PROVINCIAL JUDGES

Journal

DES JUGES PROVINCIAUX

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THE CANADIAN ASSOCIATION OF
PROVINCIAL COURT JUDGES

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JUGES DE COURTS PROVINCIALES

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CHANGES?

New Provincial Representative?

Let the Executive Director and the Junior Editor know without delay!

New Compensation Terms?

Let Judge D.M. McDonald, Calgary know as soon as possible!

* * * * * *

CHANGEMENTS?

nouveau(elle) représentant(e) de la province?

Je vous prie, informez le directeur exécutif aussi bien que le rédacteur en chef du journal sans délai!

nouveaux termes de la compensation/ rémunération?

Informez m. le juge D.M. McDonald de Calgary le plus tôt possible!

President's Page

by/par Judge Yvon Mercier/M. le juge Yvon Mercier

Nous sommes déjà rendus à la fin de la présente année judiciaire et très bientôt nous nous retrouverons à Toronto à l'occasion de notre conférence annuelle du mois de septembre. Je sais que le juge Porter n'a ménagé aucun effort pour faire en sorte que cette rencontre soit des plus agréables et des plus productives. Le juge en chef Sidney Linden y est allé de sa collaboration et je peux vous assurer que vous reviendrez enchantés de votre séjour à Toronto. Je profite de l'occasion pour vous encourager très fortement à assister à cette réunion annuelle au cours de laquelle il se pourrait que de très sérieuses décisions soient prises concernant l'avenir de notre Association et l'orientation de sa principale raison d'être, c'est-à-dire l'éducation de ses membres.

En effet, le Gouvernement fédéral par l'intermédiaire de madame Kim Campbell, ministre de la Justice, n'a pas encore donné de réponse affirmative au renouvellement de notre subvention annuelle et à la suite d'un voyage effectué à Vancouver par notre secrétaire exécutive, madame la juge Pamela Thomson, lors d'un colloque auquel assistaient madame Campbell, Me John Taite, sous-ministre de la Justice, et quelques autres membres du Cabinet de la ministre, il fut annoncé que nous aurions des nouvelles sous peu. Cependant, je reste convaincu que le ministère de la Justice voudrait dorénavant faire passer notre subvention annuelle par les mains du Centre judiciaire canadien. Cela pourrait apporter comme inconvénients le fait que lorsqu'un colloque est organisé par le Centre judiciaire canadien, les juges de nomination fédérale n'ont aucun problème pour voyager et se rendre à ce colloque. Il n'en est pas de même pour les juges de nomination provinciale pour le paiement de leurs déboursés de voyage et de séjour. Voilà une question extrêmement importante qui fera l'objet de discus-

Already we have arrived at the end of the present judicial year and very soon we will find ourselves in Toronto on the occasion of our annual conference during the month of September. I know that Judge Porter has spared no effort to ensure that this meeting will be one of the most pleasant and productive. Chief Judge Sidney Linden has thrown his support behind it and I can assure you that you will come away from Toronto delighted with your visit. I am taking advantage of this opportunity to strongly urge you to attend this annual meeting during the course of which some serious decisions could be made concerning the future of our Association and its raison d'etre, that is to say the education of Association members.

Actually, the Federal Government through Ms. Kim Campbell, Minister of Justice, has not yet responded affirmatively to the renewal of our annual grant and following a recent trip made to Vancouver by our Executive Secretary, Judge Pamela Thompson, at the time of a symposium attended by Ms. Campbell, Mr. John Tait, Deputy Minister of Justice, and some other members of the office of the Minister, it was announced that we would have some news shortly. However, I am still convinced the Department of Justice would like henceforth to channel our annual grant through the Canadian Judicial Centre. The disadvantage in that would be the fact that when a workshop is organized by the Canadian Judicial Centre, the federally appointed judges have no problem with travelling to attend a workshop. It is not the same for provincially appointed judges in having their travel and lodging expenses paid. That is an extremely important question which will be the object of serious discussion with the Minister of Justice.

The conference organized by Judge Doug Campbell of Vancouver, which will be held at the end of June at Yellowknife

sions sérieuses avec madame la ministre de la Justice.

D'autre part, la conférence organisée par monsieur le juge Doug Campbell de Vancouver, laquelle se tiendra à la fin de juin à Yellowknife, comportera des thèmes extrêmement importants comme le racisme et la discrimination relative au sexe. Le vice-président, le juge Charles Scullion de Toronto, me représentera à ce colloque et je suis assuré que les résultats seront des plus satisfaisants.

Cela m'amène à mentionner le fait que l'organisation du colloque des provinces de l'ouest fera également l'objet d'une discussion et d'une étude lors de notre prochaine rencontre de l'exécutif à Toronto, en septembre prochain. Certains juges en chef ont laissé entendre qu'ils pourraient demander au Centre judiciaire canadien de s'occuper de ce colloque alors que d'autres juges en chef préfèrent que l'Association canadienne continue à en être le grand tuteur.

Je veux aussi vous mentionner le fait que la province du Nouveau-Brunswick organisera pour le début de juillet prochain un colloque qui réunira non seulement les juges de cette province mais également tous les juges des autres provinces atlantiques. Le juge Pérusse et le président du Collège canadien, le juge Jean-Marie Bordeleau, ont réussi à mettre sur pied l'organisation d'une telle rencontre. J'en suis très fier car depuis quelques années et pour des raisons de toutes sortes, une telle rencontre n'avait pû avoir lieu. Je compte bien être présent à ce colloque et je suis assuré qu'il connaîtra tous les succès escomptés.

En terminant, je veux vous souhaiter une saison estivale des plus remplies et reposantes et je vous donne rendez-vous au colloque de septembre prochain, à Toronto.

will include themes of extreme importance such as racism and sex discrimination. The First Vice-President, Judge Charles Scullion, of Toronto, will represent me at this meeting and I am certain that the results will be most satisfactory.

This leads me to mention the fact that the organization of the meeting of the Western Provinces will likewise be the object of discussion and study during our next Executive Meeting at Toronto in September. Some Chief Judges have let it be known that they would be requesting the Canadian Judicial Centre to take care of this meeting while other Chief Judges prefer the Canadian Association continue to be the chief guardian.

I want to also mention that the Province of New Brunswick will have organized for the beginning of July a meeting which will bring together not only the judges of that province but also judges of all the other Atlantic Provinces. Judge Perusse and the Chairman of the Canadian Judicial College, Judge Jean-Marie Bordeleau, have succeeded in putting together such a meeting. Of that I am very proud because for a few years and for many reasons, such a meeting has not been able to be held. I fully intend to be at that meeting and I am sure that every success can be expected.

In closing, I want to wish you a pleasant and restful summer season until we meet in Toronto in September.

