

September 18, 2017

The Barbra Schlifer Clinic is responding to the Ontario government's request for input on a proposed gender-based violence (GBV) strategy.

Background on the Barbra Schlifer Commemorative Clinic

The Barbra Schlifer Commemorative Clinic is the only Clinic of its kind in Canada. Since opening in 1985, the Clinic has assisted over 60,000 women. The Clinic provides legal representation, counseling and language interpretation to women who have experienced all forms of violence. We work in over 200 languages, provide a variety of innovative counseling services and are the go-to for community mobilization, public legal education/information and legal representation for gender-based violence across the lifespan nationally and internationally, perpetrated by non-state actors such as family and spouses, stranger and acquaintance sexual assault, state sponsored violence, forced marriage and so-called "honour"-related violence. Currently, we serve about 4,000 women every year.

In addition, we engage in various educational initiatives, including public legal education, professional development for legal and non-legal professionals and clinical education for law students. We work on various law reform activities both within Canada and internationally, and consult broadly with all levels of government on policy or legislative initiatives that impact women survivors of violence. We have been part of numerous legal test cases, are represented at public policy tables and in law reform efforts related to violence against women.

Question 1: We know there are some individuals who experience violence more than others because of who they are and their gender. Based on your experience, as we think about defining gender-based violence, what is important for us to know?

Simply stated, gender-based violence (GBV) is:

The general term used to capture violence that occurs as a result of the normative role expectations associated with each gender, along with the unequal power relationships between the two genders, within the context of a specific society.¹

The Clinic asserts that in defining and developing a strategy to address GBV the Ontario government should pay attention to the following considerations:

1. GBV is a reflection and perpetuation of power inequality.

GBV is centered on sustaining and exacerbating power disparities in a patriarchal society. It has been widely propounded in social science academia that gender is a social construct and the normative construction of gender is used as a “force of societal control”.² GBV is one way to ensure that normative gender roles and the power hierarchies that accompany them are maintained. Consequently, while the vast majority of victims of gender based violence are women³ and almost all perpetrators are men³, GBV is not only a man-on-woman crime. LGBTQI2S individuals are regularly victims of GBV. Despite a dearth of available research, studies tend to show a comparable rate of incidence of intimate partner violence in lesbian, gay and bisexual relationships.⁴ Oftentimes GBV within LGBTQI2S relationships has a distinctively gendered element involving the gender identity and presentation of the victim.⁵ Trans individuals and communities are routinely victimized at a high rate with 20% of trans folks reporting being physically or sexually assaulted, 34% reporting being verbally threatened and/or harassed and 24% reporting harassment by police.⁶

A definition of GBV needs to account for power dynamics, informed by patriarchy, heteronormativity, colonialism, and racism, all of which underwrite and inform GBV. Moreover, understanding GBV against LGBTQI2S individuals requires a consideration of queer theory to challenge the heteronormative lens typically applied to GBV.

2. GBV disproportionately affects some individuals and communities.

¹ Shelah Bloom, *Violence against Women and Girls: A Compendium of Monitoring and Evaluation Indicators* (2008).

² Clare Cannon et al, “Re-Theorizing Intimate Partner Violence through Post-Structural Feminism, Queer Theory, and Sociology of Gender” *Soc. Sci.* 2015, 4 at 9

³ Marie Sinha, “Measuring Violence against Women: Statistical Trends” Catalogue No. 85-002-X (Ottawa: Canadian Centre for Justice Statistics, 2013) at 8-9. Online: <http://www.statcan.gc.ca/pub/85-002-x/2013001/article/11766-eng.htm>

⁴ Dominic Popowich, “Intimate Partner Violence in LGBTQ Communities”, *Rainbow Health Ontario* (Toronto: 2016) Online: https://www.rainbowhealthontario.ca/wpcontent/uploads/2016/07/RHO_FactSheet_LGBTQIntimatePartnerViolence_E.pdf

⁵ *Supra* note 5.

⁶ Sadie McInnes, “Violence Against Trans People in Canada: a Primer” *Canadian Centre for Policy alternatives Manitoba Office* (February 14, 2017) Online: <https://policyfix.ca/2017/01/30/violence-against-trans-people-in-canada-a-primer/>

The rate of occurrence and impact of GBV are affected by a woman's race, sexual orientation, gender presentation, immigration status, ability, socio-economic status, and class among other factors. In Canada, aboriginal women confront the highest level of violence compared to any other group of women.⁷ Newcomer women who face language barriers, high levels of precarious and low wage employment, and insecure immigration status are also increasingly vulnerable to violence. Women with disabilities experience violence at three to four times the rate of women who do not report disabilities.⁸ At the Clinic we see how economic vulnerability exacerbates the exposure to violence by eliminating alternatives to abusive interpersonal and working relationships.

