THE JUSTICE HOUSE

REPORT OF THE SPECIAL ADVISOR ON GENDER EQUALITY

TO THE MINISTER OF JUSTICE OF THE NORTHWEST TERRITORIES

May 1992

The Northwest Territories
Gender Equality Review

May 8, 1992

Honourable Dennis Patterson
Minister of Justice
Government of the NWT
Box 1320
YELLOWKNIFE, NT
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Dear Mr. Patterson:

I am pleased to enclose at this time my report on Gender Fairness in the Administration of Justice. I have titled the report "The Justice House". In doing so, I am indicating that the structure of the administration of justice is a product of its architects and therefore the assumptions, rules, mechanisms and philosophies associated with it are necessarily reflective of those who built it.

In undertaking the Review I have used approaches that I felt were appropriate to the nature of the inquiry. I have therefore not centred the Report around the various procedural aspects of the institution that we know as the administration of justice. The Report is also not categorized by function of individuals within the administration of justice, nor focused around the laws administered by it. It is focused on the lives and experiences of women. The Report has therefore been organized around issues. I have attempted to discuss in this fashion some of the barriers that exist to gender fairness in the administration of justice. In doing so, I hope that I have provided a voice for some of the concerns and experiences related to me. I have undoubtedly underemphasized some aspects, and my own perceptions have inevitably played a role in my understanding of the issues and my proposals for change.

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The Report which follows would not have been possible if so many women and men across the Northwest Territories had not been willing to share their wisdom, experience and pain. They have done so generously and their willingness to participate in yet another study is a reflection of the level of their concern and the strength of their characters. This commitment to social issues deserves a public response and I therefore urge you to release the Report publicly.

Thank you for your continued interest and support.

Your truly,

Katherine R. Peterson, Q.C.
Special Advisor on Gender Equality

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ACKNOWLEDGEMENTS

The process of this Report as well as the production of this Report would not have been possible without the assistance, support and insight of many people. I would like to thank Kate Irving, Robert Hay, Tanis Stirling, Mary MacCreadie, Mary-Beth Levan and Norma Wikler for their exceptional contributions. I would like to express gratitude to those many individuals who shared their wisdom, experiences and pain. Their strength is an inspiration.

Katherine R. Peterson

I MANDATE AND METHODOLOGY

In December 1990, in response to concerns raised by women in the Northwest Territories, the Justice Minister for the Government of the Northwest Territories appointed a Special Advisor on Gender Equality to conduct the Gender Equality Review. Although the particulars of the controversies which preceded the appointment are not relevant for the purposes of this report, it is fair to say that a number of women felt that the administration of justice in the Northwest Territories did not reflect their view of the world, their reality. Incidents which have occurred since the institution of this Review have confirmed and reinforced the perception of exclusion of women's perspective. Having said that, it is not the purpose of this report to review or comment on those events.

The mandate of the Special Advisor is included as Appendix A to this report. A examination of it indicates that the scope of the Review is extremely broad and touches upon structural frameworks, policy, resources and services, attitude and substantive law. In undertaking the Review, some narrowing of scope was necessarily involved.

It goes without question that the types of inquiry adopted by this Review influence the nature of input received. Approaches were adopted that were appropriate to the nature of the inquiry. The report is therefore not centred around the various functions of the institution that we know as the administration of justice. The report is not categorized by function of individuals within the justice system, nor is it focused around the laws administered by it.

It is focused on the lives and experiences of women. This Report is therefore organized around issues. In this fashion, some of the barriers that exists to gender fairness in the administration of justice are discussed.

For those expecting a statistical analysis investigating the presence or absence of gender bias, they will be disappointed. For those expecting a comparative study of sentencing, they too will be disappointed. For those wishing to hear what the concerns of women might be and how a system as rigid and clothed in precedent as is the administration of justice might respond, it is hoped that the report that follows will be of constructive use.

From the outset, the question is posed, what do we mean when we talk about gender fairness and gender bias? Gender bias can be defined as behaviour or decision-making by participants in the justice system which is based on or reveals stereotypical attitudes about the nature and roles of men and women, or of their relative worth, rather than being based upon an independent valuation of individual ability, life experience and aspirations.[1]

Gender bias also arises out of myths and misconceptions about the social and economic realities encountered by both sexes. Gender bias is reflected not only in actions of individuals, but also in cultural traditions and in institutional practices. To the extent that law-makers themselves labour under certain biased attitudes and myths and misconceptions about women and men, the law itself can be said to be characterized by gender bias.

The underlying philosophy of approach in this Review is that women and men experience the world differently. The question of gender fairness is therefore a question of the extent to which we are able to recognize these differences, respect them and respond to them appropriately. The concept of equality means much more than an absence of bias: it necessarily involves a depth of understanding, recognition and acceptance of differences.

It is not a question of determining whether men and women are treated identically. It is precisely the assumption that men's and women's experiences are identical that gives rise to inequality in the first place. This assumption is inaccurate and does not reflect reality. This assumption has also meant that the conduct of women has been measured against norms that are often the product of male perspectives and which have not allowed for input from women. This is analogous to the willingness to measure other cultures against the norm of the white culture.

Yet it is exactly at this point that conflict often arises respecting the question of gender fairness in the administration of justice. For some, justice can be understood as requiring equality of treatment or using the same standards to judge conduct.[2] Yet what is actually required to achieve fairness is a sensitivity to and understanding of the fact that men and women may not only experience the world differently, but they may also be treated differently by the world around them.[3]

Women have been seen as ranters and ravers, interest groups, political lobbyists and perennial malcontents. Yet it is interesting to note that similar concerns respecting fairness raised in a racial or cultural context are no longer clothed with the same infirmities. Why is it that the charge of racism carries with it more moral turpitude than does the charge of sexism? Is it somehow less serious to discriminate on the basis of sex than on the basis of race?

This report therefore does not deal with the question of whether men and women receive the same treatment before the courts or with respect to other aspects of the administration of justice in the Northwest Territories. The report is not about dismantling the rights of accused persons nor is it about making men and women somehow sexless. It is about the experience of women and how that experience might be better respected in a system that has

evolved in a male context.[4]

The Review did not undertake a statistical analysis of court decisions, criminal or civil, in this jurisdiction, nor did it scrutinize transcripts of proceedings for "evidence" of attitudinal bias among participants in the administration of justice.[5] As well, the substantive law, in the form of applicable federal and territorial legislation was not examined statute by statute for evidence of unequal treatment.[6] In short, this Review was not a process of determining **whether** gender bias exists in the administration of justice in the Northwest Territories. Rather it was an examination of the way in which the lack of gender fairness is experienced by women and how we can best approach these issues in a way that reflects the realities of women's lives and their concerns.

At the outset therefore, conscious decisions were made that the focus of the inquiry ought to be to hear from women in a way that allowed them to have a voice. Hearing from those who work within the administration of justice, while a necessary and important part of this Review, was therefore not the only source of input as to the effectiveness or fairness of the system.

Permitting women to have a voice respecting these issues meant undertaking consultation in a format that was less rigid and intimidating than the usual "public inquiry" method. The presentation of formal written briefs at hearings designed for that purpose does not permit the full and frank discussion of concerns that these issues necessarily involve. It also does not permit those who work within the administration of justice to express their views in confidence. From the outset it was seen as critical to respect the privacy of women who chose to discuss their experiences as well as those who work on an ongoing basis in the courts and other related agencies.

The consultations took three basic forms:

1. Discussions with those involved on an ongoing basis in the administration of justice including members of the judiciary, practising lawyers, members of the Royal Canadian Mounted Police, courtworkers, social workers as well as those employed by various government departments involved directly and indirectly in the administration of justice;

2. Discussions in a workshop format at various communities throughout the Northwest Territories. The workshop was designed to fulfil a dual purpose. It provided information to participants about the justice system, with an emphasis on understanding basic criminal procedure. Schematic diagrams were used to track the hearing of a criminal charge from its inception to the imposition of sentence. Some of the "rules" of how court is conducted were explained in language that was straight-forward and amenable to interpretation into aboriginal languages. Examples of these included the "Clean Paper" rule used to describe the fact that a court can only take into account those facts disclosed in the proceedings in order to make decisions about verdicts and sentences, and the "Who's The Boss" rule used to describe the hierarchy of authority in legal systems such as appellate levels. These particular rules were chosen to focus on those areas where there seemed to be the greatest level of misunderstanding about the criminal justice system.[7]

In addition, in order to explore the concepts associated with gender fairness a series of role plays were used. These role plays depict a scene of domestic violence commencing with the victim at a nursing station seeking medical assistance but declining to involve herself in laying charges or speaking with the police. The next scene depicted was in the home when the police were called by a third party. The husband is arrested and the police officer is attempting to provide information to the woman about what is happening and what she can expect to happen as a result of the investigation of the incident. The third scene involved

the woman walking down the street in her community, with bystanders commenting about her. The final scene involved a sentencing hearing with the victim thinking out loud about her position, and her inability to relate to the proceedings. After each role play the position of each of the players was discussed by workshop participants. The balance of the workshop was devoted to discussions in small groups to record the concerns of the participants and to develop recommendations.

3. Public meetings were held in various communities across the Territories. In the public meeting, time was taken to explain the genesis of the Review and the mandate of the Special Advisor. The background to the concept of gender fairness was dealt with differently than in the workshop format. An analogy was developed which described the administration of justice as a house. In pursuing this analogy, the fact that "house" may mean different things to different people depending on their view of the world was emphasized. For example a "house" to an Inuk man living several hundred years ago would look different than a "house" to an early Euro-canadian settler. So too does the house which is the justice system reflect the view of the world and values of those who, over the course of time, built it. The builders of the justice house have predominantly been white men of property and the structure which has developed necessarily reflects these architects. As with aboriginal culture, the culture of women does not figure strongly in the means of dispute resolution that we call the administration of justice.

Participation at each type of consultation varied from one community to another. A list of the communities visited is set out in Appendix B to this report.

Participation at the workshops primarily included younger aboriginal women although attendance by men and by older individuals of both sexes was not exceptional. Simultaneous interpretation was provided in most communities and was indispensable in the Eastern Arctic.

In addition, it was not unusual for local justices of the peace, social workers and shelter workers to attend.

Participation in the Review by the judiciary was mixed. Some members of the judiciary actively assisted in both discussions and review of written materials, while others refused to participate at all. Participation by others involved directly in the administration of justice varied as well, from a cooperative and open stance exhibited by the RCMP, Justices of the Peace and social workers to sceptical disdain exhibited by some members of the practising bar.

Again, a variety of responses was received to the public meeting. In some communities in excess of fifty people turned out in inclement weather to discuss concerns surrounding the administration of justice. In other communities, the response was less enthusiastic.

Written briefs were received from some participants. The briefs have been reproduced in Appendix C to this report.

Finally, it should be strongly emphasized that the Northwest Territories poses the most significant challenges of all Canadian jurisdictions to the administration of justice. It is often difficult for those who live outside its boundaries to appreciate the immense geographic size of the jurisdiction and the complexities posed by the wide variety of language and culture of its sparse population. Great efforts have been made to deliver services in these difficult circumstances. So too have those who work on an ongoing basis within the administration of justice strived to serve the public in a way that is both unique and demanding.

ENDNOTES

1. This definition of gender bias is based on that developed in the U.S. context by Norma Wikler and Lynn Hecht Schafran and used in their materials on gender bias task forces and judicial education, see for example Norma Wikler, "Identifying and correcting gender judicial bias" in *Equality and Judicial Neutrality*, (Mahoney and Martin, eds., 1987, p.12).

2. This approach to equality is based on treating likes alike. Such an understanding of equality, rule equality (equality of opportunity, or quality before the law), gave rise to decisions such as *Bliss v. Attorney General of Canada*, ([1978], N.R. 527). In this pre-Charter, Supreme Court decision, it was found that a special unemployment regime imposed on pregnant women was not discriminatory against women, but merely against pregnant people, as pregnancy was a condition voluntarily entered into. The treating-likes-alike approach (or similarly situated approach) perpetuates disadvantage. The disadvantaged are seen to be disadvantaged, and therefore not similarly situated with the group with whom they are being compared (usually white males) and thereby discrimination against the disadvantaged is legitimized.

3. Justice requires not merely formal equality, (which can be seen as a negative right, such as freedom from discrimination), but substantive or result-oriented equality. As treating unequals as equals does not achieve equality, fairness does not necessarily mean identical treatment for everyone in all cases. A substantive equality approach recognizes and seeks to redress existing inequalities.

The Supreme Court of Canada has recognized the more profound sense of equality in decisions such as *Law Society of British Columbia v. Andrews*, ([1989] 1 S.C.C.143) where Mr.Justice McIntyre writes that "[For] the accommodation of differences, which is the true essence of equality, it will frequently be necessary to make distinctions." Madam Justice Wilson notes in the same decision that "s.15 [the equality guarantee of the Charter of Rights and Freedoms] is designed to protect those groups who suffer social, political and legal disadvantage in our society". Significantly, it is sufficient to establish that a law or policy has a discriminatory effect regardless of whether that effect is unintentional or indirect. Section 15 has, as Mr. Justice McIntyre notes, "a largely remedial component".

4. There is no need to belabour this important point, but it is a simple historical fact that the roots of our justice system were established in a period of English history when women simply did not play significant public or political roles, and were absent from the decision-

making process.

5. The examination of cases, transcripts, sentencing and other formal processes within the administration of justice is an exercise that has been conducted elsewhere. Although it is a necessary and valuable undertaking, there is little purpose in reproducing this research again.

Examples of existing Canadian research: Patricia Marshall, formerly of METRAC has amassed an impressive collection of judicial comments from sexual assault sentencings. A selection from these comments can be found in "Sexual Assault, the Charter and Sentencing Reform", *Criminal Reports*, 63 (3d) 1988, p.216-235. The larger collection of comments is available as "Sentencing Database - Judicial Comments", mimeo. Mona Brown and the Manitoba Association of Women and the Law have done case law analyses of selected Manitoba and national decisions, first in the area of family law and personal injury awards (in 1988), and more recently in the area of criminal law (in 1991) to produce reports detailing gender unfairness in judicial decision-making and in the treatment of women.

There is a large and growing body of literature in the United States about gender bias in the administration of justice. Over the last ten years, the judiciary within some 35 states have established task forces to examine gender bias within the administration of justice.

6. Substantive law bias has been examined by the P.E.I. and Saskatchewan representatives to the Federal/Provincial/Territorial Working Group on Gender Equality in the justice system. The contribution from P.E.I. looked at problems in the area of tax law. The Saskatchewan paper examines charter equality and human rights issues, tort law and personal injuries, family law as well as substantive criminal law.

Substantive law bias was also one of the many subjects of discussion at the National Symposium on Women, the Law and the Administration of Justice, organized by the Federal Minister of Justice Kim Campbell and held in Vancouver, June 10 - 12, 1991. The Symposium brought together a broad spectrum of participants in the legal professions, activists, grass-roots organizers, politicians and bureaucrats. The recommendations of the Symposium should be released in the near future.

7. Other "rules" discussed in the workshops include: the burden of proof beyond a reasonable doubt; the presumption of innocence; the principle of precedent; and the principle that the courts are public.

II KNOWLEDGE AND EDUCATION

Before examining various aspects of the administration of justice and the experiences of women in relation to that, it is important to initially look at the issues of knowledge and education. The question of the extent to which people understand the administration of justice and have an opportunity to learn about it and secondly, the question of the extent to which individuals understand the issue of gender fairness and have an opportunity to learn about it, determine, in large measure, the nature of the women's experiences with the justice system.

