JUSTICE
RESEARCH NOTES

Guns and Domestic Homicide: Can We Stop the Killings?

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Every year in Canada an average of 70 domestic homicides are committed with firearms. Such incidents evoke strong reaction from the media, women's groups, and the general public, but to date, few research studies in Canada have systematically addressed this type of crime.

In 1991, the Department of Justice Canada commissioned a study to find out more about domestic homicide with guns and to consider ways of applying the new information in the hope that it might be possible to ultimately prevent such incidents. Of particular importance was the need to analyze the study findings in the context of the federal legislation for firearms control introduced in May 1991.

The researchers, Dansys Consultants of Ottawa, first looked at statistical trends between the years 1975 and 1990 to determine how the levels of this crime and other crimes of homicide may have changed during that period. Next they conducted a detailed study of individual cases of domestic homicide involving firearms, which was intended to reveal whether there were certain common factors in such cases. The report of the study was released earlier this year.

Statistical Trends in Homicides, 1975-90

Data were obtained from the homicide database maintained by the Canadian Centre for Justice Statistics. Trends were examined and compared for three separate categories of homicide: *total homicide, domestic homicide,* and *domestic homicide involving firearms.* The term "domestic" includes situations in which the victim is related to the offender as a child, parent, sibling, and spousal/common-law partner or ex-partner. Boyfriend and girlfriend relationships were not included. Following are the statistical highlights for the years 1975-90.

▲ Although there were yearly fluctuations, a modest decline was observed overall in the number of homicides in Canada over the 15-year period. The average number of victims per year was 652; in 1990 the total number was slightly higher at 656.

▲ From 1975 to 1990, the average number of victims of *domestic homicide* was 207, with a modestly declining trend from 1975 onward.

No. 6 November 1993

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Department of Justice Canada Ministère de la Justice Canada
Canada

▲ Within the category of domestic homicides, there was a moderate drop in the number of *domestic homicides involving firearms.* The average number of victims during the 15-year period was 73; the total number in 1990 was 48.

A Close-up Analysis of Cases, 1989-90

Based on nearly all cases of *domestic homicide involving firearms* that occurred during 1989 and 1990, more detailed information was gathered about the victim, the accused, the relationship between victim and accused, the circumstances surrounding the crime, and the perceptions of police officers involved with cases. The analysis covered 93 out of 105 cases (89%) that occurred during the two-year period, involving a total of 103 victims and 98 accused (a few cases involved more than one victim or more than one accused).

Data were collected by distributing a detailed questionnaire to police who were responsible for investigating cases. The Department of Justice Canada was assisted by the RCMP, the Ontario Provincial Police, the Sureté du Québec, and various municipal police forces across Canada.

Justice Research Notes is produced by the Research and Statistics Directorate of the Department of Justice. Its purpose is to provide, in summary form, results of projects carried out under the Department's program of research into various areas of justice policy, as well as information and articles on other socio-legal matters.

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Published by authority of the Minister of Justice
and Attorney General of Canada

by

Communications and Consultation
Department of Justice Canada
Ottawa K1A 0H8

Printed in Canada

ISSN 1181-9243

▲ ***The Victim.*** In 1989 and 1990, 56 per cent of victims were female and 44 per cent were male. The mean age of females was 37 and of males, 30. Fifty-six per cent of all victims lived in a rural setting.

▲ ***The Accused.*** Male accused outnumbered female accused by a ratio of 5 to 1. Women accounted for only 18 per cent of all accused. The mean age of males was 38 and of females, 35. Fifty-five per cent of all accused lived in a rural setting.

One half of the accused (52%) either had a criminal record or were awaiting trial for a criminal or other federal offence at the time of the homicide. Many of the accused exhibited patterns of substance abuse prior to the incident: 49 per cent were reported as alcohol abusers, and there was evidence that 24 per cent were drug abusers. Eleven per cent were receiving mental health treatment before the homicide.

Forty-eight per cent of all accused were believed to be having some form of financial difficulty: 39 per cent were receiving either unemployment insurance or welfare payments, 25 per cent had recently become unemployed, and 24 per cent had credit problems (percentages do not total 48 because some of the accused had more than one form of financial difficulty).

▲ ***The Victim/Accused Relationship.*** The homicides reviewed in the analysis involved five different types of domestic relationships: husbands killing wives (46% — further detail is provided below), wives killing husbands (12%), parents killing children (11%), sons killing parents (6%), and men killing related men (15%). In 55 per cent of all cases, the victim and the accused lived together at the time of the incident.

▲ ***The Firearm.*** In 85 per cent of cases, the homicide was committed with either a rifle or a shotgun, and the remaining 15 per cent were committed with a handgun. In total, 22 per cent of the firearms were held illegally: more than half of the handguns (57%) were held illegally, compared with 18 per cent of the rifles and 10 per cent of the shotguns (actual numbers here were quite small). Legally held handguns were involved in six homicides (43%).

▲ ***The Incident.*** Seventy-five per cent of incidents took place within the residence of the victim. In 29 per cent of cases it was a neighbour who first contacted the police, 24 per cent of the time it was another family member, and in 16 per cent of cases it was the accused. In all but two cases the shooting had stopped by the time the police arrived.

Fifty per cent of the accused were found to be under the influence of alcohol at the time of the incident, as were 31 per cent of the victims. Notably, almost one half of homicide incidents (47%) were followed by the suicide or attempted suicide of the accused.

The timing of incidents (season or day) did not appear to be a significant factor. No pattern was found in the distribution of cases among the four seasons of the year, and one third of the incidents occurred on weekends as opposed to weekdays.

