

# “They Just Don’t Care”: Women Charged with Domestic Violence in Ottawa

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A N I T A G R A C E \*

## ABSTRACT

Police in Ontario are obligated to lay charges when responding to incidents of intimate partner violence and to ensure that those charges are laid against the primary or dominant aggressor. This obligation is intended to protect victims, the majority of whom are female. However, there is evidence that women are being inappropriately charged in situations of intimate partner violence which raises questions about how police are applying policies designed to identify primary aggressors. Drawing from interviews conducted with 18 women who have been charged in situations of intimate partner violence, this study examines women’s accounts of how police responded to them during the incident for which they were charged. The women’s compelling and complex accounts of these incidents, and the ways in which police responded, suggest that in some situations, police are failing to identify the primary aggressor and are inappropriately charging women. Women experience these failures by police as betrayal. Some even feel the police become complicit to their on-going abuse. As a result, women who have been inappropriately charged in situations of intimate partner violence say they would be unwilling to turn to the police for protection in the future, even if they are again victims of violence. *Keywords:* domestic violence, intimate partner violence, mandatory charging, primary aggressor, dominant aggressor, police, assault

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\* PhD Candidate, Law and Legal Studies Department, Carleton University. This paper was written with the guidance, input and support of Dr. Diana Majury.

## I. INTRODUCTION

Canada has clearly made significant progress from the time in which “the abuse of women within marriage [was] an aspect of the husband’s ownership of his wife and his ‘right’ to chastise her.”<sup>1</sup> Yet women still represent nearly 80 percent of the victims of spousal violence<sup>2</sup> and last year alone, 148 women and girls were killed by violence in Canada, 53 percent of whom were victims of their intimate partner.<sup>3</sup> The serious nature of intimate partner violence has been acknowledged by federal, provincial and territorial governments.<sup>4</sup> Mandatory arrest policies have been the principal justice system responses in Canada as in other Western nations. Such measures are intended to deter perpetration, demonstrate moral intolerance, limit police discretion, and protect victims, of whom the vast majority are women.<sup>5</sup> Indeed, incidents involving female victims are more likely to lead to charges.<sup>6</sup> However, justice system responses to intimate partner violence have resulted in unanticipated adverse legal, social, and economic outcomes for women.<sup>7</sup> In particular, women are being charged with assault and other related offences, even in situations in which they themselves have been victims of violence.<sup>8</sup> Due to concerns about such

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<sup>1</sup> *R v Lavallee*, [1990] 1 SCR 852 at 872, [1990] SCJ No 36 (QL).

<sup>2</sup> Marta Burczycka & Shana Conroy, “Family violence in Canada: A statistical profile, 2015” (2017) 37:1 *Juristat* 1 at 36.

<sup>3</sup> Myrna Dawson et al, *#CallitFemicide: Understanding gender-related killings of women and girls in Canada 2018*, (Guelph: Canadian Femicide Observatory for Justice and Accountability, 2019) at 6-7.

<sup>4</sup> Canada, Ad Hoc Federal-Provincial-Territorial Working Group, *Spousal Abuse Policies and Legislation: Final Report of the Ad Hoc Federal-Provincial-Territorial Working Group Reviewing Spousal Abuse Policies and Legislation*, (Ottawa: Department of Justice, 2002).

<sup>5</sup> Mariana Valverde, Linda MacLeod & Kirsten Johnson Kramar, *Wife Assault and the Canadian Criminal Justice System: Issues and Policies*, Mariana Valverde, ed. (Toronto: University of Toronto Press, 1995); Elizabeth A Sheehy, “Legal Responses to Violence Against Women in Canada” in Katherine MJ McKenna & June Larkin, eds, *Violence Against Women New Canadian Perspectives*, (Toronto: Inanna Publications, 2002) 473.

<sup>6</sup> Burczycka & Conroy, *supra* note 2 at 37.

<sup>7</sup> Valli Rajah, Victoria Frye & Mary Haviland, “Aren’t I a Victim?” (2006) 12:10 *Violence Against Women* 897; David Hirschel & Eve Buzawa, “Understanding the context of dual arrest with directions for future research” (2002) 8:12 *Violence Against Women* 1449.

<sup>8</sup> Susan L Miller, “The Paradox of Women Arrested for Domestic Violence” (2001) 7:12 *Violence Against Women* 1339; Russell P Dobash et al, “The Myth of Sexual Symmetry in Marital Violence” (1992) 39:1 *Soc Problems* 71; Jennifer E Caldwell et al, “Why I

adverse impacts, many jurisdictions across Canada and America have enacted primary aggressor policies that mandate police officers to identify the primary or dominant aggressor in a domestic incident.<sup>9</sup> This article reports on findings from an Ottawa-based research project designed to examine experiences of women who received intimate partner violence related charges in light of such primary aggressor policies.

I begin by placing mandatory charging and primary aggressor policies within the historical and legal context of criminal justice responses to intimate partner violence. Concerns about mandatory charge policies are articulated, as are the remedies put in place to address them. This is followed by a brief review of recent scholarship on intimate partner violence, demonstrating existing gaps and the need for studies such as this. The methods and findings of this research project follows, focusing on the narratives of women charged in situations of intimate partner violence. The first section of research findings provides a detailed exploration of the ways police responded to women, and how women describe these interactions. The second section explores women's intersecting vulnerabilities such as race, immigration, and addiction. The article concludes by highlighting key concerns raised by this research about police responses to intimate partner violence.

## II. MANDATORY CHARGING

In 1982, Canadian Member of Parliament Margaret Mitchell told the House of Commons that "one in ten [Canadian] husbands beat their wives regularly."<sup>10</sup> She was immediately drowned out by laughter and heckling.

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hit him: Women's reasons for intimate partner violence" (2009) 18:7 *J Aggression Maltreatment & Trauma* 672; Meda Chesney-Lind, "Criminalizing Victimization : The Unintended Consequences of Pro-Arrest Policies for Girls and Women" (2002) 2:1 *Criminology & Public Policy* 81.

<sup>9</sup> Ontario, Ministry of the Solicitor General, *Policing Standards Manual*, 2000, (Ontario: MSG, 2000) at Domestic Violence Occurrences, 7/12 [*Policing Standards Manual*]; David Hirschel, Philip D McCormack & Eve Buzawa, "A 10-Year Study of the Impact of Intimate Partner Violence Primary Aggressor Laws on Single and Dual Arrest" (2017) *J Interpersonal Violence* 1; Cheryl Fraehlich & Jane Ursel, "Arresting Women: Pro-arrest Policies, Debates, and Developments" (2014) 29:5 *J Family Violence* 507; Mary A Finn et al, "Dual Arrest Decisions in Domestic Violence Cases: The Influence of Departmental Policies" (2004) 50:4 *Crime & Delinquency* 565.

<sup>10</sup> *House of Commons Debates*, 32-1, Vol 15 (12 May 1982) at 17334 (Margaret Mitchell) [*Hansard Vol 15*]. The statistic of 1 in 10 women beaten by their husbands was from the

Defiantly responding that wife battering was “no laughing matter,”<sup>11</sup> Mitchell went on to request that courts and law-enforcement start to treat spousal abuse as a criminal offence.<sup>12</sup> Later that year the Canadian government affirmed the criminality of ‘wife battering’<sup>13</sup> and over the next three years, federal and provincial governments adopted policies and directives requiring police to lay charges in all incidents of spousal abuse where there were reasonable grounds to believe an offence had been committed.<sup>14</sup> Originally classified as ‘wife assault,’ over the next three decades, the terms used to describe violence within intimate relationships evolved into ‘domestic violence,’ ‘spousal abuse,’ and ‘intimate partner violence.’ These terms recognize varieties in intimate relationships and the potential and actual victimization of men and women, cis and transgender; they also incorporate various types of violence, including emotional and psychological abuse.<sup>15</sup> Bill C-75, which received Royal Assent in 2019, adds a gender-neutral definition of intimate partner to section 2 of the *Criminal Code* which includes a person’s “current or former spouse, common-law partner and dating partner.”<sup>16</sup> Similarly, the 2000 Ontario Policing Manual

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first Canadian report on ‘wife battering’ titled *Wife Battering in Canada: The Vicious Circle* (1980). It was written by Ottawa sociologist Linda MacLeod. MacLeod continued to research and report on domestic violence and violence against women, publishing *Battered But Not Beaten* (1987) and *The City of Women: No Safe Place* (1989).

<sup>11</sup> Hansard Vol 15, *supra* note 10 at 17334.

<sup>12</sup> Judy Stoffman, “MP Margaret Mitchell famously called wife abuse ‘no laughing matter’”, *The Globe and Mail* (22 March 2017), online: <[www.theglobeandmail.com/news/politics/mp-margaret-mitchell-famously-called-wife-abuse-no-laughing-matter/article34392492/](http://www.theglobeandmail.com/news/politics/mp-margaret-mitchell-famously-called-wife-abuse-no-laughing-matter/article34392492/)> [perma.cc/KRA8-38F5].

<sup>13</sup> Peter Jaffe et al, “The impact of police charges in incidents of wife abuse” (1986) 1:1 *J Family Violence* 37.

<sup>14</sup> Sheehy, *supra* note 5; Valverde, *supra* note 5.

<sup>15</sup> Currently six provinces (Alberta, Manitoba, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, and Saskatchewan) and three territories (Northwest Territories, Yukon, and Nunavut) have specific legislation on family violence that broadens the scope of what constitutes domestic violence. For example, Manitoba’s *The Domestic Violence and Stalking Act*, SM 1998, c 41 includes under the meaning of domestic violence “conduct that reasonably, in all the circumstances, constitutes psychological or emotional abuse” (2(1.1)(c)). See also Ad Hoc Federal-Provincial-Territorial Working Group, *supra* note 4.

