



Canadian Council of Muslim Women
Le conseil canadien des femmes musulmanes

VIOLENCE AGAINST WOMEN

Health and Justice
for Canadian
Muslim Women

PAMELA CROSS

Foreword by Asma Barlas



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About CCMW and Acknowledgements

The Canadian Council of Muslim Women (CCMW) is a national non-profit organization whose overarching mission is to ensure the equality, equity and empowerment of Muslim women. Founded in 1982, the organization has drawn upon faith and social justice for the betterment of Canadian society. For over 30 years CCMW has proudly advocated on behalf of Muslim women and their families and developed projects that enrich the identity of Canadian-Muslims, encourage civic engagement, empower communities and lastly promote inter-cultural and inter-religious understanding. Past initiatives include the coalition for No Religious Arbitration, the Muslim Marriage Contract Kit, My Canada and the Common Ground Project. CCMW is composed of a National Board that works to further CCMW's objectives at a national level, and its 12 local Chapters and members, whose passion and hard work advances the vision of CCMW within local communities.

OUR GUIDING PRINCIPLES

- We are guided by the Quranic message of God's mercy and justice, and of the equality of all persons, and that each person is directly answerable to God
- We value a pluralistic society, and foster the goal of strength and diversity within a unifying vision and the values of Canada. Our identity of being Muslim women and of diverse ethnicity and race is integral to being Canadian
- As Canadians, we abide by the Charter of Rights and Freedoms and the law of Canada
- We believe in the universality of human rights, which means equality and social justice, with no restrictions or discrimination based on gender or race
- We are vigilant in safeguarding and enhancing our identity and our rights to make informed choices amongst a variety of options
- We acknowledge that CCMW is one voice amongst many who speak on behalf of Muslim women, and that there are others who may represent differing perspectives
- We aim to be actively inclusive and accepting of diversity among ourselves, as Muslim women

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Foreword

CHALLENGING VIOLENCE AGAINST MUSLIM WOMEN

Asma Barlas

Even if one is familiar with the long and sordid history of violence against women, it is still sobering to read about the persistence of sexual abuse and discrimination in Canada today. What is also distressing is that although citizenship confers equal rights and protections under the law on women and men, the onus is on women to document their own brutalization in order to lobby states for safeguards against it. They are thus doubly burdened: by the violence and by having to find effective ways to secure their own well-being.

This is why these four reports, commissioned by the Canadian Council of Muslim Women (CCMW), are so important, because they not only detail the various forms of violence to which women are subjected but also propose some strategies for mitigating it. The most comprehensive, in my view, is educating both the women about their legal rights and the communities in which violence is normalized by appealing to religion, tradition, and/or national culture.

In this context, while no community is free of abusive practices, the Muslim is beset by two further problems. One is that violence is committed not just by some husbands but also by fathers and brothers which makes for an expanded circle of familial abuse for women. The other is the tendency to ascribe this abuse to Islam's

own scripture, the Qur'an, as the report on "Violence Against Women" notes. Since, for Muslims, the Qur'an is God's word, the pervasive view is that God "himself" gives men the license to control or ill-treat women.

Yet, as much new scholarship illustrates,¹ and as the report also points out, one can interpret the Qur'an as *rejecting* women's abuse, which raises the question as to why most Muslims cling so compulsively to its patriarchal interpretations. The most obvious answer is that, since they live in patriarchies in which male authority is taken for granted, they do not question their own approach to the Qur'an. In what follows, therefore, I will focus on some of the problems in Muslim attitudes towards it in the hope, both, of debunking the idea that Islam is congenitally patriarchal and of helping those who wish to work in Muslim communities understand how anti-women interpretations of the Qur'an are generated and the grounds on which one can go about contesting them.

INTERPRETING THE QUR'AN: FOUR PROBLEMS

The most theologically problematic assumption Muslims make is that God is a male since the Qur'an refers to God as "He/ Him." However, these gendered references are simply a function of the Arabic language as is obvious from the Qur'an's categorical assertion that God is uncreated, hence incomparable. To this end, it even forbids using similitude (metaphors that convey similarity) for God. Of course, if God is not a male and is, in fact, beyond sex/gender, one might ask why God would favor men and discriminate against women, as most Muslims hold, but no Muslim theologian has ever addressed this question.

1 See: Asma Barlas, *"Believing Women" in Islam* (Austin, University of Texas Press: 2002); Amina Wadud, *Qur'an and Woman* (Oxford, Oxford University Press: 1999); Azizah al-Hibri, "A Study of Islamic Herstory," *Women's Studies International Forum*, 5.2 (1982): 207-221 and Riffat Hassan, "An Islamic Perspective," in *Sexuality: A Reader*, Karen Lebacqz ed. (Cleveland, The Pilgrim Press: 1999).

A second problem is that, since most Muslims are not literate, they only have a second-hand knowledge of the Qur'an which is culled from various sources, the most popular being the *hadith*. These are narratives about the Prophet's life that began to be compiled a few centuries after his own death and which now circulate as oral stories among Muslims. (There are also six compilations that Muslims regard as canonical.) In fact, even educated Muslims and scholars rely on the *hadith* to interpret the Qur'an which creates a fundamental problem since several well-known *hadith* undercut or undermine its teachings.

For instance, it is the *hadith* that claim that women are "morally and religiously defective," "evil temptresses, the greatest *fitna* [temptation] for men," "unclean over and above menstruation," "the larger part of the inhabitants of Hell, because of their unfaithfulness and ingratitude toward their husbands," and have "weaker intellectual powers," than men, making them unfit to be political rulers.²

In a parallel fashion, the *tafsir*, or commentaries on the Qur'an, many of which were written by early Jewish and Christian converts to Islam, have introduced into Islam the name "Eve" for Adam's spouse, the idea that she was created from his rib and that she was responsible for the Fall, for which all women are being punished by painful childbirth and menstruation. Muslim denials of "female moral responsibility," also derive from "Bible-related traditions,"³ as do Muslim depictions of such women figures in the Quran as the Queen of Sheba and Potiphar's wife, known by the popular name of Zuleikha.

The Qur'an, however, makes no derogatory claims about women and it says God created human beings from a single self (*nafs*), an account that does not establish an ontological hierarchy between men and women. Nor does it teach the idea of a "Fall"

2 Barbara Stowasser, *Women in the Quran*. (New York: Oxford University Press, 1994). 23; 32. See also: Barbara Stowasser, "The Mothers of the Believers in the Hadith," *The Muslim World*, 82.1-2 (1992): 1-36. For an analysis and critique of the *hadith* see Fazlur Rahman, *Islamic Methodology in History*. (Karachi: Central Institute of Islamic Research, 1965).

3 Stowasser, 1994: 28; 41.

or say anything about practices that are now associated with Islam, such as stoning to death (or beheading, as the Saudis do) for adultery, or female genital cutting (FGC).

Muslims may not feel the need to distinguish between these different sources of textual authority in order to lead a good life but that is the only way for them to know the differences between God's word (the Qur'an) and the words of men (the hadith and tafsir). While it is unlikely that they will stop relying on such secondary religious texts, it is nevertheless crucial to get them, especially the women, to see that it is these texts and not the Qur'an that are the sources of misogyny; that men, not God, are responsible for oppression.

A third problem is that most Muslims do not question the interpretations of the Qur'an they embrace or how these became dominant over time. However, no knowledge, including religious knowledge, comes ready-made. Rather, human beings construct it by means of specific methodologies and in specific milieus which is why there is a connection between authorship, method, and meaning, as well as between texts and the contexts in which they are interpreted. What this means with respect to the Qur'an is that what we understand it to be saying also depends on *who* interprets it, *how*, and in what *contexts*.

It is no secret that, throughout Muslim history, only men, and only a handful at that (all scholars and mostly Arabs), have claimed the authority to interpret the Qur'an, or that the societies in which they have done so are patriarchal. To my mind, it is these factors that account for the extraordinary consensus that exists in these societies about women's rights and status. In other words, unlike many Muslim feminists, I do not believe that Islam is itself a patriarchal religion. For, if by "Islam" we mean its theology, it cannot be patriarchal since God is not a patriarch. Nor does the Qur'an say God made man in "his own image" or that the man alone is God's vice-regent; rather, women are as well. If, on the other hand, by "Islam" we mean those words, lines, and verses in the

Qur'an that speak to men about women, or give them certain rights vis-à-vis women, then one can explain these with reference to history and social structures.

We know that the Qur'an's first audience, which it addressed in real time, was a seventh-century tribal Arab patriarchy and, for the Qur'an to have taken this as an existing fact is not tantamount to upholding patriarchy as a norm, as some Muslims allege. If anything, the Qur'an often speaks to men in order to reform them and, often to reprimand and/or caution them for ill-treating their wives and daughters.⁴ To be clear, the Arabs were hardly unusual in their attitudes towards women since no medieval society was known for its egalitarian sexual politics. For instance, Assyrian laws allowed a husband to pull out a wife's hair, mutilate her ears, and smash her teeth "with burnt bricks" if she contradicted him.⁵ Unrestrained polygyny, slavery, concubinage, incestuous marriages with sisters and daughters, husband-worship, the "law of the veil," and the segregation of elite women were endemic in many societies. In Europe, women were regarded as chattel until a few centuries ago. No society, in other words, has clean hands when it comes to women.

Given the realities of history, it strikes me as a bit benighted and opportunistic to insist that because a few verses in the Qur'an speak to men about women, this means Islam is patriarchal and/or that it advocates patriarchy. The Qur'an also addresses slave-owners but no one in their right minds takes that to mean it advocates slavery or that Muslims are obliged to enslave others. Why the insistence, then, on making a seventh century Arab patriarchy the only lens for interpreting the Qur'an today? Like old forms of slavery, old forms of male privilege are also long gone and why would the Qur'an universalize these when —surely!—God must know that patriarchy itself is not timeless? More to the point, why would a God who is not a male want to uphold male privilege?

4 See in the text below for what the Qur'an has to say about men who kill their daughters and to male guardians of female orphans about the need to deal justly with them.

5 Leila Ahmed, *Women and Gender in Islam*. (New Haven, Yale University Press: 1992). 13.

In my view, then, far from Islam having invented or sanctioned patriarchy, patriarchies have invented and sanctioned their own versions of Islam. They have done this not only by holding the Qur'an hostage to the hadith and tafsir, which are the sources of many anti-women ideas, but also by insisting that the Qur'an has just one set of patriarchal meanings that a few dozen male scholars have fixed once and for all. This is the final problem I wish to mention since it amounts to the absurd assertion that language is fixed and transparent and that words can have only one meaning, known only to an elect few, all of them men.

THE QUR'AN AND VIOLENCE

It is now a commonplace that every text is open to different readings and that "interpretation is an open process which no single vision can conclude;" in fact, this is a "key hypothesis of hermeneutical philosophy."⁶ One can easily contest patriarchal interpretations of the Qur'an on the basis of this claim alone, but I also wish to examine some of the words/ lines/ verses that are read as allowing the abuse of women. In examining these, I draw on the Qur'an's counsel to read it as a whole (I take this to mean reading verses in light of one another rather than piecemeal), privileging its foundational (clear) verses over allegorical ones, and reading it for its "best" meanings. The verses I have chosen impinge either directly or indirectly on the issues raised in these reports, starting with the one on "Violence Against Women."

1. "Wife-beating"

Violence takes many forms but one of the most pervasive among Muslims is the practice of wife-beating which is traced to verse 4:34. Since this verse is also cited

⁶ Paul Ricoeur, *Hermeneutics and the Human Sciences*, J.B. Thompson. Trans. and Ed. (Cambridge, Cambridge University Press: 1981). 212.

as evidence that men are women's guardians, I will quote it in its entirety, starting with Abdullah Yusuf Ali's widely accepted translation:

Men are the protectors
 And maintainers of [*qawwamun ala*] women,
 Because God has given
 The one more (strength)
 Than the other, and because
 They support them
 From their means.
 Therefore the righteous women
 Are devoutly obedient [*qanitat*] and guard
 In (the husband's) absence
 What God would have them guard.
 As to those women
 On whose part ye fear
 Disloyalty and ill-conduct [*nushuz*]
 Admonish them (first),
 (Next), refuse to share their beds,
 (And last) beat them [*daraba*] (lightly);
 But if they return to obedience,
 Seek not against them
 Means (of annoyance).⁷

Incidentally, the Qur'an does not use the word "strength" (fourth line), and this is Ali's own interpolation. In contrast, Laleh Bakhtiar translates verse 4:34 as:

Men are supporters of wives
 Because God has given some of them an advantage
 over others
 and because they spend of their wealth.
 So the ones (f) who are in accord with morality
 are the ones (f) who are morally obligated,
 the ones (f) who guard the unseen
 of what God has kept safe.
 But those (f) whose resistance you fear,

7 Abdullah Yusuf Ali, *The Holy Qur'an*. (New York, Tehrike Tarsile Qur'an: 1988). 190.
 The words in italics are Arabic.

then admonish them (f)
 and abandon them (f) in their sleeping place
 then go away from them (f);
 and if they (f) obey you,
 surely look not for any way against them (f);
 truly God is Lofty, Great.⁸

A great deal can be, and has been, said about this verse but I will make just one main point which is that its meanings depend on how we interpret/ translate four words: *qawwamun*, *qanitat*, *nuzhuz*, and *daraba*.

With respect to the first, there is a split between those who interpret it as a reference to a husband's financial obligation to maintain a wife and those who read it as saying that men are "in charge of" women and their guardians. In this context, Ziba Mir-Hosseini notes that the term "*qiwamah* (protection, maintenance)," from which *qawwamun* derives, "doesn't appear in the Qur'an at all." Rather, "in relation to marriage and relations between spouses, two other terms appear over 20 times: *ma'ruf* (good way, decent) and *rahmah wa muwadah*, (compassion /love)."⁹ Given this fact, she questions why family law is based on "the twin concepts of *qiwamah* and *wilayah* which are ... understood as having mandated men's authority over women." Hosseini and Anwar also argue that, when the Qur'an uses the term *wilayah*, it does so "in the sense of friendship and mutual support, but never as endorsing male authority over women."¹⁰ The point of their critique is to illustrate that the "DNA of patriarchy" in Islam has to do with the particular choices of medieval Muslim jurists, choices that they—and others—want Muslims to question in order to reform family law.

8 Laleh Bakhtiar, *The Sublime Qur'an* (Chicago, Kazi Publications: 2007). 94.

9 Ziba Mir-Hosseini and Zainah Anwar, "Decoding the "DNA of Patriarchy" in Muslim Family Laws," 21 May. 2012, Open Democracy, 28 Feb. 2013 <<http://www.opendemocracy.net/5050/ziba-mir-hosseini-zainah-anwar/decoding-%E2%80%9Cdna-of-patriarchy%E2%80%9D-in-muslim-family-laws>>.

10 Ibid.

As for the specious claim that men are women's guardians, the Qur'an itself offers evidence against such an interpretation by saying that:

The Believers, men
And women, are [awliya],
One of another: they enjoin
What is just, and forbid
What is evil: they observe
Regular prayers, practice
Regular charity, and obey
God and [God's] Apostle.¹¹

Merryl Wyn Davies argues that "*awliya*" implies that men and women are "guides or in charge of one another."¹² Even if one does not agree with her, the verse makes it clear that women and men have a mutuality of obligations which women could not fulfill if men were dominant over ("in charge of") them.

As for the word *qanitat*, while it is taken to mean the wife's obedience to her husband, as Amina Wadud argues, the Qur'an never mandates such obedience. This is why she interprets *qanitat* as obedience to God.¹³ In the same vein, while *nushuz* is interpreted as a wife's disloyalty or ill-conduct, the Qur'an also refers to a husband's *nushuz*. Both parties, therefore, are equally capable of the same behavior. Of course, a problem that arises is that both do not have the same recourse vis-à-vis one another since this verse only gives husbands certain rights, including, it would seem, to strike (*daraba*) their wives.

In this context, it is necessary to keep in mind that *daraba* not only means beat or strike but also to leave, go away, and separate, as Bakhtiar's translation demonstrates. (Incidentally, some of the same Muslims who love to quote the hadith ignore the one

11 9:71-72; in Ali, 461.

12 Merryl Wyn Davies, *Knowing One Another* (London, Mansell Publishing: 1988). 84.

13 Wadud, 77.

which says that the Prophet forbade men from striking their wives and he himself never hit his own.) Of course, even if we take *daraba* to mean “go away,” or “leave,” the Qur’an is still giving a husband, and not the wife, this right. However, this may have had to do with the kinds of social relationships that were possible in the seventh century, as I noted earlier.

Some secular Muslims think it is an apologetic move to explain certain Qur’anic verses with reference to the historical conditions in which they were revealed. However, ignoring these conditions, as both secular and so-called traditionalist Muslims prefer to do, is a far more questionable interpretive practice. If the choice is between acknowledging history or ignoring it, it seems more logical to do the former. In fact, the Qur’an’s counsel to find the “best” within it (39:18) is not just an ethical injunction but also one that is sensitive to history since our notion of what is “best” changes over time. Thus, the Qur’an itself opens the door for Muslims to keep reinterpreting it in light of new historical insights.

2. Femicide/ Infanticide

The heinous practice of “honor” killings is considered Islamic since some of the perpetrators are Muslims but, as the CCMW notes, such murders also take place in other cultures even if we call them by a different name. On that note, I commend the CCMW for opposing the term “honor killings” on the grounds that it amounts to describing a woman’s murder “by the rationale provided by the murderer.” Instead, the CCMW advocates that all murders be categorized “as femicide—the killing of women and girls simply because they are females. This includes the killing of girls as infants – infanticide.”

While some Muslim fathers and brothers believe they have the right to kill their daughters/sisters who have “disgraced” them, the Qur’an gives them no such right.

Indeed, it promises that, on Judgment Day, “the female (infant) Buried alive [will be] questioned For what crime She was killed.”¹⁴ This is a reference to the seventh-century Arab practice of burying new born girls in the sand and the Qur’an warns fathers who are guilty of this crime that their girls will bear witness against them when God calls them to account.

The issue of female infanticide comes up in the Qur’an in the broader context of gender preferences and it is instructive to read what it has to say about men who kill their daughters or treat them with contempt. The very men who allege that God has daughters, says the Qur’an, desire sons for themselves and:

when any of them is given the *good tidings* of a girl, his face is darkened and he chokes inwardly, as he hides him from the people because of the evil of the *good tidings* that have been given unto him; whether he shall preserve it in humiliation, or trample it into the dust. Ah, *evil is that they judge!*¹⁵

In effect, God regards the birth of girls a “good tiding” and considers it “evil” that some men should kill them or keep them alive on sufferance.

It also bears noting that when God condemns the polytheists of the Prophet’s time for assigning daughters to God, it is not because God considers them less worthy than sons, but because God rejects the notion of divine patriarchy altogether. It may not be a coincidence, then, that the Qur’an also does not assign a special place to fathers and that it condemns the institution of father-rule, which opens up to question the claim that fathers are sacrosanct in Islam.

¹⁴ 81:8-9, in Ali, 1694.

¹⁵ 16: 55-60; in A.J. Arberry, *The Koran Interpreted*. (New York, Allen and Unwin: 1952). 292. My emphasis.

3. Forced/Child Marriages

The Qur'an does not mention forced and/or child marriages, which are the subjects of the third report. However, Muslim law (*fiqh*) allows men to marry not only more than one wife, but also very young girls on the grounds that one of the Prophet's wives, Ayesha, was a child when they got married. (By way of a comparison, we need to remember that the age of consent in the U.S. for girls was between seven and ten years as late as 1889.) Both these issues are best considered separately since there is no relationship between them.

Only two verses mention polygyny and both are addressed to male guardians of female orphans. One verse exhorts these guardians to:

Give the orphans their property, and do not exchange the corrupt for the good [i.e., your worthless things for their good ones]; and devour not their property with your property; surely that is a great crime. If you fear that you will not act justly towards the orphans, marry such women as seem good to you, two, three, four; but if you fear you will not be equitable, then only one, [aw] what your right hands own; so it is likelier you will not be partial.¹⁶

The other verse says God's will "is being conveyed unto you through this divine writ about orphan women [in your charge], to whom — because you yourselves may be desirous of marrying them — you do not give that which has been ordained for them."¹⁷ In effect, both verses attest that only those men can marry more than one wife who (a) have female orphans in their care and (b) who fear they will not be able to act justly towards these orphans outside of the marriage tie.

¹⁶ 4:1; in Arberry, 100.

¹⁷ 4:127, in Muhammad Asad, The Message of the Quran. (Gibraltar, Dar al-Andalus: 1980). 129. My emphasis.

However, there are two additional stipulations: first, the reference to securing justice for the orphans suggests that what the Qur'an is allowing is marriage to them. Second, such marriages are contingent on the man being able to treat all his wives equitably and, since that is unlikely, says the Qur'an, it is best to marry just one. Thus, the purpose of polygyny in the Qur'an is to secure justice for female orphans, not to provide men sexual access to women or as a means to produce male heirs, as many Muslims believe.

As for Ayesha's age, there is no consensus on it since her first biography was compiled a century and a half after her death.¹⁸ By then, Muslims had broken into the Sunni and the Shi'a sects and Ayesha was a polarizing figure for both since she had led a battle against the Prophet's cousin and son-in-law, Ali, whom the Shi'a regard as their first imam. Sunnis, however, treat her as the Prophet's favorite wife and a major source of hadith narration.

Moreover, some hadith put her age at nine (since she is said to have had dolls) while others say she was in her teens (since she could recite the rules of Arab poetry and grammar). However, the more important point, as far as I can see, is that if Muslim men really want to follow the Prophet's example, they can also follow the example of his first marriage. This was at the age of twenty-five to Khadijah who was fifteen years older than him and who was twice widowed. During her life-time, he did not marry another wife. Why is this marriage not the ideal of Muslim men but only the Prophet's marriage to Ayesha?

On a final note, the Prophet was allowed certain marriages as "a privilege" only for him and "not for the (rest of) believers" (33:50). Consequently, for Muslim men to

¹⁸ See D.A. Spellberg's excellent account of the construction of Ayesha, *Politics, Gender and the Islamic Past*. (New York, Columbia University Press: 1994).

insist that they have the same rights the Prophet did ignores that they do not have the same status as he does in Islam.

4. Female Genital Cutting (FGC)/Female Genital Mutilation (FGM)

The custom of female genital cutting is pre-Islamic and the Qur'an has nothing to say about it though, as I pointed out earlier, one can find some hadith on the subject. What the Qur'an does speak about is the need for spouses to find love and sukun in one other (30:21), a term that implies a sense of peace resulting from sexual fulfillment.¹⁹ In effect, the Qur'an recognizes and encourages the mutuality of sexual desire and since FGC makes it impossible for a woman to have a fulfilling, healthy, or pleasurable sexual relationship with her husband, one can argue against it on scriptural grounds.

IN ENDING

Over the years, I have heard many Muslims wondering what to do about the verses they read as discriminating against women and I am always struck by the naivety and ingenuity of this way of thinking. To me it seems unlikely that a pious Muslim man first reads the Qur'an and then sets about beating a wife with whom he is unhappy, or killing a daughter or sister who he thinks has ruined his reputation by making choices of which he does not approve. This is another way of saying that Muslims are not helpless before the Qur'an; to the contrary, the Qur'an is at our mercy since, clearly, we have the option to read different meanings into, and out of, it. But, of course, it is convenient for abusive men to pretend they are being forced to act in accordance with the Qur'an's teachings while they are actually ignoring most of these.

19 Mustansir Mir, "The Sura as a Unity," in Approaches to the Quran. G.R. Hawting and Abdul-Kader A. Shareef. Eds. (New York, Routledge: 1993).

The majority of these teachings confirm that women and men are equal before God, counsel husbands and wives to live together in love and mercy, and not to forget liberality between themselves even if they are getting divorced, instruct husbands to deal kindly with their wives, even if their wives are their enemies, and condemn men for killing their girls or keeping them alive only to humiliate and oppress them. If Muslim societies are willing to make the Qur'an hostage to one or two verses, why not pick those that speak to such issues? Or those that open up liberatory possibilities for us, such as:

For Muslim men and women,—
 For believing men and women,
 For devout men and women,
 For men and women who are
 Patient and constant, for men
 And women who humble themselves,
 For men and women who give
 In charity, for men and women
 Who fast (and deny themselves).
 For men and women who
 Guard their chastity, and
 For men and women who
 Engage much in God's praise
 For them has God prepared
 Forgiveness and great reward.²⁰

For believers, there can be no more powerful evidence that they stand equal before their Creator. However, to experience this equality, they will need to stand up to all those who seek to repress all that is best in the Qur'an itself.

20 33:35; in Ali, 1116-17.

Introduction

Violence against women exists in every culture, every country, and every community in the world. No one is immune; no one is protected by virtue of their race, skin colour, nationality, religion, age or class. Violence against women can be physical, psychological, and sexual. It can happen in the home, in the workplace, and in the community. It can be perpetrated by intimate partners, parents, children, schoolmates, work colleagues, religious leaders, and governments.

In this series of papers, we explore four facets of violence against women as they exist within Canada – violence against women within the family, forced marriage, femicide and female genital cutting – looking in particular at their manifestation in and on Muslim communities in Canada. The recommendations we make about how to move forward to address these issues are framed in the Canadian context. While, of course, our concerns extend to the manifestations of these issues around the world, these papers are intended to assist Canadians who are engaged in addressing issues of violence against women in communities in this country.

It is our hope that these papers will serve as a starting point for important conversations among key players – social service providers, government officials, legal professionals and community members – that can lead to action to improve the response to and eventually eradicate these forms of violence against women. These papers will also form the basis for community education and development tools that will be used with a diversity of audiences, including Muslim women and service providers. Our

goal is to create greater awareness at the community level and to increase the cultural competence of service providers so that women experiencing violence can find the support they need.

As noted in the funding proposal to Status of Women Canada:

Violence against women and girls takes many forms, and for Canadian Muslim women there are additional forms of violence rooted in culture/traditions/customs that they may have to contend with The perpetrators of such violence, which is often attributed to religion/culture, offer many rationales and justifications to convince Muslim women that these practices are for their own benefit. . . .

Amongst some Muslims, there is reluctance to name and discuss such cultural beliefs and practices because it often leads to a frenzy of anti-Muslim sentiments and stereotyping. Those within Muslim communities who are concerned about such issues hesitate to publicly discuss them because they are wary of contributing to the anti-Muslim sentiment and reinforcing negative stereotypes. Well-meaning non-Muslims are equally hesitant to address these issues since they fear accusations of racism. And then there are others who refrain from condemning such practices within immigrant and Muslim communities in the name of cultural relativism.

It is our hope that these papers avoid these pitfalls and, instead, provide some new insights into these important issues.

VIOLENCE AGAINST WOMEN IN THE FAMILY

[W]ife battering is not culture . . . [It is a] traditional patriarchal custom that men have practised and women have accepted for generations.¹

Progressive people, among them many feminists, have come to believe in the urgency of saving Muslim women from their patriarchal communities. As a practice of governance, the idea of the imperilled Muslim woman is unparalleled in its capacity to regulate. Since Muslim women, like all other women, are imperilled in patriarchy, and since the rise of conservative Islam increases this risk (as does the rise of conservative Christianity and Hinduism), it is hard to resist calls to 'save the women.'²

1 Natalie Sokolov, ed., Domestic Violence at the Margins: Readings on Race, Class, Gender and Culture. (New Brunswick: Rutgers University Press, 2010) 6.

2 Sherene Razak, Casting Out: The Eviction of Muslims from Western Law and Politics. (Toronto: University of Toronto Press, 2008) 17.

EXECUTIVE SUMMARY

The violence women experience within their families has many names: domestic violence, wife assault, conjugal violence, intimate partner violence, wife beating, battering, violence against women and, no doubt, more. No one term offers the degree of nuance needed to serve as a meaningful label to permit outsiders to fully understand the issue quickly. Despite some of the challenges it presents, we use the term “violence against women” because we feel it is important to illuminate the gendered reality of the violence that occurs in families.

We bring an intersectional, gender-based analysis to this paper. This allows us to examine the issue of violence against women in families in a way that acknowledges both the gendered elements of it and the different social locations in which women in this country are situated. Those different social locations have an impact on the violence women experience but, more importantly, how those experiences of violence are seen and responded to by the mainstream community around them.

Violence against women in Canada is a serious and entrenched social problem. Victims of family violence accounted for 25% of all victims of violent crime in 2010, according to Statistics Canada; with women having more than twice the risk than men. Young women face the greatest risk of all. Spousal violence carries a high price tag: according to Statistics Canada, in 2009, the cost was at least \$7.4 billion. This figure includes the cost of policing, health care, safety strategies, victim relocation, criminal prosecutions, funerals and lost wages.

There is no religious justification for violence against women, although fundamentalist interpretations of the Qur'an have become mixed with what has been inherited from various tribal cultures over time, as has been the case in other religions. Women in Muslim communities in Canada, like women in all communities, face the

risk of experiencing violence within their families. That violence is predominantly perpetrated by their husbands, although there is some violence perpetrated by mothers-in-law and daughters-in-law. Research does not indicate there is any greater risk of violence for Muslim women than for women in other communities who are similarly socially located. Nonetheless, there are some differences in the types of violence as well as in motivators for and impacts of the violence.

Canada offers many rights and protections for women who experience violence. While some of these rights are formal and lack substance, it is important to note that there are policies, initiatives and services in place to work towards the eradication of violence and to support women and families who have experienced it. It is also important to note that it is primarily a minority woman's lack of knowledge about accessing culturally competent services that distinguishes the experiences of women from non-mainstream communities compared to those in the mainstream.

Like other women, women in Muslim communities face barriers when they consider leaving an abusive relationship. Some of these barriers are internal (women often continue to love their abusive partner), some are rooted in the community (community attitudes about marriage and the roles of men and women in families) and some are systemic (lack of affordable housing). However, women in Muslim and other non-mainstream communities in Canada face unique barriers. For example, concern about losing her cultural/religious identity by leaving her abusive husband is a significant barrier to accessing services. Racism and a lack of cultural competency on the part of service providers, including police, pose barriers as well.