▲ ***Previous Violence.*** In 70 per cent of all incidents, there was third-party knowledge of previous violent disputes between the victim and the accused. This finding is consistent with previous research. However, the police were aware of past disputes in only 23 per cent of cases; in the majority of cases, it was other family members, friends, or neighbours who were aware of the disputes.

In almost one third of cases there was evidence that victims had told others about a previous incident of, or fear of, assault. Similar to the previous finding, family members and others were most likely to be informed by the victim, and the victim had made previous reports to police in only 12 per cent of cases.

In a total of 13 cases (14%), victims had expressed a specific fear that the accused would use a firearm against them. This fear was conveyed to police in seven cases (which precipitated a variety of police interventions to provide protection) and to other individuals in 10 cases.

▲ ***Police Opinions.*** On the survey form completed for each homicide case, police officers were asked to provide some of their own views. In only a small number of cases (5%), police said they had information that might have suggested the possibility that this incident would occur. However, in 46 per cent of cases they felt this information was available to others, including family members, friends, and neighbours. In 64 per cent of cases, police said that in their opinion the incident would not have occurred if the accused had been unable to get a firearm.

When Men Kill Their Partners

As indicated above, almost one half of cases (46%) involved a husband killing his spouse or ex-spouse. In examining this subsample of cases further, the findings were very similar to the larger sample, though more salient. Sixty-five per cent of the accused were abusers of alcohol, and over one half had a criminal record or were awaiting trial. Fifty per cent were experiencing financial difficulty of some kind.

In one half of the cases, the victim and accused were negotiating a separation or divorce, and in 40 per cent of cases there was a recent separation of residence. In almost one quarter of the cases, either the victim or the accused were involved in an outside relationship. Evidence of a child-custody dispute was found in

only 10 per cent of cases. In 81 per cent of cases there was third-party knowledge of prior violent disputes, though again, police were aware in only 22 per cent of cases.

Sixty-four per cent of the accused were under the influence of alcohol at the time of the incident. Much higher than in the general sample of cases, 70 per cent had committed or attempted suicide (5 out of 27 survived their suicide attempt).

Suggestions to Police and Community for Preventive Measures

Many findings in this study merit serious consideration by criminal justice policy-makers and practitioners. The authors provide a number of suggestions for prevention in light of the 1991 provisions in the *Criminal Code* for firearms control. Three components of the legislation were considered in detail.

1) Preventing Some People from Acquiring Firearms

Canadians who wish to own a firearm must first apply for a Firearms Acquisition Certificate (FAC) at a local police station, and a Firearms Control Officer can refuse a FAC if certain indicators of risk are found. Under the new firearms legislation (section 106), applicants will be denied a FAC if, within the preceding five years: they have been convicted of an indictable offence involving violence or weapons, they have been receiving mental health treatment and have shown symptoms of violence, or there is other evidence of a history of violence.

The researchers applied the above criteria to the individual cases of homicide that occurred in 1989 and 1990 to determine whether the accused would have been denied a FAC under the new firearms legislation. By taking into account (on a cumulative basis) a criminal record for a violent or weapons offence, violent disputes known to police, and mental health treatment, it was found that 48 per cent of accused would have been denied a FAC. By broadening the criteria and using other indicators of risk, including violent disputes known to others and alcohol/substance abuse, it was found that 90 per cent of the accused would have been denied a FAC.

The need for communication between police and the community is clearly demonstrated by the high proportion of cases in which third parties (other than the police) were aware of previous violent disputes. It appears that prevention will be better assured if the public is encouraged to inform police of violent domestic disputes, and if further inquiries are made in the community as police review FAC applications.

2) Removing Firearms from the Home

Police are now authorized under section 103 of the *Criminal Code* to search premises and seize firearms, provided that they reasonably believe that the firearm may be used unlawfully.

Many of the factors identified in this study might be useful to police as they respond to calls about domestic disputes and assess the danger of violence with firearms. The police might routinely consider the criminal record of the aggressor, the nature and degree of stress in the situation, the influence of alcohol or drugs, and so on. Then, if it is considered appropriate, they might confiscate any firearms. But again, it is important to ascertain whether violence was involved in the current or previous disputes, and communication between police and members of the immediate community is therefore essential.

3) Prohibition Orders from the Courtroom

Section 100 of the *Criminal Code* allows the courts to prohibit ownership of firearms on conviction of an offence of a violent, weapons, or drug-related nature.

Twenty-eight per cent of the accused in this study were found to have a criminal record for at least one of these offences, and it is quite possible that full application of the law on prohibition would contribute further to preventing domestic homicide involving firearms. It is evident that, in addition to the police and members of the community, judges and prosecutors also have an important role in preventing this type of crime.

When and How to Intervene in Domestic Disputes

This research and the new firearms legislation have sparked several ideas for preventing domestic homicide involving firearms. However, readers should bear in mind that one cannot predict with certainty any future occurrence of a domestic homicide, with or without a firearm. Police respond to several thousand domestic calls every year, many of which could involve the same risk factors identified in this research, and death or serious injury does not result. As such, police and others involved in law enforcement must continue to use considerable judgment in determining how best to intervene in individual cases.

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Domestic Homicides Involving the Use of Firearms, by Dansys Consultants Inc., Ottawa. Department of Justice Canada, Working Document [WD1992-20e], March 1992.

