



85 Queen St, Dartmouth NS B2Y 1G7
Ph: (902) 454-5041 Fax: (902) 454-4100 Web: www.efrymns.ca

September 29, 2022

Mass Casualty Commission
1791 Barrington Street, Suite 310
Halifax, NS B2N 2K3
By email: info@masscasualtycommission.ca

Dear Commissioners:

Re: Final Written Submissions

Thank you for inviting the Elizabeth Fry Society of Mainland Nova Scotia (“Elizabeth Fry”) to participate in Commission proceedings during Phase 2 and 3. Elizabeth Fry works with and on behalf of incarcerated and otherwise criminalized women and gender diverse persons to advocate for systemic changes within our justice system that promote equality, safety and security for the most marginalized members of our community.

These written submissions will speak to the following three topics: The first is the perpetrator’s targeted victimization of sex workers and other especially vulnerable women in the years preceding the mass casualty. The second is the pipeline from intimate partner victimization to criminalization. The final topic is a discussion of recommendations.

TOPIC 1: Victimization of Vulnerable Women by the Perpetrator

Vulnerability lies at the core of the events of April 2020: vulnerability of our community’s response mechanisms, safeguards, public services, and community members. However, the perpetrator was exploiting vulnerable persons long before the mass casualty took place.

Jolivet et al. (2012) defines vulnerable persons as those who are more susceptible to harm or ill treatment, susceptible to abuse, or, more specifically, susceptible to mistreatment by those who may potentially hold power over them. The vulnerability of women permeates all of history. Even as women have gradually received more rights and moved into the public sphere, they have continued to occupy a generally lower status in society than men, as frequently demonstrated through their work in low-paying domestic jobs, societal expectations of public and private behaviours, and more (Wang, 2021).

Some women are subject to greater vulnerability than others. Research shows that Black and Indigenous women have particularly high rates of psychological distress, job instability, and substance use while simultaneously receiving inadequate social and material support for recovering from residential school experiences, intergenerational trauma, and inequitable living conditions (CMHA 2021; Matheson et al., 2019; StatsCan, 2020). Additionally, individuals who identify as 2SLGBTQQIA+ are at an increased risk of violence (Breiding et al., 2014) and homelessness as teens and adults (National Coalition to End Homelessness, 2020).

Evidence gathered by the Commission provides insight into how the perpetrator targeted and sexualized vulnerable women. Certain interviews and foundational documents have referenced the perpetrator's disturbing interactions with sex workers, individuals in so-called "crack houses", and low-income denture patients. Several patterns emerge from looking at the perpetrator's behaviours, including: interacting with women in intoxicated and impaired states, and encouraging such states; fostering and then exploiting women's financial dependency on him; and specifically targeting women made more vulnerable because of their substance use, age or their participation in sex work.

Substance Use

The perpetrator's behaviour echoes the research demonstrating that women using substances are frequently abused physically, sexually, and psychologically (Beijer et al., 2015; Cunradi et al., 2002; El-Bassel et al., 2003; Golder et al., 2012; Marshall et al., 2008; Panchanadeswaran et al., 2008; Schneider et al., 2009; Shannon et al., 2008). Research also indicates cumulative disadvantages among drug users. For example, the Canadian Women's Foundation (2011) found that among women in substance disorder

treatment programs, 40% had a major mental health disorder, 67% had a history of abuse, and 50% were in an abusive relationship at the time. The vulnerabilities faced by substance users are multi-faceted and range from ongoing health concerns, consuming contaminated product, and increased likelihood of victimisation. Addiction often leads to financial stress, social strain, and reliance on their drug provider (Beijer et al., 2015; Oliver et al., 2022). In addition to these risks, substance use is often associated with trauma or other mental health issues (Canadian Women’s Foundation, 2011), leaving users especially vulnerable to victimisation and re-traumatisation.

Alcohol use is a common theme in many of the perpetrator’s interactions with vulnerable women over several years. It is well established from witnesses, including Lisa Banfield (COMM0003436) and an ex-girlfriend, QQ (COMM0006489), that the perpetrator was a heavy drinker and suffered from alcoholism. Alcohol appears to have put the perpetrator in a violent and aggressive state according to his ex-wife, FF (COMM0008405). It is also important to note that Ms. Banfield and the perpetrator had been drinking on the night the mass casualty began (COMM0003436). However, it is his interaction with and promotion of women in intoxicated states that typifies the relationship of substance use to vulnerability to violence. The perpetrator became sexually involved with his neighbour, EE (COMM0046242), from approximately 2017 to 2019. He also had sporadic sexual interactions with EE’s daughter, DD (COMM0015878). DD reports that the perpetrator would often visit her mother before everyone would go to his residence to drink. At this time, EE was suffering with alcoholism, suggesting a level of vulnerability given that the perpetrator would often supply her with alcohol during these visits.

Najavits and colleagues (1997) conducted a systematic review that found that 55-99% of women with disordered substance use reported a lifetime history of violent and sexual victimization, compared to 36-51% of women in community samples. Women with substance use concerns are often in a very vulnerable position as women most often use substances to cope with untreated trauma or mental health concerns (Canadian Women’s Foundation, 2011). Further research has consistently shown that women impacted by violence and/or substance use face regular discrimination and judgment from the public, service providers, and police officers (Canadian Women’s Foundation, 2011). This could lead to repeated victimisation due to the lack of support given to them by the justice system and community.

Financial Vulnerability

For women in abusive relationships, financial abuse is a significant barrier to leaving their abuser (Adams, 2011; King et al., 2017), given that it often has long-lasting consequences for housing and employment security (Adams et al., 2013; Borchers et al., 2016; Voth Schrag, 2015). This vulnerability is highlighted by empirical studies that have found 94-99% of women seeking domestic violence support resources report some form of financial abuse (Adams et al., 2008; Postmus et al., 2012). Furthermore, low-income individuals are far more likely to be victims of violence (Breiding et al., 2014). Many of the women the perpetrator targeted were in vulnerable financial situations which he was able to exploit for sexual purposes.

Related to financial vulnerability, the exploitation of service provision is also prevalent. Through the perpetrator's work as a dentist, he would often target low income or homeless women who had their dentures covered by social assistance. He was known to make inappropriate and explicit sexual advances on his patients during appointments and would engage in inappropriate sexual misconduct and harassment towards his employees. The perpetrator used his authority over these women as their employer and service provider to exploit them for sexual purposes.

Sex Workers

There is ample documentation of the perpetrator using a variety of vulnerabilities to his advantage, such as alcohol and drugs, financial insecurity, and youth/inexperience. On the other hand, there is very little documented evidence about his interactions with sex workers. Although we know he frequented sex workers, the commission has yet to hear from any of these individuals. This is concerning given that there is plenty of research that has identified sex workers as particularly susceptible to violence.

