National Symposium on Women,
Law and the Administration of Justice

Colloque national sur la femme,
le droit et la justice

Proceedings of the Symposium

Vancouver, British Columbia
June 10-12, 1991

Volume I

Department of Justice Canada
Ministère de la Justice Canada

Canada

National Symposium on Women,
Law and the Administration of Justice

Colloque national sur la femme,
le droit et la justice

Proceedings of the Symposium

Vancouver, British Columbia
June 10-12, 1991

Volume I

Department of Justice Canada
Ministère de la Justice Canada

Canada

CANADIAN CATALOGUING IN PUBLICATION DATA

National Symposium on Women, Law and the Administration of Justice (1991: Vancouver, B.C.)

National Symposium on Women, Law and the Administration of Justice

Issued also in French under title: Colloque national sur la femme, le droit et la justice. Contents: v. 1. Proceedings of the symposium -- v. 2. Recommendations from the symposium -- v. 3. Action plan on gender equality. ISBN 0-662-19763-1 (set); 0-662-19764-X (v. 1); 0-662-19765-8 (v. 2); 0-662-19766-6 (v. 3) DSS cat. no. J2-111/1991E (set); J2-111/1-1991E; J2-111/2-1991E; J2-111/3-1991E

1. Women -- Legal status, laws, etc. -- Canada -- Congresses. 2. Sex discrimination against women -- Law and legislation -- Canada -- Congresses. 3. Justice, Administration of -- Canada -- Congresses. I. Canada. Dept. of Justice. II. Title.

KE3499.N37 1992 342.71'0878 C92-099708-2

Published by authority of the Minister of Justice
and Attorney General of Canada
Government of Canada
by
Communications and Consultation Branch
Department of Justice Canada
Ottawa, Ontario
K1A 0H8

(613) 957-4222

Également disponible en français sous le titre
Colloque national sur la femme, le droit et la justice

Cat. No. J2-111/1-1991E
ISBN: 0-662-19764-X

Printed in Canada

JUS-P-617(E)

For convenience, the masculine pronoun is used in this document to refer to either male or female where the context does not clearly indicate one or the other.

TABLE OF CONTENTS

PART II

OPENING PLENARY - " Women in Canada "

ADDRESSES

SPEECHES

Plenary - " The Voices of Canadian Women "

Plenary - " Working for Change "

CLOSING ADDRESSES - " Next Steps "

FOREWORD

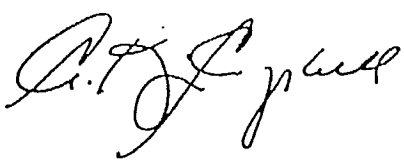
It is with great pleasure that I present the first two volumes of the report of the National Symposium on Women, Law and the Administration of Justice which I hosted in Vancouver on June 10 -12, 1991.

The National Symposium was an unique event in Canadian law reform. All who participated came away with a new and more profound understanding of the ways in which law and the administration of justice have a particular impact on women in our society. All of us also came away with a renewed sense of hope that change will occur, strengthened and supported by the tremendous energy and good will shown by those who participated.

These documents represent an important step towards the realization of our shared goal of gender equality in the Canadian justice system. They reflect the dedicated efforts of the many Canadians who participated in the symposium process, both in preparatory meetings and as speakers and participants in the Symposium itself.

By releasing these documents, it is my hope that the message of the National Symposium and the important lessons that were learned there will be broadened to include in the process of consultation and reform many more of the thousands of Canadians - both women and men - who work daily to create a justice system which better reflects the realities of the lives of women in Canada, in all our diversity.

I look forward to continuing this journey with you.



A. Kim Campbell
Minister of Justice and
Attorney General of Canada

INTRODUCTION TO THE NATIONAL SYMPOSIUM SERIES

The National Symposium on Women, Law and the Administration of Justice was held in Vancouver, British Columbia between June 10 and 12, 1991. This event brought together for three days almost 300 invited participants from a broad spectrum of experiences, disciplines and regions of the country to debate and discuss a wide range of issues concerning gender equality in law and the administration of justice in Canada. Through a series of preparatory meetings, symposium organizers and participants developed an agenda based on the input and experience of experts from across the country.

The event culminated in the development of a large number of recommendations for change calling for action on the part of governments, organizations and individuals. Symposium organizers and participants alike understood that the Symposium and the recommendations generated there must be viewed as only one step in the journey moving us closer to the goal of gender equality in the Canadian justice system.

Further steps have already been taken during the intervening year. To name only a few:

- All of the recommendations of the Symposium have been shared with senior officials of Provincial and Territorial Departments of Attorney General to be considered by the Working Group on Gender Equality as its members developed proposals for Attorneys General to promote gender equality;

- The federal Department of Justice has undertaken a review of litigation affecting women's equality rights; and

- Several departmental consultation efforts (notably that on Bill C-49 [Rape shield] which was tabled in December 1991) were carried out in a new and inclusive way.

VOLUME ONE: PROCEEDINGS OF THE SYMPOSIUM

The Proceedings of the National Symposium are presented in Volume One. The document includes all background documentation and information provided to the participants, the full agenda of the three days, all speeches and addresses as delivered at the Symposium.

VOLUME TWO: RECOMMENDATIONS FROM THE SYMPOSIUM

The National Symposium was organized to facilitate discussion and allow participants to develop recommendations in three general areas or tracks. Each general area was, in turn, divided into three sub-tracks as follows:

The Substantive Law

- Criminal law
- Family law
- Tax Law

The Legal Process

- Access to Justice for Women
- Court Process
- Sentencing

Work in the Legal Professions

- Selection Processes
- Education and Training
- Gender and Work

The participants at the National Symposium worked long and hard to develop recommendations to address issues of gender equality and justice in each of the identified areas. Participants chose one sub-track on the basis of their interest and expertise and stayed within this group for all work sessions over the course of the Symposium. The difficult task of moving from issue identification to the development of recommendations for action was facilitated in each group by an expert non-government volunteer. At the close of the event, a brief summary of the discussion and recommendations was presented at a Plenary session by the Track Moderator.

Volume Two contains the summary of discussions and recommendations as produced and approved by the participants in each sub-track. As the sub-groups approached their task in their own way, the reader will note a great deal of variability among the sub-track summaries as well as some duplication of recommendations. This is not surprising, given that the issues being addressed frequently have common roots and are not easily separated. Nevertheless, the summaries and recommendations are presented as they were written and approved in order to respect the integrity of the process in which those at the Symposium participated.

By releasing Volumes One and Two of the National Symposium Series, the Minister of Justice, the Honourable Kim Campbell is taking another step in the process of promoting gender equality in the justice system. It is hoped that the material contained in these two volumes will provide an opportunity for further discussion and reflection.

VOLUME THREE: ACTION PLAN ON GENDER EQUALITY

Volume Three, to be released separately, will serve two purposes. First, it will provide the Department of Justice an opportunity to respond to the recommendations of the National Symposium and to any further input generated by the release of Volumes One and Two. Second, it will contain the Action Plan of the Department of Justice on Gender Equality.

It is hoped that the National Symposium Series will provide a basis for ongoing consultation and policy discussions in the subject areas already identified as well as provide an impetus for further policy analysis and development on gender equality issues in areas of law and the administration of justice not included in the current documents.

AGENDA

REVISED AGENDA

AGENDA

Monday, June 10, 1991

9:00 - 10:15 Opening Plenary - Women in Canada

Moderator - John C. Tait, Deputy Minister
Department of Justice

° The Honourable Mary Collins
Associate Minister of National Defence and
Minister Responsible for the Status of Women

"Women's Experience with the Justice System"

Opening Address -

° The Honourable Kim Campbell
Minister of Justice and Attorney General of Canada

"A Vision for Canada's Justice System:
Reflecting Women's Realities"

10:15 - 10:45 Coffee Break

10:45 - 12:00 Plenary - The Voices of Canadian Women

Moderator - Mary Dawson, Associate Deputy Minister
Department of Justice

° Jean Swanson
Vice-President, National Anti-Poverty Organization
and Coordinator, End Legislated Poverty

° Pauline Busch
Aboriginal Women of Manitoba, Native Women's Association of
Canada

° Glenda Simms
President, Canadian Advisory Council on the Status of Women

12:00 - 13:30 Lunch Break

13:30 - 14:15 Individual Meetings of Tracks

A. Gender and the Substantive Law
Moderator: Maureen Maloney, Dean of Law
University of Victoria

B. Gender and the Legal Process
Moderator: Stephen Owen
Ombudsman of British Columbia

C. Gender and the People of the Law
Moderator: Marie-France Bich, Professor, Faculty of Law,
University of Montreal

14:15 - 15:30 Track Work Session # 1 - "Naming the Issues"

A. 1 Criminal Law
Facilitator: Renate Mohr, Professor, Department of Law, Carleton University

A. 2 Family Law
Facilitator: Freda Steel, Professor, Department of Legal Studies
University of Manitoba

A. 3 Tax Law
Facilitator: Maureen Maloney, Dean of Law University of Victoria

B. 1 Access
Facilitator: Mobina Jaffer, Dohm and Jaffer, Vancouver

B. 2 Court Process
Facilitator: Stephen Owen, Ombudsman of British Columbia

B. 3 Sentencing
Facilitator: Major Donna Howell, Correctional Services, Salvation Army of Canada

C. 1 Selection Processes
Facilitator: Sylviane Borenstein, Bâtonnière du Québec

C. 2 Education and Training
Facilitator: Judge Michael Sheehan, Court of Quebec

C. 3 Work and Gender
Facilitator: Marie-France Bich, Professor, Faculty of Law
University of Montreal

15:30 - 15:45 Refreshment Break

15:45 - 17:00 Track Work Session # 2 - "Naming the Issues"

Groups as above

KEYNOTE ADDRESS AND RECEPTION - PAN PACIFIC HOTEL

19:30 Introduction - **The Honourable Kim Campbell**
Minister of Justice and Attorney
General of Canada

Keynote Address

Ms. Rosalie Silberman Abella, Chair
Ontario Law Reform Commission

Reception following hosted by The Honourable Kim Campbell

Tuesday, June 11, 1991

9:00 - 10:15 Plenary - Working for Change

Moderator - D.C. Préfontaine, Assistant Deputy Minister
Department of Justice

- **Advocating for Change: The Metropolitan Action Committee on Public Violence Against Women and Children**
  Speaker: Patricia Marshall, Executive Director
  Metropolitan Action Committee on Public Violence Against Women and Children (METRAC)

- **Judicial Education**
  Speaker: Lynn Smith, Dean designate, Faculty of Law, University of British Columbia

- **Multiculturalism and Justice**
  Speaker: Mobina Jaffer, Dohm and Jaffer, Vancouver

10:15 - 10:30 Coffee Break

10:30 - 12:00 Track Work Session # 3 - "Articulating the Goals"

Groups as above

12:00 - 14:00 Luncheon - Pan Pacific Hotel- Governor General Suite

Moderator - Anne-Marie Trahan
Associate Deputy Minister, Department of Justice

Address - The Honourable David Marshall
Canadian Judicial Centre

14:00 - 15:30 Track Work Session #4 - "Overcoming the Obstacles"

Groups as above

15:30 - 15:45 Refreshment Break

15:45 - 17:00 Track Work Session # 5 - "Recommendations for Change"

Groups as above

17:00 - 18:30 Cash Bar and Snacks

18:30 - FILM SCREENING

° **"WHEN THE DAY COMES"**

Federal Women's Film Program - VANCOUVER TRADE AND CONVENTION CENTRE

Moderator - Vancouver Director of Women's Marketing, NFB

Wednesday, June 12, 1991

9:00 - 10:00 Plenary - Recommendations

Moderator - Elaine Doleman, Chair
Federal/Provincial/Territorial
Working Group on Gender Equality

A. Gender and the Substantive Law
Maureen Maloney

B. Gender and the Legal Process
Stephen Owen

C. Gender and the People of the Law
Marie-France Bich

10:00 - 11:00 Plenary Discussion

11:00 - 12:00 Plenary - Next Steps

Moderator -	Madame Justice Patricia Proudfoot, Court of Appeal, British Columbia
Address -	The Honourable James Lockyer Attorney General of New Brunswick
Closing Address -	The Honourable Kim Campbell Minister of Justice and Attorney General of Canada

FEDERAL-PROVINCIAL-TERRITORIAL WORKING GROUP

ON GENDER EQUALITY IN THE CANADIAN JUSTICE SYSTEM

FEDERAL-PROVINCIAL-TERRITORIAL WORKING GROUP ON GENDER EQUALITY IN THE CANADIAN JUSTICE SYSTEM

FOR

THE NATIONAL SYMPOSIUM ON WOMEN, LAW AND THE ADMINISTRATION OF JUSTICE

VANCOUVER, BRITISH COLUMBIA

10-12 JUNE 1991

MAY 1991

FEDERAL-PROVINCIAL-TERRITORIAL WORKING GROUP ON GENDER EQUALITY IN THE CANADIAN JUSTICE SYSTEM

As a result of an address by the Honourable James Lockyer, Q.C., Attorney General of New Brunswick, to the Federal/Provincial/Territorial Meeting of Attorneys General and Ministers of Justice in June of 1990, it was agreed that a Working Group of senior officials, chaired by New Brunswick, be established to propose methods of promoting gender equality in the Canadian justice system. This Working Group, which includes representatives from all jurisdictions except Quebec, has met regularly over the past year and is expected to report to Attorneys General at their next meeting in September 1991. The Working Group has, to date, done substantial work in reviewing issues in the context of the following six topic areas:

1) access to justice for women;
2) the response of the justice system to violence against women;
3) gender bias in the courts;
4) the response of the justice system to female offenders;
5) substantive law bias against women; and
6) women working in the justice system.

Aware of the interest of Ministers Responsible for the Status of Women in these issues, the Working Group has coordinated its efforts with those of Status of Women officials.

FEDERAL/PROVINCIAL/TERRITORIAL WORKING GROUP ON GENDER EQUALITY IN THE CANADIAN JUSTICE SYSTEM

LIST OF DESIGNATED OFFICIALS
(As of March 14, 1991)

CANADA
Susan M. Christie
Senior Policy Analyst
Policy Directorate Department of Justice
Ottawa, Ontario
K1A OH8
Tel:(613) 957-0199
Fax:(613) 957-2491

ALBERTA
G. D. (Don) Dawson
Director of Personnel Services
Alberta Attorney General
1st Floor, Bowker Building
9833 -109 Street
Edmonton, Alberta
T5K 2E8
Tel: (403) 427-4978
Fax: (403) 427-6821

BRITISH COLUMBIA
Gillian (Jill) Wallace
Barrister and Solicitor
Legal Services Branch
Ministry of the Attorney General
609 Broughton Street
Victoria, B.C.
V8V 1X4
Tel: (604) 356-8887
Fax: (604) 356-9154

MANITOBA
Stuart J. Whitley, Q.C.
Assistant Deputy Minister
Public Prosecutions
Department of Justice
5th Floor, 405 Broadway
Winnipeg, Manitoba
R3C 3L6
Tel: (204) 945-2873
Fax: (204) 945-1260

NEW BRUNSWICK (Chair)
Elaine E. Doleman
Legislative Counsel
Law Reform Branch
Office of the Attorney General
Room 418, Centennial Building
P.O. Box 6000
Fredericton, N. B.
E3B 5H1
Tel: (506) 453-2544
Fax: (506) 453-3275

NEWFOUNDLAND
Wendy Kipnis
Office of the Legislative Counsel
Government of Newfoundland and Labrador
Confederation Building
P.O. Box 8700
St. John's, NF
A1B 4J6
Tel: (709) 576-2881
Fax: (709) 576-3627

NORTHWEST TERRITORIES
Janis Cooper
Policy Advisor
Policy and Planning Division
Department of Justice
Government of the Northwest Territories
P.O. Box 1320
Yellowknife, N.W.T.
X1A 2L9
Tel: (403) 920-6418
Fax: (403) 873-0173

NOVA SCOTIA
Noella A. Fisher, Q.C.
Senior Solicitor
Department of Attorney General
c\o Housing Department
Alderney Gate
40 Alderney Drive
P.O. Box 815
Dartmouth, N. S.
B2Y 3Z3
Tel: (902) 424-8601
Fax: (902) 424-5327

ONTARIO
Marie Moliner
Ministry of the Attorney General
Equality Rights Branch
720 Bay Street -7th Floor
Toronto, Ontario
M5G 2K1
Tel: (416) 326-2504
Fax: (416) 326-2699

PRINCE EDWARD ISLAND
Judy Haldemann
Departmental Solicitor
Department of Justice and Attorney General
P.O. Box 2000
Charlottetown, P.E.I.
C1A 7N8
Tel: (902) 368-5486
Fax: (902) 368-5283

QUÉBEC
(Québec is not participating)

SASKATCHEWAN
Betty Ann Pottruff
Director
Policy, Planning and Evaluation
Public Law and Policy Division
Department of Justice
1874 Scarth Street
Regina, Saskatchewan
S4P 3V7
Tel: (306) 787-8954
Fax: (306) 787-8084
(306) 787-9111

YUKON
Penelope Gawn
Legal Counsel
Legal Services Branch
Department of Justice
P. O. Box 2703
Whitehorse, Yukon
Y1A 2C6
Tel: (403) 667-5107
Fax: (403) 668-3279

THE DEPARTMENT OF JUSTICE

WOMEN AND JUSTICE: QUESTIONS AND ANSWERS

FOR

THE NATIONAL SYMPOSIUM ON WOMEN, LAW AND THE ADMINISTRATION OF JUSTICE

VANCOUVER, BRITISH COLUMBIA

10-12 JUNE 1991

Prepared by: Statistics Section
Policy, Programs and Research Sector
Department of Justice

June 1991

INTRODUCTION

The objective of Women and Justice: Questions and Answers is to offer a statistical context for addressing the symposium's issues.

Statistics are provided on:

- Demographic Characteristics
- Socio-economic Characteristics
- Divorces
- Victimization and Fear of Crime
- Female Offenders

Each area contains a Summary and identifies sources.

WOMEN AND JUSTICE: QUESTIONS AND ANSWERS

DEMOGRAPHIC CHARACTERISTICS

- **What is the proportion of females in the Canadian population?**
  Females constitute about 51% of the Canadian population. In 1990, there were 13.5 million females and 13.1 million males.

- **How many women are 65 and older?**
  There are 1.7 million women aged 65 years and older (13% of all females), compared to 1.2 million men aged 65 years and older (9% of all males).

- **What is the marital status of women aged 65 and older?**
  Almost half of women (48%) aged 65 and older are widowed; 40% are married; the remaining 12% are single, divorced, or separated.

  In comparison, three quarters (75%) of men aged 65 and older are still married; only 14% are widowed; the remaining 11% are single, divorced, or separated.

- **How many women are living alone?**
  About 1.2 million females are living alone, compared to 800,000 males. One of every three women aged 65 and older lives alone, compared to only one of every seven men.

- **How many single-parent families are headed by a woman?**
  There are 910,000 single-parent families (13% of all families). An overwhelming proportion (82% or 750,000) of them (750,000) are headed by a woman and only 18% (or 160,000) are headed by a man.

- **How ethnically diverse is Canada?**
  In 1986, 72% of the population reported single ethnic origins while 28% reported multiple ethnic origins. Among those reporting single origins, 36% were British, 35% were French, 21% were other European, 6% were Asian, 2% were aboriginal, 1% were Latin American or black.

SUMMARY:

Compared to men, there are many more women aged 65 and older. Almost half of them are widowed and one-third of them live alone.

Among single-parent families, four-fifths are headed by a woman.

Canada is ethnically diverse as over one quarter of the population are neither British nor French.

SOURCES:

Statistics Canada (1990): *Ethnic Diversity in Canada.* (Catalogue 98-132)

Statistics Canada (1990): *Postcensal annual estimates of population by marital status, age, sex and components of growth for Canada, provinces and territories, June 1, 1990.* (Catalogue 91-210)

Statistics Canada (1990): *Women and the Labour Force.* (Catalogue 98-125)

Statistics Canada (1990): *Women in Canada: A Statistical Report.* (Catalogue 89-503)

SOCIO-ECONOMIC CHARACTERISTICS

- **Is the average income of females comparable to males?**
  Females earn significantly less than males. In 1987, female full-time workers earned an average of $21,000, only 66% of the income of male full-time workers (who earned an average of $32,000). Female university graduates earned only 70% of the income of male university graduates.

- **How many females are classified in the low income group?**
  In 1987, 3,535,000 Canadians (14% of the total population) were classified in the low income group. However, the proportion was higher among females (16%) than males (13%).

  [Note: Statistics Canada classifies those who spend 58.5% or more of their income on food, shelter, and clothing as in the low income group.]

- **Among single-parent families headed by a woman, what proportion is in the low income group?**
  More than half (57%) of single-parent families headed by a woman (totalling over 400,000 families) are in the low income group. In comparison, the proportions for other families or individuals in the low income group are: single-parent families headed by a man, 17%; husband-wife families, 8%; males living alone, 30%; females living alone, 33%.

  Females heading single-parent families are less likely than their male counterparts to own their homes (41% for females compared to 64% for males in 1981), more likely to have lower average family income ($21,000 for females compared to $36,000 for males in 1986) and also more likely to spend a higher percentage of their income on shelter (25% for females compared to 16% for males in 1986).

- **Is the unemployment rate similar among women and men?**
  The unemployment rate is higher among women. In 1988, the unemployment rate for women was 8.3%, compared to 7.4% for men. The largest difference was found among the middle aged group (those aged 35 to 54): 7.1% for women, 5.1% for men.

- **What is the proportion of women in the labour force?**
  In 1989, 58% of females aged 15 and older were in the labour force, compared to 77% for males.

- **Do women occupy jobs similar to those held by men?**
  A survey of the federal public service in 1989 shows that women are over-represented in administrative support occupations while under-represented in senior management and professional occupations.

  While women constituted 43% of the federal public service, 83% of the administrative support group were women, compared to only 12% in senior management and 24% in a professional group.

SUMMARY:

Women are generally economically worse off than men. More women than men are classified in the low income group. Fewer women than men have jobs. Fewer women than men occupy professional and management jobs. The average income of women is significantly lower than that of men. The unemployment rate for women is also higher.

SOURCES:

Statistics Canada (1989): *Family Income.* (Catalogue 98-128)

Statistics Canada (1990): *Women and the Labour Force.* (Catalogue 98-125)

Statistics Canada (1990): *Women in Canada: A Statistical Report.* (Catalogue 89-503)

Task Force on Barriers to Women in the Public Service (1990): *Beneath the Veneer.* Volume 2: What the Numbers Told Us.

DIVORCES

- **How many divorces are granted each year?**
  In 1989, there were 81,000 divorces granted in Canada. The rate was 423 divorces per 1,000 marriages. International data for 1987 for 26 mostly western countries show that Canada had the highest divorce rate, including the United States.

- **How many women have children when they obtain their divorces?**
  Almost two-thirds (64%) of women who obtained divorces in 1989 did not have children at the time of the divorce. Fifteen percent had one child; 16% had two children and 5% had three or more children.

- **How often are women given custody of the children?**
  In 1989, custody orders were issued by the courts for 50,000 children as a result of divorces. Almost three out of four children (74%) were put under the custody of the wives. Only 13% were granted to the husbands; 12% were granted under joint custody; 1% were granted to other persons or agencies.

- **What are the reasons given as grounds of divorce?**
  The alleged grounds for divorce in 1989 were separation for more than one year (85%), followed by mental cruelty (11%), adultery (9%), and physical cruelty (6%). The total is more than 100% because some divorce decrees involved more than one ground.

SUMMARY:

The divorce rate in Canada is one of the highest in the world.

Two-thirds of women who obtain divorces do not have children. If they have children, they are much more likely than men to receive custody of the children.

SOURCE:

Statistics Canada (annual): *Health Reports: Divorces*. (Catalogue 82-003)

VICTIMIZATION AND FEAR OF CRIME

- **How often are women victims of spousal violence?**
  Women are victims in close to 90% of spousal assaults. In 1987, about 2% of married women were assaulted by their spouses. One half of them were assaulted more than once. Spousal assaults were most common among married women aged 15 to 24; 8% of this group were assaulted in 1987.

- **How serious are the spousal assaults?**
  Three quarters of spousal assaults in 1987 involved actual attacks while the remainder involved threats of violence. One in five incidents involved a weapon, the majority of which were blunt instruments. Close to two-thirds (64%) reported some injury but only one quarter (26%) of the victims sought medical attention and one-fifth (20%) received support from a social service agency.

- **How many women are victims of homicides each year?**
  In a typical year, about 200 to 250 females are victims of homicide (murder or manslaughter). On the other hand, less than 80 out of a total of 500 to 600 suspects are females. Thus female victims are mostly killed by males.

  In 1989, a total of 246 females were victims of homicides. Almost one-third (31%) or 76 women were killed by their husbands. In comparison, only 22 men were killed by their wives.

- **What is the proportion of women showing fear of walking alone at night?**
  In 1988, 40% of women aged 15 and older said they felt unsafe walking alone in their own neighbourhoods at night. In contrast, only 12% of men said they felt unsafe.

- **What kind of action do women take to prevent crime?**
  In 1987, 27% of women aged 15 and older said they changed their normal routine to prevent crime; 21% said they installed new locks or alarms; 6% said they changed phone numbers.

SUMMARY:

Victims of spousal violence are mostly women. They constitute almost 90% of spousal assaults and over 75% of spousal homicides.

Women have a much higher fear of crime than men.

SOURCES:

Statistics Canada (1990): *Conjugal Violence Against Women*. Juristat Vol.10 No.7. (Catalogue 85-002)

Statistics Canada (1990): *Patterns of Criminal Victimization in Canada*. (Catalogue 11-612)

Statistics Canada (annual): *Homicide in Canada: A Statistical Perspective*. (Catalogue 85-209)

Unpublished tabulations from the General Social Survey Cycle 3 on personal risk and victimization.

FEMALE OFFENDERS

- **How many females are charged by the police each year?**
  In 1989, there were 72,000 female adults charged under the Criminal Code by the police. In addition, there were 20,500 female young offenders charged. Females constituted 17% of all adult offenders and 18% of all young offenders.

- **Is there any increase in the number of female offenders?**
  The number of females charged increased much faster than males. The number of female offenders (adults and youths) increased from 66,000 in 1980 to 93,000 in 1989, a 40% increase. The charge rate increased from 540 per 100,000 population in 1980 to 700 per 100,000 in 1989, a 28% increase. In comparison, the charge rate for males increased only 3% from 3,300 per 100,000 population in 1980 to 3,400 per 100,000 in 1989.

- **What types of crimes are committed by female offenders?**
  Females are more likely to commit less serious crimes. In 1989, females adults constituted 17% of all adult offenders, they constituted only 10% of all violent offenders and 23% of all property offenders. On the other hand, female young offenders were more likely than adult women to be violent offenders. They constituted 20% of all violent young offenders and 18% of all property young offenders.

  However, about 90% of the violent offences committed by female offenders (adults and youths) were minor non-sexual assaults (compared to 75% for males) and about 85% of the property offences committed by female offenders were either theft under $1,000 or fraud (compared to 55% for males).

- **What is the proportion of female offenders admitted to custody?**
  In fiscal year 1989/90, 120 female offenders were admitted to federal penitentiaries, constituting 3% of all sentenced admissions; 9,200 female offenders were admitted to provincial institutions, constituting 8% of all sentenced admissions. Among female provincial inmates, 30% were admitted for fine default.

- **What is the proportion of female aboriginal inmates?**
  While aboriginals constituted below 3% of the general population, 15% of female inmates in federal penitentiaries (on June 30, 1990) were aboriginals and 29% of females admitted to provincial institutions in 1989/90 were aboriginals (compared to 17% for males).

SUMMARY:

Criminality among females is much lower than among males. They constitute less than 20% of all those charged under the Criminal Code. While the number of females charged increased significantly in the 1980s, most of the offences committed by them were of a less serious nature. Because of this, female inmates constitute only about 5% of the total custodial population.

SOURCES:

Statistics Canada (1990): *Adult Correctional Services in Canada*, 1989-90. (Catalogue 85-211)

Statistics Canada (1990): *Women and Crime*. Juristat Vol.10 No.20. (Catalogue 85-002)

Statistics Canada (1991): *Adult Female Offenders in the Provincial/Territorial Corrections Systems, 1989-90*. Juristat Vol.11 No.6. (Catalogue 85-002)

Statistics Canada (annual): *Canadian Crime Statistics*. (Catalogue 85-205)

SUMMARIES OF RECENT RESEARCH

FOR

THE NATIONAL SYMPOSIUM ON WOMEN, LAW AND THE ADMINISTRATION OF JUSTICE

VANCOUVER, BRITISH COLUMBIA

10-12 JUNE 1991

Prepared by: The Research Section
Department of Justice

MAY 1991

INTRODUCTION

The Research Section, Department of Justice Canada, has undertaken research projects on a number of topics which affect women directly or indirectly.

The following twelve summaries are meant to review the more recently completed research projects. These were not always initiated primarily to determine the impact on women, as in the case of innovative delivery of legal aid services, but it is believed that their impact on women and justice is sufficient to warrant inclusion.

The major areas of investigation include violence to women, as victims of sexual assault and family violence, domestic homicides and firearms, and potential secondary violence through the vehicle of violent pornography.

Issues on access to justice were included, pertaining to legal aid and public legal education and information.

The impacts of recent legislation on soliciting and the pros and cons of divorce mediation are also reviewed.

TABLE OF CONTENTS

Divorce Mediation:

Court Based Divorce Mediation in Four Canadian Cities: An Overview of Research Results

Women and poverty revisited

WOMEN AND POVERTY REVISITED - A report by the National Council of Welfare, Ministry of Supply and Services Canada, 1990

TITLE: OVERVIEW, SEXUAL ASSAULT LEGISLATION IN CANADA: AN EVALUATION, REPORT NO. 5*

AUTHOR(S): Research Section, Department of Justice Canada, 1990.

The next three fact sheets report the results of a major evaluation of the sexual assault legislation that was proclaimed by the federal government in 1983 (Bill C-127, *An Act to Amend the Criminal Code in Relation to Sexual Offences and Other Offences Against the Person*). The legislation removed from the *Criminal Code* laws on rape, attempted rape and indecent assault, and replaced them with a trilogy of sexual assault offenses: sexual assault (Level I); sexual assault with a weapon, threats to a third party, or bodily harm (Level II); and, aggravated sexual assault (Level III). Important reforms were also made to laws on procedure and evidence.

In 1985, the Department of Justice Canada established an evaluation plan that would focus on the impact of the new legislation, in regard to victims as well as various sectors of the justice system. The plan included detailed research in six cities across Canada, a survey of front-line agency personnel, an analysis of national police statistics, and a review of selected court cases.

The present fact sheet provides a general overview of results and summarizes the findings from the six study sites. The next fact sheet (Report #4) summarizes the analyses of national justice statistics, and the third fact sheet (Report #3) focuses on changes in sentencing patterns.

SUMMARY OF FINDINGS:

* There has been an increase in the number of sexual assaults reported to police across the country. While the site studies indicate that there were contrasts between cities of comparable size, national data confirm that there has been a general trend to higher rates of reporting sexual crimes since the proclamation of Bill C-127.

* There was some consensus among key respondents that sexual assault remains underreported and that victims' reasons for not reporting include fear of the assailant, shame and a desire to avoid the criminal justice process.

* All sites indicated little overall change in the characteristics of complainants and assailants. There were very few spouses and few males reporting incidents to police. It appears that the spousal exemption and the gender-neutral language of the legislation made only a small contribution to the increased numbers of reports made to police.

* Founding rates (i.e., reports that are deemed by police, after preliminary investigation, to be supported by sufficient evidence to lay a charge) have not changed dramatically in the last 10 years. Furthermore, the founding rates across the provinces continue to vary. These findings suggest that changes in regard to evidence and the new offence classifications have not affected this aspect of police work.

* Analysis of national charging data indicate that the clearance rate for sexual assault is similar to that of other crimes involving violence. There has been little change in the aggregate charging rate since the 1983 legislation. Thus, it does not appear that the legislation has affected the likelihood that a charge will be laid in a sexual assault case.

* Corroborating evidence did not play a consistent role across the sites in relation to charging; however, there was some sense among key respondents that corroboration is still an important consideration in the charging decision.

* The site studies addressed three aspects of the criminal justice system: plea bargaining, conviction and sentencing. First, the investigation into plea bargaining dealt with how changes in offence classification might affect the day-to-day work of the Crown attorney and defense counsel in court. Counsel were divided on this issue. Some felt the new legislation made negotiation easier; however, there was no indication that negotiation is more prevalent under the new law. It would appear that Crown attorneys approach plea bargaining with extreme caution in sexual assault cases.

* Findings across the sites for convictions were quite diverse. The conviction rate went up in three sites, down in two, and remained approximately the same in two. Crown attorneys and defense counsel gave mixed responses on the likelihood of obtaining a conviction if: (a) the complainant's past sexual history was introduced into evidence; (b) corroborating evidence was present; and (c) the complaint was recently reported. These factors cannot be consistently related to either the qualitative or quantitative data on conviction rates.

* Finally, the data on sentencing in the sites was limited; however, respondents from sexual assault centres indicated a continuing belief that sexual assault sentences do not reflect a clear recognition of the victim's trauma. Roberts's sentencing patterns study (see below) indicated that, while there is variation across the country, sentences have not become more lenient since 1983.

* According to information gathered in 1987, very few victims of sexual assault were aware that the law had been amended. They therefore may have taken the decision to report the assault to police on the basis of other factors. The court experience continues to be unpleasant, a feeling that undoubtedly prevails in all cases but especially in sexual assault cases.

IMPLICATIONS FOR WOMEN AND JUSTICE:

The research has raised new and important questions about how to deal with sexual assault and has provided some ideas of new directions. It is evident from the evaluation research that the 1983 sexual assault legislation achieved some of its objectives and fell short on others. With this knowledge, we are better informed to continue to improve the law and its supporting institutions.

TITLE: AN ANALYSIS OF NATIONAL STATISTICS: SEXUAL ASSAULT LEGISLATION IN CANADA: AN EVALUATION, REPORT NO. 4

AUTHOR(S): Julian V. Roberts, for the Research Section, Department of Justice Canada

SUMMARY OF FINDINGS:

Using the Uniform Crime Reports (national police statistics collected by the Canadian Centre for Justice Statistics) for the 11 year period from 1977 to 1988, this study identified trends in the number of cases "reported", "founded", and "cleared by charge" for rape and sexual assault. Similar numbers and rates of reporting, founding and charging for the three levels of assault and manslaughter were also analyzed as a basis for comparison. General findings were as follows:

* Since 1983, there has been a steady increase in the number of sexual assaults reported to police. The number of reports in 1988 (n= 29,111) is 127% higher than the number in 1982 (n= 12,848). This is significantly higher than the increase in the incidence of nonsexual assaults reported to the police.

* The increase in sexual assault reporting has not been uniform across the three levels. The vast majority of sexual assault reports (95% in 1988) were classified as Level I (least serious of the three levels). Since 1983, there has been a substantial reduction in reports classified at Level III, the most serious level. There has also been a slight increase in reports of Level II. (It is important to note, however, that the increase in reporting is not consistent across the country. Reporting patterns vary greatly in different provinces and territories.)

* After a preliminary investigation, incidents that are reported to police are designated as being "founded" or "unfounded" -- this does not relate to guilt or innocence but whether there is sufficient evidence to proceed. When tracked over time, it was revealed that the proportion of reports considered unfounded has not substantially changed since 1983.

* There has been, however, a significant decline in the unfounded rate of aggravated sexual assault, from 20% in 1983 to 8% in 1989. This fact can be coupled with the decline in the number of reports of sexual assault classified as aggravated (Level III). Together they suggest police may be classifying difficult cases (i.e., hard for the Crown to prove) of aggravated sexual assault (Level III) as Level I.

* The most recent data available (1988) reveal that 49% of the reports of sexual assault deemed founded were subsequently cleared by the laying of a charge. This rate has risen steadily since 1980, when it was only 37%. However, the 1988 clearance rate for nonsexual assault was 47%, suggesting that factors in addition to the reform legislation may have affected clearance.

* At the national level, there is a systematic trend for the clearance rate of sexual assault offences to rise with the seriousness of the crime: in 1988, 60% of aggravated sexual assaults (Level III) were cleared by the laying of a charge, whereas 48% of Level I sexual assault offences were cleared by the laying of a charge.

* In 1988, 20% of founded offences of sexual assault were cleared "otherwise" (i.e., cleared without the laying of a charge). This is lower than the comparable statistic for nonsexual assault (33%).

IMPLICATIONS FOR WOMEN AND JUSTICE:

The increase in reporting rates may suggest that victims' attitudes towards the criminal justice system have changed, making them more likely to come forward.

It is likely that the reform legislation is in part responsible for the increase in reporting rates; however, other factors may have had an effect. There has been an increase in the number of sexual assault crisis centres and special units within police forces to handle cases of sexual assault. As well, the general social climate has changed, perhaps making it less traumatic for victims to come forward and report victimization to the criminal justice system.

TITLE: SENTENCING PATTERNS IN CASES OF SEXUAL ASSAULT: SEXUAL ASSAULT LEGISLATION IN CANADA: AN EVALUATION, REPORT NO. 3

AUTHOR(S): Julian V. Roberts, for the Research Section, Department of Justice Canada

SUMMARY OF FINDINGS:

In the absence of national data on sentencing in Canada, this report draws upon secondary databases to present a picture of recent sentencing patterns for the offences of sexual assault. The databases include a computerized sentencing information system in British Columbia and recent Department of Justice Canada evaluation research of the 1983 legislation (Bill C-127). To the extent possible and where data permit, the report deals with public opinion about sentences given, with actual sentences imposed both before and after the 1983 law reform, and with apparent variation in current sentences imposed from region to region.

* Since 1983, a great deal of public and professional concern has arisen over the sentences imposed for the new crimes of sexual assault. Much of the criticism from members of the public concerns the perceived leniency of sentencing trends. News media coverage of sexual assault focuses on cases resulting in atypically lenient sentences.

* There appears to be a discrepancy between the typical case of sexual assault as reported to the police, and the public views of what constitutes the average case of sexual assault. To most people, sexual assault is synonymous with the earlier offence of rape.

* Based on information contained in the site studies and in the B.C. sentencing information system, for the period covered in this study, between 60 and 80% of convictions for sexual assault (Level I) resulted in a period of imprisonment. Incarceration was the disposition imposed in more than 90% of convictions for sexual assault with a weapon (Level II); virtually all convicted offenders of aggravated sexual assault (Level III) were incarcerated. Using the percentages of offenders incarcerated as the index of comparison, sexual assault Levels II and III were punished more severely than other personal injury offences.

* Sexual assault convictions (especially Level I) generated considerable sentencing variation across the sites studied. This variability probably should be expected, given the vast range of behaviours that can be categorized as sexual assault, but there remains the need for further study to fully understand the factors and dynamics involved in the sentencing process. (These findings must be viewed as preliminary and tentative, since national data on sexual assault sentencing are not yet available.)

IMPLICATIONS FOR WOMEN AND JUSTICE:

News media coverage of atypically lenient sexual assault case sentences may contribute to the public's perception of lenient sentencing trends in sexual assault cases.

Although the public may regard sexual assault as rape renamed, sexual assault in fact includes a range of behaviours varying in seriousness from acts that used to be classified as indecent assault to rape.

TITLE: TOWARD A MORE EFFECTIVE CRIMINAL JUSTICE RESPONSE TO WIFE ASSAULT: EXPLORING THE LIMITS AND POTENTIAL OF EFFECTIVE INTERVENTION

AUTHOR(S): Linda MacLeod and Cheryl Picard, for the Research Section, Department of Justice Canada, 1989

This study attempts to address concerns about existing policies and programs within the criminal justice system relating to wife assault, particularly recent charging policies, the use of mediation and other non-adversarial approaches.

According to victims and social service workers, women's ambivalence toward the justice system may be a function of the fact that, although justice services offer them one of the few opportunities for protection, these services reduce the ability of women to devise their own solutions.

SUMMARY OF FINDINGS:

Research indicates that since more aggressive charging and prosecutional policies have come into effect, criminal justice intervention is reducing violence.

A number of alternatives to the criminal justice system have been attempted in Canada and the United States. Mediation was one alternative discussed. It was found to be a controversial measure which raised issues of power, protection, autonomy and credibility. There was little agreement as to its benefits in these cases.

Some suggestions were made for further intervention in situations of wife assault, including:

- women should be provided with clear honest information about their options, including benefits and pitfalls.
- advocates for women should be available from the moment police are called in.
- men should be removed from the home, not the women and children.
- judges should be better trained to understand the complexity of wife assault.
- more counselling programs are needed for children living in homes where women are battered.
- lawyers should be further sensitized to the needs and experiences of battered women.

IMPLICATIONS FOR WOMEN AND JUSTICE:

In the late 1970's and early 1980's women's groups pressed government to emphasize the criminal nature of wife assault and to rely on charges rather than attempt to mediate disputes.

Recent experiences suggest that many women who are battered do not want to have their case proceed through the court to conviction and sentencing. In addition, domestic assault cases have been added to the backlog of cases awaiting court. A new search for creative ways to intervene in wife assault cases has begun.

There is a real debate across the country with respect to the effectiveness of the charging policy as well as a renewed emphasis on non-adversarial intervention.

RESEARCH REPORTS
FROM THE SEXUAL ASSAULT EVALUATION PROGRAM

☐ Stanley, Marilyn G., The Experience of the Rape Victim with the Criminal Justice System Prior to Bill C-127, *Sexual Assault Legislation in Canada: An Evaluation, Report No. 1*, Department of Justice Canada, Ottawa: July, 1985 (150 pages).

☐ Ruebsaat, Gisela, The New Sexual Assault Offences: Emerging Legal Issues, *Sexual Assault Legislation in Canada: An Evaluation, Report No. 2*, Department of Justice Canada, Ottawa: July, 1985 (110 pages).

☐ Roberts, Julian V., Sentencing Patterns in Cases of Sexual Assault, *Sexual Assault Legislation in Canada: An Evaluation, Report No. 3*, Department of Justice Canada, Ottawa: 1990a (108 pages).

☐ Roberts, Julian V., An Analysis of National Statistics, *Sexual Assault Legislation in Canada: An Evaluation, Report No. 4*, Department of Justice Canada, Ottawa: 1990b (78 pages).

☐ Research Section, Department of Justice Canada, Overview, *Sexual Assault Legislation in Canada: An Evaluation, Report No. 5*, Department of Justice Canada, Ottawa: 1990 (83 pages).

☐ Rowley, Susannah W., A Review of the Sexual Assault Case Law, 1985-1988, *Sexual Assault Legislation in Canada: An Evaluation, Report No. 6*, Department of Justice Canada, Ottawa: 1990 -- to be available Summer 1991.

☐ Roberts, Julian V., Homicide and Sexual Assault, *Sexual Assault Legislation in Canada: An Evaluation, Report No. 7*, Department of Justice Canada, Ottawa: 1991 -- to be available Summer 1991.

Working Documents (Limited quantities available)

☐ Baril, Micheline; Bettez, Marie-Josée; Viau, Louise, Sexual Assault Before and After the 1983 Reform: An Evaluation of Practices in the Judicial District of Montreal, Quebec, Department of Justice Canada, Ottawa: November, 1988, WD1991-2a (327 pages).

☐ Ekos Research Associates Inc., Report on the Treatment of Sexual Assault Cases in Vancouver, Department of Justice Canada, Ottawa: September, 1988a, WD1991-3a (200 pages).

Research Reports from the Sexual Assault Evaluation Program (Cont'd)

☐ Ekos Research Associates Inc., Report on the Impacts of the 1983 Sexual Assault Legislation in Hamilton-Wentworth, Department of Justice Canada, Ottawa: July, 1988b, WD1991-4a (165 pages).

☐ J. and J. Research Associates Ltd., An Evaluation of the Sexual Assault Provisions of Bill C-127, Fredericton and Saint John, New Brunswick, Department of Justice Canada, Ottawa: November, 1988, WD1991-5a (115 pages).

☐ University of Manitoba Research Ltd., Report on the Impact of the 1983 Sexual Assault Legislation in Lethbridge, Alberta, Department of Justice Canada, Ottawa: August, 1988a, WD1991-6a (126 pages).

☐ University of Manitoba Research Ltd., Report on the Impact of the 1983 Sexual Assault Legislation in Winnipeg, Manitoba, Department of Justice Canada, Ottawa: September, 1988b, WD1991-7a (176 pages).

☐ CS/RESORS Consulting Ltd., The Impact of Legislative Change on Survivors of Sexual Assault: A Survey of Front Line Agencies, Department of Justice Canada, Ottawa: November, 1988, WD1991-8a (83 pages).

NAME: _____ **POSITION:** _____

ADDRESS: _____

CITY: _____

(Postal Code)

TELEPHONE: ( ) _____

TITLE: STUDY TO REVIEW AND ANALYZE RCMP DATA ON SPOUSAL ASSAULT FROM 1985 TO 1988

AUTHOR(S): Colin Meredith and Chantal Paquette, Abt Associates of Canada, for the Research Section, Department of Justice Canada.

This report presents the findings of a series of analyses of RCMP data on spousal assault covering the period of 1985 to 1988. The broad objective of these analyses was to monitor the implementation of the RCMP's general policy on laying charges in spousal assault cases.

There is a widely held belief that police were less likely to lay charges in cases of spousal assault, because of the common perception that spousal abuse is a private, family matter.
Before the change in the spousal assault charging policy, victims, who are primarily women, were often encouraged to seek assistance elsewhere (e.g. family counselling) or to lay charges themselves (via a private information).

SUMMARY OF FINDINGS:

Beginning in 1985, it became possible to distinguish assault cases involving spouses from those not involving spouses. The findings indicate that only approximately 50% of spousal assault cases were correctly coded.

Nationally, a slight increase was observed in the total number of spousal cases reported, with a peak in 1987.

Approximately 86% of spousal cases were coded as involving assault by the male partner only. The female partner was coded as being the aggressor in approximately 10% of the cases.

