

Recent Developments in Domestic Violence Law and Policy in Alberta

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Legislation and Report Commented On: [*Bill 2, An Act to Remove Barriers for Survivors of Sexual and Domestic Violence; Family Violence Death Review Committee Annual Report 2015-2016*](#)

Statistics Canada's most recent report on family violence indicates that although the rate of family violence reported to the police was stable across the country overall from 2014 to 2015, Alberta experienced a 2% increase in the rate of family violence during this period ([Family violence in Canada: A statistical profile, 2015](#) at 37). Shelters in Alberta also [report](#) an increase in the number of calls to their crisis lines and for shelter space since 2014. At the same time, results from Canada's 2014 General Social Survey showed that 7/10 self-reported victims of spousal violence did not report the violence to police, often because they viewed the abuse as a "private matter" ([Family violence in Canada: A statistical profile, 2014](#) at 10).

Within this context, two recent developments in Alberta merit discussion. Bill 2, *An Act to Remove Barriers for Survivors of Sexual and Domestic Violence*, removes the limitation period that would otherwise restrict the time within which civil claims for damages can be commenced in domestic violence and sexual assault cases, and the Family Violence Death Review Committee's 2015-2016 Annual Report makes several recommendations for changes to Alberta law and policy to better deal with family violence issues.

Bill 2, An Act to Remove Barriers for Survivors of Sexual and Domestic Violence

Bill 2 was introduced in the Legislative Assembly in March 2017 by Justice Minister Kathleen Ganley, and received royal assent on May 4, 2017. The Bill amends the *Limitations Act*, [RSA 2000, c L-12](#), section 3 of which previously provided the following limitation period with respect to claims for damages for personal injuries:

- (a) 2 years after the date on which the claimant first knew, or in the circumstances ought to have known,
 - (i) that the injury for which the claimant seeks a remedial order had occurred,
 - (ii) that the injury was attributable to conduct of the defendant, and
 - (iii) that the injury, assuming liability on the part of the defendant, warrants bringing a proceeding,

or

(b) 10 years after the claim arose,

whichever period expires first.

Bill 2 added section 3.1 to the *Limitations Act*, completely removing the limitation period for claims of sexual assault and battery, and removing it in cases involving sexual misconduct or assault and battery in specific circumstances, including the domestic violence context:

3.1(1) There is no limitation period in respect of

(a) a claim that relates to a sexual assault or battery,

(b) a claim that relates to any misconduct of a sexual nature, other than a sexual assault or battery, if, at the time of the misconduct,

(i) the person with the claim was a minor,

(ii) the person with the claim was in an intimate relationship with the person who committed the misconduct,

(iii) the person with the claim was dependent, whether financially, emotionally, physically or otherwise, on the person who committed the misconduct, or

(iv) the person with the claim was a person under disability,

or

(c) a claim that relates to an assault or battery, other than a sexual assault or battery, if, at the time of the assault or battery,

(i) the person with the claim was a minor,

(ii) the person with the claim was in an intimate relationship with the person who committed the assault or battery,

(iii) the person with the claim was dependent, whether financially, emotionally, physically or otherwise, on the person who committed the assault or battery, or

(iv) the person with the claim was a person under disability.

(2) Subsection (1) applies to a claim in respect of an act that occurred before or after the coming into force of this section, regardless of the expiry of any previously applicable limitation period set out in section 3 or a predecessor of this Act.

As indicated in subsection (2), the removal of the limitation period applies retroactively. This aspect of the Bill received comment in *KS v Yakabuski*, [2017 ABQB 252 \(CanLII\)](#), a case involving an application to dismiss a civil claim for sexual assault against several defendants on

limitations grounds while Bill 2 was pending. The alleged sexual assault occurred in 1992, and Master Schlosser remarked that “In all but the most extraordinary circumstances, a lawsuit started this long after the fact would have a life expectancy of about five minutes. The mere passage of time erodes the evidence, decreasing the chances of a fair and just result for either side.” (at para 3) Noting that there were indeed extraordinary circumstances before the Court, with “a large majority in the Legislature, remedial legislation directed at exactly this type of lawsuit, and proposed retroactive effect”, Master Schlosser adjourned the application to await the outcome on Bill 2 (at para 8).

Given the large number of sexual assaults and instances of domestic violence that go unreported, and in light of ongoing concerns about the criminal justice system’s handling of sexual assault matters especially, civil claims might take on new prominence in this area. My research on all reported marital rape cases in Canada between 1983 and 2013 found only 5 civil claims over a 30-year period, compared to over 400 criminal cases (see “The Judicial Treatment of Marital Rape in Canada: A Post-Criminalisation Case Study”, forthcoming in *The Right to Say No: Marital Rape and Law Reform in Canada, Ghana, Kenya, and Malawi* (Hart Publishing, 2017); for an earlier report on that research see [here](#)). The challenges of bringing a civil claim in the context of spousal assault and spousal sexual violence are myriad, including the sensitive and stigmatizing nature of the claims, the vulnerability of victims to power and control by their abusers, the nature of harms that may take some time to manifest and be understood, and the impact of those harms on the ability to bring forward a claim within a short timeframe (see [Alberta Hansard](#), 8 March, 2017 at [110-111](#); 15 March 2017 at [314-22](#)). Explicitly recognizing these barriers in its title, Bill 2 brings Alberta into line with other provinces including British Columbia (*Limitation Act*, SBC 2012, c 13, s 3(1)(k)), Saskatchewan (*The Limitations Act*, SS 2004, c L-16.1, s 16), Manitoba (*The Limitation of Actions Act*, CCSM c L150, s 2.1), Ontario (*Limitations Act, 2002*, SO 2002, c 24, s 16) and Nova Scotia (*Limitation of Actions Act*, SNS 2014, c 35, s 11) in removing the limitation period in cases of domestic violence as well as sexual assault.