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 popularion, 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)

In Lighter Vein

In one city court there was a judge who was renowned for the near-sermons which he simply could not resist laying on convicted persons. One day, he was in the process of delivering one of his favourite lectures to a man convicted of theft:

"You have been found guilty, and it is my duty to sentence you to a penalty of seven years in prison," pronounced the judge. "I hope that sentence will serve to afford you time to reflect upon the gravity of your act."

The convicted man slowly looked up and said: "Oh! Your Honour, I can reflect much more quickly than that."

• • •

IT'S ONLY A JOKE
Question: A fairy, a very high-priced lawyer and a bargain-priced lawyer were together in a room. On the table sat a $100 bill. Suddenly the lights went out and when they came back on, the bill had disappeared. Who do you suppose had taken it?
Answer: The high-priced lawyer ... because the other two are figments of the imagination.

• • •

"When I was a little boy," said the famous lawyer, "I always dreamed of becoming a pirate."

"Is that so?" responded his client. "Congratulations!"

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 neighbourhood 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, female 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

Editorial Page

From time to time I have heard it expressed that 15 years or 20 years on the bench is quite sufficient given the immensity of the demands upon a judge's psychological capacity and the high level of stress associated with the profession. On the other hand I have heard it said that in this country what we need is a judicial system with a career judiciary.

A career judiciary would naturally involve much more than a career span of 15 to 20 years but the justification for a career judiciary normally involves the notion that such a system would eliminate political patronage in the appointment of judges, would ensure a group of well-qualified and dedicated persons who wield enormous power to influence the lives and liberty of our citizens, and would afford to judges ample cause to be contented and satisfied with their career as they would be able to expect to be promoted on the basis of merit.

In 1988 Superior Court Judge Robert P. Schifferman for the County of Los Angeles, California wrote in the *L.A. TImes* that justice in the U.S. requires a career judiciary. Except for the fact that in Judge Schifferman's jurisdiction the judges of which he spoke were elected, his rationale for a career judiciary would similarly apply to our own country. I have not seen an argument in favour of a career judiciary more ably put and I offer the following excerpts from his comments as a valid and valued contribution to that debate. Judge Schifferman stated:

> It has always struck me as anomalous that we evaluate training and experience before we permit a physician to perform delicate surgery, yet when selecting a judicial officer whose rulings may affect someone's livelihood or freedom, our candidate may have mediocre qualifications to practice law, much less serve as a judge. Equally startling is the fact that persons selected to serve as judges of our intermediate and highest appellate courts may never have practiced law or presided over a trial; yet, they are deemed appropriate final arbiters in our American system of justice.
>
> Attempts have been made in various jurisdictions — with varying degrees of success — to utilize a merit system in the selection of judges. I believe there is only one way to avoid confrontations over judicial selections, such as the Bork nomination or the bitter 1986 retention elections involving California Supreme Court justices. We must embark upon the development of a career judiciary, whose members would be selected without reference to race, sex, creed, color or political affiliation, but rather on the basis of demonstrated intellect, legal ability and, just as importantly, emotional stability and objectivity.
>
> We should pay our judges well in order to attract "the cream of the crop" and provide for elevation to higher courts as they demonstrate their entitlement to that recognition. To the charge that we would emerge with an elitist judiciary, I plead guilty, if by "elitist" one means that we would have selected and retained the best possible judges without reference to racial, political or ideological concerns. In this way, we would create a national judiciary representing a genuine cross-section of our finest judicial talent drawn from all races and creeds.
>
> Our American career judiciary would be forged in the following manner:
>
> Upon graduation from law school,

judicial candidates would take written and oral examinations administered by local boards composed of judges, law professors and practicing lawyers, as well as community representatives, including people skilled in psycho-social evaluation. Promising survivors of this intensive selection process would be appointed to serve initially in courts of limited jurisdiction. Their progress would be closely monitored, and as they demonstrate acquired judicial skills, they would be promoted in the judicial hierarchy with greater responsibilities and commensurate increased compensation.

By committing themselves to a lifetime career on the bench with its attendant honor and recognition, in one generation our career judiciary could accomplish what 200 years have not: a bench free of political pressures and, more importantly, free of the sources of popular discontent — chronicled by Dean Roscoe Pound in 1906, and still largely unsolved more than 80 years later. This approach, if adopted, would require both constitutional changes and an entirely different outlook by the American people on their desires and expectations from the judicial system.

Does this represent an indictment of the entire American judiciary? Of course not. The majority of judges are able and hard-working. But unless we are prepared to professionalize our national judiciary, we will continue to see divisive battles over confirmation, resignation of some of our most able jurists and occasional appointment or election of marginally qualified judicial candidates. Only by the creation of a true career judiciary can we hope to achieve our professed dream of equal justice for all.

Rhetorically I ask, What more is there to be said?

— M. Reginald Reid
Editor-in-Chief

Ne jugez pas de peur que vous soyez jugé vous-même.

D'accord, qui est le type goguenard?

Excerpt from *Women and Justice: Questions and Answers* *

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, higher than 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 joint custody; 1% were granted to other persons or agencies.

— What are the reasons given as grounds of divorce?
The alleged ground for divorce in 1989 was mostly 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.

SOURCES:

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 commonly 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 remaining 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

*Excerpted from a paper prepared by Statistics Section, Policy, Programs and Research Sector, Department of Justice, June 1991 for presentation to THE NATIONAL SYMPOSIUM ON WOMEN, LAW AND THE ADMINISTRATION OF JUSTICE, Vancouver, BC, 10-12 June 1991.

against women in the attitudes of judges and lawyers and even in parts of the law itself. She challenged judges to speak out against these inequities.

We feel we've accepted the challenge,'' said Arnot, who detects a renaissance stage to the feminist movement.

Campbell, of the Western Judicial Education Centre, has also been influential, he stressed. ''He's taken judicial education to a different plane in dealing with native cultural issues and gender bias issues.''

The Saskatchewan provincial court judges ''want to be at the vanguard of this type of education,'' he added.

For three of her five years on the bench, Judge Patricia Linn has been the only woman among 43 provincial court judges. There are times it's not a comfortable seat, she admitted.

''You do feel torn, often, as a women making the decision. It is sometimes no-win.''

While emphasizing her first duty is to do ''what I feel on the evidence is right in law,'' she feels judges could take ''a more active role in the process, so that it is less harsh and demeaning and terrifying to the victims, be they male, female or children. ''Victims of abuse have the right not to be victimized all over again,'' she said.

The video project was not intended to point fingers at anyone, Linn said, bemoaning the fact that only bad judgments — not the majority of fair, compassionate ones — get press. The video is purely for the awareness and education of our profession. We owe it to ourselves and the community to be the best judges we can be.

