Call for a review of mandatory charging policies

Discussion paper prepared by Luke's Place

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This paper has been endorsed by the following organizations:
Action ontarienne contre la violence faite aux femmes
CFSD
Centre Victoria pour femmes
CORNERSTONE Family Violence Prevention Centre
Inasmuch House, Mission Services of Hamilton
The Violence Prevention Coordinating Council of Durham (VPCC)
YWCA Cambridge
YWCA Durham
YWCA Muskoka
YWCA Sudbury
YWCA Toronto

Luke's Place

Luke's Place, an award-winning, community driven, non-profit organization, works with women who have been subjected to intimate partner abuse to support them and their children through the family law process. Located in Durham Region, we provide direct services to women across Ontario and are a provincial and national leader in systemic work such as law reform, advocacy, research, education and training on family violence and family law.

An essential part of our mandate is to advocate at a policy level to challenge the root causes of gender-based violence and the systemic barriers that survivors encounter as they attempt to navigate the legal system. We identify trends through the experiences of women and frontline advocates in our community and use these trends as the foundation of our law reform and systemic advocacy work. Further information about this part of our work can be found on our website (https://lukesplace.ca/advocacy/).

While our mandate is to provide support and services to women through the family law process, many of the women we support are also involved in the criminal system. Our anecdotal experience with women can be confirmed through past research showing the number of people who have concurrent family law and criminal law cases. In cases involving family violence, the intersections between family and criminal law are so deep that it is not possible to make changes to one system without impacting the other.

Luke's Place operates on the land of the Mississaugas of Scugog Island. As an organization deeply committed to the ongoing work of reconciliation and supporting Indigenous sovereignty, we recognize the colonial and detrimental impacts of the court and legal system in which we operate. In the context of this paper, we recognize the over-surveillance and the criminalization of Indigenous peoples across Turtle Island, and honour the voices and experiences of First Nation, Inuit, and Metis survivors who have been impacted by mandatory charging, something we will further explore in this discussion paper.

Introduction

In 1982, NDP Member of Parliament Margaret Mitchell famously rose in the House of Commons to talk about domestic violence, telling her fellow MPs that one in 10 Canadian husbands regularly beat their wives. The response was laughter.

Later the same year, the federal government confirmed the criminality of domestic violence ("wife battering") and, over the next few years, mandatory charging policies, often accompanied by vigorous prosecution policies, came into effect across the country.

These policies directed police officers to lay charges whenever they believed there were "reasonable and probable grounds" to do so. Put another way, police were expected to lay charges where they believed the evidence was likely to lead to a guilty verdict.

In the approximately 40 years since these policies were introduced, many concerns have arisen about their negative impact on those they were intended to protect – survivors of intimate partner violence, most of whom are women. These policies have disproportionately impacted survivors with marginalized identities, including racialized, migrant, low-income, disabled, and 2SLGBTQIA+ survivors. We explore some of these below.

There have been numerous calls for a review of mandatory charging policies in Ontario, including:

- In 2005, a report by the Woman Abuse Council of Toronto made six recommendations for changes to the then-current approach to mandatory charging: www.oaith.ca/assets/files/Publications/womenchargedfinal.pdf
- In 2009, the provincial Domestic Violence Advisory Council called for a study to assess the impact of mandatory charging on women
- In 2023, the Barbra Schlifer Commemorative Clinic included a call for review in their Criminalization of Women Forum Brief: https://www.schliferclinic.com/wp-content/uploads/2023/05/Criminalization-of-Women-Forum-Brief-1.pdf
- The 2022 CKW Inquest produced 86 recommendations for system change related to intimate partner violence and femicide. Recommendation 58 calls for the provincial government to:

  "Commission a comprehensive, independent and evidence-based review of the mandatory charging framework employed in Ontario, with a view to assessing its effect on IPV rates and recidivism, with particular attention to any unintended negative consequences." The province has accepted this recommendation "in part," also noting: "At this time, the Ministry of the Solicitor General does not have plans to commission an independent review of the mandatory charging framework."