There are a number of tools, initiatives and resources related to violence against women in Muslim communities that can serve as important starting points for moving forward to address this issue. The 2011 Call to Eradicate Domestic Violence, made by a large group of Imams, scholars and community organizations is one such initiative; the

Muslim Resource Centre for Social Support and Integration is another. These and other initiatives and models can be built on to continue valuable work already done. The need for men, young men and religious and community leaders, to be involved in the work to eradicate violence against women cannot be overstated.

The development of new service delivery models that strive for culturally competent best practices is also critical. Women should never feel that they are being asked to choose between their community and access to services and support. Services should be linguistically accessible, and information about them should be widely available so women are aware of their existence.

THE LANGUAGE WE USE

While the term “domestic violence” is the language most frequently used by government and institutions such as the police, courts and health care providers, this report will primarily use the term “violence against women,” as we believe it most accurately reflects the violence that occurs in the home. “Domestic violence” is primarily perpetrated by men against women. In the context of this paper, when it is children who are the victims of violence within the family, it is most often young girls, and that violence is primarily committed by fathers and/or older brothers.³ As noted in the final report of Ontario’s Domestic Violence Advisory Council: “Violence against women spans a continuum of attitudes, beliefs and actions.”⁴

The opening to the definition of violence against women used by the United Nations provides a holistic approach, stating:

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.⁵

This definition is helpful because it highlights violence that is both private (family)⁶ and public (community or state). This allows us to examine not just individual acts of violence committed directly by one individual against another but also violence that is

3 The Daily, “Violence Against Women, 2011” 5 Feb 2013, *Statistics Canada*, 25 Feb 2013 <<http://www.statcan.gc.ca/daily-quotidien/130225/dq130225a-eng.htm>>.

4 Domestic Violence Advisory Council. “Transforming our Communities: Report from the Domestic Violence Advisory Council for the Minister Responsible for Women’s Issues.” May 2009. *The Ontario Women’s Directorate*. 5 Feb. 2013 <http://www.women.gov.on.ca/owd_new/english/resources/publications/dvac/dvac_report.pdf> 12.

5 United Nations, “Declaration on the Elimination of Violence Against Women.” Dec 1993, The United Nations, 12 Feb. 2013 <<http://www.un.org/documents/ga/res/48/a48r104.htm>>.

6 The term commonly used in Quebec to describe violence against women within their families is “conjugal violence,” which is a useful way of phrasing it because it distinguishes this from other, more public forms of violence. However, it lacks the gendered analysis offered by the phrase “violence against women.”

based in social structures that either explicitly or implicitly permit the violence to take place and create roadblocks for victims of that violence who seek to end or leave it.

Violence embedded in social structures is often invisible because it is part of our regular experience. Laws, policies, and entrenched ideas and traditions make unequal relationships of power seem normal and inevitable. In order to address violence embedded in social structures, our definition of violence against women must be broad enough to include types of violence that have not traditionally been considered. As noted in the final report of a forum on violence against women and family law held by the Barbra Schlifer Commemorative Clinic in 2011:

Diverse forms of patriarchal violence designed to control a woman's movement, sexuality, life choices and sometimes ability to remain alive remain under-assisted by conventional definitions of 'domestic violence' (intimate partner abuse). Forms of violence that are intended to control women's behaviour and sexuality (such as those named as "honour-based") are increasingly challenging the 1980s definition of partner assault as the most salient form of violence against women.

As a result of staid paradigms, some communities of women find themselves either under-responded to or inappropriately responded to by a reflexive attribution of violence to 'culture': "That's a cultural thing and we don't want to interfere or it might be seen as cultural insensitivity or racism"; or over-responded to: "You need to leave your family and your community/culture so we can keep you safe". This is a serious issue that can leave a woman in an impossible position of having to choose between safety and her community. The continuum of violence that women experience must be seen as such, and our services need to adapt openly to this changed environment.⁷

We need, also, to rethink our understanding of the word "culture." As Korteweg et al. establish:

7 Barbra Schlifer Commemorative Clinic. "Justice Done: Crafting Opportunity from Adversity" 2011, *The Ontario Association of Interval and Transition Houses*, 2 Feb. 2013 <http://www.oaith.ca/assets/files/Publications/Family%20Law/JusticeDone_FinalReport_ENG.pdf> 7.

[A] more nuanced conceptualization of culture as giving meaning to all forms of violence combined with a structural conceptualization of violence as, what we call, multi-scalar, enables a rethinking of violence against women in all communities and a deepening of our understanding of women's full citizenship.”⁸

THE NEED FOR AN INTERSECTIONAL, GENDER-BASED ANALYSIS

A gender-based analysis describes an examination of the differential impact of policies and programs on women and men. As Cross establishes:

Too often, public discourse and policy about violence against women has been based on a gender-neutral analysis, with the result that outcomes are often unsuccessful, inadequate or counter-productive, even, at times, worsening the problem.⁹

Thus, any analysis of violence against women must acknowledge the gendered reality of this issue. However, this is not enough. Canada in 2013 is a diverse society. Not all families fit the binary, heterosexual norms of the past. Many of the cultures that make up Canadian society define violence and roles within the family very differently and bring different values to marriage, divorce, responsibility for children, and other family issues. For these reasons, our analysis must also reflect an intersectional feminist framework (IFF):

IFFs attempt to understand how multiple forces work together and interact to reinforce conditions of inequality and social exclusion. IFFs examine how factors including socio-economic status, race, class, gender, sexualities, ability, geographic location, refugee and

8 Anna Korteweg, et al., “Citizenship, Culture and Violence Against Women: Social Service Provision in the South Asian Communities of the GTA.” Mar. 2013, CERIS- *The Ontario Metropolis Centre*, 12 Feb. 2013 <<http://www.ceris.metropolis.net/wp-content/uploads/2013/03/Korteweg-et-al-CERIS-Research-Report-March-25-FINAL.pdf>> 2.

9 Pamela Cross. “It Shouldn’t Be This Hard: A Gender-Based Analysis of Family Law, Family Court and Violence Against Women” Jun 2012, *Luke’s Place Support and Resource Centre for Women and Children*, 5 Feb 2013 <http://www.lukesplace.ca/pdf/It_Shouldnt_Be_This_Hard.pdf> 18.

immigrant status combine with broader historical and current systems of discrimination such as colonialism and globalization to simultaneously determine inequalities among individuals and groups.¹⁰

While violence against women is, of course, a gendered problem in which the vast majority of victims are women, the vast majority of perpetrators are men. Accordingly, violence against women exists because of women's ongoing inequality, and other factors including race, culture, religion and immigration status in Canada must also be considered if our analysis is to be complete.

VIOLENCE AGAINST WOMEN IN CANADA

Using statistics to define and analyze violence against women and to determine appropriate policy and service initiatives is inadequate on its own. Numbers alone cannot convey the complexities and nuances of the issue and, as has been said frequently, anyone can find a set of statistics to support a particular point of view. Nonetheless, some statistical information is helpful.

According to Statistics Canada,¹¹ in 2010, victims of family violence accounted for 25% of all victims of violent crime. Women have more than twice the risk of becoming a victim of family violence, with girls or women accounting for 7 out of 10 victims of such violence. Intimate partner violence is highest among young women aged 25 to 34. The same research showed that 56% of family violence incidents resulted in charges being laid or recommended, which is higher than the 43% rate of charging in non-family violence incidents. Over the past decade, 65% of spouses accused of homicide

10 Bunjun, Bénita, et al., "Intersectional Feminist Frameworks: An Emerging Vision." 2006, *Canadian Research Institute for the Advancement of Women*, 7 Feb. 2013 <<http://www.criaw-icref.ca/intersectional-feminist-frameworks-emerging-vision>> 5.

11 Maire Sinha, "Family Violence in Canada: A Statistical Profile- 2010" 22 May. 2012, *Statistics Canada*, 13 Feb. 2013 <<http://www.statcan.gc.ca/pub/85-002-x/2012001/article/11643-eng.htm>> 5 – 6. (Note: this study examines police-reported violence only).

had a history of family violence involving the victim, most often when the victim was estranged from the partner.

A recent Justice Canada study found that, in 2009, almost 50,000 cases of spousal violence were reported to the police. Women were the victims in more than 80% of those cases. There were 49 domestic violence homicides in which women were killed by their partners or former partners. The study also reviewed the results of the annual Statistics Canada telephone survey, which found that approximately 336,000 Canadians were victims of some form of violence perpetrated by their spouse.¹² The report noted that the financial cost for spousal violence in that year alone was at least \$7.4 billion. That figure included the costs of policing, health care, safety strategies, victim relocation, criminal prosecutions, funerals and lost wages, among others:

Spousal violence is a widespread and unfortunate reality that has an effect on all Canadians. Victims of spousal violence are susceptible to sustaining costly and long-lasting physical, emotional and financial consequences . . . Every member of society eventually feels the impact of spousal violence through the additional financial strain imposed on publicly funded systems and services.¹³

According to a 2011 *Juristat* report based on the Transition Home Survey, in 2010 there were 593 shelters for abused women and their children with a total of 11,461 beds. On “snapshot day” (April 15, 2010), those shelters were at approximately 74% capacity, with 4,600 women and 3,611 children in residence. Of those women, 60% had not reported the violence they had experienced to the police, formal charges were laid in 27% of the reported cases, and some form of no contact order was put in place in 26% of the cases.

12 Dean Beeby, “Spousal Violence Costs Billions of Dollars Per Year, Major Study Finds,” 23 Dec. 2012, *The Globe and Mail*, 24 Dec. 2012 <<http://www.theglobeandmail.com/news/national/spousal-violence-costs-billions-of-dollars-per-year-major-study-says/article6698908/>>.

13 Ibid.

VIOLENCE AGAINST WOMEN IN MUSLIM COMMUNITIES IN CANADA

Looking at violence against women and girls in Muslim communities requires the use of an intersectional feminist analysis if the issue is to be understood correctly. It is too easy, and incorrect, to simply conclude that violence against Muslim women is a result of cultural or religious values that are in some way unique to Islamic communities. As the World Health Organization correctly notes, “Violence against women and girls occurs in every country and culture, and is rooted in social and cultural attitudes and norms that privilege men over women and boys over girls.”¹⁴

It is important to remember that violence against women has been justified by virtually all religions and cultures through history. For example, the Laws of Chastisement written during the Roman era permitted a man to beat his wife as long as the stick was no thicker than the base of his thumb.¹⁵ Both the Christian church and British Common Law allowed punishment for wives who were in disagreement with their husbands as long as this happened out of charity and concern for the woman’s soul and not out of anger.¹⁶ It is also important to remember that Islam is founded on the principle of equality of rights and responsibilities for men and women within the family.¹⁷

As with Christian and other religious teachings and interpretations, the teachings of Islam and its interpretations have become mixed with what has been inherited from various tribal cultures through the centuries, not all of which practiced equality between the sexes. For instance, while the Qur’an can be interpreted to reject

14 The World Health Organization, “Understanding and Addressing Violence Against Women,” 2012, *The World Health Organization*, 3 Feb. 2013 <http://apps.who.int/iris/bitstream/10665/77431/1/WHO_RHR_12.43_eng.pdf> 1.

15 Leading to the still-used expression “rule of thumb.”

16 Mohammed Baobaid and Gahad Hamed, “Addressing Domestic Violence in Canadian Muslim Communities,” Dec 2010, *The Centre for Children and Families in the Justice System*, 21 Feb. 2013 <http://www.lfcc.on.ca/MFSP_Manual_2010.pdf> 7.

17 Ibid, 18.

the abuse of women, there are those who find a way to interpret it to permit the control of women by their male partners, including the use of physical force when necessary.

In her analysis of Muslim marriage and divorce in North America, Julie Macfarlane interviewed Muslim women in both Canada and the United States who had left their marriages. She found that one-third of the women she spoke with had experienced abuse within their marriage. Most of this included physical violence, but a number of women also described emotional and verbal abuse, such as threats by the husband that he would divorce her and take the children. As Macfarlane notes, the rates and types of violence described by her research subjects are no higher or different from those in the general population:

Domestic violence is not inherent to any particular culture – it is a reflection of systemic patriarchy and occurs across all cultural communities. . . . However, how far a community tolerates male violence on women is critical to the development of cultural norms, and tolerance often supports influential community narratives that minimize and justify male violence. . . . Religious values – just as any other belief or ideology – can be called in aid to support and justify violent behaviours that are based in patriarchy and assumptions of male control.¹⁸

Sokolov defines violence as “a purposeful course of action buttressed by familial, *institutional, social and cultural practices*” and notes that, “Battered women’s oppression is often multiplied by their location at the intersections of particular race, ethnic, class, gender and sexual orientation systems of oppression and discrimination.”¹⁹ Nonetheless, many Muslim women worry that service providers and others such as police will try to locate the violence they are experiencing entirely as a cultural problem as opposed

¹⁸ Julie Macfarlane, “Understanding Trends in American Muslim Divorce and Marriage: A Discussion Guide for Families and Communities,” 5 Jan. 2012, *The Institute for Social Policy and Understanding*, 9 Feb. 2013 <<http://www.ispu.org/getreports/35/2399/publications.aspx>> 25 - 26.

¹⁹ Sokolov, 1 – 2.

to understanding it as a broader societal problem that is experienced by women from all cultures.

While the prevalence and types of violence against women may be very similar from culture to culture and across class and age lines, it would not be correct to say there are no differences. Immigrant women face some unique vulnerabilities including: challenges associated with migration to a new country, immigration laws and processes; the loss of family support networks in the family's country of origin, social isolation, lack of language skills and "different concepts of conjugal violence based on practices from the country of origin."²⁰ It is also the case that, in some communities, familial violence against women may be perpetrated by other women in the family. This is most commonly done by mothers-in-law and sometimes it is the daughter-in-law who abuses her mother-in-law who has been brought to Canada to assist with child care and household chores. More importantly, the barriers posed by women's lack of awareness of services cannot be overstated. This is not the responsibility of the women, who can't be expected to find out about something they do not know exists, but rather points to the need for more effective outreach by community services.

The motivators for and the impacts of violence within the family may be very different, depending on the social location of the family. Again turning to Sokolov's work, we learn that:

[W]hile all men who batter exercise some form of patriarchal control, men's relationships to patriarchy differ in patterned ways depending on where they are socially located. While all women are vulnerable to battering, a battered woman may judge herself and be judged by others differently if she is white or black, poor or wealthy, a prostitute or a housewife, a citizen or an undocumented immigrant.²¹

20 Shield of Athena, "Report of Cultural Communities Awareness Campaign." 2007, *Shield of Athena*, 22 Mar. 2013
 <<http://shieldofathena.com/report-cultural-communities-awareness-campaign>>.

21 Ibid, 27.

According to the work of Baobaid and Hamed, violence against women in Muslim communities tends to occur most often in families where the husband is resistant or unable to let go of old patterns of marital interaction and gender expectations.²² This is neither uncommon nor surprising. For newcomer families especially, men often feel isolated when other family members embrace aspects of Canadian culture that may appear to contradict cultural or religious values the family has brought from their country of origin. This isolation can lead to fear and a perceived need by the man to protect his family from these influences. With few resources, he may turn to controlling or physically violent tactics in the interests of keeping his family intact and safe. As another text puts it:

[Most immigrants] bring with them deeply embedded cultural and family values and religious beliefs, and they are influenced by societal expectations regarding sexual and gender roles acquired in their country of origin. . . . When abuse or violence is a reality in the family life of immigrants, how it is understood and addressed is influenced by all of these factors. Seeking help and making use of Canadian social services becomes yet another stress and is fraught with additional dilemmas. . . . For immigrant and refugee families, structural obstacles, ethnocultural prohibitions, language barriers, and fears about being deported or losing their children complicate their ability to make use of such services. In some cases they may not even be aware of services available to them.²³

In other words, we do not ignore culture but rather understand violence as crossing cultural (and other) differences and taking on unique characteristics and implications that have cultural connections. We agree with Korteweg et al. who establish:

. . . Instead of abandoning the idea of culture altogether, culture can usefully be understood not as a uniform, deterministic force, but as a

22 Baobaid and Hamed, 22.

23 Ramona Alaggia and Cathy Vine, *Cruel But Not Unusual: Violence in Canadian Families* (Waterloo: Wilfred Laurier University Press, 2006) 100 – 101.

process that gives meaning to practices, including practices of violence. Ultimately, this nuanced conceptualization of culture combined with a conceptualization of violence as structured by forces of the family, society, economy, and the state, or what we call multi-scalar violence, enables a re-thinking of violence against women in all communities.²⁴

For many Muslim women and girls, including newcomers to Canada, the violence they experience within the family is just one of many forms of violence and abuse with which they must contend. Newcomers in particular confront many challenges including immigration issues, acculturation, language acquisition, isolation, discrimination and financial hardship:

Although religion can indeed be used to justify violence [against women], the multiple other forms of violence that Muslim girls and women in Canada face indicate that to understand the violence in their lives in a meaningful way calls for an analysis that goes beyond only looking at Islam and at Muslims. In other words, given the violence that Muslim girls and women face based on racism, Islamophobia, poverty and other factors, it would be both inaccurate and inadequate to confine an analysis of the sites and forms of this violence only to Islam or Muslim cultures.²⁵

Everyone is harmed if we think of violence against women as the norm in some groups and as not existing in others. As the Muslim Resource Centre for Social Support and Integration articulates:

Victimization is also denied when domestic violence is defined as culturally normal for groups different from the dominant white culture. Defining domestic violence as “culturally relative” minimizes the extent of domestic violence in white families; ignores the complexity of other cultures’ values concerning respectful intimate relationships and conflict resolution, trivializes the ongoing evolution

24 Korteweg, et al., 2.

25 Krista Riley, “Violence in the Lives of Muslim Girls and Women in Canada: Symposium Discussion Paper,” Sep. 2011, *The Centre for Research and Education on Violence Against Women and Children*, 15 Feb. 2013 <<http://www.learningtoendabuse.ca/sites/default/files/Violence%20in%20the%20Lives%20of%20Muslim%20Girls%20and%20Women.pdf>> 1.

of other cultures; may confuse cultural expectations with other social, psychological or relational factors; and diverts attention from how oppressive cultural practices may rigidify in dangerous forms in a context of discrimination by our dominant culture.²⁶

The Duluth Model, developed by a team of community service providers in Duluth, Minnesota in the early 1980s, is an approach to understanding and responding to violence against women that is based in the experiences of women and children. One of its well-known tools is the power and control wheel.²⁷ This wheel has been translated into more than 40 languages and adapted to reflect the realities and needs of various cultures and communities. One such adaptation is the Muslim Wheel of Domestic Violence, which conveys some of the ways religion can be distorted to justify abuse against women and children in the family context.²⁸ For example, the Muslim wheel shows that a Muslim abuser may:

- Threaten to marry another wife²⁹
- Threaten to beat his wife, claiming that it is “God-ordained”
- Tell his wife that divulging episodes of abuse is a violation of her Islamic responsibility to respect her husband’s privacy
- Tell his wife that his dominance is mandated by the Qu’ran and that her opinions are un-Islamic
- Have the Imam tell her the abuse is her fault³⁰

²⁶ Ibid, 30 – 31.

²⁷ For more information about the Duluth model see: www.theduluthmodel.org.

²⁸ Sharifa Alkhateeb, “Muslim Wheel of Domestic Violence,” *The Centre for Children and Families in the Justice System*, 10 Dec. 2012 <http://www.lfcc.on.ca/muslim_wheel_of_domestic_violence.html>.

²⁹ Polygamy is a form of violence against women. It is, as noted here, a threat used by abusive men. It also has a significant and negative impact on women, who are made vulnerable to violence and abuse within the family because of their extreme dependency on their husband. Women in polygamous marriages have limited access to power, minimal influence (if any) in the selection of their partner, little personal empowerment, an under-developed sense of self, indoctrinated conformity and little access to financial resources.

³⁰ It should be noted that invoking so-called religious values or claiming that God permits the abuse is a trait of abusers from many fundamentalist religions and is not specific to the Muslim community.

RIGHTS AND PROTECTIONS FOR WOMEN WHO EXPERIENCE VIOLENCE IN CANADA

Canada does offer some rights and protections for women who experience violence, although these often prove to be largely formal rights that offer little in the way of substantive protection for many women. However, at a minimum, they offer a starting point for law and policy reform activism and advocacy. The *Charter of Rights and Freedoms* sets out women's equality rights in sections 15 and 28. Section 15 guarantees equality before and under the law and the right to equal protection and benefit of the law without discrimination to an enumerated list of categories, including sex. Section 28 states more generally that the rights and freedoms set out in the Charter are guaranteed equally to male and female persons. Thirty years of case law has established that a substantive approach to equality to remedy historic disadvantage must be used when determining Charter-protected rights.

Further to the Charter, various human rights acts guarantee freedom from discrimination on the basis of, among other grounds, sex. Canada has also ratified several international covenants and treaties – most notably, CEDAW – the *Convention to Eliminate All Forms of Discrimination Against Women* – that commit the country to support women's equality. In support of these international commitments in particular, in 1995, the government implemented a Federal Plan for Gender Equality in which it committed to apply a gender-based analysis to the development of all legislation.

There have been a number of policy and program initiatives at the federal, provincial and territorial levels to address the issue of violence against women. These are carefully enumerated in research published by the Canadian Women's Foundation.³¹

31 Canadian Women's Foundation, "Scan of Funding and Policy Initiatives to Respond to Violence Against Women," Jul 2011, *The Canadian Women's Foundation*, 2 Feb. 2013 <http://www.canadianwomen.org/sites/canadianwomen.org/files/PDF%20%20VP%20Resources%20%20CNWSTHCWF_Policy%20and%20funding_2011.pdf>.

The list below provides a very brief overview of those initiatives and is not intended to be comprehensive:

- i. Federal: Family Violence Initiative
- ii. British Columbia: Provincial Office of Domestic Violence
- iii. Alberta: Interdepartmental Committee of Family Violence and Bullying
- iv. Saskatchewan: Action Plan for Saskatchewan Women
- v. Manitoba: Status of Women Council
- vi. Ontario: Domestic Violence Action Plan, Sexual Violence Action Plan, Domestic Violence Death Review Committee
- vii. Quebec: Revenir, dépister, contrer la violence conjugale
- viii. New Brunswick: Family Violence Regional Networks, Provincial Strategy on Sexual Assault Services
- ix. Nova Scotia: Domestic Violence Action Plan
- x. Prince Edward Island: Premier's Action Committee on Family Violence Prevention
- xi. Newfoundland and Labrador: Violence Prevention Initiative for Newfoundland and Labrador
- xii. Yukon: Victims of Crime Strategy
- xiii. North West Territories: Family Violence Action Plan
- xiv. Nunavut: Status of Women Council

Most provinces and territories have public education campaigns focused on raising awareness of and preventing family violence. Some provinces have legislation aimed specifically at domestic violence.

The past 30 years has seen considerable development in terms of the criminal and family law responses to violence against women. Marital rape was made a criminal offence in 1983. The *Criminal Code* now contains provisions prohibiting stalking behaviour. Bail conditions for men charged with abusing their wives have become more

stringent. Since the mid-1980s, police and Crowns have followed what are known as mandatory charging and vigorous prosecution directives or policies. These require the police to lay charges and Crowns to prosecute them where there is evidence a crime has been committed and there is a reasonable likelihood of conviction, even if the victim does not want charges pursued.

Most provinces have family laws and child protection legislation that speak to the need to consider violence within the family when making decisions related to custody and access as well as child welfare. However, as noted above, many of the legislative and policy initiatives offer formal rather than substantive protection for women and, even where there is substantive protection; it is often minimally accessible to women from marginalized communities. In some cases, the initiative has a negative impact on women from marginalized communities. For example, mandatory charging has proven highly problematic for newcomer women. Often, the laying of a charge creates difficulties for the family in its immigration/refugee process. Some women describe the police as taking a particularly aggressive approach to mandatory charging because of racism and/or Islamophobia, with the result that the woman herself may be charged.³²

32 Shoshana Pollack, et al. "Women Charged with Domestic Violence in Toronto: The Unintended Consequences of Mandatory Charge Policies." Mar. 2005, *The Woman's Abuse Council of Toronto*, 15 Feb. 2013 <<http://www.womanabuse.ca/resources/show.cfm?id=9>>.

BARRIERS FOR MUSLIM WOMEN WHO EXPERIENCE VIOLENCE³³

In a context where Muslim women may be facing racism and other forms of exclusion from the dominant non-Muslim society, for a woman to speak out about violence within her family or religious community may have the effect of severing her relationship with the only community in which she feels a sense of belonging... This silencing effect of racism leaves women particularly dependent on their families and religious communities, unwilling to jeopardise either their own sense of belonging or their communities' reputations.³⁴

Certainly, all women who experience violence face many challenges and barriers as they find ways to manage their situations and keep themselves and their children as safe as possible. Women from marginalized communities – whether by virtue of race, skin colour, culture, immigration status, class, age, geographic location or ability – face additional challenges, many of which are unique from community to community. One of the biggest decisions a woman will consider is whether to stay with or leave her abuser. Some of the factors that all women consider when making this decision are:

1. Will the violence increase? Many women fear their partner will kill them if they leave – because he has threatened to do so or because they hear the news stories about women who are killed after leaving. Staying with the violence they know and know how to manage can be or seem to be less of a risk than leaving to face unknown and possibly increased violence.
2. Will the abuser take or try to take the children? One of the most common threats made by an abusive man to his partner if there are children is that he will take them if she leaves. These threats are believable, especially if he has access to the

33 *Please note:* This paper focuses on violence against women within the family in Canadian Muslim communities. The barriers and challenges identified here are experienced by women from a broad range of ethno-cultural backgrounds and are not specific to women from Muslim communities.

34 Baobaid and Hamed, 9.

financial resources to mount a vigorous custody fight or has parents who will support him or if he is better situated in the community.

3. Can she afford to leave? The lack of social supports (social assistance, affordable housing, childcare, etc.) is a significant factor in keeping women from leaving. This is especially so for women with children, who often feel they have no right to deprive them of a decent lifestyle.
4. Is it really that bad? Abuse seldom happens every day. It is easy to deny the long-term impact it is having and try to focus on the “good” days, even if they become fewer and farther between. Women often underestimate the seriousness of emotional abuse, thinking that if their partner is not hitting them, they are not being abused. Women also believe the partner’s promises to change, and convince themselves that this time will be the last time.
5. Is it her fault? Abusers are very effective at convincing their victims that *they* are the ones to blame. “I would not have had to hit you if you had had dinner on the table on time.” “If you can’t keep those kids quiet, you know what is going to happen to you.” As a woman’s self-esteem and self-confidence diminishes, her tendency to take responsibility for the abuser’s actions increases.
6. Will anyone believe her when she tells them about the abuse? Most women, but especially those who have kept the abuse a secret, fear no one will believe them. If the abuser is charming and outgoing in public, her fears about not being believed will increase, just as they will if he is a person with some prominence in the community or is involved in the criminal or family court systems in some way.

7. Does she still love him? Women do not stop loving their partners just because they are abusive. There are often long periods of tranquility or even real happiness between bouts of violence. Most women simply want the abuse to stop – they do not stop loving their partners.

Some of these factors have unique implications for women from Muslim and other non-mainstream ethnocultural communities. For example, the fear that her abusive partner might take the children is exacerbated if the family has a country of origin where the father has economic and family roots and where, perhaps, women have fewer legal rights with respect to custody and access.

One of the biggest barriers for Muslim women who consider turning to community services is the risk that identifying with non-Muslim women will mean the loss of their Muslim self and the fulfilment they get from belonging to a community that has shared values. Women worry that service providers and others such as police will try to locate the violence entirely as a cultural problem as opposed to a broader societal problem also experienced by women from other cultures. As Sokolov establishes, “To assume that women will shed their cultural backgrounds as easily as their residences is to disrespect women’s very existence.”³⁵

In addition to this barrier, many newcomer Muslim women are in Canada without any of the supports that would be available to them in their country of origin. Their extended family – which can function as an escape but also as a means to monitor abusive behaviour – may not be here. This can lead to increased feelings of isolation and make the woman even more reluctant to speak out about what is happening to her. Other barriers can be internal to the woman herself, can come from the community or can be more generally systemic.

35 Sokolov, 67.

Some internal barriers are:

- Feelings of shame and responsibility about the abuse
- Suspicion of state intervention, if the woman or her family have come to Canada from a country with a repressive regime
- Fear of discriminatory treatment
- Fear of racism
- Concerns about her sponsorship status if she leaves her abuser or talks about her abuse
- Concerns about her husband's immigration status if she reports the abuse
- Lack of information about the Canadian legal system, both criminal and family
- Lack of knowledge about her legal rights
- Lack of knowledge about services
- Language barriers for women who do not speak English or for whom it is not a first language

Community-based barriers can include:

- Values about keeping the family intact and maintaining the marriage, no matter what, resulting in pressure to stay being put on the woman
- Belief that divorce is wrong
- Belief in fate
- Collectivist values

External, systemic barriers include:

- Assumptions that abused women want to leave their abuser
- Individualist values
- Lack of social supports and services such as housing and financial aid

- Lack of social supports and services that provide culturally specific or even culturally competent services to Muslim women³⁶
- Lack of linguistically appropriate services
- Current immigration laws and policies³⁷

The lack of culturally appropriate services, as noted above, presents a significant barrier to Muslim women who are seeking assistance as the result of abuse they are experiencing in their marriages. The clash between collectivist and individualist values and assumptions by many service providers that women want to leave their abuser contribute significantly to the reluctance of many Muslim women to seek support outside their own community.

Many Muslim communities are essentially collectivist in nature, whereas mainstream North American culture is very much individualist. This creates significant challenges and barriers for women in abusive relationships, as most of the definitions of violence against women and the responses offered by Canadian law and community services are very individualistic. As the frontline workers interviewed in Korteweg's research found, this causes some women to turn away from accessing support entirely, because of the individualistic focus of mainstream agencies on the woman's experience alone, separate from and exclusive of her context.³⁸

Collectivist communities place a higher value on the interests of the group than on the interests of the individual. In the family context, this means greater value is

36 For instance, the first shelter for Muslim women operated by Muslim women in the city of Calgary (the Rahmah Women's Centre) opened up its doors to the public this past December 2012. While it remains an accomplishment that is to be commended, it illustrates the lagging nature of the establishment of culturally specific social services for Muslims and other community groups (Schneider, 2012).