''One way is to address the current, everyday issues such as gender bias and racial bias.''

In one scene, a male judge paternalistically spares a repeat shoplifter a jail term because ''she should be home with her children.'' Yet he flips out when his female secretary leaves early to care for a sick child.

Linn is well aware of the lack of respect for the parenting role, and the tug-of-war between career and motherhood. Interviewed during a busy day at the courthouse, she would soon head home to supervise her 13-year-old's birthday party. She'd been up late the night before, making the cake.

It's the direct experience of such conflicts that enlivens this landmark video, and points the way to positive changes in the courts. Changes, one hopes, that will also give Linn some female company on the bench.''

News Briefs

ONTARIO

Appointments

The following appointments to the Ontario Court (Provincial Division), were made effective February 1, 1991:

His Honour Judge David P. Cole, Toronto region;
Her Honour Judge Paddy A. Hardman, Central South region;
His Honour Judge Ronald B. Lester, North West region;
His Honour Judge Douglas W. Phillips, South West region;
Her Honour Judge Lynn D. Ratushney, East region;
Her Honour Judge Mariotte Roberts, Central West region;
His Honour Judge Harry M. Salem, Toronto region;
Her Honour Judge Eleanor A. Schnall, South West region;
His Honour Judge D. Roger Timms, Central East region;
Her Honour Judge D. Terry Vyse, Central South region.

Effective March 8, 1991 His Honour Judge Bernard M. Kelly, Toronto was appointed Senior Judge for Metropolitan Toronto.

Effective May 17, 1991 His Honour Judge Stephen J. Hunter of Belleville was appointed for the East region.

Effective June 1, 1991 the following appointments were made:

His Honour Judge Peter Hryn, Toronto region;
Her Honour Judge Dianne Nicholas, East region;
His Honour Judge Patrick A. Sheppard, Central East region.

Effective July 1, 1991 the following appointments were made:

His Honour Judge Ralph E.W. Carr, North East region;
Her Honour Judge Karen E. Johnston, Central East region;
His Honour Judge Brian Stead, Central South region;
His Honour Judge Raymond Taillon, Central East region.

Retirements (from full-time to part-time service)
His Honour Senior Judge Alex W. Davidson, Toronto. Judge Davidson was appointed November 20, 1973 and ceased to serve on a full-time basis effective January 31, 1991.

ALBERTA

Appointments

His Honour Judge William Crowell Kerr, Calgary, appointed Assistant Chief Judge, Civil Division, effective May 13, 1991;
Her Honour Judge Eileen M. Nash, Criminal Division, Edmonton, effective May 13, 1991;
Her Honour Judge Sharron Prowse-O'Ferrall, Family & Youth Division, Calgary, effective May 13, 1991;
His Honour Judge David J. Tilley, Criminal Division, Edmonton, effective June 3, 1991.

Transfers

Her Honour Judge Sharon Lynne Van De Veen from the Criminal Division, Edmonton to the Criminal Division, Calgary effective May 1, 1991.

Retirements

His Honour Judge James Julius O'Connor from the criminal Division, Calgary, effective May 6, 1991;
His Honour Judge Samuel Alexander Friedman from the Criminal Division, Edmonton effective May 31, 1991.

Family Violence Court of Manitoba

by Judge Ronald Meyers

(EDITOR'S NOTE: — In September 1990 the Province of Manitoba established a Family Violence Court in its Provincial Court to deal with a specialized category of cases. The following series of articles deals with that topic and in the first article, adapted from notes for a speech delivered at THE NEW BRUNSWICK SYMPOSIUM ON WOMEN ABUSE AND THE CRIMINAL JUSTICE SYSTEM at Moncton, New Brunswick on November 8, 1990, Judge Ronald J. Meyers sets out the rationale for the implementation of the project. The next two articles basically constitute a serial report on the experience and success of the Court during the first half-year of operation. Those reports were compiled by Professor E. Jane Ursel of the Department of Sociology of the University of Manitoba.)

On September 17th of this year, the Province of Manitoba introduced its latest initiative in the fight against domestic violence. A new Provincial Family Violence Court, designed to hear such matters as spousal assault, child sexual assault and assaults against the elderly, began its sittings in the City of Winnipeg, under the watchful eye of a population that has been numbed by the all too frequent headlines announcing either the death of a woman at the hands of her mate, or the sexual assault of an innocent child by an adult.

As might be expected, there was criticism of the concept of a specialized court. Some lawyers opposed the project because of the possible unfairness it would create for accused persons, while others saw it as a knee jerk reaction by government to demands for action by a powerful women's lobby. Those in the latter category are obviously still of the view that an attack on anything identified with the feminist movement will result in its falling into public disfavor.

However, I can assure you that this particular court did not come about to infringe on anyone's rights, or as a capitulation to feminism.

That it is functioning today, is directly attributable to the fact that the justice system recognized that the old ways of its dealing with family violence were ineffective and required immediate addressing.

To understand how Manitoba arrived at its decision to introduce this specialized court requires a brief primer in history. I'm not going to bore you with the development of the justice system since 1870, when Manitoba entered into Confederation. If we take 1983 as a key date we would be able to see quite clearly how and why we were inevitably going to wind up with the new Court.

In 1983, the then Attorney General issued a directive instructing all police departments in the Province to charge any person who was alleged to have assaulted or threatened his or her spouse. That initiative created a dynamic that no one had contemplated. It also led to difficulties which will be referred to by me in the time at my disposal.

Up until 1983, there was a certain reluctance on the part of the police to get involved in what they perceived to be matters best left for resolution in the family court system. Unless the assault was to their thinking of a very serious nature, abused women were advised to either proceed in the family court or by way of private prosecution in the criminal court. While legal aid was and had been available since 1972 to assist in family court matters, it was not available to assist private criminal prosecutions. The criminal justice system could best be described as woefully inadequate when it came to dealing with the issue of spousal assault.

An interesting feature about both videos is the heavy degree of volunteer work. Local actors from the Battlefords Players theatre company performed as victims, perpetrators and witnesses. Judges and lawyers also chipped in. Battlefords Co-operative Cablevision did the taping and editing. The video isn't meant to tell judges how to think. It's designed to raise their awareness of gender bias, he said.

But if there was a certain tenor, it is this, Arnot said: "I think the message to the judiciary is females want fairness and equality, and who can argue with that?"

The month earlier, before the video was completed, Sheila Robertson's column appeared as follows:

"It's always a pleasure to hear a pre-trial motion from you Susan," the male judge tells the woman lawyer, "especially when you look as good as you do today."

"With respect, your honour, I really don't think my personal appearance is relevant."

The judge, looking embarrassed, says, "You feminists take all the joy out of life. But I'll hear what you have to say on behalf of your client."