1. Understanding the administration of justice

It was evident from speaking with people across the Northwest Territories that there is a tremendous sense of alienation from the administration of justice. This is particularly, although not exclusively, the case outside of urban areas. The courts, the roles of individuals within the courts, the nature of the legal process, the methods of dispute resolution permitted by the system are all poorly understood and a source of puzzlement and at times, extreme frustration. The process often occurs in a language that is difficult to understand, even for those whose first language may be English. The lack of comprehension is magnified for those whose first language is not English.[1]

Language

The courts in the Northwest Territories have made an effort to use aboriginal languages.[2] This effort has been recognized in a formal fashion by an amendment to the *Jury Act*. This legislation permits non-English speaking aboriginal persons to sit on juries.[3] This is the only jurisdiction in Canada where this is so.

In addition, the Government of the Northwest Territories has devoted resources to training interpreters for court.[4] The Department of Justice has also funded a full-time interpreter/translator to work out of Iqaluit. This interpreter provides services for the court sitting in Iqaluit and goes on circuit with the court in the Baffin. These are all very positive steps in trying to make legal proceedings more comprehensible to the general population. While these steps are important ones, they still have not begun to close the gap of understanding.

One of the fundamental principals of our system of justice is that justice be public.[5] Yet the court is not a public place when the language spoken in it is foreign to many of the participants and members of the public.[6] Some members of the judiciary have made attempts to learn the aboriginal language spoken in their region. Unfortunately, this is the exception and not the rule. It is important that interpretation be provided and that this service be available on more than an "as needed" basis.[7] In other words, interpretation should be provided for all proceedings, whether or not the direct participants can speak English.[8] Although this is a cumbersome process and it will add to the time and expense of conducting court, it is an essential part of making the court more of a public place.

RECOMMENDATION #1: That courts be conducted in the language appropriate to the venue of the sittings.

There is another aspect of language within the court that is more difficult to manage. This involves the type of English used by participants. As with many other types of professions, the law has developed a language that is particular to it. In some ways this is understandable and almost unavoidable. However, it creates immense difficulties for those who do not understand "legal language" and for those who must interpret proceedings into other languages. It is difficult to teach lawyers and others who use legal language to leave the habit behind. However, the use of plain language in the courtroom must be encouraged and at times demanded. The burden of this task may well fall on the shoulders of the judiciary. It is hoped that through the course of time, language habits begin to change.

RECOMMENDATION #2: That the use of plain language in court proceedings be actively encouraged and be considered as required in the courtroom.[9]

Public education

In the workshops a portion of the time was dedicated to providing information about criminal procedure and other general concepts associated with the courts. It was the exception rather than the rule if a participant was familiar with what lawyers would consider the most basic concepts. These included who is the crown attorney and what is their function, what role does a victim have, whether the judge can talk to parties individually or privately and so on. The thirst for understanding was indeed significant, and the barrier consistently appeared to be the lack of opportunity to learn. The northern media's coverage of court cases has not assisted in creating a greater understanding of the process. Authors of media reports often themselves have a limited understanding of issues and procedures and have seized on controversy in favour of other approaches. This can lead to ever increasing misconceptions about any number of issues.

The legal profession as a body has not contributed in the way that it might in terms of

promoting understanding. While from time to time lawyers as individuals step into the field of public legal education, the means for them to do so are limited.

Lack of knowledge and understanding about the administration of justice and access to legal remedies can be addressed through both the avenues of the education system and public legal education.

It was felt by many participants that information concerning the administration of justice, including some aspects of substantive law as well as procedure and historical development, should form part of the regular curriculum in public schools. This was seen as a subject area of significant relevance and hence the emphasis on it should mirror that importance.[10]

RECOMMENDATION #3: That the curriculum of elementary and high schools in the Northwest Territories be reviewed with a view to incorporating sections on the administration of justice. In particular, areas of curriculum development should include:

-an historical overview of the development of our present court structure;

-the structure of courts and the variety of jurisdiction exercised by different levels;

-the role of persons involved directly in the administration of justice, including the judiciary, crown counsel, defence counsel, counsel in civil disputes and administrative positions such as clerks, court reporters;

-a comparison of other means of dispute resolution and problem solving that are used in different cultures.

It should be emphasized that while course materials on substantive law, such as contracts and torts, may have a role to play, such courses do not give an overview of our system of dispute

resolution. It is this latter aspect that is so important in contributing to an understanding of the function and limitations of the court.

In order for women to fully utilize legal remedies, they must firstly have an awareness of the existence of them. It is therefore necessary to implement measures to ensure that women are aware of available relief. Public legal education is therefore an important aspect of equality for women. One organization that has this mandate is the Arctic Public Legal Education and Information Society (Arctic PLEI). This society has published pamphlets and conducted workshops to increase public awareness of legal remedies. However, in order to address the still and continuing widespread lack of awareness, this organization must be better resourced. It is essential that information be provided in a way that is truly accessible to the general public, such as television spots, video materials and workshops. In order to do so, this body must be adequately resourced as the development of this type of material is necessarily more costly than print information. If print is used, the language must be amenable to translation into aboriginal languages.

RECOMMENDATION #4: That Arctic PLEI receive increased funding from both levels of government as well as bodies such as the Law Society of the Northwest Territories so that it may provide appropriate and accessible public legal education.

In three regions of the Northwest Territories there are legal aid clinics.[11] Funding for the clinics is derived from both the Government of the Northwest Territories and the Federal Government. The nature of the cost sharing agreements between the two levels of government do not permit public legal education to be done by clinic staff. This would seem to be an incredible waste of local expertise and resources and indeed has been a source of considerable frustration to some clinic staff. If this mandate was being adequately fulfilled by other organizations, the situation would make more sense. However, the resources

provided to Arctic PLEI do not permit it to carry out public legal education to the extent required across the vast geographic expanse of the N.W.T. Furthermore, it is more appropriate that this task be undertaken by individuals who live in the regions on a full time basis and are more familiar with the needs and particular requirements of a region.

RECOMMENDATION #5: That funding arrangements which currently exist between the Government of the Northwest Territories and the Federal Government be reviewed such that shared funding for the operation of legal aid schemes permit regional clinics to undertake public legal education and that public legal education be a mandated activity of regional clinics.[12]

Those who work on an ongoing basis within the administration of justice must continue and enhance efforts to link with other agencies and community organizations. Presently, this is undertaken when circumstances permit and such efforts are largely due to individuals dedicated to this process. In some regions of the Northwest Territories, members of the judiciary have organized community meetings to discuss concerns, provide information and develop appropriate responses. This type of interaction begins the crucial process of demystifying the courts and allows a more realistic flow of information and opinion. These efforts should be actively encouraged by the senior Justice of the Supreme Court of the Northwest Territories and the Chief Judge of the Territorial Court.[13]

Interagency response

It must be remembered that the administration of justice cannot work in isolation to address many of the problems that are faced on a daily basis within the courts. In the first place, the courts and the law generally are not equipped to address many of the significant social problems facing people in the north. Courts by and large deal with the end result of a whole series of problems and they usually do not have an opportunity to intercede at an earlier

stage. As one judge put it, Court is the last stop on the railroad track. However, in order to do the best with what is available it is necessary for the courts to work in concert with and not in isolation from other agencies such as the R.C.M.P and the Department of Social Services. Interagency communication must continue on both the policy development level as well as the community level.[14]

RECOMMENDATION #6: That interagency communication and cooperation, both at the policy and community level be developed and encouraged by the Ministers responsible for the Departments of Social Services, Health and Justice.

2. Understanding gender fairness

Violence against women

As discussed earlier, gender fairness requires a recognition of the differences between the realities of men and women. These realities are most significantly different when one considers the issue of violence. For this reason, one cannot begin to address the question of gender fairness without examining the question of violence. While some would like to pretend otherwise, it is simply not possible to look at violence in gender neutral terms. The overwhelming proportion of violence is perpetrated by men and the vast majority of victims are women.[15] To ignore this fact is to ignore one of the most fundamental concerns of women.[16] Violence is not only a reflection of inequality between men and women in our society, it is a cause contributing to the perpetuation of inequality.

In many cases of physical and sexual abuse, the offender is in a position of trust. He is often a husband, a father, in other words, a person to whom others in the family should be able to look to for support. Hence, violence, as a means of exerting power, results in a "breach of trust". If society depends on stable and trusting family relationships, then this breach of trust is not a domestic issue, it is a public issue.

In addition, for no other segment of society do we require, need and publicly support refugee camps, otherwise known as women's shelters. While recognizing the necessity of safe places for women, we continue to tolerate the conduct which gives rise to the existence of shelters.

Violence is not a "family" issue, it is not a "domestic" issue, it is not a "women's" issue. It is an issue for all of society to address.

The Lake Louise Declaration denouncing violence against women was endorsed by the Ministers responsible for the Status of Women in 1990. The Declaration is reproduced in Appendix E.

In every workshop the concern was forcefully expressed that there needs to be greater public awareness of the position of women and the fact that women face a different world then do men. This was particularly evident respecting the issue of violence. The belief was expressed that there remains a great deal of tolerance respecting violence against women. Understanding the dynamics of violence and the position of a victim of violence was seen as a necessary step in better understanding the position of women.

Many people express very genuine frustration and bewilderment when discussing the position of abused women. Why do they stay? Why do they put up with this? These circumstances are particularly difficult for men to understand. It is unlikely that many men have encountered situations of violence, intimidation and fear to the same extent that women have. This is especially the case with reference to violence, fear and intimidation that women face in the privacy of their own home.[17]

It is also apparent that women do not react to violence and fear in the same way as men. The socialization of men often demands that they meet aggressive behaviour with aggression

and the failure to respond in this way can be bewildering to them. In a larger context, the circumstances of having limited credibility, feeling intimidation and the absence of power are also not as familiar to men as to women. It should therefore not be surprising that difficulties are experienced in understanding the position of women. It is not an absence of concern or effort in many cases, but an inability to relate to circumstances that are very different from one's own. Yet despite this gap in experience and understanding, there is a surprising reluctance to recognize that this may be an area where training or education is needed. As alluded to at the outset, this same type of reluctance is not present to the same degree when one considers the issue of culture or race. There exists considerable enthusiasm for training in a cross cultural setting and such training exists, for example, in a formal way for members of the RCMP.

Opening the door

How is it then that we start to increase the level of understanding, particularly about women as victims of violence? We begin by listening to their experiences. Women in the workshops across the Territories painted a very consistent picture of their experiences. They felt fear, confusion, intimidation and isolation. They frequently did not understand the process of court and they had no one to turn to explain it to them. They also felt that they had no control, that all decisions were out of their hands. Time and again women said that they felt blamed, that they had no credibility, that they were not taken seriously. In court proceedings, women felt afraid and humiliated. This was particularly the case when testimony of painful and embarrassing experiences was required in open court.

Many women do not involve themselves in the court process. It is often the same feelings of fear, vulnerability and isolation that discourage reporting. Although statistics on non-reporting are difficult to gather, the impression from speaking to women throughout the Territories was that a very significant number of them do not report acts of violence directed

at them.

Training and education

It is therefore important to place considerable emphasis on the aspect of training and education in the area of gender fairness. While some may argue that training is not an adequate answer as some persons are not capable of being educated away from their biases, there is still merit in offering the opportunity to gain new perspectives. Recognition of inappropriate assumptions can be a large obstacle. Pervasive cultural conditioning underlies the problem, and this conditioning can be a blinder to the very existence of bias.

Offering training opportunities for those who work within the administration of justice is an important first step in addressing the question of gender fairness. This issue is particularly delicate when one considers members of the judiciary. The foundation stone of the judiciary is the responsibility to make impartial decisions. This belief must be shared by both the judiciary and the public. Any suggestion that the judiciary suffers from a lack of awareness as to the realities of women is a threatening proposition and can be met with considerable resistance. It speaks to the fundamental duty of that office.

In the United States there has been less of a defensive stance by the judiciary to this issue. The first gender bias task force was established in New Jersey in 1982. Since that time, judges in 35 states have struck judicial task forces to inquire into the treatment of women in the justice system.[18] There are tremendous and obvious advantages to this approach. The findings of a task force of judges are generally accorded credibility and judges are uniquely placed to implement recommendations. In addition, there is less of a defensive stance taken when any criticism comes from within and a greater capacity to recognize the issues addressed as serious and legitimate.

In Canada, the issue has not been addressed in the same manner. There has been no systematic examination of gender bias in the justice system by members of the judiciary. There has been a greater tendency to categorize the issue as one arising from an "interest group" and the response has at times been a resolve not to bend to the influence of what is understood as some form of political pressure.

However, the Canadian judiciary has taken some significant steps forward respecting the questions of both gender fairness and cultural sensitivity. There has been over the last several years a movement in judicial education away from what might be termed technical training, with a greater emphasis on broader social issues. There has also been a greater willingness to permit persons other than lawyers or judges to offer training. This was evident for example at the Western Judicial Education Conference held in Yellowknife in June 1991. The entire week of seminars and workshops for judges was dedicated to enhancing the understanding of aboriginal culture and gender fairness.[19] This was the last of an extensive three-year program touching exclusively on these issues.[20] Because this type of training necessarily involves the development of awareness and not merely technical expertise, it is important that members of the judiciary participate fully.

RECOMMENDATION #7: That gender fairness and awareness training be mandatory for all sitting members of the judiciary.

In offering education on both gender and cultural issues, there is however, a propensity to place the issues of gender fairness and cultural awareness in two separate boxes. Clearly the issues are not as distinct as that. Both involve encouraging the capacity of individuals to understand a reality that is different than one's own. In addition, separation of the issues does not tackle some of the difficult questions that are associated with conflicts between gender and culture. There are indeed instances where the abuse of women has been clothed

in cultural acceptability and the interests of aboriginal women are therefore extremely vulnerable when these issues are not dealt with on equal footings.

RECOMMENDATION #8: That future education programs offered to the judiciary address the questions of gender fairness and cultural awareness together such that difficult questions of the impact of each area on the other are fully canvassed.

With respect to the superior court level, the National Judicial Institute,[21] established in 1988, has the responsibility for continuing education of federally appointed judges. In May 1990 the Institute started a gender equality program designed to ensure that judges' actions and decisions are based on a fair and informed assessment of each situation and not on preconceived notions of gender roles. The Institute has prepared a video and accompanying materials about the treatment of women in the courtroom, issues of spousal and sexual assault and the economic realities faced by women. The materials prepared by the Institute are most helpful and their use should be strongly encouraged.

In the Northwest Territories, a particularly important area of training for the judiciary is with respect to justices of the peace. These individuals will be taking ever increasing roles in the administration of justice in this jurisdiction and they have the capacity to administer justice in the communities in which they live. They can be the symbol of community standards. It is therefore crucial that training materials developed for justices of the peace deal extensively with the issue of gender fairness. During the course of the Review we had an opportunity to speak to justices of the peace in most communities that were visited. This group of individuals is singularly dedicated to their responsibilities and their willingness to improve their capacity to fulfil their responsibilities by taking training was most encouraging.

RECOMMENDATION #9: That training materials addressing issues of gender fairness

be developed for justices of the peace, and that such materials be considered an integral part of training received by justices of the peace.

RECOMMENDATION #10: That justices of the peace be encouraged to participate in any relevant interagency training offered in their community.

The need for training and education on gender issues is of course not limited to the judiciary. Other participants have significant responsibilities in the administration of justice and to the extent that inappropriate attitudes are portrayed by others, the functions of a sensitized judiciary can be entirely frustrated.

In this regard, members of the RCMP are visible, important and front line workers in the administration of justice. In visiting each community time was spent with officers in local detachments and there were consistently opinions offered by members of the community as to the resident members of the police. Police officers themselves evidenced willingness to spend time discussing these issues and the nature of the problems encountered in their community.

Women have contact with the RCMP at the point of entry to the justice system in matters involving criminal offenses. The police are in a position to facilitate or deny access to the justice system. It is therefore essential that police officers have an understanding of the problems faced by women, particularly as victims of spousal or sexual assault. They must continue to develop an awareness of the dynamics of abuse and violence. If police are unable to understand why women return to abusive relationships, then perhaps they must simply come to accept this as a reality. They must stop assuming that ending the relationship is the desired result and take their cue from the women themselves that the desired result is ending the violence.