Needed: A Better Break for Street Kids and Runaways

by Lorri Biesenthal
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The increased awareness of the problems of street youth and runaways in Canada is generating mounting concern about the needs of this vulnerable group.

Not least of the difficulties these young people face are those caused by overlapping administrative mandates and divided jurisdictions in delivering the needed services. These are problems which also plague the people who provide the services — in the areas of education, social welfare, health, and criminal justice.

Two questions arise: what are the type and range of community services that are available to youth at risk? and how do the young people themselves view these services?

A Research Goal: More Effective Services

A project designed to devise the best ways to tackle research on these issues has been developed by the federal Interdepartmental Working Group on Youth at Risk, composed of representatives of Health and Welfare Canada (now Health Canada), the Ministry of the Solicitor General of Canada (now Public Security), Employment and Immigration Canada (now Human Resources and Labour), the Canadian Centre for Justice Statistics, and the Department of Justice Canada.

The overall intent of the project is to provide better clues to effective intervention and to assist in developing appropriate future programs and policies for youth at risk.

The report of the first phase of the project, funded by Health and Welfare Canada, was released early this year.

The purposes of this first phase were to develop the research tools and sampling strategies needed to conduct a national study on runaways and street youth and to conduct a one-site feasibility study to test the research instrument. The report contains a research design, the results of a pre-test undertaken in Calgary, and a typology of Calgary youth services, including information on the various roles and responsibilities of key youth workers in that city.

Who Are the Runaways and Who Looks to their Needs?

Five general questions are identified by the authors in the Phase I report. These will form the focus of the research to be carried out in Phase II.

1) How many runaways and street youth are there? What is the size of the runaway and street youth population in various locations in Canada?
2) Who are the runaways and street youth? In research terms, what are the demographic characteristics of this group?
3) What are the antecedents to running and becoming a street youth?
4) What are the consequences of running and entering life on the streets? How does a young person get off the streets?
5) What is the nature of the services for runaways and street youth — including educational, health, criminal justice, and social services? What gaps or overlaps exist in the services being delivered?

Four Classifications of Street Youth Behaviour

The report contains an extensive review of the literature, including a detailed look at the most recent Canadian — and, to a lesser extent, American — research on runaways and street youth. The literature is analyzed in terms of lessons learned.

The findings of the literature review, and the four-quadrant model discussed below, were incorporated into the development and design of the detailed research instrument. The report also includes a discussion on interview techniques and schedules.

The research model is designed to conceptualize street youth and runaway behaviour. A detailed questionnaire aimed at street youth and runaways was created based on this model. (Note that the Calgary pilot study was primarily intended to be a pre-test to develop an adequate questionnaire. The interviews were therefore limited to 20 street youth — 15 males and 5 females — and a control group of 106.)

For the research model, the reader should visualize four quadrants formed by the intersection of two axes: a horizontal axis that measures the amount of time individuals spend on the street, and a vertical one that measures the extent to which young people are involved in street culture. These four quadrants, as we shall see, depict graphically four broad classifications of street youth behaviour.

The horizontal axis of the model forms a continuum (left to right: less to more) which ranges from young people who are occasionally on the street to entrenched street youth who literally live on the street. Young people who are commonly included in the street youth population can be located along the continuum according to the length of time they actually spend on the street. Those individuals falling along the

continuum of the vertical axis (top to bottom: less to more) show involvement ranging from conventional behaviour at one end, to extensive participation in the dangerous and risky activities associated with street life at the other.

▲ Young people in the top left quadrant are seen as conventional youth. As they become more involved in street culture and spend more time on the street, they approach the intersection of the two axes at the centre of the model.

▲ Individuals in the top right quadrant are termed victimized youth, since many are throwaways or running from intolerable situations (such as abusive homes or institutions). While they spend a significant amount of time on the street, they are, as yet, not very involved in street life. Their precarious living situations, however, make them extremely vulnerable.

▲ The bottom left quadrant contains the conventional delinquents identified as delinquent youth. Most are not on the street to any extent but they do participate in the illegal and dangerous activities associated with street culture.

▲ The bottom right quadrant contains entrenched youth. These young people spend most of their time on the street, as many are homeless with no fixed address. They are extensively involved in street life.

The significance of this model is that it identifies a range of behaviour that attracts a range of community responses. It should be noted that although the model may not be able to encompass every type of street youth behaviour or situation, it is a constructive conceptual starting point.

The authors point out that the major dependent variable in the Calgary study was the phenomenon of running. The length of time "on the run" was loosely defined as a proxy for the degree of entrenchment in street life. The second dimension in their conceptualizing of street youth behaviour was the level of involvement in the hazards of street life — including delinquency, narcotic use, school leaving, and depression.

Next Phase: Street Youth Studies in Saskatoon and Ottawa

The preliminary findings of the study suggest that street youth and runaways are an extremely heterogeneous population. The research model developed is now being used in Phase II, which began in January 1993 in Saskatoon and Ottawa, to capture the range of these variations by looking at the level of involvement in running behaviour, combined with the level of involvement in hazardous and delinquent behaviour. The second phase is being funded by the Solicitor General of Canada, Health and Welfare Canada and the Department of Justice Canada. The researchers are attempting in Phase II to pull out the antecedents, consequences and long-term sequels of such situations.

An update of the research will be provided in a future issue of Justice Research Notes.

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Phase I: Studying Runaways and Street Youth in Canada: Conceptual and Research Design Issues, by Augustine Brannigan and Tullio Caputo. Supply and Services Canada, User Report 1993-05. Available from: Research Section, Department of Justice Canada.

