Submission to the Standing Committee on Justice Policy regarding its study on Intimate Partner Violence

Prepared By:
Luke's Place Support & Resource Centre for Women & Children

July 25, 2024

Luke's Place[1] is an award-winning non-profit organization solely devoted to improving the safety and experience of women and their children as they proceed through the family law process after leaving an abusive partner. Luke's Place is named after Luke Schillings, a 3½ year old boy who was murdered by his father on his first unsupervised access visit, after his mother had sought, but was unsuccessful in obtaining, an order for supervised access.

Since 2003, Luke's Place has been delivering legal support services to women who are leaving relationships in which they were subjected to abuse. We work at the provincial and national levels, providing training, and conducting research and law reform advocacy on the issue of violence against women and the law. The Ministry of the Attorney General (MAG) designed the Family Court Support Worker (FCSW) program based on our service delivery model. The Ministry of Children, Community and Social Services (MCCSS) now has oversight of this program and contracts Luke's Place to train FCSWs and moderate their online resource hub as well as to deliver FCSW and THSP services for the Durham Region. We operate a provincial legal clinic, deliver public legal education workshops and create resources for women and those who serve them.

Intimate partner violence (IPV) is a public health and safety emergency that requires immediate attention

IPV is an epidemic and needs to be treated as such by law and policy makers without any further delay to ensure proper support and services are in place. One need only look at the rates of IPV across the province and its associated impact on survivors to understand why it is an epidemic:

- Between January and June of this year, **13** women were killed by their intimate partner in Ontario.[2]
- From November 2022 to November 2023, at least **19** women were killed by their intimate partner in Ontario, with another **13** femicides where the relationship to the killer is not yet known.[3]
- Between 2002 and 2017, there were **433** domestic homicide victims in Ontario, of whom 81% were women and 9% were children.[4]
- More than 4 in 10 women have experienced some form of IPV in their lifetimes.[5]
- Police-reported IPV rates have been steadily increasing since 2015. In 2022, there were **117,093** victims of police-reported IPV in Canada, with 8 in 10 victims being women and girls.[6] In Ontario, the rate was 257 per 100,000 population. These numbers only scratch the surface of the true rates of IPV given the extent to which it goes unreported to police.[7]
- The risk of being subjected to violence and the impact of this violence is even more severe on some communities of women and girls, particularly those who are marginalized within Canadian society: Indigenous women and girls; older women; Black and racialized women;

[1] For more information, see our website
[2] OAITH femicide report (June 2024)
[3] OAITH femicide report (November 2023)
[4] 2018 DVDRC Annual Report, Chapter 2
[5] Stats Canada: https://www150.statcan.gc.ca/n1/daily-quotidien/210426/dq210426b-eng.htm
[6] Stats Canada: https://www150.statcan.gc.ca/n1/daily-quotidien/231121/t001b-eng.htm
[7] Research showing that only 20- 30% of IPV is actually reported to police: e.g. https://www150.statcan.gc.ca/n1/pub/85-002-x/2016001/article/14303/01-eng.htm; https://www.canada.ca/en/public-safety-canada/news/2021/03/new-legislation-designed-to-prevent-and-deter-intimate-partner-violence.html

immigrant and refugee women; Two-Spirit, lesbian, gay, bisexual, transgender, queer, intersex, and additional sexually and gender diverse (2SLGBTQI+) people; people with disabilities; and women living in northern, rural, and remote communities.

There have been countless research reports on the impact of IPV on survivors. We know that it can cause significant, long-lasting effects up to and including death.[8] We see the detrimental psychological, medical, financial, physical, and social impacts in our everyday work with survivors, and how these impacts make it all but impossible to navigate complex systems like the family law system.

IPV and Family Law

IPV within the context of family law is at the core of our mandate at Luke's Place. We see the failure of this system every day with the hundreds of women we support each year. As the system exists now, it minimizes the severity of violence, re-traumatizes survivors, and places them and their children at risk of ongoing violence and harm.