Although considered a subjective measurement, approximately two of three cases involved the consumption of alcohol by either the victim or the offender (or both). This is suggestive of a trend toward frequent involvement of alcohol (in some capacity) in those offenses.

Data indicate that the RCMP charging policy is being applied, if somewhat unevenly, across the country. From 1985 to 1988, the proportion of spousal assaults cleared by charge has generally increased, while the comparable figures for non-spousal cases have remained relatively stable.

IMPLICATIONS FOR WOMEN AND JUSTICE:

In addition to the effects of a more aggressive charging policy expected at the individual case level, these policies were also seen to have an important impact at a broader, societal level. Specifically, it was thought that a charging policy would signal to the victim and offender, and to society at large, that spousal assault is a crime, not a private family matter. In addition, it would serve as a powerful impetus to change the views of abusive partners about the acceptability of spousal assault and clearly demonstrate that this kind of criminal behaviour will not be tolerated.

The literature on family violence typically indicates that, for a variety of reasons, complainants in spousal cases are less likely to proceed with a prosecution than are complainants in non-spousal cases. The fact that charges are laid by the police, under the new policy, should reduce this disparity. The data indicate that spousal charges are not, in general, being stayed, withdrawn or dismissed at a different rate from non-spousal charges, but again, variations were observed across Divisions.

More public attention on victims' concerns in general, and wife battering in particular, led to the new policy -- monitoring such a policy shows the extent to which forces are complying with the new policy.

RESEARCH ON FIREARMS AND DOMESTIC HOMICIDES

Background

A study is currently being conducted, under contract with the Department of Justice (by Colin Meredith of Abt Associates).

In Canada, a substantial number of spousal assaults culminate in homicides.

The attached table, compiled by the Canadian Centre for Justice Statistics, examines spousal homicide in Canada over a 10 year period (1980-1989) by sex of the victim and method used.

According to statistics compiled by the Canadian Centre for Justice Statistics on average 98 spouses have been killed per year in Canada between 1980 and 1989. Of these, the majority (3/4) of victims have been female. More than 1/3 of these homicides have been by shooting.

In 1978, a number of new provisions of the *Criminal Code* designed to encourage safer use of guns came into effect. These provisions empower police and courts to prohibit the use or ownership of guns by criminals and dangerous persons. They also grant police greater powers to search for and seize weapons in threatening situations. Finally, they allow police to deny a Firearms Acquisition Certificate to persons who have been convicted of an indictable offense or who have a history of violence or threatened or attempted violence. The three relevant sections of the *Criminal Code* which deal with these issues are prohibition S100(4), Search and Seizure S103(1)(2) and Firearms Acquisition Certificates S1063(a)(c).

Description of the Study

Discussions with police and other experts in the domestic violence area suggest that police forces may not be routinely checking Firearms Acquisition Certificate applications for information on family violence complaints so that they can deny firearms where appropriate. In addition, they may not be routinely inquiring about firearms in responding to domestic calls. This information would enable them to search homes where an offense has taken place, seize firearms and or prohibit individuals in volatile domestic situations from having guns. Remedying this situation may be beneficial to both victims and police.

The current research would query police as to whether there is any link-up of information on firearms and information on investigations of domestic incidents and,

especially, repeat calls. Specifically, it would be important to understand whether police are routinely inquiring about the availability of firearms in homes, what police are doing if there are guns in a home and whether they are using S100(4), 103(1)(2) and 106(3)(4).

Implications

This study will provide valuable information about police handling of domestic situations when firearms are involved. It will hopefully result in assisting police trainers to instruct police officers to more effectively use the powers invested in them by the *Criminal Code*.

SPOUSAL* HOMICIDES BY SEX OF VICTIM AND METHOD USED, CANADA, 1980-1989

YEAR	SHOOTING				OTHER				TOTAL			
	MALE	FEMALE	UNKNOWN	TOTAL	MALE	FEMALE	UNKNOWN	TOTAL	MALE	FEMALE	UNKNOWN	TOTAL
1980	6	26	-	32	11	34	-	45	17	60	-	77
1981	7	28	-	35	20	54	-	74	27	82	-	109
1982	9	32	-	41	13	45	-	58	22	77	-	99
1983	8	36	-	44	19	47	-	66	27	83	-	110
1984	2	32	-	34	15	31	-	46	17	63	-	80
1985	5	32	-	37	20	54	-	74	25	86	-	111
1986	6	38	-	44	13	32	-	45	19	70	-	89
1987	5	35	-	40	29	44	-	73	34	79	-	113
1988	5	28	-	33	16	43	-	59	21	71	-	92
1989	7	35	-	42	15	41	-	56	22	76	-	98
TOTAL	60	322	-	382	171	425	-	596	231	747	-	978
ANNUAL AVERAGE	6	32	-	38	17	43	-	60	23	75	-	98

* Includes "legal" and Common Law

TITLE: A GUIDE TO THE SOCIAL SCIENCE EVIDENCE ON THE EFFECTS OF PORNOGRAPHY

AUTHOR(S): Part 1, Barry Leighton, January 1988, Department of Justice; Part 2, Augustine Brannigan, February 1990, University of Calgary, for the Research Section, Department of Justice Canada

The focus of the report is mainly on the impact of pornography on adult males, particularly with respect to sexual aggression towards adult females. In this paper, violent pornography is restricted to that which is tangible, identifiable, and specific as opposed to implied.

SUMMARY OF FINDINGS:

Behaviour: The effects of non-violent pornography on consumers is mixed or inconclusive. There is mixed evidence as to changes in pornography legislation and their relationship to changes in criminal behaviour (i.e. sexual assaults). The research shows that criminal behaviour is linked to broader cultural and socialization factors. Much of the laboratory research found little effect of non-violent pornography on laboratory aggression.

Attitudes: One attitudinal change that has been noted is that after viewing idealized actors and actresses, respondents often found their own partners less attractive.

Behaviour: In general the laboratory research that examines the effects of sexually explicit violent pornography concludes that there are significant deleterious effects as indicated by increased aggression by males against females; but it is the violent component of the pornography which generates this effect. Violence appears to cause the laboratory aggression; pornography is the vehicle. Other research on sex offenders, such as rapists, suggests that explicit pornography does not play a role in the causation of sex offending.

Attitudes: The main laboratory effect of violent pornography on male attitudes is to reinforce and strengthen already existing negative attitudes towards sexual aggression against females. The research suggests that for violent pornography to have an effect on male attitudes towards rape, the female victim must be depicted as experiencing a positive or pleasurable benefit.

Update 1988-89: The update examines recent research on the impact of violent pornography on aggressive behaviour. Psychologically, there remains confirmation that harms arising from pornography are mainly attitudinal and appear to result in aggression very rarely, except in those men already predisposed to view women negatively. Little evidence was found with respect to the relationship between the circulation of pornography and rates of sexual aggression/rape in different countries.

IMPLICATIONS FOR WOMEN AND JUSTICE:

Pornography would not exist in violent forms without the negative attitudes (against women) which make it available.

Research into the formation of negative attitudes about women is needed, particularly in adolescent males who are just beginning to be sexually involved. Violent pornography is one more form of violence against women.

Both the Badgley and Fraser Committees identified pornography as an issue of special concern to women since it is mainly women who are "used" as models or actresses.

TITLE: AN EVALUATION OF FORT NELSON LEGAL INFORMATION SERVICES

AUTHOR(S): Tim Roberts, Focus Consultants, Victoria, British Columbia, for Research Section, Department of Justice Canada

The Fort Nelson Legal Information Services (FNLIS) was funded by the Department of Justice from July 1986 to February 1989, under an agreement with the British Columbia Legal Services Society. The project was seen as a model for delivery of legal aid services using a paralegal in the remote community of Fort Nelson.

This report describes the establishment and operation of FNLIS and efforts made to ensure project quality; it also provides quantitative and qualitative data on case and client characteristics, paralegal time management, accessibility issues and project impacts. It also addresses the overarching issue of transferability or applicability of the paralegal model in other remote communities.

The primary activity of the paralegal was the provision of legal assistance to clients on civil and criminal matters (i.e., direct service). In addition to direct service, the paralegal delivered a number of Public Legal Education workshops.

SUMMARY OF FINDINGS:

In terms of volume of FNLIS direct service activities, it was found that:

- the paralegal has averaged 358 intake interviews per year
- 75% of intake interviews have dealt with civil matters, and 25% with criminal
- 23% of intakes have resulted in short service, and a further 23% in legal aid referrals.
- native clients comprise 27% of overall intake, roughly double their proportion of the overall Fort Nelson population
- male clients comprise 45% of all FNLIS intakes, compared to 80% in the year prior to FNLIS. This confirms the importance of FNLIS to women, whose family law and civil needs prior to FNLIS were often not met.
- the proportion of native legal aid referrals to overall referrals from 1986-89 was 51%. It has climbed each year. The proportion of native criminal legal aid referrals from FNLIS is 66% of the total, and 27% of the civil legal aid referrals.
- males comprised 64% of FNLIS legal aid referrals in 1986-89: 82% in criminal legal aid referrals and 35% in civil aid referrals.

- 39% of civil intakes are family law problems, compared to 61% for other civil matters. The composition for native clients is 45% with family law problems, compared to 38% for non-natives. 25% of male clients bring family law problems, versus 46% of female clients.

Data were available on the characteristics of FNLIS clients and showed that:

- among native clients there is a sharper male-female polarization (female high, male low) in civil than there is for non-natives. By contrast, the polarization (male high, female low) in criminal cases is stronger for non-natives than for natives.
- the percentage of all FNLIS clients from 1986-89 with civil problems who are native was 16%, versus 84% for non-natives. The percentage of all FNLIS clients with criminal problems who are native was 59%, versus 41% for non-natives.

IMPLICATIONS FOR WOMEN AND JUSTICE:

In terms of eligibility, access to free intake service and short service is free to all clients. Thus the very existence of FNLIS in Fort Nelson has dramatically improved client access to service, especially in regard to civil matters, which has a significant impact on the number of female clients now having access to legal aid, especially in terms of civil cases, as the data indicate. This increase in civil (family) legal aid is of even greater importance to native women.

TITLE: NORTHERN PARALEGAL PROJECT EVALUATION

AUTHOR(S): Working Margins Consulting Group, Winnipeg, for the Research Section, Department of Justice Canada

Legal Aid Manitoba (LAM), with financial assistance from the Department of Justice Canada, sought to increase Legal Aid services to four remote Northern Manitoba communities in 1987.

It was felt that two paralegals with a northern background and knowledge of Cree and English could overcome problems of access to, and communications with, the legal system.

The great majority of residents in the four project communities are Cree-speaking natives, primarily Registered Indians; 90% of the clients are unemployed, and almost all of them depend on welfare payments.

Prior to the Paralegal Project, most of the work done by LAM was done on circuit court, allowing little time for communication between lawyers and clients, and resulting in only urgent, criminal problems being addressed, with no time for domestic or civil issues.

Translation of legal terms and concepts, already difficult enough when everyone speaks English, becomes much more difficult when translating to Cree or other aboriginal languages.

The paralegals arrived in the community a few days before the court party to interview clients, take legal aid applications, conduct investigations, interview witnesses, and in general, prepare criminal docket matters for the lawyers. They were also to assist in interviewing clients about non-criminal issues, such as family law, welfare law, civil claims, and unemployment insurance claims, that would later be referred to the LAM lawyer.

SUMMARY OF FINDINGS:

The project has effectively increased access to legal services among northern native residents, and it has improved communications between the lawyers and clients, and between the court and clients. There has been a great increase in the area of civil and family law services in particular. As well, paralegal activities appear to have reduced the time required of LAM lawyers per case, by improving efficiencies in information collection and communication.

The paralegals have had more inquiries concerning domestic and other civil matters than concerning criminal matters. The statistics support the view that the paralegals have especially increased the amount of civil work being done. Moreover, the number of clients seen per month increased as the paralegals gained experience and became known in the communities.

Access was said to have improved because there has been an increase in LAM applications from the target communities, there are fewer files closed due to lack of client contact, and the paralegals are another source of information in civil matters.

The value of the paralegals is partly due to language capabilities and their rapport with the people of the northern communities. They were of considerable assistance in bridging the cultural and communication gap. The ability of the paralegals to speak to clients in their mother tongue led to a greater openness and a broadening of the information base available to the lawyers involved. Most of the paralegal clients surveyed said that they received the information concerning their rights, the charges against them, or their sentence.

The paralegals and lawyers also claim that because their clients understand their rights better, they are demanding more trials, they are pleading not guilty more frequently, and civil applications are increasing greatly. This claim is corroborated by data obtained from the survey of paralegal clients.

IMPLICATIONS FOR WOMEN AND JUSTICE:

Because the data were not available by "sex of client", it cannot be determined if female clients are receiving more service as a result of the paralegal project, but the significant increase in family and civil matters would suggest that women are more likely to be legal aid clients now than before the project.

TITLE: FOCUS GROUPS ON PUBLIC LEGAL INFORMATION NEEDS AND BARRIERS TO ACCESS

AUTHOR(S): Gallup Canada, Inc. for the Research Section, Department of Justice Canada, 1990

This study represents a preliminary step in identifying Public Legal Education and Information (PLEI) needs in Canada and suitable ways to meet those needs. It provides qualitative data collected through a series of twelve focus groups in six Canadian cities from the following segments of the Canadian population: youth, the elderly, the poor, aboriginal people, members of visible minorities, immigrant women, working women and professionals who work with the disadvantaged;

SUMMARY OF FINDINGS:

Awareness of the impact and importance of the law in everyday life was quite high among all focus group participants. The level of awareness of different aspects of the law varied depending on participants' range of personal experiences.

For example, many participants who were Chinese, black or immigrant women associated the law with government regulations since they had dealt with government bureaucracies about their immigration status, unemployment, social benefits, student loans, and so on.

Many single working women thought mainly in terms of family law and social welfare regulations.

While most thought that the law treated average Canadians fairly, very few saw themselves as average. Most did not feel that "everyone is equal before the law". Money was seen to be a guarantee of better treatment before the law. It was felt to buy connections, influence and effective representation.

Many individuals and groups of individuals had a cynical view of the administration of justice. Canadian laws as they are written were perceived to be fair, but the means by which those laws are applied was felt to be flawed.

A troubling aspect of the group discussions was the frequency with which participants assumed corruption within the court system.
Police were dismissed by most respondents as being unreliable sources of legal information.

Awareness of existing public legal education and information sources was very low.

Immigrants and working poor women had the most experience in searching for and using various legal information services. They might be expected to be the types of individuals who would make most effective use of a PLEI facility once they were aware of it.

In general, advocacy would be preferred over information, and case-specific information would be preferred over general knowledge. By and large, most people displayed little interest in gaining an overall understanding of the law.

The working poor women, mainly single mothers, had extensive experience with the law and were the most knowledgable about lawyers and legal information of any of the focus groups. Many had experienced divorce and child custody disputes and they were critical of court delays and the criminal justice system's inability to enforce decisions like support payments. They also criticised lawyers and judges for failing to see the human aspects of the cases before them.

IMPLICATIONS FOR WOMEN AND JUSTICE:

The expressed predisposition to solving specific problems has implications for the level of resources, ways of identifying target groups (i.e., the poor, immigrant women, elderly women, single mothers) and types of approaches that might be required to significantly improve the knowledge base of disadvantaged Canadians about the law. In their contacts with general counsellors, women could be informed about PLEI organizations and resources available to them.

TITLE: STREET PROSTITUTION: ASSESSING THE IMPACT OF THE LAW, SYNTHESIS REPORT

AUTHOR(S): Research Section, Department of Justice Canada, 1989.

In December 1985, Parliament passed Bill C-49 to respond to the problem of street solicitation. The bill made criminal the attempt to communicate with or to stop a person in a public place (redefined to include a private vehicle) for the purposes of obtaining the services of a prostitute.

Field studies examined prostitution in five Canadian regions, concentrating on major cities -- Halifax, Montreal, Toronto, Calgary and Vancouver. Some smaller centres were also studied.

SUMMARY OF FINDINGS:

One of the objectives of Bill C-49 was to apply the street prostitution law equally to prostitutes and customers. Police departments in the larger cities--Montreal, Toronto and Vancouver-- seemed more aware of this objective than those in the smaller cities. In most cities prostitutes represented at least three quarters or more of those charged under the new law;

In almost all cities studied, proportionately fewer male prostitutes and their customers were charged when compared to their female counterparts. Conviction rates on the communicating charges were high in all sites--between 75% and 90%. According to this indicator (of the ease of application of the law) C-49 has been relatively effective.

While a majority of the prostitutes interviewed for this research reported a reduction in the number of customers, the continued presence of large numbers of cruising customers on the strolls in Montreal, Toronto, Winnipeg, Regina, Calgary and Vancouver suggests that customers have not been seriously deterred. Similarly, the continued presence of street prostitutes in these cities suggests that the possibility-- and, in some cities, the likelihood-- of being charged, processed, and perhaps imprisoned has not appreciably reduced the number of female street prostitutes.

Research also suggests that as a result of the enforcement of C-49, street prostitutes in many of the sites studied were geographically displaced to new areas within the city core, either temporarily or permanently. There is little evidence that the law caused prostitutes to move indoors.

IMPLICATIONS FOR WOMEN AND JUSTICE:

The research suggests that as cities continue to change, attracting suburbanites and new commercial development to city centres, pressure to move street prostitutes is likely to continue.

Lobby groups, including the Canadian Association of Chiefs of Police, the Federation of Canadian Municipalities, the Canadian Association of Elizabeth Fry Societies and the Canadian Advisory Council on the Status of Women, remain divided. The legislation has not reconciled their divergent interests.

TITLE: COURT BASED DIVORCE MEDIATION IN FOUR CANADIAN CITIES: AN OVERVIEW OF RESEARCH RESULTS

AUTHOR(S): C. James Richardson, University of New Brunswick, for the Research Section, Department of Justice Canada, 1988

This report draws upon two separate but related projects on divorce mediation. The Winnipeg Study, and the Divorce and Family Mediation Study (DFMS).

SUMMARY OF FINDINGS:

The DFMS data do indicate measurable and systematic differences on some kinds of outcomes that favour divorce mediation over the ordinary legal process and are in general consistent with previous research findings. However, on many measures, particularly those concerned with post-divorce relations, it is difficult to detect differences between the mediating and non-mediating groups. Data suggest that most of the observed benefits accrue to those cases where there was full or partial agreement. Thus, results for couples who tried but were unsuccessful at mediating a settlement are not very different from those for couples who were not exposed to mediation at all.

While the results of this research do not make a clear case for the superiority of divorce mediation over the traditional adversarial process, they give no empirical support to the contentions of critics of divorce mediation. The concern that women's rights may not be adequately protected when they choose to mediate their separation or divorce also failed to be supported by the research. Most clients took the advice of the mediator and did consult a lawyer before, during or after mediation and were as likely to be represented at the time of their court hearing as those who did not attend mediation.

While mediators evidently encourage couples to work out a joint custody arrangement, there is no evidence to suggest that women were forced into this because of fears that they would lose in a contested custody dispute. For most women with a joint custody order, this had been their first choice.

Nor was joint custody a trade-off for a lower maintenance payment: women involved in joint legal custody arrangements but with *de facto* sole physical custody were receiving considerably higher levels of maintenance than the general sample of separated and divorced women in the sample.

There was some dissatisfaction among clients when issues of child support and spousal support were excluded from the mediation process. The wishes of the parties and the areas of dispute, particularly disposition of the matrimonial home, should be discussed, since they set parameters as to what may or may not be realistic with respect to custody and parenting arrangements.

Contrary to arguments that mandatory mediation will not work because it is impossible to make people cooperate, the data suggest that outcomes, particularly settlement rates, do not appear very different for "automatic referrals" (which approximate mandatory mediation) in Winnipeg compared with the other three research sites.

IMPLICATIONS FOR WOMEN AND JUSTICE:

Although research findings do not clearly support mediation over the traditional adversarial approach, neither do they support the argument that women fare more poorly from mediated settlements. According to the findings:

- women receive higher maintenance payments through mediation;

- spend less time in court; and

- have more clearly defined access arrangements following mediation.

Mediation proves more costly than the traditional adversarial process and may cause additional financial hardship for women.

Mediators encourage joint custody but findings do not support the contention that women felt compelled to accept joint custody -- most women reported that they preferred joint custody because they believed it was in the best interest of the children.

TITLE: WOMEN AND POVERTY REVISITED

AUTHOR(S): National Council on Welfare, Ministry of Supply and Services Canada, 1990

SUMMARY OF FINDINGS:

* Except where otherwise stated the figures provided are for 1987.

. In spite of the legislative, social and economic changes implemented to improve the situation of women in Canada over the past ten years, the proportion of women among Canada's poor has not changed noticeably.

. In 1975, 59% of adults living in poverty were women compared with 61% in 1981 and 59% in 1987.

. Overall, in 1987, 15% of women age 16 years and older, compared with 11% of men, lived in poverty. Furthermore, the poverty rate of elderly women (22%) was double that of elderly men (11%).

. Unattached women represent 40% of poor women, followed by women in two-spouse families (37%), those living in one-parent families headed by women (15%) and women in other living arrangements (8%).

. The proportion of people who live in two-spouse families has diminished, while the proportion who are unattached or who live in female single-parent families has increased.

. Among poor women under the age of 65, those living with their husbands were the largest group comprising 30% of all poor women and including 19% whom had children under 18 years at home, and 11% without children under 18.

. Women, with and without children, and living with their husbands are far less likely to be poor than women in other family situations.

. Single-parent families headed by women were the most poverty-prone of all groups.

. Never-married single-parent mothers had the highest poverty rate (75%), followed by other single-parent mothers (52%), married women with children (10%) and married women over age 65 years (6%).

- Single-parent mothers, who compose 3% of the population, bear 17% of Canada's total poverty gap, followed by unattached women and men under 65 who compose 14% of the Canadian population and bear 21% of the poverty burden.

Poverty and Changes in Family Situation

- Evolving marriage and divorce rates, the continuing rise in out-of-wedlock births, and the aging of our population as a result of Canadians living longer and having fewer children have contributed to the decline in the proportion of Canadians in traditional husband-wife families.

- Based on current trends in marriage, divorce, and life expectancy, the data demonstrate that 84% of women can expect to spend a significant portion of their adult lives in husbandless households where they will have to support themselves and often their children as well. Among these, 13% are women who never marry, 30% who separate or divorce, and 41% who are widowed.

- Men are much more likely than women to spend their lives in a traditional family situation. Eighty-four percent of women compared with 60% of men find themselves without a spouse at some time in their adult lives.

- The data suggest that owing to the nature of the family situations women are now finding themselves in, they are increasingly more vulnerable to poverty than they were ten years ago. Seventy-four percent of women in 1979 compared with 84% in 1987 could expect to find themselves on their own.

Poverty and Employment of Women

- While data indicate that women's share of the Canadian labour market has increased, the data also demonstrate that the quality of women's jobs has not increased significantly.

- Women's share of the Canadian labour market has increased from 28% in 1961 to 44% in 1988.

- In terms of the quality of women's jobs, 85% of employed women were in "female" occupations at the turn of the century compared with 76% in 1988.

- In 1987, 65% of Canadian women, aged 15 to 65, were in the labour market. Among these, 44% had full-time positions, 15% had part-time ones and 6% were unemployed. The remaining 35% were outside the paid labour force.

- Data demonstrate that the proportion of married women under 65 who are full-time homemakers has decreased from 58% in 1971 to 30% in 1987. A further decrease has occurred among wives with children under 18 years. Sixty-two percent of these women were full-time homemakers in 1971 compared with 27% in 1987.

- The data suggest that women are segregated into a narrow range of jobs which are among the least stable and lowest paying. For example, data from 1986 demonstrate that while men are spread out over the full range of occupations, 59% of all employed women were in only three types of jobs - 30% in clerical, 10% in sales and 19% in services.

- In 1987, three-quarters of Canadian wives under the age of 45 had children under 18.

- Women who had full-time positions before dropping out of the labour force for a minimum of one year eventually returned to paid work, many in part-time positions.

- Younger and more educated women have a much higher rate of return to paid employment and go back more quickly.

- The much higher presence of women in the labour market is not a sign of greater continuity in employment but rather a reflection of the quicker entries and re-entries of large numbers of women in paid jobs.

- A large proportion of women who have children still leave the labour force for relatively long periods, and many of those who return take part-time jobs.

- In 1960, among Canadian men and women aged 21 to 29, 95% felt women should not take a job outside the home. This figure decreased to 82% in 1970, 68% in 1975, 50% in 1980 and 49% in 1982.

Single Parenthood and Poverty

- The proportion of Canadian families headed by a female single parent was 9% in 1941 and 9.3% in 1981.

- The poverty rate for single-parent mothers of all ages dropped from 64% in 1973 to 47% in 1977 to 57% in 1987.

- Single parents have an average of 2.5 children while mothers in husband-wife families have an average of 2.6.

- Single-parent mothers are much more likely than married mothers to have entered their first union and to have had a child when they were still teenagers. As well a larger proportion of single-parent mothers had a child before or very soon after they started living with their partners.

- In terms of education, among mothers with children under 18 years and those with children under seven years, single-parent mothers were more likely to have less than Grade 11 education as well as post-secondary and university degrees than were married mothers. The differences were particularly significant for mothers with children under age seven years.

- Never-married mothers are quickest to leave single parenthood. 83% were no longer single parents after an average of 3.5 years. 57% of separated and divorced mothers had left single parenthood after an average of 5.3 years and 47% of widows after an average of 6.2 years.

- Data demonstrates that while two-thirds of two-parent families live in their own houses, more than three quarters of female single-parent families live in rented accommodations.

Poverty and Marriage Breakdown

- Separation and divorce cause many women to become poor, and living in a union under conditions of poverty increases the risk that they will separate or divorce.

- The data demonstrates that without the husbands' earnings or support payments, 51% of the families with two spouses under 65 years which now live above the poverty line would become poor. The most vulnerable of these are families with pre-school children.

- The rates of remarriage for divorced people from 1984 to 1986 were 64% for women and 76% for men.

- Nine percent of divorced men and 30% of separated men who did not have custody of their children had incomes below the poverty line. On the other hand, the poverty rate for women, who in the majority of cases had custody of their children, was 58% for divorced women and 71% for separated women.

- Women's poverty rates vary greatly depending on the number of children they have. For example, among divorced women the poverty rate increased from 43% for those with one child to 89% for those with four children or more. Among separated women the figures ranged from 47% of mothers with one child to 96% of mothers with three children.

Spousal and Child Support

- In 1986, support payments averaged 18% of the gross income of husbands leaving most of these men with incomes far above the poverty line. If divorced and separated women and their children had to live on nothing but support payments 97% would have been poor.

- Data demonstrates that support payments, in spite of how small they be, do make a significant difference in terms of decreasing the proportion of women who live in poverty. For example, in 1986 58% of divorced and separated women who received support payments lived in poverty compared with 75% of the women who didn't receive such payments. Furthermore, single-parent mothers who receive even modest support payments stay on welfare for much shorter periods of time than those who receive no support.

- Between May 1989 and November 1989, the federal Justice Department seized $9 million in federal payments from men (and a few women) who owed almost $10 million in child and spousal support.

- Women's greater participation in the labour force and fairer sharing of property on divorce are widely used as excuses to deny even long-term housewives decent support payments.

Poverty and Social Assistance

- While national data relating to the percentage of single-parent mothers who rely on social assistance is not available, data for 1987 demonstrate that female single parent mothers made up 20% of the welfare caseload in Quebec and approximately 30% in Ontario.

- CMHC reports that 40% of female single parents under 65 have core housing needs, meaning their housing is either too crowded, physically inadequate or costs more than 30% of their total income.

- Although the proportion of widowed mothers among single parents has been declining in recent decades, they still accounted for 27% of all female single parents in 1986.

- A comparison of poverty rates for Canadian single parent mothers with that of seven other developed countries demonstrate that Canada ranks among the worst. International data on poverty rates demonstrate that among the seven countries for which data were collected, Sweden and Norway have the lowest poverty rates at 11% and 18% respectively, followed by Switzerland (21%) and the United Kingdom (29%), Canada (49%), and the United States and Australia both with poverty rates at 55%.

Poverty and Living Alone

- Within the last generation, the proportion of Canadians who live outside families has increased substantially. The greatest changes have been among separated and divorced people who are childless or do not have custody of their children, and among older widows.

- Unattached women who live alone or with non-relatives have the highest poverty rates after single parent mothers. The overall poverty rate of unattached women decreased from 50% in 1977 to 37% in 1987. Most of the reduction came from elderly women. Elderly women are no longer the poorest among the unattached women.

- In 1987, the poverty rate for unattached women aged 16 to 24 years increased to 53%. As a result of declining birth rates young women represent a shrinking portion of the population. Hence, the increase in poverty among young women has had little impact on overall poverty figures.

- While the trend has been for more unmarried young people to leave their parents' homes there has been a reversal in this pattern in recent years. Furthermore, data demonstrate that men are now more likely than women to stay with their parents longer. In 1986, a greater proportion of unmarried men aged 15 to 19 (92%) and 20 to 24 (71.2%) compared with unmarried women aged 15 to 19 (91.4%) and those age 20 to 24 (63.3%) were still in their parents' home.

- Among all poor unattached young people, only 14% of women and 10% of men were employed on a full-time, year round basis in 1987.

Poverty and the Elderly

- Marital status is very important in determining whether or not older Canadians are poor. Data collected in 1987 demonstrate that the poverty rate for seniors living alone or with non-relatives was higher than that of married seniors. As well, the data showed that poverty rates for women in this group increased sharply as they advanced in age.

- The most important difference between the sexes in old age is that the majority of the men live with their wives while most of the women live alone or with non-relatives. For example, among Canadians aged 65 to 69, 60% of the women are married compared to 84% of the men. For those aged 80 and above, only 15% of the women have a spouse, compared to 58% of the men.

- Unattached elderly persons, particularly women, have a much higher poverty rate than elderly couples. For example, data from 1986 demonstrate that 50% of unattached elderly women and 29% of unattached elderly men lived in poverty compared with 7% of elderly couples.

- There are indications that an increasing proportion of elderly will live in institutions. Between 1971 and 1986, the proportion of women, aged 75 or older, living in institutions increased from 14% to 19%. In 1986, among those aged 85 and over, 41% of women compared with 28% of men lived in institutions.

Homeless Women

- Because homeless people have not been included in censuses and surveys to date, it is difficult to identify the number of homeless people there are in Canada as well as what proportion of these are women.

- According to the Canadian Council on Social Development, there were an estimated 130,000 to 250,000 homeless people in Canada and only 13,500 spaces in shelters for the homeless in 1986. People who work with the homeless believe that the proportion of women among them is between 30 and 40%.

- Homelessness is often less visible for female groups than male because more of them can prostitute themselves in exchange for a room.

- Several factors may contribute to the problem of homelessness including unemployment, low welfare rates (especially for singles), availability of cheap accommodation, the deinstitutionalization of the mentally ill, violence and sexual abuse, alcohol or drug dependency, conflicts with families and the lack of facilities for ex-offenders.

- Homelessness appears to be increasing quickly, especially among the young.

Aboriginal Women

- It is anticipated that unless measures are taken to improve the living standards of Canada's aboriginal peoples, it is expected that there will be an increase in the percentage of Canadians who live in poverty.

- While the poverty rate of aboriginal people is unknown, data suggest that they are poorer than the general population. For example, in 1985, 25% of aboriginal women and 13% of aboriginal men compared with 19% of all Canadian women and 7% of all men had no income for that year.

- Many aboriginal women bring up children alone. For example, data for 1986 demonstrate that 16% of aboriginal families compared with 10% of all Canadian families were headed by a single-parent mother.

- The birth rate of aboriginal people is substantially higher than that of other Canadians.

Disabled Women

- As the population ages, disabled people, particularly disabled women, will represent a growing percentage of all Canadians. Unless provided with adequate systems of disability benefits and support services, this will result in an increase in the proportion of Canadians who live in poverty.

- Figures from 1986 suggest that 15% of Canadians aged 15 and over were disabled - 16% of all women and 15% of all men.

- While the data reveal that disability increases sharply with age, the data also demonstrate that a slightly greater proportion of men than women are disabled before age 35, and elderly women are more likely to be disabled than elderly men.

- In terms of employment of disabled persons data suggests that employers under federal jurisdiction perform even worse than others in the labour force. For example, data collected in 1988 under the Employment Equity Act indicated that only 1.7% of employees under federal jurisdiction were disabled persons compared with 5.4% for the Canadian labour force as a whole.

- Although the total number of employees in federally regulated companies increased in 1987 and 1988, the number of employees with disabilities decreased in each of the two years.

Immigrant and Visible Minority Women

- Factors affecting the financial situation of immigrants, in general, and immigrant women specifically include: the length of time they have been in Canada; racial discrimination and level of education.

- As of 1986, immigrants made up 15.6% of the Canadian population, including 9.6% from Europe, 2.8% from Asia, 2.5% from North and South America, 0.5% from Africa and 0.1% from Oceania and elsewhere.

- The language problems of immigrant women are much worse than those of immigrant men. Among immigrants aged 15 to 64 in 1986, 5% of women (83,835) compared with 3% of men (44,650) did not know English or French.

INFORMATION ON SOME ACTIVITIES SUPPORTED BY DISCRETIONARY CONTRIBUTION FUNDING

FOR

THE NATIONAL SYMPOSIUM ON WOMEN, LAW AND THE ADMINISTRATION OF JUSTICE

VANCOUVER, BRITISH COLUMBIA

10-12 JUNE 1991

Prepared by: Project Development
and Discretionary Funds Section
Department of Justice
May 1991

PROJECT DEVELOPMENT AND DISCRETIONARY FUNDS SECTION

The Project Development and Discretionary Funds Section of the Department of Justice administers a number of discretionary contribution funds. The funds are intended to support the development of programs and services, support training and public legal education projects and encourage research studies that promote and assist in the implementation of selected justice system reforms.

Conferences, workshops, symposia, seminars, research studies, feasibility studies, impact assessments, short-term demonstration projects or pilot projects, and the production of printed material, audio or videos may be considered for funding. The funds are available to individuals, groups and provincial/territorial government agencies that are involved in areas defined as priorities by the Government of Canada.

On the pages that follow, there is a brief description of some of the activities supported by discretionary contribution funding. These activities are in support of the themes of the National symposium on Women, Law and the Administration of Justice.

More detailed information on the various discretionary contribution funds may be obtained by writing to:

Department of Justice Canada
Project Development and Discretionary Funds Section
239 Wellington Street
Ottawa, Ontario
K1A OH8

Telephone: (613) 957-3538

TITLE: Family Violence Court Project

RECIPIENT: Manitoba Justice Department

CONTACT: Candice Minch
Research Officer, Manitoba Justice
Woodsworth Bldg., 405 Broadway
Winnipeg, Manitoba
R3C 3L6
(204) 945-0170

REPORTS: Quarterly reports
Final report

This project was developed in response to the need to deal more effectively with child, spousal and elder abuse.

One objective of the project is to help reduce the excessive time required for family violence cases to come to trial after the laying of criminal charges. The objective is to reduce the time frame from arrest to final disposition from six to three months. Courtroom delays place a strain on victim and family and it is hoped that this program will improve the chances that such cases will be dealt with by the courts.

A second objective of the project is to assist in the development of a comprehensive response to cases of family violence by establishing a specially trained unit of judges and local Crown prosecutors. Preliminary data from the workings of this new family violence court indicate that the overwhelming majority of cases in the first four months involved wife abuse (85%).

Finally, the monitoring component of the project is intended to provide statistical information on victim and offender; type of offence; and the time frame and manner of case disposal, useful information for other jurisdictions interested in establishing similar programs.

TITLE: "Les Journées Maximilien-Caron: Femmes et droit, 50 ans de vie commune ... et tout un avenir" (Women and Law, 50 years together ... looking toward the future)

RECIPIENT: The Faculty of Law, University of Montreal

CONTACT:
Normand Hétu
Co-ordinator
Faculty of Law
University of Montreal
PO Box 6128, Station "A"
Montreal, Quebec
H3C 3J7
(514) 343-2426

REPORTS: A final report published by Les Éditions Thémis will include the "Proceedings".

The Faculty of Law of the University of Montreal held its annual conference on the campus of the University of Montreal on March 8 and 9, 1991. The conference focused on "Women and Law, 50 years together ... looking toward the future".

The Minister of Justice delivered an address to the conference on March 8, which coincided with International Women's Day.

The purpose of the Maximilien-Caron Days is to celebrate the presence of women in the law: from the pioneers to those in "alternative" practice and from women speakers and politicians to those who would encourage empirical research on legal issues.

Women and men concerned with the theme of the conference came together to share their experiences and discuss not only feminist thought and legal theory but also the empowerment of women, the education and training of women lawyers and the personal and professional factors that shape their practice.

TITLE: Manitoba Access Assistance Program

RECIPIENT: The Government of the Province of Manitoba

CONTACT:

Linda Cantelon
Family Conciliation
Manitoba Family Services
14th Floor,405 Broadway
Winnipeg, Manitoba
R3C 3L6
(204) 945-7236 or;

Joan MacPhail
Family Law Branch, Manitoba Justice
4th Floor, 405 Broadway
Winnipeg, Manitoba
R3C 3L6
(204) 945-0268

REPORTS: Interim reports
Final report

This project assists in the administration of a conciliation process designed to improve parents' access to their children after separation or divorce. The program focuses on the need for a positive and on-going co-parenting environment, offering professional counselling to parents and children who have otherwise been unable to resolve access problems.

TITLE: National Association of Women and the Law - 1991 National Conference "The Feminization of Poverty"

RECIPIENT: The National Association of Women and the Law (NAWL)

CONTACT: Ms. Sherry Gailey
Executive Director
400 - 1 Nicholas Street
Ottawa, Ontario
K1N 7B7
(613) 238-1544

REPORTS: Conference proceedings, including papers presented at the conference

This project assisted the National Association of Women and the Law (NAWL), a bilingual, non-profit, feminist organization involved primarily in law reform, to host its ninth biennial conference entitled "The Feminization of Poverty" in Toronto, February 22-24, 1991.

This theme was chosen expressly to highlight the economic plight of Canadian women, increasing numbers of whom live in poverty, and to help educate the public at large about the legal and social costs of the feminization of poverty.

The following data from Statistics Canada illustrate the severity of the problem:

15% of all Canadian families are headed by a single parent who is often female;

47% of single-parent families headed by a working female live below the poverty line;

two-thirds of women over the age of 65 years live below the poverty line.

The papers presented at the conference will be published, as will a special edition of the *Canadian Journal of Women and the Law* on the theme of "Women and Poverty". NAWL also plans to follow-up by establishing a NAWL working group focusing on women and poverty, and by developing specific initiatives for implementation by the National Steering Committee, including legislative proposals.

TITLE: Oral Culture Family Violence Theatre Project

RECIPIENT: Arctic Public Legal Education and Information Society

CONTACT: Barb Hood-Hall
A/Executive Director
4916 - 47 St., P.O. Box 2706
Yellowknife, N.W.T.
X1A 2R1
(403) 920-2360

REPORTS: Theatre manual
Evaluation report
Final report

This project grows out of a concern with the lack of statistics on family violence in northern communities. Its aim is to use the medium of theatre to help educate native people about using the legal system to redress cases of family violence.

A theatre manual including counselling materials on various aspects of family violence accompanied the production as another means of enhancing native awareness of the issue.

TITLE: Prevention Training Manual On the Sexual Abuse of People with a Mental Handicap

---

RECIPIENT: G. Allan Roeher Institute

CONTACT:
Marcia Rioux
Executive Director
G. Allan Roeher Institute
York University, Kinsmen Bldg.
4700 Keele Street
Downsview, Ontario
M3J 1P3
(416) 661-9611

REPORTS: Training Manuals

This project assists in the preparation of a training manual designed for professionals and care givers involved in the delivery of assistance to sexually abused persons with a mental handicap. The need for such a manual arose from the results of a 1988 study undertaken by the G. Allen Roeher Institute, York University, Toronto, which found that persons with a mental handicap were more vulnerable than others to sexual abuse (Vulnerable: Sexual Abuse and People with an Intellectual Impairment). The study suggested that mentally handicapped girls were twice as likely as similar boys to be sexually abused before reaching age 18. In addition, over half the females who disclosed sexual abuse were not believed as compared to males who disclosed sexual abuse, all of whom were believed. Moreover, disclosure of the abuse stopped its occurrence in 100% of the cases for males compared to only 75% of the female cases.

It is anticipated that the training manual will be distributed nation-wide and form the basis of future training sessions for workers in the field.

TITLE: Project on the sexual exploitation of children and family violence

RECIPIENT: The Amerindian Police Service

CONTACT: Mr. André Robillard
Co-ordinator
Headquarters, 406 Amishk St.
Pointe-Bleue, Quebec
G0W 2H0
(418) 275-4244

REPORTS: Audio presentations (5 languages), on the sexual exploitation of children and on family violence.

Audio-visual production of four videos, two of which are intended for the general population and two for those who intervene (5 languages), on the sexual exploitation of children and family violence.

Pamphlets (2 languages), on the sexual exploitation of children and family violence.

Final report including an analysis of research data.

This project was intended to make native people and native police in Quebec aware of the problems of child sexual abuse and family violence.

The project consisted of the creation, production and distribution of information folders, as well as audio and video presentations on child sexual abuse and family violence, to native civilians and police in Quebec.

These bilingual materials are intended to inform native people, intervenors, parents and police about the problem of family violence and about recent amendments to the *Criminal Code* and the *Evidence Act* relating to child sexual abuse.

TITLE: Provincial symposium on Women Abuse - A Criminal Justice System Response

---

RECIPIENT: New Brunswick Departments of Solicitor General and Attorney General

CONTACT:
Brenda Thomas
Senior Analyst, Policy Planning and Evaluation
Department of the Solicitor General
P.O. Box 6000
Fredericton, N.B.
E3B 5H1
(506) 453-7142

REPORTS: Provincial Protocol on Women Abuse & Symposium Proceedings

An Interdepartmental Committee on Family Violence was established by the government of New Brunswick in 1987 to develop a coordinated approach to responding effectively to family violence.

An interdisciplinary approach to address women abuse was developed based on an existing provincial model for child sexual abuse. A provincial protocol for all professionals involved in handling women abuse cases has been developed, as well as a training program. The symposium represents the first training phase which will be followed by regional workshops addressing the implementation of the protocol.

The protocol provides information on the provincial government's philosophy and principles, definitions of women abuse and myths and facts about women abuse. The protocol outlines the legislative provisions in the *Criminal Code* and the *Family Services Act* which pertain to women abuse and lists some general indicators of women abuse. Intervention guidelines relating to women abuse are provided for social workers, income assistance workers, mental health and public health workers, justice system personnel, school and emergency department personnel. The protocol explains the roles and responsibilities of each system in responding.

TITLE: Sexual Assault Centre Regional Meetings

RECIPIENT: Canadian Association of Sexual Assault Centres

CONTACT:
Diane Lemieux
Quebec Regional Representative
CASAC
C.P. 1594
Sherbrooke, Québec
J1H 5M4
(819) 563-9940

REPORTS: Final report on meetings held with representatives from sexual assault centres in the Maritimes, Quebec, Ontario, Prairies, British Columbia and the Yukon

This project assisted the Canadian Association of Sexual Assault Centres (CASAC) to coordinate the delivery of sexual assault services across Canada by hosting five regional meetings of member sexual assault centres to identify issues of common concern and develop recommendations for improving the delivery of sexual assault services, including the development of education and prevention strategies applicable to each community. A national meeting of representatives of member assault centres is tentatively scheduled for the fall of 1991.

TITLE: Socio-legal program to accompany female victims of violence in Témiscouata

---

RECIPIENT: La Collective d'intervention auprès des femmes victimes de violence

CONTACT:
Mme. Nicole Dubois
Coordonatrice/Formatrice
La Collective d'intervention auprès des femmes victimes de violence
58-A rue Commerciale, C.P. 427
Cabano, Québec
G0L 1E3
(418) 854-7160

REPORTS: Final report

This project helped to establish a more effective approach to the problems of family violence in the community of Témiscouata. A wide variety of materials was produced including a training manual for volunteers caring for victims; code of ethics for volunteer workers; a list of local resources and complementary agencies; public relations materials on the kinds of services provided; and the development of a model for the on-going delivery of family violence services in this and similar communities.

TITLE: Western Workshop Series

RECIPIENT: Western Judicial Education Centre
Canadian Association of Provincial Court Judges

CONTACT: Judge Douglas R. Campbell
Director, Western Judicial Education Centre
3162 Mathers Avenue, West Vancouver
B.C.
V7V 2K5,
(604) 922-4217

REPORTS: Proceedings of the workshops held in Vancouver, Lake Louise and Yellowknife

The Western Workshops are a series of judicial education meetings designed for provincial and territorial court judges from western and northern Canada, aimed at raising their awareness of the social context in which judicial decision-making takes place.

The emphasis for the 1991 Yellowknife Workshop will be on the justice system's service to aboriginal people and women.

The Workshop on aboriginal people is intended to identify the existence, if any, of discrimination in judicial decision-making; improve cross-cultural education and understanding between judges and aboriginals; and develop new approaches to improve judicial responses to the aboriginal offender.

The women and judicial decision-making component of the workshop is intended to educate and promote judicial leadership on equality issues with particular focus on gendered language, gender equality in the judicial process, and corollary issues related to sexual and spousal assault.

GRANTS AND CONTRIBUTIONS

The Policy, Programs and Research Sector administers most of the Department of Justice's grants and contributions programs. In general terms, the purpose of these grants and contributions is to promote and maintain basic standards in the justice system and to improve the delivery of justice services to the public.

The Programs Directorate develops and manages major federal-provincial program financing arrangements in three areas: legal aid, native courtworkers, and juvenile justice services.

The Legal Aid Program ensures that, in serious criminal matters (criminal and civil in the territories), legal aid is available to economically disadvantaged persons across Canada. The Native Courtworker Program helps status and non-status Indians, Inuit and Métis understand their legal rights and obtain legal assistance.