Sex work is colloquially used as an umbrella term for the provision of sexual services or performances in exchange for money or other markers of economic value (i.e., goods, services). Sex workers are also referred to as prostitutes, escorts, strippers, porn actors, sex phone operators, or dominatrixes (Sawicki, 2019). The Center for Disease Control (CDC) differentiates between Full-Service Sex Workers (FSSW) and non-FSSW. Full-service sex workers are individuals who participate in sexual intercourse with others

for the purposes of gaining income or who participate in ‘survival sex’ (i.e., trading sex to meet basic needs of daily life). Survival sex can involve many sex markets, such as escorts, prostitutes, brothel workers, adult film stars, and exotic dancers (CDC, 2016). Sex workers who are not designated as FSSW typically engage in more casual and less risky options such as internet sex work (i.e., OnlyFans) or asynchronous communication with clients (CDC, 2016).

Traditional discussion of sex workers emphasizes two paradigms for understanding why some individuals, generally women, engage in sex work: oppression and empowerment (Dinse & Rice, 2021). These paradigms are diametrically opposed. For example, Sagar et al. (2016) suggested that all sex workers are victims of the male customer whose sexual appetite must be met by women, while McCarthy et al. (2014) suggest that individuals with low social standing, education, or employment opportunities choose the sex industry as their best option for economic stability. It is important to note that women who engage in sex work are a heterogeneous group with mixed backgrounds and differ on pathways into the industry. This may include personal profit, pressure from another person (who may or may not share the profit), or against their will (those who have been recruited, conned, and forcibly held or threatened into performing sexual acts for the profit of others).

The practical differences between sex workers’ daily experiences are based on the level of control the individual has over when and where to work, which clients to accept, rate of pay, and how much income is kept or paid to others. Broadly speaking, sex work in Canada falls into one of three categories: self-employed, employed, and forced sex work (e.g., human trafficking). Regardless of employment type, leaving sex work for a different job is very difficult given the stigmatization or otherwise unexplainable employment history. If women can successfully transition out of sex work, they often find themselves returning due to a reduced income in the new career path (Dinse & Rice, 2021).

Self-employed sex workers choose their hours, location, clients, and keep all their income. Many individuals choose to engage in sex work because they feel empowered by the freedom of time, clients, and income that sex work provides compared to traditional female-oriented employment (Dinse & Rice, 2021). This is often attributed to systemic failure to provide equal opportunities or support for marginalised groups (e.g., female, trans, and queer people) and/or a lack of gainful employment (due to

lack of well-paid positions and stigma; Dinse & Rice, 2021). Sex work provides these desired benefits for self-employed sex workers as there is the potential to earn relatively high incomes, have more control over their clients, and have flexible schedules. However, self-employed sex workers also face vulnerabilities and risks due to the environment in which sex work is allowed. For example, recent changes to the Canadian law allows for the sale but not the purchase of sex. Unfortunately, this policy change has increased risks for sex workers. Many workers operate out of their own home which may increase risk of being victimised. Clients cannot legally contact workers for the purposes of purchasing sex. This restriction means that clients may refuse to negotiate price and other terms of the arrangement and that workers are unable screen their clients prior to meeting due to their clients' fear of prosecution. Thus, Canadian law impedes self-employed sex worker's ability to control their clients, income, and location of work.

Women who are employed sex workers tend to work in a single location owned and operated by a "madam" or "pimp". The employer allows workers to use the space, provides security, and may provide clients in exchange for a share of the worker's rate. This agreement ostensibly provides sex workers with a safe space, regular clientele, community, and support. Through the advancement of social clubs, telephones, and the internet, employed sex work can take many different forms such as strip clubs, phone sex lines, internet sex work (text or video), and pornography. These contracts have mutual benefits for the employer and workers, as the employer benefits monetarily and the employees have the space to choose clients, negotiate rates with clients, and have access to immediate assistance in case of an emergency. Unfortunately, under the current legal framework, this type of employment is illegal due to its association with human trafficking; therefore, individuals working for such employers do not have the legal protections that regulated workplaces provide.

Clients are as heterogeneous as sex workers, often coming from different backgrounds, perspectives, and expectations about what they can receive from sex workers. Since the purchase of sex is illegal in Canada, it is difficult to get an accurate description of this group; however, Demand Abolition (2019) completed a large survey inquiring about the purchasing of sex in the U.S which may provide some insight. The survey found that 6.2% of men reported buying sex in the last year, 20.6% of men had ever purchased sex, and

most sex work was supported by regular clients. Most regular clients were males between 18-65+ in medium to high socio-economic standing. Clients were more likely to hold traditional views of masculinity and gendered roles within and outside of their interactions with sex workers; specifically, clients often believe that “prostituted women enjoy the act, it is mostly a victimless crime, buyers are merely taking care of their needs, and they are just ‘guys being guys’” (Demand Abolition, 2019, p 5). Furthermore, regular clients tend to have issues controlling their impulses and engage in risky sexual and non-sexual behaviour. Political beliefs and race were similar among between buyers and non-buyers.

In the case of *Canada (Attorney General) v. Bedford*, 2013 SCC 72 (“*Bedford*”), the Supreme Court of Canada held that sections 210, 212(1)(j) and 213(1)(c) of the *Criminal Code* violated the *Charter* and were not saved by section 1. The crux of *Bedford* is that the offences did not merely cause legal sex work to be near impossible, but also made it significantly more dangerous. Following *Bedford*, Parliament created Bill C-46 “*Protection of Communities and Exploited Persons Act*” (“*PCEPA*”). The *PCEPA* aims to address the concerns within *Bedford*, by providing that sex workers can work and advertise legally. Moreover, sex workers who pay for services such as, accounting or security became legally excusable payments under the *PCEPA*. It is the procurers of sexual services who shoulder criminal liability for the purchase of sex.

The eventual goal of the *PCEPA* is to abolish sex work in Canada, on the premise that the industry disproportionately exploits women and girls. As such, the *PCEPA* criminalises the purchase of sexual services, and third-party advertising of sexual services to discourage and eventually eradicate sex work. The *PCEPA* also criminalises third party actions by prohibiting financial benefit (with some exclusions), procurement for consideration, recruiting for sex work, or exerting control over an individual’s movements for the purpose of sex work for consideration. Overall, the major focus of the offences within the *PCEPA* is on those who purchase sexual services and those who benefit from the exploitation of those engaged in providing sexual services.

However, *PCEPA* has resulted in some unforeseen and troubling consequences for sex workers. Since the amendments in the *PCEPA*, sex workers report fear of arrest under section 286.1 which prohibits

“communicating with anyone for the purpose of [obtaining sexual services for consideration]” with further punishment for communicating for this purpose “in a public place, or in any place open to the public view”. This offence provides the police with a great deal of power over sex workers and their business. As a result, sex workers fear arrest and police abuse of power (Hollett 2016). The fear of arrest forces sex workers to prioritize avoiding arrest over their own safety such that they do their work in hiding (Hollett 2016). Browne (2019) at Global News, found that since the changes in 2014, sex workers have experienced increased negative interactions with law enforcement, targeted violence, fear of reporting, unwanted or unsolicited police interactions, and targeting of sex workers who are even more vulnerable such as Indigenous, Black, trans, and migrant sex workers, as well as sex workers who use drugs. Sex workers are also not provided labour protections such as a negotiated business contract, because their work is not legal for their patrons (Hollett 2016).

