

removed from the home, for a reasonable period, to allow victims adequate time to determine an appropriate course of action and to defuse the emotional climate thereby reducing the immediate likelihood of continuous violence.

The Committee also heard evidence that the justice system has repeatedly failed to provide adequate protection for women who are threatened or abused by the men in their lives, especially former husbands or boyfriends; a number of tragic examples were cited where that failure eventually culminated in murder. Arguing that existing Canadian laws are inadequate to address the problem, the Metro Action Committee on Public Violence against Women and Children (METRAC) recommended that “anti-stalking” legislation be implemented, similar to those recently enacted in a number of United States jurisdictions.(78:19)

The Nova Scotia Advisory Council on the Status of Women (NSACSW) argued that women’s vulnerability to abuse by former partners is compounded by a failure on the part of the justice system to treat such offences seriously.(71:7) Their solution would be to amend s. 423 of the *Criminal Code*, which prohibits various forms of intimidation, to make it an indictable offence.⁴⁶ They believe that the option of prosecution by indictment would better reflect the seriousness of the charge and encourage a more appropriate judicial and system response to the behaviour.

It is apparent that some Canadian women do not enjoy the same freedom as other citizens to move about their homes and communities unmolested. According to the NSACSW, even when threats are not carried out, victims may be robbed of their peace of mind by the constant fear engendered by “offences that cripple the day-to-day living of women and children.”(71:7) Although various jurisdictions have attempted to address the issue of women’s safety through better enforcement techniques, the problem remains substantially unresolved and the Committee agrees that further legislative steps are required to strengthen the system’s response.

The Committee is aware that more than half of the state legislatures in the United States have passed “anti-stalking” laws since 1990. These laws are by no means uniform and some may be vulnerable to challenge on constitutional grounds.⁴⁷ At the same time, many are so new that their effectiveness has yet to be tested. It is also not clear which, if any, would be useful in the context of our criminal justice system and the *Canadian Charter of Rights and Freedoms*. For example, some would expand the scope of existing criminal sanctions by allowing a conviction for simply following a person, while others require accompanying threats of death or great bodily injury, activity already prohibited by section 264.1 of the *Criminal Code*.⁴⁸

Consequently, the Committee is attracted to the NSACSW recommendation to expand existing *Criminal Code* provisions rather than create an entirely new offence. Although amendments were suggested to render section 423 an indictable offence, the Committee notes that the language and

⁴⁶ Offences under s. 423 of the *Criminal Code* are currently classified as summary conviction.

⁴⁷ Kenneth R. Thomas, *Anti-Stalking Statutes: Background and Constitutional Analysis*, Congressional Research Service, 26 September 1992, Library of Congress.

⁴⁸ Section 264.1 (1) Every one commits an offence who, in any manner, knowingly utters, conveys or causes any person to receive a threat

(a) to cause death or serious bodily harm to any person;
(b) to burn, destroy or damage real or personal property; or
(c) to kill, poison or injure an animal or bird that is the property of any person.