

Women Being Arrested¹

INTRODUCTION²

1.1. COMMUNITY COORDINATION FOR WOMEN'S SAFETY

The Community Coordination for Women's Safety Program (CCWS) provides assistance to BC communities to develop new models or improve existing models of cross-sector coordination on violence against women.

Coordination brings together different sectors in a community—for example, counselling centres, transition houses, police, hospitals, Aboriginal services, etc., to ensure that all services work together as effectively as possible.

Our program:

- works with urban and rural communities, and women who face particular discrimination in those communities (including Aboriginal women, women of colour, immigrant women, low-income women, women with disabilities, lesbians, transgender women, older women and young women);
- identifies barriers to women's safety common to communities across the province, and works with the provincial government and leaders in all sectors to reduce or eliminate those barriers.

We are guided by a Provincial Working Group that includes senior personnel in government, police and community agencies. The group provides input to CCWS on issues that relate to their field of professional expertise and identify local and provincial strategies to help enhance coordination and implementation of violence against women policies.

CCWS is a program of the Ending Violence Association of BC (EVA BC). For more information, go to www.endingviolence.org and click on CCWS Program.

¹ Please note that this document focuses on heterosexual relationships, because this is the vast majority of cases that police deal with, and because many other specific considerations apply to same-sex/same-gender relationships.

² This document is for general information only. It is not intended to be, and cannot be relied upon as, legal advice.

1.2. THE REASON FOR THIS BACKGROUNDER

Ongoing Reports of Women Being Arrested in BC

In recent years, CCWS and EVA BC have received numerous reports from communities of cases involving the arrest of both parties in relationship violence situations. These communities have contacted us to express their concern. They report that women are being arrested even when there is evidence of a history of violence by their male partners. Frontline anti-violence workers are hearing comments from police such as “This is part of our ‘zero tolerance’ policy,” or “We’ll let Crown sort it out.”

In the vast majority of cases of relationship violence, there is one primary aggressor, and in heterosexual relationships this is almost always the male partner. However, when police attend at a scene of relationship violence, in some circumstances it may be difficult to analyze. It can be difficult to tell whether or not there was physical violence or threats of violence; it can be difficult to tell which person is telling the truth; it can be difficult to see the bigger picture of the power dynamics in the relationship. Confusing elements include:

- no immediate signs of violence—no injuries, damage to property, etc.;
- both parties claiming that there is nothing wrong;
- both parties claiming that the other assaulted them;
- one or both people using substances;
- the woman may appear upset while the man appears more calm and rational, and therefore credible.

Anti-violence programs across BC do not condone the use of violence by women or men, and we acknowledge that there are circumstances where women do use violence. However, it is important to understand that women and men use violence differently and for different reasons. As well, not all relationship violence is part of an ongoing pattern of abuse. Key considerations in cases of women being arrested include:

- domination, intimidation, degradation and control are common elements of abuse and violence;
- although abuse victims do sometimes commit acts of violence, it is most common for self defence or to protect children;
- abusers don’t always have to use violence to terrorize—threats, and a history of violence to back them up, are often enough;
- victims learn to read signals from abusers—e.g. certain words, body language and other behaviors such as substance use can convey serious threats of violence about to happen.

After Marc Chahal murdered his ex-wife and eight members of her family in 1996, RCMP revised their Violence in Relationships Policy, and added a section about determining who the *primary aggressor* is. Some municipal police detachments in BC have similar policies, and a number of detachments have established specialized domestic violence units. This work by RCMP and police is a significant antidote to women being arrested. But there is still some concern that many police officers are arresting both parties or women when an assault occurs, due to lack of knowledge of policy, lack of experience, or lack of understanding of the dynamics of such relationships and the negative consequences of mistakenly arresting women in cases where relationship violence exists.

The Serious Impact of Arresting Women In Relationship Violence Cases

The consequences of arresting women in cases where relationship violence exists include: decreased ability to prosecute; increased liability for police services, particularly if violence increases, resulting in injury or death; aggressor gaining more power and a sense of entitlement to continue his tactics; further victimization of battered women who use violence to protect themselves or their children; increased potential for eventual homicide by the abuser and risk to woman are obscured; decreased chance of victims seeking further help; and victims are often unable to access victim and other support services as the fact that they have been arrested means that they do not meet the service criteria of being a victim, so may not be referred to the appropriate service.

1.3. CCWS WORK TO DATE ON THIS ISSUE

Since 2002, CCWS has been working to raise awareness of the dangers of women being arrested in cases of relationship violence. Our work has included:

- delivering trainings on the issue to coordination initiatives and RCMP detachments;
- engaging in provincial level education and collaboration with RCMP and municipal police;
- developing resources related to women being arrested and dual charging, including case studies, resource lists and a document on the gendered nature of relationship violence, *Naming the Violence* (See Resources section below);
- assisting individual communities who want to address the issue: providing information and training, assisting community services to dialogue with police detachments;
- developing the Safety Issues Protocol in collaboration with RCMP “E” Division: this protocol guides communities who wish to bring concerns forward to the RCMP that involve victim safety (please see www.endingviolence.org for more information).