Sex workers report targeted harassment and poor relationships with police in Canada and on a global scale, likely due to the criminalisation and stigmatisation of sex work in many countries (Lyons et al., 2017; McBride et al., 2020; Decker et al., 2012; Platt et al., 2018; Rhodes et al., 2008). The link between sex work laws, policing practices, and sex workers’ health and safety was explored in an influential 2018 meta-analysis by Platt and colleagues. The authors pulled data from a total of 40 quantitative and 94 qualitative studies published since 1990 across the world. Results from the 40 quantitative studies indicated that repressive policing was associated with increased risk of sexual and/or violent victimisation, contracting sexually transmitted infections, and condomless sex. Common themes that occurred across the 94 qualitative studies included police violence or abuse of power (e.g., arbitrary arrest, bribery, extortion), sexual and violent victimisation, lack of justice, and forced HIV testing. As a result of police harassment against sex workers and/or their clients, sex workers were forced to operate in isolated areas with little peer support and access to risk-reducing services. These effects were even stronger for marginalised sex workers. In decriminalised settings, however, there was improved access to justice and negotiating power with clients. Platt and colleagues (2018) conclude that the decriminalisation of sex work is associated with better health and safety outcomes for sex workers.

Although legalisation and decriminalisation are important first steps to reducing involvement in the criminal justice system, de-stigmatisation may be a requirement for improving relationships between sex workers and the police. Stigma has long been associated with sex work (e.g., Minichiello et al., 2017; Pheterson, 1990; Weitzer, 2009), and contributes to psychological distress (Quinn & Chaudoir, 2009) and poor health outcomes (Lasarus et al., 2012; Sawicki et al., 2019) among sex workers. Notably, a study by Sprankle and colleagues (2018) found that participants responded with less empathy to a rape victim who was a sex worker than a rape victim who was not a sex worker. It is therefore possible that the stigmatisation of sex workers explains their treatment in the criminal justice system such that they are not taken seriously after reporting crimes (Sprankle et al., 2018). Some studies have found that legalisation of sex work leads to a reduction in stigma (Weitzer, 2000) while others have found no association (Kotsadam & Jakobsson, 2014). There is an urgent need for more research examining this relationship in sex worker samples, but it is generally well-accepted that the stigmatisation of sex work is at least partially responsible for preventing workers from accessing justice (Sprankle et al., 2018; Weitzer, 2009).

Though the Mass Casualty Commission has not yet heard from the sex workers who interacted with the perpetrator, there is evidence that strongly suggests his involvement with this population. First, the Task Actions Report (COMM0009626, cited from COMM0052034) found that the perpetrator had performed internet searches for sex workers in the Halifax area. Second, Lionel Lewis, an employee of the perpetrator, reported that the perpetrator said he had been on vacation and paid young girls \$20 for sexual services (COMM0006937). Finally, Lisa Banfield reported interactions between the perpetrator and sex workers or other vulnerable women in multiple statements (COMM0003436, COMM0050847). Specifically, Ms. Banfield details that the perpetrator had once spent a night at the house next door to their Dartmouth residence, which she had referred to as a ‘whore house’ and ‘crack house.’ When Ms. Banfield entered the building the following day, she discovered that many of the women were severely intoxicated. This was later corroborated by Ms. Banfield’s friend, Renee Karsten (COMM0010163), who Ms. Banfield told about the incident at the time. Taken together, these incidents provide indication that the perpetrator had frequented sex workers, especially those engaged in survival sex.

Conclusion

The Commission ought to engage with the perpetrator's targeted victimization of especially vulnerable women in the years leading up to the mass casualty. The perpetrator was able to commit violent crimes against an unknown multitude of women, with impunity, due to their various vulnerabilities, and the barriers they faced in accessing justice. The Commission has an opportunity to learn about the risk factors of mass casualty perpetrators, by deeply interrogating the perpetrator's historical violence against vulnerable women, and why our government institutions failed to stop it.

TOPIC 2: Criminalization of Victims of Domestic Violence and Coercive Control

Background and Psychology of Domestic Violence

Domestic violence refers to the verbal, emotional, physical, or sexual abuse of one's partner (Alejo, 2014). Despite being experienced by all genders, domestic violence is predominantly experienced by women (Ceballo et al., 2004). As many as one-third of all women will be abused by a domestic partner at some point in their lives (Ceballo et al., 2004). The psychological impacts of domestic violence on survivors are both pervasive and far-reaching (Ceballo et al., 2004).

The psychological assessment of Lisa Banfield (COMM0058792) provides a scoping literature review of domestic violence. It describes that the three most common typologies of domestic violence are: 1) situational couple violence, or violence used to control specific situations; 2) intimate terrorism, or abuse used to establish a pattern of total control; and 3) violent resistance, or violence used by the victim to fight back. The reasons that survivors may stay in domestic violence situations are numerous and complex, and include feelings of attachment to the perpetrator, economic concerns, isolation from support systems, concern for the wellbeing of children, and psychological difficulties. The psychological assessment also discusses the reasons why survivors may not report their abuse. Finally, the cycle of abuse is discussed, including how the abuse develops and how perpetrators use promises of change and increasing levels of violence to develop absolute control. These topics were comprehensively canvassed during Phase 2 roundtables and participant submissions.

There is a strong link between violent victimization and poor psychological well-being, and experiencing violence is strongly correlated to the use of mental health services (Avidbegovic et al., 2017). This is also

true for domestic violence survivors (Avidbegovic et al., 2017), for which the psychological impacts of domestic violence on victims have been well documented. Domestic violence has been identified as a reliable risk factor for the development of various psychological and psychiatric disorders (Avidbegovic et al., 2017; Ceballo et al., 2004). Some of the most well-known psychological outcomes of domestic violence on women are: aggression, anxiety, concentration problems, depression, dysthymia, eating disorders, emotional avoidance, impulsiveness, loss of intimacy, low self-esteem and self-respect, minimization of abuse, nervousness, panic attacks, personality disorders, phobias, post-traumatic stress disorder (“PTSD”), sexual dysfunction, sleep disorders, social dysfunction, somatization, substance abuse, and suicidality (Alejo, 2014; Avidbegovic et al., 2017; Ceballo et al., 2004; Fahmy & Rahman, 2008; Ferrari et al., 2014; Fikree & Bhatti, 1999; Flury et al., 2010; Humphreys & Thiara, 2003; Kumar et al., 2005; Roberts et al., 1998; Sharma et al., 2019; Stewart & Robinson, 1998; Weingourt et al., 2001). Amongst these outcomes, many are long-term, with depression, PTSD, and substance use disorder being the most prevalent long-term disorders (Alejo, 2014; Ceballo et al., 2004). Research has shown that these negative psychological outcomes are most prevalent amongst older domestic violence victims and those who experience more severe forms of abuse (Avidbegovic et al., 2017; Ferrari et al., 2014). In addition, as the severity of domestic violence experienced increases, so do symptoms of mental illness (Ferrari et al., 2014).