Speaking Out for Diversity in Designing Future Studies of Sexism in the Law

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The current widespread interest in the study of gender bias in Canada has stimulated a host of activities focused on understanding the problems more thoroughly and proposing remedial action in many areas — not least of which is the justice system.

In Vancouver on November 1-2, 1991, the Vancouver Association of Women and the Law and the Feminist Institute for Studies on Law and Society sponsored a research consultation on "How to Study Gender Bias in the Law, the Courts, and the Legal Profession."

Co-funded by the Department of Justice Canada and the British Columbia Law Foundation, the event was sparked by the observations that the various committees formed to study gender bias across Canada consisted of lawyers and judges and that most of the social science research of the various committees was conducted by lawyers. The sponsors saw the need for a forum that would bring together a whole range of individuals and organizations concerned with the study of gender bias — judges, lawyers, legal scholars, social scientists, and policy-makers. The participants would be asked to identify the process whereby they conceptualize the issues and how they obtain the data from which conclusions are drawn. Participating groups included the B.C. Native Women's Association, Gender Bias Committee of the Provincial Court of British Columbia, Canadian Bar Association Task Force on Gender Equality, Western Judicial Centre, and Immigrant and Visible Minority Women of British Columbia.

An Agenda for Eliminating Bias

The objectives of the meeting included:

- discussion of the conceptual, methodological, and practical issues associated with the study of gender bias;
- development of a framework to identify and document the existence of gender bias so that systematic and comparative information can be collected; and
- development of strategies to eliminate such bias.

The consultation focused on the following issues, discussed within the context of criminal law, family law, civil law, and employment law: What is gender bias? Can qualitative methods provide reliable data about gender bias? What are the problems associated with using the law for study? Can gender bias in the justice system be studied without studying other forms of bias? Is it possible to study gender bias solely in relation to women? and How does a research question influence the research design and the results of the research?

The Need to Widen the Range of the Research

A variety of questions emerged from the consultation, which reflected the participants' widely differing views.

- One of the most important questions raised was whether gender bias could be studied in isolation from other forms of inequality. Some participants suggested that, although race and sexual orientation are linked to gender, sexism in the law and legal institutions can be, indeed must be, conceptualized and studied as a distinct

issue. Other participants stated that gender, race, and class must be seen as similar forms of social relations that are therefore inextricably intertwined. They stressed that if these factors are isolated, a hierarchy of oppression is communicated, each of which can be operationalized and subjected to "scientific" scrutiny.

▲ Participants also suggested that there is no simple or foolproof method to study sexism in law. However, it was concluded that the decisions about research questions are critical, that who formulates them and how they are formulated will reflect a particular perspective of "social reality." Furthermore, as was pointed out, the initial research questions determine who the subjects of the research will be and, as a result, whose concerns will be heard. Some participants stated that the practice of lawyers and judges establishing task forces to study themselves is problematic. Others observed that the members of gender-bias task forces and the subjects of their research are silent on the issues of race, class, and sexual orientation.

▲ The question was raised whether it is appropriate to analyze the role played by the law and legal institutions in generating and sustaining systemic inequalities without looking at how other institutions contribute to the same end. The participants agreed that the law must be conceptualized as having close links to non-legal arenas of social life rather than as a self-contained and closed system of rules.

▲ Another issue relates to the specific focus of the research. For example, how much time should a researcher devote to the study of one aspect of the law over another? A number of participants indicated that existing research on gender bias in the law focuses on the courts and judicial decision-making. The methodology frequently entails the analysis of reported cases. It was suggested that research on decision-making during the pre-court stages of legal cases and the analysis of alternatives to the courts (such as mediation) may provide more information about sexism in the law than the court hearings themselves.

▲ During the lengthy discussions on how to address sexism in the law, some participants suggested that greater efforts should be expended on education. Others advocated the need for more multidisciplinary research, including the dissemination of the results at various forums. It was noted that future meetings should be held, bringing together smaller, focused groups to address specific problems or issues.

A Call for Action Brings Results

In conclusion, the group forwarded the following resolution to the Hon. Madame Justice Bertha Wilson, chair of the Canadian Bar Association Task Force on Gender Equality:

Despite the appointment of one non-lawyer, the CBA Task Force on Gender Equality is not nearly representative enough of Canadian society. A consultation process with representative groups and advisory committees needs to be set in place so that diversity can be injected into the deliberations of the Committee.

In a follow-up response, Madame Justice Wilson indicated that she had "acted upon the Statement" and that the guidelines forwarded to the chairpersons of all provincial/territorial working groups included the following: "A special effort should be made to include in working groups representation from minority and disadvantaged women's groups." In addition, Madame Justice Wilson noted, the Task Force had expanded the consultation process outlined in its mandate "to include groups of disadvantaged and disempowered women, both lawyers and non-lawyers."

Copies of the papers presented at the consultation were edited by Joan Brockman and Dorothy Chunn of Simon Fraser University and published in Toronto by Thompson Educational Publishing. Royalties from sales of the book will go to benefit the Madame Justice Bertha Wilson Bursary. This was established by the Feminist Institute for Studies on Law and Society for graduate students at Simon Fraser University who are pursuing research that has a focus on the feminist analysis of law and society.

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Investigating Gender Bias: Law, Courts, and the Legal Profession, Joan Brockman and Dorothy Chunn, eds. Includes selected bibliography. For copies: Thompson Educational Publishing, Inc. (11 Briarcroft Road, Toronto, Ontario M6S 1H3; tel. 416-766-2763; fax 416-766-0398), 1993. $19.95.

