



## Osgoode Hall Law Journal

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Volume 35  
Issue 3 *Volume 35, Number 3/4 (Fall/Winter 1997)*  
*Special Issue on Parkdale Community Legal Services (PCLS)*

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Article 29

7-1-1997

### The Spousal Assault Policy: A Critical Analysis

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#### Citation Information

Rachin, Leah. "The Spousal Assault Policy: A Critical Analysis." *Osgoode Hall Law Journal* 35.3/4 (1997) : 785-804. <http://digitalcommons.osgoode.yorku.ca/ohlj/vol35/iss3/27>

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## The Spousal Assault Policy: A Critical Analysis

### Abstract

This article examines the complex relationship between PCLS's spousal assault policy and the clinic's mandate to practice poverty law. The author addresses the conflict which arises from the clinic's attempt to reconcile two goals-access to justice for all members of Parkdale's poor community and advocacy in the area of violence against women. The article also examines whether poverty can serve as a catalyst for violent behaviour or whether such a hypothesis is based on classist myths and assumptions. Ultimately, the author concludes that if battering can be linked to poverty, then PCLS (as a poverty law clinic) has an obligation to assist abusive men with legal issues unrelated to the battering.

### Keywords

Parkdale Community Legal Services; Legal aid; Legal assistance to abused wives; Toronto (Ont.)

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# THE SPOUSAL ASSAULT POLICY: A CRITICAL ANALYSIS<sup>©</sup>

BY LEAH RACHIN\*

This article examines the complex relationship between PCLS's spousal assault policy and the clinic's mandate to practice poverty law. The author addresses the conflict which arises from the clinic's attempt to reconcile two goals—access to justice for all members of Parkdale's poor community and advocacy in the area of violence against women. The article also examines whether poverty can serve as a catalyst for violent behaviour or whether such a hypothesis is based on classist myths and assumptions. Ultimately, the author concludes that if battering can be linked to poverty, then PCLS (as a poverty law clinic) has an obligation to assist abusive men with legal issues unrelated to the battering.

Cet article analyse les rapports complexes qui existent entre la politique de *Parkdale Community Legal Services* concernant la violence faite aux femmes et le mandat de la clinique de réconcilier deux objectifs: l'accès à la justice pour les membres de la communauté de Parkdale qui sont dans le besoin et le plaidoyer en faveur des femmes victimes de violence. L'auteur s'interroge aussi à savoir si la pauvreté peut servir de catalyseur aux comportements violents ou si une telle hypothèse est fondée sur des mythes et des suppositions reliés aux classes sociales. En définitive, l'auteur conclut que si un lien peut être établi entre la violence faite aux femmes et la pauvreté, *Parkdale Community Legal Services*, en tant que clinique oeuvrant dans le domaine du droit de la pauvreté, à l'obligation de venir en aide aux hommes violents qui connaissent des problèmes d'ordre juridique n'ayent pas trait à la violence faite aux femmes.

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I. INTRODUCTION

In this article, I analyze Parkdale Community Legal Services' (PCLS) "Spousal Assault Policy." In Part I, I examine the history of the policy, its theoretical foundations, and related clinic policies. In particular, I address the ongoing tension between the clinic's spousal assault policy, and its commitment to access to justice, professional responsibility, and assisting women in abusive situations. Access to justice is an ideal that drives both our casework and law reform initiatives at Parkdale. Accordingly, we must pose the obvious question—"Access for whom?" The answer to this question seems simple in light of our mandate—"Why, the poor, of course." This response, however, begs the question, "Who are 'the poor?'"

In Part II, I address the feminization of poverty as it relates to women's legal options and how women suffer the effects of poverty in multi-dimensional and systemic ways which men do not. Moreover, immigration status, race, ethnicity, disability, and sexual orientation intensify our clients' experience of poverty. However, the ways in which people experience poverty on *individual* bases cannot be quantified *solely* along gender lines (or on the basis of immigration status, race, ethnicity, disability, and sexual orientation). These factors operate in different ways for each Parkdale client. If our mandate is to serve "the poor," then we cannot easily refuse to serve men who have been known to abuse their partners if they otherwise satisfy our eligibility criteria.

The two most pressing questions posed by our current spousal assault policy are: whether we can ethically refuse to represent men in cases where the battering is "at issue;" and whether we can ethically refuse to represent batterers in *any* area, even when the abuse is not "at issue." In order to answer either of these questions, it is necessary in Part III to discuss the social phenomenon and psychology of men's battering. In so doing, I assess whether the following hypothesis is tenable: the systemic problems generated by poverty may serve as catalysts for battering. I will also address whether such a theory may be premised on classist and racist myths and assumptions. If this theory is valid, however, and the effects of poverty *do* contribute to male violence, then it contradicts our mandate to refuse such men our services in areas

*unrelated* to battering. If the clinic is truly committed to “poverty law,” and if the effects of poverty precipitate violence, we cannot refuse to serve such men simply because it is unpalatable to do so.