The purpose of the Justice Services Cost-Sharing Program is to aid in the implementation of the *Young Offenders Act*, and to help provincial and territorial governments develop and advance sound juvenile justice systems. This support is in the form of federal contributions towards provincial and territorial costs for post-adjudication custodial services, as well as for certain noncustodial services and alternative measures programs.

In addition to these, the Directorate also manages agreements to support public legal education and information, compensation to victims of violent crime, grants and contributions to national criminal justice organizations, and a variety of funding programs to support the participation of students in advanced legal studies.

DEPARTMENT OF JUSTICE

GRANTS AND CONTRIBUTIONS
FISCAL YEAR 1991-92

PROGRAM		AMOUNT
Legal Aid		
- Adults		73,495,800
- Young Offenders		13,539,800
	Total	87,035,600
Native Courtworker and related projects for Native People		3,795,400
Juvenile Justice Services (Young Offenders Act)		158,282,000
Public Legal Education Fund		1,571,800
Compensation for Victims of Crime		2,697,500
Grants to encourage native people to enter the legal profession		296,970
Duff-Rinfret Scholarship		90,725
Summer Exchange Program between civil and common law students		229,900

WOMEN, LAW AND THE ADMINISTRATION OF JUSTICE

An Environmental Analysis

January 1, 1991 to May 13, 1991

Information: Communications and Public Affairs
(613) 957-4211

May, 1991

WOMEN, LAW AND THE ADMINISTRATION OF JUSTICE

PUBLIC ENVIRONMENT ANALYSIS

January 1991 to May 13, 1991

DESCRIPTION OF COVERAGE INCLUDED IN THE ANALYSIS

The aim of this public environment analysis is to present and summarize current public perceptions as reported in selected sources involving the issues of women, the law and the administration of justice. The analysis attempts to identify trends, reactions to government actions, interpretations of issues and common concerns that are present within the public environment.

Information from the following four sources was collected during the period of January 1, 1991 to May 13, 1991: Reports from the press and broadcast media, correspondence to the Minister of Justice, Hansard transcripts of the House of Commons debates and surveys and public opinion polls by polling companies. The list of press and broadcast media is not exhaustive; it does however include major dailies and weeklies from Ontario and Quebec, as well as most major dailies and weeklies from across the country. In total, approximately 30 dailies are used. Publications such as *MacLeans* and *Lawyers Weekly* are also covered, but in a much more limited capacity. Radio and television reports from CBC/Radio Canada, Global and CTV, and some privately owned radio and television stations were examined.

INTRODUCTION

The fields covered in the study of women, law and the administration of justice are varied: violence against women, poverty, discrimination and sexism, among others. The way that the justice system deals with these problems affects the lives of women, and of their families as well. Often, public perception is that not enough attention is being paid to these areas, both by the government through lack of funding and allocation of resources, and by the justice system through lenient sentences for offenders, inadequate orders for support payments and perceived gender-bias in the attitudes of judges.

A. VIOLENCE AGAINST WOMEN

Violence against women takes many forms, among them: physical, emotional and sexual abuse, domestic abuse and violence portrayed in pornography. A common concern reflected in the sources seems to be that neither the federal nor the provincial governments are dealing adequately with this perceived wide-spread violence. Workers in social services and agencies dealing with female victims of violence cite lack of sufficient funding and resources and lack of attention by governments as major impediments to preventing violence and helping its victims. In general, they criticize the government for not putting violence against women higher on the political agenda. They see violence against women, in whatever form it takes, as the product of continued inequality of women in society.

In the Media

The Advisory Council on the Status of Women has recently recommended the creation of a Royal Commission on violence against women. Glenda Simms, President, stated that the Commission should look at the causes of inequality between women and men because it is closely related to the problem of violence against women. Simms says that psychological and economic abuse should be included in the definition of violence. The difference between violence against women and violence against men, she states, is that women are often abused at home, or by people they know. This can create a situation of dependency and constant fear. A solution must therefore encompass all types of violence against women (*La Presse*, *Le Devoir*, 14-02-91)

Women's groups told a House of Commons committee that violence against women is now "an urgent epidemic". The committee, chaired by P.C. Member Barbara Greene, was created in December 1990 to study the problem of violence against women. A LEAF spokesperson told the committee that the problem could not be shelved until more women hold positions of power in politics and elsewhere (*Calgary Sun*, 13-02-91).

A *Calgary Herald* editorial entitled "Make War On Violence" stated that LEAF was on the right track when calling for an organized, nation-wide campaign to reduce violence against women. It included several statistics: one in four women will be sexually abused in their lives, one in eight women will be abused by their husbands or partners, 68% of murders of females are directly linked to domestic or random violence (14-02-91). A television report stated that spokesperson from the Advisory Council on the Status of Women felt that a "war-sized budget" was needed to deal with the "sexual terrorism" that is present on the streets (CBC/CBOT, 20-02-91).

A report carried by Canadian Press stated that a B.C. government program to educate the public about violence against women amounts to "tokenism", according to a spokesperson from Women Against Violence Against Women, unless more financial resources are allocated for the program and for services (20-02-91).

An Amnesty International report, "Women in the Front Lines", detailing human rights violations against women occurring around the world was covered by most dailies in Ontario and Quebec, and other provinces as well (08-03-91). The report detailed abuses in 40 countries by security forces, citing rape as the favoured form of torture against women prisoners. An *Ottawa Citizen* editorial criticized Canada's foreign aid record, stating that aid that is supposed to be linked to human rights in policy is not always so linked in reality (08-03-91).

Statements in the House of Commons

Liberal members strongly supported the creation of a Royal Commission on violence against women, stating they had received petitions and letters from groups in their communities supporting the same (07-03-91). The Federal Minister for the Status of Women stated that it is essential that men understand and become involved in solving the problem of violence against women. She urged male parliamentarians to visit women's shelters and centres and to talk to victims to ensure that "men in the House understand and appreciate the issues that we are discussing" (07-03-91).

Liberal M.P. Jack Iyerak Anawak recommended harsher penalties for men who abuse women and stated that "if men were on the receiving line of violence, the penalties would be much stricter than they are" (07-03-91).

Letters to the Minister

Almost a year after it happened, a large number of letters to the Minister of Justice expressed concern and sadness about the massacre of female engineering students in Montreal in December 1989. It is felt that their deaths are evidence of the problem of violence against women in Canada: "they died because they are women, and their classmates are alive because they are men." Many letters expressed support for the creation of a Royal Commission on violence against women. It is felt that the stemming of violence in communities will be a long, slow process but one the government must not ignore.

Surveys and Public Opinion Polls

A *Gallup Canada Inc.* report released April 15, 1991 indicates that 79% of Canadians favour a more restrictive gun control law. Eighty-six percent of the women surveyed were in favour of such a law, whereas the number dropped to 72% among males. This, and other studies, may indicate that women are more concerned about violence involving firearms.

Figures from *Statistics Canada* compiled in 1990, indicate that 25% of Canadians (aged 15 and over) felt unsafe while walking alone in their neighbourhoods at night. The study also showed that the fear of crime is prevalent among women and the elderly who live in cities. (*General Social Survey: Patterns of Criminal Victimization in Canada* (1990) Statistics Canada)

1. Sexual Abuse

In the Media

Statistics from 1989 show that 30,340 women were sexually assaulted in Canada (*Montreal Gazette*, 28-01-91). Several articles reported spokespersons of various women's groups and shelters as well as various politicians as stating that violence against women should be fought using government publicity campaigns similar to the ones that helped educate Canadians against drinking and driving (C.P., *Toronto Star*, *Ottawa Sun*, *Montreal Gazette*, 13-02-91).

Reports from dailies across the country stated that counsellors, social workers, lawyers and others involved in helping abused women were calling for more support services for victims of sexual assaults, especially within the court system. A counsellor from the Toronto Rape Crisis Centre stated that judges and lawyers needed to become more sensitized to the experiences of victims of rape (*Montreal Gazette*, 28-01-91).

Many reports strongly criticize the way the courts and the judicial system as a whole treat victims of sexual abuse. These reports indicate that in many cases, the police and the courts do not help the victim, but rather, are perceived to be on the side of the offender. The victim is described as having to go through an ordeal from the time that she reports the violence to the police, to her appearance in court. An article reported that a Calgary woman who testified at a sexual assault trial felt she was "raped over and over again" by the court system during the three day questioning. She said the treatment she received by the judicial system was "brutal" (*Winnipeg Sun*, 21-04-91).

A Winnipeg Free Press report stated that a rape with no physical injury was worth about $200 to the victim (awarded by the courts). The report detailed the case of a victim of sexual abuse who was not told that criminal injuries compensation was available to her, and who later found out that the board would only compensate for physical injuries, not for emotional suffering or loss (30-03-91). The acquittal of a man, a member of a fraternity at McGill University, accused of raping an intoxicated female student was widely reported in Ontario and Quebec, and was also carried by some dailies in other provinces. Students in Montreal responded to the acquittal by saying that they were "not impressed by the judicial system." Students demonstrated in front of the fraternity, opposing what they considered to be a clear case of date rape (*Montreal Gazette*, 05-03-91). A columnist criticized a comment by the judge in this case, who said that young women who are intoxicated "do things they wouldn't normally do if they were sober" (*Montreal Gazette*, 05-03-910. Another report entitled "Was Justice Served?" questioned the judgment and took the unusual step of providing a transcript of the judgment (*Ottawa Citizen*, 19-03-91).

A *Montreal Gazette* article included a criticism of the 1983 amendment to the *Criminal Code* that provides that if an accused can prove an honest belief as to the consent of the victim, that creates a reasonable doubt for charges of sexual assault. The head of a Montreal sexual assault clinic stated that this amendment causes sexual assault victims to have to prove <u>their</u> innocence in court (09-03-91).

Another report described the *Jane Doe* case, in which a Toronto woman was not warned by police that she was among those targeted as a potential victim by a serial rapist. The woman was later raped and has now launched a lawsuit against the Toronto Police. Other such cases in Montreal, where the authorities possessing information about possible victims did not give out warnings, were criticized (*Montreal Gazette*, 11-02-91). A woman who lives in an apartment building in which several attacks had occurred says she is so scared to leave her apartment that she has virtually become a prisoner in her own home (*Toronto Star*, 16-05-91).

Several reports dealt with date rape. The president of the Canadian Psychological Association says that the problem of date rape on Canadian campuses may be as serious as in the United States, where surveys show that one out of seven female students has been a victim of date rape (*Ottawa Citizen*, *Toronto Star*, *La Presse*, Canadian Press, 16-04-91, *Le Devoir*, 25-04-91, *The Times-Colonist* 19-04-91).

The recent case of two Toronto men accused of sexual assault attracted considerable media and public attention as it came before the Supreme Court of Canada. The debate centres around the 1983 amendment to section 277 of the *Criminal Code* (known as the "rape shield law") which prohibits the introduction of evidence concerning the sexual reputation/history of a person in court for the purpose of challenging or supporting the complainant's credibility. An editorial in the *Globe and*

Mail anticipates a "vigorous internal debate" within the Supreme Court on this issue (02-04-91). An *Ottawa Citizen* editorial stated that "a judicial touchstone of women's equality is now being threatened" (02-04-91). Madame Justice L'Heureux-Dubé has been reported as stating that a woman's sexual past is never at issue and is irrelevant for sexual assault cases. This opinion is echoed by the Legal Education and Action Fund, whose spokesperson stated that the rape shield law was indispensable for women. Madame Justice McLachlin is said to be in favour of revealing the victim's sexual history (*Globe and Mail*, 01-04-91). It was also reported in several dailies that the lawyer representing the two accused and the Canadian Civil Liberties Association stated that it is unconstitutional to say that certain types of evidence may never be allowed in court, and that this law denies the accused the right to a fair trial (*Montreal Gazette*, *La Presse*, *Globe and Mail*, *Toronto Star*, *Le Droit*, (27-03-91).

Statements in the House of Commons

Liberal Mary Clancy stated that one out of four Canadian women is sexually abused at some time in her lifetime, half before reaching the age of 17 (07-03-91). This statistic was widely reported in the press as well.

Progressive Conservative M.P. Barbara Greene stated that parliamentarians must act as a united force to combat this problem (07-03-91).

Letters to the Minister

Women in Hay River, N.W.T. wrote to say that they are losing confidence in the police. In Rankin Inlet, N.W.T., an RCMP special constable was convicted of two charges of sexual assault, after which he was transferred to another northern community. Their concern is that this constable has breached the people's trust. Women who call the RCMP for assistance may now feel uncomfortable and threatened.

2. Sexual Abuse by Physicians and Professionals

The creation of a five-member task force by the Ontario College of Physicians and Surgeons to look into sexual abuse of patients by doctors has been widely reported and supported.

Marilou McPhedran, the head of the task force, stated that she was surprised that only six weeks after its creation, the task force was receiving hundreds of responses from people with complaints of sexual abuse by physicians. Some concern was expressed that community resources may not be available to "help heal the psychological wounds re-opened by the task force" (*Globe and Mail*, 02-04-91). As a

result of the overwhelming response, a 24-hour answering service has been installed by the task force so that victims may call in to give accounts of their experiences.

A *Toronto Star* report on the task force stated that there were two important messages to remember: that many women victims do not want to take their complaints of sexual abuse by physicians to other physicians, and that, when complaints are investigated, doctors and patients are considered to be equal - the physician's position of "authority" over the patient is rarely considered. The President of the Patient's Rights Association says the patient's credibility is often questioned whereas the physician's is never questioned when sexual abuse is reported (*Toronto Star*, 21-04-91). The task force has heard reports of abuse not only by physicians, but also by lawyers, teachers, clerics, dentists and optometrists. The head of the task force says such reports are being received by the task force because it presents the only opportunity for people to speak out about sexual abuse by professionals. Victims of abuse are too afraid or ashamed to speak out, and many do not know where to take their complaints. They fear no one will believe them. The task force reports that some victims, after revealing their experiences, were told by authorities or other physicians to "just forget about it" (*Toronto Star*, *Globe and Mail*, 03-04-91).

The task force has since released its preliminary report, which received national coverage. The report estimates that as many as one in ten physicians in Ontario are guilty of some form of sexual misconduct towards their patients. Far-reaching preventative measures are recommended by the report, including a life-time ban on practising medicine for any physician guilty of sexually abusing a patient (*Globe and Mail*, *Ottawa Sun*, *Ottawa Citizen*, *Montreal Gazette*, Canadian Press, CBC's "The Journal", 29-05-91).

Women's groups were outraged at the suspended sentence given to a former County Coroner convicted of four counts of sexual assault and three counts of indecent assault involving six female patients. The Women's Emergency Centre in Woodstock, Ontario, stated the sentence was a slap on the wrist. The Women's Community House in London, Ontario said it confirmed the stereotype about "fine outstanding citizens" who abuse women. If the offender had been a trucker instead of a doctor, they say, he would not have been "let go" (*London Free Press*, 05-04-91).

3. Domestic Violence

In the Media

A physician stated that violence at home often begins during the woman's first pregnancy and that there is a good possibility that the baby will be abused, possibly becoming an abusive adult later on. Statistics show that women may be beaten 35 to 40 times before asking for help, that 10 to 50% of women are assaulted by their male partners, and that battering is present in 60% of all murders of women in Canada (*The Daily Gleaner* (Fredericton), 03-01-91).

A Rimouski Community Health Service study for 1989-1990, reported in several dailies, shows that women and children who live with violence at home have four times as many health problems as those who don't. These problems may include depression, loss of memory and extreme nervousness (*Montreal Gazette*, *Globe and Mail*, 14-02-91).

Many reports used the personal profiles of battered women to launch into criticism about the way the police and the courts deal with domestic violence. These profiles show the fear that abused women must face while deciding to reveal the abuse to the authorities. Often, the victims fear not only for their lives, but also for those of their children.

A case worker for a shelter for battered women in Ottawa stated that abuse against women and children in the home is now a "silent epidemic" (*Globe and Mail*, 08-12-91). Surveys from Statistics Canada reveal that less than one third of violent incidents are reported to the police because the victims feel that it is too personal, they don't want police involvement, or they feel the police can't help them. Proposed solutions to these barriers include a willingness by police to lay charges in response to complaints of violence, and more severe penalties for offenders. It has been suggested that the authorities encourage the disclosure of family violence by its victims, and that direct special attention be given to abused women who may be new to Canada (*Globe and Mail*, 08-12-90).

A *Toronto Star* columnist stated that "getting married is one of the most dangerous things a young woman can do these days" and that "murdering your wife is one of the easiest crimes to get away with" (26-04-91). This opinion was echoed in several Quebec dailies, reporting that three battered women from Edmonton who filed for divorce were severely beaten by their husbands or partners. Two are dead and one is seriously injured as a result of the beatings (*La Presse*, *Le Journal de Montreal*, 11-02-91). Ontario dailies reported that at least five women in Nova Scotia have been killed by a husband or partner in the past 18 months. They question whether

police are adequately dealing with and responding to complaints of family violence (*Toronto Star, Globe and Mail*, 21-02-91 and *The Halifax Chronicle-Herald*, 23-02-91).

A report noted suggestions that local police forces establish a squad of specially-trained officers to investigate domestic violence. These officers would be better able to decide if the victim needs police protection, and could also give advice to women on how to protect themselves and their families (*The Hamilton Spectator*, 06-04-91). These reports seem to indicate that there is not much trust in the ability of police forces and courts to help battered women and to prevent violence.

Problems involving courts letting "wife-beaters" out on bail, or not being able to enforce restraining orders have been identified as areas of great concern. An editorial in the *Ottawa Citizen* quoted "legal experts" saying that it was practically impossible for the police to enforce restraining orders (20-04-91). Another editorial stated that there is "something wrong" when a man is sentenced to nine years in prison for an armed robbery of $ 7,000 while another receives two years for raping his teen-aged daughter (*London Free Press*, 18-02-91). The same editorial suggested that there is "a disturbing sense of priorities in a system of justice that too often treats offenses against property more seriously than offenses against people."

Former Health Minister Perrin Beatty's announcement that the federal government plans to spend $ 136 million over the next four years to deal with family violence was covered by most dailies and broadcast media from across the country, and received mixed reviews.

Most critics wanted more specifics on how the money was to be spent; whether more shelters would be created, etc... Liberal critic Mary Clancy called it "a sham of a program", saying it was not enough, it was merely a "band-aid" solution (most press and broadcast media, 20-02-91). NDP critic James Karpoff called it "a cruel hoax" (21-02-91), and other critics described the government initiative as a pre-budget pacifier (21-02-91). Women's groups said the plan did not make up for the massive government cuts to women's programs and services in recent years (21-02-91).

Justice Minister Kim Campbell's announcement that the federal government is studying the legal limits of a parent's right to inflict corporal punishment on a child received favourable coverage (Canadian Press, *The Vancouver Province*, *Ottawa Citizen*, 14-04-91).

The recognition by the Supreme Court of Canada of the "Battered Wife Syndrome" in the landmark 1990 *Lavallée* case is still mentioned and supported in many reports dealing with domestic violence. Sections of the ruling and quotes from Madame Justice Wilson's decision in the case are still used in many reports. A *Toronto Star* article said the Supreme Court recognized the need to look at self-defense with a

"woman's reality" and not just interpret the laws from a man's point of view (12-01-91).

Reports from across the country indicate there is a shortage of funding, resources and services for battered women. The Battered Women Support Services Group in Vancouver stated that they receive up to 300 new clients every month, and that calls to their emergency crisis line have increased by 46% in the last two years (*The Vancouver Province*, 17-03-91).

Advertisements by the B.C. government indicating phone numbers where battered women may receive assistance have been called "dangerous" by a spokesperson for the Battered Women's Support Service. She says the government has not set up comprehensive services to respond to the ads, and has not allocated extra funding to existing services to deal with new clients (*The Vancouver Province*, 10-04-91 and 17-03-91).

The Alberta government's publicity blitz to curb family violence was criticized by an NDP member of the provincial legislature as being useless unless there are resources for women to turn to when they are battered. The Alberta Council of Women's Shelters estimates that 4,000 families were turned away from women's shelters in 1989 because of lack of space and resources (*Calgary Sun*, 15-01-91).

Statements in the House of Commons

Liberal Mary Clancy stated that there is a spectre of violence, injury and death that hangs over women. She said that in the last two years in Canada, more than 200 women have been killed by their male partners (07-03-91).

Letters to the Minister

A letter from the N.W.T. stated that the government must stop paying "lip service" to the problem of spousal assault. Another from B.C. stated that according to a subcommittee on domestic violence, there are not services for the offender or the child from a violent home. The government must start to implement programs to deal with the abuser as well as the abused.

Law Journals and Reviews

The recognition by the Supreme Court of Canada of the "battered wife syndrome" in the *Lavallée* case highlights the need for decision-makers to be receptive to women's experience of abuse when considering a plea of self-defence. This case has made an important contribution to the development of Canadian law on self-defence. (Christine Boyle, (Fall 1990) 9 *CJFL* 171-179).

Surveys and Public Opinion Polls

An *Environics - Focus Canada (1990-4)* poll indicates that six in ten Canadians are convinced that women (and women's groups in general) deserve more federal assistance. This number has significantly increased since 1988.

4. Immigrant Women

In the Media

The co-ordinator of the Toronto Mayor's Committee on Community and Race Relations says immigrant women who are victims of sexual assault are trapped because of linguistic and cultural barriers (*Toronto Star*, 14-03-91). For example, despite the large Filipino community in Toronto, there is a lack of community services to assist them. A report written by the Multiculturalism Coalition for Access to Family Services says the government does not plan for the growing immigrant population when setting up social services. Many immigrant women victims of abuse have many obstacles to get over: their inability to speak English or French, the fear of police or government authorities, and the need to "save face" within their own communities. Because of the fear of losing their children or being sent out of Canada, many immigrant women therefore suffer in silence and stay in abusive situations (*Toronto Star*, 14-03-01).

Statements in the House of Commons

Criticisms of the lack of language training available to immigrant women have surfaced in the House of Commons. An NDP member states that the government continues to refuse to give immigrant women the same opportunities for language training as it gives immigrant men (07-03-91).

5. Elder Abuse

A 1989 study shows that 60,000 senior citizens suffered some sort of material abuse (cheated out of assets), 34,000 were victims of verbal abuse, 12,000 were victims of physical abuse and 10,000 suffered from neglect (*Edmonton Journal*, 21-04-91).

The Edmonton Elderly Abuse Resource Service reported having 171 cases of elder abuse since 1989, and 81% of victims were women (*Edmonton Journal*, 21-04-91). The *Montreal Gazette* reported that Montreal now has two new programs aimed at preventing elder abuse. These will make staff at centres and services for the elderly

more knowledgeable about the problem, and give them screening tools to enable them to identify clients at risk (26-04-91).

6. Pornography

In the Media

Pornography is seen by women's advocates as a contributing factor leading to violence against women. The danger presented by pornography and "strip bars" is the message that women, because of their gender, are vulnerable whereas men are not (*La Presse*, 13-04-91).

A Canadian author stated that often, pornographers and distributors of pornography have greater protection under the law than women do. The safety of women and children should not, he says, be a trade-off for freedom of expression (*Globe and Mail*, 14-01-91).

A decision by the city of Montreal to restrict graphic signs outside topless bars and other sex businesses was praised by many women's groups and editorials. A *Montreal Gazette* editorial stated that the signs were degrading to human beings and showed children that leering at women was the "norm" (05-03-91).

The Chairman of the Canadian Committee Against Customs Censorship said people who say pornography causes sex crimes are actually diverting attention from the people who commit these crimes and the real causes behind sexual abuse. Condemnation of sexual imagery creates "a climate of embarrassment and shame for anyone beginning to explore their sexuality" and restricts tolerance (*Globe and Mail*, 02-04-91).

A coalition of eight Christian churches called on Justice Minister Kim Campbell to curb child pornography and to introduce provisions against the production, distribution and exhibition of pornographic material (dailies in Ontario and Quebec, *Calgary Sun*, 07-05-91).

Letters to the Minister

Women, men and families writing to the Minister call for tougher laws against pornography, especially against "kiddie porn". These letters expressed concerns that pornography leads to violence against women and is eroding family values.

7. Prostitution

In the Media

Anti-prostitution groups have criticized sentences handed down to customers of prostitutes (Canadian Press, 28-02-91).

Justice Minister Kim Campbell's rejection of a Parliamentary Committee recommendation for government funding for programs to help get prostitutes off the streets has sparked anger by several groups. Edmonton's Communities For Controlled Prostitution says contrary to research cited by the Justice Minister, prostitutes really do want to get off the streets and live better lives away from violence (*Edmonton Sun, Edmonton Journal*, 04-05-91 to 05-05-91 and *Victoria Sun*, 06-05-91).

Acting Liberal leader Sheila Copps was reported saying in the House of Commons that the Justice Minister "turned her back on prostitutes" (*The Victoria Times-Colonist*, 22-05-91).

Letters to the Minister

The National Association of Women and the Law states that the death of an Ottawa prostitute last fall reinforces the conviction that street soliciting makes prostitution an extremely perilous trade. Prostitutes have become less particular about their customers, and the fear of being detected is driving prostitutes into unfamiliar neighbourhoods where assistance is not readily available.

Another letter from Ontario stated that there will be no end to street prostitution unless some alternative is provided. Until then, it is useless to create laws that are only enforced with great difficulty.

B. DISCRIMINATION IN THE WORK ENVIRONMENT

1. Sexual Harassment in the Workplace

Le Groupe d'aide et d'information sur le harcèlement sexuel de la région de Montréal says there has been an increase of complaints of sexual harassment in the workplace. Sexual harassment can include many different forms; jokes, comments, physical contact and assault or attempted assault. Because of high unemployment rates and the recession, however, women find it difficult to leave their jobs despite the sexual harassment they may suffer (*Montreal Gazette*, 25-02-91).

2. Sexual Discrimination in the Workplace - General

In the Media

Statistics show that women are still earning only $ 0.65 for every dollar a man makes. The president of the National Action Committee on the Status of Women says there still exists a big disparity between "attitudes and reality" (*Toronto Star*, 02-01-91).

An editorial stated that for pay equity to have real meaning, all women should be paid according to the value of their work (*Toronto Star*, 06-01-91).

Statistics Canada figures show that there are still few women in traditional male-oriented jobs, despite government programs to improve the situation. Only 16% of blue-collar jobs are filled by women. Obstacles such as sexual harassment aimed at getting the women to leave their jobs are present, according to a spokesperson from the Canadian Human Rights Commission (*La Presse*, 28-03-91).

Surveys and Public Opinion Polls

An *Environics - Focus Canada (1990-3)* poll indicates that 70% of Canadians feel that achieving equality between women and men is a very important goal to achieve in the next ten years. Another 77% of Canadians would support legislation forcing employers to promote women into higher positions and non-traditional occupations and 91% of Canadians favour legislation requiring equal pay for work of equal value for women's occupations.

3. Women in Politics

Comments by Conservative M.P. Barbara Greene in the House of Commons calling many parliamentary committees "private men's clubs" were widely reported in Ontario and Quebec dailies. Greene stated that sexual harassment and discrimination are rampant within the parliamentary process. She criticized male-dominated House committees for "watering down" Justice Minister Kim Campbell's gun control proposal (*Ottawa Citizen*, *Ottawa Sun*, *Calgary Sun*, 08-03-91 and *Montreal Gazette*, 09-03-91). NDP Status of Women critic Dawn Black agreed with Greene's statements.

A report in *La Presse* indicated that there are many obstacles for women in politics, and that many feminists find it hard to defend their views within their political parties. The report cites the example of Senator Pat Carney, who voted against the abortion bill in the Senate, then "found herself expelled" from an important committee, and quotes Carney as saying the Senate is "a bastion of male chauvinism" (08-03-91).

A *Chronicle-Herald* article, criticizing the poor representation of women in politics, stated that if women continue to be elected into politics at the present rate, it will take 842 years before their numbers equal men's at the federal level (10-04-91).

4. Discrimination by the Justice System

In the Media

Much criticism has been directed at the way in which the justice system as a whole treats women victims and offenders. In a speech made to the Elizabeth Fry Society in Calgary, Madame Justice McLachlin stated that women were treated unfairly by criminal law, as it was used to enforce public morality through feminine crimes such as abortion and prostitution (speech made 17-04-91, reported in most dailies across the country).

An editorial in the *Ottawa Citizen* echoes this opinion, saying most rules are "man-made" and are difficult for women to cope with (05-01-91).

Criticism has also surfaced as a result of perceived sexist and racist remarks made by judges in court. Recently, a B.C. Supreme Court Judge, finding there was not enough evidence to support lack of consent in a sexual assault case, said that sometimes when women say "no", "no may mean maybe, or wait a while". This comment, as well as transcripts of the case, were widely reported by the press and by broadcast media (24-04-91). The provincial Minister responsible for Women's Issues said the comment was offensive, and a psychology professor at Simon Fraser University called it "a licence to sexually assault women" (*La Presse*, and other dailies, 25-04-91). Dailies from across the country reported that Justice Minister Kim Campbell planned to review remarks made by the judge (26-04-91). After reviewing the case, Minister Campbell stated that the decision was fair and based on the careful consideration of the facts, but that the controversial remarks were regrettable because they gave a false impression of how the judge arrived at his decision (*Vancouver Sun*, 03-05-91, *Edmonton Journal*, *Montreal Gazette*, *Ottawa Citizen*, *Globe and Mail*, *Toronto Star*, 04-05-91).

A N.W.T. Judge has sparked outrage after making several comments about native women, notably, that women in the Arctic can engage in sexual relations [at a young age] after menstruation. Women's groups say such comments cause a deep mistrust of the justice system and the way it deals with native women (*The Northerner*, March/April, 1991). The recent case of a woman arrested in B.C. for not obeying a subpoena calling her to testify at the trial of her attacker in Iqaluit sparked outrage when it was revealed that she was handcuffed, held in custody and transported in the same van as her attacker. Yellowknife lawyer Katherine Peterson, Special Advisor to

the Justice Minister in the N.W.T., says gender bias exists in the justice system. She stresses the importance of informing people about how the justice system really works (*The Northerner*, March/April, 1991).

Critics say little has been done to help victims of family violence and sexual assault. Victims often have to leave their homes and communities for protection while the offenders stay at home. Women living in small, isolated communities may not always understand legal terms and process, so they often do not report abuse at all. Some women, after reporting abuse, are only interviewed by the prosecution shortly before the trial. Some are not interviewed at all (*The Northerner*, March/April, 1991).
A recent editorial in the *Vancouver Province* asked the question: "Can women get a fair deal in court? It's a good question..." (06-05-91).

As a result of growing pressure to sensitize the judiciary to women's concerns, the Canadian Judicial Centre in Ottawa has set up classes to educate and inform judges about discrimination and cultural differences (*Toronto Star*, 19-01-91).

Letters to the Minister

Letters from the Women's Resource Centre in the N.W.T. indicate that women have begun to lose confidence in the justice system after a N.W.T. Supreme Court Judge said that a man who kicked his wife was justified in his behaviour because she had provoked him. This attitude indicates a "hurtful bias which is not tolerable."

5. Sexual Discrimination - Women in the Justice System

A law professor at the University of Saskatchewan states that there are a number of "deeply hidden barriers" keeping the number of women in the judiciary low (*Montreal Gazette*, 11-03-91). Additional barriers are created for women in the judiciary because of family obligations.

A study prepared by the Law Society of Upper Canada shows 70% of female lawyers surveyed in Ontario have experienced sexual discrimination in the workplace. The survey also shows that women lawyers earn less overall and fewer become partners in law firms (*Ottawa Citizen*, *Toronto Star*, *Globe and Mail*, 29-04-91). Dissatisfaction was cited by female lawyers as the main reason for leaving the legal profession.

The president of the Alberta Canadian Bar Association states that women lawyers still have difficulty getting high-paying jobs, partnerships and work outside the traditional legal fields for women, such as family law (*Edmonton Journal*, 01-05-91).

The growing interest by the media in the impact women judges and lawyers are having on the judicial system is reflected in certain articles. Often, the male/female split in decisions in the Supreme Court will be outlined, and comments by women members of Parliament on the impact laws and judicial decisions will have on women will be sought out. Articles discussing the perceived gender-bias in the judicial system often quote former Justice Bertha Wilson's landmark speech at Osgoode Hall Law School, in which she said that such a bias did in fact exist.

C. POVERTY

In the Media

A report by the National Action Committee on the Status of Women states that the lives of Canadian women are becoming harder, women are becoming poorer and working conditions are deteriorating. Recent federal economic policies are said to be "a shift away from solving inequality". New systemic barriers are being created for women with limited financial resources, low levels of education and family responsibilities. These, in turn, are increasing part-time work and term work, and are creating "job ghettos" (*Globe and Mail*, 14-02-91 and *Montreal Gazette*, 18-02-91). These barriers become practically insurmountable for immigrant, native and older women, the report states.

1. Support Payments and the Divorce Law

There has been a great deal of criticism concerning custody and spousal support maintenance payments. The main objection is that courts are awarding amounts that are far too low. In ten years, the average amount awarded of $ 200 per month has not increased. The opinion that "judges aren't aware of the soaring costs of parenthood" seems to be widespread (*Edmonton Journal*, 05-01-91).
Judges have also been accused of not recognizing the plight of middle aged women who are facing the break-up of their marriages. Many find it difficult to find employment without retraining and find themselves in difficult financial situations when support payments are too low (*Edmonton Journal*, 05-01-91).

A recent workshop for Alberta judges focused on the areas of criminal law, family law, and spousal and child support payments. The aim of the workshop was to try to understand discrimination against women and children inherent in laws and their application (*Edmonton Journal*, 05-01-91). Court of Queen's Bench Justice David McDonald stated that judges who haven't had to shop for groceries or shop for children's clothing in a while may "need reminding for child support cases".

A *Toronto Star* article stated that decisions of judges on some divorce cases are actually helping to create a new class of poor: divorced women and their children (19-01-91). A law professor at Ottawa University stated that judges need to be taught that the opportunities for a mother to find a high paying job after a divorce are not great, and that child care costs can cause difficult financial situations (*Toronto Star*, 19-01-91).

Statements in the House of Commons

Several members have criticized the government for not creating a child care program. An NDP member said that child care groups across the country have been anticipating for almost seven years that child care initiatives would be created (03-15-91). According to the 1990 Report of the Human Rights Commission, better child care arrangements would give women a better chance to participate in the workforce on an equitable basis (20-03-91).

A Liberal member stated that there are close to one million latch-key kids in Canada who need pre-school and after-school care. She pointed out that six years ago Judge Rosalie Abella said that child care was the bridge to employment equality, but that the government has done little to help solve the problems in these areas (07-03-91).

Letters to the Minister

Women writing to the Minister feel the legal system is biased against women. Women who get divorced feel they lose all their assets and have to spend huge amounts of money in legal fees to try to enforce support and child payments that their ex-spouses have not paid.

Law Journals and Reviews

Madame Justice McLachlin states that the problem with the present law of spousal support stems from the fact that the law has moved from the traditional to the new model of marriage with great rapidity. Different "models" of marriage mean different roles and economic positions for the partners (i.e. the union for life model, the joint venture model, etc...). However, the assumption of economic equality for women remains tragically untrue for large numbers of women in our society. Until this economic reality is reached, the problems of spousal support will not be resolved. The law must therefore reflect the reality of inequality (Madame Justice Beverley McLachlin, (Fall 1990) 9 *CIFL* 131-142.

Surveys and Public Opinion Polls

An *Environics - Focus Canada (1990-4)* poll indicates that when Canadians were asked about priorities for government spending, child care ranked ninth out of 18 areas. Overall, 77% advocate at least some increase in government spending on child care services and, of these, 60% say the spending should be targeted towards low-income families.

D. NATIVE WOMEN AND PENITENTIARIES

Extensive coverage has been given to the plight of native women inmates following the suicides of five native inmates in the last two years, one attempted suicide and a hunger-strike at Kingston's Penitentiary for Women. Reports indicate that tension in the penitentiary is very high, and a spokesperson from the Native Women's Association stated that there is so much oppressive discrimination within the system itself that native women find it hard to survive (CBC Newsworld, 07-02-91). Prisoner's rights activists say there is something wrong with the system when "death becomes the best option" (CJOH News, 08-03-91). Some media reports have stated that Corrections Canada is planning to close Kingston's Penitentiary for Women in three years and replace it with small regional prisons.

A native inmate stated that many women coming to the penitentiary are deeply troubled. Most have been victims of sexual or physical abuse and family violence. Often, they are dependent on drugs and alcohol and are torn apart from their families and communities, as women from all over the country are incarcerated in the penitentiary. Visits from families or tribal elders are rare since many inmates come from outside Ontario and funding is not available for these trips. The director of the Elizabeth Fry Society in Kingston says native inmates at the penitentiary are "the most damaged women in Canada" (*Ottawa Citizen*, 09-03-91).

A *Calgary Herald* article stated that the Kingston Penitentiary is "killing women". Critics say they can not understand why women, especially native women from the Western provinces, are still being sent there (02-09-91).

Most dailies reported the comments of former Solicitor General Pierre Cadieux, who called for a public inquiry into the suicides, as well as comments by the Ontario Chief Coroner, saying he was concerned about the number of suicides (08-03-90 and 09-03-91).

A Toronto professor and psychologist stated that the suicide rate of native women in prison is a reflection of the overall native suicide rate, which is three times that of the general population. This has been described as a "national tragedy" (*Ottawa Citizen*, 09-03-91).

PREPARATORY MEETING

SUMMARY

A SYNTHESIS OF IDEAS AND SUGGESTIONS RECEIVED IN PLANNING MEETINGS ACROSS CANADA

FOR

THE NATIONAL SYMPOSIUM ON WOMEN, LAW AND THE ADMINISTRATION OF JUSTICE

VANCOUVER, BRITISH COLUMBIA

10-12 JUNE 1991

Prepared by: Joanne Godin
May 1991

A SYNTHESIS OF IDEAS AND SUGGESTIONS RECEIVED IN PLANNING MEETINGS ACROSS CANADA

In preparation for the symposium on Women, Law and the Administration of Justice, Department of Justice officials met with representatives of groups and associations involved with legal issues affecting women. These planning meetings, held in Montreal, Ottawa, Fredericton, Toronto, Regina and Vancouver, were designed to generate wide-ranging discussions on what the symposium's purpose, focus and design should be. This synthesis presents an overview of these discussions and provides a context for the choices and decisions that ultimately shaped the symposium.

Make us part of the process

Participants in the planning meetings expressed support for the Minister's initiative in consulting with people involved in all aspects of the legal system, from policy makers and judges to victims and providers of support services. They believe that it is the right time to take stock of progress on issues affecting women, to identify long-standing and emerging problems and to propose solutions.

They want non-governmental organizations and those women who have had the least power in the past -- native women, members of visible minority groups, offenders, people with disabilities, single parents and women living in poverty -- to be involved in making the law and the justice system responsive to the reality of women in Canada today.

Let's agree that these problems exist

Participants described experiences and problems common to many women today and asked that the symposium not spend time debating the extent of these problems but focus instead on making changes to eradicate them:

- women are victims of violence in the family and in society
- discrimination is a part of women's daily lives
- women are at the bottom of the salary scale
- women lack support in reconciling their professional and family lives
- poverty is largely applicable to women, especially after divorce
- women have neither enough information about their rights nor adequate means to safeguard them

Many laws were written in times when women's powers were severely restricted. It is time to review our laws and the way they are interpreted, in the context of the *Charter of Rights and Freedoms* and women's new status. Sexual and racial

discrimination are implicit in some laws and systems, so we should question their basic assumptions. Sexual and racial stereotypes must be eradicated.

Make the symposium accessible

Canada is a bilingual and multicultural society, but its laws and its justice system have not always respected the rights and cultural realities of native women, women who are members of visible minority groups and other women who face financial and physical barriers to justice. Their voices must be heard in the symposium. Men, too, must help find solutions to these problems which, although they only or mostly affect women, are problems of the entire Canadian community.

Participants want the proceedings to be published and ask that the language used be accessible, not legalistic or bureaucratic. Additional translation facilities should be available for languages other than English and French, and organizers should consider that some women may prefer alternative ways to communicate their views.

Physical access to symposium facilities should be ensured for all, and access should not be limited by a conference fee.

Where do we start?

Planning meeting participants discussed a panorama of subjects that need to be addressed. Violence against women was highlighted in all the meetings, but was especially emphasized in Montreal. While participants everywhere insisted on recognition of the reality of native women and members of visible minority groups, Regina provided an in-depth presentation of issues affecting native women and Vancouver stressed the particular circumstances of women from racial and cultural minority groups.

Certain subjects were mentioned in several of the planning meetings as fundamental to an analysis of the law and the justice system. Women's needs in the workplace must be examined, as must our role in the legal profession and our experience as participants in the legal process: the needs of victims, witnesses, offenders, providers of support services and others must be addressed.

In a two-and-a-half day symposium not all issues can be covered. Participants therefore asked that choices be made that might allow the most pressing problems to receive adequate attention. They pointed out that the symposium could lose time on discussions of the "root causes" of problems -- they recommend that solutions, not causes, be the focus.

The symposium is an opportunity for the experts -- victims, offenders, workers, single parents, native women and others -- to inform and advise the policy makers and law makers. The opportunity should not be lost to endless debate. The goal is not to win debates. The goal is to improve our laws and the justice system for women. If the symposium can provide suggestions for concrete actions, it will have made legal and systemic changes possible.

Put people to work

In line with their wish that the symposium provide concrete direction to policy makers, participants want the discussions to be pragmatic in focus. They want working groups to look for solutions and suggest appropriate follow-up actions. In examining issues symposium delegates should cover the need for:

- education
- elimination of gender bias in courts
- community services
- access to information
- advocacy
- law reform
- research

Some participants pointed out that, where solutions to problems seem to call for differential treatment for some groups, this should not be ignored. Equal treatment does not always provide for equality. Where needs are different, treatment may have to be different to be fair.

A message to governments

Participants lamented the state of research on issues affecting women and the legal system. They point to contradictory findings in some research that lead them to believe that bias has informed the research design or conclusions. They want governments and others to share research in progress so that efforts are not duplicated. They emphasize that the best way to recognize the needs of native women and other special groups is to include them in consultations about the research.

The tendency of government programs and funding criteria to identify "flavours of the year" in research was decried. This approach forces organizations to tailor their work to outside demands instead of focussing on their real expertise and strength. Funding also tends to dry up after the year is over.

Participants asked what changes in government programs and policies might be needed to help corporations and others make changes that are beneficial to women.

Focussing the discussions

Based on the comments of participants in these planning sessions, three main "tracks" have been identified. The various issues raised by the planning meeting participants are listed below in these track subjects.

I. GENDER AND THE SUBSTANTIVE LAW

CRIMINAL LAW

Participants in all the planning sessions discussed the problem of violence against women at great length. They raised the issues of violence against children and the elderly, the need for services and education, concerns for native women and members of certain ethnic groups and the need for research.

Men's problem

They called for greater preventative measures and measures to protect women and children at risk. They raised the recently-emerging spectre of random violence and pointed out that violence must be seen as the problem of violent **men**. They indicated that research is necessary on whether pornography and sexist advertising can be linked to violence.

Participants asked why it is that women who are battered must leave the family home. They suggested that transition houses for men are needed. In the north, women seeking shelter may have to travel far from their homes to get the services they need. In some remote areas no services are available and women are therefore isolated and made more vulnerable by their financial dependence. Where participants suggested that new services are needed, such as transition houses for men, they insisted that this not be at the expense of existing services and additional services needed for women.

Women's different needs

Women from certain cultural and ethnic groups may have greater difficulty gaining access to services that meet their needs. The cultural background of some women may make them uncomfortable in transition homes where a feminist ideology is apparent. Where services do not accommodate women's special cultural or other

needs, they may prefer to remain in an abusive situation. They may see this as preferable to moving into a system that they believe does not understand them.

Services must be tailored to the special needs of members of natives and other cultural and racial groups. These women need support services in their first language and alternative services where the mainstream approaches are in conflict with their cultural background.

It must be recognized that women in some racial groups are more deprived and more likely to be subject to violence. Women whose entry into Canada was sponsored, for example, may be particularly vulnerable. Attention must also be paid to "condoned" cultural practices that are abusive to women and children.

Services must be available

Participants stated that counselling services are needed and that, where they are not sufficient to meet the community need, they should not be advertised extensively so that women have a false sense of support. They also insisted that, when charging is automatic, services must be available to women. If there are no services to support her, a woman should have the choice of whether or not to lay charges.

Family violence is a community issue, participants said. It should be treated as such. Education about attitudes toward violence and acceptable and unacceptable behaviour should be initiated in the schools.

Legal Aid

Participants stated that cuts in legal aid have the effect of further limiting accessibility for women. Legal aid is predominantly focussed on criminal law, usually offences committed by men. Women who need support in obtaining damages after a sexual assault, or who want information on administrative law, often turn to women's centres for help. Those who are truly disadvantaged are being shut out.

The problems of women in conflict with the law need to be addressed and the correctional services should be examined. The sentencing of native women should be studied, as should services available in institutions. For example, there are no paid positions in institutions for elders as there are for Catholic and Protestant spiritual leaders.

Law reform should be addressed: the *Criminal Code* should be reviewed with respect to discrimination against native women, the poor, people with disabilities, lesbians and others. Delegates should discuss the 1992 review of the sexual assault legislation.

The sexual abuse of children should be included in discussions, as should racism as a form of violence.

FAMILY LAW

Participants focussed on the problems women face upon divorce. They said that poverty after divorce should be studied, and that the self-sufficiency provisions in the *Divorce Act* should be examined. Policy makers should consider formulas for maintenance orders, such as dividing up the family income stream. Maintenance enforcement systems must be improved. They suggested that the cost of problems with maintenance should be compared to the cost of solutions.

Custody and access should be community issues, not women's issues, according to the participants. They ask whether there is bias with respect to custody determination.

Participants said that the procedures for divorce are problematic and that women need access to good, clear information to find their way through the laws and procedures.

It was noted that, in the north, many women in common law relationships do not know their rights. They need to know about child custody rules and the laws on inheritances. The problem of the adoption or foster placement of native children in non-native families should also be discussed.

