

Bail Reform

RESOLVED, That the Canadian Federation of University Women urge the federal government of Canada to amend the Criminal Code to protect victims of Intimate Partner Violence (IPV) by:

- a) Granting bail only to first time alleged IPV offenders who have no previous IPV convictions, have not violated any previous bail conditions and have not committed a weapons-related offence or demonstrated a behavioural pattern of coercive control.
- b) Making it a legal duty to inform victims immediately about the time, day and location of the bail hearing and to ensure safety concerns are submitted to the bail hearing.
- c) Making it a legal duty, if bail is granted, to disclose all conditions of release to the victim.
- d) Making it mandatory, if bail is granted, for repeat or high-risk accused to wear a GPS tracking device to strengthen a restraining order.

RESOLVED, That the Canadian Federation of University Women urge the federal, provincial, municipal and territorial governments of Canada to work collaboratively to provide full funding for mandatory attendance of IPV offenders (including those on bail) at sufficiently lengthy, effective and evidence-based violence prevention programs.

OVERVIEW

The CFUW since its founding has been working to improve human rights and social justice. It encourages its members to bring about change to women's issues e.g. violence against women. The UWCNY supports these issues and envisions a world where women are safe. One of the ways to strive towards these goals is to urge the government to toughen bail laws in order to protect women, and sometimes their children as well, from further domestic abuse and homicide (Dionne, Matt, October 2021), (Haines, Nov. 2020). Domestic abuse or intimate partner violence escalates over time and the risk increases when the victim's partner has access to a weapon. Granting bail to a repeat offender of IPV leaves the victim in danger as 50% of men charged with IPV violate their bail conditions and often seek out their victim again (Beeby, Dean, Global News). Hence bail for some men can be equal to the death penalty for some women.

BACKGROUND

In Canada in 2021, 173 women and girls were violently killed, a rise from 160 in 2020 and 146 in 2019. (Canadian Femicide Observatory for Justice and Accountability (CFOJA)). This equals a woman or girl killed every 2.1 to 2.5 days. Of this number, 60 women on average are victims of domestic or intimate partner homicide each year, which is one every six days, according to the Canadian Women's Foundation (Statistics Canada 2019). Some of these intimate partner homicides are committed by men out on bail. A study done by CBC looked at 392 homicides between current or former romantic partners between Jan. 1, 2015 and June 30, 2020 and found at least 36 victims were

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under court order protection intended to keep them safe from the accused when they were killed (CBC Investigates Dec.7, 2021). Although homicide rates are generally higher for males than females, females are at a much higher risk of homicide by their male intimate partners. Women were killed by an intimate partner at more than five times the rate at which men were killed by an intimate partner, according to a study in 2015 by the CFOJA. Intimate partner violence has increased since the Covid-19 pandemic began, endangering more women (D'Amore, Rachael, September 2020). Matters are worse with women at home with their abusers, and shelters are overflowing and having to turn women away (Ireton, Julie, March 2020) (Thompson, Nicole, January 2019).

Bail Procedures of Canada's Criminal Justice System

It is a basic Constitutional right to be considered innocent until proven guilty. Section 11 of the Canadian Charter of Rights and Freedoms (Government of Canada, Justice Laws Website) states that an accused person is not to be denied bail without just cause, according to a Federal Ombudsman publication on bail reform (Bail Reform, November 2017). After a person is arrested and charged, he or she may be released pending the court date or kept in custody. If kept in custody, the accused is usually brought before a Justice within 24 hours for a bail hearing to determine if the accused will be released for the period leading up to the trial date; this could be months away or even a year or more from the date of arrest. In 2019 amendments to the bail provisions of the Criminal Code of Canada (introduced within Bill C-75 in 2018) were made, such as "reverse onus" requiring the accused with a previous IPV conviction to justify his release from detention.

The Crown is to carefully review all the charges and evidence against the accused and should consider consulting with the victim or witnesses to ascertain all facts, including safety issues, prior to conducting the bail hearing. If additional information is required for decision-making, the Crown Counsel may request an adjournment of bail proceedings of up to three days unless the accused consents to a longer adjournment. The Justice of the Peace or Judge can deny bail if there is enough proof the alleged offender is a danger to society, as victims also have rights under the Canadian Charter of Rights and Freedoms to secure their personal safety. If an accused is released on bail, there may be certain conditions such as signing a peace bond, abstaining from any communication with the victim or witnesses and wearing a GPS tracking system. Under the Criminal Code (Government of Canada, Justice Laws Website), the victim is entitled to receive, ON REQUEST, a copy of the bail hearing order (Bail Reform, November 2017). At a bail hearing, the safety of the victim is supposed to be taken into serious consideration but is not always done. Sometimes a bail hearing happens too quickly before all the facts are known such as the victim's safety concerns, and concerns of the police and other frontline workers involved. There may have been several previous assaults by the offender (perhaps not all reported), a recent separation, threats of death from the offender, access of the offender to weapons, and previous bail violations.

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Consequences of Granting Bail to Repeat Violent Domestic Abusers

Research done by an expert in the field, Peter Jaffe, founding partner of the Centre for Research and Education on Violence Against Women and Children (CREVAWC) at Western University, shows that there is a pattern to domestic abuse. It is almost never a one-time event. It is ongoing, escalates and can lead to homicide (Jaffe, Peter, April 2020). This pattern is also seen in an examination of police reports (Haines, Avery, Part One, November 2020). The risk is greater when the abusive partner or ex-partner is jealous, controlling and has access to a weapon (Jaffe, Peter, April 2020). As defined in Section 2 of the Criminal Code, a weapon is anything designed to be used in causing death or injury to any person, such as a knife or firearm (What constitutes a weapon, Liberty Law Blog). As Canadian journalist, Rachel Giese puts it: in the abuser's eyes his victim ceases to be an individual but instead becomes his property (Giese, Rachel, November 2001). The most dangerous time for the victim is when she tries to leave and up to six months after separation as the offender does not like to relinquish control (Haines, Avery, Part One, November 2020). Therefore, granting bail under such circumstances to a repeat domestic abuse offender is a serious risk to the woman's life (Di Luca, Joseph, Department of Justice Canada, 2012).

