

RESPONSE TO WHITE PAPER ON JUSTICE REFORM PART TWO

1. Organizational Profile

The Ending Violence Association of BC (EVA) is a charitable, non-profit organization that provides services to over 200 anti-violence programs across BC including:

- Community-based Victim Services
- Stopping the Violence Counselling and Outreach Services
- Multicultural Outreach Services
- Sexual Assault/Woman Assault Centres

EVA

- provides support, resources, and training
- undertakes research
- educates the public and government bodies on victims' needs
- develops and maintains standards for service delivery, and
- fosters cross-sector coordination and collaboration

EVA's Community Coordination for Women's Safety Program or CCWS, works with emergency responders in rural and isolated communities, and at the provincial and national level, to support the development of a coordinated response to gender-based violence. EVA provides a voice for community based service providers and for those who have been victimized by violence, particularly women who face multiple forms of discrimination.

2. Response to White Paper Commitments/Recommendations

Action Item 1: Advance Family Justice Reform

Early assessment, information and referral

White Paper Commitment: Government to expand mandatory [needs] assessment to other locations in the province. (p. 30)

EVA Response: The thrust of the discussion about needs assessments in family law cases is that such assessments are beneficial in that they often result in early settlement or cases being diverted from the court. (p. 8) While out of court settlement may be appropriate in some cases of family breakdown, in cases where domestic violence is a factor, inappropriate streaming of the case by a family justice counsellor can put women and children at greater risk of further violence or even death. Any needs assessment process therefore, must be conducted by personnel who are trained to be able to identify risk indicators for domestic

violence and the assessment meeting must be conducted in a way that is safe for all parties and that recognizes power imbalances, otherwise critical information will not be shared with the person conducting the assessment. It is also essential that family justice counselors develop close working relationships with specialized community based victim service workers who are mandated and specifically trained to work with domestic violence victims and that in cases where domestic violence may be a factor, family justice counselors adopt and implement referral protocols so that the woman is directed to the appropriate agency.

The White Paper Part Two also mentions that if safety is an immediate concern, that Family Justice Counsellors will assist with safety planning. (p.9) Again referral and interagency collaboration with specialized community based victim service workers will be critical for the development of an effective safety plan and referral of the case to a high risk case assessment team if necessary. The safety plan should not be developed in isolation but should be a collective effort involving the woman, the community based agency and where appropriate, the family justice counselor. If the family justice counselor is also working with the abuser, then it may not be appropriate for the family justice counselor to work on the safety plan.

Until a broad based training strategy for Family Justice Counsellors is implemented, including a specific focus on addressing power imbalances and identifying risk indicators for domestic violence, it may be premature to expand mandatory early assessment to other court locations in the province. Even with training in place, this should be proceeded with slowly and with regular performance reviews or audits to determine whether such a process addresses safety concerns.

White Paper Commitment: Government will open a third Justice Access Centre in Victoria in late 2013. Other Centres are located in Nanaimo and Vancouver. They provide a single point of entry for family and civil justice services, and use a needs assessment process to match clients to resources. They provide information, advice, and mediation services as well as referrals to other service providers. Government also intends to use technology to provide Justice Access Centre services to rural and remote communities. (p.30)

EVA Response: To be effective as a service delivery model for abused women, Justice Access Centres must work in close collaboration with Community Based Advocacy Services. Front line service providers know, and the literature indicates, that violence against women escalates during or immediately after separation or divorce. Murder of a female partner is most likely to occur in the context of marital separation or divorce. Therefore, it is extremely important that the family justice system appropriately address the safety needs of women and their children.

Many of the women coming in to receive community based antiviolenace advocacy services are also involved in the family law system. In these cases, front line service providers based in the community play a key role by developing safety plans and providing advocacy for the woman to make sure that her and any child's safety concerns, now a key consideration in the

FLA, do not fall through the cracks. In cases where there are indicators of domestic violence, Family Justice Centre personnel must work in close collaboration with community based advocates to appropriately manage risk and refer cases to high risk case assessment teams where necessary and where such teams exist. (See also my comments above in relation to mandatory needs assessments)

While providing a “single point of entry” for family and civil justice services has certain advantages, it also has certain drawbacks for women suffering domestic violence. Underreporting of domestic violence remains a significant issue. Marginalized women in particular are more likely to make an initial disclosure of abuse to a front line service provider based in their own community rather than to staff at a large umbrella agency associated more directly with the justice system. It is for this reason that women’s advocacy services are currently based in the community. Once a disclosure has been made, community based advocates are well positioned to support and encourage women to engage the broader justice system. If she lives in a rural or isolated community, the advocate can help her access the technology-based Justice Centre services being proposed in White Paper Two. We know that many women experiencing family violence and separating from their spouse will need to engage a variety of agencies and systems in order to successfully escape the violence. An advocate is critical to help the woman navigate these systems and appropriately engage the legal system.