Ultimately, in Part IV, I conclude that an unconditional “No Batterers Policy” is untenable if we are to stay true to our mandate to serve the poor community. While the current policy is not categorical in its scope, given how many staff at PCLS interpret the policy, and given two recent amendment proposals, there seems to be a discernible trend towards an unequivocal “No Batterers Policy.” I argue that it is misguided for PCLS to move in this direction. The current policy, if refined and clarified, can be consistent both with a feminist approach to the practice of law and with an understanding of the problems generated by the devastating effects of poverty.

## II. THE POLICY

### A. *History of PCLS’s Spousal Assault Policy*

PCLS Policy 6.17, “Spousal Assault Policy,”<sup>1</sup> was passed by the clinic’s board of directors in December 1982 and reads:

THAT this Clinic recognizes wife assault as a serious issue and wishes to pursue a program of community education and law reform on this matter and that to facilitate this program the Clinic will not represent male clients in cases where spousal assault (spouse to be widely defined) is an issue, unless we are unable to find other representation for the client.

A position paper sent to the board prior to the policy’s approval sets out the motivations behind the policy.<sup>2</sup> The paper addressed the widespread nature of domestic abuse and explained how women are often ashamed of being abused and afraid to leave and/or take action against their abuser.

The policy paper also examines how a woman who takes action against her abusive partner likely faces a host of challenges which may be insurmountable. If a woman is successful in having her abuser prosecuted, but is financially dependent on him, she faces the quandary

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<sup>1</sup> See Parkdale Community Legal Services, *PCLS Clinic Manual* (Toronto: PCLS, 1983) s. 5.5, reproduced in this issue of the Journal: “PCLS Clinic Manual 6.17— Policy on Spousal Assault” (1997) 35 Osgoode Hall L.J. 777.

<sup>2</sup> *Ibid.*

of how to provide food, shelter and medical care for herself and, possibly, for her children. In addition,

[t]he legal minefield which an already injured and distraught woman must face usually leads to charges not being laid, or being dropped, or failing in court. The assaulted woman then becomes discouraged and disillusioned and gives up on the legal system.<sup>3</sup>

Accordingly, PCLS wanted to educate the community about the serious nature of domestic violence and to acknowledge the systemic barriers that abused women face when taking legal action. PCLS has sought to provide a place for women where they could be safe in the knowledge that they would not encounter their abuser.<sup>4</sup> It was hoped that this action would help women with the daunting task of coming forward. As the position paper attached to the original policy asserts, “[i]t is difficult for members of the public to appreciate the mental gymnastics which allow a lawyer to represent both wives who are assaulted and husbands who assault.”<sup>5</sup>

Another argument in support of the policy is that defences which PCLS would have a duty to put forward on behalf of abusive men would perpetuate false premises present in our society (*i.e.*, that women lie, or that “domestic squabbles” belong in the private realm). To employ such defenses would be at cross purposes to PCLS’s goals of community legal education and law reform in the area of violence against women.

Some progress has been made in the area of spousal assault since the policy was enacted over a decade ago. However, these “victories” have been largely superficial. Crown policy manuals advocate a tougher stance on spousal assault and the police now have programs sensitizing them to such issues. The effect of the initiatives, however, have been less than momentous. Indeed, many of my clients recount how the police and the Crown have been insensitive to the reasons why they are abused and endure such abuse, and to the emotional, physical, and economic fallout that would ensue if they left.

Since the spousal assault policy was enacted, it has inspired much discussion and a variety of proposed amendments, yet the policy remains the same as the day it was enacted. This was stated decisively in the minutes of the PCLS Board: “management is to reiterate to staff and

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<sup>3</sup> *Ibid.* at 779.

<sup>4</sup> Support for this proposition can be found in the position paper of May 1994 attached to a policy proposal which was approved by PCLS staff in November 1994 but which was not adopted by the board: *ibid.* at 782.

<sup>5</sup> *Ibid.* at 780.

students that there is only one policy in force and lay out what it is re. violence against women.”<sup>6</sup>

Having canvassed PCLS staff and students, it is clear that efforts to clarify the policy have been unsuccessful. Given that students and staff lawyers make nearly all intake decisions, it is essential that the policy be clearly explained so that it will be interpreted uniformly and in keeping with its original intention.

If one examines the wording of the policy, it is not surprising that it is subject to a variety of interpretations. The phrase, “the Clinic will not represent male clients in cases where spousal assault ... is an issue” is ambiguous. “An issue” could easily be interpreted as meaning that if the issue of domestic violence arises at all, we would have to turn the male client away.

I believe that the words “*at issue*” would better convey the true thrust of the policy, especially if the clinic manual were to provide a few hypothetical examples of what is meant by “at issue.” My comments should not be viewed as semantic nit-picking. Evidently, the meaning of the policy is not sufficiently clear given how widely misinterpreted it is.

The clinic’s policy on representing landlords is more clear. This policy states that PCLS will not act for landlords *specifically* in landlord and tenant matters. As Ron Ellis’ letter attached to the policy indicates:

Seventy-five per cent of the office’s legal services are unrelated to landlord-tenant matters, and *of course*, indigent landlords are accepted without question as clients in respect of all services other than those dealing with landlord-tenant concerns.<sup>7</sup>

If it goes without saying that PCLS will represent indigent landlords in matters unrelated to their role as landlords, why is the same clarity not achieved in our spousal assault policy? The failure do so has led many to misinterpret the current policy as being a categorical “no batterers policy.” To adopt such a policy, however, directly contradicts the policy statement accompanying the original spousal assault policy:

It is important to realize that we are *not* saying that we do not wish to represent wife-beaters because we ‘don’t like them.’... We are not denying representation to these men to punish them; ... we are saying that if there are allegations of spousal assault then our clinic does not wish to represent a male client as part of our policy of encouraging

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<sup>6</sup> Parkdale Community Legal Services, Board of Directors, *Minutes* (28 June 1995) [unpublished].