As a result, it is widely agreed that a conceptualization of gender based violence must be "intersectional" in nature. Simply put, an "intersectional approach" recognizes that groups often experience distinctive forms of stereotyping or barriers based on a combination of race and gender, gender identity, ability or status.

Intersectionality, when improperly defined or understood, can invite a hierarchy of rights. At its most precise, intersectionality is an approach to anti-discrimination and equality law that attempts to move beyond static conceptions⁹ and fixed "identities" of discriminated subjects, and, based on the metaphor of a traffic intersection, delineates the 'flow' of discrimination as multi-directional, and injury as seldom attributable to a single source¹⁰. However, feminist scholars have come to acknowledge "the courts' failure to engage deeply with the equality argument, yields an impoverished and decontextualized analysis which allows the differential and prejudicial treatment to persist"¹¹. Importantly, this diminished law and legal discourse, centers on the stripped-down bearer of legal rights, essentialized to a single axis of identity, often competing against herself for protections that may well apply to her as a complex subject, but which are constructed outside intersectional approaches to be separate and

⁷ Marika Morris, "Violence Against Women in Canada: Effective approaches and resources" *Match International* (2008) Online: <http://endvaw.ca/wp-content/uploads/2015/12/match-gender-violence-against-women-in-canada.pdf> at page 8

⁸ Cecilia Benoit et al, "Issue Brief: Sexual Violence Against Women in Canada" (Status of Women Canada, 2015) Online: <http://www.swc-cfc.gc.ca/svawc-vcsfc/index-en.html>

⁹ Emily Grabham with Didi Herman, Davina Cooper and Jane Krishnadas, "Introduction", *Intersectionality and Beyond: Law, Power and the Politics of Location* (New York: Routledge Cavendish, 2009) at 1.

¹⁰ Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics* 1989 U. Chi. Legal F. 139 1989, at 149.

¹¹ Fay Faraday, "Envisioning Equality: Analogous Grounds and Farm Workers Experience of Discrimination". In, Fay Faraday, Judy Fudge & Eric Tucker, eds, *Constitutional Labour Rights in Canada* (Toronto: Irwin Law, 2012), 109 at 111.

at odds with one another¹². In this sense, even as an elaboration of the law's test or grounds of protection in anti-discrimination law, intersectionality has something to offer.

3. GBV is not always interpersonal.

GBV is frequently considered to be an interpersonal crime. Intimate partner violence and some sexual assaults are viewed as crimes or acts of violence that occur between individuals. The reality is that while GBV can occur within intimate partner, familial, and employment relationships, it is also structural violence that can be perpetrated and/or sanctioned by the state, community, and other institutions. In Canada, the failure of the state to provide adequate protection through responsive policing and court processes, accessible housing and social services, economic opportunities, and just immigration and refugee policies, amounts to a condonation by the state of the continued existence of GBV.

4. There are many forms and manifestations of GBV.

GBV encompasses physical, psychological, financial/economic, emotional, and cyber abuse. Recently, the labels of "coercive control" and "intimate terrorism" have been employed to refer to the wide array of tactics used by an abuser to control his partner over a period of time.¹³ The tools used in the perpetration of GBV are also evolving as can be seen by the rise in instances of cyber violence and the use of the internet to

¹² A classic example from the international human rights context is 'Sandra Lovelace v. Canada [1977-1981] and the right to enjoy First Nation (Indian) culture under art. 27 of the International Civil and Political Covenant) 024/1977'. Online at <http://sim.law.uu.nl/SIM/CaseLaw/CCPRcase.nsf/40aef4fd0f005d2d41256c02003>.

Sandra Lovelace presents herself as neither subsumed by nor divorced from culture, but in critical negotiation with it. Lovelace was shut out of her right to 'access to culture in community with others' (ICCPR article 27) as an Indigenous person, but on the basis of matrimonial property rights which divested women who married outside of the community differently than it did men who did the same. Lovelace argued her case under ICCPR on the basis of discrimination as an Indigenous person and as a woman experiencing 'sex discrimination' (articles 1 and 2). The state's defense rested on its contention that the patriarchy of her community determined her loss of entitlement, and that, in order to respect their autonomy (group rights), the state could not protect her rights as a woman (individual right). Lovelace countered this by submitting evidence that traditional Indigenous culture was not patriarchal, and that this was a colonial distortion of it. Lovelace thus contested both the colonial state's definition of (her) culture and the Indigenous male leadership's collusion with it. Importantly, this complexity of identity, or revelation of symmetry between the patriarchal state and 'cultural' leadership was not recognized in the holding by the HRC, although Lovelace did win the case on the basis of article 27 (not articles 1 and 2).

