

# **A Degraded Justice:**

**Instruments of Perjury in the Family Court**

**Submission to the Standing Committee on Justice and Social Policy**

**Reviewing Bill 117, The Domestic Violence Protection Act**

**October, 2000**

**Presented by Louise Malenfant**

**Family Advocate of Parents Helping Parents**

**Edmonton, Alberta**

**“The Administration of Justice is the most important**

**Pillar of the Good Society.”**

## **AN INTRODUCTION**

On behalf of Parents Helping Parents, I would like to introduce both myself and the advocacy service I operate to this respected Committee and also to the Province of Ontario. I don't wish to stand here and tell you that I am an expert on Ontario court rooms, but I will say that I have been studying Canadian family law issues since 1994 and practiced family advocacy principles that were established and finely tuned in the province of Manitoba. I recently re-established Parents Helping Parents in Alberta upon the request of family rights organizations in this province. Further information about the history of Parents Helping Parents can be provided on request.

Many severe psychoses that are itinerant with disturbed divorce courts were all present in Manitoba, such as perjury, *ex parte* orders, unsubstantiated allegations of child abuse and domestic violence, satanic ritual outbursts, lawyer misconduct and self enrichment, not to mention gender bias and chronic abuse validation demonstrated by the judiciary and the child welfare system. It was a long list, but when I left two months ago, my case flow was getting so slow on these issues that I felt comfortable leaving my province in good hands. I welcomed with gratitude an invitation from Alberta's rich volunteer corp. of family rights organizations to join them here in their efforts to get on the track of fairness and gender equality in this province.

I say “volunteer” because there are literally no publicly-funded services for non custodial families - only custodial parents receive government support through public funding with specialized domestic violence against women only programs, women's shelters, and unfettered access to the courts. I say “rich” because many of the problems I listed above as once occurring in Manitoba, are indeed happening with hysterical abandon in Alberta's family courts. I think the only thing not present in Alberta is a satanic ritual problem, but every other sickness is infecting the courts with epidemic frequency. It takes exactly that for so many men and women to come forward in a political movement to return justice and equality to the family court.

Canadians are not known for their radical natures, but many have risen up to oppose unfair family law practices. This is also true in the province of Ontario, and I am afraid that the proposed Bill 117 will only fuel what is already a raging fire of discontent.

For that reason, I hope to provide this Committee with the view from a province which established one of the first “Zero Tolerance” policies on domestic violence in Canada, and a newcomer’s preliminary observations of the current strains of disturbance found in Alberta, which are causing many people to be permanently harmed by their experiences in the family courts. It is my hope that the province of Ontario will then not make the same mistakes of these two provinces, and save itself from bringing its own system of justice into disrepute.

### THE GOOD NEWS FIRST

There are judges currently sitting in the Ontario Courts who are nationally renowned and admired for the progressive decisions they have made concerning false allegations, parental alienation, and the principals which result in defining shared parenting as in the best interests of children. These judges are known for testing the evidence, and weighing its consequences in a fair and respectable manner, and their caselaw has spread to use in provinces outside of Ontario. In Manitoba, there were those of us who loved these judges no less, for they demonstrated no bias for one gender or another and they knew the difference between a true and a false allegation. I would like to take a moment to bow in appreciation to these excellent Ontario judges.

Ontario Courts of Family Law have already made a fine start by establishing many court-attached services that will only improve with time, and Ontario is also remarkably welcoming to those who represent their own interests before the court. This is in contrast to Manitoba, where self-representation is so rare that judges have an immediate aversion to anyone who attempts the task, and their decisions reflect their discomfort to any contact with litigants. Legal Aid practices in Ontario are a severe impediment to justice and many more people choose to represent themselves in this province as a result. It is still very encouraging to see how the courts of Ontario view the practice of self representation.