At the national level, recommendation V. 10 of the 2023 final report of the Nova Scotia Mass Casualty Commission calls for:

> *(a)provincial and territorial governments [to] replace mandatory arrest and charging policies and protocols for intimate partner violence offences with frameworks for structured decision-making by police, with a focus on violence prevention*

The time is right for a review of mandatory charging. Much has changed since the implementation of these policies. We have had enough time to see how they work and don't work, and recommendations for a review go back more than a decade.

Further, the federal government is poised to revise the *Criminal Code* to include an offence of coercive control. Luke's Place has taken a position opposing such criminalization before other steps are taken, including a review of mandatory charging. Where the criminal law and related policies have already failed to protect survivors of intimate partner violence, it seems foolish to proceed with new criminal laws before analyzing past efforts for their effectiveness.[1]

Our position

Because the work we do is focused on women who are involved with family law, we look at mandatory charging policies through this lens. As we explore more deeply below, the impacts of mandatory charging on a survivor's family law case are significant. While those impacts can be both positive and negative, it is our experience that they are more often negative than positive, particularly in instances where the survivor holds marginalized identities.

[1] Luke's Place Support & Resource Centre for Women & Children. (2024, February). *Criminalization of coercive control: Are we just putting another tool in the hands of abusers to use against their partners?* [PDF]. Luke's Place. https://lukesplace.ca

We believe that a comprehensive, independent review of mandatory charging is both urgent and essential. This review must include meaningful consultations with all stakeholders, including diverse survivors, those who have caused the harm, women's advocates, police officers, Crown Attorneys, family law lawyers and the judiciary. It should also take into account the existing research and data from survivors, advocates, and activists who have researched and discussed the impacts of criminalization through an intersectional lens.

History of mandatory charging policies in Canada and their impact on women

At the time that mandatory charging policies were put in place, police officers had little to no training about the dynamics of domestic violence. It was common for an officer responding to a "domestic" to ask the woman while her partner -- and possibly their children -- were standing close by whether she wanted to charge him. Not surprisingly, most women said no.

There were and are a number of reasons for this:

- Fear that the abuser would be angry if he were charged, which might lead to an escalation in violence
- Financial concerns should the primary breadwinner be arrested
- Shame about the abuse
- Love for the abuser, coupled with the belief that he will change and the abuse will end
- Distrust in the police
- A lack of knowledge or understanding of "charging" and the criminal system
- Fear of reprisal or being "a bad mom"
- Concerns with the possible impact on citizenship and housing

Mandatory charging policies were intended to relieve survivors of intimate partner violence, most of whom were women, from the responsibility of deciding whether or not their partner should be charged. However, the decision of whether to charge an abusive partner can be a big part of a woman reclaiming autonomy and choice. For some women, it is important that they get to make that choice and not have it made for them.

Still, the hope for many was that mandatory charging would increase the safety of survivors -- or at least reduce the likelihood that they would be at greater risk because of pressing charges -- increase domestic violence reporting rates, improve police response, and increase abuser accountability. It was also hoped that placing responsibility for laying charges with the police would help to bring domestic violence out into the public and get rid of the idea that it was a private problem confined to the privacy of the family home. A decade after these policies came into effect, in 1996/1997, the establishment of domestic violence courts in many parts of the country led to more consistent use of mandatory charging policies.

Almost immediately, the number of domestic-violence-related charges laid by police increased significantly. However, it wasn't long before it was evident that women – often the person who had called the police for help – were being arrested and charged. Initially, this was in the context of dual charging, in which both partners were charged by the police. Over time, increased numbers of women were being solely charged, again, even when they had been the ones to call the police.

In an attempt to respond to this problem and reduce the rate of women being incorrectly charged, tools were developed to assist police officers in identifying the primary or dominant aggressor before making any decisions about who should be charged.

Unfortunately, even with these tools, incorrect charging of women continued. It has been clear for some time that, while these are mandatory charging policies, police are, in fact, using a lot of discretion and biases when they make decisions about whether or not to lay charges and who should be charged.