<sup>16</sup> Bill C-75, *An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts*, Parliament of Canada, 2019, c. 25, cl 1(3). The Bill, which is currently before Senate, also introduces reversal of onus of proof in bail applications for those who have previous charges against intimate partners, longer maximum sentences for those convicted of indictable offences against intimate

notes that “intimate relationships include those between the opposite-sex and same-sex partners. These relationships vary in duration and legal formality, and include current and former dating, common-law and married couples.”<sup>17</sup> However, despite the gender neutrality of policies addressing intimate partner violence, the rates and severity of experiences and threats of violence continue to disproportionately affect women. In 2003, a report released by the Ad-Hoc Federal-Provincial-Territorial Working Group tasked with reviewing spousal abuse policies and legislation concluded that while both men and women experience spousal abuse, that which is suffered by women is much more severe.<sup>18</sup>

Canada was not alone in implementing mandatory or pro-charge policies during the 1980s. In the United States and the United Kingdom, similar policies that targeted spousal abuse were being welcomed by feminists as a “symbolic and normative condemnation of domestic violence.”<sup>19</sup> Early studies of mandatory charging in Canada showed a dramatic increase in charge rates,<sup>20</sup> and in public support for such policies.<sup>21</sup> Yet in jurisdictions across North America, concerns were soon being raised about policy effectiveness, particularly given patriarchal power differences, gender inequities in access to the law, and male-dominated criminal justice institutions.<sup>22</sup> Concerns were also expressed about increased rates of women

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partners, and the consideration of offence committed against an intimate partner as an aggravating circumstance on sentencing.

<sup>17</sup> *Policing Standards Manual*, *supra* note 9 at Domestic Violence Occurrences, 1/12.

<sup>18</sup> Ad Hoc Federal-Provincial-Territorial Working Group, *supra* note 4; Holly Johnson & Myrna Dawson, *Violence Against Women in Canada: Research and Policy Perspectives* (Don Mills: Oxford University Press Canada, 2011).

<sup>19</sup> Marianne Hester, “Who does what to whom? Gender and domestic violence perpetrators in English police records” (2013) 10:5 *European J Criminology* 623 at 623; see also Chesney-Lind, *supra* note 8; Carol Smart, *Law, Crime and Sexuality*, (London: Sage, 1995).

<sup>20</sup> Jaffe et al reported a 2500% increase police charges in London, Ontario from the pre-policy year of 1979 to the third year of policy, 1983, despite relative consistency in the number of ‘family calls’. Jaffe et al, *supra* note 13.

<sup>21</sup> A 1996 study in the Yukon found that 85% of victims were in favour of pro-charging policies. Ad Hoc Federal-Provincial-Territorial Working Group, *supra* note 4 at 18; See also Myrna Dawson & Tina Hotton, “Police Charging Practices for Incidents of Intimate Partner Violence in Canada” (2014) 51:5 *J Research Crime & Delinquency* 655.

<sup>22</sup> Smart, *supra* note 19; Faith E Lutze & Megan L Symons, “The Evolution of Domestic Violence Policy Through Masculine Institutions: From Discipline to Protection to Collaborative Empowerment” (2003) 2:2 *Criminology & Public Policy* 319.

charged with assault and other related offences.<sup>23</sup> In Winnipeg in 1991, 23 percent of charges against women were related to intimate partner violence, in 1995, two years after the adoption of mandatory charge policies, that percentage jumped to 58.<sup>24</sup>

Primary aggressor policies were implemented to address concerns about the rise in intimate partner violence charges against women, and the fear that women were being inappropriately charged. Such policies mandate police officers to identify the primary or dominant aggressor in a domestic incident.<sup>25</sup> Even if both parties have or claim injury, police should carefully consider the severity and type of injury, as well as prior violence, and determine which party, if any, is the primary or dominant aggressor.<sup>26</sup> To promote identification of primary aggressors and reduce inappropriate charging of women, Domestic Violence Crown Attorneys, community groups, and the Ministry of Community Safety and Correctional Services in Ontario created an ‘Investigative Aid for Police Officers’ aimed at the “reduction of dual charges in domestic violence occurrences.”<sup>27</sup> It notes that the dominant aggressor may not be the individual who initiated the violence, but is the ‘principal abuser’ with a history of violence, as well as power and control indicators such as emotional abuse and isolation.<sup>28</sup> Various other investigative tools are available to police in Ontario to aid them in identifying the dominant aggressor. These include the Ontario Domestic Assault Risk Assessment, used to assess the severity and frequency

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<sup>23</sup> Susan L Miller, “The Paradox of Women Arrested for Domestic Violence” (2001) 7:12 *Violence Against Women* 1339; Russell P Dobash et al, “The Myth of Sexual Symmetry in Marital Violence” (1992) 39:1 *Soc Problems* 71; Jennifer E Caldwell et al, “Why I Hit Him: Women’s Reasons for Intimate Partner Violence” (2009) 18:7 *J Aggression Maltreatment & Trauma* 672; Meda Chesney-Lind, “Criminalizing Victimization: The Unintended Consequences of Pro-Arrest Policies for Girls and Women” (2002) 2:1 *Criminology & Public Policy* 81.

<sup>24</sup> Fraehlich & Ursel, *supra* note 9 at 508 citing Elizabeth Comck, Vanessa Chopyk & Linda Wood, *Mean Streets? The Social Locations, Gender Dynamics, and Patterns of Violent Crime in Winnipeg*, (Winnipeg: Canadian Centre for Policy Alternatives, 2000). .

<sup>25</sup> Hirschel, McCormack & Buzawa, *supra* note 9; Finn et al, *supra* note 9.

<sup>26</sup> David J Hirschel & Eve S Buzawa, “The Role and Impact of Primary Aggressor Laws and Policies” (2012) 12:2 *J Police Crisis Negotiations* 165; Finn et al, *supra* note 25; John Hamel, “In Dubious Battle: The Politics of Mandatory Arrest and Dominant Aggressor Laws” (2011) 2:2 *Partner Abuse* 224.

<sup>27</sup> Ministry of Community Safety and Correctional Services, *Investigative Aid: Dual Charges* (2016).

<sup>28</sup> *Ibid* at 2-3.

of assaults and the risk of future assault; the Domestic Violence Supplementary Report Form<sup>29</sup> which includes a 19-point checklist of risk factors, such as past history of violence, access to firearms, bizarre behaviour, and drug and alcohol use; and the Spousal Assault Risk Assessment Guide with a 20-point checklist on criminal history, psychological functioning and social adjustment.<sup>30</sup> However, even when such guidelines exist, research in the United Kingdom has indicated police still use their own discretion in determining whether or not to make arrests.<sup>31</sup> Research in the United States shows that policy compliance by police is low.<sup>32</sup> In Canada, research in the 1990s on officers' perceptions of mandatory charging policies indicated they were resistant to loss of discretion<sup>33</sup> and that interpretation of policy is influenced by individual officer's perceptions and stereotypes.<sup>34</sup> More recently, Myrna Dawson and Tina Hutton analyzed the 2008 Canadian Uniform Crime Reporting Survey which includes 81,482 incidents of intimate partner violence reported to the police.<sup>35</sup> They found that legal and extralegal factors influence police decisions to lay charges across all jurisdictions, despite the prevalence of mandatory-charge policies.<sup>36</sup> In a 2004 Toronto area study of women charged with domestic violence, Shoshanna Pollack found that 90 percent of women charged had a history of physical, emotional and sexual abuse by the partner they allegedly assaulted, and six of 19 respondents had called 911 for their own protection, yet were instead themselves arrested.<sup>37</sup> The existence of policy directives and

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<sup>29</sup> This form was created by the Ontario Provincial Police Behavioural Science Form in response to the inquest into the murder of Arlene May by her boyfriend Randy Iles. Allison Millar, Ruth Code & Lisa Ha, *Inventory of Spousal Violence Risk Assessment Tools Used in Canada*, (Ottawa: Department of Justice Canada, 2009).

<sup>30</sup> *Ibid.*

<sup>31</sup> Andy Myhill & Kelly Johnson, "Police use of discretion in response to domestic violence" (2016) 16:1 *Criminology & Crim Justice* 3.

<sup>32</sup> Dana A Jones & Joanne Belknap, "Police Responses to Battering in a Progressive Pro-Arrest Jurisdiction" (1999) 16:2 *Justice Q* 249.

<sup>33</sup> Kelly Hannah-Moffat, "To Charge or Not to Charge: Front Line Officers' Perceptions of Mandatory Charge Policies" in Mariana Valverde, Linda MacLeod & Kirsten Johnson, eds, *Wife Assault and the Canadian Criminal Justice System: Issues and Policies*, (Toronto: University of Toronto Press, 1995) 35.

<sup>34</sup> J Faubert & R Hinch, "The Dialectics of Mandatory Arrest Policies" in Thomas O'Reilly-Flemming, ed, *Post-Critical Criminology* (Toronto: Prentice Hall, 1996) 230.

<sup>35</sup> Dawson & Hotton, *supra* note 21.

<sup>36</sup> In Ontario, 86.3% of cases were cleared by a criminal charge, which is higher than the national average of 74%.

<sup>37</sup> Women Abuse Council of Toronto, *Women Charged with Domestic Violence in Toronto*:

guidelines does not guarantee changes to police practices, nor unequivocally prevent inappropriate charging of women. However, Research and Education for Solutions to Violence and Abuse recently conducted a study of 2,736 women accused of intimate partner violence offences in Winnipeg.<sup>38</sup> They found there was a decline in dual arrests (where both parties are arrested) after police received primary aggressor training.<sup>39</sup>

### III. APPROACHES TO STUDYING INTIMATE PARTNER VIOLENCE AND MANDATORY CHARGING

International scholarship on mandatory charging and primary aggressor policies notes that police continue to exercise great deal of discretion in responding to domestic situations.<sup>40</sup> As has been shown in research on police responses to sexual assault, officers may mistrust or disbelieve women's accounts of assault and apply stereotypes about 'real' victims.<sup>41</sup> Additionally, officers who disagree with mandatory charge policy guidelines can downplay them at every level in practice, training, and supervision.<sup>42</sup> They can selectively invoke the law according to context and their own moral judgments.<sup>43</sup> Susan Miller suggests that officers may be reluctant to conduct thorough investigations of family violence if they feel they lack the

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*The Unintended Consequences of Mandatory Charge Policies*, by Shoshana Pollack, Vivien Green & Anke Allspach (Toronto: WACT, 2005) [Pollack, Green & Allspach].

