

VANCOUVER TRANSITION HOUSE: BRIEF TO THE LEGAL SERVICES COMMISSION

April 4, 1977

Transition House and the Legal System

Vancouver Transition House is a short-term refuge for women, with their children, who are forced to leave their homes due to untenable domestic situations. The majority of our residents have been victims of physical brutality. They come into contact with the legal system through police intervention in "domestic disputes", through the laying of charges at police stations or Justice of the Peace's offices; and through dealings with lawyers, family court workers, and Judges. In all these circumstances, we act as their advocates at their request. Our perspective, therefore, is a unique one. We are primarily concerned with the safety and well-being of our residents. We are concerned that they not return to unresolved and dangerous situations. During the month they stay with us, we endeavour to help victims regain their self-esteem and explore and begin to implement more rewarding life patterns. In order for us to succeed in this, it is necessary that women be assured that their batterers will not be released unpunished and untreated. The present legal system does not ensure this. It is geared to mediation, to "keeping the family together", and to seeing violent assaults against women as "family fights".

Because the Transition House resident population is largely made up of women who are, or are in the process of becoming single parents, and because the house serves many low-income, immigrant and Native Indian women, we are also very concerned with the difficulty experienced by poor and minority women in gaining access to good legal information and advice. It is our observation during more than three years of operation, that the law of Canada is foreign to the cultural experience and knowledge of these women. They do not know their rights, and there is little available to help them increase their knowledge.

It is on these two main areas - recognition of assault against a spouse as a crime, and access to legal information for poor and minority women, that the substance of our brief will focus.

The Wife as Victim of Assault

Because "domestic disputes" are considered disruptions of "order", rather than infractions of the law, men who beat their wives are rarely arrested. According to Don Dutton, who developed the new Human Relation Curriculum for the Police College, arrests are made in only 7% of the cases where police intervene in a man-wife family fight. Since police only intervene in 53% of the man-wife "disputes" where a request for intervention is made, that means only about 3½% of men who assault their wives are arrested. It thus becomes incumbent upon the victim to lay the charges. Because of her emotional and financial dependency upon her husband, and her fear of reprisals when he is released - usually a short time later - it is often very difficult and frightening for women to lay charges

against their batterers. To be forced to do so places a great deal of responsibility and guilt on the victim. The police do have the power to lay charges when they are witnesses to an assault, or see the physical evidence that battering has occurred. We therefore recommend that the attorney-general's department instruct police to lay charges in cases of assault upon a wife, and that the legal system treat such charges as they would other assault charges.

### Justices of the Peace

Under the present system, victims must go to the police station or Justice of the Peace's office to lay charges. They then decide whether to accept the charge and whether it will be "common assault" or "assault causing bodily harm". They also decide which court - family or criminal - it will be heard in. In most cases, the charges are heard in Family Court, along with other disputed matters regarding child custody, maintenance, and application for a restraining order.

We frequently encounter Justices of the Peace who refuse to take charges from women who have been abused. On several occasions, our staff members have accompanied women to a Justice of the Peace office and found that, despite the arguments of victim and worker, the Justice would not lay the charges. In one example, a woman had been held at gunpoint by her husband for 3½ hours. Police had finally intervened and taken the gun away; they brought her to us, and told her to lay charges in the morning. The Justice of the Peace refused to take the charges. It is frequently stated that women will not follow through on the charges. When they have no choice but to return to live with their batterer, who is usually released almost immediately, this has indeed been the case. Little wonder. Most of our residents do follow through because they have a supportive and safe atmosphere to live in while the charges are being heard. In any event, we feel that it is not relevant whether or not the woman may withdraw the charge. The job of the Justice of Peace is to look at the evidence to see the law is obeyed, not to make character assessments. We therefore recommend that Justices of the Peace be required to deal with assault charges laid by a wife against her husband in exactly the same manner as they would any other assault charges.

Justices of the Peace also have the right to determine whether charges of assault by a spouse should be heard in Family Court or in Criminal Court. There is a great deal of difference in the degree of seriousness with which such charges are treated in the two courts. Family Court is set up and oriented to the mediation of problems between husbands and wives; to keeping the family together if possible, or settling matters of custody and access, and working out separation agreements. The orientation of criminal court is towards ascertaining guilt, assuring the public safety, and protecting the victim from recurrence; Assault is a crime; it should therefore be dealt with in criminal court.

### Family Court

Unified family courts - still not a reality in Vancouver - are a definite improvement over the previous system. But we are not convinced that unification will resolve all current problems women experience regarding access to the legal system. As we have stated, we believe that assault cases should not be heard there, they must be treated with the seriousness that such charges deserve. Family Court Workers, by the nature of their job, are mediators rather than advocates. They cannot possibly represent the woman adequately in assault cases. The neutral workers may be beneficial in some cases, and may indeed help avoid expensive and polarizing litigation. But there is no mediating the consequences where physical violence has occurred, and there is a risk of serious injury or loss of life.

Most women go through family court without consulting a lawyer, or being aware that counsel is available through the court, and that they have a right to such counsel. In our experience, they are often told "you do not need a lawyer . . . do not get one unless your husband does". The Crown Prosecutor is supposed to act on behalf of the victim. Our experience shows the Crown Prosecutors tend to be interested primarily in getting rid of the case; they are often not aware of the facts of the case, e.g. in a recent case where a medical report regarding the victim's injuries was submitted to the Crown Prosecutor but not read or referred to by him - and they frequently do not follow a case through to its dismissal. They frequently suggest to the woman that she drop the charges, in return for which they promise her that they will see that such minimum requests as restraining orders are granted. Or they recommend only light sentences or probation for extremely vicious assaults, allowing no protection for the victim. Such sentences perpetuate the myth that wife battering is not a crime, that it is really all right for a man to slap his wife around a bit, or more than a bit.