<sup>7</sup> See Parkdale Community Legal Services, *PCLS Clinic Manual* (Toronto: PCLS, 1996) s. 6.18.3 [hereinafter *1996 Manual*]; reprinted in this issue of the Journal: “PCLS Clinic Manual 6.18—Policy on Landlords” (1997) 35 Osgoode Hall L.J. 681 [emphasis added].

assaulted wives to take legal action and our policy of attempting to reform the legal system and to get it to work for assaulted wives.<sup>8</sup>

It is difficult to believe that one of the motivating factors behind a more categorical interpretation of the spousal assault policy (*i.e.*, a true “no batterers” policy) is that “we don’t like them,” especially in light of Parkdale’s policy on representing landlords. Indeed, the landlord-tenant division encourages tenants to take legal action and is engaged in law reform work to make the legal system more advantageous for tenants. However, the policy on landlords does not categorically deny services to landlords in order to accomplish these goals. If, as the wording indicates, the intention of the spousal assault policy is only to deny services to men where the abuse is *clearly* at issue, it should be explicitly stated.

The discussion paper attached to a May 1994 proposed amendment to the current policy stated that “there are no other clinics providing the full range of services required by a woman who is a victim of violence.”<sup>9</sup> It was also stated that “there are other clinics doing immigration, tenancy and workers’ rights work who will accept a client referred to them with a letter simply stating that there is a potential conflict of interest.”<sup>10</sup>

These comments are troubling. First, while access to justice remains a pressing issue for abused women, it is no longer true that there are no other clinics which provide women with a full range of services with regards to violence against women. CLASP (the legal clinic operating at Osgoode Hall Law School) has an area of practice designated “Women’s Division,” which dedicates itself specifically to this type of work. Moreover, organizations such as the Toronto Rape Crisis Centre and the Barbra Schlifer Clinic also provide support and advocacy for women facing domestic violence. Second, I have great difficulty with the assertion that other clinics would accept such clients with a letter in hand from us stating a conflict of interest. This “not in my backyard” type of reasoning is inappropriate for a community clinic. Essentially, it entails dumping a problem which we find distasteful on other clinics, which, as poverty law clinics, likely share our ideals and mandate. While such a practice might comfort our consciences at PCLS, it does not address the real issue—how can we deny our services to poor men, even

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<sup>8</sup> *Supra* note 1 at 780.

<sup>9</sup> [unpublished].

<sup>10</sup> *Ibid.*



abusive poor men, if they satisfy our income and geographic requirements. I will address this question in detail below.

### B. *Goals and Objectives of PCLS*

The clinic movement in Ontario arose in response to deficiencies in the legal aid program. Many problems of particular concern to low income people were not being addressed by the Ontario Legal Aid Plan.<sup>11</sup> Moreover, there was no preventative or educational thrust to the program. One of the informing principles of the clinic movement was that accessible legal services would enable people to address their problems in ways that would strengthen their ability to cope with, or better still, to ameliorate their poverty.

Ultimately, there is no detailed manifesto which specifically provides what type of work PCLS is meant to do. This is not necessarily a disadvantage. In fact, a broad statement of purpose allows the clinic's services to evolve with the changing needs of the community we serve.

As stated in Policy 2.15<sup>12</sup> (entitled "Clinic Performance Evaluation Criteria"):

The clinic is responding to ... changing cultural trends and changing cultural/economic patterns which affect the legal needs of low income people in the community ... by regularly ... and appropriately updating or revising priorities for clinic services, as is necessary.

This commitment to responding to the changing needs of the Parkdale community is also reflected in the clinic's policy of regularly examining intake sheets and referrals to identify the legal needs of the community.

PCLS must regularly review the needs of the Parkdale community in order to make tough choices about how to best allocate resources. It is important to note, however, that poverty throughout the existence of PCLS has been reason enough to provide services to those who reside within our catchment area. Nevertheless, unless our clinic becomes solely a clinic for women, we cannot fail to serve men who meet eligibility criteria in place at that particular time. It does not follow that we will fail to address access to justice issues for women. It is clear, particularly in our work doing courtroom accompaniment and advocacy

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<sup>11</sup> 1996 *Manual*, supra note 7 s. 2.2.1 (Goals and Objectives).

<sup>12</sup> *Ibid.* s. 2.15.

before the Criminal Injuries Compensation Board, that we are sensitive to the unique legal needs of women.

### III. THE FEMINIZATION OF POVERTY

At this point, an examination of the question “who are the poor?” becomes necessary. In these times of fiscal restraint, we must ask ourselves the difficult question: “who in the Parkdale community is *most* in need of our services?” We must then ask whether PCLS can justify withholding services from some individuals, albeit poor, in favour of other groups of poor people.