TAX LAW

The ways in which the tax system discriminates against divorced women with children must be addressed. The recovery of support payments should also be looked at, as should the problems native people face with respect to property laws.

II. GENDER AND THE LEGAL PROCESS

ACCESS TO THE LEGAL PROCESS

Plain language information is essential for women to be aware of their rights and to have access to justice. This is especially important for native women and members of cultural and linguistic groups other than French and English.

Women involved in a divorce action need information on maintenance amounts, division of property, child custody and lawyers' fees, not just on the law of divorce. The approach in plain language legal information should be holistic.

Native women, immigrants and women with disabilities face double or even triple discrimination and are in need of information that meets their needs as one step to addressing the injustice.

Education of young people and others should take innovative forms. Information on campus rape should be distributed in colleges and universities, for example, as was done in the U.S. There is a need for service providers and plain language experts to share information on ideas and approaches such as publishing the names of men who batter.

COURT PROCESS

Court services do not respond to women's needs, according to the participants in the planning sessions. They ask whether there is a women's approach to the justice system. They say there is a need for day care services and flexible timing of hearings so that victims don't lose work time.

Victims of violence need protection throughout court proceedings. They need to know their rights during plea bargaining. All the processes around sexual assault investigations and court processes need to be reviewed: depositions, witness testimony, proof, evidence etc.

Judges should have sensitization programs available to them before they take up their duties and as they draft judgments. Is there a women's approach to judgments? U.S. research on judgments has turned up interesting findings.

Is there a bias in the selection of witnesses and experts? Why are so few female experts called? Sexism of all forms in the courts must be denounced.

Native people should have access to systems that meet their needs. Processes already put in place by native people should be examined as models of what can be done as alternatives to court procedures. Treating everybody the same way isn't always equality.

Participants asked whether charging, prosecution criteria and the use of diversion programs can be standardized across Canada. They also suggested that there is a need in some cases to allow men to admit to abuse without admitting guilt under the law, so that services can be provided to the family and the family home can come under scrutiny.

SENTENCING

Participants stated that they thought that sentencing in some instances of family violence amounted to a farce. They stated that judges should be made aware of all sentencing options and that the uneven approach to charging and treating men across Canada needs to be examined. All men who batter should undergo mandatory counselling and treatment programs.

The effect of the number of women lawyers, litigators and judges on sentencing should be studied.

Fine option programs are not as open to women because of problems in arranging for the care of their children.

III. GENDER AND WORK IN THE LEGAL PROFESSIONS

SELECTION OF THE PEOPLE OF THE LAW

Participants stated that there appears to be a 20% "glass ceiling" on the number of women who can accede to the upper levels of an organization. At this point, the women feel that they have somewhat adequate representation even if it is not truly equitable. Above this point, men tend to be more intolerant of their female colleagues and become more aggressive.

Women are only marginally represented at senior levels even though they now represent 50% of the legal profession. What are the barriers to women practising law?

The public tends to believe that most problems will be solved with more female judges. Is this so? The eligibility criteria for judges excludes most women, who have been admitted to the profession more recently.

EDUCATION AND TRAINING

Judges, lawyers, police, social workers and law students must be sensitized to women's needs and the realities of women's everyday lives, as well as the circumstances faced by members of various cultures in the community. Judges' training should begin before they are appointed to the bench and should continue as they write their judgments. We must define the need for sensitization, the results required and the commitment we are willing to bring to the process.

The training of personnel in the legal system and the general public should emphasize that no culture accepts violence against women and children. The federal and provincial governments should work in concert to bring the message that "no means no" to young men in schools. Children's education should begin early. Educational materials, such as audio-visual aids, are needed.

There is a need for better coordination of federal and provincial programs generally. They and all women's groups must share information.

There has been little progress to date in opening up access to legal education for members of visible minority groups.

WORK AND GENDER

Work standards need to be examined. Women in the workforce tend not to be as unionized as men. They are more likely to be in part-time positions. Both of these situations place women in a more precarious position. Seniority, which favours men, should also be examined.

Women need support for their family responsibilities. They need workplace day care, special leave to care for children and day care adapted to the working hours of lawyers. The effect of maternity leave and leave to care for children on women's careers should be examined.

Are there female ghettoes in the law? Are there still male bastions? What has been the progress in achieving salary equity? Are there promotion barriers to women? How are young female lawyers treated by the courts?

Women need positive role models. We also need to rethink the traditional "male workaholic" as the standard portrait of a worker.

Technology and the possibility of home work should be studied. How could this option benefit women? Could it further undermine their ability to participate as equals?

Sexual harassment laws need to be addressed, as does the policy of the *Unemployment Insurance Act* in sexual harassment cases.

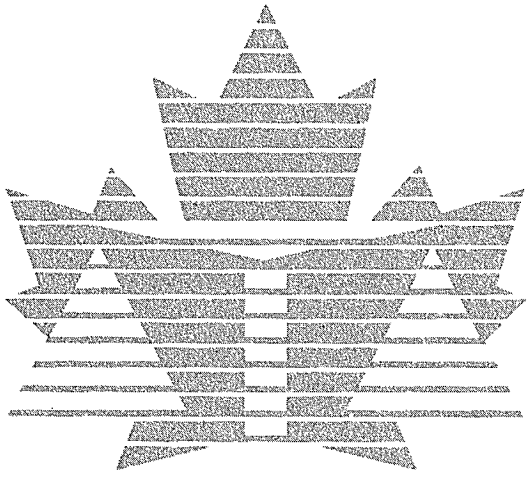
Non-governmental organizations that have researched women and the law should share their results. The Bars and the Law Associations should be involved in promoting equality for women.

CANADIAN CENTRE FOR JUSTICE STATISTICS

WOMEN IN CANADA

Canadian Centre for Justice Statistics

Facts to Consider



Women comprise 51% of the Canadian population. In 1988, there were approximately 13.1 million women in Canada compared to 12.8 million men.

HIGHLIGHTS

* The proportion of Canadian women in the labour force has increased from 38% in 1970 to 57% in 1988. In that year, over 65.1% of working women had pre-school children (under 6 years of age).

* In 1987, women with full-time employment earned about 66% what their male counterparts earned ($21,012 compared to $31,865). Almost one-third of working women were employed in clerical positions and another 17% were in service industries.

* Women made up almost 53% of all university students in 1986-87, held 17% of the university teaching positions, and made up 33% of the community college staff.

* Lone parent families accounted for 13% of all families in 1986, the majority of which were headed by females (82%). Over 55% of households headed by a female lone-parent have low income rates.

* In 1987, 44% of single, elderly women were living at a low income level, compared with 66% in 1980.

Sources: 1986 Census of Canada; Historical Labour Force Statistics, 1988; Labour Force Survey, 1988; Earnings of Men and Women, 1988; Labour Force Annual Averages, 1981-1988; Education in Canada, 1987; Education, Culture, and Tourism Division, 1988; Income Distributions by Size in Canada, 1988.

Further Reading: Women in Canada: A Statistical Report, Second Edition,Statistics Canada, 1990.

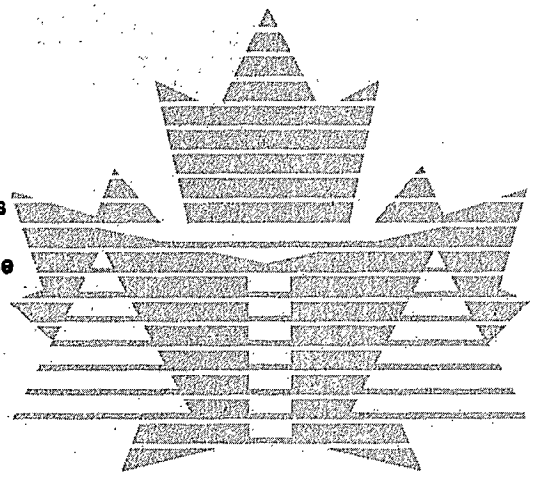
For futher Information: Information and Client Services, Tel. 613-951-9023.

Official Release Date: February, 1990

WIFE ASSAULT

Canadian Centre for Justice Statistics

Facts to Consider



According to the General Social Survey (GSS) conducted by Statistics Canada in 1988, an estimated 7 women per 1,000 in the Canadian population were assaulted one or more times during 1987 by a spouse or former spouse. One-half were assaulted more than once, for an estimated rate of incidence of 15 per 1,000 women.

HIGHLIGHTS:

* Women account for 80-90% of victims of interspousal violence, according to the Canadian Urban Victimization Survey (CUVS) in 1982 and the GSS in 1988.

* Women living in households with an annual income of less than $20,000 at the time of the interview experienced rates of wife assault four times higher than women in households with earnings of $20,000 or more, according to the CUVS.

* Approximately three-quarters of the incidents in both surveys involved a physical attack or sexual assault. One in five incidents of wife assault involved a weapon, the majority of which were bottles and other blunt instruments.

* Less than one-half (44%) of incidents of wife assault captured by the CUVS were reported to the police.

* In 1989, 76 women in Canada died at the hands of their spouses.

Further Reading: Conjugal Violence Against Women, Juristat Vol. 10 no. 7, May 1990, price in Canada: $3.60.

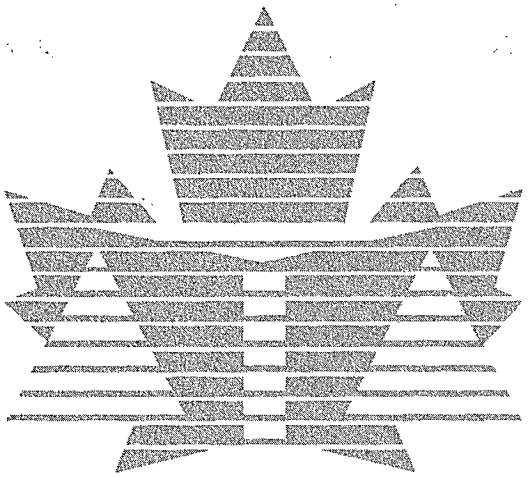
For further information: Information and Client Services, Tel. 613-951-9023.

Official Release Date: April 27, 1990

WOMEN AND CRIME

Canadian Centre for Justice Statistics

Facts to Consider



In 1989, one in 100 women in Canada was charged with a crime, compared to seven in 100 men. Overall, women accounted for only 15% of all adults charged by the police.

HIGHLIGHTS:

* Since 1962, the total number of women charged has increased fourfold, compared to a twofold increase for men.

* Over the past three decades, the rate of women charged per 100,000 women has increased substantially for property crime (527%) and violent crime (553%) compared with smaller increases (65% and 207% respectively) for men.

* In 1989/90 women accounted for 3% of all admissions to federal custody, 8% to provincial custody, and 17% of admissions to probation.

* From 1978 to 1989, the total number of women charged has increased by 38%. During this period, admissions to provincial custody and probation have shown greater increases, at 102% and 56% respectively.

Further Reading: Women and Crime, Juristat, Vol. 10 no. 20, December 1990, price in Canada: $3.60.

For further information: Information and Client Services, Tel. 613-951-9023.

Official Release Date: December 14, 1990

Statistics Canada Statistique Canada

Canada

WOMEN IN THE ADMINISTRATION OF JUSTICE

Canadian Centre for Justice Statistics

Facts to Consider

In 1990, women represented 21.1% of total police personnel and 6.4% of police officers. Women accounted for over 70% of civilian personnel and almost one-third of other non-officer personnel in Canadian police forces.

HIGHLIGHTS

* Since 1972, when females accounted for only 194 police officers (0.4%), the number has continued to rise, reaching an all time high of almost 3,600 female officers (6.4%) in 1990.

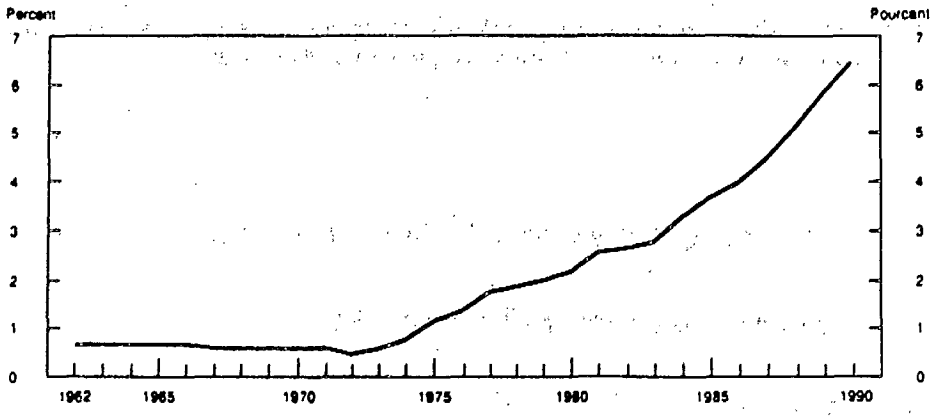
* Between 1980 and 1990, the number of female police officers tripled. In comparison, the number of male police officers increased by only 1.4%.

* In 1990, the Northwest Territories reported the lowest proportion of female police officers at 3.7%. British Columbia and Newfoundland reported the highest proportion of female police officers at 8.0%.

* In 1990 three of the nine Supreme Court judges were women. Across Canada, women accounted for 8.8% of all federally appointed judges.

Percentage of Female Police Officers, Canada, 1962-1990

Pourcentage des agents de police de sexe féminin, Canada, 1962 à 1990



Further Reading: Police Personnel 1990, Statistics Canada Daily Bulletin, March, 1991.

For further information: Information and Client Services, Tel. 613-951-9023.

Official Release Date: March 7, 1991

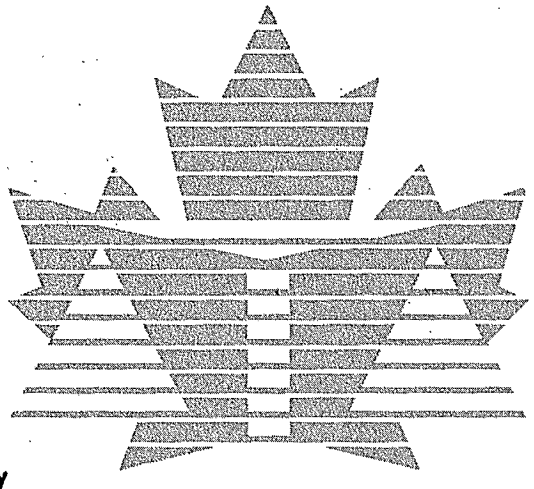
Statistics Canada Statistique Canada

Canada

UNIFIED FAMILY COURTS

Canadian Centre for Justice Statistics

Facts to Consider



The ajudication of family law is the responsibility of both federally and provincially constituted courts. Unified family courts hear both federal and provicial family matters, eliminating the need to go before a succession of different courts.

HIGHLIGHTS

* Unified family courts are presided over by federally appointed judiciary who may hear family matters under both federal and provincial legislation.

* Unified family courts have are located in the cities of Hamilton, Ontario (1977), Saskatoon, Saskatchewan (1978), St. John's, Newfoundland (1979), and the province of New Brunswick (1979). In addition, the Family Section of the Supreme Court Trial Division in P.E.I. and the Family Division of the Manitoba Court of Queen's Bench are also Unified Family Courts.

* In Quebec, all family matters are heard in the Superior Court, Family Division.

* A system of province-wide maintenance enforcement and reciprocal enforcement of maintenance orders is in operation in all jurisdictions.

* All provinces and territories provide mediation and counselling services in areas such as custody, visitation, and access to children. The intent of these services is to mediate disputes and reconcile differences.

Further Reading: Family Courts in Canada, Juristat Vol.10 no.3, April 1990, price in Canada, $3.60.

For further information: Information & Client Services, Tel. 613-951-9023.

Official Release Date: April 1990

Statistics Canada Statistique Canada

Canada

Adult Female Offenders in the Provincial/Territorial Corrections Systems, 1989-90

Canadian Centre for Justice Statistics

Facts to Consider

Women incarcerated in Canada's corrections facilities, both provincial/territorial and federal, represent a small proportion (approximately 7%) of the total inmate population. Of these women, over 95% are incarcerated in provincial/territorial facilities.

Highlights

- In 1989-90 there were a total of 115,114 sentenced admissions[1] to provincial/territorial correctional facilities in Canada, of which 8%, or 9,183, were women. The number of women admitted under sentence increased by 13.2% since 1986-87.
- Nationally, the rate of admissions for women (aged 18 years and over) in 1989-90 was 9.1 per 10,000. The rate in Ontario (9.4) was roughly equal the national rate. Five jurisdictions had admission rates higher than the national average: Prince Edward Island (13.9), the Northwest Territories (17.8), Saskatchewan (21.3), Alberta (24.5) and the Yukon (38.6).
- Women under the age of 35 made up the largest age group (76.1%) of female admissions to provincial/territorial facilities. In all regions, at least two-thirds of the female offenders were less than 35 years of age.
- Of the 9,183 women admitted to provincial/territorial facilities in 1989-90, 2,671 (29.1%) were aboriginal women.
- The majority of adult female offenders had sentences of one month or less (62.6%).

Further Reading:	Adult Female Offenders in the Provincial/Territorial Corrections Systems, 1989-90, Juristat Bulletin Vol. 11 No.6 April 1991, price in Canada: $3.60.
For Further Information:	Information and Client Services, 19th floor, R.H. Coats Building, Ottawa, Ontario, K1A 0T6, Tel. 613-951-9023.
Official Release Date:	April 26, 1991.

[1] Data for Prince Edward Island and New Brunswick represent those offenders admitted and released during the same year and are reported on a calendar year basis.

Statistics Canada Statistique Canada

Canada

THE SUB-PROVINCIAL JUSTICE DATABASES

MICROCOMPUTER DATABASES FOR THE ANALYSIS OF CRIMINAL JUSTICE ISSUES AT THE SUB-PROVINCIAL LEVEL

Databases which respond to the need for information below the provincial level have been developed by the **Integration and Analysis Program** of the **Canadian Centre for Justice Statistics.**

These Sub-Provincial (SubPro) databases contain statistics and information for geographic areas which parallel Justice Administration Areas (JAA's) as defined by the provinces and territories. The databases for each of these areas includes data from the Centre's justice surveys as well as data from the 1986 Census of Population.

Databases are integrated into similar geographic areas, forming the basis for a standard unit of data analysis. Comparisons are therefore possible among JAA's either within or between provinces.

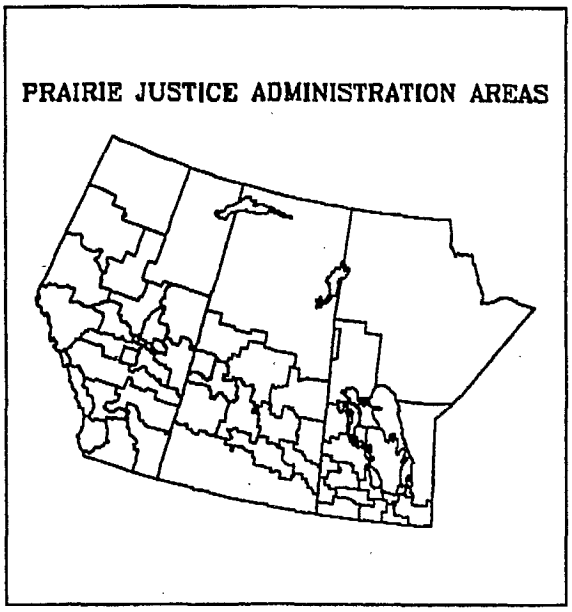
JUSTICE ADMINISTRATION AREAS

SubPro databases were developed with the cooperation of the provinces and territories who identified geographic units to form over 200 Justice Administration Areas throughout Canada. The boundaries for each of these areas were identified by the "catchment", or service area, of the Provincial Criminal Divisions Courts of Record. All justice services physically located within this court service area were identified as part of an enriched justice database for each of the JAA's.

A MAJOR INNOVATION

These databases place a new and exciting facility in the hands of users who address research, planning or administrative problems. Through the development of common boundaries, the SubPro databases allow for the use of analytical tools in the study of criminal justice issues from the local (urban or rural), regional, or provincial perspectives.

Previously, it has been difficult to conveniently integrate social, demographic and economic elements with justice data because of the use of different geographic boundaries for the census and justice surveys. However, with the Centre's SubPro database system, it is now possible to include a wide selection of these census (non-justice) variables in the analysis of the administration of justice. Furthermore, data from different criminal justice sectors can be more readily integrated within these common geographic areas.



The Centre will continue to support the SubPro databases and will update justice and social statistics for each of the justice and social services available within the JAA. These will include data from: police crime statistics in the new Uniform Crime Reporting Program, Adult and Youth Courts, Correctional and Community Services, Legal Aid and available Resource and Expenditure information. In addition, other relevant non-justice data and information will be added to the SubPro databases for geographic units compatible with the Justice Administration Areas.

AVAILABILITY

Data files for Canada and each of the provinces and territories will be available in early 1991. The current SubPro database contains 203 data elements for each JAA: 154 provide information on the incidence of crime by specific offence, and the subsequent police and judicial action; and, the remaining 49 provide population profiles for social and economic variables such as employment, education, income, language and type of dwelling.

For further information, contact:
Information and Client Services
Canadian Centre for Justice Statistics,
19th Floor, R.H. Coats Building,
Ottawa, Ontario,
K1A 0T6.
(613) 951-9023

CCJS/I&A/3512/11/90

ORDER FORM

Canadian Centre for Justice Statistics

MAIL TO:
Publication Sales
Statistics Canada
Ottawa, Ontario, K1A 0T6

FAX TO: (613) 951-1584
A Fax will be treated as an original order. Please do not send confirmation.

(Please print)

Company _____
Department _____
Attention _____
Address _____
City _____ Province _____
Postal Code _____ Tel. _____

METHOD OF PAYMENT

☐ Purchase Order Number *(please enclose)* _____
☐ Payment enclosed $ _____
☐ Bill me later (max. $500)

Charge to my: ☐ MasterCard ☐ VISA

Account Number
Expiry Date

Signature _____
Client Reference Number _____

Catalogue Number	Title	Frequency/ Release Date	Annual Subscription or Book Price			Qty	Total $
			Canada $	United States US$	Other Countries US$		
85-002	Juristat	Service Bulletin	90.00	108.00	126.00		
		Issue	3.60	4.30	5.00		
85-205	Canadian Crime Statistics	Annual	39.00	47.00	55.00		
85-211	Adult Correctional Services in Canada	Annual	39.00	47.00	55.00		
CORPORATE PUBLICATIONS							
11-001E	The Daily	**Daily**	120.00	144.00	168.00		
11-002E	Infomat	**Weekly**	125.00	150.00	175.00		
11-008E	Canadian Social Trends	**Quarterly**	34.00	40.00	48.00		
11-010	Canadian Economic Observer	**Monthly**	220.00	260.00	310.00		
11-204E	Statistics Canada Catalogue 1990	**Annual**	13.95	16.70	19.50		
					SUBTOTAL		
Canadian customers add 7% Goods and Services Tax.					**GST (7%)**		
Please note that discounts are applied to the price of the publication and not to the total amount which might include special shipping and handling charges and the GST.					**GRAND TOTAL**		

Cheque or money order should be made payable to the Receiver General for Canada/Publications. Canadian clients pay in Canadian funds. Clients from the United States and other countries pay total amount in US funds drawn on a US bank.

Order completed by: Date:

Subscriptions will begin with the next issue.

For faster service ☎ **1-800-267-6677** ☎ **VISA and MasterCard Accounts**

PF 03491 05/90

Version française de ce bon de commande disponible sur demande

Statistique Canada Statistics Canada

Canada

DISCUSSION PAPERS

SEXISM AND THE LEGAL PROFESSION

FOR

THE NATIONAL SYMPOSIUM ON WOMEN, LAW AND THE ADMINISTRATION OF JUSTICE

VANCOUVER, BRITISH COLUMBIA

10-12 JUNE 1991

Prepared by: Maître Sylviane Borenstein
Bâtonnière du Québec

SEXISM AND THE LEGAL PROFESSION

"To name is to reveal and this, in itself, is already a form of action."[1]

That was my guideline as I prepared this text.

The three sub-topics I am going to discuss are:

1. the selection process;
2. education and training;
3. sexism and the practice of law.

To avoid repetition, however, I am going to discuss the selection process in the context of the other two themes.

CHAPTER I

EDUCATION AND TRAINING, OR THE SCHOOL FOR WOMEN

This topic was recently featured at the Maximilien Caron Days at the University of Montreal, March 8 and 9, 1991, the Proceedings of which will be published shortly.

The right questions were raised on that occasion:

> How many women students and professors are there in the law schools?
>
> Do women and men learn and teach in the same way?
>
> Does the presence of women professors have an impact on the student body in general and on women students in particular?
>
> Are these women a positive role model?
>
> Are they changing our way of looking at law?
>
> Are they undertaking a feminist analysis of law?
>
> Are they bringing about a re-examination of the content of law courses?
>
> How do men and women students relate to each other?
>
> How do professors and students of both sexes relate to one another?
>
> Are these relationships marked by sexism or is there indifference to the increased numbers of women?

In trying to sketch out an answer to these questions, I would like to refer to two very useful articles: "Gender Bias within the Law School: 'The Memo and its Impact'"[2] by Sheila McIntyre, and "Thémis retrouve l'usage de la vue"[3] (Themis Gets Her Eyesight Back) by Ann Robinson, which, from now on, I will call "Memo" and "Themis".

Although there have been many studies on this topic in the United States, I wanted to rely on Canadian works as much as possible; however, it is clear that the experiences described are the same.

Something that is immediately apparent is both the courage of these writers in exposing the situation in the law schools as well as their fear, a fear that is common

to every women student. In Ann Robinson's words, there is a "fear of becoming the target of offensive and intolerant criticism, fear of being even more ostracized by my own Faculty".[4] At the Maximilien Caron Days, women professors from several law schools and students told of similar experiences. This fear is also evident in Christina Boyle's article: "Teaching Law as if Women Really Mattered, Or, What About the Washrooms?"[5]

In her 1988 Master's Thesis for the Faculty of Social Sciences at Laval University, Maude Rochette tells us that: "in Canada, the proportion of women in law schools has increased sevenfold in the last two decades. In 1966 they were a small group, scarcely amounting to 6.3% of the whole, whereas in 1981 they made up nearly 40% of the law student population."[6] And in 1990, women accounted for more than half of law students, according to David Stager in "Lawyers in Canada".[7]

As Ann Robinson said in Themis, there is no common ground between statistics for women students in the law schools and the number of women professors in those same law schools, ie, an average of over 50% women students as opposed to an average 18% of women professors.

Since admission to law schools is granted solely on the basis of excellence, there is no discrimination in the selection process for women students.

The same does not hold for women professors as Memo and Themis point out. Some schools are already talking about instituting an employment equity program for women professors, thus recognizing that there is a problem and that it must be corrected.

Answers to the other questions may be found in a series of articles such as: "Otherness and the Law School: A Comment on Teaching Gender Equality",[8] "Teaching Law As If Women Really Mattered, or, What About the Washrooms?",[9] "Patriarchal Hegemony and Legal Education"[10] and "Feminist Perspectives on Law: Canadian Theory and Practice".[11] These articles show that, in law school programs, men have the central roles and women are on the sidelines; they are "the other", as Simone de Beauvoir wrote in the Second Sexe.

The rights and responsibilities studied in these law courses are those that belong to men: "the reasonable man", "the prudent father", or by implication: "the shareholder", "the taxpayer".

Christine Boyle[12] concludes that law professors should admit the role they may play in perpetuating such inequality and should reflect on the underlying values unconsciously being taught in the courses they give.

A review of the literature on the subject shows that the presence of women professors has a very positive impact on the student body and teaching faculty. They stimulate an awareness of sexism. They serve as positive role models. They cause the content of law courses to be called into question. They prepare future lawyers to represent their future women clients.

In closing this section, I would like to quote this passage from Sheila McIntyre, in Memo: "In addition to teaching my students law this year, I had one political goal which deeply matters to me personally: to lend the hierarchical authority of my position and to use my presence to validate women's voices in the classroom and in institutional life, in order to help women feel it is both safe and legitimate to speak from their own perspective and their own experience when studying or practising law".[13]

CHAPTER II

SEXISM AND THE PRACTICE OF LAW

In the various studies devoted to the subject, it is noteworthy how little it matters whether the discussion centres on Canada or the United States, whether it is 1970, 1980 or 1990; wherever and whenever women are involved, intolerance is the order of the day.

I would like to discuss this topic in two parts:

- women and the practice of law, and
- women and the judiciary.

I. WOMEN AND THE PRACTICE OF LAW

This topic was examined recently at the Maximilien Caron Days and there again the right questions were asked:

What power do women lawyers have in their place of work?

Do they become partners as quickly as their male counterparts?

What is the "price" of partnership for a woman?

Do women need working conditions adapted to their needs?

Do men and women at the articling stage have the same opportunity to land a regular job in a law office when they finish?

Do the careers of women lawyers suffer because of their family responsibilities and motherhood?

Do they experience inequity and inequality in employment?

Do women have to confront sexist attitudes?

What experience do they have of sexism in their professional life?

A number of studies have addressed these questions and, once again, I have limited myself primarily to Canadian studies, but the many American studies on the topic reveal the same deplorable situation.

In "Les Avocats du Québec - sondage général 1987", Professor MacKaay concluded that "women do not always enjoy a situation equivalent to that enjoyed by men. (...) Women lawyers always find themselves proportionately less numerous in private practice, they become partners less frequently, and they are always over-represented in the areas of family law and social law and under-represented in commercial and corporate law."[14]

The same observations appear in studies by Maude Rochette,[15] Fiona M. Kay, "Women in the Legal Profession",[16] the Conference Board of Canada, "Concilier les exigences professionnelles et les responsabilités familiales" (Reconciling Professional Duties and Family Responsibilities)[17] and most recently in "Transitions in the Ontario Legal Profession -- A Survey of Lawyers Called to the Bar Between 1975-1990", published in May 1991.[18]

The presence of women in the legal profession is not unlike mountain air: the higher you climb, the rarer it gets. Only a ridiculously small number become partners. In terms of salary, 68% of women earn $55,000 or less per year, compared to 43% of men. Yet, only 6.5% of women earn more than $85,000 as compared to 25% of men lawyers.[19] Maude Rochette explains this discrepancy in large part by the fact that women are still involved in almost all the child care and spend less time than men at their work. However, her analysis shows that there are disparities even between women and men without children.

Income levels from top to bottom are as follows:

1. Men with children;
2. Men and women with no children;
3. Far behind, women with children.

Some of the comments in the latest report of the Ontario Law Society[20] are very revealing; I shall only cite a few:

- The findings of the Report lead the Law Society to conclude that discrimination (whether it be individual or systemic, intentional or unintentional) continues to exist within the profession.

- The Law Society recognizes that sexual harassment is a demeaning practice that constitutes a profound affront to the dignity of persons forced to endure it.

Lynn Hecht Schafran, a woman lawyer from New York and a leading expert on the question of sexism in the legal profession, described sexism as follows in an article published in 1988: "Gender bias has three aspects: stereotyped thinking about the nature and roles of women and men; (...) society's perception of the relative worth of women and men and what is perceived as women's and men's work; (...) and myths and misconceptions about the social and economic realities of women's and men's lives..."[21]

This description tallies with the examples of sexism that women lawyers must face:

> Why is it that only women lawyers are asked whether they can discharge their professional and family obligations at the same time?
>
> Why is it that when a male lawyer does his best for his client, they say he is competent, but when a woman lawyer does the same thing, they say she is really hard and aggressive?
>
> Why do people assume that women lawyers are incompetent until they prove otherwise, whereas the opposite is true for men lawyers?

The sexism encountered by women lawyers comes from judges, lawyers, clients, juries and witnesses, and language is a major factor in this state of affairs.

A perfect illustration is found in an anecdote told by Lynn Hecht Schafran: "In a recent trial, a judge inquired as to why the jury had not selected the woman he had anticipated as foreperson, to which the jurors replied that the court rules directed them to appoint a "foreman" and so they did."[22]

Another example of the pernicious effect of language is the expression "working mother" which implies a contradiction in terms, whereas the expression "working father" is never used.

We can see therefore that all the questions raised at the Maximilien Caron Days can be answered in the affirmative.

II. WOMEN AND THE JUDICIARY

This subject can be divided into two sub-sections: the treatment of women lawyers by judges and the presence of women on the Bench.

A. The Treatment of Female Lawyers by Judges

A large number of women lawyers find the legal profession is an alien environment. Male lawyers and judges often treat them differently, condescendingly, or fail to take them seriously. This form of sexism is sometimes manifested in a way that allows women lawyers to confront it openly and effectively, but more often, it is only a vague feeling that pollutes the atmosphere of the courtroom or makes the woman lawyer uneasy.

The United States has amassed a great deal of documentation on the subject, thanks to twenty-three task forces that have studied sexism in the courts and whose reports and recommendations tend to support each other's findings (eg New Jersey, New York, California, ...).

A few Canadian examples of sexism in the courts:

- In January 1989 in Quebec, Denys Dionne J said, in court, that "rules, like women, are made to be violated".

- In September 1986 in Quebec, Anatole Corriveau J, in a sexual assault case, said this about the seriousness of the offence: "The circumstances showed me that it was a little sexual assault, if one can call it that... That is, it was a ... a kind of rape, but more in the nature of a little rapelet".

- In June 1989 in Manitoba, Frank Allen J told a woman lawyer, seeking an adjournment, that women should not try to be lawyers and mothers at the same time.

- Also in Manitoba, Kenneth Peters J, in an assault case said: (...) sometimes a slap in the face is all that a woman needs and might not be such unreasonable force after all."

- In Quebec, a judge cited a woman lawyer for contempt because she flirted with the jury.

- Recently in British Columbia, Sherman Hood J in a sexual assault case said: "The mating practice, if I may call it that, is a less than precise relationship ... At times, "no" may mean "maybe", or "wait a while"".

Finally, I would refer you to a number of articles in "Equality and Judicial Neutrality",[23] including among others "Identifying and Correcting Judicial Gender Bias",[24] by Norma J Wikler, "Feminist Theories of (In) Equality",[25] by Kathleen A

Lahey, "The Success of the American Program",[26] by Lynn Hecht Schafran, and "Prospects for Changes in Canada: Education for Judges and Lawyers",[27] by Judge Melvin L Rothman.

B. Women on the Bench

At this level, the existence of sexism in the selection process becomes very apparent.

At the federal level in Canada, only 10% of the judges are women. At the provincial level, in Quebec, they represent 11%, the greatest percentage of whom (12 out of 47) are relegated to Youth Courts, once again illustrating the ghettoization of women in certain areas.

I would like to finish this section with a quote from Madam Justice Louise Mailhot of the Quebec Court of Appeal: "...It's only since we have become more numerous that concerted efforts have been made throughout the legal community to fight sexism in all its forms and manifestations, whether it be verbal, conceptual or in gestures ... A genuine dialogue seems, and I say "seems" advisedly, to have begun to take the place of the earlier monologues by the first women in the profession denouncing the state of affairs...But some traces of the foundations must be preserved as a reminder of the long and painful route to gain entrance to the administration of justice in Canada....But the ideal of equality of numbers remains an objective to attain."[28]

I am closing on an optimistic note because, for the first time, we have a woman Minister of Justice, who is aware of the problems and has the courage to want to bring them to light and to find solutions.

Under her wing, the Department of Justice is a member of the Working Group on Gender Equality in the Canadian Justice System. The Department has organized a National symposium on Women, Law and the Administration of Justice which will help make judges, jurists and the public aware of the discrimination faced by women in our legal system, and I hope it will lead to the creation of mechanisms to correct this sad state of affairs.

In addition, the Minister has undertaken to see that women are fairly represented on the Bench, which is an encouraging sign.

So, we have our work cut out for us to improve the situation of women in the legal profession, but we must always remember the words of Claude Levi-Strauss:

"Every sign of progress gives rise to a new hope, that hangs suspended on the solution of a new problem. The case is never closed."

ENDNOTES

1. Simone de Beauvoir, "Le sexisme ordinaire"

2. Revue juridique La Femme et le Droit, 1987-1988, Vol. 2, No. 2, p. 362

3. Revue juridique La Femme et le Droit, 1989, Vol. 3, No. 1, p. 211

4. Supra, p. 213

5. Christine Boyle: "Teaching Law As If Women Really Mattered, or, What About the Washrooms?" Revue juridique La Femme et le Droit, 1986, Vol. 2, No. 1, p. 109

6. Maude Rochette "Les Femmes dans la Profession Juridique au Québec: De l'Accès à l'Intégration, Un Passage Coûteux". Master's Thesis, Faculty of Social Sciences, Graduate School, Laval University, June 1988, p. 49

7. David Stager, "Lawyers in Canada", p. 112

8. Mary Jane Mossman, Revue juridique La Femme et le Droit, 1985, Vol. l, No. l, p. 213

9. Supra, note 5

10. Mary O'Brien and Sheila McIntyre, Revue juridique La Femme et le Droit, 1986-1988, Vol. 2, No. 1, p. 69

11. Susan Boyd and Elizabeth A. Shechy, Revue juridique La Femme et le Droit, 1986-1988, Vol. 2 No. 1, p. 36

12. Supra, note 5

13. Supra, note 2, p. 392

14. Report prepared by Ejan MacKaay, Faculty of Law of the University of Montreal, April-May 1987, p. XII-4

15. Supra, note 6

16. Fiona M. Day, "Women in the Legal Profession", a report submitted to the Law Society of Upper Canada, August 1989, p. 12

17. Report prepared for the "Association du Jeune Barreau de Montréal"

18. A report of the Law Society of Upper Canada, p. 99

19. Supra, note 6

20. Supra, note 18, p. 108

21. Lynn Hecht Schafran,"Women in the Courts Today: How Much Has Changed?", in Law and Inequality: A Journal of Theory and Practice, Vol. VI, May 1988, No. 1, p. 27

22. Arizona Bar Association Annual Meeting, June 10, 1988, Tucson, Arizona. "Sex and Law: The Impact of Gender in the Courtroom"

23. S. Martin & K. Mahoney, eds, Toronto: Carswell, 1987

24. Supra, p. 12

25. Supra, p. 71

26. Supra, p. 412

27. Supra, p. 421

28. "L'histoire des femmes dans le droit et dans la magistrature d'ici: Les Pionnières", Journées Maximilien Caron, March 8, 1991, p. 20

GENDER AND THE SUBSTANTIVE LAW

FOR

THE NATIONAL SYMPOSIUM ON WOMEN, LAW
AND THE ADMINISTRATION OF JUSTICE

VANCOUVER, BRITISH COLUMBIA

10-12 JUNE 1991

Prepared by: Christine Boyle, Visiting Professor
University of British Columbia,
Faculty of Law

GENDER AND SUBSTANTIVE CRIMINAL LAW

Introduction

There is a vast body of literature focusing on issues of gender and the criminal law. This note will concentrate on the substantive criminal law. However, it should be read with an awareness of the broader context. Feminist analyses, both academic and activist, of the criminal justice system, include highly theoretical discussions of the role of the state, the nature of crime, and the justifications for punishment. The significance of research from disciplines other than law is addressed, as well as precise doctrinal questions about the content of particular rules of law.[1] The fundamental theme of such analyses is the importance of gender, but there is also emphasis on the interaction between gender and race, culture, class, and sexual orientation.

This overview of substantive law issues should be read with an awareness that a great deal of attention has been paid to problems of enforcement, procedure, evidence, and sentencing. For instance, the Supreme Court of Canada is presently considering the limits on questioning of sexual assault complainants in the *Seaboyer* case.[2] The implications for women of the decisions made with respect to such issues continue to be addressed in the academic literature and in the arguments made by the Women's Legal Education and Action Fund (LEAF), as an intervenor in some cases.[3]

It should not be assumed that feminist proposals for reform are based on any assumption that the basic premises and values of the criminal justice system are sound and all that is needed is some fine-tuning with respect to gender. While many law reform proposals are directed at changes which are practical and achievable in the short-term, there is a growing body of literature which envisions the possibility of radical changes in the criminal justice system or alternative methods of achieving similar goals.[4]

As well, it is important to note that a focus on gender does not simply lead to proposals for changes in the law itself, but also to reconceptualization of the ways in which we think about criminal law issues. The presence of large numbers of women lawyers, activists, and academics, and to a lesser extent, judges, may be contributing to a shift in methodology in this context.

The Values Reflected in the Present Law

The underlying philosophy of our criminal law reflects an emphasis on volition or free will. This, for most offences, makes a finding of fault central to the theoretical structure of the law and to the determination of guilt. Crime is attributed to individual shortcoming, and so, with some exceptions, considerable emphasis has been

placed on a finding of subjective guilt, utilising the concept of *mens rea* (a guilty mind). Hence it is usually the case that a person cannot be punished unless it has been decided, beyond a reasonable doubt, that (s)he chose, with knowledge of the relevant facts, to engage in the behaviour labelled criminal by Parliament. This approach can be contrasted with a structural approach, in which the sources of crime would be found in the pathologies and inequalities of society,[5] and strategies devised to address deviant behaviour on a structural rather than an individual basis.

This philosophy has most practical significance in terms of gender with respect to the *mens rea* requirement for sexual assault. The Supreme Court of Canada, in *Pappajohn v. R.* [6] decided that an honest though unreasonable mistaken belief in consent is a defence to a charge of sexual assault. This is consistent with the free will approach to fault described above and avoids the danger of punishing someone who did not consciously take the risk of sexual contact with an unconsenting person. The issue of whether the rule in *Pappajohn* should be changed, perhaps more than any other, epitomises the debate about the sexual politics of the criminal law of sexual assault. Indeed it raises significant questions about whether the criminal law embodies a male perspective on culpability and adequately addresses the harms distinctively experienced by women.[7]

There are at least two problems with a rule of law which does not require people to take reasonable care to ensure consent before having sexual contact with others. Firstly, those who are capable of taking reasonable care are acquitted along with the incapable. Secondly, those who are incapable of taking reasonable care pose a grave danger to others, mostly women and children, the primary targets of sexual assault.[8] The rule in *Pappajohn* does not require those men who believe that no means yes or that women welcome violent sex to re-examine or take responsibility for the harmfulness of their self-interested misconceptions.[9] The structural factor of socialization is ignored. A legal system committed to offering women and children protection from sexual assault might well include an offence of negligent sexual assault.

Pappajohn raises a broader question. Does the criminal law offer women adequate protection from sexual assault? Whatever boundaries are set for sexual assault offences, e.g. in the judicial construction of such concepts as "sexual", "fraud" and "consent", and whatever standards are set for the communication of lack of consent,[10] they will be an expression of male expectations of women's accessibility.[11]

In turn, the ongoing debate about the values embodied in sexual assault law is part of a broader question of whether the criminal law is tilted toward the protection of male interests. Some examples can be found in *A Feminist Review of Criminal Law*.[12] Property interests are protected by a wide range of criminal offences. However, women own significantly less property than men.[13] This may be due to the economic

oppression of women and the allocation of gender roles. The concept of property used, however, in such offences as theft and mischief, is traditional and narrow. It does not include interests capable of being labelled property interests such as a right to social security or public housing, access to the workforce, or to a safe, non-sexist, work environment. It is possible to argue that the selection of interests worthy of protection by the criminal law reflects a double standard. Similar arguments could be made with respect to such matters as the preservation of the state, the protection of privacy, the status of heterosexual marriage, and freedom of expression.

Specific Crimes

Much more attention has been paid to the gender implications of specific crimes, particularly those relating to reproduction and sexuality, than to the theoretical structure of criminal law.

1. Crimes which limit reproductive choice:

Parliament could attempt to replace the abortion offences declared unconstitutional by the Supreme Court of Canada (discussed below with respect to the Charter [14]) with offences consistent with the Charter. As well, some offences could in theory be used to control reproductive, including childbirth, decisions. Section 223(2) of the *Criminal Code* [15] if applied to a pregnant woman, could fall into this category. It includes within homicide the injuring of a "child before or during its birth as a result of which the child dies after becoming a human being." Section 242 criminalizes neglect to obtain "reasonable assistance" in childbirth. Any present or future offences which use the criminal law to control women's reproductive behaviour have implications for the status of women.[16]

2. Prostitution:

Offences associated with the sale of sexual services have traditionally conveyed very clear messages about separate spheres of deviance. Thus, for example, prostitutes were women and deviant, while males could be exploiters of women and deviant, or consumers of prostitution and non-deviant.[17] The present offences of soliciting, living on the avails of prostitution, etc. are now gender-neutral, and attention has shifted somewhat to enforcement patterns. However, there still remain structural concerns about inadequate responses to poverty and the appropriateness of punishing women for trying to earn their living in a context of economic inequality. If prostitution is a part of the subordination of women then punishment can be seen as compounding that oppression.[18]

3. Pornography:

The concerns here do not arise because of the criminalization of women's reproductive or sexual activities. Rather, the debate has focussed on whether the criminal law has a role to play in addressing the harms that women suffer in this context, and whether the present law of obscenity is responsive to those harms. Traditionally, obscenity law was designed to regulate morals and may not address the role of pornography in the subordination of women. Indeed, obscenity has been interpreted to include images of lesbian sexuality.[19] Recently, a line of cases has identified pornography as dehumanising, degrading, and dangerous for women.[20] A significant question for the criminal law, which has now taken a constitutional form and is discussed below, is whether the production and distribution of pornography should be seen as the exercise of freedom of expression or as behaviour which causes significant harms to women. Any reform of the law in this context should take into account the view that pornography eroticizes, makes into sex, the subordination of women. It eroticizes racial difference and thus constitutes a practice of racial inferiority. It makes lesbianism, childhood, and disablement means to male sexual arousal.[21] Again a major question here is whether the criminal law adequately recognises harms which women distinctively suffer.

Defences

One of the most practical and challenging questions relating to gender and the criminal law is whether the law of defences is constructed so as to respond fairly to the claims of justification or excuse made by both women and men. The concept of reasonableness is central to the law in this area, as defences will usually not be successful unless the accused acted reasonably. Questions have arisen about whether the reasonableness standard is constructed using a male perspective. As well the law has tended to approach defences in a narrow way, excluding information about the context in which the behaviour occurred which might have explanatory value. For these reasons, analyses of defences have gone beyond critique of doctrine to challenge the legal method underlying issues of whether punishment is justified.

