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SUBMISSION TO THE SENATE COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS: STUDY OF BILL C-48 AN ACT TO AMEND THE *CRIMINAL CODE* (BAIL REFORM)

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ABOUT THE OFFICE OF THE FEDERAL OMBUDSPERSON FOR VICTIMS OF CRIME

The Office of the Federal Ombudsperson for Victims of Crime (OFOVC) is an independent resource for victims in Canada. Our Office was created to help the federal government honour its commitments to victims of crime. Victims contact our Office to learn more about their rights under federal laws, about federal services available to them, or to make a complaint about any federal agencies or legislation dealing with victims. We help problem-solve when victims' rights are not respected. We collaborate with stakeholders across the country to identify emerging trends or issues that affect victims of crime. We also offer recommendations to federal agencies and help to ensure that victims' concerns are considered in the legislative process. For more information visit: www.victimfirst.gc.ca

CONTEXT

Bill C-48 was introduced to reform Canada's bail system, following calls from citizens, provincial and territorial premiers, and federal government leaders. One of its goals is to reduce the risk posed by intimate partner violence (IPV) by recognizing risk factors for recidivism. This goal is the one we will address in this brief.

This Bill focuses on creating a reverse onus in bail hearings for individuals accused of serious offences involving violence and the use of a weapons, who have been convicted within the past five years of a similar offence. Bill C-48 would also expand the reverse onus provisions for offences involving intimate partner violence to apply to an accused person who was previously discharged for such an offence. Courts would also be required to consider if the accused person has previous convictions involving violence and to consider the safety and security of the community.

In 2017, the OFOVC released a report on bail reform following [nationwide consultation](#) with victims and survivors of crime. Several victim groups shared concerns about the frequency and nature of bail-related offences, emphasizing the importance of considering the needs of victims during the bail process. They also called for flexibility and responsiveness in the bail process as well as better safety and security measures. These groups also highlighted the need to provide victims with the necessary resources, information, policies, and practices regarding bail.

POSITION

I appreciate the intent of Bill C-48 is to offer better protections for victims and for communities as a whole. At the same time, we recognize that the bail system needs to be reformed and

better resourced to prevent systemic racism and to offer safe alternatives to detention when appropriate. It is important to not lose sight of the unintended consequences policies can have, particularly for marginalized and racialized communities.

Victims need better protections, and the bail system needs to be fair for all affected.

CONSIDERATIONS

Stalking and Intimate Partner Violence

Criminal harassment, or stalking, is an assertion of control, a violation of privacy, and a significant red flag for potential escalation in violence. The Ontario Domestic Violence Death Review Committee found that obsessive behaviour displayed by the perpetrator was a risk factor in 46% of cases between 2003-2018.¹ Even if stalking does not involve the current victim, it provides insight into the behavioural pattern of the accused, which is crucial when assessing the risk to the victim and the community.

Intimate partner stalkers in comparison to non intimate partner stalkers, are more likely to have criminal records, abuse drugs and alcohol, follow through on threats, and escalate their violent and controlling behaviours. One study found that 71% of partner stalking victims who were threatened were actually assaulted, compared to 33% of non-intimate partner stalking victims who were threatened.²

Stalking demonstrates a pattern of dangerous boundary violations that should be weighed when considering the likelihood that an accused will respect boundaries on bail.

Femicide and Coercive Control

The killing of women and girls is a global issue. In 2021, the United Nations found that approximately 81,100 women and girls were killed, out of whom 45,000 were killed by their intimate partners or family members. Stalking is linked to femicide. The Stalking Prevention, Awareness, & Resource Center (SPARC) in the USA reports that research has found 85% of attempted and 76% of completed intimate partner femicides involved stalking in the previous year. In addition, 74% of former intimate partners who were stalked report experiencing violence and coercive control during their relationship.³ A study conducted in 2019 on the role of coercive control in intimate femicide found that one-fifth of those interviewed stalked their victims prior to the killing.⁴ Stalking is used as a tactic to intimidate and exert control over victims in intimate relationships, elevating the risk of lethal violence.

¹ Office of the Chief Coroner. (2018) *Annual Report of the Domestic Violence Death Review Committee*. Toronto, ON, <https://www.ontario.ca/document/domestic-violence-death-review-committee-2018-annual-report/chapter-2-statistical-overview#section-5>

² Stalking Prevention, Awareness, and Resource Centre (SPARC). (2018). *Stalking & Intimate Partner Violence Fact Sheet*. [SPARC IPV StalkingFactSheet 2018 FINAL2.pdf \(stalkingawareness.org\)](#)

³ Stalking Prevention, Awareness, and Resource Centre (SPARC). (2018). *Stalking & Intimate Partner Violence Fact Sheet*. [SPARC IPV StalkingFactSheet 2018 FINAL2.pdf \(stalkingawareness.org\)](#)

⁴ Johnson, H., Eriksson, L., Mazerolle, P., & Wortley, R. (2019). Intimate Femicide: The Role of Coercive Control. *Feminist Criminology*, 14(1), 3-23.

