



LAW COMMISSION OF ONTARIO
COMMISSION DU DROIT DE L'ONTARIO

**CURRICULUM MODULES IN ONTARIO LAW SCHOOLS: A
FRAMEWORK FOR TEACHING ABOUT
VIOLENCE AGAINST WOMEN**

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CURRICULUM MODULES IN ONTARIO LAW SCHOOLS: A FRAMEWORK FOR TEACHING ABOUT VIOLENCE AGAINST WOMEN

A Law Commission of Ontario Initiative¹

I. INTRODUCTION TO THE INITIATIVE

In 2011, the Ontario Women's Directorate (the OWD) provided funding to the Law Commission of Ontario (the LCO) for an initiative to develop model course components for Ontario law students on issues related to violence against women, with particular emphasis in domestic or intimate partner violence. As stated in the LCO's proposal,

. . . Cases of domestic violence pose challenges for lawyers for a variety of reasons, including the identification of clients who have experienced domestic violence, types of domestic violence, the complexities of relationships, protection of children, possible involvement of both family and criminal court, diversity and need for victims' services and supports for their clients. Lawyers are often the first point of contact women have with the family court system.

Law school curricula provide limited training on VAW issues or on understanding and supporting clients who have experienced violence. While some law schools have faculty members who are experts in legal issues related to VAW and make efforts to integrate these issues into their teaching, most law students can graduate from law school without any exposure to these issues. Yet clients retaining a lawyer for issues unrelated to domestic violence may be experiencing domestic violence. It is therefore not only lawyers whose clients retain them specifically in relation to domestic violence or in areas in which domestic violence issues are most likely to arise, but all lawyers who can benefit from at least a basic understanding of this issue.

[. . .] This project will develop violence against women law school course modules to increase law students' knowledge and skills on the dynamics, signs and consequences of violence against women, including effective management of domestic and sexual violence files. The modules will be flexible, to enable them to be used as separate intensive courses or workshops, integrated into existing courses (torts, criminal and family, for example) or combined in a full course, as each law school finds appropriate.

The LCO appointed a Coordinator, Pamela Cross, who had previously been involved in developing curriculum for the National Judicial Institute (NJI) judges' training program and Legal Aid Ontario, among other projects addressing violence against women, to undertake the initiative. The Executive Director of the LCO supervised the initiative. An Advisory Group, including representatives from all Ontario law schools and members from a wide range of relevant constituencies, such as legal clinics, the NJI, the Ministry of the Attorney General, defence counsel and service organizations, provided input from a diversity of perspectives and

experiences. The Coordinator consulted the Advisory Group at various stages of the initiative and several provided detailed comments on the final draft of the modules. The members of the Advisory Group are listed on page iv.

In addition, focus groups were held at the faculties of law at Osgoode Hall Law School, the University of Ottawa, Queen's University and the University of Toronto. Comments from the student focus groups are included as Appendix B, since they may be helpful to law schools in considering whether or how to implement these modules.

II. WHY THIS INITIATIVE IS REQUIRED

A. The Issue of Violence Against Women

Violence against women² is a serious and entrenched social problem in every community in Ontario, Canada and around the world. As Amnesty International put it in its Stop Violence Against Women campaign:

It's the world's most pervasive human rights violation. It's the violation most often ignored. Every minute of every day, women and girls around the world are assaulted, threatened, raped, mutilated, killed.³

The reality of this violence is often overlooked or ignored, despite the fact that, at a time when Canadian crime rates generally are on the decline, the rate of violence against women remains constant or even is on the increase.⁴

The relationship between violence against women and the law is clear. Particularly, but not exclusively, in the areas of criminal and family law, issues related to violence against women arise on a daily basis. Yet it is crucial to appreciate that these issues can arise in many areas of law in ways not necessarily appreciated by practitioners who do not practise in the "usual" areas of law that are assumed to raise these issues.

B. Violence Against Women Issues Need to be Included in the Law School Curriculum

In 1992, three legal academics developed detailed materials for a seminar on "wife abuse" for the OWD. In the twenty years since, there have been a number of recommendations to address the topic of domestic violence in faculties of law in Ontario. Importantly, there has also been an increased understanding more broadly about the prevalence of domestic violence. Yet there has not been a systematic effort to develop contemporary materials, even though whether or not legal professionals realize it, domestic violence issues can arise in the practice of law in almost every field. Corporate lawyers, bankruptcy lawyers, tort lawyers, real property lawyers, criminal defense lawyers and family lawyers, regularly represent victims or perpetrators of domestic violence. Criminal and civil judges preside over a range of cases involving domestic violence as an underlying or hotly contested issue. The need to understand domestic violence legal issues is relevant to the competency of individual lawyers and judges, as well as the legal profession as a whole.⁵

As the 1997 Report of the American Bar Association Commission on Domestic Violence ("the ABA Commission") states,

The legal profession has a unique role to play in developing and implementing coordinated community responses to domestic violence. To realize this goal, however, law school programs must ensure that law students – who may become prosecutors, defense attorneys, family law attorneys, general practitioners, business leaders, legislators, lobbyists, policy analysts, or judges – attain an adequate understanding of domestic violence issues.⁶

Finding a way to ensure that all students are exposed to education about violence against women is critical because any law student, regardless of her or his career path, will almost inevitably be faced with a client or a case where violence against women is an element. As the ABA concluded,

Teaching law students about domestic violence issues should be an inherent part of legal education, rather than a specialized track taught only by professors who are experts in domestic violence law. Raising domestic violence issues provides students with an opportunity to engage in profound debate about the law's role in shaping social policy. The diversity of approaches to the criminal, civil, and federal aspects of domestic violence law allows students to consider a range of perspectives across the political spectrum.⁷

In other words, teaching about violence against women needs to be a pervasive component of law schools, not something students can bypass because they think they do not need to know about it. Rather, students need to understand that violence against women issues can arise in almost any area of law, and women who have experienced violence and men who have perpetrated it may be their clients regardless of why lawyers are representing them.

In Ontario in recent years, largely as the result of recommendations made by inquest juries and the Domestic Violence Death Review Committee (DVDRC),⁸ some steps have been taken to address the topic of domestic violence in continuing legal education programs for practising lawyers, but to date there has been little attention paid to raising this issue in a formal way in law school curriculum.

Since as early as 1999, recommendations have been made to address the topic of domestic violence in faculties of law in Ontario. The Joint Committee on Domestic Violence wrote as follows:

The Canadian Association of Law Deans and the Canadian Association of Law Teachers should work towards ensuring the adequacy of education for law students on domestic violence. We recommend that such education become part of the core curriculum.⁹

Recommendations have come from a number of other sources in the years since. The various reports of the DVDRC include recommendations generally about the importance of education about the dynamics of domestic violence and the need to take appropriate action for professionals, including lawyers and judges, who come into contact with victims and perpetrators of domestic violence (2007, 2009, 2010) and more specifically to use some of the DVDRC case files as teaching aids in law schools (2010).¹⁰

In its 2008 research report, Luke's Place Support and Resource Centre for Women and Children recommends that the government work with faculties of law to develop either consistent components within family law courses or a stand-alone course on violence against women.¹¹

The final report of the Domestic Violence Advisory Council¹² contained a number of recommendations for reforms to the legal response to violence against women, including

the following directed at the education of lawyers:

Build on the work being done through the Government of Ontario and professional schools to ensure that all law students study the issue of violence against women either in stand-alone courses or as part of other courses such as family, criminal and evidence law.¹³

While there has not been a coordinated approach to integrating violence against women into the law school curriculum, there have been both faculties and individual professors who have exposed students to the topic. This happens in particular in criminal and family law courses, but violence against women has also surfaced in contracts, torts and other courses, as well as in more specialized upper year courses.

Students also have the opportunity to learn about violence against women in student legal clinics, externships in specialized community clinics such as Toronto's Barbra Schlifer Commemorative Clinic and through independent study programs.

III. ISSUES RELATING TO IMPLEMENTATION OF THE INITIATIVE

Proposing the introduction of curriculum focused on one particular social context topic may face some challenges, although these may differ from law school to law school and from one faculty member to another. Issues of academic freedom, objectivity and the importance of black letter law, among others, may be raised as objections to movement in this direction. Integrating non-traditional material into a curriculum that is steeped in history has never been easy, although there have been increasingly successful efforts to address social contexts in law schools over the past 25 years in particular. Thus in some schools, or for some faculty members, curriculum about violence against women may be viewed as adding an important nuance to a curriculum that places law in social context. In other cases, however, it may be thought that adding yet another “social context” issue will detract from the “proper” curriculum.

Many faculty members will appreciate that training future lawyers to understand the dynamics of violence against women and the appropriate way to respond to clients who have experienced (or are experiencing) violence or clients who have been accused of committing violence or have been found responsible for doing so is a matter of competently representing clients and fulfilling ethical responsibilities. Competent representation in this context requires being able to explain certain conduct by the client that would otherwise be difficult to explain or which might affect the lawyer’s response; knowing how the experience of violence might affect the presentation of the case; and having the awareness to direct a client to non-legal resources, among other examples. A lawyer who is unfamiliar with signs of domestic or intimate partner violence may give advice that is inappropriate in the circumstances and, indeed, a lawyer needs to have enough knowledge to know that he or she does not have sufficient competence to deal with the matter (see the Law Society of Upper Canada’s Rules of Professional Conduct, Rule 2.01). The presence of domestic violence might affect whether a lawyer considers alternate dispute resolution an appropriate approach pursuant to Rule 2.02(3).

As with all courses, to a certain extent professors would have discretion in how they teach this topic, keeping in mind the usual expectations the law school has developed about teaching responsibilities and ensuring that major issues are taught. Law schools vary in the extent to which they expect faculty members to teach to a specified course outline, for example. This initiative does not contemplate a departure from law schools’ own expectations. Again, as with all courses, teaching approaches would reflect the current body of academic, statistical, statutory and case law knowledge and would support full, open and respectful discussion among the students.

Yet intimate partner violence is not an easy subject to address, even for those who are more familiar with the issues and the material. Individual professors may be reluctant to raise these issues in the classroom or may feel ill-equipped to manage the often challenging discussions that teaching about violence against women often engenders. Furthermore, the pervasiveness of violence against women makes it inevitable that some students (and teachers) will have experienced such violence themselves or in their families or circle of friends. This reality requires particular skill on the part of the professor to manage – whether the experience is one from the perspective of victim or perpetrator. There can be an emotional toll for those who teach the

subject just as there is for students who engage in clinical activities related to violence against women.

Professors need to be supported in teaching this new material through the provision of resources, teaching tools and discussion guides. Connecting professors for whom this is unfamiliar terrain with those already teaching about violence against women could prove enormously helpful. Faculties of law offering internal teaching clinics or workshops (as does Osgoode Hall Law School, for example), could dedicate one to the topic of teaching violence against women issues.

“Specialized” violence against women courses and seminars, those addressing a particular aspect of the broader topic, are likely to attract students who are already well versed in the subject matter or at least interested in learning about it. It is therefore important that to some degree relevant issues are addressed in introductory courses that are mandatory for students.

Issues related to violence against women can be taught within the law school’s current “fiscal envelope”. Indeed, the Faculty may attract new funding in the form of research grants, fellowships for professors, additional attention in the form of applications from potential students and even private donors who have a particular interest in supporting such an initiative.

Appreciating the need to teach issues related to violence against women requires an understanding of the prevalence of this social issue and of the need for students to leave law school equipped to address social context, including violence against women, in their work if they are to meet minimum ethical and professional standards. As with many topics, these modules teach not only content but also skills, such as interviewing, learning how to see beyond the surface, raising concerns with opposing counsel and understanding when a lawyer’s obligations may go beyond the obvious legal case. These are skills that are transferable to other areas of practice.

