

## **Bill 133: An Act to amend various Acts in relation to certain family law matters and to repeal the Domestic Violence Protection Act, 2000**

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### **Submission to the Standing Committee on Social Policy**

#### **From YWCA Toronto**

#### **Presented by Pamela Cross and Amanda Dale**

#### **Introduction**

My name is Pamela Cross. I am a lawyer and have been working in the field of violence against women for many years as an activist, an educator and a law reform advocate. My years as a family law lawyer representing abused women have given me extensive opportunities to observe and analyse the frustrations many of them experience in the family court system and the ongoing safety issues that confront them.

I am Amanda Dale, the Director of Advocacy and Communications with YWCA Toronto. Since our national founding in the 1870s, we have grown to a member-based organization active in more than 14 communities in Ontario, with 38 member associations in Canada. We have more than 25 million members in our Association worldwide.

YWCA Toronto works through four major program areas: Housing and Shelter, Girls and Family, Employment and Skills Development and Advocacy.

Annually, we serve more than 26,000 individuals. Across all our program areas, the most common factor limiting women's engagement with their community, their family, their career or their potential, is the reality of violence in their home and control over their decision-making autonomy in dispute, custody or immigration matters.

We are here today to speak strongly and enthusiastically in support of Bill 133; in particular those provisions dealing with restraining orders.

Abused women and their advocates in Ontario have long been frustrated by the restraining order legislation provided under family law. Restraining orders often contain conditions that are difficult to understand, the police are often reluctant to enforce the orders and the consequences to an abuser who has breached a restraining order are frequently minimal.

As a result, women and their children do not get the safety they deserve, and abusers are not held accountable for their actions.

In 2000, the provincial government then led by Conservative Premier Mike Harris, introduced the *Domestic Violence Protection Act*, after a summer in which an unusually large number of women had been killed by their former husbands. Despite the good intentions of this legislation, there were serious concerns with it from the beginning, and it was never enacted.

Since then, women have continued to rely on the provisions, inadequate as they are, in the *Family Law Act* and the *Children's Law Reform Act* to try to keep themselves and their children safe.

If passed, Bill 133 will significantly enhance the safety of women who leave abusive relationships in many ways. To understand how, it is important to first understand that the violence and abuse that a woman experiences in her relationship does not end just because she leaves. In fact, it may even escalate.

The reports of the Domestic Violence Death Review Committee, a committee of the Office of the Chief Coroner of Ontario, have identified key commonalities across homicides of women by their partners or former partners. In more than 90% of the cases reviewed, the homicide was preceded by violence and/or abuse in the relationship. Significant risk factors found across these homicides include recent or pending separation (more than 80%) and custody and access disputes.

Further evidence of this ongoing abuse can be found in research conducted by Luke's Place Resource Centre for Women and Children in Durham Region. This research project gathered information from women, service providers, lawyers and judges about the experiences of abused women who must handle their family court proceeding without legal representation. It established that more than 60% of unrepresented abused women going through family court feared for their lives because of the ongoing violence and threats of their former partner.

Clearly, women and their children need the best protection we can offer them if they are to feel safe enough to leave an abusive relationship, deal with their legal issues and move on to lives free from violence.

As noted above, many women turn to family law restraining orders to assist them in staying safe. Bill 133 takes a number of significant steps to make the existing system of family court restraining orders work better than it does now.

## **Enforcement**

We wish to first address the issue of restraining order enforcement.

One of the biggest difficulties for a woman who has received a restraining order is effective enforcement. At the present time, a breach of a restraining order is punishable under the *Provincial Offences Act*. Bill 133 would make a breach punishable under the *Criminal Code*, section 127, which states:

*"Every one who, without lawful excuse, disobeys a lawful order made by a court of justice ...is, unless a punishment or other mode of proceeding is expressly provided by law, guilty of an indictable offense and liable to imprisonment for a term not exceeding two years."*

This is of critical importance.