This interchange is included in a remarkable video developed by a group of judges on the education committee of the Saskatchewan Provincial Court. The project features 31 vignettes about gender bias. Commissioned by Judge Douglas Campbell, director of the Western Judicial Education Centre in Vancouver, the tape debuts at a judges' conference in Yellowknife in June, and will be distributed to judges across Canada.

Why is it so remarkable? It's the first project of its kind to spring from the judiciary — a career group that is still predominantly male, and which is known for being fairly conservative. That members of this group should demonstrate an awareness of gender inequalities in the courts and move to address the problem is exciting.

Judge David Arnot of North Battleford spearheaded the project, with the help of Judges Lloyd Deshaye, Bert Lavoie, Patricia Linn and Gerald Seniuk. In a recent telephone interview, Arnot explained the 2½ hour video grew out of a shorter tape assembled last year as a teaching tool for lawyers.

The judges drew on real life dilemmas encountered in their own court rooms and elsewhere. One segment reflects a sexual assault case from Manitoba. The judge in this case departed from tradition in admonishing a psychiatrist for a pre-sentence report blaming the 17-year-old victim. He said this approach ignored the accused's power over the victim, who lived in his house and was his sister-in-law.

The judges-cum-screenwriters also acted as judges in the taping, which took place recently in the Battlefords.

"It could only have been done here, with small-town Saskatchewan co-operation," Arnot said in a telephone interview, citing the aid of the local bar association, the sexual assault centre, the community cable television station, and 57 amateur actors. For his part, Arnot exchanged a judge's robe for a director's chair.

The goal is to enlighten judges about gender bias, he said. "Once they can identify it, whether it's subtle or blatant, the issue is whether a judge should be a leader in the community, in promoting gender neutrality."

"Usually judges respond to community issues ... but we'll be challenging them to take a leadership role."

The judges involved in this project were inspired by recently retired Supreme Court Justice Bertha Wilson, Arnot said. In a bold speech at Toronto's Osgoode Hall Law School last year, Wilson decried the bias

Video Production by Saskatchewan Judges: A Report

by Judge Gerald T.G. Seniuk*

The production by a group of judges of a video on gender bias issues has resulted in some positive media coverage of the provincial court. The video was produced and directed by Judge David Arnot of North Battleford, Saskatchewan, who recruited a team of provincial court judges, law professors and lawyers to act as consultants, script writers and sometimes actors. But key to the success of the project was the involvement of three community groups: the Battlefords Co-operative Cablevision, the Battlefords Community Players Theatre Company, and the Battlefords Bar Association.

This was the second video produced by Judge Arnot, the first being an educational video on practice and procedure in the provincial court. That video was for use at the provincial bar admission course and was supported by the Law Society of Saskatchewan.

Early screenings of the new video indicate it will be as well-received and useful as the first. Faculty of the Western Judicial Education Centre have viewed parts of the video and it was also used in Manitoba at a joint educational seminar involving judges from the Provincial Court, Queen's Bench Court and the Court of Appeal. Enquiries for its use have also come from the Ontario Provincial Court and the federal Department of Justice.

Along with other media reports, two informative newspaper articles have appeared, one in the Regina Leader Post, written by Bill Doskoch, and another in the Saskatoon Star Phoenix, written by Sheila Robertson. These articles provide good information about the project and also show a positive reception to such judicial efforts. What follows is part of Mr. Doskoch's article, edited to remove duplication, and Sheila Robertson's column in full.

Mr. Doskoch describes two scenes in the video and then goes on to observe:

"The two scenarios aren't real, although you wouldn't know that by watching them.

Both are part of a 4½ hour video that will be presented to provincial court judges throughout Western Canada to provoke thinking on gender bias issues. Its premiere will take place June 23 at a conference in Yellowknife.

About 35 different vignettes are presented. They are generally based on actual cases, although dramatized to highlight certain points, Arnot said.

Date rape, spousal assault, and the impact of the court process on female victims are some of the topics covered. A discussion on the legal, ethical and social issues raised by the vignettes takes place after most of them.

It's a new direction in legal education for judges, Arnot said. Traditionally, judges have upgraded themselves by studying cases and focusing on the law itself, he said. But under the leadership of Judge Douglas Campbell of Vancouver — who heads the Western Judicial Education Centre, an adjunct of the Canadian Association of Provincial Court Judges — judges have broadened their perspective and started examining social issues as well, he said.

Campbell asked for the gender bias video after seeing one prepared in North Battleford for the Law Society of Saskatchewan's bar admission course on conducting criminal cases in provincial court.

*Provincial Court of Saskatchewan

Now, with a new directive it had to adjust to new realities. The first problem encountered by the criminal justice system was the addition of hundreds of domestic assault cases to already heavy dockets. No one had estimated the loading problem.

Problem number two centred around the judiciary and Crown. Court officials who were used to such niceties as cooperative witnesses, were now faced with reluctant complainants — women who for any number of valid reasons would either not testify or fail to show at trial. Some judges spoke out and provoked complaints to the judicial council for their expression of frustration.

Newspaper headlines decried the jailing of victims who refused to answer subpoenas. To some court officials contempt was contempt.

It was not long before these frustrations prompted positive change. In September 1984, certain members of the Provincial family court, whose family law jurisdiction in the City of Winnipeg had been transferred to the federal judiciary, made themselves available to preside over spousal assault cases in the criminal division.

A domestic violence trial court was established in Winnipeg in October 1984. All wife battering trials were scheduled in this court. And, since the judges presiding had been sensitized to family issues, the court gained credibility. This credibility was further enhanced in early 1985, with the establishment of a women's advocacy program.

That particular unit comprised of social workers and women lawyers, assisted complainants by preparing them for Court and counselling them during very difficult times.

The court was further enhanced by Crown counsel who were assigned there for the better part of a year. Continuity ensured that matters of family violence were of the highest priority.

To my way of thinking a lot was accomplished.

Women, who willingly testified were treated with courtesy by a Judiciary which made clear to them that they were right in reporting the offence, and that they were not blameworthy, nor the person who required anger control counselling.

Those women, who would not testify were not further victimized by a contempt citation. Both judge and Crown were sensitive to the fact that in many cases all that the complainant wanted was the interference of authorities to stop the beating and to provide treatment for the offender.

However, it was not long before those operating within the system became aware of its continued shortcomings. Despite the advances made, only the surface of the problem had been scratched.

Firstly, the vast majority of domestic violence matters were still being dealt with in the regular court system. By rough count, only 33 per cent of spousal assault cases were finding their way into that trial court. It was not difficult for defence counsel to direct cases into any number of courts, where they could be assured of more advantageous plea bargaining deals.