Family legal aid reform

White Paper Two Commitment: Government intends to support LSS to expand the family legal aid services it currently provides. (p.30)

EVA Response: This is a positive step. Lack of access to legal representation for women in family law cases has been identified as a major concern by community based advocates coming under our provincial umbrella. Women leaving abusive relationships who do not have legal representation will not be in a good position to present critical evidence regarding the presence of family violence as it relates to the best interests of the child test. She may not be able to obtain a protective order to protect herself and the children. In the absence of a lawyer to represent her, she may enter into mediation, potentially subjecting herself and any children to further risk. Legal aid funding increases should also take into account potential legal complexities that may arise if the woman is an immigrant sponsored by the abusive partner, thus potentially losing her immigration status if the relationship breaks down.

Action Item Three: Improve Early Criminal Processes

Improvements to charge assessment processes

White Paper Two Commitment: Government will proceed with a number of initiatives to identify and implement improvements that can be made in communications between police and Crown counsel. These include an improved disclosure agreement, training materials, and

new processes that will support the development of a closer working relationship between police and Crown counsel. (p.32)

EVA Response: In principle, improved information sharing between Crown and police and training to support a closer working relationship is a positive step. We agree with the following statement in White Paper Two:

“In criminal matters, better outcomes and earlier resolution depend on a clear understanding of the needs of and risks posed by the accused, including the risk of reoffending and factors that contribute to criminal behavior. When this knowledge is properly analyzed and applied, it will lead to the matching of services to the individual. This will maintain public safety and uphold the rule of law, while also benefitting the offender and reducing the risk of further criminal behavior.” (p.13)

We have serious concerns, however, with Cowper Recommendation 2.4 which proposes a new approach to pre-charge resolution that maximizes the opportunity to resolve matters before formal charge approval is complete and calls for an abbreviated report to Crown counsel form to be considered by the Police/Prosecution Liaison Committee in appropriate cases. In the absence of compelling evidence that pre-charge resolution or alternative dispute resolution results in greater protection for women and children suffering domestic violence, we cannot support any initiative which encourages this practice in such cases. In terms of an abbreviated report to Crown counsel, historically in domestic violence cases, critical information about key risk indicators has not been effectively communicated through the system particularly from police to Crown. This was an issue in the Lee inquest, for example. In domestic violence cases, the use of abbreviated Report to Crown counsel forms could, in our view, result in more fatalities since it might result in information critical to risk management once again being lost.

Crown workload, court backlogs and system costs are clearly an issue. Domestic violence cases represent a significant portion of police and Crown caseloads. We need an in depth discussion about how the criminal justice system, in partnership with other related social support systems, can address this serious public safety issue. Diverting or effectively decriminalizing domestic violence--trying to make this problem go away-- is not the answer. Justifying alternative measures and abbreviated Reports to Crown counsel as somehow advantageous for women and children who are victims of domestic violence, in the absence of compelling evidence, could cynically be viewed as a misguided attempt to mask the underlying thrust of Cowper’s recommendation: finding ways to save money.

Enhancing system-wide knowledge of risk assessment

White Paper Two Commitment: Government will act to share evidence-based information about risk assessment practices with police, Crown counsel, defence counsel, the judiciary, and other key justice system participants.(p.32)

EVA Response: Within government, Corrections has shown great leadership in terms of risk assessment processes. We support this commitment.

Restorative Justice

White Paper Two Commitment: An inter-ministry Committee on Restorative Justice was established to articulate a coordinated and connected vision for restorative justice and advance a strategy for promoting best practices.

Government will continue to expand and support existing Community Accountability Programs, including a training initiative that is currently underway.

Government intends to expand the use of restorative justice as additional funding becomes available. (p.32)

EVA Response: In the absence of compelling evidence that restorative justice helps enhance protection for women and children suffering domestic violence, we cannot support the expansion of the use of restorative justice approaches in domestic violence cases. A community based restorative justice model including the use of volunteers (p.14) cannot begin to address the complexities of risk and power imbalances involved in domestic violence cases and will put women and children at greater risk. Diverting or effectively decriminalizing domestic violence--trying to make this problem go away-- is not the answer. Justifying restorative justice as somehow advantageous for women and children who are victims of domestic violence, in the absence of compelling evidence, could cynically be viewed as a misguided attempt to mask the underlying issue: finding ways to save money. Domestic violence should not be characterized as a “soft” community mental health issue which can be resolved through discussion facilitated by concerned community members. It is a serious public safety concern. Women who have been beaten and are fearful cannot sit down at a community accountability table with their abuser and work things out through discussion which incorrectly assumes a level playing field between herself and her abuser.

