




# Research Brief: Intimate Partner Violence in the Courtroom

Submitted to the House of Commons Standing Committee on the Status of Women

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## Intimate Partner Violence in the Courtroom



On October 30, 2020, Helen Naslund received one of the longest sentences in Canadian history for killing her abusive husband.<sup>1</sup> Naslund survived an extensive history of abuse by her husband, which included him threatening both Naslund and their son with a gun and flying into an increasingly agitated tirade the night before Naslund killed him.<sup>2</sup> These abuses were well-documented in an agreed upon statement of facts Naslund's lawyer filed on her behalf when she pled guilty to manslaughter, however, her plea deal sentenced her to 18 years in prison. Naslund's sentence is substantially longer than the average sentence abusive men receive for killing their intimate partners. According to Statistics Canada, men convicted of manslaughter in cases involving intimate partners receive an average of six to 12 years in prison.<sup>3</sup> Naslund's sentence is 50% longer than the highest sentence in that range. Justice Sterling Sanderman, the judge who presided over Naslund's case, commended the "fairness" and "maturity" of Naslund's sentence,<sup>4</sup> characterizing the shooting as "a callous, cowardly act on a vulnerable victim in his own home," and suggesting that Naslund could have simply left her husband instead of shooting him.<sup>5</sup>

The Alberta Court of Appeal has since reduced Naslund's sentence to nine years, finding that the original sentence reflected "outdated thinking" about intimate partner violence (IPV), and calling for Alberta courts to change their approach to IPV cases.<sup>6</sup> The Court's recognition of the impact of IPV on survivors and the necessity that courts take this impact into consideration is an important step forward for all survivors of IPV. Nevertheless, Naslund's case provides a stark example of how much progress is still necessary for courts to adequately understand and address IPV. As Justice Sheila Greckol notes in the Court's majority opinion, the Crown prosecutor, Justice Sanderman, and Naslund's original defense lawyer all failed to understand and account for the role IPV played in this case.<sup>7</sup> This failure of understanding resulted in the disproportionate punishment of an abuse survivor.

Naslund's case is unusual in terms of sentence length, but the failures of understanding that led to that sentence length are, unfortunately, all too common. Three decades of research have established that judges, prosecutors, and defense lawyers often have inadequate understandings of IPV which substantially influence how survivors are treated in both civil and criminal courtrooms.<sup>8</sup> Much of the common knowledge about IPV is based on misunderstandings that fail to accurately reflect both the realities of IPV and the experiences of survivors.<sup>9</sup> In the absence of formal education about, or direct experience with, IPV, judges and lawyers might automatically rely on these misunderstandings as a framework for approaching cases involving IPV.<sup>10</sup> Courts that rely on these misunderstandings are at high risk of reproducing the harms of IPV instead of counteracting them.

Courtroom misunderstandings of IPV are particularly problematic in cases involving survivors from marginalized communities, including BIPOC (Black, Indigenous, and people of color) and 2SLGBTQ+ survivors. Common misunderstandings of IPV often conceptualize survivors in ways that exclude racial and sexual minorities.<sup>11</sup> BIPOC and 2SLGBTQ+ survivors who do not conform to the stereotypical image of the survivor face an increased risk of being treated as aggressors instead of survivors, and of being dismissed or criminalized by the legal system.<sup>12</sup> This risk of dismissal or criminalization is especially concerning given that BIPOC women and 2SLGBTQ+ people experience disproportionate levels of IPV, and Indigenous women, in particular, experience among the highest rates of IPV in Canada.<sup>13</sup> The survivors who are most likely to be dismissed or criminalized in courtrooms are thus also those who are the most likely to experience IPV.

Courtroom misunderstandings of IPV are also problematic in cases where survivors must navigate parenting time and decision-making disputes about children with their aggressor. Parenting time and decision-making disputes are one of the ways that abusers can continue to exert control over the lives of survivors, even after the abusive relationship ends. Research has established that family courts frequently award parenting time and decision-making responsibility to parents based on misunderstandings of IPV, including the myths that IPV is just a "conflict" between parents, that survivors use claims of abuse to "keep children for themselves," and that survivors who attempt to

protect their children from abuse are overreacting or acting out of spite.<sup>14</sup> In allowing these myths to inform parenting decisions, family courts not only fail to meet the needs of survivors and their children, they also directly perpetuate the systems that uphold IPV.

## About ACWS

The Alberta Council of Women's Shelters (ACWS) is the provincial network organization of women's shelters in Alberta. ACWS brings close to four decades of experience and knowledge to serve our 40 members operating over 50 shelters across the province for women, children, and seniors facing domestic abuse. We advocate for ACWS members and work with them to end domestic violence through culture-shifting violence prevention programs, collective data and research, and frontline training. With support from ACWS, Alberta shelters are helping to provide safety, support families, and improve communities.

