

# When Does it End? The continuation of family violence through the court process, financial outcomes for women and good practice

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## *AD&FV Clearinghouse project on women's financial security*

Today we will present some findings of a one year, qualitative research project being conducted by the Clearinghouse that raises critical issues for legal processes and legal practitioners in addressing issues of family violence.

The Commonwealth Government is funding our organisation to investigate factors contributing to and detracting from women's financial security, pre and post abusive relationships. The purpose of the project is to improve our understanding of the ways in which family violence and system responses can undermine women's financial security, and to promote practices and responses that lead to positive financial outcomes for women and keep them out of poverty.

Working with eight services across Queensland, South Australia and Victoria, we have conducted interviews and focus groups with around forty staff and sixty female clients who've experienced abuse, looking at factors affecting women's economic outcomes and the ways in which we can support them to be more financially secure.

While we are still in the process of transcribing and analysing that data, legal issues and the courts have emerged as a pivotal area affecting women's financial outcomes. Legal options represent one way for women to gain financial security. But they can also function as an acute source of financial stress and hardship.

We should emphasise that legal issues are only one component of our project.

We also recognise that financial security is not the only issue at stake for women involved in the legal system – that obtaining justice, gaining safety and being able to tell one's story are some of the many reasons for engaging in legal processes – but financial security is critical in supporting women to access long term housing, employment, child care, health care, meet children's expenses and other needs.

## *Defining financial security*

To provide you with some context, when we asked women who had experienced abuse what financial security would look like to them, their views were principally modest ones: to be able to pay the immediate bills and to meet their children's needs. Ultimately though, for them financial security represented empowerment: to have control over their finances, to be able to stop worrying about paying the next bill, to be able plan, to have choices and to be independent of others – not only of their ex-partners but also independent of government agencies and creditors.

What follows are some of the leading issues from our research.

### *Women and the legal process*

Women in the study were involved in a wide range of legal actions including: criminal cases, protection orders, property settlement, child contact, wills, victim compensation, bankruptcy and legal action relating to jointly-owned business.

Quite a few women had multiple matters proceeding in different courts, so that they might be dealing with shared parenting issues in the Family Court but also protection order or criminal justice issues in local jurisdictions. Most of the women involved in legal matters were concerned about the financial cost of these actions.

### *Access to legal advice and representation*

Access to legal advice is essential to assisting women to make informed legal decisions. And legal representation is crucial to successful outcomes. However, many women we spoke with felt that their access to justice was compromised because they lacked the financial means to pursue legal action or to access quality legal representation. 'If only I had the money' was a recurrent theme in the interviews.

Many women were not eligible for Legal Aid even though they felt stretched to meet their legal costs. A client asked us: 'I'm just covering the expenses... Should I be giving up work to get all this support?'

### *Satisfaction with Legal Aid*

Many of the women we spoke to who were involved in legal matters were accessing Legal Aid. While women were grateful for receiving Legal Aid, some women were concerned about Legal Aid's process for determining whether to pursue a case; that lawyers were only available until the money approved for the case by Legal Aid ran out (after which they encouraged clients to settle) and that legal avenues would be pursued only if they were considered to be winnable.

Other women talked about having had a number of different lawyers through Legal Aid, none of whom were fully apprised of the issues in the case.

Some women who were, in fact, eligible for Legal Aid chose to pay a private lawyer instead, due to concerns for the safety of their child and the risk that their ex-partner would get some shared parenting arrangement.

Quite a few questioned the quality of advice and representation they received. One woman complained:

*We went to mediation and I told the lawyer I wanted full custody and no visitation. When I got there, none of that was written down. It was written down that I wanted her to live with me but for him to see her. ... my barrister was pushing me to let him see her... If I had extra money I would have got a better lawyer that actually knew more about family law.*

### *Satisfaction with legal representation generally and with the court process*

Women who were dissatisfied with the quality of their legal representation generally, expressed feeling disempowered as a result. Some women felt like their lawyers were disinterested in their case, commenting: 'As client you've got to wonder how important you are to your lawyer.' And, 'We're all just numbers'.

Some women felt that they were being taken advantage of by lawyers; for example, that their lawyer and the ex partner's lawyer were forcing adjournments.

Women expressed concerns about not having sufficient time with their lawyers, leaving them ill-informed or unable to articulate their case and expectations fully, even though they were paying for the time.

Some women were concerned about the apparent lack of knowledge their lawyers had about family violence and family law legislation:

*I had a lawyer who ... didn't know the legislation so I was pointing things out to him and said this is not what the legislation said. But he said to me "He wants fifty-fifty care and he will get it" [referring to equal shared parenting arrangements]. I said "No, this is not the legislation".*

Women also expressed a lack of faith in the courts. They felt frustrated that they were spending a lot of money on legal action yet weren't being heard. One woman said:

*At hearings we went to, the judge said both times "I haven't read either affidavits in full, I've just looked at the first few pages just to get a feel". And I think "Why the hell am I paying \$5000 for you not to read my affidavit? As far as I'm concerned, you can sit and read it through your lunch, I'm not leaving until you've got a proper grasp of what's going on."*