Responding to the calls of the Mass Casualty Commission and Renfrew County Inquest

The jury recommendations from the Inquest into the deaths of Carol Culleton, Anastasia Kuzyk and Nathalie Warmerdam includes adding the term “femicide”, and its definition to the *Criminal Code*. Additionally, both the Inquest and the Mass Casualty Commission (MCC) recommended the *Criminal Code* be amended to include coercive control. In a report prepared for the MCC, coercive control was found as a risk factor to intimate partner homicide and actual or pending separation was identified as a risk factor for intimate partner violence.⁵ These risk factors for lethal violence require greater consideration at bail hearings.

Investment in community-based alternatives that offer protection

A holistic approach to bail reform should also include cost-effective, evidence-based alternatives to remand. In any bail considerations involving domestic violence, the safety of intimate partner survivors and their children should be paramount. The “Safe at Home” model offers a continuum of housing options rooted in a right to housing approach where survivors of domestic violence are entitled to stay in the family home, free from violence.⁶ When an accused is released on bail, it can put the victim at immediate risk, especially if the person who is abusive returns to the shared home. Safety measures to improve the survivor’s security can include changing locks, installing security cameras, and devices that alert for emergency responses, such as electronic monitoring for the accused.⁷ The goal is to shift power dynamics so that survivors and their families do not lose their housing when they experience violence.

A survey done by the Woman Abuse Council of Toronto (Woman ACT), an organization that works to eradicate gender-based violence, found staying at home made some survivors feel empowered, in control, and stable.⁸ This approach is also less disruptive to children who are often displaced by violence.

While the Safe at Home housing model provides an innovative approach, in cases where the risk is too high, or where the home environment is untenable, providing a continuum of housing options is crucial. Shelters have long been the primary refuge for those fleeing violence. However, with the increasing demand and challenges such as overcapacity, it is evident that relying solely on shelters is not sufficient. A continuum of housing options such as second-stage housing and rental subsidies is essential to ensure that every survivor has a safe place to stay.

⁵ Gill, C., & Aspinall, M. (2022, June). *Understanding Violence in Relationships*. Mass Casualty Commission. <https://masscasualtycommission.ca/files/commissioned-reports/COMM0058937.pdf>

⁶ Diemer, K, Humphreys, C, & Crinall, K., 2017. Safe at home? Housing decisions for women leaving family violence. *Australian Journal of Social Issues*, Volume 52 <https://onlinelibrary.wiley.com/doi/full/10.1002/ajs4.5>

⁷ Jones, A., Bretherton, J., Bowles, R. & Croucher, K., 2010. *Sanctuary Schemes for Households at Risk of Domestic Violence: Practice Guide for Agencies Developing and Delivering Sanctuary Schemes*, London: Department of Communities and Local Government.

⁸ Klingbaum, A. (2022). “A place of my own” Survivors’ Perspectives on the Safe at Home Housing Model. https://womanact.ca/wp-content/uploads/2022/11/WomanACT_A-Place-of-My-Own-Report.pdf

RECOMMENDATIONS

1. Require courts to consider coercive and controlling behaviours and patterns of criminal harassment when considering the release of an accused on bail. It could be added as a reverse onus or identified in the legislation as requiring special consideration. The *Canadian Victims Bill of Rights* is quasi constitutional legislation requiring courts to consider the safety and security needs of victims.
2. Amend the preamble of Bill C-48 to include the following:
 - Whereas a pattern of intimate partner violence such as coercive and controlling behaviours and criminal harassment have been linked to increased risk for lethal violence, and victims have the right to protection;
 - Whereas a judge or justice of the peace can use their discretion to choose alternative bail conditions to ensure the safety of victims while mitigating the overrepresentation of Indigenous and Black individuals held in custody;
3. Beyond Bill C-48, the government must invest in community-based alternatives such as “safe at home” models, second-stage housing, and rental subsidies to ensure the safety and well-being of survivors within the bail system. Consultations with stakeholders such as domestic violence advocacy groups, are needed.

CONCLUSION

Given that many reports and studies demonstrate clear links between coercive control, criminal harassment and risks of escalating and lethal violence, these risk factors need to be taken into account in any type of bail reform under consideration.⁹ These are of critical importance from the perspectives of victim safety and security as well as reduction of recidivism and prevention. Community-based alternatives also need to be carefully considered and better resourced if we are to progress towards the goal of a safer, more effective, more just, and more sustainable system.

⁹ Sheehan, B. E., Murphy, S. B., Moynihan, M. M., Dudley-Fennessey, E., & Stapleton, J. E. (2014). Intimate partner homicide: New insights for understanding lethality and risks. *Violence Against Women*, 21(2), 269-288. DOI: 10.1177/1077801214564687 <https://pubmed.ncbi.nlm.nih.gov/25540257/>