More on Victim Impact Statements: Managing the B.C. Program

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Victim impact statements, those written personal accounts by victims of the physical, financial, and psychological effects of the crime committed against them, have been the subject of on-site studies initiated by the Department of Justice Canada since 1985.

As described in the November 1990 issue of *Justice Research Notes,* the Department sponsored a series of demonstration projects from 1985 to 1989 in the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, and Quebec.

It will be recalled that Bill C-89, *An Act to Amend the Criminal Code (Victims of Crime),* provided for provinces to formally designate Victim Impact Statement (VIS) programs, thereby lending statutory legitimacy to the inclusion of VISs in the sentencing process. The Act was proclaimed in October 1988, although the provinces and territories did not respond immediately to the new provisions. As of November 1991, five provinces and territories had formally designated programs.

The projects funded by the Department between 1985 and 1989 were designed to test different models for implementing programs. They also looked at such factors as the statements' effects on victims, their effects on the justice system, and, generally, how well the program operated — for example, did the victims have difficulty giving a statement? and what were the methods of obtaining a statement?

New Study Focuses on Administrative and Legal Issues

To complement the Department's previous research, a new study was undertaken of the administrative and legal issues in implementing the VIS program. The study was conducted by Tim Roberts, of Focus Consultants, Victoria, and was made possible by the cooperation and assistance of the B.C. Ministries of the Attorney General and Solicitor General (now amalgamated into one department).

Roberts's report, released earlier this year, describes the Victim Impact Statement Program run by Crown counsel offices in B.C. and assesses the direct and indirect impacts of both the program and the provisions in the *Criminal Code* on the use of these statements. Victims were thus not directly part of the study. Moreover, the project differed from the Department's

earlier studies in that it monitored the implementation of the legislation, while previous work had reviewed demonstration projects.

An advisory committee was set up, composed of a representative from the federal Department of Justice and representatives of six branches within the British Columbia Ministries of the Attorney General and Solicitor General. This committee played a vital role in developing questionnaires, ensuring access to respondents, and providing useful systems of information.

A total of 107 interviews were conducted (in Victoria, Vancouver, Surrey, and Prince George) with individuals in or related to the justice system who have knowledge of or have had experience with VISs. These included 42 Crown counsel, 15 judges, 17 defence counsel, 4 police officers, 8 probation officers, 5 parole officers, and 16 victim assistance workers.

In addition, telephone interviews were held with persons administering VIS programs in all Canadian provinces and territories, a literature search was made of programs in Canada and the United States, and VIS formats and other program documents were collected from a number of sources.

Study Findings Suggest Better Use Could be Made of Victim Impact Statements

It was found that victim impact statements played a very small role in terms of their overall application in criminal cases in British Columbia. They were requested by Crown counsel or by staff in Crown Victim Witness Services (CVWS) offices in approximately 2 to 6 per cent of cases where criminal charges had been laid. Statements actually filed in court represented only 1 to 2 per cent of criminal cases where charges had been approved by Crown counsel for prosecution.

(Note that the CVWS was established in 1987 as an adjunct of the Crown counsel system, and it provides information, court orientation, and referral services to victims of serious crime. Funding comes from regional Crown counsel budgets, and at the time the research was being conducted, the services operated in eight offices, covering all five Crown counsel regions in the province. Additional offices have recently opened.)

The study revealed that procedures for requesting victim impact statements varied from one Crown office to another and might be handled totally or in part by CVWS staff in some offices. Victims who were not asked to produce a statement were generally not informed of their right to submit one. Policy was to request statements from victims of the more serious offences, usually involving violence or other offences against the person. When circumstances warranted, victims of lesser offences might also be asked to provide statements. There was general consensus that the serious offences were the most appropriate to be included, though break-and-enter offences were frequently mentioned as a type that could be targeted more often.

Generally, Crown counsel interviewed for the study regarded the role of victim assistance groups favourably. Defence counsel frequently expressed concerns about what they perceived as the lack of objectivity of victim assistance groups, although they felt somewhat more positive toward statements managed by CVWS staff.

To the extent that deficiencies in VISs were identified in the study, the major problems perceived by defence counsel — and to a lesser extent Crown counsel — related to vengeful and/or prejudicial comments made by the victim. Defence counsel tended to see deficiencies occurring more frequently than did Crown counsel, and far more frequently than did victim

assistance workers. Generally, however, it appeared that the issue of vengefulness was not a major factor for Crown counsel in deciding whether or not to file a statement.

The VIS was reported to be useful to Crown counsel at times in preparing a case. Disclosure of the statement to defence counsel was primarily tied to the decision of whether or not it would be filed. If the statement was filed, it was always disclosed by counsel before sentencing occurred. Regardless of disclosure, there was a feeling among some Crown counsel interviewed in the study that the statement could affect the content of their discussions with defence counsel about plea and sentencing.

Where a VIS was available, Crown counsel reported that, on average, they filed the statement in slightly over 50 per cent of convictions. The primary reason given for not filing was simply that the statement was not useful or significant. Less than 25 percent of respondents mentioned vengeful comments in the statement as the primary reason for not filing. It also appeared that disputes with defence counsel about the VIS occurred rarely. Usually a dispute did not require calling the victim; instead, Crown and defence, before the trial, came to an accommodation over what was admissible.

Because of the low rate of filing VISs, judges interviewed in the study reported that they had limited experience with them, though they had not generally found admission of the statements to be problematic.

