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**SYNTHESIS OF
DEPARTMENT OF JUSTICE CANADA
RESEARCH FINDINGS
ON SPOUSAL ASSAULT**

Tammy Landau, Ph.D.

March, 1998

WD1998-5e

UNEDITED

**Research and Statistics Division/
Division de la recherche et
de la statistique**

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Department of Justice Canada. The views expressed herein are
solely those of the author and do not necessarily
represent the views of the Department of Justice Canada.*

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SUMMARY

This synthesis of Department of Justice research findings on spousal abuse identifies a number of key findings:

- there is general agreement that mandatory charging in cases of spousal assault has been successful in increasing the number of charges laid, in promoting rigorous prosecution of such cases and in reducing case attrition in the prosecution process;
- the mandatory charging policy has a high degree of support from criminal justice professionals and victims of spousal assault;
- many women who experience the process want more support, including information about the prosecutorial process, their own case and opportunities to meet with the Crown before their case comes to trial;
- there is considerable support for alternatives to criminal prosecution, including mandatory counselling or mediation;
- many police and Crown support increasing police discretion to charging in more minor cases;
- First Nation, rural and ethnocultural and immigrant women who have been abused face additional barriers in accessing the criminal justice system and other community supports;
- further research needs include: follow-up data on the extent to which spousal abuse continues at various stages in the prosecution process, integrating the voices of abused women into evaluations of strategies to address spousal assault and a new focus on strategies to deal with spousal assault which are located outside the criminal justice system.

1.0 INTRODUCTION

Since 1993, Department of Justice Canada's Family Violence research program has included several reports with specific emphasis on spousal abuse. A number focus on mandatory charging policies adopted and implemented in the provinces (e.g., Prairie Research Associates, 1994; Ursel, 1995; Roberts, 1996), while two evaluate legislation: the criminal harassment amendments to the *Criminal Code* (Gill and Brockman, 1996) and the *Victims of Domestic Violence Act* in Saskatchewan (Prairie Research Associates, 1996). Other studies examine issues specific to particular groups of women, such as immigrant women (Sy and Choldin, 1994; Godin, 1994; Currie, 1995), rural and farm women (Brookbank, 1995; Biesenthal and Sproule, 1997) and First Nations women (Roberts, 1996).

Methodologies include: tracking cases through the system (e.g., Prairie Research Associates, 1994), comparisons of spousal abuse cases across various provincial courts (Ursel, 1995), interviews with victims, offenders and key justice informants (e.g., Sy and Choldin, 1994; Roberts, 1996) and literature reviews (Godin, 1994; Brookbank, 1995; Biesenthal and Sproule, 1997).

Definitions of the problem and the terminology vary. Terms used include "family violence" (e.g., Prairie Research Associates, 1994; Ursel, 1995), "wife abuse" (Sy and Choldin, 1994) and "spouse/spousal abuse" (Currie, 1995; Brookbank, 1995; Roberts, 1996).

Still, there are significant common themes to these reports, and to the various policies, laws and initiatives which are their focus. As a body of research, the emphasis is on mandatory charging policies across the country, and with information and other support services for women who are the primary victims/witnesses in the case for the Crown. A chart showing the ten reports according to their main focus and methodology is shown in Appendix 1.

The following pages attempt to bring together the findings of these reports along a number of lines of inquiry identified by Justice Canada in preparation for the March 23 and 24, 1998 Federal/Provincial/Territorial Forum on Spouse Abuse:

- What the research has said about the capacity of the justice system to protect and respond to victims of spousal abuse, including justice system approaches that appear to be effective (these are sometimes called 'best practices') for (a) providing for the safety of victims of spousal abuse, and (b) successfully prosecuting spousal abuse cases;
- Common themes emerging around the prosecution and disposition of cases of spousal abuse and how promising approaches can be strengthened or modified to be even more effective;

- Common themes to what victims (mostly women) say about the justice system with respect to their experiences; and
- Issues specifically affecting women in different communities (ethnocultural, rural/urban).