Women were particularly dissatisfied with court processes with regards to safety issues for them and their children. Their despair and frustration is evident in the following:

*My son came back with cigarette burns on him from his dad and I went to court to try and have his time suspended. Basically the court said, "On our scale of things, he's still alive, he's walking around. Keep on going as it is." Well, I don't want to let my son be black-and-blue and unconscious in the hospital before they'll do something about it.*

### *Legal fees*

A major source of concern and dissatisfaction with the women we interviewed centred on legal fees. Women spoke about having to choose between paying for food and bills or paying for ongoing legal costs. One woman noted:

*I earn \$30 000 a year and my legal fees last year were \$20 000 and the mortgage was \$18 000. Thank God for Kevin Rudd and his hand outs is all I can say.*

Some women questioned the transparency of the fees and whether lawyers contacted them unnecessarily in order to run up costs. They spoke of significant costs for every email, phone call, conversation and letter, not to mention court appearances.

Ongoing or additional court cases can incur large financial costs for women and take a significant emotional toll, making it difficult for women to move on from the abuse and plan for their future. While some of women had initiated court proceedings, other women were very clear that their ex-partners were deliberately initiating matters as a means of continuing the abuse following separation, and that the courts were allowing them to do that. We heard comments like: 'He's just enjoying taking me through the system because he earns a lot of money'.

### *Court related costs*

Women also discussed the range of costs associated with court proceedings, such as costs associated with expert witnesses, child care and transport costs. For example, one woman had to pay for a court appointed counsellor for her children - \$100 per visit. The children were already seeing a counsellor whom the ex partner had successfully argued was biased towards the mother.

Court decisions may also result in unforeseen financial costs for women. One woman told us about being encouraged by her lawyer and the school principal to get a doctor's certificate every time her children were sick and away from school, in case school records were used against her at court. She didn't think she could afford the transport and medical costs, particularly if the available doctor did not bulk bill.

Several women also highlighted the financial costs of attending court in terms of its impact on their ability to find and stay in employment. One woman explained that she had decided not to take any further legal action, partly because of the impact it would have on her work:

*There's a whole bunch of things that maybe I could go to court with but all that's going to do is put me back [there], being in the court process and dragging lots more finances and causing me to be a fruit loop and I'm not able to be there for my kids. You can't work when you're going to court every month.*

### *Accountability by perpetrators and courts*

Accountability was a chief issue for many of the women we spoke to. That is, the need for ex partners to be made accountable through the legal system for their violence, and for magistrates and judges to be accountable for outcomes of cases, with one woman noting: 'None of them are accountable for anything'. Most of the women we spoke to felt let down by the courts, in that perpetrators were not made to be accountable for their past and continuing behaviour. These are some of the comments from women:

*That's the part I find frustrating with my other half is that he's been going on and assaulting the children and doing this and doing that, and yet it's him dragging me into court... It's like, "Hello, when are you going to stop and read the police reports? When are you going to stop and look at the photos of the bruises?" They're just ignored.*

*It all gets back to that accountability. My other half went to five hearings to avoid having a restraining order tacked onto him. Five hearings? ... For Christ's sake, all he had to do was keep away from me, what's the problem? There's no criminal record, there's no anything else at all. Nothing. But they allow [him] to do it.*

*He hasn't shown up for the last two access [visits]. He hasn't kept to any of the orders that were put through the court from the children's lawyer. He hasn't kept to any of that but yet I'm the one that still gets dragged back through court when he feels I'm not meeting my [obligations]... It's just so hard, it's really hard.*

### *Next steps*

Our research has focused on only the financial security aspect of the experience and outcomes for women affected by abuse who engage with the legal system. But the issue of financial outcomes is integral to women staying free from poverty and gaining control over their lives. So there is a pressing need for reform of the legal process to address issues raised in this research.

We have primarily focussed in this presentation on the concerns women raised with us but they also spoke of positive experiences and outcomes, particularly around legal advocacy and court support. There were also those who spoke positively of encounters with lawyers and magistrates and judges who were aware of family violence issues and attuned to safety concerns.

Our research is ongoing but already points to the need to provide victims of family violence with information about their rights, access to legal advocacy and court support, access to affordable and informed legal counsel. Legal officers and the judiciary need training around issues of family violence. From the literature, court specialisation looks to be one way of providing a more informed and coordinated response to matters related to family violence. Some of these initiatives are already underway and we support their expansion.

The research has highlighted the importance of advocacy for women affected by family violence. That is, advocates who can refer to legal and other services, who can assist women to negotiate the service system, who can advocate on their behalf around bills and debts, who can talk women through letters and other legal documents, and who can provide court support. Advocacy is vital in assisting women to gain justice through legal systems but its delivery is dependent on the availability of services and their level of resourcing. Our research indicates an urgent need to make such services more consistently and widely available.

We consider that a review of the Legal Aid system is timely for women affected by family violence. The review should examine eligibility threshold levels and training of lawyers around family violence. In particular, it should consider access to Legal Aid for women with complex cases and access to lawyers who can see the case through to completion.

This research has highlighted the gravity of these issues and the urgency with which we need to address them. We owe these women concerted efforts to respond to and prevent family violence, through legal responses that are more informed, integrated and accountable.