Manitoba included all crimes involving families as a dedicated adjunct of the family court system, along with the first “zero tolerance” policy towards domestic violence in Canada. The benefit of this system is that research is far easier to gather on family violence statistics, but the suspension of due process that came with the zero tolerance policy created significant problems. In August 2000, noted domestic violence researcher Jane Ursel noted that a 47% dismissal rate of all cases brought forward meant that alternative dispute resolutions outside the criminal charge model had to be considered, and police required “discretion” in the decision to lay charges. It became clear, even to domestic violence researchers like Ursel, that a conviction can not be obtained by the criminal standard of evidence without any substantiating evidence

Ontario must find a way to eliminate these problems. One way, certainly, is to allow contact with the judicial community from a more varied set of stakeholders. My observation from here is that the Ontario family court is quickly developing an almost exclusive relationship with the interests of the domestic violence lobby, with little or no consideration for other stakeholders such as the victims of perjury, false ex parte orders, gender biased custody decisions and bankrupting legal fees, that is, such people as are found in the non-custodial family community. There are great judges making excellent decisions, but these decisions are not followed by the brethren of the court, resulting in unfair and devastating outcomes for many. Several judges have developed hardened reputations for biased decisions and ill preparation on a regular basis that results in the public perceiving the courts to be unfair and corrupt.

We would also encourage the Committee to recommend significant funding resources to establish an effective court-attached custody and access assessment service. Some of the best systems in the U.S. include this resource, which frequently develop solid reputations for effective and modern clinical assessments that can be relied upon and trusted by the Court and the Public alike. Such court attached services are also immune to the need to provide reports which support the paying party. No case which includes allegations of criminal behaviour can proceed to settlement or mediation without an effective custody and access assessment, but many can not afford the prohibitive cost. A service, which has a good reputation for assessing credibility and following standard procedure guidelines, will reduce the incidence of perjury and obstruction of justice, and encourage earlier settlement of chronic conflict cases. It is notable that many high conflict cases include the scenario where one parent is attempting to eliminate all contact with the other parent and the extended family. An effective assessment service would greatly reduce the incidence of high conflict cases and false allegations, characteristics which will multiply if Bill 117 is implemented.

Unless Ontario plans to establish the presumption that all women tell the truth in their statements supporting an Emergency Order, you will definitely run into problems with perjury, perjury which is not frequently met with criminal charges. In Alberta, for example, there have been only two trials for perjury in the past two years, and one domestic violence case where the judge recommended possible charges be investigated against one woman and her mother. No charges were ever brought in this case, however.

The use of polygraph equipment should be explored where criminal allegations of domestic violence have been made, but have not been reported to the police, and where no substantiating evidence is present to support the claims. I respectfully submit that even were it known that such a procedure were available to a judge, this would dramatically reduce the incidence of perjury in Ontario's courtrooms.

In summary, the good news is that the Ontario family courts have several strong features, and I would caution this Committee regarding implementing any law which presumes that "women never lie", for fear that you will destroy the credibility of your system of justice. This presentation will conclude with a review of certain ills, which will only be cured by a pro-active commitment of the Justice system of Ontario to the principles of due process and honest testimony.

## **THE BAD NEWS**

This is no war between the rights of men and women, for among the walking wounded of divorce court battles are grandmothers, sisters, aunts and friends of the fathers who are all denied access to the children they love. This is a family affair, not a gender war. A gender war has allowed family law issues to be defined by a battle to choose winners and losers, where resources of the former are gained by taking from the latter.

Right now, the domestic violence lobby has almost overtaken the direction and commitment of resources in the last ten years of family law development in this country. This has created a delusional court that is predicated on the fallacy that all women who make allegations are always telling the truth, and the rules of evidence are suspended. It also suspends all due process to accused parties, usually men, who frequently are labeled as violent, as sexual predators, and as drug or alcohol addicted, without any witness or other substantiating evidence outside of a woman's words. The domestic violence lobby has a right to be heard but does not have the only right to be heard. Its influence has distorted the court, and brought justice into severe disrepute. No where is this most apparent than in the making of the *Emergency Order*, as contemplated by Section 3(2) of Bill 117.

## **THE EMERGENCY ORDER: A LICENSE FOR PERJURY**

The fear of domestic violence and how to prevent it has been a problem that has vexed modern societies for more than a decade. Extensive efforts have been made by government, police and other community organizations to reduce the dangers posed to female victims only. Men do not receive emergency orders when they claim to be assaulted by their female partners, or harassed in abrogation of no-contact orders. I am at a loss as to what to tell men who are constantly telephoned by female partners who repeatedly breach their own no-contact orders. When women breach these orders, nothing is done; in contrast to when men breach them.

Unfortunately, the establishment of allegations requiring no substantiating evidence has created a simultaneous slide in the protection of due process owed to the accused, who frequently suffer from a decreasing right to hear charges made against them in a timely fashion, and no right to defend themselves against the allegations.