Secondly, countless remands delayed matters for many months. By the time the cases reached the domestic trial court any number of things might have occurred, resulting in complainants having second thoughts about testifying. As many cases were aborted at trial as were heard.

It was time for yet another new approach.

In December 1989, the provincial justice department undertook to have its Research and Development Branch examine the feasibility of an enhanced family violence court. This court, if it came into operation, would deal with the vast majority, if not all of the family violence cases that arose in the City of Winnipeg. I would point out that

Court was to allocate Court room 403 five days a week for trial cases, Mondays and Tuesdays for wife abuse and elder abuse and Wednesdays, Thursdays and Fridays for child abuse. In addition Court room 404 was to be used Monday mornings for docket court. Thus the allocated court time was five hours, five days a week for trial court and three hours a week for docket, for a total of 28 hours a week. However, within the first month and a half of opening the specialized court the heavy volume of cases made it evident that court time would need to be extended. Docket court was becoming swamped as it attempted to handle an increasing volume of first appearances, as well as remands and cases returning for sentencing. For example, on the first day of Family Violence Court there were 11 cases on docket, on October 29 there were 63 cases and by November 19 the number had risen to 98. An extension of court time was necessary to reduce the pressure on docket court and also increase the time available for trials. To respond to the pressures on docket court a screening court was introduced November 1st to take over most remands, provide a mechanism to minimize unnecessary remands and delays and ensure a trial date be set within three weeks of the hearing within screening court. To handle the backlog of trial cases an additional court room 405 has been added (see appendix B).

As a result of these extensions the actual court time expended on family violence cases is now 44 hours per week. In addition to the original 28 hours per week there is an additional minimum of six hours of screening court per week and an average of 10 hours in room 405 for trials. With this extension the Family Violence Court has been able to keep up with the heavy volume of cases and still achieve the goal of processing a case within three months.

In order to keep up with the growing volume of cases the feedback within the system among the key actors must be very rapid. In this regard specialization has been extremely effective. While the Court Implementation Committee meets monthly to iron out the bigger wrinkles and to plan for future developments, key personnel are in contact on a regular often daily basis to keep the system on top of the case load. The very good communication and cooperation between the Chief Judge and Court Coordinator and the Crown Attorney team has been critical to the rapid adjustment of the courts and court schedules to respond to the volume increase.

While the court itself is specialized, its personnel have further specialized duties within Family Violence Court. To provide consistency throughout the three types of courts (docket, screening and trial) the members of the crown attorney team take turns concentrating on docket or screening on a monthly basis, while they divide the rest of their time in trial court (see appendix B). The judges specialize, with one judge primarily responsible for docket and the rest of the judges divided between child abuse and wife/elder abuse. The research team has also specialized with one member primarily responsible for docket and screening courts and keeping an active file on the location of each case within the system, another member has concentrated on monitoring and the third member will concentrate on tracking and data entry particularly in the second quarter. Finally, the allocation of a specific support staff person to assist the crown attorneys and the research team and coordinate the files and the flow of information has been absolutely critical to the smooth operation of the system to date. A list of the key actors in Family Violence Court, the judges, the crown attorney team, the research team and the Court Implementation Committee is presented in appendix C.

II RESEARCH ACTIVITIES

In the first quarter the research team had to focus on very basic data collection and retrieval tasks, as well as finalizing the monitoring and tracking instruments to be used in the study. Our priorities were:

1. Develop an information holding system

ruled *Norgren* because in *Norgren* the Appeal Court may have erred in holding that the judge was within his jurisdiction, when he had expressly abdicated the jurisdiction conferred upon him by Parliament in s. 542, and purported to assign his jurisdiction to the trial court.

Whatever the correctness of all the above decisions, they do illustrate a state of affairs that tends to bring the administration of justice into disrepute. The preliminary hearing judge must, on the one hand, exclude evidence that was contained in an improperly obtained confession, and must, on the other hand, admit evidence that was obtained in violation of the *Charter.* In practice impugned evidence may give rise to issues of admissibility involving both the *Charter* and s. 542. The accused alleges that he was denied access to counsel by the same police officer who allegedly obtained his confession by an inducement or threat. How can the judge realistically banish from her mind the facts relating to the one issue while ruling on the other?

If preliminary hearings are to be retained would it not be better for Parliament to provide either that all alleged confessions are admissible at the preliminary hearing, however obtained, or that a preliminary hearing judge does have jurisdiction to give a *Charter* remedy by excluding all improperly obtained evidence? I would favour the former solution, on the grounds that it would avoid the possibility of a meritorious prosecution being derailed by an erroneous ruling on admissibility at the preliminary inquiry, while fully protecting the rights of the accused to attack the admissibility of the evidence at the trial. That would resolve the misgivings of Mr. Justice McIntyre.

But do the ends of justice really require the retention of preliminary inquiries? What is their purpose? In practice they usually operate only as examinations for discovery. Rarely is an accused discharged on the basis of insufficient evidence.

Why should an accused be entitled to an examination for discovery in the case of offences characterized as "indictable", but denied that right in summary conviction cases? The division of offences into these two categories is often arbitrary. Sentences upon conviction are not invariably more severe in the case of indictable offences. Those accused of summary conviction offences receive second class justice, compared to those accused of indictable offences, in possible violation of s. 15 of the *Charter.* (The *Charter* does, of course permit discrimination in respect of the right to the benefit [sic] of a jury trial: s. 11(f).)

Would it not be both more practical and just to give accused persons who plead not guilty, the same access to prosecution evidence in both indictable and summary conviction offences, by simply requiring the Crown to obtain sworn depositions from all witnesses, and to make these available to defence counsel a reasonable time before the trial? Special rules could be devised where a witness is young or disabled or unwilling to sign a deposition. In such cases the witness could be compelled to appear at a hearing, in camera and ex parte, before a provincial court judge or justice of the peace, and her or his evidence could be videotaped for the benefit of defence counsel. Such a procedure would preserve the accused's rights under ss. 10 and 11 of the *Canada Evidence Act.*

If Parliament could see fit to abolish preliminary inquiries much valuable court time would be saved, and speedier justice would result. Perhaps also the lay people who are now, as witnesses, required to testify twice and to be cross-examined twice in the same case, would have an enhanced respect for the administration of justice.

Do We Need Preliminary Inquiries?

by Judge J.S. de Villiers*

> "In my view, the preliminary hearing magistrate is not therefore a court of competent jurisdiction under s. 24(1) of the Charter, and it is not for courts to assign jurisdiction to him. I might add that it would be a strange result indeed if the preliminary hearing magistrate could be said to have the jurisdiction to give a remedy, such as a stay under s. 24(1), and thus bring the proceedings to a halt before they have started and this in a process from which there is no appeal."