<sup>38</sup> Fraehlich & Ursel, *supra* note 24.

<sup>39</sup> *Ibid* at 511, 516.

<sup>40</sup> Durant Frantzen & Claudia San Miguel, "Mandatory arrest? Police response to domestic violence victims" (2009) 32:2 Policing 319.; David Hirschel et al, "Domestic Violence and Mandatory Arrest Laws: To What Extent Do They Influence Police Arrest Decisions" (2008) 98:1 J Crim L & Criminology 255; Enrique Gracia, Fernando García & Marisol Lila, "Police Attitudes Toward Policing Partner Violence Against Women: Do They Correspond to Different Psychosocial Profiles?" (2011) 26:1 J Interpersonal Violence 189.

<sup>41</sup> Jan Jordan, "Perfect Victims, Perfect Policing? Improving Rape Complainants' Experiences of Police Investigations" (2008) 86:3 Public Administration 699; Amy Dellinger Page, "Gateway to reform? Policy Implications of Police Officers' Attitudes Toward Rape" (2008) 33:1 American J Crim Justice 44.

<sup>42</sup> Eve Buzawa, Thomas L Austin & Carl G Buzawa, "Responding to Crimes of Violence Against Women: Gender Differences Versus Organizational Imperatives" (1995) 41:4 Crime & Delinquency 443.

<sup>43</sup> Trish Oberweis & Michael Musheno, "Policing Identities: Cop Decision Making and the Constitution of Citizens" (1999) 24:4 Law & Soc Inquiry 897 ; Myhill & Johnson, *supra* note 31.



training or resources to do so.<sup>44</sup> They may also believe it is best left for the courts to decide.<sup>45</sup> Thus, arresting both parties may be seen as a prudent and cautious step, one which the courts can remedy if need be. However, Canadian 2017 data indicate criminal court cases involving females accused of violent crimes are more likely (compared to males) to be stayed or withdrawn.<sup>46</sup> Given that women's violent crimes are most likely to be related to situations of intimate partner violence,<sup>47</sup> withdrawal of charges raises questions about whether these charges were appropriate. Although Miller found that police minimize negative effects of arrest on victims, believing that arrest could provide victims with safety and motivate them to seek assistance,<sup>48</sup> research clearly shows that women charged and arrested with intimate partner violence become very wary of the police and are unlikely to call upon them in the future, even if they are being physically assaulted.<sup>49</sup> Women who have been charged also face many other negative consequences, including costly legal fees and lengthy legal proceedings; loss of child custody, employment and housing; and feelings of isolation and depression.<sup>50</sup>

Feminist scholars like Miller,<sup>51</sup> Marianne Hester,<sup>52</sup> and Janet Mosher<sup>53</sup> have argued that the criminal justice system is incident-focused, and is thus ill-equipped to respond to and recognize sustained patterns of violence, including emotional, physical, sexual, and economic control and abuse.<sup>54</sup> This narrow focus increases the likelihood that police may arrest a woman for lashing out, such as scratching, slapping or pushing her partner, yet ignore sustained abuse she has endured.<sup>55</sup> Clearly, in some cases women do

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<sup>44</sup> Miller, *supra* note 8.

<sup>45</sup> Margaret E Martin, "Double Your Trouble: Dual Arrest in Family Violence" (1997) 12:2 J Family Violence 139 at 142.

<sup>46</sup> Laura Savage, "Female offenders in Canada, 2017" (2019) 39:1 Juristat 1 at 10.

<sup>47</sup> *Ibid* at 7.

<sup>48</sup> Miller, *supra* note 8.

<sup>49</sup> Pollack, Green & Allspach, *supra* note 37 at 20-23.

<sup>50</sup> *Ibid* at 4-5, 20-21; Hillary Kaert, *Help or Hindrance: the Impact of the Mandatory Charge Policy* (Peterborough, 2013) at 54-55; Hirschel & Buzawa, *supra* note 9 at 1459.

<sup>51</sup> Miller, *supra* note 8.

<sup>52</sup> Hester, *supra* note 19.

<sup>53</sup> Janet E Mosher, "Grounding Access to Justice Theory and Practice in the Experiences of Women Abused by Their Intimate Partners" (2015) 32:1 Windsor YB Access Just 149.

<sup>54</sup> See also Hirschel & Buzawa, *supra* note 3.

<sup>55</sup> Miller, *supra* note 8.

use physical violence against their partners. However, most women who use violence against an intimate partner do so in the context of violence against themselves, and their violence is often in self-defense.<sup>56</sup> Still, Shoshana Pollack argues that women charged with offences related to domestic violence are rarely given opportunities to provide context for their actions, but are treated as ‘offenders’ and ‘batterers.’<sup>57</sup> She adds that women are more likely to be charged if they use a ‘weapon,’ even if this is something like a phone or tv remote.<sup>58</sup> Hillary Kaert notes that women often feel re-victimized, dismissed, and disbelieved by police.<sup>59</sup> Victoria Frye and Mary Haviland find that even when women have visible, serious physical injuries, sometimes they are still sole-charged.<sup>60</sup> Indigenous women experience intimate partner violence at a much higher rate than that experienced by non-Indigenous women in Canada,<sup>61</sup> yet they are often wary of turning to police for assistance, as they have found police to be unresponsive to their complaints.<sup>62</sup> For many women, the ‘choice’ to stay in abusive relationships “may be influenced, constrained, or dominated by violence witnessed and experienced during childhood,” rates of which are disproportionately high in Indigenous communities.<sup>63</sup> Similarly, racialized women such as new immigrants and visible minorities experience high rates of intimate partner violence, but underutilize criminal justice system responses.<sup>64</sup>

Mandatory charging policies and other efforts aimed at addressing intimate partner violence have been met by an antifeminist backlash from men’s rights activists across Western jurisdictions.<sup>65</sup> In 2000, when the

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<sup>56</sup> Kathleen J Ferraro, *Neither Angels nor Demons: Women, Crime and Victimization* (Hanover: University Press of New England, 2006); Hirschel & Buzawa, *supra* note 7; Miller, *supra* note 8; Suzanne C Swan & David L Snow, “The Development of a Theory of Women’s Use of Violence in Intimate Relationships” (2006) 8:3 *Violence Against Women* 1026.

<sup>57</sup> Pollack, Green & Allspach, *supra* note 49 at 9.

<sup>58</sup> *Ibid* at 7-9.

<sup>59</sup> Kaert, *supra* note 50.; see also Dora MY Tam et al, “Racial Minority Women and Criminal Justice Responses to Domestic Violence” (2016) 31:4 *J Family Violence* 527.; Finn et al, *supra* note 8.

<sup>60</sup> Victoria Frye & Mary Haviland, “Aren’t I a Victim?” (2006) 12:10; see also Martin, *supra* note 45.

<sup>61</sup> Dawson et al, *supra* note 3.

<sup>62</sup> Manitoba, *Aboriginal Justice Implementation Commission Final Report* (Winnipeg: AJIC, 2001).

<sup>63</sup> McGillivray & Comaskey, *supra* note **Error! Bookmark not defined.** at 16.

<sup>64</sup> Tam et al, *supra* note 59.

<sup>65</sup> Ruth M Mann, “Men’s Rights and Feminist Advocacy in Canadian Domestic Violence

Ontario government tabled Bill 117 *An Act to Better Protect Victims of Domestic Violence*, which would enhance restraining orders for abusive partners, men's groups lined up in protest.<sup>66</sup> For example, Butch Windsor of Equal Parents of Canada voiced themes common in backlash discourses, such as women's "rampant" use of false allegations and the refusal of government to support men's groups; Peter Cornakovic of Fathers Can Parent Too claimed spousal violence is "largely mutual."<sup>67</sup> Similarly, within academic scholarship, an argument about 'gender symmetry' claims that women are just as violent, if not more violent, than men in intimate relationships.<sup>68</sup> Such articles are countered by scholars insisting male violence toward women is more likely to cause serious physical injury and that women are more likely than men to fear their intimate partners.<sup>69</sup> Recent data from Statistics Canada show that more women than men are victims of police-reported intimate partner violence at a rate per 100,000 of 482 to 132.<sup>70</sup> Nevertheless, the gender symmetry debate remains persistent so it is vital that feminist scholars prepare themselves for backlash<sup>71</sup> and present their research findings within the context of gender power dynamics and gendered experiences of violence. For example, Dawson and Hutton reported that in Canada in 2008, offences against females were more likely to result in charges (than those against males) by a factor of 2.4,<sup>72</sup> a finding which could bolster arguments of those claiming men are discriminated against in mandatory charging policies and practices. However, Dawson and Hutton go on to note that their study could not examine co-related factors which influence arrest decisions, such as prior criminal records, which men

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Policy Arenas: Contexts, Dynamics, and Outcomes of Antifeminist Backlash" (2008) 3:1 *Feminist Criminology* 44; Miller, *supra* note 8 at 1343;; for example of argument that mandatory charge policies are biased against men see Hamel, *supra* note 26..

<sup>66</sup> Mann, *supra* note 65 at 55-59.

<sup>67</sup> Ontario, Legislative Assembly, Standing Committee on Justice and Social Policy, 37, (24 October 2000).

<sup>68</sup> Murray A Straus, "Why the Overwhelming Evidence on Partner Physical Violence by Women Has Not Been Perceived and Is Often Denied" (2009) 18:6 *J Aggression Maltreatment & Trauma* 552; Donald Dutton, Tonia Nicholls & Alicia Spidel, "Female Perpetrators of Intimate Abuse" (2005) 41:4 *J Offender Rehabilitation* 1.

<sup>69</sup> Leslie M Tutty et al, *The Justice Response to Domestic Violence: A Literature Review* (Calgary, 2008) at 1; Dobash et al, *supra* note 8 at 75; Miller, *supra* note 8 at 1344-46.