## Improving Understandings of Intimate Partner Violence in Alberta Courtrooms

In response to the updates to the federal *Divorce Act*, ACWS has developed a comprehensive workshop for family lawyers to better support families experiencing IPV. The workshop develops the capacity of family lawyers to understand the scope of coercive controlling violence, understand the effects of IPV on survivors and their children, identify IPV, and engage in productive conversations about IPV.<sup>15</sup> The workshop was successfully piloted in 2021 and was launched in 2022 through collaboration with the Legal Education Society of Alberta (LESA). Feedback from workshop participants indicates that (1) the workshop provides invaluable information for family lawyers, (2) the workshop should be made available to all lawyers who work on cases that might involve IPV, and (3) the workshop should be made available to all judges who work on cases that might involve IPV. Based on this feedback, together with the collective insights our members have acquired over decades of supporting and advocating for survivors in the legal system, ACWS has developed the following recommendations.

## Recommendations

1. All judges who work on cases that might involve IPV should be required to undergo extensive training about IPV.
2. Additionally, the judicial application process should include a requirement that all applicants have taken specialized training on IPV and sexual violence as well as their intersections with those populations that have already been marginalized by the larger society.
3. All lawyers who work on cases that might involve IPV should be required to undergo extensive training about IPV.
4. Any mandatory training about IPV must be (1) trauma-informed, (2) grounded in the lived experience of survivors, and (3) informed by the insights of frontline IPV violence service providers.

Research suggests that changing laws is not enough to change how courtrooms approach IPV.<sup>16</sup> To enact meaningful change in courtrooms, it is equally necessary to correct misunderstandings that influence how both lawyers and judges approach IPV, and to increase their understanding of the realities, impacts, and experiences of IPV. Without this change in understanding, any attempt to reform how courtrooms address IPV will necessarily be incomplete, and survivors like Helen Naslund will continue to face legal systems that are not equipped to fully address their cases.

Thank you for your consideration.

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## Notes and References

<sup>1</sup> Jonny Wakefield, “‘She Wasn’t Mom No More’: Son of Woman Sentenced to 18 Years for Killing Abusive Husband Describes ‘Lifetime’ of Mistreatment,” *The Edmonton Journal*, November 9, 2020.

<sup>2</sup> Ibid.

<sup>3</sup> *Report on Sentencing for Manslaughter in Cases Involving Intimate Relationships* (Calgary: Statistics Canada, 2002).

<sup>4</sup> Jonny Wakefield, “Inside the Fight to Overturn Helen Naslund’s 18-Year Prison Sentence,” *The Edmonton Journal*, January 20, 2022.

<sup>5</sup> Janice Johnston, “Alberta Top Court Slashes Prison Sentence for Woman Who Kills Abusive Husband,” *The Edmonton Journal*, January 12, 2022.

<sup>6</sup> Ibid.


<sup>7</sup> Ibid.

<sup>8</sup> See, for example, Paula C. Barata, “Abused Women’s Perspectives on the Criminal Justice System’s Response to Domestic Violence,” *Psychology of Women Quarterly* 31 (2007): 202-215; Elaine Craig, *Putting Trials on Trial* (Montreal: McGill-Queen’s University Press, 2018); Myrna Dawson, “Punishing Femicide: Criminal Justice Responses to the Killing of Women Over Four Decades,” *Current Sociology* 64, no. 7 (2016): 996-1016; Martha R. Mahoney, “Legal Images of Battered Women,” *Michigan Law Review* 90, no. 1 (1991): 1-94; Joanne C. Minaker, “Evaluating Criminal Justice Responses to Intimate Abuse through the Lens of Women’s Needs,” *Canadian Journal of Women and the Law* 13, no. 1 (2001): 74-106; Mavis Morton, Tanja Samardzic, Pamela Cross, Shannon Johnstone, Leslie Vesley, and Melisa Choubak, “The Degendering of Male Perpetrated Intimate Partner Violence Against Female Partners in Ontario Family Law Courts,” *Journal of Social Welfare and Family Law* 43, no. 2 (2021): 104-118; Katherine O’Donovan, “Law’s Knowledge: The Judge, the Expert, the Battered Woman, and Her Syndrome,” *Journal of Law and Society* 20, no. 4 (1993): 427-437; Melanie Randall, “Domestic Violence and the Construction of Ideal Victims: Assaulted Women’s Image Problems in Law,” *St. Louis University Public Law Review* 23, no. 1 (2004): 107-154; Michael D. Saxton, Laura Olszowy, Jennifer C. D. MacGregor, Barbara J. MacQuarrie, and C. Nadine Wathen, “Experiences of Intimate Partner Violence Victims with Police and the Justice System in Canada,” *Journal of Interpersonal Violence* 36, no. 3-4 (2021): 2029-2055; Holly Johnson and Jennifer Fraser, *Specialized Domestic Violence Courts: Do They Make Women Safer? Community Report: Phase I* (Ottawa: University of Ottawa, 2011).

<sup>9</sup> Miranda Pilipchuk, “Spectres of Rape, Illusions of Justice: Sexual Violence Tropes and the Carceral System,” Ph.D. Dissertation (Villanova University, 2021).

