September 1, 2018

The Standing Committee on Justice and Human Rights Studies
The House of Commons
111 Wellington Street
Ottawa, Ontario K1P 5L1

Submitted via E-Mail: JUST@parl.gc.ca

Re: SUBMISSION: BILL C-75: AN ACT TO AMENEND THE CRIMINAL CODE, THE YOUTH CRIMINAL JUSTICE ACT AND OTHER ACTS

The Barbra Schlifer Commemorative Clinic ("the Clinic") is very pleased make submissions on this issue of great importance to the marginalized women the Clinic serves – specifically women experiencing violence, who often experience intersecting discriminations because they are also indigenous, racialized, immigrants, or differently abled.

The Barbara Schlifer Commemorative Clinic

The Barbra Schlifer Commemorative Clinic is a specialized clinic for women experiencing violence. It is a multi-disciplinary, frontline service provider that assisted 7,000 women last year year to build lives free from violence through counselling, legal representation, and language interpretation. Since it was founded in 1985, the Clinic has assisted more than 65,000 women whose experience of violence has intersected with law.

Since 1985, the Clinic has worked with the marginalized populations of women, to provide them with the legal, counselling and interpretation services they need to escape violence. Over the years, we have witnessed a steady increase in the number of women calling on the Clinic for help. In 2017, we assisted 4,700 women. In 2018, we assisted 7,000 women – an 84% increase over the previous year.

The Clinic's Interest in Bill C-75

The Clinic provides legal representation and information, skilled professional counselling and practical support, as well as language interpretation in more than 200 languages. Due in part to a lack of predictable funding, the Clinic's team of highly skilled staff members remains low at approximately 36 full and part-time staff. Our ratio of staff to clients is an untenable ratio of three staff to every 600 clients. Despite this ongoing demand for our services, our funding has increased less than 1 per cent in the last year.

We frequently assist women who have come into contact with the criminal justice system not only due to their gender and the abuse in their relationships, but also because of stereotypes that inhere to their race, age, immigration status, and/or disability. The Clinic relies on *pro-bono* legal counsel to assist these women, as our funding does not cover criminal law matters. We are deeply concerned about the ill-effects of misplaced application of the criminal justice system on this marginalized population.

The Clinic welcomes the change proposed that broadens the definition of "intimate partner" to include dating partners and former partners. The Bill introduces positive changes for the repeat offenders of intimate partner violence, while recognizing the lifelong consequences of violence against women.

However, the Clinic is concerned that the criminal law amendments in Bill C-75 will place an excessive burden on women who are swept up in criminal responses. The Clinic is concerned about unintended consequences which may mean that the women it serves will be subject to increased criminal law penalties under Bill C-75. We are also concerned more generally that the Bill will disproportionately affect racialized and Indigenous Canadians.

To strengthen Bill C-75, we strongly recommend that Parliament undertake an Impact Assessment to determine the Bill's potential effects on women who experience violence, and on racialized Canadians.

We advance three rationales supporting an Impact Assessment:

1. The Bill fails to take into account experience of women who are criminalized due to mandatory charging policies of intimate partner violence.;
2. The Bill with exacerbate the lack of agency female complainants have in the criminal justice system; and
3. The Bill's increased penal penalties will disproportionately affect racialized Canadians.

Reason 1: *The Bill fails to take into account experience of women who are criminalized due to mandatory charging policies of intimate partner violence.*

Mandatory charge polices have been enacted across the country, for good reason. Historically, police would not take domestic abuse calls seriously, which allowed abuse to flourish with impunity. In cases of domestic violence, police have no discretion and must lay charges due to

Canada-wide mandatory charge policies. Mandatory charging means that police must lay criminal charges in domestic violence cases if they have reasonable grounds to believe that an assault occurred. Simply put, if someone calls the police in a domestic violence situation, the party accused will be arrested and charged.

However, federally funded research in which the Clinic is engaged is showing the pendulum has swung the other way. It's worth noting mandatory charging, like other systems of law, does not have a "nuanced understanding of the coercive control that abusive men have over their partners."[1] Many men call the police with false allegations of abuse to continue their abuse and to maintain power and control over the life of their partner. This is often done when a woman attempts to leave the abusive relationship or has used some level of physical force in an act of self-defense. Practitioners also report that abusers who know about the mandatory charge policies through their own involvement in the criminal justice system, use the mandatory charge policy as a tool of abuse by threatening to call police, or by actually calling the police with a false or exaggerated report of violence against them.

