

ADVOCACY FOR WOMEN WHO HAVE EXPERIENCED VIOLENCE

BY KAMALJIT LEHAL

Advocacy on behalf of women who have experienced violence has been occurring for many years. This advocacy takes roots in the quest for equality, the hope being that if women are equals then violence against them, rather than not be tolerated, simply would not occur. However, centuries of deep-rooted oppression of women have made this goal challenging to attain. The reality is that advocating for the safety of women has been a hard-fought battle with some wins and many setbacks along the way. Even now, strategic legal challenges are being mounted to underscore the ongoing legal disadvantages that women continue to face when fleeing violence.¹ Advocacy is essential for the safety and well-being of women who have experienced violence.

The focus of this article is deliberately on women who are victims of interpersonal violence and/or sexual assaults.

Statistics reveal time and time again that a woman is more likely to be abused, sexually assaulted, and killed than a man.

Police data for 2018 record that 99,452 people in Canada experienced intimate partner violence, women were the vast majority of those who experienced this form of violence, accounting for 79% of the survivors.² Likewise, police data from the same year indicate that women in Canada are overrepresented among victims of intimate partner homicides. Of 945 intimate partner homicides, between 2008 and 2018, about 8 in 10 involved female victims.³ As for sexual-assaults, the same police-reported

data for 2018 show that rates of intimate partner sexual assault were almost 30 times higher for women than men. Rates of sexual assaults were the highest among women aged 15 to 24.⁴ The rate of sexual assault among Indigenous women is almost three times as high as the rate among non-Indigenous women.⁵ The statistics go on and on, consistently revealing that women are at higher risk of violence overall than men.

The highest court of Canada has also noted the prevalence of violence against women and the social context within which such violence has not only been condoned, but legally permitted.⁶ As Madam Justice Wilson remarked:

The law has historically sanctioned the abuse of women within marriage as an aspect of the husband's ownership of his wife and his right to 'chastise' her. One need only recall the centuries-old law that a man is entitled to beat his wife with a stick "no thicker than his thumb."⁷

Lawyers, victim workers, and anti-violence organizations have and continue to advocate on behalf of women who have experienced violence. As stated, it has been a slow and steady process, but it is through their advocacy that legal and policy reforms have occurred. For instance, in 1960 while the *Criminal Code of Canada* contained a provision for common assault, the assault on one's wife was usually dealt with in family court as opposed to criminal court.⁸ The women's movement sought to change the mindset of the police, crown, and judiciary in dealing with violence against women, to have it viewed like any other life-threatening harm.⁹ This advocacy saw some jurisdictions in Canada, in the 1980s, adopt a 'no drop' charge policy to ensure that the charges are prosecuted, without discretion, even if the



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woman no longer wanted to proceed with the charges.¹⁰ There are pros and cons to such a policy, as a woman is disempowered from the process should she decide that she does not or cannot leave the abusive relationship.

In 1982, women's advocacy groups fought for the inclusion of substantive provisions pertaining to equality in the *Canadian Charter of Rights and Freedoms*.¹¹ However, it became apparent that the provisions enshrined in the Charter could not alone change years of complacency towards violence against women. While the legal landscape appeared to be changing with an explicit provision for sexual assault in the *Criminal Code*, provisions which were born out of advocacy aimed at ensuring fairer treatment of victims, the reality was that decision making was not keeping pace.¹² Victims and their testimony were being scrutinized from a lens of skepticism and there was a high 'unfounded' rate for their claims.¹³

Further reforms were pursued and obtained to the sexual assault provisions in 1992, with the concept of 'consent' being defined to take away discretion of this finding from a judge. However, hand-in-hand with reforms to ensure interpersonal violence and sexual assaults were taken seriously, were legal challenges framed in *Charter* rights for the perpetrator.¹⁴ That is why the journey has been slow, steady, and ongoing. Advocating in the backdrop of centuries of oppressive laws and norms that relegated a woman to nothing more than a chattel has been no easy feat. In addition, stereotypes that put a victim's sexual history, or the clothes she was wearing, or anything else that suggested "she was asking for it" makes progress in justice for victims out of line with the legal reforms obtained on their behalf. This was highlighted by the remarks in 2014 of the then-judge, Robin Camp, when during a sexual assault trial, he asked the victim "Why couldn't you just keep your knees together?" In acquitting the assailant, the judge remarked:

"I want you to tell your friends, your male friends, that they have to be far more gentle with women. They have to be far more patient. And they have to be very careful. To protect themselves, they have to be very careful."¹⁵

The judge appeared before the Canadian Judicial Council in

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2017 and resigned from his position after a finding that he was unfit to remain on the Bench.¹⁶ However, decisions like this continue to happen, despite training and education dispelling the myths and stereotypes women are subjected to.¹⁷ Many women avoid reporting sexual assaults for fear of being revictimized again in the court process. The absence of a trauma informed lens is glaring. There has been advocacy to implement *Bill C-337, An Act to amend the Judges Act and Criminal Code (sexual assault)*, to ensure jurists receive "recent and comprehensive education" about sexual assault law.¹⁸ This Bill was introduced in 2017 and is still "in progress."¹⁹

The fact that we need a law to ensure women are not belittled or degraded when coming forward with assault claims is somewhat troubling, but if that is what it takes to ensure women are supported then it is a measure that must be undertaken.