Undertake Public Safety Reform

Crime Prevention

White Paper Two Commitment: Government will establish an Inter-ministry Committee on Crime Prevention that will develop a Provincial Crime Prevention Strategy by March 2014 (p.33)

EVA Response: Given the prevalence of domestic violence as indicated by police, Crown and victim service dv caseloads, this Committee should include community partners with specific expertise in domestic violence.

Action Item 5: Protect Marginalized Women

Prevention and Protection

White Paper Two Commitment: Government will work with the Advisory Committee led by Steven Point to identify how Government can assess communities to implement locally appropriate measures for supporting their vulnerable youth and women. This will include a review of options for community-police linkages, community mobilization and networks, and legislative measures that could provide additional protection for this vulnerable group. (p.34)

EVA Response: Justice, healing, empowerment and prevention of future tragedies are all important pieces of the work to honour murdered and missing northern women and girls and women and girls from the Downtown Eastside and and their loved ones. Most often the focus of work to address murdered and missing women is focused on determining causes to prevent future tragedies. This work is critical. Equally important, and much less frequent, is work with families, friends and other community who have been violently robbed of their loved ones. More services are urgently needed particularly for aboriginal women who are particularly marginalized and the additional funding to the WISH Drop-in Centre is an important first step. The RCMP has an amazing team of investigators who are working to find answers and justice, but a truly comprehensive response needs to include immediate, ongoing and accessible supports, connections to other families and empowerment to be involved in seeking answers and justice.

Prevention work needs to focus on how we can hold perpetrators of violence accountable, not how individuals can avoid what is tragically and wrongly labelled as high risk behaviour.

Family, friends and other community members with missing or murdered loved ones need to be central to the work of the Advisory Committee.

In addition to the government representatives on the Steven Point Advisory Committee, there should be strong representation from aboriginal women's organizations and other community based organizations with recognized expertise in the area of violence against marginalized women.

Vulnerable witnesses and victims

White Paper Two Commitment: Government is committed to providing supports for vulnerable witnesses and examining how these services could be improved.

Government will review research related to vulnerable victims and witnesses to facilitate and support their participation in the criminal justice process. This research will be incorporated into training materials for justice participants including, prosecutors.

Prosecution policies, including those that guide the exercise of prosecutorial discretion, will be reviewed to ensure that equality is recognized as a fundamental principle. (p.35)

EVA Response: These are important first steps and in keeping with the thrust of the larger justice reform process underway, we look forward to a transparent process. We anticipate that the research will be widely shared and that opportunities will be provided to community partners with a particular expertise in gender based violence and marginalized women to provide input on the training materials. Also, the opportunity for meaningful stakeholder input on revision of prosecution policies will ensure that the policies are informed by on-the-ground realities experienced by marginalized women victims.

Action Item 6: Respond to Domestic Violence

Provincial Office of Domestic Violence

White Paper Two Commitment: By June 2013, the Provincial Office of Domestic Violence will deliver a multi-year action plan that will identify a comprehensive approach to addressing domestic violence across Government. (p.35)

EVA Response: We look forward to reviewing the action plan.

Domestic Violence Units:

White Paper Two Commitment: Government to work with communities to expand the number of Domestic Violence Units in the province. (p.35)

EVA Response: Existing research and practice indicates that such units have good outcomes when they are structured as a partnership between police/rcmp and a community based agency. This is the model we would endorse.

Domestic Violence Courts

White Paper Two Commitment: Government is committed to working with the judiciary and other justice system participants to explore the establishment of a framework for domestic violence courts. (p.35)

EVA Response: The establishment of designated court days in provincial court (e.g. the Duncan model) initiated by the judiciary in consultation with community based advocates, police, corrections and other stakeholders, is a good, cost-effective model which might be further articulated or explored as part of the proposed framework. Care must be taken not to endorse a Cadillac model which might draw much needed provincial government resources away from services and would also not assist women in smaller rural communities. The framework document should consider the question: what are the critical components of a successful court model and which of these components might be achievable without the need to create a domestic violence court. Further discussion of this important question from EVA's perspective can be found in the Keeping Women Safe Report which can be accessed on our website. Joe Wood (now a provincial court judge in Duncan) acted as special advisor in the development of the Keeping Women Safe Report.

Evidence Based Approaches

Empirical Analysis of Problems

White Paper Two Commitment: Government will undertake a reform project to understand the growth in administration of justice offences. (p.36)

EVA Response: Administration of Justice Offences includes breaches of protection order conditions. In domestic violence cases such breaches of protection order conditions are a high risk indicator. For this reason we cannot support any initiatives which would have the effect of discouraging vigorous enforcement and prosecution of breaches in dv cases.