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Diana Ginn*

Mandatory Reporting of Wife Assault by Health Care Professionals

I. *Introduction*

This article examines the issue of mandatory reporting of wife assault[1] by health care professionals. Should a health care professional who believes that a patient is being abused by her partner have a legal duty to report that belief, and the information on which it is based, to a designated government ministry or department?[2] Such reporting is already required for cases of suspected child abuse and, in one province, for suspected abuse of adults who are mentally or physically unable to protect themselves from the abuse.

While the reporting requirements in child welfare legislation and the Nova Scotia *Adult Protection Act*[3] apply to everyone with information

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1. The term "wife assault" rather than "spousal assault" or "domestic violence" is used throughout this article, and the victim is referred to as "she" and the perpetrator as "he." This is done to highlight the fact that, in the vast majority of cases, it is women who are being assaulted by their male partners. This is not to deny that abuse can also happen in same sex relationships.

2. Although no jurisdiction in Canada requires health care professionals to report wife assault, one provincial Law Reform Commission has raised the issue. In a 1993 discussion paper, the Law Reform Commission of Nova Scotia solicited public response on the issue of mandatory reporting: "An issue on which the Commission at this time makes no suggestion but seeks public comment is whether or not there should be a requirement that medical doctors and other health professionals report suspected cases of spousal assault" (Law Reform Commission of Nova Scotia, *Violence in a Domestic Context: A Discussion Paper* (Halifax: The Commission, 1993) at 21).

3. R.S.N.S. 1989, c. 2. The following lists mandatory reporting of child abuse sections in provincial and territorial legislation: Alberta: *Child Welfare Act*, S.A. 1984, c. C-8.1, s. 3; British Columbia: *Family and Child Service Act*, S.B.C. 1980, c. 11, s. 7; Manitoba: *Child and Family Services Act*, S.M. 1985–86, c. 8, s. 18, C.C.S.M. c. C80; New Brunswick: *Family Services Act*, S.N.B. 1980, c. C-2.1, s. 30, title am. by S.N.B. 1983, c. 16, s. 1; Newfoundland: *Child Welfare Act*, R.S.N. 1990, c. C-12, s. 38; Northwest Territories: *Child Welfare Act*, R.S.N.W.T. 1988, c. C-6, s. 30; Nova Scotia: *Children and Family Services Act*, S.N.S. 1990, c. 5, ss. 23–24; Ontario: *Child and Family Services Act*, R.S.O. 1990, c. 11, s. 72; Prince Edward Island: *Family and Child Services Act*, R.S.P.E.I. 1988, c. F-2, s. 14; Quebec: *Youth Protection Act*, R.S.Q., c. P-34, s. 24; Saskatchewan: *Child and Family Services Act*, S.S. 1989–90, c. C-7.2, s. 12.

The only jurisdiction in Canada that does not have mandatory reporting of child abuse is the Yukon. The Yukon *Children's Act*, R.S.Y. 1986, c. 22, s. 115(1) states that information that a child may be in need of protection *may* be reported.

regarding suspected abuse, this article will focus on reporting by health care professionals.

Because "physicians will likely maintain contact with an abused woman or her partner, long after the intervention by other community agencies has ceased,"[4] it seems particularly relevant to ask what impact mandatory reporting might have on the relationship between battered women and health care professionals.

Mandatory reporting of wife assault would probably affect health care professionals more than most other professions. Unlike the situation of adults who fall under adult protection legislation, where abuse or neglect might be noticed by a social worker, or the situation with children, where teachers, day care workers or babysitters might observe signs of abuse, it seems that if wife assault is disclosed to or discovered by someone other than a friend, family member or the police, this is most likely to take place in a medical setting.[5]

Furthermore, since it is necessary for health care professionals to know that abuse is happening in order to provide good health care to battered women, any measure that affects the extent to which women are willing to disclose abuse to health care professionals is also likely to affect the quality of the health care received by battered women.

Finally, because patients expect that the information they give to health care professionals will be kept confidential, requiring health care professionals to report would seem to conflict more with assumptions about the role of health care professionals than it might with assumptions about the role of, for instance, neighbours or co-workers.

For these reasons, then, this article will examine the specific issue of reporting by health care professionals. However, before discussing whether health care professionals should be required to report suspected wife assault, it is relevant to consider the reporting provisions in Nova Scotia's adult protection legislation and in American statutes.

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4. Ontario Medical Association Committee on Wife Assault, "Approaches to Treatment of the Male Batterer and His Family" (1986) 53:12 Ont. Med. Rev. 782 at 785.
5. According to Dr. Lesley Pinder, Chair of the New Brunswick Medical Society's Subcommittee on Family Violence, "doctors are, after police officers, the most likely people to come face to face with domestic violence" (P. Sullivan, "NB Physicians Sent Hard-hitting Discussion Paper on Wife Abuse" (1990) 143:3 CMAJ 218 at 219).

II. *Adult Protection Legislation*

Nova Scotia's *Adult Protection Act*[6] requires "[e]very person who has information, whether or not it is confidential or privileged, indicating that an adult is in need of protection" to report that information to the Minister of Community Services.[7] Failure to do so is an offence, carrying with it a maximum penalty of a $1000 fine or a year imprisonment or both.[8] "Adult in need of protection" is defined in the Nova Scotia legislation as

> an adult who, in the premises where he resides,
>
> (i) is a victim of physical abuse, sexual abuse, mental cruelty or a combination thereof, is incapable of protecting himself therefrom by reason of physical disability or mental infirmity, and refuses, delays or is unable to make provision for his protection therefrom, . . .[9]

The majority of women who are battered by their partners do not fit this definition, and a review of the reported cases decided under the adult protection legislation in Nova Scotia shows that it has not been used to deal with wife assault.

In most cases, it is not "physical disability or mental infirmity" which prevents battered women from protecting themselves or remedying the situation.[10] Instead, they are prevented from doing so by a variety of

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6. Prince Edward Island's *Adult Protection Act*, R.S.P.E.I. 1988, c. A-5 states that abuse of an "adult in need of protection" may be reported, but it is not mandatory to do so. Newfoundland has a *Neglected Adults Welfare Act*, R.S.N. 1990, c. N-3 which requires reporting where an adult is being neglected (s. 4(1)), but the legislation does not deal with abuse. There are also adult protection provisions in New Brunswick's *Family Services Act*, *supra* note 3 which give the Minister certain powers with regard to elderly or disabled persons who are being abused (ss. 34–42). However, there is no reference in New Brunswick's legislation to the reporting of such abuse.

7. *Supra* note 3, s. 16. The *Adult Protection Act* also requires reporting in the case of neglect; however, the focus of this article is on abuse.

8. *Ibid.*, s.17.

9. *Ibid.*, s. 3(b).