<sup>70</sup> Burczycka & Conroy, *supra* note 2 at 53.

<sup>71</sup> Mann, *supra* note 65.

<sup>72</sup> Dawson & Hutton, *supra* note 21 at 671.

are more likely to have and that women make up the vast majority of victims of intimate partner violence.<sup>73</sup>

Arguments about gender symmetry are fueled by variances in data and lack of clarity around trends in charging practices. A 2013 study in Peterborough, Ontario found that women were charged in about 20 percent of domestic incidents,<sup>74</sup> while a 2016 province-wide study in Ontario found that when police were contacted in domestic violence situations, women were charged in only 5 percent of cases.<sup>75</sup> This would suggest a downward trend in women being charged, which counters what is reported anecdotally by community partners. Data on criminal charges against women indicate the rates of various charges women receive, but cannot locate these charges within police practice regarding mandatory charging. For example, 2017 data on criminal charges in Canada indicate 70% of violent-crime related charges against women were for assault, of which the vast majority (76%) were level 1 assaults (assaults which cause little physical harm to victims and do not involve weapons); and victims of females accused of a violent crime were most likely to be intimate partners.<sup>76</sup> This suggests that violent-crime related charges levied against women are primarily made in relation to intimate partner violence situations, but it cannot speak to how these charges were determined, nor the context in which they were made. Clearly more research is needed to assess charging rates and practices in jurisdictions across the country in ways that would render findings comparable.

Substance use is a complicating factor in both domestic violence and police intervention. For example, a study using criminal justice data to compare women and men arrested for domestic violence found that 67 percent of women and 78 percent of men appeared to have been using drugs or alcohol when they were arrested.<sup>77</sup> Another study found that 92 percent of domestic violent assailants (of which 22 percent were female) had used

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<sup>73</sup> Lynette Feder & Kris Henning, "A Comparison of Male and Female Dually Arrested Domestic Violence Offenders." (2005) 20:2 *Violence & Victims* 153.

<sup>74</sup> Kaert, *supra* note 50 at 27.

<sup>75</sup> Holly Johnson & Deborah Connors, *The Benefits and Impacts of Mandatory Charging in Ontario: Perceptions of Abused Women, Service Providers and Police* (Ottawa: University of Ottawa 2017) at 4.

<sup>76</sup> Savage, *supra* note 46 at 7-8, 11.

<sup>77</sup> Amy L Busch & Mindy S Rosenberg, "Comparing Women and Men Arrested for Domestic Violence: A Preliminary Report" (2004) 19:1 *J Family Violence* 49 at 54.

drugs or alcohol on the day of the assault.<sup>78</sup> Martin found that alcohol and/or drugs were involved at the time of the arrest in more than half of dual arrest cases.<sup>79</sup> In a study of women who used violence against their intimate partners, 33 percent indicated they had hit their partner “because [they] were drinking or using drugs.”<sup>80</sup> What is not clear from this research is the extent to which substance use influenced the women’s behaviour (such as increasing aggression or decreasing inhibitions), and/or the extent to which it influenced police decisions about whether or not to arrest one or both individuals, although research has found that police are less likely to believe domestic violence victims if they have been drinking.<sup>81</sup> There are on-going questions about the role substance use plays in police decision-making. If a woman has been drinking, are police more likely to arrest and charge her with assault? At the same time, are they less likely to believe her accounts of violence she experienced?<sup>82</sup>

The Barbara Schlifer Commemorative Clinic in Toronto, which provides services to more than 4,700 women each year, noticed an increase in women being criminalized when requesting state protection from gender-based violence. Their on-going ‘Criminalization of Women Project’ focuses on women charged in relation to family law violations, sexual assault laws, and immigration and refugee laws. Such research projects are needed in Canada since research on justice responses to intimate partner violence still focuses predominantly on the perspectives of women victims.<sup>83</sup> With a few

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<sup>78</sup> Daniel Brookoff et al, “Characteristics of Participants in Domestic Violence: Assessment at the Scene of Domestic Assault” (1997) 277:17 J American Medical Association 1369 at 1370-1371 at 1371.

<sup>79</sup> Martin, *supra* note 45 at 148.

<sup>80</sup> Caldwell et al, *supra* note 8 at 680.

<sup>81</sup> Research indicates police are less likely to believe, and more likely to blame, drunk victims of domestic than sober victims, but it is not clear if police are more likely to arrest drunk ‘assailants.’ Joyce Stephens & Peter G Sinden, “Victims’ Voices: Domestic Assault Victims’ Perceptions of Police Demeanor” (2000) 15:5 J Interpersonal Violence 534; Anna Stewart & Kelly Maddren, “Police Officers’ Judgements of Blame in Family Violence: The Impact of Gender and Alcohol” (1997) 37:11/12 Sex Roles 921; Hannah-Moffat, *supra* note 33.

<sup>82</sup> Stewart and Maddren found that police are less likely to believe, and more likely to blame, drunk victims of domestic than sober victims, but their research did not indicate if police are more likely to arrest drunk ‘assailants’. Stewart & Maddren, *supra* note 81. See also Hannah-Moffat, *supra* note 33.

<sup>83</sup> Johnson & Conners, *supra* note 75; Mosher, *supra* note 53; Joseph Roy Gillis et al, “Systemic Obstacles to Battered Women’s Participation in the Judicial System: When Will the Status Quo Change?” (2006) 12:12 Violence Against Women 1150; Tam et al,

important exceptions<sup>84</sup> there is little research being done in Canada on women who are charged in situations of intimate partner violence. As noted above, gaps and variances in research on charges against women can fuel arguments of gender symmetry and make it difficult to locate studies such as this. Additionally, scholarship aimed at police practices has focused on the role of prosecution,<sup>85</sup> and factors leading to the laying of charges.<sup>86</sup> Less attention has been given to how women experience these police practices, particularly women who are deemed by police to have committed an offence. This research builds upon Canadian scholarship about police charging practices and addresses gaps created by the shortage of attention to the perspectives of women who have been charged in situations of intimate partner violence.

#### IV. RESEARCH PROJECT

This study is part of a community-based project on Violence Against Women, the primary goal of which was to examine, in light of primary aggressor policies, the experiences of women who had received an intimate partner violence related charge.<sup>87</sup> Community partners working with criminalized women and women who have experienced intimate partner violence were active members of the project. They assisted with recruitment of participants, as well as with interpretation and communication of findings. As researchers Mary Haviland, Victoria Frye and Valli Rajah point out, understanding women's experiences of violence and power is part of "domestic violence work."<sup>88</sup> As such, this project was rooted in feminist

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*supra* note 59; Dianne L Martin & Janet Mosher, "Unkept Promises: Experiences of Immigrant Women with the Neo-Criminalization of Wife Abuse" (1995) 8:3 CJWL 3.

<sup>84</sup> Fraehlich & Ursel, *supra* note 24; Pollack, Green & Allspach, *supra* note 37; Kaert, *supra* note 59.

<sup>85</sup> Johnson & Dawson, *supra* note 18.

<sup>86</sup> Dawson & Hotton, *supra* note 21.

<sup>87</sup> The project was funded by the Social Sciences and Humanities Research Council as part of a larger partnership project (Community First: Impacts of Community Engagement) that explored how to make community/academic partnerships more effective from a community perspective. It was conducted by the author under the supervision of Dr. Diana Majury, and guided by representatives of the Elizabeth Fry Society of Ottawa and Harmony House. Additional community partners include Odawa Native Friendship Centre, Catholic Family Services, and the Eastern Ontario Resource Centre.

<sup>88</sup> Mary Haviland, Victoria Frye & Valli Rajah, "Harnessing the Power of Advocacy –

research principles that prioritize in-depth understanding women's experiences, and the context of these experiences through narrative accounts,<sup>89</sup> and that honour the work and insights of frontline workers.

The research process involved in-depth interviews with 18 women in Ottawa, Ontario who had been charged in domestic violence incidents.<sup>90</sup> Community partners report increases in the number of women who have received intimate partner violence related charges and who are seeking support services. However, in some cases cutbacks in funding have resulted in loss of programming designed for these women. Recruitment for this project had initially been planned from one such program, but as it ended soon after the project began, additional community partners were brought in so that more potential participants could be reached. These included a community organization offering services relating to violence against women, another organization offering a Partner Assault Response program to women, and a drop-in centre for Indigenous women. This engagement with diverse community partners facilitated access to women of different demographics and from different areas of Ottawa. However, it is important to acknowledge that women who use these services are not representative of all women charged in situations of intimate partner violence.<sup>91</sup>

The recruitment process involved displaying posters at partner locations and having service providers give the posters to women who met the recruitment criteria.<sup>92</sup> When women contacted me, the researcher, we would arrange to meet at a mutually convenient time, usually in a private room at the location where the woman received information about the

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Research Lessons From the Field" (2008) 3:4 *Feminist Criminology* 247 at 249.

<sup>89</sup> Shulamit Reinharz & Lynn Davidman, *Feminist Methods in Social Research* (Oxford: Oxford University Press, 1992); Marjorie L DeVault, "Talking Back to Sociology: Distinctive Contributions of Feminist Methodology" (1996) 22 *Annual Rev Sociology* 29.

<sup>90</sup> All participants were interviewed in Ottawa and most of their experiences related to interactions with Ottawa municipal police. However, four women's experiences were with police from other jurisdictions, including the Ontario Provincial Police.

<sup>91</sup> See Holly Johnson, "Methods of Measurement" in Katherine MJ McKenna & June Larkin, eds, *Violence Against Women New Can Perspect* (Toronto: Inanna Publications, 2002) 21.

