



BACKGROUND

ISSUE: Varying Bail “No Contact” Conditions To Allow Contact In Situations Of Violence Against Women In Relationships

This backgrounder is based on the information available at April 4, 2002. It is an excerpt from research conducted during Morgen Baldwin’s graduate research. In addition to the sources cited, it incorporates input from many experts on violence against women, including those involved in the Community Coordination for Women’s Safety project. This includes Victim Services Division (BC Ministry of Public Safety and Solicitor General), the BC Association of Specialized Victim Assistance and Counselling Programs, RCMP “E” Division, BC Municipal Chiefs, the Justice Institute of BC, the Department of Justice National Crime Prevention Centre, representatives from the criminal and civil bar, Multilingual Orientation Service Association for Immigrant Communities (MOSAIC), and the Pacific Association of First Nations Women.

This document is also available on the website of the BC Association of Specialized Victim Assistance and Counselling Programs:

- Go to www.endingviolence.org
- Select “Community Coordination for Women’s Safety”
- Select “Documents-Coordination Resources”

FUNDING PARTNERS:

- Law Foundation of BC
- Ministry of Public Safety and Solicitor General
- Ministry of Community, Aboriginal and Women’s Services
 - National Crime Prevention Centre:
 - Community Mobilization Program & Crime Prevention Partnership Program
 - National Victims Policy Centre

BACKGROUND:

Current Concerns

The entire Crown Victim/Witness Services program has been eliminated in Provincial Government budget cuts, effective May 31, 2002. In many communities Crown Victim/Witness Services workers have been assisting women whose partners apply to vary their bail no-contact conditions. Crown Victim/Witness Services have also provided other support to assaulted women, including referrals to and coordinated service delivery with specialized and/or police based victim assistance programs. There is an urgent need for increased resources, training and community agreements to address the gap this creates in coordinated and skilled support for women in violent relationships.

Resuming Contact With An Assaultive Partner

Varying bail orders to allow contact involves one of the most contentious issues regarding violence against women in relationships -- women resuming contact and/or relationships with men who have assaulted them. These women are often viewed as unreliable and less deserving of assistance. (Dobash and Dobash 1992; Ferraro and Pope 1993; Ginn 1997; Rigakos 1995)

The law...essentially takes the view that asking for the protection of the law is "blowing hot"; remaining with an abusive individual is "blowing cold"; and the law cannot help those who "blow hot and cold" at the same time.

(Alberta Law Reform Institute, p. 51)

Different Goals of Women and Response Systems

Many women involve the Criminal Justice System with the goal of obtaining sanctions and treatment to end their partner's use of violence, not with the goal of ending their relationship. The Criminal Justice System, however, is not generally designed to deal with situations where the relationship between the victim and perpetrator is ongoing.

Michelle Fine and Jacqui Wade's 1993 research with shelter residents and workers demonstrated that this focus on ending the relationship, rather than ending the violence, is not confined to the criminal justice system. While many shelter residents defined success using such indicators as "to leave so that he knows that when I come back that I can leave again," or "to be able to call a friend when he is about to go off," shelter workers tended to describe success as "that imaginary leaving when the woman never returns and is never bothered by him again." (Fine 1993: p. 284)

Reasons For Resuming Contact

The reality is that many couples resume contact after an assault, often despite the existence of a no-contact order. (Pence and McDonnell 1999; Plecas 2001) The reasons for resuming contact are varied, including threats and coercion by the accused, financial dependence, access to parents for children, lack of resources and/or a desire for reconciliation.

Results Of Resuming Contact With No-Contact Orders In Place

Women may find themselves in the position of being apprehensive about their safety, or re-victimized, but unwilling to call the police since they fear or have been told that they are violating the no-contact order. (Ferraro and Pope 1993; Baldwin 2001; Plecas 2001) Women may also be concerned that they will be asked by police why they are still in the relationship and may also feel that they won't be taken seriously.