Victims of domestic violence frequently blame themselves for their victimization. In turn, self-blame has been associated with negative psychological outcomes (Kyu & Kanai, 2005). In fact, some research has shown that the psychological and emotional impacts are more damaging to the long-term health of domestic violence survivors than the immediate physical danger (Alejo, 2014). Domestic violence survivors with mental health concerns are more likely to be in unhealthy relationships, meaning they are at increased risk for repeat victimization (Alejo, 2014). Compounding this, psychological disorders can leave individuals prone to repeat victimization, which in turn increases the severity of their experienced mental health concerns (Alejo, 2014). The personality traits and general emotions of domestic violence survivors have been examined in various studies. In one study by Avidbegovic et al. (2017), it was found that survivors of domestic violence showed higher than average levels of deprivation and aggression. This suggests that survivors of domestic violence were more likely to experience sadness, pessimism, anxiety,

anger, and impulsivity than women who were not exposed to domestic violence (Avidbegovic et al., 2017). In all, this shows that domestic violence can cause significant long-term psychological harm to its survivors.

Criminalization

Criminal offending itself can also result from domestic violence. For instance, women who have been victimized by a domestic abuser are at increased risk of property offending, drug offending, theft, fraud, commercial sex work, and other forms of criminal activity (DeHart et al., 2014; Moe, 2004). Victims may be coerced into illegal activities by their abusive partner or may try to support themselves through theft or other illegal activities if their partner has full control over their finances (Gilfus, 2002). It has been shown that many women who engage in sex work are coerced into doing so by abusive partners (Goodmark, 2021). When women eventually escape the abuse, they may have no resources because domestic violence has the potential to lead to a loss of employment, housing, and educational opportunities; as a result, battered women are at increased risk to engage in criminal activities to survive (Gilfus, 2002).

One significant contributor to the criminalization of domestic violence survivors is mandatory arrest and no drop prosecution policies (Cross, 2018). In Canada, mandatory arrest policies regarding physical and sexual violence have existed for over three decades (Saxton et al, 2021). In the context of domestic violence, mandatory arrest policies permit police to apply an incident-based approach wherein they look for signs of physical or visible injury, the use of weapons, and the presence of witnesses when determining who to charge (Hirschel & Buzawa, 2002). In cases where victims retaliate as a form of self-defence, they may be charged along with their abusers (Cross, 2018; Duley, 2007). If they confide in someone about the abuse, and this person then takes the life of the abuser, the victim may be charged with conspiracy and remain to be held accountable for the death (Duley, 2007).

Research suggests that police policy and training fail to equip officers with the skills needed to identify and respond to the often-insidious nature of domestic violence. One study of police in New Brunswick found that 58 percent of police believed intimate partner violence to be definable as predominantly physical violence (Gill et al, 2021). As a result, police in New Brunswick are more than likely unable to

understand how coercive control (discussed further below) presents in its victims. Since the adoption of mandatory arrest policies, there has been a drastic increase in the number of women arrested in domestic violence situations (Goodmark, 2021). Furthermore, victims may feel as though these mandatory policies serve to undermine their autonomy (Cross, 2018). For instance, in jurisdictions with mandatory arrest and no drop prosecution policies, a victim does not have the authority to decide whether her abuser is arrested, charged, or prosecuted (Cross, 2018; Duley, 2007). When victims resist these policies, they are sometimes deemed as helpless, unable to think for themselves, or as being untruthful about the nature of the abuse (Cross, 2018).

Hyper-responsibilization

Hyper-responsibilization plays a key role in the criminalization of women. The term refers to the holding of an individual to higher standards than what would typically be expected of the average person. As it is considered a by-product of patriarchal society, hyper-responsibilization is seen primarily with women and suggests that women are expected to take more responsibility for their actions than men (Bontrager et al., 2013). Women with one or more marginal identities (i.e., women who are racialized, have a disability or a mental illness, are poor, or a sexual minority) are especially susceptible to hyper-responsibilization as they are expected to take more responsibility for their actions than both men and other women (CAEFS & NWAC, 2008; Grant, 2015; Pate, 2018). In Canada, this is particularly notable amongst Indigenous women. Even more often than other women, Indigenous women are expected to be responsible for themselves and for those they care about, especially with regards to their personal safety (Pate, 2018). This hyper-responsibilization is illustrated by the poor systematic response to the ongoing Missing and Murdered Indigenous Women crisis in Canada. Because the system does not afford protections to these women, they are left to find ways to protect themselves against victimization (Pate, 2018).

In the case of criminalized women, hyper-responsibilization is manifest through holding them to a standard that is not equivalent to the standard of responsibility placed on men. Hyper-responsibilization in the criminal justice system has arisen from a shift in penology that has seen men and women go from being treated differently to being treated as one in the same (Bontrager et al., 2013; Boritch, 1992; Freiburger, 2011; Gelsthorpe, 2004; Newburn, 2017). This shift in penology, also known as the

responsibilization strategy, flows from a neoliberalist belief system that places responsibility for crime prevention on the individual instead of the state (Garland, 1996; Grant, 2015). In turn, responsibilization opens the door for women to fall victim to discrimination in the form of being held more accountable for crime prevention than men.

The literature is mixed regarding the attribution of blame in domestic violence situations. Whereas some studies have shown that both men and women are equally likely to assign blame to the other partner in the event of domestic violence, others have shown that women are more likely to blame themselves for incidents of domestic violence than men (Cantos et al., 1993; Henning et al., 2005). This self-blame is particularly evident when the woman is still in the relationship. The blame a woman assigns to herself tends to be placed on something she considers possible for her to change (Cantos et al., 1993). When men blame themselves for domestic violence, they tend to externalize their behaviour or claim self-defence, whereas women tend to blame themselves through internalizing their behaviour (Cantos et al., 1993; Henning et al., 2005). It should be noted, however, that these patterns are not necessarily visible in all domestic violence scenarios. For instance, patterns of blame may be influenced by such factors as the severity of the abuse, the frequency of the abuse, and whether the abused person is still in a relationship with their abuser (Cantos et al., 1993).

