An Evaluation of the B.C. *Violence Against Women in Relationships (VAWIR)* Policy

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As violence in intimate relationships is increasingly being recognized as a complex and pervasive issue in society, it is important to evaluate policies meant to protect victims of intimate partner violence (IPV). This essay will evaluate the British Columbia (BC) *Violence Against Women in Relationships (VAWIR)* policy, specifically the way that the police and Crown Counsel, not the victim, decide whether charges should proceed in IPV cases. This essay will provide a brief historical background and overview of the *VAWIR* policy and describe the strengths and critiques of mandatory arrest and charging in IPV cases in BC. The aim of this essay is to show that despite best intentions, the *VAWIR* policy upholds patriarchal attitudes towards victims of IPV and can harm rather than help victims, especially those who are immigrants.

Throughout this essay the terms "intimate partner violence" (IPV) and "domestic violence" will be used interchangeably, and I will use the *VAWIR* policy definition of these terms as "physical or sexual assault, or the threat of physical or sexual assault against a current or former intimate partner whether or not they are legally married or living together at the time of the assault or threat" (Government of British Columbia, 2010, p. 1). The term "wife battery" will also be used when referencing historical understandings and policies about IPV. Additionally, the term "victim" will be used when referring to an individual who has experienced IPV. The use of "victim" is common throughout all sources referenced in this essay; however, I acknowledge that not all individuals who experience IPV define themselves as victims. This essay and the sources included also predominantly refer to victims of IPV as women. However, IPV can be perpetuated by any gender within same-sex relationships and opposite-sex relationships (Gurm, 2020). Despite the title of the *VAWIR* policy, the policy states

that it “applies equally in all domestic violence situations regardless of the gender of the offender or victim” and is “equally intended to stop violence in both same-sex relationships and violence against men in heterosexual relationships” (Government of British Columbia, 2010, p. 2).

Historical Context of the *VAWIR* Policy

Addressing IPV in Canada has gradually shifted from viewing domestic violence as a private and individual issue, to viewing domestic violence as a societal issue necessitating policies and a coordinated response by the justice system. Previous views of domestic violence focused on personality disorders and dysfunction and saw violence as a symptom of a disturbed partner (Gurm & Salgado, 2020). Academic, policy, and feminist work in the twentieth century demonstrated the prevalence of wife battery and showed how wife battery was related to gender inequalities that are perpetuated by the family and societal structure (Wilmshurst, 1997). This work also raised questions about what role the Canadian criminal justice system should have in instances of wife battery (Wilmshurst, 1997). In 1983, the Attorney General and the Solicitor General of Canada issued directives to police agencies and Crown Counsel offices instructing them to “encourage rigorous investigation and prosecution of wife assault cases,” and Canada was recognized as the first country globally to have developed and implemented mandatory charging policies in wife assault cases nationwide (Wilmshurst, 1997, p. 1). In BC, this resulted in the *Wife Assault Policy* established in 1984, revised in 1986 and expanded in 1993 as the *VAWIR* policy. The *VAWIR* policy has been revised since 1993, with the most recent

version being 2010, and this essay will address both the initial and current versions of the policy.

In the 1993 version, the main objectives of the *VAWIR* policy were to "implement mandatory arrest/charging; reduce the number of cases "stayed" by Crown Counsel; issue harsher sentencing as a deterrent; and provide victim assistance services to minimize "secondary victimization" by the justice system" (Wilmshurst, 1997, p. 1). The 2010 version goes on to note "the primary purpose of the *VAWIR* policy is to ensure an effective, integrated and co-ordinated justice and child welfare response to domestic violence … to support and protect those individuals at risk and facilitate offender management and accountability," as well as provide information about the "complex criminal issue of domestic violence, including the roles and responsibilities of justice and child welfare system partners" (Government of British Columbia, 2010, p. 2). From both the initial and current versions of the policy, the intention of protecting the victim by means of the criminal justice system is clear. The 2010 policy states, "police should advise the suspect and victim(s) that all domestic violence cases are treated as serious criminal matters, and that it is the responsibility of police to investigate and Crown Counsel, not the victim, to decide whether criminal charges should proceed … police should submit a Report to Crown Counsel recommending a charge even if there are no injuries to the victim and regardless of the victim's desire or willingness to lay charges" (Government of British Columbia, 2010, p. 16). Based on this, domestic violence victims are not granted the individual autonomy to decide whether pressing charges will benefit their situation or not. Instead, police and Crown Counsel maintain the power to decide, under the view that mandatory arrest/charging will always benefit and protect the victim (Wilmshurst, 1997).