Risks of Dual Arrests and Mutual Peace Bonds

Following the introduction of pro-active arrest and charge policies such as the BC Attorney General's *Violence Against Women In Relationships Policy*, there was an increase in the practice of arresting both the batterer and the victim, as well as the issuance of mutual peace bonds. This resulted from a lack of Primary Aggressor analysis (analysis of the history and pattern of abuse in the relationship, physical and/or emotional damage, treatment for injuries, and physical strength and skills for effective assault)¹. These practices raise concerns about long-term safety. Many women who have experienced or are in fear of violence agree to a mutual peace bond, saying they would like nothing better than to have no contact with the other party. In situations where there is further violence or threats of violence against the woman, police are faced with a woman in fear for her safety, who according to official records is one of the aggressors or potential aggressors in the relationship. Given the power imbalances involved, dual arrest and/or the use of mutual peace bonds is to be avoided or should be used rarely.

Recommendations for Formal Procedures and Specialized Support

It is important for formal procedures to be put in place to address the safety needs of women in ongoing contact and/or relationships with violent partners. Procedures such as the Prince George post-bail variance process described on page 7 offer a way to protect the woman and maintain her credibility. Through this process she can be connected with specialized support so that she can assess her own safety needs, get information about available resources and make an informed decision about if and under what conditions she will have contact with her partner/ former partner.

Arlene May was an Ontario woman who was stalked, terrorized and eventually murdered in 1998 by her ex-boyfriend Randy Iles, who then killed himself. A standard procedure to vary no-contact conditions was one of the recommendations of the 1998 Ontario Coroner's Inquest into their deaths.

Wherever possible, when a victim of domestic violence requests that ... a non-contact term of an accused's recognizance be varied, the Crown Attorney should refer her to the Victim/Witness Assistance co-ordinator, who should conduct an interview and prepare a written report to confirm that the request is made free of duress, intimidation, or any other undue influence. That it is within the discretion of the Crown Attorney not to accede to such requests must be explained to the victim.

(Coroners Courts, Toronto, Ontario 1998: Recommendation P. 12)

Benefits of Contact with Specialized Victim Services:

The post-bail interview may mark the beginning of an ongoing opportunity to provide specialized support during and after the court processes. Information about the range of possibilities for contact can be made available. Many women, believing that their only option is to resume unlimited contact, may be relieved at being able to choose options such as "contact only when a third party is present," or "phone contact only". New information about available resources such as housing may result in women withdrawing their consent to vary no-contact conditions.

¹ While RCMP Policy in British Columbia now includes Primary Aggressor analysis, the Attorney General Policy does not.

VARYING BAIL ORDERS - POLICY AND CONTEXT

→ Arrest, Charge and Release

The process leading up to and including varying bail orders is complex. When the police have reason to believe an assault has occurred in an intimate relationship, British Columbia policy² directs them to arrest and recommend charges where legal grounds exist. Once arrested, there are 4 possibilities for release:

1. Release by a Police Officer on an Appearance Notice or Summons: In this type of release no bail conditions can be attached to the release. Because of this inability to attach conditions, "...it is not usually in the public interest for police to release an accused on an appearance notice or a summons". (Attorney General VAWIR Policy 2000 (5.i))

2. Release by a Police Officer with Conditions: The authority of the police to release and impose conditions is relatively new. The *Criminal Code of Canada* was revised in June 1997 and again in December 1999 to allow for this. Under the expanded release provisions of sections 497, 498, 499 and 503, the police can release an accused on conditions without taking the accused before a Justice of the Peace (JP) or Judge³.