The non-comprehensive list below illustrates some of the barriers survivors encounter in family court – barriers we see again and again in our work. It cannot be overstated that all the barriers identified below are compounded by the various systemic inequities and oppression encountered by many survivors. This includes but is not limited to poverty, unemployment, Indigeneity, lack of access to affordable housing and health care, immigration status, language barriers, racism, ableism, and gender discrimination.

- ***Failure to understand and recognize trauma***: Survivors of IPV are often living with trauma when they enter the family law system. This trauma may manifest in different ways, many of which serve to work against the survivor in family court, with judges and other legal system stakeholders failing to recognize the behaviour as a response to the trauma they have endured.[9] Trauma also has a chronic impact on a survivor's mental health, which then becomes weaponized by abusers in family court as a reason to discredit a survivor or limit their parenting time.[10] The court process itself is re-traumatizing, with the survivor having to directly face their abuser and repeatedly tell their story of violence, which is often met with doubt.
- ***Failure to recognize post-separation violence***: There is a mistaken belief that violence ends when the relationship ends, which can lead to court orders that fail to protect survivors and children from ongoing violence and harm. In fact, violence often escalates when the relationship ends[11], and it is at this time of elevated risk that survivors enter the family court process.

  The first two to six months after separation are often the most dangerous in terms of both lethal and non-lethal but serious violence. The violence may look different when the relationship ends, including the use of the court process itself as a tool for further

[8] E.g. https://www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/rr12_12/rr12_12.pdf
[9] Cross et al., "What you Don't Know Can Hurt you: The importance of family violence screening tools for family law practitioners", report produced for the Department of Justice (2018), at pg. 70 ("screening tools"); Neilson, L, "Responding to Domestic Violence in Family Law, Civil Protection & Child Protection Cases", 2017 CanLIIDocs 2, s. 5.2.5.; Luke's Place, "When Shared Parenting and the Safety of Women and Children Collide" (2016) at pg. 10 ("Shared Parenting")
[10] Neilson, *ibid* at 5.2.2 and 7.4.9.
[11] E.g. 2020 DVDRC Annual Report, which found that 66% of the cases reviewed from 2003 to 2020 involved an actual or pending separation

abuse.[12] Despite the severity of post-separation violence, many legal system stakeholders do not understand the ongoing risk of violence to survivors and children.

- ***Lack of legal representation***: Many of the survivors we support in family court are unrepresented. This is true whether or not they qualify for a legal aid certificate through Legal Aid Ontario. Many survivors fall just outside the financial eligibility criteria and are unable to afford a privately retained lawyer. Others have a certificate but cannot find a lawyer to accept it.[13] Navigating the family law process without a lawyer is nearly impossible for many survivors.[14] The governing laws and legal processes are complicated, particularly for survivors who are also grappling with trauma and ongoing violence. Without a lawyer, survivors are at increased risk of negative court outcomes and being pressured into settlements that fail to keep themselves and their children safe.
- ***Reliance on myths and stereotypes***: Legal system stakeholders continue to rely on harmful myths and stereotypes about IPV, including that survivors lie or exaggerate the abuse because they are vindictive and/or to gain a strategic advantage in court; that if the violence was so bad, they would have left the abuser sooner or reported to the police; that physical violence is worse than psychological violence; that IPV is between the adults and has nothing to do with parenting ability.[15] These myths and stereotypes serve to discredit many survivors in family court, with their experiences being ignored and their concerns being silenced.
- ***Prioritizing friendly co-parenting relationships and settlement***: Family court culture prioritizes collaboration and compromise. It encourages people to come together and find a mutually agreeable parenting arrangement for their children that involves as much contact with both parents as possible. In situations of IPV, it often is not possible to collaborate and compromise on a resolution that will ensure safety from ongoing violence.[16] Even though the very nature of the violence may make out-of-court negotiations unsafe and inappropriate, many legal system stakeholders continue to pressure survivors to engage in alternative dispute resolution processes with abusers. When a survivor does express concerns in the family court case about the safety and well-being of children in the other parent's care, they are at risk of being seen by legal system stakeholders as unreasonable. Some survivors may be viewed by the judge as trying to alienate the children from the abuser, which may result in their evidence of violence being ignored and their parenting claims being unsuccessful.[17]
- ***Lack of mandatory screening for IPV***: There is no explicit legislative direction for family law lawyers to screen all clients for IPV. This requirement only exists by law when it comes to family law arbitrators.[18] As a result, not all lawyers screen their clients,