Again, we feel the solution would be to have assault charges heard in criminal court. Until and unless this happens, women should be represented in family court by counsel committed to acting on their behalf. Family court workers should be required to fully advise all clients as to their right to counsel, and regarding the workings of the judicial system. Counsel specializing in family law should be highly visible and readily accessible to all clients of family court. In all cases where physical abuse is involved - whether or not assault charges have been laid - counsel for the victim should automatically be appointed. We would also recommend that the caseload of Crown Prosecutors be lightened, by the appointment of more Prosecutors if necessary, so that they would have more time to familiarize themselves with cases. In this regard, the appointment of qualified women as Crown Prosecutors is urged.

### Information On Family Court Procedures

In order that women are aware of their rights and are familiar with the family court system, we recommend that multi-lingual pamphlets and/or signs informing family court clients, and potential clients of their rights, and give information on the laying of assault charges, the proper preparation of separation agreements, and applications for custody orders and restraining orders, and detailing the legal implications of these documents, be prepared and made readily available in family court waiting rooms, Justices of the Peace offices, community information centers, legal aid offices, welfare offices, and other locations where women with potential need of such information might go.

### Therapy Groups for Batterers

If wife battering is to be considered as a crime, it becomes necessary to deal with the "criminals" - - - the batterers. In order to prevent repetition of the criminal behaviour, new patterns of relating to women and dealing with frustration and aggression must be learned. Simple incarceration is not rehabilitative. We therefore recommend that men convicted of assaulting their spouses be required to undertake intensive peer-group therapy, designed to help them realize that such behaviour is not acceptable, and to learn new behavioural modes and improve communication skills. "Post Partum" now operates "men's groups" for the male partners of couples who are having difficulties caused by the addition of a new family member; they are proving successful in helping men deal with that stress, and increasing positive communication between the men and their wives. Intensive peer-group therapy is also proving highly successful in treating "criminally insane" men in Penatanguishene Hospital, Ontario. It was recommended at the United Way Symposium workshops that a model for such a program be set up in B.C. We would urge that the Legal Services Commission help in facilitating the development of such a model, in so far as it is within its powers to do so.

### Legal Aid

A recent inquiry to the legal aid office in Vancouver regarding income ceiling for assistance solicited the information that "the client has to come in and talk to us; there's no fixed ceiling." In our experience, many single parents who are attempting to support a family on "women's wages" and be financially independent, have been denied aid, although they were in no position to pay solicitor's fees out of their earnings. Thus, women who are paying for child care, transportation, and additional clothing costs necessitated by employment, out of minimal wages, are penalized because they prefer not to apply for social assistance. We therefore recommend that a sliding scale of income ceilings for legal aid, which takes into account the financial obligations of the applicant, and is set at a realistic figure recognizing the high cost of good legal service, should be instituted, and made public. Partial or supplementary legal expenses should also be available.

Legal aid services also leave much to be desired in that, while a client knowledgeable enough to request the name of a good lawyer specializing in family law may apply for his services, her chances of retaining him or her are slight. Lawyers are under no obligation to take legal aid cases. If the lawyer of her choice refuses, the client is appointed another, perhaps a generalist not interested or not particularly competent in family law, nor able - - because of the low fees paid by Legal Aid - - - to give the time and attention to her case that he would to the case of a full fee-paying client. This means that women often have lower quality legal service than do their spouses, and means that they are disadvantaged in the case. We therefore recommend that all lawyers be required to take legal aid cases as a specific percentage of their caseload, and that the funds available for legal aid be increased so that rates in reasonable accord with the amount of service necessary may be paid to lawyers who work on legal aid cases.

The Legal Aid office is located in Gastown, an area not close to the residences of most of its clients. The fact that there is only one office may make it difficult for women with children who must depend on public transportation to have access to this service. Legal Aid workers are for the most part, English speaking Canadians; this may create difficulties in communicating and understanding when working with clients from other ethnic backgrounds.

We therefore recommend that Legal Aid storefront offices be opened in all areas of the City, particularly those having a high low-income and/or ethnic population. Workers in each area should represent the ethnic mix of each community as much as possible; where workers of appropriate backgrounds are not available, interpreters should be obtained for all clients whose knowledge of English is limited.

It has been reported that the government is cutting back, rather than increasing, the funds available for legal aid. We would protest any such cut-backs strongly; funds should instead be substantially increased. Women are an economically deprived group; women who work still make only on the average, 55% of what men make (statistics for 1976, Women's Bureau, Federal Dept. of Labour). Cutting back on legal aid funds therefore means depriving women of equal access to legal services. The right to equal access to legal service should be a fundamental one for all Canadian citizens, regardless of sex or income.

### Women in Law Schools

The enrollment of women in law schools has increased during the past few years, and we are pleased and encouraged by this. Nevertheless, it remains difficult, if not impossible, for low income women, particularly those with dependent children to go to law school. Welfare will only pay recipients while they attend post-secondary educational institutions, if their programme will be completed within two years. To attend law school, pay living expenses, and make provision for child care is a very expensive proposition, beyond the means of the vast majority of women. We therefore recommend that talented, interested women be subsidized to attend law schools.