A leading case is *R. v. Lavallee*.[22] Ms. Lavallee shot her abusive partner and claimed self-defence. In restoring her acquittal, the Supreme Court of Canada decided that expert testimony about the battered woman syndrome was admissible to dispel common myths about this phenomenon. The Court also said that the requirement of reasonableness, "must be adapted to circumstances which are, by and large, foreign to the world inhabited by the hypothetical 'reasonable man'." Thus the Court has indicated that the factor of gender is germane to what is reasonable. Further, the Court went on to remove the requirement of an imminent attack. In other words, it might now be possible to plead self-defence successfully in a case where the accused was not actually being attacked at the time of the killing. The case is important

methodologically as the situation examined was not simply the killing itself. Rather, the Court was signalling a willingness to examine social context in which gender is significant - the research on battered women, the socialization of women, the history of sex discrimination, and the fact that the imminent attack doctrine might in effect be a sentence of death. Concerns have been expressed about whether *Lavallee* will have harmful as well as positive effects. For instance, if women suffer from a relative lack of credibility in court, then use of expert testimony to explain women's experiences may not address this problem. Further, there is a danger that individual women may have to fit the "syndrome" in order to have their experiences understood.[23] Nevertheless, the case may signal a shift in the way judges and prosecutors will approach such issues.

Lavallee, in its approach to reasonableness, and its removal of the imminent attack doctrine, may have an impact on other defences, either through judicial decisions or through legislative changes to the *Criminal Code*.[24] Changes which are responsive to the needs of women could be drafted in gender-neutral language so as to apply to men if they found themselves in similar situations.

1. Provocation:

Lavallee can be used to support the argument that gender is germane to the ordinary person test in provocation.[25] This defence raises the question of what is understood to be so enraging to ordinary persons as to cause them to kill. It is possible that women might be enraged in situations which are not so understood.[26] Similarly, the functional equivalent of the imminent attack doctrine is the requirement that provocation be sudden. This could be interpreted as allowing a court to strip the event of its context so that the meaning of the "provocation" to, for instance, a woman who had been battered or raped in the past, would not be understood.[27]

2. Duress:

While section 17 (applying to perpetrators) does not have a reasonableness requirement, it does require a belief that the threats will be carried out. The common law defence (applying to parties) requires that the threat be of such a nature that a person of reasonable firmness could not be expected to resist. The Law Reform Commission has proposed that the offence be committed in reasonable response to threats.[28] Following *Lavallee* the law of duress may have to incorporate a realistic assessment of the contexts in which women are threatened.[29] The imminent attack equivalent is the requirement in the *Code* that the threats be of *immediate* death or grievous bodily harm. The Law Reform Commission would retain such a requirement, but it seems inconsistent with the *Lavallee* approach. A prostitute, for instance, might wish to argue duress as a defence to a soliciting charge where she had been threatened with harm by her pimp.

3. Necessity:

Reasonableness requirements, to which *Lavallee* would be relevant, could develop in this relatively new defence. The most significant implications, however, arise with respect to the way the defence of necessity has been constructed around the concept of an emergency.[30] This has important implications in terms of gender, since women in particular may wish to use the defence in situations not understood as emergencies - homelessness, poverty, and pregnancy (were abortion to be recriminalized).[31]

The Charter and Substantive Criminal Law

One major way in which concerns about gender fairness in the criminal law can take practical legal form is through argument about constitutional norms. The Charter sets standards against which our criminal law must be measured, both by the judiciary in response to court challenges and by Parliament in passing new provisions.

Firstly, in order to satisfy section 15, the criminal law must be consistent with the constitutional right to sex equality. Secondly, in order to satisfy section 28, it must be consistent with sex equality in the enjoyment of other Charter rights, such as security of the person and freedom of expression. Questions about the implications of these provisions have arisen in a number of cases, and others are likely to emerge. At this stage we know very little about what the Charter requires, since most criminal cases so far have been relevant to procedure and evidence.

The Supreme Court of Canada has already said that the old abortion offences were inconsistent with the rights of women to security of the person in *Morgentaler*.[32] It is not known whether new offences are constitutionally possible. As well it should be noted that the Court did not use a sex equality analysis to strike down the offences. This may become significant when the Court addresses the question of the constitutional status of the foetus.

The obscenity provisions have been challenged as contrary to freedom of expression in *Butler*,[33] so the issues discussed above under pornography will now have to be addressed by the Supreme Court of Canada on the constitutional level.

Further issues may arise. While *Lavallee* was not a constitutional case, it could be used to argue that failing to take gender into account in the construction of legal concepts is a denial of equality. Hence the discussion of defences above may have a constitutional dimension. For instance, Parliament might replace the requirement of immediacy in the defence of duress in order to make the defence consistent with sex equality.

There remains a gender-specific offence of infanticide in section 233 of the *Criminal Code*. This is unlikely to be challenged by any female accused person as it is of benefit to women. Hence Parliament, rather than the judiciary, will have to determine its consistency with sex equality. It could be seen as in conflict with a liberal understanding of equality, the "sameness" approach. However, the Supreme Court of Canada has rejected such an approach and emphasised instead a view of equality responsive to disadvantage.[34]

The Supreme Court has upheld the soliciting offence in section 213.[35] However, the offence had not been challenged on the basis that it infringed the equality rights of either women in general or prostitutes in particular. So an equality challenge is a possibility.

There is a strong trend toward constitutionalizing the *mens rea* requirement, at least with respect to serious offences. Thus the Supreme Court has struck down certain homicide offences which did not require the Crown to prove a guilty intent on the part of the accused.[36] Negligent murder is probably unconstitutional.[37] If this trend continues it may become constitutionally impossible to create an offence of negligent sexual assault, as discussed above. However, a relatively minor offence has the best chance of being constitutional.

Conversely, the Charter might have some radical potential, as yet unexplored. A political atmosphere in which sex equality is valued and given a meaning beyond gender-neutrality, might have implications for the values reflected in the activities which are criminalized. The law, might reflect, for example, more understanding for the desperation of poverty, of the harms of hate-motivated violence against women, and of the importance of gun control, in view of the risks to which women are particularly vulnerable.

ENDNOTES

1. For bibliographies, see L.Doerkson, "Women and Crime: A Bibliography" (1985- 86), 13 *Resources for Feminist Research* 60; S.B.Boyd and E.A.Sheehy, "Feminist Perspectives on Law: Canadian Theory and Practice" (1986), 2 *Canadian Journal of Women and the Law* 1, at 41- 52; M-A.Bertrand, C.Boyle, C.Lacerte-Lamontagne and R.Shamai, in J.Russell,ed., *A Feminist Review of Criminal Law*, Status of Women Canada, 1985, at 201-10. See also the Special Issue Devoted to Women and the Criminal Justice System, J.Abell and G.Geller, eds., (1985-86), 13 *Resources for Feminist Research*, and M.Cain, "Towards Transgression: New Directions in Feminist Criminology" (1990), 18 *International Journal of the Sociology of Law* 1.

2. The Ontario Court of Appeal judgment is reported at (1988), 37 C.C.C. 3d. 53. See generally T.B.Dawson, "Sexual Assault Law and Past Sexual Conduct of the Primary Witness" (1987-88) *Canadian Journal of Women and the Law* 310.

3. For instance, LEAF successfully intervened in *R.v. Canadian Newspapers Co. Ltd.* (1988), 43 C.C.C. 3d.24 (S.C.C.) to urge the Court to uphold the right of sexual assault survivors to insist on the non-publication of information identifying them.

4. See, e.g. C.Brants and E.Kok, "Penal Sanctions as Feminist Strategy: A Contradiction in Terms? Pornography and Criminal Law in the Netherlands" (1986), 14 *International Journal of the Sociology of Law* 269; and D.Klein, "Can This Marriage be Saved?: Battering and Sheltering" (1979) *Crime and Social Justice* 19, especially at 28; M-A.Bertrand, "Femmes et justice: Problemes de l'intervention" (1983) 16 No.2 *Criminologie* 77; P.File, ed. *Women and Criminal Workshop Proceedings*, Ottawa, National Association of Women and the Law, 1987 and in particular, D.Black-Froman, "A Critique of Crime from an Aboriginal Woman's Perspective", at 98.

5. See e.g. J.Hagan, *Structural Criminology*, Cambridge, England, Polity Press, 1988, in which it is argued that crime can be understood in terms of power relations.

6. [1980] 2 S.C.R. 120.

7. See generally, R.Graycar and J.Morgan, *The Hidden Gender of Law*, Federation Press, Australia, 1990, at 272-347, where the authors discuss women's experiences of criminal injuries.

8. See the Canadian Urban Victimization Survey (Female Victims of Crime), Solicitor General, 1985, at 2, and the Badgley Report, *Sexual Offences Against Children and Youth*, at 213-15 and 196-98.

9. One study has found that some men may have been socialized to have significant and self-interested misconceptions about women's behaviour. See A.Abbey, "Sex differences in attributions for friendly behaviour:Do males misperceive females' friendliness?" (1982), 42 *Journal of Personality and Social Psychology* 830.

10. In a recent case, *R.v. Letendre*, (1991), No. CC901003, Vancouver Registry, the judge stated that "no may mean maybe" and found that lack of consent had not been proved beyond a reasonable doubt as the complainant had not adequately communicated lack of consent to the accused.

11. T.B.Dawson, "Legal Structures: A Feminist Critique of Sexual Assault Reform" (1985), 14 *Resources for Feminist Research* 40.

12. *Supra*, note 1.

13. For information comparing the economic position of men and women, see the *Convention on the Elimination of all Forms of Discrimination against Women, 2nd Report of Canada*, Secretary of State, Minister of Supply and Services Canada, 1988.

14. *The Canadian Charter of Rights and Freedoms*, the *Constitution Act*, 1982, Sched.B, as enacted by the *Canada Act (U.K.)* c.11.

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

16. See the judgment in *R.v. Sullivan and Lemay*, October,30, 1990 (S.C.C.) in which the Court indicated that its decision that a full-term foetus in the process of being born was not a person was consistent with the "equality approach" argued by LEAF.

17. See C.Boyle and S.Noonan, "Prostitution and Pornography: Beyond Formal Equality" in Boyle *et al*, *Charterwatch:Reflections on Equality*, Toronto, Carswell, 1986, 225, at 231.

18. Madame Justice McLachlin gave a speech recently in which she was quoted as saying that the "law relating to prostitution ignores the real social problems which underlie the business, such as poverty and drug addiction". *The Vancouver Sun*, April 19, 1991. See generally the Fraser Report, *Pornography and Prostitution in Canada*, Ottawa, Ministry of Supply and Services, 1985; N.Erbe, "Prostitutes: Victims of Men's Exploitation and Abuse" (1984),11 *Law and Inequality* 609; K. Barry, *Female Sexual Slavery*, New York, Avon Books, 1981; B.Heye, "Prostitution: An Extreme Case of Sex Stratification" in F.Adler and R.James Simon, eds. *The Criminology of Deviant Women*, Boston, Houghton Mifflin,1979.

19. For cases, see M.Eaton, "Lesbians and the Law" in S.D. Stone, ed. *Lesbians in Canada*, Toronto, Between The Lines, 1990, at 127.

20. See *R. v. Wagner* (1985), 36 A.R. Pt 111 (Alta. Q.B.); *R.v. Rankine* (1983), 9 C.C.C. 3d. 53 (Ont. Cty.Ct.); *R.v. Ramsingh* (1984), 14 C.C.C. 3d. 230 (Man. Q.B.); *R.v. Red Hot Video* (1985), 18 C.C.C. 3d.(B.C.C.A.); *Towne Cinema Theatres Ltd. v. R.* (1985), 18 C.C.C. 3d. 193 (S.C.C.); *The Queen v. Fringe Product Inc.* (1990), 53 C.C.C. 3d. 422 (Ont. Dist. Ct.).

21. See, e.g. A.Dworkin, *Pornography: Men Possessing Women*, New York, Perigee, 1981.

22. [1990] 1 S.C.R. 852.

23. See e.g. J.Blackman, "Emerging Images of Severely Battered Women and the Criminal Justice System" (1990), 8 *Behaviorial Sciences and the Law* 121, discussing case studies which raise issues of race and class bias, and E.Schneider, "Describing and Changing: Women's Self-Defence Work and the Problem of Expert Testimony on Battering" (1986), 9 *Women's Rights Law Reporter* 195.

24. See D.Martinson, "Implications of *Lavallee v. R.* for Other Criminal Law Doctrines", forthcoming in the *U.B.C. Law Review*.

25. The Supreme Court of Canada, in *R.v.Hill* (1986), 25 C.C.C. 3d. 322 has already recognised that factors such as age or gender are relevant, although the trial judge need not instruct the jury about this.

26. See T.Pickard and P.Goldman, *Dimensions of Criminal Law*, Vol.11, Queens University Kingston, at E-9.

27. There are signs of a willingness to examine context in the case law already. In *R.v. Daniels* (1984), 7 C.C.C. 3d. 542 (N.W.T. C.A.), a case where a woman stabbed another woman who had been having an affair with her husband, the court was of the view that it should consider past events which gave meaning to the insult in question.

28. *Report on Recodifying Criminal Law*, Report 31, Ottawa, 1987, at 35.

29. For instance in *R.v. Robins* (1982), 66 C.C.C. 2d. 550 (Que. C.A.), a woman was convicted of kidnapping where she claimed to be acting out of fear of her husband, who had assaulted her on previous occasions, and out of fear that he would take their child to the United States.

30. See *R.v. Perka* (1984), 2 S.C.R. 233.

31. See, e.g. Pickard and Goldman, *supra*, note, at E-243, and Bertrand *et al*, *supra*, note 1, at 43.

32. *Morgentaler, Smoling and Scott v. R.* (1988), 37 C.C.C. 3d.449.

33. *R.v. Butler* (1990), 60 C.C.C. 3d. 219(Man. C.A.)

34. *Law Society of British Columbia v. Andrews* (1989), 56 D.L.R. 4th 1 (S.C.C.). Factors which were mentioned as leading to the conclusion that a person was being treated unequally included whether (s)he belonged to a group lacking in political power and the place of the group in the entire social, political, and legal fabric of society. However, there is some uncertainty about the meaning of equality favoured by the Court. Thus in *R. v. Hess* (1991), 59 C.C.C. 3d. 161 (S.C.C.), the majority said that the old offence of statutory rape, which only men could commit, did not offend section 15. The reasoning was not that men did not belong to a disadvantaged group in this context but that only females could get pregnant.

35. *R. v. Skinner* (1990), 56 C.C.C. 3d.1 (S.C.C.)

36. *Vaillancourt v. R.* (1987), 39 C.C.C. 3d.118 (S.C.C.)

37. *R. v. Martineau* (1990), 58 C.C.C. 3d.353 (S.C.C.)

PART II

MINISTER'S OPENING ADDRESS

OPENING ADDRESS

- THE HONOURABLE KIM CAMPBELL -
MINISTER OF JUSTICE
AND
ATTORNEY GENERAL OF CANADA

NATIONAL SYMPOSIUM ON WOMEN, LAW
AND THE ADMINISTRATION OF JUSTICE

JUNE 10, 1991
VANCOUVER, B.C.

First, let me say how delighted I am to welcome all of you to this symposium. It is a particular pleasure for me to have convened this gathering because the subjects which you will be addressing are very close to my heart.

National gatherings frequently take place in Ottawa; however, I believe that national concerns should be aired in all parts of Canada; and perhaps I am showing my personal bias by inviting you to attend this symposium, here on the West Coast, on my home ground of British Columbia. I welcome you all most warmly.

I would like to recognize, in particular, the presence and the role of Jim Lockyer, the Attorney General of New Brunswick, who last year initiated, at a federal-provincial meeting of Ministers of Justice, the idea of establishing a federal- provincial working group on gender equality in the justice system.

At that time, I undertook to convene a national conference on women and the justice system, not only to assist my government in its own planning process but to provide input to the federal-provincial working group.

I believe it is crucial that federal, provincial, and territorial governments work together in addressing gender equality in the justice system. I am impressed and encouraged by the willingness of the Attorneys General and their departments, not only to study this whole area, but to engage in joint co-operative efforts; efforts that will accelerate the process of bringing about the changes which must take place at all levels of the justice system to eliminate systemic discrimination.

I would like also to thank my colleague, Mary Collins, the Minister responsible for the Status of Women, for her presence with us and for sharing her views on women's experiences in the justice system in Canada.

Especially, I want to thank each and every one of you for your willingness to be present at this symposium, to share your concerns and your views, and most importantly, to work together to search for solutions, and to produce recommendations for addressing the problems of inequities which women face in Canada's justice system.

To do this we need to have a clear picture of the society which is Canada today, and of the women in our society.

Canada is an ethnically diverse country. It is a multicultural, multiracial society. In 1986, more than one quarter of the population reported origins which were neither British nor French. Large numbers of women from diverse cultural backgrounds came to this country with their parents, or husbands, to seek a new life; they are often cut off from the larger community by language and other cultural barriers; and

they are trying to understand the history of their adopted country and to find their place in its future.

Females make up 51% of Canada's population. It is an aging population. There are 1.7 million women aged 65 or older (13% of all females), compared to 1.2 million men in that age group (9% of all males).

Almost half (48%) of Canada's women aged 65 and older are widowed, 40% are married, the remaining 12% are single, divorced, or separated. In comparison, 75% of Canada's men aged 65 and older are still married; only 14% are widowers; the remaining 11% are single, divorced, or separated.

One of every three women, aged 65 and older, lives alone, while only one of every seven such men lives alone.

There are 910,000 single-parent families in Canada (13% of all families); and an overwhelming proportion, 82% of them, are headed by a woman. Over half of these women (57%) are in the low income group.

Women earn significantly less than men. In 1987 women full-time workers earned only 66% of the average incomes earned by men. (This has come about because of the different nature of career opportunities open to women). Female university graduates earned only 70% of the income of male university graduates. In 1987, 14% of the total Canadian population was in the low income group, and 59% of Canadian adults who lived in poverty were women.

Women heading single-parent families are less likely than their male counterparts to own their own homes (41% for females compared to 64% for males in 1981). They are more likely to have lower average family income and also more likely to spend a higher percentage of their income on shelter (25% for women compared to 16% for men in 1986).

In 1989 58% of women aged 15 and older were in the labour force, compared to 77% for men.

These figures illustrate what we know; women are generally economically worse off than men; more women than men have low incomes; fewer women than men have jobs; fewer women than men occupy professional and management jobs and the average income of women is significantly lower than that of men.

Many women are raising families and caring for aged parents, as well as holding down jobs and finding time to contribute their skills and energies to their community in countless ways.

Add to this general overall profile the fact that there is increased reporting of violence against women. Violence against women is still largely overlooked by society; too often domestic violence is regarded as being brought about by the woman herself; this in turn, creates for victims of violence a climate which is hostile rather than supportive.

Victims of spousal assault are mostly women. They constitute almost 90% of spousal assaults and over 75% of spousal homicides. Former Justice Bertha Wilson recently expressed the view that family violence will not be solved until men recognize women as full equals and acknowledge that the problem is really theirs.

Women live in fear of violence. In 1988, 40% of women aged 15 and older said they felt unsafe walking alone in their neighbourhoods at night. In contrast, only 12% of men said they felt unsafe.

Emerging from this skeletal statistical picture, is the knowledge that permeating the reality of many women's lives in Canada, is either the experience, or the fear, of poverty and violence.

It is in this climate, in this reality, that we must address the situation of women and the justice system. As part of an ongoing effort to identify priority issues, earlier this year my department commissioned an informal survey of selected national organizations in Canada. When asked about women and justice issues, most of those surveyed responded with more questions; but the theme which emerged was that the achievement of legal justice for women was not enough. They stressed that real justice for women requires a new vision of justice, which embraces a deeper commitment to the principles of human and civil rights, social justice and genuine equality than the present system offers. Virtually all the organizations were of the view that the justice system lacks understanding and sensitivity to women's reality.

I believe that the Canadian system of justice must, and should be able to, serve all Canadians, and, I'd like, for a moment, to share with you something of my vision of the justice system and what I'd like to accomplish.

First, I want to promote the notion of what I call "inclusive justice". A concept of inclusiveness is central to the development of reform in the justice system. Rather than fragmenting the system of justice to respond to special interests and particular needs, I believe the system should be broad enough to accommodate the needs of all Canadians. A mainstream justice system in which some people have to appeal for special arrangements is simply not a fair and acceptable system.

I want to look at a system that is flexible enough, creative enough, and sensitive enough that all Canadians can find their place in it, and can see their own reality reflected in it.

And it is important to reinforce the fact that women are not a minority group in Canadian society. We are a visible and vocal majority striving to ensure that the Canada of today truly reflects our reality; and we are a visible and vocal majority with an understanding of what it feels like to be a member of a minority.

I want to stress that this notion of inclusiveness must address the concerns of **women**, the concerns of aboriginal people, of visible minorities, and of those with disabilities. This symposium will provide a valuable means for collectively exploring gender equality in the justice system and for finding ways of making the system responsive. In this regard, as Minister of Justice, I am working very closely with my colleagues- the Secretary of State, the Minister of Indian Affairs and Northern Development, and the Minister of Multiculturalism and Citizenship, whose mandates and departmental activities are very much involved with these concerns.

Later this year, in September, I shall be co-sponsoring with the Honourable Margaret Joe, Minister of Justice of Yukon, a Federal-Provincial-Territorial Conference on Aboriginal Justice. Again, I believe that a comprehensive, inclusive system of justice must, and can, be developed to meet the needs of all Canadians. The Conference in September, as well as this symposium, will be vital parts of the process of moving toward such an inclusive system.

It is time to broaden the mainstream of Canadian society so that no Canadian feels like a second-class citizen, whether female or male. It will require a capacity to work together, in partnership, to influence and educate decision-makers in all areas which govern our lives. What we are trying to do is not advocate women's rights in and of themselves as something separate. We are saying we want to be part of the mainstream and we want to be part of it on our own terms.

One of the most influential thinkers in this area was a man named Frantz Fanon, who died in 1961 at the age of 36. He was a psychiatrist from the French island of Martinique, and he was black. He wrote a book called *The Wretched of the Earth*, - in my view, one of the most important books in the post-war period. Not a lot of people knew of him personally, since he died so young and his views have been articulated by others.

In looking at the experiences of his fellow blacks in Martinique, and later in France where he practised, and ultimately in Algeria, he recognized a kind of neurotic symptom or neurotic manifestation that could not be traced to the classical individual traumas that psychiatrists look at to try to explain why people suffer neurosis. As a

result of his studies he developed a theory of something that he called a "collective neurosis" that results from group trauma. He articulated a theory of the psychological effects of colonialism on people who are oppressed as a result of their race or their culture, and this notion he developed had, as its corollary, the idea that people can never really attain psychological wholeness unless they can be who they really are. If we live in societies where we are forced to conform to other cultural norms or to be something that we are incapable of being fully, (if one is black, one is incapable of ever being completely white; if one is a woman, one is incapable of ever being completely a man), if we are forced to try and conform to those sorts of norms, we will always suffer a certain kind of psychological damage. And that is a very simplistic explanation of Fanon's views.

I do not accept his prescription of violent revolution but I think he touched on an important dynamic that was reflected in many of the movements of the 1960's - the women's movement, Black power and others - that were based on being accepted in one's own terms. Fanon's writings promote the idea that true liberation allows people to be who they really are, rather than requiring that they assume an imposed identity.

I think women have come a long way in being able to say "we want not just to be equal, but we want to be equal as *women*; we want to participate in the mainstream of society but we do not want to have to pretend that bearing children is not a significant part of our lives. We want society to recognize that our career patterns may be different from those of men, but that they are just as valid".

Initially, women in my generation and women who had come before us, felt that in order to be accepted, in order to make our way in non-traditional areas, we had to be "ersatz" or imitation men. We had to make our way on the same terms as men did in those positions and roles.

But with an increasing number of women in Canada functioning in what were previously, non-traditional jobs, women have begun to question the norms established by men, and to insist on being accepted on their own terms. They have begun to push against the limitations of institutional structures and operating procedures that have been designed to accommodate the lifestyles and career patterns of men, and to demand recognition of their own needs. The mainstream is changing, and a broad and encompassing mainstream <u>will</u> reflect the differing experiences of men and women.

I want the law to be accessible and understandable to Canadians. For too long, there has been the assumption that law is solely the domain of lawyers. To use a line from a Kris Kristofferson song of some years ago, "the law is for protection of the people". I am committed to simplifying our public message, so that the people of Canada will

have a better sense of how we are going about both reforming the law and making the Canadian legal system more accessible and responsive to them.

I want to ensure that our laws and our policies are expressed in ways which are readily understandable to "the people" - to those outside of the legal community; and this includes writing legislation in language that can be understood by ordinary people. We must demystify the law and the justice system so that it can be more readily understood by all Canadians and be more accessible to them. For too long most people have, so to speak, stood on the outside of the doors of justice, knocking to come in. I want those doors to be open for all Canadians. And at this symposium, in particular, I am inviting you to "come on in" and help to break down the barriers which exist, whether they be real or perceived. It is a timely opportunity for input to the development of the concept of an inclusive system of justice that will incorporate the concerns of the women of Canada today.

In the past, many women have worked tirelessly to bring about changes in the law to improve the situation of women. And they have done so in a variety of ways.

The National Council of Women, formed in 1893, exerted pressure to secure the vote for women; the efforts of Nellie McClung, Emily Murphy and friends, established recognition of women as "persons" in 1929, with the right to be appointed to the Senate.

There are many ways to work for change. More recently women's groups have coalesced around issues to bring media attention to their concerns; they have engaged in lobbying to promote their cause. This is one way of influencing opinion to bring about change.

Some groups use litigation as a means to seek legal remedies which address systemic discrimination - we are all familiar with the activities and successes of the Women's Legal Education and Action Fund (LEAF).

Over the years a wide variety of women's groups have undertaken projects which have contributed to a better understanding of the need for change. Following the renowned *Murdoch* case, during the 1970's, the Canadian Federation of University Women carried out valuable research in the area of women and family property law and made recommendations on matrimonial property and support.

L'Association féminine d'éducation et d'action sociale (L'AFÉAS) was in the vanguard in proposing protection for women engaged in family businesses or enterprises with their spouses.

Throughout the 1980's the impact of the National Association of Women and the Law has been felt in Canadian law schools and elsewhere in the legal profession, and continues to exert a compelling influence.

The ongoing activities of the Elizabeth Fry Society, over the years, have assisted women who have been exposed to the criminal justice system. The Elizabeth Fry Society, along with the Aboriginal Women's Caucus, played an integral part in developing the recommendations of the Task Force on federally-sentenced women, which resulted in the decision to close Canada's Prison for Women.

The efforts of all these and many other groups have been relentless and the list is staggering.

Additionally, outstanding women within the legal system have provided insightful analyses on the subject of women and the law. Former Justice Bertha Wilson's address to the Fourth Annual Barbara Betcherman Memorial Lecture in February 1990 is a landmark example. And I am pleased that the Canadian Bar Association has established a Task Force on Gender Equality in the legal profession, which Bertha Wilson will head. I am sure we all await with great interest the findings and the report of this task force.

Rosalie Silberman Abella, Chair of the Ontario Law Reform Commission (and whom we are delighted to have as our keynote speaker this evening) has made many contributions on the subject of equality.

Madame Justice Beverley McLachlin has cited violence and poverty as the root causes for many of the concerns facing women in the justice system. And she has urged that society must "let women speak". This symposium will do that.

The actions of the individuals and the groups I have mentioned, along with numerous others, have exerted an influence which has resulted in gender issues now being on the public agenda. I believe the means for achieving change will need to differ to suit the climate of the times.

We hear frequently that the adversarial system has not served women well and that women espouse a consensus-building approach. I am sympathetic to this. Women have long wanted the subject of their relationship to the justice system to be dealt with on the government's agenda. In convening this symposium, I am stating very clearly: yes, it is on the government's agenda; and I am inviting you to share your concerns and your constructive solutions so that the agenda responds to women's needs. I hope that this kind of co-operation will move us forward at all levels of government.

This symposium is launching a process of dialogue which acknowledges and includes the expertise from outside as well as within the legal profession. I want to create a greater sense of trust in government and I hope to accomplish this by involving people, from all walks of life, in identifying the problems they see in the justice system and producing the options for addressing them. I would also like to ensure that government demonstrates an openness to considering such options.

Your message may assist those who make, administer and practice the law to do so in a way which addresses fairly the circumstances and needs of all Canadians. To do this we must be aware of the problems and the inequities which exist, and understand the situation of various groups in Canadian society - native people, visible minorities, persons with disabilities, immigrants, and women from all sectors. We must know what their concerns are with the justice system and search for solutions that justice in Canada applies and is seen to apply fairly to all.

In planning this symposium, preparatory regional meetings were held across the country, bringing together people from a diversity of backgrounds.

First, the message was clear - women want to, can, and must, articulate their concerns for themselves. They are no longer willing to hear others define women's concerns and needs in the justice system. They demand the right to be heard.

At the preparatory meetings a range of issues emerged which were seen, in general, to result in discrimination against women, but each of the meetings stressed the need to address two particular impediments to women receiving equal treatment: namely poverty and violence.

It is in the context of all these issues that the symposium is structured. We are not questioning whether gender bias exists in Canada; rather, we want to discover how biases are reflected in our justice system.

How do people exercise their discretion in administering the law? In her article entitled "The Dynamic Nature of Equality," Rosalie Silberman Abella emphasizes that "every decision-maker who walks into a courtroom to hear a case is armed not only with the relevant legal texts but with a set of values, experiences and assumptions that are thoroughly embedded". How does gender impact on the job? Does it make a difference if the court social worker is male or female or if the judge is female?

What are the economic consequences of divorce? We know that most women are poorer after divorce than most men. What is the effect of court-supported mediation? Does tax law adequately take into account the realities of sequential families? Do the child support provisions of the Act result in gender inequality?

How does the criminal law treat women as offenders and as victims? Madame Justice Beverley McLachlin, in a recent address on "Crime and Women - Feminine Equality and the Criminal Law" which she gave to the Elizabeth Fry Society in Calgary last April, puts forward this view: "In some cases, it can be argued, it (the criminal law) has treated women unequally and unfairly, unfairness that found its roots in inappropriate stereotypes of feminine behaviour and the failure to appreciate the true position of women involved in crime."

How can the court process be made fairer to women? And how can the sentencing process better reflect women's reality in terms of both sentencing women in conflict with the law, and sentencing those convicted of crimes against women?

And what about the selection processes in the legal profession? Who gets to be a law student? Who gets hired as an articling student? Who gets to stay on? Who gets to be a partner? a senior partner? a law teacher? a law dean? Who gets to be a judge? Who are the decision-makers in the process?

How do we educate and train people who will become, or already are, a part of the decision-making process, so that they are aware and sensitive to women's reality?

We must also look at what changes are needed to enable women and men both to carry out their work and, as well, to meet the needs of raising a family. I have said before, as Minister of Justice, that if I had had children, I would have faced a considerable challenge of balancing the demands of family responsibilities and work. And I am aware of the career restrictions that many women face in choosing to have a family; restrictions which do not generally apply to men.

The symposium agenda by no means covers all the areas of concern. Without question, there are other important and complex issues related to the justice system which affect women, that could and should be addressed. However, the topics selected for examination at the symposium support the priorities articulated at the regional meetings and, will feed directly into the existing federal-provincial mechanism which I mentioned earlier, namely the federal-provincial-territorial working group on gender equality in the Canadian justice system, established by the attorneys general. I am sure that Jim Lockyer, Attorney General of New Brunswick, will tell us more about this.

The work is being carried out in consultation with federal, provincial and territorial ministers responsible for the Status of Women. In my opinion, these joint initiatives are steps in the right direction. Almost ten years ago, in December 1981, with the support of all provincial and territorial governments, Canada ratified the United Nations Convention on the elimination of all forms of discrimination against women.

As a party to this Convention, Canada comes under international scrutiny when it reports on the measures taken by governments in Canada to implement the provisions of this important international instrument. This process is another demonstration of the positive co-operation between various levels of government in Canada that are committed to action in eliminating discrimination against women.

In participating in this symposium you have made a commitment to work with others to produce recommendations for change, and for this, I thank you. It may not be easy and there will be inevitable frustration; these are complex topics to cover in two and a half days; but it is my fervent hope that you will each have an opportunity to contribute some of your knowledge and ideas, to hear what others have to say, and to reach some conclusions that will bring to bear some important changes for women in the justice system.

I would like you to consider presenting a full range of solutions and recommendations. For my part, I undertake to consider all of them in developing the government's agenda, not only in my own department but by conveying them to other members of cabinet. I will also make your recommendations available to other bodies such as law schools, law societies, non-governmental organizations, the Canadian Judicial Centre, and in particular to those who are organizing the Canadian Association of Provincial Court Judges Conference on Gender Bias, planned for 1992.

In inviting people to this symposium, efforts have been made to involve a cross-section of representation from across Canada, taking into consideration gender, race, language, culture, regional interests and expertise and including representatives of provincial and territorial governments.

There certainly has been no difficulty in finding 250 people willing to participate. Canada has a wealth of expertise and it would have been easier to select one thousand people to attend this symposium, but not very practical. It is a sign of how far we have come, that we could probably have filled B.C. Place Stadium with people interested in gender equality. But this is not a meeting to learn about gender equality in general. All of you have particular expertise in relation to gender equality in the justice system. This is a working meeting designed to tap that experience in a concrete, action-oriented way.

We did experience difficulty, however, in finding men who either would consider themselves knowledgeable on this subject or, are recognized as experts on these topics, and I think this poses another challenge to Canadian society to ensure that the fundamental issue of gender equality is not isolated as a women's issue. The truth is that many men support the struggle for gender equality. It is indeed a societal issue, and I want to thank those men who have agreed to contribute their views and experience.

Time is a precious commodity for all of us and I hope you will feel that the symposium is a good investment. You may not all share the same view of the problems, or of the solutions. It is absurd to think that a group that constitutes 51% of the population would reflect an ideological uniformity. The important thing is to make these issues mainstream issues - part of the array of issues that constitute the agenda of public policy debate in this country. I trust you will address them with openness and receptivity, and I hope that you leave with a better sense of how law and the administration of justice can better serve the women of Canada.

I look forward to hearing your views and receiving your recommendations, and I thank you very much for your generosity in agreeing to be part of this gathering. I want to conclude by saying that I bring to this symposium the simple premise that there is nothing even faintly radical or strange about the notion that Canada's justice system should reflect the reality of a group that constitutes a majority of its population. Justice for women is, quite simply, justice.

OPENING ADDRESS

- THE HONOURABLE MARY COLLINS -
ASSOCIATE MINISTER OF NATIONAL DEFENCE AND
MINISTER RESPONSIBLE FOR THE STATUS OF WOMEN

NATIONAL SYMPOSIUM ON WOMEN, LAW AND THE ADMINISTRATION OF JUSTICE

JUNE 10, 1991
VANCOUVER, B.C.

Good Morning. Today is an historic day for women and for the justice system in Canada. Like explorers of old, we are embarking on a voyage to chart the course for women's equality within one of the most fundamental cornerstones of our society - our justice system. Our journey may be difficult. We could face storms of resistance as we seek to alter some of the basic tenets of the system.

It will not be easy to ride the winds of change, as we are buffeted by the advocates of time-worn tradition and procedures. But our search to establish new territory will surely end in success, if we are fearless in our venturing, respectful of each other's knowledge and experience, dedicated to excellence and committed to our ideals and our dream.

Where do we start, where do we want to go? And how then, do we get there?

Well, I will begin by rejoicing that so many women have come here today. Come from across the country, with experience, with commitment and with ideas, all to participate in this voyage of change. I also want to thank Kim Campbell, our federal Minister of Justice and the provincial attorneys general for enabling this symposium to happen.

Justice and gender issues have not only been on the agenda of the federal, provincial and territorial Justice ministers, they have also been on my agenda and that of my colleagues, the provincial and territorial Status of Women ministers. These two efforts have now been linked and consequently, the views and recommendations from this symposium will flow to both groups for action. Indeed, when I meet with my colleagues next week in Newfoundland at our annual conference, the results from this meeting will form an important part of our agenda, helping us move within each of our own jurisdictions and together, accelerate the pressure for change.

We start as well, with the foundation that has been laid by many women throughout the history of Canada, when we remember our suffragettes, who won for us the right to vote; the famous five who enabled us to be "persons"; organizations like the National Council of Women, the YWCA, the Federated Women's Institutes and the Canadian Federation of University Women - who have been working for nearly a century to change laws and to advance women's equality.

In more recent years, many others have joined the cause. Groups and organizations that represent immigrant and visible minority women, aboriginal women, women in conflict with the law, disabled women, rural women and business women. Each in their own way and in their own voices, speak out for the changes they wish to see, making our economic, political, social and justice systems more responsive and more relevant to the realities of women's lives.

Special voids have been filled by groups who now focus specifically on the relationship between women and the development of equitable laws and between gender and the administration of the justice system. The National Association of Women and the Law (NAWL) and the Women's Legal Education and Action Fund (LEAF) have raised significantly the public awareness of, and action on, gender issues in the judicial system and in the legal profession.

And finally, we look at the mechanisms put in place by federal, provincial and territorial governments right across the land; mechanisms that flow from the report of the Royal Commission on the Status of Women twenty years ago, Status of Women Bureaux, Advisory Councils on the Status of Women, and umbrella organizations such as NAC (National Action Committee on the Status of Women) and the Fédération nationale des femmes canadiennes-françaises. All of these have played important roles in naming the issues, in influencing decisions and in moving Canada to a position which is the envy of many others around the world.

But organizations, councils and bureaus can only be effective if they are listened to and supported by at first dozens, then hundreds, and thousands of women active on the front line. Women who work with women who suffer the consequences of economic inequality, women who are victims of violence and women who have not been treated fairly by the justice system.

As we turn to the issues of women and the justice system, it is <u>these</u> first hand experiences, from <u>these</u> women, which provide the evidence of why changes are required. These real life cases confirm that the legal system <u>has</u> to keep pace or fail one half of the population.

Time and time again, we get the message that crimes against women and children are somehow not as important as crimes against property or crimes against men. Over and over again, women receive a message that their economic and social contributions are not as valuable as those of men.

These perceptions have a tremendous impact on the daily lives of women. For female victims of violence, in particular, their lack of confidence in the ability of the justice system to give them a fair hearing, reinforces a belief that it is often pointless to lay charges against their assailants.

This lack of confidence in the justice system, combined with threats of retaliation in the future and the prospect of economic hardship, makes it extremely difficult for a woman to report an abusive husband or partner, particularly if young children are also involved.

Women question whether the justice system is indeed just. If the law seems to offer greater protection to the assailant than to the victim, in cases of unreasonable delay for example, women wonder whether there is any true understanding of the social, economic and political realities of their lives. The law is seen as perpetuating these existing inequalities.

And let us not forget on a broader level, the Canadian justice system touches the life of every woman in this country, in some small way, every day. It regulates our interactions, with others, and with the state. It impacts on options within our personal lives. It influences women's sense of security of person and freedom of mobility. Ultimately, our association with the justice system - whether a distant or a close one - determines our concepts of justice and of equality. And ultimately affects our self-esteem, and our views of our place in society.

Well, if that is our starting point, where do we want to go?

It seems to me that, as women, the kinds of changes we want to see require some fundamental rethinking of the basic building blocks of our society. Equality does not mean the same. Increasingly, women are saying that a society built only upon male values, male perspectives, and male experiences is not just lacking in fairness - it is failing to recognize the true potential of the human race.

Do you remember a decade ago when women were just breaking down the doors to the business world. We all looked alike - "wanna be's", in our starkly tailored suits and sombre colours.

Now women are saying "enough! I not only want to express my own sense of self and my individuality through my dress, I don't like the other rules around here either." Who set the traditional working hours of 9 to 5, hierarchical command structures, the set division of tasks which promotes isolation rather than integration? Not women, that's not our experience. We might design our organizations perhaps in somewhat more chaotic forms, but they would be flexible and responsive, horizontal and holistic, and I believe we could achieve our goals just as effectively. Probably the best answers lie somewhere in between.

If we took the best of both, if we freed our thinking of such stringent barriers, examined societal influences - education, entertainment, media - and if we redesigned these influences to truly reflect the diversity of the male and female experience, we could, I believe, build a better society.

Perhaps some of you have had the opportunity to experience the multimedia drawings and poetry, "The Trials of Eve", by Pnina Granirer, who lives here in Vancouver. It has also been transformed into a wonderful film produced by Gretchen Jordan-

Bastow. In this very powerful documentation Pnina suggests how the views of women's powerlessness and place in our society derives from the Christian Judaic understanding of Eve's fall from grace when she tried to grasp the apple, the symbol of knowledge and power.

However, as "The Trials of Eve" goes on to say, the apple that has been in the hand of Adam for these many centuries has gone sour and the world's problems are too much for only half the human race (the ones in power) to handle. Harmony and balance between the sexes, is portrayed as the key to personal, inter-personal and global harmony.

But you may well ask if that isn't too idealistic a view to hope for. Maybe, but cannot we, as women, work each in our own way towards achieving that new balance?

Let me give you a very small, but concrete example. Over the past two weeks in Ottawa, a few of us had an illustrative example of how we can do things differently and make changes. Dawn Black, women's critic from the NDP, had put forward a Private Member's bill which would give Parliamentary sanction to December 6th as a National Day of Remembrance and Action on Violence Against Women. The bill, fortunately, was drawn in the Private Member's Lottery and became eligible to be a voteable item. Dawn approached me and Mary Clancy, the women's critic from the Liberals, for our personal support and our help in getting support from other members of our respective Caucuses. We both agreed and went to work. The bill passed Second Reading and Committee unanimously last week with active support from many women and male MPs. But even so, what kind of comments did I receive from some quarters and from some media? "Isn't it rather strange to support an opposition bill? Why would you let someone else get credit for something? Was it because you were women you were able to do this?" Well, maybe it was, but if something is a good idea, isn't it a good idea to support it? Yes, I recognize our Parliamentary system is built on an adversarial model, but in my mind, one of the reasons it has fallen into disrepute is that the public is tired of constant posturing and conflict. Perhaps we might all do better if we emphasized consensus building and altered our political structures to incorporate a more feminist approach to problem solving.

So, I believe when we talk about achieving equality for women we must also talk about a society with institutions which are fundamentally based on a more appropriate sharing of power, on a more <u>balanced</u> set of values and processes that truly reflect male and female perspectives on life.

Thus, I return to my final question. How do we get from where we are today to that more ideal society?

Over the next two and a half days, you have before you an opportunity to take a fresh look at our justice system and how it responds to the realities of women's lives.

Let us look at the challenge at hand, some of the specifics we might be able to change in real terms in the justice system that could empower women.

You have the opportunity to take a look at the system from the viewpoint of the people it serves, as well as those who are involved in the delivery of the system. We need to hear many voices -- women as victims, witnesses, clients and offenders (who are themselves often victims of abuse and crime). And, we need to hear the voices of other disadvantaged groups. We need to hear their views on how the system serves them.

However, we need to go farther. I would echo the views of former Supreme Court Justice Bertha Wilson, who, as you know, is currently heading the Canadian Bar Association's Task Force on Gender Equality. In accepting the B'nai Brith Women of Canada Achievement Award last month, she advocated:

> "making a critical review of accepted norms and institutions, including those we hold dear, and being open to the possibility that some traditions would be better deposited on the scrap-heap of history".

She included in these, the historic concept that men have a God-given authority over other members of the family and the notion of family privacy under the law.

As she illustrates, the privacy approach to home and family has been used to deny women and children the protection they deserve. While this approach may have served men well in the past, it is hurting women and children in the reality of today.

In my meetings with women's groups all across the country, I have heard repeatedly that there are many gaps in our legal system -- gaps between the ideal of equal respect for all individuals, and the reality that members of certain groups are favoured over others. Sexist and economic biases in the justice system have enormous consequences for women.

Women's groups interested in legal issues in our country have identified a number of areas of concern, and I'd like to reiterate these so we may keep them in mind during your deliberations. These concerns centre on:

- the current imbalance between the right of the accused to a fair trial, and the right of the victim to justice;

- the lack of women in senior positions in our justice system;
- gender bias in judicial decision-making;
- the revictimization of women reporting crimes through their treatment by the justice system;
- the lack of understanding of the social and economic realities for women in Canada, which not only contribute to crime but can also impact on how damages are awarded;
- and, the need to examine the underlying - that is, "male" values and principles that shape the substantive law. Prime examples might include the concepts of the "reasonable man" and the principle that "it is better that a thousand guilty men go free than one innocent man is convicted." The latter maxim is particularly difficult for assault victims to accept.

Above all, women would like to see greater recognition of the seriousness of violent crimes against them and their children. In fact, many would assert that these should be considered among the most serious crimes committed in our society. Despite the *Criminal Code* amendments of 1983, in many situations police and Crown officials continue to elect to charge sexual assaults at level one, because it is easiest to obtain a conviction under this offence. We must question why this has become so utterly commonplace.

Yes, we will reach our goals by examining these issues and bringing forth actions for change.

And we will get there as well when we link this symposium with other initiatives that are taking place across the country to change and improve the situation for women.

Ones that are a priority for me, are the efforts to reduce and eliminate violence against women in our country. Many women and men are working on the front lines to assist women and children who are victims of violence, and within the justice system to ensure that the issue is understood and dealt with effectively by judges, lawyers and police.

Municipalities and provinces are undertaking a wide range of programs focusing on education of the public, protection of victims, and rehabilitation of offenders.

At the federal level, we recently announced new funding for the family violence initiative, $136 million over the next four years. These funds will support activities

and partnerships in a variety of innovative programs directed at breaking the cycle of family violence and child abuse.