Family Violence Death Review Committee Annual Report 2015-2016

The Minister of Community and Social Services, Irfan Sabir, tabled the Family Violence Death Review Committee’s 2015-2016 Annual Report in the Legislature on May 16, 2017. A [report by CBC](#) indicates that this Report was in the hands of the government for almost a year before it was released, much to the frustration of the chair of the Committee. The Family Violence Death Review Committee was first established under the *Protection Against Family Violence Act*, [RSA 2000, c P-27](#) in 2013, and this is its second annual report. The Committee “provides advice and makes recommendations, through the Minister of Community and Social Services, pertaining to the reduction of family violence through the examination of family violence deaths.” (Annual Report at 4).

The Committee’s 2015-2016 Annual Report indicates that 15 deaths related to family violence occurred in 2015 – those involving “homicides and homicides/suicides where the victim was a current or former intimate partner of the person responsible for the homicide”, and “homicides of people other than the intimate partner that occur in the context of intimate partner violence, or in the midst of a perpetrator’s attempt to kill an intimate partner” (at 4-5). The Report also provides statistics for all 132 family violence deaths in Alberta from 2008-2015. Consistent with the national statistics, family violence deaths in Alberta are gendered, with women outnumbering

men as homicide victims, and men far outnumbering women as perpetrators of murder-suicides (at 12-14; see also [Family violence in Canada: A statistical profile, 2015](#) at 36-37).

The Annual Report's recommendations are based on an in-depth [Case Review Report](#) completed by the Committee in November 2015 in relation to a homicide against a woman by her intimate partner. Not many facts are provided in the Case Review Report, given that the Committee maintains confidentiality of the parties, but the recommendations suggest that the case involved spouses who were new to Canada and from a cultural minority group, and that the homicide took place at the victim's workplace. Recommendations include the suggestion that the government amend the *Occupational Health and Safety Act*, [RSA 2000, c O-2 \(OHS\)](#), "to recognize and include family violence as a workplace hazard" (Case Review at 3). Further to this recommendation, the Committee advocates that family violence should be defined in the *OHS* as it is in the *Protection Against Family Violence Act* and include "direct family violence (where the family violence is at the workplace) and indirect family violence (where the family violence is outside of the workplace) and it directly affects the workplace through employee's performance or by creating an unsafe work environment." It also recommends that workplaces be required to implement policies, procedures, monitoring and accountability mechanisms to deal with family violence as a workplace hazard, in collaboration with police services (at 3).

Other recommendations from the Case Review that are repeated in the Annual Report include the development of a family violence training component into the mandatory Alberta Basic Security Course taken by security workers licensed in Alberta, which is offered through the Ministry of Justice and Solicitor General; the distribution of family violence materials at various points of public contact, including Alberta Registries, Alberta Family Justice and Mediation/Dispute programs, Alberta Health Services programs, and social service agencies providing programs and services to immigrants; and collaboration between the government and immigrant-serving agencies "to identify and address key obstacles that prevent new Canadians from seeking assistance with family violence issues." (Annual Report at 17).

[Responding](#) to the late release of the Committee's 2015-16 Annual Report, Minister Sabir noted that the government had already begun working on the recommendations. Specifically, family violence prevention materials are now available in Alberta Works offices, and Sabir's ministry is "also working with the department of labour to come up with strategies to deal with family violence as a workplace hazard."

On the last point, Alberta could take some guidance from Ontario, which amended its *Occupational Health and Safety Act*, [RSO 1990, c O.1](#), in 2009 to deal explicitly with domestic violence as a workplace hazard:

32.0.4 If an employer becomes aware, or ought reasonably to be aware, that domestic violence that would likely expose a worker to physical injury may occur in the workplace, the employer shall take every precaution reasonable in the circumstances for the protection of the worker.

Currently, Alberta's [Occupational Health and Safety Code](#) (2009) enumerates workplace violence as a hazard and requires employers to develop policies and procedures on potential workplace violence (Part 27), but these provisions are not specific to domestic violence.

Another instructive jurisdiction is Manitoba, which allows employees to take domestic violence leave from employment to obtain medical attention, counselling, or victim services, to seek legal or law enforcement assistance, and / or to relocate temporarily or permanently (see *The Employment Standards Code*, [CCSM c E110](#), section 59.11). Ontario and Saskatchewan are considering similar legislation (see [Bill 177, The Domestic and Sexual Violence Workplace Leave, Accommodation and Training Act 2016](#) (Ontario), which is currently before the Standing Committee on Justice Policy, and [Bill 604, An Act to Provide Support to Victims of Domestic Violence](#) (Saskatchewan), which has had first reading).

Alberta does have an information booklet on [Family Violence and the Workplace](#) (2008) for employers and employees, but ideally it should amend its occupational health and safety and employment standards legislation to provide for the sorts of specific protections found in Ontario and Manitoba. The government has shown a commitment to legislating on issues of domestic violence, and these amendments would complement Bill 2 as well as the 2015 amendments to the *Residential Tenancies Act*, [SA 2004, c R-17.1, Part 4.1](#) for victims of domestic violence (for a post on which see [here](#)).

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