¹³ Michael P Johnson, *A Typology of Domestic Violence: Intimate terrorism, violent resistance, and situational couple violence*, (Boston: University Press of New England, 2008) at 87-90 Online: <https://books.google.ca/books?id=EzB6A7BuqJoC&pg=PA87&dq=coercive+control&hl=en&sa=X&ved=0ahUKewiM2eTjjaHWAhWi7IMKHdoCCI0Q6AEITzAH#v=onepage&q=coercive%20control&f=true>

threaten and terrorize victims. Therefore, the definition of GBV must not be confined to any particular manifestation.

5. GBV has wide-ranging on individuals and communities.

GBV can have devastating and long-lasting impacts on individual victims and communities. GBV is a distinct form of trauma because the violation involved is extremely invasive and gives rise to feelings of shame, self-blame and guilt.¹⁴ Individual victims can experience chronic physical, mental and emotional affects. Within families, the exposure to GBV is widely acknowledged to have deleterious intergenerational effects on children's emotional health and well-being and their ability to construct lives without violence.

In Canada, indigenous communities are still scarred by intergenerational traumas caused by the residential school system, long standing patriarchal laws denying equal citizenship by gender and systemic racism that makes women increasingly vulnerable to violence. The continued crisis involving hundreds of missing and murdered aboriginal women can be seen as both the cause and effect of trauma within indigenous communities.

Strategies for addressing GBV should seek to address both the immediate and long-term consequences of GBV.

6. GBV is not a “cultural phenomenon”.

The Clinic has found that in addition to or conjunction with discussions of gender-based analysis, references to “culture” in the condemnation of practices must be addressed. Discourses, which rely on culture as the explanatory phenomenon for violence against women, exacerbate problematic myths about violence in specific communities.¹⁵ Placed against the backdrop of notions of ‘reasonable accommodation’¹⁶, ‘failed multiculturalism’ and constrained pluralism in Western liberal democracies, which have evoked notions of women's equality rights as partial

¹⁴ *Mental Health and Gender Based Violence: Helping survivors of sexual violence in conflict – a training manual* (Luxembourg: Health and Human Rights Info, 2014) Online: <https://view.joomag.com/mag/0783880001404682542/p22> p13

¹⁵ Geraldine A. del Prado, ‘The United Nations Protection of the Rights of Women: How Well Has the Organization Fulfilled its Responsibility’ (1995) *William & Mary Journal of Women in the Law* 51, 70.

¹⁶ Recent legislative attempts in Quebec to ban the *niqab* in the name of gender equality have prompted feminist opposition of which the author is a part: see John Bonner, ‘Coalition Launches Day of Action’, May 20 2010, *Rabble.ca*, <http://www.rabble.ca/blogs/bloggers/johnbon/2010/05/coalition-launches-day-action-against-quebec%E2%80%99s-proposed-bill-94>, accessed 10 March.

justifications for a roll-back of cultural rights¹⁷, the question of this manipulation of a stagnant formulation of “culture” takes on urgency for human rights practitioners.

Culture is a notoriously ‘spacious’ concept in human rights, as Patrick Thornberry has noted, and “finding a discrete substance for the right’ to culture is a ‘complex undertaking”¹⁸. It is, in any case, not the primary interest here. It is, however, worth noting at a minimum, as Thornberry has, that bundled into the notion are a number of specific and discernible rights, which might well be named concretely, rather than tackled as an amorphous right¹⁹. Culture as an umbrella concept is particularly unhelpful where “culture is claimed as a justification for practices unlikely to be consistent with human rights.”²⁰ However, women’s negotiations at the intersection of these rights and affiliations are complex and painful. Culture in this sense must be examined more critically to “understand the link between culture and relations of power and domination”²¹ that so frequently pit a woman as a bearer of individual rights against the claimed requirements of culture, particularly in cases of violence.

Often, conversations around culture exclusively evoke “stereotyped roles [that] perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision;”²² practices that are, to be sure, real and discriminatory, but about which some perspective and context are required to avoid descent into racist stereotypes. Such commentary has “reinforced the notion that metropolitan of the West contain no tradition or culture harmful to women, and that the violence which does exist is idiosyncratic and individualized rather than culturally condoned.”²³ European or North American forms of violent discrimination against women seldom receive the same international attention,²⁴ and the preoccupation with the lurid and with “alien and bizarre”²⁵ forms of

¹⁷ See Volpp L, ‘Feminism versus Multiculturalism’ (2001) 5 *Columbia Law Review* 1181. See also Amanda Dale, ‘Women In Sudan’, *Studio Two*, television program, Television Ontario, broadcast April 18, 2006 on the hypocrisy of international invasion as a strategy to protect women’s rights in Afghanistan and Sudan (Darfur).

¹⁸ Thornberry P, ‘Confronting Racial Discrimination: A CERD Perspective’ (2005) 5:2 *Human Rights Law Review* 1, page 4.

¹⁹ *Ibid*, page 5.

²⁰ *Ibid*, page 6.

²¹ Yakin Erturk, Report of the Special Rapporteur on Violence Against Women, its causes and consequences’ (18 May 2009) A/HRC/11/6, para 18.