On probation officers' use of victim impact statements, the study found that protocols around access to Crown files were developed in local Crown offices rather than at provincial headquarters, which led to uneven application throughout the province. Probation officers generally had some access to Crown files when preparing pre-sentence reports, but sometimes used court files instead. Therefore, if a VIS was not filed with the court, this information was not available to the officer.

It was found that parole officers normally had access to Crown files to obtain information on the impact of crimes on victims, and that in the National Parole Board's work in developing policy on the role of victims, parole officers in some communities were active participants in victim coordinating committees. In general, however, as the report points out, communication networks on victim impact issues need to be better developed between parole officers and Crown counsel. Indeed, the study revealed that with the British Columbia Board of Parole, VISs were rarely available for parole hearings.

A careful review of the information packages typically sent out to victims to request a statement indicated that certain improvements might be advisable, and the report provides alternative samples for consideration.

The study made clear that the training of victim assistance workers in how to help victims complete a statement in an objective but supportive manner could contribute to the overall quality of the documents received by Crown counsel. Suggestions are made in the report about training content.

Diverging Views on the Impact of the VIS Program

Opinions of respondents varied widely on the precise impact that the British Columbia VIS program and legislative provisions have had on the criminal trial process and its various participants.

▲ ***Judges:*** All respondents felt there had been a change in judges' awareness of victim concerns. Crown counsel and victim assistance workers tended to credit the change as being more significant than did other respondents. Although 27 per cent of respondents were

unsure whether Bill C-89 had affected judges' willingness to hear victim impact information, of those who were able to comment, 58 per cent (36/62) felt it clearly had.

▲ ***Crown Counsel:*** 47 per cent of respondents (37/76) felt that the VIS program had had a salutary effect on the awareness of Crown counsel of victim circumstances.

▲ ***Defence Counsel:*** The majority of defence counsel felt that VISs had had a negative impact on clients' outcomes, especially in sexual assault, sexual abuse, and homicide cases, and that this had limited the defence counsel's options. A minority expressed the opinion that Crown counsel were only weakly committed to VISs, and that the statements were just a formalization of what they had always done as part of sentencing submissions.

▲ ***Probation and Parole Officers:*** In spite of the problems noted earlier, Bill C-89 appears to have given a noticeable boost to the collection of victim impact information by probation officers and parole boards in British Columbia, insofar as the legislation seems to reflect the higher level of public concern about the status of victims.

▲ ***Victims:*** Although this study did not include interviews with victims, the general consensus among respondents was that victims had been satisfied when they had used the VIS program.

▲ ***Offenders:*** There were no interviews with offenders, but respondents reported variable reaction to VISs by offenders, depending primarily on the characteristics of the offender.

▲ ***Sentencing Process:*** A majority of respondents who were able to assess the impact of VISs on sentencing felt that there had been a "minor change" in sentences ordered by judges. Occasionally, sentences were dramatically higher in cases where a VIS was involved.

How Best to Administer a VIS Program

It was clear from this study that one of the central issues in administering VISs is whether statements should be automatically filed (although not required) with the court, and thus be given to judges at sentencing time on a consistent basis, or whether Crown counsel should retain some discretion in the use of statements. There is also some question of whether Crown counsel themselves should administer VISs, or whether an alternative delivery model is more appropriate — such as the Crown Victim Witness Services or a community-based service.

There was mixed feedback on the type of delivery most preferred by respondents. Judges, Crown, and defence counsel generally preferred a Crown-based system with Crown counsel exercising discretion over whether to file a statement with the court. While police, parole and probation officers, and victim assistance workers also expressed their general preference for a Crown-based system, within such a system they preferred automatic filing of the VIS.

Furthermore, although judges, Crown counsel, and defence counsel generally preferred a Crown-based delivery system, there were differences of opinion about the potential effects of automatic filing. Most judges felt automatic filing would have good results, though less than 10 per cent of Crown and defence counsel felt the same way.

In sum, the study showed a general preference for a system with some association with Crown counsel and, at the same time, a desire to limit Crown control by means of automatic filing. In some centres, there was a gradual devolution to Crown Victim Witness Services of responsibility for targeting and collecting statements. Consistent with this trend, the report recommends that a pilot project be undertaken, involving quality

control by CVWS staff and automatic filing of the VIS in court. A recommendation is also made for a similar pilot project involving a community-based victim support service. A "model VIS form" is included in the appendix of the report.

Future of VIS Programs Seems Assured

Although the Victim Impact Statement Program in British Columbia is clearly at an early stage of development, the views expressed in this study, combined with the knowledge from previous research that victims generally benefit from the opportunity to complete VISs, suggest that the program has the potential to become more deeply embedded in the criminal justice system.

To assist in developing such programs in British Columbia and in other jurisdictions, further dialogue and coordination is required between representatives of victims and personnel from the different sectors of the justice system.

Among the issues that need to be resolved are the following:

- clarifying the overarching purpose of VISs;
- establishing how the roles of each of the participants touch upon these purposes in fulfilling their own mandates; and
- identifying the necessary modifications to the existing VIS system and communication networks to meet the needs of all parties in a mutually beneficial way.

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Assessment of the Victim Impact Statement Program in British Columbia, by Tim Roberts, Focus Consultants, Victoria. Department of Justice Canada, Working Document [WD1992-5e], February 1992.

Challenging Intergovernmental Agreements: How It's Done and Why

by Lynne Dee Sproule
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The past 15 years have marked an increasing public interest in government activities and a changing legal atmosphere in Canada, as individual citizens are being given legal status to challenge government actions of all sorts, including intergovernmental agreements. Governments themselves are also showing more willingness than in the past to bring actions in court to enforce these agreements.