IV. BUILDING CURRICULUM: GENERAL COMMENTS

A. The Federation of Law Societies of Canada¹⁴

This project builds on recent work to explore the content of Canadian law school curricula, in particular the work of the Federation of Law Societies of Canada. The final report of the Federation's Task Force on the Canadian Common Law Degree, approved by all law societies in Canada, does not address inclusion of issues relating to violence against women in the curriculum, but some of its more general statements are helpful in thinking about how that might be done. Furthermore, it provides for a mandatory ethics and professionalism element that offers a place where all students can be alerted to the issues raised by violence against women.

The Task Force talks about the need for the focus in law schools to be on learning outcomes and not on prescriptive input requirements, which opens up the opportunity to use different content to achieve already agreed upon and successful learning outcomes. It also points to the importance of individual law schools determining how their graduates accomplish the required competencies, which maintains the academic freedom that is so important and yet allows the integration of new ideas and topics.

Law societies respect the academic freedoms that law schools vigorously defend. There is a strong tradition within the legal education system, particularly in North America, to view law school education as not simply a forum for training individuals to become practitioners of a profession, but also as an intellectual pursuit that positions its graduates to play myriad roles in and make valuable contributions to society.¹⁵

The new focus on ethics and professionalism fits very well with the concept of teaching about violence against women. Indeed, certain core competencies in this area, which we outline later in this report, could become part of the ethics and professionalism competency requirement. The Federation's Task Force report states as follows in this regard:

The Task Force is convinced that dedicated instruction on ethics and professionalism, beginning in law school, is essential. It should address both the broad principles of professionalism and the ethical issues with which lawyers must contend throughout their careers, including conflicts of interest, solicitor-client confidentiality and the lawyer's relationship with the administration of justice...Ethics and professionalism lie at the core of the profession. The profession is both praised for adherence to ethical codes of conduct and vilified for egregious failures...In the Task Force's view, the earlier in a lawyer's education that inculcation in ethics and professionalism begins, the better. The Task Force believes that more, not less, should be done in this area and that legal educators and law societies together should be identifying ways to ensure that law students, applicants for admission and lawyers engage in focused and frequent discussion of the issues.¹⁶

Upon acceptance of the Task Force report by Canadian law societies, the Federation struck a Common Law Degree Implementation Committee. Its Final Report, submitted in August 2011, proposes a path for moving ahead on the Task Force's recommendations. It suggests that

Ethics and professionalism instruction be interpreted to allow for both single stand-alone courses and demonstrable courses of study that could be delivered within a single course or over multiple years in courses that also address other topics. (Recommendation 3)

By 2015, anyone seeking entry to law society admission programs be required to have taken at least 24 hours of study in the area of ethics and professionalism. (Recommendation 4)¹⁷

To meet the ethics and professionalism competency requirement, the Implementation Committee suggests that the person be able to demonstrate an awareness and understanding of the ethical dimension of the practice of law in Canada and an ability to identify and address ethical dilemmas in a legal context. This would include having knowledge of the rules of professional conduct, relevant legislation, the nature and scope of a lawyer's duties, the range of legal responses to unethical conduct and professional incompetence and the different models of the roles of lawyers, the legal professional and the legal system and having the skills to be able to identify and make decisions about ethical problems in practice and to identify and engage in critical thinking about ethical issues in legal practice.¹⁸

Teaching about violence against women would provide an opportunity to explore these issues in a particular social context. For example, students could learn about the need for specialized interviewing techniques and could begin to acquire the necessary skills to effectively interview clients; they could learn about their legal and ethical responsibilities with respect to knowing when to breach lawyer client privilege to report violence to child protection authorities; they could learn about proper file management in cases involving violence against women and so on. All of these topics, and more, would fit precisely within the new ethics and professionalism competency requirements.

B. The Law Society of Upper Canada

The Law Society of Upper Canada has recently released its Consultation Report on articling for Ontario law students.¹⁹ The Task Force had the mandate to examine the challenges facing the current articling program, the competency-related principles articling is intended to address and the effectiveness of the articling program. The Task Force set out the following five goals of articling:

- provide experiential learning
- expose students to practice management issues
- help students learn ethical and professionalism principles
- assist students transition to being practitioners of law, and
- introduce students to systemic mentoring.

Central to the considerations of the Task Force is the reality that law students are finding it increasingly difficult to find articling positions (12.1 per cent of 2010-2011 graduating students

were unable to find positions compared to 5.8 per cent in 2007-2008).²⁰

The Task Force has received submissions from a number of interested parties, including one from the University of Ottawa, Faculty of Law Ad Hoc Working Group on Articling and Access to Justice, which identified its key message as being that “the most significant challenge facing the professional licensing system in Ontario is not a general shortage in articling positions. Rather, there is a specific shortage of access to justice-oriented articling positions and, in turn, a shortage of pathways to careers in access to justice-oriented lawyering.”²¹

While it is too early to know what the final recommendations of the Task Force will be, it is not too early to see that important connections can be established between the development of curricular offerings focused on violence against women and new approaches to articling, including a possible increased use of clinical articling opportunities.

C. The American Experience

Although the Canadian context may be somewhat different, American institutions and law schools have been addressing the issue of including issues of violence against women in law school curricula more systematically than has been the case in most Canadian law schools. This section therefore reviews the American experience which has been helpful in developing a framework for Ontario law schools.

The work of the American Bar Association Commission on Domestic Violence in this area has been particularly helpful. Its two reports on integrating domestic violence into law school curricula²² document a multi-year, multi-faceted project that brought together law teachers, law students, community activists, survivors of domestic violence and others at five national conferences to discuss how best to bring the topic of domestic violence into law schools.

The American Bar Association Commission on Domestic Violence established a set of core competencies or learning objectives in its project to incorporate domestic violence into law school curricula as follows:

- What domestic violence is, including dynamics and breadth
- Safety planning
- Confronting stereotypes about victims and perpetrators
- Understanding survivors of domestic violence
- The need for competent legal representation

Each of these areas is spelled out in some detail. For instance, the discussion about why students need to understand what domestic violence is explains how domestic violence affects conduct in different areas of law, sometimes in non-obvious ways. As the American Bar Association’s Commission on Domestic Violence points out,

While conduct such as emotional or financial abuse may not be illegal, it illustrates a perpetrator’s use of power and control. When law students understand the dynamics of domestic violence, they will be able to screen for it and comprehend what is happening in a legal case, as clinical students or as practicing attorneys. In family law cases, for

example, one party's repeated filing for modifications of visitation arrangements may reflect a batterer's desire to maintain control. Students in poverty law clinics may learn that an abusive partner attempted to have a victim's public benefits or utility services terminated. Understanding that domestic violence is at the root of a client's legal problems can help law students advocate for a just result. For instance, if a victim is facing eviction from public housing due to the violence of a former partner or has been terminated from employment for taking time off to go to court, students may be able to make persuasive public policy or legal arguments to obtain relief.²³

The Carnegie Foundation for the Advancement of Teaching's study of legal education at 16 American and Canadian law schools set out to "[try] to understand legal education, as well as its implications for the profession it serves, by focusing on the daily practices of teaching and learning through which future legal professionals are formed."²⁴ Its report speaks to the importance of law schools teaching not just about "the law" but also about lawyering: "That is the challenge of professional preparation for the law: linking the interests of educators with the needs of practitioners and members of the public the profession is pledged to serve – in other words, participating in civil professionalism."²⁵

The study's authors determined that education to prepare professionals involves the following six tasks:

1. developing in students the fundamental knowledge and skill, especially an academic knowledge base and research;
2. providing students with the capacity to engage in complex practice;
3. enabling students to learn to make judgments under conditions of uncertainty;
4. teaching students how to learn from experience;
5. introducing students to the disciplines of creating and participating in a responsible and effective professional community; and
6. forming students able and willing to join an enterprise of public service.²⁶

The Report discusses law school programs that improve integration among what the authors call "the three apprenticeships of professional education":

1. The teaching of legal doctrine and analysis, which provides the basis for professional growth
2. Introduction to the several facets of practice included under the rubric of lawyering, leading to acting with responsibility for clients
3. A theoretical and practical emphasis on inculcation of the identity, values, and dispositions consonant with the fundamental purposes of the legal profession [put more simply, ensuring students understand, through theoretical learning and practical experience, what it means to be a lawyer engaged in the profession of law].²⁷

One of the programs the Report reviewed is at the City University of New York (CUNY) School of Law. Its programs aim "to integrate the students' learning of the skills of practice and the ethical demands of professional identity with the more typical courses in civil and criminal procedure, contracts, torts and so forth. Each lawyering seminar is linked to a 'doctrinal' or substantive course, and both are taught by the same instructor."²⁸

The ABA's Commission on Domestic Violence explored the issue of how to teach about domestic violence at some length. In its report *When will they ever learn?*, it concluded that domestic violence legal issues should be incorporated throughout law school curricula as well as raised in core curriculum courses. In its later report *Teach Your Students Well*, the Commission sets out in some detail how to raise the issue across the law school curriculum in courses including civil procedure, constitutional law, contracts, criminal, employment, evidence, family, immigration, international, lawyering and legal research, legislative drafting, poverty law and public welfare, professional responsibility, property, tax and torts. In each course area, the Commission proposes issues to be highlighted, sample hypotheticals and follow up questions for class discussion or student assignment.²⁹

Because of the significant differences in both law and legal procedure between the United States and Canada, the actual content ideas proposed by the ABA are of little use to this project. However, the structural proposals made in the American project are extremely helpful in thinking through how this issue can be effectively taught at Canadian law schools.

The ABA project worked with professors and practitioners from across the United States to develop a set of "teaching tools" intended to offer guidance and support to professors who want to include domestic violence issues into their courses. These tools formed a useful starting point for this project's discussions about effective teaching methods. The ABA tools include the following:

- case law
- statutory analysis
- court television
- reflection papers
- guest speakers
- role play scenarios
- educational videotapes
- court-watch, and
- research papers.³⁰

V. A FRAMEWORK FOR INCLUSION OF VIOLENCE AGAINST WOMEN ISSUES IN LAW SCHOOL CURRICULA

A. Introduction

Based on the research and experience described previously and on the contributions of members of the Advisory Group and student focus groups, the LCO has developed a framework for the inclusion of issues relating to violence against women in the curricula of Ontario law schools. We have deliberately chosen a framework approach rather than developing a specific curriculum in order to allow greatest flexibility and to recognize the need for curriculum to evolve to meet changing circumstances. The framework is composed of the following elements:

1. principles governing its formation;
2. the objectives to be satisfied by including these issues in the curriculum;
3. core competencies to be developed by students;
4. curriculum content;
5. course formats; and
6. pedagogical techniques.

In addition, the framework includes examples of curriculum design for the following three courses: family, criminal, and legal ethics and professionalism.

B. Principles Governing the Framework's Formation

Throughout this initiative, we have worked from the principles set out by the Federation of Law Societies of Canada in its work on the Canadian common law degree, as well as by the other studies referenced above in this report. In particular, we have been mindful of the following:

- The focus needs to be on learning outcomes and not necessarily or solely on the specific context to achieve those outcomes.
- Individual law schools need to determine how their graduates accomplish the required competencies.
- The principle of academic freedom and law schools' own expectations about course content and teaching apply.
- Law students need to learn about lawyering as well as about "the law".
- Students learn best when provided with an array of learning methods and formats and when they can apply doctrinal learning to real life situations.