Most importantly, in last month's Speech from the Throne, we announced our intention to name a special panel to inquire into the many dimensions of violence against women in Canada and to suggest innovative solutions and plans of action. I am presently working on the terms of reference, process, and membership for the panel and have been consulting widely for input on these matters. I envisage the overall approach of the panel as being inclusive, responsive, interactive and innovative. We hope to announce the details in the summer so work will be under way by September. The result, I hope, will truly make a difference in women's lives as will the results of your discussions.

Canadians, particularly women, are looking for a renewed signal that their legal system is based upon a framework of social justice. It is, therefore, vital that those involved in the administration of justice in this country -- the legal community and governments -- show that they are listening, show that they are hearing, show that they are capable of responding.

This symposium provides all participants with a unique opportunity -- an opportunity to bring the perspectives and creativity of women and men to our legal system and to reshape the principles that govern our society.

The possibilities for women are indeed promising. Because of the many connections between women's lives and the justice system, legal reforms have the potential to result in significant improvements in women's economic and social status, as well as in their physical and mental health. As a cornerstone of our society, a refurbished legal system could mean the beginnings of changes in many other institutions. Systemic change can mean the end of systemic discrimination.

I am sure you will agree that this would be of benefit to all of us, both women and men, and it would be invaluable to us as a nation.

As Canada prepares to enter the 21st century and embark on a new millennium, we face many great challenges. Challenges that require creative, cooperative and urgent responses.

The increasing entry of women into the public sphere is well-timed to meet these challenges. We have the opportunity, for example, to decrease our reliance on individualism, confrontation and adversarial relations. We have the chance to expand our use of more cooperative problem-solving techniques -- techniques that tend to be favoured by women. I hope that we might now bring this to our legal system.

Men too, should be more involved in this reshaping of our justice system. If we are to make progress in addressing inequalities, we must include men in our work. If men are deemed part of the historical problem, they have to be part of the solution. And, if our goal is to create a more just and equitable world for women, we must also create a more just and equitable world for men.

In order to make the most of this opportunity, we need to work together. We need to share information and learn to listen to each others' perspectives. We need to remember that no two women and no two men share the same realities. We must learn to listen to each others' truths.

And so, two days from now this part of the voyage will end. You will trim the sails and drop anchor, return home exhilarated by your experiences. But I caution, our odyssey to the heart of the matter will require a series of voyages - voyages of discovery of ourselves and our society - as we search for the new world of true justice and true equality.

So now, as we set sail, let me leave you with a small offering, an offering of poetry - which is my own way of getting to the heart of the matter and which I wrote whilst on the journey here. It's entitled, *Standing Alone*.

STANDING ALONE

WHAT IS THE HEART
THE HEART OF THE MATTER
THE CROWN CRIES - I OBJECT
THE JUDGE REPLIES - "OVER RULED"
THE WOMAN - STANDS ALONE

IN OUR HEARTS
DO WE KNOW JUSTICE
SHE IS NAKED NOW WITH HER SCALES
WE HANG IN THE BALANCE
WHY DO WOMEN - STAND ALONE

DOESN'T SHE UNDERSTAND
I WAS DRIVEN TO IT
HE TOLD ME I WAS NO GOOD
WHERE WAS I TO TURN
WHY DID I HAVE TO - STAND ALONE

AM I ONLY MY TEARS AND MY LAUGHTER
AM I NOT A REASONABLE PERSON
ENOUGH! NOW WE MUST TIP THE SCALES
SO WOMEN NO LONGER STAND ALONE

WILL YOU JOIN ME TO FIND NEW WAYS
TO RE-DEFINE THE HEART OF THE MATTER
MADAME JUSTICE - WE ARE IN YOUR IMAGE
WOMEN - WE WILL NO LONGER - STAND ALONE

KEYNOTE ADDRESS

REVISED VERSION

KEYNOTE ADDRESS

- ROSALIE SILBERMAN ABELLA -
CHAIR
ONTARIO LAW REFORM COMMISSION

NATIONAL SYMPOSIUM ON WOMEN, LAW AND THE ADMINISTRATION OF JUSTICE

JUNE 10, 1991
VANCOUVER, B.C.

In 1972, the year that I was called to the bar, Margaret Atwood wrote in her classic book *Survival*, "To know ourselves, we must know our literature... Literature is not only a mirror, it is also a map." She could as easily have been talking of law. The centrality of law and its institutions cannot be underestimated as either a reflection of or guide to human behaviour within national boundaries.

Permit me then to provide the following simplistic answer to the time honoured question of whether laws create or respond to social norms: The answer is they do both. This may seem like laughing at the social ladder while climbing it, but I think there is more truth to it than many would admit. Its importance lies in being able to decide how to get to the fairest justice system, and whom we can comfortably take as travel companions. If law both confirms and generates norms, as I believe it does, then we can take everyone: the public whose views seek legislated endorsement or statutory inspiration, the politicians from whom the endorsement or leadership is sought, and the lawyers and judges who interpret all of the above.

Turning to the world of Hollywood, the source of many of my favourite metaphors and most of my professional fantasies, I see the road to equality for women in the justice system as the Yellow Brick Road. I see the feisty Dorothy leading the public, politicians, and legal justice professionals to find the "Wizard of Ms." who would provide the heart, courage and brains, and a way back to a kind of Kansas where everyone felt safe and protected and cared for.

As you remember, once Dorothy and her team find the Wizard, Toto pulls the Wizard's curtain to reveal not some mysterious oracle but an ordinary human being. It had been, until Dorothy discovered that the Wizard was human, an elaborate and inaccessible mythology of omniscience that seemed to please the sagacity-seekers. And that is the metaphorical introduction to my talk - the curtain has been opened, and the frailty of the dispensers of Wizdom (sic) revealed. A woman stands shocked at the deception, but she remains nonetheless intent on getting a remedy - as is the human Wizard on providing one. The movie, as you remember, had a happy ending once everyone acknowledged that they had been hiding their insecurities behind their securities, and once everyone was allowed to be who they really were.

So this is not about tearing down the Wizard's justice cathedral, it is about how to change what makes us insecure in the liturgy, and how to rearrange the furniture so that there is more room for more people to move around more comfortably.

I start by asserting that we have to stop pretending that the justice system is not about social justice. The public thinks law and justice are one and the same thing or intimate friends, or at least on speaking terms. If we continue to tolerate the dissonant dichotomy between the public's expectations of the justice system as the deliverer of justice, and an internal passionate defence by those inside that it merely

protects process not results, we risk perpetual mutual frustration. We need not and cannot and should not guarantee any particular result, but neither can we pretend that results are irrelevant. So we have to start by appreciating the wider culture and its anxieties under whose umbrella the justice system is operating, so that we can better understand the culture and anxieties of the justice system itself. And then, having played the overture, the play's female performers can come on stage and deliver their lines.

I want to start with the wider cultural picture because I think the country's emotional environment is very much the contextual issue for a discussion on justice. Then, with any luck as this lecture continues, the justice system may come into increasing focus like a Polaroid photograph and the images should become easier to identify and explain.

I think there are two main dynamics directing the cultural environment in North America and Canada today, and they are both worrying for different reasons. The first is the New Puritanism and the second is the New Pluralism. Both profoundly affect our capacity to create ameliorating strategies and each offers explanations for strategic delays.

First, the New Puritanism or Fundamentalism. As far as I can tell, the Old Fundamentalism was about religious orthodoxy and the maintenance of clear distinctions between right and wrong, as ecumenically declared.

In their personal firmament, fundamentalists found answers to most of life's tough calls and were spiritually content to resist moral ambiguity. As time went on, as is the case with many who feel they categorically know the difference between right and wrong, there grew a zeal to impose more universally the moral certainty puritanism preached. From there, it was a short jump from a morality whose tutor was religion, to a morality whose student was secularism. By the 1950's, after decades of moral pluralism, exhausted and wounded as we were by the horror and enormity of World War II, puritanism as secular morality surfaced as a majority phenomenon. It took the form of Dwight Eisenhower in the U.S., Louis St. Laurent in Canada, the suburbs, bungalows, 2.5 children per family, one spouse per marriage, June Cleaver and her son Beaver, a station wagon and a matching dog. The essence of the movement was conformity and the majority bought in. The "truth" was obvious, compliance was expected, and competitive truths and their adherents were squelched.

McCarthyism flourished in the name of this moral purity, and decent people behaved unforgivably for years. The people who started the movement were haters. Their followers were naive or worse. Anyone who resisted was labelled undemocratic, unpatriotic, Communist, or Jewish - often interchangeable terms in those days. Careers were ruined, injustices blatantly encouraged or not discouraged, horrendous

assumptions tacitly accepted, and all while the continent yawned and stretched and felt proudly unified by the purity of its monolithic and homogeneous morality.

Is it any wonder we had the turbulent 60's? Or the loquacious 70's. Or the amoral 80's. A devastating World War shatters presumed civilities; the victims are humanism and humanity; the need for spiritual catharsis creates a search for purifiers; the purification which starts nobly at Nuremberg eventually ends ignobly at the House Committee on Un-American Activities in Washington; the purified parents of the 50's create predictably bored progeny in the 60's; and a decade in the 60's is spent over-reacting to the overpurification and oversimplification of the 50's.

But the purification of the 60's created its own new tyrannical truths - about adults over 30 and whether you could trust them, about respectability, about rules, and about traditions generally. The only thing the people raised in the 50's and those raised in the 60's had in common was that each group thought they had a monopoly on truth.

And that's why we did so much talking in the 70's. We had to try to figure out which value system was better, which side was right. So we discussed the environment, women, minorities, disabled persons, aboriginal people, marriage, religion, children, sex, language, and education. We changed some laws and social norms, and started to regroup. We sought refuge in like-minded people, battered as we were by the increasing stridency of the national and local conversations.

We also started to divide. By the time we finished talking to or at each other in the 70's, we had no idea who was right and who was wrong. There were no villains but there seemed to be a lot of victims, and we were utterly confused.

In the 80's, we fervently became one of three things: conservatized, radicalized or self-absorbed. And each side of the triangle mocked the other two, claimed to represent a broad consensus, and expressed frustration with public institutions. We lost our compass - and our tolerance. We held each other under siege but we didn't know why we were giving ultimatums to each other.

And on top of all of this was imposed a *Charter of Rights and Freedoms*. I am a serious Charter fan and I always have been. But I think we have to be aware of what we coincidentally did in bringing in the Charter when we did. On top of the cynicism about whether democratically elected political institutions were properly accountable, we imposed unelected, unaccountable jurists to decide whether rights and freedoms no one understood but everyone passionately believed in were being violated. On top of a debate about whether individual rights or collective rights were supreme, we imposed a Charter that was ideologically schizophrenic on the subject, and offered as a tool for brokering the issue the great jurisprudential problem-solving concept found

in section 1: "It depends". On top of the public's relief that at last the concept of human rights was now constitutionally entrenched and therefore supreme, we imposed a notwithstanding clause, assuring people that in their own interests and for their own benefits, governments could suspend their otherwise constitutionally protected rights and freedoms, (but not, ironically, their constitutionally protected division of powers). And on top of a nation increasingly divided over how to unify whatever it was that was holding it together, we imposed a unifying document that seemed to protect everyone's right to stay diverse. The Charter, in short, gave voice to the lines.

So people who drew their lines through the debates of the 70's held tough and stayed tough through the 80's, comforted by the notion that the lines had become rights, and that the rights had been enshrined. Everyone, in short, began to claim a monopoly now not only on truth, but on justice as well. What could before have been labelled an individual's personal and idiosyncratic point of view, was now perceived by that individual as a constitutionally protected personal and idiosyncratic point of view. And when individuals start to perceive that their points of view have constitutional validity, they start to take those views and themselves very seriously. And from there it's only a short leap to intolerance, to the kind of Pavlovian urge to impose your views on others, and more importantly, to exude the fumes of moral absolutism fundamentalism exhales. In short, we've come full circle back to the puritanism of the 50's only now there are more truths demanding compliance and competing for primacy. And the voices are louder and more urgently strident.

But what makes the New Fundamentalism in my view more frightening than the Old Fundamentalism is the way it merges with the New Pluralism, producing a neurotic national psyche. Somehow this merger of "Isms" has been accompanied by the acquisition of noisy absolutes whose larynx is fear and whose voice is, therefore, urgently strident. We are forgetting, it seems, that nothing, not even rights, is absolute, and as a result, we are losing our balance, even as a country.

Pluralism represents the attempt at peaceful co-existence by disparate groups who by choice or necessity are inter-dependent. It implies that each group is equal and acknowledges that each group is different. Starting with the 50's, we find a burst of immigration adding to the existing collection of ethnic, racial, linguistic and religious groups; the beginning of human rights laws to protect them from discrimination; and a general concern about how to fit everybody in or, more pointedly, whether they would or should fit in even if we could. Many of these minority groups added their voices to those of the reawakened female ones in the 60's, and spent the 70's adding to the discussion table, among others, francophones outside Quebec, and disabled and aboriginal people. And, by the 80's, like the New Puritanism, lines had been drawn, sides taken, and expectations forcefully articulated.

When the Charter was introduced to this "Ism", rights truly became capitalized, and people started capitalizing on their rights. This "rights" frenzy produced an interesting phenomenon. As groups and the individuals in them spoke with increasing confidence of their rights, bolstered by the Charter and inspired by the Supreme Court of Canada, more and more people outside these groups started asserting their right to be free from pluralism. People we used to call biased, now felt free to raise insensitivity and intolerance to the level of a constitutionally protected right on the same plateau with the rights of minorities, or women, or aboriginal people. We started to think that all rights are created equal, even the right to discriminate. It is in fact the old competition between "equal" and "equality", and between individual and group rights.

But we should not be embarrassed to admit that yelling "fire" in a crowded theatre is fundamentally very different from yelling "theatre" in a crowded fire hall; or that teaching holocaust denial is different from teaching about the holocaust; or that promoting racist ideas is different from promoting race. The harmful impact is different and so, therefore, should be our attention. The issues in each equation are not and should not be of equal weight on the scales of justice. Intellectual pluralism does not and cannot mean the right to expect that racism or sexism will be given the same deference as tolerance.

And yet, this is what the New Pluralism seems to tolerate: a variety of groups and a variety of views about them, all of perceived equal legitimacy and weight.

That is why it is important to appreciate the difference between civil liberties and human rights; otherwise, we will throw ourselves hopelessly into analytical anarchy over which approach applies when, especially under the Charter.

Civil liberties represent the theory of individual rights developed by Locke and refined by Mill, whose premise was all individuals are equal in their right to be free from arbitrary state intervention. Every individual has the same presumptive right as every other individual to individual autonomy subject only to those limitations the state can justify as reasonable.

In human rights, on the other hand, we are talking of individuals in their capacity as members of groups which are disadvantaged for arbitrary reasons. It is about discrimination against individuals based on ascribed characteristics, because a whole group has been stereotyped as having those characteristics. So we treat the individuals in those groups differently to correct the disadvantage only members of those groups face.

The reason in human rights we do not treat all individuals the same is because not all individuals have suffered historic generic exclusion because of group membership. Where assumptive barriers have impeded the fairness of the competition for some individuals, they should be removed, even if this means treating some people differently.

The fact is that, unlike the United States, we were never, in Canada, concerned only with the rights of individuals. Our historical roots involved as well, a constitutional appreciation that two groups, the French and English, could remain distinct and unassimilated, and yet, theoretically, of equal worth and entitlement. That is, unlike the United States whose individualism promoted assimilation, we, in Canada, have always conceded that the right to integrate based on differences has as much legal and political integrity as the right to assimilate. A melting pot if necessary, but not necessarily a melting pot.

On the one hand, we find different groups trying to integrate their distinctiveness into the mainstream, and on the other hand, we find other groups trying to keep them and their distinctiveness out by setting homogenizing terms and conditions at the gate. Just like the Old Pluralism but multiplied and with louder and more urgently strident voices.

It is, in fact, this intensity which is new about these "Isms", an intensity borne of an intense fear of change, and an intensity that has turned the national conversation into a series of monologues and harangues.

Too many people won't listen to anyone else. We're locked in old struggles, wearing old scars as uniforms, and using old vocabulary as weapons. Our creative imaginations seem to have failed us, and our minds have retreated into familiar compartments.

If we don't start fresh to try to figure out what these troubles are really about, with more accurate and less provocative terminology, we won't know what the issues are. If we don't know the issues, we won't know what questions to ask. If we don't know what questions to ask, we won't be able to figure out what our common objectives are. And if we don't know what our objectives are, how in the world can we figure out the strategy for getting there?

Never mind labels like fundamentalism or pluralism, old or new. This is not about moral purity, it's about whether anyone should be allowed to impose their harmful truth on anyone else. And this is not about individual versus group rights, it's about whether some people are being arbitrarily disadvantaged, which brings me directly to the legal culture and the woman in it.

Without apology, let us make an admission which, but for the fact that it was recently made or implied by two female justices of the Supreme Court of Canada and one female federal Minister of Justice, would have been designated radical rhetoric. And that is that on the whole, the world looks and feels different to most women. To acknowledge this or apply this, is not to introduce a bias; it is to eliminate the insensitivity that creates it. We owe an enormous debt to Bertha Wilson, to Beverly McLachlin and to Kim Campbell for mainstreaming the observation that the justice system and many of the laws in it are insensitive to women. By expressing those views about the legal system, (views that had already been expressed without controversy about almost every other public system and institution in the country), these influential women gave voice and legitimacy to the thousands of women across the country who either knew or suspected that these views were correct but were labelled extreme or spoiled or strident or irresponsible for articulating them.

Why we would think that the legal culture was uniquely immune to the systemic barriers and mythologies pervading the rest of the culture is somewhat mind-boggling. It was as if the very suggestion that the law operated in a wider social culture was a violation of a secret family code that drew the curtain across a reality in the name of the public interest. The public needs to feel, it was argued, that its legal system and the people in it are unbiased, whether or not they really are. And so, in the name of the public interest, there were for too long neither admissions nor corrections from the top.

And then Bertha Wilson's words resonated across Canada and a generation of feminists in the legal system were legitimized. Do women make a difference; if they are willing to confront and respond to realities that uniquely harm women. Do men make a difference? Ditto. This is not just about increasing the number of women in the organizational layers of the justice system, although that is certainly important. It is about increasing the participation of those women and men who are ready to acknowledge and eliminate, rather than deny and perpetuate, the bias. Quantitative gender increases without accompanying increases in gender sensitivities provide the romantic illusion rather than the required reality, and they presume, erroneously, that equality is merely a redressing of numerical rather than substantive imbalances.

Not all women will agree that there is insensitivity nor will all men. Nor can they. But the fact that not every woman agrees does not mean that those who think there is insensitivity are wrong. Or that no attention needs be paid to their observations. Not all women, or men for that matter, speak with the same voice. But men are not expected to sing with one voice before policy attention is paid to a legitimate concern - they are permitted the cacophonous sounds of a Hindemith composition; women on the other hand, are expected to sound like Schubert's Lieder before their concerns are deemed legitimate music, let alone reviewable.

The legal culture responds to the rest of the culture in which it operates. Suggestions about deficiencies in both should be welcome. The system is best promoted by those who believe in its evolving relevance, and least well served by those who suffer the slings and arrows of constructive criticism badly and call it outrageous. Those intellectual baskets that form the shape of the information we receive have to be changed to make room for new and different information. We must be willing to see firstly and then define, otherwise we will be unable to listen and respond.

When I started practising law in 1972, I was not personally aware that women suffered any particular disadvantage at the hands of their communities or laws. After all, getting from one year to another in school was a matter of getting the marks; getting into law school was a matter of getting your parents to support your professional aspirations; having children and working was simply a matter of not being told you couldn't; and practising litigation was a matter of making a living doing what you used to get put in the corner in kindergarten for doing - talking too much. I knew from the European novels I'd read that there was relentless poverty and human despair, but I did not know from those books, or the teachers who taught them to me, that poverty and despair were different for women. I went through law school in the late 1960s without hearing the phrase "human rights", and even the social turbulence I watched outside the windows of my legal education spoke to liberation of a universal, not a gender specific kind. Except for my having been born in Europe after the war to Jewish refugees who had spent four years in a concentration camp, I would not personally have known the unspeakable cruelty of discrimination. And if anything, being an immigrant to Canada conditioned me not to think in terms of entitlements based on differences, but in term of opportunities based on hard work. So I was raised, as a person and as a lawyer, to develop an intellectual basket which, while conscious at some level that harm could come to those who were different, preferred to receive information in a shape that suggested that those differences could be overcome with effort.

Then I had clients. And from exposure to their realities in the early 1970s, I learned that you could lose your children if a judge didn't like the way you were raising them even if your husband wasn't raising them at all; I learned that you could spend a lifetime helping your husband earn a living then get nothing from that living if you left him for the wrong reasons; I learned that if you got the kids you rarely got the money you needed to raise them properly; I learned that if you went to work or if you stayed home, someone was going to tell you that wasn't what women were supposed to do; I learned that decisions about abortion policy were based on which side could send in more Gestetnered letters of protest; I learned that people who were gay couldn't get custody or keep their jobs; and I learned that a separated woman's economic security depended on the return and maintenance of her virginity.

All this assuming she could find and pay for a lawyer who would help her, let alone enjoy the right to have her rights flirted with in the courts. And all of this was practically irrelevant if you were a black, aboriginal, disabled or poor woman to whom the simple issue was getting through the day.

Then when I went on the family court bench in 1976, 8 months pregnant with my second child, I saw that there was one court where those who were poor were expected to go, and one for those who were not; I saw children being removed from homes because their mothers were dating the wrong man; I saw girls being removed from homes, siblings and friends because their fathers, who were not being removed because it would disrupt the family, had assaulted them; and I saw criminal assaults being handled in family rather than criminal court because the victims were only wives not strangers, and the object was to persuade not punish. I saw almost no childcare for women; unpaid household evening work at the end of underpaid daytime employment, if they had paid jobs; and a widening gap between the new crop of professional women and the 90% who were not.

There has also been enormous progress in my lifetime for women. But it has taken a female Justice Minister and two Supreme Court female justices to remind the public that in the shadow of this remarkable progress, much is left to be done.

None of this discrimination may have been the justice system's fault - after all, the general culture has a trickle-down, supply-side impact on the legal one. But it is the justice system to which we turn for a remedy because that is the system our culture promotes as the one we assert rights in. We may be somewhat shaken by what has been revealed, but we nonetheless expect the system to deliver us to "Kansas".

No one is accusing the justice system or its players of deliberately creating an insensitive environment. The message rather is that the justice system as the designated primary deliverer of justice is expected to play a leadership role in its equitable distribution. It is no more appropriate for the justice system defensively to deny that it has a role in either the creation or resolution of the problem than it is for its consumers to lay responsibility for injustice exclusively at its feet. It does no good for the system to pretend that impartiality precludes openness to wider points of view, nor is it fair to characterize the pleas of women for empathy as special-interest politics.

What women, in fact, seek <u>is</u> impartiality, a genuine willingness and capacity to hear the evidence and arguments with an open mind. The answers to many questions depend on how the issue is framed. Being impartial is being open to new frames. Walter Lippmann said that while people may be willing to admit that there are two sides to a question, they do not believe that there are two sides to what they regard as a fact. All too often what we call a fact is really a judgment. Some people look at

the canals of Venice and see rainbows; others see garbage. Knowing what is a question and what is a question of fact is the essence of being open. And if people are feeling weary with the pleadings of women, it is nothing compared with the weariness felt by those who plead. Labelled "strident" when desperate, "activist" when accurate, "self-righteous" when corrective and "peripheral" when angry, it is no wonder women feel relief to know that their views are shared by Supreme Court of Canada judges and Ministers of Justice.

For reasons I can explain, but not understand, the word "feminist" seems to be the grown-up equivalent to saying "Boo". I had always understood that feminism was that branch of human rights that concentrated on women to ensure that no arbitrary barrier stood between them and their aspirations. That, it strikes me, is not a controversial proposition. So why is the label we give it? What is so scary about getting rid of discrimination?

Just over 60 years ago in declaring women persons, Lord Sankey, in the Privy Council said, "Customs are apt to develop into traditions which are stronger than law and remain unchallenged long after the reason for them has disappeared." The customs and laws have now been challenged by people who are in the position - and have the hearts, courage and brains - to change the customs, traditions and laws. The call to action has been made and heard by the public. It only remains to act. The public is watching and all of us are on stage with our assigned parts. They expect a script they can understand and a plot they can relate to. And that is exactly what they should have.

TRANSCRIPT - AS DELIVERED

ADDRESS

- THE HONOURABLE DAVID MARSHALL -
CANADIAN JUDICIAL CENTRE

NATIONAL SYMPOSIUM ON WOMEN, LAW AND THE ADMINISTRATION OF JUSTICE

JUNE 11, 1991
VANCOUVER, B.C.

Minister, ministers, colleagues and invited guests, it is an honour for me to be invited to speak to this important meeting and I commend the Minister Kim Campbell and the organizing committee -- Susan Christie and Susan Campbell -- and others for its inception.

Being the only male speaker on the program so far I suppose I am the token male. When I thought about this last night I must confess that I had a certain sinking feeling, which I still have. Perhaps, however, that's appropriate and fitting at this meeting since women have for so long and so often been lone players in activities dominated primarily by men.

With less paranoia I must also say that I am impressed not only with the eloquence of the speakers but with the power and depth of the views that we have heard from the participants here in the last two days.

Anne-Marie Trahan's introduction -- Anne-Marie is famous for telling jokes and I expected one of her jokes, and I had one in reply; however, one good turn deserves another so I will not.

After Rosalie Abella's speech last night, I must say that it's hard not to feel flawed standing in front of you. And I want to tell you at the outset that I don't have 14 honorary degrees. In fact, I don't have any honorary degrees. However, being intimidated, one of course wants to say the right thing.

I feel a little bit like Hugh Garner. I don't know how many of you know or remember Hugh Garner but he was a writer from Toronto who wrote Cabbagetown, among other things. I feel a little bit like Hugh Garner may have felt when he went to the Governor General's mansion to receive the Governor General's prize. He was sitting next to Mitzi Steinberg. I don't know if you know Mitzi Steinberg but she is of the Steinberg family, of the Steinberg grocery chain. Well, Hugh Garner was at a loss for words as to what to say with all this. Finally he blurted out, "I buy my groceries at your store."

In the time that I have, I really want to make three points. And first, I must say the conference has been a wonderful experience for me personally and my only regret is that more of our judiciary are not here. I want to make three points because they are, I believe, very important points for all of us to keep in mind in dealing with the important and serious topic of this conference.

First, let me say though at the beginning that we judges require your patience and your understanding with us, just as you, I am sure, want us to understand your views and your aspirations. In a word, I think you must be patient with us because being too quick to respond or to espouse change has never been seen as a great judicial asset or practice.

Like the topic of this conference, judging, quite seriously, is a very serious business. And I know of no judge in Canada who takes the task lightly. Chief Justice Bora Laskin, as he then was, on being sworn in as the judge of the Supreme Court of Canada, said this to his colleagues and those who attended the ceremony in regard to judicial independence. He said (and I paraphrase) I have no expectations to live up to, save those I place upon myself; I have no constituency to serve, save the realism of reason; and I have no one to answer to, save my own conscience and my own standards of integrity.

Now this reflects, as he said himself, some hyperbole as a result of the euphoria of being sworn in to that august body. But it does describe, I think, the fierce independence of the Canadian judge. Perhaps it was a high water mark but it clearly makes the point. And I would ask you to see this and to see us -- to see this not as judicial arrogance but as judicial independence, a very important part of our social fabric in Canada.

On the independence of the judiciary, Sir Winston Churchill in the House of Commons in 1954 said this:

> There is nothing like them in all our island [meaning the judges]. They are appointed for life; they cannot be dismissed by executive government; they cannot be dismissed by the Crown, either by the prerogative or on the advice of Ministers. They have to interpret the law according to their learning and conscience.

And I want to repeat that last sentence. "They have to interpret the law according to their learning and their conscience."

Chief Justice Laskin then, in spite of the hyperbole, was in good company in his points on judicial independence. Our own beloved ex-Chief Justice Dickson, as he then was, in speaking of this question of judicial independence and its importance has said this.

> In Canada, the foundation of our social and constitutional order is a commitment as a society to live under the rule of law, applied and protected by an independent judiciary.

In any event, I expect that I do not need to convince anyone here of the importance of judicial independence. But I want to relate this to the subject of this conference, and indeed ultimately to judicial education. This independence, not only requires independence from governments and from ministers and interested parties, but also the judge must be free from any external pressure. The point is made in a seminal note by Dean Lynn Smith who is here, in an article called "The Courts and Different Kinds of Objectivity;" a very fine article that was published in the *Advocate* some years ago -- which, as an aside, we sent out to all the judges in Canada.

She referred there to Somerset's case -- and many of you will know Somerset's case of 1772. The facts of the case, briefly, were these: a slave had escaped in England where his Virginian owner was visiting. The slave had been recaptured and the issue in the case was a writ of habeus corpus to free him (the slave). In that case Lord Mansfield with a stroke of the pen and in one decision said: "Let justice be done, whatever the consequences." And though the result of that decision was and would be the setting free of some 14,000 to 15,000 men now one can only imagine the outcry that such a decision would bring in a society where slaveholders presumably would hold great economic power. Lord Mansfield clearly did not yield to strong social or economic pressure but resisted that pressure and freed all the slaves at that time on English territory.

The point that I want to make is that judicial independence precludes judges and should preclude judges from yielding to even very strong pressures. They must follow the law and precedent and beyond that a sense of reality and a sense of realism.

How does this bear on our subject today? Today and at this meeting we are witnessing, in my view, a great social change. The temptation for government, for all of us, will be to tell our judges that they too must change with us and accept this new social reality or this social reality. Canadian judges in my view cannot and should not be told how to decide cases. What the result should be in any particular case they should not be told. Education with judges, I submit to you, must be different. Education in some situations may proceed by fiat. In the case of judges, I submit again, fiat will not work and should not work.

My point is that any process of judicial education must take careful account of judicial independence. As Chief Justice Laskin said, again, "I have no constituency to serve, save the realism of reason." The answer to this is clear: we must win the judgment of our judges through logic and realism and the realism of reason. Fiat, pleading, public pressure; none of these will, and none should, prevail.

The second point that I want to discuss is more positive. I want to look briefly at the nature of judicial decision making and tie that as well to judicial education.

Benjamin Cordoza in his famous book to all students of the law, "The Nature of the Judicial Process" describes this process of judicial decision making, in part, thus:

> What is it that I do when I decide a case? To what sources of information do I appeal for guidance? If a precedent is available when do I refuse to follow it? At what point shall a quest be halted by some discrepant custom, by some consideration of social welfare, by my own or the common standards of justice and morals?

In attempting to answer this question, Justice Cordoza points out that considerations in judicial decision making will be both conscious and unconscious.

And I think it's important that we recognize these things at this meeting. He points out that there is in each of us a stream of tendency which gives coherence to thought and to action. Judges cannot escape the current of this any more than other mortals. Inherited instincts, traditional beliefs, acquired convictions, and the resultant outlook on life, a conception of social needs; all these of course and much more go into the mix that makes a judge. In his mental background every problem finds its setting and we, the judge, can never see the problems with any eyes except our own.

If we apply, then, these thoughts in judicial education -- as I think we should -- all questions of changing the statute law aside, how can we educate our judges? What can we change?

Again, I believe nothing through fiat or pressure; but much through logic, reason and knowledge. So the role of continuing judicial education or education for judges, I believe, is to expose, to broaden, to clarify; to appeal to reason, to logic and to fairness. We may assist the judge to question his or her own deeply held convictions and beliefs. We may try to expand the experiences and the vision of our judges -- or as Dean Lynn Smith so eloquently put it in the article I referred to above -- "We can help the judges to practice a rigorous disregard for common assumptions and expectations about people deriving from their membership in particular groups. And we can urge judges to exercise the power of imagination, to consider an issue from the perspective of those involved..." -- we have heard this at this conference -- "...even though that perspective may be quite different and very different from that of the decision-maker himself or herself. We can encourage the judges to exercise their creative and analytical powers in asking whether the law itself is skewed by history, built upon preconceptions about particular groups or disregard for their perspective."

So the answer to the question "What part can judicial education play with an independent judiciary" is a resounding "much." It's trite to say that judges must keep

their hand on the pulse of society, but in education I believe that we can help them do that.

That brings me to the final point of my discourse -- and the most positive of all, I believe -- and that is what we are doing in Canada in regard to judicial education. This, I believe, is the good news and it's quite startling.

What can we do to assist judges in this quest for sensitivity, for realism, for reason, and social justice under the law? Again the answer is "much." There is a great awakening in Canada in regards to judicial education. Some of you may not be aware of it. And indeed this awakening is taking place around the world.

The Americans have, in a sense -- as they so often do -- led in this. And one Judge O'Connell of the United States Federal Court wrote in an early article, "Continuing a Legal Education for the Judiciary." He said that judges should keep abreast of what is happening in the world and in our community and that a judge should possess knowledge; and, insofar as he or she lacks, that the judge should ensure that he or she obtains it. He went on to suggest sabbatical leaves and a permanent institute for judges.
We've recently instituted it in Canada: in the short past, a system of federal sabbatical leaves for judges after ten years on the bench; and we are funded in Canada now for a pilot study of an intensive academic school for judges in the summer here in Canada.

New judge training is increasing. Courses are proliferating everywhere on all sorts of topics -- and you have heard evidence of that today. Indeed, some of our judges are isolated by tradition; some by gender and by race; some by geography. We can help these judges in the ways that I have mentioned.

Judicial education in the last three years has virtually exploded in this country. I am not sure that everyone is aware of that, but it has virtually exploded. Through the work of the Canadian Institute for the Administration of Justice, the Institute for Advanced Legal Studies, the Canadian Judicial Council, Canadian Judicial Centre, Canadian Association of Provincial Court Judges, the Western Judicial Centre, all these bodies, I can tell you without hesitation that there has been more activity and indeed progress in judicial education in this country in the last three years than in the preceding one hundred years. That's a remarkable change in itself.

Just three years ago, the study that led to the establishment of our centre -- which is to provide and coordinate these activities -- the original study showed that 40%, a full 40%, of Canadian judges took no part in any judicial education process throughout their entire careers, and 40 percent had no training at all on nomination to the bench. And that is changing very rapidly. In three years that has changed. At the

Centre alone, we've produced and delivered detailed materials to the majority of Canadian judges on the question of gender. Our program has been followed by more than a thousand judges and other programs, as you have heard, have been produced and delivered by others all across this country on the subject of gender. There is, of course, much, much more to do but there is no question that we have, in Canada, a good start.

Other topics that we are dealing with: cultural diversity, native peoples, as you heard again this morning, family violence. These are all being developed and delivered now.

Funding for the judicial centre -- the federal Department of Justice -- has assisted us greatly and is shared equally by the provinces and by the federal government. In spite of fierce fiscal restraints at this point the funding of our centre has been increased to keep up with the current demand -- great demand -- for judicial education.

There is wide support for judicial education all across this country and I think you can feel it here. Judges have responded enthusiastically and courses have in fact been oversubscribed in most cases. People ask if it's necessary to have compulsory courses. Our problem, quite frankly, has been the opposite. We are overbooked; we have to set quotas.

Our national centre has grown rapidly; our centre staff has increased and we are actually involved in our third expansion in something like thirty months. Again, of course, there is much, much more that we can do. We've really just begun.

There are many other signs and symptoms, I think, of progress in the area that we are concerned with at this conference, as we heard last night from Rosalie Abella. For one thing, we are seeing more and more judges appointed -- female judges appointed. We have the thrust of the important speeches of Madames Justice Wilson and Justice Beverley McLachlin. We have this tremendous surge in judicial education which I mentioned, and in the training of others as well involved in the administration of justice all across this country.

Again, all this is not to say in any sense that all has been done. It is not done at all but quite frankly there is much more to do, but we have a very good beginning. The important thing is that the need for judicial education is recognized here; it's recognized by government; I believe it's recognized by the public; I believe it's recognized by the judges themselves, which is of course most important.

The work done by you, by many of the people in this room, on this subject "Women and the Law" has indeed done much to bring about the change that I have described. This conference itself will assist us in understanding and appreciating the important

social reality that you point out. The number of judges and chief judges and chief justices here testify to the commitment of the judiciary. At some of the workshops they may have been quiet, but I assure you that they were listening.

So finally, and in closing, let me say that we commend you on the great progress that you have obviously made. And I personally am honoured to have had the opportunity and to have been invited to speak and to take part in this important conference.

Thank you very much.

SPEECHES

TRANSCRIPT - AS DELIVERED

PANEL PRESENTATION
"THE VOICES OF CANADIAN WOMEN"

- JEAN SWANSON -
VICE-PRESIDENT
NATIONAL ANTI-POVERTY ORGANIZATION
COORDINATOR
END LEGISLATED POVERTY

NATIONAL SYMPOSIUM ON WOMEN, LAW
AND THE ADMINISTRATION OF JUSTICE

JUNE 10, 1991
VANCOUVER, B.C.

I want to start out by reading from a letter that was written to End Legislated Poverty in response to an article that I wrote for *Legal Perspectives*, which is a magazine of the B.C. Legal Service Society. Actually, most of what I have to say today was in that article.

Then I want to talk about how laws create poverty, and since I understand that you want to develop some resolutions for action, I will suggest some.

So, first of all, here are parts of this letter that was written to our group. I am quoting now.

> In May, I will be facing another shoplifting charge; this time it was a pair of shoes from Sears. I couldn't afford the things like food and clothing that I need; my son can't survive without food. The reality is that neither can I. I am aware that my lack of sufficient money is a consequence of a market and a welfare system which are designed to keep many people poor. This awareness of mine is sometimes projected in such a manner that I am perceived by some people who work within the legal system as uncooperative. The humility and regimentation of jail is intended to teach remorse. I will most likely go to jail again. I can't seem to adjust to never having enough money for the food and clothing we need.
>
> The judges instruct me to seek and obtain full-time, gainful employment. The implication would seem to be that if I had a job I should have enough money for food and clothing. If this were the case I wouldn't want or need to shoplift.
>
> Although employment income could be more than my present income, it wouldn't alleviate our poverty. Not all poor people resort to shoplifting; survival strategies differ, but inequality and poverty eliminate choices.

This woman sees what some of you might call crime as a way of surviving and feeding her child. Shoplifting for her provides a more real opportunity than the low wage work and welfare system.

What I want to do now is use these yellow strings here -- if you are short-sighted like I am you might want to put on your glasses -- to illustrate the poverty and the inequality in Canada that this woman spoke of in her letter to us.

Right here I have five yellow strings, and each one represents one-fifth of the Canadian population, about five million people; and each inch of string -- about this much -- represents 1% of all the wealth in Canada.

So, the poorest five million Canadians, the poorest fifth of Canadians -- you might need binoculars in addition to glasses -- have minus point three of a percent of all the wealth in Canada, as represented by this string that I really am holding, which is about a third of an inch long. The poorest five million people have minus point three percent of the wealth; we are in debt.

The second poorest five million people have 2.4% of the wealth, represented by this string which some of you in the front might be able to see.

The middle income, the middle fifth of Canadians or the five million, have 9.3% of the wealth.

The second to the richest fifth -- maybe a lot of you are in this one -- have 19.8% of the wealth. This is almost 20%. So if income were distributed equally in Canada we'd all be in a string that looked more or less like this.

And then the richest 20% of Canadians have almost 69% of the income.

And just starting from my hand here the richest 10% of Canadians have 51.3% of the wealth.

So the richest 10% of Canadians have more wealth than all of the people in all of these strings put together. So that is the reality of the wealth system in Canada.

Now I want to talk about how laws actually ensure that this string here, that you probably can't see, will be short and that this string here is going to be long. Welfare laws ensure poverty. For example, the B.C. Cabinet has passed an order-in-council which is a law that says the welfare rates will be $1,033 a month if you are a single parent with two kids. The poverty line for people in this group is about $24,000 a year; so the provincial government has passed a law that ensures that single parents on welfare will live, not only in poverty, but at over $12,000 a year below poverty; and in B.C. we have 36,000 single parents and about 83,000 children who are affected by welfare laws that ensure dire poverty. Multiply that by 10 for the Canadian average.

Minimum wages are laws. The minimum wage law in B.C. sets the minimum wage at $5.00 an hour. If a single person works full-time at this wage she will be about $3,000 a year below the poverty line. If the person who wrote the letter that I read

worked full-time at the minimum wage she and her child would be about $9,000 a year below the poverty line, if she got free child care.

There is a law that says women on welfare can keep only $100 of the child maintenance payments they receive from their ex-partner regardless of the number of children they have. This maintenance law is touted as a law that will help end child poverty. In fact, this law ensures that a single-parent family with two children on welfare will be about $10,000 a year below the poverty line. And in the vast majority of cases, all the maintenance money paid over the $100 a month will benefit the government and not poor women or their children.

Taxes are laws. The way the tax laws work, poor people pay sales taxes, hidden taxes, our landlord's property taxes. We even pay income tax. A poor woman -- a working woman who is in this little tiny string that you can't see, who earns $1,000 a month -- pays $106 a month in income tax. On the other hand, B.C. tax laws allow people who inherit estates worth millions to pay nothing in inheritance taxes. And in 1988, federal tax laws allowed over 86,000 profitable corporations to pay no income tax at all.

Unemployment insurance laws create poverty. Bill C-21, the UI cutback bill is now law. According to a study by Global Economics, that law will cut an average of $1,803 a year from about 250,000 Canadians whose income was already below $10,000 a year. In other words, they were already poor; and this UI bill is making them poorer by $1,803 a year.

There is another UI law that makes women poorer. It's the UI law that says UI payments will be at 60% of what you earn. Right? Women earn 60% of what men earn; along comes a UI law and we get 60% of 60%; we get 36% of what men earn when they are working and we have to support the kids.

The cumulative effect of laws like these and a host of others is that there are five million people in this little string; five million poor people who don't have enough money for a decent standard of living. And the laws create an economic situation where crime is often either necessary to survive and feed one's kids, or is seen to provide more real opportunity for survival than the low wage work welfare system and that is the situation of the woman who wrote the letter that I read.

It's just about impossible to find official statistics about the income backgrounds of women in prison. Perhaps this is because people with enough power to collect these kinds of statistics know what they would show. Most women in prison are poor women. That would challenge the myth that everyone is equal before the law.

I did find a book by the Elizabeth Fry Society called *A Forgotten Minority*. It says "Women offenders are often poor, unemployed and under educated." It goes on to quote women who have been convicted: "I wanted to be like the others but I didn't have the money."

Other women told the Elizabeth Fry Society that they stole "to get more food for their children," or so they could have something to wear.

One reason women give for prostituting, according to the article, is that it's the only way they can earn more than the minimum wage. Marie Arrington -- some of you, if you are from B.C., you might know her. She is the leader of a prostitute group in Vancouver; and she attended the National Conference of Women in Law in Toronto in February. And I was talking to her afterwards and she told me that many of the women in her workshop thought that prostitution was "just so degrading," and Marie asked them if they had ever had to deal with the welfare system. And then she said, "At least with prostitution, the degrading part is over in 15 minutes."

So the point I want to make is that selling drugs or prostitution may be seen as a way of getting money without suffering the humiliation that often comes from dealing with the welfare system.

Poor people are often afraid of the law and legal systems, and we're afraid because we may have been guilty of small survival crimes and don't want to be found out. Babysitting under the table sometimes gets done by women on welfare. These women are really guilty: they are guilty of wanting to work; they are guilty of wanting to provide for their children so the kids won't be seen as different and discriminated against by their friends. But they are also guilty of violating welfare laws. So, every day they balance the fear of being caught for not reporting money with the disappointment they see in their kids' eyes when they can't afford field trips or decent running shoes for gym.

If you are poor and drive an old clunker you may fear being stopped by the police. Maybe the cop will tell you to buy a new muffler that you can't afford. But not being able to use the car means you can't juggle work and child care and you might lose your job. If you were not poor, on the other hand, you would have a better car; you could afford regular maintenance and you wouldn't fear the police.

These situations are very stressful for poor women. They contribute to the high rates of sickness and early death that poor people experience even in Canada.

The legal system and people in it are often unfamiliar and disempowering for poor people. Sometimes poor people feel humiliated when dealing with the system. A poor person in need of a lawyer has to go to a fancy law office and meet with people

dressed in stylish clothes who seem to use words and phrases that are designed to purposely confuse. A woman I know told of a lawyer she had for her divorce. He told her straight out he wouldn't be spending much time on her case because she was legal aid. But the worst part for her was when he asked her what her assets were and laughed when she told him a T.V. and a couch.

The legal system also discriminates against poor people. Poor women can't raise bail money, so they can spend months in the remand centre before even having a trial. A woman with money would be able to stay out of jail before the trial, shop around for the best lawyer, and plan her life to impress the judge. She could spend the pre-trial time in a private detox, find relatives to care for the kids; keeping social services out of her life. She could arrange for maintenance of her home and her possessions. A poor woman often loses all of these, including, worst of all, her children. So everything that gives a person roots in the community can be lost if you have no money.

Poor women are assigned to legal aid lawyers; and just like lawyers who are paid for by their clients, some are good and some are not. But the poor woman doesn't have the same ability to choose as the others.

There are some small things, I guess, that individuals in the justice system can do about these situations. You can talk in plain language; you can learn what is empowering and disempowering for low income women; you can examine your own stereotypes -- are you blaming the victim in subtle ways? Does your body language or your actual language humiliate your clients?

But our significant action has to come at the level of justice. We need a just society in order to have a just justice system. We need a society where everyone, including the people in this little string here, feel that they have an opportunity in the work and the social safety net system, more opportunity than they have in the crime system. We need a society where women don't fear the legal system because they have enough money to live within it.

And we are in real danger of losing a just society in Canada because of federal and provincial policies over the last few years. I want to be real specific about this because we have to address this if we want to deal with justice in Canada; justice for women.

Bill C-69 will destroy the universality of the Canadian medical system within a few short years. It does this by ending federal payments to provinces that ensure the universal and accessible standards in the *Canada Health Act*. This threatens the health of poor people in Canada who already get sick twice as much as other people. Bill C-69 also ends the ability of the three richer provinces to raise welfare rates to

meet the needs of poor people. You remember I pointed out at the beginning that welfare rates in B.C. are $12,000 a year below the poverty line for a single parent with two kids. Bill C-69 reduces federal money for education, making it harder for poor women to take the only road there is to escape poverty as individuals.