2.0 CAPACITY OF THE JUSTICE SYSTEM TO PROTECT AND RESPOND

The ability of the justice system to protect and respond to victims of spousal abuse is addressed to some extent by studies of mandatory charging policies and legislative reforms, such as federal criminal harassment legislation under s.264 of the *Criminal Code* and the *Victims of Domestic Violence Act* in Saskatchewan. Key terms, such as ‘capacity’, ‘protection’, and ‘success’ are generally measured in terms of the stated goals of the strategy. There are two reports which specifically evaluate the mandatory charging policy through the prosecutorial process, both in the Family Violence Court in Manitoba (Prairie Research Associates, 1994; Ursel, 1995). In addition, two reports evaluate the implementation of specific legislation which was intended to provide women with additional tools to protect them from high risk contact with abusive partners or former partners (Prairie Research Associates, 1996; Gill and Brockman, 1996).

2.1 Mandatory Charging

The goals of mandatory charging policies tend to emphasize full prosecution, obtaining convictions and strict sentences. For example, Prairie Research Associates (1994, p. 117) identify the general goals of the Family Violence Court of Manitoba, and the mandatory charging policy more generally:

- to increase victim/witness information and cooperation to reduce case attrition, particularly at the Crown level (through a reduction in stays of proceedings);
- to process cases expeditiously, by achieving a three month average processing time from first appearance to disposition; and
- to provide more consistent and appropriate sentencing to better protect the victim, to mandate treatment for the offender where suitable, and to increase monitoring of offenders (through probation services).

Based on the reports, mandatory charging has been successful in terms of:

- increasing the number of charges laid in spousal assault cases;
- promoting more rigorous prosecution of such cases;
- reducing the attrition of cases as they proceed further along into the system; and
- increasing the use of probation and incarceration.

Limitations to mandatory charging, according to the reports, include:

- in many cases, mandatory charging represents a transfer of power from the batterer to the criminal justice system: many women report feeling as disempowered by this process as they were before the policy, when they had more say in police charging practices;
- the options provided by the criminal justice system are too narrow and focussed, i.e., they promote separation of the woman from her abuser, when there may be few options and little desire for this outcome on the part of the woman;
- mandatory charging represents a uni-dimensional response to a complex social problem, when the criminal justice system cannot deal with the caseload or the social sources of spousal abuse; and
- police continue to exercise discretion in charging, and often do not lay charges, particularly in cases where women are reluctant to give evidence.

2.2 Legislative Reforms

With respect to the *Victims of Domestic Violence Act*, the research shows that:

- the various orders available to women under the *Act* were used infrequently;
- in some cases where criminal charges were laid, there was no Emergency Intervention Order (EIO) issued when it should have been;
- there was encouraging evidence that EIO's were issued in cases where there were no criminal charges and no evidence of an assault; and
- women with experience with EIO's felt more protected than they did without such orders, although there is no independent measure of this.

With respect to s.264 of the *Criminal Code* (criminal harassment) legislation the research found:

- while most criminal justice personnel support the legislation, victim advocates varied considerably on whether the legislation provided an additional, effective tool for at-risk women, or whether it provided a false sense of security for women who still had difficulty getting police to deal with violence against women;

- a high percentage of cases were withdrawn by the Crown;
- high rates of probation, rather than incarceration, upon conviction; and
- high rates of release on bail for individuals with previous records of breaches.

3.0 PROSECUTION AND DISPOSITION OF CASES OF SPOUSAL ABUSE

There is generally a high degree of support among criminal justice personnel, community groups and victims themselves for mandatory charging, despite the lack of empirical evidence that prosecution of spousal abuse cases reduces violence against women. According to one Crown quoted by Prairie Research Associates (1994, p. 185), the policy “demonstrates that spouse abuse is a crime that will not be tolerated. The directive is perceived to be part of a necessary overall response to discourage violence against women”. The reports have identified a number of issues relevant to the prosecutorial process, and to the roles played by the main actors in the system.

3.1 Discretion

The Justice studies identify a significant increase in the number of charges laid for spousal abuse where mandatory charging and prosecution strategies have been fully implemented. However, concerns over the exercise of discretion in charging remain. In particular:

- there is considerable evidence that, in many cases, police are not laying criminal charges when the conditions for charging have been met;
- there is evidence of considerable variation in the laying of charges across communities - it may occur based on extra-legal factors, particularly in the context of First Nations communities (e.g., the status of the couple in the community);
- many support increasing police discretion in charging, particularly in minor cases. Police, Crowns and judges share the concern that scarce resources should be devoted to more serious cases rather than to minor cases;
- alternatives to prosecution and/or harsh sentences should include mediation, counselling and other community alternatives; and
- mandatory charging, which provides an immediate response to the victim, should be distinguished from mandatory prosecution, which does not necessarily have the positive long-term impact that many would like.