Mandatory Charging and the Criminalization of Women

Despite these policies, with a focus on identifying the primary aggressor, and training and education for some police officers on domestic violence, many women continue to be disbelieved. Systemic disbelief of survivors is amplified among racialized, migrant, low-income, disabled, and 2SLGBTQIA+ survivors. Some officers hold deeply rooted stereotypes about who is a "real" or "perfect" victim, leaving those who do not fit this category, and often face disproportionate rates of IPV, to be further dismissed and disbelieved. Even now, not all police are adequately trained in how to conduct a proper IPV investigation, let alone unlearn the problematic myths and stereotypes that continue to impact all aspects of the criminal process. This can lead officers to lay charges against both people, leaving it to the courts to sort out what really happened. This approach minimizes the inevitable negative impact of being arrested on survivors of crime, even if ultimately the charge is dropped or the person arrested is acquitted. Furthermore, this can lead to women being the sole person charged.

Misidentification of survivors of IPV as perpetrators has been established as a significant global issue in jurisdictions that use proactive prosecution strategies to reduce IPV.[2] In a study of policies in Victoria, Australia, researchers found that the adoption of mandatory charging laws for IPV led to a rise in the identification of female perpetrators of IPV. There was no correlating rise in the number of men being identified as victims, which would be expected if the increase was indicative of a genuine rise of women perpetrating IPV in heterosexual relationships. Instead, the researchers suggest that the increase is more indicative of the unintended consequences of proactive charging policies in cases of IPV where survivors are being misidentified as primary aggressors.[3]

Research has been done on the effectiveness of primary aggressor laws in the United States by Hirschel, McCormack, and Buzawa. Their paper entitled "A 10-year Study of the Impact of Intimate Partner Violence Primary Aggressor Laws on Single and Dual Arrest" found primary aggressor laws have had the intended effect of "reducing the occurrence of dual arrests compared to jurisdictions without these laws."[4] However, "reduction of arrests, in general, appeared to be an unintended consequence."[5] Hirschel et al. believed this was happening because "jurisdictions in which police struggle to identify predominant aggressors, but are

[2] No To Violence, "Predominant Aggressor Identification and Victim Misidentification: Discussion Paper" (21 November 2019) at 5 online (PDF): <https://ntv.org.au/wp-content/uploads/2020/06/20191121-NTV-Discussion-Paper-Predominant-Aggressor-FINAL.pdf>
[3] *Ibid* at 6
[4] *Ibid* at 17. See also David Hirschel, Philip D. McCormack, & Eve Buzawa, "A 10-Year Study of the Impact of Intimate Partner violence Primary Aggressor Laws on Single and Dual Arrest" (2017) 36:3-4 J of Interpersonal Violence 1356.
[5] *Ibid* at 17.

mandated to do so, may avoid designating a predominant aggressor altogether to avoid misidentifying a victim." [6]

There are further challenges when police do not conduct a proper investigation into who is the primary aggressor. The abuser may manipulate and bait the woman until she throws something at him or pushes him, and then call the police to report that he has been assaulted. She may have defended herself or the children against an act of violence by the abuser, which is then misinterpreted by the police as an act of aggression rather than of self-defence. Often, these acts of "aggression" by the primary victim are extremely minor, and yet it may look like she is the one who should be charged. Her partner may spin a convincing tale of himself as the victim that the police believe, leading her to be charged even though she is really the primary victim.

IPV cases are challenging to investigate, as often there are no witnesses beyond the abuser and the survivor, leaving police to sort out "he said/she said" stories. Many women report that they don't feel the police give as much weight to their story compared to the story their partner tells. According to Anita Grace's research on the criminalization of women in Ottawa, women reported that police officers sometimes walked away from them as they were explaining what had happened, didn't write down their evidence, raised their voices when talking with them, belittled them, and refused to collect evidence.[7]

Across Ontario, Family Court Support Workers assist survivors of IPV in their family law cases. The vast majority of clients are women who have left abusive male partners. It is not uncommon for their clients to be criminally charged, often with assault with a weapon. What was deemed by the police to be a weapon is often a small household item at hand, grabbed by the woman to try to compensate for the size and strength disparity between her and her partner.[8] Family Court Support Workers reported situations where a woman had been charged with assault with a weapon for throwing such items as an empty plastic water bottle; a baby bottle nipple; a cell phone; a banana; a raw potato; a grape or a stuffed baby toy.