Participants in the workshops stated that they felt a greater degree of comfort and trust when dealing with women police officers. They felt that their situation was more likely to be understood and that they would be treated with greater sensitivity. Having more women officers is seen as one method of removing barriers for women assault victims. It was also felt that specialized training would assist in police being able to respond more appropriately to cases of spousal or sexual assault.

RECOMMENDATION #11: That the RCMP pursue affirmative action policies to encourage the recruitment of women.

RECOMMENDATION #12: That specialized training be offered at the time of recruitment respecting responses to and investigation of cases of spousal and sexual assault.

There were a number of cases brought to the attention of the Review where women indicated they were less than satisfied with the behaviour of the police. These women were uncertain as to how to make their dissatisfaction known. It is necessary that there be a mechanism to bring incidents of inappropriate behaviour to the attention of the authorities and that such mechanism be accessible to the general public.

RECOMMENDATION #13: That the RCMP make greater efforts to inform the public of the existence of the RCMP Complaints Commission and how to go about making a complaint.

Fiscal restraint within the RCMP has posed severe limits on the ability of the RCMP to provide training to its members. In many cases the force is struggling to provide a basic level of service to the community. Bringing members from various communities to a central location is an expensive proposition. It also does not take into account that the police at the

community level work in concert with other individuals such as nurses, social workers, shelter workers, and others. A more creative response to training is therefore required.

An effective response to problems such as wife battering requires a coordinated response on the part of various agencies at the community level. The training needs of these various agencies could be met together and could be met at the community level. This type of model was adopted for training in the field of child sexual abuse and it appears to have been well received by those who participated in it.

RECOMMENDATION #14: That interagency training in the area of gender fairness and the dynamics of family violence be offered at the community level to participants from various fields. RCMP officers, health workers, social workers, justice of the peace and other agencies should participate in the training. The costs of training should be shared between the two levels of government.

Crown prosecutors bear a particular responsibility in having an understanding of the issues surrounding gender fairness. Such attitudes affect the presentation of appropriate arguments in court, the making of proper decisions about proceeding with prosecutions, accepting pleas to other or reduced offenses and dealing with women as victims generally. At present the crown's office is called upon to play a significant role in providing support to the victim. They do so by default of other agencies or resources to adequately assume this role. However, there are times when the interest of "the state" may conflict with that of a victim and in addition, it unduly taxes the already strained resources of the crown's office. Crown attorneys must participate in programs that will increase their awareness of gender issues and they must be aware of community resources available to women so that a victim's access to support can be facilitated.

RECOMMENDATION #15: That Crown attorneys have access to training on gender issues including the dynamics of family violence and sexual assaults.

While those noted above have particular responsibilities within the administration of justice, training and education ought not be limited to those offices. All individuals working within the administration of justice must develop awareness of gender fairness.

RECOMMENDATION #16: That all individuals who are employed in connection with the administration of justice, as legal counsel, legislative drafters, legal aid administrators, courtworkers and interpreters be required to take programs respecting the issue of gender bias and that such programs be offered on a regular basis by the Department of Justice.

It is also important that those who are employed in the private practice of law have an understanding of these questions. These individuals are responsible for the conduct of cases in court and they can have a profound effect on the types of decisions made in court. Further, it is the duty of defence counsel to treat witnesses, such as victims, with respect. To the extent that the position of the victim is not understood, there is a greater possibility of demeaning questioning and borderline ridicule. Indeed lawyers in private practice evidenced some of the most significant resistance to these issues during the course of the Review.

RECOMMENDATION #17: That all practising lawyers who wish to undertake legal aid work and be eligible to be listed on legal aid panels for that purpose be required to undergo continuing education in the area of gender bias and cultural awareness in order to commence or continue that practice.

RECOMMENDATION #18: That the Law Society of the Northwest Territories be

responsible for the development and delivery of programs respecting gender sensitivity and that all members of the profession be encouraged to participate.

There are two final points which must be made with respect to the areas of education and training for those involved in the administration of justice. Firstly it is critical that those who are involved in the area of offering training are themselves free to the largest extent possible of bias about the role and realities of women. Secondly, training and education are not the full answer and should not be seen as a panacea or the answer to the problem. There is at times a large tendency to adopt the attitude that having participated in training, the issue is now resolved. Nothing is further from the truth.

Societal attitudes

In a larger context, women continue to feel demeaned by how they are portrayed in the media and by assumptions that are made about them. They feel that aspirations that they may have for roles other than those traditionally accepted for them are at times beyond their reach. There must be greater efforts to dispel these attitudes and those efforts cannot be confined to certain institutions like the administration of justice. The courts, decisions on sentencing and the administration of justice generally is often a convenient target and at times a flashpoint for criticism. While some of this criticism is entirely justified, the issue extends far beyond this particular institution.

RECOMMENDATION #19: That the Status of Women Council for the Northwest Territories undertake a major public awareness campaign directed at providing information concerning the position of women, the perpetuation of stereotypes and the limitations imposed on women as a result of a lack of understanding or refusal to understand the issue of gender bias.

RECOMMENDATION #20: That education materials that continue to portray

stereotypes of women be removed from school curricula.

There is also a need for schools to actively encourage non-violent ways for children to solve problems. Violent behaviour is learned by children at a very young age. It is essential that schools send out a message that violent behaviour is unacceptable. The Canadian Teacher's Federation has prepared a project entitled "Thumbs Down" to encourage classroom discussion and activities aimed at deterring violence against women.

RECOMMENDATION #21: That the Department of Education review available materials directed at deterring violent conduct and that appropriate materials be developed for delivery in the Northwest Territories.

There is also a great need for public education generally on the subject of violence. It must be recognized that, regardless of the response of the justice system to violence against women, such violence will continue so long as there is widespread tolerance of such behaviour. In many communities participants in workshops indicated that there exists a large measure of tolerance for violent behaviour. The question, then is how to change public attitudes. Participants in workshops, as well as the Keewatin Legal Services Centre Society in their written brief, drew attention to the rapid evolution of public attitudes toward drinking and driving over the last few years. They suggested that a public awareness campaign about spousal assault could be instrumental in changing public attitudes about the acceptability of violence. As in the case with drinking and driving, changing public attitudes may result in changed behaviour.

RECOMMENDATION #22: That a major public awareness campaign be launched by the G.N.W.T. directed at changing attitudes towards violence against women.[22] This campaign must be adequately resourced. The campaign must use primarily not written

materials, however funding for existing resources in this area such as the regular publication of the Spousal Assault Network Newsletter should be assured.

The administration of justice, while playing a very significant role in our society, cannot be required to shoulder the full responsibility for the existence and perpetuation of gender bias. It is a problem which must be addressed in the broadest possible dimensions.

ENDNOTES

1. Several criminal trials in the Northwest Territories have been conducted entirely in French. The right to a French-language interpreter for witnesses or parties to a civil or criminal proceeding is guaranteed in the section 14 of the *Charter of Rights and Freedoms* only to a person who "does not understand or speak the language in which the proceedings are conducted".

2. The Official Languages of the Northwest Territories are Chipewyan, Cree, Dogrib, English, French, Gwich'in, Inuktitut and Slavey.

3. Section 4.1 of the *Jury Act* provides that:

> "An aboriginal person who does not speak and understand either English or French, but who speaks and understands an aboriginal language and is otherwise qualified under this Act, may serve as a juror in any action or proceeding that may be tried by a jury in the Territories."

This amendment to the Act, passed in 1986, came into force on September 1, 1989.

4. The legal interpreters program within the Department of Justice was set up in 1988, with resources provided by the federal government. Since that time, an eight-week legal interpreters program has been developed. Interpreters in all of the Official Languages except Cree and French have completed the training. As of February 1992, 37 had gone through the program and 90 others had partially completed the program. In addition, work is almost completed on legal terminologies in all of the aboriginal languages except Cree.

5. Court is public except in special circumstances, such as where it is appropriate to protect the identity of the victim. Routinely court is closed in child welfare proceedings.

6. One commentator compared conducting court in a language that is not understood by most of the people in the community in which the court is being held, as tantamount to a proceeding in the Court of Star Chamber. (This criminal court in Tudor England exercised inquisitorial powers *in camera*, that is, not in open court.)

7. Subsection 12(2) of the *Official Languages Act* provides that anyone may use any of the Official Languages of the Northwest Territories in court. Frequently however, people involved in court proceedings are too shy, embarrassed or intimidated to acknowledge that they would like an interpreter. Or they may underestimate the difficulty involved in understanding the legal language of the court or the speed with which it is often spoken. If interpretation is offered people will sometimes decline, and if is not offered (if, for example, an officer of the court considers that the person speaks English well enough), people, uncomfortable in the courtroom setting and uncertain of their rights, rarely insist.

8. The provision of interpretation for the general public at a court proceeding is at the discretion of the judge. The *Official Languages Act* provides that a court may provide for simultaneous interpretation of proceedings in court in any of the Official Languages of the Northwest Territories,

> "where it considers the proceedings to be of general public interest or importance or where it otherwise considers it desirable to do so for members of the public in attendance at the proceedings." (Subsection 12(3).)

The Aboriginal Languages Conference, "Bringing Our Language Home, held in Yellowknife in March, 1991, recommended that "simultaneous interpretation be **required** in court", [Conference Proceedings at 31]. (emphasis added)

9. A concern with plain language is of course not particular to this jurisdiction. For example, the Report of the British Columbia Justice Reform Committee "Access to Justice" (1988) (known as the Hughes Report) gave as its number one recommendation that the Attorney-General establish a senior level, policy-making, Plain Language Committee to provide leadership to the Bar, the Judiciary and the Government in developing a strategy for the implementation of plain language in the justice system.

10. A brief submitted from the Keewatin Legal Services Centre Society put it this way:

> "If an unfairness has been perpetuated by imposing a set of foreign rules on the Inuit, the unfairness is magnified if the Inuit are not adequately educated as to what these foreign rules are. Also, one cannot expect the Inuit to recommend how the imposed system can be modified to suit the[m] until they understand what the imposed system and its rules are." [p. 3] (See

Appendix C)

11. Maliganik Tukisiniakvik serves the Baffin from Iqaluit and Pond Inlet, Keewatin Legal Aid serves the Keewatin from Rankin Inlet and Arctic Rim serves the Delta/Beaufort from Tuktoyaktuk. A further clinic is planned for Cambridge Bay in the near future.

12. In the Report of the Task Force on the Criminal Justice System and its Impact on the Indian and Metis People of Alberta, March 1991, ("Justice on Trial", the recommendation was made that "the Legal Aid Society include in its mandate a requirement to educate the Aboriginal people of Alberta about the services offered by the Society." (Recommendation 3.1)

13. In the Report of the Task Force on the Criminal Justice System and its Impact on the Indian and Metis People of Alberta, March 1991, ("Justice on Trial"), recommendations 4.1 to 4.5 address the need for greater contact between the judiciary and native communities.

14. Interagency cooperation has born fruit in the past. For example, at the departmental level, the Child Sexual Abuse Initiatives Coordinating Committee is responsible for the development of a child sexual abuse protocol now in place across the Northwest Territories. Established in 1989, the Committee is composed of assistant deputy ministers and representatives from the RCMP, Justice Canada and the Women's Directorate.

Recently, the Departments of Social Services and Justice cooperated in sharing the costs of setting up a new interview room in Yellowknife for RCMP officers and Social Services workers to interview child victims of sexual abuse.

At the local level, many communities have very active interagency groups that meet on a regular basis for the purpose of sharing information and developing solutions to common problems. This sort of communication and cooperation has a direct effect on the delivery of services in the community.

15. Of those cases of spousal assault where complaints were made to the RCMP in the N.W.T., 10% of the cases in 1989 and 11.7% of those in 1990 involved female accused. It is generally accepted that the numbers of spousal assaults that are reported to the RCMP are a small portion of actual assaults. It is unclear how this factor would affect these figures.

In the case of sexual assault, the *Sexual Assault and Sentencing Study*, examining sexual assaults before the N.W.T. courts in the 1988 - 1989 period, reveals that the perpetrators of sexual assaults were men in 97% of the cases. The same report shows that the victims were women nine times out of ten, (p.11). This later figure is confirmed by national statistics revealing that women are victims of sexual assaults in 90% of the cases (Canadian Urban

Victimization Survey, No. 4, "Female Victims of Crime").

Nationally, reports have shown that virtually all sexual assailants are men; only one in 100 is female (*Report of the Committee on Sexual Offenses Against Children and Youth* (Badgely Report), 1984).

16. It is no accident that the recent report (June 1991) of the federal Standing Committee on Health, Welfare, Social Affairs, Seniors and the Status of Women, Subcommittee on the Status of Women was entitled *The War on Women*. The response of the federal government to the report, issued in November 1991, is appropriately called *Living without Fear ... Everyone's Goal, Every Woman's Right*. In that report, the Government of Canada recognizes that:

> "The same power imbalance in society which undervalues women and allows them to be discriminated against is the same power imbalance that fosters tolerance of violence and minimizes the gravity of its impact on the lives of women. This violence is uniquely directed at women precisely because they are women." (p.1)

It is appropriate to look at some figures that suggest the extent of violence against women. There is a certain risk associated with presenting specific numbers: inevitably the numbers will be attacked by sceptics, the sources discredited and the methodologies questioned. These tactics serve to distract attention from what is the essential question here: that is, that violence and fear of violence is a fact of daily life for many women. The figures below are offered for illustrative purposes only. They are drawn from a number of sources.

-at least one women in eight in Canada is battered by her male partner (Linda MacLeod, *Battered but not Beaten*, 1987. p.7);

-in Ontario, eight aboriginal women in ten have been abused or assaulted or can expect to be abused or assaulted, (Ontario Native Women's Association, *Breaking Free: A Proposal for Change to Aboriginal Family Violence*, December 1989);

-one women in four will be sexually assaulted by a man some time in her life (Julie Brickman, "Incidents of Rape and Sexual Assault in an Urban Canadian Population", *International Journal of Women's Studies*, 7, no. 1, 1984, p.197).

In the N.W.T., wife abuse complaints received by the RCMP increased almost 30% from 1989 to 1990 (from 563 to 727), (RCMP "G" Division, Criminal Operations).

In a recently published report, figures indicate that reports of sexual assaults have also shown similar dramatic increases over the last few years. Reporting rates have more than doubled

in the Northwest Territories from 1982 to 1988, as they have nationally (see Roberts, *Sexual Assault Legislation in Canada: An Evaluation"*, Report No. 4, 1990, p.14). By way of comparison, non-sexual assaults reports increased 20% in the Northwest Territories and 50% nationally over the period 1983 to 1988 (Roberts, 1990, p.18). With reference to sexual assaults, it is difficult to determine to what extent an increase in the number of reports is a reflection of increased incidence of assault, of increased willingness to report assaults, or of the disclosure of assaults that were committed some time ago.

Although the statistics indicating rapid growth in the number of sexual assault charges should be interpreted with some degree of caution, it is clear from the court dockets that sexual assault occupies a great deal of the court's time. In a recent listing of criminal cases pending in the Supreme Court, fully 32% of the 223 charges were sexual offenses. (This figure includes sexual assault, sexual assault with a weapon and aggravated sexual assault as well as sexual interference.) The number of assault charges pending in the Court varies from one region to another from as low as 22% to as high as 64% of all charges pending.

Roberts' figures indicate that the Northwest Territories has rates of reported sexual assaults that are consistently four and five times the national average from 1977 to 1988, and over ten times the rate in Quebec in 1988 (Roberts, 1990, p.14.) This ratio also prevails with non-sexual assaults (*ibid*, p.19).

Worth noting from the same report is the fact that while the unfounded rates in the Northwest Territories for sexual assault reports (or rape reports in the case of the earlier figures) have fallen from 46% in 1980 to 20% in 1988, this figure remains substantially higher than the more or less constant 15% figure nationally (*ibid* p.32).