[12] https://familycourtandbeyond.ca/your-experience/intimate-partner-abuse/checklist-forms-of-abuse-4/#po
[13] Luke's Place's submissions to Legal Aid Ontario re tariff reform (2023) ("LAO submission"); Self-represented Litigants in Family Law, Government of Canada (2016)
[14] Luke's Place, "Through the Looking Glass: The Experiences of Unrepresented Abused Women in Family Court" (2008)
[15] E.g. Koshan, J "Challenging Myths and Stereotypes in Domestic Violence Cases" (2023) 35 Can J. Fam L 33; Rise Women's Legal Centre, "Why Can't everyone just get along?" at pages 46-47(2021); Rise Women's Legal Centre, "Are we Ready to Change? A Lawyer's Guide to Keeping Women and Children Safe in BC's Family Law System" (2021); Supra note 9, Shared Parenting.
[16] Luke's Place, "It Shouldn't Be This Hard: a gender-based analysis of family law, family court and violence against women" (2012) at pg. 34
[17] Luke's Place blog post "Addressing the issue of parental alienation" (Feb. 2024)
[18] O Reg 134/07, *Family Arbitration* at s. 4.

instead relying on them to self-disclose, even when the research tells us this does not always occur.[19] When screening doesn't take place, the lawyer may be missing important information that is critical to the advice provided to their client. The lawyer won't know what course of action to recommend, won't know what evidence to put before the court and, importantly, won't be alive to the safety and wellbeing of their client and any children involved in the case.

- ***Involvement in the criminal justice system:*** The intersection between criminal and family law is often challenging for survivors to navigate. Trying to reconcile the different legal standards, processes, procedures and rights afforded in each system can be extremely confusing. Survivors are often frustrated by the lack of coordination and communication between the two courts, with orders getting made in one that conflict with orders getting made in the other. If a survivor has not reported abuse to the police or the police have not laid charges or the abuser was not found guilty, her claim of abuse in family court is subject to increased scrutiny and doubt.

  Survivors are also negatively impacted in family court because of mandatory charging policies, which were introduced over 40 years ago to take the responsibility away from survivors for deciding whether to lay criminal charges in cases of IPV. Police are directed to lay charges where they believe there is a reasonable likelihood of conviction. Unfortunately, the implementation of these policies has resulted in survivors being criminalized due to misidentification by police of the primary aggressor.[20] Abusers know how to manipulate the system and present themselves as the victim rather than the aggressor when police are called. Abusers will then use the existence of a charge or the involvement of police to gain a tactical advantage in family court – alleging, for example, that they are the victim and claiming that the other parent's parenting time with the children should be limited. Survivors are also pressured to plead guilty in criminal court in hopes of lessening the impact of the outstanding charge on their outstanding family court case.

Solutions to addressing IPV:

Family-law focused solutions

We begin our discussion of solutions by talking about family-law-focused solutions first. The solutions we propose here should not be seen as the only steps that need to be taken. Rather, they represent a few key solutions that have been identified to increase the safety and security of survivors engaged in the family law process.

We will then move to discuss more general solutions to IPV that are wider in scope. The key to these solutions is that addressing IPV requires an all-government approach that prioritizes consultation and collaboration with experts in different communities across the province. We have to examine the root causes of gender-based violence (GBV), including systemic inequalities and oppression that exist across multiple systems if we hope to make any meaningful progress towards ending GBV.

[19] *Supra* note 9, screening tools; HELP toolkit: Identifying and Responding to Family Violence for Family Law Legal Advisers, (2021)

[20] Luke's Place blog post, "Call for a review of mandatory charging policies" (May 2024)

1. Enhance funding for the Family Court Support Worker Program

Survivors need access to multi-disciplinary, survivor-centered supports and services to help navigate a complex family law system. Key to this multi-disciplinary approach is the Family Court Support Worker (FCSW) Program.