<sup>10</sup> Examples of prevalent misunderstandings that make regular appearances in courtrooms include the myth that survivors invent or exaggerate abuse claims to seek revenge against a romantic partner, that they could easily leave an abusive relationship if they wanted to, and that survivors who stay in abusive relationships (or, alternatively, survivors who push back too strongly against abusive partners) are inept or irresponsible parents. See Craig, *Putting Trials on Trial*; Mahoney, “Legal Images of Battered Women”; O’Donovan, “Law’s Knowledge”; Randall, “Domestic Violence and the Construction of Ideal Victims.”

<sup>11</sup> Pilipchuk, “Spectres of Rape, Illusions of Justice”; Beth Richie, *Arrested Justice* (New York: New York University Press, 2012).



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<sup>12</sup> Amnesty International, *Maze of Injustice: The Failure to Protect Indigenous Women from Sexual Violence in the US* (New York: Amnesty International Publications, 2007); Kimberlé W. Crenshaw, Priscilla Ocen, and Jyoti Nanda, *Black Girls Matter: Pushed Out, Overpoliced, and Underprotected* (New York: African American Policy Forum and Center for Intersectionality and Social Policy Studies, 2015); Sarah Deer, *The Beginning and the End of Rape: Confronting Sexual Violence in Native America* (Minneapolis: University of Minnesota Press, 2015); Patriona Duhaney, "Contextualizing the Experiences of Black Women Arrested for Intimate Partner Violence in Canada," *Journal of Interpersonal Violence* (2021), DOI: 10.1177/08862605211056723; Patriona Duhaney, "Criminalized Black Women's Experiences of Intimate Partner Violence in Canada," *Violence Against Women* (2021), DOI: 10.1177/10778012211035791; Kolleen Duley, "Un-Domesticating Violence," *Women & Therapy* 29, no. 3-4 (2007): 75-96; Margo L. Nightingale, "Judicial Attitudes and Differential Treatment: Native Women in Sexual Assault Cases," *Ottawa Law Review* 23, no. 1 (1991): 71-98; Pilipchuk, "Spectres of Rape, Illusions of Justice"; Richie, *Arrested Justice*; Beth Richie, *Compelled to Crime: The Gender Entrapment of Battered Black Women* (New York: Routledge, 1996); Andrea J. Ritchie, *Invisible No More: Police Violence Against Black Women and Women of Color* (Boston: Beacon Press, 2017); Andrea J. Ritchie, "Law Enforcement Violence Against Women of Color," in *Color of Violence: The INCITE! Anthology*, ed. INCITE! Women of Color Against Violence (Durham: Duke University Press, 2016): 138-156.

<sup>13</sup> Canadian Centre for Justice and Community Safety Statistics, Statistics Canada, "Brief: Statistical Profile of Intimate Partner Violence in Canada," Submitted to the House of Commons Standing Committee on the Status of Women—FEWO, February 15, 2022. For demographic information on survivors who access women's shelter services in Alberta, see the Alberta Council of Women's Shelters *2021 Data Release*, available here: [https://acws.ca/wp-content/uploads/2021/12/ACWS\\_01896\\_DataRelease2021\\_FINAL.pdf](https://acws.ca/wp-content/uploads/2021/12/ACWS_01896_DataRelease2021_FINAL.pdf).

<sup>14</sup> Mariachiara Feresin, "Parental Alienation (Syndrome) in Child Custody Cases: Survivors' Experiences and the Logic of Psychosocial and Legal Services in Italy," *Journal of Social Welfare and Family Law* 42, no. 1 (2020): 56-67; Samantha Jeffries, "In the Best Interests of the Abuser: Coercive Control, Child Custody Proceedings and the Expert Assessments that Guide Judicial Determinations," *Laws* 5, no. 1 (March 2016): 1-17; Susan L. Miller and Jamie L. Manzer, "Safeguarding Children's Well-Being: Voices From Abused Mothers Navigating Their Relationships and the Civil Court," *Journal of Interpersonal Violence* 36, no. 9-10 (2021): 4545-4569; Daniel G. Saunders and Katherine H. Oglesby, "No Way to Turn: Traps Encountered by Many Battered Women with Negative Child Custody Experiences," *Journal of Child Custody* 13, no. 2-3 (2016): 154-177; Daniel G. Saunders, Kathleen C. Faller, and Richard M. Tolman, "Beliefs and Recommendations Regarding Child Custody and Visitation Cases Involving Domestic Violence," *Violence Against Women* 22, no. 6 (2016): 722-744.

<sup>15</sup> ACWS is currently in the process of developing this workshop to be accessible to lawyers practicing other areas of law that may indirectly deal with issues of IPV, including wills and estates lawyers and real estate lawyers.

<sup>16</sup> *Keeping Women Safe: Eight Critical Components of an Effective Justice Response to Domestic Violence*, Prepared by the Critical Components Project Team (British Columbia, 2008).