While the idea that domestic violence exists is indisputable, the problem with changing our tenets of justice to meet the problem, results in a simple and easy process by which women are given the exclusive opportunity to make false allegations without penalty. This is especially true at the onset of divorce proceedings and through ongoing child access problems, when men are most vulnerable to these allegations.

It is not uncommon for serious criminal allegations of violent assault and child abuse to be made in the sworn statements of the emergency order, claims which have never been reported to police or child welfare authorities. No where in the proposed Bill 117 does it spell out any penalties for making a false statement. There is paragraph 16(1), which asserts that “No person shall...commit perjury, or public mischief within the meaning of the criminal code.” I would ask Committee members to request information from your Attorney General with respect to the frequency of perjury charges in the province of Ontario, especially arising out of family law matters. Judging by the absence of these charges, should we assume that everyone who provides evidence in family court is telling the truth? I would respectfully suggest that Ontario’s own Civil Justice Review found that the exact opposite was true, and penalties for perjury in family court hardly exist.

Emergency Orders as contemplated by Bill 117 would have no protection of due process available to the Respondent. While Paragraph 4 provides provision that an Order made under this Act “may be subject to such terms as the court considers appropriate, including a term that specifies the period of time for which the provision shall be in force (emphasis added), there is no requirement that a time limit be specified. This is in contrast to a similar type of Order in Alberta, where Orders made under *The Protection from Family Violence Act* expire after one year, but can be renewed for additional years. What this allows for is that the Respondent’s behaviour can be reviewed by the court at regular intervals to determine whether the existing order has been breached or the sanctioned behaviour has changed over the year. It also at least contemplates that the accused might not be found guilty. Ontario’s Bill 117, on the other hand, proposes to eliminate several basic civil rights for an indefinite term.

Along similar lines, Bill 117 is notable for the fact that there are no strict guidelines within this Act to establish rules governing service of Emergency Orders on Respondents. While the Act stipulates that Judges making such Orders will “promptly forward a copy of the order and all supporting documents, including any reasons for the order, to the court.”, there is no paragraph stipulating service upon the Respondent. Although, thankfully, the order cannot be enforced unless it has been served (7(1)), I can certainly contemplate many misunderstandings and unnecessary charges made against Respondents for innocent breaches of these Orders, as they will have to struggle to prove they were not served with these Orders. May I recommend to this Committee that a paragraph strictly spelling out the Court’s duty to serve these Orders upon the Respondent be devised for Bill 117.

Further to this problem, part 7(1)(b) suggests that the attorney for the Applicant be left with the duty to serve the Order on the Respondent, and with all due respect to lawyers, it is unseemly for the Court to expect an attorney for the Applicant to act in the interests of the Respondent. Part 7(3) is also troubling, as Bill 117 proposes here that substitutional service may be sought “whether or not any attempt has yet been made to serve the Respondent.” I would like to suggest that at least some effort be made to directly serve the Respondent before a substitutional order of service is contemplated, as it is required in any other court proceeding.

In Alberta, though the *Protection Act* requires a limitation date, these orders are frequently made without a returnable date, making such an order very easy to obtain and very difficult and expensive to overturn. I would like to ask the Committee to examine the court records of Manitoba and Alberta, where special domestic violence laws exist, and search out charges of perjury arising from the making of a false statement

to obtain an emergency order. You will not find one instance, even when the claims are eventually disproven in court. Perjury is rampant and the judiciary does nothing to stem the tide, nor does it mete out any penalties for the obstruction of justice in their courtrooms. In fact, the best liar usually wins. This is what Ontario has to look forward to if it implements Bill 117 as written.

### **ARE WE FUELING VIOLENCE?**

No matter what happens in the future, I won't soon forget the sights and sounds of the alleged confession made by Craig Anderson following the divorce-related murder of his wife, Lisa, here in Alberta in September 2000. The media accounts of this tragedy have not suggested that Mr. Anderson had a long history of violence during his marriage or even subsequent to his divorce. What it looks like is a typical, middle class male was driven over the cliff of reason, and I wonder if we are ready to ask ourselves "why". Could it be that he lost his sanity when he discovered that a person could go to court and change his life circumstances without even notifying him or allowing him to be present? In the guise of protection from domestic violence, the Alberta court routinely issues orders without notice which can change custody, access, property and maintenance provisions of all previous orders made by the court. These ex parte orders are available to women only. Are we ready to believe that this complete usurpation of human rights and due process can cause some people to snap into unpredictable insanity?