3.2 High Attrition of Cases

There is a high attrition rate of spousal abuse cases, from the initial laying of charges to those that remain in the system for sentencing. Concerns that emerged from the Manitoba Tracking Study:

- 21% of all cases dispatched resulted in charges. Lack of physical evidence (54%) and unwillingness of the victim to proceed (18%) were the most frequently cited reasons for not laying charges. At the same time, police took photographs in only 6% of cases where injuries were reported;
- only 12% of cases resulted in convictions and 4% resulted in incarceration; and
- almost 30% of cases were stayed - half because the victim refused to testify; the high degree of plea negotiating in spousal abuse cases is attributed to the substantial proportion of cases in which the victim is unwilling to testify .

3.3 The Role of Victims

Studies of mandatory charging and prosecution emphasize the critical role of the victim as the main witness for the prosecution. Police and Crown assert that, without the cooperation of the victim, there is usually no independent evidence on which a successful prosecution can be based. In fact, in the Manitoba Tracking Study, Crowns identified the unwilling victim as the most significant ‘problem’ they face in prosecuting spousal abuse cases. At the same time, the interests and needs of abused women as victims, as distinct from witnesses, are clearly not being met by strategies which, for the most part, focus on prosecuting and convicting the accused.

The Department of Justice reports identified a number of issues of particular concern to the victims:

- there is a high degree of support for mandatory charging among victims, but considerably less consensus with respect to the post-charge phase of a prosecution. This is particularly important since many women do not want the relationship to end, but would like a broader range of options available to stop the violence;
- improving support to victims was identified as the most urgent need. Victims of spouse abuse “want the system to validate their perceptions, reduce their isolation and hear their needs...charging is not necessarily their primary goal” (Roberts, 1996, p. 111);
- Crowns see women who are reluctant to testify, resulting from a desire to reconcile with the offender or not wanting him to go to jail, more so than out of fear or economic dependence;

- at least one judge viewed mandatory charging and prosecution as paternalistic, leaving women not wanting to testify “no choice but to lie”, usually by saying she doesn’t remember what happened (Prairie Research Associates, 1994);
- in 30% of cases where women were subpoenaed they did not appear in court (Prairie Research Associates, 1994);
- plea negotiations may go beyond the traditional ‘bargains’ over plea, facts or sentence, to include ‘testimony charging’, where concerns of the victim, for example, over sending the accused to jail or perhaps recommendations for treatment are considered. According to Ursel (1995), innovative testimony bargaining enables the Crown Attorney to meet the dual and potentially conflicting mandates of rigorous prosecution and sensitivity to the victim;
- overall, women gave lower effectiveness ratings to mandatory charging policy than did men; and
- First Nations respondents generally rated the effectiveness of the policy lower than non-First Nations respondents.

3.4 Increased Pressure on Courts

There is an unquestionable increase in the pressure placed on the various prosecutorial stages as a direct result of mandatory charging. These have resulted in:

- increased police time and training required;
- increased caseload on courts;
- long delays between charge and disposing of the case in court;
- lack of time for Crown to prepare the case;
- lack of time for Crown to meet with victim before the case is heard; and
- pressure on correctional services (probation, institutions).

3.5 Reporting

Roberts (1996) points out there is little evidence to suggest that mandatory charging encourages reporting. The policy has been in effect in Canada for over 10 years, yet there is little doubt that most spousal assault is not reported. In fact, he found that, in some instances, experience with the prosecution process would reduce the likelihood of the women reporting in the future.

4.0 WHAT VICTIMS SAY

Two studies include data based on interviews with victims of spousal abuse: the report of mandatory charging practices in the Yukon (Roberts, 1996) and, to a lesser extent, the Manitoba Tracking Study (Prairie Research Associates, 1994).

4.1 Views on Mandatory Charging

Victims' support for mandatory charging is evident as follows:

- 85% of victims in the Yukon felt the mandatory charging policy is a good one: 82% feel the policy is a good one in relation to how children experience an incident, and 68% "make the victim more or less confident about reporting a future incident of assault"; and
- women are often satisfied with charges which are laid; however, they often admit they were pressured by accused or his family to drop charges.