C. Objectives to be Satisfied

At the macro-level, curriculum on violence against women has the objective of preparing students to enter the profession of law with the following characteristics:

- a comprehensive understanding of the issue of violence against women and its implications across all areas of the practice of law;
- the skills needed to competently manage files involving violence against women issues;
- the knowledge required to play a role in working to shape social policy responses to violence against women; and

- the knowledge required to play a role as members of their professional community in bringing an end to violence against women.

D. Core Competencies

1. Introduction

To assist us in developing model course components at the micro-level, we first established a set of core competencies for law students with respect to their learning about violence against women. To do that, we turned to existing work in Ontario and elsewhere.

Over the past several years, the Ontario Women's Directorate has funded approximately 20 domestic violence training and education projects. These have been aimed at many sectors, including health, education, justice and social services.³¹ Within the justice sector, training and education has been developed for the following groups:

- judges, through the National Judicial Institute³²
- lawyers, through Legal Aid Ontario³³
- Ministry of Community and Safety and Correctional Services staff,³⁴ and
- training of Crowns by the Ministry of the Attorney General.³⁵

Each project has developed core competencies that are relevant to its sector and that have been helpful as we have identified the competencies for education for law students.

2. Competencies

Knowledge

Law students should develop the following competencies with respect to their knowledge of issues around violence against women:

- familiarity with the dynamics and types of abuse, including how, when and where it can happen, and ability to recognize some of its indicators in clients and files;
- an understanding of the differing ways in which violence against women is manifest in different communities³⁶;
- an understanding of the impact of violence against women on both women and children;
- an understanding of the relationship between violence and various legal issues and areas of law;
- an understanding of the impact of violence on a victim's ability to interact with legal systems; and
- familiarity with characteristics of abusers and how these affect the abuser's relationship with legal issues, areas of law and legal systems.

Best practices

Law students should develop the following competencies with respect to implementing best practices in relation to violence against women:

- establish safe environments for all clients to allow disclosure of abuse where appropriate;

- create a professional relationship of trust with clients once abuse has been disclosed;
- create a physical and emotional safety plan for clients as well as for herself or himself and the law practice generally; and
- integrate knowledge of abuse into how he or she handles the case/file.

Skills

Law students should develop the skills to allow them to do the following in their cases with respect to violence against women:

- screen for violence against women/domestic violence;
- be aware of violence against women risk factors;
- know when to refer for a full assessment;
- be able to respond appropriately to a disclosure of abuse or violence;
- make effective referrals to community services;
- conduct an effective interview with a client who has experienced abuse;
- conduct an effective interview with a client who has perpetrated abuse;
- manage files involving violence against women appropriately; and
- manage the impact of this work on themselves.

Professional role(s)

Law students should develop competences that are necessary for them when they deal with violence against women in the following roles:

- legal counsellors to their clients;
- officers of the court; and
- members of a professional community.

Ethics

Law students should learn how to ensure the following ethical conduct in relation to violence against women:

- identify and respond to violence against women regardless of their professional role or area of law practised;
- address ethical issues that arise when they suspect violence against women has occurred or is occurring;
- understand the ethical issues involved in representing victims/alleged victims and abusers/alleged abusers; and
- understand the issues related to children in a family in which violence against women has or is occurring.

E. Curriculum Content

Using the core competencies as a guide, we suggest the following proposed topics about violence against women that could be included in law school courses. While the actual teaching of this material will be a decision made by individual faculties of law and individual professors, it seems important that the first two topics below form an introduction to the other topics and

that as many students as possible be exposed to these two topics, even if they do not pursue this area of study any further.

1. Setting the foundational context

- Explain why violence against women requires recognition in the curriculum.
- Establish an approach based on the intersectionality of factors such as culture, race, gender, ability, religion, age, sexual orientation, citizenship status, geographic location and other characteristics reflective of Canada's pluralism and diversity.
- Explain the importance of a gendered analysis.
- Introduce practices in other jurisdictions.

2. What is violence against women?

- Provide definitions of violence against women.
- Explain and discuss how violence against women occurs in the public sphere.
- Explain and discuss how violence against women occurs within the family.
- Explain and discuss different ways the law addresses violence against women.
- Briefly discuss what "violence against women" means in other jurisdictions.

3. Family law

- Establish the statutory framework.
- Identify provisions and case law relating to custody and access.
- Identify the law governing child protection.
- Explain and discuss the impact of violence against women on family court proceedings.
- Explain and discuss issues relevant to representing abusers/alleged abusers.
- Explain and discuss other processes for addressing the consequences of violence against women (e.g., mediation).
- Explain the relationship between Family and Criminal Court and the Domestic Violence Court.

4. Criminal law

- Provide an overview of criminal law and violence against women.
- Identify key issues in domestic violence (e.g., mandatory charging, victim response to charges/prosecution, bail) and sexual violence (e.g., production of third party records, consent, trafficking of women and children).
- Explain and discuss the role of the "victim".
- Explain and discuss issues involved in representing persons accused of committing violence against women.
- Explain plea bargaining in the context of violence against women.
- Identify evidentiary issues relevant to violence against women.
- Identify and discuss sentencing options.
- Identify and discuss restorative justice processes.

5. Immigration and refugee law

- Establish the statutory and regulatory framework for immigration and refugee law.
- Explain and discuss the difference and similarity of and relationship between individual and state violence.
- Explain and discuss the role of violence in the refugee claimant's home country.
- How violence against women might occur, responses to it and issues that arise among immigrant communities in Canada.

6. Social welfare law

- Explain and discuss social assistance issues for victims of violence against women.
- Explain and discuss housing issues for victims of violence against women.
- Explain and discuss disability pensions for victims of violence against women.

7. Tort Law

- Explain the use of tort law in cases of sexual violence, including institutional cases.
- Explain a cost/benefit analysis of tort law in domestic violence cases.
- Explain and discuss challenges and barriers to the use of tort law in domestic violence cases.

8. International Law

- Identify international instruments that could be used to address violence against women (e.g., Committee on the Elimination of Discrimination Against Women, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children [the Palermo Protocol], Inter-American Commission on Human Rights, International Court of Justice).
- Explain and discuss the use of these instruments to address violence against women in Canada, particularly violence against Aboriginal women, and including trafficking of women and children.
- Explain and discuss the challenges and barriers to the use of these instruments.

9. Quasi-legal remedies

- Identify the applicability of human rights codes and commissions.
- Identify the applicability of administrative law processes and remedies.
- Identify the applicability of workplace safety legislation (e.g., Part III.0.1 of the Occupational Health and Safety Act).
- Identify the applicability of the Criminal Injuries Compensation Board.
- Identify the applicability of proceedings governed by professional colleges.

10. Alternative dispute resolution

- Identify and discuss the following forms of dispute resolution in cases of violence against women, including when appropriate, advantages and disadvantages, and special issues to be noted:
 - o mediation;
 - o arbitration;
 - o collaborative family law; and
 - o plea bargaining.

11. Public Policy

- Discuss working with government to effect violence against women policy reform.
- Explain and discuss related non-legal issues that require policy attention (e.g., housing, income security).
- Explain and discuss issues that arise in supporting women who do not want to engage with the law.
- Explain and discuss the role of the community in preventing and responding to violence against women (e.g., initiatives such as “Neighbours, Friends and Families”³⁷).

12. Other areas of law and violence against women

- Explain the following in courses such as real estate, contracts, wills and estates, and administrative law:
 - o when violence against women can arise;
 - o how to recognize it; and
 - o how to handle it.

13. Ethics, professionalism and practice considerations

- Explain the importance of being ready for the possibility of violence against women and/or domestic violence with any client.
- Explain how to screen for violence against women/domestic violence without “looking” for it.
- Explain the duty to report and circumstances when solicitor/client privilege may be breached.
- Explain the Crown and police duty to report to child protection authorities.
- Identify and discuss practice tips for working with an abuser as well as a survivor.
- Identify and discuss special conflict of interest/confidentiality considerations.
- Identify issues relating to file management.
- Identify the need for and issues related to safety planning for the lawyer and her/his staff.

F. Course Formats

There are a number of possible approaches to the integration of violence against women materials in law school curricula. Each carries with it some advantages and some disadvantages. The approaches should be assessed against the objectives of ensuring that all students are provided with basic information about violence against women in the context of their roles as lawyers. Each law school has its own curriculum approval process. Ensuring that all students are provided with some basic information (perhaps through the modules addressing “Setting the Foundational Context” and “What is Violence against Women?”) requires a formal process to create, for example, an intensive week dealing with the issues or inclusion of the ethical issues in an ethical lawyering course. To provide a more in depth understanding of the subject matter, individual professors could incorporate relevant issues into existing courses; however, this alone does not ensure that all students have some exposure to the issues. Accordingly, to be effective, law schools need to take a systemic approach to how they will include violence against women issues in the curriculum, as well as ensure that professors are knowledgeable in the issues and supported in their teaching and interaction with students. There are a number of ways to include these issues in the curriculum, including the following:

- The curriculum process and/or individual faculty members could embed reference to the issue in every first year course.
- The law school could create a separate, mandatory first year course on violence against women.
- The curriculum process and/or individual professors could incorporate the topic into existing mandatory first year perspective courses such as some Canadian faculties of law already offer.
- The curriculum process could create a mandatory intensive week or month-long curriculum on issues relating to violence against women.
- The curriculum process and/or individual professors could incorporate the issues into upper year courses.
- The curriculum process could create specialized courses for students interested in a more in-depth examination of the topic.

This initiative's Advisory Group and students in a series of focus groups held at a number of Ontario law schools were asked how to incorporate violence against women issues into the law school curriculum (see Appendix B for the notes from the student focus groups). There was no consensus in the responses, although certain themes emerged from both the Advisory Group and the students.

There was no doubt that people felt strongly that all law students should learn about this topic; however, there were different opinions about the quality of both learning and teaching when material is mandatory. Some students, in particular, felt strongly that mandatory courses would be treated with disrespect by their colleagues who did not see violence against women as an important part of their law school learning. Some faculty were concerned that some of their colleagues might interpret mandatory curriculum as an infringement of their academic freedom.

Most advisors and students felt that some material should be introduced in first year courses, since this curriculum is mandatory for all students and that specialized upper year courses would also be helpful for those who have an interest in the topic.

The concept of creating a teaching resource for professors was also seen as a positive approach. This would provide a valuable resource for professors who do not have a background in this area but who are interested in incorporating relevant case law, academic articles and other sources and approaches into existing courses. As noted earlier in this report, it might be possible for existing internal teaching clinics to incorporate violence against women as an issue.

There was a generally positive reaction to the idea of incorporating some violence against women content into ethics and professionalism courses so that law students would realize from the beginning of their careers that there is an ethical and professional duty to be aware of this issue regardless of their area of practice.

Ultimately, it seems that a mixed approach may be best, for example as follows:

- incorporating violence against women issues into first year courses
- expanding on already existing upper year specialty courses
- developing a teaching resource touching on all major areas of law to support professors in

incorporating violence against women issues into existing curricula

- including discussions about violence against women into ethics and professionalism courses.

G. Pedagogical Techniques

In discussions with faculty, practitioners and students, the following ideas, some of which overlap with the ABA ideas referred to, were generated about how to teach this issue effectively:

- clinical placements
- case and statute law
- fact scenarios/case studies
- skills development (e.g, interviewing techniques)
- guest speakers
- community resources
- ethical issues and questions posed throughout a course
- role playing
- films and videos
- lectures
- reading resource list
- web-based interactive techniques
- digital sources of information
- critical journaling and reflective papers.