37 Women whose partner is their sponsor or whose refugee claim is attached to their partner's or whose legal status in Canada is uncertain or volatile may resist seeking assistance or leaving their partner because of fears of deportation. Women with children often fear their partner will take the children and return to the country of origin. For other women, the concern is that their abuser may be deported if she reports the abuse to the police.

38 Korteweg, et al., 18.

assigned to maintaining the family than on giving any one individual within the family everything he or she wants. As noted by Baobaid in his work:

[S]ervice providers need to understand that Muslim women who choose to stay within the family may fully accept their 'place' within the collectivist system. Differences in values make it too easy for people from the dominant culture to reject such thinking as a sign of subservience and submission. While the woman may be fully aware that the abuse is wrong, at the same time, she may be unwilling to give up the security she derives from her place in the family and community. . . . The idea that Muslim women have the ability to define their role in a collectivist hierarchy is perhaps one of the more difficult concepts for mainstream anti-violence feminists. There is a long-standing Western feminist perspective that automatically equates hierarchy in a patriarchal system with unequal and unjust power relations. If Muslim communities are deemed 'more' patriarchal than the dominant society, then choice is not really 'free' choice for Muslim women, but rather coercion. Yet many women from collectivist societies assert that they are exercising their rights in choosing the role they have assumed within the family and the community.³⁹

For many women, especially women from non-mainstream communities, safety is not an absolute but rather a relative term. They may want to explore ways to stay safe within their family and cultural community rather than to leave them in their search for safety. For these women, cultural safety, a sense of belonging, is as important as personal safety. They cannot be rushed into making a decision to leave their partner (and community) and move to a completely new setting where they will be isolated and will feel guilty for their actions. Many mainstream service providers assume women in abusive relationships want or need to leave them, and this disconnect makes those services inaccessible to women, including Muslim women, who want to remain with their family, including the abuser:

39 Baobaid and Hamed, 34 – 35.

Mainstream services face serious challenges in effectively addressing domestic violence in immigrant communities. Multiple factors have contributed to creating these challenges, but primarily the differences in the conceptualization of violence against women between mainstream services and immigrant communities. Mainstream Canadian service providers, based on a model of individual rights, perceive violence and abuse against women as non-negotiable, and the safety of abused women is the priority in these situations. While immigrant cultures also see abuse as unacceptable, the approach tends to differ. Domestic violence against women is often seen as a family matter which implies that only the family can and should resolve it without the intervention of anyone outside the family.⁴⁰

Coupled with this is the tendency of mainstream Canadian culture to categorize women from Muslim communities as victims of a patriarchal culture, rather than seeing them as possessing both vulnerabilities and strengths, just like women from other cultures. The conflation of culture with patriarchy by mainstream observers and service providers means the empowering aspects of a woman's culture are missed. The Muslim Resource Centre identifies four dilemmas faced by women who seek help:

- The high price they feel they must pay for revealing the secret of abuse, because of the collectivist nature of their community
- The pressure they will feel if the service provider insists on a focus of gender inequality rather than a focus on treating the violence
- The lack of support from mainstream service providers for women's self-determined goals, which may include a goal for them to stay in their home or community
- Being challenged by the service provider in their belief that they are partially responsible for the violence against them⁴¹

40 Mohammed Baobid, "Guidelines for Service Providers: Outreach Strategies for Family Violence Intervention with Immigrant and Minority Communities: Lessons Learned from the Muslim Family Safety Project." *The Centre for Children and Families in the Justice System*. 23 Feb. 2013 <http://www.lfcc.on.ca/MFSP_Guidelines.pdf> 5.

41 Ibid, 32.

Lastly, siloing of services also poses problems. As Korteweg et al. establish:

[T]he social service system is set up such that very separate and distinct ‘sectors’ of practice exist. As such, the VAW sector is separated structurally from other social service silos such as immigration/settlement agencies, the disability sector, the trauma, mental health and health sector, education, etc. . . . the structure of the entire social service system creates a chronic lack of coordination and collaboration across sectors, and an inability of any individual agency or even sector of practice, to deal with complex situations involving multiple needs and issues.⁴²

INITIATIVES, TOOLS AND RESOURCES RELATED TO VIOLENCE AGAINST WOMEN IN MUSLIM COMMUNITIES

While women in Muslim communities who experience violence face considerable challenges and barriers as discussed above, there have also been important steps taken within those communities to respond to the issue and work towards the eradication of violence against women. The following is a sampling of some of those initiatives.

1. Call to Eradicate Domestic Violence

In October 2011, a group of Muslim and other organizations, Imams and Muslim scholars released the following call to end domestic violence:

As October, the Domestic Violence Awareness month, has ended and we now approach December 6, the National Day of Remembrance and Action on Violence Against Women, Muslim Canadians reflect on the reality of domestic violence within our own communities, compounded by abhorrent and yet persistent pre-Islamic practices rooted in the misguided notion of restoring family honour.

42 Korteweg, et al., 6.

As Muslims, we base our ethics and behaviour on the teachings of the Quran and the authenticated example of the prophet Muhammad, who never hit a woman and taught the men that “the best amongst you is he who treats women the best.” The Quran unequivocally emphasizes the sanctity of all life, forbids all forms of coercion in matters of religion, and reminds us all that each of us is accountable for our actions directly to God, the only Judge.

There is no room within these teachings for any person, by virtue of gender or position within the family, to seize control over the life and bodily security of another. Domestic violence and, in the extreme, practices such as killing to “restore family honour” violate clear and non-negotiable Islamic principles, and so we categorically condemn all forms of domestic violence.

We the undersigned declare our commitment to intensify our efforts to eradicate domestic violence from our communities through:

- Working within our community and with other communities to raise awareness of harmful (and sometimes lethal) attitudes that lead to this violence
- Working within our communities to raise awareness about the serious psychological, judicial, social and religious consequences of such practices, through Friday sermons, public lectures, workshops and other means
- Morally opposing the use of the word “honour” when describing such killings to ensure no positive connotation is implied directly or indirectly in connection to such heinous crimes
- Working with community leaders and Imams in order to ensure that they are equipped with the necessary resources and training, so that they can offer mediation, conflict resolution and domestic violence counselling in a manner that reflects professional standards, contemporary research and religious scholarship
- Educating parents and youth about existing resources that can help them deal with intergenerational conflicts and misogynist leanings

As a first step, starting immediately and specifically on December 9, we commit ourselves to addressing this issue at all levels, including and especially within our Friday sermons, which must highlight Islamic perspectives on domestic abuse, perspectives that condemn all forms of violence against women and children, most especially threatening, abusing and killing women in the name of protecting the family's honour. As Muslims and as Canadians, we stand with all Canadians and pledge to combat domestic violence in all its manifestations, wherever and whenever they arise.⁴³

This call was endorsed by more than 60 Muslim organizations (including CCMW, Canadian Council of Imams, Muslim Association of Canada) as well as other organizations and Imams and Muslim scholars (27) and community leaders (35). In support of the Call to Eradicate Domestic Violence, individual organizations made their own statements opposing violence against women, such as this one by the Islamic Social Services Association of Canada, made on December 6, 2011:

We must make it clear to everyone that violence against women, in families, or against anyone is not acceptable, and is against Islamic teachings and the traditions of the Prophet Muhammad peace be upon him.⁴⁴

2. Muslims for White Ribbon Campaign

In November 2012, Muslims joined the long-standing White Ribbon Campaign⁴⁵ with a Muslims for White Ribbon Campaign, a campaign designed to allow Muslim Canadians

43 Noor Cultural Centre, "Call to Eradicate Domestic Violence" 31 Oct. 2011, *Noor Cultural Centre*, 12 Feb. 2013 <<http://www.noorculturalcentre.ca/?p=3798>>.

This Call was endorsed by more than 60 Muslim organizations, a number of other organizations, 27 Imams and Muslim scholars and 35 community leaders.

44 Islamic Social Services Association. "ISSA Joins the Many Muslim Voices Call to Action: Increased Domestic Violence Awareness and Intervention." 6 Dec. 2011, *Islamic Social Services Association*, 26 Dec. 2012 <<http://www.issaservices.com/issa/domesticviolenceawarenesscampaign.html>>.

45 The White Ribbon Campaign, begun following the December 6, 1989 massacre of women at L'Ecole Polytechnique in Montreal, is an international movement of men and boys working to end violence against women and girls and promote gender equity, healthy relationships and a new vision of masculinity. For more information, visit www.whiteribbon.ca.

to reflect on the reality of violence against women.⁴⁶ As co-chair Imam Michael Abdur Rasheed Taylor stated, “We hope to challenge everyone, especially men and boys, to speak out and think about their own beliefs, language and action.”⁴⁷

One of the major goals of the campaign is to break the silence on violence against women in the Muslim community by encouraging mosques and organizations to sponsor awareness events and speak about violence against women in Friday sermons. Many communities have taken up the campaign. For example, in Hamilton, Ontario, the Mountain Mosque had a series of special sermons each Friday from November 21 to December 21, 2012. Imam Abu Noman Tarek has stated, “We are encouraging all males to make a pledge that they will never commit or condone or remain silent about any form of violence against women and girls.”⁴⁸

3. Neighbours, Friends and Families Muslim Project

Neighbours, Friends and Families is a public education campaign in Ontario to raise awareness about the signs of woman abuse so those close to an at-risk woman or an abusive man can help.⁴⁹ A number of specialized campaigns aimed at specific communities have been developed since the first general campaign was launched in 2006. In 2012, Immigrant Women’s Services, Ottawa, launched a Neighbours, Friends and Families Muslim Project education campaign to open communication on the issue of domestic violence and to educate people to recognize warning signs that relate to domestic violence.⁵⁰

46 For more information, visit the campaign’s website at www.muslimsforwhiteribbon.com.

47 Muneeb Nasir, “Canadian Muslims Fight Violence Against Women,” 28 Nov. 2012, *On Islam*, 18 Dec. 2012 <<http://www.onislam.net/english/news/americas/460221-canada-muslims-fight-violence-against-women.html>>.

48 Mark Newman, “Local Muslims Answer Call to End Domestic Violence,” 13 Dec. 2012, *Hamilton News*, 26 Dec. 2012 <<http://www.hamiltonnews.com/news/local-muslims-answer-call-to-end-domestic-violence>>.

49 For more information see: www.neighboursfriendsandfamilies.ca.

50 Openfile Canada, “Local Muslim Women Fight Against Domestic Violence,” 1 Dec. 2011, *Openfile Canada*, 26 Dec. 2012 <<http://ottawa.openfile.ca/ottawa/text/local-muslim-women-fight-against-domestic-violence>>.

4. Muslim Youth

Young Muslims have become very involved in efforts to end violence against women. In December 2007, after the murder of Aqsa Parvez of Mississauga, Ontario, by her father and brother, the organization Young Muslims Canada called for a proactive strategy to combat domestic violence:

Abuse of women is prohibited in the Islamic tradition . . . Partnerships between community groups and all levels of government are needed to develop proactive strategies especially for new and emerging communities to combat domestic violence.⁵¹

In December, 2012, *Heartbeats: The Izzat Project* was launched in Toronto by the Barbra Schlifer Commemorative Clinic. Inspired by the high-profile murders of South Asian women across the country, *Heartbeats* is written in comic book format and shares the voices of young South Asian women talking about violence and honour in their families and communities.

5. Muslim Resource Centre For Social Support And Integration⁵²

Established in 2009, and growing out of the work of the Muslim Family Safety Project in London, Ontario, the Centre exists to establish social support networks for the diverse London Muslim community in dealing with issues of integration, family conflict, domestic violence and children in conflict with the law. The Centre runs a number of programs:

- The Family Safety Program, which intervenes when there is a risk or episode of violence in a family

51 Young Muslims Canada. "Services to Humanity." *Young Muslims Canada*, 26 Dec. 2012 <<http://www.youngmuslims.ca/activities/service/>>.

52 The Muslim Resource Centre for Social Support and Integration. 2013, *The Muslim Resource Centre for Social Support and Integration*, 2 Feb. 2013 <<http://mrccssi.com/>>.

- Delivery of cross-cultural training for mainstream service providers to educate them about the values, customs and beliefs of Muslim families⁵³
- Research on violence against women in Muslim families, which is available on the Centre's website.

6. The Muslim Wheel Of Domestic Violence

As described above, this adaptation of the Duluth Power and Control wheel offers an important educational resource for Muslim communities wanting to understand more about the dynamic of violence against women.

7. Outreach Strategies

Guidelines for Service Providers: Outreach Strategies for Family Violence Intervention with Immigrant and Minority Communities was produced by the Muslim Family Safety Project of London, Ontario. It provides guidelines for organizations and service providers in Canada to reach out to isolated and vulnerable minority groups in an effort to reduce rates of family violence.⁵⁴

8. Information for Women

Some information about violence against women, women's legal rights in Canada and family law from a Muslim perspective have been produced and are available in a variety of languages in addition to English. For example:

⁵³ The Centre has produced a training manual entitled "Addressing Domestic Violence in Canadian Muslim Communities: A Training Manual for Muslim Communities and Ontario Service Providers" (2010), which exposes service providers to different strategies for responding to domestic violence with increased cultural sensitivity and awareness in the Muslim community. Members of the Muslim community will learn about the Canadian legal response to domestic violence and services available for both victims and perpetrators.

⁵⁴ Baobaid.

- Family Law Education for Women (FLEW) has legal information available in multiple languages, some of it written specifically for Muslim women by the Canadian Council of Muslim Women⁵⁵
- The Muslim Family Safety Project has developed a brochure about violence against women and the law, including information about the Islamic perspective on domestic violence, which is available in several languages⁵⁶
- The Canadian Council of Muslim Women has published “Muslim and Canadian Family Laws: A Comparative Primer” and a “Muslim Marriage Contract Kit,” which provide information about the differences between aspects of Canadian and Muslim family law and tools to assist Muslim women in decision-making

RECOMMENDATIONS FOR MOVING FORWARD

1. Build on Existing Models

Good work is already being done, and it should be built on wherever possible. For example:

- The Strategic Framework to End Violence Against Aboriginal Women,⁵⁷ developed in 2007 under the leadership of the Ontario Native Women’s Association and the Ontario Federation of Indian Friendship Centres, sets out foundational principles and strategic directions and actions to address violence against Aboriginal women. This is a model that could be adapted for use by Muslim communities

55 Family Law Education for Women, “Family Law Resources,” *Family Law Education for Women*, 4 Feb. 2013 <<http://www.onefamilylaw.ca>>.

56 Muslim Family Safety Project, “Family Safety, Family Harmony- Information on Violence Against Women and the Law in Ontario,” 2007, *Centre for Children and Families in the Justice System*, 12 Feb. 2013 <http://www.lfcc.on.ca/MFSP_pamphlet.html>.

57 The Ontario Native Women’s Association and the Ontario Federation of Indian Friendship Centres, “A Strategic Framework to End Violence Against Aboriginal Women,” Sept. 2007, *Ontario Women’s Native Association*, 13 Feb. 2013 <<http://www.onwa-tbay.ca/upload/documents/strategic-framework-to-end-violence-against-women-document.pdf>>.

- The Muslim Family Safety Project, now part of the Muslim Resource Centre for Social Support and Integration in London, Ontario, is an excellent community development model that could be used in other communities. Its objectives were:
 - To establish and promote dialogue between the Muslim community and mainstream anti-violence agencies
 - To facilitate an environment of mutual understanding and respect
 - To enable and promote the mobilization of the Muslim community on the issue of family violence
 - To empower Muslim women to define and articulate their needs and social realities
 - To enable the collaborative development of prevention and intervention materials and services that meets the needs of Muslim women
- Developing culturally-competent outreach strategies that include awareness campaigns to educate a particular community using engagement strategies that are appropriate and relevant to that community. The goals of such campaigns are to increase knowledge and awareness of services and to strengthen and support networks through building an understanding of the needs of the identified population. The steps in building a successful community outreach plan include:
 - Understanding the identified community
 - Building mutual understanding
 - Developing a collaborative plan of action
 - Developing the actual plan⁵⁸
- Developing a community engagement best practice that includes the following elements:
 - A collaborative and community development framework for action
 - An integrated framework

⁵⁸ For more information about how to develop culturally competent community outreach campaigns, see: Baobaid and Hamed, 2010.

- Inclusion of men
- Building of relationships between anti-violence agencies and the Muslim community:
 - Public education
 - Engagement of religious leaders
- The Neighbours, Friends and Families public education program offers many opportunities for the development of specialized programming specific to a particular community
- Building on existing programs and projects that focus on young people. Young people understand and experience violence in unique ways. First generation Canadians also struggle with family conflict over their integration into “Canadian” culture. If violence against women within families is to be eradicated, young people must become engaged

2. Involve Men, Especially Young Men

This strategy has been mentioned earlier, but warrants noting as a stand-alone recommendation as well. Mainstream feminist violence against women initiatives have traditionally been led by women and have created and offered women-only space for survivors of male violence as well as for women working in this field. This has been an important model and should not be set aside. However, there are some situations that are better served by models that include men in some or all aspects of the work. In collectivist cultures, including men is a prerequisite to success.

Young men need to be involved because they can become catalysts for change in their peer groups of young people who are growing up as part of mainstream Canadian culture while still living in extended families that remain tied to the country of origin. However, men need to be involved in a way that does not take voice away from women

or interfere with their empowerment but that also acknowledges the challenges and barriers faced by men and creates opportunities for men to learn new behaviours.

3. Create New Service Delivery Models

[M]any individuals and families are caught in a difficult religious and cultural bind. There are established organizations claiming to promote culturally appropriate counseling for family violence, yet in reality they offer only one standard model of intervention. Many women and/or families feel that this style of treatment is inconsistent with their way of life because it lacks respect for their life experience, perpetuates a racist view of their self-identity (ie “your ways are inferior”) and is so rigidly limited in scope that it cannot fully accommodate the client’s needs and wants. This is particularly true for women: most seek only to have the violence stopped, and not to lose their families, financial stability, community position or social status in their countries of origin. . . . Clearly, it would be far more effective and helpful to identify the particular problems experienced by Muslim clients and build solutions through consultation with appropriate advisors and through co-operation with the local Islamic community.⁵⁹

Mainstream agencies providing services to women who have experienced violence need to do more to ensure they provide what is needed by women from Muslim and other cultures whose values may be different from those of mainstream Canadian society. This includes such things as offering services and ensuring that materials are available in multiple languages, but it is more than this. As noted above and in the earlier section exploring barriers experienced by Muslim women, service providers need to be able to understand the issue of violence within families and strategies for addressing it in ways that reflect the value systems of women from Muslim communities. Some elements of a culturally competent service delivery best practice include:

59 Wahida Valiente, “Domestic Violence: An Islamic Perspective,” Jun. 2006, *The Canadian Islamic Congress*, 8 Feb. 2013 <<http://www.canadianislamiccongress.com/ar/opeds.php?id=2892>>.

- Women should never feel that they are being asked to choose between their community and access to services and support
- Service providers need to be able to empower women by offering them choices, asking them about other possible choices and then accepting their decisions without judgement
- Services need to bring flexibility and a multidisciplinary balance to their work supporting women from Muslim communities
- Collaboration between mainstream organizations that provide specialized violence against women programs and the Muslim community is essential, with both communities being open to learning from the other
- Learning from Muslim women themselves about their traditional methods of coping and supporting one another
- Joint training for both staff and volunteers, who must understand and respect the fact that the vast majority of Muslim women will not shed their religion or culture when they cross the threshold of an emergency shelter or social service agency⁶⁰
- Empowerment programs for women and girls
- Finding appropriate ways to involve men and to work with the whole, often extended, family
- Development of an approach to risk assessment and safety planning that takes into account the reality of multiple perpetrators of abuse and also “recognizes the structural and state violence women encounter in their daily lives” that can act as obstacles to finding help⁶¹

⁶⁰ Ibid.

⁶¹ Korteweg, et al., 26.

4. Involve Religious and Community Leaders

Because women will not and should not have to leave their religious and cultural beliefs, values and communities behind in order to obtain the services and supports they need, it is absolutely essential to ensure that religious and community leaders are engaged, aware and involved. This includes a number of elements:

- Encouraging all religious and community leaders to sign on to the Call to Eradicate Domestic Violence discussed above and to speak out in their Friday sermons about the importance of ending violence against women
- Providing educational opportunities for religious and community leaders about violence against women, including information about the kinds of abuse, warning signs, legal responses, community services, etc. so they understand it is not a private matter to be ignored but rather one that requires a community response. It is important for them to be able to speak knowledgeably and comfortably about violence against women from their perspective as religious and cultural leaders of the community
- Ensuring that religious leaders understand the requirements of Ontario's *Arbitration Act* and that they follow it if they are involved in conducting any family law arbitrations
- Encouraging religious leaders to understand polygamy and forced marriage as forms of violence against women in which they will not participate
- Encouraging community leaders to become involved in community initiatives to respond to and prevent violence against women and girls
- Ensuring that religious and community leaders have information and resources about violence against women and community services to provide to members of their congregation or community

5. Advocate for Changes at the Policy Level

Policies and practices at times create the barrier that keeps a woman in an abusive relationship. With respect to women from minority religious and cultural communities, including newcomer women, work needs to be done to address barriers created by immigration laws and procedures and mandatory charging/vigorous prosecution policies in particular.

CONCLUSION

Violence against women in Canada is a serious and seemingly endemic social problem. While rates of violent crime generally in Canada are on the decline, rates of violence against women, including homicide, remain constant. Clearly, much remains to be done to ensure that all women and children in this country can live lives free of violence and the threat of violence.

As we have outlined in this paper, women in Muslim communities in Canada face some unique challenges when confronting violence in their lives and families. At the same time, Muslim communities have begun to develop some exciting initiatives to address violence against women. In every case, these initiatives involve close working relationships between Muslim and non-Muslim communities and require both communities to learn from one another. While much remains to be done, there is every reason to hope it can be done.

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FEMICIDE

Calling the murders “honour killings” accomplishes two goals. First, it makes it seem as if femicide is a highly unusual event. Second, it makes it seem as if femicide is confined to specific populations within Canada and specific national cultures or religions in the world at large. But Canadian statistics prove otherwise. According to Stats Can figures, from 2000 – 2009, an average of 58 women a year were killed in this country as a result of spousal violence. In that same period, 67 children and young people aged 12 – 17 were murdered by family members. In contrast, recent estimates tell us that there have been 12 or 13 so-called honour killings in Canada in the last decade. It does not take a genius to see that comparing 12 or 13 against the hundreds of women and children who were victims of familial violence serves only to frame “honour killing” as peculiar, when in reality it is part of a larger pattern of violence against women. . . . Femicide is about gender. It is about girls and women being killed because they are girls and women. It has nothing to do with honour, passion or convenience.¹

¹ Yasmin Jiwani and Homa Hoodfar, “Should We Call it ‘Honour Killing?’” 31 Jan. 2012 *Montreal Gazette*. 3 Feb. 2013 <<http://mrcssi.com/wp-content/uploads/2011/10/The-Gazette.pdf>>.

EXECUTIVE SUMMARY

Finding the right language to describe an issue is an important first step in moving towards understanding and addressing it. Nowhere is this truer than with the issue of the killing of women and girls within the family, where opinions about the best language are varied and strongly held. Those who take the position that “honour killing” is the most appropriate term identify a number of distinctions between this kind of violence against women and domestic violence/femicide including: motivation, who is killed and by whom, involvement of family members and the reaction of family and community.

Conversely, others including CCMW, believe that these kinds of killings should be clearly identified as violence against women and be called femicide. With more than 80 women a year killed by their partners or former partners in Canada, femicide remains a serious social and criminal problem in this country. According to the work of Ontario’s Domestic Violence Death Review Committee, there are some common risk factors for femicide. Women are at greatest risk when there has been a history of domestic violence and when they have just left or are about to leave their abusive partner. There are no cultural or racial delineations. Women from all demographics are killed by their partners or former partners; although women from Aboriginal communities experience a higher rate of femicide and violence within their relationships, than do women from any other community.

This paper argues that a holistic definition of violence against women, such as that used by the United Nations (UN), is the only way to be able to develop appropriate and effective strategies to combat the practise. The UN definition, in part, reads:

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.²

We explore the distinctions drawn by some between “honour killing” and femicide and conclude that they are neither as plentiful nor as significant as they would argue.

It is of value to look at the defence of provocation in relation to the public discourse about honour killing/femicide. This Canadian criminal law defence allows an accused, in certain circumstances, to have a murder conviction reduced to manslaughter. The accused must establish that he was provoked to such an extent that he lost the power of self-control. Historically, this defence was only available to men charged with killing their wives because of the wife’s infidelity, and even now this is when it primarily arises. Clearly, there are similarities between this defence, contained in the Canadian *Criminal Code*, with its notions that men’s violent behaviour towards women can be somehow excused when the man perceives his honour has been brought into question.

It is important, whatever language is used to describe the killing of girls and women within the family, to ensure we are not drawn into positions based on cultural relativism. We cannot set up a false dichotomy between what might be seen by some as “Canadian” values and the values of other cultures. This serves only to trap women from all cultures – mainstream and not mainstream – and does not help move communities forward in addressing issues of violence against women.

Unfortunately, the public discourse in Canada – including media commentary, statements made by politicians and comments made by judges in cases of femicide – often reverts to the inflammatory language of “honour killing”. This serves only to further “other” those who are not part of the mainstream culture and allow those

2 United Nations. “Declaration on the Elimination of Violence Against Women,” 20 Dec.1993, *The United Nations*, 5 Feb. 2013 <<http://www.un.org/documents/ga/res/48/a48r104.htm>>.

of us who are to distance ourselves from the issue of violence against women in our communities.

The paper concludes with a number of recommendations for moving forward. These fall into three categories – law, public policy and service delivery – and build upon work already done and being done by organizations across Canada. An underlying principle of the recommendations is that they must be informed by the experiences of women.

THE LANGUAGE WE USE

In this section of the paper, we explore the various terms used to describe the killing of girls and women by men. Our position, as set out below, is that the murder of women and girls should not be described as “honour killing.” However, because of the extensive debate on this issue, we feel it is important to review the positions of others, even where we do not agree with their perspective, as we think this makes it easier for those who are thinking about this issue for the first time to understand why we have taken the position we have. In this discussion, we review such terms as femicide, “honour killing” and “honour” related violence (which encompasses forms of violence other than murder).

In March 2011, the Canadian Council of Muslim Women approved a position on the language to be used when describing the murders of women by members of their family. The CCMW position was summarized in an article that appeared in a publication of the Sheldon Chumir Foundation for Ethics in Leadership and states:

The Canadian Council of Muslim Women is strongly opposed to the use of the term “honour killing” to describe the murder of women and girls.

Our argument is that no murder of a woman should be categorized by the rationale provided by the murderer, or by society itself, whether it be a so-called “honour killing” or a crime of passion.

We urge that all murders/killings be identified as femicide – the killing of women and girls simply because they are females. This includes the killing of girls as infants – infanticide. This term does not separate women and girls into distinct groups based on race, culture or religion, and murders are the crimes committed against any one of them.

We hold that all forms of violence against women are regressive because somewhere in here lies misogyny and the lessened value of the lives of women and girls.³

The full position statement goes into greater detail, stating, in part, that the issue should be addressed “as a Canadian one [and] in Canada, according to our values and laws as articulated in the Charter of Rights and Freedoms.”

CCMW finds that the 1993 *Declaration on the Elimination of Violence Against Women* is broad enough to include the murder of women by family members, and notes that the declaration recommends that states not allow any justification of violence against women by anyone who might invoke custom, tradition or religious considerations. CCMW also points out that the murder of women by their families, often to protect family honour, has been a reality for centuries in many cultures and religions. Pre-Christian, Christian and other religions have held strong positions on and punishments for adultery in particular. For instance, according to Deuteronomy:

They shall bring out this damsel to the door of her father's house, and the men of her city shall stone her with stones that she die, because she hath wrought folly in Israel, to play the whore in her father's house: so shall thou put evil away from among you.”⁴

While patriarchy is the major cause of all forms of violence against women, CCMW acknowledges that tribal patriarchy creates a particular culture that supports such violence:

The social order of patriarchy is that the father/ male is central and dominant. It is the male who is the norm for being human while women don't measure up because they don't fit the norm of maleness. Women and girls are the dependents of the father and so they must be obedient and subject to social control. Patriarchal values are about

3 Alia Hogben, “Femicide, Not Honour Killings,” in *Gender, Culture, Religion: Tackling Some Difficult Questions*, Heather MacIntosh and Dan Shapiro, Eds. (Calgary, Sheldon Chumir Foundation for Ethics in Leadership: 2012). 38.

4 Deut. 22: 2.

men and to maintain the family's and the community's reputation with scant attention to women or children.

A tribe has an internal social structure, with shared beliefs, strong feelings of identity and loyalty. The tribe believes in its own superiority, and is exclusive rather than inclusive. With men as central to the structure, women and children are seen as belonging to the tribe and family. The strong sense of belonging to a tribe can be and has been politically manipulated. Tribalism is of course the opposite of pluralism.

The prestige of the tribe and the family dominates and the welfare of the group takes precedence over any individuals – especially lowly women. Any sign of rebellion is seen as threatening the tribal solidarity. This combination of tribe and patriarchy governs the lives of women.