Advocacy, whether frontline, policy or legal reform advocacy, continues to be essential to ensure that women are heard should they flee violence or come forward about a sexual assault.

Advocates are keenly aware of the cumbersome path that women fleeing violence must take to get to safety and the many hurdles they must be prepared to face in leaving the violence or reporting a sexual assault. However, this understanding is often lacking by the players in the various systems a woman must engage in. The decision to leave or report is not an easy one, as there is much a victim must consider. Let us take the example of a woman with young children who is in a violent interpersonal relationship, the immediate thought she must put her mind to is, "where do I go with the children?" Her options may be a transition home, which typically provides shelter for a few months, or escaping to family and friends, where she may be offered a room or a sofa. She must decide, despite the abuse she endures, whether it is worth leaving the basic securities we all need, such as a roof over her and her children's heads and food. She is taking a step into the unknown and her displacement from her home with her children is akin to being homeless.

This is not the end of her considerations. If her decision is to leave and not return and to report her abuse to the police, she must be psychologically prepared to engage in the criminal justice system, which involves police statements, potential court hearings for protection orders, and testifying at a trial with the perpetrator present. Alongside that, she must be prepared to engage in the family justice system to deal with matters pertaining to guardianship over her children and their protection. Once again, this typically involves coming face to face with the perpetrator. Somewhere in there, with the help of a transition home staff or a victim support worker, she must figure out how to obtain financial assistance,

counselling for herself and her children, and long-term housing as the transition homes and even family and friends are usually only able to accommodate her needs temporarily.

Prior to the COVID-19 pandemic, women and children escaping violence to transition homes were not always promised a placement as the shelters were often at capacity. In 2019, it was reported that women across Canada were being turned away from shelters due to a chronic lack of resources and funding.²⁰ The reality for women is that they must carefully take into consideration that there may not be options available to them and they may have to remain in a violent relationship or be prepared to return to it if they are turned away from the shelter.

This lack of resources for women was underscored during the pandemic, when we saw a 300% increase in incidents of interpersonal violence.²¹ Lockdown rules forced families to be confined to their homes. The uncertainty of their future and employment concerns became a tipping point in many relationships culminating in violence or exacerbating already volatile and abusive relationships. Organizations struggled to find accommodation for women fleeing their homes in these circumstances as transition homes, which were already operating at capacity pre-COVID, were not prepared for this surge. Women and their children were being put up in hotels and basements, anywhere community organizations could find to keep them safe. The pandemic highlighted the epidemic of an under-sourced support structure to enable women to flee violent relationships.

Let us now take the example of the woman fleeing violence with her children and make this woman a minority who does not speak English and has no immediate family or friends to turn to. The language barrier will make the decision-making that much more difficult. While there are resources and organizations that offer services in different languages, she may not realize they are out there. Once she does and is hopefully connected, she will have to face the similar challenges of finding accommodation and having to potentially engage in the criminal justice system and family justice system all while trying to get help for herself

and children for the trauma they have endured.

Let us go even a step further and make this woman an immigrant woman, who is either married or in a marriage-like relationship with a Canadian that has turned violent. She may or may not have legal status. How does she lose status?

It is quite common for these women to be told by the spouse that immigration sponsorship is underway and if she reports the abuse it will be withdrawn, and she will be deported.

Imagine not just having to worry about finding a safe place to escape to but worrying about the Canada Border Services Agency (“CBSA”) removing you from Canada. Prior to 2019 some of these women who reported their abuse, in fact, were removed, some of them tracked down in transition homes to affect their removal. The children of these women were sometimes then left in the care of the abusive spouse.²² The legal option for such women was to secure their own permanent resident status on humanitarian and compassionate (“H & C”) grounds, which typically took up to two years to process. Until that time the woman could try and obtain a Temporary Resident Permit (“TRP”), which would give her interim status to remain in the country, but there was no guarantee she would receive it, and that process could take up to a year at times. In the meantime, these women were at the mercy of the goodwill of transition homes, if space was available. Clearly, for such women with precarious status and lengthy delays to secure status, the incentive to leave their relationship was not there, and many decided to remain in their relationship.

However, in July 2019 after close to a decade of legal advocacy, the Federal Government announced an expedited TRP process for out-of-status women and an expedited H & C process for immigrant women fleeing violence. These applications are now

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being processed in a matter of months as they are coded with “FV” (Family Violence) flagging them for priority processing. Having been involved in advocating for this reform, it has been long overdue and has given some hope to these women. The expedited processing instructs CBSA officers to put hold on any removals until a decision is made on the applications. There is still further advocacy taking place regarding these reforms as they do not address all scenarios that immigrant women may encounter. However, for now, the expedited process to obtain immigration status has given some women with precarious status a bit of relief. They will however still have to endure navigating the various justice systems and facing their perpetrator in the process, and all the other considerations a woman escaping violence must put her mind to.

We see that when we walk in the shoes of these women, just a few steps, that leaving a relationship of violence is daunting.

Having represented women
who have experienced violence one
comes to understand that while they
are victims of violence, they are not just
victims; their decision to leave a violent
relationship or report a sexual assault
is courageous.

To be willing to risk stepping out into the unknown, where resources are scant and systems are still encumbered by outdated perceptions regarding women, requires strength and resiliency. Until the systems in place are working in a manner that actually listens to and hears what these women have to say, the work of legal advocates, victim support workers, and anti-violence agencies must continue and will be crucial in ensuring that this is accomplished. V

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