10. This article argues that the majority of battered women are not "mentally infirm" and therefore should be allowed to make their own choices, even if those choices do not accord with the advice given them by others. Obviously, if a battered woman is mentally incapacitated, then the Nova Scotia *Adult Protection Act* would apply.

The legislation also speaks of inability to protect oneself because of physical disability. That issue is largely outside the scope of this article; however, it seems that including battered women and others in the *Adult Protection Act* simply because of a physical disability is inappropriate and may discriminate on the basis of disability. Unless a person is so physically disabled that she truly cannot communicate with the outside world, there seems to be no need for the state to intervene as set out in the *Adult Protection Act*. Certainly a battered woman who is physically disabled might face additional difficulties in leaving the abusive relationship; however, solutions such as ensuring that appropriate transportation to a safe place is made available, that transition houses are accessible to women with disabilities and that other necessary services and supports are in place would seem to be a better approach, enabling the disabled woman to protect herself.

socially created obstacles, including economic dependence; the lack of affordable housing and other resources for women and children who are trying to escape abuse; the fact that the legal system often does not provide any real protection;[11] the fact that it may actually be more dangerous once the woman leaves or tries to leave;[12] the way in which women have been socialized to "stand by their men" and to believe that it is their responsibility to keep the family together, whatever the cost; the social stigma which still attaches to victims of abuse;[13] the woman's fear that she may lose custody of the children if she leaves; the fact that ending the relationship will almost always mean leaving the family home and, sometimes, moving away from community, family and friends; and the fact that the woman may still love her partner, and simply want the abuse, not the relationship, to end. These obstacles may be exacerbated if the woman is disabled, or belongs to an ethnic, racial or linguistic minority.

Therefore, except in those few cases where a battered woman would fit the definition of an adult in need of protection, even in Nova Scotia there is no requirement that health care professionals report wife assault. In fact, since there is no such legislative requirement, reporting by health

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11. See, for example, Cape Breton Transition House, *Speaking Out: Voices of Battered Women in Cape Breton* (Sydney, N.S.: Cape Breton Transition House, 1988); Hon. C. McQuaid, *Inquiry into Police and Department of Justice Policies and Procedures in Cases of Inter-Spousal and Intra-Family Violence* (Prince Edward Island, 1991); Dr. C. Murphy, *Summary Report: Nova Scotia Crime Victims Needs and Services Research Project* (Halifax, 1991); P. Mahon, *Silence in the Court: Battered Women Talk About Their Experience in the Legal System* (Halifax: Nova Scotia Council on the Status of Women, 1988); D. Pedlar, *The Domestic Violence Review into the Administration of Justice in Manitoba* (Winnipeg: Manitoba Justice, 1991); J. Ursel, "Examining Systemic Change in the Criminal Justice System: The Example of Wife Abuse Policies in Manitoba" (1990) 19 Man L.J. 529.

12. Dr. Peter Jaffe, Co-chair of the Canadian Panel on Violence against Women, estimates that a woman in an abusive relationship becomes five times more likely to be killed by her partner when she leaves or when her partner discovers that she plans to leave (Statement made by Dr. Jaffe during Panel hearings, Halifax, March 6, 1992).

An America study of "interspousal homicide" revealed that in more than half the cases where a woman was killed by her partner, the couple had already separated. See G. Barnard *et al.*, "Till Death Do Us Part: A Study of Spouse Murder" (1982) 10 Bull. Am. Acad. Psychiatry Law 271 at 274; see also D. Berrios & D. Grady, "Domestic Violence Risk Factors and Outcomes" (1991) 155:2 West. J. Med. 133. After reviewing the files of over two hundred victims of domestic violence who came to the emergency department of a California Hospital, the authors note that "physical separation from the batterer . . . did not ensure protection for our subjects. Fully a third of the victims in our study were not living with their assailants at the time of the index episode" (*ibid.* at 135); M. Mahoney, "Legal Images of Battered Women: Redefining the Issue of Separation" (1991) 90 Mich. L. Rev 1.

13. An abused woman quoted in an article in *Maclean's* states: "The fear of violence is something terrible. Physically it's terrible; mentally, it's terrible. However the stigma and the fear of coming out and the lack of resources are worse than the beatings themselves" ("Women in Fear" *Maclean's* (11 November 1991) 4 at 32).

care professionals would seem to be unethical, as it would breach the patient's right to confidentiality. The Canadian Medical Association's *Code of Ethics* states that an ethical physician "will keep in confidence information derived from a patient . . . and divulge it only with the permission of the patient, except when otherwise required by law."[14] Similarly, the *Code of Ethics for Nursing* states that "[t]he nurse holds confidential all information about a client learned in a health care setting."[15]

One commentator has suggested that health care professions have "an independent discretion . . . to report [wife assault] in good faith when he or she considers it necessary to preserve a patient's health and well-being"[16] and, therefore, a health care professional who made such a report would be "protected against liability for breach of confidentiality and for defamation."[17] However, given the fact that there is no legislative requirement to report and given the legal and ethical requirements that health care information be kept confidential, it is hard to see how this "independent discretion" would arise.

III. *American Legislation*

In a number of American jurisdictions the reporting duties of hospitals and health care professionals are worded broadly enough so as to include reporting of wife assault. In quite a number of states, the police must be informed when a person seeks medical treatment for a wound that appears to have happened during the commission of a crime. The duty to report is phrased in a variety of ways, but most of the wordings would include a duty to report injuries to a woman caused by her abusive partner.[18]

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14. Canadian Medical Association, *Code of Ethics* (Ottawa: Canadian Medical Association, 1992), s. 6.
15. Canadian Nurses Association, "Code of Ethics for Nursing" in F. Baylis & J. Downie, compilers, *Codes of Ethics* (Toronto: Department of Bioethics, Hospital For Sick Children, 1992) at 40, Value III. The discussion of this "Value" in the "Code of Ethics for Nursing" does contain the limitation that "[t]he nurse is not morally obligated to maintain confidentiality when the failure to disclose information will place the client or third parties in danger."
16. B. Dickens, "The Limitations of Current Laws in Dealing with Women's Health Rights" (1992) J. SOCG 41 at 44.
17. *Ibid.*
18. Although these provisions refer to injuries suffered by either the perpetrator or victim of the crime, it seems likely that at least the original focus of these provisions was crime prevention and particularly the apprehension of wounded criminals who had left the scene of the crime, not assistance to victims.

For instance, in Pennsylvania, health care professionals and hospital administrators must report to the chief of police when treatment is sought by or for a person

> (1) suffering from any wound or other injury inflicted by his own act or by the act of another by means of a deadly weapon . . . ; or
>
> (2) upon whom injuries have been inflicted in violation of any penal law of this Commonwealth;[19]

Similarly, Florida legislation requires a report to the sheriff when any health care professional "knowingly treat[s] any person suffering from a gunshot or other wound indicating violence."[20]

A number of American jurisdictions also have legislation similar to the Nova Scotia *Adult Protection Act*. In most cases, the American legislation, like the Nova Scotia Act, is limited to situations where the victim of the abuse or neglect is mentally or physically impaired. However, several states do have more broadly worded provisions.