Research suggests that issues with misidentification of primary aggressors are even more salient when police are responding to IPV in same-sex relationships. In this context, female same-sex couples were 31.9 percent less likely to attract a single arrest, and 30.7 percent of male same-sex couples were less likely to attract a single arrest as compared to heterosexual couples.[9] Conversely, same-sex couples were more likely to be subjected to dual arrests: female same-sex couples were 39.1 percent more likely, and male same-sex couples were 52.8 percent more likely to be subjected to dual arrests as compared to heterosexual couples. [10]These figures suggest that the risks of misidentification by police may be even greater when

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[6] *Ibid* at 17.

[7] Grace, A. (2019). 'They just don't care': Women charged with domestic violence in Ottawa. *Manitoba Law Journal, 42*(3), 153. https://www.canlii.org/en/commentary/doc/2019CanLIIDocs2790#!fragment/zoupio-_Tocpdf_bk_2/BQCwhgziBcwMYgK4DsDWszIQewE4BUBTADwBdoAvbRABwEtsBaAfX2zhoBMAzZgI1TMATAEoANMmylCEAIqJCuAJ7QA5KrERCYXAnmKV6zdt0gAynlIAhFQCUAogBl7ANQCCAOQDC9saTB80KTsIiJAA

[8]Poon, J., Dawson, M., & Morton, M. (2014). Factors increasing the likelihood of sole and dual charging of women for intimate partner violence. *Violence Against Women, 20*(12), 1447–1472. https://doi.org/10.1177/1077801214557577

[9] *Ibid* at 17.

[10] *Ibid* at 17.

responding to IPV in same-sex relationships.[11] Furthermore, it suggests, on the part of police, a lack of training, awareness, and understanding of 2SLGBTQIA+ relationships.

Police officers are used to working in the single-incident-focused atmosphere of criminal law, whereas most IPV situations are ones of patterns of behaviour, ongoing over time. Someone who is trained and experienced at investigating single-incident criminal activity (for example, a bank robbery that occurred on a specific day at a particular time) will likely not have the nuanced understanding of IPV that is needed to conduct a proper investigation before decisions about whether or not to lay charges and against whom are made.

A story

Jane and Joe are married and have two young children. Jane is the children's primary caregiver and does not work outside the home. Joe is mentally, physically and financially abusive to Jane. This abuse often takes place in front of the children. Jane called the police one night after Joe was screaming at her and pushing her while they were at home with the children. When the police arrived at the home, the children were crying, and Joe immediately claimed that it was Jane who initiated the fight and was physical with him. He claimed a pre-existing mark on his arm was recent and that it was caused by Jane. Jane was scared and didn't know what to say in response to Joe's accusations. The police believed Joe's version of events, and Jane was removed from the home and charged with assault. She was released on bail with conditions that she not have any contact with Joe or attend at the family home. Jane, having nowhere else to go, ended up at a local emergency shelter for women. She has no money, no place to live and no lawyer. She hasn't seen or spoken to the children since her arrest and has no idea how to make arrangements to see them when she cannot communicate directly with Joe or come to the family home. She is extremely afraid of what Joe will do to her if she discloses the abuse she has been subjected to. He has threatened in the past that if she ever tried to leave him, he would make sure she never sees the children again. She has nowhere to turn and no idea what to do next in order to keep herself and the children safe.

Women like Jane who are inappropriately charged tend to lose faith in the criminal system, which can put them at risk of greater harm in the future, because they may be reluctant to call the police or even other authorities when they are in an unsafe situation.

> "Women who have been inappropriately charged in situations of intimate partner violence say they would be unwilling to turn to the police for protection in the future, even if they are again victims of violence."[12]

Further, women with criminal histories may face a greater risk of being misidentified as an aggressor in the future if they choose to re-engage with the system.

Women are charged when they shouldn't be, and the consequences for them are significant and long-lasting. Immediately, bail conditions will likely separate them from their children, which

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[11] *Ibid* at 17.

