

K-Court:

The Feminist Pursuit of an Interdisciplinary Approach to Domestic Violence

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For many Canadian women, family does not represent sanctuary. Domestic violence* has reached alarming proportions in our society and represents the leading cause of injury to women aged 15 to 44. Sources indicate that in Canada, one woman in every 10 is beaten by her male partner, two-thirds of all Canadian marriages experience at least one occurrence of domestic violence.¹ Thus, domestic violence is among the most troubling and complex problems facing the legal community today.² As a social phenomenon, spousal abuse challenges the scope, breadth and role of criminal law enforcement, practice and theory.

A significant problem in attempts to address this issue has been a lack of coordination across sectors. The focus of this paper is the situation in Ontario. Ontario's 1998 Provincial Coroner's Inquest into domestic

violence made more than 200 recommendations that spoke to the need for a continuous system held together by the partnership of all sectors.³ Fragmented services are particularly problematic in the area of domestic violence where complex and inter-related concerns are triggered.⁴ Few social issues necessitate such an integrated effort at the interstices of criminal justice, health care, education and social service systems. While criminal law is certainly not a panacea for responding to and preventing domestic abuse, many spousal abuse victims initially seek criminal justice intervention. Thus, in order to ensure comprehensive and viable solutions to domestic violence, the law must not operate in a social vacuum. It has become increasingly clear that traditional methods of service delivery are ineffective at addressing the varied and complex patterns of domestic violence.⁵

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* The term "domestic violence" and variations of it (i.e., domestic assault, domestic abuse, spousal abuse, spousal assault, spousal violence, etc.) is used to refer to violence directed at women and perpetrated by men in intimate relationships. Other forms of violence, such as elder abuse, child abuse, female on male, and same sex abuse, and stranger assaults will not be considered in this paper. Further, the word "victim" should not be read to infer helplessness on the part of the abused.

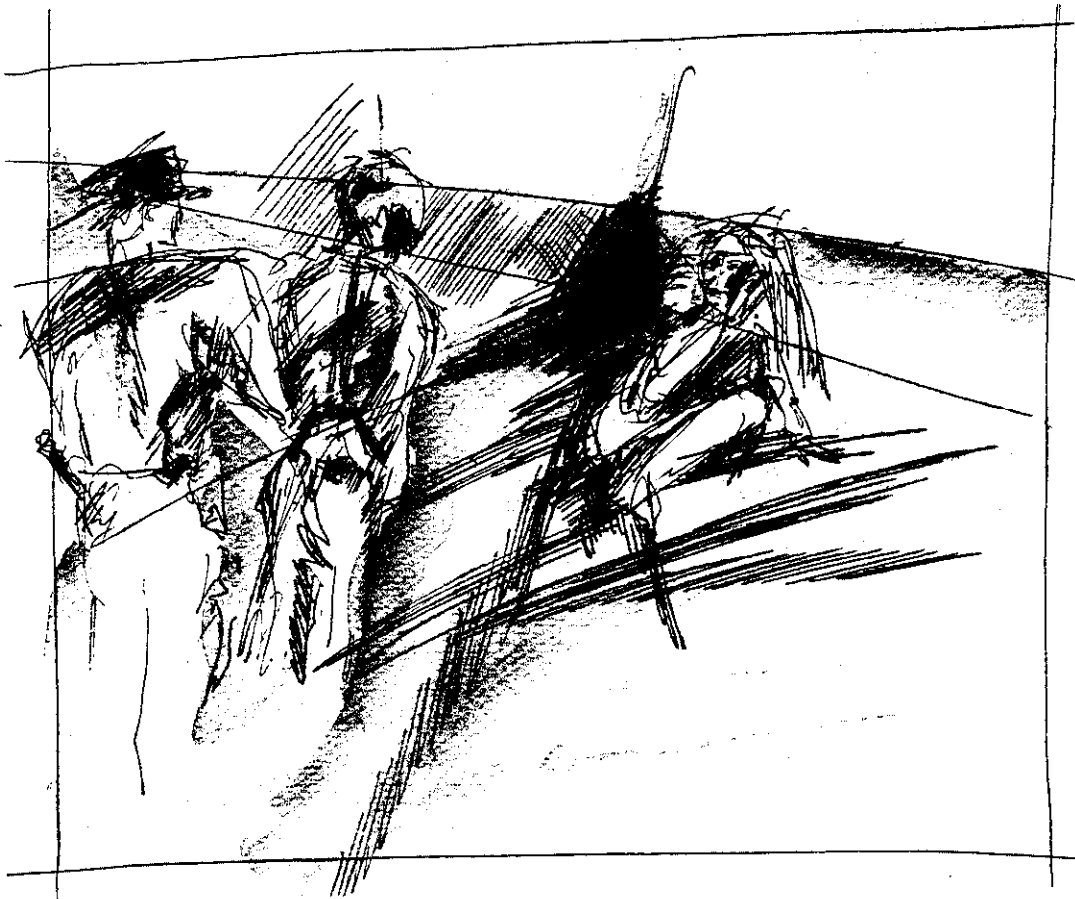
1 B. Wilson, "Family Violence" (1992) 5 Can. J.W.&L. 137 at 138; E. M. Hyman, "The Courts and Domestic Violence" (1999) 19 Lawyer's Wkly 4; C. Christopher, "New Family Violence Protection" (1999) 23 L. Now 58 at 62. Statistics on domestic abuse may be accessed at Toronto City Council, "Woman Abuse Council of Toronto" <http://www.city.toronto.on.ca/council/wac_index.htm> (date accessed: 9 April 2001); Statistics Canada, "The Violence Against Women Survey: Highlights" (November 1993) *The Daily*, online: Education Wife Assault <<http://www.womanabuseprevention.com/html/statistics.html>> (date accessed: 15 March 2001).