²² CEDAW GC 19 (n 23) para 11.

²³ Holtmaat R, and Naber J, *Women’s Human Rights and Culture: From Deadlock to Dialogue* (Intersentia 2011) page 77.

²⁴ Holtmaat and Naber make the point that article 5 of CEDAW could be evoked to call attention to the widespread practice of cosmetic surgeries on women in ‘developed’ nations, for example. Holtmaat R, and Naber J, *Women’s Human Rights and Culture: From Deadlock to Dialogue* (Intersentia 2011).

²⁵ Coomaraswamy R, ‘Identity Within: Cultural Relativism, Minority Rights and the Empowerment of Women’ (2002-2003) 34 *George Washington International Law Review* 483, page 486. See also Volpp, who, however, does not specifically refer to CEDAW or the international context: See Volpp L, ‘Feminism versus Multiculturalism’ (2001) 5 *Columbia Law Review* 1181.

gender persecution²⁶ among human rights advocates echoes colonial arrogance, and international human rights-protecting instruments can ill-afford to underscore it.

However, using such “culture-based” reasoning obscures the complexities of women’s experiences of violence, risking the exclusion of women who experience multiple forms of marginalization from state protection. In the context of violence against women, we have observed that this confusing use of the notion of “culture” leaps from supporting equitable protection from violence and instead creates a hierarchical model of who needs more protection over others. Unfortunately, in the context of an overarching dominant culture and multiple minority communities, these notions places most marginalized women at the bottom of the protection grid.

Question 2: Based on your experience, what is or isn’t working well to:

- Prevent gender-based violence?
- Support survivors of gender-based violence?
- Respond to offenders or those at risk of committing gender-based violence?

Despite the recognition of GBV at both domestic and international levels as a “pandemic”²⁷ and a “global public health problem”²⁸, victims of GBV still encounter systems that are unresponsive, insensitive and, in some cases, harmful. Moreover, in certain areas there is striking lack of accessible resources available for survivors of GBV. The Clinic highlights the following issues that should be of particular concern for the Ontario government:

1. The Justice System

a. Sexual Assault Survivors and the Justice System

Sexual assault is a gendered crime: the vast majority of the victims are women, and nearly all of the perpetrators are men²⁹. While sexual assault potentially affects women of all backgrounds and identities, young, immigrant, indigenous, disabled, and impoverished women are increasingly vulnerable.

²⁶ See Volpp L, ‘Feminism versus Multiculturalism’ (2001) 5 *Columbia Law Review* 1181, page 1208.

²⁷ “The Preventable Pandemic: Sexual and Gender-Based Violence”, *United Nations Academic Impact* (2016) Online: <https://academicimpact.un.org/content/preventable-pandemic-sexual-and-gender-based-violence>

²⁸ “Violence Against Women: a global health problem of epidemic proportions”, *World Health Organization* (20 June 2013) Online: http://www.who.int/mediacentre/news/releases/2013/violence_against_women_20130620/en/

²⁹ Shana Conroy and Adam Cotter, “Self-Reported Sexual Assault in Canada, 2014” (2017) *Juristat* Online: <http://www.statcan.gc.ca/pub/85-002-x/2017001/article/14842-eng.pdf>

It is well established that sexual assault is also vastly underreported and under-prosecuted³⁰. Women who choose to report assaults face an insensitive and sometimes hostile criminal justice system they describe as daunting, isolating, overwhelming and re-traumatizing. Pervasive rape myths, poor communication with Crown Prosecutors and Victim Services, and a lack of access to legal advice and information before and during the court process result in women who report to us that they feel ousted by the process and unprepared to give evidence at trial or face cross-examination.

We commend the Ontario government's implementation of a provincial Sexual Violence Action Plan in 2015 to stop sexual violence and harassment³¹. As part of this initiative, the Schlifer Clinic spearheaded the new independent legal advice ("ILA") pilot project for sexual assault survivors. Women living in Toronto, Ottawa, and Thunder Bay can receive up to 4 hours of independent legal advice from a roster of qualified lawyers or directly through the Clinic. The provincial government should remain committed to funding and expanding the ILA project and to ensure that through communication and cooperation with front line workers and grass roots community organizations the program is accessible for all victims of GBV.

In addition, the Chief Justice of Ontario has responded to troubling rulings and decisions in recent sexual assault cases by implementing mandatory training on sexual assault law for judges³². However, that this training would only be mandated for new judges fails to adequately address concerns that arise from the decisions of judges already on the bench. Furthermore, training for judges should focus not only on the substantive aspects of sexual assault law but also on the impacts of trauma on survivors of GBV. A trauma-informed approach can provide insight in to how the typical and predictable response of a survivor to trauma can be perceived as an inconsistency in memory/recall or an unexpected action or reaction.

b. Criminalization of Women

Criminalization of women has increased markedly over the last few decades³³. Women,

³⁰ Ontario, *It's Never Okay: An Action Plan to Stop Sexual Violence and Harassment March 2015* (Toronto: Government of Ontario, 2015).