2. THE GENDERED NATURE OF RELATIONSHIP VIOLENCE

Although both women and men experience spousal abuse, the nature and severity of the spousal violence suffered by women is much worse, with the result that spousal abuse remains predominantly an issue of male violence against women (Ad Hoc Federal-Provincial-Territorial Working Group 2003).

The overwhelming majority of assailants in all cases of violence are men, and in cases of intimate violence—violence in relationships, sexual assault, stalking, abduction, and spousal homicide—women are overwhelmingly the victims.

Some studies have seemed to indicate that women and men experience similar rates of physical violence and emotional abuse in their relationships. These studies tend to count individual incidents of violence without considering the broader context of the relationship dynamics. If the numbers in these surveys are considered on their own, then it may appear that men are just as likely to be victims. However, if the different types of violence and their impact are examined, it is clear that women are at much greater risk.

According to the 2006 fact sheet on “spousal abuse” from the Department of Justice Canada, women are:

- six times more likely than men to report being sexually assaulted;
- five times more likely to require medical attention as a result of assault;
- three times more likely to be physically injured;
- almost twice as likely to report being threatened or attacked with a knife or gun;
- much more likely to fear for their lives or the lives of their children.

Homicide data reveals that women are at higher risk of being killed by their partners. On average over the past two decades, three times as many wives have been killed by their husbands as husbands killed by wives. In 2004, it was *five* times as many wives as husbands (Statistics Canada 2005).

Why are women more likely to be abused than men? There are a number of factors, including:

- In many parts of the world there is a strong tradition of ignoring or condoning violence against women. This has even been enshrined in law in some places;
- Most cultures, including the Judeo-Christian culture that informs Canadian society, historically favour men over women, and see men as more rational and required to control emotional women. These societal beliefs are often reflected in statements made by batterers and victims. A batterer might say, “I make the decisions in this house” or “There’s no other way to shut her up when she gets hysterical.” A victim might say, “That’s what

- men are like,” or “This is the way it’s always been.”;
- Often, it is unlikely that a man who batters his partner will face any legal or social repercussions, due to systemic barriers within the justice system and society at large, and a strong belief that violence against women is a private family matter.

Some argue that men are abused as often as women, but that statistics are skewed because men are less likely to report incidents of abuse. However, research has shown that this is not the case. As Michael Flood points out, citing “Some people claim that men are less likely than women to report domestic violence, out of shame or chivalry or the fear that they won’t be believed. However, the available evidence finds instead that men are more likely to call the police, more likely to press charges and less likely to drop them.”³

Arguing that men are less likely to report, or that the system is biased towards reports by women, ignores the reality of the social context that indirectly supports and tolerates violence against women and children. This in turn leads to serious consequences: lack of support for programs that serve abused women and abusive men, minimization of violence, not believing victims, serious reduction of safety for victims and, most importantly, increased levels of violence and murder.

3. EXISTING POLICIES

[The policies’] specific application to spousal abuse cases played a pivotal role in helping to make the critical distinction between the criminal justice system’s treatment of spousal abuse as a “criminal matter” and its historical treatment of spousal abuse as a “private matter” (Ad Hoc Federal-Provincial-Territorial Working Group Reviewing Spousal Abuse Policies and Legislation 2003).

As mentioned previously, there are policies in BC that apply to situations where both parties present are arrested. These policies are often described as “pro-charging” policies; nonetheless, they are, in fact, the applicable standards for all criminal conduct. We have excerpted them here:

³ Michael Flood refers to the following studies: 1) Kincaid, Pat J. 1982. *The Omitted Reality: Husband-Wife Violence In Ontario And Policy Implications For Education*. Maple, Ontario: Learner’s Press. 2) Rouse, Linda P., Richard Breen, and Marilyn Howell. 1988. “Abuse in intimate relationships. A comparison of married and dating college students.” *Journal of Interpersonal Violence*, 3, pp. 414-419. 3) Schwartz, Martin D. 1987. “Gender and injury in spousal assault.” *Sociological Focus*, 20, pp. 61-75.

3.1. BC MINISTRY OF ATTORNEY GENERAL: VIOLENCE AGAINST WOMEN IN RELATIONSHIPS POLICY JANUARY 2004

Response and Arrest

4. Police officers, when there are grounds to believe an offence has occurred, should always arrest when it is in the public interest as set out in s. 495 of the Criminal Code, including when it is necessary to secure the accused's attendance in court, or prevent the repetition of the offence or the commission of other offences (including interference with the administration of justice and intimidation of witnesses).