No one condones such horrors, for they traumatize the entire community and cause personal damage that few people ever fully recover from. I can't help wondering, however, if Lisa Anderson would have been alive today had the court made its decisions in an honest way, giving both parties an opportunity to make their cases and defend themselves. Instead, they slithered behind the back of a person who had a long history of legal conduct before the court for many years. We will never know if a calm recognition of the rights of both parties would have prevented this horror show, but I am convinced that the ex parte order summarily eliminating Mrs. Anderson's legal duty to pay Mr. Anderson \$800 in child support contributed to her death. No man has ever succeeded in eliminating such a duty without due process to a mother. What a sick irony to think that "protection" policies themselves may be contributing to the environment needed for these painful divorce explosions to happen in the first place.

While the gender neutral language of Bill 117 is laudable, and at least considers the possibility that men can sometimes be victims of violence, I respectfully suggest that Bill 117 Orders will be rarely issued to men. Bill 117 also contemplates the elimination of outstanding custody and access orders, as well as property rights, by paragraph 10(1), which grants power to judges to "vary, amend or rescind any of those orders" under the Act under which it is made...". Such Ontario Acts include and are named in Bill 117 as *The Children's Law Reform Act* and *The Family Law Reform Act*. In Paragraph 10(2), judges are given power under Bill 117 to vary, amend or rescind court orders made under *The Divorce Act*.

What Ontario is contemplating here, is creating a fast and easy process by which a woman can obtain all custody, access and property arising from a relationship, simply by saying that she is an abuse victim, even

where no corroborating evidence substantiates her claim. Does this Committee really believe that provisions like these will not ever be abused by some women? No time limits are contemplated by these two paragraphs, nor are there any returnable dates built in. Following the confirmation hearings as prescribed in paragraph 5(2) or (6), which must take place within 30 days of service, a judge will be empowered to make these custody, access and property orders without further assessment of the allegations being made.

We are all aware that, where allegations are made in the context of divorce, a costly and lengthy process of assessment, as frequently provided by third party experts, is usually required to determine credibility of the parties and determine the best interests of children. Bill 117, however, proposes to make these decisions within 30 to 40 days, which does not leave time for any kind of assessment. It is also the case that Orders made under proposed Bill 117 may only be appealed to the Divisional Court, usurping the family courts of Ontario. These decisions are usually made after several months of investigation, yet Bill 117 by-passes all in its rush to judgement. I recommend that emergency orders under Bill 117 be reviewable by any family court of jurisdiction, as it is frequently the case that assessments arrive at the conclusion that accusers have not told the truth. Bill 117 should at least contemplate the possibility that some applicants will not be telling the truth, and leave some avenue for a Respondent to see his children pending the final determination of the matter.

In a similar vein, paragraph 2(3) recommends that a finding of domestic violence may be found to have occurred...whether a charge has been laid or dismissed or withdrawn or a conviction has been or could be obtained.” What this means is that an applicant can make serious criminal allegations of domestic violence or child abuse, without reporting the crimes to the police or child welfare authorities. Since many false accusers are reluctant to submit themselves to police investigation, the court deprives itself of this avenue of investigation, or enforcement for perjury for that matter. May I respectfully suggest that this recommendation was likely made by the women’s shelter lobby to your Attorney General, and should in no form be considered as potential law for Bill 117.

By way of demonstration, the following case study is provided for your consideration. In a matter before the Alberta Courts, an applicant female swore that she was the victim of chronic domestic violence spanning years, and she further made the following allegation:

“R began losing his temper with little K as well. On two occasions...he hit (the child) so hard on her bottom with a wooden spoon that the spoon broke. Once...he was so angry at K because she touched his CD’s that he pushed her to the ground. Another time, he was angry with her because she was sitting in his spot on the couch....He became so enraged that he grabbed K and shook her violently...and it left K with bruises on her arms and chest. There was also an incident in which R grabbed K by the throat and lifted her off the floor and dropped her on the floor, with her landing flat on her back...”