Women are disproportionately poorer than men and domestic violence is a factor that compounds women’s poverty. Studies reveal that domestic violence is a contributing factor, if not the cause of homelessness for 50 per cent of homeless women.<sup>13</sup> Indeed, research done in the area of domestic violence offers compelling insights into the relationship between gender and poverty.<sup>14</sup>

I have seen this connection in my own work with the family and welfare division at PCLS. The most glaring example is the terrible shortage of affordable housing for women. Our clients have found that Metro Toronto Housing’s priority program for abused women takes nearly two to three months to locate a vacancy—an eternity for any woman who must endure the trauma of physical and/or mental abuse.

The rules governing eligibility for social assistance intensify how abused women experience poverty.<sup>15</sup> A woman suffering from abuse cannot receive government assistance separate from her spouse unless she vacates the shared dwelling place and establishes an independent address. Many women have no money of their own and simply do not have the resources to leave. Of course, if they had the money of their own, there would be no need for social assistance. As a result, leaving an

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<sup>13</sup> See for example, G.P. Mullins, “The Battered Woman and Homelessness” (1994) 3 J.L. & Soc. Pol’y 237; and J. Zorza, “Woman Battering: A Major Cause of Homelessness” (1991) 25 Clearinghouse Rev. 420 at 421.

<sup>14</sup> P. Marguiles, “Representation of Domestic Violence Survivors as a New Paradigm of Poverty Law: In Search of Access, Connection, and Voice” (1995) 63 Geo. Wash. L.Rev 1071.

<sup>15</sup> See for example, *Falkiner v. Ontario (Ministry of Community and Social Services)* (1996), 140 D.L.R. (4th) 115 (Ont. Ct. (Gen. Div.)), commonly referred to as the “spouse in the house case.” In this case, a number of female social assistance recipients argued that they did not want their financial income merged with the men they lived with because they had been victims of spousal violence and they wanted to maintain financial independence.

abusive situation is not an option for many women, especially women with children.

For women who are “lucky” enough to leave their abusive homes and receive assistance, many have trouble satisfying the job search requirements given barriers to self-promotion as a result of having been battered. Often, women involved in prolonged violent relationships suffer from post-traumatic stress disorder and/or diminished self-esteem. Given her inability to promote herself, a woman may be unable to find employment or in a position to maintain it. Thus, one effect of the current system is to encourage poor women to remain in abusive relationships.

Immigration policy also keeps immigrant women in abusive relationships because their immigration status often depends on abusive partners who is their sponsor. If sponsorship is revoked, an immigrant woman will lose her status and may be deported. While a woman in such circumstances might be able to make a claim to stay in Canada on the basis of humanitarian and compassionate grounds, she will face barriers on three levels. First, it is unlikely that she will know her legal rights given her probable lack of access to community resources. Second, the cost of such a claim is prohibitive—now hovering around \$1,475.<sup>16</sup> Third, in order to make a successful claim, she must demonstrate establishment: close ties to Canada and economic self-sufficiency. This is extremely difficult for immigrant women who may lack the language skills, immigration status, and self-confidence necessary to gain employment.

In order to be true to our mandate of responding to the needs of the Parkdale community, we must recognize that domestic violence and the feminization of poverty have a very important place in the practice of poverty law. However, to recognize the importance of issues surrounding women’s poverty does not mean that it must be to the exclusion of other groups. We are a *poverty law* clinic, not a specialty clinic, which dedicates its services solely to specific groups, (e.g., the Advocacy Centre for the Elderly.) Given that we are a general poverty law clinic, we must devote ourselves to understanding the effects of poverty on *all* groups within the community we serve.

It is crucial to acknowledge that poverty is exacerbated not only by gender but also by race, immigration status, ethnicity, disability, and sexual orientation. In conjunction with these personal characteristics, the problems associated with poverty and class can be exponentially increased. While it is undeniable that women are *systemically* more

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<sup>16</sup> An application is \$500 and the mandatory Right-of-Landing fee is \$975.

disadvantaged than men, it cannot be denied that when poverty is compounded by the above factors, the effects can be devastating to men as well. Thus, I do not think it is wise to *categorically* deny services to men suspected of battering in areas unrelated to the battering.

Theory cannot be separated from practice. If we are truly to serve "the poor," we cannot only serve those who make us feel virtuous. I believe that PCLS's current spousal assault policy is truly in keeping with our mandate. Yet, it appears from my interviews with PCLS students and staff and from recent proposed amendments to the existing policy, that the clinic is heading in the direction of an equivocal "no batterers" policy. I am concerned by this trend and urge PCLS to consider the negative ramifications that would be involved if such a policy were implemented.

I realize I will be accused of looking at the debate simplistically (*i.e.*, that all poor people should be served). However, I would redirect this admonition back at my critics. It is an unnecessary over-simplification to dichotomize the issue into two irreconcilable positions (*i.e.*, either we serve abused women *or* we serve men accused of abusing). If we take a more nuanced view (one which I will explore in greater detail below), PCLS can do both without compromising our desire to provide women with greater access to justice.