This loyalty to the tribe also extends to revenge killing and vendettas which affect the men of the tribe.⁵

In her analysis, Alia Hogben, the Executive Director of the CCMW, further states that calling murders of women “honour killings” makes them “... exotic, foreign and alien to Western culture as if the West is free from all forms of patriarchy”⁶ and “... ignores the fundamental issues of patriarchy, tribalism, control and power over women.”⁷ Instead CCMW advocates for the use of the term femicide. As Hogben writes, “Femicide, as a definition, avoids inferences about the motives of the killers, and clearly states that violence is used as a tool against females, and murders are the extreme end of the continuum of violence against women and girls.”⁸ She encourages us to ask questions about why people might want to identify some murders as honour killings:

5 Ibid, 41.

6 Ibid, 38.

7 Ibid, 39.

8 Ibid, 40.

- What is the motivation to name these specific killings (and not others) as honour killings?
- How does this help the women as victims?
- What is the purpose in separating them from other murders of women?
- To what avail? Will there be more severe punishment?
- Who is defining them? Is it the perpetrators, who are legitimizing or dignifying the murder or is it done for racial or religious discrimination to separate some women from the sisterhood of all women?
- If we separate these murders, will this not lead to the perpetrators using the justification of family honour to mitigate their punishment, claiming, for instance: “It is beyond me as an individual – it is called for by my family/community.”⁹

Other authors in the Sheldon Chumir publication define and analyze the issue differently. Janet Keeping identifies honour killings as distinct from domestic violence and sets out three elements that distinguish them:

- Honour killings are motivated by the desire to repair or salvage family honour
- The killings are approved of by others from the same culture who considers them justified – they are a “culturally-sanctioned phenomenon”
- Law enforcement officials in western countries are now systematically examining honour motivated violence for its distinctive characteristics¹⁰

Unlike some authors, she is clear that honour killings are not a core part of any particular religion, writing, “There is no need to pin this problem on particular cultures or religions *per se*. The focus should be on those sub-cultures which obsess on family

9 Ibid, 42.

10 Janet Keeping, “Honour Killings in Canada: What Needs to be said? What needs to be done?” in Gender, Culture, Religion: Tackling Some Difficult Questions, Heather Macintosh and Dan Shapiro, Eds. (Calgary, Sheldon Chumir Foundation for Ethics in Leadership: 2012) 11-12.

“honour” . . .¹¹ Keeping maintains that domestic violence homicide is an individual act, taken in a moment of pique or jealousy with no cultural context , whereas what she calls “honour killing” is largely if not entirely driven by the framework of community/culture:

It is one thing to kill in a fit of jealousy or to take tyrannical patriarchy to the extent of lethal violence. But it is quite another to kill a member of your own family, especially your own child, to satisfy a sense of family “honour” premised upon the need to maintain appearances in your community.¹²

In a third paper on this issue in the same publication, Richelle Wiseman defines “honour killings” as an act:

. . . Where one or more members of a family kills another member of that family to protect what they understand to be the family’s honour. The perpetrators consider protection of the family “honour” more important than the life of the victim. . . A so-called honour killing occurs when a family feels that their female relative has tarnished their reputation by what they loosely term “immoral behaviour.” The person chosen to carry out the murder (usually male: a brother, father, cousin, paternal uncle or husband) brutally ends their female relative’s life to cleanse the family of the “shame” she brought upon them.¹³

Later in her paper, she identifies what she believes to be the distinguishing features of honour killings as compared to other forms of femicide:

- They are driven by notions of female purity/obedience
- They are pre-planned

¹¹ Ibid, 14.

¹² Ibid, 14.

¹³ Richelle Wiseman, “The Honour Killings Debate in Canada.” In Gender, Culture, Religion: Tackling Some Difficult Questions. Heather Macintosh and Dan Shapiro, Eds. (Calgary, Sheldon Chumir Foundation for Ethics in Leadership: 2012) 22-23.

- There is family complicity
- There is approval from both the family and the community¹⁴

Shield of Athena Family Services is a Montreal organization that supports women, children and communities in breaking the cycle of psychological, emotional, verbal, economic and physical violence. Its work focuses on immigrant communities and has included research and community discussions about femicide. Executive Director Melpa Kamateros believes the term “honour based killing” is the appropriate language stating:

[T]hrough the definition of honour based violence (HBV) as a sub category of the larger field of violence against women we are trying to further define a category of violence that (a) has been increasing lately, is more and more reported, as evinced in qualitative and verbal reports given by social service providers and police agencies, and that (b) presents in a totally different way from either conjugal or family violence . . . We like to be specific about the different forms of violence possible so that we can address them with specific interventions at either the victim or community levels.

As noted above and as explored further in this paper below, CCMW does not take this position; feeling that the issue of what is often called honour based violence is best combatted by addressing violence against women, including femicide, more generally. There are yet more definitions.

On July 2, 2002, the United Nations General Assembly noted:

All forms of violence against women and girls committed in the name of honour should be criminalized and those deliberately participating in, facilitating, encouraging or threatening violence against women in the name of honour should be penalized.¹⁵

¹⁴ Ibid, 28 - 30.

¹⁵ Report of the Secretary General. “Working Towards the Elimination of Crimes Against Women Committed in the Name of Honour.” 2 Jul. 2002, *The United Nations*, 4 Feb. 2013 <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N02/467/90/PDF/N0246790.pdf?OpenElement>> 11 – 12.

Echoing similar sentiments, in her 2012 report to the United Nations General Assembly, the Special Rapporteur on Violence Against Women, Rashida Manjoo, uses the term “gender-related killings of women” and states, “Rather than a new form of violence, gender-related killings are the extreme manifestation of existing forms of violence against women.”¹⁶ Her report also provides a short history of the word femicide, which has been in use since the early 19th century, with resurgence in popularity in the 1970s. Initially, defined as “the murders of women by men motivated by hatred, contempt, pleasure or a sense of ownership of women,” the definition of femicide has changed to mean the “misogynist killing of women by men.”¹⁷

Human Rights Watch provides another definition of what it calls ‘honour’ crimes:

Honor crimes are acts of violence, usually murder, committed by male family members against female family members who are perceived to have brought dishonor upon the family. . . . Honor crimes are not specific to any religion; nor are they limited to any one region of the world.¹⁸

In an article in *Middle Eastern Quarterly*, Phyllis Chesler,¹⁹ distinguishes between honour killings and domestic violence and maintains that they need to be treated as a distinct phenomenon. She sets out a number of differences:²⁰

16 Rashida Manjoo. “Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences,” 23 May. 2012, *United Nations Human Rights Office of the High Commissioner for Human Rights*, 12 Feb. 2013 <http://www.ohchr.org/Documents/Issues/Women/A.HRC.20.16_En.pdf> 1.

17 Ibid, 6.

18 Human Rights Watch. “Oral intervention at the 57th Session of the UN Commission on Human Rights,” 6 Apr. 2001, *Human Rights Watch*, 3 Feb. 2013 <<http://www.hrw.org/news/2001/04/05/item-12-integration-human-rights-women-and-gender-perspective-violence-against-women>>.

19 Phyllis Chesler is a well-known feminist psychologist, who has written on violence against women, divorce, child custody and other related topics for the past four decades.

20 Phyllis Chesler. “Are Honor Killings Simply Domestic Violence?” *Middle Eastern Quarterly* (Spring 2009): 61 – 69.

HONOUR KILLINGS	DOMESTIC VIOLENCE
Mainly Muslims, committed against girls/young adult women	Committed by men of all faiths against adult women
Fathers killing daughters	Adult men against wife or common-law spouse
Carefully planned, often preceded by death threats	Often spontaneous
May involve multiple family members	Usually carried out by man alone
Motivated by dishonour to family	Many motivators, but not dishonour
Barbaric ferocity	Little ferocity
No remorse	Sometimes remorse
Valorized by extended family and community	

We can find another definition of honour-related violence in a report commissioned by the Dutch government:

Honour-related violence is any form of psychological or physical violence based in a collective mentality and perpetrated in reaction to the (threat of) violation of the honour of a man or woman and by extension his or her family[where the honour violation] is known to the outside world or threatens to become known.²¹

Mohammed Baobaid and Gahad Hamed of the Muslim Resource Centre for Social Support and Integration in London, Ontario, have this to say about the language related to “honour” killing/femicide:

One of the challenges in understanding honor related violence committed against women is that there is no common definition. . . Such killings and acts of violence are assaults committed against women both by female and male family or community members, for what is considered immoral behaviour.²²

21 Henk Ferwerda and Ilse van Leiden, 2005. “Eerwraak of eengerelateerd geweld? Naar een werkdefinitie.” *Ministerie van Veiligheid en Justitie*, Feb 3, 2013 <http://www.huiselijkgeweld.nl/doc/feiten/eerwraak_of_eengerelateerd_geweld_ferwerda_2005.pdf>.

22 Mohammed Baobaid and Hamed, Gahad. “Addressing Domestic Violence in Canadian Muslim Communities.” Dec. 2010, *The Centre for Children and Families in the Justice System*, 21 Feb. 2013 <http://www.lfcc.on.ca/MFSP_Manual_2010.pdf> 24.

They go on to say that what they call honour killings usually take place in communities that believe women are the upholders of the family honour and men are the protectors of that honour.²³

For another perspective, we can turn to a piece by Fareena Alam that appeared in *The Guardian* almost a decade ago:

Honour killing is neither simply a gender issue nor an individual aberration. It is symptomatic of how immigrant families attempt to cope with an alienating urbanisation. In villages “back home,” a man’s sphere of control was broader, with a large support system. In our cities full of strangers, there is virtually no control over who one’s family members sit, talk or work with.

Failed efforts to retain control can be devastating – enough to generate the unimaginable rage that it must take to kill one’s kin. The same communities that are driven by honour and shame are also driven by gossip. Individuals or families teetering on violence refuse to seek help for fear of further dishonour in a community that loves to talk.²⁴

FEMICIDE IN CANADA

According to Statistics Canada, there were 89 partner homicides in Canada in 2010,²⁵ with women making up approximately 90% of the victims. This was a slight increase over the number of spousal homicides in 2009,²⁶ but by and large the rate of domestic

23 Ibid, 25.

24 Fareena Alam. “Take the Honour out of Killing” 6 Jul. 2004, *The Guardian*, 7 Feb. 2013 <<http://www.guardian.co.uk/world/2004/jul/06/religion.prisonsandprobation>>.

25 Tina Hotton Mahony. “Homicide in Canada 2010,” 26 Oct. 2011, *Statistics Canada*, 5 Feb. 2012 <<http://www.statcan.gc.ca/pub/85-002-x/2011001/article/11561-eng.pdf>>.

26 According to Statistics Canada the rate of intimate partner homicide against women rose again in 2011 over 2010 by 19% (Statistics Canada, 2011).

homicide in Canada has remained constant over the past several years.²⁷ It is important to note that young women are at the highest risk of being killed by a partner or former partner, and women in dating and common-law relationships are at higher risk than women who are married. It is also important to note that this overall constancy in the rate of femicide occurs at a time when there has been a decrease in virtually all other categories of homicide in Canada.

Ontario's Domestic Violence Death Review Committee (DVDRC) was established in 2003 in response to recommendations from inquests into the murders of women by their partners. Its mandate is to investigate and review deaths that occur as a result of domestic violence and to make recommendations to help prevent future deaths in similar circumstances.²⁸ The DVDRC defines domestic violence deaths as "all homicides that involve the death of a person and/or his child (ren) committed by the person's partner or ex-partner from an intimate relationship."²⁹ It is important to note that this definition does not include other familial homicides, such as those perpetrated by a parent against a child, unless domestic violence against the child's parent is also present. In other words, as an example, the women killed in the Shafia case³⁰ would not fit the definition of domestic violence homicide used by the DVDRC and so will not be reviewed by the Committee.

27 According to another 2011 Statistics Canada report, "Family Violence in Canada: A Statistical Profile," there were 1,500 homicides committed by family members between 2000 and 2009 (Sinha, 32). 47% of these were classified as spousal, with women between the ages of 15 and 24 making up the majority of victims (Sinha, 33). Children between the ages of birth and 17 were the victims in 21% of family homicides during the same time period (Sinha, 34). Stabbing and shooting were the predominant methods used.

28 Office of the Chief Coroner – Province of Ontario. "Domestic Violence Death Review Committee: 2011 Annual Report." Sept 2012, Ministry of Community Safety and Correctional Services, 4 Feb. 2013 <<http://www.mcscs.jus.gov.on.ca/stellent/groups/public/@mcscs/@www/@com/documents/webasset/ec160943.pdf>> 1.

29 Ibid, 1.

30 In 2009, three sisters and their father's first wife were found dead in a car submerged in water in the Rideau Locks system near Kingston, Ontario. The family had immigrated to Canada from Afghanistan and were Muslim, and the deaths of the four women were quickly called honour killings.

Women from all cultural and racial backgrounds can be killed by their partners or former partners.³¹ According to the DVDRC, women from Aboriginal communities experience a higher rate of domestic violence, including homicide, than do women from non-Aboriginal communities.³² No other racial, religious or cultural communities are identified by the Committee as facing unique or particular risk of domestic homicide. Nor does the DVDRC provide data about victims or perpetrators of domestic homicide by cultural, racial or religious identification, thus making it impossible to identify the numbers of women murdered who might identify as “Muslim.”

In its most recent report, the DVDRC found that there have been 203 cases of domestic homicide in Ontario between 2002 and 2009, resulting in 294 deaths. Women were the victims in 80% of those cases, and children in 12% of instances. The two most common risk factors in every year since the DVDRC began its research were a history of domestic violence and actual or pending separation. There are a number of other common risk factors including:

- Recent loss of employment
- Suicide threats
- Access to weapons
- Mental health issues

Beyond this, each case has its own risk factors, unique in number and combination to that particular family. There are some community-based risk factors as well. Certainly, the challenges associated with immigration and entering a new culture with very different norms and practices can create stresses that lead men to engage in acts of violence against some other members of their family – usually women and girls.

31 Of course, women from specific communities – whether defined by race, class, immigrant status, religion or culture – face different kinds of risks in different contexts, meaning responses to the threat of violence faced by women must be developed to be appropriate for each circumstance.

32 Office of the Chief Coroner- Province of Ontario, 43.

While protecting or re-establishing family honour is often given as the reason for such violence – and may be one of the factors – it is also the case that this violence is motivated by the man's desire to re-establish control which is a significant motivator to all male violence against women, including murder. In other words, while there are differences from one case of femicide to another, most of them, regardless of the cultural or religious affiliations of the perpetrator, are based in the perceived need by men that this is an appropriate way for them to maintain power and control over the women and children in the family.

SIMILARITIES AND DIFFERENCES BETWEEN “DOMESTIC VIOLENCE HOMICIDE” AND “HONOUR KILLING” IN CANADA

We believe only a holistic definition of violence against women is appropriate when analysing the issue of woman killing, so we refer back to the definition used by the United Nations that appeared in our paper on violence against women in the family:

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.³³

Also noted in that paper and of use to this discussion is the report on a forum on violence against women and family law held by the Barbra Schlifer Commemorative Clinic in 2011:

Diverse forms of patriarchal violence designed to control a woman's movement, sexuality, life choices and sometimes ability to remain alive remain under-assisted by conventional definitions of ‘domestic violence’ (intimate partner abuse). Forms of violence that are intended to control women's behaviour and sexuality (such as those named as

33 United Nations, 1993.

“honour-based”) are increasingly challenging the 1980s definition of partner assault as the most salient form of violence against women.³⁴

Using these definitions as a starting point, let us return to Phyllis Chesler’s chart and the language favoured by some organizations (e.g. Shield of Athena) to examine whether or not all of the differences noted between “honor killings” and domestic violence hold up.

1. Honour killings are perpetrated mainly by Muslim fathers against their daughters who are girls and young women and domestic violence is committed by men of all faiths against their wives

If we use the holistic definition of violence against women provided by the United Nations coupled with the Schlifer Clinic forum suggestion that we need to apply a definition with a broader spectrum, we can see that Chesler’s first distinction begins to fade.

With our definition, the murder of young women by their fathers is a form of violence against women just as is the murder of women by their partners or former partners. Certainly, the data collected by Ontario’s DVDRC illustrates that children are often killed by their fathers as part of a “domestic violence” homicide. According to Statistics Canada, young women between the ages of 15 and 24 are at highest risk of being killed by another family member, yet Statistics Canada does not describe these homicides as honor killings. We know that the killing of women by men in their family crosses all cultural, racial and religious lines. If we use an inclusive definition of violence against women, Chesler’s argument that “honor killing” is a Muslim issue becomes irrelevant.

34 Barbra Schlifer Commemorative Clinic. “Justice Done: Crafting Opportunity from Adversity” 2011, *The Ontario Association of Interval and Transition Houses*, 2 Feb. 2013 <http://www.oaith.ca/assets/files/Publications/Family%20Law/JusticeDone_FinalReport_ENG.pdf> 7.

2. Honour killings are carefully planned and often preceded by death threats whereas domestic violence killings are often spontaneous

A careful review of the DVDRC reports will show that women who are murdered by their partners or former partners in acts of what Chesler calls domestic violence have often experienced ongoing violence and threats prior to their deaths. In many cases, the threats have been serious enough for the women to contact police and for charges to have been laid against the partner.³⁵ While there is an element of spontaneity to some domestic violence murders, the prevalence of stabbing and shooting (see: Footnote 23) indicates that there is often at least some planning involved.

A number of the murders reviewed by the DVDRC involved careful planning to find the victim alone or to entice her into contacting the perpetrator. Perpetrators of domestic violence killing often construct elaborate arrangements to make the murder appear like a suicide, an accidental death or a stranger murder, all of which would argue against the notion that they are spontaneous.³⁶ According to University of Toronto criminologist Rosemary Gartner, the majority of domestic murder/suicides (which make up almost 50 percent of spousal homicides in Ontario) involve premeditation, “There is evidence that men plan these things.”³⁷ Clearly, both so-called honor killings and domestic violence murders can and do involve a history of threats as well as planning on the part of the perpetrator.

35 Note, for instance, the recent (January 19, 2013) murder of Bridget Takyi in Etobicoke (Greater Toronto), whose partner was facing eight serious domestic violence charges, including one of uttering death threats, at the time he allegedly killed her.

36 In this context, note a double murder reviewed by the DVDRC, in which the ex-partner killed his former wife and the ex-wife of the man his former wife was dating, setting the killings up to look as though the two women were in a relationship and one had killed the other and then herself.

37 Josh, Tapper. “Georgetown Tragedy: What Prompts a Spousal Murder-Suicide?” 15 Oct. 2012, *The Toronto Star*, 12 Feb. 2013 <http://www.thestar.com/news/crime/2012/10/15/georgetown_tragedy_what_prompts_a_spousal_murdersuicide.html>. The article goes on to confirm that “spousal murder-suicides are rarely spontaneous.”

3. Honour killings involve other family members and domestic violence killings do not

It is certainly true that many of the murders of young Muslim women that are often categorized as honour killings involve other members of the family.³⁸ This is a factor that is not present in most cases of violence against women murders, and serves as a clear distinguishing factor that establishes these kinds of killings as a particular form of violence against women.

However, it should be noted that family members are often complicit in domestic violence cases, albeit in a more implicit way. For example, men who have been charged with respect to violence against their partner are often released on bail with a family member acting as surety. This family member is responsible for ensuring that the accused does not violate any of his bail conditions, one of which is that he cannot contact his partner. Family member sureties often do not take this responsibility seriously and often know the accused is in contact with his partner, yet fail to report this to police.³⁹

4. Honour killings are driven by perceived dishonor to the family and domestic violence killings are not

How we define honour is critical to our understanding of the gendered killing of women and girls. As Caplan writes:

³⁸ By way of example, both the father and brother of Aqsa Parvez were charged in her murder, in which it was alleged by the Crown that other members of the family were present in the home and did nothing during her murder and the murders of Rona Amir Mohammed and Zaineb, Sahar and Geeti Shafia led to first degree murder convictions against the sisters' father, mother and brother.

³⁹ For example, when Ralph Hadley killed his former partner Gillian Hadley and then himself, he was on bail. His father was his surety, and he was living with his parents, yet continued to have contact with her. In another death reviewed by the DVDRC, a young man was on bail facing charges as the result of violence against his former partner. His bail prohibited any contact by him with his former girlfriend. His father, who was his surety, drove him to his ex-girlfriend's apartment, where the young man killed her. Please note, we are not alleging that these sureties knew that their family members were going to kill their former partners. We are simply making the point that there are ways in which families can become complicit, even passively, with the abuser that make it easier for them to continue to harm, including kill, their victim.

[B]oth kinds of murders [domestic violence and honour killings] have a common root. Both are honour killings, reflecting a twisted, pathological male sense of honour. Both are executed by men who feel they haven't received their due deference, men who consider "their" women, whether daughter or partner, to be their chattel, to do with as they choose. Have we smug Canadians forgotten that you don't have to be a Muslim or South Asian to regard women this way?⁴⁰

It is important to remember, as discussed above, that in most cases of domestic violence homicide, the parties have either just separated or a separation is pending. For an abusive man, the decision by her partner to end the relationship is a serious insult to his honour; and yet we do not generally describe these murders as "honour killings." Henry VIII had his wives beheaded publicly for their alleged adultery or for failing to produce male children – both of which could easily be interpreted as attacks on the honour of the king.⁴¹

Indeed, as we will explore in greater detail below in our discussion of the defence of provocation, the honour of men with respect to their wives and partners has long been given preferential treatment in both English common law and statutory criminal law in the western world, including Canada.

5. Honour killings are barbarically ferocious and domestic violence killings are not

Any murder of any woman, whatever the reason, should be seen as *de facto* barbaric. However, it is true that some appear more brutal in nature than others. Those murders labelled by some as "honour killings" hold no monopoly on barbarism. Think for a moment of the murder noted above (See: Footnote 33); a murder that has not been

40 Gerald Caplan. "Honour Killings in Canada: Even Worse Than We Believe." 23 Jul. 2010, *The Globe and Mail*. 5 Feb. 2013 <<http://www.theglobeandmail.com/news/politics/second-reading/honour-killings-in-canada-even-worse-than-we-believe/article1314263/>>.

41 Matthew A Goldstein. "The Biological Roots of Heat-of-Passion Crimes and Honor Killings." *Politics and Life Sciences*. 21.2 (2002): 28-37.

labelled an honour killing, Bridget Takyi was stabbed multiple times, then doused with gasoline and set on fire until she was “burned beyond recognition.”⁴²

A quick review of any one of the annual reports of the DVDRC will confirm that Bridget is not alone. Many women who are killed by their partners or former partners are savagely attacked, with the injuries inflicted far exceeding those needed to ensure death. They reflect the rage of the attacker; rage at the insult to his honour because of something the woman has done or that he perceives her to have done.

6. Honour killings are valorized by the extended family and community and that domestic violence killings are not

There are parts of the world in which Muslim communities valorize the killings of girls and women by members of their family. There may have been such a time in Canada, as well, but those days have passed. When considering how to name and address the issue of femicide in Muslim communities, it is imperative to remember this, and not to use language that, while perhaps suitable in other contexts, only serves to inflame emotions and muddy our public policy thinking in Canada. As put by CCMW in its position statement on customary killing:

We appreciate that other countries may use this term but we are reluctant to join them in identifying any murder for the preservation of the family’s honour. Canada is not . . . any other country, and comparisons don’t assist us here. We must address the issue in Canada and not elsewhere.

The Shafia case is an excellent illustration of this, as Muslim communities across the country spoke out frequently and strongly against the murders and against labelling them as “honour killings.” Upon the announcement of the guilty verdict,

⁴² Michele Mandel. “Courts Failed Murder Victim.” 22 Jan. 2013, *Sun News Network*, 25 Jan. 2013 <<http://www.torontosun.com/2013/01/22/courts-failed-murder-victim-bridget-takyi>>.

Samira Kanji, president of the Noor Cultural Centre in Toronto, stated, “It’s a murder and it’s going to be treated as a murder.”⁴³ Imam Sikander Hashmi of the Islamic Society of Kingston also responded by establishing:

Our job as community leaders and members of society is that we have to be very clear about our position on domestic violence and such crimes. We need to speak very strongly and we need to take concrete action.⁴⁴

Accordingly, Muslim communities in Canada, as is the case with other communities in Canada, generally deplore violence against women and speak out against those who perpetrate it, including those who commit acts of femicide.

7. There is no remorse on the part of the perpetrator in honour killings but perpetrators of domestic violence killings sometimes experience remorse

This, as with the involvement of other family members discussed above, is a factor that to some extent distinguishes these kinds of killings from other forms of femicide. However, it should be noted that there is little data available to ascertain whether or not the perpetrator of homicide identified as “domestic violence” feels remorse because so many of them kill themselves after killing their partner or former partner.⁴⁵

It would be a mistake to assume that the perpetrator’s suicide is an indicator of remorse. Some data seems to indicate that often the perpetrator’s primary objective is to kill himself and that his need for control over his partner (or former partner) is so great that he cannot allow her life to continue without him and thus kills her first.

43 CBC. “Muslim Community Grapples with Shafia Verdict.” 30 Jan. 2012, CBC News, 5 Jan. 2013 <<http://www.cbc.ca/news/canada/story/2012/01/30/shafia-trial-verdict-reaction.html>>.

44 Martin Barillas. “Opinion Split in Canadian Muslim Community over Guilty Verdict in Honor-Killing” 30 Jan. 2012, *The Cutting Edge*, 25 Jan. 2013 <<http://www.thecuttingedgenews.com/index.php?article=71788&pageid=37&pagename=Page+One>>.

45 According to the 2011 report of Ontario’s Domestic Violence Death Review Committee, 47% of the cases it reviewed between 2003 and 2011 were murder/suicides (Office of the Chief Coroner-Province of Ontario, 2012).

Nonetheless, this is a distinguishing feature between those murders often called “honor based” and those categorized as domestic violence homicides.

As this review of Chesler’s differential factors⁴⁶ in “honour killing” and domestic violence homicides shows, the similarities significantly outweigh the differences, both in number and in substance. Thus, this is one more argument in favour of naming these killings femicide and of understanding them as a form or subset of violence against women.

PROVOCATION, CULTURAL RELATIVISM AND CULTURAL DEFENCES

Provocation is a defence in the *Criminal Code* that allows an accused, in certain circumstances to have a murder conviction, which carries a mandatory life sentence, reduced to manslaughter, which carries no minimum sentence. The accused has to establish that he was provoked to such an extent that he lost the power of self-control.⁴⁷

Historically, this defence was available only to a man who had come upon his wife engaged in an act of adultery.⁴⁸ Women were the legal property of men, and it was considered understandable for a man to lose his power of self-control should his wife engage in sexual activity with another man. However, no such understanding was afforded to women who might discover adultery or other wrong-doing on the part of their husband. While the “defence” of honour killing (which does not exist in Canada) and the defence of provocation (which does) are not perfect legal parallels⁴⁹,

⁴⁶ Factors also noted by others, both individuals and organizations.

⁴⁷ Section 232 (1) Culpable homicide that otherwise would be murder may be reduced to manslaughter if the person who committed it did so in the heat of passion caused by sudden provocation; (2) A wrongful act or an insult that is of such a nature as to be sufficient to deprive an ordinary person of the power of self-control is provocation for the purposes of this section if the accused acted on it on the sudden and before there was time for his passion to cool.

⁴⁸ Goldstein.

⁴⁹ In countries that accept an honour killing defence, it provides a complete justification and exoneration from criminal responsibility. Successful use of the defence of provocation simply reduces the criminal liability from murder to manslaughter.

the similarities in their histories make a brief discussion of provocation useful in the context of this paper.⁵⁰

Certainly, the notions of a man's loss of self-control as the result of actions or words by his wife are very similar to rationales provided for co-called honour killings. While the specific actions on the part of the woman may vary, the theme is the same: when women attempt to assert their autonomy and independence against the wishes of their husband or other men in their family, men should have a legal and/or cultural defence on which they can rely.

There are many feminist critiques of the defence of provocation. In its paper analyzing the women's equality implications of this defence in Canada, the National Association of Women and the Law (NAWL) reviews a number of cases in which men murdered their female partner and then raised the defence of provocation, and establishes:

These cases point to a jurisprudence that considers a woman's autonomy – her drive for independence, self-respect, and security – as provocative insults, which call for compassion for the accused. . . . As many authors have argued, this jurisprudence vindicates men's proprietary interest in their spouses and legitimates murderous "loss of self-control" as a response to a woman's attempts to assert her autonomy. . . . The exculpatory defence of provocation literally allows men to get away with murder, reducing their conviction from intentional, sometimes premeditated murder, into one for manslaughter. Thus, the most violent forms of patriarchal crimes are reduced to an infraction akin to an accident, or a negligent act. This legal characterization trivializes femicide, and signals our criminal law system's tolerance of wife-assault.⁵¹

50 In fact, there have been Canadian cases in which the accused rested his provocation defence on the cultural importance of honour.

51 Andr  e C    , et al. Stop Excusing Violence Against Women : NAWL's Position Paper on the Defence of Provocation. (Ottawa : National Association of Women and the Law, 2000). 9.

In another analysis of the defence of provocation, Carolyn Dick comments:

As one would expect, the defence of provocation has been the target of considerable criticism as a gendered defence that ‘invites compassion’ for male violence against women. . . . Interesting, too, is the fact that the risk of spousal homicide to women increases significantly upon deciding to terminate a relationship, with actual or imminent separation being highly relevant to risk. In this case, it is not infidelity, but the mere act of leaving a relationship that prompts male rage. Here, intimate femicide emerges as the final assertion of control over the women who has decided to exercise her autonomy.⁵²

These assessments of the defence of provocation as it appears in Canadian law seem to allow similar consideration for men’s honour as does the concept of honour killings. Let us now add the lens of cultural relativism and the concept of culturally based defences to our discussion and keep in mind the argument of Keeping who writes, “When rights in a liberal democratic state bump up against deeply embedded religious-cultural traditions, the hot spot of contention is the rights of women”.⁵³

CCMW articulates its position on cultural relativism in its position on customary killing, writing:

Too often, multiculturalism is invoked to divide people and to segregate us rather than to bring us together. . . . As minority women we are often dismayed by many who use cultural relativist arguments to bend backwards to accommodate all practices, not understanding that they end up hindering our struggle for our gender equality.

What are the limits of cultural tolerance? How do we build a pluralistic society that both respects different cultural traditions and requires that citizens abide by a set of common laws and norms. . . . the rights of citizenship must take precedence over membership of communities.

52 Carolyn Dick. “A Tale of Two Cultures: Femicide, Cultural Defences and the Law.” *Canadian Journal of Women and the Law* 23.2 (2011) : 535.