Bill C-61, the UI cutback bill, makes over 400,000 Canadians who are already poor -- the people in this little string -- still poorer by an average of $1,500-$1,800 a year. Wage control in the public sector freezes single parent workers into poverty.

Since 1984 the Tories have made many tax changes that hurt the people in these little strings here -- all of these strings -- and helped the people in this big long string here. The GST, de-indexing the family allowance, and the whole tax system and reducing tax rates for the rich are examples. Free trade has cost hundreds of thousands of jobs, many of them women's jobs. It has given employers just the excuse they need to demand wage rollbacks of wages that are already low and already put women in poverty.

The whole system that we are headed for, where corporations are given the right to move wherever labour is cheapest and taxes are lowest is not a just system. The corporations get the rights; we are left with a few resources, declining tax revenue and exhausted people. And we have to deal with the responsibilities: the unemployed, the homeless, the poor, the victims created by poverty, the alienation and the crime.

We are not headed for a just society. We are headed for a survival of the fittest, dog eat dog society with these policies. And with a system like this you guys over the next two days can pass all the resolutions in the world and poor women will still not be treated equally by the justice system.

So the people in my organization think it's really important to pass resolutions and to get behind campaigns that would convince the government and the other political parties that we have to end poverty in this country. Specific actions would include raising welfare rates to the poverty line, raising minimum wage to at least $7.50 an hour, bringing in pay equity, restoring our UI system, taxing the poor less, and the rich more, repealing Bill C-69, stopping the trade deal so our people -- not multinational corporations -- have more say in our economy, developing affordable housing and universal child care.

Now that sounds pretty utopian and some people might say, "but ending poverty is going to be a long time coming. What are we going to do in the meantime?" And we say, "we have to start now with the first steps." Surely a society does not exist just so a minority can accumulate great wealth while the rest of us, and more and a growing number of us, live in poverty. If you are serious about equality for women in

the justice system I urge you to deal with recommendations and actions because it's going to take more than resolutions. It's going to take action and it's going to take pressure; that will force government to start reducing poverty and restoring control of our economy to the people who live here.

We need a minimum wage law that will cut off a little bit of this long string here and add it over here to this little teensy string. We need tax laws that will cut a little bit more off of here and add it on over here. We need welfare laws to do the same thing. We need creation of decent jobs that pay decent wages. It might cut a little bit more off here and add it on over to this short string. We don't need a lot.

There is not a big difference, for example, between the length of this little poor string and the second to the poorest string. If we only cut this much off the big string, we'd make quite a significant difference in the life of millions of poor people and poor women. And the people in this big string, you'd think they'd hardly notice the difference. But the people in this little string would see that they could make it, the work, social safety net system and that crime wouldn't be a better alternative than existing in this little string.

Only by ending poverty can we have a legal system that doesn't discriminate against poor women.

TRANSCRIPT - AS DELIVERED

PANEL PRESENTATION
"THE VOICES OF CANADIAN WOMEN"

- PAULINE BUSCH -
ABORIGINAL WOMEN OF MANITOBA
NATIVE WOMEN'S ASSOCIATION OF CANADA

NATIONAL SYMPOSIUM ON WOMEN, LAW
AND THE ADMINISTRATION OF JUSTICE

JUNE 10, 1991
VANCOUVER, B.C.

Good afternoon sisters. I could not pass up this opportunity, billed as the voice of the native Canadian women, to hear from the voice of the aboriginal women. We are here representing the Native Women's Association of Canada, so we felt justified in asking for the space that was allotted to Maria Campbell.

When we speak of justice in the justice system there were words used to the effect of "realities," "the justice system," "must speak to the realities," "the historic days," "explorers of old," embarking on a voyage." We, as aboriginal women, are taking the opportunity and participating in this conference and in any of the conferences to ensure that there will not be a repeat of historic days.

When the explorers come around, it will be on our terms if it is going to affect our people.

And presently the justice system does affect our people. We are filling your jails to capacity. In the 500 years that our people have been in contact with Europeans we have seen a complete breakdown of our society, loss of our culture, languages and our traditional and spiritual ways. And the signs of those are in your jails. We speak of the suicide that happens in the jail systems because the jails do not have a healing process in place. The justice system is victimizing the victims and abusing those that have been abused. That is not currently being addressed and until that comes, until that happens, people will continue to fill the justice systems or the jails.

As for what you term as rehabilitating people, I have yet to see one person that I could term as having been healed, as having been rehabilitated through your justice system.

We participated in the consultations in Regina. We were very disappointed to see that not one single item that we spent an afternoon discussing had come up on the agenda. Not only that, but there were no formal invitations extended to the aboriginal women of Manitoba or to the Aboriginal Women's Council of Saskatchewan that participated in the planning session as it was built. We came through the Native Women's Association of which we are provincial members. Now, when we give you the time and say "this is what we feel our people need," don't disregard that. If that's going to be the case then don't bother us. We are very busy.

We talk about the way Canada looks in the view of the world, and it's not necessarily because Canada deserves to have that view because we as Canadians are very adept at camouflaging what is out there; the reality. When she holds up that little short string -- my people are all in that little short string and yet we are the original people of this country. When Canada has the ability to take up arms against the original

people of this country, I think the rest of the world needs to see exactly what happens here.

The impact that the justice system makes on aboriginal people is not very positive. We have, we figure, about 90 to 99% of the women in the Saskatchewan penitentiaries who are of aboriginal descent; 60% of the men in the federal penitentiaries are our people; 70 to 80% in the provincial penitentiaries are our people. And yet we come time and time again and say "we have a better way. We want to be part of this process to heal our people," because it is a healing system we need, not a punishing system.

One of our recommendations is to have healing lodges built. We have a healing lodge that aboriginal women have been lobbying for, have been working on. And there are some aspects of our culture that you can tap into that women in general will benefit from. Within our culture and property laws, it used to be that if you were wishing to divorce your man, he left with next to nothing and the women were the property keepers. In that respect I think that it would benefit your people to adopt some of our laws.

As women we were the decision-makers in the family. In the new laws that came within the land, we as women were stripped. We were stripped of all that we had, all that was ours, all the power we had in our communities and that was through the parliamentary system, through the Indian Act. So now we were no longer equal in our communities; neither did we have even a percentage of equality in our society. So not only did we lose our standing in our community, but we suffered further in trying to adapt to your system.

I think our very survival over the 500 years indicates the strength that we as aboriginal women possess and the strength that we have to maintain a sense of our culture and our languages. I think when we have in our culture a prophecy, or actually something that one of our elders says, that when the aboriginal women stand and take their rightful place, it is at that time that we will see a just and equal people and I think we can extend that further and say women in society in general. We have allowed the men to carry through for quite a few years and obviously they need a little help. If we have to push our way in to help them, then I think it's high time that we chose to do that.

We spoke earlier of the suicide that happens within our present justice system and I think that's part of the way the system is developed; the justice. You know we take more pride and put more value on possessions than we do on human lives and it's time that changed too; that we recognize that human lives are much more important than all the wealth that you can acquire.

Suicide is another thing which is not of our culture. We are taught that the creator gave us a spirit as a gift, a gift that he and only he could take back and it is not considered our responsibility to make that decision. Suicide is a violence committed onto yourself. When you finally realize that, that is the only power that you have. In attempting to address that we have tried to lobby to have women kept within the vicinity of their homes when they are being incarcerated. And a sentence to the Kingston Penitentiary for aboriginal women is comparable to a death sentence.

The recent Court of Appeal in Saskatchewan overturning Judge Marion Wedge's decision to keep Saskatchewan women in the prison has been like a knife in the back of our women because it is our attempt to keep those women.

We had earlier heard that there will be a conference in the Yukon to address the needs of aboriginal people in the justice system. We would like to strongly recommend when this conference does come forward that it not just be a public relations type of issue. We've had so many studies and commissions and the Royal Commission coming forward. We want to quit having studies and start initiating action.

If it's so hard, if the people in power need to put so much emphasis and time into their studies, they can go ahead and do that; but on the other hand, equip us and empower us to address those issues. And in many instances, before your study is done you will see the results of what we have accomplished with maybe a quarter of what you've put towards the studies because within our culture anything and everything that we do we are not doing just for today and just for the four years that we are in power or in term. In every issue and every decision we make, we have to look to the generations ahead; not only to our grandchildren and their children but for seven generations forward.

Now, what more accountability could you possibly have to answer to? Thank you.

PANEL PRESENTATION
"THE VOICES OF CANADIAN WOMEN"

- GLENDA SIMMS -
PRESIDENT,
CANADIAN ADVISORY COUNCIL ON THE STATUS OF WOMEN

NATIONAL SYMPOSIUM ON WOMEN, LAW
AND THE ADMINISTRATION OF JUSTICE

JUNE 10, 1991
VANCOUVER, B.C.

In bringing to this gathering a perspective from the point of view of women, I would like to start with the notion of trust. I am fully aware of the risk taken in addressing legal practitioners on trust, because there is a peculiar feature of English law called the law of trusts. My learned friends, let me assure you that the legal definition of trust is not what I am talking about.

The focus of my discourse is the connection between trust and justice. Research indicates that there was a time when the common law courts became so rigid in applying rules, that people sought justice elsewhere. They turned to what became courts of equity or courts of conscience. This created two kinds of court; one where you went to have rights declared, another where you went to obtain justice. Although the two court systems have merged, the distinction between law and equity is still important. I must tell you that for a non-lawyer, this distinction would be very troublesome. Most ordinary people expect that our legal system will be just. They trust that it will perform as a justice system. It is in this way that trust can be used in more than one sense, even in the law.

If ever there was a woman who understood the double edge of legal trust, it was Rosa Becker. She laboured fourteen years to help build the family beekeeping business. When her common-law husband forced her to leave the farm and denied her contribution to the business, Rosa Becker trusted in the law to obtain justice. The next six years of her life were consumed by litigation, but she finally persuaded the Supreme Court of Canada to apply the equitable doctrine of constructive trust to marriage breakdown in order to give her half of the value of the farm. But rights and justice never coincided for Rosa Becker. She never collected the money owed her. Six years later, she committed suicide. She died poor, alone, and without hope of truly obtaining justice. Her trust of the justice system had been broken, in every sense of the word.

The point I am trying to make is that, like religious or spiritual faith, the legal system conjures up a parallel though a secular system in which people put their trust. In Judeo-Christian religious terms, ordinary people invest an inordinate amount of psychic energy in a belief system that is epitomized by a male godhead - oftentimes personified as an older, white male floating amongst white clouds. They trust that some day they will be redeemed. Similarly on the secular level, there is the belief that the justice system, personified traditionally by older, white men in blonde wigs, will be the one system in which they can get justice on this earthly plain. People invest a lot of themselves in this belief. And when that trust is broken, there is a crisis of the self and of the community. For women, visible minorities, aboriginal peoples and other powerless groups, that trust is shaken, every day, in many ways in this country. Let me put faces to this discourse. These are gleaned from telephone calls and letters we have received at the Council.

Last year we heard from a school teacher who had taught three generations of a family: grandfather, father and son. She was called to testify at a custody hearing about her experience dealing with the violent behaviour that she saw repeated in each generation. She told us that the judge completely discounted her evidence because she wasn't an "expert". She said that she had never felt so humiliated; she felt that she had been treated as "a meddlesome old biddy". Her life's work and experience were irrelevant.

Another woman called to discuss her sexual harassment complaint. The institutions responsible for her sexual harassment are financially sound, the complaint was settled and the complainant has been described as successful. However, the settlement contained two common but devastating features of such negotiations: first, nowhere was there any acknowledgement that she had been a victim of sexual harassment, and that it had caused her humiliation and suffering. After all, a common purpose of settlement is to avoid findings of liability. Secondly, there were to be no public statements beyond acknowledging the fact of settlement, thus denying acknowledgement that she is a survivor of sexual harassment. Her experience therefore has been effectively denied.

Recently, a father wrote to us. His 14 year-old daughter was kidnapped and raped. The rapist was convicted and served his time. The daughter has spent many years trying to pick up the pieces of her life. With therapy and good family support, she survived and is now the mother of two young children. The rapist has re-offended, and the Crown Attorney insists on calling this young woman as a witness. The father's anguish is palpable. He doesn't think that his daughter can survive re-living the experience in court. He thought justice had been done, but now it threatens to turn back on his daughter.

A mother writes to us and asks for help in persuading a Crown Attorney, ironically in the same province, to pay travel expenses for herself and her 14 year-old son, so that he can testify against the man who sexually assaulted him. While waiting for a trial date, the family moved out of the jurisdiction. The Crown refused to pay. The Crown's position essentially was that they were unlikely to secure a conviction in any event because the child's testimony was uncorroborated. No one talked about the cost to this child of not being able to tell his story and to have his experience validated.

These are just a few examples of what we hear in our work at the Canadian Advisory Council on the Status of Women. They are not necessarily comprehensive examples, but they serve to demonstrate that the successes or failures of the system are not always apparent. We therefore need to develop different standards for assessing the performance of our legal system. Pushed or pulled by events over which they often have no control, people come to the courts so that their experiences will be taken

into account. This is their trust. For women, this is especially difficult. Our laws, our legal system, our standards of adjudication have all been constructed by men and reflect their experiences and limitations. Women come to the world with a different experience, and what we want is to make a place where our experiences will be taken into account.

What does it mean to take women's experiences into account? First, it means that we must accept that women are not equal simply because the law says we must be. Second, it means that we must accept that women are not equally unequal; our experience of inequality differs based on our race, class, age, religion, marital status, sexual orientation, and differing levels of ability. Thirdly, it means that we need a justice system that is listening, truly listening, to what women have to say about their experiences of inequality.

These simple and obvious precepts bear repeating. In 1989, the Council published a study called *Canadian Charter Equality Rights for Women: One Step Forward or Two Steps Back?* Gwen Brodsky and Shelagh Day, the authors of the study, began with a review of women's condition. Why? Because, as they stated, "the illusion that women have achieved equality is almost as pervasive as the reality of oppression. Women's inequality is invisible because it is so ordinary, so massive and so accepted."

The failure to perceive inequality is systemic; it exists in the gender neutral language of our laws, in the formal equality approach to legal theory, in our attitudes when we say "she brought it on herself" and when we fail to question the assumptions and experiences that we bring to our daily practice. The failure to perceive inequality is not just the result of benign neglect. I agree with the authors, who concluded that "perpetuating the myth that women have already achieved equality justifies doing nothing."

I am much encouraged by public statements by our minister of Justice and Supreme Court Justices Wilson and McLachlin which acknowledge that the law has not and must now take women's reality into account. When such prominent women, steeped within the legal profession, speak out for women, we begin to sense the possibility that we might one day be able to trust the justice system. The major challenge of our times is to make the historical leap to an understanding not only of sexism but also of racism within the legal system.

Racial minority and aboriginal women in the criminal law system have devastating stories to tell us. The situation of aboriginal women is better known. Aboriginal women are very disproportionately represented amongst women in federal and provincial correctional institutions; and the legal system is literally killing them. In the last two years, six aboriginal women have attempted suicide at the Kingston Prison for Women. Five of them have succeeded; one has been in a coma for

months. Suicide is one of humanity's most confusing acts. When we asked why, one aboriginal woman at the prison said, "I don't know. Maybe because it is one decision that we can make on our own."

I would like to share with you one image etched permanently in my mind. Men often tattoo their bodies. The word "MOM" enclosed in a blue heart on a bulging bicep is the North American version of a macho with a heart. One Ottawa man has the call letters for a country radio station etched on his wrist; he was wined and dined on the station's anniversary date. But I don't think that I can ever again think of a tattoo without thinking of the pain, of the permanent unspoken racism suffered by aboriginal women. What do you say to an aboriginal woman who has tear drops tattooed down her cheeks?

Poverty has been instrumental in increasing the numbers of racial minority women in our prisons. Over the past three years, black women have outnumbered aboriginal women at the Kingston Prison for Women, most of them young women serving time for drug-related offenses or fraud. Their experience of racism begins outside the system, but continues within. I recently met with the Black Women's Collective at the Prison for Women. An articulate, soft-spoken, meticulously groomed, young black woman who had been convicted of passing bad cheques told me how she and another inmate, a white woman, spent the day in court together. Unlike her white sister, she spent the day in shackles. She says they just didn't "see" her all day.

Training opportunities are limited in the prison. Women inmates are provided with opportunities to finish their formal high school education, and with vocational training in hairdressing, microfiche technology, telemarketing, and woodworking. Well, if you were a black women, would you be motivated by these career prospects if you were being taught how to do "white" hair by a white man? And, as for telemarketing, I can think of other forms of solicitation that offer more substantial economic rewards.

The fact is that federally sentenced black women have a relatively high degree of education. One young woman I spoke to had a partially completed nursing degree; however, the prison was unable to assist her in continuing her education because she was not a landed immigrant and the prison could not afford the "foreign student" fees she would be charged for post-secondary correspondence courses. Another young black woman is barely hanging on, as she tries to reconcile the racism she must face every day and the conflicts between her own cultural imperative to keep to herself and get through her time and the prison culture that invites giving as good as you get.

Violence against women is the single most serious issue of our time. Do you realize that some Black women chose not to report the men who batter them because they

know that Black men are victimized by racism and violence at all levels of the justice system. Who do you turn to when you don't trust those entrusted with justice?

Gwen Brodsky and Shelagh Day discussed the seriousness of the problem of access for women and other disadvantaged groups, including aboriginal peoples, disabled persons and members of racial minorities. They underscored that the problem is not just one of numbers, not just that these groups cannot get cases into our courts to deal with their concerns. In relation to Charter equality litigation, they concluded that lack of access means "There is no serious discourse in these decisions about inequality in Canada, its dimensions, its patterns, its curves. There is no developing discussion, no public conversation about the pervasive disadvantage of certain groups." I would go further and say that lack of access applies to all of our institutions, not just in relation to litigation.

Finally, I would like to say that although our attention is drawn to the well publicized precedents established by the Supreme Court of Canada and the sensationalized statements of judges and lawyers, all too often during criminal trials, most women experience the law from a different vantage point. Their experience is the law of poverty, exacerbated by the decisions of welfare authorities, landlords, child protection agencies, unemployment insurance administrators, immigration officials, school boards, employers. These decision-makers of the social safety net, and the administrative law tribunals and review boards and umpires and arbitrators and mediators who oversee them, are also part of the so-called justice system. They, and the laws and programs that they are entrusted with, must also be considered in our quest to eliminate racism and sexism.

What have I been trying to say so far? I have said that the legal system bears a substantial if unwarranted burden of trust that it will dispense "justice". And I have said that the system has betrayed that trust by failing to take into account women's often complex realities, and that it is women who pay the price of that failure every day in mostly everyday and ordinary ways. I would like to conclude with two additional thoughts.

I am an optimist. We have much to learn about oppression from those who are marked by it. We also have much to learn from their survival. I have said elsewhere that it is possible to see the living, visible proof of the transcendent power of the human spirit. Indeed, as Alice Walker's semi-literate, sexually and economically oppressed heroine, Celie, put it in Walker's bestselling book, The Colour Purple: "I'm pore, I'm black, I may be ugly . . . But I'm here." As women, racial minorities and aboriginal peoples, our very hereness implies a duty to positively validate our existence. This can only be done if we teach ourselves, and learn from each other.

We will spend the next two days, all of us so-called experts, discussing ways to fix the system, to make it more just. I think this is valuable. As a non-lawyer, I think it is important that those parts of the legal system that distinguish between "rights" and "justice", between form and content, must be reconciled. Otherwise, our system will not be just and will not deserve nor long maintain the trust it requires for legitimacy. But we can't do it alone. We must find ways, whatever our niche in the system, to give space to those who voices have been either unheard or actively denied. We cannot succeed without them, for in many of the most important ways, we are not the experts.

Whether we are teachers or students, lawyers or police officers, judges or legislators, prison guards or parole officers, jurors or prosecutors, women or men - we all come to our work shaped by the limitations of our education, our socialization, our experiences and our privileges. There is not one of us in this room who is not limited by these factors and who does not bring these limitations to his or her work. With our intellects and our badges and our words and our actions, we are all of us responsible for the accumulation of small actions, performed daily, that taken together, will tell whether we have earned our trust. I think we can do it, and that we can find creative, meaningful ways to change for the better, if we truly listen to the voices of women and other disadvantaged groups. If we truly listen, and if we are prepared to make room for the possibility of experiences and perceptions that are not our own, then we will indeed be on a journey to "justice".

Are you, the power brokers of the justice system, ready for this journey?

REVISED VERSION

PANEL PRESENTATION
"WORKING FOR CHANGE"

- PATRICIA MARSHALL -
EXECUTIVE DIRECTOR
METROPOLITAN ACTION COMMITTEE ON
PUBLIC VIOLENCE AGAINST WOMEN AND CHILDREN (METRAC)

NATIONAL SYMPOSIUM ON WOMEN, LAW
AND THE ADMINISTRATION OF JUSTICE

JUNE 11, 1991
VANCOUVER, B.C.

The topic of this plenary, now called *Advocating for Change*, was originally called *Good News*. In looking for good news, I was first feeling so overwhelmed by the bad. In the past seven years of extensive advocacy work, dealing with the bad news about the treatment of sexual assault survivors was all too familiar. In the past seven months I have added the almost daily burden of the terrible impact of the Supreme Court of Canada decision known as *Askov* -- dealing with unreasonable delays of courts on sexual assault victims for whom and around whom the justice system effectively shut down and who watched as their victimization was denied and their abusers were set free. The decision was meant to support fair trial rights for those accused of crimes.

In one of the first cases I dealt with, the Crown had dropped the charges before her accused rapist even entered the Court. All opportunities for appeal were cut off. Just after the victim was told, she was followed by an unknown man as she left her night job. She told me all she could think was "he can do anything he wants to me and nothing will happen. I'm not safe. No woman in Canada is safe".

Most recently, I met with senior representatives of the Ministry of the Attorney General of Ontario. With me were two people who had journeyed to Ontario from a Maritime province to seek answers about a terrible set of tragedies that had put their lives into a tortuous holding pattern for the past three years. Their daughter had required surgery after extensive sexual abuse by her natural father. Charges were laid, the evidence was good and the family cooperated with the justice system in every way they could - confident that their daughter would see the abuser face the consequences for his terrible actions, that he would receive "help" and not ever commit such a heinous crime on another child.

The nightmare of the three years was punctuated in their home by the daughter's terrible nightmares as she re-experienced the sexual abuse. The hell of those years was briefly described. For three years they have told her that she did the right thing, but her guilt and her ambivalence have been dreadfully difficult to deal with.

In early April, the parents learned through a police detective that there would be no trial. In response to a defence motion the Crown Attorney had "caved in" from the weight of the *Askov* decision and the judge had stayed the charges. The Crown's decision, evidently uncontested, was that there was no avenue for appeal as there had been a total of 26 months' delay. Evidently, at no time was a strong victim-centred argument using S.7 and S.15 of the *Canadian Charter of Rights and Freedoms* used or seriously considered. The accused, with present access to more live-in children and a past career as a children's camp bus driver, is now free to continue doing what he wants.

The young woman's therapy has stopped and so it seems has her healing. The mother is terrified that the abuse is propelling her out the door to be a street kid. Her sentence started immediately when she was living with her natural father; the child had been diagnosed as being mentally deficient or having psychological problems. She failed extensively in school. In spite of countless batteries of tests, the sexual abuse was not discovered. When she left her father and started school in her mother's home province and town, her grades skyrocketed to A's and have been there ever since, in spite of her other acting out behaviour.

The decision to travel to Ontario to seek answers was not made lightly by the family. The money had been carefully saved for a trip to Toronto for the trial. We learned that there had not been enough money for the victim's mother to attend the funeral of her own mother in Toronto and attend the trial. She chose, very reluctantly, not to go to her own mother's funeral (after her death from a car crash) in order to attend the trial in the Toronto area scheduled for May.

The family was devastated. They have not told the victim; they say they don't know how to tell her. She thinks there was another stay in the proceedings. Her mother asked, "How do I tell her she's like dirt swept under the rug." In the *Askov* decision, the rights for victims were never even recognized in spite of the Charter.

The delays in the legal process were at least as stressful for her as for the accused who was free the whole time. The Supreme Court of Canada's goal was to reduce the impact of the delays, but we have to question their means to reach such an end.

Another tragedy in the story raises a relevant issue for this symposium.

At the time of her divorce, the mother's legal aid lawyer would not help her in her fight for the custody of her children. Because she had committed adultery, the legal aid lawyer declared her (or, to be fair, might have said that she would be declared) an unfit mother. She was not allowed to change lawyers by those administering legal aid; she lost custody and was separated from her children for 9 or more years.

During that time, the daughter (at least) was brutally sexually abused by her father. The surgery necessary has only been able to somewhat begin to repair the physical damage done by the abuse. The emotional and psychological damage, of course, cannot be healed at all by surgery.

I urge you all to think about what can we do to ensure that there is a commitment to have change never again come at such a high price for the innocent; that such a terrible violation of the basic human right to security of the person and to equal benefit and protection of the law will not be repeated.

In the midst of that difficult work, I did appreciate the challenge of thinking of what good news I could share with you. In spite of the bad news, I was surprised by the result of thinking of all the good news as we undertake this process, a process about which I remain optimistic.

The Recipe

The good news is that the ingredients of the recipe for change are here. The potential and possibility for change created by our first female minister of Justice, with this historic symposium, does give us an opportunity to make a difference. In this dynamic, multidisciplinary gathering, are thoughtful participants, rich in knowledge and in advocacy and with a wealth of experience of power as agents of change. If we are truly open to change, we must understand how poverty, racism, sexism, and the tolerance for violence interact. We are here representing many. I am surrounded today, as I speak, by the courage, pain and anger of the many women who I have been privileged to meet, and of all the female victims of violence whose experience with "justice" has inspired my work.

Our will to change is important.

There is considerable motivation from those of us who know that the status quo is unacceptable. We know we are still far from our goal of equality, free of gender, race and class bias. Our collective unwillingness to leave in place systems which further harm and perpetuate inequality will keep us working.

We have begun to identify the problem. Looking at the bad news is the good news; in the problem we have the foundation for our solutions. The answers are right there, if we have listened carefully to the experiences of women and if the naming of the problem is done carefully. We must also recognize the barriers to change. A major barrier is that the problems have not been important to decision-makers and therefore have not been recognized. Resistance to change is another barrier. I find it helpful to remember the scientific law: for every action there is a reaction. Now I wait for it instead of hitting my head immediately against the resistance. It saves me many headaches(!)

Asking an institution to change is asking for traditions and comfortable ways of being to be discarded, belief systems to be challenged and to some extent be replaced with the new and the unfamiliar. It is discomfiting, to say the least, for those inside the institutions.

It has been my experience that when the extent of the problems and the harms created by the status quo are identified and made clear, that people -- often men -- of good will within the systems, will sometimes lead, support, facilitate and expedite the

changes. It helps me to know, personally, members of the judiciary -- male and female -- who are here, as well as a committed minister of Justice, will support, in the ways that are possible for them to do so, the changes we will suggest.

Outside change agents can be helpful and I have been asked to briefly describe two systems in which I acted as a change agent. As well, I will put forward recommendations for change in the justice system.

Models for Change

The first was the system which administers and delivers public transit in Toronto -- the Toronto Transit Commission or TTC.

Although the majority of its captive transit riders were female and approximately 10% of its 10,000 workers were female, women's safety and security concerns were quite invisible in the organization.

That was not unusual. Women's safety and security concerns are invisible in most places in society including urban planning and design, in crime prevention programs and most gender-neutral responses to "safety for people". The TTC did not talk, even whisper, about sexual assault and rape because it might cause panic. They had no appreciation of the fear women had and how they limited their use of public transit, especially at night. Their research was only on users. In addition, stories of workplace harassment abounded and pornography displays in the workplace were common.

I want you to know, because it is relevant to the work we are doing, that I came onto the scene uninvited to informally monitor the impact (by the company) of the return to work of a supervisor just acquitted by the criminal justice system of a charge of a brutal sexual assault of his employee. The police had found the victim in a fetal position mumbling incoherently after the alleged assault. The accused called it "rough sex" -- and it was his word against hers. The Court, obviously bedazzled by his superior work status, his better attendance record at work and his character witnesses, was acquitted. This wonderful woman is living out the remainder of her life on welfare -- a sick and broken woman. Her lifetime sentence continues. She has never recovered from this denial of her reality and the extensive workplace harassment that followed.

The challenge of creating anything that would support women's security interests was certainly there. It took some time; we know that patience and persistence are always necessary for effective change work. Senior management learned much from the research about women's experience of victimization -- that one in four women will probably be sexual assaulted in her lifetime, that the impact is devastating, that there

is a trampling of the mind, body and soul in many instances, and that it remains quite invisible, in part because it is probably the most under-reported major crime in Canada. Women, by the way, cite mistrust of the criminal justice system as the major reason for not reporting. Senior management then understood women's fears and concerns to be rational and necessary to respond to, rather than trivial and silly. They agreed that one sexual assault was one too many and, with that as their philosophical foundation, they undertook, with METRAC and the Metro Toronto Police, a sexual assault audit of the 65 subway stations. The extensive multimillion dollar recommendations on design changes, guidelines for construction and renovation, sensitivity training programs for employees, and self defence for female employees were all unanimously adopted by the Commission. Later, the general manager spontaneously announced and initiated an internal equity audit that would focus on sexual and racial harassment. In a patriarchal bureaucracy, this was truly change! METRAC supports audits of public and semi-public spaces with its women's safety audit kit. We have found that the auditing process is, by the way, a very useful one for determining the problems in the criminal justice system as well as with physical designs.

In the second system, the College of Physicians and Surgeons (CPSO), we worked toward enhancing women's safety interests in a very different way. In five years of work, it was clear that, like the other self-regulating professions, the College of Physicians and Surgeons of Ontario was having a very limited effectiveness in meeting the primary responsibility of self regulation, that of erecting safeguards to protect the public, including protecting women and children from sexual abuse. There was often harmful treatment of sexual abuse victims.

Women were being sexually abused by doctors and the harm done to them was furthered by their contact and experience with the College and its quasi-judicial processes. The assumption was that highly educated men (mainly), who were responsible and certainly not uncaring, would always do the right thing. There is, however, little transferability from skills of neurosurgery or other medical specialities to the specialist knowledge of sexual abuse.

Several years ago, METRAC named sexual assault involving a breach of trust as a "national blind spot" -- a pervasive crime with a devastating impact. The person in the trust relationship, who has the responsibility to act in the best interests of the other, uses his power and authority instead to abuse. Such violations are poorly handled by all systems -- churches, social institutions and courts. When an institution, in whom we vest power and authority breaches that trust, an institutional breach of trust then occurs. Judges don't recognize these crimes well either. In one METRAC study of approximately 200 sentencing decisions in sexual assault cases involving a breach of trust, the judges did not recognize it at all or as the aggravating factor it was in 44% of the cases.

The reality was that adjudicators were making decisions that they, predictably, would reverse if they had specialized knowledge in issues of sexual abuse or if the prosecutors had presented different kinds of information in the hearings on "sexual impropriety". The historical resistance to change and to outside influences could find many parallels in the justice system.

The College, to its credit, publicly recognized the inappropriateness of its past practices in its establishment of an independent task force with a majority of members being non-physicians. It has a mandate to study 11 broad areas related to sexual abuse by doctors that include education and law reform, and to report to the College in the fall of 1991. The findings of the task force were both rich and disturbing. Two of many facts that were clear from the long days of public and private hearings: there was a great deal of sexual abuse by doctors, much of which women had never talked about before, and many doctors were continuing to abuse with impunity even while colleagues knew. There has already been unanimous adoption by the Council of the CPSO (College of Physicians and Surgeons) of the first recommendation of the task force's Preliminary Report: to have a philosophical foundation of "zero tolerance" of sexual abuse by doctors and the development of appropriate policies, practices and education programmes to support it.

In order to determine the best changes in the criminal justice system, we must examine and challenge our basic assumptions, even including the presumption of innocence, not with the purpose of discarding them but in order to re-evaluate and know clearly the cost, if we decide to, of keeping each one.

One cost, for example, of preserving the very onerous criminal burden of proof is that, in sexual assault cases, men guilty of abusing will go free and we are all less safe when that happens. Our individual and collective security rights are undermined by this risk of harm. We may, therefore, want to build in other balances, insuring the refining and expansion of relevant education programs (not just two hour seminars) for prosecutors, judges and other specialists. The cost of using an adversarial system must also be carefully tallied.

Naming the Problem

Changes to the criminal justice system could enhance women's safety and security interests. In its simplest terms, a major part of the problem is the treatment of sexual assault in the system. Women who report the crime committed against them are further harmed by the system. Many sexual offenders are undetected and remain free to abuse. Those who are apprehended soon go free to abuse again. Often they will abuse many times; the research on serial offending is startling. In one study (Abel), the sample of 411 paraphiliacs attempted 238,711 sex crimes and completed 218,900 of them. These include "nuisance" and other types of "low-level" sexual

offenses. On the average, each offender attempted 581 crimes, completed 533 crimes, and had 336 victims. Over a period of 12 years, following the onset of his deviant arousal, each paraphiliac committed an average of 44 crimes a year.

The Law Itself

Although improved in 1983, the sexual assault law itself still can undermine women's equality rights. The tiered statute is framed in a way most consistent with dealing with physical assault; it supports a focus on external factors such as cuts and bruises and deflects attention from the essential violation and degradation of the crimes of sexual assault. The Law Reform Commission of Canada was moving us further toward the parallels with a physical assault with its recently proposed Sex Crimes Act which focuses on cuts, bodily harm, and "inflicting pain". There is no recognition of the considerable psychological and emotional impact of many sexual violations.

The present statute provisions on aggravated sexual assault include the use of weapons, but do not recognize another critical aggravating factor: the abuse, in sexual assaults, of a position of trust or authority. As an interim measure, aggravated sexual assault should be immediately amended to include "sexual assault by a person in a position of trust or authority." The so-called present rape-shield provisions which provide only minimal protection to a victim-witness are presently being challenged.

Because the changes in law were not accompanied by extensive education programmes for judges, the hangover effect from the old law is still very much present. For example: even after the removal of spousal immunity, in the amendments of 1983, judges are still calling sexual assault a husband's "outburst" and questioning whether courts should be involved "whenever transitory passion triumphs for a brief instant" (read "sexual assault").

We must examine the impact of gender in evidence in sexual assault cases. The focus of much of the evidentiary law is built on a disbelief of the rape victim and a disbelief that middle class men will offend. That must change.

The Harms

Because the standard of ordinary assaults is used to evaluate cases of sexual assault, harm is still being defined, often exclusively, in traditional male terms of cuts and bruises. The harms of sexual assault, and particularly sexual assault involving a breach of trust, often do not leave that kind of evidence.

Long-term consequences and harms of particular types of abuse can and must be introduced. Effects of patient-therapist abuse include heightened anxiety levels,

impaired ability to trust and work and relationship dysfunction, resulting sometimes in suicide.

Sexual abuse of all kinds can result in life-threatening behaviour disorders, including attempted (and successful) suicide and other high-risk behaviours such as drug and alcohol addiction, anorexia, bulimia, and so on. At a minimum, there is a devastating impact on self-esteem.

When there are often lifetime sentences of dysfunction for victims, we have to recognize the risk of incarcerating the victim in a life of hell as well as risks related to incarcerating offenders. Where serious personality disorders result, for example, victims are often misdiagnosed. Many diagnoses of schizophrenia, we are now coming to realize, are misdiagnoses of so-called multiple personality disorder. I understand this "disorder" to be the most understandable and incredible coping behaviour there is for a child subjected to sexual abuse. The misdiagnosis can be followed by inappropriate psychiatric interventions, such as the use of the wrong drugs and incarceration in institutions. The harm often includes the loss of housing, loss of children and loss of family. This impact is usually invisible in courts in victim impact statements.

Witnesses' Testimony

The police are accorded broad discretionary powers in the laying of charges. A major criterion for determination is whether victims will make good witnesses in court. "Poor" cases are filtered out. As a result, the most vulnerable in our society -- including disabled women and those in institutional care -- are, at present, usually denied access to justice. Research shows that these women, precisely because of their vulnerability, are at greater risk of sexual abuse. The Charter, of course, doesn't say "equal benefit and protection of the law except for disabled women".

"Blameless victims", are sought after by the police, and few of us can meet their standards for blamelessness. To qualify, we would have to abstain from alcohol totally, never go out after dusk, wear dark-coloured, loose-fitting clothing, be immaculate housekeepers, refrain from sexual relationships, and be articulate and strongly confident both during and after an attack. The white, virginal, 15-year-old or the 85-year-old, locked in her home and crocheting the flag are the ideal.

The last thing anyone who has been sexually assaulted needs is exposure to the adversarial process and the present court practices -- where defence counsel have few if any limitations on their behaviour.

In North Bay, Ontario, as I speak, four young women are trying valiantly to recover from the legal battery they received recently in court. Their complaints of sexual

abuse against their doctor were upheld with conviction. But surely the cost to victims doesn't have to be as high. A Charter driven review of defence practices could produce guidelines and protocols that would impose some limitations.

Pilot projects could be developed in an effort to bring balance to a system that, until recently, has only had to consider the rights of the accused, and very amorphous "public interests". In Israel, for example, child witnesses are replaced with 3rd party experts (Youth interrogators) when it is determined that the court process will further harm the victim.

Use of Public Behaviour: Character Evidence

Character evidence is offered for the accused by experts and by others, usually at the sentencing hearing. It is intended to, and often does, work to minimize the blame attached to the offender by stressing his otherwise impeccable behaviour. Sometimes the comments and the offence are hard to reconcile. In sentencing a medical doctor and minister for eleven years of abuse involving many children, the judge took into consideration the abuser's "exemplary contribution to the community". (*R.C. Collins*, NFLD, CA, March 3, 1987 (unreported)).

Since public behaviour is a poor index of the propensity to commit sexual abuse and is irrelevant to the actual offence, evidence on employment, education, and good citizenship should be given minimal weight. In METRAC's review of sexual assault sentencing in Canada, it is evident that little recognition is given to the manipulative, deceptive behaviour employed by the accused in order to succeed in abusing his victims.

Evidence of "bad" character

In contrast, the defence focuses on the victim/witness's character in order to discredit her and build on the disbelief already held by judges and jury to challenge her credibility. In a 1988 seminar on defending sexual assault charges, an Ottawa defence lawyer spoke of "slice-and-dice-time" and "whacking" the sexual assault complainant, and advised obtaining her medical records, custody hearing transcripts and any other records that might discredit her. (Cristin Schmitz, "Whack the Sexual Assault Complainant" (May 27, 1988), *Lawyers Weekly* 22.) Past sexual victimization is used with increasing frequency to discredit women and children.

In reviewing sexual assault sentencing decisions, one is struck by the uncritical weight given to expert testimony from psychiatrists and psychologists on behalf of the defence. There is little evidence that judges have challenged its accuracy or scrutinized it for bias.

In the case, for example, of a man who had sexually abused his own daughter and a deaf child for a total of seven years, both the treating psychiatrist and the judge seemed to have great confidence in the doctor's assessment that the accused was not "at risk for harming himself or others."

An expert's inability to recognize breach of trust in sexual abuse cases is sometimes compounded by inaccuracy. For example, one expert assessment details the abuse of one girl for two years when in fact, according to the sentencing decision, the abuse involved three girls over a period of nine years. He describes "the girl in question" -- either a three or a six year old -- as "encouraging and enjoying" the sexual activity. In spite of the offender's long history of abusing, the expert maintains that "there is no evidence that he has any paedophiliac or other deviant sexual compulsions." Madame Justice Wilson's support in *R. v. Lavallée* for a new kind of expert testimony is a welcome and necessary departure from a traditional use of expert testimony that reinforces that bias and is a barrier to equality.

Sentencing

At a national consultation on women and sentencing (organized by the Canadian Elizabeth Fry Society), the participants (individuals and organizations representing women victims and women offenders) found that both female victims and offenders suffered the effects of gender, race and class bias through sentencing practices.

Black women, aboriginal women, and other immigrant and visible minority women, lesbian women, disabled women, poor women and privileged women talked of their experiences with the justice system. Some of you will remember the pain that was in that room; it was quite overwhelming.

Female offenders found they had more in common with female victims than with male offenders.

Conclusion

For me, the Rocky Mountains and the Berlin wall are powerful models in the work I do because of the fact they have been scaled and brought down. Most of us arrived in Vancouver by crossing the Rocky Mountains with an ease that early explorers couldn't have dreamed of. In the journey to an equal society, there is much in common with these early explorers and settlers, both aboriginal and European, as they experienced the vastness of the frontier and that great Canadian barrier, the Rocky Mountains. We do have that opportunity to pioneer again. Before us is as vast a frontier to cross, a frontier that extends far beyond rhetoric. We have our own Berlin Walls to pull down. Let's not underestimate the challenge; it can be done.

Shaking the foundation of an unequal society is necessary to re-order it. I believe it can still be done with intensive and peaceful evolution rather than by revolution or earthquake. What is clear is that a little tinkering for the purpose of cosmetic change, or for public relations damage control, will not do.

We can learn much from our aboriginal and the African indigenous systems that were premised on a commitment to return the innocent party, the victim, to a state as close as possible as that enjoyed before the crime. That must be a goal of all work here.

Until the justice system is working for prostitutes abused by police officers and for institutionalized and disabled women abused by their caregivers, for immigrant women who don't speak the language, for aboriginal women in big cities and in the remote areas of Canada, and for children in foster care or detention homes, then we have not made it across the frontier. Until the justice system is working for black women and other women who complain about rape and are charged themselves, we still have work to do.

If we can use our time together to give impetus to a fundamental reordering of the systems of justice so that the rights established in our *Canadian Charter of Rights and Freedom* are available to us all -- lesbian women, black women, white women, aboriginal women, disabled women, older women -- we'll have done well. I look forward to continuing the process with you.

TRANSCRIPT - AS DELIVERED

PANEL PRESENTATION
"WORKING FOR CHANGE"

- LYNN SMITH -
DEAN DESIGNATE
FACULTY OF LAW
UNIVERSITY OF BRITISH COLUMBIA

NATIONAL SYMPOSIUM ON WOMEN, LAW
AND THE ADMINISTRATION OF JUSTICE

JUNE 11, 1991
VANCOUVER, B.C.

I've been asked to provide you with some information about judicial education programs. I am also going to provide you, at no extra cost, with a bit of commentary about judicial education programs.

My talk is going to come in three parts: first, a brief description of some programs for judicial education on gender issues in which I have been involved in my academic capacity. Secondly, some comments about barriers to judicial education on gender issues. And, thirdly, some thoughts about future directions.

I will begin with the description of some judicial education programs on gender issues conducted in western Canada over the past few years. Tomorrow, Mr. Justice Marshall from the Canadian Judicial Centre is going to talk to you about judicial education in more general terms and tell you about the Canadian Judicial Centre work.

For the past three years, the Western Judicial Education Centre, which is headed by Judge Campbell of the Provincial Court of British Columbia, has put on workshops for provincial court judges focusing on two major areas. Those are aboriginal peoples issues and gender issues. The major funding for these programs --and this is just the major funders because there are a lot of in-kind contributions -- have been the law foundations in the western provinces and the two territories, as well as the federal departments of Justice, Solicitor General, Health and Welfare, and Secretary of State.

The first program was held in Vancouver in 1989; the second at Lake Louise in 1990; and in less than two weeks we will be in Yellowknife with program number three. By the time the third program is finished, most western Canadian provincial court judges will have had the opportunity to go through it. And this year's program is by far the most ambitious to date on gender. The overall title for the program, and this encompasses the two halves, is "Equality and Fairness: Accepting the Challenge."

That states the overall theme; what we are striving for. Namely, that equality and fairness are not new concepts for the judiciary. But what is new and what is only coming up in this century is the challenge that is posed by the demand that those concepts be applied to gender issues, to issues involving first nations people, and to other issues where we cannot continue to assume that our norms are everyone's norms; that our ways of viewing the world are everyone's ways. I will come back to how that theme is developed in a moment.

There are two major components to the materials for the gender program. The first is a rather extensive set of written materials with papers and background readings. The second component is a video with vignettes mostly around trial situations in sexual assault cases, but also including some situations involving -- I guess the general rubric would be judicial ethics or judicial control of courtroom behaviour. Those

videos have been prepared by a group of judges and others in North Battleford, Saskatchewan under the leadership of Judge David Arnott, and the two major components of the materials were both made possible by a special grant from the Alberta Law Foundation.

I won't take the time to go through the program in detail, but I will just try to give you a sense of what we are going to do and then we will have a little bit of commentary on why.

The keynote speaker is going to be the Honourable Madame Justice Beverley McLachlin. And she is going to address the general topic "Equality and Fairness: Accepting the Challenge." There will be an interspersal of sessions on aboriginal peoples and gender issues. I will just focus on the gender issues because that is the main topic today, but one of the goals that we've strived for in this program is to bring together the connections between the two sets of issues to make sure that aboriginal women's issues are included in the aboriginal program and that in the gender component there is not some assumption that all women are white or that the only problems that exist are the ones that happen to be conceived of by privileged white women.

The sessions will include a number of facets, and I will just describe them, and really what I am doing is stating the objectives for the program. Objective number one is to provide information; and under that rubric there is a session called "The Consequences of Inequality" where statistical and other evidence is reviewed to show that Canadian women are in a disadvantaged position in society today; as well, to present the judges with some of the realities of sexual assault and wife battering. There will be panels with survivors of sexual assault, survivors of battery, and front line workers from transition houses and sexual assault crisis centres.

We are going to try to make sure that the information is imparted that women come in many varieties with many specificities, and we are also going to have a lecture by Professor Norma Wickler on the issue of credibility bringing to bear sociological findings that show in some very interesting ways how the credibility of women is assessed in very different ways than is the credibility of men -- and, of course, particularly focusing on the courtroom context.