Patriarchal Nature of the *VAWIR* Policy

When evaluating the *VAWIR* policy in 1997, Wilmshurst wrote that "since one of the most empowering possessions that women in a democratic society have is their ability to choose, any policies that diminish that power either directly or indirectly, should be re-evaluated" (Wilmshurst, 1997, p. 14). Based on this, the explicit way that the *VAWIR* policy states "police decisions to recommend charges must not be influenced by factors such as … reluctance to proceed on the part of the victim" blatantly disregards the choice of the victim (Government of British Columbia, 2010, pp. 12-13). By disregarding and choosing to not value the desires of a victim of IPV, this policy is implying police and Crown Counsel know better than the victim what would be best for them and how best to end their abuse.

West (2016) conducted a research study with six women who experienced IPV and also interacted with the criminal justice system in BC. In the study, half of the participants reported negative experiences with the RCMP (West, 2016). One participant reported "she was shocked and not feeling clear-headed after her assault, and did not want charges pressed immediately against her partner as she was fearful of her partner's retaliation because of living alone in an isolated and remote area" (West, 2016, pp. 80-81). This is one example of why a victim may not wish to press charges, or at least not immediately, as she recognizes how this may further endanger and increase her risk of violence. It is also important to note that victims wanting the violence to stop and wanting their partner arrested is not always synonymous; Gurm and Salgado (2020) quote one victim saying "I just want the police to come and stop the violence but I do not want my partner to be charged and sent to jail" (Gurm & Salgado, 2020, para. 23). Eventually, the participant from West's study was ready to press charges but felt unsupported

by the RCMP as the officer said “well you didn’t want to put charges then we’re not going to put charges on him … should have put it (pressed charges) when I told you to” (West, 2016, p. 81). This woman’s experience exemplifies the way that the *VAWIR* policy privileges the judgement of police over that of the victims themselves. Not only was she left feeling unsupported when she did want to press charges, the RCMP officer’s attitude showed that she was now at a disadvantage because of attempting to make her own choice on when to press charges. Additionally, four out of West’s six study participants reported that their involvement with Crown Counsel was negative; and specific negative experiences included “having no voice in the criminal matter” (West, 2016, p. 82). In contrast to this, one participant felt empowered specifically because she was offered a choice in whether charges should be laid against her partner (West, 2016). The experiences of these victims show how the police and Crown Counsel’s authority over the decision to press charges is negatively experienced by victims of IPV, while being given the choice to press charges can be empowering.

Based on the lack of choice for the victim and the privileging of the police and Crown Counsel’s judgement, it is clear that the *VAWIR* policy upholds patriarchal views about victims of domestic abuse. Although the justification for mandatory arrest and charging is as a response to power imbalances and dynamics that work to prevent a woman from taking steps to end her abuse, Wilmshurst writes that “mandatory charging policies are patriarchal by their very nature by basing their justifications on the presumption that the reason(s) that prevent a woman from “taking steps to end abuse” is her inability or indecisiveness to lay criminal charges herself” (Wilmshurst, 1997, p. 14). These policies also work to frame the person experiencing IPV as only a victim in need of protection by the laws and police (Wilmshurst, 1997).