[12] Grace, A. (2019). 'They just don't care': Women charged with domestic violence in Ottawa. *Manitoba Law Journal, 42*(3), 153. https://www.canlii.org/en/commentary/doc/2019CanLIIDocs2790#!fragment/zoupio-_Tocpdf_bk_2/BQCwhgziBcwMYgK4DsDWszIQewE4BUBTADwBdoAvbRABwEtsBaAfX2zhoBMAzZgI1TMATAEoANMmylCEAIqJCuAJ7QA5KrERCYXAnmKV6zdt0gAynlIAhFQCUAogBl7ANQCCAOQDC9saTB80KTsIiJAA

creates emotional anguish for both the mother and the children. It also can serve to establish a status quo of the father/abuser as the primary parent, which will be problematic to the woman in the family law case. Because she is desperate to be reunited with her children, especially if she does not have access to adequate legal representation, she may decide to enter an early guilty plea or sign a peace bond in exchange for having the charge withdrawn. Either of these decisions can have serious ramifications for her family law case and elsewhere in her life. If she is a newcomer without permanent status in Canada, these decisions can jeopardize her ability to stay here.

When talking about mandatory charging, we also have to address the culture of patriarchy, violence, and misogyny within the policing system that can consciously, or unconsciously bias police officers tasked with investigating IPV. Research conducted by CBC News earlier this year shows that 1 in 3 police suspensions across Ontario involved allegations of domestic abuse and/or sexual assault[13]. In fact, the research and existing literature suggests that police "are disproportionately perpetrators of particularly domestic violence"[14]. These statistics raise questions about how the police can properly implement mandatory charging policies when these policies would in fact result in their colleagues and peers being charged with IPV-related offences.

Intersectional and Disproportionate Impacts of Mandatory Charging

Mandatory charging has a disproportionately negative impact on some communities of women. Because of systemic racism, Indigenous, racialized and Black women are more likely to be charged either dually or solely.[15] Women who have had a prior unrelated history with the police are less likely to be believed when they report intimate partner violence. A history of IPV calls to the police may also affect police attitude and willingness to conduct a thorough investigation before deciding whether charges should be laid.

As mentioned above, there continues to be reliance on stereotypes when it comes to the "perfect victim" of IPV by many criminal system stakeholders, including the police. Academic literature has characterized the stereotype as typically being a submissive, white, middle-class, straight, cis woman who has not fought back against her abuser. Shelby Moore, in her research on Battered Women's Syndrome in the 1990s has argued that the concept of victimhood is greatly influenced by racial and gendered categories, in which the concept of victimization is tied to the idea of white womanhood and leads to the suspicion of victim experiences among women of colour.[16]

A separate study of mandatory charging laws in the United States found that mandatory charging worked differently for some racialized groups of abusers than others. For example, white abusers tended to have fewer charges laid against them as compared to racialized abusers.[17] Immigrant women or women whose second language is English face even greater hurdles when the police are investigating an incident of IPV. Not only do these women

[13] Ireton, J. (2023, July 21). *One-third of Ottawa officers accused of gender-based violence were paid to stay home.* CBC News. https://www.cbc.ca/news/canada/ottawa/paid-to-stay-home-one-third-officers-accused-gender-based-violence-1.7181385

[14] Ibid.

[15] Grace, *Supra* note 10 at 162.

[16] No To Violence, *Supra* note 2, at 12. See also Shelby A.D. Moore, "Battered Woman Syndrome: Selling the Shadow to Support the Substance" (1995) 38:2, Howard L J 297.

[17] Thebaud & Kim, *Supra* note 13 at 17.

experience limitations when it comes to communicating with police officers, but they may be in a particularly vulnerable position in terms of their status in Canada. Research done in the United States shows that police often ignore reports by South Asian women, in particular, who lack fluency in English.[18] When investigating an allegation of IPV, officers are more likely to only gather information from the abuser rather than attempt to communicate with the woman. The abuser uses this opportunity to their advantage, omitting their own violence from the narratives that they give to police or telling stories that highlight their partner's violence and minimizes their own.[19] We see similar scenarios playing out in Canada when it comes to the experiences of immigrant women and women from marginalized communities.[20]

Black women are also more likely to be misidentified as primary aggressors in situations of IPV compared to other women. For instance, research in the United States shows that police are more likely to arrest Black women when they fight back as compared to non-Black women.[21] Legal system stakeholders indicate that Black women, who have more limited access to social supports and services as compared to non-Black women, may be using self-defence to protect themselves from their abusive partner.[22]