<sup>92</sup> Service providers working with criminalized women are aware of the charges women have faced or are in the process of dealing with due to the nature of the services they provide. As such, women recruited for this project did not need to disclose to the service provider any information about their charges or situation about which that individual was not already aware.

project.<sup>93</sup> By relying on participant self-selection, I cannot know the criteria upon which women decided to participate, or how many women chose not to participate.<sup>94</sup> Participants received a \$10 gift card, which especially for economically marginalized women could have influenced their decision. Several women told me they responded because they wanted to have the chance to tell their story. One participant was in the process of trying to have the charges against her withdrawn. She told me she had engaged a lawyer, but given the high cost of his fees, she was reluctant to communicate much with him. During the interview, as she discussed the event that had led to her charges, she noted that there were details she was telling me about which her lawyer was not aware. I offered to give her our interview transcript so she could give it to her lawyer. She shared the transcript with him and later I heard through the community partner that charges against her were withdrawn. Certainly, I have no way of knowing if the transcript had any influence on the lawyer's arguments or the court's decision, however I provide this account to illustrate a feminist approach to research which emphasizes compassion and connectedness.<sup>95</sup>

Interviews focused on women's experiences with the police with respect to the charges against them and how much information the police solicited about the abuse they had experienced in the light of the primary aggressor charging policy in place in Ontario. Length of the interviews ranged from 16 to 100 minutes, with an average of 41 minutes.<sup>96</sup> As a researcher, I

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<sup>93</sup> Two women asked me to come to their home or office as it was not convenient for them to meet me at the partner site.

<sup>94</sup> Johnson, *supra* note 91.

<sup>95</sup> Sandra Harding & Kathryn Norberg, "New Feminist Approaches to Social Science Methodologies: An Introduction" (2005) 30:4 *Signs* 2009; Rebecca Campbell et al, "What Has It Been Like for You to Talk With Me Today?": The Impact of Participating in Interview Research on Rape Survivors" (2010) 16:1 *Violence Against Women* 60; Amanda Burgess-Proctor, "Methodological and ethical issues in feminist research with abused women: Reflections on participants' vulnerability and empowerment" (2015) 48 *Womens Studies Intl Forum* 124.

<sup>96</sup> The 16-minute interview ended early because the participant, recruited at a drop-in centre, grew increasingly distraught when talking about her experiences of violence. As the emotional well-being of research participants was my primary concern, when she first became upset, I offered that we stop the interview and I expressed concern about her well-being, but she insisted that she wanted to continue saying, 'I have talk to somebody about it, right?' and talking about her loneliness. However, after a few more minutes she said she wanted to stop, to which I immediately agreed. It is not unusual for participants who have experienced violence to become distraught during interviews - see Rebecca Campbell et al, *supra* note 91 - although this was the only interview that



approached narratives not as records of fact, but as meaning-making representations of the “chaotic mass of perceptions and experiences.”<sup>97</sup> I viewed interviews as guided conversations through which I sought to understand women’s experiences from their perspectives and in a process of narration that they chose.<sup>98</sup> I opened each interview by inviting the woman to talk about her experience however she wanted. Some women began by describing how they first met their husband or boyfriend many years previously and talked at length about their relationship; others began with an account of their arrest, providing context later on during our conversation. While I referred to my interview guide to make sure we had addressed all the questions listed (such as whether the police took photos or items for evidence), the sequencing of questions about the incident varied significantly and often women provided answers to the research questions without my direct inquiry. I tried to end all interviews with questions aimed at drawing out narrative accounts of resiliency and strength. Community partners had ensured that counsellors were freely available to women after our interview, a service about which I informed each woman prior to and after the interview. None of the women took up this invitation. Despite that many of them cried during our conversation, several commented that the interview experience was positive, which corresponds with research on feminist practices in interviews of sexual assault victims wherein interviews can be supportive environments that allow women to talk about their experiences, particularly when women are given choices in how they tell their story and are met with compassion rather than judgment.<sup>99</sup>

Of the 18 interviews, 16 were audio-recorded and transcribed; for the other two I took notes, which were then transcribed. All interviews were anonymized and pseudonyms assigned to each case. My analytic process involved thematic data analysis developed through intensive reading, coding using software QSR NVivo, and searching for themes that described the experiences of respondents. Some guiding questions included: How do

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was cut short due to the participant's emotional distress.

<sup>97</sup> Ruthellen Josselson, “Imagining the Real: Empathy, Narrative, and the Dialogic Self” in Ruthellen Josselson & Amia Lieblich, eds, *Interpreting Experience: The Narrative Study of Lives* (Thousand Oaks: Sage Publications, 1995) 27 at 33.

<sup>98</sup> Steinar Kvale & Svend Brinkmann, *InterViews: Learning the Craft of Qualitative Research Interviewing*, 2nd ed (Los Angeles: SAGE Publications Inc, 2009).

<sup>99</sup> Campbell et al, *supra* note 95.

women describe their encounter with police? What was the context in which the incident occurred? What have been the impacts of police intervention? Following the process of interviewing, coding, and analyzing, I drafted a report which was circulated to the project's community partners. Two roundtables were held with community partners, including service providers who assisted with participant recruitment, individuals who assist in providing court-related supports to criminalized women, and feminist researchers and advocates. These women served as guides in interpreting and communicating findings<sup>100</sup>; they challenged me on some of my preliminary conclusions, and helped to place research findings within the broader context of feminist efforts to address violence against women.

## A. Findings

### *1. Incidents and charges*

Before delving into the narrative accounts of women who participated in this study, this section provides an overview of these women and the charges laid against them, findings which are placed within the national context of intimate partner violence and women's criminalization. As will be discussed more fully, women in this study faced intersecting and compounding vulnerabilities through poverty, race, immigration, disability, addiction, and histories of abuse (See Table 1). The only criteria for participating in this project was that women had been charged in a domestic situation. However, each of the 18 women interviewed had been sole-charged, meaning she alone was charged and her partner was not, although one woman had, in another situation, been dual charged. This sole-charging of women is hard to understand, since of the 18 women interviewed, only one said that her partner had not been physically violent toward her, and indeed several women told me they had visible injuries on their bodies when police arrived. Women also mentioned their partner's use of sexual violence, withholding of money, threats, and other types of control and aggression.

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<sup>100</sup> Haviland, Frye & Rajah, *supra* note 88.

Table 1 – Women's demographics

Ages (at time of interview)	range from 25 to 62, with a mean of 39 and median of 36
Ages (at time of incident <sup>101</sup> )	range from 19 to 60, with a mean of 36 and a median of 33
Employment	9 employed 9 unemployed
Ethnicity	8 Indigenous and Inuit* 5 Immigrant 4 Caucasian 1 Black
Living arrangements at time of incident	7 women lived with partner in shared house/apartment 6 women had their own homes 4 women were staying in his apartment 1 couple was homeless
Children	7 had children with them (ranging from infant to age 21) 6 had no children 5 had children but not with them (i.e. grown up or living elsewhere)
History of abuse prior to this relationship	14 women indicated prior abuse, as children and/or as adults 3 women indicated there had not been prior abuse 1 woman was not asked this question**
Self-identified disabilities	12 women said they had no disabilities (although some identified as alcoholics) 5 women identified disabilities (incl. acquired brain injury, PTSD, depression) 1 woman was not asked this question

<sup>101</sup> Age at time of incident is an approximation since it was not one of the questions asked during the interview. While some women mentioned their age, in other instances they mentioned the year in which the incident happened or indicated the amount of time that had passed.

Drug and alcohol use	9 women described themselves as alcoholics or having a ‘problem’ with alcohol (of which 2 also reported frequently using drugs) 9 women did not indicate alcoholism or drug use
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\* 5 of the 8 Indigenous and Inuit women were recruited at the Indigenous drop-in centre.

\*\* See footnote 95.

When investigating allegations of intimate partner violence, police are instructed to look at previous charges, police records, and protection orders (all of which are indicative of a history of violence).<sup>102</sup> Among the 18 women, three had prior charges of assault, two of whom were involved in relationships with men who also had prior assault charges. One woman had a prior charge of manslaughter, but it was unclear if the man whom she stabbed in the incident we discussed had any prior charges. Two women had prior charges of drinking in public, and one of impaired driving. Nine women had no prior involvement with police, nor any previous charges. However, at least six of the women interviewed (and sole-charged) were accused of assaulting someone who had a previous violent charge against them. Irena’s husband even had a restraining order based on his violent assaults against her. Even if application of the primary aggressor policy could have contributed to the charging of those women with previous violent offence charges, it is hard to understand how the rest of the women were sole charged, particularly when accused of assaulting someone known to have a history of violence.

Canadian statistics indicate that 70 percent of women who are charged with violent crimes receive charges of assault<sup>103</sup> and that for females accused of assault, 40-51 percent of their victims were intimate partners.<sup>104</sup> Among the 18 women interviewed, 16 received assault charges. Charges laid against these women were comparable to national rates, since seven women’s charges were for assault with a weapon or aggravated assault, and nationally these levels of assault make up 49 and 50 percent respectively of assault charges against an intimate partner. The weapons women were accused of using included knives (three incidents), a frozen bag of meat, a lamp, and a

<sup>102</sup> Ministry of Community Safety and Correctional Services, *supra* note 27.

<sup>103</sup> Savage, *supra* note 46 at 3.

<sup>104</sup> Statistics Canada, *Women and the Criminal Justice System*, by Tina Hotton Mahony, Joanna Jacob & Heather Hobson, Catalogue No 89-503-X (Ottawa: Statistics Canada, 2017) at 29.

snow shovel. The charge of aggravated assault was for a fingernail scratch on her husband's cornea.

Intimate partner violence takes place at all demographic and socioeconomic levels.<sup>105</sup> Women who participated in this study also spanned demographic and socioeconomic categories. Nine women were employed, nine were not. Some women were born and raised in Ontario, others came from Northern Canada or countries abroad. Some lived in their own homes, alone or with their children, others were dependent on a partner or on housing services. All of the respondents indicated they were in a heterosexual partnership; for one couple the male partner was transgender. International research on LGBTQ experiences of intimate partner violence indicates they “are at equal or higher risk of experiencing [intimate] partner violence when compared to heterosexual” couples.<sup>106</sup> National data from 2015 also indicates violence within dating relationships is more common (54 percent) than within spousal relationships (44 percent).<sup>107</sup> Among the women interviewed, only five were married to their partner, although eight others had been living with their partner for over a year and could be considered common-law.