2 A. Duffy and J. Momirov, "Family Violence: A Canadian Introduction" (1999) 24 Can. J. of Sociology 554 at 555; D. B. Mitchell, "Contemporary Police Practices in Domestic Violence Cases: Arresting the Abuser: Is it Enough?" (1992) 83 J. Crim. L. & Criminology 241-249.

3 *Supra* at note 1.

4 D. Kinnon, *The Other Side of the Mountain: Working Together on Domestic Violence issues, Phase 1* (Ottawa: Interdisciplinary Project on Domestic Violence, 1988) 794 at 794.

5 *Supra* note 5 at 798; K. Yllo, Book Review of *Woman Abuse: Sociological Perspectives* by Walter DeKeseredy and Ronald Hinch (1992) 19 Social Justice 146-9.



Interdisciplinary cooperation is critical to promote a thorough understanding of the issues, increase the efficient use of resources and diminish system-induced re-victimization, with special attention to racialized and otherwise marginalized women.⁶

In recent years, a number of initiatives have been developed specifically targeting broader social, political and economic forces that impact upon individual perpetrators' propensity to abuse. The legal system itself has undergone transformation, beginning in 1997 when specialized domestic violence courts were launched in North York and Toronto through the Courts Pilot Projects in Ontario.⁷ These pilot programs have become permanent fixtures in the criminal court system and now serve as models for

other projects across Ontario. They are believed to be more effective than the traditional approach to addressing the complexities of prosecuting domestic assault. These courts facilitate early intervention in the cycle of violence, provide counselling for victims and offenders, courtroom and support services for victims and investigation and prosecution of complaints.

Toronto's K-Court model, named after police K (domestic violence) files, operates through a coordinated and mandatory response involving the Crown attorney, the Victim/Witness Assistance Program (V/WAP), the police, the judiciary, court administration, probation services and community groups offering intervention programs for offenders.⁸ This innovative model, with its multi pronged

⁶ *Supra* note 5 at 795.

⁷ A. Bissett-Johnson, "Domestic Violence: A Plethora of Problems and Precious Few Solutions" (1986) 5 Can. J. Fam. L. 253 at 276; "Canadian Introduction", *supra* note 2 at 555.

⁸ *Domestic Violence Justice Strategy—The DVC Projects at Old City Hall and North York Courts*, looseleaf (Toronto, 1999).

approach to domestic abuse, encompasses some of the systemic remedies that feminist legal theory supports. The remainder of this article explores the K-Court model's most controversial features, namely aggressive criminal justice intervention in domestic violence through mandatory charging and no-drop prosecution. Although the impetus for these features can be attributed in part to historical demands by feminists that the criminal justice system take seriously the injuries to women flowing from domestic violence, a closer look at feminist analysis reveals significant concerns about the combination of criminal law responses with mandatory frameworks.

The economic, political and social inequalities of women simultaneously fuel and justify violence against women.

CRIMINALIZING DOMESTIC VIOLENCE: THE INTERFACE WITH FEMINISM

Aggressive criminal justice intervention in domestic abuse cases is characterized most often by mandatory charging and no-drop prosecutorial policies. This approach is held out as offering protection for individual women facing domestic violence, and transforming the norms currently sustaining male violence against females.⁹ This approach has enjoyed and continues to enjoy widespread support among some women's advocates and various governmental actors. In part, such aggressive interventions grew out of contemporary demands for reform of the criminal justice response (or rather, lack of response)

to domestic violence.