This program has been operating since 2011 and was established in part through the hard work of violence against women advocates as a strategy to address the barriers experienced by survivors when navigating family court. There are currently 41 organizations across Ontario who are funded to deliver this program.[21]

FCSWs bring a perspective and an approach to working with survivors that compliments the training and expertise of other legal system professionals. It is premised on the notion that a survivor is best served by having a lawyer for legal advice and representation, and a support worker to help provide critical emotional, safety and informational support. The support worker prioritizes the survivor's emotional needs and well-being and ensures the survivor feels more prepared and less alone for important steps in their case. They are attuned to the trauma responses of their individual clients and tailor their service delivery accordingly. They are also skilled at building trust and rapport with survivors, creating an atmosphere of safety and empowerment.

Some key elements of the FCSW program service delivery include:

- Ongoing safety planning and risk assessment
- Providing legal and court process information
- Helping to connect to other programs and services
- Advocating with other programs and services
- Helping survivors document and gather evidence of abuse
- Providing emotional support at court and lawyer appointments

Since the program's inception, survivors have reported feeling safer, better informed, and better able to present their case effectively because of working with an FCSW. Lawyers and other legal system professionals have also shared positive feedback about the FCSW's role in making both the case and client engagement operate more smoothly.

As the organization that leads the training and community of practice for FCSWs across the province as well as delivers the program in Durham Region, we are in a unique position to learn about many of the challenges this program faces. Even though the FCSW program provides a critical service to survivors, the funding for the program has not been annualized and has largely stayed the same since 2011. We also know that many organizations are only funded to provide FCSW services part-time, some of whom are provided as little as a .25 position, meaning that the individual in this role spends about a 1 day per week delivering family court support services. Staff turnover has increased, with the salary for FCSWs unable to keep pace with inflation over the past decade. The funding level no longer covers basic salaries and organizations are left to fundraise to cover the difference and all other associated program delivery costs.

The job itself is also prone to burnout and vicarious trauma, which is exacerbated by the lack of resources and support for the program. The FCSW role is highly specialized. Often the FCSW is

[21] Family court support workers | ontario.ca

the only person within their organization who works on family law issues. In rural and northern communities, the FCSW may be the only person providing this support for hundreds of kilometers. Many organizations providing FCSW services are so under-resourced that there is little time for knowledge sharing for new recruits when an experienced advocate leaves her position.

This makes it impossible to meet the growing demand for services across the province. Not only have rates of IPV gone up, but the majority of the women who turn to the program do not have a lawyer. This places a larger burden on FCSWs, who may be the woman's only consistent source of legal information and support.

We recommend that the government prioritize this program through increased and stabilized funding. This should be done in consultation with organizations currently delivering the program and others who are doing so without the support of this funding, to understand the unique needs regionally and province wide. This consultation should consider the need for program delivery to be expanded to other organizations to increase accessibility.

2. Make sure survivors have access to legal advice and representation

Legal Aid Ontario (LAO) provides a critical service to low-income Ontarians and needs to be properly funded. At a minimum, funding should be restored to the levels before the sizeable 2019 budget cuts. This increased funding would allow LAO to increase the financial eligibility cut-off. This is critical, as the current financial threshold is so low that many low-income survivors are ineligible while also not able to afford a privately retained lawyer.

LAO also needs to address the tariff rates and onerous administrative processes for lawyers, since the current conditions discourage lawyers from taking on LAO-funded cases.[22]

In addition to increased funding, LAO needs to be accountable to the provincial government and the public to ensure that it is prioritizing legal representation for survivors and is providing comprehensive training and resources to lawyers on issues of IPV and trauma.

Community organizations are best placed to provide legal services given their experience supporting survivors engaged in the legal system. For this reason, the provincial government should fund civil society organizations in Ontario that provide key legal services to survivors of violence in family court.