For instance, Minnesota requires professionals caring for "vulnerable adults"[21] to report abuse or neglect to the police, sheriff or local welfare agency. The definition of "vulnerable adult" includes any person who "is unable or unlikely to report abuse . . . without assistance because of impairment of mental or physical function or emotional status."[22] Arguably, this definition could more easily be interpreted as including wife assault than are the provisions in the Nova Scotia *Adult Protection Act*. Under the Minnesota legislation, it would not have to be argued that a battered woman was mentally incapacitated, only that, at the time the report was made, her emotional status made it "unlikely" that she would report the violence "without assistance."

Michigan and California have even broader provisions. The Michigan legislation[23] states that any health care professional, other than a physician, "who suspects or has reasonable cause to believe that an adult has been abused, neglected, exploited, or is endangered"[24] must report this to social services. A physician is required to report such abuse only if the physician determines that making a report would be "in the best interest of the adult."[25] This legislation clearly applies to wife assault, since the reporting requirements refer to abuse of *any* adult.

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19. *Crimes and Offenses*, Title 18, s. 5106.
20. Title 46, s. 790.24.
21. M.S.A. s. 626.557.
22. *Ibid.*, s. 626.557.1(b)(3).
23. *Social Welfare Act*, M.C.L.A., s. 400.
24. *Ibid.*, s. 400.11a.(1).
25. *Ibid.*, s. 400.11a(2).

California[26] requires health care professionals to report physical abuse of elders and dependant adults. "Dependant adult" is defined to include "any person between the ages of 18 and 64 who is admitted as an inpatient to a 24-hour health facility."[27] Thus, in California, reporting of wife assault would seem to be required where the battered woman is admitted to a hospital for any reason, but health care professionals would not be required to report wife assault if the woman was only seen in a physician's office or in the emergency department of a hospital, without being admitted to hospital.

While a literature search did not reveal any legal articles about the impact of the American reporting requirements on battered women and on their relationship with the health care system, one can only speculate as to whether this lack of writing in the area means that there has been no impact, or simply that it is not being written about in legal journals.

IV. *Arguments in Support of Mandatory Reporting*

The arguments that are made in support of mandatory reporting of wife assault are inter-related, characterizing such reporting as a reflection of society's responsibility to battered women and as a way of helping women who are unable to help themselves.[28]

Historically, society has condoned or ignored wife assault. As Madame Justice Bertha Wilson commented in *R.* v. *Lavallée*:

> The notion that a man has a right to "discipline" his wife is deeply rooted in the history of our society. . . . One consequence of this attitude was that "wife battering" was rarely spoken of, rarely reported, rarely prosecuted, and even more rarely punished. Long after society abandoned its formal approval of spousal abuse tolerance of it continued and continues in some circles to this day.[29]

Obviously, society has the obligation to do everything possible to end wife assault. This obligation is multifaceted, but arguably one aspect of it is that every person, including a health care professional, who is aware of a situation of wife assault should be required to report to the police. Of course, society is also obligated to provide an appropriate response, since mandatory reporting alone, without immediate and effective crises intervention, a reformed legal response, and both short and long term support services for battered women, would be of little use. From this perspective,

26. *Welfare and Institutions Code*, Division 9, ch. 11, s. 15600.
27. *Ibid.*, s. 15610(2).
28. E. Schneider "Describing and Changing: Women's Self-Defense Work and the Problem of Expert Testimony on Battering" (1986) 9 Women's Rts. L. Rep. 195 at 198.
29. [1990] 1 S.C.R. 852 at 872 [hereinafter *Lavallée*].

continuing to turn a blind eye to the violence that women experience at the hands of their partners, by *not* making reporting mandatory and by not responding effectively when violence is reported, is an "abdication"[30] of personal and societal responsibility. Given the continued tolerance of wife assault in some circles, appropriate responses to the violence will not be found until there are significant structural changes in society. A recognition of individual responsibility might create greater acceptance of a collective responsibility to end wife assault. Furthermore, a requirement to report might make health care professionals aware that there is at present no adequate system in place to deal with incidents of wife assault once they are reported. Such a realization might cause health care professionals to demand changes from the legal and social services sectors. If health care professionals, who possess privilege and power within society, could be encouraged to take on such a role, it would give greater weight to the arguments being made now by those advocating changes in this area.[31]

The philosophy that wife assault is a societal problem, not just a personal one, and therefore that society has an obligation to respond, is reflected in Police and Crown Directives on laying criminal charges and prosecuting cases of wife assault. The Nova Scotia *Directive of the Attorney General and Solicitor General Regarding Spousal Assault*[32] begins with the statement, "Violence against women is a major societal concern." The Directive goes on to provide:

> 1. The police are to respond to and fully investigate all complaints of spousal assault. . . .
>
> 2. The police officer is to lay a charge where there are reasonable grounds to believe that an offence has been committed, regardless of the wishes of the victim/complainant. . . .
>
> . . . .
>
> 8. Crown Attorneys will prosecute a spousal assault charge whenever they are satisfied that sufficient evidence exists regardless of the victim/complainant's wishes unless public interest considerations dictate otherwise.

30. This phrasing comes from Professor Brenda K. Richard, of the Maritime School of Social Work, Dalhousie University. In a conversation with me on the issue of reporting of wife assault, Professor Richard used the concept of social responsibility to argue very persuasively for mandatory reporting, with the caveat that reporting would work *only* if structural change occurred within society and the appropriate responses to wife assault were in place.

31. *Ibid.*

32. Issued March 30, 1992.

The Directive reflects the fact that wife assault is a crime, and any crime is an offence against the state as well as against the individual. Therefore it is appropriate that the state lay charges and prosecute the offence. The Directive also seems to acknowledge that it may be unfair to burden the woman, at a time of acute crisis, with the decision of whether a charge should be laid against her partner. A variety of factors, ranging from fear of retaliation to the hope that her partner may change his behaviour voluntarily, may make it very difficult for a battered woman to ask that charges be laid. If the perpetrator is charged and convicted, he may be more likely to blame his partner (and she may be more likely to blame herself) if it was her decision to lay criminal charges. Similarly, the fact that the prosecution can go ahead even if the victim requests otherwise would seem to be an attempt to safeguard a battered woman from her partner's demands that she have the charge withdrawn.

Parallels can be drawn between, on the one hand, the requirement for police to lay charges and Crown Attorneys to prosecute in cases of wife assault, regardless of the woman's wishes, and, on the other, a requirement for health care professionals to report wife assault. In each case, it could be argued that overriding a woman's wishes can be justified by the public interest in ending wife assault, the need to relieve battered women of the burden of deciding whether or not to involve the criminal justice system, and the need to protect battered women from reprisals.