Under the *Criminal Code*, police release is not possible if:

- the offence is punishable by five or more years in jail
- the police believe, on reasonable grounds, that it is necessary in the public interest to detain him in custody or to deal with his release through a bail hearing having considered the need to establish identity, to secure or preserve evidence, to prevent the continuation or repetition of the offence or to ensure the safety and security of any victim of or witness to the offence

3. Hold for a bail hearing before Justice of the Peace or Provincial Court Judge and release with conditions:

Police officers are able to impose the same conditions as a Justice of the Peace (JP) or Judge with 2 exceptions:

- police can impose a firearms prohibition while a JP or Judge can impose a weapons prohibition (broader than firearms). If the police want a weapons prohibition they have to seek it under Section 111 of the *Criminal Code*.
- police can impose an order to not "communicate with" specified parties while a JP or Judge can impose an order to not "contact" specified parties. The *Attorney General Violence Against Women In Relationships Policy 2000* states that case law has

² RCMP are directed to follow the RCMP "E" division (British Columbia) Violence in Relationships/ Violence Against Women in Relationships/Criminal Harassment Policy in conjunction with the BC Attorney General's Violence Against Women In Relationships (VAWIR) Policy. Municipal police are directed by the Attorney General's Policy as well as detachment policies.

³According to the *Criminal Code*, the accused is released by entering into an undertaking in *Form 11.1 - Undertaking Given to a Peace Officer or an Officer in Charge*, which contains all available conditions. This form is forwarded to the *Protection Order Registry* (a computer database of protection orders issued by B.C. courts.) and submitted for entry on Canadian Police Information Centre (CPIC). CPIC, part of National Police Services (NPS), is an automated system that provides information on crimes and criminals. Over 60,000 police officers across Canada can obtain immediate access to operational police information from a terminal in their office or in their police vehicles.

determined “no contact” to give greater protection to victims than “non-communication”.

4. Request for Court Ordered Detention: According to the *Attorney General Violence Against Women in Relationships Policy 2000*, the following are risk factors which, especially in combination, suggest the police should hold the accused for court and recommend a detention order:
- A history of violence within or outside the relationship
 - A history of breach of court orders
 - Death threats
 - Recent threats of suicide
 - Escalating violence
 - Substance abuse
 - Recent relationship changes
 - Recent employment problems
 - The use or threatened use of weapons

Whether a police officer, a justice of the peace, or a judge releases the accused, both RCMP and AG policy directs the imposition of appropriate conditions to address the concerns for the safety and security of the victim or the public. These conditions remain in effect until the case is disposed of by the criminal court system or until the conditions are varied.

→ **Varying Bail Conditions**

There are two references to varying bail conditions to allow contact in the Attorney General Violence Against Women In Relationships Policy. The first refers to the importance of the police forwarding the Report to Crown Counsel (RCC) as soon as possible so that the Crown counsel is able to address any attempt by the accused to change the bail conditions. (C.1) The second encourages the development of a process for dealing with an application to vary bail conditions.

C. 6. If the accused and victim later seek removal of the no-contact condition of bail, Crown counsel should contact the victim and bail supervisor for further information before addressing the matter in court. If there is a significant history of abuse, or the bail supervisor or Crown counsel determines that the victim may be at risk, an application to remove the no-contact order should be opposed by Crown counsel, and the reasons stated to the court. It may be advisable to provide the victim with further information on specialized victim services in order to assist her in dealing with the impact of the criminal justice process on her relationship and life.

The process of varying bail orders is developed locally and varies between jurisdictions. Results of informal consultations across BC (Baldwin 2001) reveal that a few jurisdictions have an agreed upon procedure to allow for the variance of bail orders, some are just beginning to examine the process and develop protocols, and others have no plans or procedures to address this issue.

IMPACT ON WOMEN'S SAFETY

One of the most significant reasons to create strategies to deal with this issue is the level of risk specific to this period in a violent relationship. An increase in physical violence associated with planned or actual separation is well documented in research on violence against women in relationships. (Bowman 1992; Buzawa and Buzawa 1996a; Ferraro 1993; Ferraro and Pope 1993; Hannah-Moffat 1995; Jiwani and Buhagier 1997; MacLeod 1995; Roberts 1996; Plecas 2000).

