

Research project of the *Forum provincial en matière de violence*, with
the collaboration of the Muriel McQueen Fergusson Centre for Family
Violence Research

University of New Brunswick

Research Paper Series
Number #4, April 2004

SUMMARY

OBSTACLES TO SEEKING LEGAL AID ENCOUNTERED BY FRANCOPHONE WOMEN IN NEW BRUNSWICK



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This report does not cover all of the legal aspects pertaining to family violence. Please contact the legal aid office in your region for more information.

This project was made possible through a grant from the Women's Program under Status of Women Canada and Canadian Heritage.

Canada

March 2004

The opinions expressed in this document do not necessarily reflect the official views of those involved in this study. The interpretation of the survey results reflects the experiences and opinions of those persons interviewed.

INTRODUCTION

This study is an initiative of the *Forum provincial de concertation en matière de violence* in collaboration with the Muriel McQueen Fergusson Centre for Family Violence Research, and is a qualitative research study. Eleven stakeholders working with female victims of family violence and eighteen abused women participated in the study, whose primary objective was to identify any obstacles to seeking legal aid encountered by Francophone women in New Brunswick.

METHODOLOGY

An advertisement was placed in the province's Francophone newspapers, and printed notices were posted in selected locations, inviting female victims of family violence to contact the researcher. This recruitment method did not produce the expected results. Our researcher interviewed women who answered the ads, and discussion group meetings were also organized. Eighteen female victims of domestic violence were recruited this way.

STAKEHOLDERS' VIEWS ON LEGAL AID

In New Brunswick, a victim of domestic violence who seeks legal aid must first meet with a counsellor from the Family Division of the Court of Queen's Bench. The victim may avail herself of the services of a legal aid lawyer for custody and access, child and spousal support, and the division of marital property, if the value of this amount does not exceed \$20,000. Information regarding the division of property does not appear to be properly disseminated. With the exception of the Family Division counsellors, only one person displayed a solid understanding of the property division service offered by the Domestic Legal Aid Program.

Recommendation 1: that the Province of New Brunswick regularly advertise the services offered by the Domestic Legal Aid Program, in clear and easy-to-understand language.

Some of those interviewed displayed a vague understanding of the eligibility criteria for the various services offered through the Legal Aid Program. Others had a clear understanding of only a few aspects of these services.

Recommendation 2: that the Department of Justice regularly distribute information on legal aid services to front-line stakeholders in order to keep them abreast of the services available to female victims of domestic violence.

Many victims of domestic violence are simply not referred to the Legal Aid Program for female victims of domestic violence. The system in place has proved to be intimidating for the woman: the victim must identify herself to the receptionist as a victim of domestic violence. From the client's perspective, this means that she has no guarantee that the confidentiality of her request will be respected. Moreover, the amount of time that passes before the abused woman can access legal aid can, at least in some regions, be up to several months. There have even been occasions when this meeting only takes place several minutes before the woman appears in court. This delay is sometimes the cause of the woman changing her mind and withdrawing her petition.

Recommendation 3: that all female victims of domestic violence have access to legal aid services within a reasonable timeframe, and that these services be offered in a regular and consistent manner throughout the province.

The questionnaire that was developed by the court and used by counsellors during the assessment process is 'troublesome' because the vocabulary used in this questionnaire is not always adapted to the victim's situation or education level. The brochures made available to women informing them about available services pose the same problem.

Recommendation 4: that the questionnaire handed out during the assessment be written in clear and understandable language for all female victims of domestic violence, regardless of their education level.

Recommendation 5: that the information brochures handed out during the assessment be written in clear and understandable language for all female victims of domestic violence, regardless of their education level.

Often women do not have access to the services offered by legal aid because they are not even aware that these services exist, or they think that the services would be expensive, or they do not see themselves as victims of domestic violence.

Recommendation 6: that continuing education on domestic violence be made available to lawyers in the Legal Aid Program, as well as to counsellors with the Family Division, in order to provide them with the tools and knowledge to help them identify female victims of domestic violence, increase their awareness of the inherent dynamics of family violence, inform them about the fears and concerns of abused women, and ensure that they take a regular and consistent approach in their work.

Recommendation 7: that publicity explaining the cycle of violence, while demystifying it, be ongoing and continuous, and that the vocabulary used in this publicity be suitable for the entire population.

We noted a lack of psychological support and counselling for women. Women will abandon the process for fear of encountering their aggressor in court or because of a lack of financial resources. “I would say that 80% of women return (to their violent spouse) because you lose everything (by leaving him): no more money, no house, nothing at all!”

Recommendation 8: that a social worker with the Department of Family and Community Services be hired in each of the province’s regions in order to support female victims of domestic violence who have access to legal aid, and to assist them throughout each step of the process.

WOMEN’S VIEWS ON LEGAL AID

Eighteen women from Bathurst, Moncton, Richibucto, the Acadian Peninsula and Edmundston who had experienced domestic violence were met either individually or in groups. Eight of these women said they had received information from women’s shelter workers about the services offered by the legal aid office; five received information from community agency workers, such as Family Services; one learned about these services from a social worker with the Department of Family and Community Services, and two other women couldn’t remember.

A few women were able to describe just what the services were able to offer them. Most associated their eligibility for legal aid with the criteria of their financial situation.

Thirteen of the women interviewed had used legal aid services. Of the other five women, some didn't understand the information and did not believe that they could obtain legal aid services; some didn't receive any information; and some, in spite of the abuse they received, did not see themselves as victims of domestic violence. Among the reasons cited for not contacting the legal aid service: the fear of a breach of confidentiality or that their new telephone number would be given to the ex-spouse; that they had not yet made the decision to separate from their spouse; and the stories and negative experiences of other women who had sought help through legal aid. Some women also mentioned the fact that there was no legal aid office in their area.

