good clothes the child was sent in were kept.
- 13 had a woman who had no safe place to drop the kids off.
- 13 had a woman who had a dangerous partner and was unable to move away because of access.
- 12 had a woman who had to go to mediation with an abusive man.
- 12 had a woman who had a RO or No Contact order except for purpose of access.
- 11 had a woman who had their ex’s new girlfriend supervise the visits.
- 10 had a woman have their child not return from an access visit in another city.
- 6 had a woman whose lawyer who reminded them of their husband
- 5 had a woman whose child was child kidnapped out of the country.
- 4 had a woman who has seen racist stereotypes used in reasons for judgment.

Workshop – Nanaimo – “If you ever had a woman”

30 participants were asked to step forward if the following applied to them.

- 23 had a woman whose children returned from access visits with clothes that were in poor shape and the good clothes the child was sent in were kept.
- 23 had a woman who wasn’t believed about abuse.
- 23 had a woman who was told that now the marriage is over and they just need to learn to get along.

- 23 had a woman who was threatened by the Ministry they'd apprehend her children if she didn't leave, then the Ministry did nothing to help her get no/or supervised access.
- 23 had a woman who lost Custody to an abuser.
- 23 had a woman who had no safe place to drop the kids off.
- 23 had a woman who had a RO or No Contact order except for purpose of access.
- 23 had a woman who had a dangerous partner and was unable to move away because of access.
- 23 had a woman lose custody of her children.
- 23 had a woman have to force her children to go on access visits when they didn't want to go.
- 21 had a woman who has seen racist stereotypes used in reasons for judgment.
- 21 had a woman who had to go to mediation with an abusive man.
- 20 had a woman have their child not return from an access visit in another city.
- 20 had a woman have an assessment that ignored their partners abuse while labelling the woman.
- 17 had a woman whose lawyer who reminded them of their husband
- 16 had a woman who had their ex's new girlfriend supervise the visits.
- 10 had a woman whose child was child kidnapped out of the country.