As part of our research, we have reviewed Clinic files dating back several years which show a pattern of criminally charged women who are themselves long-term victims of domestic violence. Often abusers have better knowledge of the English and assert power through represrenatation of the justice system that hold the threat of criminal charges and the sanctions over women to extort concessions from them. A report to police need not be accurate or true to put the gears of the criminal system in motion – mandatory charge policies across Canada mean that any allegation of domestic assault will lead to arrest. Because women remain a disadvantaged social group, are often defendant on their partners, and remain the primary caretakers to their children, women are often less inclined to take a matter to trial and simply plead guilty. They do this so they can be reunited with their children, who may now be with their abuser, or for a myriad of other hardships outlined below.

The Clinic submits that Bill C-75 must take experiences of survivors who are criminalized while not being primary aggressor into account alongwith as proposed history of abuse in a intimate partner violence cases. The Clinic further submits that lack of proper assesement of primary agressor's role, survivor's experience and instigator's role in an incident of intimate partner violenc will have unintended consequences and injustice towards marginalized communities.

Reason 2: *The Bill with exacerbate the lack of agency female complainants have in the criminal justice system*

Women experiencing violence may well call the police because she is scared, because she wants to put an end to a volatile situation, or because she wishes to rebuke the other party. They are likely unaware that such a call will almost certainly result in an arrest and subsequent criminal prosecution that may impact their lives for many months, or years.

[1] Janet Mosher, "Grounding Access to Justice Theory and Practice in the experiences of Abused Women by Intimate Partners," 3-4.

Once a charge is laid, the Crown alone will determine how the matter proceeds, including whether or not the charges should be withdrawn because the victim is not cooperative, harmed by the prosecution, or does not want the matter to proceed, for another reason. Common reasons that women wish to veto criminal charges proceeding in domestic violence matters include:

- reliance on their partner for immigration status, finances, the best interest of their children;
- a loss of housing due to bail conditions, that they now must live in a shelter which impacts their employment and/or children;
- other hardship, such as the pain of being forcibly separated from their partner; and/or
- that they do not want to be called as a witness and cross-examined.

To avoid allegation of witness tampering, or simply due to limited resources and heavy workloads, Crowns are often unwilling to engage with complainants who wish to halt prosecutions. Complainants are often forced to hire their own counsel, if they have the resources to do so, to communicate with the Crown on their behalf. Even then, Crowns may simply disregard their wishes, despite the enormous repercussions on the lives of female complainants. Many victims report feeling patronized by a system that refuses to recognize their agency about the most deeply personal and intimate aspects of their lives.

Because Bill C-75 increases legal jeopardy for abusers, it also carries consequences into the lives of their intimate partners, which the legal system consistently disregards. The exacerbation of the negative experiences of women in the criminal justice system by this Bill should be further studied in an Impact Assessment.

Reason 3: *Increased penal penalties disproportionately affect racialized Canadians*

The Clinic knows first-hand the devastation intimate partner violence ("IPV") wreaks on the lives of women and children. The emotional and physical scars of such violence may never go away. IPV perpetrators must face consequences for their actions, including criminal consequences.

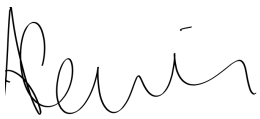
At the same time, the Clinic is aware that the Canadian criminal justice system disproportionately affects the lives of racialized and indigenous people, including widely acknowledged disproportionate incarceration rates. The Clinic is concerned that Bill C-75's focus on increased incarceration will disproportionately affect already affected populations and excellerate the undue racialization of the incarcerated population in Canada. The Bill contains sweeping amendments, many impacting constitutional rights, and the affects of the proposed amendments related to sentencing structure on racialized and indigenous populations.

Conclusion

Overall, Clinic supports the proposed changes in Bill C-75. We regret that the Bill does not include experiences of criminalized victims that inclides women, racialized and indigenous populations of Canada. An Impact Assessment would help plug this this omission and would better protect survivors of violence.

The Clinic would welcome the opportunity to discuss these matters further and to otherwise assist the Committee in its review of the Bill.

Yours very truly,



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