For the Committee to understand the full breadth of these allegations, K is a 3 year old child, and these alleged incidents have never been reported to child welfare or police authorities. They all allegedly occurred in a two month span as well. This woman originally swore out a statement for an *Ex Parte* Order, which is the same as the emergency order contemplated by Bill 117. She swore that she was so fearful that she was



immediately taking her daughter and going to a women's shelter. After swearing this statement, the mother promptly returned to the home she shared with her partner, R, and waited more than one month to leave the home, as the process took approximately one month to obtain an order.

Several months later, the woman doctored the ex parte sworn statement by removing her claim that she was going to a women's shelter, as well as eliminating the date she swore the statement, and attached the doctored court document to her subsequent affidavit. In a similar vein, approximately one month after swearing her document, the woman attended at a church to meet with police officers from the family violence unit of Edmonton, and posed as ignorant to the process for leaving a violent home and obtaining an emergency order. In a letter provided by the police documenting this meeting, it is notable that the woman did not mention she had already applied for an emergency order and was fully cognizant of the process for obtaining one; she was by no means the ignorant victim that she posed to the police one month after swearing her statement.

Parents Helping Parents has noted in its 8 years of case work, that mothers with a history of psychological disorders, as well as histories of eliminating access to prior husbands, and histories of chronic conflict with others, are simultaneously the mothers who are most likely to make false allegations at the onset of separation or divorce proceedings. And while many courts, as Ontario now contemplates, make it easy to make these allegations, they also make it very difficult and expensive to have those allegations reviewed by competent professionals well versed in the assessment of credibility and evidence. This means that it is not uncommon for bad parents to gain the upper hand in divorce proceedings by making false allegations, without concern for any penalties arising from perjury.

In the case study here provided, for example, this mother had been engaged in a high conflict divorce from a previous partner, and lost residential custody to her former husband until she sought counselling for her psychological difficulties. It has been one year since this previous custody order was made, and this mother has made no attempt to initiate access with this child. This is also not uncommon, as we have found that when mothers of this type lose custody, they also lose interest in the child, for they view them as objects to be won or lost rather than small human beings with needs and rights of their own. Bill 117 as contemplated by Ontario will give free reign to these types of women, with no checks or balances built in to the law to protect innocent parties from being falsely accused.

In Manitoba, the need for an emergency or ex parte order has been all but eliminated, by establishing effective courtroom security measures. This includes a quick trip through a metal detector for anyone entering the courthouse, as well as security personnel placed inside the courtrooms where serious allegations of criminal behaviour have been made. After Manitoba's Civil Justice Review Task Force completed its work and released its final report in 1996, the population was no longer plagued by the constant request for emergency ex parte orders.

May I recommend to the Committee that Bill 117 at least include provisions for child access pending final criminal or family law dispositions of allegations being made. Most fathers are happy to accept supervised conditions until such time. For those Committee members who may be curious about how this particular case turned out, the father of the three year old K has not seen her in five months, even though he was the

primary caregiver for her entire life. Parents Helping Parents has initiated a police investigation for perjury in the matter.

## **MEN DONT GET HURT**

In the early days of our recognition of wife battery, we knew that many women did not report or seek help to leave their violent circumstances. Policy and services grew exponentially to change this problem of under reporting. It is also becoming recognized that domestic violence is perpetrated in fairly equal amounts by women as well, and yet, the problem of men who do not report assaults against them is not defined as a problem by the current justice system.

While a simple push against a woman will result in a charge against a man, only the most serious assaults against men will be taken seriously by the police and the court, if even then. In an unnamed case currently before the court, a young man reported an assault against him to the police. The alleged female perpetrator fled the premises before police arrived. Police found the young man with blood flowing from a cut under his right eye, and he was also bleeding from a human bite to his upper left arm. Both injuries left scars visible more than one month following the alleged assault. Forensic photos were taken that night, and the young man was advised to see a doctor the following day, who also recorded his injuries. The alleged female perpetrator was found at her mother's home the following day, and was placed under arrest. Although she had no apparent injuries, she claimed that she was also abused. The police subsequently returned to the young man's home and placed him in handcuffs to make an arrest. He was further advised to vacate the apartment, which was rented independently and in his name. Though a no contact order is in place between them, the female has called and left four lengthy messages on voice mail, and has threatened that she will also be accusing him of criminal child abuse regarding their 2 year old son. Though we have instructed him to hang up and use tracing methods to document the calls, no harassment charges have been laid against the female accused.