With the exception of one woman, all those with children responded to this question by stating that custody of the children was their priority. The second issue singled out was the division of property.

Recommendation 9: that women who request assistance with regard to the division of marital property not be penalized when the property in question amounts to more than \$20,000 in value.

All the women interviewed were apprehensive about meeting the lawyer handling their case.

Recommendation 10: that women be informed that they have the right to change legal counsel in the event of a conflict, or if the lawyer's personality does not instil a climate of trust; that women have the possibility of being represented by a female lawyer if they so request.

Eight of the participants had contacted a lawyer from the private sector before contacting legal aid (two of the women had consulted several lawyers). Only four of the lawyers they met mentioned the fact that they could have recourse to legal aid services. There are instances of clients who only learn about legal aid services after having spent several thousand dollars on their own lawyers.

It sometimes happens that a woman who has already received legal aid services that resulted in a consensual agreement or a court order cannot make a second request for legal aid services. Officially, variation service is available, but each region has its own interpretation regarding access to this

service. Twelve of the fourteen participants who had used legal aid services stated that once their file was closed, several of the problems that they had initially faced had not been resolved. In addition to those related to child custody and access, the most pressing issues voiced by the women were the spouse's refusal to respect the court order, recourse to legal aid services to have the court order enforced, financial resources allowing them to hire a lawyer from the private sector to enforce the agreement, and the lack of variation service for the agreement in certain regions.

Recommendation 11: that a victim of domestic violence be able to access legal aid services each time she is confronted with problems pertaining to child custody and access.

CONCLUSION

This research report is drawn from the verbal testimony of twenty-nine participants. It reflects the primary obstacles, fears, and concerns of women who are victims of domestic violence and who had or could have had recourse to legal aid. Several crucial changes must be implemented in order to allow victims of domestic violence equal access to the services offered by the Legal Aid Program throughout the province.

APPENDICES

COMMENTS MADE BY STAKEHOLDERS

NB The following quotations were transcribed from tape recordings of interviews. Certain slang words have been standardized.

1 – Awareness of the service

“I can tell you frankly that I do not know much about it... we don’t have much information on legal aid.”

“Speaking with you now, I realize that I myself don’t know much about the services. I would say that they perhaps involve assisting with regard to rights, shedding light on the different stages of legal procedures... we don’t have any brochures to hand out. There is a lack of information about services. We probably have some level of responsibility with all this, but it would take someone to better inform us about the services and eligibility for them.”

2 - Lawyers

“...the Crown prosecutors are more inclined to defend the victims, but the lawyers, it seems that they are better able to defend the offenders.”

“When you have to get down on your knees... you’re begging on behalf of the client: “Well, take the case, you know, she needs help! Can you take her? Take care of it? It can’t be too complicated...” I can just imagine what kind of service you receive... it can’t be very impressive...they call back and tell you: “Well, it didn’t work out with him, and he referred me to another, who doesn’t return my calls, and I’ve called him like ten times now...”

3 – Women’s needs

“Most of them don’t care whether they get the house, the car... they need to keep their children and have a place to stay.”

“The division of marital property will most likely be handled by HIS lawyer, and she (the woman) risks getting the short end of the stick; she is not represented anywhere. Same thing with custody of the children. If she has no legal papers, the aggressor gets his way. If the woman has no lawyer, the children also become the losers. For example, with regard to child support, it has a bearing on the quality of life, the development of the children and the wife.”

4 – Accompanying support

“... not a good thing to establish agreements for custody of the children during a crisis situation because sometimes the situation changes or the woman doesn't realize the problems that can arise if the spouse continues to harass her; emotions are so intense, and so confusing, and the other parent will still be a parent for life.”

“... even if the woman changes her mind... something has changed, the fact that she made a decision, it triggers something. Sometimes, they won't come back here, but later they will finally leave their spouse. Many women return (to the violent spouse) for financial reasons. When they don't have a salary, they have nothing to live on. Or, the spouse might tell them: “If you desert us, you're not a good mother,” and they are afraid of losing their children.”

COMMENTS OF THE WOMEN INTERVIEWED

“... the division of property is not settled yet... the lawyer's fee is \$150 an hour, and my belongings are sold off (by the husband), and nothing gets done (for nearly two years now). I stop calling (the lawyer) because it costs too much... I have always worked, and now I have nothing left.”

“... not enough information on exactly what violence is; after a while, you start to believe you're no good for anything.”

“(a lawyer told me): “Well, I don't understand your situation... you've got a home and you have a man, and I can't understand why it is you haven't returned to him... that you stayed there” (at the women's shelter).”

“I would tremble when I called there; it's quite something when you leave your home for the first time, and then, you have a lot of services... and you're very emotional and he (the lawyer) doesn't understand my situation at all... given the fact that I was already insecure, he set me back several months; if I had been in front of him, I would have lost it...”

“... you can get counselling if you pay \$60 an hour, but you can't afford it. I would have needed it... and I now know that I would have needed support well before that, if there had been support available at a more moderate cost.”

“I went to Court all by myself; if I had had someone to guide me, to point me in the right direction or coach me on what questions to ask... then you know what to expect.”

“Personally, with regard to legal aid, I advise women, even if they are only making \$35,000, that it is better to invest their money in a lawyer so that things go quicker so they can feel better afterwards. When you meet with a lawyer and you say that it is urgent and that you want it settled quickly... if they work for you... I also know women who pay, and it doesn't go quickly either. Personally, I don't understand that...”