53 Keeping, 5.

Carolyn Dick of Western University echoes a similar sentiment, writing:

Many feminists argue that the greatest danger of using cultures in the courtroom is the prospect that violence against women will go unpunished or inadequately punished . . . and contend that aligning a defence that has long excused male violence against women with the ability of an accused to lead evidence regarding the patriarchal values of minority cultural communities is likely to produce judicial outcomes that are governed by the logic of ‘race before gender.’⁵⁴

Toronto therapist, Aruna Papp, problematizes the issue of culture in another way:

Problematically, the ideology of multiculturalism, even amongst the most well-meaning advocates for female equality, tends to preclude any discussion of cultural values and traditions that project a “colonialist” mentality or that may lead to perceived “racialization” of an entire ethnic community.⁵⁵

As Amirthalingam Kumaralingam notes, the application of cultural relativism has implications for the accused as well:

Cultural considerations assume particular significance when an accused is from a minority culture, as it is the moral values of the majority that are relied on to determine the accused’s culpability. Occasionally, the accused is in a position of disadvantage as there may be a disjunction between the cultural values he or she is operating under and the cultural values relied on by the court in judging the accused. There is a question of fairness that is raised: is it justifiable to punish a member of a minority culture under laws or norms reflecting those of the majority culture?⁵⁶

54 Ibid, 20 - 21.

55 Aruna Papp. “Culturally Driven Violence against Women: A Growing Problem in Canada’s Immigrant Communities.” Jul 2012, *Frontier Policy Series*, 5 Jan. 2013 <<http://www.fcpp.org/publication.php/3351>> 4.

56 Amirthalingam Kumaralingam. “Culture, Crime and Culpability: Perspectives on the Defence of Provocation in Multicultural Jurisprudence.” in *Multicultural Jurisprudence: Comparative Perspectives on the Cultural Defence*. Marie Claire Foblets and Alison Dundes Renteln, Eds. (Portland: Hart Publishing, 2009) 36.

While anthropologists have long claimed cultural relativism as a cornerstone of their work, the issue of violence against women has led to some rethinking of this position:

Cultural relativism, long a key concept in anthropology, asserts that since each culture has its own values and practices, anthropologists should not make value judgments about cultural differences. . . . The issue of violence against women throws the perils of cultural relativism into stark relief.⁵⁷

Accordingly, patriarchy and not culture must be identified as the primary source of violence against women. As Dale argues:

The concept of patriarchy can be revitalized and made more universally visible by being named as such, and separated from 'cozy notions of culture' that distract from the job of attentively dismantling 'claims of cultural authority housed in specific representations – claims which are contested within communities.'"⁵⁸

With respect to the killing of women and girls specifically, Dale concludes:

What about 'honor killings' of sisters and daughters accused of sexual misconduct in some Middle Eastern and Mediterranean societies? Some anthropologists have explained this practice in culturally relativist terms . . . While some judges have agreed; anthropologists should see a different picture: a pattern of cultural discrimination against women. . . . As the issue of domestic violence shows, we need to explore the ways that we balance individual and cultural rights. . . . I believe that we should not let the concept of relativism stop us from using national and international forums to examine ways to protect the lives and dignity of people in every culture.⁵⁹

57 Carolyn Fluehr-Lobban. "Cultural Relativism and Universal Rights." *The Chronicle of Higher Education*. (1995):33.

58 Amanda Dale. *Does CEDAW Require Women to Choose Between Gender Protection and Cultural Belonging?* Master's Thesis, University of Oxford. Oxford : 2011. 47.

59 Ibid, 34 – 35.

Discussions about violence against women generally, and femicide more particularly, often set up a false dichotomy between what many view as Canadian values and the values of other cultures. Canadian values are seen as positive, and actions such as wife assault and murder are then attributed to some failing on the part of the individual who commits them. Conversely when a person of another culture assaults or kills his wife, it is the culture and not the individual that is blamed:

Discussions of the way culture can shape domestic violence occur in a broader context of already existing stereotypes about culture, that reflect problematic notions as to how culture is believed to link to race. This tendency to describe domestic violence as “cultural” when occurring in communities of color, and not through the language of power and control used to describe domestic violence in “mainstream” communities, is linked to the uninterrogated assumption that devalued and less powerful groups are somehow more culturally determined. . . Psychology is used to explain why people positioned as Western subjects act irrationally. In contrast, culture is used to explain why those considered non-Western subjects act irrationally.⁶⁰

Cultural relativism can also trap women from non-mainstream cultures. As Leti Volpp writes:

... A battered woman who is an immigrant may have failed to call the police, not because her culture condones passivity on the part of women, but because her partner was a police officer in her country of origin, because she has witnessed a failure of police protection and practices of police brutality, and because the police in her present location do not speak her language. Granting explanatory power to essentialized depictions of “culture”, as purportedly made up of unchanging rituals that cement the subordinate location of women

60 Leti Volpp, “On Culture, Difference and Domestic Violence,” *Journal of Gender, Social Policy and the Law* 11.2 (2003): 394.

in a fixed system of social practices, will inevitably fail to accurately describe the relationship of culture, difference and domestic violence.⁶¹

More notably, reliance on cultural relativism can let those of us who are part of the mainstream culture off the hook, as a number of authors have noted:

... Invocations of culture can erase the racism of agencies and entities that fail to provide appropriate services to battered women by hiring diverse staff who speak relevant languages or translate materials. Further, invocations of culture can detract attention away from the policies of the state.⁶²

How are we to deal with difference without accepting the passivity implied by the cultural relativism for which anthropologists are justly famous – a relativism that says it's their culture and it's not my business to judge or interfere, only to try to understand? Cultural relativism is certainly an improvement on ethnocentrism and the racism, cultural imperialism and imperiousness that underlie it; the problem is that it is too late not to interfere. The forms of lives we find around the world are already products of long histories of interactions.⁶³

Pascale Fournier further notes:

[C]ulturalist explanations of honour crimes are historically and empirically mistaken. ... Negating the pervasiveness of honour in all forms of gender violence impairs "our" conception of ourselves, marginalizing the importance of Western gendered violence and the many common traits it shares with honour crimes.⁶⁴

61 Ibid, 399.

Of course, many non-immigrant women have reasons not to call the police, as well, many of them similar to those listed above. One of the most serious challenges in addressing violence against women in Canada is the "mandatory charging" policy which requires the police to lay a charge where they believe there is a reasonable prospect of securing a conviction, whether or not the woman agrees. This can leave women feeling disinclined to call the police when there is a subsequent, perhaps more serious, violent episode, because they do not want their partner charged. One concern that is unique to newcomer families is that the perpetrator might lose his status in Canada or be deported back to the country of origin as a result of criminal charges.

62 Ibid, 398.

63 Lila Abu-Lughod. "Do Muslim Women Really Need Saving? Anthropological Reflections on Cultural Relativism and Its Others." *American Anthropologist* 104.3 (2002):786.

64 Pascale Fournier. "Introduction: Honour Crimes and the Law – Public Policy in an Age of Globalization." *Canadian Criminal Law Review* 16.2 (2012): 107.

Ultimately, the use of cultural relativism serves only to further “other” cultures that are different, or are perceived to be different, from the mainstream culture:

Selectively blaming culture leads to the misapprehension that certain ethnic cultures are fundamentally different from “our” culture. Ethnic difference is equated with moral difference, with which we must struggle in a multicultural state. Specifically, commentators depict the sex-subordinating practices of certain immigrants as creating an irreconcilable tension between the values of feminism and multiculturalism. . . . The condemnatory reaction, which distances the observer from the practice and defines the observer as the antithesis of that practice, relies upon and perpetuates a failure to see subordinating practices in our own culture when, for example, young girls are forced to engage in non-consensual sex or are battered in the process of “becoming a woman.”⁶⁵

As we have discussed earlier in this paper, finding the similarities and overlaps between the ways in which femicide occurs in different communities does not eradicate the very real differences in the ways that violence is experienced by women or the barriers and challenges they confront in trying to escape it. In different communities, male violence against women, including femicide, may be motivated by different specific factors. Likewise, a woman’s assessment of what has happened to her is different. For some women, the gendered basis of the violence is immediately apparent. For others, the basis of the violence may appear to be rooted in the family’s experience of class, race, religion or culture. Women will assess their own role in the violence based on their social location, and will determine who to tell or not to tell, when, where and how to seek support (or not) also based on her community.

In newcomer families especially, men often feel isolated when other family members embrace aspects of Canadian culture that may appear to contradict cultural or religious values the family has brought from their country of origin. This isolation can lead to fear and a perceived need by the man to protect his family from these

65 Leti Volpp, “Blaming Culture for Bad Behavior,” *Yale Journal of Law and the Humanities*, 12 (2000): 90-91.

influences. With few resources, he may turn to controlling or physically violent tactics in the interests of keeping his family intact and safe. As Volpp establishes:

[Most immigrants] bring with them deeply embedded cultural and family values and religious beliefs, and they are influenced by societal expectations regarding sexual and gender roles acquired in their country of origin. . . .When abuse or violence is a reality in the family life of immigrants, how it is understood and addressed is influenced by all of these factors. Seeking help and making use of Canadian social services becomes yet another stress and is fraught with additional dilemmas. . . .For immigrant and refugee families, structural obstacles, ethnocultural prohibitions, language barriers, and fears about being deported or losing their children complicate their ability to make use of such services. In some cases they may not even be aware of services available to them.⁶⁶

While these comments were made about domestic violence generally, they are on point in this discussion about femicide as well.

THE PUBLIC DISCOURSE ABOUT “HONOUR” KILLING IN CANADA

There are challenges in addressing femicide generally in Canada – the static rate of more than 80 women a year killed by men⁶⁷ is adequate proof that the issue has not been resolved. Both challenges and recommendations for overcoming them are addressed in a number of other publications,⁶⁸ and so will not be revisited in this paper. Our focus

66 Ramona Alaggia and Cathy Vine, *Cruel But Not Unusual: Violence in Canadian Families* (Waterloo: Wilfred Laurier University Press, 2006) 100 – 101.

67 At a time when the rate of all other forms of homicide are in a steady decline.

68 Annual reports of Ontario's Domestic Violence Death Review Committee, for instance, provide detailed recommendations for systemic change to reduce the rate of domestic-violence related homicides. Luke's Place: A Centre of Excellence for Family Law and Violence Against Women, the Centre for Research and Education on Violence Against Women and Children, the Barbra Schlifer Commemorative Clinic. The National Association of Women and the Law and others have also produced copious research addressing the issue of violence against women and making recommendations for change at both the systemic and service delivery levels.

is on those kinds of femicide for which many wish to assign a cultural or religious responsibility.

One of the biggest challenges in addressing this form of femicide is the public discourse on the issue, which has often both inflamed and been inflamed by court decisions, comments by politicians and media coverage of events. When passing his ruling of guilty of first degree murder against all three accused in the Kingston, Ontario, Shafia case, Justice Robert Maranger stated:

It is difficult to conceive of a more despicable, more heinous crime The apparent reasons behind these cold-blooded, shameful murders was that the four completely innocent victims offended your completely twisted concept of honour . . . that has no place in any civilized society.⁶⁹

In the earlier, but similarly high-profile murder of Aqsa Parvez, Justice Bruce Durno said the “abhorrent motivation” called for a significant penalty and called her killing “shameful, horrible, evil and barbaric.”⁷⁰

It is not just judges who make troublesome comments; so do politicians. Commenting on the decision in the Shafia case, Justice Minister Rob Nicholson rose in the House of Commons to say:

So-called honour killings are barbaric and unacceptable and have no place in Canada. We are committed to protecting women and other vulnerable persons from all forms of violence and to hold offenders accountable for their acts. In Canada, Mr. Speaker, murder is murder regardless of the motive. Our government is always focused primarily on the rights of victims and not on the twisted rationale offered by convicted murderers.

69 Melinda Dalton. “Shafia Jury Finds All Guilty of First Degree Murder,” 29 Jan. 2012, *CBC News*, 27 Jan. 2013 <<http://www.cbc.ca/news/canada/story/2012/01/shafia-sunday.html/>>.

70 Janet Keeping, “Introductory Essay: Gender Equality in a Culturally and Religiously Diverse Canada” in *Gender, Culture, Religion: Tackling Some Difficult Questions*, Heather Macintosh and Dan Shapiro, Eds. (Calgary, Sheldon Chumir Foundation for Ethics in Leadership: 2012) 9.

This opinion should not surprise us, given the following excerpt from the citizenship guide prepared by the government of Canada:

In Canada, men and women are equal under the law. Canada's openness and generosity does not extend to barbaric cultural practices that tolerate spousal abuse, "honour killings," female genital mutilation, forced marriage or other gender-based violence. Those guilty of these crimes are severely punished under Canada's criminal laws.⁷¹

The media, of course, also plays a role in determining the bounds of public discourse. In reporting on the verdict in the Shafia case, the *Toronto Sun*'s headline read: "Death and dishonour: Shafia murders the latest sad chapter in war on Muslim women." The associated article by Ezra Levant used words such as "demon" to describe one of the accused, "medieval beliefs" to describe their alleged motivation and maintains: "[There is a] war on women. But not a war on all women . . . their killers are extremist Muslim men."⁷²

There is no shortage of examples of these kinds of comments; we have presented only a very small sampling. Together, they establish a framework for public discourse and public policy that encourages further "othering" of those who are not part of the mainstream culture. This framework also allows those who are part of the dominant culture to distance themselves from the issue of violence against women because it can safely be attributed to "*those people*" who are perceived to be of another foreign culture/skin colour/race/religion. More notably, solutions proposed within such a framework will not work because they are based on a number of incorrect premises, mainly that violence against women is restricted to particular communities and that mainstream

71 Citizenship and Immigration Canada. "Discover Canada: The Rights and Responsibilities of Citizenship." 2012, *Government of Canada*. 4 Feb. 2013 <<http://www.cic.gc.ca/english/pdf/pub/discover.pdf>> 9.

72 Ezra Levant. "Death and Dishonour: Shafia Murders the Latest Sad Chapter in War on Muslim Women." 30 Jan. 2012, *The Toronto Sun*, 4 Feb. 2013 <<http://www.torontosun.com/2012/01/30/death-and-dishonour-shafia-murders-the-latest-sad-chapter-in-war-on-muslim-women>>.

culture does not condone violence against women, but in fact abhors it.⁷³ Both of these premises are blatantly untrue, as this paper amply illustrates. However, they continue to drive the public response, and as a result all women suffer.

The murders of women from mainstream Canadian culture are seen as individual tragedies, committed by men with personal flaws, instead of being the result of systemic problems including women's ongoing inequality under Canadian law and the continuing misogyny in Canadian culture. The murders of women from non-mainstream Canadian culture are also dismissed in a certain way. Harsh though the condemnation of their family member killers may be arguments of cultural relativism can be and are used to lessen the "... horror of the crimes and to make these women's lives less valued."⁷⁴ To return to Gerald Caplan:

[D]o we focus on so-called honour killings precisely because the victims are Muslims, or South Asians, or Middle Easterners? By giving such prominence to these communities and their cultures, are we not denigrating them? For all our ostensible acceptance of multiculturalism, are we not feeding our lingering prejudices against certain specific minorities among us? ... No nation, religion, class or ethnic group has the monopoly on misogyny.⁷⁵

RECOMMENDATIONS FOR MOVING FORWARD

The recommendations we propose fall into three categories – law, public policy and service delivery – and very much build on work already done and being done by others.

73 In this respect, note one of the comments made by Richelle Wiseman in the Sheldon Chumir paper, "[A]lthough domestic violence is widespread in Canada, it is not condoned. Instead, it is condemned by most Canadians as an unacceptable way to resolve problems within the family" (Wiseman, 32). Compare that with the assessment of Gerald Caplan in his commentary in *The Globe and Mail* where he writes that approximately 42 women in Ontario are killed *each year* by their partners or former partners, and yet the media focuses its attention on the perhaps 12 so-called "honour killings" over the course of a decade. (He goes on to clarify that his comments are not to be read as minimizing the horror of those 12 deaths).

74 Hogben, 39.

75 Caplan.

Whatever recommendations we discuss, it is important to remember the words of former United Nations Special Rapporteur on Violence Against Women, Radhika Coomaraswamy, who states:

There is a need to support women working with their communities at all levels, particularly women who are at the forefront of efforts to combat violence against women and struggle for women's rights – any other strategy risks creating a backlash.⁷⁶

Law

There has been considerable discussion about whether Canada should create a new law to deal with “honour-based violence,” including but not necessarily limited to the killing of women and girls. As discussed in a special issue of Canadian Criminal Law Review dedicated entirely to the topic of honour crimes and the law, “One of the first issues that is usually discussed is the introduction of specific criminal law provisions relating to honour crimes.”⁷⁷

At this time, no such provisions exist in Canada. An assault, whatever its motivation, is dealt with under the various assault provisions in the *Criminal Code*. Likewise so is murder, which is dealt with under the appropriate section of the *Code*: first degree murder, second degree murder or manslaughter. Most experts agree that there is no need for new provisions specific to honour-based violence. The present provisions in the *Criminal Code*, applied correctly, coupled with the existing sentencing guidelines address such violence appropriately:

[T]he legal tools currently available allow for efficient prosecution of honour crimes. . . . Since the homicide provisions leave very little

⁷⁶ Coomaraswamy quoted in Fournier, 109.

⁷⁷ Ibid, 105.

room for judicial discretion, the adoption of sentencing guidelines to specifically address honour crimes seems unnecessary.⁷⁸

We agree with this position. We wish to point out that improvements to provincial family law regimes could provide greater support to women who seek to leave abusive relationships and continue to fear for their safety. In particular, stronger restraining and protection order provisions and an approach to custody and access that makes it very difficult for a former partner to remove the children from Canada would be very helpful.

Policy

The federal Department of Justice has not issued any policy statements or guidance on the phenomenon of honour crimes, other than its brief mention in the immigration guidebook as noted earlier in this paper. As Fournier states:

Apart from that, honour crimes are not afforded specific social policies, despite the fact that the Shafia case does raise the complex question of State intervention which inevitably precedes the criminal justice system. One can think of many institutions, from school teachers and social workers, who play an important role in integrating minority citizens, to youth protection services and police bodies, which can effectively protect minority children and women. This special issue is premised upon the idea that the development of a policy approach to honour crimes is a pressing imperative.⁷⁹

78 Ibid, 105-106.

In this section, Fournier identifies some of the aggravating factors that judges must take into account when determining the appropriate sentence for someone convicted of manslaughter or second degree murder, including whether the perpetrator has abused a position of trust or authority (the case when the victim is a daughter, sister or wife of the perpetrator) and whether there has been a history of domestic violence on the part of the perpetrator towards the victim.

79 Ibid, 106.

Fournier notes that this lack of policy attention may be explained by the prevalence of culturally relativist positions taken by many in authority, which "preclude us from elaborating sensitive, contextual policies and can in fact lead to inaction" (Fournier, 108). As Anna Korteweg, establishes, "If honour is so utterly foreign, why should we design specific policies, legal or other, to address this form of violence? Would it not suffice to better affirm "Canadian values in the immigration context?"

While criminal law reform may not be needed, new public policy would be helpful. This could include:

- A national policy statement from the Department of Justice enunciating a government position that honour killing is femicide and a form of violence against women that should be addressed as such;
- Policies with immigration, education, health care and child protection sectors to ensure that frontline workers and managers are familiar with the issue, aware of warning signs, and empowered to take action early to prevent serious harm, including death⁸⁰

Public policy could also speak to the need for appropriate resource allocation and funding for training and service provision to enable mainstream agencies to work in substantive and meaningful partnership with community-based agencies and the community at large.

Service Delivery

Of course, ultimately, it is frontline services that are the most likely to be able to identify warning signs and provide assistance to women and girls at a time and in a way that may prevent them from becoming victims of femicide.

1. Existing violence against women, immigrant and other culturally specific services are obvious places to address the issues of femicide as they play out in different communities of women. However, there are gaps that need to be addressed.

We repeat here one of the recommendations from our paper on violence against women within the family:

⁸⁰ Shield of Athena in Montreal has been involved in work with other organizations so this issue can be addressed in a multi-sectoral fashion. Efforts to date include the development of screening methods and tools and prevention and public awareness programs and interventions. For more information, see: www.shieldofathena.com.

Mainstream agencies providing services to women who have experienced violence need to do more to ensure they provide what is needed by women from Muslim and other cultures whose values may be different from those of mainstream Canadian society. While this includes such things as offering services and ensuring that materials are available in multiple languages, more is required. Service providers need to be able to understand the issue of violence within families and strategies for addressing it in ways that reflect the value systems of women from Muslim communities. Agencies must work towards the ideal of cultural competency, even though full achievement of this goal is likely to remain elusive.

Some elements of a culturally competent service delivery best practice include:

- Women should never feel that they are being asked to choose between their community and access to services and support
- Service providers need to be able to empower women by offering them choices, asking them about other possible choices and then accepting their decisions without judgement
- Services need to bring flexibility and a multidisciplinary balance to their work supporting women from Muslim communities and understanding what aspects of their religion and/or culture they are not prepared to leave behind in order to access support
- Collaboration between mainstream organizations that provide specialized violence against women programs and the Muslim community is essential, with both communities being open to learning from the other
- Joint training for both staff and volunteers, who must understand and respect the fact that the vast majority of Muslim women will not shed their religion or culture when they cross the threshold of an emergency shelter or social service agency
- Empowerment programs for women and girls
- Finding appropriate ways to involve men and to work with the whole, often extended, family

- Developing outreach strategies to ensure that women from minority cultures are aware that services exist
2. Training for those who may be able to identify warning signs is critical. As we learned from the Shafia case, both school personnel and child protection services had been told by the younger daughters of serious problems at home. A timely intervention may have been able to prevent the murders of all three daughters and perhaps also of their father's first wife. Teachers and other school officials, child protection workers and managers, police, frontline health care workers, social service workers and immigration officials should be provided with training about the dynamics of violence against women, including femicide. This can include the different ways femicide manifests itself in different communities and should be given information about resources for women and girls in their community.
 3. The involvement of religious leaders is imperative. Many women are isolated within their religious or cultural community and may turn to their religious leader for guidance if they are dealing with violence within their family. For instance, a mother may talk to the imam if there are tensions between her husband and their teenaged daughter or if she is feeling controlled and manipulated by her husband. A father may talk to the imam about his fears that his family is becoming too westernized, about how isolated he feels or about feeling that the family honour is being jeopardized.

Religious leaders are in a crucial position to intervene, so they need to be well informed about violence against women, including warning signs that physical violence may be imminent. They must be able to support women in understanding that violence against women is not acceptable and in accessing services that do not isolate her from her family and community. They must also be able to assist men in changing their attitudes and behaviours.

4. New ways of providing information about violence against women, Canadian laws and community services to women must be developed. For example, ESL classes provide a captive audience and can be a place where information is shared. Citizenship classes and materials could inform women about their rights under Canadian laws and the response to violence against women under both criminal and family law.
5. Men, including young men, in the community need to be involved. As we said in our paper dealing with violence against women within the family:

Mainstream feminist violence against women initiatives have traditionally been led by women and have created and offered women-only space for survivors of male violence as well as for women working in this field. This has been an important model and should not be set aside.

However, there are some situations that are better served by models that include men in some or all aspects of the work. In collectivist cultures, including men is a prerequisite to success. Men need to be involved in a way that does not take voice away from women or interfere with their empowerment but that also acknowledges the challenges and barriers faced by men and creates opportunities for men to learn new behaviours.

6. The entire community needs to be involved in discussions, dialogues and learning so that families struggling with violence can be supported, community members feel confident engaging in interventions where appropriate and girls and women feel comfortable turning to members of their community for support when they need it.

CONCLUSION

Men have been killing women and finding ways to rationalize it since the beginning of time. Some cultures use the language of passion, provocation or jealousy; some use the language of honour. There are distinct differences in some of the aspects of woman killing, but the root cause is common across cultures: patriarchy and misogyny. Solutions need to be crafted that acknowledge and respect the cultural and religious differences in the many communities that make up Canadian society, but they all must start from the premise that femicide is at its essence violence against women.

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FORCED MARRIAGE

You girls need to get down on your knees and give thanks daily when you are married to older men – especially when you are given men who have the stamp of approval of the prophet. These men can take you by the hand and . . . take you to the highest degree of the celestial kingdom where you will be queens and priestesses. . . . You mothers, teach your daughters to be grateful for that call, so when the priesthood places them, they'll be prepared.¹

¹ Debbie Palmer and Dave Perrin, Keep Sweet: Children of Polygamy (Creston: Dave's Press, 2004) 202.

EXECUTIVE SUMMARY

Forced marriage is distinct from arranged marriage, and it is important not to blur the line between them. Arranged marriages involve choice on the part of two people while forced marriages do not. This paper begins with an overview of international treaties, conventions and covenants that address the issue of forced marriage. International prohibitions can be found in the *Universal Declaration of Human Rights*, the *Universal Islamic Declaration of Human Rights*, the *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*, the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights*. Canada has signed and/or ratified some but not all of these international instruments.

Within Canada, there is no legislation that speaks specifically to the issue of forced marriage. However, there are laws – both civil and criminal – that prohibit activities often associated with forced marriages. The paper surveys marriage laws across Canada at both the federal and provincial/territorial levels as well as offences under the *Criminal Code* such as kidnapping and forcible confinement that could apply to cases of forced marriage. The paper then explores the concepts of consent, coercion and duress in relation to marriage. In Canada, both parties to a marriage must be legally capable of consenting and then must consent for the marriage to be legal and binding. Duress can be argued as a reason to annul a marriage but as the case law illustrates, this is not an easy test to meet.

Recent research conducted in Ontario by the South Asian Legal Clinic of Ontario (SALCO) provides some of the first hard data about the extent of forced marriage in the province. It is valuable information to have when discussing appropriate approaches to both service delivery and policy development. The data makes it clear that women are the predominant victims of forced marriage and that forced marriage is a form of

violence against women, as the tactics used to pressure girls and women are emotionally coercive and may also be physically violent.

The paper examines some of the reasons given by family members in support of forced marriage as well as some of the warning signs that those outside the family can watch for. There are significant implications for women who are forced into a marriage they do not want. These include the destruction of her dignity and equality, placing her at risk of further harm within the marriage, ending her education and/or employment, forcing her into early and repeated child-bearing and isolating her from everyone except her extended family. It is very difficult for women to leave – leaving may be unsafe, it may isolate her from her cultural community, it may separate her from her children or it may leave her homeless and/or living in poverty. Many women, especially those who are newcomers, may not know they can leave or may fear immigration reprisal if they do.

The paper also reviews responses to forced marriage around the world. In Europe, some countries have criminalized those who perform such marriages as well as those who force females into them. A number of European countries have created action plans to address the issue. The UK has an extensive response to forced marriage, including legislation, a special regime of civil protection orders and the Forced Marriage Unit. In the United States, forced marriage is considered a form of gender-based persecution and can be the basis of a claim for asylum. Conversely, Canada has little in the way of a formal response to forced marriage. SALCO's work and that of the Network of Agencies Against Forced Marriage offer a great deal of leadership in this area.

Finally, the paper concludes with suggestions for moving forward, that include building on and expanding awareness of SALCO's work, developing a federal response and lastly, ensuring adequate education for service providers and professionals such as child protection authorities, doctors, teachers and others who may be involved with victims or potential victims.

THE LANGUAGE WE USE

It is important to distinguish clearly the difference between arranged and forced marriages. Too often, this line is blurred because both kinds of marriage are outside the experience of mainstream Canadian culture. “In an arranged marriage, the families take a leading role in choosing the marriage partner, but the choice of whether to enter the marriage is left to both people.”² The choice is both free and informed.³ Conversely, choice is absent in a forced marriage.

Various organizations have described forced marriage in slightly different ways. For instance, according to the Forced Marriage Unit in the United Kingdom:

A forced marriage is a marriage where one or both people do not (or in the case of some people with learning or physical disabilities, cannot) consent to the marriage and pressure or abuse is used. . . The pressure put on people to marry against their will can be physical (including threats, actual physical violence and sexual violence) or emotional or psychological (for example, when someone is made to feel like they’re bringing shame on their family. Financial abuse (taking your wages or not giving you any money) can also be a factor. . . ⁴

In a similar manner, The Government of Canada states:

A marriage must be entered into with the free and informed consent of both people. Both people should feel that they have a choice. A forced marriage is one in which one or both people do not or cannot consent to the marriage and where pressure or abuse is used to force one or both people to marry against their will. Forced marriage also overlaps with child marriage because children are not considered capable of making an informed decision.⁵

2 Nadine Dostrovsky, et al., “Annotated Bibliography and International Law relating to Forced Marriage” Aug. 2007, *Department of Justice Canada*, 5 Feb. 2013 <<http://www.justice.gc.ca/eng/pi/fcy-fea/lib-bib/rep-rap/2007/mar/pdf/mar.pdf>> 1.

3 HM Government, “Forced Marriage” 13 Mar. 2013, *The UK Government*, 12 Feb. 2013 <<https://www.gov.uk/forced-marriage>>.

4 Ibid.

5 Government of Canada. “Forced Marriage.” 22 Mar. 2013, *Government of Canada*, 4 Feb. 2013 <<http://travel.gc.ca/assistance/emergency-info/forced-marriage>>.

INTERNATIONAL TREATIES AND CONVENTIONS

International law has spoken against forced marriage in many treaties, conventions and covenants. Below are the most significant of these, with a notation as to whether or not Canada has signed or ratified each.

*Universal Declaration of Human Rights:*⁶

Article 16:

(2) Marriage shall be entered into only with the free and full consent of the intending spouses.

While this is not an internationally legally binding document, it can be a tool to apply pressure on governments.

*Universal Islamic Declaration of Human Rights:*⁷

Article 19: Right to Found a Family and Related Matters

(i) No person may be married against his or her will. . .

6 G.A. Res. 217 (III) UN GAOR, 3d Sess. (1948).

7 September 19, 1981, adopted by the Islamic Council, proclaimed at UNESCO.

*Convention on the Elimination of All Forms of Discrimination Against Women.*⁸

Article 16:

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:
 - (a) The same right to enter into marriage;
 - (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
2. The betrothal and the marriage of a child shall have no legal effect

General Recommendation 21, Article 16:

16. A woman's right to choose a spouse and enter freely into marriage is central to her life and to her dignity and equality as a human being.