One model considered was that of the domestic violence courses offered to judges by the National Judicial Institute. These courses are taught from a skills development/trial management perspective. They are intensive three to four day courses, with a relatively small group of judges (30 to 40) working together throughout the course. The judges work with a single case study and engage with the family at various stages throughout the court (family or criminal) process. Videotapes with actors playing the parts of the man and woman and lawyers and judges playing the parts of lawyers and judges show specific proceedings and are interspersed with live lectures, comments from a panel of experts, and small group work.

General response to this teaching method has been very positive. It could be considered in the law school context; however, it is likely to be most effective in a time-limited intensive setting. The National Judicial Institute is making the resources from these programs, as well as from relevant courses on victims, available to law professors who wish to integrate them into teaching on violence against women.

Students in one focus group had an interesting discussion about the use of guest speakers. All agreed that the expertise offered by guest speakers (for example, survivors of violence, practitioners specializing in violence against women work, shelter workers, Crown Attorneys, victim assistance workers, police) would enrich any course. However, concern was expressed that some law students might take non-lawyer speakers less seriously than lawyer speakers and that there might be a tendency to see any guest speaker on this issue as carrying a “bias” that would prevent them from making an “objective” presentation of the issue.

Although none exist within Canadian law schools, domestic violence clinics are not uncommon in American law schools. Camille Carey examines the role of clinics in advancing domestic violence lawyering and argues for a larger and broader role for clinics in this regard:

While family law representation meets an important need for victims, it is only one set of the multitude of potential needs for victims of domestic violence. Our focus on family law routinized domestic violence advocacy, and stymied understanding of its broader effects and possibilities. To move domestic violence law and advocacy forward, we need to more actively engage in dialogue about priorities for civil domestic violence advocacy and take braver and broader steps on behalf of victims.³⁸

Carey summarizes the priorities of a number of specific domestic violence law school clinics. These clinics use a variety of models. Some are stand-alone, in-house student law clinics. Others are partnerships between law schools and existing community legal clinics (not unlike the relationship between Osgoode Hall and Parkdale Community Legal Services in Toronto except that, in the American experience, the partnership is focused entirely on domestic violence law). In these cases, the students participate in externships in the community that also carry a seminar and/or paper component that allows them to reflect on their clinical experiences. In other cases, law students work with community domestic violence organizations that would not otherwise be able to offer legal support to their clients (for example, shelters).

While not a university based clinical model, the University of Toronto's Faculty of Law has an ongoing partnership with the Barbra Schliker Commemorative Clinic, a legal clinic in downtown Toronto providing legal representation and other services exclusively to women who have experienced violence where a small number of students are placed for academic credit. This is considered an externship placement.

Pro Bono Students Canada (PBSC) offers opportunities for students that fit the externship model. Every law school in Ontario has at least one PBSC project that deals with violence against women. Students are partnered with community agencies where they play a legal role of some kind, such as undertaking research, writing papers, assisting with policy development, providing training and education, among other activities.

Internships provide another learning opportunity for students. The University of Ottawa already offers research internships in which students are placed outside the law school and earn 3 credits for 125 hours of work. The National Judicial Institute takes three students in this program and is committed to taking at least one whose sole focus is domestic violence. This is a model that could be expanded to other law schools.

Ontario's Family Justice Centres could incorporate legal intern positions, which would create an opportunity for law students to work with legal issues in violence against women cases in a community setting and to learn about the role community organizations and social agencies play in responding to domestic violence.

Another model is the public interest requirement at Osgoode Hall Law School. Students are required to complete a minimum of 40 hours of unpaid law-related public interest work before

graduating. Osgoode students have been placed at organizations that either are dedicated to or have the potential to be dealing with violence against women issues: Flemington Community Legal Services; Community Advocacy & Legal Centre (Belleville); Barbra Schlifer Clinic; CLASP; Metropolitan Action Committee on Violence against Women and Children (METRAC); No Means No; Ontario Women's Justice Network; and Parkdale Community Legal Services.

There are a number of clear pedagogical benefits to clinic-based learning, many of which are enunciated by both Carey and the ABA in its reports. Among other things, students are able to

- learn interviewing and other important skills in a real-life setting;
- understand the complexity and intersectionality of domestic violence and the law;
- learn about non-legal community resources and services for survivors of domestic violence;
- develop critical perspectives on law;
- develop the skills to engage in effective problem solving and planning, both emergency and long term; and
- learn the importance of using a client-empowerment model when working with this client population.

As well, clinics offer important legal services to a vulnerable and under-represented community and provide the opportunity for university-community relationship building.

As Carey concludes, in a comment that could be applied generally to teaching law students about violence against women:

Canadian law schools and law societies are considering an increased role for law student clinics, which makes this an ideal opportunity to discuss the establishment of some clinics that are focused on the legal needs of survivors of violence against women.³⁹ We note that some law schools, including Queen's University, have issues of particular concern to older adults or persons with disabilities in their clinic work. For example, Western Law specifically identifies wills and powers of attorney for these communities as part of the assistance available at Community Legal Services.⁴⁰

VI. BRINGING IT TOGETHER: FIVE EXAMPLES

This initiative has further expanded on the content of five of these areas to provide a course description, key themes, possible teaching methods and proposed readings, including case law. These modules are the following:

- setting the foundational context;
- what is violence against women;
- family law;
- criminal law; and
- ethics, professionalism and practice considerations.

These have the potential to be the beginning of a longer project to flesh out all of the 13 topic areas identified above and appearing as Appendix C at the end of this Report.

VII. NEXT STEPS

This initiative has allowed us to begin what needs to be an ongoing process and collaboration to integrate teaching about violence against women into law school curriculum. We see the following as important next steps to ensure the work done in this initiative can move forward:

1. Circulate the report to the following organizations:
 - a. Ontario Women's Directorate
 - b. Ontario law deans
 - c. Law Society of Upper Canada
 - d. Ontario Bar Association
 - e. Law Foundation of Ontario
2. Consider ways in which the materials can be used as the basis for similar modules in other disciplines.
3. Pursue further initiatives with OWD or other possible funders, including the following:
 - a. Development of workshops to assist professors in teaching about violence against women
 - b. Development of expanded curriculum
 - c. Development of teaching resources for professors, and
 - d. Development of learning resources, strategies and opportunities for students.

APPENDIX A: CURRICULUM MODULES

A1: AN INTRODUCTION TO VIOLENCE AGAINST WOMEN

A2: SETTING A FOUNDATIONAL CONTEXT

A3: FAMILY LAW AND VIOLENCE AGAINST WOMEN

A4: CRIMINAL LAW AND VIOLENCE AGAINST WOMEN

A5: ETHICS, PROFESSIONALISM AND PRACTICE CONSIDERATIONS

Appendix A1: An Introduction to Violence against Women

1. Content description

This unit focuses on the social issue of individually perpetrated violence against women – public, private, sexual, physical, psychological. Particular attention will be paid to post-separation violence and the intersection between violence against women and the law. The legal response will be situated as one component of a holistic response to violence against women.

Readings are largely drawn from the sociology/psychology realm.

Students who successfully complete this unit will have increased knowledge about the issue of violence against women and its relationship with the law.

2. Possible Teaching Tools

Guest speakers

- Survivor of violence
- Shelter worker
- Court support worker
- Crown
- Defence Counsel

Films

- Life with Billy
- Sleeping with the Enemy
- The Burning Bed
- Looking for Angelina
- Polytechnique

3. Definitions of violence against women

Proposed definition

“The term “violence against women” means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life. Accordingly, violence against women encompasses but it not limited to the following:

- a. Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence, violence related to exploitation and trafficking of women and children.
- b. Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution.

- c. Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

Acts of violence against women also include forced sterilization and forced abortion, coercive/forced use of contraceptives, female infanticide and prenatal sex selection." (United Nations, Declaration on the Elimination of Violence Against Women, 1973)

A. Sexual Violence

Key themes

- Under-reporting of sexual violence
- Why women are not believed
- Stranger rape vs rape by men women know
- Rape in spousal relationships
- Criminal response to rape in Canada
- Rape vs sexual assault

Suggested readings

Doe, Jane. The Story of Jane Doe. Random House Canada, 2003: 9-16.

Kingsolver, Barbara. "Letter to my Mother." Small Wonder: Essays. New York: HarperCollins, 2002: 160-175.

MacFarlane, Bruce A. "Historical Development of the Offence of Rape." Canadian Bar Association. 100 Years of the Criminal Code in Canada: Essays commemorating the centenary of the Canadian Criminal Code. 1993: 66.

Randall, Melanie. "Sexual Assault in Spousal Relationships: 'Continuous Consent' and the Law." Manitoba Law Journal 23 (2008): 141-181.

Razack, Sherene. "Gendered Violence and Spatialized Justice." Canadian Journal of Law and Society 15.2 (2000): 91-120.

Sheehy, Elizabeth, ed. Sexual Assault Law, Practice & Activism in a Post-Jane Doe Era. Ottawa: University of Ottawa Press, 2012.

Vandervort, Lucinda. "Honest Beliefs, Credible Lies and Culpable Awareness." Osgoode Hall Law Journal 42 (2004): 625-660.

B. Domestic Violence

1. Introduction

Key themes

- Societal reaction to domestic violence
- Legal response/non-response to violence within intimate relationships
- Extent of the problem

Suggested readings

Chewter, Cynthia L. "Violence against Women and Children: Some Legal Issues." Canadian Journal of Family Law 20.1 (2003): 99-178.

DeKeseredy, Walter S. "Current Controversies on Defining Nonlethal Violence Against Women in Intimate Heterosexual Relationships: Empirical Implications." Violence Against Women 6.7 (2000): 728-746.

Luke's Place Support and Resource Centre for Women and Children. Through the Looking Glass: The Experiences of Unrepresented Abused Women in Family Court. 2008: 6-15.

Office of the Chief Coroner of Ontario. "Domestic Violence Death Review Committee Eighth Annual Report." 2010.

Vallee, Brian. The War on Women. Toronto: Key Porter Books, 2007: 27-30, 31-44.

2. Dynamics, forms and tactics of woman abuse

Key themes

- Overall dynamic of power, control and coercion
- Exploration of forms and tactics: physical, sexual, psychological, social, religious, legal, etc.

Suggested readings

Jacobsen, Neil and John Gottmann. When Men Batter Women. New York: Simon and Schuster, 1998: 43-57.

Johnson, Michael P. A Typology of Domestic Violence: Intimate Terrorism, Violent Resistance and Situational Couple Violence. Northeastern University Press, 2008.

Luke's Place Support and Resource Centre for Women and Children. "Forms and Tactics of Abuse." After She Leaves. 2010.

Power and Control Wheel⁴¹

Stark, Evan. Coercive Control: How Men Entrap Women in Personal Life. Oxford University Press, 2007: 1-17, 26-31, 31-36, 51-60, 291-303; case stories at 73, 96, 101.

3. A statistical overview

Key themes

- Current Canadian statistics
- Why social science research may not paint an accurate picture

Suggested readings

DeKeseredy, Walter S. "Tactics of the Antifeminist Backlash against Canadian National Woman Abuse Surveys." Violence Against Women 5.11 (1999): 1258.

Johnson, Holly. "Measuring Violence Against Women: Statistical Trends." Statistics Canada Report. 2006.

Office of the Chief Coroner of Ontario. "Domestic Violence Death Review Committee Eighth Annual Report." 2010.

Statistics Canada. "Family Violence in Canada: A Statistical Profile." Catalogue No. 85-224-X. January 2011.