Nevertheless, there are issues as to whether mandatory charging practices meet the interests and needs of many women:

- 70% of women who were victims of spousal abuse and who called the police wanted police to charge their spouse but the police did so in 85% of cases. This finding was more pronounced for the First Nations women, where only 66% of women wanted their spouse charged, while 90% were charged;
- 63% of victims did not call the police for previous assaults:
 - 65% out of fear of the offender, but also of not being protected by the criminal justice system;
 - 58% hoped their relationship with their spouse would improve;
 - 48% wanted to maintain family unit;
 - 41% didn't want their spouse in jail;
 - 30% were afraid the RCMP would lay charges;
 - 39% feared their spouse wouldn't get help through the criminal justice system; and,
 - 24% feared their children would be taken into care.

4.2 Experience with Pre-Court Stage

- 78% of victims did not want to testify or go to court at all. The percentage was higher for First Nations women and for women from small communities. RCMP and family members were influential in convincing them to testify. Indeed, Roberts suggests that experience with the RCMP is a major factor influencing whether a woman would be likely to report again;

- victims often reported being dissatisfied with proceedings/dealings with Crown, usually because of little or no contact with the Crown, and lack of information; and
- victims want more input, and more information about their case and the criminal process in general (e.g., better preparing them as witnesses, and notification about release dates for accused).

4.3 Experience with Court Stage

- there was dissatisfaction with court outcomes: many victims wanted mandatory counselling for the accused and more serious consequences for breaching probation conditions;
- in the Yukon, over one-half of the victims whose cases were sentenced in mainstream court were dissatisfied with the sentence -- either they wanted longer sentences or they wanted treatment for the offender; and
- in the Yukon, First Nations victims, or women whose spouse was from a First Nation, would have preferred a circle process. Of the small number who experienced a circle process (n=7), 5 felt their views were adequately considered by the circle, and 5 were satisfied with the sentence, primarily because the circle offered the opportunity for the victim and offender to get help.

5.0 WOMEN ACROSS DIFFERENT SITUATIONS

There is considerable concern that women who are victims of spousal abuse but who are not necessarily part of the mainstream society may be either differentially affected by spousal violence, or may face different challenges in responding to the violence. A number of the reports include relevant information about the challenges faced specifically by First Nations women (Roberts, 1996), ethnocultural or immigrant women (Sy and Choldin, 1994; Godin, 1994; Currie, 1995), and rural women (Brookbank, 1995; Biesenthal and Sproule, 1997).

Many issues are shared with most women (e.g., lack of post-charge protection, minimal preparation by Crown, lack of information about the prosecution process), while others are unique to, or exacerbated for, certain groups of women as a direct result of their social status (e.g., minority status, language, disability, geographic location). As Currie (1995) points out, how spousal abuse and the social response to that violence are experienced depends on the woman, the particular community she lives in and her particular sociocultural background.

5.1 First Nations Women

Little in the reports explicitly address the needs of First Nations or Aboriginal women who are victims of spousal abuse. Presumably, however, in the Yukon study, most of the respondents would be women of First Nations background. The following information has been identified:

- approximately 33% of all couples in Family Violence Court were Aboriginal, while they make up roughly 5-8% of the population of Manitoba;
- First Nations community workers felt that spousal abuse was not given a high priority in their community, nor were there sufficient local resources for handling it;
- First Nations respondents reported greater pressure from spouses not to participate in the court process, and more frequently identified the need for alcohol abuse treatment than did non First Nations respondents; and
- community respondents favoured interventions which emphasized community/clan/family, and wanted flexibility, as “the appropriate model depends on the case” .

5.2 Rural Women

The Violence Against Women survey data (1993) suggest that there is little difference between rural and urban settings in rates of spousal abuse against rural women (Biesenthal and Sproule, 1997). There are recurring themes which are identified as particularly, if not uniquely, relevant to rural women who are victims of spousal abuse.

