

**Submission to the Standing Committee on the Status of Women for its  
Study on Intimate Partner and Domestic Violence in Canada**

**A Consideration of Laws and Policies  
Affecting Intimate Partner Violence Across Canada**

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## **A Consideration of Laws and Policies Affecting Intimate Partner Violence Across Canada<sup>2</sup>**

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There are myriad laws and policies related to intimate partner violence (IPV) across Canada. Based on Canada's federal system, these laws exist at the federal and provincial/territorial levels, and Indigenous communities may also have their own IPV laws.<sup>3</sup> Governments have expanded the legal frameworks and remedies for IPV over the past several decades to respond to the many legal issues that flow from this systemic social problem. Laws and policies are only one aspect of governments' obligations to prevent and respond to IPV, but they are nevertheless a critical aspect.

Our research maps the laws, policies, and legal systems related to IPV in several domains: (1) Civil Protection Orders; (2) Domestic Violence Disclosure Laws; (3) Family Laws; (4) Child Protection Laws; (5) Criminal Laws and Policies and Domestic Violence Courts; (6) Victim Compensation and Victims Rights; (7) Family Violence Death Review Committees; (8) Legal Aid and Legal Assistance/Supports; (9) Civil Law and Limitation Periods; (10) Residential Tenancies Laws; (11) Immigration & Refugee Laws; (12) Social Housing Laws; (13) Social Assistance Laws; (14) Employment & Occupational Health and Safety Laws; (15) Human Rights Laws; and (16) Privacy Laws.

All of these laws, policies, and legal systems can interact and intersect in complicated ways that affect the access to justice and safety of survivors of IPV—who are mostly women—and their children.<sup>4</sup>

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<sup>2</sup> This brief is based on a report we submitted to Women's Shelters Canada in April 2021, "A Comparison of Gender-Based Violence Laws in Canada: A Report for the National Action Plan on Gender-Based Violence Working Group on Responsive Legal and Justice Systems", available at <https://ssrn.com/abstract=3995519> [hereafter "Comparison of Gender-Based Violence Laws in Canada"]. The full report of Women's Shelters Canada, *Roadmap for the National Action Plan on Violence Against Women and Gender-Based Violence: A Report to Guide the Implementation of a National Action Plan on Violence Against Women and Gender-Based Violence* (April 30, 2021) is available at <https://nationalactionplan.ca/wp-content/uploads/2021/06/NAP-Final-Report.pdf>. See also our publications "The Costs of Justice in Domestic Violence Cases" in Trevor Farrow and Les Jacobs, eds, *The Justice Crisis: The Cost and Value of Accessing Law* (Vancouver: UBC Press, 2020), available at <https://ssrn.com/abstract=3598277> [hereafter "Costs of Justice"] and *Domestic Violence and Access to Justice: A Mapping of Relevant Laws, Policies and Justice System Components Across Canada* (2020 CanLIIDocs 3160), online: <https://canlii.ca/t/szxl>.

<sup>3</sup> Indigenous laws may be enacted pursuant to federal laws such as the *Family Homes on Reserves and Matrimonial Interests or Rights Act*, SC 2013, c 20 and *An Act respecting First Nations, Inuit and Metis children, youth and families*, SC 2019, c 24, or under the inherent jurisdiction of Indigenous peoples.

<sup>4</sup> We acknowledge that a rigid gender binary runs the risk of obscuring the experiences of gender diverse people, including trans women and men, non-binary folks, and two-spirited individuals. Much of the data and research we rely on in our work reports on the experiences of those who identify as "women," and women continue to be disproportionately victimized by IPV in comparison to men. See Statistics Canada, Intimate partner violence in Canada, 2018 (26 April 2021), online: The Daily, <https://www150.statcan.gc.ca/n1/daily-quotidien/210426/dq210426b-eng.htm>. However, many gender diverse folks—especially trans women and men—

In undertaking its Study of Intimate Partner and Domestic Violence in Canada, we urge the Committee to **review these laws, policies, and legal systems**, and to be guided by a **broad notion of access to procedural and substantive justice** that encompasses equal protection of the law, equal access to legal rights and remedies, and safety for women and children.<sup>5</sup>

We also urge the Committee to **consider the potential for national uniformity of laws**. Our research compares provincial, territorial, and federal laws pertaining to IPV to identify gaps, inconsistencies, and best practices. This includes an examination of how various forms of status (for example, marital, immigration, and Indigenous status) can impact relevant legal entitlements. Another concern is that definitions of IPV differ within and between jurisdictions, and coercive controlling violence is only recognized in some contexts. Furthermore, remedies and supports may require different levels of proof or verification of IPV, and remedies obtained in one Canadian jurisdiction may not be recognized in others. **Survivors of violence should not be disentitled to protective remedies depending on their status, the type of violence they experience, or their place of residence.**<sup>6</sup>

**Judicial interpretation of laws related to IPV can also create barriers** to the safety of women and children and their access to legal rights and remedies. We urge the Committee to consider **mandatory judicial education** such as that which exists in the sexual assault context.<sup>7</sup> It is also crucially important to consider whether laws translate into equal and accessible protections for the safety of women and children on the ground through the actions or inactions of other legal actors, including police, Crown, child protection workers, or immigration officials. The (in)actions of these actors may result in **adverse consequences for members of marginalized groups such as racialized, migrant, and Indigenous women**. One overarching observation from our research is that governments do not routinely **monitor and evaluate the implementation and enforcement of their legislation and policy related to IPV**, which is another important recommendation for the Committee's consideration.

**Overall, we recommend that a National Action Plan on Gender-Based Violence be adopted, and that it address the gaps and inconsistencies in IPV laws and policies to ensure the broadest protection possible for all survivors and their children. We also recommend regular evaluations of IPV laws and policies to ensure they are working as intended and do not result in adverse consequences, particularly for members of marginalized groups.**

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experience significantly higher rates of GBA, online: The Daily, <https://www150.statcan.gc.ca/n1/daily-quotidien/200909/dq200909a-eng.htm>.

<sup>5</sup> For further discussion of access to justice and IPV see “Costs of Justice”, *supra* note 2.

<sup>6</sup> See “Comparison of Gender-Based Violence Laws in Canada”, *supra* note 2.

<sup>7</sup> See Bill C-3, *An Act to amend the Judges Act and the Criminal Code* (43<sup>rd</sup> Parliament, 2<sup>nd</sup> Session); Bill C-233, *An Act to amend the Criminal Code and the Judges Act (violence against an intimate partner)* (44<sup>th</sup> Parliament, 1<sup>st</sup> Session). See also our discussion of case law during the initial months of the COVID-19 pandemic, “COVID-19, the Shadow Pandemic, and Access to Justice for Survivors of Domestic Violence” (2021) 57(3) Osgoode Hall LJ 739, online: <https://digitalcommons.osgoode.yorku.ca/ohlj/vol57/iss3/8/>.