Arguments in favour of mandatory reporting focus not only on societal responsibility but also on the need to help battered women who cannot help themselves. Over the last fifteen years, the phrase "battered woman syndrome" has been used to describe the psychological response of some battered women to the violence which they experience.

> In the classic description, the battered woman lives in a constant state of fear that anything she does may precipitate another beating. She may be paralyzed by "learned helplessness," a sense of loss of predictability and control over her life, although she often has survival strategies. She may also have such a sense of low self-esteem and so few real and/or perceived options that she cannot leave the abusive relationship.[33]

Since 1977,[34] some American courts and, more recently, Canadian courts have heard expert testimony on battered woman syndrome in cases

33. Schneider, *supra* note 28 at 202. The concept of "learned helplessness" is taken from experiments in which electric shocks were administered to dogs who had no avenue of escape. Walker concluded that "repeated batterings, like electrical shocks, diminish the woman's motivation to respond" (L. Walker, *The Battered Woman Syndrome* (New York: Springer, 1984) at 87).

34. *State* v. *Wanrow*, 88 Wash.2d 221, 559 P.2d 548 (1977).

where a battered women is accused of killing her husband and the defence of self-defence is raised.

In the Supreme Court of Canada decision *Lavallée*, evidence on battered woman syndrome was integral to the court's finding that the accused had acted in self-defence when she shot her abusive partner. Madame Justice Wilson stated:

> Expert evidence on the psychological effect of battering on wives and common law partners must, it seems to me, be both relevant and necessary in the context of the present case. How can the mental state of the appellant be appreciated without it? The average member of the public (or of the jury) can be forgiven for asking: Why would a woman put up with this kind of treatment? Why would she continue to live with such a man? How could she love a partner who beat her to the point of requiring hospitalization? We would expect the woman to pack her bags and go. Where is her self-respect? Why does she not cut loose and make a new life for herself?[35]

Expert testimony offered by the defence, and accepted by the Court in *Lavallée*, focused on the concept of learned helplessness, arguing that the accused did not leave her partner because

> the spouse gets so beaten so badly—so badly—that he or she loses the motivation to react and becomes helpless and becomes powerless. And it's also been shown . . . —not that you can compare animals to human beings, but in laboratories, what you do if you shock an animal, after a while it can't respond to a threat to its life. . . . So in a sense it happens in human beings as well. . . . You get paralyzed with fear.[36]

If battered women are paralyzed by fear and low self-esteem, and are therefore simply unable to assess their options or seek help, then mandatory reporting by health care professionals is one way of acting for women who cannot act for themselves. In fact, it may be a way of beginning to attempt to restore autonomy to women whose sense of self has been so diminished that they could not be expected to take on the arduous task of obtaining help and escaping the violence. Some survivors of wife assault have asked why no one acted on their behalf, when they were trapped within the violent relationship.[37]

Another relevant aspect of the concept of battered woman syndrome is the characterization of wife assault as a cycle of violence, with three identifiable phases: "the tension-building phase; the explosion or acute battering incident; and the calm, loving respite."[38] According to this

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35. *Supra* note 29 at 871.
36. *Ibid.* at 884.
37. *Supra* note 30.
38. L. Walker, *The Battered Woman* (New York: Harper & Row, 1979) at 55.

theory, the third phase (sometimes called the honeymoon phase) may undermine a battered woman's plans or desire to end the relationship. According to Dr. Lenore Walker, who developed the concept of battered woman syndrome,

> [t]he third phase follows immediately on the second and brings with it an unusual period of calm. The tension built up in phase one and released in phase two is gone. In this phase, the batterer constantly behaves in a charming and loving manner. He is usually sorry for his actions in the previous phases, and he conveys his contriteness to the battered woman. He begs for forgiveness and promises her that he will never do it again. . . . The batterer truly believes he will never again hurt the woman he loves, he believes he can control himself from now on. He also believes he has taught her such a lesson that she will never again behave in such a manner, and so he will not be tempted to beat her. He manages to convince everyone concerned that this time he really means it.[39]

If, as Dr. Walker suggests, there is a predictable cycle to the violence which may make it more difficult for women to decide to leave, there may be a need for mandatory reporting, on the grounds that the woman is so emotionally enmeshed in the relationship that it is impossible for her to consider her own best interests or even her safety.

Besides the positive reinforcement of the "loving respite" postulated by Dr. Walker, there is also a great deal of societal pressure on women to remain in abusive relationships. Many women (whether or not in a battering situation) have internalized societal values which tell us that a woman without a man has no value, that it is the woman's responsibility to hold the family together and that any separation is caused not by the violence, but by her inability to play her proper role, that women's "pleasure is expected to come from pleasing others, especially men,"[40] that what goes on in the home must be kept private, and that it is better for children to be raised in a two-parent (albeit violent) family than in a (probably poor) single-parent family. These powerful messages tell battered women they should stay in the relationship and "struggle and suffer in silence."[41]

Therefore, even if the resources available to battered women were greatly improved and expanded, societal expectations about women's

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39. *Ibid.* at 65–66. This aspect of the battered woman syndrome was also relied upon in *Lavallée*, *supra* note 29. The Court in *Lavallée* also noted the related concept of "traumatic bonding" between a victim of violence and the perpetrator (*ibid.* at 885).

40. D. Sinclair, *Understanding Wife Assault: A Training Manual for Counsellors and Advocates* (Toronto: Ministry of Community and Social Services, Family Violence Program, 1985) at 25.

41. *Ibid.* at 26.

role and societal denigration of women's worth might still make it very difficult for some battered women to take the initial step of calling the police or contacting other community services. This too provides support for mandatory reporting.

More recently, the terminology "post-traumatic stress disorder" (PTSD) has come to be used in the context of women's psychological response to repeated batterings. A recent text, *Trauma and Recovery*,[42] relates the clinical features of PTSD to the experiences of battered women:

> Traumatic reactions occur when action is of no avail. When neither resistance nor escape is possible, the human system of self-defense becomes overwhelmed and disorganized. Each component of the ordinary response to danger, having lost its utility, tends to persist in an altered and exaggerated state long after the actual danger is over. Traumatic events produce profound and lasting changes in physiological arousal, emotion, cognition, and memory. Moreover, traumatic events may sever these normally integrated functions from one another.[43]

In fact, Herman goes on to suggest that a new category of "complex post-traumatic stress disorder" may be needed to describe those who have survived "prolonged, repeated trauma,"[44] such as wife assault, as opposed to those who have been subjected to one "circumscribed"[45] traumatic event.