A man who breaches a restraining order could be arrested by the police, charged with a criminal offence and held for a criminal bail hearing. His case would then proceed in criminal court and, if he is found guilty, he would be liable to potentially more serious penalties.

This amendment has the potential of improving women's safety in at least two ways:

- men may take the restraining order more seriously knowing they face a possible criminal conviction for a breach
- when there is a breach, the man will have to appear for a criminal bail hearing and may be held in custody until trial, which can give his former partner the time she needs to create and implement an effective safety plan

### Who can apply?

We are also pleased to see that Bill 133 broadens the categories of people who can apply for a restraining order. The *Family Law Act* currently restricts restraining orders to spouses, former spouses or people who have cohabited for at least three years. Bill 133 expands this to include people who have lived together for any period of time.

This will ensure that women, no matter how short-lived their cohabitation arrangement, can have access to the safety of a restraining order. Young women, who are the age group at highest risk of lethal violence in their relationships, will particularly benefit from this amendment.

### Required evidence

A third important area of reform presented in Bill 133 is that of the evidence required. A woman will be able to obtain a restraining order by making an application to the family court, where she can show that she *"has reasonable grounds to fear for... her own safety or for the safety of any child in... her lawful custody."*

This language importantly maintains the family court "on a balance of probabilities" standard of proof and makes it clear that it is the woman's reasonable grounds to fear for her safety that is to be established, not the opinion of any third party, which might impose life-threatening delays in the process.

### Terms

Bill 133 also provides specific provisions that judges can include in a restraining order. While the list of suggestions is not exhaustive, it provides judges with a starting place, while permitting them to also make "any other provision that the court considers appropriate."

The Bill also proposes some interesting provisions to limit inappropriate behaviour in situations where the woman does not necessarily have fear for her safety:

*"... the court may also make an interim order prohibiting, in whole or in part, a party from directly or indirectly contacting or communicating with another party, if the court determines that the order is necessary to ensure that an application is dealt with justly."*

This should be of great assistance to women whose partners use the family court proceedings as an opportunity to engage in ongoing legal bullying. In cases where the judge makes this order and it is breached by the abuser, it would provide good evidence to support any application the woman might decide to make for a restraining order in the future.



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We would not support any amendment that would maintain the *Domestic Violence Protection Act*. While this piece of legislation had value at the time it was introduced, it is our opinion that Bill 133 achieves the same goal of keeping women and their children safe from abusers better and more efficiently.

Indeed, repealing the DVPA clears the way for discussions about the possible need for global legislation at both the provincial and federal levels that would respond generally to violence against women, such as the American *Violence Against Women Act*.

While our primary purpose in appearing before you today is to speak to the restraining order provisions contained in Bill 133, we would like to mention briefly our support for other provisions, including those related to custody and access.

We strongly support the requirement that evidence be provided in all custody cases, even where the parties are consenting to an order.

We are also in agreement with the provision that further evidence – the results of a recent police and child protection records check and information about any current or previous family court proceedings -- be required where the person seeking custody is a non-parent.

Taken together, these changes will increase the safety of children, particularly in cases where non-parents are seeking custody.

The provision in Bill 133 relating to child support that will make it mandatory for payors to provide updated financial information on an annual basis will relieve women of the onerous task of pursuing it on their own or of not receiving increases to the level of child support to which they may be entitled. For women whose former partners are abusive, this offers a new level of safety.

Finally and very briefly, we think the proposed amendments to the division of pension assets offer the potential of a cleaner, speedier process that would mean less ongoing contact (and possible acrimony) for the separating parties. It is the regulations that will ultimately determine the effectiveness of these provisions, and we suggest that the regulation development process include an opportunity for public input.

We appreciate that government must weigh many competing interests in the development and passage of legislation. We also know that changing a law is only the first step, and that both those who apply it and those who seek to use it must become familiar with those changes before they have any real impact.

We can assure you that Bill 133 takes us a long way in the direction of increasing safety for women and children, this making it easier for women to leave abusive relationships and move on, with their children to lives free from violence.

We urge you to recommend this Bill as written for Third Reading.