Although political and legal theory have long recognized the danger of unlimited state authority, traditional theory has not acknowledged the incongruous authority of men over women. A systemic critique of the criminal law yields insights into the myriad ways criminal justice regimes have legitimized sexual dominance, remained oblivious to its harm and refused to characterize violent expression of that dominance as an abuse of power.¹⁰ The economic, political and social inequalities of women simultaneously fuel and justify violence against women. In short, the alienating and oppressive practices of the legal system have failed women where justice, validation and support should be found.¹¹

Feminist critiques of the social conditions that sustain women abuse, and more specifically, of legal responses to domestic violence which characterized it as merely a private matter within the domain of family life were the impetus for reform strategies which increasingly centred on demands for a more aggressive and regularized criminal justice response. The historical entrenchment of men's proprietary rights over women in the legal system is well documented.¹² Feminist struggles woman abuse thus logically came to focus on legal solutions. The criminal law further came to be seen as having symbolic importance in the struggle to prevent violence against women due, in part, to both its historical role in subverting women's voices and its potential for public exposure of violence as a social and political (and not merely personal) issue.¹³

9 D.L. Martin and J.E. Mosher, "Unkept promises: Experiences of Immigrant Women with the Neo-Criminalization of Wife Abuse" (1995) 8 Can. J. W. & L. 3 at 3.

10 L. M.G. Clark, "Feminist Perspectives on Violence Against Women and Children: Psychological, Social Service and Criminal Justice Concerns" (1989) 3 Can. J. W. & L. 420 at 425.

11 Wilson, *supra* note 1 at 140.

12 See generally R. Dobash & R. Dobash, *Violence Against Wives: A Case against the Patriarchy* (New York: Free Press, 1979); W.S. DeKeseredy & L. MacLeod, *Woman Abuse: A sociological Story* (Toronto: Harcourt Brace, 1997).

13 D.H. Currie, "The Criminalization of Violence Against Women: Feminist Demands and Patriarchal Accommodation" in K. Bonnycastle & G.S. Rigakos, eds., *Unsettling Truths: Battered Women, Policy, Politics and Contemporary Research in Canada* (Vancouver: Collective Press, 1998) 41 at 41.

As such, in the late 1970s and early 1980s, women's groups lobbied government to emphasize the criminality of domestic abuse by encouraging the police to treat it "like any other crime", and take positive steps to charge the perpetrators of assault rather than relying on dispute resolution through other means.¹⁴ Beginning in 1981 with a series of federal initiatives, within less than one decade, most Canadian jurisdictions adopted a "zero-tolerance" policy, encouraging mandatory charging and prosecution.¹⁵ In domestic violence cases, the criminal law is engaged procedurally at three discrete, but related points of discretionary power: the decision of the police to arrest and/or charge, the decision of the Crown to prosecute, and the decision of the court to impose a sentence if the case is made. For advocates of aggressive criminal justice intervention in domestic violence cases, taking wife abuse seriously has come to be measured by criminal justice yardsticks at each of these discretionary points: charges must be laid and prosecuted, convictions obtained, and jail sentences imposed.¹⁶ Proponents of such an approach assumed (and continue to assume) that these interventions operate directly and indirectly to better women's lives.

According to some academics, feminist activists never intended to focus societal responses to violence against women on criminal justice intervention.¹⁷ Feminist critics of such an approach argued that: criminal justice interventions merely contain the problem within legal boundaries, criminal justice, as an adversarial process rooted in punishment, hierarchy and dependence,

perpetuates the very factors contributing to abuse in the first instance, criminal justice is based on interventions into discrete events and narrowly-defined acts and abused women's problems, which are not strictly legal, have no place in criminal proceedings.¹⁸ While initially struck as a challenge to patriarchal notions of domestic violence, the movement to end violence against women came to support, in part, expanding the reach of a legal apparatus, which incorporated many patriarchal norms, through demands for more aggressive criminal interventions on behalf of victims of such violence.

It must be a theory that, while acknowledging the pervasiveness and harm of violence against women, does not accept this violence as an immutable feature of social relations.

Nevertheless many feminists remain committed to criminal law responses while at the same time pursuing a critical inquiry into the role that criminal law plays in resolving domestic violence. This involves a review of structural and systemic problems, organizational barriers and other issues perpetuating the status quo.¹⁹ Criminal law takes notice of women but often denies women benefits and protections. The basic tenet of one strand of feminist critique of criminal justice is that a preoccupation with men and male perspective has dominated the system.²⁰ The challenge, therefore, is to adapt male-oriented laws and practices to the concerns of female victims of domestic assault. This is difficult, however, because of the many conflicting concerns and

¹⁴ *Supra* note 10 at 15.

¹⁵ *Supra* note 14 at 41.

¹⁶ *Supra* note 10 at 16.