Canada ratified this convention in January 1982.⁹

*International Covenant on Civil and Political Rights.*¹⁰

Article 23:

1. No marriage shall be entered into without the free and full consent of the intending spouses.

⁸ Passed on December 18, 1979, 1249 U.N.T.S. 13, entered into force September 3, 1981.

⁹ It should be noted that, in its regular reports to the United Nations CEDAW Committee, FAFIA (Feminist Alliance for International Action) notes the many failures of the Canadian government to live up to the terms of CEDAW. While the issue of forced marriage has not been raised specifically, it is the case that mere ratification of an international convention does not guarantee full compliance with it by the ratifying country.

¹⁰ Passed on December 16, 1966, 999 U.N.T.S., entered into force March 23, 1976.

General Comment No. 28:

23. States are required to treat men and women equally in regard to marriage . . . Men and women have the right to enter into marriage only with their free and full consent, and States have an obligation to protect the enjoyment of this right on an equal basis. Many factors may prevent women from being able to make the decision to marry freely. . . . A second factor in some States may be that either by statutory or customary law a guardian, who is generally male, consents to the marriage instead of the woman herself, thereby preventing women from exercising a free choice.

24. Another factor that may affect women's right to marry only when they have given free and full consent is the existence of social attitudes which tend to marginalize women victims of rape and put pressure on them to agree to marriage.

Canada acceded to this in May 1976.

International Covenant on Economic, Social and Cultural Rights:¹¹

Article 10.1: The States Parties to the present Covenant recognize that the widest possible protection and assistance should be accorded to the family. . . . Marriage must be entered into with the free consent of the intending spouses.

General Comment 16:

27. States Parties [must] ensure that men and women have an equal right to choose if, whom and when to marry . . . and boys and girls should be protected equally from practices that promote child marriage, marriage by proxy, or coercion.

¹¹ 933 U.N.T.S. 3, GA Res. 2200 (XXI) 21 UN GAOR (No. 16) at 52, entered into force January 3, 1976.

*Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages*¹²:

Article 1:

1. No marriage shall be legally entered into without the full and free consent of both parties. . .

Article 2: States Parties to the present Convention shall take legislative action to specify a minimum age for marriage. No marriage shall be legally entered into by any person under this age. . .

Canada has **not** signed or ratified this convention.

Hague Convention on Celebration and Recognition of the Validity of Marriages:¹³

Article 11: A Contracting State may refuse to recognize the validity of a marriage only where, at the time of the marriage, under the law of that State: . . .

- (3) one of the spouses had not attained the minimum age required for marriage, nor had obtained the necessary dispensation; or
- (4) one of the spouses did not have the mental capacity to consent; or
- (5) one of the spouses did not freely consent to the marriage.

Canada has not signed or ratified this convention but is a member state to the Conference.

¹² Passed by the United Nations on November 7, 1962, 531 U.N.T.S. 231, entered into force December 9, 1964.

¹³ Passed on March 14, 1978 by the Hague Conference on Private International Law and entered into force on May 1, 1991.

The *Report of the Fourth World Conference on Women (Beijing)*¹⁴ speaks of the impact of what it calls “early marriage,” followed by pregnancy on girls’ access to education, women’s equality and freedom from violence and abuse. It also asserts that the human rights of women include the right to have control over and decide freely and responsibly on such issues as sexuality free from coercion and refers to the importance of equal relationships between women and men in related matters. Echoing similar sentiments, the Council of Europe also has a number of texts which speak to the issue of forced marriage and trafficking of women.

CANADIAN LAWS

Canada has no legislation that speaks specifically to the issue of forced marriage. However, there are laws – both civil and criminal – that prohibit activities often associated with forced marriage.

Civil Law

In Canada, responsibility for the governance of marriage falls to both the federal and provincial/territorial levels of government, as set out in the *Constitution Act*, sections 91 and 92. Divorce, on the other hand, falls entirely within the hands of the federal government and is legislated in the *Divorce Act*.

With respect to marriage, the federal government has exclusive jurisdiction over the capacity of people to marry and the provinces/territories have exclusive jurisdiction over the solemnization of marriage. The federal *Marriage (Prohibited Degrees) Act* sets out the rules about who can marry whom. Marriage is prohibited between people

14 UN Doc. A/CONF.177/20 (Beijing: 4-15 September 1995).

who are related by blood or adoption lineally (i.e. parents/children, grandparents/grandchildren) or as sister or brother.¹⁵

The issue of what relates to the capacity to marry as opposed to the solemnization is a matter of much disagreement, and court and legislative outcomes often seem to lack consistency. The same-sex marriage debate brought some of these issues to a head, with the courts and the government eventually determining that permitting same-sex marriage fell under federal jurisdiction because it was a matter of the capacity to marry. Some aspects of the solemnization of marriage (provincial jurisdiction) are straightforward. Provinces/territories have responsibility for determining who can perform marriages, what constitutes the form of a marriage, how marriage licences are to be issued and so on. However, less straightforward, and of some relevance to any discussion about forced marriage, is the matter of the age at which people can marry and the issue of parental consent, both of which fall within provincial jurisdiction. Nonetheless, many feel they are really matters of the capacity to marry and should fall within the federal government's authority.¹⁶

Provincial and Territorial Legislation Related to Marriage

Provincial and territorial marriage legislation is very similar, although there are some differences from region to region. All provincial/territorial legislation permits marriages to be performed by either clergy of recognized and registered religions or individuals registered with the province to perform civil marriage ceremonies. All require the parties to obtain a marriage licence and two adult witnesses must be present at the ceremony, whether religious or civil. The various pieces of legislation also speak to

15 This is much less restrictive than both historical common law and common understanding: in Canada, contrary to much public opinion, it is legal for cousins to marry one another, for an aunt to marry a niece or nephew, etc. Of course, while these practices may not violate the law of the country, they may be and are culturally and/or religiously unacceptable to many.

16 John Fisher, et al., *Division of Powers and Jurisdictional Issues Relating to Marriage* (Ottawa: Law Commission of Canada, 2000) 15–32.

such matters as the need for the parties to speak and understand the language in which the ceremony takes place and stipulate that a person cannot marry if they are lacking the mental capacity to do so because of intoxication.

Two provinces – British Columbia and Saskatchewan – have provisions permitting Doukhobors to use their own religious rites and ceremonies to perform marriages, as long as all other requirements set out in the law are met. One province – Nova Scotia – offers similar exemptions for Quakers and members of the Baha'i faith.

British Columbia and New Brunswick permit a third party to pay a fee and lodge what is called a "caveat" to stop a marriage licence from being issued. The caveat must include an explanation of why the person is objecting to the licence, and this stops one from being issued until there has been an investigation into the concern and the authority responsible for issuing licences is satisfied that it is appropriate to do so.

There are some differences among the provinces and territories about the age at which someone can consent to marry. The age of consent is either 18 or 19, with marriages generally permitted where the parties are as young as 16, if they have the written permission of both sets of parents. There are exceptions to this requirement where it is not possible or reasonable to obtain that written permission. Generally, people under 16 years of age who wish to marry must apply to the court for permission. The court must examine the circumstances (for example, pregnancy) in making its decision about whether or not to permit the marriage.¹⁷

Where a marriage has failed to meet the substantive legal requirements (either party did not have the capacity to enter into a marriage, there was fraud or either party was not legally able to consent), the marriage may be void or voidable. The party

¹⁷ For instance, section 29 of British Columbia's *Marriage Act* states the court can only permit marriage where either party is under the age of 16 where the marriage will be "expedient and in the interests of the parties."

wishing to have the marriage made void must seek an annulment from the court. We will revisit this topic in the section on consent, below.

Criminal Law

Forced marriage is not prohibited by Canadian criminal law. However, the *Criminal Code* does contain a number of provisions that could address activities related to forced marriage. For example:

- Kidnapping and forcible confinement (section 279)
- Parental abduction (section 282)
- Uttering threats (section 264)
- Assault, including assault with a weapon and aggravated assault (sections 265, 267, 268)
- Sexual interference (section 151)
- Invitation to sexual touching (section 152)
- Sexual exploitation (section 153)
- Procurement for the purpose of sexual activity (section 212)

Of course, it is the circumstances that will determine which, if any, of these might be the appropriate charge to lay in a given situation.¹⁸

¹⁸ For example, in November 2012, the parents of a 21-year-old woman in Edmonton were charged with assault with a weapon and forcible confinement for their attempts to force their daughter to take part in a marriage outside Canada, against her wishes.

CONSENT, COERCION AND DURESS**Consent**

There are several elements to consent. Generally, to establish consent, a person must have agreed to something:

- Voluntarily
- With a clear understanding and appreciation of the facts
- Knowing the implications and possible consequences of the action to which they are consenting

In other words, consent does not exist if there is an absence of any of the above factors.

Coercion

Coercion is when one person imposes his or her will on another by the use of physical or psychological force or threats of such force.¹⁹

Duress

Duress is when one person puts unlawful pressure on someone else to do something that person would not ordinarily do. In Canada, it can be used as a legal defence by someone charged with a criminal offence. For example, if a person is charged with trafficking

¹⁹ For an important discussion of coercion in domestic violence, see: Evan Stark, Coercive Control: How Men Entrap Women in Personal Life (Oxford: Oxford University Press, 2007). As Stark establishes:

Coercive control . . . is designed to stifle and co-opt women's gains; foreclose negotiation over the organization, extent and substance of women's activities in and around the home; obstruct their access to support; close the spaces in which they can reflect critically on their lives; and reimpose obsolete forms of dependence and personal service by micromanaging the enactment of stereotypic gender roles through "sexism with a vengeance" (194).

Stark also argues that "It is an offense to liberty that prevents women from freely developing their personhood, utilizing their capacities, or practicing citizenship, consequences they experience as *entrapment*" (4).

in illegal drugs, she could argue that she should not be found guilty because she only committed the illegal act because someone else (the drug dealer) had threatened to kill her child if she did not. She would have to convince the court that her fear was both real and reasonable.

Marriage and Consent

In Canada, both parties to a marriage must be legally capable of consenting and must have consented. There is a legal presumption that parties to a marriage are consenting, so if a party wishes to claim a lack of consent, the onus lies with her to prove its absence. The age criteria set out by the provinces and noted above provide the minimum age at which a person can legally consent to marry. In other words, if a party is younger than the minimum age prescribed in a province, then they cannot legally consent to marry. Consent may also be absent if either party to the marriage does not have the capacity to consent. Usually such a lack of capacity is due to an intellectual disability.

The marriage may be voidable where there is a lack of consent and where the party lacking consent wishes to void it. Generally, where either party entered into the marriage under duress or fear (or where either party lacked the capacity to consent) the marriage may be void and able to be ended without a divorce. In this case, it is said the person did not enter into the contract of marriage of their own free will (i.e. with consent).

A person wishing to annul their marriage has to apply to the court. If successful, it is as though the marriage never happened, which is quite different from a divorce, which ends a marriage but does not deny its past existence. Most often, people seeking to annul a marriage argue duress, but this is not an easy test to meet. For instance, mere parental pressure does not always meet the test, meaning that consent can be valid even

if it is reluctant or resentful. “What matters is whether the will of the individual has been overborne by the pressure.”²⁰

A British case from 1967 has established that three factors must be present to establish duress in the context of annulling a marriage:

- The person must be sufficiently afraid to remove the element of voluntary consent to the marriage
- The fear must be reasonable in the circumstances
- The fear must arise from external circumstances for which the party is not himself or herself responsible²¹

The courts in Great Britain have been satisfied that this test has been met when, for example, the woman was removed to another country and held with no possibility of escape and then married. It has also been accepted when a young woman has complete financial dependency on her parents who have threatened she would be kicked out of her home and cut off from her family. In one case, the court accepted as part of the woman’s evidence, a videotape of the wedding which clearly showed her unhappiness and reluctance to be getting married.

There is very little case law in Canada on this issue, and what there is follows the test set out above from the *Buckland* case in England. In Canada, the courts have found that:

- The duress must be of such a nature that the person’s powers of choice were so affected that there was no consent. Mere allegations of fear are not enough²²

²⁰ Dostrovsky, 2.

²¹ *Buckland v Buckland* [1967] 2 All E.R. 300.

²² *Parihar v Bhatti* (1980) 17 R.F.L. (2d) 289.

- Duress can be established through non-physical pressure if it was such that the person's mind was so overcome by oppression that there was an absence of free choice²³

Age of Consent for Sexual Activity

Until 2008, Canada had one of the youngest ages for consent to sexual activity in the world – 14 years of age. However, the age of consent has since been raised to 16. With some exceptions noted below, no one can consent to sexual activity until they are 16 years old. Anyone who has sexual contact with a person under the age of 16 could be charged with one of a number of criminal offences, including: sexual interference, invitation to sexual touching, sexual exploitation and lastly “procuring,” which is the offence when parents make their children available for sexual activity to an adult.

The exceptions to 16 as the age of consent are:

- A person who is 14 or 15 years old can consent to sexual activity with a person who is no more than 5 years older, as long as that person is not in a position of trust, authority or dependency
- A person who is 12 or 13 years old can consent to sexual activity with a person who is no more than 2 years older, as long as that person is not in a position of trust, authority or dependency
- A young person must be at least 18 years of age to enter into sexual activity if that activity would “exploit” the person. Such activities include prostitution and pornography and include any sexual activities with a person in a position of trust, authority or dependency towards the young person

It should be noted that these ages of consent to sexual activity are for the purpose of determining whether or not a criminal sexual offence may have been committed. They

23 S.(A.) v S.(A.) (1998) 15 R.F.L. (3d) 443.

are not connected to the issue of early marriage, where it is the provincial/territorial legislation setting out the minimum age to marry that is relevant.

EXTENT OF FORCED MARRIAGE IN CANADA

As noted in a 2007 report of the U.N. Special Rapporteur:

The often criminal and hidden nature of forced marriages, combined with the fact that most forced marriages take place in closed families, groups, communities or societies, makes it particularly difficult to compile reliable statistics on how many women and girls are subjected to forced marriages of any kind every year.²⁴

Within Canada, the South Asian Legal Clinic of Ontario (SALCO) has tackled this challenge by conducting research which has provided some important statistical information about forced marriage in Ontario.²⁵ The Forced/Non-Consensual Marriage Survey was developed by the Forced Marriage Project at the SALCO and circulated widely through the Network of Agencies Against Forced Marriage (NAAFM), shelters, legal clinics, settlements agencies, youth organizations and other community agencies.

The insightful survey establishes that since 2010 thirty agencies have reported working with 219 forced marriage (FM) clients, while the Department of Foreign Affairs and International Trade reports assisting 24 people with FM situations.²⁶ The Department of Foreign Affairs and International Trade responded to the survey

24 Sigma Huda, "2007 UN Report of the Special Rapporteur on the Human Rights Aspects of the Victims of Trafficking in Persons, Especially Women and Children," 24 Jan. 2007, *The United Nations*. 15 Feb. 2013 <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/104/10/PDF/G0710410.pdf?OpenElement>>.

25 Maryum Anis, et al., "Who/If/When to Marry: The Incidence of Forced Marriage in Ontario," Feb 2012, *South Asian Legal Clinic of Ontario*.
The survey is yet to be published. The information for this essay was gathered through contact with SALCO and its representatives.

26 Ibid, 9.
This is accepted to be a low figure, as many organizations do not formally track FM cases and a lack of understanding of the issue means FM cases are not always identified as such.

indicating they had provided assistance to 24 people in FM situations.²⁷ The survey also reports that women make up the overwhelming majority of people affected by FM at 92%. This supports the categorization of forced marriage as a kind of violence against women.²⁸ As SALCO establishes:

Contextual understanding of patriarchy is necessary to understand FM. The survey results provide clear evidence that FM, as is the case with all forms of domestic violence, is an expression of patriarchy. Gender, ethnicity and culture also increase women's vulnerability to subjection to patriarchal control. The fact that FM is mostly imposed on women and is not bound by any particular geographic region, culture or religion speaks to the universality of culture of violence and patriarchy.²⁹

The majority of people forced into marriage (31%) were between 19 and 24 years of age, closely followed by people between 16 and 18 and those from 25 – 34 (both at 25%). Yet as the survey data confirmed, forced marriage is not restricted to any particular culture, religion or geographic region.³⁰

Most individuals facing forced marriage reported that they had more than one person pressuring them into the marriage. Fathers were the primary source of pressure 77% of the time, while mothers were 74% of the time with siblings acting as a source of pressure in 30% of the cases. The “pressure” to marry always involves violence of some kind. According to the results of the SALCO survey, 75% of respondents reported they had experienced mental or social pressure as violence. This pressure generally includes some kind of coercion – direct or indirect – such as shaming the person to preserve the family’s reputation, stressing the negative impact of the person’s refusal to enter into the marriage on the health of a parent, endangering a sibling’s future changes of marriage, threats of self-harm by a family member or creating a sense of fear that the person would

²⁷ Ibid, 10.

²⁸ Ibid.

²⁹ Ibid, 24.

³⁰ Ibid, 13.

lose their immigration status.³¹ Other kinds of pressures exerted included: threats of harm, financial control or abuse, sexual or physical violence and lastly stalking. Almost one-quarter of the respondents in the SALCO survey indicated that they had been imprisoned by their family, and 14% reported they had been abducted in order to ensure they entered the marriage.³²

The reasons given by family members in support of forced marriage are many. Some parents see marriage as, “Protecting their child by controlling unwanted sexual interest or behaviour, preventing “unsuitable” relationships, protecting religious or cultural ideals, strengthening family links, or honouring long-standing family commitments.”³³

Other reasons include:

- Pressure from the extended family
- Protecting perceived cultural and religious ideals
- Maintenance of social cohesion, stability and class
- Maintenance of links to the home country
- Maintenance of a culture’s survival in new country
- A means to ensure that land and money stay within the family
- Ensuring children are protected after the parents die
- Controlling unwanted behaviour such as alcohol and drug use and/or Westernization
- To assist with immigration³⁴

³¹ Ibid, 22.

³² Ibid, 23.

³³ Dostrovsky, 1.

³⁴ Some of these reasons were drawn from public education materials developed by the Barbra Schlifer Commemorative Clinic and the South Asian Legal Clinic in Toronto, both of which have projects focused on forced marriage.

A 2007 UN questionnaire³⁵ identified various reasons for forced marriage. Most frequently identified by responding countries were:

- As a way to gain/maintain control over daughters' lives
- To settle a debt
- To secure a dowry payment for the family
- For immigration purposes

A primary reason given for forcing very young girls to marry within the Fundamentalist Church of Jesus Christ of Latter-Day Saints (FLDS) community in Bountiful, British Columbia is that this is the way both men and women can attain the highest possible position after death, "the highest degree in the celestial kingdom" as it was put in the quotation that opened this paper. The language used by FLDS-ers to describe marriages of girls as young as 13 and 14 to men at times older than their grandfathers is "assigned" or "placed." As Brahman establishes in her analysis of the Bountiful community:

Jeffs [one of the leaders of the Bountiful community] has arranged and forced hundreds of marriages, some involving girls as young as fourteen and men as old as or older than their fathers and grandfathers. Many of the brides have been transported across state borders as well as international borders with Canada and Mexico.³⁶

What is even more troubling is that even when a father knew the man his daughter was assigned to marry was abusive, he went along with the plan. As Bramham writes:

[Charles] Quinton was a man that Dalmon Oler would not have given a dog to. . . . But it didn't matter. When the prophet commanded, Older

³⁵ Huda.

³⁶ Daphne Bramham, *The Secret Lives of Saints: Child Brides and Lost Boys in Canada's Polygamous Mormon Sect*. (Toronto: Random House Canada, 2008) 2.

handed over his oldest daughter [Debbie] in accordance with the prophet's will.³⁷

Warning Signs

Forced marriage is not well understood by Canadians generally, and by service providers, including child protection authorities, in particular. As a result, warning signs that might have led to a preventative intervention are often missed. There is no perfect list of indicators that are present in every situation in which a young person is at risk of being forced into an unwanted marriage, but there are some common red flags:

- A planned marriage where one person is significantly younger than the other
- Fearfulness about a family trip
- Isolation of a young person prior to such a trip
- A marriage by means of telephone or internet
- Missed appointments
- Depression
- Eating disorders
- Self-harm
- A drop in academic performance

Young women from poor families or who lack employable skills or education may be particularly vulnerable to being forced into a marriage against their will. As recommended by SACLO in its report, development of an appropriate risk assessment tool for service providers would be very helpful in identifying forced marriage cases early on, when prevention is still possible.³⁸

³⁷ Ibid, 192.

Note that at the time her father forced her into this marriage, Debbie was 18 years old. This was her second marriage: she had been married at the age of 15 to a man much older than she who died.

³⁸ Anis, et al., 33.

IMPLICATIONS FOR WOMEN

While both women and men can be forced into marriages not of their own choosing, and the implications for both are serious, the phenomenon is much more commonly one experienced by women. For this reason, and because some of the consequences for women are unique and extremely serious, our comments in this section focus on women. Numerous reports and research papers have accumulated a long list of the impacts on women and children of forced marriage. The discussion below draws on that work and adds our own observations.

First, and perhaps foremost, women's dignity and equality can be seriously damaged when forced to marry someone against their wishes. The intimacy of marriage and the family that is constructed from that marriage, whether or not it includes children, can only be properly enjoyed when both parties have autonomy of choice as to whether, when and who to marry. A woman forced into a marriage enters from a position of inequality and with a lack of dignity from which it may be difficult if not impossible to recover.

This places her at risk of further harm within that marriage. All sexual contact may be rape, because of the lack of consent. Violence may be perpetrated by her spouse and his extended family, because she is perceived to have offended the family by not entering freely into the marriage. With forced sex may come unwanted pregnancy followed by unwanted child-bearing.

In addition to this, when women are forced to marry at a young age, this may bring an end to their education, thus leaving them dependent on their husband for their financial well-being. This economic dependency, in turn, makes it difficult for women to leave the marriage, should they wish to consider this as a possible option. If the wife has limited education and skills, she may be forced to take on all the household chores

since she is not able to work outside the home. Or, it may be that the husband does not permit her to work outside the home. Indeed, forced marriages often demonstrate rigid sex stereotyping of roles, rights and responsibilities of the two spouses.

When children are exposed to all of this – an abusive, unequal relationship in which their mother is subordinate and may not want to be there, or where their father controls and dominates – it can have a significant impact on them. They come to see violence and abuse as acceptable, it has an impact on their self-esteem and their academic achievements and they may experience trauma associated with witnessing the victimization of their mothers. Their loyalties are inevitably torn between their parents, both of whom they love. Some will blame their mother and some their father, while some will blame themselves for the family's problems. Why, then, do women remain in a forced marriage? There are many reasons:³⁹

1. Running away may be the only way for a woman to escape, but it creates a whole new set of challenges. She may have to leave her children behind.
2. She may need to leave her community because to remain makes it likely she would be returned to her abuser by other members of the community.
3. It is very difficult for women with limited or no access to financial resources to think about how to leave and manage their lives independently, and finding somewhere safe to go will be a difficult feat.
4. Women fear and may face continued and even greater abuse if they leave their partner, coupled with ostracization by their community. This is especially the case for women who do not speak English and who do not have contacts

³⁹ Please see our paper on violence against women within the family for a full discussion of reasons women may remain in an abusive relationship. The discussion in this paper is limited to specific issues for women in forced marriages.

outside their immediate culture community, and will feel very isolated if they leave.⁴⁰

5. Women may not know they can leave. This can be because of a lack of knowledge about Canadian laws respecting marriage and divorce or can be because of religious or cultural beliefs that tell women marriage is forever and they will suffer serious spiritual consequences if they fail to honour their marriage vows.
6. If the woman is a newcomer to Canada who is in the midst of an immigration process or whose immigration status is dependent on her husband, she will be reluctant to leave him for fear of being deported, possibly without her children.
7. Many women feel shame and guilt if they are unable to be happy in their marriage, especially if their own family tries to convince them it is their responsibility to make their marriage work. This can be a powerful disincentive to leaving.
8. Some women stay because they put the interests and well-being of their family and community ahead of their personal well-being. These values are often culturally-rooted, and can be very difficult to overcome.
9. Lastly, some women remain in forced marriages, despite their unhappiness and the abuse they receive, because there are no appropriate services available to them.⁴¹

40 Even where language is not a barrier, women can find leaving means they are cutting off all contact with everyone they know including, in some circumstances, members of their own family and their children. This has been the experience of many of the women who have fled Bountiful and other FLDS communities in North America.

41 Again, we reference our paper on violence against women within the family for a fulsome discussion about the gaps in services for women from minority communities. Challenges include language barriers and a lack of cultural competency, among others.

Materials developed by the Forced Marriage Unit in the UK (to be discussed in greater depth below) include a chart of possible warning signs in the areas of education, employment, health, family history and police involvement.⁴² Of course, most of these signs can also be red flags for more general family abuse and dysfunction, so it is important that professionals not leap to the wrong conclusion, but being aware of the reality of forced marriage is important for anyone working in a professional capacity with children and young adults in particular.

POSSIBLE SOLUTIONS

The issue of forced marriage is very different from country to country, so naturally solutions developed in different parts of the world vary considerably. While it goes on more or less openly in some parts of the world, including South and East Asia and Africa, it is a hidden and sometimes illegal practice in most countries. The UN Special Rapporteur on Contemporary Forms of Slavery, Gulnara Shahinian, has spoken against forced marriage and has recommended that countries, “Adopt specific provisions to criminalize servitude in all its forms and manifestations, including bonded labour, child and forced marriages and other so-called ‘cultural’ practices.”⁴³ In a similar manner, UNWomen has called for the criminalization of forced and child marriage.⁴⁴

42 Foreign and Commonwealth Office, et al., “The Right to Choose: Multi-agency Statutory Guidance for Dealing with Forced Marriage.” 2008, *Forced Marriage Network*, 6 Feb. 2013 <http://www.forcedmarriage.net/media/images/righttochoose_118.pdf> 15.

43 Gulnara Shahinian, “Report of the Special Rapporteur on Contemporary Forms of Slavery, Including its Causes and Consequences.” 18 Jun. 2010, *Office of the High Commissioner for Human Rights*, 12 Feb. 2013 <http://www.ohchr.org/Documents/Issues/Slavery/SR/A_HRC.15.20_en.pdf> 19-20.

44 UN Women, “Supplement to the Handbook for Legislation on Violence Against Women: “Harmful” Practices Against Women.” 2012, *UNWomen*, 11 Feb. 2013 <<http://www.unwomen.org/wp-content/uploads/2012/12/UNW-Legislation-Supplement-EN.pdf>>.

European Responses

According to a recent report from the UK Home Office,⁴⁵ Austria, Belgium, Cyprus and Germany have created criminal offences specific to forced marriage. Many other European countries prosecute forced marriage under related criminal statutes such as intimidation, threats and forcible confinement. A few countries, including the Netherlands, Sweden and the UK are considering or are in the process of creating a discrete criminal offence of forced marriage.

Those opposed to the criminalization of forced marriage are concerned that this may push the practice even further underground and increase the risk for victims. However, there is some evidence that this has not been the experience in Denmark, with increased numbers of victims coming forward since forced marriage was criminalized in that country.

Accordingly, Denmark has tightened its immigration policy as a response to forced marriage. Now, foreign spouses must be at least 24 years of age (formerly, the age requirement was 18) to immigrate to Denmark and there must be a real and substantial connection between the spouse and Denmark. The country also has an action plan that is focused on education for young people. In Austria, police and prosecutors are required to investigate suspected forced marriages even when the victim is too afraid to come forward or to testify. Also adopting policy change is France, where the minimum age for women to marry has been raised from 15 to 18, which makes it now the same as it is for men. While there is no criminal prohibition on forced marriage, the civil law of France has been amended to prevent forced marriage and to provide protections to those affected by it.

⁴⁵ UK Home Office. "Forced Marriage: A Consultation." Jun 2012, *The UK Government*, 11 Feb. 2013 <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/157837/forced-marriage-response.pdf> 20.

Norway has also introduced government action to tackle the challenge, first passing an Action Plan to address forced marriage in 1998, which was focused primarily on children. A revised plan was published in 2002/2003 and, in 2003, the government criminalized forced marriage. Norway was the first European country to prohibit family reunification through marriage unless the wife had the right to seek a divorce.

Lastly, the United Kingdom has also been very active on the issue of forced marriage. The Parliament of Scotland is considering criminal legislation to address forced marriage. More recently, in June 2012, Prime Minister David Cameron announced that the UK government would develop amendments to the criminal law to make forced marriage a criminal offence. It is anticipated that this legislation will be introduced in 2013/14.⁴⁶ This announcement followed a public consultation in which 54% of respondents were in favour of creating a specific offence and 37% were opposed. The decision to criminalize forced marriage is no doubt also a reflection of the seriousness of the issue in the UK Research carried out by the Department for Children, Schools and Families estimated that the number of reported cases of forced marriage in England was between 5,000 and 8,000.⁴⁷

In 2007, the UK government passed the *Forced Marriage (Civil Protection) Act*, which provides a regime of civil protection orders for people who are being forced into marriage or who are already in one. A forced marriage protection order is a legal document issued by a judge that is designed to protect someone according to their individual circumstances.⁴⁸ The person seeking the order completes an application form in which she sets out the reasons she needs it. If circumstances warrant (that is, if the threat is imminent) an emergency order can be issued. Violation of a protection

46 Charlotte Proudman, "Forced Marriage and the Criminal Law," 13 Sept. 2012, *Family Law Week*, 4 Feb. 2013 <<http://www.familylawweek.co.uk/site.aspx?i=ed100479>>.

47 Ibid.

48 They are similar to family court restraining or protection orders in Canada – orders that are commonly used in cases of violence against women within the family.

order can lead to a criminal charge and, if the accused is found guilty, can result in up to 2 years imprisonment. The protection order does not end the marriage, but other processes may be available in some circumstances to annul the marriage. Plain language information about how to apply for a forced marriage protection order is available at agencies throughout the country.