While intimate partner violence knows no boundaries, there are some demographic factors associated with heightened risk, such as youth and racialization. The average age of the women who participated in this study was 33. Statistics on women's criminalization indicates that charges against women decline as women age (as they do with men), with women aged 18-24 receiving the highest number of assault charges (all levels).<sup>108</sup> Similarly, women under 24 are most likely to be victimized by an intimate partner, usually someone they are dating.<sup>109</sup> Women in this study were slightly older than the age at which most women are victimized and criminalized. However, although the incident(s) that led to charges happened for most women when they were in their 30s, many women had been experiencing violence for several years prior to their charge. Racialized women, by which I mean women whose skin colour, accent, and other sensory markers denote

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<sup>105</sup> Ad Hoc Federal-Provincial-Territorial Working Group, *supra* note 4.

<sup>106</sup> Ellis Furman et al, “It's a gap in awareness': Exploring service provision for LGBTQ2S survivors of intimate partner violence in Ontario, Canada” (2017) 29:4 J Gay Lesbian Soc Services 362 at 363.

<sup>107</sup> Burczycka & Conroy, *supra* note 2 at 47.

<sup>108</sup> Mahony, Jacob & Hobson, *supra* note 104 at 27-28.

<sup>109</sup> Burczycka & Conroy, *supra* note 2 at 48.

a non-Anglo-Saxon Caucasian origin,<sup>110</sup> made up the majority (13/18) of the respondents. In Canada, research consistently shows that Indigenous women are more likely to be affected by violent victimization, including intimate partner violence.<sup>111</sup> Indigenous women experience spousal violence at a rate three times higher than that of non-Indigenous women, and are more likely to experience severe violence and fear for their lives.<sup>112</sup> Statistics reveal that slightly fewer immigrant women report victimization by spouses than non-immigrants<sup>113</sup> but that racial minority women from developing countries experience high rates of violence.<sup>114</sup> Other factors which have been associated with increased risk of experiencing intimate partner violence include having experienced abuse as a child.<sup>115</sup> The majority (14/18) of the women in this study reported experiencing prior abuse, as children and/or as adults.

The demographics of the 18 women are generally consistent with national trends on intimate partner violence and women's criminalization. That said, the results of this small qualitative study cannot be generalized to larger populations of women who receive intimate partner violence related charges, nor to the frequency of problems associated with primary aggressor policies.<sup>116</sup> Additionally, while this project focused on women who have received intimate partner violence related charges, in Canada, as in other Western nations, the majority of those arrested on such charges are men<sup>117</sup> and thus results here cannot be generalized to police responses to domestic calls. However, "women's powerful narratives provide considerable feedback"<sup>118</sup> which can be used to understand how they have experienced police responses to situations of intimate partner violence, and which can raise question about the implementation of primary aggressor policies. The following section turns to women's descriptions of their experiences with

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<sup>110</sup> Sherene Razack, "What Is to Be Gained by Looking White People in the Eye? Culture, Race, and Gender in Cases of Sexual Violence" (1994) 19:4 *Signs* 894.

<sup>111</sup> Mahony, Jacob & Hobson, *supra* note 104; Dawson et al, *supra* note 3.

<sup>112</sup> Mahony, Jacob & Hobson, *supra* note 104 at 16.

<sup>113</sup> *Ibid* at 15.

<sup>114</sup> Tam et al, *supra* note 59 at 527.

<sup>115</sup> Experiencing abuse as a child is associated with higher risks of spousal violence – 6% compared to 3%. *Ibid* at 15.

<sup>116</sup> Haviland, Frye & Rajah, *supra* note 88.

<sup>117</sup> Dawson & Hotton, *supra* note 21; Johnson & Connors, *supra* note 75.

<sup>118</sup> Tam et al, *supra* note 59 at 535.

the police. Identifying details have been altered slightly, but as much as possible, women's narratives are presented in their own words.

## *2. Police Questions and Investigations*

When police respond to a domestic violence call, they are supposed to separate the couple, make sure any children are safe, interview each person separately to find out what happened, and gather evidence (such as taking photos and securing objects for evidence).<sup>119</sup> Eight of the women interviewed said they were questioned by police separately from their partner, such as in different rooms of their home. Sometimes the police took one person outside of the building for questioning. "They took my ex out and they talked to him, got his side of the story," Melissa said. "And then they talked to me and got my side of the story." But she said the police then told her their accounts don't 'jive.' Melissa scoffed, "of course they don't jive together." Her boyfriend was denying that he had hit her, while she was claiming he had. Melissa said that in situations like this, people were going to lie and it was up to the police to figure out what happened. Similarly, Melanie described the questioning as "he said, she said. And nobody really tells the truth, ever." Yet while most women who were questioned by police suggested they did not feel heard or believed, six women said they were not questioned by police nor given opportunities to explain what had happened. Felicia and Christine both did not recall any questions being asked of them. "They just charged me and left it at that," said Christine. "They didn't even ask questions or whatever."

In addition to women reporting they were not separately questioned about the incident, five women said they had visible physical injuries when the police arrived. Yet they were still sole-charged. Mitch's injuries were extensive. "The whole side of my face was black and blue and swollen up to here," she said, drawing her hand up her face toward her eyebrow. Her partner had attacked her in the kitchen, thrown her to the ground, and punched her repeatedly in her face, breaking her nose. She then grabbed two knives and stabbed him. Mitch did not demonstrate surprise at being charged, since she admitted she had stabbed him, but she was frustrated the police refused to consider that her action was in self-defense, despite her bloodied face.

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<sup>119</sup> Ministry of Community Safety and Correctional Services, *supra* note 27; *Policing Standards Manual*, *supra* note 9.

I couldn't even eat with a spoon. I almost had to suck everything through a straw because of it. People looked at me and was like 'oh my lord.' Well, that's what domestic violence does.

Similarly, Jeannie noted, "even in my mug shot, I had black eyes" from the beating her boyfriend had given her the night she stabbed him. Yet both Mitch and Jeannie were sole-charged and it does not appear that their injuries were considered as evidence of their own victimization, or grounds for at least dual-charging. Melissa admitted that when the officer was questioning her, she got upset with his repeated refusal to acknowledge her injuries. "I said, this is why women don't bother coming out and speaking up and telling you what happened, because then you're going to believe the other person!" Similarly, Irena said the police refused to document the injuries on her body. "My ankle was so swollen," she said, "I was in real pain." She also had bruises all over her arm. "They never made pictures of it." Makayla said the police did take pictures of her injuries, but she still did not feel like they believed her.

I had a red mark on my arm from him squeezing me so tight. And I had some bruising and scratches on my chest and [the police] said, 'they're old injuries and they don't add up to what happened.' But I never had those marks before that moment.

The police discounted Makayla's injuries, suggesting she was exaggerating or even lying, as if she does not know her own body. Although the police took pictures, they did so in black and white. Makayla, whose father is Jamaican, noted that black and white pictures will not clearly show fresh bruises on dark skin.

Police comments to Makayla that her injuries did not "add up to what happened," or to Melissa that her story did not 'jive' with her boyfriend's, illustrate what several women experienced during their encounters with police, namely that officers seemed to give more weight to accounts told by men. Katia said that police made notes when they came to the house after her partner called 911, but she insisted that what they wrote down was not true, "because they wrote what he said mostly." She added, "they didn't even check [his allegations] in any shape or form. They just took what he said!" Of the 18 women, in four cases, it was the male partner who called 911 and made allegations of assault; in an additional two cases the men pressed charges at the police station after which women were charged. In other words, in six cases men went to the police with allegations. Their 'version of events' was what police believed. When women tried to explain their side,



they felt disbelieved and even belittled. "The police believe whoever goes first. That's my impression," said Elena. "That's maybe why they dismissed everything I said, because he called them first, even though it was unfounded." Similarly, Felicia suggested the police believed her boyfriend because he got to them first. "I don't think it was fair," she said. "It's just, who's gonna call 911 first?"

When Leena was picked up by the police and told she was being charged with assault, she told them that her husband had also been violent toward her. Police responded that there was no point in her saying anything about that since it would just look like she was trying to 'get back' at him. The six men who made allegations to the police against their partners had been violent and controlling in the past. For example, Felicia, an immigrant woman, was living with a man who abused her physically and sexually. He may have realized she was getting ready to go to the police about her abuse, so one day when she was alone in the apartment the police arrived. They claimed to be responding to a 911 call placed by her boyfriend alleging that she had hit him with a snow shovel. She was baffled by the accusation; she pointed out there was not even a snow shovel on the premises. But she says, her ex had convinced the police, "and then, that's it. They picked me up like I was a crazy animal or something." She was charged with assault with a weapon.

Katia described her husband as extremely abusive and controlling. One night after an argument, he locked her out of the bedroom the two of them shared with their infant son. He ignored Katia's pleas to open the door, but finally she managed to force her way in. She described feeling so fed up and angry at this point that she yelled and swore at him. He continued to ignore her, pretending to sleep. In frustration, she picked up a pajama top and threw it at him. Katia described what happened next. "He kinda pretended to wake up, and he's like 'what are you doing? What are you doing? Like why are you doing this? Why are you hitting me? Why are you hitting me?'" Katia said she wondered why he was "acting weird" and saying this, but she was so angry she said she just kept saying "I hate you! I hate you!" He then left the room and went outside to his car, from which he called the police and alleged that he was afraid for his own safety and that his wife had been beating him.

Katia had gone to bed after he left the room and was surprised when the police arrived. They told her they were responding to allegations of assault. "This is kinda ironic," she told them. "He's the crazy, like violent

abusive one.” The police warned her that she should be careful since she could be charged, but she did not take this seriously since she did not think she had done anything wrong. That night they left without laying charges, but told her that if he truly was abusive, she should file a report. A couple of weeks later, Katia went to the police station where she completed a 13-page report about his abuse, including descriptions “of him trying to kill me, like choking me till I passed out.” A few weeks later, Katia received a phone call from a detective informing her that she was being charged with assault. She was dumfounded. During that entire ‘incident’ when she threw the pajama top, her husband had been secretly making an audio-recording. This explains why he asked Katia repeatedly why she was hitting him. “I didn’t say anything like, “I’m not hitting you,” Katia said regretfully. “I just said, ‘I hate you.’” Based upon this ‘evidence’, and despite the detailed report she had filed about her own abuse, Katia was charged with assault. Her husband did not receive any charges and claimed custody of their children.