17. The recent *Sexual Assaults and Sentencing* study revealed that 33% of sexual assault occurring over a two year period in the Northwest Territories took place in the home of the victim and another 13% took place in a shared domicile (p.23). Nationally, women are almost 5 times as likely as men to be assaulted in their own home, (*Canadian Urban Victimization Survey*, No. 4, "Female Victims of Crime", p.3).

A striking characteristic of violence against women is the extent to which it is perpetrated by men that they know, either family members or partners.

-of sexual assaults cases in the N.W.T. in 1988-1989, 28.7% were committed by family members, and a further 50.6% by friends and acquaintances. Almost all were committed by people known to the victim, (*Sexual Assaults and Sentencing*, p.27). Nationally, the victim and the assailant know each other in 41% of cases, (*Canadian Urban Victimization Survey*, No. 4, "Female Victims of Crime", p.3);

-nationally, women are six times more likely than men to be assaulted by relatives, *(ibid.)*;

-62% of all women murdered in Canada are victims of domestic violence (Canadian Centre for Justice Statistics, *Homicide in Canada 1987*, p.59.

18. At a conference of chief justices in 1988 it was urged that every state chief justice establish a task force.

The mandate of the various task forces established to date has been to study / determine / examine the existence / nature / extent of gender bias in the judicial system of the state. They are to recommend changes to correct the problem and promote equality. Several task forces were given the specific mandate to develop a judicial education program.

The areas of study varied from state to state and included substantive law and judicial decision-making in family law, criminal law and civil law; court practices and administration; women litigants and women in the profession; sentencing; and young offenders.

Methodology again varied from state to state and included surveys and focus groups of judges and practitioners; public hearings; review of the literature; case research; and private interviews.

Task forces have made recommendations for legislative reform and most have called for programs of judicial education in gender fairness, changes in judicial selection and evaluation, and for continuing education for the practising bar, as well as a number of other reforms such as resources for victims services. (See Norma Wikler, "Water on Stone: A Perspective on the Movement to Eliminate Gender Bias in the Courts (The American Experience)" in *Court Review*, Vol. 26, No. 3, Fall 1989.)

19. The workshop included plenary presentations of papers on gender equality issues; plenary panel discussions (such as sexual assault survivors); small group discussions restricted to judges (and in the case of the aboriginal justice issues, elders and translators). There were also videos distributed to all the attending judges that were prepared by the education committee of the Saskatchewan Provincial Court. The video contained vignettes dramatizing date rape, spousal assault, and the impact of court on a victim.

20. An evaluation of the three workshops was completed by Dr. Norma Wikler who was involved as a faculty member at the workshops.

The author of the report, Dr. Wikler, a sociologist from the University of California, Santa Cruz, has been involved in issues concerning gender bias in the courts and judicial education

for eleven years. She has served as advisor to a number of task forces set up in American states to examine gender bias in the courts and has published extensively on the subject.

Wikler considers that the "Gender Equality in Judicial Decision-Making" program presented in Yellowknife last summer was the "most in-depth and sophisticated treatment on this subject that I have observed in either the United States or Canada", ("Educating Judges about Aboriginal Justice and Gender Equality: The Western Workshop Series 1989, 1990, 1991, An Evaluation Study Report submitted to Department of Justice, Canada, December 1, 1991, p. 55).

21. Formerly the Canadian Judicial Centre.

22. The Keewatin Legal Services Centre Society also points out in their brief that a similar recommendation was made by the 1985 Task Force on Spousal Assault.

As a result of this recommendation, the Department of Culture and Communications developed a variety of materials on spousal assault in the mid to late 1980s. These materials circulated for some time, but there was no sustained campaign, and no attempt was made to measure of the effectiveness of the materials. The only element of the campaign to survive is the Spousal Assault Newsletter which achieves wide distribution, but for which there is no assured funding source despite the very nominal cost involved.

Written materials can be useful resources, but widespread change of attitudes requires the use of mass media, particularly non-print media.

The N.W.T. Status of Women Council has received funding from the Federal government's Family Violence Prevention initiative to prepare five television spots about wife assault. The spots should be ready for airing this spring.

It is worth noting that the recommendation number one of the recent federal report *The War Against Women* was that the federal government mount "a national, multi-media campaign on violence against women".

III ACCESS TO JUSTICE / ALLOCATION OF RESOURCES

It is important to recognize that the question of whether one is treated fairly by the administration of justice makes a large assumption, namely that women have access to the system in the same way that men do. If women do not have adequate access to the courts the whole question of fair treatment once there is not a complete picture. The question of access is therefore a very important aspect of the issue of gender fairness. In the same way, the question of the extent to which women receive financial support as litigants becomes an issue of gender fairness. Therefore, questions of awareness of remedies, ability to utilize remedies and the kind of remedies available must be addressed.

1. Access to Civil Remedies

One of the issues reviewed is that involving the capacity of women to access the justice system for the purpose of obtaining civil relief. This relief usually involves court orders respecting custody of children, maintenance of children and spousal support. Other forms of relief may include restraining orders and division of property on breakdown of relationships. It was painfully obvious throughout the consultations at the community level that many women were not aware of various forms of remedies available to them, particularly respecting child support orders. Many women are raising children by themselves, with assistance only from extended family or social assistance payments or both.

Legal aid

With respect to the provision of legal aid, although regional clinics have been instituted with a view to increasing accessibility of legal assistance to residents in the regions, this increased accessibility is limited in its scope. The clinics mainly service those charged with criminal offenses and civil work has yet to take a position of equal importance. The demands placed on counsel employed at the clinics often do not permit them to provide the type of assistance that they would wish to civil clients and it is not unusual for this work to be delegated to legal counsel residing in Yellowknife. In addition, many of the legal proceedings taken in civil matters are conducted in court on Yellowknife.

RECOMMENDATION #23: That sufficient resources be allocated to legal aid clinics to permit them to place greater emphasis on obtaining civil relief on behalf of clinic clients. In some cases this many require contracting the services of a second lawyer whose responsibility would be civil matters.

The issue of access to remedies will be significantly affected by policies and funding criteria of the Legal Services Board of the Northwest Territories. Presently eligibility for civil relief is based on both the nature of the relief sought and the financial circumstances of the applicant. In family law matters, relief is available for custody, maintenance and division of property matters. There is not a specific category of relief when an applicant is seeking protection from violence or apprehended violence without seeking custody of children or maintenance. While funding has been granted for such applications, it is at the discretion of the Executive Director of the Legal Services Board. In some cases it was assumed that there need not be funding for this type of relief in that it was available with the assistance of the RCMP in a peace bond application. However, there are cases of the police being reluctant to seek this relief and it cannot be relied upon as a resource for protection against violence. In addition, if legal aid funding is designated in this way, it reflects a larger value, namely, that not only perpetrators of violence as accused persons deserve the support of

publicly funded legal assistance.

RECOMMENDATION #24: That the Legal Services Board approve or designate a specific category of eligibility respecting applications by person threatened with or apprehending violence.

Inherent in the allocation of legal aid funds is the opinion that criminal law defence work is more important or valuable than work in the family law field. This necessarily involves attributing value to the defence of accused persons over and above the necessity of addressing the needs of victims, children and questions of financial support. This frequently unspoken but ever present bias needs to be addressed. Philosophical underpinnings to the distribution of resources must be seriously reviewed by the Legal Services Board.

When an application is made to legal aid for financial assistance, there is a mechanism for reviewing the denial of assistance. Such a decision may be brought to the attention of the Executive Director of the Legal Services Board. The Executive Director may reconsider the initial decision on qualification. If the applicant is unhappy with this review, the matter may be brought to the attention of the Legal Services Board. While these remedies may be sufficient, they will not be so if individuals are not aware of them. There must be greater information provided to the public about accessing legal aid and review mechanisms available if an applicant is dissatisfied with their failure to qualify for assistance.

RECOMMENDATION #25: That the Legal Services Board take steps to better inform the public of procedures involved in applying for financial assistance and the mechanisms available for the review of a decision respecting qualification.

Justices of the Peace

Most communities have resident justices of the peace. The government of the Northwest Territories has made a concerted effort in the last several years to provide training to the justices of the peace.[1] This training has been geared to increasing the capacity of justices of the peace to hear contested summary conviction criminal matters. However, there has been little effort to date to train justices of the peace to hear civil matters in the nature of family law issues. There is the legislative jurisdiction for this level of court to hear some matters in this area.[2] The jurisdiction of justices of the peace should be increased to permit the hearing of maintenance and custody matters in order to make these remedies more truly accessible at the community level. The emphasis on training in the criminal sphere again indicates the willingness to develop and allocate resources to areas that do not benefit women.

RECOMMENDATION #26: That the *Domestic Relations Act* be amended to grant to justices of the peace jurisdiction to hear cases involving custody of and maintenance for children.

RECOMMENDATION #27: That the coordinator of the Justice of the Peace training program develop training materials respecting the hearing of civil law matters, with emphasis in the area of family law, and that such training be offered to justices of the peace coincidentally with training in the criminal law sphere.

2. Availability of Remedies

Access to remedies is a function not only of awareness of remedies and the capacity to utilize them, but also of the kind of remedies available. In the area of maintenance, there are limits both in terms of who can access support and the nature of support available. To correct this, flexibility must be introduced into the area of support orders.

In many small communities there is a very marginal wage economy. The courts must have the capacity to order support in kind, such as the provision of meat or assistance with child care in appropriate circumstances.

RECOMMENDATION #28: That the *Maintenance Act* and the *Domestic Relations Act* be amended to provide the option of ordering non-monetary support.

The courts have recently decided that common-law spouses are not eligible for spousal support.[3] This would have a significant impact on the situation of women as common-law spouses.

RECOMMENDATION #29: That the *Maintenance Act* be amended to enable common-law spouses to obtain spousal support.

The entire area of family law is badly in need of wholesale revision. Most of the legislation is outdated and in some areas such as the division of matrimonial property, there is no substantive legislation at all.[4] In 1988 the G.N.W.T. Department of Justice set up a working group to review family law in the Northwest Territories with a view to, not only updating it, but bringing in new legislation that was appropriate to the unique circumstances of this jurisdiction. The review adopted a consultative approach, involving aboriginal interests, women's interests as well as input from practising lawyers and policy makers. While the process involved is commendable, the incomplete state of the review is not.[5] The G.N.W.T. must give a priority t completion of this review.

RECOMMENDATION #30: That the G.N.W.T. take such steps or allocate such resources as may be necessary to complete the review of family law in the N.W.T. and that the passage of legislation arising from recommendations be given priority.

There are other limits imposed on women seeking help from the courts. One possible avenue of compensation for injury received is a civil suit for damages. There have been cases recently in southern Canada where women have been awarded substantial sums of money in damages for sexual assault. However, in many cases of sexual assault, the limitation period of two years makes it most unlikely that the victim will be in a position to initiate legal proceedings. In effect, the limitation period rewards the perpetrator who effectively silences his victim by abuse of his power over her.

RECOMMENDATION #31: That the *Limitations of Actions Act* be amended by removing the limitation period for civil actions arising out of sexual assaults.

Another avenue of redress lies through criminal injuries compensation. The *Criminal Injuries Compensation Act* allows for money to be paid by the state to victims of injuries incurred as a result of a criminal act.[6] The Northwest Territories recently adopted a new Act which allows for compensation for pain and suffering by a victim. This change should help make compensation available to victims of acts such as sexual assaults, where the victim has suffered emotional and psychological trauma without having sustained physical injury.[7]

There remain concerns about how this legislation may be interpreted. One such concern is the provision in the Act whereby compensation may be denied if the victim is considered to have contributed to the injury by her behaviour. Steps must be taken to ensure that appropriate recognition is given to the battered women's syndrome, as acknowledged by the Supreme Court of Canada in *Lavallee*. Otherwise women may find themselves unfairly denied appropriate compensation.[8]

In addition, the Act provides for a limitation period of one year. Discretion is given to the compensation officers to extend the period where warranted. The removal of the limitation

period for civil actions based on sexual assaults, as recommended above, would send the right signal to officers about the profound impact and dynamics surrounding sexual assault, particularly where there is a breach of trust.

A further concern about access to criminal injuries compensation, particularly by women living in smaller communities, is the level of knowledge of the existence of this avenue of compensation. It is fair to say that most if not all the women participating in workshops were not aware of the program, although most have been victims of violence.

RECOMMENDATION #32: That appropriate measures must be taken to ensure that the criminal injuries compensation program is adequately publicized.

Finally, the federal government has recently announced that it is withdrawing from cost-sharing agreements with the provincial and territorial governments for the funding of criminal injuries compensation.

RECOMMENDATION #33: That the federal government immediately reinstate funding for criminal injuries compensation and for other forms of victims assistance.

3. Enforcement of Civil Remedies

Once a court order has been made which grants to the applicant custody, maintenance, or protection from contact, the capacity to enforce such orders is limited. With respect to restraining orders, there are essentially two available remedies. The person who is alleged to be in breach of the order may be charged with an offence under section 127 of the *Criminal Code* (breach of a civil order). The instances of such charges being instituted for breach of restraining orders are rare, particularly when such orders are granted in circumstances of domestic violence.

The other remedy is to ask the court to find that the person breaching the order is in civil contempt. Various types of sanctions may be imposed for contempt, but the remedy is technical, difficult and time consuming. Again this results in the remedy not being pursued. The absence of enforcement mechanisms completely undermines the value of the order in the first instance. Frequently, this is put forward as a rationalization for not obtaining the remedy at all. In effect, this results in condonation of the acts of violence.

RECOMMENDATION #34: That policy directives be developed within the Royal Canadian Mounted Police requiring institution of charges under section 127 of the *Criminal Code* in instances where there are reasonable and probable grounds to believe that the terms of a restraining order have been violated.

In the case of custody orders, the police are reluctant to become involved in enforcement. In other jurisdictions such enforcement may be handled by sheriffs or bailiffs. In the Northwest Territories, there is no equivalent office equipped or mandated to enforce these orders. The frequency of enforcement of custody orders does not likely merit establishing offices for this purpose exclusively. However, some real and workable method of enforcement must be established. In addition, there must be a greater willingness to pursue appropriate charges under the *Criminal Code* for kidnapping and abduction of children. Again, there persists an attitude of reluctance respecting the investigation and prosecution of such charges.

RECOMMENDATION #35: That an appropriate protocol between the courts and the Royal Canadian Mounted Police be established which will enable the police to be accurately informed of existing custody orders and provide them with the capacity to enforce such orders.

RECOMMENDATION #36: That policy directives be developed within the Royal

Canadian Mounted Police requiring the institution of appropriate abduction or kidnapping charges when reasonable and probable grounds exist respecting child abduction.

As for enforcement of support orders and agreements, the Government of the Northwest Territories has established an office specifically for the enforcement of maintenance orders in this jurisdiction.[9] However, the capacity of this office to effectually enforce payment of support is severely handicapped by the lack of sufficient staff. Permanent full time staff has not been designated for this office.[10] The number of open files requiring action is steadily increasing and has virtually from the outset exceeded the capability of the staff to keep up.[11] The Government of the Northwest Territories cannot on the one hand state that they actively support women in their attempts to collect maintenance payments and on the other hand, fail to adequately staff the office charged with this responsibility. If the Maintenance Enforcement Program continues to be understaffed, women must have some other means of collecting support payments. This can be done by authorizing legal aid to fund such assistance. However, this ultimately will be a more costly way of achieving the purpose.

In addition, from time to time the maintenance enforcement officer is required to make difficult judgments of a legal nature. It is important that this office have access to legal advice, either through the GNWT Department of Justice or through some other contractual arrangement.

RECOMMENDATION #37: That the Maintenance Enforcement Office be better resourced by the allocation of permanent full time person years.

RECOMMENDATION #38: That the Maintenance Enforcement Officer be provided with access to legal advice either through the GNWT Department of Justice or through a contracted retainer for legal services.

Women who participated in the workshops had very little awareness of remedies available for obtaining child support and even less awareness of the ability to have assistance in enforcing support orders once obtained.[12] Again, the value of existing resources is extremely limited if there is not wide public awareness of the existence of them.