The Forced Marriage Unit (FMU) is a joint initiative with the Home Office with a mandate to raise awareness and provide expert advice to professionals through public speaking engagements, publications, training and the development of multi-agency guidelines for police, child protection, adult protective services, housing and education professionals. It is an extremely busy office: in 2011, it gave advice or support related to possible forced marriage in 1,468 instances. The victims were women in 78 percent of the cases. The FMU has also developed multi-agency statutory guidance for dealing with forced marriage because the legislation mandates certain authorities to “have regard to it in the exercise of [their] functions.”⁴⁹

The first document sets out what actions chief executives, directors and senior managers are expected to take. This includes the development of policies and procedures, roles and responsibilities, lines of accountability, the use of a victim-centred approach, inter-agency collaboration and information sharing, confidentiality, staff training, monitoring and evaluation, recordkeeping and risk assessment.⁵⁰ There is also a chapter identifying specific issues for agencies providing services to children and young people and another for those providing services to adults with support needs.

The companion document is aimed at frontline practitioners working in health, education, police, children’s social care, adult social care and local housing

49 Foreign and Commonwealth Office, et al., 6.

50 It is interesting to note that the guidelines speak to the danger of family counselling, mediation, arbitration and reconciliation in these cases (19).

authorities.⁵¹ It covers how to understand the issues related to forced marriage, how to keep a victim safe, actions to be taken in all cases, and then sets out specific guidelines for different professions.

The FMU has also developed a Safer Schools Partnership that includes awareness training for teachers as well as awareness days for students and peer to peer mentoring. Other resources prepared by the FMU include a guidebook for Members of Parliament,⁵² a workbook for survivors,⁵³ and information specifically for people who are planning to travel abroad, including contact information for British consulates and embassies in other parts of the world.

American Response

In the United States, forced marriage is considered a form of gender-based persecution and can be the basis for a claim for asylum. There is no discrete criminal provision against forced marriage in the United States although, as in Canada and many European countries, many activities associated with forced marriage are criminalized.

According to a study conducted by the Tahirih Justice Center, there have been as many as 3,000 cases of forced marriage in the past two years.⁵⁴ Only 16% of the agencies responding to the survey indicated they were equipped to respond to clients dealing with forced marriage, and fewer than 10% had a working definition of forced marriage.

⁵¹ Ibid.

⁵² This resource includes information for MPs about what forced marriage is, how common it is, what the legislation is, what the MP/constituency office can do and international and domestic contact and referral information (Foreign and Commonwealth Office, 2009).

⁵³ The workbook includes information about what someone can do who is already in a forced marriage in the UK or out of country, safety planning, getting legal help, establishing a new identity, finding somewhere to live, getting established financially, going back to school and finding a job. It also contains a glossary, referral information and suggested readings.

⁵⁴ The survey was based on data collected from more than 500 responses, across 47 states. Tahirih Justice Center, "Forced Marriage in Immigrant Communities in the United States: 2011 National Survey Results." Sep 2011, *The Tahirih Justice Centre*, Feb 13. 2013 <<http://www.tahirih.org/site/wp-content/uploads/2011/09/REPORT-Tahirih-Survey-on-Forced-Marriage-in-Immigrant-Communities-in-the-United-States-September-2011.pdf>>.

The study also found that 46% of the responding agencies said their clients in forced marriages had been subjected to actual physical violence.

Canadian Response to Date

The Report of the Committee on Polygamous Issues established in British Columbia in 1992 identified forced marriage as the biggest problem in the Bountiful community and as being of greater concern than polygamy.⁵⁵ The same report questioned whether children raised in that community could ever be capable of giving informed consent because of the religious beliefs in which they are inculcated from a very young age.⁵⁶

There are no criminal prohibitions specific to forced marriage, although as noted earlier in this paper, there are a number of provisions in the *Criminal Code* that address activities related to forced marriage. At this time, there is no indication that the federal government intends to move in the direction of criminalizing forced marriage as a discrete offence. We agree with this approach. Criminalization of forced marriage may only serve to drive the practice further underground and isolate even more communities and their most vulnerable members in which it is practiced.

Various government departments in Canada have tackled the issue in their own manner. Citizenship and Immigration Canada's guidebook for new Canadians states that, "Parents are prohibited from forcing their daughters or sons into marriages against their will."⁵⁷ The Department of Foreign Affairs provides information about overseas travel and marriage, including forced marriage on its website⁵⁸ and has created a forced marriage working group that is in the process of developing policy and standard

55 Bramham, 234.

56 Ibid, 235.

It is worth noting that the British Columbia was so unhappy with the direction taken by the report that it never released it.

57 Citizenship and Immigration Canada. "Welcome to Canada: What You Should Know." 2013, *Citizenship and Immigration Canada*, 12 Feb. 2013 <<http://www.cic.gc.ca/english/pdf/pub/welcome.pdf>> 36.

58 Government of Canada, 2013.

procedures for consular staff when they must deal with a forced marriage situation abroad.⁵⁹ Finally, the Department of Justice has created a working group on forced marriage and has held a number of sector-specific workshops.

Outside of the government, there are also some valuable resources. Useful information is available on a website funded by the Alberta Law Foundation and developed by Changing Together: A Centre for Immigrant Women and the Legal Resource Centre of Alberta. General in its ideas, the resource is aimed at “foreign brides” and does not appear to have been updated since 2007.⁶⁰ A British Columbia family law lawyer also maintains a website that provides general information about family law, including some discussion about consent and voidable marriages. However, it is not material that would be easily accessible by someone who did not know where to look.⁶¹

The most notable work to date being done on forced marriage in Canada is that led by SALCO. The organization mobilized the first North American forced marriage symposium in 2008, leading to the development of a service providers’ tool kit⁶² and a website: www.forcedmarriages.ca. SALCO also provides training for service providers and government about what forced marriage is, information for people planning to travel outside Canada, information and tools, legal options for clients, safety planning and referrals.⁶³

59 Anis, et al., 7.

60 For more information see: www.lawforforeignbrides.ca.

61 For more information see: www.bcfamilylawresource.ca.

62 The tool kit, Canada’s first, is called “Forced/Non-Consensual Marriages: A Toolkit for Service Providers.”

63 Suggestions include: helping the person to open a bank account in their own name, keeping documents away from the family home, getting legal advice, putting together an emergency bag to be left with a friend, getting a phone card and organizing emergency housing. Suggestions are also made for what to do if a person is being taken overseas: leaving the destination address and telephone number as well as passport and flight information with someone trusted who is in Canada, completing the Foreign Affairs “Registration Form for Canadians Residing Abroad,” taking information about the Canadian embassy/consulate in their destination country, having a secret cell phone and money and carrying contact information for the Government of Canada Emergency Operations Centre.

Growing out of the conference and SALCO's ongoing work to unify stakeholders working on this issue, the Network of Agencies Against Forced Marriage (NAAFM) was established in 2010. The Network has approximately 70 members and meets regularly to discuss and coordinate efforts across the country to address forced marriage. SALCO held a second conference in 2012, bringing together service providers and stakeholders to share the resources available in Ontario and to discuss the gaps in policy and service. This led to the research survey cited in this paper, which provides the first substantive data about the extent of forced marriage in Canada.

RECOMMENDATIONS FOR MOVING AHEAD IN CANADA

A number of principles and issues must be considered in any discussion about moving forward in Canada to address forced marriage. Family law, including responses to forced marriage, must remain in the public sphere. Unfortunately, family law is almost universally still seen as belonging in the private realm, as somehow exempt from legal governance and where cultural and religious customs and practices are not challenged by state laws. Instead, "[F]amily law is often 'relegated' to the private or communal sphere to be governed by religion or custom."⁶⁴

As the National Association of Women and the Law stated in its paper on the use of religious laws in the arbitration of family law disputes, "... in the intimate, "private" and "personal" space of the family, women are all too often subjected to discrimination, exploitation and abuse by men."⁶⁵ It is critical that responses to forced marriage avoid "othering;" setting ourselves apart from those who engage in practices with which we do not agree. As noted by Leti Volpp:

64 Martha Bailey, et al., "Expanding Recognition of Foreign Polygamous Marriages: Policy Implications in Canada," in Polygamy in Canada: Legal and Social Implications for Women and Children, (Ottawa: Status of Women Canada, 2005) 67.

65 Natasha Bakht, "Arbitration, Religion and Family Law: Private Justice on the Backs of Women," Mar. 2005, *National Association of Women and the Law*, 12 Feb. 2013 <http://www.nawl.ca/ns/en/documents/Pub_Report_ReligArb05_en.rtf> 60.

The condemnatory reaction, which distances the observer from the practice and defines the observer as the antithesis of that practice, relies upon and perpetuates a failure to see subordinating practices in our culture when, for example, young girls are forced to engage in non-consensual sex or are battered in the process of ‘becoming a woman.’⁶⁶

In order to tackle the obstacles associated with forced marriage, we must also avoid cultural relativism:

Accommodating cultural practices that differ from the practices in mainstream society may seem the fair thing for a modern, pluralistic, democratic nation to do, all in the name of tolerance and respect for cultural diversity. However, the accommodation of all practices of a minority cultural or religious group may in some cases create a situation where the vulnerable members of that group are subjected to harm . . . The reality of culture-based gender discrimination is such that the most insidious forms of it are practised in that private sphere of life where historically the highest bar was raised against remedial state action.⁶⁷

It is important to remember the power of the law, which can act as a weapon for maintaining social oppression or a tool to work for social justice:

When the law operates as an instrument of exclusion rather than inclusion because it disregards or discounts the knowledge and experience of the marginalised, some ask whether it is even appropriate to press for more of the same. . . . Nevertheless, the significance and power of law cannot be dismissed.⁶⁸

More notably, it is also important to remember when the lack of a legal response has served to reinforce a group’s position of oppression:

66 Leti Volpp, “Blaming Culture or Bad Behavior,” *Yale Journal of Law and the Humanities*, 12 (2000): 115.

67 Bailey, 67.

68 International Council on Human Rights Policy. “When Legal Worlds Overlap: Human Rights, State and Non-State Law” 2009, *International Council on Human Rights Policy*, 6 Feb. 2013 <http://www.ichrp.org/files/reports/50/135_report_en.pdf> 18.

The different standards applied to women's human rights and those of other groups needing protection is also reflected in national legislation. . . Even where the question of women's rights to equality in the family have been raised, opportunities to link violence against women (VAW) to discriminatory family laws have been missed.⁶⁹

What, then, should our next steps be?

1. We should build on the recommendations made by SALCO in its report. These recommendations focus on education and training, risk assessment, health care, housing and policy reform.⁷⁰
2. Governments at the provincial, territorial and federal levels must become engaged in supporting the excellent work already being done with inadequate resources by community organizations such as those described above.
3. Further research must be undertaken, building on that done by SALCO, to determine the extent of the issue of forced marriage in Canada. How often are girls or young women being forced into marriages to which they do not consent? How often are they being removed from Canada to participate in such marriages? How often is this an issue for boys and young men?
4. A national working group, with the authority to make recommendations to all levels of government should be established to review in detail steps taken in other countries, in particular, the work of the Forced Marriage Unit in the UK, and to determine which strategies are appropriate for Canada. The national working group should also consider:

69 Ibid, 65 – 66.

70 Anis, et al., 31 – 38.

- Whether the minimum age to marry should be increased
 - Whether forced marriage should become a discrete criminal offence
5. The work of SALCO should receive broader awareness and use so that professionals across the country and across sectors have access to tools and resources to assist them.
 6. Professional associations of teachers, child protection authorities, health care providers and others should commit to educating their members about the issue of forced marriage and about their role in addressing it.
 7. Community VAW/child protection protocols and collaborative agreements should be expanded to include a response to forced marriage involving children and young people.
 8. Violence against women shelters should be permitted to allow under-age girls being threatened with forced marriage to use their services, including residential services.
 9. Violence against women and community services should increase their cultural competency and understanding of the issue of forced marriage in order to be better able to support girls, young women and families dealing with this issue.

CONCLUSION

Forced marriage is a reality in Canada. Some countries have detailed a strategy for handling forced marriage. There is much to be learned from these experiences and much that can be applied to the Canadian context. There is also work being done in Canada that deserves greater recognition and more support. It is time for all levels of government and community agencies to work together to support victims of forced marriage and to eradicate the impunity still offered to this serious form of violence against women.

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VIOLENCE AGAINST WOMEN | **FORCED MARRIAGE**

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FEMALE GENITAL CUTTING/MUTILATION

Even though cultural practices may appear senseless or destructive from the standpoint of others, they have meaning and fulfil a function for those who practise them. However, culture is not static; it is in constant flux, adapting and reforming. People will change their behaviour when they understand the hazards and indignity of harmful practices and when they realize it is possible to give up harmful practices without giving up meaningful aspects of their culture.¹

¹ World Health Organization, et al., Female Genital Mutilation: A Joint WHO, UNICEF, UNFPA Statement (Geneva: World Health Organization, 1997) 1.

EXECUTIVE SUMMARY

Female genital cutting/mutilation is one of the many issues where women's equality rights and traditional cultural practices intersect. In our final paper, we examine this issue within the Canadian context, while framing it in a wider international perspective. We begin with a discussion of the appropriate language to use – language that expresses the seriousness of the issue and our strong opposition to this practice while respecting the opinions of many of the women who have experienced the procedure. We then survey the different terms by various organizations – international and domestic – working on the issue and conclude that the term “female genital cutting/mutilation (FGC/M)” is the most appropriate. We provide a brief description of what FGC/M is, noting that there are four types, all of which have significant impacts on women's health (physical and psychological) including their sexuality and reproduction.

According to Amnesty International, 135 million girls and women around the world have undergone FGC/M, and 2 million girls a year are at risk of undergoing the procedure. Most extensive in Africa and in some countries in the Middle East, the impact of FGC/M is now felt around the world due to increased global mobility.

There is little data about FGC/M in Canada. Canadian health care providers most often come into contact with women who have had the procedure in their country of origin and are then seeking health care (related or not to the FGC/M) after immigrating to Canada. There is some limited data to indicate that girls and young women are being removed from Canada to undergo FGC/M, however it is difficult to assess the full extent of the practice. There is also some anecdotal evidence that some Canadian doctors are approached by women seeking to be re-infibulated after childbirth.

We also explore the similarities and differences between FGC/M and cosmetic genital surgery, which is experiencing an increase in popularity in the west. There are

considerable differences in the extent and seriousness of the two practices; however, both are rooted in societal impositions on women's bodies.

There are considerable international responses to FGC/M, many led by various United Nations organizations, including the World Health Organization. The paper surveys the work done by these organizations, as well as the positions set out in various UN treaties and conventions and actions taken by individual countries.

While the early and mid-1990s saw a flurry of activity directed at FGC/M in Canada, little has happened since. Performing FGC/M is a criminal offence in Canada, as set out in the aggravated assault provisions of the *Criminal Code*, which also prohibits the removal of children from Canada to undergo the procedure. Some human rights commissions have developed policies against FGC/M, as have a number of medical associations, including the Society of Obstetricians and Gynecologists of Canada and the Colleges of Physicians and Surgeons of British Columbia, Ontario and Nova Scotia. Child protection legislation and regulations do not provide any explicit references to FGC/M as a form of child abuse, although it appears it is considered to be one.

We conclude the paper with recommendations for moving forward to address FGC/M in Canada. A number of our recommendations build on the work of the Sexuality Education Resource Centre of Manitoba's *Our Selves, Our Daughters* community engagement and education project on FGC/M. One of the most important steps to be taken is the development of a body of research and data on the issue. In order to develop appropriate strategies, we need to know the nature and extent of the problem in Canada, which can only be done through the collection of data about the practice of FGC/M here.

THE LANGUAGE WE USE

As with many of the issues in which women's equality rights and traditional cultural practices intersect, finding the appropriate language for the discussion is both difficult and important. Here are just two opposing views of how we could talk about this particular traditional practice:

The use of the term "female genital mutilation" by international non-governmental and feminist organizations trying to eradicate FGC can be perceived by potential allies as imperialist, oppressive and discriminatory. It implies that cultures that support the practice lack parental love for their children, and that 'we know what is best for you.'²

And:

No matter how many terms one conjures to lessen the impact of the horror visited upon women in the name of culture, mutilation is mutilation; it cannot be diminished by semantics. In addition, I am my sisters' keeper; their pain is my pain. I have an obligation to use my words to speak truth to power in their names.³

Research conducted by Khadija Khaja and her colleagues with Somali women living in Canada and the United States found that while:

... Study respondents were unanimous in their belief that all forms of FGC should be banned ... use of the term 'female genital mutilation' or FGM angered them. Respondents described the terms as 'degrading' and 'insulting', and believed it implied that Westerners regarded them as 'flawed' and 'uncivilized'.⁴

2 Khadija Khaja, et al., "Female Genital Cutting: African Women Speak Out." *International Social Work*. 52 (2009): 11.

3 Patricia Broussard. "Female Genital Mutilation: Exploring Strategies for Ending Ritualized Torture – Shaming, Blaming, and Utilizing the Convention Against Torture." *Duke Journal of Gender Law and Policy*. 19 (2008): 15.

4 Khaja et al., 2009: 8.

One participant in the study described her opposition to the language by stating, “[T]o show to the other people that we are mutilated, we are less than other women, we don’t have feelings. I disagree”.⁵

In 1995 the Federal Interdepartmental Ad Hoc Working Group on Female Genital Mutilation undertook consultations in Ottawa and Montreal with communities where female genital cutting/mutilation is a traditional practice. Similar to Khaja’s study, the majority of participants in both consultations indicated they found the language used to describe the practice as offensive. In particular, participants objected to the use of the word “mutilation” and the term “child abuse.”⁶ Winnipeg, Manitoba’s project on female genital cutting/mutilation shares a similar position, stating:

The term female genital mutilation (FGM) gained growing support in the late 1970s to reinforce the view that it is a violation of human rights and to promote efforts to end the practice. The term, however, can be problematic when trying to change a cultural belief. Parents understandably resent the suggestion that they are ‘mutilating’ their daughters. As a result, the term ‘cutting’ has been increasingly used to avoid alienating communities.”⁷

The issue is problematic at an international level, where international organizations fail to agree as to what language is the most appropriate:

To capture the significance of the term ‘mutilation’ at the policy level and, at the same time, to use less judgemental terminology for practising communities, the expression ‘female genital mutilation/cutting’ is used by UNICEF and UNFPA. For the purpose of this Interagency Statement and in view of its significance as an advocacy

5 Khaja, Khadija, et al., “Female Circumcision: Toward an Inclusive Practice of Care. *Health Care for Women International*, 31 (2010): 686 – 699.

6 Lula Hussein and Marian Shermarke, *Female Genital Mutilation: Report on Consultations Held in Ottawa and Montreal*. (Ottawa: Department of Justice Canada, 1995) vi.

7 Our Selves and Our Daughters, “Our Selves Our Daughters: Women, Men and Youth Perspectives of Female Genital Cutting and Change.” Aug. 2011, *Sexuality Education Resource Centre*. 12 Feb. 2013 <http://www.serc.mb.ca/sites/default/files/resources/Our_Selves_Our_Daughters_2010-11_Final_Report.pdf> 4.

tool, all United Nations agencies have agreed to use the single term 'female genital mutilation'.⁸

Especially problematic is the use of language by western countries and organizations that implies superiority on the part of cultures that do not engage in this practice:⁹

A worldview organized in terms of good versus evil, civilized versus backward, morally upright versus ideologically compromised, us versus them, is one we inhabit at our risk. It leaves no room for self-criticism, no way to think about change, no way to open ourselves to others.¹⁰

Yael Tamir articulates the complexity of language and discourse by assessing the "othering" impact that discourse creates, stating:

Referring to clitoridectomy, and emphasizing the distance of the practice from our own conventions, allows us to condemn them for what they do to their women, support the struggle of their women against their primitive, inhuman culture, and remain silent on the status of women in our society.¹¹

Accordingly, while it is imperative that the language used not diminish the seriousness or the extent of the issue, it is also important to ensure that those who have undergone this procedure not feel demeaned or judged by the manner in which we speak about it. As will be discussed below, research has established that the greatest success in ending this traditional practice has come when those who engage in the practice are not excluded but are involved and feel that their opinions and feelings are taken into consideration.

8 World Health Organization, et al., Eliminating Female Genital Mutilation: An Interagency Statement. (Geneva, World Health Organization: 2008) 22.

9 Those very cultures may well engage in other practices that demean women, deny women's sexuality, increase women's risk of experiencing sexual violence, etc.

10 Joan Wallach Scott, The Politics of the Veil. (Princeton: Princeton University Press, 2007) 18-19.

11 Yael Tamir, "Hands off Clitoridectomy: What Our Revulsion Reveals About Ourselves." Boston Review (1996): 22.

To say that this is a difficult balance is an understatement. This paper uses the term female genital cutting/mutilation (FGC/M) out of respect for the opinions of many of those women who have experienced the procedure and who want to be part of the work to eradicate. We also use this language to indicate our strong opposition to a practice that can have the effect of mutilating women's genitalia. Where we refer to the work or positions or statements of organizations that use other language, we use their terminology.

WHAT IS FEMALE GENITAL CUTTING/MUTILATION?

It is not the purpose of this paper to explore in detail the physiological aspects of FGC/M. However, it is useful to briefly review what is meant when people talk about female genital cutting/mutilation. There are four generally accepted types of FGC/M:¹²

1. Clitoridectomy, which involves the partial or total removal of the clitoris;
2. Excision, in which the clitoris and the labia minora are partially or totally removed, with or without excision of the labi majora;
3. Infibulation, which involves narrowing the vaginal opening through the creation of a covering seal;
4. All other harmful procedures performed on the female genitalia for non-medical purposes, including pricking, piercing, incising, scraping and cauterizing.

12 World Health Organization, "Fact Sheet No. 241: Female Genital Mutilation," February 2013. *The World Health Organization*, 16 Feb. 2013 <<http://www.who.int/mediacentre/factsheets/fs241/en/>>.

There is universal agreement among health care professionals that there are no health benefits to FGC/M and many harmful consequences, immediate and longer term, physical and psychological.¹³ Immediate consequences can include severe pain, shock, hemorrhage, tetanus or sepsis, urine retention leading to infection, open sores, injury to nearby tissue and even death. Some of these consequences are the result of the way in which much FGC/M is conducted, by people with no medical training in unsanitary non-medical surroundings, using inappropriate and unsterile equipment.

Long-term consequences can be equally significant and include: recurrent bladder and urinary tract infections, kidney damage, bladder stones, extensive and painful scarring and cysts. Some of the most significant long-term consequences are related to women's ability to become pregnant and give birth vaginally. There is some evidence that FGC/M can lead to infertility and increased risk of childbirth complications¹⁴. Women who have undergone infibulation require surgery (de-infibulation) to allow for sexual intercourse and vaginal delivery. Often, these women are then re-stitched (re-infibulated) after each birth, meaning they may go through several surgeries as they have subsequent pregnancies.

Clearly, FGC/M has an impact on women's sexuality. Intercourse is very painful, perhaps even dangerous, and sexual pleasure for the woman is impaired if not eliminated entirely. Some research shows that women experience psychological effects including anxiety, terror, humiliation and feelings of betrayal.¹⁵

13 As established by the World Health Organization in its 2012 paper on Female Genital Cutting entitled "Understanding and Addressing Violence Against Women," "FGM has serious health implications and no health benefits. It involves removing and damaging healthy and normal female genital tissue, and interferes with the natural functions of girls' and women's bodies" (WHO, 2012:3).

14 According to the World Health Organization, FGM results in an additional one to two perinatal deaths per 100 deliveries (WHO, 2010: 6).

15 Amnesty International, "What is Female Circumcision?" Jun. 1997, *Amnesty International*, 4 Feb. 2013 <<http://www.amnesty.org/en/library/asset/ACT77/006/1997/en/3ed9f8e9-e984-11dd-8224-a709898295f2/act770061997en.html>>.

FGC/M AROUND THE WORLD

Amnesty International estimates that 135 million girls and women have undergone FGM and that 2 million girls a year – 6,000 a day – are at risk.¹⁶ The practice is most extensive in Africa and is common in some countries in the Middle East. In other parts of the world, it mostly occurs in immigrant populations, where girls are often taken back to the family's country of origin to have the procedure performed.¹⁷ According to the World Health Organization, in some countries more than 90% of the female population has undergone FGC/M.¹⁸

Many reasons are provided by those who engage in or support the practice of FGC/M. Most relate to the perceived need to control women's sexuality. Overwhelmingly, practitioners stress that it is necessary to control a woman's libido and to help her resist "illicit" sexual acts, thus increasing her marriageability by ensuring she is a virgin. Some see the practice as increasing hygiene and cleanliness. It is seen by many as just a natural part of preparing a girl for adulthood and marriage, and thus a means to conform women to cultural ideals of femininity and modesty. Lastly, traditionalists argue that FGC/M is simply a continuation of and conformation with what others do and have been doing for centuries; that it is a way to preserve a culture that would otherwise disappear. As put by the World Health Organization:

FGM functions as a self-enforcing social convention or social norm. In societies where it is practised, it is a socially upheld behavioural rule. Families and individuals continue to perform it because they believe that their community expects them to do so. They further expect that if they do not respect the social rule, they will suffer social consequences such as derision, marginalization and loss of status. While FGM is de facto violent, it is not intended as an act of violence.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ WHO, et al., 2008: 29.

Northern Sudan (90%), Mali (91.6%), Djibouti (93.1%) Sierra Leone (94%), Guinea (95.6%), Egypt (95.8%), Somalia (97.9%).

It is considered to be a necessary step to enable girls to become women and to be accepted, together with the rest of the family, by the social group of which they are part.¹⁹

It is interesting to note that, while the practice of FGC/M is extremely widespread in some parts of Africa, and while many women from those regions call for its immediate and complete eradication, those women also see other issues as of greater importance to the health of girls and women in their home countries. In Khaja's research, every respondent referred to the civil wars in their home countries as the human rights violation of greatest concern with respect to women and children. Women talked about the lack of drinkable water, lack of access to education, their desire to participate in their countries' political processes, infant and child mortality and lastly famine as having larger and more immediate negative impacts on their lives than FGC/M:

There was also a widespread perception that Western feminists and human rights organizations had fixated on FGC, often with the consequence of leaving, in the respondents' views, more serious concerns related to the very survival of African women and children in the background, as expressed by this quote: "... Western women need to put themselves in the others' shoes. ... Did you ever speak to us? Did you ask us? Did you assume?"²⁰

FGC/M IN CANADA

There is no hard data about FGC/M being performed in Canada. Anecdotal stories surface from time to time but because the practice is illegal and practitioners, if known, could be criminally charged, it is difficult if not impossible to determine where and how often FGC/M is performed in this country.

19 WHO, 2010: 2.

20 Khaja et al., 2009:10.

As noted by Erica Weir, women who have undergone FGC/M are most likely to come into contact with the medical system sometime *after* the procedure has been performed. “Canadian physicians are more likely to encounter the chronic health effects . . . and must also manage prenatal care and vaginal deliveries involving infibulated women.”²¹ They may be seeing the health care provider for an unrelated matter or they may need medical attention related to FGC/M because of infection, conception difficulties or because they are receiving pre-natal care once pregnant. However, as the 1995 consultations held in Ottawa and Montreal discovered:

Many of the women participants stressed that they were afraid and embarrassed to go to their doctors for gynaecological medical examinations because doctors constantly grilled them as to what had happened to them. This makes them feel very awkward and uncomfortable.²²

This was also the feeling of many of the women interviewed by Khadija Khaja and her colleagues. Some of these women indicated they found that, once healthcare providers knew they were Somali, they became more interested in FGC/M than in the actual reason for the visit to the doctor. Some felt like specimens when their doctors wanted to show their vaginas to medical and nursing students.²³ This understandable reluctance to come forward on the part of women who have experienced FGC/M makes it even more difficult to identify the extent of the issue in Canada.

Even the frequency of girls being removed from Canada to undergo FGC/M is not easy to determine. Often, the girls do not know this is the reason for the trip or, if they do, have no opportunity to seek an intervention. They may be too old to fall under the jurisdiction of child protection authorities and yet lack the autonomy to stop what is happening. They may believe the procedure is necessary for their health or to make

21 Erica Weir, “Female Genital Mutilation,” *Canadian Medical Association Journal*, 162.9 (2000): 1344.

22 Hussein and Shermark, 27.

23 Khaja, et al., 2010: 5.

their parents happy and may decide to keep what is happening a secret within the family. Nonetheless, some violence against women organizations report having contact from girls who are seeking assistance in not being removed from Canada to undergo FGC/M.

FGC/M AND COSMETIC GENITAL SURGERY

Cosmetic genital surgery (CGS) has been gaining popularity among women in the West in recent years. While a number of significant differences exist between CGS and FGC/M – including severity of harm and rate and consent – there are some commonalities in the patriarchal roots of both. For this reason, and in full respect of the seriousness of FGC/M for millions of girls and women around the world, this paper includes a short discussion of CGS and its similarities to FGC/M.

Kathambi Kinoti has explored the issue of CGS in her analysis and defines the two procedures as follows:

[FGM is] the centuries-old practice of removing part or all of the external genitalia of women. . . as a tool to control a woman's sexuality. Genital cosmetic surgery is a modern practice that is undertaken, mainly by women, to improve the appearance of their genitalia.²⁴

Kinoti notes the significant increase in the numbers of women in the UK electing to undergo cosmetic surgery on their genitals to appear younger or more beautiful and establishes that neither practice is medically required. Instead both are rooted in cultural norms and expectations about women's sexuality in relation to men's desires. She establishes that both carry risks of physical harm, acknowledging that the risks

24 Kathambi Kinoti, "Female Genital Mutilation and Cosmetic Genetic Surgery: Do They Have Anything in Common?" 11 Feb. 2011, *Association of Women in Development*, Feb 16. 2013 <<http://www.awid.org/Library/Female-genital-mutilation-and-cosmetic-genital-surgery/>>.

associated with FGC/M are much higher because it is often carried out underground in non-sterile surroundings, by people with no medical training using inappropriate equipment. Conversely CGS is carried out in hospitals or clinics, by trained medical personnel, in sterile surroundings and with appropriate and clean equipment.²⁵

Kinoti also explores the notion of consent. FGC/M is most often performed on girls and young women who lack the capacity to consent, whereas CGS is voluntary surgery chosen by adult women. However, the question arises as to whether that consent comes from a place of power or knowledge; whether it would meet the test to be informed consent. Indeed, the power of social pressure arises in both contexts. With respect to CGS, Kinoti writes:

Although the choice to undergo the surgery may be an individual one, the suggestion that it is necessary originates in evolving societal values that define what desirable genitalia look like. The beauty industry, mainstream media and profit-making health care sector all collaborate to exert immense pressure on women to be youthful and beautiful according to rigid standards. . . While it can be argued that women have the right to make decisions about their own bodies, the combination of actors influencing any woman's decision to undergo this surgery makes it difficult to ascertain to what extent her choice is completely informed.²⁶

Kinoti concludes with this important comment:

The harmfulness and pervasiveness of FGM should never be downplayed. . . [but] It is also important to challenge modern ideologies that influence women to seek to modify their genitalia. Although the two practices may stem from different beliefs and have

25 Please note, this point is not made to support medicalizing the practice of FGC/M. We explore and reject a harm reduction model later in the paper.