The court presumes that women are incapable of violence, and if they do hit, it is only to protect themselves. It does not take into account that some females are raised with the example of violent homes, and they also sometimes suffer from long-standing psychological problems, which make some women more prone to violence. In addition, we presume that "men can take it" or prefer to believe that it is not possible for a woman to hurt a man. We fail to remember that size does not always matter when a violent personality is involved, and the largest person is not necessarily the most violent. It is a certainty that men can not automatically obtain protection orders or ex parte orders when they claim to be the victims of violence.

Two leading decisions of the Supreme Court of Canada are also relevant to this discussion, particularly when we discuss the absence of substantiating evidence for domestic violence charges. The leading case on battered women syndrome as a defense for women who kill is that of R v. Lavallee, where a woman shot her boyfriend after an alleged assault. In this case, the Supreme Court was asked to rule on whether an expert's opinion on whether the accused was credible regarding her claim that she was an abuse victim with

reasonable belief she was in imminent danger, and whether such expert evidence could be submitted to the jury. The Crown in this Winnipeg case was arguing that this expert evidence should not have been allowed. The court was very clear when it ruled that there was ample evidence to support the accused's claim that she was a frequent victim of serious violence. There were witnesses who testified to the assaults, including the night she shot her boyfriend. As well, there were several medical reports and police records with respect to her many previous assaults. The Court found there was abundant corroborating evidence to substantiate that the accused woman was indeed a chronic abuse victim at the hands of the deceased.

This is in contrast to the Supreme Court's more recent decision on the battered women syndrome defense, entitled *R v. Mallot*. In this case, a woman claimed the battered woman's defense after killing her ex-boyfriend, whom she no longer lived with. She then went to the apartment he shared with a new girlfriend and attempted to kill the girlfriend. Though there was one report to the police regarding alleged abuse by the deceased boyfriend against the accused, the police did not investigate at the time, and her convictions for manslaughter and attempted murder were upheld by the Supreme Court. The difference in these cases is that one had significant corroborating evidence to establish a pattern of abuse, while the latter did not. This point is raised to highlight the grim absence of any necessity to provide corroborating evidence as contemplated by Bill 117.

Unfortunately, the Supreme Court appears to provide an exception to the rule. When women kill in this country, media reports are usually buried in the back pages, and the strategy at trial is almost always a battered woman's defense. No evidence of a history of violence is required in a Canadian court room, as we seem to have been successfully convinced that no evidence is needed to believe that a history of violence is present. One Albertan case involved a woman who killed her partner while he was in the bathtub. Another woman's case was lauded as a victory for women when she was acquitted of hiring a hit man to kill her husband, who turned out to be a police officer. These cases abound in the back pages of newspapers right across the country. Less frequent is the recent result of the Canadian dentist convicted of manslaughter in the killing of her husband. The U.S. jury did not accept her claim that she was fighting for her life when she repeatedly stabbed her sleeping husband, perhaps because there was not a mark on her, while he was obviously turned toward the wall and sleeping when he was attacked. It would appear that murdering men is not legal in the U.S., as it is here in Canada.

With the advent of Alberta's *Prevention from Family Violence Act*, proclaimed in June of 1999, one would think that this would apply to any assault committed by any party who uses violence in the advancement of conflict. Unfortunately, this Act appears to apply to women only.

In Alberta, the writer has reviewed the three perjury-involved cases of domestic law related cases. We have also reviewed 236 charges of assault which went to trial in the past two years in Alberta. Of all 236 cases, only one charge was brought to trial against a woman who attempted to hire a police officer to kill her boyfriend.

This is the case of Dolores Bobyak who pleaded guilty to a charge under Section 464(a) of the *Criminal Code of Canada*, namely, counselling to commit an indictable offence, in this case the murder of her husband, Jerry Bobyak. It was not in dispute that Ms. Bobyak spoke to an undercover police officer to hire

him to murder her husband, and the officer was shown an insurance policy for \$300,000.00 on the life of Jerry Bobyak, which was taken out only one month prior to her effort to hire a hitman. Jerry Bobyak was at the time of trial serving a sentence for assaulting Dolores, and evidence was tendered from RCMP files and hospital records showing that Dolores had previously been the victim of violence.