¹⁷ See W.S. DeKeseredy & L. MacLeod, *Woman Abuse: A sociological Story* (Toronto: Harcourt Brace, 1997).

¹⁸ *Supra* note 14 at 45.

¹⁹ *Supra* note 5 at 796.

²⁰ S. J. Schulhofer, "The Feminist Challenge in Criminal Law" (1995) 143 U. Pa. L. Rev. 2151 at 2153.

commitments held by key stakeholders in the system. Further, although some feminist theory equates women's oppression with patriarchal domination, there is little agreement as to how patriarchy is upheld and how it can be challenged. Beliefs about how patriarchy continues to subordinate women and sustain that subordination become expressed in various moments and individual actions. Despite these difficulties, feminist legal reform has consistently striven to address the root causes of the problem by demanding the implementation of systemic remedies.²¹ This process involves the development of theory and practice steeped in social reality. It must be a theory that, while acknowledging the pervasiveness and harm of violence against women, does not accept this violence as an immutable feature of social relations. The aim, then, is not merely to describe social relations, but to transform them. Feminist theory, however, has the luxury of being able to abstract women from their social context, whereas, feminist struggles are shaped by and framed within existing social orders and, as such, the translation of knowledge into action is not a straightforward endeavour. As in the case of criminal justice interventions, frequently something is lost in the translation.

MANDATORY PROSECUTION AND LEGAL REFORM

Criminal law has been slow to respond to the unique circumstances and challenges presented by domestic assault. As recently as 1983, a man in Canada could not be charged with the rape of his wife, even if the couple were separated. The situation,

however, is gradually improving. Though the criminal justice system has been primarily concerned with physical and sexual abuse, non-physical forms of abusive behaviour that often characterize domestic situations are now being recognized as punishable crimes. In 1993, the federal government passed a law that created the offence of criminal harassment to deal with stalking (s.264 of the *Criminal Code*).²²

Along with this trend, there has been an increasing recognition that domestic violence cannot be effectively dealt with in a fragmented system. In Ontario, this has spurred the creation of two specialized courts through the Courts Pilot Project initiative: one at the Old City Hall courthouse in Toronto and the other at the North York courthouse. The Pilot Project addresses the findings of a series of articles in the *Toronto Star*, which identified that the vast majority of domestic violence cases were dropped or withdrawn during the court process due to difficulty in prosecuting such cases.²³

Old City Hall's K-Court operates according to a coordinated prosecution model. This model brings together the police, Crown attorneys, probation and parole services, shelters and other services for abused women. The target of this integrated approach is to collect additional evidence beyond victim statements to aid the prosecution.²⁴ By combining state-level policing legislation, backed by aggressive prosecution efforts and supplemented by treatment programs, K-Court's interdisciplinary approach has, in effect, streamlined and apparently increased the effectiveness and sensitivity of the criminal justice system.²⁵

21 *Ibid.* at 141.

22 N. Bala and S. Edwards, "Legal Responses to Domestic Violence in Canada and the Role of Health Care Professionals" (1999) at 2-3, online: QL (SFLA).

23 V. Green, "Domestic Violence Courts Project," online: Education Wife Assault <http://www.womanabuseprevention.com/html/domestic_violence_courts_projec.html> (date accessed: 15 March 2001)

24 *Ibid.*; E. Raymer, "Domestic Assault Projects Mark Successful First Year" (1998) 17 Lawyer's Wkly 1.

25 N. Z. Hilton, Book Review of *Domestic Violence: The Changing Criminal Justice Response* by E.S. Buzawa and C.G. Buzawa, eds. (1994) 36 Crim. J. Crim. 211 at 212; Toronto City Council, "Woman Abuse Council of Toronto", online: City of Toronto, City Council <http://www.city.toronto.on.ca/council/wac_index.htm> (date accessed: 9 April 2001).

K-Court handles all domestic violence cases from police divisions 11, 14 and 52. It is staffed by a team of Crown attorneys who prosecute only domestic violence cases and receive mandatory training in social, psychological and legal issues associated with domestic assault and sexual abuse prosecutions.²⁶ In accordance with the 1982 directive of Ontario's Attorney General, Crown attorneys are required to assume an active role in promoting police-laid assault charges.²⁷ Under this zero-tolerance policy, the police also play a critical role in responding to spousal abuse and have taken significant steps to improve training in this regard.²⁸ Police officers are no longer expected to ask a victim if she wants her abuser charged. Instead, they must lay charges regardless of the victim's wishes.²⁹ After police lay a charge, a special reporting form is used and an attempt is made to have the victim participate in a videotaped interview.³⁰ The investigation of a case thus involves close cooperation between Crown attorneys and the police.