Cooperative arrangements between federal and provincial governments in Canada often result in a written agreement signed by both parties. These have become a major tool for delivering government programs. They can be broad framework agreements (as for economic and regional development) that provide a context for negotiating more specific agreements, or they can stand alone (Part 1 of the Canada Assistance Plan, for example). The agreements may refer to many types of arrangements, the most familiar being cost-sharing, as for legal aid programs, and joint resource or program management.

In 1991, the Law Reform Commission of Canada requested that the Canadian Institute for Resources Law examine the main legal issues around intergovernmental agreements, including their legal characteristics, enforceability, and the place of the public interest in their negotiation and implementation. Susan Blackman, Research Associate at the Institute, carried out the study

and provided the Commission with a draft report based on analysis of some 50 agreements, a review of pertinent literature and case law, and interviews with government personnel. Following the dissolution of the Law Reform Commission, Blackman updated and finalized the report under the auspices of the Department of Justice Canada. The following is a summary of her findings.

Legal Characteristics of Agreements

Existing case law, according to Blackman, shows that intergovernmental agreements may contain legally binding obligations, with courts generally looking to the parties' intentions when they made the agreement, a standard practice when courts interpret a contract between *private* parties. For the most part, however, intergovernmental agreements *differ* from private contracts because the parties are governments and the agreements are used for purposes peculiar to governments. Blackman asserts that other aspects of contract law, such as remedies (damages, injunctions, and orders to perform a contractual obligation), do not apply in the context of intergovernmental agreements. Intergovernmental agreements are also unlike private contracts in that they almost always contain a strong element of public interest.

Opportunities for Public Input Are Few

Blackman holds that the public interest — the interest of people who benefit from or who are burdened by an agreement — should be taken into account in the development of any agreement, given people's legal or practical ability to hinder the agreement's implementation. For some agreements, the interest group should be broadened to include the general public. Blackman advocates public input during the larger policy-making process that leads to an agreement. She posits that detailed consideration of actual agreements by the public is only appropriate when the agreement directly involves members of the public in its implementation, and when public interest is high.

Blackman points out, however, that real opportunities for public input in the development and implementation of agreements are few and not systematically available. Most opportunities are limited to indirect observation of policy-making and negotiations or to scrutiny of the agreement and its implementation after it is too late to have any influence on the process. The majority of the interested public therefore seldom gets a feeling of having been involved in decision-making for a particular agreement or group of agreements. Blackman maintains that greater use of public participation in the development and implementation of agreements will generate more informed and balanced decision-making, and hence agreements that better meet the needs of the public.

The legal issues arise when an agreement needs to be enforced either by a party to the agreement or by a member of the public.

Enforcement of Agreements by Government Parties

The Blackman paper outlines three means of enforcing agreements by the parties.

First, the agreement itself may specify that government ministers are to resolve disputes. Whether or not the agreement so specifies, in fact this would normally be the means of settlement chosen.

Second, for certain types of agreements, Blackman notes that it may be useful to consider creating tribunals with expertise in particular

areas of intergovernmental agreements which could arbitrate all disputes arising out of, for instance, social welfare agreements or economic and regional development agreements. Blackman concedes, however, that the general lack of use of arbitration to date suggests that parties are unwilling to give up their own decision-making authority.

Third, bringing a suit in court is an option where provinces have enacted legislation granting the Federal Court of Canada or the Supreme Court of Canada jurisdiction over "controversies" between themselves, or between themselves and the federal government. (Most provinces have done this, though British Columbia repealed its legislation granting the Federal Court jurisdiction in December 1992.)

Whether the agreement will be enforced by a court depends in part on whether an intention to create legally binding obligations can be found in the agreement. However, certain constitutional principles *may* nullify any stated or implied intention to create binding obligations. These principles can serve to question the validity or limitations of federal spending power in particular cases, or to render unconstitutional any agreement in which a government delegates its constitutionally assured legislative powers to the other level.

Enforcement by Private Individuals and Interest Groups

The usual route for enforcing an agreement by someone who is not a party would be by court action. The rules on bringing an action to challenge government activity are fairly broad in Canada, although not wide open, and have allowed a person affected by an intergovernmental agreement to challenge government action taken under the agreement. The broad rules at least permit these issues to be raised in court, although the existing case law in Canada gives no conclusive indication of what approach courts will take in deciding the issues.

The law also provides people with two other means of enforcing or supervising implementation of agreements: statutes establishing the office of Ombudsman, and access-to-information statutes. According to Blackman, however, both are flawed for that purpose. The statutory jurisdiction of the Ombudsman may not extend to all of the issues that might arise in the implementation of an agreement. In addition, the office of Ombudsman is created by provincial statute, and the province cannot give its Ombudsman jurisdiction over the federal government, nor can it grant access to records held by the federal government. With respect to access-to-information statutes, although agreements appear to be treated as public documents, some *might* be excluded from public scrutiny if certain sections of the federal *Access to Information Act* were deemed to apply.

Blackman points out that the means by which the public might enforce agreements all come into play only after the agreement is signed. She concludes that, although legal action may provide an effective means of ensuring public interests are taken into account during implementation, they would be more adequately represented, with less expense, if the public were permitted to participate in the development of agreements.

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Intergovernmental Agreements in the Canadian Administrative Process, by Susan Blackman, Canadian Institute for Resources Law. Department of Justice Canada, Technical Report (Unedited and Untranslated), 1993.