The "strange result" that Mr. Justice McIntyre found unpalatable, when he uttered those words in *Mills v. The Queen* (1986) 1 S.C.R. 863 at p. 955, was that the **Crown** would have no right of appeal against a discharge of an accused, resulting from the exclusion of evidence that was procured in violation of the *Charter*. In an earlier decision, sitting in the B.C. Court of Appeal in *R. v. Norgren* (1975) 27 C.C.C. (2d) 488, he did not express the same concern for an **accused** person, wrongly committed for trial. He ruled that the latter had no remedy where a provincial court judge had improperly admitted a confession into evidence, even though without the confession there would have been no evidence to warrant a committal. He allowed an appeal from an order of Anderson J., as he then was. Anderson J. had quashed the committal because the preliminary inquiry judge had ruled that it was not necessary for the Crown to prove that the confession had been made freely and voluntarily. McIntyre J.A. ruled that if the judge had erred in admitting the confession his error was within his jurisdiction, and not reviewable.

In *R. v. Pickett* (1975) 28 C.C.C. (2d) 297 the Ontario Court of Appeal unequivocally approved of Mr. Justice Anderson's decision, and quashed a committal in similar circumstances. Whether or not our Court of Appeal was correct in ruling in *Norgren* that the judge's error had been within his jurisdiction, it left open the question of whether there had been an error. It must, however, now be accepted that the duty cast upon the judge presiding over the preliminary inquiry by s. 542 of the *Criminal Code* is to exclude an admission, confession or statement made by an accused unless the Crown proves that it was free and voluntary. S. 542 by its terms clearly limits confessions, admissions and statements to those admissible by *law*. The law does not allow them to be admitted in the absence of proof that they were free and voluntary, and the standard of proof is beyond a reasonable doubt.

If such a confession is excluded and if the accused is discharged as a result, then the same "strange result", feared by Mr. Justice McIntyre in *Mills*, will ensue. There will be no appeal, nor will the proceedings be reviewable by certiorari, because a decision to exclude or admit evidence on the basis of a mere finding of fact is a matter within the jurisdiction of the judge, and the only basis for such a review is where she has exceeded her jurisdiction.

In the more recent decision of *R. v. Dubois* 25 C.C.C. (3d) 221, the Supreme Court of Canada held that a judge exceeds his jurisdiction when he discharges an accused on the grounds that the evidence presented by the Crown has not satisfied him beyond a reasonable doubt of the guilt of the accused. That is a jurisdiction, says the Court, that parliament assigned to the trial court and not to the preliminary hearing judge.

It is arguable that *Dubois* implicitly over-

*Provincial Court of British Columbia. Judge de Villiers is Editor of British Columbia Provincial Court Judges Association NEWSLETTER.

so that no data would be lost during the process.

2. Attend all docket and screening courts to develop a system of following cases as they proceed through the system.

3. Refine and finalize the necessary court instruments for monitoring and tracking cases (see appendix D).

4. Selective case monitoring.

2. Retrieval of information through the provincial court system:

The initial task for the research team was to meet with the coordinator of the Provincial Court and establish an information sharing system. A list of cases being heard at docket and screening court is now provided to the team and a listing of trial and sentencing dates is also updated on a regular basis.

The second task for the researchers was to acquaint themselves with the Crown Prosecutor's system of filing. Because the Family Violence Court was a new system, the files were to be kept separately from the existing general court files. It was discovered that the case files are constantly in circulation. the Crown, the court clerks, clerical staff, the Women's Advocacy Program and Probation Services need the files at various times throughout the process. Therefore, a system was devised whereby all agents needing access to the file would sign a form to indicate the location of the file in question.

It was also determined that the usual practice once the cases were disposed, was to return the file to the Police Department. Upon return the police records were separated from the file and the contents of the file were destroyed. Given the volume of cases and the nature of the information needed by this research team, it was essential for us to preserve the files intact. In cooperation with the Crown's office, the current procedure is to secure the file upon disposition of the case and photocopy the police information slips. These photocopies are retained with the remainder of the file. Once the research team has collected the necessary information, the file is archived where it is readily accessible if needed.

Another area of concern were those cases electing trials in Queen's Bench. Once the case has been committed for trial to Queen's Bench, we had lost track of it. The research team met with the Queen's Bench court coordinator and set up a system of information retrieval. By providing the coordinator with the names of those cases proceeding to Queen's Bench, she is able to access the file on the computer and provide us with an update of the case. The files in question will also be retained using the same procedure as mentioned above.

2. Database system for active cases in the family violence court:

At the outset, there were a number of cases that came in to the Family Violence Court (FVC) without an initial intake. These are cases that have been remanded for a number of reasons in the General Court system, but were now transferrred to the new court for trial or sentencing without an intake at the docket or screening level. These cases have been designated as "TRANSFER" and have a "T" added to the case identification number.

Other cases, initially heard in the General Court, and subsequently relocated to the Family Violence Court on docket or screening are designated as "IMPORTS" and have an "I" added to their case identification number.

Those cases that are first heard on the intake docket in Family Violence Court are designated as "FIRST APPEARANCE" and have an "F" added to their case identification number.

Because the goal of the FVC was to hasten process time, it was necessary to determine whether those cases that were first heard in the FVC were processed more

swiftly. Therefore, the comparison of the three types of cases was crucial.

Cases heard at the intake docket are numbered and labelled "F" or "I". The information available from docket includes the following:

1. Name of accused and complainant (where available) and type of case (i.e., Spousal, Child or Elder abuse).
2. Police number and charges pending.
3. Conditions of release (i.e., personal appearance requirements).
4. Date of intake and reasons for subsequent remand dates.
5. Name of defence and whether they are represented by Legal Aid.
6. Requests for bail variation and the outcome.
7. Warrants issued and cancelled for both accused and complainant.
8. Pleas (i.e., guilty, not guilty) to charges laid.
9. Any changes in the charges (i.e., plea bargaining).
10. Crown election (i.e., summary or indictable).
11. Accused's court election.
12. Requests for reports (i.e., WAP, PSR, Psychiatric).
13. Dispositions on guilty pleas.

The TRANSFER cases are retrieved by listing the cases appearing on the trial diary and the same information as above is gathered. A full listing of cases and where and when they are to be heard is available to the research team. This listing also provides a ready access to information for the Court Implementation Committee in terms of time for processing and the numbers and types of cases in the court process at any given time. This data is then used in the tracking and monitoring procedure when the case is eventually disposed of.

III RESEARCH FINDINGS

Between September 17 and November 17 there were 337 cases heard in Family Violence Court. Approximately one third, or 104 of these cases have been identified as 'transfers'. These are cases that have been in the courts prior to the introduction of the Family Violence Court and have been transferred in for final processing. Thus if we consider the origin of the cases 218 are FVC (family violence court), 104 are Transfers and 15 cases are unknown. At any given time a small percentage of cases in the system will be *temporarily* unknown because of the circulation of files throughout the system. Sufficient information is usually available by the second hearing (screening court) to be able to classify them.