Another development facilitating prosecution of such cases relates to evidentiary rules regarding bad character and previous criminal conduct.

It is now accepted practice to begin domestic abuse investigations with the aim of being able to prove that an assault occurred without having to rely on the victim's in-court testimony. Gathering evidence such as photographs of the victim's injuries, 911 emergency

telephone tapes and audio or videotaped statements from the victim and other witnesses permit a victimless prosecution. This type of evidence collection is presumed to lessen the emotional burden on the victim although she will normally be called to testify if the case goes to trial.³¹

Recent case law developments have further facilitated the prosecution of domestic assault cases. Canadian courts now accept that an audiotaped statement by a woman to the police may be the basis for proving domestic abuse if she takes the witness stand to deny that her partner abused her and claims that her injuries were accidental. Such admission depends on the judge being satisfied that the earlier statement was true and that the victim has been pressured into recanting her original story in court. Before the Supreme Court of Canada's decision in *R. v. B.(K.G.)*³², prior inconsistent statements were excluded as hearsay unless the witness adopted the statements as true while testifying. The court in *B.(K.G.)*, however, held that prior inconsistent statements are admissible when they meet the dual requirements of necessity and reliability.

Another development facilitating prosecution of such cases relates to evidentiary rules regarding bad character and previous criminal conduct. In spousal abuse cases, the courts are increasingly acknowledging the unique nature of the offence with respect to the admission of evidence. In *R. v. F.(D.S.)*,³³ evidence that helped to characterize the nature of the relationship between the parties and the context in which the abuse occurred was admitted. As such, a

26 Victim Witness Programs and Services, "The Designated Domestic Assault and Sexual Assault Coordinators", online: Ministry of the Attorney General <<http://www.attorneygeneral.jus.gov.on.ca/html/VW/dsexass.htm>> (date accessed: 10 April 2001).

27 *Supra* note 8 at 267.

28 Christopher, *supra* note 1 at 62.

29 *Supra* note 23 at 7.

30 *Ibid.*

31 *Ibid.* at 10.

32 *R. v. B.(K.G.)* (1993), 79 C.C.C. (3d) 257.

33 *R. v. F.(D.S.)*, [1999] O.J. No. 688 (C.A.), online: QL (OJ).

victim or other witness may testify as to the entire history of abuse in a relationship in order to put the charges in context.

The impact of aggressive criminal justice intervention is felt differently depending upon individual women's social location and needs.

Prior to the commencement of a trial in K-Court, the domestic assault victim is contacted by the V/WAP and encouraged to participate in an interview. The program familiarizes the victim with the court process and provides her with support throughout the trial. Referrals to community agencies and services are also provided.³⁴ Shelters play a critical role in providing crisis accommodation and security for women and their children who are leaving an abusive relationship and have nowhere to turn. Shelters usually provide crisis or transitional accommodation for a period as long as six weeks. Although it is recognized that only a relatively small percentage of abused women stay at these shelters, there is an urgent need for more long-term accommodations and support. It is reported that if more spaces were available, there would be greater use of such facilities.³⁵

The coordinated prosecution model provides counselling services to abusers as well. When a judge imposes counselling as a condition of the sentence, the abuser is referred to an intervention program by his probation officer.³⁶ Many of these programs operate on a group model with one or two leaders directing each abuser to discuss and confront his problems and history of abuse. An intensive curriculum helps to

identify the philosophies and biases that abusers use to legitimize their use of violence. Treatment goals often aim at getting the abuser to: understand the harm done to his partner, family and community; take responsibility for his abusive and controlling behaviour without minimizing or denying it, and; recognize his abusive behaviour within the context of power and control and not within the context of anger.

Ultimately, the highest priority is the safety of potential victims. While participation in counselling and other forms of individual and group therapy can reduce the incidence of violence, some men do not respond to these programs and continue to abuse their partners. Programs can teach abusers that there will be serious consequences for their behaviour, but it takes a lifetime to change values and learned patterns of behaviour.³⁷ Recovery begins when abusers can express emotion without intimidation.³⁸

AGGRESSIVE CRIMINAL JUSTICE REFORMS: A FEMINIST CRITIQUE

Faced with the difficulties of translating theory into praxis and transforming social reality, feminists must continually ask themselves whether existing policies are benefiting assault victims. When the answer to this question uncovers dislocation between the interests of domestic assault victims and the goals pursued by the state, there is cause for concern.³⁹ Such a dislocation has been alleged with respect to K-Court and other specialized domestic assault courts. Some critics believe that public interests tend to supersede the interests of victims and that the position adopted in Ontario does not adequately reflect the needs of women or the contemporary feminist debate.⁴⁰ Central to

³⁴ *Supra* note 23.