#### IV. THE SOCIAL PHENOMENON OF BATTERING

##### A. *The Prevalence of Domestic Violence*

Statistics on battering reveal that one quarter of women have experienced violence by a current or past marital partner. One-sixth of currently married women reported violence by their spouses, and between 1974 and 1992, 1,435 women were killed by their male partners.<sup>17</sup>

Some progress has been made in the area of violence against women (*i.e.*, police forces implementing mandatory arrest and charging policies and Crown policies mandating automatic prosecutions of wife assault cases), yet men continue to batter their partners at alarming rates.<sup>18</sup>

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<sup>17</sup> See McGuire Associate Consultants, *Framework for Action on the Prevention of Violence Against Women in Ontario* (Toronto: Ontario Women's Directorate, 1996) section 2.1.

<sup>18</sup> See M.F. Rusen, "Silencing Their Screams: The Legal System's Response to Male Battering of Women" (Ottawa: National Association of Women and the Law, 1992).

It is important to acknowledge that there is no stereotypical “battered woman.” I use the terms “battered woman” and “abused woman” with reluctance. The phrases are reductive, as they define the life experience of a particular woman entirely in terms of the violence she experiences—it ignores her many other attributes and the strength with which she faces her situation. Similarly, a “batterer” is nothing more than that, a violent dominator. The term has no regard for his personal history and challenges.

### B. *Definitions of Battering*

There are many definitions of “battering.” A common definition is “the threat or use of physical force to coerce and control.”<sup>19</sup> This understanding of battering as a physical phenomenon is common to law enforcement, where the emphasis is on the physical nature of abuse and disregards the subtle, yet equally devastating mental elements of abuse.

Jeraldine Howell Nelson points to the uniqueness of the feminist approach to the treatment of men who batter their female partners. She defines wife beating as “a sociopolitical problem ... with power and control as the fundamental issues.”<sup>20</sup> As Linda MacLeod states:

Wife battering is the loss of dignity, control and safety as well as the feeling of powerlessness and entrapment experienced by women who are the direct victims of *ongoing or repeated* physical, psychological, economic, sexual and/or verbal violence or who are subjected to *persistent* threats ...<sup>21</sup>

### C. *Why Men Batter*

Sociological and feminist explanations of male violence against women developed largely during the 1970s. Many sociologists and feminists wanted “to correct the impression created by the psychiatric community that wife assault was a rare event that was committed only by men with diagnosable psychiatric disturbances.”<sup>22</sup> Sociological and

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<sup>19</sup> L. M. Russell & J.S. Clarkson, eds., *Dictionary of Feminist Theologies* (Louisville, Ky.: Westminster John Know Press, 1996) at 24.

<sup>20</sup> J.H. Nelson, *A Comparison Between the Male Batterer's and the Male Nonbatterer's Perception of Control and Authority* (Ann Arbor, Mich.: University Microfilms International, 1992) at 36-37.

<sup>21</sup> L. MacLeod, *Battered but not Beaten: Preventing Wife Battering in Canada* (Ottawa: Canada Advisory Council on the Status of Women, 1987) at 16 [emphasis added].

<sup>22</sup> D.G. Dutton, *The Domestic Assault of Women: Psychological and Criminal Justice Perspectives* (Vancouver: UBC Press, 1995) at 34.

feminist theories argued that spousal assault was actually a common occurrence generated by social mores—we live in a patriarchy which condones the use of violence to maintain itself. Battering, therefore, is “normal” violence committed not by raving psychopaths but rather by “normal” men who believe that patriarchy is their right.<sup>23</sup>

Given the existing power structure, men and women are socialized differently. Despite some success of the women’s movement, we are socialized from birth to conform to prescribed gender roles (*i.e.*, the great divide between pink and blue!). Boys are programmed by society to be assertive, physically aggressive, success-oriented, and above all, financially independent. As a result of male socialization, the range of permitted emotions is severely limited. Not surprisingly, rage and violence become acceptable modes of behaviour. One theory suggests that, “[m]en who assault their wives are actually living up to cultural prescriptions that are cherished in Western society ... aggressiveness, male dominance and female subordination—and they are using physical force as a means to enforce that domination.”<sup>24</sup>

Donald Dutton and Susan Golant argue that given the atrocities committed against abused women, it would be simple to write off their abusers as less than human, as suffering from varying degrees of “testosterone poisoning.”<sup>25</sup> To perceive such males simultaneously as victims and victimizers confuses this polarized view. Yet, I believe that this outlook best reflects the reality of abusive men’s behaviour. Men who do not live up to society’s gender expectations must endure its scorn. Undoubtedly, such rejection may lead to feelings of powerlessness, inadequacy, and rage which in the context of economic poverty, may precipitate abusive behaviour.<sup>26</sup>

The loss of control is widely acknowledged as a source of battering. For many men, control is central to their masculinity. In fact, “male power (especially over females), appears to be central to many men’s definitions of themselves.”<sup>27</sup> Yet, for many men, support for this identity is structurally denied. For example, when men face poverty, they are unable to assume the role of the strong, independent “breadwinner.” As a result, such men may perceive control issues in the

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<sup>23</sup> *Ibid.*

<sup>24</sup> D.G. Dutton & S.K. Golant, *The Batterer: A Psychological Profile* (New York: Basic Books, 1995) at 69.

<sup>25</sup> *Ibid.* at 19.