Additionally, since mandatory charging emphasises the punishment of the individual offender, it does little to disturb the root cause of IPV; as instead of recognizing the responsibility of society as whole, responsibility for the crime still rests at the level of individual men (Singh, 2010). West's research showed the majority of participants' experience with the BC criminal justice system exemplified structural violence and covert oppression based on the negative interactions with RCMP and the way the criminal justice system responded to these women's experiences of IPV (West, 2016). Wilmshurst furthers this by noting that the policy does not address "the underlying issues suggesting the action of wife battery is a reaction itself to the prolific existence of patriarchal values and gendered inequalities that permeate social and family structures within society" (Wilmshurst, 1997, p. 12). Instead of understanding IPV as a systemic problem, it is viewed as an individual problem these victims face (West, 2016), and something that police and Crown Counsel can exercise their authority to protect victims from.

The *VAWIR* policy states that "despite the harm that the abuse may have caused and the risk of continued or more serious harm, the dynamics of the relationship in which these crimes arise may result in the victim's reluctance to fully engage with the police or Crown Counsel in the investigation and prosecution of these crimes" (Government of British Columbia, 2010, p. 3). Recognizing the complexities of IPV yet still denying the victim the ability to choose whether charges are pressed is contradictory. Ferraro and Pope, as quoted in Wilmshurst, further this by writing "empowering battered women involves recognizing the diversity of needs and the competence of women to identify the most appropriate strategies for their survival" (Wilmshurst, 1997, p. 14).

Immigrant Women and Mandatory Charging Policies

Recognizing the diversity of needs among victims of IPV is especially relevant for immigrant women who experience IPV. Immigrant women (defined as those born outside of Canada) make up about 20% of the Canadian female population, and just over half of the immigrant population in Canada (Chui, 2011). Immigrant women face specific and unique barriers to seeking help to end their abuse, including racism and cultural stereotypes, fear of police, social and physical isolation, and economic disadvantages; and when immigrant women do interact with the criminal justice system, they are made more vulnerable by the mandatory arrest/charging policies (Singh, 2010). In an evaluation of mandatory charging in domestic violence cases in Ontario (where policies are similar to those in BC), Singh (2010) writes about the need for an intersectional approach to address IPV that "must acknowledge how race, class, citizenship, and other structural locations intersect with gender, and complicate a woman's experience of violence as well as her interaction with the criminal justice system" (Singh, 2010, p. 38).

Mandatory charging policies rely on the idea of the police as protectors for women experiencing IPV, however, this isn't always the case for immigrant women who may have precarious legal status, as they face fears of deportation (Singh, 2010). Even for immigrant women who do have secure legal status, "victims contemplating police assistance often decide against it for fear of being cast as passive victims of tradition and invoking stereotypes" (Singh, 2010, p. 40). When victims do experience police intervention, the mandatory charging policies are shown to uncover various immigrant specific factors that exacerbate the structural vulnerability of immigrant victims of IPV (Singh, 2010).

Singh found that instead of empowering and protecting victims, mandatory charging in domestic violence cases often leaves immigrant women isolated and experiencing further vulnerabilities (Singh, 2010). If their partners are arrested and removed from the home, many immigrant women are left without anyone to rely on as they may not have extended networks of family and community support (Singh, 2010). Additionally, the sudden removal of a partner can result in women left unprepared to manage rent or mortgages on their own; Singh notes that "although many economically disadvantaged, Canadian-born victims of abuse may share this fate, the consequences for immigrant women are far worse, given the barriers they encounter in the labour market or when attempting to access social assistance" (Singh, 2010, p. 39). Based on this, it is clear how immigrant women experiencing IPV face specific barriers prior to even seeking out support from the criminal justice system, and these barriers are only exacerbated by the mandatory charging policies. By painting all victims of domestic violence with the same brush and assuming mandatory charging will benefit all victims, the criminal justice system fails to recognize the complexities of IPV and how race and class, among other intersections, need to be acknowledged when supporting victims.