Katia’s story was striking as it demonstrated planned deception on the part of her abusive partner. Other women also found themselves caught up in investigations apparently based upon false allegations. For example, after breaking up with her controlling boyfriend Elena was shocked to get a call from a police detective saying she was being charged with criminal harassment. Her ex had made multiple accusations against her, which she felt the police accepted without scrutiny. Twice she went to the police station in attempts to understand the charges being made against her and to ask what she could do to counter them, both times she was met with an unsympathetic officer. “He was talking to me very rudely,” Elena said. “So I started crying, because I’d already been panicked when I got there. And he shouted at me, ‘Go home! Take your meds!’ He literally shouted that at me.”

The charges Elena’s ex levied seemed to her to have been done purely out of spite. However, other women describe how their partners used calls to the police to get something they wanted, whether this was custody of children or having their partner removed from the home. For example, a few years ago Tammy had accidentally scratched her husband in the eye with her fingernail. The next week, when the eye still looked irritated, she encouraged him to go to the hospital where it was determined that the cornea had been scratched. Two years later, their marriage was ending and her husband wanted full custody of their young son. He obtained the hospital records about his scratched cornea and went to the police. Tammy

was charged with aggravated assault; her husband gained full custody of their child.

In some cases, partners had already taken away the women's phones so they were unable to call 911 themselves.

I was screaming, 'somebody please call 911.' Because my ex had taken my phone and basically like confined me to our apartment. Cuz he didn't want me to leave, or he didn't want me to call the police for whatever reason. - Melissa

Of the 18 women interviewed, only two had been the ones to call 911 for police intervention. Makayla called because she hoped police would remove her boyfriend from her home following a fight in which he pushed her around and knocked her to the ground. But when her boyfriend realized she had called police, he locked himself in the bedroom and also made a call, alleging his own victimization. When the police arrived, they accepted his story and took Makayla away in handcuffs. Irena also called the police after being pushed and kicked by her husband, but when the police arrived, he convinced them that she had bitten him. Despite her injuries, that she had called for help, and that he had a restraining order due to his previous violence against her, Irena was arrested on the spot and sole-charged with assault.

Several women made the point that police should try to 'understand where I'm coming from', which suggests they felt misunderstood. They faced questions from police such as, 'Why didn't you just leave?' or 'Why did you go back to him if he was so abusive?' Some women said police even implied women were responsible for their own abuse.

One of the things the cops said to me was, 'why didn't you go take a walk?' I did. I left the house and I went for a walk for half hour, came back, and he was not cooled down...They just treat it as if I could have done something to prevent it but why couldn't my ex? Why can't you tell my ex to do something to prevent it instead? So, yeah. Yeah. It's like we're the problem. - Makayla

Makayla's partner was given the opportunity to fill out a long domestic violence victim's form, something which was offered to none of the 18 women interviewed. This form included questions about things such as financial, social and emotional control. Although Makayla doubts police would have listened to her side of the story, given everything she experienced, she insists that if they had been willing to listen "they would learn what he was really like to me."

### *3. Women's Intersecting Vulnerabilities*

The 18 women interviewed had varied past experiences of involvement with police. As noted above, four had previous charges for violent crimes, and three had previous charges related to alcohol consumption. The ways in which they engaged with police may have been shaped by these and other previous experiences. For example, Brenda had previous alcohol-related charges and her boyfriend was on probation for something “unrelated.” She had been in the process of moving out of their shared apartment when they got into an argument during which she hit him with a bag of meat she was taking out of the freezer. She then went over to her neighbours to ‘chillax.’ When she saw the police arrive, she ‘went over to chat.’ Upon realizing that she was being questioned, she said she became evasive and tried to negotiate with the police, such as suggesting she would go and stay at her friend’s place while things calmed down. Her partner also told the police that he had pushed her first, although Brenda says this was not true but rather said in an attempt to not have her charged. However, the police still arrested her and charged her with assault with a weapon (the weapon being the bag of frozen meat).

Colleen had been street-involved for much of her adult life. She said she had a long history with the police, which included a grudge against an officer whom she claimed stole a carton of her cigarettes. In the incident for which she was charged, a staff member at the homeless shelter where she was staying saw her hitting her boyfriend and called the police. When police arrived, Colleen unsuccessfully tried to convince them they should let her go to “sleep it off.” Colleen also described another occasion in which police charged her with assault. In this instance, Colleen recalled physically struggling with an officer.

I do remember me and the police officer, the female, struggling with each other, and I told her, I said... ‘you seem to like assaulting me when I’m drunk.’ And I said, ‘why don’t you try me when I’m sober and with no gun and no badge.’ And then I guess that’s when I was taken down to the floor a second time.

Colleen was the only woman who described physically struggling with police, however other Indigenous women also described attempts to defend themselves, such as by refusing to answer questions or by being purposefully evasive. Of the 18 women interviewed, five were Inuit and four were Aboriginal. Most had stories of previous negative encounters with police, and expressed distrust and apprehension toward cops. Janis reported that in the past she had a run-in with police during which they asked her for her

name. She gave them her Inuktitut name. "And they were going to charge me with using a false name," she said. Cathy, who has an acquired brain injury from a motor vehicle accident, said police had tasered her three times in her own apartment when she was drunk and unstable. She said sometimes she ends up at the police station and is not sure why she is there. "I don't know how and what, but I wake up in jail several times." She has been charged twice for assaulting her boyfriend, who is also Inuit. Although he has also been violent toward her, Cathy said described him as "pretty smart for living here longer than me." He has never been charged, which Cathy suggests is because the police "understand him more than me."

Cathy's accounts of the situations in which she was charged indicate the complicating factor that alcohol can have in intimate partner violence. She was a soft-spoken woman who laughed easily, but she admitted that when she is drunk, she is unstable and aggressive. "Maybe I have to control my alcohol," she said. "I'm bad when I'm drunk, I think, hitting my boyfriend." Cathy and Nancy both relayed stories in which they had been drinking and woke up in the police station where they were told they had hit or beaten up their partner. Indeed, in describing the incident that led to the arrest, 12 of the 18 women indicated that drugs and alcohol were 'a factor.'<sup>120</sup> They characterized alcohol as contributing to, or even causing, the violent incident. Lucia describes herself as putting up with her partner's abuse and control for months, but one night she finally spoke out. "We had a couple of drinks and so that's like what made it all explode, the drinks," she said. "We started yelling, like pushing each other, and um, 'I want to leave. I don't want to be here. I'm not in love with you. You're a jerk.'" She suggested alcohol triggered the argument that escalated into physical violence, and subsequent police intervention. Other women similarly described alcohol as sparking the argument and physical violence for which they were charged. In these situations, police were called to the scene by on-lookers (such as shelter staff, neighbours, relatives), perhaps when it seemed the situation was getting out of control.

Some of the women who described alcohol as frequently contributing fights between themselves and their partners had stories of police intervening but not laying charges. Nancy said there was one police officer who 'understands' her situation. She relayed an account when her partner

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<sup>120</sup> When this research started, the use of drugs and alcohol was not identified as a factor to be studied, so specific questions were not asked about it. It was in reviewing transcripts that the repeated mention of alcohol use was noted and explored.

called the police on her. The police arrived and the man was yelling at her, 'You're going to jail! You're going to jail!' But Nancy said the cop replied, "You are going to jail if you keep yelling at her like that." Nancy said that made her boyfriend shut up. The officer did not arrest her, but did take her away from the situation. For Nancy, this was an indication that the police could be at times supportive and could recognize that they were being used to settle a personal score. This also indicates the discretion police exercise when responding to a domestic call and raises questions about why, in the stories described above, they chose to lay sole-charges against the women involved.

Most of the women who had no prior experience with police were shocked and terrified by their arrival. In some cases, this was because of the aggressive manner in which police arrived on the scene. For example, Lucia had gone to bed after an argument with her boyfriend during which they had both pushed each other. She was lying in bed when two male officers kicked her door open and yelled at her to get up. She had a blanket covering her bare breasts, which one officer pulled off. "So I pull another one to cover myself. He pulls it off again," she said. "They're just standing there staring at me." While police were much less aggressive with Leena, she also described being in a state of shock when they picked her up in their cruiser and informed her that she was being charged with assault. Tammy received a phone call from police telling her she needed to come in for questioning about an assault allegation. She describes getting off the phone and 'hyperventilating' in a state of panic.

The fear and panic described by several women was particularly acute among immigrant women like Lucia, Felicia and Elena, none of whom had permanent residency status. Elena said her residency and job in Canada have been threatened by the charges and court proceedings. "The problem is, I'm just not having the time to go to trial and ask for justice, because that's a matter of having lots of time and money," she said. "It's not a matter of what's fair and what's right." Immigrant women also said they lacked knowledge of the justice system and struggled to access services. Lucia said the night police charged her she had been in the country for less than a year and was still learning English. She could not understand what police were saying to her, nor the papers she was told to sign at the police station. After laying the allegations of being hit with a snow shovel, Felicia's partner knew that she had been charged and given a no-contact order. He used this to extort sexual favours, threatening Felicia that if she did not comply with his

requests, he would have her deported from the country. She spent close to a year enduring this sexual exploitation out of fear that her refusal to comply would jeopardize her immigration status.