Table I indicates that the overwhelming majority of cases (83%) in the first quarter were wife abuse cases. Table I also indicates the small percentage of cases disposed of by November 17th.

Table I: Case Data by Type and Status

Type	#	%	In Process #	%	Disposed #	%
Wife Abuse	279	83	211	76	68	24
Child Abuse	37	11	29	78	8	22
Elder Abuse	0		0		0	
Unknown	21		21		0	
Total	337		261		76	

Despite the small percentage of cases disposed of as of November 17 some initial observations can be made. Table II provides a simple breakdown of convictions, stays, acquittals and dismissals in all the completed wife abuse and child abuse cases. This table includes both the 'transfers' and the FVC cases.

Table II: Status of Disposed Cases

Type	Wife Abuse		Child Abuse	
# Cases	68		8	
Status				
Conviction	36	53%	6	75%
Attrition	32	47%	2	25%
Stayed	18	26%	1	13%
Acquitted	3	4%	—	
Dismissed	11	16%	1	13%

Study pre-test and comparative data on the 1984 Winnipeg Area Study of public attitudes to criminal justice intervention in domestic assault cases.

The second activity undertaken by the Court Implementation Committee was a Court Orientation day for family violence service deliverers. Twenty agencies that provide services to victims of family violence were contacted and invited to attend court. They were asked to select one of two days, March 21 and March 22. The orientation included a briefing before court conducted by a staff member of the Women's Advocacy Program, attendance at a trial and at screening court followed by a debriefing with the crown attorney who leads the family violence prosecutorial team. The sessions were well attended and the response from participants was very enthusiastic.

NOTICE

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His Honour Judge H.D. Porter
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dicate that child abuse continues to make up a small percentage (16%) of family violence cases. Of the 963 cases which entered Family Violence court within the first six months only 156 were child abuse.

While the limited number of child abuse cases pose particular problems for the research team it also raises some general questions concerning the very high attrition rate, i.e. Why do so few cases make it to court? The 156 cases which appear in Family Violence Court represent a very small proportion of child abuse incidents. A review of the Department of Family Services child abuse statistics indicates a much higher number of incidents brought to the attention of child welfare agencies than ever appear in court. Unfortunately, the department's statistics for 1990/91 are not yet available, however, a review of the 1989/90 statistics reveals a tremendous discrepancy between the number of incidents brought to the attention of child welfare authorities and those that proceed to court.

In the fiscal year 1989/90 the Child Abuse Office reports the investigation of 2,484 incidents involving 2,183 alleged abusers throughout the province of Manitoba. Of the total number of incidents 15% or 369 resulted in criminal proceedings and 898 proceeded to Family Court for an order of guardianship. Of the total incidents of child abuse in the province, 1,195 or 52% occurred in the city of Winnipeg. If the figures do not vary dramatically for 1990/91 it is safe to assume that by the end of the first year of the Family Violence Court approximately 300 child abuse cases will be heard and this will represent about 20% of the incidents reported in Winnipeg.

A consideration of the nature of the child abuse cases reported indicates a greater prevalence of sexual assault. The Department of Family Services reports 1,277 cases of sexual abuse, 59% of all reported cases and 95 or 41% involving physical abuse. The court data show an even greater prevalence of sexual assault cases. Of the 148 still within the Family Violence Court only 56 have been disposed. Of the disposed cases 44 or 79% were sexual assault and 12 or 41% involved physical abuse.

Other Events

In addition to working to keep on top of the high volume and the particular characteristics of the cases being heard in Family Violence Court the Court Implementation Committee has undertaken two other initiatives to facilitate the operation of the court and public understanding of its mandate. On February 19, Chief Justice Kris Stefanson, in his capacity as Chairperson of the Court Implementation Committee, arranged a meeting of representatives of the committee with the Minister of Justice, the Minister of the Status of Women and the Minister of Family Services. The purpose of this meeting was to report to the ministers on: 1. the progress of the court, 2. public perception of court specialization in this field, and 3. pressures being put on the system by the high volume of cases. Our particular concern was to alert the Ministers to the increased work load on the Women's Advocacy Program, an important advocacy program for victims whose partners have been charged. This program implemented in 1986 has played a critical role in the effective processing of wife abuse cases in court (Ursel 1991). The Implementation Committee was concerned that in the absence of further resources the program of three staff could not keep up with the increasing volume of cases.

Further we advised the ministers of the growing number of accused being sentenced to batterers treatment groups as a condition of probation. We expressed concern about the availability of such services in the face of high volume increases and the dilemma created when the most appropriate sentencing option becomes inaccessible due to backlog.

We provided the ministers with data on case numbers and type as well as case load information on the Women's Advocacy program. In addition we presented preliminary results from the Winnipeg Area

Table III presents the status of disposed cases excluding 'transfer' cases. Because 'transfers' are older cases, some dating back to 1989, they are more likely to be stayed and we suspect they are less typical of the cases which began in Family Violence Court. Indeed table III indicates that when transfers are excluded the conviction rate in wife abuse cases goes up. However, we also find that their exclusion leads to a decline in the conviction rate in child abuse cases. Because of the small numbers involved, especially in child abuse cases we advise caution in interpreting table III. We anticipate that the second quarterly report will provide more reliable information on dispositions because of the larger number of cases disposed at that time.

Table III: Status of Disposed Cases Excluding Transfers

Type	Wife Abuse		Child Abuse	
# Cases	24		3	
Status				
Convictions	20	83%	2	67%
Attrition	4	17%	1	33%
Stayed	2		1	
Acquitted	—		—	
Dismissed	2		—	

Table IV lists the number of cases by week for docket court and screening court to provide some indication of the heavy volume handled by Family Violence Court. It should be noted that the figures in Table IV should not be added up to determine total number of cases because both docket and screening court have a significant number of reappearances (remands).