RECOMMENDATION #39: That the availability of maintenance and enforcement remedies be better publicised by the production of television advertisements and pamphlets[13] and posters translated into aboriginal languages.

Women in the workshops also expressed a great deal of frustration at the apparent lack of any mechanism to receive financial support when their partners are in jail. However, under the *Corrections Act* there is the ability to divert funds earned by inmates while incarcerated for the support of their families. While the proportionate number of inmates who are able to earn funds from paid employment or carving activities may be low, there is still a benefit to be obtained to using the funds so earned for the support of the inmate's family. In this regard, regulations should be enacted which mandate deduction of support payments from funds earned from paid labour or related activities.

RECOMMENDATION #40: That regulations pursuant to the *Corrections Act* be enacted to provide for the mandatory deduction of support payments from funds earned by inmates for paid labour or related activities. Such payments should not require the prior existence of a court order for support as most women will not seek support orders in these circumstances.

Women experience difficulty in accessing and enforcing civil remedies for reasons discussed above. There are also circumstances where women are forced to enter into contact with the administration of justice, both civil and criminal, whether they want to or not.

4. Enforced Access: Civil

Support Orders

Some women find themselves in the situation of trying to put as much distance between themselves and their former partner or spouse as possible. They may forgo remedies if seeking them will require a confrontation with their spouse in the court process. This is of course particularly true of women who have been physically and/or emotionally abused by their mates. Yet when seeking financial help from the Department of Social Services, they will be actively encouraged to seek financial support from their spouses. It is a legitimate concern that the public purse not be burdened with providing support when a family member is capable of doing so. However, in the case of abusive relationships, there should not be a requirement or even the encouragement to seek payment from the estranged spouse. Legislation should be amended to grant to the Department of Social Services the capacity to seek contribution from the spouse in instances where financial aid has been provided by the Department.

RECOMMENDATION #41: That the *Social Assistance Act* be amended to permit the Director of Social Assistance to apply to the court for child support or spousal support payments from non-custodial parents in instances where financial assistance has been provided by the Department to an applicant.

5. Enforced Access: Criminal

Mandatory Charging and Prosecution of Criminal Offences

One form of access that has become familiar to women is the enforced access to the courts associated with the policy known as "mandatory charging" of spousal violence offenses and the corresponding prosecution policy known as "zero tolerance prosecution". In practical terms what these policies mean is that once an assault complaint is made, the police are obliged to investigate it. If upon investigation there are reasonable and probable grounds to

believe that an offence has been committed, a charge will be laid.[14] Once a prosecution has been commenced by the laying of a charge, the Crown Attorney is obliged to prosecute, even if the complainant is unwilling or reluctant to participate in the court process as a witness.

In practice, the Crown Attorney's office has exercised a degree of flexibility in the prosecution of these offenses. However, there are still incidents of proceeding with prosecutions in the face of a reluctant and sometimes hostile complainant. The dilemma involved in such situations is not insignificant. On the one hand, an act of violence is a crime and it ought to be treated as such. It is not only a crime against the complainant but also against society as a whole. Failure to prosecute not only sends a message that the matter is not really a crime but it also allows the accused to exert pressure with a view to convincing the complainant not to proceed. Clearly some form of protection or support is required in these cases. Based on the mandate of the police and the historical difficulties encountered by members of the police in truly understanding the position of abused women, it would be inappropriate to reintroduce a full measure of discretion at the investigatory level. Indeed, it was the opinion of one RCMP officer that it would be a step backwards for women to allow the police to exercise discretion in charging domestic violence offences.

RECOMMENDATION #42: That the police charging policy with respect to spousal assaults continue to be rigorously enforced.

There remain two contradictory interests at play. There is on the one hand the interest of "the state" or society at large. This is represented by the theoretical underpinning of the state maintaining responsibility and hence control in the prosecution of alleged offenses. Despite the historical validity of this approach, its relevance to prosecutions presently is at best questionable. The second interest is that of the victim and it is the clash of these two

interests that pose such difficult dilemmas for all parties concerned. The prosecutor is faced with a reluctant and at times hostile witness. The complainant is thrust into a proceeding in which she does not want to find herself and the accused is defending himself in a situation that almost certainly will impair the prospects of regaining a healthy relationship with the complainant. In many instances of domestic violence, the victim does not necessarily seek punishment of the offender. In many cases she simply wants the violence to stop. The victim must be given a larger role in deciding the course such matters are going to take.

6. Services to victims

One of the striking features of the mandatory charging and prosecution policies is the absence of any control in the hands of the person directly affected. She must have available to her support and counselling in order to arrive at an informed decision as to whether to proceed with the prosecution. This decision should not be made for her by persons who may not comprehend her situation and who do not have to live with the consequences of the decision. Of the recommendations received in all of the workshops and public meetings held, the need for victim support and services was the one which was voiced most strongly and most consistently. It formed the major concern at every workshop.[15] The need for such support is not merely to facilitate prosecution of offences of violence, it is an overwhelming need of battered women and children at both the urban and community level.

Ideally, counselling and support should be available to a victim prior to the laying of any charges. If this occurs, she is then is a position to decide whether she wants to press charges.

RECOMMENDATION #43: That counselling and support services be provided to victims to permit them to make informed choices about the prosecution of domestic violence offenses.

RECOMMENDATION #44: That Crown prosecutors abide by expressed wishes of the complainant unless there are compelling reasons to proceed with the prosecution.

It is with considerable reservation that the above recommendation is made. Returning control to the victim brings with it many ramifications, most of which are not favourable to her. But if the process of proceeding with charges further victimizes her, there is little to be gained by it. This is particularly the case if lenient sentences are imposed. In such cases, not only does the victim feel devalued, there is no message to the public about the seriousness of the conduct.

In dealing with such difficult issues, the Crown attorney must have sufficient time to spend with the victim. Strained resources continue to place unacceptable burdens on this office. Permitting Crown attorneys greater time with witnesses requires more Crown attorney positions in this jurisdiction.

RECOMMENDATION #45: That the Federal government allocate more Crown attorney positions to the Northwest Territories.

It must be emphasized, however, that the decision of whether or not to proceed with a prosecution for domestic violence cannot be returned to the victim without the benefit of the support and counselling services. To do so would place her in the same situation as gave rise to the policies to begin with and results in moving a step backwards rather than the converse. As well, counselling and support services must not be restricted to victims of domestic violence although they clearly will be the most frequent beneficiaries of it. It must be available to all victims, with the clear emphasis that services be mandated for adult and child victims of violence.

In addition, the mandate of victims' assistance should be wide enough to include advocacy on behalf of the victim. This role should be interpreted in the broadest sense and should not be restricted to advocacy within the justice system. The interests of the victim may require support in other areas such as obtaining housing or social assistance.

There have been a number of recent initiatives in the Territories to provide support to victims. Some of these initiatives have come from the Government of the Northwest Territories,[16] some from the Federal government[17] and some from community groups.[18]

These initiatives are to be encouraged, but there is no agency with the mandate to provide services to victims. As a result, there is a tendency for each agency to respond to the pressure for victims services individually, which results in a fragmented response to the problem. There is also a tendency for services to be offered only in the largest centres. Support services must be accessible to individuals at a community level. The provision of such services, if their availability is restricted to the larger centres, does not address the acute needs of victims residing in small and remote areas. These circumstances bring with them very particular problems and cannot be appropriately addressed in an urban context. Therefore training and resources must be available for community members. It appears that such a mandate may appropriately fall within the Department of Social Services. It is important however that such a mandate not be shifted to social workers or community corrections workers. The respective mandates of each are already to large. Positions dedicated to this service must be created in order to fulfil this need.

RECOMMENDATION #46: That a training program be instituted through the joint cooperation of the Department of Justice and the Department of Social Services to offer counselling and support services to victims;

RECOMMENDATION #47: That training be offered through Arctic College and

existing programs of adult education respecting Victim's Assistance;

RECOMMENDATION #48: That training for victims' assistance and counselling be community based and culturally relevant.

RECOMMENDATION #49: That counselling services for both the victim and the abuser be available at the community level.

RECOMMENDATION #50: That paid positions for victim's assistants be available at the community level, and that these positions be funded in part from the victims of crime surcharge.

RECOMMENDATION #51: That protocol be developed between the RCMP, Department of Social Services, local resources such as shelters and Victims Assistants respecting contact with and support for victims at the earliest possible stage.

RECOMMENDATION #52: That communities be given the opportunity to develop appropriate mandates for victims' assistance as the type and method of support will vary and should be flexible.

It may be argued that strained public resources do not permit creation of these additional services.[19] In such circumstances, the type and object of existing services must be closely scrutinized with a view to assessing the values promoted. With respect to victim's assistance, it may be useful to remember that a network of services is provided to accused persons under the Courtworker program. The mandate of these services is to provide assistance to persons charged with offenses and to assist in their understanding of the process. This may include actual representation of the accused by the courtworker in summary conviction or sentencing matters, completion of legal aid applications forms, obtaining background information for the assistance of the defence counsel or the court, interviewing witnesses and so on. Courtworkers primarily reside in the region that they service and are therefore a relatively accessible resource. It has been suggested that the mandate of the courtworker be revised to provide assistance to victims of violence rather

than providing assistance, at least part of the time, to persons accused of perpetrating violence. Clearly the courtworker cannot do both. Yet supporting the accused and failing to support the victim indicates the continuing problem of structural or institutional bias, namely, the willingness to dedicate resources to those area of the administration of justice that do not benefit women. A balancing must be achieved and, resources permitting, not at the expense of either.

ENDNOTES

1. Following the recommendations of the "Task Force on Justices of the Peace and Coroners" released in 1988, the Government of the Northwest Territories hired an Administrator of the Justice of the Peace program in mid-1990. The Administrator, operating under the Chief Judge of the Territorial Court, has the responsibility for the recruiting and training of justices of the peace. There are currently close to 150 justices of the peace across the Territories.

2. Under the *Child Welfare Act*, a justice of the peace has the same jurisdiction as a Territorial Court judge for child protection under Part II of the Act, for contribution orders under Part III and for establishment of parentage under Part IV. Under the *Domestic Relations Act*, a justice of the peace may grant orders of guardianship under Part III of the Act. Under the *Maintenance Act*, a justice of the peace may make maintenance orders under section 5 of the Act.

3. Supreme Court of the Northwest Territories in October, 1991, in *Mayfield Blake v. Linda Andre*, [1991 NWTR 351].

4. The *Matrimonial Property Act*, passed in 1974, has never been brought into force.

5. The need for a comprehensive review of family law matters has been used as an excuse not to make any legislative changes in this area until the complete of such a review. In its response to the recommendation of the 1985 "Task Force on Spousal Assault" that the government review legislation and prepare a draft act on spousal assault, it was indicated that the Department of Justice was reviewing legislation on family law (see "Choices..." p.13).

6. Legislation of this kind was first introduced in Saskatchewan in the late 1960s. Since that time jurisdiction across the country have recognized the need to provide some compensation to victims. The first Territorial Act was passed in 1973.

7. Access to compensation should also be improved by the fact that victims now apply to a criminal injuries compensation officer for an award rather than to the Supreme Court.

8. A recent decision by the Saskatchewan Criminal Injuries Compensation Board is a case in point. A women received reduced compensation because of the risk knowingly incurred by staying in a relationship with an abusive man.

9. The Maintenance Enforcement Program was established in January 1989. Maintenance orders issued from the courts are registered with the Program and creditors are contacted to determine if they want the Program to collect from the debtor on their behalf. The legislation provides program administrators with a wide variety of powers for the collection of arrears.

10. The office is currently run by one person filling an unfunded position and one other "casual" employee. The office in the Yukon Territory performing a similar function for a smaller population, has four employees.

11. As of April 31, 1992, the office had opened a total of 476 files. From April 1, 1991 to April 31, 1992, the program opened 107 files. As of March 1992, some 301 files were considered "active". Of these active files, only about 12% were not in arrears. The total amount owing to women is in excess of $1.5 million.

Collections have grown rapidly since the inception of the program. From $273,998 in 1989, to $473,668 in 1990 and $640,402 in 1991. Over $256,000 has been collected in the first four months of 1992 alone. However, the ability of the program to further collect on outstanding debts is severely hindered by the shortage of staff.

12. This is particularly the case for women outside of the larger centres. As of January, 1992, over 70% of women in the N.W.T. receiving support through the program live in Yellowknife, Hay River or Fort Smith. In the Baffin outside of Iqaluit there are only two women registered with the program. In the Keewatin and Kitikmeot, only four in each.

13. The N.W.T. Status of Women Council, with the assistance of Arctic PLEI and the Maintenance Enforcement Program, has recently prepared a pamphlet on spousal and child support. This useful pamphlet should be widely distributed, but of course, efforts to publicize the existence of enforcement remedies must not be limited to print.

14. This policy was put into place for a number of reasons. Firstly, the charging policy was intended as a clear signal that spousal assaults are a criminal matter and are not to be

tolerated. Implicit in this is the recognition that the discretion in the hands of the police was not always appropriately exercised.

Secondly, by putting the responsibility for charging clearly in the hands of the police, a woman was no longer to be made to feel responsible for making the decision to charge her spouse.

15. In 1991, Arctic PLEI prepared an "Assessment of the Needs of Victims in the Northwest Territories". Counselling needs were highlighted by both justice providers and by community service providers in the study as an important victim need.

16. In 1989, the N.W.T. *Victims of Crime Act* was passed, creating a Victims Assistance Fund of money collected under the victims surcharge. A surcharge of 15% is levied on fines handed down in territorial courts, on territorial or federal offences. In 1990-91 the surcharges totalled $120,478.04. (Victims Assistance Committee Annual Report 1990-91, p. 3-4).

A three-member Victims Assistance Committee, appointed by the Minister of Justice, is responsible making recommendations to the Minister on how to spend the money in the Fund. The Committee is supported by a full-time Victims Coordinator, paid out of the Department budget.

In 1990-91, over half the money from the Fund was used to encourage training for people helping victims of crime. A quarter of the funds were devoted to research and a small amount for direct service delivery. The money is not used to compensate victims.

The Victims Coordinator, in addition to providing executive support to the Victims Assistance Committee, is responsible for the administration of other projects funded by the Department of Justice from money earmarked for victims. These projects include the preparation of a booklet for child sexual abuse victims in court, a booklet for teen sexual assault, and setting up the Victim Assistance Training Program.

The first two sessions in the training program were offered at Fort Smith in cooperation with Arctic College, in the fall of 1991. Other sessions are planned for Iqaluit in the spring. The training aims at providing basic skills for workers or volunteers helping victims of crime.

17. The federal prosecutors office has recently hired two aboriginal victim / witness assistants, one for each of the Yellowknife and Iqaluit offices. These positions are jointly funded by the Federal and Territorial governments. The assistants are to help the Crown prosecutors in communication with victims and assist in trial work, provide victims information about the courts and about their case, prepare witnesses for court and refer

victims to available services.

The federal government provided funds to Pauktuutit, the Inuit Women's Association, to prepare the ground-breaking 1991 publication "No More Secrets" about child sexual abuse in Inuit communities.

Federal funds have been accessed by Family Violence Prevention in the Department of Social Services to provide a very successful training program for shelter workers. The training has been offered over the last few months in two stages to shelter workers in three regional centres in the Northwest Territories.

18. A community-based response to victims assistance has been attempted in Fort Good Hope and in Fort Rae.

In Fort Good Hope, drug and alcohol workers, with the backing of the community council, sought and received funding from the Secretary of State to hire a Victims Advocate in the fall of 1989. Working out of the Community Council office, the Advocate offered counselling and advocacy services to victims of family violence, as well as working on public education about violence in the community. The project was originally sponsored by the Yellowknife-based Society Against Family Abuse, but once the project was up and running, it was turned over to the Fort Good Hope Community Council.