The CBC investigation mentioned earlier identified warning signs in 1 in 3 cases of the 392 IPV homicides. The top four warning signs were recent separation, previous reporting to police, coercive control, and court-ordered protection. Coercive control is a strategic form of ongoing oppression and terrorism used to instill fear. It can take many forms such as isolating the victim from friends and family, not allowing the victim to go anywhere alone, especially with "his" children, confiscating important documents e.g. driver's licence, passport or immigration papers, severely limiting access to money and food, making violent threats against the victim's children or pets and installing invasive surveillance systems in the home denying any privacy, etc. Stabbing was the most common method of homicide followed by shooting. (CBC Investigates Dec. 2021).

According to Dr. Katreena Scott, Director of CREVAWC, a previous violation of a court order is a huge red flag for the likelihood of further IPV violence. Each violation increases the risk that the offender is 2 ½ times as likely to offend again (Haines, Avery, Part One, November 2020). Due to lack of funding, there can be lengthy delays before an offender goes to trial. The more time an offender of domestic violence is out on bail, the more dangerous he may be to his victim even with stay away bail conditions and a GPS tracking system. Unfortunately, when some women have had the courage to try to escape and have charged their offender, they have been let down by the Justice System which has let a violent repeat offender out on bail AGAIN resulting in the victim's murder.

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Specific Cases Here are two examples of the tragic consequences of this happening.

Bridget Takyi Bridget left her home and two young children to walk to her car to drive to her job as a waitress at Pearson International Airport in Toronto. She was attacked, stabbed numerous times, then, set on fire. Police charged Emmanuel Owusu- Ansah with first degree murder. At the time of the attack, he was out on bail following numerous charges of assault, assault with a deadly weapon and threatening to kill Ms. Takyi (Bail and Violence Against Women, January 2013).

Darian Hailey Henderson- Bellman Darian, 25, was shot multiple times and killed by Darnell Reid, her former intimate partner, on July 28, 2020. The victim's family and the police had struggled to keep the victim safe. Reid had been arrested not once, not twice but four times for violating his bail terms by contacting the victim following a violent domestic incident and for possession of illegal guns. Despite clear concerns regarding risk to the victim he was released again into the community with a GPS monitoring device. Peel Region Police Chief Nishan Duraippah called the case a "complete failure" of our Justice System and said we collectively need to do better. When this case was reviewed by Avery Haines of CTV's W5 "Unrestrained" on Nov. 14, 2020, it was revealed that Reid had a ten-year criminal record including illegal guns, drunken driving and domestic violence. When arrested two months earlier for drunken driving and possession of an illegal weapon he and his lawyer used the excuse of the risk of contracting Covid-19 if held in jail until his trial, and he was let out on bail (Haines, Avery, Part One, November 2020).

Lack of Communication between the Justice System and the Victim

Although it is a recommendation, it is still not yet a legal duty to automatically inform victims of their rights or when an offender is released on bail (Bail Reform, November 2017). This means victims with legitimate concerns for their safety may not be made aware when the accused person is released and what conditions may or may not be in place. Sometimes the victim may be told, but not early enough to submit a statement to Counsel or execute safety planning. It should be a compulsory legal duty to inform victims automatically and immediately when an offender is due to be released on bail and what the release conditions are.

Counselling and Treatment Programs for Violent Men

One way to try to stop the cycle of IPV is to mandate that offenders attend programs to help stop their abusive behaviour and challenge them to take an active role in preventing woman and child abuse. A detailed description of Violence Prevention Programs (VPP) across Canada and other multifaceted services addressing root causes of the violence are found in "Programming Responses for Intimate Partner Violence" (Heslop,L, June 2019). VPP such as "Changing Ways" (About Us, Changing Ways) and "Caring Dads" (Why Caring Dads) have had impressive results in reducing reoffending rates by 50% over two years. However, funding from the Ontario Ministry of

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the Attorney General has been cut, resulting in a watered-down program from 26 to 12 weeks which is less effective (Haines, Avery, Part Two, November 2020) (Haines, Avery, November 2020). By comparison in the U.S. the program runs for 52 weeks. Peter Jaffe of CFOJA says the men can change; they are unhappy too.

CONCLUSION

Peace bonds, stay away orders, GPS monitoring devices and effective Violence Prevention Programs do stop some offenders from reoffending. However, they are essentially useless when it comes to preventing impulsive violent criminals from offending again. Some simply ignore the bail conditions and go after their victim once again, engaging in violent assault and sometimes homicide. As Canadian lawyer Pamela Cross says, "A piece of paper doesn't stop a bullet or knife." Therefore, we need our Federal Government to amend the bail laws so repeat violent offenders are not released on bail and there are better safeguards for IPV victims from further violence and even homicide.

IMPLEMENTATION

- CFUW could work with other organizations with a similar view on bail reform to advocate to the Minister of Justice and Canadian Parliamentary Standing Committee on Justice and Human Rights.
- CFUW members could write to their local MP regarding the identified situation and express the need for a national action plan that is well funded.
- Clubs could feature speakers in a webinar or public lecture on new policy issues.

CFUW Clubs could work with other organizations and write to their local MPPs to advocate expanding Violence Prevention Programs to achieve maximum effectiveness. Copies could be given to other political parties in their ridings.