Table IV: Docket and Screening Court Listings for September 17 - December 10

Date	Docket Court	Screening Court
September 17	11	
September 24	8	
October 1	18	
October 9	25	
October 15	84	
October 22	73	
October 29	63	
November 1		24
November 5	76	
November 8		54
November 13	25	
November 15		66
November 19	98	
November 22		46
November 26	62	
November 29		46
December 3	90	
December 10	68	

In addition to considering the volume, type of case and outcome, another consideration is "leakage", i.e. how many cases are avoiding the specialized court through exercising their right to election to Queen's Bench. As of December 12 we had information on 405 FVC cases and 135 Transfers. Of the FVC cases 41 had elected to Queen's Bench, 33 of these cases are awaiting preliminary hearing, 3 have been committed to Queen's Bench and 5 cases have re-elected back to provincial court. Among the 135 transfer cases, 11 have elected to Queen's Bench, 3 of these are awaiting preliminary hearing, 6 have been committed to Queen's Bench and 2 have re-elected back into provincial court. To date there is a 10% 'leakage', however it will be important to watch this rate and also to determine what percentage finally have their trial in Queen's Bench. The pattern of electing to Queen's Bench and then re-electing down may simply be a stalling tactic by Defense. Because Queen's Bench only has one docket court a month defense counsel can gain a two month delay simply by electing for Queen's Bench and then re-electing back into provincial court. This strategy could seriously undermine the goal

of Family Violence Court to process these cases within a three-month period, if the percentage of cases electing to Queen's Bench increases over time.

IV RESEARCH PROBLEMS, CONCERNS

The primary research problem is the gap between resources and court time. The increase in court time from 28 to 44 hours has resulted in a severe pressure on the research team to cover the essential courts, (docket and screening) and still have time to monitor. At the time of writing this report the Family Violence Court has an intake of 100 to 120 new cases a month. However, at the time that the research proposal was submitted we calculated 8 hours per research assistant per week. In view of the extended court times we renegotiated the budget shifting funds from other items to provide for 15 hours per research assistant per week. While fifteen hours per worker per week (there are three research assistants) will cover the tracking and monitoring of Family Violence cases including the time needed for coding and data entry it permits us little or no time to accomplish the comparative data collection. In order to collect data from the general court additional research time is required for monitoring, tracking, coding and data entry. The only solution to this problem is the aquisition of additional resources to provide for more research assistant time. All three workers should be working 20 hours per week in order to keep on top of the current work load.

The second research problem relates to the small number of child abuse cases being processed in the Family Violence Court. Because our priorities in the first quarter had to be on setting up reliable data collection and retrieval systems we had limited resources for monitoring child abuse cases. Furthermore, a significant proportion of these cases elect for Queen's Bench and are lost to our monitoring process. As a result of these factors we anticipate a limited number of child abuse cases will be monitored. While these cases will be priorized for monitoring in 1991 we still have the problems posed by 'leakage' into Queen's Bench and a small number of cases to begin with. While all child abuse cases will be tracked we must lower our expectations concerning the data we can retrieve from monitoring these cases. Because of our current information on: 1. the smaller volume of cases, 2. greater frequency of election to Queen's Bench, and 3. the longer time to process child abuse, we perceive these cases as being better dealt with over a longer period of time. At this point we see the child abuse cases as being a high priority for a more in depth analysis over a two-year period or longer. The Department of Justice Canada, Research Branch has been informed of our intention to submit a proposal for the next fiscal year to provide for on-going in-depth analysis of particular issues that arose out of this "survey" study.

I OVERVIEW OF EVENTS IN THE SECOND QUARTER

In the first quarterly report we identified that the volume of cases in the new Family Violence Court (FVC) was much higher than anticipated. This put an immediate strain upon the system increasing the demand for: 1. court time, 2. research assistant's time, 3. Crown attorney's time. Given that one of the express purposes of the specialized court was to expedite the processing of family violence cases the concern about backlog was foremost on everyone's mind. The high volume of cases in the first quarter was not anomalous and as a result in the first six months of operation the family violence court has had an intake of 963 cases, which constitutes a 70% increase over last year.

In the first quarter the Court Implementation Committee responded to the high volume by allocating more court time for family violence cases. The original court time allocated was 28 hours per week (First Quarterly Report p. 3). By the end of the first quarter this was increased to 44 hours per week which was the result of adding 6 hours (two half-days) for screening court and 10 hours of additional trial court time.

In the second quarter it became evident that further court time was required. As a result, an additional screening court half day was added and an additional 5 hours of trial court was added to the 44 committed hours of court time. Currently there are 52 hours per week allocated to the Family Violence Court.

ALLOCATION OF COURT TIME

5 hrs	5 days a week for the original trial court (Rm. 403)	= 25 hrs
3 hrs	1 day a week for docket court (Rm. 404)	= 3 hrs
5 hrs	3 days a week for additional trials (Rm. 409)	= 15 hrs
3 hrs	3 days a week for screening court (Rm. 302)	= 9 hrs
		52 hrs

Increasing the court time was essential to avoiding the problem of backlog. As a result of this commitment of court time the Family Violence Court has been able to meet its goal of processing family violence cases within an average of 3 months. To date, based on an analysis of 243 disposed of cases the average processing time for the court was 3.37 months. However, this average is conservative due to the fact that at the time the court was implemented there was a backlog of pending cases, these cases have been identified as 'transfers'. We also distinguish between 'imports', those cases originally assigned to another court and 'FVCs', those cases that come directly to Family Violence Court. When we separate out the different origins of the cases we find a substantial difference in processing time. Transfers had an average processing time of 5.6 months, imports were processed within an average of 3.08 months and FVCs were quickest at 1.9 months. As a result of the commitment of court time and personnel to the Family Violence Court 53% of the 963 cases which entered the court were disposed within the first 6 months of the court's operation.

A second issue identified in the first quarterly report was our concern that a significant proportion of accused would bypass the specialized court through electing to Queen's Bench. The extent to which by-passing would occur was difficult to assess in the first quarter because so few cases had been disposed. Our concerns were two-fold: 1. What impact would a specialized court have if a large number of cases could simply opt out through the device of election to Queen's Bench? 2. In cases where elections were introduced simply to buy time, what impact would this have on the average processing time for family violence cases?

With the benefit of six months of operation some of these questions can be addressed with a greater degree of confidence. We can now say that of the 963 cases which entered Family Violence Court only 29, or 3% have ended up in Queen's Bench. If this rate of election to Queen's Bench continues or even rises to the 10% level it should present no problem to the viability of the specialized court. The second problem was the tendency of defense to immediately elect for Queen's Bench to buy time, with the expectation that they would elect back to provincial court at a later date. While this strategy continues to be exercised it has not, to date, significantly delayed overall proceedings. Our data, based on 243 tracked cases cited above, indicates that the processing time for family violence cases remains well within the 3-month goal for the majority of cases. Factors which may have moderated the flow of cases to Queen's Bench are the significant court time and personnel invested in screening court and the use of plea bargaining and election to proceed summarily on the part of the crown.

A third issue identified in the first quarterly report was the imbalance between wife abuse and child abuse cases being heard in Family Violence Court. While this does not pose a particular problem for court staff it does pose a problem for research staff who are concerned with observing and recording a sufficient number of child abuse cases to be able to discern patterns in processing and sentencing. Statistics in-