26 Ibid.

different effects, they both have roots in societal impositions on women's bodies.²⁷

INTERNATIONAL RESPONSES TO FGC/M

It would seem that there is not a single United Nations agency or international body of significance that has failed to take a position opposing female genital cutting/mutilation.²⁸ In November 2012, the United Nations approved its first-ever draft resolution aimed at ending female genital mutilation, which received consensus approval from the General Assembly's "Third Committee."²⁹ Secretary General Ban Ki-moon expressed his support by stating, "I look forward to the Assembly's adoption of this resolution, which would mark a major step forward in protecting women and girls and ending impunity for this practice."³⁰

Not surprisingly, the World Health Organization has a strong position supporting the eradication of FGC/M, and supports a number of initiatives and endeavours. One of these is an interagency statement prepared by 10 UN affiliated agencies.³¹ This statement speaks to the importance of working collaboratively with communities that engage in the practice of FGC/M:

27 Ibid.

Note also the experiences of some heterosexual women in Canada and other Western countries who report that their obstetrician, when preparing to stitch them after vaginal childbirth, ask if they would like an "extra" stitch, with a suggestive wink towards their male partner. While certainly not commonplace, this occurs often enough that it has a name: "the happy husband stitch." In other words, many cultures are prepared to implicate women's sexuality to ensure that the sexual desires of men (or perceived desires) can be satisfied.

28 It should be noted that despite widespread policies and laws at the international and national levels to ban FGC, it remains a serious and entrenched practice, as there seems to be little enthusiasm for vigorous enforcement of the many regulations that exist.

29 The "Third Committee" deals with social, humanitarian and cultural issues.

30 United Nations News Centre. "UN Committee Approves First-Ever Text Calling for End to Female Genital Mutilation." 28 Nov. 2012, *United Nations News Centre*, 16 Feb. 2012 <http://www.un.org/apps/news/story.asp?NewsID=43625&Cr#.UXrHFrV_5Lc>.

31 WHO, et al., 2008.

Decades of prevention work undertaken by local communities, governments, and national and international organizations have contributed to a reduction in the prevalence of female genital mutilation in some areas. Communities that have employed a process of collective decision-making have been able to abandon the practice. Indeed, if the practising communities decide themselves to abandon female genital mutilation, the practice can be eliminated very rapidly.³²

The statement concludes with a commitment:

The United Nations agencies confirm their commitment to support governments, communities and the women and girls concerned to achieve the abandonment of female genital mutilation within a generation.³³

In a similar manner, UNICEF, the specialized UN agency which focuses on the protection of women and children establishes that:

FGM/C is a fundamental violation of human rights. In the absence of any perceived medical necessity, it subjects girls and women to health risks and has life-threatening consequences. It violates rights to the highest attainable standard of health and to bodily integrity, among others. Furthermore, it could be argued that girls (under the age of 18) cannot be said to give informed consent to such a potentially damaging practice.³⁴

The *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW) also condemns the practice, with Recommendation 14 calling upon states to take appropriate and effective measures towards the eradication of FGM, and requests states to provide information about what they are doing in this regard in their regular reports to the CEDAW Committee.³⁵ Likewise, the 1990 *Convention on the Rights of the*

³² Ibid 1.

³³ Ibid, 21.

³⁴ UNICEF, "Female Genital Mutilation/Cutting" 2012 Jan, *Child Info*, 5 Feb. 2013 <<http://www.childinfo.org/fgmc.html>>.

³⁵ WHO, et al., 1997: 8.

Child explicitly speaks to the need to abolish traditional practices that are harmful to children.³⁶

In 1995, at the 9th United Nations Congress on the Prevention of Crime and the Treatment of Offenders,” Canada introduced a resolution (which passed) that urged States to take steps to “Prevent, prohibit, eliminate and impose effective sanctions against rape or sexual assault, sex abuse and all practices harmful to women and girl children, including female genital mutilation.”³⁷ Lastly, the *United Nations Declaration on the Elimination of Violence Against Women* has also taken a position, defining violence against women as including “female genital mutilation and other traditional practices harmful to women.”³⁸

We can now turn our attention to the national and government level. The scan which follows of actions taken by various countries is not intended to be comprehensive, but rather to demonstrate the range and extent of the responses.

1. In Africa, a number of countries have implemented criminal laws against FGC.³⁹ These include Burkina Faso (72%), Cote d-Ivoire (41%), Djibouti (93%), Ghana (4%), Kenya (32%), Senegal (28%), Tanzania and Togo (5.8%). Many countries outside Africa also have criminal and other prohibitions against FGC.⁴⁰
2. Sweden was the first western country to ban FGC/M when it passed legislation in 1982 to criminalize its practice. This legislation was updated in 1998 to make

³⁶ Convention on the Rights of the Child, Article 24.3.

³⁷ United Nations, “United Nations Congress on the Prevent of Crime and the Treatment of Offenders: Cairo, Egypt, 29 April – 8 May 1995,” 12 May 1995, *United Nations Crime and Information Network*, 15 Feb. 2013 <<http://www.uncjin.org/Documents/9rep2e.pdf>>.

³⁸ *Declaration of the United Nations General Assembly on the Elimination of Violence Against Women*, Section 2.

³⁹ The numbers in brackets following each country indicate the approximate prevalence of FGC in that country, as determined by national survey data (WHO, et al., 2008: 29).

⁴⁰ Mahnaz Afkhami and Haleh Vazirir, *Victories Over Violence: Ensuring Safety for Women and Girls – A Practitioner’s Manual* (Bethesda, Women’s Learning Partnership for Respect, Development and Peace: 2012) 36.

penalties more severe and to apply when the procedure is performed outside the country.

3. The UK made FGC/M illegal in 1985 and has since updated its legislation, which applies to both the practice of the procedure within the country and to the removal of children from the UK for the procedure.
4. In both Australia and New Zealand, it is a criminal offence to perform FGC/M and to remove a child from the country for the procedure.
5. In France, a conviction can lead to up to 20 years imprisonment, and reporting suspicions about the performance of FGC/M is required in law.
6. Italy has made FGC/M a criminal offence, with conviction leading to a prison sentence of 4 to 23 years, depending on the type of procedure performed and the extent of harm inflicted.
7. The Netherlands does not have a specific offence relating to FGC/M, but subsumes it within the offence of “inflicting harm.” Maximum penalties are higher if the offender is a family member of the victim. It is also illegal in the Netherlands to assist or encourage another to undergo or perform the procedure.
8. Belgium, Norway and Spain also have criminal laws to deal with those who perform FGC/M or remove children from the country to have the procedure performed elsewhere.

9. Finally, the United States passed a federal law prohibiting FGC/M in 1996, and 16 states have since followed with their own legislation.⁴¹

While of course the international response to FGC/M and the commitments made by countries in the West to its eradication are both very positive developments, it is important to remember, as noted above, that some women from countries where FGC/M is commonly practiced report feeling ignored and discounted in the discussions about FGC/M. This is because they feel that a western preoccupation with FGC/M has left other serious concerns unaddressed.

CANADIAN RESPONSES TO FGC/M

The early and mid 1990s saw a flurry of activity directed at this issue. Both the federal government and the government of Ontario, in particular, undertook research, engaged in consultations and created working groups to discuss FGC/M.⁴² However, little of lasting impact seems to have developed from these activities, other than the development of a criminal law prohibition. Engaging in FGC/M is a criminal offence as contained within the aggravated assault provisions of the *Criminal Code*, which is asserted in Canada's *Guide for Newcomers*. The guide includes the following statement:

All forms of child abuse may result in criminal charges being laid or the intervention of child protection authorities. Child abuse includes any kind of sexual contact, neglect and female genital mutilation.⁴³

41 Criminal law in the United States falls under the jurisdiction of both federal and state government, unlike in Canada where it is strictly a matter of federal jurisdiction.

42 See earlier commentary in this paper about consultations and papers written during this period of time. As well, Ontario's Ministry of Community and Social Services held a workshop in 1992 and the Women's Health Bureau at the Ontario Ministry of Health provided a grant to sensitize health professionals to the issue, through which a number of workshops were held at hospitals. The Ontario Women's Directorate established an Inter-Ministerial Task Force on FGM which commissioned a research paper, but this was never published. At the national level, an interdepartmental workshop was held in 1993, sponsored by the Health Promotion Branch of National Health and Welfare.

43 Citizenship and Immigration Canada, Welcome to Canada (Ottawa, Citizenship and Immigration Canada: 2010) 11.

Section 268:

- (1) Every one commits an aggravated assault who wounds, maims, disfigures or endangers the life of the complainant.
- (2) Everyone who commits an aggravated assault is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.
- (3) For greater certainty, in this section, “wounds” or “maims” includes to excise, infibulate or mutilate, in whole or in part, the labia majora, labia minora or clitoris of a person, except where
 - (a) a surgical procedure is performed, by a person duly qualified by provincial law to practise medicine, for the benefit of the physical health of the person or for the purpose of that person having normal reproductive functions or normal sexual appearance or function; or
 - (b) the person is at least eighteen years of age and there is no resulting bodily harm.
- (4) For the purposes of this section and section 265, no consent to the excision, infibulation or mutilation, in whole or in part, of the labia majora, labia minora or clitoris of a person is valid, except in the cases described in paragraphs 3(a) and (b).

The *Criminal Code* prohibits the removal of children from Canada to undergo FGC/M.

Section 273.3:

- (1) No person shall do anything for the purpose of removing from Canada a person who is ordinarily resident in Canada and who is . . .
 - (c) under the age of eighteen years, with the intention that an act be committed outside Canada that if it were committed in Canada would be an offence against section . . . 268. . . in respect of that person.

The issue of FGC/M has also been addressed by some of Canada's human rights bodies. In June 1995, the Canadian Association of Statutory Human Rights Associations⁴⁴ unanimously passed this resolution:

WHEREAS Canada is a party to international instruments that provide for the respect and protection of the fundamental human rights of women and children; and

WHEREAS Canada is participating in an international initiative to eradicate the practice of female genital mutilation; and

WHEREAS Canadians are concerned that women and girls who are ordinarily resident in Canada are being subjected to the practice of female genital mutilation;

BE IT RESOLVED that CASHRA recommend to the Minister of Employment and Immigration that all prospective immigrants be provided with information setting out Canada's commitment to upholding international human rights instruments; emphasizing that the protection and respect of human rights is a cornerstone of Canadian society and extends to the protection of women and children against any acts which would cause grave interference with their personal inviolability, including female genital mutilation; and advising that practices such as female genital mutilation are deemed to be a criminal activity under the Canadian Criminal Code.

Further to this, both Quebec and Ontario have issued their own positions or policies on the subject of FGC/M. The Quebec Human Rights Commission released a paper in 1994 establishing, "This type of (genital) mutilation is performed exclusively on women, and is unquestionably a discriminatory interference with their physical and mental inviolability."⁴⁵ The paper takes the position that it has the jurisdiction to investigate a complaint filed by a woman who has experienced FGC/M, although none has been brought to date. Similarly, Ontario's Human Rights Commission passed a policy on female genital cutting/mutilation in 2000, which acknowledges that FGC/M

44 The Human Rights Commission of Canada and all provincial and territorial Human Rights Commissions, except that of British Columbia, are members of CASHRA.

45 Maurice Drapeau, and Hailou Wolde-Giorghis, *Sexual Mutilation: Unlawful Interference with Personal Inviolability* (Montréal: Commission des droits de la personne du Québec, 1995) 6.

is an internationally recognized violence against women and girls' human rights violation. The Ontario policy recognizes the need for public sensitivity, awareness and understanding in dealing with culturally rooted practices which may conflict with the principles and provisions of the *Code*.⁴⁶

The OHRC acknowledges the complex social and cultural roots of FGM and the need for dialogue and education initiatives within the at-risk communities in Ontario and across Canada. However, it is the OHRC's view that arguments based on a defence of cultural or religious values should not be accepted as justification for the practice, nor for discriminating against women who have been subjected to, or perceived to have been subjected to, genital mutilation. . . . The practice offends the inherent dignity of women and infringes their rights as set out in the Code. It is the OHRC's position that the Human Rights Tribunal of Ontario should deal with applications involving FGM filed by victims of the practice or their legal guardian.⁴⁷

Medical associations in Canada have also taken positions on FGC and on the duties of their members. The Society of Obstetricians and Gynaecologists of Canada states:

SOGC believes that FGC/M is a violation of the rights of girls and women to life, to physical integrity and to health. The practice has no medical benefit and is recognized as being harmful to physical and psychological well-being. The SOGC believes that health care professionals are in a privileged position to use their knowledge, influence, and authority to work towards the abandonment of the practice and to ensure that girls and women living with FGC/M receive culturally competent care.⁴⁸

The SOGC defines FGC/M as "the removal of any part or the whole of the external female genitalia, or any injury to the female genital organs, for traditional, cultural, religious

46 Ontario Human Rights Code, "Policy on Female Genital Mutilation," 30 Jun. 2008, *Ontario Human Rights Commission*, 17 Feb. 2013 <<http://www.ohrc.on.ca/en/book/export/html/2448>>.

47 Ibid.

48 Society of Obstetricians and Gynaecologists of Canada "SOGC Policy Statement: Female Genital Cutting/Mutilation." *Journal of Obstetrics and Gynaecology Canada* 34.2 (2012): 197-200.

or other non-therapeutic reasons.” SOGC advises its members that performing FGC/M is a criminal offence that reporting to child welfare authorities is mandatory and that requests for reinfibulation must be declined. It also encourages members to learn more about it, become culturally competent, educate family members, advocate and to become involved in community-based initiatives. Lastly, SOGC recommends that FGC/M be integrated into medical school curriculum so that all physicians understand the issue and can bring a culturally competent and sensitive approach to managing it should it arise in their practice.

Similarly, the College of Physicians and Surgeons of British Columbia states:

The College endorses the position of the World Health Organization (WHO), and many other medical organizations, regarding female genital mutilation, as having no health benefits, and both immediate and long-term negative health consequences.

A physician must decline to perform female genital mutilation and must not make a referral for the purpose of female genital mutilation Urgent action must be taken if a physician considers that a child may be at risk of female genital mutilation.⁴⁹

The College sets out a duty to report to the College and to the Ministry of Children and Family Development if the physician learns of another physician performing FGC/M if: the physician is requested to perform FGC/M, s/he learns that these procedures may be performed on a child or person under 19 or if the physician considers that the child may be at risk in relation to the practice of FGC/M.

The College of Physicians and Surgeons of Ontario⁵⁰ has advised physicians that performing FGC/M is an act of professional misconduct and that any physician

49 College of Physicians and Surgeons of British Columbia, “Professional Standards and Guidelines: Female Genital Mutilation,” Jan 2012, *The College of Physicians and Surgeons of British Columbia*, 3 Feb. 2013 <<https://www.cpsbc.ca/files/u6/Female-Genital-Mutilation.pdf>> 2.

50 Stuart Foxman, “Doc Talk: Addressing Female Genital Cutting-Mutilation,” 2011, *The College of Physicians and Surgeons of Ontario*, 14 Feb. 2012 <<http://www.cpso.on.ca/members/resources/practicepartner/doctalk/default.aspx?id=5694>>.

who learns that FGC/M has been performed or is being contemplated must notify the appropriate child welfare authorities. Physicians are also required to immediately notify the College if they learn that another physician has been involved with FGC/M. Likewise, the College of Physicians and Surgeons of Nova Scotia approved a physician policy in 2012 opposing the practice of FGC/M and instituting College disciplinary measures for any physicians who engage in it.

Child protection falls under provincial/territorial jurisdiction in Ontario. While no provincial child welfare statutes speak specifically to the issue of FGC/M, all require child protection agencies to become involved where children have been physically, sexually or emotionally harmed or are at risk of experiencing such harm. In addition to this, all legislation creates a duty to report for professionals who work with children and for the public at large, when there is a reasonable belief/suspicion that a child has been or is at risk of being harmed. As Huston writes:

FGM is considered a form of abuse and as such, any child suspected of being at risk of FGM would justify intervention by child protection authorities... This may include removing a child from her family if there are reasonable grounds to believe this is necessary for protection.⁵¹

RECOMMENDATIONS FOR MOVING FORWARD IN CANADA

Activities undertaken by Western countries to respond to FGC/M have led to many discussions about women's rights and cultural relativism, and how best to meet appropriate standards of cultural competency while also ensuring that women's health and equality rights are adequately protected. At one end of the spectrum is the position of anthropologist Fluehr-Lobban who states that, "...since each culture has its own values and practices, anthropologists should not make value judgments about cultural

⁵¹ Patricia Huston, "Female Genital Mutilation," 1999, *The Canadian Women's Health Network*, 14 Feb. 2013 <<http://www.cwhn.ca/sites/default/files/resources/fgm/fgm-en.pdf>> 10.

differences” Conversely, Kinoti offers her own critique of this line of argument, writing “It is all well and good to take into account the culture of the community, but does cultural relativism supercede the inherent sexuality rights of women?”⁵²

Many of the women who participated in Khaja’s research felt that criminalization in North America was a drastic response and could drive the practice further underground, “thus unintentionally contributing to its persistence.”⁵³ Khaja further describes the obstacle associated with criminalization by stating, “FGC holds significant meaning within the cultures that employ the practice, and enforcement of laws banning it is a challenging undertaking.”⁵⁴

The World Health Organization takes a different approach by adding the importance of community engagement in tackling FGM/C:

Where large-scale abandonment of FGM has been achieved, it has been the result of an approach that reinforces the human rights values and social support that are shared by communities. This has enabled the communities to collectively explore and agree on better ways to fulfil these values, and led to sustainable large-scale abandonment of FGM as well as other harmful practices.⁵⁵

How then, do we move forward in a way that is equally committed to the eradication of the practice of FGC/M and to cultural competency and inclusion? The following are some suggested starting points.

Research is needed in critical areas of concern. This includes: 1) the extent to which this procedure may be performed in Canada (and by whom) 2) the reporting (if

52 Kathambi Kinoti, “Do FGM Eradication Interventions Address the Sexuality Rights of Women?” 22 Apr. 2005, Association of Women and Development, 16 Feb. 2013 <<http://www.awid.org/Library/Eradicating-Female-Genital-Mutilation-Sexuality-rights-vs.-Cultural-relativism>>.

53 Khaja, et al., 2009: 9.
Please note the discussion below about criminalization of FGC/M.

54 Ibid, 2.

55 WHO, et al., 2010: 2.

any) of concerns about FGC/M to child protection authorities 3) the rate of removal of girls and young women from Canada to have FGC/M performed in other countries and lastly 4) the frequency with which physicians, nurses, midwives and other health care practitioners are seeing FGC/M in women. As always, learning from existing models is valuable. Below are some examples of work that could be used more broadly or adapted for use in the Canadian context.

1. Community Engagement and Education

There is much to be learned from a Winnipeg project run by the Sexuality Education Resource Centre of Manitoba. Located in Winnipeg, *Our Selves, Our Daughters* works closely with African refugee women and allies in their communities to enhance educational, health and socio-cultural supports for women affected by female genital cutting and to work towards prevention among their daughters. The focus is on bringing a culturally competent response, with an emphasis on consultation and education, to this issue.

The project was initiated to address the health concerns faced by refugee newcomer women who had undergone FGC/M in their various countries of origin. Initial research conducted found that:

[T]he practice is deeply rooted in tradition and women's identity and is still widely accepted among many of these newcomer women, but that change is occurring. Few are aware that many of the health concerns they experience are linked to FGC. Additionally, not all newcomer women from FGC-practicing countries are aware that it is illegal in Canada. These factors demonstrate a need to address health care related gaps experienced by African newcomer women affected by FGC along with the need to look at the prevention of this practice among girls in Canada.⁵⁶

56 Paula Migliardi. "Symposium of Female Genital Cutting (FGC): Focus on Canadian Approaches to Addressing FGC Report." Sep. 2011, *Sexuality Education Resource Centre Manitoba*, 12 Feb. 2013 <<http://www.serc.mb.ca/resource-library/symposium-female-genital-cutting-fgc-focus-canadian-approaches-addressing-fgc>> 3.

The project is participant driven and culturally responsive “so that participants feel the services provided, and the project as a whole, are accessible and that their community, culture, gender and values are respected.”⁵⁷ There were a number of elements to the project including:

- Community consultations and education with the women in three immigrant populations (Eritrean, Ethiopian and Somali), using community facilitators from those communities
- Consultations with the whole community, including men and young people
- Training of community educators
- Training for service providers
- Resource development
- A Symposium on FGC in 2011⁵⁸

This project demonstrates that strong trust and support from the community is critical to success and has developed some excellent strategies for building that trust. Their ideas include:

- Service providers need to build trust with clients before raising this issue, and then must do so in a way that gives the client permission to ask sensitive questions and that provides enough time and privacy for the discussion to happen
- Approaches must always be non-judgmental
- It is important to find commonalities in women's experiences to increase the possibility of connecting effectively
- Service providers must be culturally competent and comfortable addressing sexuality and reproduction generally

⁵⁷ Our Selves, Our Daughters, 3.

⁵⁸ This symposium brought together presenters from across Canada to speak about their work addressing FGC in the areas of policy, community-based programming, research and clinical work. The symposium also included knowledge exchange sessions to facilitate knowledge exchange, build collaboration and identify gaps and needs.

- It is important to work with youth without their parents being involved
- Religious and community leaders must be engaged
- It is very helpful to train community members as advocates: women, men and young people⁵⁹

As the project's final report notes:

We continue to follow an iterative process that has brought us success to date – a process of consultation and building trust, learning and research, planning and implementation, reflection and evaluation, which then leads to the next phase of work. With each successive cycle, we deepen our knowledge about this complex issue, and build our expertise on how to best have a positive impact on women's and daughters' lives.⁶⁰

2. Health Care

While various medical organizations in Canada have taken strong positions opposing FGC/M and setting out standards to be followed by physicians in Canada, only three provinces have taken the lead. Their actions have focused on the development of policies, procedures and disciplinary consequences for physicians with respect to their duty to report other physicians and/or situations where girls or women may have undergone or be at risk of undergoing FGC/M.

All provincial colleges of physicians and surgeons should be encouraged to develop explicit policies and procedures relating to the expectations of physicians, including best practices relating to the provision of respectful gynecological and obstetric services for all women. Little in the way of best practices or regulations appears

⁵⁹ For a more detailed discussion of these and other strategies, read the final report of this project.

⁶⁰ Ibid, 45.

to exist for non-physician medical professionals, including nurses and midwives, in Canada.⁶¹

In the UK, the Royal College of Nursing has developed an educational resource for nursing and midwifery staff. Entitled simply *Female Genital Mutilation*, it provides an overview of FGC/M, including information about its history, types, rates, health risks and complications. It also sets out the human rights aspect and the legal and professional responsibility issues it raises. Nurses are given information and guidance in how to provide services in a way that demonstrates an awareness of diversity. This useful resource contains policies and protocols, case studies to discuss clinical issues and procedures and sets out professional learning requirements and could serve as an excellent model for materials that could be developed for nurses and midwives in Canada.

Women's Health in Women's Hands uses an anti-oppression health-care framework in its work with women. This supports their work in the area of FGC/M. This framework includes involving marginalized groups in decision making at all levels of the organization, ensuring that healthcare providers are representative of client populations, offering integrated services, taking services to the community and developing services based on client definitions of accessibility and cultural acceptability.⁶² This is a model that could be applied by all those working in the field of providing health care services to populations affected by FGC/M.

61 An online search of provincial nursing and midwives associations found no resources, policies, procedures or best practices guidelines for working with clients with respect to FGC. This is unfortunate, to say the least, because many women are more likely to open up to a nurse or a midwife than to a physician.

62 Migliardi, 7.

3. Human Rights

The Ontario Human Rights Commission has developed a Question and Answer sheet about FGC/M and human rights, which is available online.⁶³ This resource is helpful in providing basic information about the issue and could be easily adaptable by other provincial human rights commissions.

4. Legal

In 1994, the Immigration and Refugee Board granted refugee status to a woman whose 10-year-old daughter would have been subjected to FGC/M if she had been forced to return to her country of origin.⁶⁴ This decision could be made more widely known to those who provide support to women involved in the immigration and refugee process, to ensure that women know this is an argument they may be able to make in their claim.

One question that emerges in many discussions around the world about how best to work for the eradication of FGC/M is whether a harm reduction approach is appropriate. Does criminalization increase the likelihood that the practice will be driven further underground and the safety of girls and women jeopardized even more? Should FGC/M be brought into the mainstream medical system so it can be performed in clean surroundings, by trained health care professionals, using appropriate and sterile instruments? Would this also allow for discussions with girls and women before the procedure is performed that might lead to some changed attitudes? It is our position that this is not a situation where a harm reduction approach is appropriate.

With respect to criminalization, FGC/M is clearly a form of child abuse and/or assault. As such, it falls under existing criminal sanctions in Canada, which have been

63 Ontario Human Rights Commission, "Female Genital Mutilation: Questions and Answers," *Ontario Human Rights Commission*, 12 Feb. 2013 <<http://www.ohrc.on.ca/en/resources/Guides/FGMandHRCCode/pdf>>.

64 *Minister of Employment and Immigration v Farah* (I.R.B. Toronto, Doc. 93-2198, May 10, 1994).

written in to explicitly include FGC/M. To not criminalize FGC would be inconsistent with the values set out in the equality rights provisions in the *Charter of Rights and Freedoms* and upheld in the *Criminal Code*. Certainly, criminal law should be used in conjunction with education and community discussion, as noted earlier in this paper. The two together have the greatest likelihood of changing behaviour and of ending the practice of FGC/M.⁶⁵

While some health-care providers believe that performing FGC/M within the mainstream health care system reduces risks and is a first step towards full abandonment of the practice, we agree with the World Health Organization that:

[T]he performance of FGM by health-care providers . . . constitutes a break in medical professionalism and ethical responsibility. In most countries, it also constitutes a violation of the law. The involvement of health-care providers in the performance of FGM is likely to create a sense of legitimacy for the practice. It gives the impression that the procedure is good for health, or at least that it is harmless.⁶⁶

Any steps taken to move forward to address FGC/M must be rooted in a commitment to cultural competence. Starting from this point, the Winnipeg Symposium generated a number of ideas about initiatives that could be developed in Canada.⁶⁷

1. Further policy and best practices development is needed in all areas: health care, child protection, law and law enforcement, education and delivery of community services. This could include:

65 Consider Canada's approach to drunk driving. Rates of drunk driving have fallen significantly and attitudes about drinking and driving have changed dramatically in less than a generation, largely due to a campaign that combined strict criminal liability for impaired drivers backed up by strong police enforcement with a massive public education campaign aimed in particular at young people.

66 WHO, et al., 2010: 8-9.

67 The ideas that follow flow generally from or were inspired by the Report on the FGC Symposium hosted by the Our Selves Our Daughters project in Winnipeg.

- Law enforcement policies to support the criminal code provisions detailed earlier in this paper. While the laws exist, charges and prosecutions under sections 268 and 273.3 are virtually non-existent
 - Strict policies dealing with the duty to report to child protection authorities need to be developed in every policy, making explicit the connection between FGC/M and child abuse
 - Child protection authorities need explicit policies identifying FGC/M as a form of child abuse and requiring culturally competent and appropriate child protection intervention
 - While refugee status is supposed to be given where there is a threat of FGC/M in the applicant's country of origin, as noted above this is extremely rare. One of the reasons for this is that many countries where FGC/M is still practiced have laws outlawing it, and this interferes with the success of a refugee claim in Canada. Immigration policy needs to be developed that clearly identifies the need to grant refugee status when a claim is based on fear of FGC/M in the applicant's country of origin even where the country may have laws prohibiting it⁶⁸
2. Education and prevention programs in schools need to be further developed. Some ideas for this include:
- Integrating discussion about FGC/M into school curriculum for all students and not targeted to ethno-specific groups
 - Developing and supporting peer to peer programs for girls and young women

⁶⁸ Indeed, women should be able to access state protection from FGC/M as they can in other situations of violence against women.

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3. Information materials and campaigns for new Canadians should be developed and expanded.
4. Service providers – in the health care and community service (including violence against women) sectors – need to increase their cultural competency and personal comfort levels with the issue so women will feel safe to disclose any issues relating to FGC/M.

CONCLUSION

Girls and women across Canada are profoundly affected by FGC/M, whether because they fear it may happen to them or because they have already experienced the procedure and are living with the consequences of it. Canada's present actions related to FGC/M at the government level are disconnected and isolated. While Canada has signed onto a number of international treaties, conventions and covenants that call for the eradication of this practice, little is being done at the governmental level within the country to address FGC/M.

Little research exists to even determine the extent to which FGC/M is being practiced in the country, making the criminal law prohibitions and disciplinary and reporting requirements of various medical associations largely meaningless. This lack of research extends to information about whether or not FGC/M is ever reported to child protection authorities and to the frequency of removals of girls and young women from Canada to undergo FGC/M in other countries.

It is time for a coordinated, culturally competent approach to FGC/M in Canada. This requires collaboration among community organizations to share the excellent work already being done by some, involvement by government in research, policy development and funding, and community engagement across the country. With this approach, we can contribute meaningfully and respectfully to the international movement to eradicate FGC/M while also ensuring we provide an appropriate response to those communities in Canada where this is an issue.

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