Supra note 6.

³¹ Ontario, *It's Never Okay: An Action Plan to Stop Sexual Violence and Harassment March 2015* (Toronto: Government of Ontario, 2015).

³² Allison Jones, "Sexual Assault Education is now Required for new Ontario Judges" (May, 18 2017) *The Globe and Mail*. Online: <https://beta.theglobeandmail.com/news/national/sexual-assault-education-now-required-for-new-ontario-judges/article35042620/?ref=http://www.theglobeandmail.com&>

³³ Tina Hotton Mahoney et al *Women in Canada: Women and the Criminal Justice System* No. 89-503-X (Ottawa, Statistics Canada, 2017)

often themselves victims of violence, are penalized as they to create safety in their lives or cope with trauma. We have seen criminalization as a direct result of women's efforts to seek state protection and instead find themselves the subject of criminal charges. The Clinic has noted an increase in the number of women who identify trafficking, sexual assault and domestic violence to authorities and wind up entangled in their own criminal prosecutions or deportation proceedings. To illustrate, 86 percent of federally sentenced women reported being victims of physical abuse while over two thirds reported being sexually abused³⁴. In addition to disproportionately affecting survivors of abuse, Aboriginal women are over-represented, accounting for 35.5 percent of the female prison population despite representing a mere 3.8 percent of the Canadian population³⁵.

Criminalization has occurred as domestic violence legislation and law enforcement in particular has become increasingly punitive and neutral in their interpretations of Mandatory Charging and abstain from their mandated primary aggressor analysis in investigations. As a result, women are increasingly charged with domestic assault even in cases where they have contacted law enforcement for protection. Women also face increased charges for drug-related offences the penal response to which fail to account for coercive abusive relationships and trauma-related mental health and addiction struggles³⁶. Despite recent changes to Canada's prostitution laws, we have noted vulnerable and isolated sex workers remain subject to over-policing and the over-enforcement of regulatory offences. The lack of gender-based analysis within the criminal justice system fails to account for the context in which many women experience violence.

Women are also disproportionately incarcerated for minor, non-violent offences such as shoplifting, "moral" and public-order offences, drinking offences, traffic offences or drug offences. Arguably, "for women in Canada, imprisonment appears to be used in preference to, or in the absence of, alternatives".³⁷ Disproportionate imprisonment is a form of state violence that is arguably used to punish female offenders who, despite committing relatively minor infractions, have offended gendered norms of behavior.

³⁴ Canada, Office of the Correctional Investigator, *Annual Report of the Office of the Correctional Investigator 2014-2015* (Ottawa: Office of the Correctional Investigator, 2015) at 49.

³⁵ *Ibid* at 51.

³⁶ Margaret Beare, Law Enforcement and Policy Branch, *Women and Organized Crime* (Department of Public Safety Canada, 2010) at 19-26 and 54-59.

³⁷ M Shaw "Women in Prison: A Literature Review" (January 1994) 6:1 Forum on Corrections Research 13. Online: <http://www.csc-scc.gc.ca/research/forum/e061/e061d-eng.shtml>

Moreover, when women are charged with criminal offences they are often forced to face the state alone due to significant gaps and underfunding of Legal Aid. Legal Aid Ontario is facing a \$26 million deficit that is causing it to roll back and reduce service provision³⁸. Currently, certificates are not offered for criminal cases where the accused does not face a risk of incarceration.³⁹ Therefore, survivors who are charged with petty crimes, domestic assault, and small drug offences for which incarceration is not sought are barred from receiving legal assistance despite the fact that a conviction and subsequent criminal record can have long-term, devastating effects on employability, immigration status, and child protection/custody proceedings.

c. Cyber bullying

The Federal Government's Status of Women Committee's March 2017 Report identifies Cyber violence as a tool of gender-based violence which both contributes to violence against women and girls in the offline world and stands as a unique form of dominance and control exercised by men and boys over women and girls⁴⁰. In 2015, the previous federal government passed Bill C-13 *Protecting Canadians from Online Crime Act* as a penal response to cyberviolence.

While discussions around cybercrime should be encouraged, a gender-neutral approach to cyber violence is not appropriate. Women who seek our support report numerous instances of rape photos being used to extort ongoing sexual favours and protect abusers from women reporting or seeking assistance. In some cases, specifically racialized forms of sexual violence involve "stripping" observant women of their religious garb and shaming them into excommunication from their communities. Our Clinic has seen an increase in reports of this kind of GBV. Cyber violence can also be used to intimidate a woman as she starts family or civil court proceedings against the abuser. Cyber violence, like any other form of violence, exacerbates unequal power relations and extends the control of the abuser over the woman who experience violence, long after she has fled the abusive situation. The conceptualization of this issue as "cyber bullying" as is often seen, both trivializes the issue and erases its particularly gendered nature and the role it plays in a patriarchal society.

d. Family Court Support Workers

³⁸ Jacques Gallant, "Deficit Forcing Legal Aid Ontario to scale back dramatically" *The Toronto Star* (Dec 16, 2016) Online: <https://www.thestar.com/news/gta/2016/12/16/deficit-forcing-legal-aid-ontario-to-scale-back-dramatically.html>

³⁹ *Supra* note 34.