4. Responding to the abuser

Key themes

- Who is an abuser?
- Envisioning appropriate responses to/roles for abusers

Suggested readings

Campbell, Marcie et al. "Engaging Abusive Men in Seeking Community Intervention: A Critical Research & Practice Priority." Journal of Family Violence 25 (2010): 413-422.

Stark, Evan. Coercive Control: How Men Entrap Women in Personal Life. Oxford University Press, 2007: 66-73.

5. Post-separation violence

Key themes

- Reality of post-separation violence
- Differences between violence in and after relationships
- Lack of systemic understanding of post-separation violence
- Impact of post-separation violence on women's participation in legal proceedings

Suggested readings

Humphries, C. and R.K. Thiara. "Neither Justice nor Protection: Women's Experiences of Post-Separation Violence." Journal of Social Welfare and Family Law 25 (2003): 195.

6. Why women stay or return

Key themes

- Challenges for women who think about leaving
- Why staying is sometimes a safer choice
- How societal and systemic responses could make it easier for women to leave

Suggested readings

Herman, Judith. Trauma and Recovery. Basic Books, 1992: in particular, chapter 4, "Captivity", at page 74.

Luke's Place Support and Resource Centre for Women and Children. "Why Women Stay or Return." After She Leaves. 2010.

Stark, Evan. Coercive Control: How Men Entrap Women in Personal Life. Oxford University Press, 2007: 115-117.

C. The intersection between violence against women and the law

Key themes

- Appropriateness of the legal responses to violence against women
- Is the law part of the problem?
- Can the legal response make the violence worse?
- Women's reactions to their interactions with the legal system(s)
- Alternative dispute resolution
- Responses by other systems

Suggested readings

Barbra Schlifer Commemorative Clinic. "Justice Done: Crafting Opportunity from Adversity." 2011.

Human Resources and Skills Development Canada. "I Built my House of Hope: Best Practices to Safely House Abused and Homeless Women." 2009.

Lakemann, Lee. Obsession with Intent: Violence Against Women. Montreal: Black Rose Books, 2005.

Luke's Place Support and Resource Centre for Women and Children. Through the Looking Glass: The Experiences of Unrepresented Abused Women in Family Court. 2008.

McGillvray, Anne and Brenda Comasty. Black Eyes all of the Time: Intimate Violence, Aboriginal Women and the Justice System. Toronto: University of Toronto Press, 1999.

Ontario Association of Interval and Transition Houses. "Choose to Change This: Women and Children More at Risk in Province." 2004.

Temkin, Jennifer and Barbara Krate. Sexual Assault and the Justice Gap: A Question of Attitude. Oxford: Hart Publishing, 2008.

Ursel, Jane, Leslie M. Tutty and Janice Lemaistre. What's Law Got to do with It? The Law, Specialized Courts and Domestic Violence in Canada. Toronto: Cormorant Books Inc., 2008: 1-20.

YWCA Canada. "Life Beyond Shelter: Toward Coordinated Public Policies for Women's Safety and Violence Prevention." 2009.

APPENDIX A2: SETTING A FOUNDATIONAL CONTEXT

1. Content description

This unit examines the foundational context underlying violence against women: its gendered reality, its intersections with race, class, age, ability and sexual orientation and the importance of bringing an intersectional analysis and approach to understanding it, particularly within the legal context.

2. Possible Teaching Tools

Guest speakers

- Community worker
- Panel discussion with speakers with different perspectives

Hypotheticals

3. The importance of an intersectional analysis

Key themes

- The need for an inclusive, intersectional approach
- Role of gender
- Societal context of women's inequality

Suggested readings

DeKeseredy, Walter and Molly Dragiewicz. "Shifting Public Policy Direction: Gender-Focused Versus Bi-Directional Intimate Partner Violence." March 2009.

Dragiewicz, Molly. Equality with a Vengeance: Men's Rights Groups, Battered Women and Antifeminist Backlash. Boston: Northeastern University Press, 2011: 8-25.

Ontario Women's Directorate. "Transforming our Communities: Report from the Domestic Violence Advisory Council." 2009: 21-24. Online: http://www.women.gov.on.ca/owd_new/english/resources/publications/dvac/dvac_report.shtml.

Razak, Sherene. Looking White People in the Eye: Gender, Race, and Culture in Courtrooms and Classrooms. Toronto: University of Toronto Press, 1998: 140-147.

Sinclair, Deborah. "Overcoming the Backlash: Telling the Truth about Power, Privilege and Oppression: Exploring Gender-based Analysis in the Context of Violence Against Women." 2003.

4. Violence against women in marginalized communities

Key themes

- Differentiated societal and systemic response to violence against women because of race, culture, class, ability, age, sexual orientation, gender identity

- Situating violence against women in marginalized communities appropriately
- Additional challenges and barriers for women from marginalized communities
- Different dynamics of abuse in marginalized communities

Suggested readings

Alaggia, Ramona and Sarah Maiter. "Domestic violence and child abuse: Issues for immigrant and refugee families," Cruel but not unusual: violence in Canadian families. Waterloo: Wilfred Laurier University Press, 2006: 99-110.

Amnesty International. "Stolen Sisters: A Human Rights Response to Discrimination and Violence Against Indigenous Women in Canada." Online: <http://www.amnesty.ca/stolensisters/amr2000304.pdf>.

Brownridge, Douglas A. "Cultural Variation in Male Partner Violence Against Women: A Comparison of Quebec with the Rest of Canada." Violence Against Women 8.87 (2002).

Canadian Women's Foundation: A review of issues related to violence against women with disabilities, Aboriginal women and women with mental health and substance abuse issues. Online: <http://www.canadianwomen.org>.

Hooks, Bell. Feminist Theory: From Margin to Centre. South End Press, 1984: 1-15.

McDonald, Lynn, April Collins and Julie Dergal. "The abuse and neglect of older adults in Canada." Cruel but not unusual: violence in Canadian families. Waterloo: Wilfred Laurier University Press, 2006: 426-432.

Sobsey, Richard and Sonia A. Sobon. "Violence, protection and empowerment in the lives of children and adults with disabilities." Cruel but not unusual: violence in Canadian families. Waterloo: Wilfred Laurier University Press, 2006: 49-58 and 63-66.

Sokoloff, Natalie J., ed. Domestic Violence at the Margins: Readings on Race, Class, Gender and Culture. New Jersey: Rutgers University Press, 2010: 1-13, 416-434.

5. Violence against women and culture

Key themes

- The role of cultural relativism
- When minority and dominant cultural norms appear to clash
- Finding a non-mainstream cultural approach to violence against women

Suggested readings

Baskin, Cyndy. "Systemic oppression, violence, and healing in Aboriginal families and communities." Cruel but not unusual: violence in Canadian families. Waterloo: Wilfred Laurier University Press, 2006: 15-27.

Gillis, J. Roy and Shaindl Diamond. "Same-sex partner abuse: Challenges to the existing paradigms of intimate violence theory." Cruel but not unusual: violence in Canadian families. Waterloo: Wilfred Laurier University Press, 2006: 127-144.

Grewel, Zareena. "Death by Culture? How Not to Talk about Islam and Domestic Violence." A report written for the Institute for Social Policy Understanding. 2009. Online: <http://www.ispu.org>.

Motoi, Ina. "Is this violence? Recognizing, defining and intervening in family violence in a francophone minority context." Cruel but not unusual: violence in Canadian families. Waterloo: Wilfred Laurier University Press, 2006: 79-87.

Razack, Sherene H. "The Muslims are Coming: The Sharia Debate in Canada." Casting Out: The Eviction of Muslims from Western Law and Politics. Toronto: University of Toronto Press, 2008: 145-172.

Williams, Patricia. The Alchemy of Race and Class. Harvard University Press, 1991: 216-236.

APPENDIX A3: FAMILY LAW AND VIOLENCE AGAINST WOMEN

1. Content Description

This module focuses on critical issues in family law that have an immediate and obvious connection to violence against women:

- custody and access
- child protection
- impact of violence against women on family court proceedings, and
- the relationship between family and criminal court in cases involving violence against women.

It can be expanded to cover other family law issues which have a less direct connection to violence against women: child and spousal support and property division, in particular.

2. Possible Teaching Tools

Guest Speakers

- Family lawyer
- Children's lawyer
- Collaborative lawyer
- Family mediator

Role Playing

- Interview [to identify whether client has/is suffering domestic violence]
- Preparing a victim of domestic violence for court

A. Setting the statutory framework

Key themes

- the relevant laws
- possible new legislative approaches

Relevant statutes

Divorce Act: in particular section 16(10): the maximum contact rule.

Children's Law Reform Act: in particular section 24(2): the best interests of the child test and section 35: restraining orders.

Family Law Act: in particular section 24 dealing with exclusive possession of the matrimonial home and section 46 dealing with restraining orders.

Child and Family Services Act

Arbitration Act: in particular section 1, definitions of family law arbitration.

Suggested readings

Cohen, Jonathan and Nikki Gershbnain. "For the Sake of the Fathers? Child Custody Reform and the Perils of Maximum Contact." *Canadian Family Law Quarterly* 19 (2001): 121.

National Association of Women and the Law. "Response to Bill C-22: An Act to Amend the Divorce Act." 2003.

Neilson, Linda. "Putting Revisions to the Divorce Act Through a Family Violence Filter: The Good, the Bad and the Ugly." Canadian Journal of Family Law 20.1 (2003): 11-56.

B. Custody and access

Key themes

- Role of violence against women in custody and access determinations
- The best interests of the child test
- Challenges with joint custody
- Access with an abuser
- Alienation of children

Suggested readings

Aster, Hilary. "The Weight of Silence: Talking about Violence in Family Mediation." Public and Private: Feminist Legal Debates. Ed. Margaret Thornton. Melbourne: Oxford University Press, 1995: 174.

Bala, N., S. Hunt and C. McCarney. "Parental Alienation: Canadian Court Cases 1989-2008." Family Court Review 48 (2010): 162-177.

Birnbaum, R. and S. Chipeur. "Supervised visitation in custody and access disputes: Finding legal solutions for complex family problems." Canadian Family Law Quarterly 29 (2010): 79-94.

Harrison, C. "Implacably hostile or appropriately protective? Women managing child contact in the context of domestic violence." Violence Against Women 14.4 (2008): 381-405.

Jaffe, Peter G., Janet R. Johnston, Claire V. Crooks and Nicholas Bala. "Custody Disputes Involving Allegations of Domestic Violence: Towards a Differentiated Approach to Parenting Plans." Family Court Review 46.3 (July 2008): 500-522.

Jaffe, Peter G., Claire V. Crooks and Nicholas Bala. "Seeking a Road Less Travelled: Reconsidering the Journeys Taken by Victims of Domestic Violence in Family Court." Journal of Child Custody 6.3 (2009): 169-188.

Jaffe, Peter G., Nancy K.D. Lemon and Samantha E. Poisson. Child Custody and Domestic Violence. California: Sage Publishing, 2002: 16-33.

Johnston, Janet R. "Rethinking Parental Alienation and Redesigning Parent-Child Access Services for Children Who Resist or Refuse Visitation." 2001. Online: http://www.familienhandbuch.de/cms/Trennung_Johnston-PAS.pdf

Mahoney, Martha R. "Legal Images of Battered Women: Redefining the Issue of Separation." Michigan Law Review 90.1 (October 1991): 1-94.

Neilson, Linda. "Assessing Mutual Partner-Abuse Claims in Child Custody and Access Cases." Family Court Review 42.3 (2004): 411-438.