Victim blaming is by far the most common way for both society and the victims themselves to hold women accountable for domestic violence situations. With respect to the mass casualty, Lisa Banfield's states on several occasions in her first interview with the police on April 20, 2020 (COMM0003436) that she may have been able to stop the events that took place had she acted differently. The first instance of this is when she describes escaping from the warehouse and running for the woods. She describes hearing voices while hiding in the woods and contemplating going toward them to seek help. She was unaware whether the perpetrator was amongst these people or not. The people she could hear speaking were ultimately killed by the perpetrator. For this, it is clear she felt some degree of guilt: "Part of me felt really guilty 'cause I thought I, maybe I could have saved them by going, you know, maybe they were still alive and I could have got them". Toward the end of the statement, Ms. Banfield makes another reference to how her own actions may have contributed to what took place during the mass casualty. In particular, she criticizes

her choice to run and hide in the woods as she believes it caused the perpetrator to go home-to-home and kill his neighbours. She believes this was done in an attempt to locate her; something he would not have been doing had she stayed with him: “I’m so sorry. Like, that’s the thing ‘cause I just think if I would’ve stayed with him then maybe he wouldn’t have been going looking “. Ms. Banfield made a similar comment in her statement to the psychologist (COMM0050847) when she stated that had she stayed in the police car on the night of the mass casualty, the perpetrator may not have gone to “those other places” in search of her and ultimately would not have killed his neighbors. In her interview with the Commission (COMM0058496), Ms. Banfield remarked that had she taken the guns with her that the perpetrator put in the car, he would not have been able to use them. In the foundational document detailing the perpetrator’s violence toward his common-law spouse (COMM0050900), Ms. Banfield states that on the night of the mass casualty, when the perpetrator burnt his cottage in Portapique, she told him that she would take responsibility for burning the cottage if he would stop whatever he was doing. On the following day, once becoming aware of the mass casualty, Ms. Banfield claimed that none of it would have happened if she had left him earlier.

These statements demonstrate clearly that Ms. Banfield, as a survivor, has allocated a significant amount of blame to herself for what took place during the mass casualty. Many community members, including those impacted by the mass casualty (i.e., family members of victims), place blame on Ms. Banfield and other women victims for the perpetrator’s actions. During Ms. Banfield’s testimony to the Commission, some victims’ family members openly jeered at Ms. Banfield as she testified to the abuse she suffered, and the emotional and physical pain she continues to experience. Some family members have launched an ongoing campaign of blame against Ms. Banfield, using social media and traditional media to communicate their views. They are not alone in their thinking that women victims are responsible for the wrongdoing of men. In Leon Joudrey’s statement to police (COMM0009109), he blames Lisa McCully for the issues that existed between him and the perpetrator. He suggests that Lisa McCully telling the perpetrator that she was seeing Leon contributed to the perpetrator’s behaviour. Despite this, he claims he was not blaming her.

Coercive Control

Coercive control was originally conceptualized as a re-framing of Battered Woman Syndrome (“BWS”) (discussed further below) and was developed by Dr. Evan Stark (Stark & Flitcraft, 1996). Coercive control is defined as strategic behaviour to secure and expand gender-based privilege by dominating the personal life of another individual (Stark, 2007). Proponents of this theory highlight that coercive control is independent of whether physical violence is present; rather, coercive control can encompass verbal, emotional, and financial abuse (Flynn, 2019). Unlike the discrete physical acts considered typical of domestic violence, coercive control is ongoing and not necessarily visible to those observing a domestic violence situation from the outside. It is therefore not just learned helplessness that keeps women in an abusive relationship, but an element of control that physically and psychologically closes escape avenues for women. The literature makes it clear that leaving a domestic violence situation is a complex and multifaceted decision for survivors (e.g., Avidbegovic et al., 2017; Flury et al., 2010), all of which can be incorporated into the coercive control framework.

Unlike BWS, Stark emphasized the power structures that enable and prolong domestic violence to occur. It is a combination of coercive control and institutional failure to respond to women who report their abusers that creates the environment for persistent violence (Stark, 2007). In addition to domestic violence not being taken seriously, victims can be hesitant to report violence to the police for a variety of reasons, such as not being taken seriously (Erez, 2002). Additionally, victims often have interests that oppose the interests of the courts, making it a complicated and unsuccessful process. For example, victims may wish for a quick and private resolution, while the courts value thorough and public accountability (Hart, 1993). Victims are also in the unique position of being intimately close to the perpetrator, putting them most at risk of retaliatory violence (Hart, 1993). This is especially true in the first six months after criminal justice intervention, which suggests that involving the criminal justice system is often an inadequate – or perhaps even detrimental – method of protecting victims (Hart, 1993). Because of this, domestic violence survivors may decide that criminal justice intervention is not worth the risk, leading to a reduction in arrests, charges, and convictions. Thus, coercive control provides a more fulsome explanation for why women kill their partners: the coercive control is so extensive that it won’t end even if the victim leaves the relationship, and institutional supports have failed to provide refuge from the abuse. This leads the victim to feel that the only possible escape route is homicide. Importantly, coercive control is not a pathological diagnosis

but a contextual state; the victim would not have resorted to homicide but for a variety of situational factors.

Effects of Criminalization

Women are being incarcerated at a rate that has steadily increased over the last several decades (Bontrager et al., 2013; CAEFS & NWAC, 2008; Freiburger, 2011; Gelsthorpe, 2004; Pate, 2018). In Canada, Black and Indigenous women are far more likely to become criminalized than non-Indigenous women (Cunneen & Tauri, 2019; Hinton et al., 2018), which supports the cumulative disadvantage theory. Cumulative disadvantage describes the accumulation of disadvantages (e.g., substance use puts women at higher risk of sexual abuse) and/or the cumulative impact of a specific disadvantage (e.g., criminalization) over time (Kurlycheck & Johnson, 2019). When discussing the impact of criminalization, it is important to recognize that disadvantages accumulate prior to, during, and after involvement in the criminal justice system.

It is well established that there is poorer mental health status as well as higher rates of substance use disorders among incarcerated women compared to incarcerated men and community samples (Fazel et al., 2006; Marcus-Mendoza, 2010; Steadman et al., 2009; Taylor et al., 2019; Warren et al., 2002). Criminalized Indigenous women are also more likely to suffer from substance dependence, domestic violence, and trauma (Cunneen & Tauri, 2019). Though the prevalence and type of mental disorders varies between men and women in correctional settings, the treatment opportunities available across prisons and gender are often the same. For example, therapeutic communities that tend to use a more confrontational approach are used with both men and women even though trauma-informed, gender-responsive therapy has been shown to be more beneficial for incarcerated women (Saxena et al., 2014). This is especially true for incarcerated women with histories of trauma, abuse victimization, and substance use disorders (Saxena et al., 2014). Therefore, despite the emphasis of correctional facilities attending to the risk, needs, and responsivity of incarcerated people, the unique needs of incarcerated women are often overlooked.

Furthermore, women's experiences in correctional environments can have long-lasting psychological effects (Baldry, 2018; Saxena et al., 2014). In the first few weeks after release from incarceration, women have a higher relative risk of death than men (Binswanger et al., 2007). A literature review by Stanton and

colleagues (2016) found that some of the main concerns for women post-release were trauma, substance use, accessing mental health care and other basic needs. Specifically, addiction is a concern for incarcerated women released back into the community as substance use is one way that women can violate parole, placing them back into the criminal justice system (Saxena et al., 2014). Although women overall have lower recidivism rates than men (Kong & AuCoin, 2008), Baldry (2018) writes that desistance from crime is not the problem; rather, it is “moving to a better space” (p. 261). After incarceration, criminalized women continue to live in social and sometimes physical isolation (Baldry, 2018). Researchers have suggested that post-release care is not always gender-specific, resulting in many women with special needs being left with little transitional and long-term support (Baldry, 2018).