Investigation/Charge

9. A proactive charge policy is based on the assumption that police will conduct a complete investigation in every case, including those cases that do not immediately appear likely to proceed to prosecution. The officer will pursue the investigation with a view to obtaining sufficient evidence to proceed even without the cooperation of the victim. The evidence could include an admission by the offender, photographs of injuries, medical evidence, physical evidence, and a written statement by the victim and any independent witnesses.

3.2. RCMP "E" DIVISION OPERATIONAL MANUAL PART 2: CRIMINAL CODE OFFENCES, PERSONS, VIOLENCE IN RELATIONSHIPS: SECTION 4, PRIMARY AGGRESSOR, AMENDED 2005-02-24

- 4.1. For the purposes of this policy, "Primary Aggressor" means the person in the relationship who is the most compelling, rather than the first, aggressor.
- 4.2. An allegation of mutual aggression is often raised by the Primary Aggressor as a defence with respect to an assault against their partner.
- 4.3. Members are cautioned against accepting an argument of mutual aggression. Each case should be fully investigated to determine what happened, who is most vulnerable, and who, if anyone, should be arrested.
- 4.4. Members should identify, arrest and charge the Primary Aggressor where reasonable and probable grounds exist, in accordance with the Criminal Code.
- 4.5. Members must be prepared to support their identification of the Primary Aggressor with observations and reasons. In making their determination, members should consider all the circumstances, including the following:
 - 4.5.1. The intent behind the law and policy designed to protect victims of relationship violence;
 - 4.5.2. Who has suffered the most extensive physical and/or emotional damage and who received treatment for that injury;
 - 4.5.3. Who has superior physical strength and skills for effective assault;
 - 4.5.4. What is the history and pattern of abuse in this relationship?

3.3. POLICY ANALYSIS

Some police detachments or individual officers may perceive pro-arrest policies as meaning “zero tolerance of violence;” in other words, violence will not be tolerated, whether it is perpetrated as an assault or in self-defence. In the zero tolerance model, context is not necessarily important. So if a victim of ongoing abuse uses violence to protect herself, to protect her children, or to lash out in response to years of abuse, her reasons are not considered relevant. Because she used violence, she is considered to be just as much in the wrong as the abuser.

However, pro-arrest policies are *not* about zero tolerance. They have been put in place primarily to make the police responsible for arresting abusers and recommending charges, as opposed to pressure being put on the victim to tell police whether or not to proceed. Police are to arrest and recommend charges if there is any evidence of violence or threats to harm or kill.

4. WOMEN BEING ARRESTED IN CASES OF RELATIONSHIP VIOLENCE, SCENARIO FOR DISCUSSION BY COORDINATION INITIATIVES

Many violence against women coordination committees in BC are working on the issue of women being arrested in cases of relationship violence. We have prepared these scenarios as a means of starting and guiding discussion. Read the following scenario and discuss, using the questions that follow.

Someone calls 911 saying that the couple next door is screaming at each other. When police arrive, there is no noise coming from the home. A man and a woman answer the door together and say that there is no problem. They both seem eager for police to leave. Police enter the home anyway, and conduct private interviews with both people. The woman begins to cry and says that her boyfriend was choking her and threatening to kill her. Police notice that she has faint red marks on her neck. She says her boyfriend believes that she is seeing someone else and she cannot convince him that she is not seeing anyone besides him. Meanwhile, in the other room, the man tells police that his girlfriend sometimes gets hysterical for no reason. He shows them scratch marks on his hands and face. He says that his girlfriend scratched him today when he was trying to calm her down.

Questions about the scenario:

1. How do you think attending officers should proceed?
2. What circumstances might lead to women being arrested in this situation?
3. What kind of information might the officers want to have before they enter this situation?
4. What facts would make arresting the woman an inappropriate choice here?

General questions about women being arrested in cases of relationship violence:

1. What knowledge and experience do you have in this area?
2. What experience have you had in assessing allegations of mutual violence?
3. What impacts have you seen of women being arrested in your work with clients?
4. What pressures exist that might lead police to arrest both parties?
5. What criteria do local police and Crown use in determining primary aggressor?
6. What could be the negative consequences of women being arrested?
7. What types of safety assessment are police doing? At what stage?
8. What are the local statistics on women being arrested? If these do not reflect national and international police statistics (i.e. in the majority of cases there is a male primary aggressor) what is the reason for this?
9. How can community agencies and systems (including police) work together to increase knowledge and expertise in the area of women being arrested in cases of relationship violence? What training or resources are needed?

5. RESOURCES AND REFERENCES

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