



## ISSUES UPDATE

### September 2002: Proposed amendments to crown charging policy in violence against women cases

This update supplements the Community Coordination for Women's Safety Backgrounder, *The Ministry of Attorney General Criminal Justice Branch Review of Their Policies Including Those Governing Violence Against Women in Relationships and the Implications This Has for Victim Safety*, developed in June 2002.

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#### Overview

On July 31, 2002 the Attorney General released a discussion paper regarding proposed revisions to the Criminal Justice Branch Spousal Assault Policy (available at [www.ag.gov.bc.ca/legislation/spousal-assault/discussion.htm](http://www.ag.gov.bc.ca/legislation/spousal-assault/discussion.htm)).

The Discussion Paper seems to indicate that:

- The intent is to give Crown prosecutors greater discretion in deciding whether charges should be laid in spouse assault cases.
- The Criminal Justice Branch is contemplating greater use of “alternative measures” and peace bonds rather than criminal charges in spouse assault cases.
- The current pro-charge approach will be dropped. In other words, in cases in which the victim appears “reluctant” or unwilling to testify, charges will not be approved.

#### Areas of Concern

##### 1. Proposed Amendments

The approach being proposed by the BC Attorney General is inconsistent with the long-standing pro-charge policy adopted by other Canadian provinces, territories and the federal government. The Ministry of Attorney General Discussion Paper does not include reference to current research or provide another sound rationale for BC's proposed policy change. In fact,

evidence from existing studies indicates that pro-arrest and pro-charge policies and coordinated justice system responses enhance victim safety and reduce recidivism rates.

**Any change to charging and prosecution practices will also result in a significant change to the umbrella Violence Against Women in Relationships (VAWIR) Policy.** The VAWIR Policy applies not only to Crown Counsel but also to police, Corrections, and Victim Services personnel. The implications of such a potentially far-reaching policy shift need to be considered by all parties and consultation would be recommended on a province wide basis before embarking on policy changes.

**In the face of staff cuts and courthouse closures in BC, criminal justice personnel are already overburdened.** Allowing for greater discretion may be a positive goal in an ideal system. In our current climate, however, there is a great danger that the proposed policy will encourage overworked prosecutors and Corrections personnel to underestimate the risk posed to spouse assault victims and to divert cases inappropriately. This puts women at greater risk of further violence.

**The potential increase in the use of “alternative measures” in spouse assault cases may revive the notion that spouse assault is not a serious crime.**

**Allowing more spouse assault cases to be diverted may subject the victim to even greater pressure from her abusive partner.** For example, she may be pressured by the offender to downplay the severity of the abuse and the risks to her safety in order to enable him to qualify for diversion.

**The Ministry of Attorney General Discussion Paper, in referring to the current VAWIR policy, states that, “every case is treated the same way, even though their circumstances differ widely.”** This implies that the current VAWIR Policy eliminates Crown discretion. In fact, current policy guides but does not eliminate Crown discretion.

**The Ministry of Attorney General Discussion Paper recognizes the important role that Community-based victim-serving agencies can play in cases where victims are “reluctant.”** With recent cuts to both Crown and Community-based victim services, is it realistic to develop a policy whose success may depend on the active involvement of these severely cut or eliminated programs? In order for victim services to play a meaningful role, coordination and communication between Crown counsel and community and police-based victim services is essential. With cuts to their own staff, are Crown counsel in a position to develop and maintain such links?

**The Ministry of Attorney General Discussion Paper stresses the important role that peace bonds can play in spouse assault cases and suggests that this is a new option created by the proposed policy revisions. Existing policy and the *Criminal Code* already allow for this option in cases where there is not enough evidence to lay a charge.**

## **2. Feedback Process**

**In order for stakeholders to provide meaningful input, it is essential that the proposed policy changes and existing policies are made available along with the Ministry of Attorney General Discussion Paper.** Previous amendments to the overarching Violence Against Women in Relationships (VAWIR) Policy involved draft policy provisions being circulated to concerned stakeholders. The current Discussion Paper provides a general description of the issues related to spouse assault cases and the basic approach now being proposed by the Criminal Justice Branch. Proposed policy is referred to and quoted; however, a complete draft of the proposed policy revisions is not provided. Also, current Criminal Justice Branch policies which are referenced in the Discussion Paper are not included.

**The Federal Provincial Territorial Ministers for Justice have established a working group to review pro-charge policies across Canada. Their report will be completed later this fall.** Will community stakeholders be provided with copies of this report so that their response to the Ministry of Attorney General Discussion Paper can include reference to the F/P/T research findings? Will the timeline for the provincial policy change being proposed by the Ministry of Attorney General allow for this?

**Proposed Criminal Code amendments to allow judges to delay imposing sentences (after a conviction) may be a useful strategy.** More information on what is being proposed would assist stakeholders to respond appropriately.

**It is not clear how the Ministry will address any feedback received.** Will proposed policy wording be revised based on the feedback? Will a summary of the feedback received be developed and released? Will the revised Criminal Justice Branch Policy, once it is completed, be distributed to concerned stakeholders working with spouse assault victims?

### **An Opportunity for Input**

The Ministry will accept feedback on the Ministry of Attorney General discussion paper until October 28, 2002. Input can be submitted online by going to the AG Website at: [www.ag.gov.bc.ca/legislation/spousal-assault/feedback.htm](http://www.ag.gov.bc.ca/legislation/spousal-assault/feedback.htm) or in writing to: Spousal Assault Policy Discussion Paper, Criminal Justice Branch Headquarters, PO Box 9276 Stn Prov Govt, Victoria BC, V8W 9J7.

If you make a submission, please forward a copy to the **Community Coordination for Women's Safety Project**. This will help us to formulate our own response. We also recommend that in addition to requesting a copy of the proposed revisions to the Criminal Justice Branch Policy on Spouse Assault, concerned groups request copies of the following relevant Criminal Justice Branch Policies:

Charge Approval Guidelines (CHA 1; CHA 1.2)  
Bail-Estreatments (BAI 1.1)  
Bail-High Risk Offenders (BAI 1)  
Bail-Interim Release-Powers of Release by Police (POL 1.1)  
Criminal Harassment (CRI 1)  
Diversion (DIV 1)  
Diversion-Native Justice (NAT 1.1)  
Family Relations Act-Section 81 Prosecutions (FAM 1)  
High Risk Violent Offenders (HIG 1)  
Native Justice-Pilot Projects for Diversion (NAT 1.1)  
Recognizance to Keep the Peace-Section 810 *Criminal Code* (Rec 1)  
Recognizances to Protect Children-Section 810.1(1) (REC 2)  
Sexual Abuse of Children (CHI 1)  
Sexual Offences (SEX 1)  
Stays of Proceedings and Resolution Discussions (STA 1)  
Victims of Crime-Legislation (VIC 1)  
Violence Against Women and Children (VIO 1)

This Issues Update is also available on the website of the BC Association of Specialized Victim Assistance and Counselling Programs. Go to [www.endingviolence.org](http://www.endingviolence.org). Click on the link to Community Coordination for Women's Safety on the homepage and follow the links to this document.

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