Lisa Banfield

Although Lisa Banfield is a uniquely high-profile and well-resourced criminalized woman, and she was never incarcerated, her experiences of isolation and stigma largely coincide with that of other criminalized women. In her testimony before the Commission, Ms. Banfield described the wellspring of support that existed for her – until she was criminally charged, at which time most community and personal support abruptly ceased. Ms. Banfield acknowledged that without her family support, she might have become homeless. She lives with the fear of people attacking her, because of holding her responsible for the crimes of the perpetrator.

Lisa Banfield was a victim of domestic violence in her relationship with the perpetrator. Her psychological assessment (COMM0058792) details the nature of the domestic violence to which she was subjected. Much of this evidence was repeated in Ms. Banfield’s oral testimony before the Commission. For example, after the fifth month of being together, Lisa noted that the perpetrator’s mood changed and that he began acting verbally violent toward her, including calling her names and telling her she was the most miserable person to ever live. The frequency and severity of the abuse steadily increased, alongside his alcohol consumption. The perpetrator appeared ambivalent to her threats to leave the relationship, all of which contributed to Ms. Banfield’s negative emotional state. Janice, Ms. Banfield’s sister, details how Ms. Banfield did not consider herself a victim of domestic violence because she was not beaten every day. She also details that Ms. Banfield convinced herself that she could change the perpetrator and give him the

love that he never received when he was younger. As the abuse continued, Ms. Banfield spoke less and less about it to family and friends, increasing her isolation.

The evidence suggests that Ms. Banfield demonstrated the responses of self-blame, a sense of responsibility, and minimization that are typically seen with domestic violence survivors. In her first statement to police (COMM0003436), Ms. Banfield details how she would not involve the police when she was beaten by the perpetrator. She also explains how she took him back every time the perpetrator cheated on her. In effect, she is demonstrating the common pattern of self-blame, minimization, and rationalization commonly engaged in by domestic violence survivors. In her statement to the psychologist (COMM0050847), Ms. Banfield reports being aware that the abuse she suffered was wrong but could not explain why she chose to put up with it. When the perpetrator cheated on her at the crack house, she asked herself what was wrong with her for him to want to do that. Ms. Banfield feared for her family's safety, which is part of the reason she would not leave him. She felt like a hostage at times and would lie to those around her as to not involve them.

It could be argued that there are advantages to considering BWS *and* coercive control when examining Lisa Banfield's circumstances. Both recognize that there is a distinct lack of agency for victims of domestic violence like Lisa Banfield. BWS provides an explanation for the cyclical processes that lead to women, like Ms. Banfield, who 'choose' to stay in an abusive relationship. It explains the behaviour of battered women as a pathology that develops via prolonged exposure to physical violence, eliminating much of the responsibility for the victim's subsequent behaviour. BWS would dictate that Ms. Banfield was in a circumstance that led to her complying with everything the perpetrator asked of her, including transporting weapons illegally. However, coercive control provides a more comprehensive framework to explain why abused women behave in a seemingly irrational manner. It emphasizes the complex and varied nature of domestic violence as well as the systemic failures that leave women trapped in abusive relationships. Coercive control would suggest that Ms. Banfield was doing whatever she could to survive an inescapable situation with the perpetrator, given the failures of the police and legal institutions to recognize and respond to the abuse she was suffering.

Defences available for Criminalized Victims of Violence

BWS in the Law

Evidently, psychologists and researchers have accumulated thousands of works on the psychology behind domestic violence and BWS. However, BWS is primarily considered in legal rather than psychological or therapeutic contexts. BWS itself is not a full legal defence, but it can be used to inform the evidentiary basis for criminal defences, such as duress or self-defence. However, intimate partner violence and coercive control do not easily fit into existing criminal defences. In the context of intimate partner violence there may not be one singular violent incident that compels a survivor to act, or that spurs the act of self defence (Osthoff). Rather, survivors of intimate partner violence live in an ongoing state of abuse, and it is this larger context that often leads survivors to act in self defence, or under duress. Similarly, coercive control often causes a woman to participate in criminal activity because her partner's manipulation of her is so complete that she cannot see an alternative.

In the cases of *Whitten, Bennett, Craig, Malott, Mackenzie, Whynot, and Ryan*¹ women who were abused by their male partner did not kill their partner due to an imminent threat in the "usual sense." Rather these women killed their partner because they had nowhere else to turn, and because they had reached a breaking point after years of abuse. This pattern illustrates that survivors of intimate partner violence who kill their abuser infrequently do so based on a direct threat as contemplated by the self defence provision. Rather survivors reach a breaking point and a level of hopelessness that drives them to end the violence and control by killing their abuser. This experience of hopelessness is recognized in psychological analyses of survivors and sociological studies. However, the law leaves little room to consider these circumstantial factors.

As a result of criminal defences being unavailable to survivors of intimate partner violence, survivors are at significant risk of criminalization, and all the harms that flow from it. Survivors are viewed by the justice system as abusers themselves, despite research indicating that when women exert physical violence, the power dynamic/relationship of control is rarely, if ever, altered between them and their abuser (Miller, Meloy). Furthermore, male abusers are known to "strategically engage the power of

¹ See works cited for citations.

various legal systems” such that survivors are inundated with court dates and expenses (Mosher at page 152). For instance, where survivors experience intimate partner violence and face criminal charges it is likely that issues of child custody, and/or immigration will be brought to light in a separate proceeding by a vengeful ex-partner (Mosher at page 160).

Self defence

Self defence amounting to the use of deadly force requires reasonable apprehension of a fatal assault, and for the fatal assault to be reasonably defended (s. 34, *Criminal Code*). There are nine factors enumerated in section 34(2) that the court may consider including, imminence (s. 34(2)(b)), “the size, age, gender and physical capabilities of the parties to the incident” (s. 34(b)(e)) and “any history of interaction or communication between the parties to the incident” (s. 34(2)(f.1)) Where there is evidence of BWS, the court can modify their understanding of reasonableness such that what is considered reasonable apprehension of danger, and reasonable in the circumstances is contextually specific to the abusive relationship. However, the case law demonstrates a pattern of survivors who kill their partners but whose actions are most often impossible to fit into the law’s conception of “reasonableness” and “imminency”. Issues concerning imminency, compulsion, and reasonable belief play into duress as well.

In 1990, the Supreme Court of Canada released a foundational decision concerning BWS (*R v Lavallee*). The Court in *Lavallee* found that expert evidence can be used to prove the context of abuse which can then be used to evaluate a claim of self defence. Although expert evidence can provide education and context, expert evidence cannot be used in isolation as an evidentiary basis for self defence. There must be further evidence on the record linking the killing to reasonable apprehension of death (*Lavallee* at para 65-69). For instance, Lavallee expressed in her statement to the police that her abuser was going to kill her if she did not act first (*Lavallee* at para 3). And it seems as though it was *this* testimonial evidence, more than the expert evidence, that led the Court to find putting self defence to the jury appropriate (*Lavallee* at paras 65-69).

