

**FEDERAL STRATEGY ON GENDER-BASED VIOLENCE
BRIEFING NOTES FOR STATUS OF WOMEN CANADA AND THE DEPARTMENT
OF JUSTICE CANADA**

ISSUE: Barriers to Women’s Participation in the Criminal Justice System

Policies, programs, practices and training regarding gender-based violence must focus on barriers to women’s participation in the justice system and on understanding and addressing women’s “reluctance”¹ to report to police or to proceed with prosecution.

KEY POINTS

- Women who face particular barriers to participating in the justice system or who are reluctant to report to police or proceed with prosecution in cases of gender-based violence are at higher risk of future violence.
- Reluctance may take many forms. Women may be reluctant to report to police, request that no charges be laid or that charges be dropped, request that no-contact conditions be changed, be unwilling to testify, or choose to remain in an abusive relationship.
- Women’s reluctance has consistently been a key challenge for justice personnel responding to gender-based violence, and is often put forward as justification for a less proactive justice system response to domestic and sexual violence.
- Barriers to women’s participation in the justice system often exist within the justice system itself or within the health and social service systems, or may be related to a lack of access to support services. Victims/survivors need more rather than less support, including proactive referral to specialized support and counselling.
- A number of justice system practices cause concern: inadequate response to 911 calls, women being asked if they want to proceed despite policies mandating charging where legal grounds exist, pursuing peace bonds rather than proceeding with charges, referring cases to alternative measures without the proper safe guards and supports in place for victims/survivors rather than proceeding to trial, high rates of stays of proceedings, laying of obstruction of justice charges against victims for refusing to testify or changing their evidence, not believing survivors, not collecting more material evidence or not canvassing for other victims, etc.
- Innovative strategies are being used in many jurisdictions to prosecute domestic violence cases while reducing reliance on victims as witnesses, including introduction of

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

911 tapes, use of KGB² statements (out-of-court statements that allow victims to avoid testifying), and use of expert witnesses.

- Underlying successful prosecution, especially where women are reluctant, is a thorough police investigation, including collection and retention of all available evidence. Such investigations can result in stronger cases and more guilty pleas, eliminating the need for victims to appear as witnesses at trial.

- Effective responses to victims/survivors of gender-based violence who are reluctant to proceed with involvement in the criminal justice system must take account of *reasons* for women's reluctance:

- Reluctance as a response to serious trauma and fear.
- Material needs, economic dependency on the abuser and having few to no options for housing/employment – especially for some groups including poor women, immigrant and refugee women, Indigenous women and women who live with disabilities.
- In the case of domestic violence, fear of increased violence if they leave, a reality confirmed by experience and research (Statistics Canada, 2016).
- Pressures not to proceed from the woman's family or cultural community.
- In the case of domestic violence, commitment to keep the family together and ensure a father for her children.
- Lack of information and lack of proactive referral related to available survivor support services.
- Fear of the court process and fear of authorities, including police and child protection authorities. In all cases of gender-based violence, but in cases of sexual assault in particular, this fear may take the form of fear of public shaming, not being believed, or being blamed for the assault.
- Prior negative experience with the criminal justice system.

- It is important that police re-define success to recognize that *any* involvement with the criminal justice system is a significant step forward for a victim/survivor. Helping women see the justice system as an ally is key, so that when women are at serious risk again in the future, they will be willing to come forward again for help.

- Many women who initially oppose proactive charging of their partner in domestic violence cases come to support a pro-charge approach after participating in a successful prosecution, or after experiencing continued violence when prosecution is dropped (see, for example, Russell 2002).

- Two national initiatives are currently underway that may provide evidence-based guidance for enhanced and coordinated responses to victims of gender-based violence who are reluctant to engage with the criminal justice system. The Canadian Domestic Homicide Prevention Initiative with Vulnerable Populations is conducting research on domestic homicides, with a goal to develop evidence-based information about effective risk assessment, risk management, and safety planning.

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

The National Framework for Collaborative Police Action on Intimate Partner Violence (IPV) is based on a central principle of the importance of collaboration between police and community partners to develop “an effective response to the complex issue of IPV”. The framework acknowledges a need to mitigate the trauma and other impacts of IPV on victims and support victims by addressing factors that create risk in order to prevent further harm. Barriers to a victim’s use of the justice system is one of those factors that create risk.

SUGGESTED ACTIONS

The Federal Government should show leadership and reach out to provinces and territories to find innovative ways to address the reluctance of survivors of gender-based violence to use the criminal justice system.

- Recognizing that systems of support are only as strong as the weakest link, RCMP, the judiciary, and all others who respond to the needs of victims of gender-based violence should be specially trained on:
 - Reasons why abused and assaulted women might be reluctant to proceed with reporting and prosecution, including understanding women’s reluctance as a trauma response
 - The particular barriers faced by many marginalized women such as immigrant women, Indigenous women and women with disabilities
 - Appropriate responses to women who are reluctant, including intensive support, proactive referral to community-based support and counselling, practical assistance, information provision and proactive coordination
 - Innovative investigation strategies, including use of KGB statements to enable prosecution of cases even where the victim is reluctant.

- All relevant federal policy and procedures should be reviewed to ensure they are adequate to encourage and support victim safety and prosecution even when victims are reluctant.

- Adequate funding should be made available to ensure that RCMP can provide the intensive support and risk assessment necessary to keep women and their children safe and encourage at-risk women to use the criminal justice system.

- Consideration should be given to tying federal transfer payments for health and policing to measurable outcomes on gender-based violence.

CONTACT:

Tracy Porteous, Co-Chair
Ending Violence Association of Canada
porteous@endingviolence.org
604-633-2506, ext. 11

Debra Tomlinson, Co-Chair
Ending Violence Association of Canada
DTomlinson@aasas.ca
403-237-6905, ext. 255

EVA Canada Board of Directors:

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Western Canada Region

Rosemarie Gjerek, Klinik Community Health
Kerrie Isaac, Sexual Assault Services of Saskatchewan
Deb Tomlinson, Association of Alberta Sexual Assault Services
Tracy Porteous, Ending Violence Association of BC

References:

Canadian Domestic Homicide Prevention Initiative. Document retrieved October 8, 2016 from <http://cdhpi.ca/SSHRC/about-sshr>

Community Coordination for Women's Safety. 2002. *Backgrounder: Issue: "Reluctant" Witnesses in Violence Against Women in Relationships Cases—Addressing Barriers to Pro-Active System Involvement*. Vancouver, BC: BC Association of Specialized Victim Assistance and Counselling Programs.

Dawson, Myrna and Ronit Dinovitzer. 2001. "Victim Cooperation and the Prosecution of Domestic Violence in a Specialized Court." *Justice Quarterly* 18: 593-622.

National Framework for Collaborative Police Action on Intimate Partner Violence (IPV). Document retrieved October 8, 2016 from https://cacp.ca/index.html?asst_id=1200

Russell, Mary. 2002. *Measures of Empowerment for Women Who are Victims of Violence and Who Use the Justice System*. Victoria, BC: Victim Services Division, Ministry of Public Safety and Solicitor General.

Statistics Canada. 2016. *Family Violence in Canada: A Statistical Profile, 2014*. Ottawa, ON: author.