Arguably, women suffering from PTSD will not be in a position to assess their situation realistically or to undertake the sometimes difficult and lengthy process of finding economic resources, support services, alternate housing, physical protection, or whatever else may be needed to allow them to extricate themselves from the violence. A sense of profound helplessness and hopelessness could prevent battered women from ending the relationship or from attempting to persuade their partners to attend counselling for their abusive behaviour. If it is true that at least some battered women are living within a "fear structure"[46] which makes it difficult for them to appraise their options or seek help, then mandatory reporting by health care professionals may be necessary. From this perspective, if PTSD makes autonomous choice by a battered woman psychologically impossible, then mandatory reporting would actually enhance her autonomy.

Another argument that has been made for mandatory reporting by health care professionals is that, after a particularly bad beating, the

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42. J.L. Herman, *Trauma and Recovery* (New York: BasicBooks, 1992).
43. *Ibid.* at 34.
44. *Ibid.* at 119.
45. *Ibid.*
46. P. Hodgkinson & M. Stewart, *Coping with Catastrophe* (New York: Routledge, 1991).

woman may be physically unable to report the abuse. In *Violence in a Domestic Context: A Discussion Paper*, the Nova Scotia Law Reform Commission precedes its request for public comment on the issue of mandatory reporting with a brief discussion of the pros and cons of such reporting. The *Discussion Paper* states: "in some situations, a woman may be unable to report the abuse for a variety of reasons, including situations where a woman is severely beaten and brought to a hospital."[47]

V. *Arguments Against Mandatory Reporting*

The arguments against mandatory reporting of wife assault, while recognizing society's responsibility to assist and protect battered women, suggest that reporting by health care professionals would be unlikely to provide battered women with greater protection, emphasize the right of mentally competent adults to control their own lives, and point to the harm to battered women that might result from such reporting.

One of the most persuasive arguments for mandatory reporting of wife assault is that such reporting is one component of society's responsibility to end wife assault. However, this argument is predicated on society also fulfilling its responsibility to respond effectively and appropriately to reports of wife assault. Clearly, this is not now the case. Research on community and legal responses to wife assault[48] shows it to be, at best, inadequate, and, at worst, still reflective of the very myths and stereotypes that make it possible for wife assault to continue. Major structural and attitudinal changes are needed before there is much chance of ending wife assault; however, I am not confident that mandatory reporting is likely to cause health care professionals to work for societal change. Instead, it seems more effective to encourage health care professionals to add their voices to those already advocating for change in this area. This could be accomplished by educating health care professionals as to the prevalence and severity of wife assault and by training them to view the provision of health care as involving more than simply tending to the physical injuries of battered women. Both these goals could be achieved without instituting mandatory reporting.

Another argument in favour of mandatory reporting of wife assault by health care professionals is that the woman may be in a state of "learned helplessness," or suffering from post-traumatic stress disorder, and therefore unable to make her own decision as to whether or not to seek outside intervention. Related to this is the argument that societal formu-

47. *Supra* note 2 at 21.
48. *Supra* notes 11–13 and accompanying text.

lations of women's role and women's worth may make it very difficult for women to leave an abusive relationship.

If a battered woman's decision-making ability is impaired to the extent that she fits within the definition of an "adult in need of protection," then, at least in Nova Scotia, health care professionals who are aware of the violence are required to report it.[49] If the adult protection legislation does not apply, because the woman is not mentally incapacitated, then it seems that a battered woman, like any other competent adult, should be allowed to make her own decisions. Certainly the fact that some survivors of wife assault have asked why no one intervened on their behalf when they were in the violent relationship is a damning comment on individual and societal inaction in the face of wife assault. However, my point is not that such intervention is not necessary, but simply that it should be done with the consent of the woman involved, and with deference to her needs in terms of timing, approach, and so on.

The suggestion that mandatory reporting is necessary because women do not realize that intervention is in their best interests ignores the fact that many women do, at some point, seek help. One American study on the ways in which battered women respond to the violence found that battered women did seek help and, as the violence escalated, the women intensified their efforts to find assistance.[50] The author concluded that battered women did not become passive or helpless. If anything, it was the "helping professions" that seemed unable to act when faced with cases of wife assault.[51] Although this study is American, the proliferation of transition houses in Canada, many of which are constantly full with waiting lists, suggests that many battered women are ready to accept assistance if they feel that it truly will help. In speaking with or reading about battered women, one is struck by the inventiveness and stamina that women display in trying to find ways out of the violence. Similarly, in the rare cases where women finally turn on their abusers and kill them, the problem does not seem to be a lack of awareness of options. The problem is that there are no realistic options for those particular women.

If it is social and economic realities, not psychological syndromes, that keep battered women in abusive relationships, society's focus should be

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49. It is true that such reporting could not take place in the other provinces; however, if it is felt that mentally incapacitated adults need the types of protection found in adult protection legislation, then such legislation should be introduced for all incompetent adults who are in need of protection, not simply for those battered women who are actually incapable of decision-making.
50. E. Gondolf & E. Fisher, *Battered Women as Survivors: An Alternative to Treating Learned Helplessness* (Lexington, Mass.: Lexington Books, 1988) at 18.
51. *Ibid.* at 22–23, 99.

on changing these realities rather than on reinforcing the "stereotypical image of a battered woman—dysfunctional, helpless, dependent."[52] Although Judith Herman suggests that some women who have experienced repeated battering may suffer from complex post-traumatic stress disorder, she also states:

> The core experiences of psychological trauma are disempowerment and disconnection from others. Recovery, therefore, is based upon the empowerment of the survivor and the creation of new connections. . . . The first principle of recovery is the empowerment of the survivor. . . . Others may offer advice, support, assistance, affection, and care, but not cure. Many benevolent and well-intentioned attempts to assist the survivor founder because this fundamental principle of empowerment is not observed. No intervention that takes power away from the survivor can possibly foster her recovery, no matter how much it appears to be in her immediate best interest.[53]

A woman who is not mentally incapacitated and who wishes to make the abuse known to authorities, and feels that it is safe for her to do so, can call the police or can ask another person to call on her behalf. If she does not wish to involve the criminal justice system but still wants help, she, or someone acting on her behalf, can call a transition house. If a woman has reasons for not reporting the violence herself, presumably those reasons would also apply to reporting by someone else.

Mandatory reporting denies an abused woman the right to decide whether she wants government intervention in her life at that particular time. Besides forcing a battered woman into choices that she may not be ready to make, imposed intervention would also reinforce the stereotype that as a woman, and particularly as a battered woman, she is incapacitated and childlike. Given that a major problem for women who are being battered is lack of self esteem,[54] it seems that legislation removing the right to decide would only worsen this.