3. Prioritize training and education of legal system stakeholders

Access to justice means more than access to a courtroom. It requires access to lawyers and decision-makers who are fully informed and attuned to the complexities that exist in situations of IPV. Education for legal system stakeholders has been a key recommendation by the Domestic Violence Death Review Committee (DVDRC) in several death reviews.[23] It is also recommended in the CKW inquest verdict.[24]

The passing of Keira's Law by this provincial government in 2022 was a positive step forward when it comes to judicial education on issues of IPV. The provincial government should closely monitor the annual reports it is now legislated to receive from the Chief Justice about the courses established on IPV and the number of judges who attended these courses.

---

[22] *Supra* note 13, LAO submission.

[23] E.g. see 2019 DVDRC Annual Report, Appendix D

[24] CKW Inquest Jury verdict, recommendations 28 and 29, 31 (June 2022)

Ensuring judicial education is only one part of the problem. The lawyers who represent survivors and abusers in family court and who may become future judges also need regular and ongoing training on issues of IPV. The provincial government should be encouraging discussions at the Law Society of Ontario about implementing mandatory, annual professional development hours for all lawyers on issues of IPV. Additionally, the provincial government should engage with bodies such as the Canadian Association of Law Deans about including this kind of education and training in the curriculum at all Ontario law schools.[25]

4. Require legal system stakeholders to screen for IPV and other forms of family violence

Family law lawyers should be required to screen for family violence, including IPV.

We are of the view that lawyers are obligated to screen based on the competency requirements set out in the Rules of Professional Conduct for lawyers as well as the legislative obligation to encourage clients to engage in family dispute resolution, which may not be appropriate in situations of family violence. However, as set out above, there is no clear and explicit statement in any existing family law legislation that requires lawyers to ask important questions of all clients aimed at assessing whether there has been family violence.

Mandatory screening should be paired with mandatory education delivered by experts in the field on how to effectively screen. This training should form part of the professional development requirements through the LSO as outlined above.

5. Prioritize a review of the protection order system in Ontario

The Law Commission of Ontario is currently engaged in a comprehensive study of Ontario's protection order system to identify ways it can be improved. This project was born out of the complicated web of protection orders currently available in Ontario, some under family law legislation and others through criminal court.

Luke's Place, along with other community organizations and experts, sits on the advisory committee for the project. The provincial government should commit to a comprehensive review of the recommendations when available, with a view to implementing as many recommendations as deemed feasible. These recommendations should form part of the community and expert consultations made possible through the reinstatement of a GBV roundtable, which is outlined in more detail below.

6. Review mandatory charging policies

Although not technically falling within the purview of family law, mandatory charging policies have an impact on survivors in family court. There is little formal research on how mandatory charging policies have affected those they were intended to protect, even though calls for review have been made over the past 20 years, including in the verdict from the CKW inquest, which calls on the provincial government to "[c]ommission 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."[26]

[25] Curriculum Modules in Ontario Law Schools: A Framework for Teaching About Violence Against Women, Law Commission of Ontario, 2012

[26] *Supra* note 24, recommendation 58.

We call on the provincial government to reinstate the GBV roundtable as outlined in more detail below and include as part of its mandate a review of mandatory charging policies. This review must include meaningful consultations with all stakeholders, including survivors, women's advocates, police, lawyers and judges.

We also call on the provincial government to implement recommendation 11 from the CKW jury verdict, which calls on the government to study how to improve system collaboration and communication between family/civil proceedings and criminal proceedings.

General Solutions

We already know the steps that need to be taken to address IPV in Ontario based on the many recommendations produced by inquests, the DVDRC, the Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls, the National Action Plan to End Gender-Based Violence ("NAP"), and the Mass Casualty Commission. What we urgently need is for the provincial government to work with sector stakeholders to implement the recommendations that already exist:

1. ***Immediately declare IPV an epidemic in Ontario by passing Bill 173**:*

First and foremost, declare IPV an epidemic. Doing so would have a huge impact while costing nothing. It would bring the violence out of the shadows and make it clear that IPV in Ontario is a public health crisis and public policy issue. The declaration would also serve as validation for survivors and those still living with IPV, that this violence is both real and wrong.