Indigenous women are more likely to be criminalized as a result of mandatory charging policies.[23] The Truth and Reconciliation Commission (TRC) and the National Inquiry into Missing and Murdered Indigenous Women, Girls, and 2-Spirit People (MMIWG2S+) have highlighted how colonial practices, including policing, are actively harming Indigenous people. Any policy that affects the criminalization of IPV survivors must be read in conjunction with the statistics about Indigenous women's experiences with the criminal system and in consultation with Indigenous survivors. A study on Canadian federal women's prisons found that 40 percent of the female inmate population was Indigenous, despite making up only 4 percent of Canada's population. From 2008 to 2018, the incarcerated Indigenous population increased by a staggering 60 percent.[24]

Indigenous women in Canada also experience frightening rates of violence – they are four times more likely than non-Indigenous women to be victims of violence. Indigenous women make up 16 percent of all female homicide victims, and 11 percent of missing women. They are

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[18] Larance et al. *Supra* note 13 at 60. See also Natalie J Sokoloff & Ida Dupont (2005), "Domestic violence at the intersections of race, class, and gender: Challenges and contributions to understanding violence against marginalized women in diverse communities", Violence Against Women, 1:38, 64.

[19] Larance et al. *Supra* note 13 at 60. See also Natalie J Sokoloff & Ida Dupont (2005), "Domestic violence at the intersections of race, class, and gender: Challenges and contributions to understanding violence against marginalized women in diverse communities", Violence Against Women, 1:38, 64.

[20] Tabibi, J., & Baker, L.L (2017). Exploring the intersections: immigrant and refugee women fleeing violence and experiencing homelessness in Canada. London, Ontario: Centre for Research & Education on Violence Against Women & Children. ISBN # 978-1-988412-10-8

[21] Bourg, S., & Stock, H. V. (1994). A review of domestic violence arrest statistics in a police department using a pro-arrest policy: Are pro-arrest policies enough? *Journal of Family Violence, 9*(2), 177–189. https://doi.org/10.1007/BF01531962

[22] Potter, H. (2008). *Battle cries: Black women and intimate partner abuse*. New York University Press.

[23] Woman Abuse Council of Toronto. (2022). *Mandatory charging policies and the criminalization of intimate partner violence victims in Canada*. WomanACT. https://womanact.ca/mandatory-charging-policies-and-the-criminalization-of-intimate-partner-violence-victims-in-canada/

[24] Government of Canada, "Overrepresentation of Indigenous people in the Canadian Criminal System: Causes and Responses" online(website):< https://www.justice.gc.ca/eng/rp-pr/jr/oip-cjs/p3.html >

subjected to IPV at a rate that is twice[25] or even three times higher than non-Indigenous women.[26]

This is a direct result of colonialism, the over-criminalization of Indigenous people, over-surveillance, and racism.

The continued application of charging policies that require police to lay charges where they have reason to believe violence has occurred simply continues to perpetuate the cycle of Indigenous women being driven into the criminal legal system. A report from the Office of Senator Kim Pate, "Injustices and Miscarriages of Justice Experienced by 12 Indigenous Women", highlights how Indigenous women can be "criminalized as a result of trying to survive and negotiate marginalization and violence." The report goes on to state that "[t]he legal system and authorities that were so conspicuously absent and unresponsive as women experienced abuse sprung quickly into action to criminalize them for taking steps to try to protect themselves or others." [27]Additionally, the National Inquiry into Missing and Murdered Indigenous Women found that "the Canadian justice system criminalizes acts that are a direct result of survival for many Indigenous women." This criminalization then serves to repeat patterns of colonialism "because it places the blame and responsibility on Indigenous women and their choices, and ignores the systemic injustices that they experience, which often lead them to commit crimes."[28]

Mandatory Charging may be Putting Survivors at Greater Risk of Harm

There is yet another complication related to mandatory charging policies. Often, women are managing the abuse in a way that is safest for them, and this may not involve calling the police. When police are called by a child, neighbour or other third party, they may be disrupting a plan the woman has for her safety and that of her children. For instance, she may be saving money so she can move out or may have met with a lawyer and be waiting for the safest moment to let her partner know the relationship is over.