Women interviewed were generally adamant that they will never turn to the police for help in the future, even if they were to continue to experience abuse. Tammy said she has talked with other women who have received domestic violence related charges about whether they would call police if they were to experience violence again. "We would never call the police if we needed help because we would feel like we had to defend ourselves and why we did this." She described a situation, which happened after her charge, in which a boyfriend began hitting her and putting holes in the wall. She said other women might have called police for help, but she did not. She was concerned that blame would somehow be placed on her. She felt like she could neither physically defend herself, nor call for help. She said her only option was to escape, leaving her partner unaccountable for his violence and her own safety still at risk. Melanie said that after her experience with being charged, she is not sure she could bring herself to call the police. "Do I think my phone can dial that number, my finger? 911?" she asked, then answered herself in a whisper. "I don't know. I don't know." She paused, then explained. "Cuz they come in there and, and you are guilty until proven innocent. Innocent until proven guilty? No. No. No. No. You're not. You are guilty." The experience of being treated as 'guilty' is deeply scarring.

## **B. Discussion**

Consistent with other research on intimate partner violence and women's charging, most women in this study were charged with assault. However, all of the 18 women had been sole charged, which may indicate a shift from previously identified patterns of increases in dual charging.<sup>121</sup> The sole charging of women is very concerning given that women reported being in physically and emotionally abusive relationships and some even had visible injuries on their bodies at the time of police intervention. Five women said they were not questioned by police, which indicates that in their cases police may not have followed the protocol of separating the couple

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<sup>121</sup> Pollack, Green & Allspach, *supra* note 37; Fraehlich & Ursel, *supra* note 24; Kaert, *supra* note 50. In America, research found that primary aggressor policies have in some jurisdiction decreased rates of dual arrests, but it is unclear if primary aggressors are being correctly identified - Hirschel & Buzawa, *supra* note 26.

and interviewing each person individually. At least six women interviewed had the charges laid against them dropped; but this does not mean justice was served. The impacts are profound on women when they are charged with assault and other violent aggressions. Women reported impacts including loss of child custody and disruptions in their contact with their children, huge financial costs, loss of housing, drawn-out court processes, restrictive conditions placed upon themselves, and extreme emotional scarring.

Even when police did question women, many women felt that police did not believe what they said or give their account equal weight to that of their male partners. Women interpreted certain actions and words by police as indications that their stories, and their abuse, were not significant or worthy of police attention. There are many ways in which police officers demonstrate to women that their version of events did not matter;<sup>122</sup> these included walking away while women were trying to explain, not writing down what women were telling them, raising their voices at women, belittling them, and refusing to take evidence (such as photos). Additionally, in some cases, police challenged the veracity of what women told them, telling them their story didn't 'match' that of their partner. This echoes research findings on women who report intimate partner violence and sexual assault to the police. Dismissive police responses, such as accusing women of making false allegations and ignoring their complaints, negatively impact women's confidence in police.<sup>123</sup> Women in this study also faced questions from police about why they 'stayed' in an abusive relationship if it 'really was so bad,' or why they didn't 'do something to stop it.' There is extensive research on why women remain in abusive relationships. Reasons can include economic dependence on abusive partners; lack of financial, social and emotional support; concern about children if she were to leave; fear of retaliation; and hope that things will improve.<sup>124</sup> It is concerning that police tasked with responding to domestic violence calls would demonstrate such a basic lack of understanding of abusive relationships, especially when police are supposed to have been provided training on these specific issues. Victims of intimate partner violence do not 'choose' to be abused even if

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<sup>122</sup> Stephens & Sinden, *supra* note 81.

<sup>123</sup> Holly Johnson, "Why Doesn't She Just Report It? Apprehensions and Contradictions for Women Who Report Sexual Violence to the Police" (2017) 29:1 CJWL 36; Stephens & Sinden, *supra* note 81.

<sup>124</sup> Ad Hoc Federal-Provincial-Territorial Working Group, *supra* note 4.



they have not left the abusive relationship, nor are victims to blame for acts of violence committed against them.

Recent Canadian scholarship on police responses to intimate partner violence indicate that many women have positive experiences of their interactions with the justice system, including “informative, practical and emotional support.”<sup>125</sup> Victims of domestic violence are more likely to approve of police actions when their preferences with regard to arrest were followed and their concerns not belittled or trivialized.<sup>126</sup> In this regard, it is perhaps not surprising that our findings differed from such scholarship, such that women interviewed for this project unanimously disapproved of police actions. When women turn to the police for help, such as by calling 911 to have an abusive partner apprehended, it is clearly not their expectation to be themselves arrested. However, most women in this study did not make the decision to call the police, that was done by neighbours, friends, family members, or onlookers. This indicates that women are hesitant to involve police, even when they are being abused, which is consistent with 2014 Canadian data that suggest 70 percent of victims do not report spousal violence to police.<sup>127</sup> Additionally, in one third of the cases in this project, it was abusive male partners who called the police to make allegations against their female partner. These calls can be interpreted as efforts to avoid their own arrest and to exert further control and abuse. It is troubling that police are failing to recognize situations in which aggressors are using police as weapons in their on-going violence. Women in these situations expressed more than disapproval of police actions; they expressed outrage and bitterness for what they perceived as police complicity in sustaining and even augmenting their abuse.

Some findings in this study do support other domestic violence research, such as the increased vulnerability of Indigenous, immigrant, and racialized women. Studies have shown that newcomers to Canada, who do not speak English, who are economically dependent and socially isolated by their abusive partners face heightened difficulties in accessing resources to

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<sup>125</sup> Tam et al, *supra* note 59 at 534; see also Johnson & Connors, *supra* note 75.

<sup>126</sup> Amanda L Robinson & Meghan S Stroshine, “The importance of expectation fulfilment on domestic violence victims’ satisfaction with the police in the UK” (2005) 28:2 Policing 301; Buzawa, Austin & Buzawa, *supra* note 42.

<sup>127</sup> Marta Burczykca, “Family violence in Canada, 2014” (2016) 36:1 Juristat 1 at 47. In 2016, Johnson and Connors found even lower rates of reporting in Ontario, with 58% of English-speaking women and 46% of French-speaking women reporting domestic violence to police, *supra* note 75 at 2.

escape their abusive situations, and that mandatory charge policies deter racialized women from reporting domestic violence due to “cultural considerations, fear and integration challenges.”<sup>128</sup> Indigenous and ethnic minority women are more likely than Caucasian women to indicate lack of trust in police which deters them from contacting police about experiences of intimate partner violence.<sup>129</sup> Indigenous women in this study reported previous negative encounters with police and were very guarded in their interactions with officers. Yet in comparison to women who had never had any encounter with police, they were more likely to try to negotiate with police, such as asking to be released so they could ‘sleep it off.’ However, such negotiations did not prove successful and they indicated they felt stereotyped by police, such as being assumed to be violent when they had been drinking. Immigrant and racialized women in this study reported ways in which police failed to accommodate them, such as by not offering translation services during questioning (Lucia and Felica) or by failing to recognize that fresh bruises on melanin-rich skin will not show in black and white photos.<sup>130</sup> This study also showed that abusive partners were able to use the threat of deportation to coerce and intimidate immigrant women, and that immigrant women are more constrained than Canadian citizens in accessing and utilizing support in navigating the justice system.

The intersection of substance use with interpersonal violence is a complicating factor in studies of intimate partner violence and police intervention. Twelve of the women interviewed described alcohol as ‘a factor’ in the incident that led to their arrest. Two women (Katia and Leena) indicated their partner had been drinking heavily and in both these cases these men made exaggerated accusations to the police. Two women (Cathy and Nancy) did not recall the incident that led to their charge because they had been too drunk, but they pled guilty and did not indicate they felt falsely accused. The other eight women described incidents in which both they and their partner had been drinking and/or using drugs. These women admitted to hitting, pushing, slapping or even stabbing their partner, but all except Brenda said their partner was also physically violent to them at the time. Mitch, Melissa and Jeannie had extensive injuries.

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<sup>128</sup> Tam et al, *supra* note 59 at 536.

<sup>129</sup> Johnson & Connors, *supra* note 75 at 2.

<sup>130</sup> Sameena Mulla, *The Violence of Care: Rape Victims, Forensic Nurses, and Sexual Assault Intervention*, (New York: New York University Press, 2014).

Clearly alcohol consumption is not an excuse for violent behaviour.<sup>131</sup> Recognizing co-relations between substance addiction and intimate partner violence does not mean that interventions targeting one issue will solve the other.<sup>132</sup> However, recognizing the association between substance addiction and intimate partner violence raises difficult questions about appropriate police and criminal justice system interventions.

Due to the small sample size and lack of benchmark data about charging rates of women in situations of intimate partner violence, it is hard to conclude that more women are being charged by police responding to domestic calls. I also cannot determine if the experiences reported here are anomalies caused by inconsistencies among police officers, nor if and how police behaviours relate to police training. Several women suggested police need to be better trained in how to respond to domestic situations, which echoes a 2014 consultation by the Ottawa Police with frontline workers involved in the issue of violence against women; the number one recommendation was mandatory training informed by guiding principles from violence against women advocates.<sup>133</sup> The findings of this study certainly illustrate the negative impact on women when they receive intimate partner violence related charges and raise questions about the appropriateness of these charges, and about police understandings of situations of intimate partner violence. Police have power in choosing to whom they listen, and whose stories they refuse to hear. When police do not fully investigate the situation, disregard the account and evidence provided by women, and make assumptions about what took place, not only do they risk charging the wrong person, they also make women more vulnerable to future assault. This research confirms other studies that show that women charged and arrested with intimate partner violence become very wary of the police and are unlikely to call on them in the future, even if they are being physically assaulted. Failure by police to properly implement primary aggressor policies, and to give women's accounts and

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<sup>131</sup> Section 33.1 of the *Criminal Code*, RSC 1985, c C-46, states "It is not a defence to an offence referred to in subsection (3) [an element an assault or any other interference or threat of interference by a person with the bodily integrity of another person] that the accused, by reason of self-induced intoxication, lacked the general intent or the voluntariness required to commit the offence."

<sup>132</sup> Richard Irons & Jennifer P Schneider, "When is domestic violence a hidden face of addiction?" (1997) 29:4 J Psychoactive Drugs 337.

<sup>133</sup> Ottawa Police Services, *Ottawa Police Service Violence Against Women Consultations*, (Report) (Ottawa: OPS, 2015) at 45.

experiences the attention and respect they deserve, undermines effective justice system responses to intimate partner violence.