³⁵ *Ibid.*, at 6.

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Ibid.* at 6-7.

³⁹ A. Cretney and G. Davis, "Prosecuting 'Domestic' Assault" (1996) *Crim. L.R.* 162 at 163.

⁴⁰ *Supra* note 22 at 4.

this critical stance is a concern about the negative impacts of arrest, and charging and prosecution policies phrased in mandatory terms. While there are a greater number of successful prosecutions through the use of specialized domestic violence courts, there exist a range of practical and conceptual difficulties related to aggressive criminal justice intervention in the area of domestic violence.

The impact of aggressive criminal justice intervention is felt differently depending upon individual women's social location and needs. Under-lying the use of policies such as mandatory arrest and no-drop prosecution is the problematic notion of uniform victim experience. Many abused women have resisted and continue to resist aggressive criminal justice intervention. The use of such mandatory policies is premised on two unsavoury assumptions: that all women will react to domestic violence in much the same way, and unquestioningly welcome prosecution to the fullest extent of the law, or more ominously, that individual women's experiences and desires ought not factor in state responses to domestic violence. The opposition of an abused woman to aggressive criminal justice intervention in her circumstances may all too easily be dismissed as "wrong" or the product of "false consciousness" or a "symptom of pathology".⁴¹ Further, apart from addressing women's objections to aggressive criminal justice intervention more broadly, the literature is devoid of attention to the differential impact of such interventions on dually marginalized women, those socially



dislocated along lines of class, race and citizenship, for instance.⁴² We thus tend to generalize abused women from two inadequate reference points—that of the white, middle class woman and the "ideal victim", one who does not resist or provoke her assailant, does not introduce complexity and ambivalence into the legal process and views her relation-

ship with her abuser solely in zero-sum terms.⁴³

Aggressive criminal justice interventions such as mandatory charging and no-drop prosecutions may deter immigrant women, who often are poor and racialized as well, from seeking assistance in response to domestic abuse. When questioned

about the factors that weigh in a decision about whether to contact the police or not, immigrant women expressed a fear of deportation (along with other negative immigration consequences), feelings of cultural shame and betrayal if the police were involved, ruination of the family, fear of financial consequences, concern for the husband, language barriers, and fears of retribution from the spouse and involvement by child protective services.⁴⁴

The presumption that a man who assaults his partner should be arrested, charged and prosecuted like any other assailant may, as far as the state is concerned, demonstrate that they are taking domestic violence seriously. However, where there is no congruence of purpose between victims and prosecuting authorities, women's victimization is exacerbated rather than resolved.⁴⁵ Discussions with immigrant

⁴¹ *Supra* note 10 at 6.

⁴² *Ibid.*

⁴³ R. Langer, "Male Domestic Abuse: The Continuing Contrast Between Women's Experiences and Juridical Responses" (1995) 10 *Crim. J. L. & Soc.* 65 at 85.

⁴⁴ *Supra* note 10 at 21.

⁴⁵ *Ibid.*

women reveal that they do not necessarily equate useful and necessary state intervention with charging and prosecution.⁴⁶ This response may seem counter-intuitive in the context of the aggressive criminalization strategy in Ontario, however that strategy fails to account for the importance that immigrant women may attach to husband, family, and community. Without underestimating or dismissing the patriarchy evident in many immigrant communities in Canada, we must recognize that there are unique pressures at play for racialized minority women who may be (and feel) responsible for maintaining and protecting their cultural communities, in the face of an often hostile and racist world existing without. Further, many women express love for their partners and seek rehabilitative and not punitive responses from the state. These men are in some tangible way part of their communities, and of themselves.⁴⁷

Under pressure to follow through with a charge, reluctance becomes one of the few ways battered women can retain some control over the process.

A criminalization strategy of mandatory charging and prosecution is underpinned by two broad assumptions: that domestic violence is the same as other assaults, and that criminal justice intervention is efficacious in reducing or eliminating violence against women. However, domestic violence differs fundamentally from violence between strangers, most compellingly in that it is situated well within a complex and nuanced interpersonal relationship. Unlike other acts of violence, the abuser here has breached a long-standing and particular type of trust, thus the victim is especially

vulnerable. Depending on the nature of the relationship between the victim and the abuser, both may want the relationship to continue. The victim may choose to reside with her abuser rather than see him punished, especially if she and her children are economically dependent on him. Pressure from family or friends can also affect her decision to remain in the relationship. Alternatively, she may simply decide that the stigma of a criminal conviction is too high a price for her partner to pay. The combination of any these factors compel women to return to relationships they originally attempted to sever. Some women believe that the involvement of the police and the threat of prosecution is enough to prevent further violence. Many women remain in, or return to, abusive relationships. The desire to preserve the relationship, however, does not mean that the victim wants the violence to continue.