- physical and social isolation;
- limited availability of, and lack of access to, justice, social and health services;
- lack of privacy and concerns over confidentiality;
- limited housing and employment opportunities;
- limited means of transportation for relocation or accessing shelters;
- heavy reliance on the police as the main criminal justice service in the community; however, response times are generally too long to provide real protection;
- conflict of interest with respect to independence of criminal justice professionals (e.g., local police, lawyers, Crown) who may also have personal and/or professional involvement with the accused; and
- farm women face additional problems in that their home is also their place of business, and often risk losing all economic interest in it if they leave an abusive situation.

5.3 Ethnocultural and Immigrant Women

There is considerable consistency and overlap in three reports which deal with issues of specific concern to ethnocultural and/or immigrant women (Sy and Choldin, 1994; Godin, 1994; Currie, 1995), even though each has a slightly different emphasis. The main findings are as follows:

- ‘immigrants and visible minorities’ made up 8% of accused in Family Violence Court, while they made up 14% of Manitoba population. Ursel (1995) suggests this may be due to under-reporting of spousal abuse;
- language and information barriers exacerbate isolation, and social and economic dependency on the family, including on an abusive spouse;
- a common fear among many immigrant women is that they or their spouse will be deported;
- cultural and/or religious barriers often discourage, even prohibit, ‘dishonouring’ the family by involving outside agencies in private problems, and often promote family first values;
- barriers to using the criminal justice system exist, including ‘imported’ views of the police, courts and corrections as repressive and discriminatory;

- there are fears among women that they, or the males in their community, are targets of discrimination on the part of the police. This may cast doubt on whether their spouses will be treated fairly if the police are called;
- some communities do not support the narrow focus of the mandatory charging policy and would prefer community-specific options to spousal abuse;
- some communities question the ‘mono-cultural’ framework of the mandatory charging policy, in which severing the marital relationship is assumed and given priority;
- calling the police may invite state intrusion into womens’ lives, when they really just wanted police protection from immediate violence; and
- there is a need for cultural training for criminal justice, community, health and legal service providers.

Sy and Choldin (1994) and Godin (1994) point out the importance of public legal education for immigrant women who are assaulted by their spouses to help them understand Canada’s assault laws, the repercussions of calling the police, issues surrounding child custody or the division of matrimonial property in case of separation, and the implications for social assistance, immigration and deportation should their marriage break up or their partner be charged with a criminal offence. One study, cited by Currie (1995), identified a number of barriers to immigrant women in accessing services and supports which deal with spousal assault, including a lack of ability in English and lack of material in the womens’ mother tongue, lack of knowledge about Canadian law, the complexity of the law, and lack of information about where to go for legal information. The need to train and educate mainstream service providers who work with immigrant women who are abused is frequently noted.

The studies done for the Department of Justice recommend that the following strategies be adopted for the benefit of immigrant women:

- public legal education on criminal, child welfare and immigration law;
- workshops on the effects of immigration on the family;
- more accessible training in English as a second language;
- training in the primary job sectors; and
- a public awareness campaign in English and other languages about issues affecting spousal abuse including culturally relevant ways of addressing it which might not include involving the criminal justice system or calling the police.

6.0 FURTHER RESEARCH NEEDS

Two key challenges for the research on the criminal justice response to spousal abuse include:

- a lack of reliable and consistent information on the processing of cases, including outcomes at each stage, criteria for taking certain decisions and even previous records for spousal abuse by the same accused; and
- follow-up data, such as compliance with or breaches of various orders, and the extent to which spousal violence has continued.

The Justice studies do not address measures of protecting women from future violence. Roberts (1996), for example, found that women and criminal justice personnel *perceive* the immediate laying of charges as more successful in protecting women than the prosecution process does in the long term. Follow-up studies would tell us more about whether women have been revictimized by the same assaultive partner, or whether the prosecution process, or some aspects of it, were 'successful' in reducing violence against women. These data are essential in order to truly 'evaluate' current policies.

A final note -- women who have experienced spousal violence have played a limited role in the research agenda. While their voices are often heard, they are perhaps silenced somewhat by the current emphasis on mandatory charging as the main social response to violence against women. A number of the reports point out that this is often at odds with what many women, both inside and outside the mainstream, want. Women who experience spousal abuse and do not contact the police must also be included in evaluations of justice system responses, and in the development of effective strategies for eliminating spousal assault and protecting women. Yet little research appears to be directed towards those alternatives, unless they can be absorbed into the prosecutorial process. The remaining challenge appears to be adapting a strong and rigorous policy which allows the flexibility and compassion demanded by the diversity of women who experience spousal abuse.