Psychological abuse is another risk factor. As Shepard points out in her discussion of evaluating community responses to intimate violence, "Battered women may not experience continued physical violence but have their safety continually threatened." (Shepard 1999: p. 188)

Respondents in a study of spousal assault and police response in the Yukon identified the period between the offence and court appearance as "one of maximal stress on the victim, and one in which...[the offender] tends to scapegoat the victim." (Roberts 1996: xx) Respondents in this same study identified the period before court as one in which they would benefit from this flexibility to their needs:

Especially in regard to no-contact orders, efforts could be made to tailor such orders to the specific needs of the victim (e.g., to allow contact only if the offender is sober, only when a third party is present, only for the purpose of taking the children to appointments, etc.). This would allow the victim protection she needs, while at the same time allowing the needs of the victim, offender and children to be met if they don't conflict with safety requirements.

(Roberts 1996: p. 88)

A CASE STUDY - PRINCE GEORGE, BC

******This process is currently under review due to the complete elimination of the Crown Victim/ Witness Services program. The process described here is the one that was followed in Prince George from 1996 -2002.***

The "post-bail variance" process is initiated by accused, most often in order to resume some form of contact with the victim. This process is an "Application To Vary Bail By Consent". The first step in varying protection orders was originally a post-bail report by a bail supervisor at Community Corrections, in order to confirm that the victim was not opposed to the variation.

In December of 1996, Adult Probation approached the Prince George VAWIR Committee to report that they were no longer able to conduct these interviews due to time constraints. Crown Victim/Witness Services (CV/WS) and the Specialized Victim Assistance Program (SVAP) of the Elizabeth Fry Society agreed to conduct the interviews with complainants, based on the same format.

In this procedure, the victim is interviewed regarding safety issues, the history of the relationship, reasons for the requested change and type of contact being requested. She is also given information about the Attorney General VAWIR Policy.

Following this interview the completed post-bail interview form is forwarded to Crown Counsel. The next step is a hearing on the Application To Vary Bail By Consent, where Crown may consent to or oppose the variation. The Judge makes the ultimate decision.

Considerations for a Coordinated Community Response

Is there a standard procedure for varying bail and other no-contact conditions in your community? Consider the following in your current agreements or in the development and documenting of new procedures:

1. Is the victim contacted if the accused applies to change bail conditions?
 - If so, who contacts her?
 - Does the person who contacts her review risk factors and safety planning with her and explain the process involved in varying bail conditions?
 - Is this something Victim Services workers need training on?
 - If Crown Victim/Witness Services are responsible for this contact in your community, what will be put in place to address the cuts of CV/WS?
 - If Bail Supervisors are responsible for this contact, what will be put in place in jurisdictions where there are plans to cut bail supervisors?
 - If the program responsible for this contact is delivered by a women's centre, how will this be impacted by the cuts to core funding for women's centres (effective April 2004).
2. Is Crown required to conduct a risk assessment and document their findings if the accused applies to vary bail conditions?
 - If Crown duties are reduced due to cuts to numbers of Crown Counsel, is this a procedure that will still be followed?
3. If Court Houses no longer exist in your community, how will this affect this process?
4. How are these new conditions entered on the protection order registry and other tracking systems such as CPIC? What length of time does this take?
5. What happens to these protective conditions as each step of the Criminal Justice System process is engaged? Some of these steps will result in bail conditions being dropped. If there are any changes how is the victim informed and what type of assistance is offered with safety planning? If conditions are no longer in place, what can be put in place to address their removal? Consider:
 - If the accused is diverted to Alternative Measures?
 - If Crown does not approve charges?
 - If the accused pleads guilty due to plea discussions?
 - If there is a preliminary hearing and there is not enough evidence to proceed?
 - If the accused is found not guilty at trial?
 - If the accused is found guilty at trial?
 - If the accused is found guilty at trial and a later date is set for sentencing?
 - After the accused is sentenced?

6. Can Community Coordination for Women's Safety help?

- If your community or region could benefit from assistance related to coordination on this issue, please contact either **Regional Coordinator**
- If your community would like more information regarding policy related to this issue or assistance with promoting action at a provincial or federal level on this issue, please contact the **Issues Analyst**
- You may also wish to contact our **Managing Partner** for assistance on this issue or for other information about the project.

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