The province should follow the lead of the nearly 100 municipalities across Ontario that have already declared IPV an epidemic.[27]

2. ***Address social and economic inequity and access to justice**:*

Until large-scale issues such as income inequality, affordable housing, food security, and access to healthcare, mental healthcare and the family law system are addressed, rates of GBV, including IPV, will continue to rise as will the associated costs. In other words, without addressing large-scale systemic inequities, solutions to GBV are akin to placing a series of band-aids on a large, gushing wound.

3. ***Increase governmental oversight and accountability**:*

The CKW inquest recommendations 2–6 provide a clear blueprint for steps that the provincial government could take to ensure external oversight and increased accountability in addressing IPV. Many of the recommendations are not new and have been raised in past inquests.[28]

We need a space for the government and the sector to work together to share knowledge and implement meaningful changes in the system, with a safe and honest mechanism for the government to hear directly from the sector about what is working, what is not working, and how we can improve the system. To that end, the provincial government should reinstate the Provincial Roundtable on Violence Against Women which was disbanded by the provincial government in 2018. This roundtable was comprised of experts in the sector, including Luke's Place, to advise the government on emerging issues and ensure steps were being taken to address GBV in the province. A similar roundtable should be re-created to help facilitate the implementation of the wealth of existing recommendations on addressing IPV. Membership on

[27] Building a Bigger Wave, The Epidemic of GBV-IPV

[28] E.g. Hadley inquest jury verdict, recommendation 1 (2002); May-Isles inquest jury verdict, recommendations A and B1 (1998)

the roundtable should come from across the sector, prioritizing voices from underserved and marginalized communities.

The roundtable's mandate would require it to report publicly on the government's implementation progress.

Formal accountability measures should also be put in place when it comes to implementation of inquest and DVDRC recommendations.

4. Improve funding and stability for the sector:

IPV is an epidemic, which means that organizations working to address this issue should be funded as an essential service. There should be predictability and stability for the sector when it comes to funds from the provincial government each year.

Although funds have been invested in the GBV sector, they do not meet the need for service delivery and prevention work. Equipping communities to be safe for everyone is one of the most important things the government can do. As clearly identified in the NAP, survivors of IPV must have access to competent, stable, equitable, trauma and violence-informed, and culturally appropriate supports and services in their communities.

Addressing GBV is not the work of short-term "projects". We need funding that allows for stable structural and systemic change. We need to acknowledge that until we are able to address the root causes of gender-based violence, the endemic nature of this problem requires annualized core funding that keeps pace with actual costs.

GBV sector leadership should be focused on addressing the causes of harm and working in their communities to engage partners, support survivors and better coordinate services to make better use of available resources for those who are living with and escaping violence, not writing project grant proposals and organizing fundraising events.

There should also be increased annualized funding for shelters, sexual violence services, women's centres, legal services and Partner Assault Response Program (PAR) – these are the GBV core services that are buckling under the pressures, where critical frontline workers with important expertise work in precarious and sometimes dangerous conditions without decent wages, benefits (including mental health benefits) or access to public sector pensions.

The CKW inquest recommendations 18–22, as well as recommendations from past inquests[29], provide clear direction to the provincial government on steps it could take to ensure organizations are properly funded.

5. Invest in prevention:

Our current GBV response is crisis-driven. We are working at the wrong end of the problem, and it is getting worse. Prevention is a key pillar in the NAP. New investments in prevention have to include explicit investments in diversity to ensure smaller and marginalized organizations and groups have the opportunity to contribute and lead in community solution-making. Many of the agencies holding the necessary expertise do not receive any funding for prevention education and community engagement.

Ongoing prioritizing of the criminal system response should not be the focus when it comes to addressing IPV. Rather, it should be viewed as a last resort because it comes too late and most

[29] E.g. *Ibid*, Hadley inquest jury verdict, recommendation 38.

survivors do not turn to it for support. Instead, the focus should be on funding primary and secondary prevention to stop the violence from occurring, recurring and escalating.

Funding distribution should also take into consideration that solutions to IPV are local, diverse and collaborative. This means funding models should prioritize funding of organizations across the province that have local expertise and knowledge of the particular needs of their local communities.