

Thank you.

I thank the committee for the kind invitation I got a mere four days ago. I'm happy to be here and happy to speak about the provisions of Bill C-75 that deal with the justice system's response to intimate partner violence.

I'd like to say straight up front that I appear with two fundamental biases, both as an individual and a legal professional. I think I should bring those biases to the committee's attention in advance of my submission.

The first one is that I was a victim of severe domestic violence over 25 years ago. My ex-spouse was charged and tried with 17 criminal offences, including strangulation and sexual assault. This led to my appearing as a complainant witness in a Superior Court criminal case against my former spouse several years after the offences took place, and it sadly led me also to become the mother of a Crown witness. My now 30-year-old daughter testified when she was nine years old about violence she saw when she was four years old.

My second bias is that in my professional life I was an articling student for a criminal defence counsel, but chose very deliberately to focus on family law after my call to the bar of Ontario seven years ago, when I was 49 years old. In that current work I represent many women who have suffered through domestic and/or sexual violence and whose children have been affected by it too.

As I said earlier, the focus of my professional work is a deliberate choice that I made. Criminal defence work, although I recognize it as important and vital to any society that values the rule of law, was not a very good fit for me, probably because of my own experiences.

I made it a professional priority, consciously, when I became a lawyer to try to represent women and their children in ways that hopefully addressed the violence in their domestic lives in the justice system, and I always make it a goal to try to effect change where possible to make their lives safer.

There are many intersections between family and criminal law that one could argue might help me to do that, but I can truthfully express frustration before the committee on trying to achieve those goals daily.

I'm choosing today to focus on the issue of judicial interim release, which I believe needs to be amended in a way that makes victims more safe.

My view is that if Bill C-75 were amended in a way that provides for a reverse onus on persons charged with two or more acts of intimate partner violence, it would serve victims better than focusing on what I call the back end, which is waiting for a conviction.

Making this a condition only in cases where there's an actual previous conviction, which I understand is the current proposed amendment, is problematic for the following reasons. One is that intimate partner violence is often under-reported. Whether they're before the courts for the first time or not, it is not unusual, as we all know, for there to be a long history of violence before an alleged offender is actually identified by the police. Intimate partner violence, as we know, is highly secretive. It's not unusual for that historical record to be hidden not only from authorities but also from family members, friends, and co-workers, until an incident brings the family to the attention of authorities. The secrecy inherent in domestic violence often imposed on the complainant through the cycle of violence or through her own shame makes it very difficult for the victim to seek help.

Also, women are in more danger once the secret is out. The public shame and the effort to pressure her into backing off or testifying differently is a new source of pressure, as well as a new source of real danger. The high rate of complainants being pressured to recant or not appear at trial makes this a unique offence, in that obtaining a conviction for it, as opposed to other offences, is far more difficult.

In the time that I worked for a criminal defence counsel as an articling student between 2008 and 2009, my principal, who will remain nameless and did not appear today, was consistently telling his clients charged with domestic violence offences to refuse any offer by Crowns to resolve cases. The advice given was constantly that you can count on the complainant not to appear, which would result in the complete withdrawal of charges.

Sadly, he was mostly successful.

In intimate partner violence cases, conditions to bail are commonly breached or outright ignored. I believe this makes a mockery of the judicial system. This is a known and undisputed fact in criminal courts. Making the bar for a reverse onus only if there's an actual conviction raises the bar far too high and far too late.

As legislators and lawyers, we don't need convictions to know that this offence presents a higher likelihood of danger to the victim than others. I believe that releasing an alleged offender back into society is short-sighted, and if he or she is charged with two or more offences, it's a recipe for danger.

In my work as a family lawyer, I see clients after they've gone through the criminal justice system. I've heard Crowns offering peace bonds in intimate partner violence cases many times. This means there will never be convictions.

A variety of reasons are offered for this position. These are a smattering of the ones I've heard in my very short career.

"Domestic violence is a social problem; it's better addressed outside the justice system."

I've heard some Crowns rationalize that victims are better served with partner-abuse counselling—which I would agree with, and would be great, if there was an admission of responsibility and a change in behaviour outside the counselling room. This sadly doesn't happen very often.

I have also heard the argument that putting the offender out of work—which is argued will happen if there is a criminal conviction—will have a negative impact on the offender's ability to pay support, as if a victim's safety should take priority over support.

I've heard even more jaded remarks, such as "She's going back to him anyway", as if that's an acceptable justification for not pursuing a conviction.

While obviously there's merit in some of these arguments, they don't treat the complainants with the respect that any person in the justice system is entitled to. They defeat the very purposes of this well-thought-out legislation. They're not keeping complainants or their children safe. Often what I see in the family court system is that when the criminal course disappears through the peace bond process, the offenders carry on in the family cases as though the offence has never officially happened in the justice system, and they return to the cycle of terror against their victims.

In the family law system, where many family lawyers like me are trying to bridge the gap to create safety plans for our clients, we are then undermined by the Crown's position taken in the criminal case.

In short, the bill is sending a message that the justice system treats domestic violence as a less serious crime than stranger-on-stranger crime, which I'm confident to say is not the goal we're trying to achieve.

I realize that much of what I have submitted today is contrary to much of the case law and the submissions of my esteemed colleagues in the criminal defence bar. I have long been criticized in legal circles for the views I have told you today and for my ideas about reform. In law school I was teased relentlessly by a fellow student, who acted as though I were a three-headed lizard for suggesting these things. I stand by them.

Sadly, I've heard people in the criminal defence bar ridicule victims' rights bills and efforts. I was very bewildered last year to hear an esteemed member of that bar criticize her Crown colleagues at a continuing professional development program for calling complainants "survivors", as if that term was somehow offensive.

Nothing I have proposed today would diminish the right to make fair answer in defence or reduce an accused person's charter rights, but it would offer the victims of violence in intimate relationships the recognition that their charter rights—specifically the right to safety, liberty, and security of the person—are valued and protected by Canadian institutions such as this House.

I thank you very kindly for the opportunity to make these submissions.