The related argument that special reporting provisions are needed because a woman may be brought to hospital with such serious injuries that she is unable to report the abuse herself seems to fail, on close examination. Health care professionals need to be educated to speak with the woman alone in situations where wife assault is suspected. This would then give the woman an opportunity to reveal the source of her injuries, if she so wishes, and for the health care professionals to discuss her options with her. Unless the woman is so badly injured that she is

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52. Mahoney, *supra* note 12 at 93.
53. Herman, *supra* note 42 at 133.
54. Sinclair, *supra* note 40 at 34.

mentally incompetent—for instance in a coma—then she is still the person who should be making the decisions, with whatever support and information the health care professionals can provide. If she is only physically unable to report the violence then others can call for her, if she so wishes.

When an abused woman is deciding whether to leave her abusive partner or whether to report him to the police (the two are not necessarily synonymous), one of the many factors which she must consider is whether these actions will protect her or place her in more danger. Initially a battered woman may persuade herself that the first few incidents of assault will not be repeated; however, as the violence continues, by living with, and surviving the abuse, she in effect becomes an expert on the issue of her partner's violence.[55] According to an American psychologist who frequently testifies in cases involving women and children who have killed their abusers, "[r]epeated instances of violence enable battered women to develop a continuum along which they can 'rate' the tolerability or survivability of episodes of their partner's violence."[56]

With mandatory reporting, weight could no longer be given to the woman's assessment of whether the consequences of that reporting might actually place her in greater danger. Of course, if the police are called by someone other than the battered woman—for instance, the neighbours—then the decision is similarly taken out of the woman's hands. However, there still seems to be a major difference between this and mandatory reporting by health care professionals. Neighbours or family members are likely to call the police only in the midst of a severe battering—when it may be impossible for the battered woman to make the call herself. In that situation, where the woman is being beaten and cannot call for help, it seems clear that others should err on the side of protecting the woman and call the police, even if they are not absolutely sure what the woman herself would want done.

However, in the case of reporting by health care professionals, the very fact that the woman is in a hospital or a physician's office means that she is, temporarily, safe from the violence. Unlike the situation where neighbours hear a woman screaming and call the police, the health care professional has an opportunity (and, I would argue, a moral obligation)

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55. M. L. Gaudet & P. E. Pasquali, "As if Victims Mattered: A Guide to the More Rational Prosecutions of Men Who Violate Women and Children" (1992) [unpublished manuscript on file with the author] at 3.
56. J. Blackman, "Potential Uses for Expert Testimony: Ideas Toward the Representation of Battered Women Who Kill" (1986) 9 Women's Rts. L. Rep. 227 at 229.

to discuss the situation with the woman. At that point, the health care professional can emphasize that the violence is likely to escalate over time, provide information on available options, and offer to help by contacting the police or social services. There is time for none of this when friends or family call the police in the midst of an attack.

It is true that once the police are called, then at least in those provinces with Directives on charging, the police are required to lay charges and the Crown is required to prosecute the case, even if the woman does not want to go through the criminal process. Arguably, mandatory reporting would be consistent with the philosophy behind Police and Crown Directives. The most persuasive argument for drawing an analogy between requiring charges to be laid and prosecuted when women have been assaulted by their partners and requiring health care professionals to report wife assault is the public policy element: it is society's obligation to intervene in cases of wife assault. A major criticism of the justice system made by battered woman and those who advocate for battered women has been that, even when police do respond to a call, they have traditionally been reluctant to lay charges, seeing the battering as a private dispute to be "worked out" by the couple, or asking the woman what she did to "make" the man attack her. Thus, Police and Crown Attorney Directives may be a necessary step toward reforming that response. If the justice system did respond more appropriately and effectively and if other aspects of the community's response to wife assault could also be improved, then it seems likely that women would themselves seek help, and that real help would be forthcoming. Thus, the Directives would, if implemented, actually create changes in the way society deals with wife assault, while reporting would not necessarily lead to such changes.

Directives can also be seen as a way of protecting women from reprisals for having involved the criminal justice system. A common complaint is that battered women are asked, in front the abusive partner, "Do you want to lay charges?" Even if the man is taken to another room, if it is the practice that charges are laid only when requested by the woman, then the man will have no difficulty in deciding who to blame if charges are laid. There does not seem to be a parallel argument in the case of mandatory reporting of wife assault by health care professionals.

Another reason why the need for Directives does not automatically point to a need for mandatory reporting is the fact that although health care professionals can be valuable allies in the struggle against wife assault, they do not hold the keys of access to either the legal or social services system. However, police officers and Crown Attorneys are very much gatekeepers to the legal system. Although in theory it would be

possible for a woman to lay a charge and have it prosecuted privately, in fact very few women will have the knowledge or the resources to do so.

Another argument for mandatory reporting is that it would provide added protections for battered women. In summarizing the arguments in favour of mandatory reporting, the Law Reform Commission's *Violence in a Domestic Context: A Discussion Paper* states, "In some life threatening situations women simply need help."[57] But if health care professionals were required to report wife assault, even where the woman objects, would this actually provide her with more protection than is available without the reporting?

In order to assess whether mandatory reporting would protect abused women, it is necessary to determine what the likely consequences of reporting would be and whether these would offer battered women any protection or choices that would not otherwise be available. Given that adult protection legislation and child welfare legislation[58] use much the same approach to protection from abuse, it seems reasonable to conclude that legislation requiring the reporting of wife assault would follow the same pattern. Therefore, to ascertain the possible consequences of mandatory reporting of wife assault, it is useful to look at the approach taken in the Nova Scotia *Adult Protection Act*.[59]

A report of abuse under the *Adult Protection Act* can have a number of consequences. The Minister can offer the adult assistance in obtaining services to protect the adult from abuse.[60] Where the adult's life is in danger and the adult cannot consent to the offered assistance because of mental incapacity or duress, the Minister can remove the adult to a safe place.[61] With a court order, an adult who refuses assistance because of incapacity or duress can be placed in a facility.[62] The court can also order the perpetrator to leave the adult's home, so long as the perpetrator does

57. *Supra* note 2 at 21.

58. Under the Nova Scotia *Children and Family Services Act*, *supra* note 3, where a child is in found to be in need of protective services, a judge may make a protective intervention order requiring the person named in the order to cease residing with the child or to refrain from associating with the child (s. 30(2)). A child who is in need of protective services may also be taken into care by a social worker (s. 33).

59. The Prince Edward Island *Adult Protection Act*, *supra* note 6, also provides for a protective intervention order (s. 12(1)) and for the removal of the adult in need of protection (s. 12(3)). In addition, the adult can be placed under supervision (s. 12(2)) and can be moved to a hospital, if this is necessary to protect the adult's health (s. 13).

60. *Supra* note 3, s.7.

61. *Ibid.*, s.10.

62. *Ibid.*, s.9.

not own or lease the home,[63] and the court can prohibit or limit the perpetrator's contact with the adult.[64]

One of the obstacles to a woman leaving an abusive partner is the lack of community resources available to help in the transition. This could be remedied directly, however, by making more services available, and publicizing the existence of the services in the community. Informing abused women about the options and resources available could very usefully be done by a family doctor or by emergency room staff. This would allow women to choose whether they are ready at that particular time to make use of the available resources. This benefit could be achieved without the reporting requirement.