⁴⁰ Canada, Parliament, House of Commons, Standing Committee the Status of Women, *7th report: Taking Action to End Violence Against Young Women and Girls in Canada*, 42nd Parliament, 1st Session (March 2017) at 32.

The Family Court Support Worker (FCSW) Program was funded in the fall of 2011 by Ontario's Ministry of the Attorney General. It is available in 49 locations across the province. The Clinic provides the program to the Toronto family court system. The goals of the FCSW program is to help those experiencing violence to understand and fully participate in the family court process.

The program keeps survivors of violence informed and protected throughout the family court process by:

- Explaining the family court process;
- Working with women who have experienced violence to document history of abuse;
- Providing referrals to specialized services and supports in the community;
- Helping with safety planning related to court appearances; and,
- Accompanying women to court proceedings.

The FCSW program is of key importance because it increases women's safety when accessing the courts, thereby enhancing their access to justice. Women who have experienced violence are at an increased risk of further violence during separation or divorce. In fact, this is a key risk factor for lethality identified by the Domestic Violence Death Review Committee⁴¹. The FCSW program provides a crucial service to respond to and ameliorate the highest risk women in this province.

Ontario partnered with the Clinic along with other service providers such as Luke's Place to deliver the FCSW program because our clinic has taken a leading role in violence against women advocacy and is recognized for our excellent and expertise in preventing and responding to GBV. Despite its overwhelming success, the program faces a number of challenges caused by limited resources and funding. Workers' caseloads are unmanageable with each worker assigned over 250 clients. Moreover, there is little to no infrastructure for workers who do not have dedicated office space. The Ontario government should continue to provide support for this program and invest in its expansion.

2. Newcomer/Non-status Women

⁴¹ Office of the Chief Coroner for Ontario, "Domestic Violence Death Review Committee: 2013-2014 Annual Report" (October 2015) Online: <http://www.mcscs.jus.gov.on.ca/sites/default/files/content/mcscs/docs/ec168451.pdf>

Newcomer women are increasingly susceptible to GBV as a result of insecure immigration status, concentration in low wage employment, language barriers, and systemic racism. Non-status women in particular make up a uniquely vulnerable population who are subject to widespread exploitation and victimization with few viable mechanisms for redress. In Canada, a majority of non-status women have entered Canada lawfully and have become undocumented by virtue of overstaying their visas, having sponsorships fall through, being denied refugee status, or working contrary to visa terms⁴².

a. Inaccessibility of Resources for Non-status individuals

In February 2017, Toronto became a self-proclaimed sanctuary city through a program called AccessTO for Undocumented Torontonians.⁴³ Under this program the majority of city services are supposed to be available to individuals and families living in the city regardless of their immigration status. In Toronto, the policy directs city officials/employees not to inquire into immigration status, deny non-status residents access to services, or share personal or identifying information with federal authorities. Hamilton became a Sanctuary City in 2014 and London's city council has passed a motion to designate it a sanctuary city in early January 2017. Ensuring access to services for non-status people is integral to addressing GBV. Individuals who face violence are made more vulnerable as a result of their inability to access services such as primary care clinics, vaccination programs, prenatal and children's health programs, employment centres, emergency shelters, drop-in centers, housing help, and recreation programs/subsidies. Furthermore, without the security of knowing that attempts to access much-needed resources will not result in their identity being shared with federal authorities, many survivors of GBV are unwilling to seek out services designed to provide support and assistance.

The enactment of sanctuary city policies is one step towards addressing this issue. However, Toronto-based advocates for non-status peoples have pointed to a gap between the policy's rhetoric and its implementation. In 2017, the Rights of Non-Status Women Network conducted a survey of service providers and community members addressing the ability of non-status people to access Toronto city services.⁴⁴ 93% of Respondents indicated that they, their clients, or someone they knew had difficulty

⁴² Lilian Magalhaes et al. "Undocumented Migrants in Canada: A scope literature review on health, access to services, and working conditions". *J Immigr Minor Health*. 2010 February ; 12(1) at 133.