Strengths of Mandatory Charging/Arrest Policies

The broad stroke approach to addressing IPV in the criminal justice system through mandatory arrest/charging polices was implemented with the intention of protecting and empowering victims (Wilmshurst, 1997). The push for a more aggressive approach to policing domestic violence stemmed from a history of systemic neglect; and was supported and fought for by many feminists as "liberal feminists believed that legal reform and intervention was both

possible and essential to sending out the message that violence against women was wrong and intolerable" (Singh, 2010, p. 35). Mandated systemic intervention was therefore assumed to better protect victims, hold offenders accountable, and reduce recidivism in domestic violence cases (Gurm & Salgado, 2020; Singh, 2010).

In a comparison of responses to domestic violence cases in locations with and without mandatory charging and pro-arrest policies, Drumbl (1994) found mandatory charging and arrest policies to have a vital role in curbing relationship violence (Drumbl, 1994). With the view that it is the state's responsibility to prosecute those engaging in criminal activity, "pro-arrest thus sends a message that society no longer approves of female partner abuse as acceptable behaviour" (Drumbl, 1994, p. 142). Additionally, Drumbl notes that victims may feel more confident if it is the police laying charges and not themselves, and a benefit of the no-dropping of charges policy is that "a victim cannot be "blamed" for the fact her abuser is on trial" (Drumbl, 1994, p. 147). Based on this, the support for these policies stems from the idea that they protect women who cannot protect themselves and are a necessary deterrent to offenders or would-be offenders that IPV is no longer tolerated by society (Wilmshurst, 1997).

Other countries have also taken aggressive approaches to addressing violence against women, including the Zero Tolerance campaign in Scotland which was inspired by a Canadian family violence public awareness initiative (MacKay, 1996). The success of the Zero Tolerance campaign was in its ability to progress the issue of violence higher up the political agenda and have the state "proactively [promote] a radical definition of the issue of violence against women which [had] been formulated by the women's movement itself" (MacKay, 1996, p. 207). However, despite its success, in the beginning of the Zero Tolerance campaign organizers had

to navigate the way in which the state can be seen as playing a role in perpetuating gender inequality, but is also the only site in which many of feminism's demands can be met (MacKay, 1996). This is similar to the way mandatory charging and arrest policies in Canada raise awareness about IPV and take a stance on attempting to eliminate it, yet the policies are enacted in a patriarchal way.

Conclusion

Recognizing and breaking the silence surrounding IPV is undoubtably imperative. However, as this essay has shown, although mandatory arrest/charging policies work to legitimize the crime of IPV, these policies are still patriarchal and especially detrimental to immigrant women victims. The mandatory nature of these policies are anything but empowering for victims because they are patriarchal in structure and only represent another form of control and removal of choice for women (Wilmshurst, 1997). Instead of recognizing the complexity of IPV and the varying needs of victims, mandatory policies view all victims similarly as unable to exercise their own choice and needing the state's decision-making for protection.

As we have been and continue to live through the COVID-19 pandemic, research is also needed to evaluate how mandatory charging and arrest policies are affecting victims during this time. Research has already shown increases in both prevalence and severity of domestic violence in Canada during the pandemic (Trudell & Whitemore, 2020), and Vancouver's Battered Women's Support Services saw a 300% increase in calls during the first three weeks of the pandemic lockdown (Daya & Azpiri, 2020). As quarantine and social distancing measures

increase victims' isolation, it is important to understand how this may be further exacerbated by mandatory charging and arrest policies and whether the increase in domestic violence severity and prevalence has resulted in an increase in arrests. This essay has evaluated mandatory charging/arrest policies in Canada to show their patriarchal nature and disregard for the diverse needs of victims, and the ongoing COVID-19 pandemic presents another urgent factor for evaluating these policies as we continue to understand and work towards effectively supporting victims of IPV.

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