In turning to the police for protection, domestic assault victims will often get caught up in the criminal justice process without necessarily intending to do so. Under pressure to follow through with a charge, reluctance becomes one of the few ways battered women can retain some control over the process. In the short term, domestic assault victims see this strategy as the safest available choice. There is a misguided tendency to accuse reluctant victims of somehow "failing" those who have put themselves out on their behalf. However, from a victim's perspective, a discontinued case need not be a failed one. The experience of arrest and the threat of conviction may be enough to deter some men from further violence. It is therefore incorrect to assume that conviction and sentencing is the only successful outcome.⁴⁸ In asserting that aggressive criminal justice intervention is in

⁴⁶ *Supra* note 10 at 24.

⁴⁷ *Ibid.* at 29.

⁴⁸ *Ibid.*

the best interests of all abused women, an abused woman who resists this intervention is denied rational actor status as “arrest over the objection of the woman implies that she does not know what’s good for her”.⁴⁹ This sort of attitude only further violates women’s autonomy and increases victimization. Further, the threat of contempt charges to control a reluctant victim is a legalized form of re-victimization that serves to emphasize public interest over individual interest and regularizes male domestic abuse with other violations of criminal law.⁵⁰

Apart from the normative treatment of spousal assault as the “same” as other assaults, an aggressive criminal justice response is alleged to offer individual women protection against future violence and contribute significantly towards the eradication of violence in the long-term by communicating forcefully a message of “zero tolerance” through mandatory charging and prosecutions. However, if women do not turn to the criminal justice system because of risks it entails, or because of its punitive irrelevance in their lives, claims of protection and eradication may be grossly overstated.⁵¹ As stated above, some women may consciously be forced to decide in favour of no intervention where the decision reveals such zero-sum odds as mandatory charging and prosecution. This would impact marginalized women with the greatest force—economically disadvantaged, racialized and immigrant women (often all three) who lack access to other supports and resources. Indeed, attention to a criminalization response to domestic violence may leave other supports under-served, even where the over-arching program is alleged to be interdisciplinary or community-based.

Some feminist scholars approach this problem from another angle, arguing that women should have an absolute right to bodily integrity and protection from aggression.⁵² For those committed to this view, society has an obligation to use arrest powers vigorously when a man violates a woman’s right to physical safety. While this is an appealing perspective, it takes no account of the psychological, social and institutional dynamics that determine whether and under what conditions an aggressive prosecutorial approach is in the best interest of the complainant.⁵³

Denunciation through criminal law does signal strong general social disapproval that violence against women is unacceptable, even in the realm of the private.

Aggressive criminal justice intervention does offer two tangible benefits. Firstly, victims are given temporary respite from their abusive relationship in instances where the abuser is incarcerated. This is often the principle reason why women summon police officers during the course of an assault. Secondly, criminalization has ideological significance. Denunciation through criminal law does signal strong general social disapproval that violence against women is unacceptable, even in the realm of the private. However, the needs of domestic assault victims, those the model presumes to assist, are not being entirely met because of the continued tendency to misrepresent and misunderstand women’s experiences of abuse, along with the legal system’s propensity to pathologize behaviours and isolate each case inside its “individual” facts.⁵⁴

⁴⁹ *Supra* note 10 at 34.

⁵⁰ *Supra* note 44 at 85.

⁵¹ *Supra* note 10 at 35.

⁵² *Supra* note 21 at 2161.

⁵³ *Ibid.* at 2162.

⁵⁴ *Supra* note 10 at 9.

A more thorough examination of aggressive criminal justice intervention in domestic violence, of the assumptions underpinning it and of women's experiences with it, reveal that it has done little to promote the dual purposes of protection and prevention that it was believed to serve. The criminalization strategy, precisely because of its location within the arena of adversarial, individualized and value-laden processes, is inadequately attentive to the role of power, its inequitable distribution, and the role of the state in perpetuating such imbalances.⁵⁵ Feminists have long questioned the efficacy of legal redress through a system in which male perspectives and interests dominate at all levels of the proceedings.