In Yellowknife, the Yellowknife Victim Services Program has been organized with the participation of the RCMP, government departments and a large number of organizations in the volunteer sector. With the Y.W.C.A as the sponsoring agency, a full-time staff person has been hired. This person, operating from an office provided by the local RCMP detachment, will train and coordinate a group of volunteers who will work with victims. Funding for the coordinator has come mainly from the Department of Justice funding earmarked for victims.

In Iqaluit there is a group actively pursuing ways of providing services to victims including the preparation of a video. There are other groups with similar goals operating in different communities.

Arctic PLEI has recently published "Victims Assistance: A Guide for Communities in the Northwest Territories" to help communities members in organizing to provide assistance to victims.

19. In fact the federal government only recently announced the withdrawal of funding from victims programs across the country. They had been providing about $50,000 to victims services in the Northwest Territories.

IV COURT PROCESS

1. How do women experience court

The great majority of women who have experience with the court system derive this experience as victims of sexual or spousal assault. Some women have experience when they have sought custody of children, maintenance for children or financial support for themselves. Some women have served as jurors and some have worked within the court system (courtworkers, interpreters, justices of the peace, lawyers, clerks, social workers and so on). A limited number of women experience the court system as offenders.

As indicated earlier in this report, women as victims of violence do not report positive experiences in their dealings with the court process. Consistently they reported feelings of fear, confusion, intimidation, being misunderstood, alone and vulnerable. They often felt that they did not know what was happening, what was expected of them or what in turn they could expect from the process that they had become involved in. They felt embarrassment that the details of their experience as a victim was open to public view. They felt that they were often not taken seriously or believed and finally that they had no control. Everything was out of their hands and others made all the decisions for them.

In some cases, when women were consulted, the form of this consultation was inappropriate. One example of this occurred in a sentencing for spousal assault in a community. The

injuries suffered by the wife were significant and, to the wife's relief, the husband had entered a guilty plea. The wife therefore understood that her attendance at court to give evidence would not be required. Needless to say she was shocked to be called into court and seated beside her husband. The presiding judge then proceeded to question the wife as to whether she was afraid of her husband, whether things were alright between them and so on. Seated next to her abuser in his sentencing hearing, she felt compelled to say that things were fine. This was not a consultation, but a further undermining of her position and resulted in her being reluctant to ever report an incident of violence again. This can also send out a strong message to other women in the community.

In addition, court delays were raised as a serious problem. The length of time that it takes a matter to come to trial was felt to impose great pressure on both the victim and the accused. It impressed people not at all to learn that delays in other jurisdictions are even more significant then in the Northwest Territories. It was emphasized that the victim and accused usually live in the same small community and in many cases, in the same household. To deal with the offence some months and in some cases, years later, was to perhaps do more damage than not dealing with it at all.

In many cases, women who have been assaulted do not have contact with the courts.[1] Women who have been abused by their husbands often have contact with the police only after numerous abusive incidents. In some cases fear of the abuser keeps women from reporting. In other cases economic and emotional dependence on the abuser makes reporting virtually impossible. In addition, some women who suffer neither fear nor dependence still do not report. They feel that they will have to go through the process alone, they are afraid of having to tell their story in a public forum, they feel that they will be humiliated, embarrassed and that their credibility and integrity will be questioned. They will have to relive a painful experience many months after the fact, when what they really want to do is

put it behind them. These observations from the women in the workshops were confirmed in responses from women in shelters across the Northwest Territories.[2]

Part of the difficulty lies in the absence of support for the victim before, during and after the court process. This has been examined in the comments relating to services to victims. Part of the difficulty is the nature of the court process itself and further yet, the unsatisfactory options available to the courts.

With respect to the court process, it is a product of its architects. For many years the rules and attitudes surrounding sexual assault contained predominantly male attitudes. Rape was considered an easy accusation to make and a difficult one to defend. It was thought that women were disposed to making false accusations to cover up indiscretions or situations of embarrassment. The legal system's approach promoted the profile of the "ideal" victim. This ideal involved an attack by a stranger on an unsuspecting woman of previously chaste character in unfamiliar surroundings, or at least not the home of the woman or the man. Proof of resistance, such as scrapes and bruises, was helpful and it also assisted if the women raised a "hue and cry" or made a complaint at the first opportunity. Finally, it was important for the woman to be visibly traumatized by the event, and to show that trauma in expected ways, preferably tearfully. This was a male conception of sexual assault and it did not reflect the reality of most offenses of this type. Most assaults are committed by persons known to the victim, often in the home of the victim and often the victim does not report the attack immediately.[3]

Myths

The entire area of sexual assault has been one shrouded by myths. Some of these other myths include:

"She asked for it". The myth is rarely expressed as bluntly as this. However, it rears its head when victims are required to take all responsibility for avoiding the assault such as not dressing "provocatively", not going on the streets at night, not accompanying a man to his home or inviting him to hers, and so on. In failing to exercise sufficient caution, she has provoked the assault and what has happened is essentially her fault. One member of the judiciary despaired at the fact that women's groups do not spend more time teaching women "common sense" so that they can avoid assault. When questioned why more time was not spent teaching men not to be violent, the judge indicated that such conduct of males was to be expected and women ought to govern themselves accordingly.

"If she slept with him once she'd do it again", in other words, consent once given can never be withdrawn. This myth can even be extended to operate with respect to relationships with others, such that if a woman consented to a sexual relationship with a partner, she will likely consent to similar relations with others. In some circles this is known as the "loose women theory".

"If she didn't fight back, she wanted it." It was important, no matter what the circumstances, for the woman to show some form of active resistance. Failure to resist was taken to mean tacit consent. Unfortunately, it was not taken to mean fear, hopelessness or despair on the part of the woman.

Some of these myths were addressed in the "rape shield" provisions of the *Criminal Code* and in the proposed legislative amendment resulting from the striking down of those provisions in the *Seaboyer* decision.[4] It is difficult to determine at this point how the law will develop in this area. However, the fact that there is such strenuous debate in the area certainly confirms that the myths continue to haunt the process.

It is difficult to assess the extent to which such myths remain active in the courts. The language that is used in sexual assault cases has become ever more guarded. Yet it is in the area of assessment of credibility that the myths can cause the most damage. In addition, assessment of credibility of witnesses is an area particularly in the hands of the trial judge or the jury. It is virtually impossible to appeal a finding of credibility. It is therefore all the more important that those who are responsible for making findings of credibility are not influenced by myths and stereotypes. Training in this regard should be mandatory.

Similarly, the response of the justice system to wife battering is vulnerable to myth and stereotype. A fundamental lack of understanding can operate to the detriment of women. One common myth is that the consumption of alcohol causes abusive conduct and if this did not occur, assaults would also not occur. While there are no doubt many examples of alcohol contributing to situations of violence,[5] so too are there assault situations where the consumption of alcohol is not a factor. Sobriety should not be seen as the exclusive answer to, nor an excuse for, abusive conduct.

Another common myth operating relative to wife assault is "If she didn't like it she would leave" or "If she doesn't leave, she deserves it".[6] This myth arises out of the failure to comprehend why women stay in abusive relationships. It imposes an expectation that may not be realistic for the victim. It fails to recognize that there are many economic, social, cultural and psychological reasons why women do not leave.

Realities

In many instances women stay in abusive relationships because they do not want the relationship to end. They want the violence to end. They may have known the man as a better person, they may believe the apologies and contrition. They also may be subject to tremendous family and community pressure to remain in the family.

Women stay in abusive relationships because they do not have the emotional strength to leave. Physical abuse is often accompanied by emotional abuse that undermines the woman's self-esteem and confidence. She may be made to feel that the treatment of her is her fault and that she must change in order to stop the abuse.

Women stay in abusive relationships because it is what they have grown up with and have been taught to expect. Having witnessed abuse as a child, she may believe that this is part of married life.

Women stay in abusive relationships for lack of alternatives and because they receive no support for leaving them. Many women would have difficulty supporting themselves. In some cases, leaving the relationship means leaving the community in which the woman was born and raised and where she has spent virtually all her life. Even if she wanted to stay in the community, the desperate shortage of housing in many communities prevents this.

Indeed there are so many reasons for women to remain in abusive relationships, that it is a testament to the strength of some women that they manage to leave at all.

For those women who do decide to leave, many of them obtain temporary respite in women's shelters. The shelters are operated pursuant to the Family Violence Prevention Program by the Department of Social Services.[7] This program, with ever shrinking dollars, has continued to try to address a problem of great significance throughout the Northwest Territories. In doing so it provides financial support to shelters and recently a training program for shelter workers has been undertaken. It is largely due to the dedication of people working in the family violence program and shelter workers that safe places for women and children are available in some parts of the N.W.T. However, this program must receive greater financial support in order to try to meet the needs of northern women. The

factor of isolation and expansive geography create tremendous obstacles for women in small communities. There must be safe places for them which are readily accessible and which can provide counselling and support.

RECOMMENDATION #53: That the Government of the Northwest Territories provide increased levels of financial support to the Department of Social Services Family Violence Program.

Important as an adequate network of shelter is, it is also necessary to note that shelters are not the answer to family violence, they are merely a stopgap, palliative measure to respond to immediate crises.

One of the most common questions raised in the workshops and meetings was why is it always necessary for the woman to leave the abusive situation. Some participants expressed the view that shelters ought to be used to quarter abusers rather than the abused. While one can respond to such questions by explaining the presumptions of innocence and others aspects of the justice system, such answers are not entirely satisfactory.

One suggestion has been to expand the release powers of police officers such that conditions may be imposed by the investigating officer. Such conditions can include no contact provisions which may assist in providing a level of protection for the victim. In addition, use of conditions that prohibit the accused from remaining in the community should be more thoroughly explored. There has been a reluctance to impose such conditions on the belief that this may constitute an infringement of the accused's *Charter* rights. There is also a problem with this approach in that it may bring relief to one community and burden another. These options should be more fully explored and tested in the courts.

RECOMMENDATION #54: That the *Criminal Code* provisions dealing with the power to release or detain accused persons be amended to provide to the police the authority to impose conditions on release.

RECOMMENDATION #55: That release provisions requiring the accused to leave the community prior to trial or appearance be imposed and tested in the courts.

An understanding of the position of women and appreciating the inaccuracy of the myths is critical to the administration of justice. Women must have confidence that their lives are in fact understood by those who exercise such an important and powerful role in their lives. At present, women have indicated that they do not have confidence in "the system". While some members of the judiciary have made a concerted effort to make remarks from the bench that clearly evidence an understanding of the victim and show a strong intolerance for violent conduct, such remarks often do not make "good press". In addition, there appear to be sufficient statements that do make controversial press and hence the absence of confidence is entrenched. Furthermore, in cases of sentencing for violent conduct against women, sentences must reflect the view that such conduct will not be tolerated and the sentences that are imposed which do this must be a matter of public knowledge. The press must act more responsibly in reporting such cases and the judiciary must consistently impose sentences that send the message that violent conduct will be treated harshly.

For women to experience more positively the court process, they must be given the tools to understand it and be supported throughout their dealings with it. The importance of victims assistance cannot be overemphasized in this report. But in addition to this, the confidence of women that the administration of justice will understand the position of women must be justified. It must be justified by decisions of the courts that truly demonstrate this understanding, not just by words or lip service but by real and meaningful decisions that reflect a value for women. In this regard, it may be useful to contrast, in the sentencing

exercise, not only what sentences have been imposed for similar types of offenses, but what types of sentences have been imposed for other types of offenses, such as offenses involving the theft, damage or destruction of property. There must be confidence that women are at least as valuable as property and that this value is reflected in the sentences imposed by the court.[8]

Women must also experience respect and sensitivity in court. This may be accomplished in a number of ways. The methods of examination and cross-examination of a complainant must be kept within reasonable grounds by the presiding judge. In addition, there must be a degree of flexibility brought to the set up of the court room. If a complainant is more comfortable giving her evidence behind a barrier or screen, or not facing the accused, these wishes should be respected. Finally, in cases involving painful and embarrassing situations, the presiding judge should consider closing court to the public.

RECOMMENDATION #56: That, in appropriate circumstances, the court be closed to the public.

In those instances where women experience court not as victims of violence, but as litigants seeking custody of children, and financial support, the judgments made about their credibility as litigants must not be based on stereotypes. The fact that a women may not give her evidence in "assertive" language should not necessarily bring an adverse ruling as to truthfulness. Similarly, her circumstances must be realistically understood. This is particularly important in the area of support or maintenance orders. The courts must become more familiar with the strain of raising children in single parent families, the cost of maintaining oneself and children must be understood in a modern context and the obligation to provide financial support must be reinforced. In addition, the inability of women to have the same economic strength as men in the workplace must be recognized.[9] The capacity to

understand the position of women necessarily involves the question of increased training in the area of gender sensitivity.

2. How do courts experience women

This question is intimately connected with the ways in which the courts commonly see women. Generally speaking, the courts see women as people without power, whether this is recognized or not. In most cases the woman appears before the court as a victim of violence. Less frequently, the courts see women seeking financial support for themselves or their children or both. Occasionally the courts see women as litigants in positions of power, such as employers, owners or major income earners. The frequency of the last mentioned case is sufficiently rare that one would think that it would not be difficult to draw the conclusion that for the most part women do not exercise power or influence in our society. Yet the administration of justice can at times be astonishingly naive about this. The propensity to base the philosophy of equality in sameness of treatment is an example of this naivety. There must be more of a concerted effort for the administration of justice to see the position of women in society in more general and accurate terms. This may be accomplished to some degree by the mandatory training suggested for all of those involved in the administration of justice. This broader perspective must be reflected not only in the decisions made by the judiciary, but in the very presentation of cases to the courts by advocates.

3. Response of the justice system

The response of the justice system to the concerns and needs of women has taken a number of forms. With respect to policing, the response has been the policy of mandatory charging, discussed earlier in the report. As indicated, this policy can bring with it as many problems as it solves. Yet to introduce a full measure of discretion back into the police investigatory and charging stages would again leave women vulnerable to stereotyped attitudes about

domestic and sexual violence.

With respect to the prosecution of offences of violence against women, the office responsible for the conduct of such cases, the Federal Department of Justice, has developed a policy of zero tolerance prosecution.[10] As stated, this involves the prosecution of offences, despite the reluctance of the complainant, in order to emphasize the criminal conduct in issue. This report has earlier recommended giving the decision to proceed with charges to the complainant, provided that she is adequately supported with counselling and victim's assistance.

The effect of these two policies has not consistently been the desired one. In some instances the end product of the policies may well have been to emphasize the criminal nature of violent conduct. Whether this has any deterrent effect is subject to greater scepticism.[11] But one other significant effect of the policies has been to discourage reporting. In one community, the resident police officers advised that domestic violence was not reported at all despite the common knowledge that it existed to a significant degree in the community. Victims were aware that reporting necessarily meant going to court and giving evidence against their abuser.[12] The price of laying a charge was seen as too high by some women and the process was not seen as one that provided relief in the form of stopping the violence. The administration of justice has never had the capacity to control conduct in this fashion. At best it is only equipped to punish and in very rare instances, change the behaviour of the accused or those of like mind.

The absence of effective options causes tremendous frustration to members of the judiciary and victims alike. Particularly for those women who reside in small communities in the Northwest Territories, even when the accused is prosecuted, found guilty and sentenced to a term in jail, at the end of the jail term, he is almost certain to return to his home. Contact

between the parties is virtually inevitable. Yet very little has changed in the circumstances of either the victim or the offender.[13] The offender often does not receive the advantage of counselling for his violent conduct and the victim at best receives a respite period. This respite may not in fact be that if the offender was the source of financial support for the family. The limited options available are therefore often not suitable for addressing the larger social problem of violence against women.

Finally, as mentioned above, the length of time required to resolve an issue before the courts is a source of considerable pain and frustration to all involved in criminal matters.

What then are the solutions to this unsatisfactory state of affairs?

One approach is to seek to reduce delays encountered in criminal proceedings. There may be relief in this regard by encouraging the Crown to elect to proceed summarily in some cases.