Ursel, Jane, Leslie M. Tutty and Janice Lemaistre. What's Law Got to Do with It? The Law,

Specialized Courts and Domestic Violence in Canada. Toronto: Cormorant Books Inc., 2008: 254-271.

A sampling of case law

Bath v Bath (2010) OJ No 1668, 2010 ONSC 1630.
May-Iannizzi v Iannizzi (2010) CarswellOnt 5353, 2010 ONCA 519.
LeBlanc v Khallaf (2010), 2010 NSSC 219, 2010 CarswellNS 376.
L. (N.D.) v L. (M.S.) (2010), 2010 NSSC 68, 2010 CarswellNS 107.
Lombardi v Mehnert (2008) CarswellOnt 2075 (Ont CJ).

C. Child protection

Key themes

- The relationship between child protection and woman abuse
- Legal responses that protect children and their mothers
- Impact of child protection on children from racialized and Aboriginal communities

Suggested readings

Allagia, Ramona, Angelique Jenney, Josephine Mazzuca and Melissa Redmond. "In Whose Best Interest? A Canadian Case Study of the Impact of Child Welfare Policies in Cases of Domestic Violence." Brief Treatment and Crisis Intervention 7.4 (2007): 275-290.

Black, Tara et al. "The Canadian Child Welfare System Response to Exposure to Domestic Violence." Child Abuse and Neglect 32 (2008): 393-404.

Lavergne, Chantal et al. "Domestic Violence: Protecting Children by Involving Fathers and Helping Mothers." Centre of Excellence for Child Welfare Information Sheet #6E, 2003.

Ontario Association of Interval and Transition Houses. "In the Best Interests of Children and Mothers: A Proposed Child Welfare Response to Violence Against Women." 2003.

Ontario Women's Directorate. "Transforming our Communities: Report from the Domestic Violence Advisory Council." 2009: 52-63.

Shlonsky, Aron and C. Friend. "Child Maltreatment and Domestic Violence: Current State of Knowledge and Emerging Strategies for Policy and Practice." Evidence-Based Practice Journal 7.4 (2007): 249-252.

Swift, Karen J. Manufacturing "Bad" Mothers: A Critical Perspective on Child Neglect. Toronto: University of Toronto Press, 1995.

Trocme, Nico, Della Knoke, Cindy Blackstock. "Pathways to the Overrepresentation of Aboriginal Children in Canada's Child Welfare System." Social Services Review 78.4 (2004): 1-26.

D. Impact of violence against women on family court proceedings

Key themes

- Impact on women as family court litigants

- The role of post-separation violence
- Legal bullying
- Role of alternative dispute resolution, especially mediation
- Safety
- Need for services and supports

Suggested readings

Bala, N., R. Birnbaum and D. Martinson. "One Judge for One Family: Differentiated case management for families in continuing conflict." Canadian Journal of Family Law 26.2 (2010): 395.

Cross, Pamela. "Legal Bullying: Just Another Name for Stalking." Luke's Place Support and Resource Centre for Women and Children. Needs Assessment and Gap Analysis for Abused Women Unrepresented in the Family Law System: Final Report and Recommendations. 2008.

Hardesty, Jennifer. "Separation Assault in the Context of Postdivorce Parenting: An Integrative Review of the Literature." Violence Against Women 8.5 (2002).

Holtzworth-Munroe, Amy, Connie J.A. Beck and Amy G. Applegate. "The Mediator's Assessment of Safety Issues and Concerns (MASIC): A Screening Interview for Intimate Partner Violence and Abuse Available in the Public Domain." Family Court Review 48.4 (2010): 646-662.

Luke's Place Support and Resource Centre for Women and Children. "The Impact of Abuse on Women as Family Court Litigants." Family Court Support Worker Training Materials. 2011.

Luke's Place Support and Resource Centre for Women and Children. Study on the Experiences of Abused Women in the Family Courts in Eight Regions in Ontario. Toronto: Ontario Women's Directorate, 2008.

Mandhane, Renu. The Trend Towards Mandatory Mediation: A Critical Feminist Legal Perspective. Toronto: Ontario Women's Justice Network, 1999.

Ontario Women's Directorate. "Transforming our Communities: Report from the Domestic Violence Advisory Council." 2009: 64-68.

Zorza, Joan. "Batterer Manipulation and Retaliation Denial and Complicity in the Family Courts." 2001. Online: <http://www.stopfamilyviolence.org/info/custody-abuse/overview/batterer-manipulation-and-retaliation-denial-and-complicity-in-the-family-courts>

E. Relationship between family and criminal court

Key issues

- Information sharing
- Integrated courts

Suggested readings

Waldman, Geraldine (Justice). "The What and Why of the Proposed Integrated Domestic Violence Court." Ontario Bar Association Family Law Section Newsletter 22.2 (November 2010). Online: http://www.oba.org/En/Family_en/newsletter_en/v22n2.aspx#Article_2.

Case law

Shaw v Shaw (2008) OJ No 1111, 2008 ONCJ 130

APPENDIX A4: CRIMINAL LAW AND VIOLENCE AGAINST WOMEN

1. Content description

This unit examines the role of criminal law in addressing violence against women, the limitations in the criminal law response and the unique challenges and barriers in using criminal law as a tool to control violence against women.

The material is divided into two sections: domestic violence and sexual assault. This is far from a perfect division, as sexual violence can occur as part of “domestic violence,” but the criminal law response uses this division, and much of the writing on this topic is also divided along these lines. In addition, instructors may wish to include consideration of human trafficking in this module.

This unit has been developed as an introduction to the relationship between violence against women and criminal law. Already existing courses at some law schools, such as Elizabeth Sheehy’s work at University of Ottawa (in particular, her two courses Defending Battered Women on Trial and Sexual Assault Law) are excellent examples of ways some of these issues can be explored in greater depth at the upper year level.

2. Possible Teaching Tools

Guest speakers

- Crown Attorney
- Defence lawyer
- Victim Witness Assistance Program worker
- Victim/survivor
- Member of the Domestic Violence Death Review Committee
- Judge from Integrated Domestic Violence Court (in Toronto)
- Criminal Court Judge

Activities

- Observation of criminal court proceedings in VAW case

A. Domestic violence

Key themes

- Overview of criminal law and violence against women: relevant sections of the Criminal Code, tools for Crown and defence, outcomes of inquests and the Domestic Violence Death Review Committee reports)
- Mandatory charging/Crown domestic violence policies: historical context and current challenges
- Bail
- Counter/dual charging of women
- Recanting/reluctant witness/consequences
- Sentencing

Suggested readings

- Cameron, Angela. "Sentencing Circles and Intimate Violence: A Canadian Feminist Perspective." Canadian Journal of Women and the Law 18 (2006): 479.
- Cote, Andree, Diana Majury and Elizabeth Sheehy. "Stop Excusing Violence Against Women." National Association of Women and the Law. 2006. (the defence of provocation)
- Crocker, Diane. "Criminalizing Harassment and the Transformative Potential of the Law." Canadian Journal of Women and the Law 20 (2008): 87-110.
- Domestic Violence Death Review Committee Reports
- Ford, D. "Coercing victim participation in domestic violence prosecutions." Journal of Interpersonal Violence 18.6 (2003): 669-684.
- Grant, Isabel. "Intimate Femicide: A Study of Sentencing Trends for Men who Kill their Intimate Partners." Alberta Law Review 47 (2010): 779-822.
- Inquest Reports: May/Illes, Hadley.
- Lanthier, Stephanie. "Documenting Women's Experiences with the Toronto Police Services in Domestic Violence Situations." Prepared for the Woman Abuse Council of Toronto. March 2008.
- McMahon, Martha and Ellen Pence. "Making Social Change: Reflections on Individual and Institutional Advocacy with Women Arrested for Domestic Violence." Violence Against Women 9:1 (2003).
- Ministry of the Attorney General. *Domestic Violence Court Evaluation*. 2006.
- National Institute of Justice. *A Comparison of Two Prosecution Policies in Cases of Intimate Partner Violence: Mandatory Case Filing vs Following the Victim's Lead*. September 2007.
- Ontario Women's Directorate. "Transforming our Communities: Report from the Domestic Violence Advisory Council." 2009: 79-81. (mandatory charging)
- Pollack, Shoshana, Vivien Green and Anke Allspach. "Women Charged with Domestic Violence in Toronto: The Unintended Consequences of Mandatory Charge Policies." Prepared for the Woman Abuse Council of Toronto. March 2005.
- Salvaggio, Frances. "K-Court: The Feminist Pursuit of an Interdisciplinary Approach to Domestic Violence." Appeal 8 (2002): 6-17.
- Stark, Evan. Coercive Control: How Men Entrap Women in Personal Life. Oxford University Press, 2007: 36-40, 60-66.
- Turpel-Lafond, Mary Ellen. "No Private Matter: Honouring Christian Lee: Protection Children Living with Domestic Violence." Report prepared for the Legislative Assembly of British Columbia. 2009: 1-4.
- Ursel, Jane, Leslie M. Tutty and Janice Lemaistre (eds). "From Shelter Worker to Crown Attorney: One Women's Journey." What's Law Got To Do With It? The Law, Specialized Courts and Domestic Violence in Canada. Toronto: Cormorant Book Inc., 2008: 46-68.
- Ursel, Jane, Leslie M. Tutty and Janice Lemaistre (eds). "Specialized Justice: From Prosecution to Sentencing in a Toronto Domestic Violence Court." What's Law Got To Do With It? The

Law, Specialized Courts and Domestic Violence in Canada. Toronto: Cormorant Book Inc., 2008: 120-147.

Case law

R v Bates (2000) OJ No 255
R v Craig (2011) OJ No 893
R v D.S.F. (1999) OJ No 688 (CA)
R v Inwood (1989) OJ No 428
R v Lavallee (1990) 1 SCR 852
R v KGB (1993) 1 SCR 740
R v Khan (1990) 2 SCR 531
R v Khelowan (2006) 2 SCR 787
R v Rashid (2007) OJ No 3289
R v Ryan (2011) NSJ No 157, 2011 NSCA 30
Shaw v Shaw (2008) OJ No 1111, 2008 ONCJ 130

Statutes

Criminal Code:

- Section 222 (homicide)
- Section 229 (murder, manslaughter)
- Section 264 (criminal harassment)
- Section 264.1-269 (assault)

Film

Crime after Crime

B. Sexual assault

Key themes

- Rape myths (Criminal Code, section 276)
- Credibility
- Consent (Criminal Code, section 273.1, 265)
- Privacy of complainant's records (Criminal Code, section 278.1)
- Prior discreditable conduct

Suggested readings

Canadian Journal of Women and the Law 22 (2010):

- Lazar, Ruthy. "Negotiating Sex: The Legal Construct of Consent in Cases of Wife Rape in Ontario, Canada": 329-363.
- Randall, Melanie. "Sexual Assault law, Credibility and "Ideal Victims:" Consent, Resistance and Victim Blaming": 397-433.
- Sampert, Shannon. "Let Me Tell You a Story: English- Canadian Newspaper and Sexual Assault Myths": 301-328.
- Savarese, Josephine L. "Doing No Violence to the Sentence Imposed: Racialized Sex Worker Complainants, Racialized Offenders and the Feminization of the Homo Sacer in

- Two Sexual Assault Cases”: 365-395.
- Sheehy, Elizabeth. “Editorial”: iii–viii.