⁴³ "Access T.O. for Undocumented Torontonians" *City of Toronto* Online: <https://www1.toronto.ca/wps/portal/contentonly?vnextoid=9dfc33501bac7410VgnVCM10000071d60f89RCRD>

⁴⁴ Jade Wallace "Report on the Experiences of Non-Status Persons Accessing City of Toronto Services." Rights of Non-Status Women Network, May 2017.

accessing City of Toronto services due to a lack of status.⁴⁵ Difficulties included being explicitly asked about immigration status, being asked to submit documents regarding status, or being asked to provide documents that only a person with status would have (e.g. health card or tax assessment).⁴⁶

Finally, the availability of services for non-status survivors of GBV should not be dependent on city policy. The Ontario government should implement “Sanctuary” policies across the province making provincial and municipal services accessible for non-status people without fear of reprisal. Furthermore, Ontario must ensure that policies are being implemented according to their mandate to provide vulnerable non-status people, including victims of GBV with access to services. The Ontario government should ensure that the strategy provides for significant numbers of non-status women or women with precarious immigration status living in the province.

b. Economic abuse and exploitation of migrant workers.

Women can and have been victims of labour trafficking .They are recruited by traffickers who frequently extort large sums of money from potential migrants to bring them to Canada with the promise of employment⁴⁷. Once in Canada, victims of labour trafficking face abuse at the hands of their traffickers and future employers who take advantage of their precarious immigration status, poverty, isolation, lack of employment options, and claims of unpaid “debts”⁴⁸. As a result, migrant and non-status women who are unable to obtain or retain work permits or social insurance numbers are often underpaid and overworked in poor, unsafe and often abusive conditions⁴⁹. Due to language barriers, lack of information and fear of being deported, women in these situations routinely do not access health, legal or labour services⁵⁰. Moreover, the avenues available for them to attain status are often inaccessible or inadequate.

c. Legal Aid for Immigration Cases

There is a disparity between the availability of legal aid for immigration cases as

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ Lilian Magalhaes et al. “Undocumented Migrants in Canada: A scope literature review on health, access to services, and working conditions”. *J Immigr Minor Health*. 2010 February ; 12(1) at 133.

⁴⁸ *Ibid* at 133, 138-140.

⁴⁹ *Ibid* 38 at 140.

Migrant Workers Alliance for Change “Submissions to Changing Workplaces Review” (2015) Online: <http://www.migrantworkersalliance.org/wp-content/uploads/2015/11/Submissions-from-MWAC-re-Changing-Workplace-Review.pdf> at 4.

⁵⁰ *Supra* noe 47 at 138.

compared to all other legal matters. While the financial eligibility in terms of income is consistent, the Clinic has noticed that there are discrepancies in the amounts of savings clients are permitted to have to be eligible for legal aid. Family law clients are permitted to have a maximum \$10,000 worth of liquid assets. In immigration cases, the amount of permitted savings is unknown; however, clients served by the Clinic have been asked to contribute to their legal costs when their savings were significantly less than \$10,000. In addition, people applying for legal aid certificates for immigration and refugee matters are required to go through a merit assessment in the eligibility process based on standards that are not known or published. The result is that immigration and refugee claimants who are survivors of GBV, and may in fact be fleeing GBV, are often unable to access legal aid.

3. Gender Pay Gap

The Gender Wage Gap is a persistent barrier to women's equality and to ability to be free of violence. Financial dependency and economic vulnerability is prevalent among our clients. The Clinic knows that there is no justice when choices have to be made between exercising rights or finding housing, childcare and sufficient food. Currently women continue to make 66.7 cents for every dollar earned by men⁵¹. Racialized women earn a mere 53.4 cents on the dollar⁵². A 2015 UN Human Rights report raised concerns about "the persisting inequalities between women and men" in Canada, including the "high level of the pay gap" and its disproportionate effect on low-income women, visible minority women, and indigenous women⁵³. The gender wage gap exacerbates the effects of GBV. Inequitable earnings perpetuate the unequal power hierarchy between abusers and their victims, and women are often forced to remain in dangerous situations because of financial pressures. Overwhelmingly, women's financial worth is negatively impacted by separation and divorce, particularly in instances of domestic violence and when children are involved⁵⁴. As a result, in addition to rectifying the gender wage gap in Canada, targeted employment supports

⁵¹ Statistics Canada. 2011. "Average female and male earnings." Online:

<http://www5.statcan.gc.ca/cansim/a26?lang=eng&id=2020102>

⁵² Canadian Centre for Policy Alternatives, "Ontario's Racialized Gap Persists: Study" (June 2, 2010). Online: <https://www.policyalternatives.ca/newsroom/news-releases/ontarios-racialized-gap-persists-study>.

⁵³ United Nations Office of the High Commissioner for Human Rights. 2015. "Concluding observations on the sixth periodic report of Canada." Online:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2F6%2FCAN%2FCO%2F6&Lang=en

⁵⁴ See for example, Anna Aizer. 2010. "The Gender Wage Gap and Domestic Violence," *American Economic Review* 100(4).

for women experiencing GBV are also necessary⁵⁵. Additionally, the gendered wage gap reveals and communicates to society more generally the relative valuing of the genders. Undervaluing women's labour and thus exemplifying and maintaining women's subordinate positions in such a material way, contributes to their overall vulnerability to violence and disrespect.