Lavallee was heralded as creating progressive, incremental change in the law. Martha Shaffer found that from the advent of *Lavallee* until 1995, Crown prosecutors were more likely to both withdraw charges,

and to allow survivors to enter guilty pleas for lesser offences like manslaughter (Shaffer page 5, 6). However, the case law following *Lavallee* reveals that the Supreme Court did not create law that could be straightforwardly, or consistently applied.

Craig and *Mackenzie* were decided in the post-*Lavallee* era, and after the self defence provision in the *Criminal Code* was amended. In both cases, the courts found that although both women were undoubtedly experiencing abuse, they did not have the requisite evidence for a self defence claim (*Craig* at paras 8-41; *Mackenzie* at paras 3- 27). Namely, they required further evidence to demonstrate that they were in harm's way and thus had to act when and how they did. The problem is that the accused used self defence in anticipation of a threat they sensed, rather than one they directly heard. Fundamental research concerning BWS demonstrates that survivors of violence are acutely aware of their abuser's moods and behaviours such that they can predict serious violence (*Lavallee* para 45-46). But survivors' intuition into their abuser is not accounted for in the *Criminal Code*'s self defence provision (s 34), or at common law. Despite the fact that *Lavallee* modified the reasonableness standard in self-defence for survivors of violence, the defensible action must fit into the existing legal understanding of what constitutes self defence (para 37-38). *Craig* and *Mackenzie* demonstrate the failure of this rigid approach.

An earlier case, *Malott* (1996 COA; 1998 SCC) also demonstrates the failure of this approach. Malott was choked by her abuser shortly before she killed him (1998 at para 24) and yet she was convicted of second-degree murder. At both the Ontario Court of Appeal and the Supreme Court of Canada there were dissents by Justice Abella and Justice L'Heureux Dubé. Both dissents draw important conclusions about the state of the law in this area and how it fails survivors.

At the Ontario Court of Appeal, Justice Abella criticized the trial judge for failing to adequately consider the context of the abusive relationship. Justice Abella's dissent presented additional facts concerning the abuse Malott suffered in the weeks and hours before the violent incident. Malott was degraded and dehumanized by her abuser; the sexual and physical violence she suffered was extremely severe and existed alongside consistent coercive control. Abella J. argued that it is insufficient for a trial judge to merely acknowledge and accept that abuse occurred without outlining how the abuse is relevant to her apprehension of danger, and the reasonableness of her actions (with regard to jury instruction).

Upon appeal to the Supreme Court of Canada in 1998, Justice L’Heureux Dube opined that the law has created a new category of reasonableness – rather than a reasonable man, or woman there is now a category for “battered woman”. In turn, a survivor of abuse must have “personal inadequacies” to explain why she acted how she did, or why she did not take available legal alternatives (para 40, 41). Importantly, Justice L’Heureux Dube observed that there are fundamental, systemic factors that prevent survivors from leaving their abusive relationship, even if they do not obtain “personal inadequacies” (para 42). Although the law is willing to look at intimate partner violence through a highly individualized, subjective lens, the law is unwilling to consider a broader, societal context (para 43).

Duress

In cases such as *Ryan*, and *Fournier*, survivors attempted to use the defence of duress, ultimately without success. The defence of duress requires that a person acted wrongly and did so under compulsion of serious threats (s 17, *Criminal Code*). In cases where the defence of duress is argued in tandem with evidence of BWS, survivors of intimate partner violence are seen as autonomous, and independent rational thinkers who should have acted otherwise. In these cases, there is a sense of victim blaming – wherein the court argues that so long as survivors have a legal alternative of escape, and they are not directly compelled to commit crimes then they are culpable for their choices. Otherwise, the element of “moral involuntariness” is not met. But this approach fails to grasp the nature of intimate partner violence and coercive control. The facts of *Ryan*, presented in detail by Professor Lori Chambers during Phase 2, are a testament to this assertion.

In *Fournier*, the court found that the defence of duress was not appropriate because the accused was not compelled to act by an immediate threat. The court found that she was influenced by her abusive partner, but that the influence did not reach the threshold for “compulsion by threat” (*Fournier* at page 379). The court held that because *Fournier* had fled to a shelter, she could not have been acting under duress due to BWS (at page 370). In both cases, the women were acting out of fear. They had fundamental experiential knowledge that informed them that they had to act in line with their abuser’s wishes. Yet this experiential knowledge garnered by living in a constant state of control and manipulation is largely irrelevant to established statutory and common-law criminal defences.

The influence of romantic partners on woman-perpetrated crime is well-established. In a 1992 study by Gilfus, interviews with 20 imprisoned women were conducted to examine the influence of their male partners. Gilfus notes that most women ‘were quick to take responsibility’ (p. 81) for the crimes but noted that many were violently abused and encouraged to use drugs by their partners. These findings were replicated again in a sample of 50 women interviewed by Jones (2008). Jones identified several themes surrounding the commission of the crime, including that the woman had done so in direct relation to a threat or attack from her partner or had been expected to do so from her partner. These findings have been replicated repeatedly through the years (Becker & McCorkel, 2011; Douglas, 2017; Hulley, 2021). Much of this research is based in the U.K., where coercive control was criminalized in 2015 (Robinson et al., 2017). We note that the law is controversial and has attracted academic scrutiny and critiques: Burman & Brooks-Hay, 2018; Tolmie, 2017; Walklate et al., 2017.

Conclusion

There is a predictable pipeline whereby the coercive control of a woman frequently leads to her involvement in the criminal justice system. There is no evidence in the case law to suggest that BWS has been used as a defence in a criminal charge apart from homicide in Canada. We conclude that the law is vastly out of sync with the complex reality of domestic violence and coercive control.

TOPIC 3: Discussion of Recommendations

Recommendation #1: Fund community organizations with a proven track record of enacting change

The Commission heard from panellists and experts that although each community in Canada has struggles with coercive control and domestic violence, each community is also unique in how those struggles manifest. Canada is a vast country with infinite variations of culture, demographics, and norms. A white domestic violence survivor living on a farm in rural Saskatchewan does not have the same needs and vulnerabilities as an indigenous domestic violence survivor living in a shelter in downtown Toronto. Even within Nova Scotia, there is a tremendous range of demographics and needs: a university student in the South End of Halifax will need different resources than an elderly African Nova Scotian in Guysborough.

When sweeping policies are created and implemented by government bodies from the top down, these variations are glossed over, and the unique needs of our diverse population go unmet.

Community service organizations that operate locally have the inside knowledge of what their communities need to be safe and supported and are nimble enough to respond to changes in the environment. Our organizations' members develop relationships of care and trust with the clients we serve. We are client-centred; rather than serving the public at large (as government bodies are required to do), we can advocate fiercely and tirelessly for our clients on an individual and systemic level and draw on our community connections to develop wraparound supports for vulnerable persons.