ASSESSING THE SUCCESS OF K-COURT

Despite the concerns about the vulnerability of policies framed in mandatory language, the interdisciplinary approach exemplified by the K-Court model is believed to hold great promise. In general, interdisciplinary approaches to domestic violence have been widely accepted as the ideal response to domestic assault. K-Court is lauded as a progressive example of an interdisciplinary and collaborative project responding to persistent problems in community response to woman abuse. Studies have confirmed that these courts can make a real difference in holding abusers accountable and providing safety for victims. On July 9, 1999, the Woman Abuse Council of Toronto released the results of its Women's Court Watch Project. In assessing the effectiveness of domestic violence court sites, the survey monitored judges' decisions and outcomes in domestic violence cases and compared the effectiveness of Old City Hall's specialized court to non-specialized courts. The results

indicated that the innovative court program was better able to successfully prosecute domestic violence cases, had lower rates of withdrawals, dismissals and peace bonds, as well as higher and faster rates of guilty verdicts and higher rates of victims attending courts. Overall, the number of spousal abuse cases reaching the courts had increased while the average time from first court appearance to the conclusion of the case had decreased.⁵⁶

Interdisciplinary cooperation was also found to facilitate community-wide information sharing and effective needs-assessment. Planning and service coordination, along with improved design and monitoring of joint protocols and programs have also been positive results of such an approach. Further, thorough case consultation and review, strong client advocacy, informed public and professional education, and consistent government consultation have been achieved.⁵⁷ The "success" of K-Court is attributed to the coordination between the police, V/WAP, Crown attorneys, batterers' programs, probation and community agencies.⁵⁸

In part, the "success" of K-Court and similar violence prevention courts flows from framing issues in individualistic, rather than institutional, terms. It is far easier to speak about individual perpetrators and victims than social responsibility, for instance. For many women, however, the documented benefits of aggressive criminal justice responses to domestic violence remain contentious.⁵⁹ Assessments depend on whose criteria are used to measure success. With mandatory charging and prosecution, arrest and detention rates for abusers have increased, while attrition rates of cases proceeding through the courts have decreased, and the percentage of offenders receiving

⁵⁵ *Ibid.*

⁵⁶ "Violence at the doorstep" *The Globe and Mail* (22 June 2000).

⁵⁷ *Supra* note 5 at 797.

⁵⁸ *Supra* note 23 at 10.

⁵⁹ *Supra* note 14 at 47.

court-imposed sanctions has increased.⁶⁰

However, it is not clear that these effects of aggressive criminalization are measures of success in addressing violence against women more generally. There is no literature verifying that punitive sanctions have either a deterrent or transformative effect, particularly where applied to marginalized offenders for expressive offences.⁶¹ There are several contradictions that arise where violence against women is addressed through aggressive criminal justice interventions. Such policies imply acceptance of liberal guarantees and formal safeguards inherent in our system of justice, which do not go far enough in addressing problems such as domestic violence, mired as they are with socially constructed and maintained norms. Further, aggressive criminal intervention strategies may result in the demise of notions of rehabilitation and re-education, and result in an unconscious abandonment of the notion of prevention.⁶²

In light of these successes attributed to K-Court, however, numerous similar initiatives have sprung up endorsing better support for victims and greater accountability for abusers. The Ontario government is willing to fund eight new domestic violence courts. This would effectively double their number across the province and enhance services at existing sites. Apart from the two specialized courts in Toronto, domestic violence programs currently exist in Brampton, Hamilton, London, North Bay, Oshawa and Ottawa. It is anticipated that the eight new domestic violence courts will be located in Barrie, Kitchener, Newmarket, Sudbury, Windsor, Etobicoke, Scarborough and metro Toronto. In total, all 16 domestic violence court programs will offer a broad range of coordinated services, including referral of first-time offenders, intensive counseling through partner assault

response programs, specialized investigations to obtain evidence, aggressive prosecution of repeat offenders and incidents involving serious injuries and support services for victims through the V/WAP.⁶³

This effort is part of Ontario's strategy to improve the justice system's response to domestic violence in partnership with local communities. Other improvements to justice services initiated by the introduction of the domestic assault program include new guidelines for police response to domestic violence and an additional \$8 million annually so that Crown attorneys can better support victims and witnesses during the preparation of cases.⁶⁴

CONCLUSION

In recent years, there have been significant changes in the ways Canada's social and legal systems have responded to spousal abuse. Thanks to a general feminist critique of social, legal and economic structures, attempts have been made toward a more collaborative approach to domestic violence, which includes improved support networks for victims. While programs such as K-Court provide a useful model, caution must be exercised in practice and we must remain vigilant to ensure that the very hierarchies and power imbalances that we seek to eradicate are not resituated in renewed efforts. This article has explored many of the problematic elements of aggressive criminal justice intervention in domestic violence. The K-Court model goes some way toward responding to the concerns raised by feminist critiques. However, its two core elements—a primary reliance on punishment and a mandatory “zero tolerance” framework—may aggravate rather than relive the situations of women who are the most vulnerable to domestic violence. ■

⁶⁰ *Ibid.* at 48.

⁶¹ *Ibid.*

⁶² *Ibid.*

⁶³ *Supra* at note 9.

⁶⁴ *Ibid.*