4. Inadequate training for front line workers

Front line workers across the province need to be adequately trained to respond to the diverse needs of survivors of GBV and their communities. GBV is not a specialty issue nor is a knowledge of GBV only required for service providers directly mandated to work with survivors. Survivors of GBV interact with all provincial and municipal institutions in the course of their lives. As a result, front line workers in all fields should receive training on how to recognize and respond to survivors of GBV.

5. Substance abuse and GBV

There is a well-documented connection between substance abuse and the perpetration of GBV. The World Health Organization has stated that evidence gathered across a variety of countries suggests the consumption of alcohol increases the occurrence and severity of GBV, in particular intimate partner violence. In the United States, for example, survivors believed their partners had been drinking prior to physically assaulting them in 55 percent of cases.⁵⁶ 50 percent of sexual assault cases involve alcohol which is often used as a weapon by the perpetrator to put the victim in a vulnerable and defenseless state⁵⁷.

The response, particularly to the connection between alcohol and sexual assault, has been to encourage women to monitor their alcohol consumption. This places the burden for sexual assaults that occur while women are inebriated on the victims many of whom are targeted or pressured to consume alcohol or other substances by the aggressor. In addition, it ignores the connection between the consumption of drugs and alcohol and the perpetration of violence. While substance abuse should be included in efforts to address gender based violence, the focus should be on the perpetrators consumption not that of the victim.

⁵⁵ See for example Government of Ontario.2016. "Gender Wage Gap Strategy Consultation." Online: <https://www.ontario.ca/page/gender-wage-gap-strategy-consultation>

⁵⁶ "Intimate Partner Violence and Alcohol", *World Health Organization* (2006) at 2. Online: http://www.who.int/violence_injury_prevention/violence/world_report/factsheets/fs_intimate.pdf

⁵⁷ Antonia Abbey et al "The Relationship Between the Quantity of Alcohol Consumed and the Severity of Sexual Assaults Committed by College Men" (1003) 18:7 J Interpers Violence 813.

6. LGBTQI2S Communities

While it is acknowledged that GBV affects LGBTQI2s individuals there is a dearth of actual research that will allow for responsive and effective plans to address the issue. The Ontario government should invest in working with agencies in queer communities, including grass roots groups, to generate research and consult on strategies that are sensitive to the specific needs of those communities

7. Availability of Mental Health Services

Studies have reported that the risk of developing depression, posttraumatic stress disorder (PSTD), substance abuse issues or suicidal ideations was three to five times higher for women who have experienced violence in their relationships.⁵⁸ Survivors of GBV deal with the mental health consequences and trauma often without supports due to the wide inaccessibility of mental health services. In Ontario, the vast majority of services are not covered by OHIP meaning that individuals have to pay out of pocket. While some employee benefits plan may cover select mental health services, survivors working in low-wage, part time and precarious positions often do not have access to benefits. In addition, the lack of availability of mental health services that are culturally responsive and offered in languages other than English results in a further barrier for newcomer women's seeking supports. The Ontario government should seek to ensure that the accessibility of mental health supports for survivors of GBV features prominently in the strategy. Finally, GBV and related trauma should be specifically included in public health campaigns related to mental health.

Question 3: How can we work towards ensuring that the strategy reflects the diverse needs of Ontarians (e.g. Indigenous people, other racialized groups, seniors, LGBTQI2S, immigrants)?

The Ontario government should ensure that GBV is given an expansive, inclusive and intersectional definition that highlights the operation of GBV as a mechanism of asserting and maintaining relationships of control inherent in a patriarchal society. The plan should be reflective of the diversity of victims, perpetrators and manifestations of abuse.

The Clinic is a member of Ontario's Roundtable on Violence against Women and was one of the key participants in the development and now implementation of the Province

⁵⁸ "The Implications of Domestic Violence on Mental Health" (Jan 2014) *Yellow Brick House* Online: <http://www.yellowbrickhouse.org/the-implications-of-domestic-violence-on-mental-health/>

of Ontario's March 2015 *Sexual Violence and Harassment Action Plan* ("SVHAP"). In 2015 and 2016 the Clinic was consulted by the Minister's Task Force on the Prevention of Sexual Abuse of Patients under the *Regulated Health Professions Act*, 1991. The Clinic would welcome the opportunity to meet with the government in person to further consult on a Gender Based Violence Strategy.

Barbra Schlifer Commemorative Clinic

Per:

Amanda Dale/ Nora Angeles, Executive Director

Deepa Mattoo, Legal Director

Sheru Abdulhusein, Staff Lawyer

Guncha Murara, Staff Lawyer

Amy Voss, Articling Student