<sup>26</sup> This hypothesis will be addressed in greater detail below.

<sup>27</sup> Nelson, *supra* note 20 at 59.

family as especially consequential.<sup>28</sup> Thus, we can view spousal violence as an attempt to regain, through the use of emotional and physical abuse, something that has been lost.

I am not arguing that all poor men batter, or that battering is a problem exclusive to poor communities. Male violence against female partners is a problem faced by individuals from all walks of life. However, poverty and the sense of powerlessness that accompanies it can be devastating to men, who have been socialized to be "providers." Because poor men are bound to feel a lack of control over their own lives, it is conceivable that poverty might be a catalyst for violent behaviour.

If, as a poverty law clinic, we endeavour to understand and to educate others about the systemic problems associated with poverty and gender, we cannot turn our backs on men who batter. Battering, in some ways, can be looked upon as the intersection of poverty and gender socialization. This intersection affects men as well as women, albeit in profoundly different ways.

At a time when scarce resources must be stretched even further, the impetus to follow a triage form of case selection is understandable. According to this model, poor women are more in need of services given the additional systemic barriers they face in comparison to poor men. We will see, however, that battering is often associated with male unemployment and underemployment and other issues of particular concern to poverty lawyers. To deny our services to men with these issues is against our mandate of serving "the poor." Moreover, it could be detrimental to the women they abuse.

#### *D. The Correlation Between Poverty and Domestic Violence*

Although causal research is inconclusive, studies suggest a link between poverty and domestic violence. One study in British Columbia found that the rate of domestic violence is highest "among the poor, among women with disabilities, women living common-law and among women aged 25-34 years."<sup>29</sup> MacLeod's studies suggest some connection between poverty and battering: "[while] it is known that ... unemployment or poverty, like other life stresses ... can precipitate wife

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<sup>28</sup> L.L. Tiftt, *Battering of Women: The Failure of Intervention and the Case for Prevention* (Boulder, Colo.: Westview Press, 1993) at 43.

<sup>29</sup> See "Family Violence in British Columbia: A Brief Overview" (Vancouver: British Columbia Institute for the Prevention of Family Violence, 1997) at 8.

battering by lowering inhibitions against it, there is no conclusive evidence that any of these factors cause wife battering."<sup>30</sup> Dutton's research reveals that:

low income, unemployment and part-time employment were ... related to violence amongst spouses. The mechanisms that connect unemployment to wife assault included increased contact, greater likelihood of conflict over financial matters, lowered self-esteem in the unemployed male and redirected aggression whereby frustration that accumulates from an unsatisfying work situation is taken out on the wife. These exosystem factors alone would lead to the prediction that economic downturns would be followed by increases in wife assault.<sup>31</sup>

In Nelson's comparative analysis of batterers' and non-batterers' education and income levels, she determined that the groups were evenly matched on educational levels;<sup>32</sup> however, the outcome was different with respect to annual income level. While at middle and upper income levels, there did not seem to be a significant difference between the income of batterers and non-batterers, those interviewed with incomes below \$20,000 reflected a significant difference (50.63 per cent whereas with non-batterers the figure was 32.91 per cent).<sup>33</sup> The same results can be culled from demographics comparing the employment status of batterers and non-batterers. While there did not appear to be statistically significant differences between the sample groups engaged in full- and part-time employment, there appeared to be a notable difference between the groups when unemployment was a factor. While sixteen of the seventy-nine batterers were self-identified as unemployed (20.25 per cent), only five out of seventy-nine non-batterers were unemployed (6.33 per cent).<sup>34</sup>

The results of Dutton's study support Nelson's research: the levels of education were very similar in both batterer and non-batterer groups and batterers were more likely to be under-employed or unemployed than the non-batterers. Similarly, MacLeod found that only 38 per cent of the abusive men involved in her study worked for pay on a regular basis:

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<sup>30</sup> *Supra* note 21 at 38.

<sup>31</sup> *Supra* note 22 at 54.

<sup>32</sup> *Supra* note 20 at 127.

<sup>33</sup> *Ibid.* at 128.

<sup>34</sup> *Ibid.* at 131.



Of the men who were working for pay, only 4 per cent worked in professional occupations, 10 per cent in white collar jobs, and 27 per cent in skilled blue-collar jobs. Fifty-nine percent worked in unskilled blue collar or "miscellaneous" jobs.<sup>35</sup>

To explain male violence wholly in terms of poverty, given the variety of ways men handle stress is an oversimplification. However, to disregard the compelling research indicating that poverty can be a catalyst for violence would be equally short-sighted.

### E. Are Such Theories Classist and/or Racist?

I would like to address concerns that are bound to arise when making connections between poverty and violent behaviour. Understandably, it could be said that such theories are premised on classist and racist myths and assumptions. Given that our society views men who cannot provide for themselves and for their families as deviant, and given that poor men are disproportionately men of colour, one might say that studies linking poverty with violence are attempts by the dominant class to further stigmatize poor communities and communities of colour.

Recently, battered women's advocates and women of colour have done considerable work in expanding definitions and perspectives on battering. Kimberly Crenshaw has raised interesting questions regarding the lack of reliable statistical evidence on the incidence of battering across racial and class lines.<sup>36</sup> She challenges the theory that battering is *not* predominantly a problem of the poor and people of colour. While I would not go as far as Crenshaw and argue that battering is *predominantly* a problem of the poor, she raises compelling questions about feminist scholarship which states that battering occurs equally in all communities.