<DIV align=right>Assistant Chief Judge P.M. Caffaro heard the matter in 1999, and was swayed heavily by the evidence that Dolores was the victim of violence at the hands of Jerry Bobyak. He wrote as follows:</DIV>

“The objective of general deterrence can be met in this case without resorting to imprisonment. Other members of the community will be deterred by the consequences visited on you as a result of your actions. I know the offence has had a devastating impact on you and has left you wracked with guilt, that you were prominently named in the media as the person responsible for this tragedy, and that you have faced five months of uncertainty as to what will happen to you.”

It is hard to believe that a Judge would be similarly impressed with the “punishment” of uncertainty or media attention, as this Judge was in feeling sorry for Ms. Bobyak.

The judge, in his wisdom, determined that media reports and “uncertainty” about the future, was sufficient punishment for the crime of arranging a murder for the purpose of collecting on a life insurance policy. This sentence gives every man in Alberta a good idea about the value of their lives in this province. It is doubtful that a similar sentence would be imposed upon a man committing the same crime, and the issue of the insurance policy was completely ignored by Justice Caffaro.

Of the 236 cases of assault which were brought to trial in Alberta since 1998, not one case was that of a female assaulting a male. While trial decisions do not include data on cases settled by plea bargain, the policy of Crown Prosecutions with respect to the seriousness with which allegations of assault on men by female perpetrators is very clear indeed. It would not be unreasonable to conclude that in Alberta, men don't get hurt, and assault of men by women is not taken very seriously in this province. Since Bill 117 was designed in a reactionary environment from two particularly gruesome domestic murder-suicides, it is unlikely that Ontario will avoid the gender bias inherent in its own domestic violence law; at least, without some drastic revisions to its current form.

Gender bias against men is rampant throughout Canada, and no where is this better illustrated than by reviewing the spate of provincial domestic violence measures over the past ten years. Every one of these Acts, and Ontario's Bill 117 is certainly no exception, presumes that only women are victims of violence, only women tell the truth about violence, and only men are to be punished for acts of violence. Ontario might be wise to learn from the experience of other provinces, before it forges ahead with a gender-biased domestic violence law of its own that does not contemplate the possibility that the accuser is the abuser, or that the accuser is capable of lying.

I conclude this section by stating that where there is substantiating evidence, that is a certain situation that can be identified in an emergency hearing. But in most cases, Ontario will find that this evidence does not exist, and your Bill 117 will only eliminate the rules of evidence regarding these crimes, thereby hiding bad behaviours which both men and women are equally capable of: lies and violence.

## **TWO SIDES TO THE VIOLENCE COIN**

As has already been noted, we are all as a community completely horrified when a divorce conflict ends in the death of a female partner. This ultimate expression of rage directed outward by a man is what fuels extremism in the domestic violence debate. Yes, we are horrified, but we show a markedly lower concern when a man turns his pain inward by way of a divorce-related suicide. These are rarely reported, in keeping with the media policy of not publicizing suicide, but these deaths of divorcing men who can not bare the anguish of being separated from their children are of no concern to us. May I respectfully suggest that divorce rage can turn either inward or outward, and if you accept self-destruction than you are only tossing a coin to prevent the outward expression of violence from occurring every once in a while. Perhaps when we start to care about men, we will reduce both kinds of destruction at the very same time.

While men commit suicide at an average rate that is 5 to 8 times higher than females, we continue to ignore this growing problem. Younger men (19-29) are now the highest growing suicide rate group in Canada, and still we create laws that completely usurp justice for men, and enshrine the fallacy that all women are truth-telling, docile creatures. This is creating a hostile environment that creates hopelessness in many men, and the radical rhetoric we use to describe domestic violence situations presumes only men are bad, and all women are good. It is the opinion of this researcher that these harmful stereotypes are the leading cause of rising suicide rates of men of all ages.

## **LEGAL AID: A BARRIER TO JUSTICE IN FAMILY LAW**

Given the complexity of family law cases, particularly when serious allegations are being made, most people would certainly benefit from effective legal representation, if this were an ideal world. Some mention needs to be made about the exorbitant costs of family law proceedings when dealing with Senior lawyers, but a more troubling barrier to justice is likely the effect of the policies of Ontario's Legal Aid Society.