For some offenses the Crown Prosecutor must make an election to proceed either by summary conviction or by indictment. Proceeding summarily is available for the less serious types of offenses and when this occurs, the offense will be dealt with at the lower court level, either by the Justice of the Peace or the Territorial Court. Such an election also places limitations on the maximum sentence which may be imposed, namely six months in jail, a fine not exceeding $2,000.00 or both. Proceeding by way of indictment connotes a greater degree of seriousness and in some offenses the Crown has no choice but to proceed in this fashion. Proceeding by indictment also requires the holding of a preliminary hearing. In this type of hearing, a judge of the Territorial Court hears evidence and determines whether there is a strong enough case for the matter to go to trial in the Supreme Court of the Northwest Territories. If the Territorial Court Judge decides that there is sufficient evidence,

the matter will be listed to be heard in the Supreme Court at a later date.

There are a number of problems associated with proceeding by way of indictment. It will usually involve the victim giving evidence in court on two occasions, once for the preliminary hearing and once for the actual trial. It also usually means substantial delays in the matter going to trial. Therefore, in appropriate cases, when the Crown Prosecutor is of the opinion that any sentence which might be imposed if the accused is found guilty will likely not exceed the maximum available for summary conviction matters, there should be an election to proceed summarily, so that the case may be dealt with more quickly and with less trauma for the victim.

RECOMMENDATION #57: That for offenses that permit the Crown to make an election, in appropriate circumstances the Crown proceed by way of summary conviction.

Another approach is to expand the limited options presently available to the courts in dealing with offences of violence. Many of the participants in workshops expressed the view that while jail may be necessary as a means of punishing abusive conduct, there should be mandatory counselling in correctional facilities for abusers. The frequency of repeat offences would lead one to conclude that jail on its own is not a deterrent and does not assist in changing behaviour. The combination of incarceration and counselling may be more successful.

RECOMMENDATION #58: That counselling programs specific to abusers be offered at all correctional facilities in the Northwest Territories and that such counselling be mandatory for persons convicted of offences of domestic violence.

The research into treatment programs for men who batter suggests a mixed rate of success. A recent review of the research concludes that batterers programs have a "viable but limited role in the more complex matter of dealing with abusive men in our society".[14] Because of the limited success of these programs, it is important not to see counselling as a panacea for the problem of wife abuse.

It is also important to ensure that the counselling offered to persons convicted of violent offences involves the abusers accepting responsibility for their actions. The counselling should be directed at the controlling behaviour, and aimed at ending the violence.[15]

For the justice system to be in position to provide more satisfactory responses to violence against women, the victim must have a more prominent role in the sentencing process. In this way, the court will be better informed as to the nature of the offence and its impact on the victim. The court should also be aware of the effect of the sanction on the victim. While it is important that the circumstances of the accused be before the court, so too is it important that the court have an opportunity to know the full effect of the conduct which will be the subject of some form of sanction.

One means of accomplishing this is through the use of Victim Impact Statements. In this document the victim outlines how the offence has affected her and provides details of her situation. At present, these statements are being used in a limited number of communities in a pilot project undertaken by the RCMP and the Government of the Northwest Territories. The use in court of Victim Impact Statements must be reviewed with victims by the investigating RCMP officer and completion of the statement by the victim should be encouraged.[16] Eventually, this function is more appropriately undertaken by a victim's assistant, but until such resources are available at the community level, the task is left to the police.

RECOMMENDATION #59: That the use of Victim Impact Statements be expanded to all parts of the Northwest Territories and that the nature and purpose of the statement be explained to victims by police officers and completion of the statement be assisted and encouraged by the police.

RECOMMENDATION #60: That Crown attorneys be encouraged to use Victim Impact Statements at sentencing.

RECOMMENDATION #61: That Victim Impact Statements be available in languages appropriate to the community in which they are being used.

One of the issues discussed above is the recognition that the administration of justice cannot bear all responsibility for gender based inequities. This institution is but one aspect of inequalities existing in society as a whole. In addition, it may be time for us to start considering whether the method of dispute resolution offered presently through the court system is appropriate, at least for certain types of issues.

4. Alternative dispute resolution

Mediation

The fundamental cornerstone of dispute resolution in the administration of justice is what is known as the "adversarial system". The system has elaborate rules which rest on the assumption that the parties to the dispute, each represented by able counsel, will have their evidence heard and have an opportunity to test the credibility of the opponents's evidence through cross examination. Through this process of the presentation and testing of evidence, the truth will unfold and the court will be in a position to fairly adjudicate on the merits of the dispute. This process places a high onus on the shoulders of counsel conducting the case, for to omit crucial pieces of evidence or testimony, or to fail to reveal an absence of credibility in an opponent's witness, will necessarily affect the outcome. The approach also limits the involvement of the adjudicator or judge as to "descend into the arena" is to

potentially lose impartiality and hence the capacity to make a fair and impartial judgment. This system of dispute resolution connotes rivals, opponents or adversaries. Yet this very mechanism can at times be contradictory to our expectations of what the "system" is supposed to accomplish.

Nowhere is this clearer than in the area of family law. In the case of custody disputes, each party will call witnesses to establish quality of parenting, future capacity to parent and past relationship with the children in question. It can become a battle of experts, such as psychologists, psychiatrists and social workers. In this jurisdiction, although there have been instances of child advocates being appointed, largely at the insistence of the court, the interests of children are often not addressed independently of the interests of the parents or other parties to the dispute.

The acrimony which consistently develops between parents during the course of such stressful disputes can irrevocably affect their capacity to deal with one another in the future. The capacity or willingness to compromise is often overshadowed by the nature of the proceedings. There are frequently accusations of bad conduct made by each party against the other and the proceedings become tainted with recriminations and blame. The court finds itself caught in the crossfire of a still raging dispute and attempts to remain focused on the principal concern, namely the best interests of the children, becomes a difficult task indeed. It has often been said that the most difficult decisions that courts have to make are with respect to the custody of children.

Yet despite the inappropriateness of this form of dispute resolution in custody and other areas of family law, there are very few alternatives available to individuals. Unfortunately not everyone can agree about such issues on the breakdown of a relationship and there must be some means of resolving these differences. A court of law may not be the place for that.

Instead, it may be more appropriate, and in the long run, more cost effective, to support other forms of dispute resolution such as mediation. Mediation properly conducted can allow each party a voice in solving the issues at hand in a way which does not threaten, demean or create undue anxiety. It may also allow the separated parents of children to salvage some form of communicating relationship. While individuals may have ended their relationship of intimacy, they will still always have a relationship as co-parents.

In the Northwest Territories access to mediation is extremely limited. At present no publicly funded mediation service is available and such services may only be contracted through a very small number of private individuals. There are no legislated standards governing the training of mediators nor licensing or other requirements directed at controlling competence. Such services are completely unknown in many regions of the north and are accessible to very few. Although the Legal Services Board will fund such services, the scarcity of mediators limits the availability of this resource. In practical terms, a form of mediation often occurs between the lawyers representing the opposing parties to the dispute. It is largely due to their efforts that many cases are resolved outside of the court process.

Mediation training must also insure that the relative power positions of individuals in the relationship is recognized and not perpetuated in the mediation process. Particular sensitivity in this regard is essential and the fear of its absence has caused many to avoid the process.

RECOMMENDATION #62: That mediation services for the resolution of civil law disputes in the area of family law be developed and publicly funded.

RECOMMENDATION #63: That training for mediators be mandated by legislation, together with legislation that governs the conduct and competence of mediators.

Despite the attractiveness of mediation as a alternative dispute resolution mechanism, it too

has its limitations, and parties should continue to have access to the courts in cases of failed mediation attempts.

RECOMMENDATION #64: Because of weaknesses in the process, that mediation not be mandatory.

Community Justice

One other form of alternative dispute resolution which is receiving increasing attention in the Northwest Territories is what has been described as "community justice". This concept is almost impossible to define in all-inclusive terms. It represents an attempt by the courts to receive greater input from communities into the resolution of cases. At the time of preparation of this report, initiatives in this area were confined to conducting consultations with communities on how they might become more involved in the administration of justice and how such input might be best received. In addition, there have been some discussions respecting the granting to communities a greater degree of authority in disposition of cases. There are many positive aspects to such initiatives. It shows a greater willingness by the courts to consider other cultural values and approaches and to accord a greater degree of respect to aboriginal culture in the Northwest Territories. It also reflects a greater understanding that other cultures may approach such issues with different goals in mind, such as reconciliation and healing. Finally, such approaches may indicate a recognition that the present system of dispute resolution does not have all the answers nor does it achieve many of the goals that are expected of it.

While these efforts to expand the perspective of the administration of justice are very positive ones, there must be a degree of caution exercised. In receiving input from the community, there must be some assurance that the input received is truly representative of community opinion or values. This is particularly a concern with respect to issues of gender fairness.

In consultations at the community level, many aboriginal women voiced concerns that their voices are not heard. There appears to be a willingness to hear from male elders and not from women. There were also strongly voiced concerns that the issue of violence against women is not treated with the degree of seriousness that it may deserve and in some cases is overtly tolerated. Women must have the confidence that, in hearing from "the community" the position of women is also heard. The message that violence against women is not culturally acceptable, excusable or justifiable was very clearly delivered during the course of community workshops. Therefore, in developing means of receiving a broader range of input from communities into the administration of justice there must be a large degree of sensitivity utilized. In the event that community justice committees are a vehicle utilized for receiving this input, the voice of women on such committees must be guaranteed.

There also must be an awareness of the fact that there can be differences that develop along generational lines and that older people may evidence a tolerance of violence against women that is no longer acceptable to younger women. In seeking advice and input from communities these differences must be recognized. While it is appropriate to explore alternatives for addressing issues of violence, such alternatives must not become a mechanism for excusing violent conduct.

RECOMMENDATION #65: That the courts continue to develop means of receiving input from communities with respect to the administration of justice generally, and where appropriate, with respect to the disposition of particular cases. Community committees that may be organized for this purpose must have input from women at the community level and community input must not become a vehicle for legitimizing inappropriate actions towards or attitudes about women.

ENDNOTES

1. Reporting rates for both wife assaults and sexual assaults are notoriously low. Nationally only 45% of spousal assaults are reported to the police and 62% of women victims of sexual assaults do not report to the police. (The figure for all unreported crime is 8%.) Of the unreported sexual assault, 44% of victims did not report because of concerns about the attitudes of the police and the courts. One third did not report for fear of revenge by the assailant, (*Canadian Urban Victimization Survey*, # 4 at 4).

2. With the cooperation of the Family Violence Prevention Program of the Department of Social Services and of shelter workers and shelter clients, a survey was conducted of shelter clients.

Responses were received from a number of shelters over the period October 1991 to January 1992. Shelter workers were asked to complete questionnaires with shelter clients on intake. Questions were asked to try to determine the nature and extent of contact of shelter clients with the justice system.

Responses varied from one shelter to another and varied over time. In some cases, all of the clients at a given shelter in one month had had contact with the RCMP and charges had been laid in all these cases. In a different shelter, less than half of the clients reported having had contact with the police. Many women reported that the police were at their homes on a regular basis. In some instances, most shelter clients reported that their partners had been charged more than once, some as many as four times.

Of those women who went to court to testify, only a small number indicated that they had spoken to the Crown Attorney before court. A larger number had spoken to a shelter worker before court, but many women had spoken only to the RCMP or had no support at all.

In terms of the outcomes of cases, the overwhelming majority of charges resulted in fines. Most fines were in the $150 to $500 range. Occasionally probation was imposed and even more occasionally a jail sentence. Almost half of the women felt that the sentence was not harsh enough, and an equal number felt that it was enough. A small number of women felt that the sentence was too much. Comments in this section indicated that women who were dissatisfied were unhappy because it was too hard on the kids or because their partner could not afford to pay the fine.

Few women reported having received information or assistance concerning peace bonds or restraining order, but that did indicated that they felt that the peace bonds or restraining orders helped.

Of the women who did not contact police in abusive situations, fear of their partner was most often listed as the reason for not doing so. Other reasons given in order of priority were the fact that people would blame them (the victim) for reporting the violence; fear of going to court; the fact that the family did not want them to report; and the belief that reporting the abuse would only make things worse.

3. As noted earlier, 28.7% of sexual assaults cases in the N.W.T. in 1988-1989 were committed by family members, and a further 50.6% by friends and acquaintances. Almost all were committed by people known to the victim, (*Sexual Assaults and Sentencing*, p.27). Over 32% of the assaults took place in the home of the victim, 20% in the home of the accused, and 13% in a common residence (p.23).

Nationally, the victim and the assailant know each other in 41% of cases, (*Canadian Urban Victimization Survey*, No. 4, "Female Victims of Crime", p.3).

4. In *R. v. Seaboyer and Gayme*, the Supreme Court of Canada struck down section 276 of the *Criminal Code*. This section prohibited, in most circumstances, evidence of the sexual history of the complainant in cases of sexual assault. In December 1991, the Federal Justice Minister tabled proposed amendments to the *Criminal Code* that, if passed, would limit the circumstances under which evidence of sexual contact of the victim would be admissible in court. The amendments also propose, for the first time, to provide a definition of consent.

5. The Department of Social Services in a community not on the N.W.T. highways system, has prepared statistics indicating that although spousal assaults, as reported to the police, occur regularly in that community, that the arrival of planes on which alcohol is delivered, always leads to an increase in spousal assault within 24 hours of the alcohol being distributed.

6. This attitude is occasionally articulated in an explicit form, as for example, the recent decision of the Saskatchewan Court of Queen's Bench to uphold a ruling of the Saskatchewan Crime Compensation Board. The Board had reduced the damages paid to a women who had been brutally beaten by her husband. The Board considered, and the judge agreed, that the women had contributed to her injuries merely by staying in a relationship that was abusive. She thereby knowingly ran the risk of being injured and should therefore not be compensated for her injuries to the full extent permitted by the law. [Lawyers Weekly, July 5, 1991, p.10]

7. Since the mid-1980s, a network of shelters for abused women and their children has sprung up in communities across the Territories. Currently there are shelters in Cambridge Bay and Spence Bay in the Kitikmeot, Fort Smith and Hay River in the South Slave, Iqaluit in the Baffin, Rankin Inlet in the Keewatin, Tuktoyaktuk in the Delta, and Yellowknife in the North Slave. There are second stage houses in Yellowknife and Hay River. A shelter may open soon in Coppermine.

Funding for running the shelters is included in the base budget of the Department of Social Services. Money for a new shelter in Spence Bay and for the expansion of the shelter in Rankin Inlet came from the federal Canada Mortgage and Housing Corporation.

There are also safe homes in some communities where women may take refuge overnight in emergency situations.

Occupancy rates for major centres such as Yellowknife and Iqaluit which received many women from often distant communities average well over 100%.

8. There has been a certain amount of controversy in the Northwest Territories concerning sentencing in sexual assault cases. When what is perceived to be a light sentence is handed down, women feel that the impact of the assault on them is ignored. They feel once again that they have been victimized.

Based on the existing research, it is impossible to draw firm conclusions about whether sexual assault sentencing is more lenient here than such sentencing elsewhere.

Pauktuutit, the Inuit Women's Association, has received funding from the now-defunct Court Challenges Program to conduct research to establish that there is a pattern of lenient sentencing in sexual assault cases in the Northwest Territories that denies Inuit women their constitutional rights to security of the person and to equal protection and benefit of the law.

Currently, there is little research done into the question of sexual assault sentencing. A recently published study by Julian Roberts for the research division of Justice Canada cites data indicating that there is tremendous regional variation in sentences but that the Northwest Territories is about mid-way in the range of sentences across the country. (Ninety percent of custodial sentences for sexual assaults in the Northwest Territories were three years or less, compared to one year or less in Newfoundland and five years or less in Prince Edward Island) [*Sexual Assault Legislation in Canada: An Evaluation: Sentencing Patterns in Cases of Sexual Assault*, Report # 3, p.71].