Under the Nova Scotia *Adult Protection Act*, an adult can be placed in a facility or removed to a safe place if he or she has refused the offered assistance because of mental incapacity or duress. In the earlier discussion on the *Adult Protection Act*, I argued that most battered women are not mentally incapacitated; therefore, the question becomes whether a court should be able to order a woman to be placed in a transition house or other facility against her will in situations where she is under duress.

Some women do need assistance to escape from abusive relationships, so is important to ensure that assistance is available. Health care professionals and others must be trained to help an abused woman make her plans to leave. The police, if called, must respond promptly and sensitively and, if requested, transport the woman and her children to a safe place. Safe places must exist, for the short term and for the long term and the legal system must respond appropriately, both where a criminal charge is laid and where custody and access are being decided.

However, if these and other necessary services were actually available, yet the woman still chose to stay, a court order placing her in a facility would not be the appropriate response. Forcible detention would not only remove the woman's right to make choices but would also seem to contravene her constitutional rights.[65] Obviously a woman in an abusive relationship already has her choices very much curtailed. Presumably, however, the aim should be to increase the assistance available and enable her to make use of that assistance, rather than forcing

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63. *Ibid.*, s. 9(3).
64. *Ibid.*
65. The *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 guarantees (subject to the reasonable limits test set out in section 1) "life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice" (s. 7) and "the right not to be arbitrarily detained or imprisoned" (s. 9).

"assistance" upon her by detaining her. Furthermore, if the woman has not herself made the decision to leave the relationship, it is likely that she will return,[66] unless the intention is to continue to detain her forcibly.

The Nova Scotia *Adult Protection Act* allows the court to make a protective intervention order, requiring the perpetrator to stay away from the victim's home (so long as the perpetrator does not own or rent the home) or limiting the contact between the perpetrator and the victim. It is questionable, however, whether this actually adds anything beyond the protection that could be offered to battered women if the *Criminal Code*[67] were properly applied and enforced. In fact, because a perpetrator cannot, under the *Adult Protection Act*, be ordered out of his own home, a protective intervention order could not be used in many cases of wife assault. There is no such limitation in, for instance, the peace bond provisions of the *Criminal Code*.[68]

The *Criminal Code* provides a number of options[69] in cases of wife assault. First, the police or the woman can lay a criminal charge.[70] Then, the police can arrest the abusive partner if the police officer believes that arrest is necessary, in the public interest, to prevent the continuation or

66. Even if the woman chooses to leave, she may return a number of times before finally severing the relationship. There are a great many reasons why this may be so, including a wish to believe the partner's protestations that the abuse will never happen again; societal messages that she is to blame for the break-up, and therefore should return and "work on her marriage"; fears of losing custody; and the difficulty of finding housing and becoming economically self-sufficient.

67. R.S.C. 1985, c. C-46.

68. Section 810(1) provides that "[a]ny person who fears that another person will cause personal injury to him or his spouse or his child or will damage his property may lay an information before a justice." If the justice "is satisfied . . . that the informant has reasonable grounds for his fears" (s. 810(3)), the justice may require the defendant to enter into a recognizance ("peace bond") for up to twelve months.

69. Much of this summary of the available criminal law remedies draws upon the work done by the Nova Scotia Law Reform Commission in its *Violence in a Domestic Context: A Discussion Paper*, *supra* note 2.

70. Charges which might arise out of an incident of wife assault include the following: s. 266—assault; s. 267—assault with a weapon or causing bodily harm; s. 268—aggravated assault; s. 269—unlawfully causing bodily harm; s. 239—attempted murder; s. 271—sexual assault; s. 272—sexual assault with a weapon or causing bodily harm; s. 273—aggravated sexual assault; s. 279(2)—forcible confinement; s. 86(1)—pointing a firearm; s. 423—intimidation; s. 264.1—uttering threats; s. 372(2),(3)—harassing or indecent telephone calls; s. 177—trespassing at night; s. 430(1)—mischief (wilful damage to property).

repetition of the abuse.[71] If the criminal charge leads to a conviction, the court can suspend sentence[72] and attach conditions or can sentence the offender to jail and/or probation with conditions attached.[73] All probation orders include the conditions "that the accused shall keep the peace and be of good behaviour and shall appear before the court when required to do so by the court."[74] In addition, the judge can add specific conditions set out in the *Criminal Code*. These include the requirement that the accused report to a probation officer, pay maintenance to his family, abstain from alcohol, stay away from firearms, make restitution, and comply with "such other reasonable conditions as the court considers desirable for securing the good conduct of the accused and for preventing a repetition by him of the same offence or the commission of other offences."[75] This last category allows for conditions such as the requirement that the accused have no contact with the victim.

Furthermore, the woman can apply for a peace bond.[76] Every peace bond requires the defendant to "keep the peace and be of good behaviour." In addition, the court can require the defendant to pay a surety and can order the defendant to "comply with such other reasonable conditions . . . as the court considers desirable for securing the good conduct of the defendant." This last provision allows the judge to order the defendant to have no, or limited, contact with the person who applied for the peace bond.

One possible argument for the *Adult Protection Act* approach is that the woman would not herself need to call the police or apply for a peace bond. However, it seems likely that if the criminal justice system were reformed so as to respond quickly, sensitively and effectively to battered women,

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71. The charges that are most often laid in cases of wife assault are hybrid offenses. Section 495 of the *Criminal Code* states that the police shall not arrest a person for a hybrid offence, *unless arrest is necessary, in the public interest,* to establish the person's identity, secure or preserve evidence, *prevent the continuation or repetition of the offence or the commission of another offence* or to ensure that the person charged will attend court.

It seems that in a great many cases of wife assault, arrest would be justified under the portion emphasized above; however, if police are to be expected to arrest under this provision, they must be educated to realize that wife assault is rarely an isolated incident and that the chances of it continuing or recurring are high.

72. Section 737(1)(a) allows the judge to "suspend the passing of sentence and direct that the accused be released on the conditions prescribed in a probation order."

73. Section 737(1)(b) allows a judge to impose probation in addition to a fine or to a term of imprisonment that does not exceed two years. Failure to comply with a probation order is a criminal offence (s. 740(1)).

74. Section 737(2).

75. Section 737(2)(h).

76. Section 810. Entering into a peace bond is not the equivalent of having been convicted of a criminal offence and therefore does not give the defendant a criminal record. However, section 811 provides that any person who breaches a peace bond is guilty of an offence.

far more women would use the police and the courts of their own accord. It is true that even with such reforms some women might choose not to turn to the legal system for remedies. In that case, however, a woman who did not want intervention from the criminal justice system would probably not want a protective intervention order either, and forcing one upon her would place her in the category of children and mentally incompetent adults.