When police enter the scene and lay charges, this may jeopardize a carefully made plan and increase the risk of future harm to the woman and children.

Some women also use the police as a way to de-escalate or document the immediate situation without wanting criminal charges to be laid. For instance, the abuser may be the primary income source for the family and an arrest may jeopardize his ability to continue earning an income. Or perhaps a criminal charge may impact the family's immigration status.

Mandatory arrest laws have had a chilling effect on the likelihood that these women will call the police no matter the circumstances for fear that their partner will be criminally charged. This

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[25] *Ibid.*

[26]Ogden, C., & Tutty, L. M. (2023). My grandparent went through residential school, and all this abuse from it: Examining intimate partner violence against Canadian Indigenous women in the context of colonialism. *Journal of Interpersonal Violence, 38*(23-24), 12186–12210. https://doi.org/10.1177/0886260523112186

[27] Office of the Honourable Senator Kim Pate," Injustices and Miscarriages of Justices Experienced by 12 Indigenous Women: A Case for Group Conviction Review and Exoneration by the Department of Justice via the Law Commission of Canada and/or the Miscarriages of Justice Commission", at 12 online (PDF): <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://sencanada.ca/media/joph5la2/en_report_injustices-and-miscarriages-of-justice-experienced-by-12-indigenous-women_may-16-2022.pdf>

[28] Reclaiming Power and Place: Final Report of the National Inquiry into missing and murdered Indigenous Women and Girls, at 637, online(PDF):< https://www.mmiwg-ffada.ca/ >

leaves these women without a critical resource to use in situations where their safety may be at immediate risk. Some research out of the United States has noted an increase in lethal IPV following the implementation of mandatory arrest policies. The states that have implemented mandatory arrest policies in the United States had a 60 percent increase in domestic homicides.[29] Some scholars and legal researchers have attributed this increase to a reluctance on the part of some survivors to call the police in situations of crisis, with the situation escalating even further without police intervention.

Gaps in Research on Mandatory Charging

There are significant gaps in research when it comes to the impact of mandatory charging policies in Canada.

In particular, there is a gap in research on the impact of mandatory charging in households where survivors are trans, disabled, racialized, undocumented, or have been previously incarcerated. Studies on IPV, in general, have often neglected the voices and stories of survivors from particular communities, including Indigenous and Black survivors. [30] Policies must reflect an understanding of how they impact all communities and identities, particularly those who have faced historic and ongoing marginalization, oppression, surveillance, and harm.

There is, however, ample evidence and research to demonstrate the harm marginalized communities face when interacting with police more generally. For example, research from DAWN on domestic violence and disability demonstrates that "persons with disabilities were more likely than persons without limitations to say they were very dissatisfied with the police response (39% compared to 21%)."[31] Additionally, racially biased policing and its deadly results have been widely documented across North America, including Canada. A Canadian study explored the experiences of 15 Black women who were arrested and charged with IPV-related offences and detailed the overt racism, excessive force, and misogyny in police responses to IPV.[32]

There does not appear to be a clear or consistent opinion about mandatory charging policies by survivors, service providers, or police, according to research conducted in Ontario in 2017. [33]

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[29] Magdelene Thebaud & Jin Kim, "Intimate Partner Homicides: Has the increase in mandatory arrest laws been counter intuitive for the very people they were set out to protect" (2020) 1:157, The Macksey J, 1, at 16 < https://mackseyjournal.scholasticahq.com/api/v1/articles/21703-intimate-partner-homicides-has-the-increase-in-mandatory-arrest-laws-been-counterintuitive-for-the-very-people-they-were-set-out-to-protect.pdf> and Radha Iyengar, "Does the certainty of arrest reduce domestic violence? Evidence from Mandatory and recommended arrest laws" J Of Public Economics, 93:1-2 85, at 85-98. < https://www.sciencedirect.com/science/article/abs/pii/S0047272708001345 >
See also Lisa Young Larance et al. "Understanding and Addressing Women's Use of Force in Intimate Relationships: A Retrospective" (2018) 25:1 Violence Against Women and Roberta K Lee, Vetta L Sanders Thompson, & Mindy B Mechanic "Intimate Partner Violence and Women of Color: A Call for Innovations" (2002) 92(4), Am J Public Health, 530. < https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1447110/>

[30] Larance et al, *Supra* note 13 at 59.