Canadian Women’s Studies 28.1 (2009/2010):

- Cairns, Rosemary and Daphne Gilbert. “Teaching Sexual Assault: The Education of Canadian Law Students”: 67-80.
- Hakvag, Hedda. “Does Yes Mean Yes?: Exploring Sexual Coercion in Normative Heterosexuality”: 121-126.
- Pietsch, Nicole. “I’m Not That Kind of Girl: White Femininity, the Other, and the Legal/ Social Sanctioning of Sexual Violence Against Racialized Women”: 136-140.
- Quinlan, Andrea, Curtis Fogel and Elizabeth Quinlan. “Unmasking Scientific Controversies: Forensic DNA Analysis in Canadian Legal Cases of Sexual Assault”: 98-107.

Beres, Melanie, Barbara Crow and Lise Gotell. “The Perils of Institutionalization in Neoliberal Times: Results of a National Survey of Canadian Sexual Assault and Rape Crisis Centres.” Canadian Journal of Sociology 34.1 (2009): 135-163.

Cormack, Elizabeth and Tracey Peter. “How the Criminal Justice System Responds to Sexual Assault Survivors: The Slippage between ‘Responsibilization’ and ‘Blaming the Victim.’” Canadian Journal of Women and the Law 17 (2005): 287-294.

Derynck, Jessica. “Lacking Context, Lacking Change: A Close Look at Five Recent Lower Court Sexual Assault Decisions.” Appeal: Review of Current Law and Law Reform 14 (2009): 108.

Dubois, Teresa. “Police Investigation of Sexual Assault Complaints: How far have we come since Jane Doe?” Sexual Assault Law, Practice and Activism in a Post- Jane Doe Era. Ottawa: University of Ottawa Press, 2012 (publication forthcoming).

Dylan, Arielle, Cheryl Regehr and Ramona Alaggia. “And Justice for All? Aboriginal Victims of Sexual Violence.” Violence Against Women 14.6 (2008): 678-696.

Gotell, Lise. “Rethinking Affirmative Consent in Canadian Sexual Assault Law: Neoliberal Sexual Subjects and Risky Women.” Akron Law Review 41.4 (2008): 865-898.

Gotell, Lise. “When Privacy is Not Enough: Sexual Assault Complainants, Sexual History Evidence and the Disclosure of Personal Records.” Alberta Law Review 43 (2006): 743-778.

McDonald, Susan and Andrew Wobick. “Bill C-46: Records Applications Post-Mills, A Caselaw Review.” Department of Justice Canada Research Report. 2004.

Ruparelia, R. “Does ‘No’ mean Reasonable Doubt: Assessing the Impact of Ewanchuk on Determinations of Consent.” Canadian Women’s Studies 25 (2006): 167-172.

Sheehy, Elizabeth. “Causation, Common Sense, and the Common Law: Replacing Unexamined Assumptions with What We Know about Male Violence against Women from Jane Doe to Bonnie Mooney.” Canadian Journal of Women and the Law 17 (2005): 87-116.

Vandervort, Lucinda. “Honest Beliefs, Credible Lies, and Culpable Awareness; Rhetoric, Inequality and Mens Rea in Sexual Assault.” Osgoode Hall Law Journal 42 (2004): 625-660.

Case Law

R v Ewanchuk (1999) 1 SCR 330

R v Mills (1999) 3 SCR 668

R v O'Connor (1995) 4 SCR 411

R v Shearing (2000) 3 SCR 33

Jane Doe v Board of Commissioners of Police for the Municipality of Metropolitan Toronto et al., (1998), 39 OR (3d) 487

Statutes

Criminal Code:

- Sections 151-155 (sexual offences)
- Sections 271, 272, 273, 273.1 (definition and proof of sexual assault)
- Sections 278.1 – 278.9 (production of third party records)

Film

The Trials of One Jane Doe

APPENDIX A5: ETHICS, PROFESSIONALISM AND PRACTICE CONSIDERATIONS

1. Content description

This unit provides students with information and skills to assist them in identifying the presence of violence against women in their work and in managing cases and files where violence against women is an issue. It will examine topics related to ethics and professionalism across areas of practice and will explore issues that have unique elements when a lawyer is working with a client who has experienced or perpetrated violence against women. This unit allows students to develop skills to handle ethical, professional responsibility and practice management skills that may arise in their work.

2. Possible Teaching Tools

Guest speakers

- Lawyers practicing in various areas of law
- Legal support worker (from a VAW organization)
- Case studies
- Hypotheticals
- Role plays
- LSUC discipline committee decisions

3. Ethical issues related to violence against women

Key themes

- Role of the lawyer
- Dynamics of violence against women
- Impact on survivor's engagement with law, relationship with lawyer, legal process
- Characteristics/dynamics of abuser
- Child issues related to violence against women

Suggested readings

American Bar Association Commission on Domestic Violence. When will they ever learn: Educating to End Domestic Violence: A Law School Report. 1996.

Birnbaum, Rachel and Nicholas Bala. "The Child's Perspective on Legal Representation: Young Adults Report on their Experiences with Child Lawyers." Canadian Journal of Family Law 25 (2009): 11-71.

Cross, Pamela. "Through the Looking Glass: The Experiences of Unrepresented Abused Women in Family Court." Luke's Place Support and Resource Centre for Women and Children. March 2008.

Goodmark, Leigh. "Going Underground: The Ethics of Advising a Battered Woman Fleeing an Abusive Relationship." University of Missouri-Kansas Law Review 75.4 (2008): 999-1023.

Schneider, Elizabeth M. Battered Women and Feminist Lawmaking. Yale University Press, 2000.

Stark, Evan. Coercive Control: How Men Entrap Women in Personal Life. Oxford University Press, 2007: 135-167.

Williamson, Emma. "Living in the World of the Domestic Violence Perpetrator: Negotiating the Unreality of Coercive Control." Violence Against Women 16.12 (2010): 1412-1423.

4. Professional responsibilities

Key themes

- Role of the lawyer
- LSUC Rules of Professional Conduct as they relate to managing a case involving violence against women
- Confidentiality and conflict of interest issues
- Ability to recognize presence of violence against women in file/client (whether victim or abuser)
- Responsibilities and duties as an officer of the court
- Managing vicarious trauma
- The duty to report
- Issues related to non-representation

Suggested readings

American Bar Association Commission on Domestic Violence. Standards of Practice for Lawyers Representing Victims of Domestic Violence, Sexual Assault and Stalking in Civil Protection Order Cases. 2007.

Birenbaum, Rachel and Nicholas Bala. "The Rise of Self-Representation in Canada's Family Courts: The Complex Picture Revealed in Surveys of Judges, Lawyers and Litigants." For presentation to the Federation of Law Societies, National Family Law Program. July 2012.

Burman, John M. "Lawyers and Domestic Violence: Raising the Standard of Practice." The Michigan Journal of Gender and Law 9 (2003): 207.

Carey, Camille. "Correcting Myopia in Domestic Violence Advocacy: Moving Forward in Lawyering and Law School Clinics." Columbia Journal of Gender and Law (2011): 1-45.

Law Society of Upper Canada, Lawyer Licencing Materials

Law Society of Upper Canada, Rules of Professional Conduct

Levin, Andrew P. and Scott Greisberg. "Vicarious Trauma in Attorneys." Pace Law Review 24 (2003): 245.

Weisberg, D. Kelly. Domestic Violence: Legal and Social Reality. Aspen Publishing, 2012.

5. Practice considerations

Key themes

- Practice tips for working with survivors and abusers
- Interviewing techniques

- File management
- Risk assessment and safety planning for client and lawyer

Suggested readings

Bell, Margret E. and Lisa A. Goodman. "Supporting Battered Women Involved with the Court System." Violence Against Women 7 (2001): 1377.

Buel, Sarah M. "Effective Assistance of Counsel for Battered Women Defendants: A Normative Construct." Harvard Women's Law Journal 26 (2002): 217.

Chewter, Cynthia. "Best Practices for Representing Clients in Family Violence Cases." Department of Justice Canada. 2011.

Meier, Joan S. "Notes from the Underground: Integrating Psychological and Legal Perspectives on Domestic Violence in Theory and Practice." Hofstra Law Review 21 (1993): 1295.

APPENDIX B: LAW STUDENTS' COMMENTS

The LCO held focus groups of students at the following law schools: Osgoode Hall Law School (12 students), the University of Ottawa (20 students), Queen's University (11 students and two professors, one visiting from Sweden) and the University of Toronto (20 students in two separate focus groups). These comments have been included in the belief that they may be helpful as law schools decide whether and how to integrate the curriculum modules into their own programs. The law schools have not been identified and while most of the comments are not specific to each school, any comments that would identify a particular school have been generalized (in particular, each school has some form of intensive course called by a different name at each school and therefore each of these programs has been called an "intensive course"); however, the comments of the students from each school are available to the law dean of that school and these include the comments that would identify the school.

A. Law School 1

1. Curriculum content comments

- Ethics component exciting
- Practice tips very interesting idea
- The present focus on technical legal formalism and adherence to "the law's" internal cohesion is not connected to reality
- Should start with some general information and then move on to more focused, specialised content

2. How, when and where to teach it

- Needs to be available to all students or only self-selected students will participate
- Need safe environment for people to say what is on their minds
- Some profs don't know how to talk about this, so tips and training for profs would be good
- Discussions need to be sensitive to experiences of people in class
- There is too much victim blaming discourse in discussion on domestic violence and sexual assault
- Should be taught in first year
- Skills component could be taught in first year small sections
- Law school should engage with community organizations
- Could be a legal aid clinic in the law school that dealt with VAW
- Could integrate into "law in context" or "legal perspectives" courses

B. Law School 2

1. Curriculum content comments

- Needs a unit on immigration law
- Fact situations
- Guidelines for profs to accompany material
- Use outside resources and people – practicing lawyers in fields that students are interested in
- Has to be intersectional
- Could present content as optional/supplementary reading for existing classes
- Has to be fully integrated and not an add-on

- Could create a universal case list separate from other material that any prof could use as a tool in any course
- Focus on syllabus: expectations, goals etc, not just a reading list
- Should evidentiary issues be their own unit?
- Should there be something on violence against men?

2. How, when and where to teach it

- Needs to be mandatory in first year, otherwise only people who are already interested will take it
- Could work in [intensive course]
- Could be part of a training unit for clinics, with professional considerations integrated into it
- Could integrate some of this material with anti-oppression material being developed for first year
- Give students the tools
- Three law schools – Toronto, Ottawa, Osgoode – have HPARB [Health Professions Appeal and Review Board] projects through PBSC, in which students represent clients at hearings re health professionals. This material could be integrated into the training for these students
- Hard to engage students in large class size of first year
- First year students have to take [intensive course]– maybe some of this could fit there
- Perspectives requirement
- Do a one-day stand-alone professionalism class
- Incorporate some aspects into legal research and writing sessions in first year

3. Comments about current law school culture re VAW

- Needs to be taught in a way that is safe for students
- A lot of profs don't know the basics, don't know how to handle discussions in class about sexual assault/domestic violence
- Many students hold incorrect assumptions about VAW that affect their approach to the material that is presented
- Want profs to set parameters on the discussions and behaviour in classroom when these topics are being discussed
- There is a lack of respect for women who have experienced violence, a disbelief that it happens to classmates, profs, etc.