The second objective is to have some discussion around legal theory, and in particular, the insights from the work done by feminists in the Academy. There will be a discussion of the paradigm shifts in our thinking, particularly focusing on issues of sexual assault and wife battering, as well as equality theory and what might be called the Canadian approach to equality.

I would characterize the Canadian approach to equality as very different from the American approach, which looks for a sufficient degree of similarity to allow for same treatment. Under the Canadian model of equality there is a much more results-oriented focus and this has found its way into the decisions of the Supreme Court of Canada.

The third objective will be to provide opportunities for the judges to consider how to apply concepts of equality and fairness in new ways. This is a pervasive theme, but there will be a gender appropriate language workshop where Dean Berry, from the University of Victoria, will discuss some of the theoretical foundations around gender appropriate language and then how to do it; that is, how to write in a gender appropriate way. The video vignettes also provide an opportunity for this. They will be shown in small group sessions for particular issues to be discussed and to exchange ideas about how to deal with them.

Finally, there is going to be, we hope, an opportunity for all participants to reflect about their own thoughts and beliefs. This would happen in the small group discussions and in formal opportunities for interaction. This is not always an easy thing to bring about or to do, but I think it's an essential part of the process.

Fortunately, we have been able to have a pre-session for the judicial workshop leaders. There was a three-day session at Jasper where the materials and the videos were reviewed, and the opportunity provided for a great deal of discussion and thinking.

That's the Western Judicial Education Centre approach. I am going to briefly tell you about a couple of other programs in western Canada in which I have participated. There may have been others but these are two I am aware of.

There was a one-day session in Alberta for all Superior Court Judges which consisted of a series of papers presented by the judges themselves, mixed in with a couple of academic commentaries. In Manitoba, there was a one-day session for all judges from all levels of court -- provincial and federal -- and that session consisted of both lectures, panel discussions and small group discussions.

How do we decide whether these are successful? In the past, there have been very good evaluations from the participants in the WJEC programs, and as I understand it, the same could be said of the Manitoba program. I am not familiar with the feedback on the Alberta one. I think a key factor is the level of commitment to the program by the judges involved in it. And I will take this opportunity to say that Judge Campbell of the Western Judicial Education Centre and Judge Scioni of Calgary, as well as Judge Arnott of North Battleford have shown an extraordinary level of commitment to the programming. There has also been assistance in

designing the program in all three years from the academic pioneers in this field in Canada: professors Kathleen Mahoney and Sheila Martin from Calgary, as well as Norma Wickler who, for those of you who don't know her, was the pioneer in judicial education in the United States.

The problem is not so much conceiving the program and putting it on, as thinking through the barriers to judicial education. I am going to briefly describe four barriers and give you some idea of the thinking that we have gone through about how to deal with them.

Barrier number one: this isn't like talking about the new *Sale of Goods Act*. This isn't like recent developments in the law of impaired driving. Gender is a highly personal and very basic issue. It's closely connected with our self-identity. It's connected with our own sexuality. You don't have to be a Freudian to think that it's a fairly sensitive and touchy issue for most of us.

Secondly, it's very basic. The polarization of the sexes and the devaluation of the female pole is so deeply imbedded in our culture that most of us don't see it a lot of the time. So how do we deal with this? First of all we try to bring out, in various ways, the fundamental and basic nature of the problem; and secondly, in order to deal with the personal dimension, we try to take a non-judgmental approach, non-accusatory, and to have opportunities in small group discussions for people to acknowledge how personal and basic an issue this is. I am not talking touchy/feely sensitivity training, but just a recognition that this is a dimension and that recognizing it can help get around it.

The second barrier is that lack of information quite simply can get in the way. There is a belief abroad, and it certainly is no more pervasive among judges than anyone else, that because there are now few instances in which women are disadvantaged on the surface of the law, inequality between women and men has disappeared; that because many of the women that most of us see are well-dressed, well-fed and aren't carrying bruises, that's the way it is for all women. Therefore, it's important to impart information about the extent of women's inequality in Canadian society both statistically and through anecdotal presentations. I think that helps to overcome the barrier.

There is a sociological analysis available such as that of professor Margaret Eichler who has gone through twelve dimensions upon which one might measure equality in our society, and concludes that only on one -- and that's life span -- women do better.

So providing information on that dimension is useful. Secondly, in a very concrete way, one can try to provide information that is otherwise missing from the background set of knowledge that a judge brings into the courtroom: the actual cost

of raising a child; the actual likelihood of a woman re-entering the workforce and becoming self-sufficient. That information isn't always readily available but I think it's a goal that we should be trying to achieve in these programs.

The third barrier identified is this: empathy may sometimes prove difficult. Why is empathy important here? Understanding issues of gender equality requires, in my view, putting oneself in the place of women who are experiencing disadvantage: women who have been left on their own to raise a family with no experience in the work force, women who have been persistently beaten, women who have been raped. This is not always easy and unlikely to be pleasant. We're able to empathize with other people in varying degrees depending upon our personalities. Most of us find it much easier to empathize with others who are like ourselves and whom we can relate to rather than with persons who are different in terms of race, social class, gender and the like. Empathy is important.

Some may feel a concern that the use of empathy, putting oneself in the place of another, is inconsistent with the objectivity essential to the judicial role. I would argue the exact opposite. I would argue that, in fact, empathy enables a judge or other decision-maker to be more impartial and objective. Without the exercise of empathy, decisions rest implicitly upon the assumption that the persons affected are like the decision-makers. The empathetic decision-maker, by taking into account relevant differences between the people involved and himself or herself, leans toward an impartial decision. In short, unrelenting detachment is not invariably the best way to be objective and impartial. In effect, it leaves the decision-maker alone with his or her own perspective on the world.

This is a point that we attempt to emphasize. We discuss the importance of empathy. Of course there is judicial support for that perspective in the speech given by Madame Justice Wilson at Osgoode a couple of years ago. And we also try to give some opportunities to talk about issues in a way that permits practice with the empathetic faculty.

Fourthly, and in a sense one of the most difficult barriers, there may be a concern among judges about having discussions about these issues outside the context of the traditional adversary system. Members of the judiciary may feel very concerned about reading or listening to material which isn't presented in court pursuant to the rules governing trial procedure. They may feel uncomfortable because "both sides" aren't being presented.

I think this concern should disappear upon reflection and usually does. I would suggest three reasons for that. First, and I don't need to reiterate this to this group given what has already been said at this conference, it isn't surprising that the edifice that is the legal system needs some critical appraisal in order to make it appropriate

for both genders. It was not created by women or with women's needs in mind. The kind of basic appraisal that's necessary is very unlikely to occur within the context of individual cases and the rules of trial procedure. Rather, it will flow from an examination of the bigger picture through the kind of thinking that is illustrated by Madame Justice Wilson's speech and more recently by Madame Justice McLachlin's speech in Calgary.

It isn't at all unusual that information or analysis that assists a judge in the courtroom comes from outside the trial process. For example, in many ways a judge takes into account information which hasn't been the subject of formal proof. In a motor vehicle case you do not find counsel having to prove that roads become more slippery when they are wet. We find over and over again, when we unpack the rules that they rest upon general propositions about human behaviour which have crystallized into rules of law or practice and sometimes those generalizations need re-examining.

A good example is the former requirement for corroboration in rape cases. It rested upon a generalization about the likelihood of women lying about rape. Another example is provided by the assessment of child witnesses in sexual abuse cases. I don't think I need to belabour that point.

Finally, and I think this is perhaps the strongest point, and this is with particular reference to the concern about not hearing both sides. Given that there is solid evidence that gender inequality exists, and given that there are very clear statements in our constitution, in human rights legislation across the country and in our international commitment, Canada is a signatory to the International Convention on the Elimination of all Forms of Discrimination Against Women. Given those clear statements it may be taken that we have a societal commitment to eradicate gender inequality. Therefore at this stage I think the issue has to be how to do so rather than whether to do so.

And I think that there is also, and I won't go into the detail here, a fair level of authoritative judicial decisions explaining what gender equality means in cases from the Supreme Court of Canada such as *Bourque's*, *Jansen*, *Robichaud*, *Action travail des femmes*, and in the *Andrews* case as well. Therefore, I think that is the way to deal with the fourth barrier.

Thoughts for the future: very briefly, my view about legal education is that the goal should be to have pervasive consideration of gender issues in the curriculum -- in all courses, as well as specialized courses on feminist legal theory or other offshoots rather than having marginalized courses on women and the law.

In the same way, I think that judicial education would be well advised to consider what the California judicial education system is doing; and that is moving toward a

methodology that ensures that gender issues are automatically thought of and covered within all ongoing work and educational programming. Again, you avoid the marginalization and I think some of the barriers that I have discussed.

I will close with this note. The judiciary itself forms but one part of the legal system, and the legal system itself seldom leads social change of the sort that we are talking about when we discuss eradicating gender inequality. I think, however, that the legal system may be expected to recognize and respect social change, to move in directions consistent with it, and not to impede its progress. What we try to do, in the judicial education programs that I've been involved with, is to provide judges with the information, analysis and opportunity to think about issues in a new way; applying concepts that are very old; that is, equality and fairness.

Thank you.

PANEL PRESENTATION
"WORKING FOR CHANGE"

- MOBINA JAFFER -
DOHM AND JAFFER
VANCOUVER

NATIONAL SYMPOSIUM ON WOMEN, LAW
AND THE ADMINISTRATION OF JUSTICE

JUNE 11, 1991
VANCOUVER, B.C.

Good morning. It is my pleasure to have this opportunity to speak to you.

On May 31st, the National Conference on Multiculturalism in the Justice System took place in Vancouver and as the conference planning chairperson, I have been asked to share some of the highlights and concerns with you. I shall also be placing the information in the context of women, law and the administration of justice.

We started the evening hearing about the Gitskan Wet'su wet'on decision and what it means. One of our goals this year is to make learning and understanding the issues facing the people of the First Nation one of our priorities.

In the morning, Madame Falardeau-Ramsay, Deputy Commissioner of the Canadian Human Rights Commission, spoke on the role of the Commission. She stated that, "racism exists in the criminal justice system as it does in society; it mirrors society."

And, in our society, we tend to treat "unlike people as like," usually based on a white, middle-class standard, even though everyone is not raised in the same reality. As Madame Ramsay said, "it's time to involve all Canadians, not just a select few."

She really set the theme of the day when she talked about how the excluded need to start becoming included. She urged us to challenge the system at all levels.

And, in the workshops, this theme was further expanded by Dean Maloney who did not skirt around the issue of racism. She stated, "racism permeates the legal profession and there must be acknowledgement of it."

During the day, there was discussion about the fact that we needed not only acknowledgement, we needed to name it and address it in the entire justice system.

In her comments about who is getting access to the justice system through the Charter of Rights, Shelagh Day said that out of more than 600 cases, only 66 cases involved people whose rights had been infringed upon.

But how does one become included? How do people in the community get access? Here, I'm thinking particularly of people of colour.

Our luncheon speaker, The Honourable Judge Diebolt, Chief Judge of the Provincial Court of British Columbia, provided insights into this question in his address on the "Multicultural community and the justice system working together." He started a dialogue on how judging and the community can work together as part of a consultative process. Judge Diebolt, Judge Libby and Judge Cunliffe Barnett started a consultative process by making themselves available. By being able to offer input, they made us feel empowered.

For a long time, we have felt that judges have to examine how they are part of an ever-changing community. We believe they need to look at whether or not they are being relevant and accessible to that community.

The impact of Judge Diebolt making himself available to establish a dialogue, is a good example of the kind of step that makes a difference. It shows that even a small step can make great strides.

Delegates to the conference felt they had found a person to whom they could voice their concerns.

We felt that even though concerns regarding judges are valid, we also need to look at other groups within the justice system.

We need to influence lawyers, the law society of the province, legal drafters, corrections officials, administrators in the justice system, the attorneys general and the minister of Justice.

The law society needs to be more proactive and responsive to the needs of the community. The hurdles should not be so great that getting your qualifications assessed is almost impossible.

When I came to this country as a refugee, I could not even get the qualification application form until Tom Dohm, a well-known lawyer who is now a senior partner, intervened. Even then, I had to verify on a number of occasions that he was willing to give me a job.

Once a person is a landed immigrant, these obstacles should not exist. There is no room for obstacles such as this if we are to achieve harmony in our society.

It's time for the law society in particular to take a proactive position. They must be more sensitive to issues surrounding the community.

For example, the law society recently formed a gender committee to review issues of gender bias in the justice system. A step forward? Yes, but not one person of colour is on the committee. A step backward? Yes.

It has also become trendy to acknowledge gender bias in the justice system, but we still don't acknowledge racism. People of colour are told to "wait their turn". Let's deal with gender and then we'll look at racism later, they say. But there has to be an acknowledgement that racism also exists in the justice system, and it has to be acknowledged today.

It seems as if you have to stand in line. And that there are two lines. One is for the gender issue and the other for racism.

Do I stand in line twice? Do I stand in one line as a woman dealing with gender? Then do I have to get back in another line to deal with the racial issue?

No. I shouldn't have to stand in line twice. People of colour shouldn't have to wait their turn. Our issues have to be included now.

For people of colour, the main issue that needs to be acknowledged at this conference goes beyond the recent headline: "Justice Minister says the law is sexist." We want her to speak for us as well; to say that the justice system is both sexist and racist.

The system is presently benefitting the white middle-class. If we just talk about gender bias, we're really talking about access for white, middle-class women. What we need to talk about is sex discrimination.

There have been some advances.

The RCMP should be commended for the pioneering and active work they have done in dealing with multiculturalism and the corrections issue. They have been visionary in their handling of the Sikh turban-uniform situation.

The conference also heard from the Vancouver Police, the Legal Services Society, the Justice Institute and the Law Courts Education Society. We heard of their various innovations to include the surrounding community.

The Vancouver Police are involved in an innovative "Rovers Program" in which they reach out to the community to help youngsters learn more about the role of the police.

The Alternative Dispute Resolution Committee is another innovation. Sponsored by the University of Victoria, this committee attempts to find better ways of resolving disputes in the multicultural community.

Many of these innovations revolve around access.

Stanley Cohen, the project director of the Law Reform Commission of Canada, directed his comments to this concern in his address on "Working Towards Access".

He noted how the Justice minister has asked the Law Reform Commission to look at how the multicultural and aboriginal community can be involved in the reform process.

He pointed out that there is always a gap between a study and the commitment to the conclusions or recommendations based on a study; a gap that he says is only filled if there is political will.

We must have the will to effect change. There is still much work to be done in so many different areas of the justice system.

Throughout the day, discussions were held regarding some of the criticism of judges. But judges are a reflection of society. In an ideal world, the best situation would be for judges to have the same life experiences that we have. But the next best situation is mandatory education that is culturally sensitive.

But, it is not only judges who should have this education. Social workers, parole officers, legal drafters and others involved in the administration of justice also need to be more culturally sensitive.

There has been some resistance to education around issues of racism. The claim is that education will bias judges. And that this will prevent the judges from being objective. But this claim does not take into consideration the reality that all judges come with bias.

There are many faulty perceptions and inaccurate assumptions about other cultures.

Look at how we assume that some cultures accept assaults on women. It is portrayed as acceptable even when it is not so. Who is giving that message? Very likely, the man that is beating the woman! The conference wholeheartedly concluded that no culture really accepts assaults on women.

Then there are the stereotypes. Say the word "lawyer" and what is the first picture that springs to mind? Is it a picture of a woman? Is it an immigrant woman? Is it an immigrant woman from a visible minority? Not likely. So unlikely in fact, that after 18 years as a lawyer I was still recently mistaken for the court interpreter. And, I was wearing my gown!

To work toward changing these perceptions, wrong-headed assumptions and stereotypes, we must be part of the process. We must be included now.

Our Minister of Justice, The Honourable Kim Campbell, spoke to this in her conference address on "Multiculturalism and the Justice System: Partnership for a Better Society." She underlined the need for multicultural groups to be included; to be given a voice.

She questioned whether the laws were reflective of the realities of all Canadians. She talked about the right to participate on your own terms to speak in your own voices. Justice should reflect the realities of all Canadians.

It is very much appreciated that as a minister of Justice, she has always been prepared to listen to that voice. She is accessible. She has been a person who has not just paid lip service to this issue but has gone the extra step to include us.

It is very important for the harmony of the community that all members of the community have access to the justice system.

Harmony is like a piano. You could play all the black keys or all the white keys. You could play only the right side of the piano or the left. Play this way and you'll have music but you won't have harmony.

Now is the time to play all the keys; black and white, left and right. It is time to build a foundation for harmony and unity. It is time to bring issues of sex discrimination, cultural sensitivity and racism into the process at every level that affects women, law and the administration of justice.

TRANSCRIPT - AS DELIVERED

CLOSING ADDRESS
"NEXT STEPS"

- THE HONOURABLE JAMES LOCKYER -
ATTORNEY GENERAL OF NEW BRUNSWICK

NATIONAL SYMPOSIUM ON WOMEN, LAW AND THE ADMINISTRATION OF JUSTICE

JUNE 12, 1991
VANCOUVER, B.C.

When I arrived at the registration desk and received my name tag, I was pleasantly surprised to not find on it any indication of what I do or where I come from. To me, that symbolizes the first step of this conference, to take down barriers. It also does not require me to go through a litany of specialized introductions and simply say to you a very respectful "ladies and gentlemen."

Interestingly enough, a good friend of mine, Carl Doré, who is here this morning said that when he arrived he noticed, apart from the frustrations and the feelings that we've seen evidenced in the conversations through the last three days, a tremendous amount of friendliness with one another. And I commend whoever decided not to start the conference off by putting up barriers which we want to take down.

First, I would like to congratulate you on behalf of the government of New Brunswick and Premier Frank McKenna for this conference. Mr. McKenna is the minister responsible for the Status of Women in New Brunswick. He has been very interested in this conference. He has given his support to the organizers of the symposium and he awaits its conclusions with interest. On his behalf, Madame Minister, I would like to thank you very much for your efforts in this regard.

I must say that I come up here today with a bit of nervousness on two fronts. I am a product of my environment and I've come up through the environment which we are criticizing, which we are examining. And I, too, am learning the new language of how to deal with these issues. I recognize that I have weaknesses and that I make mistakes, and even though I may make mistakes, my mission today is to communicate a message and I am going to do that. Secondly, it is indeed a great honour and I am touched to be asked to address the closing plenary of this very important conference before such a very distinguished group of contributors. I consider everyone here a contributor. It is indeed a great honour.

And at the outset I want to commend my colleague, the Honourable Kim Campbell, not only because I happen to be the last speaker of this conference and therefore it falls upon my shoulders to thank her on behalf of everyone, but more importantly for giving us the opportunity to take an important first step in recognizing and wrestling with a very grave problem; and that is gender-based inequities and other elements of discrimination which confront those who must deal with the justice system.

This conference has taught us to learn. It has taught us to listen. It has taught us to appreciate and understand the situation of others. How could we not learn from the testimonials and the human accounts we have heard? And simply, the message is "do for others as we would want done to ourselves."

Madame Minister and Madame Justice Proudfoot, you and others have been very complimentary to me as having made some contribution to having the justice system focus on this issue; but in reality, I've had a very small part to play. There are those who have played a much, much larger part than I. And, as Attorney General, I am thinking of women in situations not unlike those we have discussed, who came to my office because I was the minister of Justice and they were looking for justice. It does not take many of those visits to let you know that something is wrong.

I am thinking of Soeur Cécile Renault, the president of the New Brunswick Coalition of Transition Homes and what she and her colleagues have done for our province. I had the pleasure and the distinct honour to be a guest speaker at their annual convention last Saturday evening, and we spent two and a half hours talking about problems and what we might be able to do to resolve them.

I am thinking as well of Jeanne d'Arc Gaudet, president of the New Brunswick Advisory Council on the Status of Women, the information that she brings to our table and her desire to work with government and we with her. I am thinking of Ellen King, New Brunswick's Women's Director and her efforts at addressing the issues as well. I am also thinking of Elaine Doleman, our New Brunswick Legislative Council, who, in addition to those very onerous duties, has chaired the federal-provincial-territorial attorneys general's task force on these issues.

Quite frankly, I am also thinking of my colleagues, the attorneys general at the provincial level, who gave unanimous support to the initiative of establishing that working group, recognizing that something must be done, and coupling that with a commitment to see this project carry through to deal with issues on an ongoing, yearly basis.

Ultimately I come back, however, to the same type of thing that I alluded to in the initial comment I made about people coming to my office. In 1983, when I felt I wanted to get involved in helping bring about change in my community at the municipal level, I was not well-known in my community, certainly on a political basis, and therefore I spoke to a senior gentleman whom I admired and asked what I must do. He said, "the only thing you can do is go door to door at every house in your riding. You will win but you will also learn a lot more."

I did that then and in every campaign that I've had since. The point is that I have insisted that I do that because what I learned was the condition in which people live, the rich and the poor, the advantaged and the disadvantaged, and invariably after having done six or seven thousand homes what sinks in your memory, what remains etched in your memory, is the condition of the poor and disadvantaged and their condition of life. Those are the people we have to appreciate.

The human accounts provided during the symposium by Jean Swanson, Glenda Simms, Pauline Busch, Mobina Jaffer and others have etched in all our minds situations where the justice system has not responded. These accounts have painted a clear picture. They have identified the need. Those involved, and many others, are waiting for our individual and collective response.

I have followed the discussions over the past three days with interest and I have learned a great deal. I learned that I'm still making mistakes. I am overwhelmed by the magnitude of gender based inequities which confront women who must deal with the justice system. Even less fortunate are women who, because of race, ethnic background, age, poverty or mental and physical disabilities, are either doubly disadvantaged, triply disadvantaged or otherwise by the system.

After listening to and reflecting on discussions at this symposium I would like to share with you my conclusions on gender based inequities and my concerns for the future of the Canadian justice system.

New Brunswick has been proud to take a contributing role in promoting gender equality. One year ago we proposed that a working group chaired by New Brunswick be established to advise Attorneys General on how to promote gender equality in the justice system. My colleagues, the provincial AGs and also the federal AG, the Honourable Kim Campbell, endorsed this proposal and enhanced it by offering to host this national symposium; a very important first step.

For the past year New Brunswick has chaired the federal-provincial-territorial working group studying gender bias and other gender based inequities in the justice system. The working group is coordinating its efforts with the work of the Status of Women officials across the country. The Canadian Bar Association and other groups have followed, establishing task forces and other initiatives to address these issues. Society is beginning to recognize and address the existence of a serious public problem which it has hidden for far too long.

The attorneys general working group has, in short order, accomplished an enormous task. Information documents are now being prepared on six topics: access to justice for women; the response of the justice system to violence against women; gender bias in the courts; the response of the justice system to female offenders; substantive law bias against women; and women working in the justice system.

The information documents being prepared will be exhaustive. They will include detailed opinions on issues of discrimination and other forms of injustice based on sex which women encounter in the justice system. Using information collected at this symposium, the documents will be updated before being submitted to the Attorneys General.

The attorneys general working group anticipates being able to present proposals for action to the attorneys general at their meeting in September. At that time, the group will also be presenting other goals and objectives to the attorneys general in relation to necessary further work. This is a beginning. In time, many more issues will be addressed. The attorneys general working group cannot be a short-term proposition. Continuous, sustained efforts will be required to bring equity to the system, and I am deeply appreciative of my colleagues in their acceptance of this long-term goal.

New Brunswick is concerned about women. On January 1, 1992 a major policy initiative of the Department of Justice will establish a comprehensive approach to support order enforcement in the province. This approach is aimed at ensuring that support orders are complied with and easing the financial problems of women during a marriage breakdown.

New Brunswick's concerns about violence against women took concrete form last fall during the provincial symposium on female victims of violence and the criminal justice system. This interdisciplinary symposium brought together professionals and groups from the private sector who spoke of their aims, their concerns and their frustrations. The symposium also served as an occasion to announce certain protocols with respect to female victims of violence intended to guide professionals working with female victims of violence. The guidelines now in force in New Brunswick were created to put an end to myths and stereotypes regarding violence toward women and to ensure that women are treated fairly at all stages of the justice system.

I had the privilege of attending the closing session of the symposium where regional committees, including public servants, presented suggestions for steps to be taken. All the information produced as a result of this meeting is being carefully examined to see how it might be implemented. Already, training sessions on the protocols have been held throughout the province during May and June under the guidance of the regional committees set up for the symposium. The symposium was unique. Its objective was to bring together representatives and professionals, men and women, from all sectors of New Brunswick in order to achieve a general collective response to the needs of the victims and, very importantly, to educate people to produce a change in attitude on the part of society so we will condemn all forms of passive acceptance of the situation and seek a solution to the problem.

Discussions and exchanges during three days of intensive meetings in November were of crucial importance; they will serve to orient the initiatives undertaken in this area by New Brunswick over the next five to ten years.

On a number of occasions over the past three years, I have publicly stated that family violence and spousal assault will be the number one priority of the New Brunswick Department of Justice. The Department has put into play anywhere from 15 to 20 different initiatives which interact and impact on women abuse. These relate to child sexual assault, publication of child abuse protocols, women abuse protocols, and changes to support order legislation which I have just referred to. We will continue to aggressively pursue these issues and to continue to pursue a proactive prosecution policy at first instance and an appropriate appeal policy in particular cases. In time, we will go further and introduce other measures which will complement those currently in operation.

I have briefly mentioned some New Brunswick initiatives to support my conviction that in learning how to resolve some very disturbing justice issues, New Brunswick has profited by committing its available resources to public and professional education, consultation and communication. Governments cannot do it alone. We need the consultation and communication between and among justice professionals and those outside the system, those who have been hurt by the system and the victims of the system. This is a common sense approach; it is a unified, collaborative approach which I believe can be applied effectively anywhere to help overcome gender bias and other gender-based inequities in the justice system.

We have heard over and over again that the justice system is a product and reflection of the social system it is intended to serve. We've heard over and over again that unfortunately the justice system and the social system are not necessarily in step with each other. We have heard over and over again that in the ordinary course of events there is a time lag between the advances in social thought and subsequent reform of the justice system. And we've heard over and over again that we have inherited a justice system which, after all, was developed predominantly by men to address their concerns. These are true statements but they are no longer acceptable excuses for an ailing justice system and I do not intend to stand before you as an apologist for the status quo. People recognize unfairness and are demanding change.

The Canadian justice system must reflect on those values which we hold and the behaviours that we as a society will tolerate and will not tolerate. When a justice system is inconsistent with society's values and acceptable behaviours, it is on its way to becoming dysfunctional. Women are saying, "we have the right to be treated equally, with dignity and respect, within the system." How will the justice system respond?

This symposium and the working group will give us a detailed and comprehensive perspective on the issue of gender inequality. I suggest this enlightenment is only the first step. Action will be required, follow up will be necessary, progress must be realized and success must be measured.

We of the legal community will have to face the reality of this analysis. We will have to be prepared to look at ourselves in the mirror. We will have to recognize our failings. We must not be afraid of what we may see. We must not retire or withdraw from examining the problem. We must not be afraid to seek out new information that will allow us to understand. It will require honesty and it will require courage but it must be done. We must find solutions to these issues and problems. We must work expeditiously and unfailingly and the legal community must play a leadership role. We must do what is right.

We must accept responsibility to bring about change; bring about change not only in our own minds but also in the minds of others who may not have had the benefit of seeing, hearing and understanding; learning what we have over the last two or three days. Society would expect that a learned profession would be generous in passing on its knowledge to one another. The challenge is for everyone to take responsibility for putting fairness for both women and men into a renewed justice system. All of us -- attorneys general, Crown prosecutors, lawyers, judges, victims, witnesses, women and men -- everyone in the justice system as well as everyone outside the justice system must examine our own prejudices and biases, as well as our innermost thoughts and convictions about equality before the law.

And we will then have to communicate with one another and educate one another to integrate our response. This is the way to build an equitable and impartial justice system which is more than the sum of its parts, a system that will ensure the objective which is justice.

In addition, we must work together. The solution of the problem will only be found if all components of the justice system work at finding common solutions. No component can be allowed to succumb to its own self-interest. Individual components must do everything to ensure that the justice system does not become an immobile monolith more concerned about its own inertia or preoccupied with its own self-importance. And if we fail, these will be steps to becoming dysfunctional and irrelevant.

I must confess that there have been moments when I, as an attorney general, have felt a deep sense of disappointment and frustration at the seeming unwillingness of components of the justice system to consider new ideas, consider new ways of doing things, consider new ways of approaching and resolving problems, and even thinking about alternatives. This ingrained resistance is found in all levels, at all components; it cuts across the entire system -- AGs, Crown prosecutors, lawyers, defence bar, judges, academics and others. We must remove these barriers.

I used to say that if we do not remove these barriers now, society will demand it; and I always phrased it in the future. What I have learned from this conference is that

we are talking, the present, and maybe we should have been talking yesterday. We do not have the luxury of time. As an elected representative, I can tell you that where rights and the determination and recognition of the rights of people are concerned, the public today has very little patience. The relevance of the justice system and its ability to adapt to changing social conditions is being called into question and we must answer that question. We must provide a full response. We must change.

But we can't stop there. Leaders in the justice system must go beyond to wider societal problems. We must lend our leadership to those issues outside the justice system as well. Gender based inequities are the root cause of many problems which end up in the justice system: women abuse, discrimination against women, and the female face of poverty are manifestations of gender inequality; equally important issues that must be resolved.

The justice system can focus on these issues and make significant contributions toward resolving them. But because the justice system is reactive by nature, it is largely inadequate at getting to the root cause. Leaders in the justice system must accept that they will have to go beyond the boundaries of the system and carry the message to society as a whole, and that message is that gender-based inequities and discrimination in society are completely unacceptable.

Efforts by leaders of the justice system in promoting education of society at all levels is urgent and necessary. We can play a role in this and we can help, and so we must. Society as a whole must be educated to adopt this as a commitment, and it is up to leaders of the justice system to move that message forward and we cannot fumble the ball. We must not be content for change only with our own profession.

When I speak of education, I mean addressing these issues within the curriculum of primary and secondary schools. That is our starting point. And we must instill what some call the "golden rule" and that is that we treat others as we would want to be treated ourselves.

Promotion of attitudes that counter the past acquiescence must be carried out at all levels of society, and it is up to us to do that. That is part of the social contract of being a member of the learned profession. All sectors of the public must be alerted to the need so that they in turn will promote a new approach and adopt gender equality as their message. We must speak out on this issue. We must encourage others to speak out as well.

In New Brunswick, we are starting to see this happen. The provincial symposium to which I referred earlier fostered regional and community teams that are carrying this message. Indeed, at the conference which I attended on the weekend, the Coalition

of Transition Houses was warmly supporting and recognizing the change that is taking place. In my own department, Crown prosecutors have, on their own initiative, addressed local groups such as Chambers of Commerce on the need to deal with issues affecting women. I've encouraged them to do so and I've congratulated them when they've done it. All of us have a role to play.

In closing, I am looking forward to receiving the background papers being prepared by the AGs' working group. They will be highly influential in suggesting how we can make our justice system more responsive and sensitive. They will help us take action to dispel the notion that our male-centred justice system is immutable. I believe the justice system must hasten to catch up to its obligations. This is a challenge long overdue. That the process has begun is directly attributable to the growing recognition within the justice system that remedies addressing gender issues are socially and morally imperative.

I came here to listen and to learn; and I leave today with a renewed sense of optimism that we can deal with these issues and that they are solvable, but with effort and commitment. And although I am aware of the enormity of the task and the breadth and depth of gender inequality and other forms of discrimination and the problems flowing therefrom, I believe that our justice system can adapt, that we can make a difference, that we can bring about change, and that change is on the way.

In closing, I would like to thank you for your attention.

TRANSCRIPT - AS DELIVERED

CLOSING ADDRESS
"NEXT STEPS"

- THE HONOURABLE KIM CAMPBELL -
MINISTER OF JUSTICE
AND
ATTORNEY GENERAL OF CANADA

NATIONAL SYMPOSIUM ON WOMEN, LAW
AND THE ADMINISTRATION OF JUSTICE

JUNE 12, 1991
VANCOUVER, B.C.

Thank you, Madame Justice Proudfoot. You know, when I flew east, I didn't cut the umbilical cord. I am still a British Columbian and that is why we have gathered together. I am very proud of my province, of its creativity. I feel almost patriotic about my province although I am not sure that is the right word to use for a province!

I want to conclude this meeting with brief comments because time is short, but to address some of the important issues that have been raised. First of all, I want to give a very sincere thank you to the people in my own Department of Justice who did such an outstanding job of organizing this meeting. On your behalf, I want to say to them, "you did just incredible work against very, very difficult odds."

And whatever the concerns have been about imperfections in the meeting, I think most of us would agree that the approach has been extremely productive, very effective and imaginative. And I want to tell you that these are people who don't get huge salaries, who don't get a lot of recognition, but who do some of the most fundamental work of government. These are wonderful people and Canada is well-served by them. Thank you, Susan, Susan, Bea and others.

It's interesting to hear the concerns that are raised from time to time about the follow up from this meeting because there is probably no one in this room who has a greater sense of urgency than I do about what follows from this conference. And that is because my tenure as minister of Justice is uncertain.

When the Prime Minister named me the first woman to be minister of Justice in Canada, I was very struck by the extraordinary opportunity that he had given to me to make a difference in an area that is so important to all of Canadian society, because while on the one hand the law crystallizes social views -- and that can be a problem as we have seen, particularly when social attitudes outstrip that particular crystallization -- it is also true that the law can lead and that there is an enormous opportunity in the way we use the law to focus the attention of our fellow citizens on areas that affect the way they live as human beings, the way all of us live.

And so I have felt, since I was made minister of Justice, the clock ticking. Like most politicians I hope to be re-elected and I hope my government will be re-elected, but I know that I have a limited amount of time.

Sorry, I am going too fast. When I was a university professor my students used to write on my course evaluations comments like "we've never heard anyone talk as fast as she does; she should slow down her motor mouth" and I used to use things like overhead projections to slow me down. I will make an effort to go more slowly, but I also have to catch a plane.

And perhaps the speed of my speech is a reflection of my sense of urgency, not simply because Canadian society wants the response, but I know that my opportunity to play a leadership role here is not unlimited.

And so, last year when the provincial attorneys general invited me to join in the federal-provincial-territorial working group on gender equality, I readily accepted the invitation and as my colleague, Attorney General Lockyer has said, I immediately volunteered to host this symposium, because I felt that it was important to focus the efforts of all interested Canadians on this issue in the quickest way possible.

I might add that there were many who thought that I was overly ambitious. I was told that a national conference of this sort would take at least two years to organize, that we wouldn't be able to get the facilities. It is about a week short of a year since I made that invitation in Niagara-on-the-Lake and here we are at the concluding ceremonies.

Some scepticism was also expressed about the ability to have a productive meeting with such a broad range of people because, after all, people told me, you know what the politics are in this area of the women's movement and of concerns about justice. People have very, very strong views. Who knows? It may just be a complete Donnybrook, a complete schmozzel.

But my approach to public policy and to difficult issues has always been to try and get everyone who is interested into a room; first of all, so that they can experience one another's humanity because when the people that you have to deal with -- whether they be judges, activists in particular areas, lawyers, or politicians -- as long as they are abstractions you can think the worst of them, expect nothing of them, and take comfort in your own hostility. But when you come to understand the fundamental humanity of all of the actors in the system, that takes away a lot of the hostility and creates the basis for meaningful discussion.

And I want to tell you that the passion and the strong views in this meeting do not bother me. My first career, as Madame Justice Proudfoot alluded to, was not as a lawyer; I was a political scientist specializing in the government and politics of the Soviet Union. And I spent three months there in 1972 so I know what I am speaking of when I talk about societies that are not democracies.

And this freedom of speech, the ability to articulate your passions and your concerns is to me a sign of the vitality of this society. The only enemy of our democracy is apathy. We haven't seen that here so I've been delighted. And, as I said at the opening ceremonies, we won't all have the same views on things. Vive la différence! It is not necessary to agree on all subjects, but the most important thing is to have a

dialogue, to have discussions, to share ideas, to confront our passions, and you have done that here magnificently.

I want to tell you how vindicated I feel about my belief that we could have this meeting as soon as we had it, with the participants that we have had, and with the productive results that we have had. Thank you for vindicating my faith and for being such an important part of Canadian history.

Your concern, of course, is follow-up and accountability. As my colleague, Attorney General Lockyer has said, the results of this symposium will go to the federal-provincial-territorial working group on gender equality. We want to get the proceedings finalized and in printed form as soon as possible. These proceedings, I think, will be an historic document in the development of programs dealing with gender equality in the justice system for some years to come.

And so I urge all of you who are asked to comment on the reports of your meetings to do so in as timely a fashion as you can, so that we can get the proceedings out so they may be part of other people's processes and may help us to set our agenda.

What I would like to do personally is to look through the recommendations, not just the ones that have come from the sessions, but the ones that were presented this morning on behalf of a number of the organizations here; and to look at those things which are, first of all, firmly within my own jurisdiction, those which can be acted on in the short-term, and those which are more medium term and long-term.

I believe there are many things that have been recommended that, in fact, we can act on right away; that don't require legislative change; that simply require a change in our operating procedures. And I think it will be a very important gesture of good faith in our bona fides, both at the provincial and the federal level, if we can address some of those issues right away so that you will see that the momentum has started.

And then we will have to priorize where we need more research. Some of you have identified areas where we don't know as much as we need to know, and those of us who have access to funds for research will be better advised now on where we put those funds and what problems we continue to address.

Your continued participation is essential. I also want to focus attention on the best way of continuing that consultation and cooperation. It's been suggested that perhaps we have another national meeting like this. I will be interested in your views on that subject.

I think it's important to bring everyone together but I also think that there would be a significant advantage in continuing the consultation on subject by subject areas.

There were quite a number of areas where people felt they really hadn't got into the issue -- I think family law was one of them, for example -- and I think we need some more work on some of those specific areas to help clarify our goals.

The recommendations from this symposium will go the Aboriginal Justice Conference which will be held in September in the Yukon; and so the concerns that have been raised about aboriginal justice will have a direct focus immediately. It is interesting because remarks that have been made to me in my discussions with aboriginal people across the country have focused on the concern of aboriginal women to be considered and to have their voice in all discussions, whether it's relating to the constitution and aboriginal people or justice. And this is an enormously important first step in making sure that the concerns of aboriginal women, as they relate to the justice system, have a full airing at that meeting in September and are seen as a unique and particular subject matter in and of itself and doesn't get lost in generalizations that fail to do the kind of justice that we want to accomplish.

Madame Justice Bertha Wilson, of course, is heading up the Canadian Bar Association task force on women in the legal profession. I think recommendations from this symposium will be of enormous benefit to her in that process.

One of the things that I, as minister of Justice, want to focus on as well in the coming months, is better communications with you all in terms of what we are already doing, because some of the recommendations reflect a lack of information about things that are already under way.

We are not quite as antediluvian as you might think; there are lots of positive things happening. And so I think it is important that we work harder to communicate. Sometimes we are so busy doing things and scrambling around trying to make things happen that we don't communicate effectively to those who are most concerned with what's on our agenda. And so I really take, as a very strong message, the need to tell you what we are up to. And I think that would help create a better sense of trust.

For example, in June of 1990, I wrote to the chairman of the Law Reform Commission, who at that time was Mr. Justice Linden, to ask the Commission to take up a special project. Let me read to you from my letter. I said:

> In my opinion, it is desirable in the public interest that special priority be given by the Law Reform Commission to a study of the *Criminal Code* and related statutes and the extent to which they ensure that (a) aboriginal persons and (b) persons in Canada who are members of cultural or religious minorities have equal access to justice and are treated equitably and with respect. The study would focus

> on the development of new approaches to and new concepts of the law in keeping with and responding to the changing needs of modern Canadian society and individual members of that society with particular regard to the rights and interests of aboriginal persons and to the diversity of Canadian society as recognized in the *Canadian Multiculturalism Act*. I would be grateful if the Commission would report on the study by June 30, 1991.

The aboriginal aspect of that study is the first to be ready, but the Law Reform Commission has this under way so there are things that are going on that you need to know more about.

One of the significant themes of this symposium has been how we characterize the justice system. Somebody referred to the newspaper clippings today -- you see, in my line of work you learn to ignore these kinds of things. I shouldn't say that with my colleagues from the press here -- but you all take them more seriously. There is no question that sexism, racism and other forms of discrimination are clearly systemic problems in the justice system.

Whether we want to label the whole system that way is a question of semantics. I kind of like Esmeralda Thornhill's way of describing it when she talks about sexism, racism, and other forms of discrimination as material realities and they clearly are. I think one of the most important intellectual steps that has been made in this symposium, and you may not have thought about it but it is significant, is that we have come to accept the notion that the law is not value-free. The law is not an abstraction. The law is human.

And for many years those of us who work in the legal profession have perhaps accepted as a goal or as an ideal for the law that it should somehow be value-free. And there are those who regard our critiques of the law -- whether racist critiques, sexist critiques, or discriminatory critiques -- as somehow a challenge to something that is pure and inviolate and rises above all the motley differences and antagonisms in human society.

The law is a human institution. It reflects the reality of society and if we don't see the biases it's because the law is in many ways a mirror of society as we are experiencing it at any given time. When we see the biases it's because the reality of the law no longer reflects the reality that we are living or that we accept, whether it is the current ideology of the day or the way we actually live our lives.

The passion that one feels here is a passion that results from the discrepancy between what is seen in the law and the process by which it's administered and the reality of

people's lives. The reflection isn't there. It's like the vampire, Dracula: he looks in the mirror and there's no reflection; only in this case the law is perhaps the vampire and we are the people who are not reflected.

It's enormously important that we've come to accept, and that the key members of the legal profession have come to accept, that the law is a human institution. That's not a failing; but to accept that and to understand that as a reality gives us a point of departure from which we can make real progress instead of trying to protect something, or to defend something in terms that simply are unrealistic.

During her speech on Monday evening, Rosalie Abella showed a photograph of Themis -- the Goddess of Justice. She commented that she is holding scales (so she probably bakes) but she has got a blindfold over her eyes (so she probably doesn't do windows). But this notion of blind justice once again is something which is an incomplete notion.

I don't think we want to do away with the notion of the impartial application of legal principles. But we also recognize that while justice in some contexts must be blind, justice also must see; justice must see and know what justice is dealing with. And that has been the message from this symposium; and that has been such an important part of our dialogue with members of the judiciary here who have made an enormous contribution to this meeting and have come here in the very best spirit possible.

We have said it is not a question of bias; it is a question of knowledge and understanding, that every once in a while Justice has to lift up the blindfold and take a gander at what's in front of her and understand the human reality and the complexity of what's before her.

One of the things that has struck me about this meeting is that perhaps women really do have a very different way of looking at justice because for women inclusive justice appears also to mean indivisible justice. It has really struck me, although we made every effort during the course of planning this meeting to ensure that we reflected the full reality of Canadian women as it reflects their economic, their racial and cultural backgrounds, that there is an unwillingness to separate any of these factors. I think that's a very different approach from that taken by men, because when men address forums of discrimination, for example, based on political beliefs or based on race, they can see those as discreet categories because the fundamental aspect of their existence, their gender, is not a basis for discrimination.

It has really struck me in the course of the last two and a half days that there is a very different way that women see these things. We may have to develop a new paradigm of understanding the relationship between bases for discrimination, the

need for the justice system to see, and the ability of the justice system to do fair and right things for all people.

I think it is also true to say that the views of all of us have been broadened. I've been enormously impressed by the comments of members of the judiciary about how their perspectives have been broadened. I think all of us have had our perspectives broadened from being here.

And some of you may have seen the interview that David Vienneau did with me before this symposium. I made the point that as a white, middle-class, urban, university-educated woman who, like Rosalie Abella, did not encounter a great deal of discrimination as I grew up (if I did encounter it I didn't notice it particularly), I was perhaps too pushy. I come from a family where my mother was a feminist and my father was very supportive. I only have one sibling, an older sister, so I never competed with brothers. I recognize the limitations of my own experience and we all have to do that. But we can all transcend our own experience, and I think for all of us this symposium has provided a marvellous opportunity to do that.

This morning, someone referred to her participation as an act of good faith; and that, I think, is the key to this symposium. This is the first meeting of its kind. It is the first time that those who advocate change have been able to sit down with those who are capable of implementing change, whether it's members of the judiciary, people in government or others, senior members of the legal profession.

And perhaps it's a little bit disquieting. It's so new and different that for those of us who make change, we are not always used to being nose to nose with those who want us to exercise our powers in a certain way. For those who have so long been knocking at the door, it can sometimes be a bit disconcerting when the door is opened and they are invited to sit down and state their views.

And so there is a certain, perhaps, inherent potential for distrust but I think much of that has been overcome and will continue to be overcome if we continue to work together in an effective and cooperative way. As I say, there were many people who when we were planning this symposium were sceptical about our ability to actually have a productive meeting; and we have proven them wrong.

I would like you to take some time to reflect on what you have already accomplished. For members of the judiciary, you have brought to this symposium a very, very important message to the people here who are concerned about the justice system; and that is a message that you are human, that you are open, that you are willing to listen and learn, that you are concerned about the integrity of your positions, the integrity of judicial independence, that you often have to make difficult decisions, but

that you recognize the humanity of the system in which you work and are prepared to work to make the system more humane.

And for those of you who have never had the opportunity to lobby directly those whose actions so concern you, you have made a difference: the telling of your stories, the sharing of your passions and the pain that perhaps it has caused some of you, have had their effect. You have accomplished a great deal as of this moment. So we must be sure that we don't allow the theoretically perfect to detract from our appreciation of the achievable good that we've already been able to accomplish.

The recommendations for doing this kind of thing better are gratefully received, as are all of the recommendations that have come forward in substantive and process issues. We must continue to work together and you have my commitment to continue to work together. As I say, I have a strong sense of urgency. I'd like to be minister of Justice for ten years; that's not a realistic expectation. I feel the clock ticking and I want to be sure that I live up to the faith that you have put in this process.

I will conclude by saying to all of you again, thank you, and wish you a very, very safe trip to your homes. Thank you for gracing my home with your presence, your wisdom and your good advice, and let's keep working together.