Law Schools and the Legal Profession: Who Gets Access?

by Phyllis Doherty
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The Department of Justice, in its continuing nation-wide search for lawyers to staff its services, is committed to hiring people who are representative of Canada's diverse population. This means ensuring inclusion of four main groups that have suffered from discrimination in the past: women, visible minorities, aboriginal people, and persons with disabilities.

In February 1992, the Department, with the assistance of 10 law schools across the country, set out to determine if law schools, the main source of candidates for lawyers and potential judges, were attracting and retaining members from these groups, and whether or not there were any barriers to access to legal education. Of particular interest were questions that examined students' perceptions of the frequency and sources of discrimination, both at law schools and during the job recruitment process. The Ottawa-based firm of Abt Associates was commissioned to conduct the inquiry, and its report was completed in March 1992.

The survey questionnaire was developed in consultation with Department of Justice staff, including the chairpersons of the Deputy Minister's Advisory Committees on Disabled Persons, Women, Aboriginal People, and Visible Minorities. The Steering Committee on Employment Equity was also consulted. In addition, suggestions were sought from law professors with a declared interest in the issue of equitable access at the University of Windsor, the University of Ottawa, the University of Saskatchewan, and Dalhousie University. As a result of these consultations, the survey questionnaire covered many human rights issues, including the problems faced by law students with children and the discrimination experienced in law schools by gays and lesbians. Law schools at the following universities participated in the inquiry: Victoria, British Columbia, Alberta, Calgary, Manitoba, Windsor, Ottawa, Queen's, Laval, and Dalhousie.

How Representative Are Law Schools?

Overall, 836 third-year law students completed the survey, which represented a 48 per cent response rate. Of these, 53 per cent were women, 12 per cent considered themselves to be members of a visible minority, slightly less than 2 per cent were aboriginal people, and approximately 4 per cent were identified as having one or more disabilities.

The findings are encouraging for law schools that have been hoping to attract a diverse student population and for the Department of Justice and law firms wishing to recruit articling students and lawyers from a representative sample of Canadians.

Evidences of Discrimination

The survey asked law students with long-term disabilities, physical impairments, or other medical conditions to indicate whether they needed special assistance and whether the necessary services were available or provided to them. These students mostly required modifications in their course load and in the amount of time allowed to complete assignments and to take examinations. Approximately two out of three students with

these needs reported that such assistance was available.

There is evidence of discrimination before entering law school, and while at law school from other students. The numbers vary by group of respondents and within different contexts. Discrimination was reported as having been experienced at law school by approximately four of ten visible minority students, one of three women students, four of ten gay/lesbian students, and two of ten disabled students. Of all students surveyed, some 6 per cent said they had experienced discrimination attributed to religious affiliation.

Experiences of discrimination in terms of frequency rank as follows: during law school from students, at school (previous schooling) before law school, during interviews at law offices, at law school from professors, and when applying to law school. Compared with either the larger educational environment (before law school) or with law offices where students have been interviewed, the law schools (except for discrimination from students) perform relatively well. This points to the need for continuing efforts to foster tolerance and acceptance for human difference and diversity among the general population.

Toward Improving Employment Equity

Survey respondents said they often experienced discrimination during recruitment by law firms. Of particular concern to women students (especially married women or women with children) was the practice of many firms to ask about their plans for raising children.

An unexpected response emerging from the written comments in the survey concerned discrimination attributed to age which, it was reported, occurred most often during job recruitment. The implication was clearly drawn by several respondents that some of the interviewing firms considered (relatively) advanced age to be a negative factor in their selection of both articling students and associates.

The survey report will be useful to law schools that would like to become more active in promoting equitable access both in admissions policy and in curriculum, to scholars interested in the issue of access to legal education, and to potential employers concerned about employment equity issues in the legal profession.

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Survey of Students at Ten Law Schools in Canada, by Colin Meredith and Chantal Paquette, Abt Associates, Ottawa. Department of Justice Canada, Working Document [WD1992-19e], March 1992.

Department of Justice Canada — Research Publications Order Form

The following research reports have been described in this issue of Justice Research Notes. Please check off the items you would like to receive, and mail a copy of this form, along with your name and address, to: Research Section, **Department of Justice Canada, Ottawa K1A 0H8.**

☐ *Domestic Homicides Involving the Use of Firearms,* by Dansys Consultants Inc., Ottawa. Department of Justice Canada, Working Document [WD1992-20E], March 1992 (58 pages).

☐ *Phase I: Studying Runaways and Street Youth in Canada: Conceptual and Research Design Issues,* by Augustine Brannigan and Tullio Caputo, Supply and Services Canada, User Report 1993-05 (217 pages). Available from: Research Section, Department of Justice Canada.

☐ *Assessment of the Victim Impact Statement Program in British Columbia,* by Tim Roberts, Focus Consultants, Victoria. Department of Justice Canada, Working Document [WD1992-5E], February 1992 (120 pages).

☐ *Intergovernmental Agreements in the Canadian Administrative Process,* by Susan Blackman, Canadian Institute for Resources Law. Department of Justice Canada, Technical Report (Unedited and Untranslated), 1993 (99 pages).

☐ *Survey of Students at Ten Law Schools in Canada,* by Colin Meredith and Chantal Paquette, Abt Associates, Ottawa. Department of Justice Canada, Working Document [WD1992-19E], March 1992 (56 pages).

For further information concerning these or other departmental research documents, please contact the Research Section at: (613) 941-2266.

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