C. Law School 3

1. Curriculum content comments

- Should be policy discussions in first year courses
- Courses need to talk critically about the law – its power, what it does, what it does not do, where there are “holes” in the law
- Contextualization very important – tie course content to the culture of [the school]

2. How, when and where to teach it

- Need to change the way VAW is discussed, especially in first year criminal law
- It just needs to be discussed and it is not

- Profs need to know how to frame the discussions better than most of them do: maybe a “best practices” document for profs
- Could be raised in the same way that Aboriginal issues are now raised in 1st year law
- Maybe in the [intensive course] – but some felt that some students...don’t take [this intensive course] seriously
- Needs to be integrated across curriculum
- Should be in every course in first year
- Some of the problem is who the prof is
- Needs to be part of law school culture
- Bring in outside people
- Develop a resource centre of case law, papers etc for students and faculty to use: could do with PBSC and collaboration with library to create resources

D. Law School 4

1. Curriculum content comments

- Needs to also speak to those who have experienced violence
- Should ensure feedback from women’s community groups as well as academics
- Generally, there is a lack of training in advocacy/client skills to help secure articling positions – this material could form the basis for a course on client skills
- Need a foundation in the issues before you can benefit from specifics
- Use curriculum as an example of how to make the bigger point (e.g., voluntariness of agreement to remortgage a house)
- Should include exposure to issues of power, control and abuse which will lead to better practice for all clients not just VAW cases
- Teach practice management issues to screen for issues of power, control, abuse
- Important to deconstruct stereotypes about VAW and culture
- Teaching how to interact with clients important
- “culture jamming” – this is what a good lawyer does

2. How, when and where to teach it

- [Intensive course] – could be inserted here
- Maybe not – only reaches 50 people
- Should be mandatory material for all 2nd year students
- Good fit with LSUC new requirements re ethics and professionalism
- Could model on “ASSIST” program which prepares those who work with people with mental health issues – interviewing techniques, etc.
- Should be from very beginning in first year courses
- Problem of separate course is that it separates VAW from other subjects when it should be integrated across range of subjects
- Could be integrated into dispute resolution course – this course discusses “culture: as in what country of origin, etc, but there could be discussion of the culture of VAW
- Challenge may be who is teaching and what experiences/capacity they have
- Some students were very enthusiastic about role playing as a teaching method – others felt strongly this would not work effectively
- Bringing in experts to supplement prof’s knowledge (or lack of knowledge or comfort)

- Practical settings/shadowing
- Clinical situations with actors role playing clients
- Case studies would work well – allows students to learn from one another and learn skills
- Important to cast net wide to reach as many classes as possible to change the culture overall
- Need to figure out how to make people receptive when they may initially be resistant, thinking it is “feminist” bias

3. Comments about current law school culture re VAW

- Needs to be taught in a way that is safe for students
- A lot of profs don't know the basics, don't know how to handle discussions in class about sexual assault/domestic violence
- Many students hold incorrect assumptions about VAW that affect their approach to the material that is presented
- Want profs to set parameters on the discussions and behaviour in classroom when these topics are being discussed
- There is a lack of respect for women who have experienced violence, a disbelief that it happens to classmates, profs etc.

BIBLIOGRAPHY

- Ad Hoc Working Group on Articling and Access to Justice, Faculty of Law, University of Ottawa.
- American Bar Association Commission on Domestic Violence. When Will They Ever Learn? Educating to End Domestic Violence: A Law School Report. 1997.
- American Bar Association Commission on Domestic Violence. Teach Your Students well: Incorporating Domestic Violence Into Law School Curricula. 2003.
- Carey, Camille. "Correcting Myopia in Domestic Violence Advocacy: Moving Forward in Lawyering and Law School Clinics." Columbia Journal of Gender and Law 2011.
- Domestic Violence Advisory Council. Transforming our Communities. May 2009.
- Domestic Violence Death Review Committee Reports. Website of the Office of the Chief Coroner of Ontario.
- Federation of Law Societies of Canada. Task Force on the Canadian Common Law Degree: Final Report. 2009.
- Federation of Law Societies of Canada. Common Law Degree Implementation Committee: Final Report. August 2011.
- Joint Committee on Domestic Violence. Working Toward a Seamless Community and Justice Response to Domestic Violence: A Five Year Plan for Ontario. Report to the Attorney General. 1999.
- Law Society of Upper Canada. Articling Task Force Consultation Report. December 2011.
- Luke's Place Support and Resource Centre for Women and Children. Needs Assessment and Gap Analysis for Abused Women Unrepresented in the Family Law System: Final Report and Recommendations. March 2008.
- Sullivan, William M., Anne Colby, Judith Welch Wegner, Lloyd Bond and Lee S. Shulman. Educating Lawyers: Preparation for the Profession of Law. Carnegie Foundation for the Advancement of Teaching, 2007.
- Vallee, Brian. The War on Women. Key Porter Books, 2007.

ENDNOTES

- ¹ The LCO expresses its appreciation to the Ontario Women’s Directorate for arranging the LCO’s involvement in this initiative and the Advisory Group created to assist with the development of the framework and modules. The project supervisor was Pamela Cross, a consultant in the area of violence against women.
- ² This document uses the language of violence against women because women are predominantly the victims of men’s violence, whether that violence is physical, psychological or sexual, whether it takes place in the home, the workplace, the school or the community and whether it is perpetrated by someone known to the victim or a stranger. However, the more common language used within the legal systems is “domestic violence,” and therefore this phrase is also used, as is intimate partner violence.
- ³ Amnesty International, “Stop Violence Against Women Campaign – Overview”. Online: http://www.amnesty.ca/campaigns/svaw_overview.php.
- ⁴ According to a number of Statistics Canada crime reviews, including The Daily from July 20, 2010 and October 26, 2011, the rate of spousal homicide remains constant and the rate of criminal harassment and sexual assault are increasing. Online: <http://www.statcan.gc.ca/daily-quotidien/111026/dq111026a-eng.htm>.
- ⁵ American Bar Association Commission on Domestic Violence, *When will they ever learn? Educating to End Domestic Violence: A Law School Report* (1997), I-5.
- ⁶ Note 5, 1.
- ⁷ Note 5, 2. This suggests that all professors should have sufficient knowledge about violence against women to meet minimum requirements for recognizing it and introducing it to students, even if they are not “experts” in the area.
- ⁸ Ontario established Canada’s first Domestic Violence Death Review Committee (DVDRC) as the result of a recommendation made by the jury in the inquest into the murder of Gillian Hadley by her estranged husband. The DVDRC’s mandate is to review all intimate partner and ex-partner homicides, identify systemic issues and make recommendations to address them, as well as to identify trends, risk factors and patterns. See, for example, Office of the Chief Coroner, Province of Ontario, Eighth Annual Report, Domestic Violence Death Review Committee (2010). Online: http://www.mcscs.jus.gov.on.ca/english/DeathInvestigations/office_coroner/PublicationsandReports/DVDR/DVDR_2010.html.
- ⁹ Joint Committee on Domestic Violence. *Working Toward a Seamless Community and Justice Response to Domestic Violence: A Five Year Plan for Ontario* (Report to the Attorney General 1999), xxxvi, Recommendation 144.
- ¹⁰ Reports of the DVDRC can be found on the website of the Office of the Chief Coroner of Ontario.
- ¹¹ Luke’s Place Support and Resource Centre for Women and Children, *Needs Assessment and Gap Analysis for Abused Women Unrepresented in the Family Law System: Final Report and Recommendations* (March 2008), 21, Recommendation 10.
- ¹² The Domestic Violence Advisory Council was established in 2007 by the Minister Responsible for Women’s Issues to provide recommendations to improve the existing system of services to better meet the diverse needs of abused women and their children.
- ¹³ Domestic Violence Advisory Council, *Transforming our Communities* (May 2009), Recommendation LR6, 72
- ¹⁴ Although the Federation’s work is with respect to the common law degree, to the extent that it applies to the inclusion of violence against women, it also has value for the civil law degree.
- ¹⁵ Federation of Law Societies of Canada, *Task Force on the Canadian Common Law Degree: Final Report* (2009) 18.
- ¹⁶ Note 15, 33 and 35.
- ¹⁷ Federation of Law Societies of Canada. *Common Law Degree Implementation Committee: Final Report* (August 2011), 2.
- ¹⁸ Note 17, 17.
- ¹⁹ Law Society of Upper Canada. *Articling Task Force Consultation Report* (December 9, 2011). Online: <http://www.lsuc.on.ca/articling-task-force-consultation-report/>.
- ²⁰ Note 19, iii.
- ²¹ Ad Hoc Working Group on Articling and Access to Justice, “Articling and Access to Justice” Submission to the Law Society of Upper Canada’s Task Force on Articling (March 2012), 3. Online: <http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147487551>. (emphasis in original)
- ²² ABA, *When will they ever learn?* note 5 and American Bar Association Commission on Domestic Violence, *Teach your students well: Incorporating Domestic Violence Into Law School Curricula* (2003).
- ²³ ABA, *Teach Your Students Well*, note 22, 23.
- ²⁴ William M. Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond, Lee S. Shulman, *Educating Lawyers: Preparation for the Profession of Law* (Carnegie Foundation for the Advancement of Teaching, 2007) 1-2.
- ²⁵ Note 24, 4.

²⁶ Note 24, 22.

²⁷ Note 24, 194.

²⁸ Note 24, 35.

²⁹ ABA, *Teach your students well*, note 22, 37-98.

³⁰ Note 22, 34-36.

³¹ Ontario Women's Directorate, "Training for Professionals on Violence Against Women". Online: <http://www.women.gov.on.ca/english/keyprograms/training.shtml>.

³² The National Judicial Institute (NJI) has developed and delivered skills-based learning opportunities and has produced practical education resources about domestic violence and the judicial process. The content and materials were developed by the NJI in consultation with judicial leaders and experts.

³³ Training resources have been developed for Legal Aid Ontario (LAO) staff as well as criminal law, family law and refugee lawyers. The focus has been on identifying women who have experienced violence as well as on protocols to more effectively assist them. This training has been embedded through an e-learning component and the production and dissemination of training DVDs, and is available to lawyers who provide LAO services across Ontario.

³⁴ MCSCS, in collaboration with violence against women experts, has developed and delivered domestic violence training to community and institutional staff who deal with female offenders. Through a two-day workshop, participants learn about the root causes of partner abuse, the long-term effects it has on women and their children as well as strategies for assessing risk. This training is mandatory for all new probation and parole officers and correctional officers in Ontario.

³⁵ Assistant Crown attorneys are required to take a one week course at Crown school on domestic and sexual violence. Furthermore, Crowns may attend an annual education program devoted to domestic and/or sexual violence during the year. Spring and fall Crown education programs frequently include sessions relevant to domestic and sexual violence prosecutions.

³⁶ We use the term "communities" here in the broadest possible sense to refer to cultural, geographic and religious communities as well as to communities defined by age, ability, class, race, Aboriginal status, gender, sexual orientation and similar characteristics.

³⁷ This public education initiative is intended "to raise awareness of signs of woman abuse so that those close to an at-risk woman or an abusive man can help". Online: <http://www.neighboursfriendsandfamilies.ca>.

³⁸ Camille Carey, "Correcting Myopia in Domestic Violence Advocacy: Moving Forward in Lawyering and Law School Clinics" (2011) *Columbia Journal of Gender and Law*, 1.

³⁹ The partnership between Osgoode Hall Faculty of Law and Parkdale Community Legal Services could serve as a model for such a clinic. As well, the National Association of Women and the Law has undertaken a study to explore the feasibility of establishing a feminist legal clinic at an Ontario law school.

⁴⁰ Western Law, Community Legal Services. Online: <http://www.law.uwo.ca/cls/index.html>.

⁴¹ The Wheel reflects the abusive behaviours found by researchers to be "most universally experienced by battered women": *Home of the Duluth Model*. Online: <http://www.theduluthmodel.org.html>.