APPENDIX 1

**DEPARTMENT OF JUSTICE RESEARCH REPORTS
ON SPOUSAL ABUSE**

Appendix 1 - Department of Justice Research Reports On Spousal Abuse

Report	Jurisdiction	Focus of Report	Methodologies
<i>Legal Information and Wife Abuse in Immigrant Families.</i> San San Sy and Sudha Choldin, 1994	Alberta	-to explore the role legal information and the legal system could play in meeting the needs of immigrant women who experience wife abuse -includes an annotated bibliography	-semi-structured interviews with service providers from immigrant servicing agencies (ISA's)
<i>More Than a Crime: A Report on the Lack of Public Legal Information Materials for Immigrant Women Who Are Subject to Wife Assault.</i> Joanne Godin, 1994	general	-examines the legal information needs of immigrant women who are victims of wife assault	-literature review of materials on wife assault especially as it relates to immigrant women, telephone interviews with service providers, government representatives and PLEI practitioners
<i>Manitoba Spouse Abuse Tracking Project: Final Report, Volume I.</i> Prairie Research Associates, Inc., 1994	Manitoba (Winnipeg, Brandon and Thompson)	-tracks cases throughout the prosecution process, from initial reporting to disposition	-tracking of cases, interviews with victims, key informants and court monitoring in Family Violence Court
<i>Winnipeg Family Violence Court Evaluation.</i> Jane Ursel, 1995	Manitoba	-Phase II of an evaluation of Family Violence Court -examines the relationship between FVC and other Manitoba courts that handle criminal matters	-analysis of characteristics of cases (including disposition) being process in FVC from intake data, court dockets -compares processes and outcomes in family violence cases in FVC with general assault cases in Provincial Court -compares outcomes, acquittal rates and sentencing procedures in FVC and Court of Queen's Bench

Report	Jurisdiction	Focus of Report	Methodologies
<i>Ethnocultural, Minority Women, Spousal Assault and Barriers to Accessing and Problems in Using the Justice System: A Review of the Literature.</i> Janet Currie, 1995	general	-barriers and problems experienced by ethnocultural minority women who are victims of spousal assault which may limit access to or use of the justice system or justice-related services	-literature review on barriers and problems, as well as the response of ethnocultural women to the mandatory charge policy
<i>Spousal Abuse in Rural Communities: A Literature Review.</i> Candace Brookbank, 1995	rural communities	-issues surrounding family violence, information needs and research gaps for rural and farm women who experience family violence	-literature review
<i>Spousal Assault and Mandatory Charging in the Yukon: Experiences, Perspectives and Alternatives.</i> Tim Roberts, 1996	Yukon	-evaluates the effectiveness and impact of criminal justice intervention in spousal assault cases, and the potential limitations of mandatory charge/pro-arrest policies -attempts to identify alternative models of RCMP/criminal justice intervention in spousal assault cases -assess compliance with and/or application of the mandatory charge policy in the Yukon -emphasis is on opinions and experiences rather than file, policy or systems analysis	-interviews with criminal justice, social service and First Nations respondents, victims of spousal assault, offenders in spousal assault cases and group interviews
<i>Review of the Saskatchewan Victims of Domestic Violence Act.</i> Prairie Research Associates, Inc., 1996	Saskatchewan	-to evaluate the implementation of the <i>Victims of Domestic Violence Act</i>	-file review, analysis of administrative data, interviews with victims and key informants, and consultations with Court Services personnel across the province

Report	Jurisdiction	Focus of Report	Methodologies
<p><i>A Review of Section 264 (Criminal Harassment) of the Criminal Code of Canada.</i> Richard Gill and Joan Brockman, 1996</p>	Canada	-a review of the implementation of s. 264 of the Criminal Code (criminal harassment)	<ul style="list-style-type: none"> -analysis of 601 criminal harassment cases -interviews with police, Crown and others with experience handling such cases -detailed review of several cases
<p><i>Violence Against Women in Rural Communities in Canada: Research Project Background.</i> Lorri Biesenthal and Lynne Dee Sproule, 1997`</p>	Canada	-to contribute to discussions of research needs on rural violence against women	-literature and research review