[31] DisAbled Women's Network (DAWN) Canada. (n.d.). *Women with disabilities and violence.* https://www.dawncanada.net/issues/women-with-disabilities-and-violence/

[32] Duhaney, P. (2021). Contextualizing the Experiences of Black Women Arrested for Intimate Partner Violence in Canada. *Journal of Interpersonal Violence*. https://doi.org/10.1177_08862605211056723

[33] Holly Johnson & Deborah E. Conners, (2017) "The Benefits and Impacts of Mandatory Charging in Ontario: Perceptions of Abused Women, Service Providers and Police" Ottawa, CA: University of Ottawa, 1. <https://ruor.uottawa.ca/bitstream/10393/37546/1/MCP%20Report%20Final%20EN%2014072017.pdf>

Service providers tend to be more positive about it than survivors. About one-quarter of police officers believe the policy to be detrimental to women. Approximately 25 percent of women whose partners were charged as a result of mandatory charging say they would be more likely to call the police in the future, with a similar number reporting that they are less likely to do so. Women whose partner was charged also report a higher level of satisfaction with police response than do women whose partners were not charged.

Survivors with positive feelings about mandatory charging identify the validation that abuse is wrong, increased access to resources, improved safety, and the ability to leave the relationship as reasons for their satisfaction. They also say that, even if charges are not laid, the police can sometimes help them in other ways, such as connecting them to community resources or sending a message to the abuser that his behaviour is wrong.

Those with negative feelings point to the fact that penalties for the abuser are often weak and there is a lack of support for abusers. They also note that the abuser often becomes angry when he is charged. As well, of course, those with negative feelings point to what we have highlighted above, concerning incorrect charging, stereotyping, and police violence.

Moving this Issue Forward

There is no doubt that mandatory charging has been helpful for some women and survivors, who want their partner charged but are not able to make that decision themselves. For those women, having their partner removed from the home to face criminal charges and having bail conditions imposed gives them time to assess their situation and make decisions about whether or not to remain in the relationship. They have the opportunity to connect with women's support services and make a plan to get out.

It has not worked well for all survivors, however. For many women, mandatory charging policies – like other criminal law responses to IPV – have had negative legal, economic, and social impacts while limiting their choice and authority in the process.

We are not as far ahead as we would like to think when it comes to knowledge and understanding about IPV in our legal system more generally and our criminal law system in particular. Just as Margaret Mitchell was laughed at in Parliament for mentioning IPV in 1982, police officers reportedly laughed at a training delivered by the White Buffalo Calf Woman Society nearly 40 years later while receiving information about advocating for women who had been subjected to violence. In her report "Violence on Our Land," Faith Spotted Eagle shares, "They were kind of giggling and talking amongst themselves." [34]

The time is now for us to review and reconsider mandatory charging policies. Imperative to this review is for the provincial government to consider the perspectives and viewpoints of survivors and experts from communities that have historically and are currently being disproportionately impacted by criminalization.

Recommendations:

1. The Province of Ontario re-establish the Violence Against Women Roundtable.

[34] Women's Earth Alliance & Native Youth Sexual Health Network. (2016). *Violence on the land, violence on our bodies: Building an Indigenous response to environmental violence* (p. 17). http://landbodydefense.org/uploads/files/VLVBReportToolkit2016.pdf

2. The Roundtable lead a comprehensive, independent review of mandatory charging.
3. The Province of Ontario provide adequate resourcing to the Roundtable to ensure the review is professionally completed.
4. The Roundtable set a timeline for producing its final report and recommendations, to be no longer than 12 months from the time the review is started.
5. This review includes meaningful consultations with all stakeholders, including survivors, those who have caused the harm, women's advocates, police officers, Crown Attorneys, family law lawyers and the judiciary.
6. The Roundtable provide its report and recommendations to the Legislative Assembly and publicly.