The idea that battering occurs in families of *all* races and classes has become the war-cry of anti-abuse campaigns. Some advocates "have even transformed the message that battering is not *exclusively* a problem of the poor or minority communities into a claim that it *equally* affects all races and classes."<sup>37</sup> These advocates appear "less concerned with exploring domestic abuse within 'stereotyped' communities than with removing the stereotype as an obstacle to exposing battering within

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<sup>35</sup> *Supra* note 21 at 30.

<sup>36</sup> K. Crenshaw, "Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color" (1991) 43 *Stan. L. Rev.* 1241 at 1252.

<sup>37</sup> *Ibid.* at 1259.

white middle and upper class communities.”<sup>38</sup> Crenshaw asserts that it is unlikely that advocates who adopt this way of thinking intend to exclude or ignore the needs of poor and minority women. However, the focal point becomes white womens’ experiences with domestic violence and does little to break the patterns of neglect that permitted the problem to continue as long as it was imagined “only” to be a minority problem. Accordingly, minority womens’ experiences of violence are largely ignored, except to the extent that they gain white support for domestic violence programs in the white community.<sup>39</sup> Crenshaw also states that:

No reliable statistics bear out [the] claim ... that [battering] is equally a problem across races and classes ... Statistics that do address the issues suggest that there is a greater frequency of violence among the working class and poor which, in turn, translates to overall rates that are higher for minorities who are disproportionately poor.<sup>40</sup>

Crenshaw’s search for empirical evidence about battering and race leads her to conclude that the pressure to minimize and/or suppress the problem of domestic violence in the African-American community could result from the desire to maintain community integrity and to discourage commonly held perceptions of black men as uncontrollably violent.

Beth Richie voices similar concerns about existing negative perceptions about the black community. Richie, like Crenshaw, argues that battered black women are often caught in a “trap called loyalty.”<sup>41</sup> Furthermore, for a community that has experienced violence at the hands of the criminal justice system, it is deeply troubling to turn to this same system as a vehicle for protection and problem resolution.<sup>42</sup>

During the course of her research, Crenshaw “attempted to review the Los Angeles Police Department’s (LAPD) statistics reflecting the rate of domestic violence interventions by precinct.”<sup>43</sup> She believed that “such statistics would provide a rough picture of arrests by racial group (given the degree of racial segregation in Los Angeles).”<sup>44</sup> The LAPD refused to release the statistics. A representative explained that

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<sup>38</sup> *Ibid.*

<sup>39</sup> *Ibid.* at 1259-60.

<sup>40</sup> *Ibid.* at 1259.

<sup>41</sup> B. Richie, “Battered Black Women: A Challenge for the Black Community” (March/April 1985) 16 *The Black Scholar* 40 at 41.

<sup>42</sup> *Ibid.* at 43.

<sup>43</sup> *Supra* note 36 at 1252.

<sup>44</sup> *Ibid.*

“domestic violence activists both within and outside the Department feared that statistics reflecting the extent of domestic violence in minority communities might be selectively interpreted and publicized.”<sup>45</sup> Crenshaw was told that “activists were worried that the statistics might permit opponents to dismiss domestic violence as a minority problem and, therefore, not deserving of aggressive action.”<sup>46</sup>

Crenshaw and Richie show us the competing goals which poor women and/or women of colour face. They must often weigh their interests in avoiding issues that might reinforce distorted public perceptions of their communities against the need to acknowledge problems within those communities. As Crenshaw and Richie point out, the problem is not so much the portrayal of violence itself as it is in the absence of other images portraying a fuller range of these communities’ experiences. Both authors agree that the suppression of domestic violence in the name of anti-racism (or anti-classism) imposes real costs.<sup>47</sup>

I think it is important to acknowledge the correlation between spousal assault and the feelings of powerlessness and multiple stresses which can result from poverty. As a poverty law clinic, I believe that PCLS has a responsibility to address such issues, given our mandate to respond to the needs of the community we serve. To address issues surrounding domestic violence demands that we serve not only the victims of the violence, but also the abusers in certain circumstances. That is, if we can alleviate some of the stresses that stem from poverty (through our practice areas of immigration, workers’ rights, landlord-tenant and/or social assistance matters), we might be able to quell some violent behaviour. I feel strongly, therefore, that our current policy, which allows us to represent abusive men in areas unrelated to the battering, is well-informed and should remain unchanged.

## V. CAN PCLS SERVE BOTH BATTERER AND BATTERED?

Does serving *both* the batterer and the victim necessarily entail an abandonment of a feminist approach to the practice of law?” I do not believe that it does. The clinic’s no landlord policy shows that serving so-called “traditional antagonists” in non-related areas does not mean

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<sup>45</sup> *Ibid.* at 1252-53.

<sup>46</sup> *Ibid.* at 1253.