It is very difficult to obtain a good and effective lawyer who is willing to work on the basis of a Legal Aid certificate. Although to many of us, lawyers sound like whiny baseball players when they complain about

fees of \$60 per hour, the fact is that lawyers rarely submit an itemized bill for an hourly rate of payment. Nearly all family law matters that do not go to trial are paid on a bulk fee basis, a flat rate for services rendered. I am advised by some Ontario lawyers that the accounting process Legal Aid implements for the hourly rate of pay is so byzantine, that an attorney can spend 3 to 10 hours of additional time on the billing process alone, with no guarantee of success. The bulk tariff rates, however, are paid immediately and without question.

Since bulk rates are all less than \$1,000.00, the less a lawyer does, the more profitable the legal aid case becomes. It is not uncommon for lawyers working on legal aid cases to accept far too many cases in the knowledge that none will be well prepared. Extra filings, disbursements, letters, meetings, hearings, examinations, affidavits and even witness interviews are sparse if not non-existent in the legal aid file.

The pressure to reduce work for limited pay results in an ever-increasing number of people who believe they can do a better job themselves by representing their own interests before the courts. The encouragement Legal Aid gives to the bulk tariff method of payment also creates a tremendous pressure to resolve the case by consent or plea-bargaining. "Plead them out - settle it out - move em out" - may well be the motto of lawyers representing legal aid clients. The sooner a case is settled, the more profitable a legal aid case becomes to the lawyer. This frequently results in severe dissatisfaction with the legal profession and a bitter aftermath of resentment towards the courts as well.

In Manitoba, 80% of all convictions obtained in the Family Violence Courts are obtained through a plea-bargain, accounting for approximately 50% of all charges coming before the court. The absence of an effective investigative process for domestic violence allegations raises the specter that many of these plea bargains are coerced from men who do not have the financial resources to defend themselves. The remaining 47% of domestic violence allegations in Manitoba were dismissed, as the criminal law has not found a way to convict people without substantiating evidence for the allegations being made.

### **A FEW FINAL THOUGHTS**

There can be no question that any contemplated law on domestic violence prevention must be balanced against the rules of natural justice which include due process and the right for accused to be heard. This is not the case in Bill 117, which steamrollers ahead with the idea that women don't lie and men must be guilty if they are accused.

The relevant factor, of course, is that when you assume all abuse allegations are true, this kind of legislation decreases the right to due process in direct proportion to the degree of presumption made about abuse allegations. We therefore have the equation, if all women tell the truth, then all men lose the right to due process.

Here is another scary thought. Might Ontario's Bill 117 encourage women to make false allegations in order to obtain all the rights and privileges on their side of the balance sheet. Certain provisions in Bill 117 might be used by some very unscrupulous women to literally steal the use of a man's property using an allegation of domestic violence. Bill 117 would not give these rights solely to women in married or common law relationships. The Bill provides in paragraph 2(1)3, that "any person who is "cohabiting with the Respondent, or who has cohabited with the Respondent, for any period of time, whether or not they are cohabiting at the time of the application..." may make an application under the provisions of this Act. This includes parts 3 and 8, which provide for the eviction of the Respondent, or the "exclusive possession of the residence...regardless of ownership." Bill 117 suggests that no woman would take advantage of a naïve man, by moving into his house for even a short while, in order to obtain exclusive rights to his possessions or his residential home. Frankly, I would suggest that Bill 117 would spawn such women, who might even make careers out of finding male dupes for their nefarious plans.

I would not want to suggest that all claims of domestic violence are false, but only that Bill 117 does not contemplate the possibility that some claims may be false. The irony is that this extreme elimination of due process for men may have the effect of placing women in danger, since it creates a hostile environment for men who come to believe that they have no where to turn once an allegation is made. Once that hostile environment is established, men come to feel hopeless because justice is a closed door for them. This leads to a rise in suicide rates for men, but it also leads to a higher rate of murder suicide.

Is Ontario planning on also implementing a polygraph program that will test the allegations of the accuser when no corroborating evidence exists to substantiate her claims. What will this province do to determine whether these claims are valid, before they implement the evictions and automatic child custody rights that their Bill 117 envisions? It is far more likely that the presumption all women tell the truth will be implemented as it has been in other provinces. So the earth quake arising when one gender is denied justice and the other gender is given a license for perjury, will occur in Ontario as it has in other jurisdictions.

May I thank the Committee for its attention to this submission, and offer you my prayers that the Honourable Members will find the courage and the wisdom to make good law out of Bill 117, before it is implemented.

---

Louise Malenfant

Family Advocate, Parents Helping Parents

Edmonton, Alberta