It seems, therefore, that a protective intervention order would not offer any more protection than would proper enforcement of the *Criminal Code*. Given that the *Criminal Code* is often not enforced in such a way as to provide abused women with the protection that is already available,[77] it seems unrealistic to expect that a protective intervention order would be any more rigorously enforced.

Not only does it seem unlikely that mandatory reporting would provide battered women with additional protections, in some instances reporting might actually place the woman in greater danger.[78] There is evidence to suggest that laying criminal charges in cases of wife assault tends to reduce the violence;[79] however, one cannot simply conclude from this that reporting under a scheme such as the *Adult Protection Act* would have the same effect. As noted above, when a woman decides to call the police, presumably she has already decided that this will protect her or at least not worsen the situation. Thus, she has already concluded that her husband may be deterred by the appearance of the police and the laying of a criminal charge. Women who feel that the situation would actually be inflamed by this intervention do not call the police, or at least do not do so until they have escaped. This would not be the case with mandatory reporting. Furthermore, although a variety of orders can be made under legislation such as the *Adult Protection Act*, none carry the same threat as a criminal charge—a criminal record and a possibility of time spent in jail. Thus, intervention by a social worker may not have the same deterrent effect as intervention by the police.

Therefore, studies suggesting that the laying of criminal charges reduces the violence cannot necessarily be extrapolated to conclude that mandatory reporting would have the same effect. In fact, in some cases, intervention might actually place the woman at greater risk, if her partner wishes to frighten her into denying the abuse, or punish her for having revealed it.

77. *Supra* note 11.
78. *Supra* note 12.
79. P. Jaffe & C. A. Burris, "Wife Abuse As a Crime: The Impact of Police Laying Charges" (1983) 25 Can. J. Crim. 309.

Thus far, the arguments against mandatory reporting of wife assault have focused on the fact that reporting would deny women the right to make their own decisions, would probably not provide battered women with any greater assistance or protection, and might, in some cases, actually increase the danger. It is also possible that mandatory reporting could have an impact on the relationship between a battered woman and health care professionals and even on a battered woman's willingness to seek medical care.

Studies suggest that unless health care professionals ask direct questions, many women do not disclose the violence and the abuse goes undetected.[80] However, once the questions are asked, it seems that most women are quite willing to acknowledge and discuss the abuse.[81] Efforts are now being made to ensure that doctors are educated to recognize symptoms of and injuries caused by abuse, to ask the appropriate questions and to provide information.[82] If health care professionals can be trained in this area, not only will they be able to deal more effectively with the woman's health care needs, but they will also be able to carry out the essential function of letting the woman know that there are many other women in the same situation, assuring her that she is not to blame, and providing information about the abuse itself (for instance, that it is likely to escalate over time) and about resources in the community.

Obviously, this trend toward identifying and discussing abuse with patients is to be encouraged; however, if health care professionals were then required to report information on abuse, it seems likely that women would be far less ready to disclose such information, even in response to direct questions. If mandatory reporting becomes the law, a woman who is in an abusive relationship but who, for whatever reason, does not want the abuse reported to authorities at that moment is left with only one option: to tell no one, not even her own doctor.

If mandatory reporting made abused women reluctant to disclose the abuse, even in response to direct questions, health care professionals would be less able to respond effectively to women's health care needs.

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80. Ontario Medical Association Committee on Wife Assault, "Wife Assault: A Medical Perspective" (1986) 53:12 Ont. Med. Rev. 771 at 772.

81. *Ibid.*

82. See for example, the work done by medical associations in various provinces, including Ontario, *supra* notes 4, 80, and New Brunswick, *supra* note 5. See also L. Finlay, "Broken Spirits; Battered Bodies" *Physician's Management Manuals* (March 1993) 21 (*re* Dalhousie Medical School Task Force on Family Violence); G. Worrall, "New Screening Test Will Help Doctors Help Abused Women" *The Medical Post* (15 June 1993); American Medical Association Council on Ethical and Judicial Affairs, "Physicians and Domestic Violence: Ethical Considerations" (1992) 267:23 JAMA 3190.

Not knowing the true cause of the problems, health care professionals might misdiagnose and mistreat an abused woman:

> Repeated episodes of abuse lead to emotional distress, which may bring the battered woman to her family doctor's office with various chronic physical and psychosomatic complaints such as insomnia, backache, fatigue or palpitations. She may subsequently undergo extensive investigations without any organic pathology being found. Often the woman is then treated with psychotropic drugs which may eliminate the distressing symptoms temporarily, but until the underlying problem is recognized and acknowledged by the physician and the woman, it is unlikely there will be any decrease in her overall level of physical and psychological complaints.[83]

Furthermore, not only might mandatory reporting make women less willing to discuss the abuse with health care professionals, it might affect the overall relationship. Obligating health care professionals to report abuse, even over the woman's objections, would seem to undermine two fundamental aspects of the health care relationship: the assumption that information given by the patient will be kept confidential and the assumption that the patient's best interests are of primary concern to the health care professional. Mandatory reporting could cause battered women to lose trust in the health care relationship. Some abused women might even decide not to seek needed medical attention in order to avoid having the violence reported. Given the serious physical and psychological harm done to women by their abusive partners, obviously this would be an undesirable result.

VI. *Conclusion*

At the present time, reporting of suspected wife assault is not required by law in Canada. In fact, reporting by doctors would seem to breach the Canadian Medical Association's *Code of Ethics*.[84] The issue of whether such reporting should be required is a difficult one, with strong arguments on either side. On the one hand, there are the arguments that a failure to require reporting is an abdication of society's responsibility to battered women, that mandatory reporting might cause health care professionals to become more involved as agents of structural change, and that reporting may be necessary to help women who are so traumatized that they cannot help themselves. On the other hand are the arguments that, generally, women remain in abusive relationships not because they are unaware of the harm or unwilling to seek help, but because there are so

83. *Supra* note 80 at 773.
84. *Supra* note 14.

few options available; that reporting would diminish a battered woman's control over her own life; that reporting would not provide any greater assistance or protection and might sometimes increase the danger; and that reporting by health care professionals might make battered women reluctant to seek medical attention or to disclose the source of their injuries. As I have progressed through the various drafts of this article, I have come to realize that the arguments in favour of mandatory reporting may be stronger than I first thought. Yet, I still find myself concluding that the arguments against mandatory reporting are the stronger ones, particularly since the very persuasive argument regarding society's responsibility to battered women is predicated on the assumption that society would respond appropriately to a report of wife assault. Since the present legal and community response to wife assault is so far from adequate, it is unlikely that reporting would benefit women. Conversely, if society changed to such an extent that an appropriate response did become a reality, then arguably battered women would seek help of their own accord and mandatory reporting by health care professionals would not be needed.