<sup>47</sup> *Ibid.*; and *supra* note 41.

that our clinic will become psychologically inaccessible to those who have been victimized.<sup>48</sup>

In no way do I underestimate the trauma that women living in violence undergo—certainly, the landlord/tenant relationship is not entirely analogous to that of the batterer/battered. However, as we have seen, the clinic's policy on landlords demonstrates that acting for both the "oppressor" and the "oppressed" does not have to be mutually exclusive or unprincipled.

The "all or nothing" approach (*i.e.*, a categorical "No Batterers Policy") represents an unnecessary dichotomy. If poverty is a spark for abusive behaviour, and if preventing violence against women is truly our goal it makes sense to go to one of the source of the battering and to mitigate it.

Concern has been raised by adherents of a categorical no-batterers policy that PCLS will lose credibility in the eyes of the women we serve if we also assist their abusive partners in *any* capacity. The issue is not so dichotomous. We can explain that by helping men who batter to overcome their poverty, and their socialization, this may go to one of the source of the battering and help to stop it.

If we were to enact an unconditional no batterers policy, PCLS might very well be a *psychologically* safe place for women. However, this notion of safety might be nothing more than a veneer. By withholding our services from abusive men in matters unrelated to battering, we could be contributing to the perpetuation of the problem by failing to address the sources of the abusive behaviour. Moreover, as is pointed out in a Management Team memo, "there is no guarantee that keeping men away will bring women in."<sup>49</sup>

Another problem inherent in a no batterers policy is alluded to in this memo. Though the policy was enacted to prevent the dilemma that a woman must race her abusive partner to PCLS's door in order for us to represent her, a no batterers policy does not solve the problem. Should the man arrive at PCLS first, even if we have *minimal* contact with him, during which he discloses abusive behaviour, the *Rules of Professional Conduct*<sup>50</sup> oblige us to refer the woman elsewhere if she comes to us for help. Therefore, the practical ramifications are that we could not represent him. Nor, however, could we represent her.

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<sup>48</sup> See discussion in Part II, above.

<sup>49</sup> Memo from Shelley Gavigan on Behalf of Management Team to Gail Cadieux, Ray Kuszelewski & Bart Poesiat (10 May 1995).

<sup>50</sup> Law Society of Upper Canada, *Professional Conduct Handbook* (Toronto: LSUC, 1997), specifically Rule 4, Commentaries 4 and 6, and Rule 5, Commentary 6.

I want to clarify any impression of forming alliances with men who batter. Public education, indeed “consciousness-raising” plays an important role in the mandate of any poverty law clinic. Accordingly PCLS’s aim, in its role as educator, would be to *change*, not *support*, abusive men’s behaviour.

To do law reform work in the area of domestic violence (an objective set out in the current policy), is in itself, not enough. If, for instance, we are successful in getting more aggressive measures put into place (*i.e.*, mandatory prosecutions, longer jail sentences, etc.), this still does not address the issues underlying men’s violence. When a man is released, the cycle of violence will likely continue if he does not acquire the resources (both emotional and financial) to stop his violent behaviour. It is widely recognized that men who batter tend to do so recurrently, and that most will not change their behaviour without outside assistance.<sup>51</sup>

Research suggests that many battered women want counseling for their husbands. MacLeod’s study found that abused women’s most frequent wish (91 per cent of the victims interviewed) was for professional help for their abusers. Most women surveyed did not want their partners punished as much as they wanted the abuse to stop and for their partner to be helped.<sup>52</sup> These assertions are supported by the findings of MacLeod’s study that 81 per cent of shelter workers felt that more battered women would want the police to lay charges if they knew that the man would be ordered to get special treatment. If MacLeod’s study is representative, then the assertion that women will not comprehend the “mental gymnastics” lawyers employ to represent two sides of an issue reflects a lack of understanding of the wishes of women in the community we serve. As a community clinic, we should take our cues from how community members define their needs. Perhaps it would be truer to say that the “mental gymnastics” are required not from the women we serve but rather from service providers who are trying to reconcile our *own* feelings of discomfort in dealing with abusive men.

## VI. CONCLUSION

Having examined in detail PCLS’s spousal assault policy and its failings, the social phenomenon of battering and the ethical dilemmas associated with such a policy, I am convinced that PCLS should maintain

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<sup>51</sup> *Supra* note 21 at 93.

<sup>52</sup> *Ibid.* at 95.

its current policy. I say this with the following proviso—it must be clearly enunciated and consistently implemented.

I do believe that it would be an indefensible conflict of interest were we to represent abusive men in the criminal context. We would rightly lose all credibility in the eyes of women's advocates, and more importantly, in the eyes of women who have been abused. At present, however, this is not a concern. Should the clinic recommence criminal work, the policy should be amended accordingly.

The same loss of confidence would not necessarily follow if we represented men in matters unrelated to battering. While we might lose credibility in the eyes of some service providers, as has been stated previously, most women who are dealing with abusive partners express that they do not want their partners punished, but rather, that they get help. We could provide such help by dealing with the legal issues that might precipitate the violence and by referring men to the appropriate social and psychological services they would require on a more long-term basis.

As I have discussed above, the appeal of an absolute no-batterers policy is evident. However, if we can alleviate some of the stress features in an abusive man's life (particularly those linked to poverty), then we may ultimately make life better for the woman he batters. To adopt a categorical no batterers policy could very well thwart this most crucial objective.