The proficiency of community organizations in effecting positive change is often developed by learning directly from the preeminent experts: those with lived experience. By engaging directly with individuals who have walked the terrible road of intimate partner violence, organizations learn what survivors need to attain safety and dignity. At Elizabeth Fry, we employ persons with lived experience wherever possible within the organization, including in leadership and advisory roles. In this way, we ensure regular contributions from those most affected by violence and criminalization, so that our policies and practices can continually improve. Having learned the value of hearing from those most affected by our work, Elizabeth Fry has been steadfast in its conviction that the Commission ought to hear and learn directly from persons with lived experience throughout the proceedings. Those individuals possess a distinct expertise complementing that of academic specialists; their voices are vital.

Community service organizations can only do their work properly when their funding is sustainable and adequate to deliver services to all clients within their mandate. As it stands, many organizations are required to devote a significant amount of their working hours to searching out and applying for short-term grants. It is untenable for these important services to be left to chance: whether organizations will secure funding for one more year - or not.

Recommendation #2: Gender-based violence and the criminal justice system

The realities of gender-based violence and its impacts need to be meaningfully considered at every stage of the criminal justice system, from police investigation to sentencing to reintegration. Pro-arrest, pro-

charge and pro-prosecution policies need to be evaluated to determine whether they keep victims safer. Drawing from Commission panel discussions on this issue, we understand that clients often feel *less* safe when their abusers are charged, and that abuse often escalates after the police become involved. We also know that women who have been abused and coerced often end up charged because of these policies, indicating that they are not having the intended effect.

In addition to policy changes, individual police officers, Crown attorneys and other justice system participants need to be well-versed in the lived realities of gender-based violence. It is not enough that high-level policy reflects an understanding of domestic violence and its impacts on survivors; the workers that populate our justice system can only respond with the appropriate care and concern when they have been educated on the insidious and all-consuming experience of intimate partner violence. Hiring policies should give preference to individuals with education and work experience that offer deep insights into the nature of intimate partner violence (i.e., social work, gender studies, etc.), as well as persons with lived experience. Dedication to justice for survivors of violence should be a cornerstone of our justice system rather than an addendum to its mandate. This objective will only be achieved when its participants are, as individuals, demonstrably committed to its realization.

Recommendation #3: New legislated defence of coercive control

We echo the comments of Dr. Amanda Dale that the judiciary needs robust education about the realities of intimate partner violence, but it also needs the tools to respond and stand up for victimized women in our criminal justice system. There has been some discussion about legislating a new offence of “coercive control” in the *Criminal Code*, but we urge the Commission to consider a new legislated defence of coercive control.

A recent article published by Susie Hulley illuminates the unfair treatment of domestic violence victims in the criminal justice system. Hulley’s research concludes that there are two primary ways in which victims’ experiences of abuse impact on their criminal convictions for violent offences:

First, by restraining the women’s choices in relation to their presence at the scene, their ability to withdraw or their assistance or encouragement of the offence. Second, by constraining the

women's engagement with the police investigation, in turn supporting officers' (often gendered) inferences about women's roles in 'assisting and encouraging' their partners... These practices emulate and deepen systemic failures of the State to recognise domestic abuse and coercive control in the lives of many of these women. (p. 587)

Notwithstanding the growing body of research on the impacts of coercive control, and the manipulation of women at the hands of their abusers, there is no formal recognition of a victim's diminished responsibility within the criminal justice system. It is disingenuous for our government to claim that Canada cares for the plight of domestic violence survivors while it continues to criminalize and incarcerate those victims at an exponential rate. As set out earlier in these submissions, recent jurisprudence has held that the existing legislated and common law defences are not applicable to the phenomenon of coercive control, and crimes committed by its victims. Bold changes are required to interrupt the pipeline from victimization to criminalization for those victims caught in the web of coercive control.

A new legislated defence of coercive control would provide victims with a shield against their abuser and the state once they are confronted with a criminal charge. A statutory defence of coercive control would be driven by a victim-centred, non-carceral approach to criminal justice that focuses on the woman's experience and her protection from the cycle of harms. This defence can be contrasted with a new offence of coercive control, which is rooted in a punitive approach toward the abuser. The latter approach is indifferent to the victim's access to justice yet again, as she is relegated to the role of witness for the state, which is likely to place her more squarely in the abuser's path of destruction.

Recommendation #4: New legislated duty of care owed by police to victims

The duty of care owed by police is a complex question that received limited attention throughout the Commission proceedings. In *Doe v Metropolitan Toronto Commissioners of Police*, the Courts established that police owe a duty of care to protect potential victims if there is sufficient proximity. Justice Moldaver (as he then was) relied on section 57 of the *Ontario Police Act* which legislated a duty to preserve the peace, prevent crime, and apprehend offenders. *Doe* has guided Canadian jurisprudence in analysing what duty of care, if any, exists for potential victims.

In *Hill v Hamilton-Wentworth*, the Supreme Court of Canada established a duty of care owed by police to suspects. This decision established the tort of “negligent investigation”. The majority reviewed the existing torts available to plaintiffs (e.g., false arrest or imprisonment, malicious prosecution, *Charter* violations, etc.) and determined that they did not provide an adequate scope of remedies. Despite its name, “negligent investigation”, this tort is exclusively available to suspects, and not to any other party involved in the investigation.

The narrow scope of the established torts does not encompass a duty of care to victims of a crime during a police investigation. Currently, EFMNS is working with three women who reported being the victim of brutal sexual assaults to the police and suffered extreme injustice because of the police investigations. The evidence in these cases suggest instances of: falsifying police records, withholding evidence from the Crown, losing evidence, and giving suspects pre-warning of scheduled searches of the alleged crime scenes, failing to interview witnesses, failing to attend the crime scene, and allowing stereotypical judgements against the victims to influence their decisions. Despite these obvious failures, our clients are forced to choose between engaging in the gruelling court processes to establish a new duty of care by the police or resigning themselves to the twin injustices of victimization at the hands of the original perpetrator and the police. We urge the Commission to recommend the legislation of a duty of care owed by police officers to victims.

Conclusion

During recent Commission proceedings, the Commission heard from international and local experts about the horrifying and apparently intractable problem of intimate partner violence and its relationship with mass casualty events. We were also heartened to learn of the demonstrable positive effect of community service organizations intervening to support and care for victims of domestic violence, as they seek to extricate themselves from abusive relationships and enjoy safe and healthy lives. As it develops its recommendations, we ask the Commission to consider the important role of grassroots organizations, by advocating for adequate and sustained funding for those entities. We also urge the Commission to reflect on the role of Parliament in ensuring that our laws keep pace with social science and the lived experience of community members. If the law is meant to promote peace, safety, and security, it is falling woefully

short of this mission vis a vis the scores of vulnerable victims of intimate partner violence across the country. Canada can and must do better, and we trust that the Commission will assist in steering our country toward greater justice for survivors of violence.

Thank you for your consideration of our submissions.

Sincerely,
ELIZABETH FRY SOCIETY OF MAINLAND NOVA SCOTIA



Jessica D. Rose
Counsel

Encl.