In terms of average (median) sentence, the figure for the Northwest Territories was one year, compared to six months in Quebec and Alberta and 18 months in British Columbia (p.74).

These figures are based on a one-year study conducted in 1984-85. They also refer only to custodial sentencing and not to fines or probation (unless there was fine default or probation admission) (p. 69). Incarceration rates vary across the country and no information is provided about the different rates in different jurisdictions. Roberts suggests that "almost no cases of sexual assaults result in a fine" (p. 73) but the evidence suggests that this may not be the case in the Northwest Territories. The Canadian Bar Association study of sexual assault sentencing in the NWT indicated a 87% incidence of jail sentences where the assault was proceeded with by indictment. The figure for assaults proceeded with summarily was 45.5%. (*Sexual Assault and Sentencing*, p.44-45).

Paula Pasquali, in her 18-month study of sexual assaults at both levels of court in the Yukon Territory found a 100% incarceration rate, ("Sexual Assault Sentencing in the Yukon", p.11). Hayli Millar, in her more limited study, found a 95% rate for the Northwest Territories, ("Judicial Reasoning in the Northwest Territories: An Explanatory Study of Sexual Assault Sentencing Decisions, 1983-1986").

Because the Roberts study looks only at custodial sentences and is based on figures from a one-year period in the mid-1980s, it provides scant data from which to draw any conclusions about sexual assault sentences in the Northwest Territories compared to other Canadian jurisdictions.

In terms of comparing sexual assault sentences to sentences in other crimes, Roberts warns that comparisons in this area must consider that different crimes have different reporting rates, unfounded rates, clearance rates, case attrition rates and conviction rates, all of which will affect the comparison (p. 40-43). That said, Roberts considers that incarceration rates for sexual offences are high when compared with other offences (p. 81)

The author of the report considers that the public perception of lenient sentencing for sexual assault results in part from the media coverage which tends to highlight cases with exceptional sentences.

There is also the issue that the term "sexual assault" is used often to refer to (at least) three different offences in the *Criminal Code* and may therefore lead to comparing crimes of dramatically differing seriousness. There is also some public confusion about the term "sexual assault" that many may be inclined to assume is the same as the former offence of "rape". The term "sexual assault" encompasses a much broader range of conduct.

Studies that look specifically at sentencing in the Northwest Territories do not provide an answer as to whether sentencing is "lenient". *Sexual Assault and Sentencing*, commissioned by the NWT Branch of the Canadian Bar Association and the G.N.W.T., released in October

1991, offers a socio-economic portrait of the offender and the victim, but provides very little information about sentencing beyond a figure for an average sentence, (15.72 months where proceeding by indictment and 3.25 months when proceeding summarily (p. 44)). It also examines the issue of aggravating and mitigating factors identified at sentencing.

Lindsey-Peck, in her 1985 study "Polarity in Sentencing, an Analysis of Sentencing Practices in the Northwest Territories", concludes that the "publicly perceived leniency of sentences" for sexual assaults in the Northwest Territories may result from the absence of certain violent types of sexual assaults and the predominance of 'acquaintance sexual assault'" (p.50).

A study completed in 1990 examines judicial reasoning in sexual assault sentencing in cases in the Northwest Territories from 1983-86. In that study, Hayli Millar concludes that arguments about lenient sentencing are "highly speculative" in the absence of further research. (p. 244)

Although Millar supports Peck's assessment that a majority of complainants were related to their assailant and were under the age of eighteen at the time of the assault (p. 224), (this is also consistent with the CBA study which revealed that the highest risk groups were aged 7 to 18 (p. 21)), she refutes Peck's assertion that violent sexual assaults are relatively absent in the Northwest Territories (p. 223). Millar also suggests that the sleeping complainant sexual assault is less frequent than Peck claims. Millar considers these refutations significant because Peck maintains that they may explain the perceived leniency of sentences. (p. 227)

Millar also finds that judicial accommodation of divergent cultural values (which may be invoked in imposing a lighter sentence than might otherwise be imposed) is infrequent, at least to the extent that they are explicitly referred to at sentencing. (p. 207) The record of the Court of Appeal may play a role here. Of the seven appeals by Crown against sentence in the cases considered in this study, all seven sentences were varied by the upper court.

Whether or not the data is available to confirm or refute the claim that sentencing is lenient, the complaint was made at all the workshops and public meetings.

9. Recent statistics published by the United Nations indicate that women in Canada had only 63% of the earning power of men in 1986 (U.N. Human Development Report cited in the *Ottawa Citizen*, April 23, 1992, p.A1).

10. The expression "zero tolerance" is not strictly accurate as there is a certain level of discretion exercised by the Crown prosecutors office.

11. There has been no specific research in the Northwest Territories examining the effect and effectiveness of this policy. Some research done in a southern jurisdiction suggests that the

policy has had positive results. There was evidence of a dramatic increase in the number of wife assault charges laid. There was a reduction in violence when the charges were laid by the police, although many victims continued to live in fear during the court process. It is worth noting that this research took place in a community where support services available for victims are relatively strong. (Peter Jaffe, "Wife Assault as a Crime: The Perspectives of Victims and Police Officers on a Charging Policy in London, Ontario from 1980-1990, Final Report"). See also a "Study to review and analyze RCMP data on spousal assault from 1985 to 1988", by Colin Meredith, (principal investigator), User Report No. 1990-04, Solicitor General Canada, Ministry Secretariat.

12. The policy may not only keep women from reporting incidents to the police, but even from seeking assistance from other sources such as social services or the nursing station, for fear that the social worker or nurse will report the incident to the police.

13. Effective use of probation is limited in the N.W.T. by a number of factors. Often social workers, particularly in smaller communities, are called upon to act as probation officers in addition to their other responsibilities. A single social worker, in addition to providing social assistance, is responsible for child welfare matters, young offenders, pre-sentence and pre-disposition reports and anything else that comes their way.

Hopefully the transfer of responsibility for corrections to the Department of Justice will result in community corrections personnel being able to assume the exclusive responsibilities attached to corrections, rather than having to step into the breach to assist under-resourced social workers.

14. The review of the studies by Justice Canada notes the great difficulties involved in evaluating batterers programs but comes to the following conclusions:

-the voluntary programs reach only a small percentage of abusive men (more than 50% drop out);

-of those that complete the programs, an average of one third remain psychologically non-abusive for a brief follow-up period;

-court-mandated clients do as well as anyone else ("in effect, every man in treatment is mandated to be there, if not legally then by his partner" (p. 51);

-the ability to predict success based on "client profile" is not significant (Nanci Burns, et.al, "Treatment Programs for Men Who Batter, 1991, p. 56).

The review laments the fact that most studies ignore substance abuse issues. This is certainly an issue in the Northwest Territories. While most recognize that alcohol does not cause abuse, there is general agreement that it is a contributing factor to the extent and frequency of abuse.

15. Many women reported that their partners became more abusive after having undergone "anger management therapy". Programs such as anger control may lead the abusive man to channel his controlling behaviour into to non-physical but nevertheless abusive behaviour.

16. Specifically, it should be explained that the victim completing an impact statement may be subject to cross-examination on the content of the statement.

V JUDICIAL SELECTION, APPOINTMENT AND DISCIPLINE

The first rule for judges, as Madam Justice Wilson (as she was formerly) noted, is that they be independent and impartial. This has long been considered essential for the administration of justice and fundamental to the legitimacy of the judicial role.[1] She then goes on to question whether such impartiality is indeed possible, pointing out the class origin and position of judges is reflected in their world view.

To demand that anyone be completely free of bias is asking a lot. The Canadian Judicial Council recognizes the difficulties involved in this expectation. In its 1991 *Commentaries on Judicial Conduct* it is noted that we all carry around cultural attitudes and deeply imbedded stereotypes about the role of women.

> "Judicial attitudes and values derived from the past, which denigrate the role of women in society are still present in the court system and in the law which they administer."[2]

The fundamental question to be addressed is to ensure judicial neutrality and freedom from bias to the largest extent possible while still protecting the independence of the judiciary. While it is fundamental that judges be free from bias, it is equally important that they have the capacity to carry out their function without influence and pressure. There must always be the capacity to make unpopular decisions. Being a judge necessarily means not pleasing everyone.

One way of approaching this issue is to look at the means by which we appoint judges.

1. Appointment of Territorial Court Judges

Historically, the appointment of judges has been the responsibility of Justice Ministers or the cabinet on the recommendation of the Justice Minister. There were concerns voiced respecting this process, and in particular, that it was fraught with political patronage. In part to address the criticism of patronage, most jurisdictions across the country have developed bodies known as judicial councils to assist the Justice Minister in making judicial appointments.

In the various Canadian jurisdictions, the composition and powers of judicial councils varies greatly, although most play a role in both the appointment and discipline of judges.

In some cases the judicial council merely reviews candidates referred to it by the Justice Minister. In other cases, the council recruits, screens and recommends suitable candidates to the Minister or cabinet. In some jurisdictions, such as the province of Ontario, the recruiting and screening function is performed by a body other than the judicial council.

In terms of composition, in some jurisdictions the council is made up entirely of lawyers and judges. In others, there are some lay members on the council.[3]

The Judicial Council of the Northwest Territories was created in 1978. The Council advertises for candidates, screens applications, interviews candidates and recommends names to the Territorial Minister of Justice. This would seem to be a more satisfactory process than one where the council can only review names provided by the Minister and the Council in this jurisdiction can play a larger role in actively recruiting candidates.

Officially, in the Northwest Territories, judges of the Territorial Court are appointed by the Commissioner of the Northwest Territories. In practise, the Minister of Justice chooses judges for appointment to this level of the bench. Unlike British Columbia, there is no statutory obligation on the Minister to appoint from the names received from the Judicial Council.

Once appointed, judges hold office until retirement, resignation or removal from the bench after discipline proceedings.

Since a 1990 amendment to the *Territorial Court Act*, the Judicial Council of the Northwest Territories is made up of the senior judge of the Supreme Court of the Northwest Territories, the Chief Judge of the Territorial Court, a representative of the Law Society of the Northwest Territories, and three persons appointed by the Commissioner on the recommendation of the Justice Minister. Of the three appointments by the Justice Minister, two must be neither lawyers nor judges. The Northwest Territories is the only jurisdiction where legislation specifically directs that two of the members of the council be lay persons.

One way of ensuring that appointees to the bench have an understanding of gender issues is to ensure that members of the judicial council are familiar with the issues and that the examination of biases of candidates becomes a part of the screening process. The presence of appropriate attitudes about women should be a factor in determining the suitability of potential candidates.

RECOMMENDATION #66: That the screening of potential candidates for judicial office include inquiries directed to attitudes about women and that this be a factor in considering the suitability of prospective judges.

Women should also be present on judicial councils or bodies responsible for judicial selection in appropriate numbers. Some jurisdictions provide guidelines to the Minister for the appointment of lay members and direct that consideration be given to the representation of women on the council. At present, women are well represented on the Judicial Council in the Northwest Territories, but such representation is not subject to guidelines or policy.

RECOMMENDATION #67: That policy guidelines be developed for the appointment of lay persons to the Judicial Council which guidelines ensure representative appointments on the basis of both gender and culture.

It is also possible for the Judicial Council to play a larger role in the administration of the courts, the development of codes of ethics for the judiciary and continuing education for members of the judiciary. There is much to be said in favour of judicial councils assuming a larger role, particularly in the field of administrative matters. Removing the allocation of resources a step further from the political process may assist in safeguarding the independence of judicial office. In addition, the judicial council may be uniquely positioned to develop education programs for judges that are particular to the Northwest Territories and that deal with the needs of the judiciary in this jurisdiction.[4]

RECOMMENDATION #68: That consideration be given to the expansion of the role of the Judicial Council such that it may assume greater administrative responsibilities respecting the operation of the courts, and further that it be able to assume a role in judicial education.

2. Federal Appointments to the Supreme Court of the N.W.T.

The Federal Minister of Justice appoints judges to the Supreme Court of the Northwest Territories. These appointments are made with the advice of a local committee that reviews

applications. The committee in the Northwest Territories is composed of a Law Society representative, a Canadian Bar Association representative, a judge of the Supreme Court of the Northwest Territories and one person nominated by each of the Federal and Territorial Justice Ministers. The committee reviews applications passed on from the Commissioner of Federal Judicial Affairs and rates the suitability of candidates.

There is no requirement for lay representation on this committee, although in practice the government representatives have been neither lawyers nor judges. The federal guidelines suggest that representation of women and minorities "should be encouraged" .

RECOMMENDATION #69: That lay representation on the committee responsible for vetting applications for judicial appointment to the Supreme Court of the Northwest Territories be a stipulated requirement and that policy directives be developed that prefer the appointment of qualified women candidates and members of visible minorities to the committee.

RECOMMENDATION #70: That the local committee have the power not just to review applications received from the Commissioner of Federal Judicial Affairs but to actively recruit judicial candidates.

3. Women as Judges

A related issue to be addressed in the appointment process is the presence of women on the bench. It has been argued that the mere presence of more women on the bench will not fundamentally change the deep institutional and societal barriers against women. As a matter of general principle though, the bench should be as closely representative to the people that it serves as possible. At present, judges are primarily male and drawn from a "relatively homogenous cultural and class background".[5]

Women could be expected to make a unique and important contribution as judges. The life experiences of women will be necessarily different from their male counterparts and the expansion of perspective will only add to the capacity of the judiciary to grapple with the issues that are before it.

Furthermore, the increased participation of women on the bench would serve to break down stereotypes of the roles of women and would assist in increasing the public confidence in the administration of justice. The presence of more women on the bench was a recommendation frequently made in the workshops and was seen as one vehicle for increasing the understanding of the position of women appearing before the courts.

In 1905 Mabel French was denied admission to the New Brunswick bar. One of the reasons given for this was the fear that she would be thereafter eligible for appointment to the bench. In 1980, 3% of federally appointed judges were women. Over the last number of years there have been increasing numbers of women appointed to judicial position. In spite of this progress, we are far from having achieved a balanced gender composition on the bench. Women still only constitute 11% of federally appointed judges.[6] In the Northwest Territories, none of the Supreme Court judges are women, although a woman was recently appointed chief justice of the Court of Appeal of the Northwest Territories. Nationally, about 10% of provincial and territorial court judges are women. In the Northwest Territories, one of the five judges of this level of court is a woman.

To ensure a greater female presence on the bench, concrete measures such as active recruitment of competent women candidates must be pursued. In the Province of Ontario, affirmative action policies have been put into place to encourage the appointment of women to judicial office.

RECOMMENDATION #71: That affirmative action policies be developed in the Northwest Territories to encourage the recruitment of qualified women for judicial office.

We should also recognize that there may be structural barriers to women assuming judicial appointments. In the Northwest Territories judicial responsibilities are extremely onerous and judges are on circuit and away from home for at least half of the time that they are hearing cases. While this poses burdens for all members of the judiciary regardless of their gender, it is particularly difficult for women who have child-rearing responsibilities. As pointed out by one member of the judiciary, the job description of a judge in the Northwest Territories seems destined to attracted workaholic males. Perhaps some of the conditions of work need to be modified before more women are prepared to accept judicial appointment. This is not as easy as it may seem, given the necessity to deliver justice to communities stretched across the largest geographic jurisdiction in Canada. The allocation of a greater number of judicial positions in this jurisdiction would relieve to some extent the necessity of such frequent travel by judges.

RECOMMENDATION #72: That further positions for superior court judges be created to reduce the present barriers to this position for those with child rearing responsibilities.

4. Discipline of Judges

Legislation in every jurisdiction provides a mechanism for the discipline of judges, although procedures and grounds for discipline vary. Anyone may make a complaint about a Territorial Court judge to the Commissioner, the Chief Judge of the Territorial Court or to the Judicial Council of the N.W.T.

The Chief Judge of the Territorial Court has the obligation to review any matter regarding the conduct of a Territorial Court Judge that comes to his attention, even if a complaint is not made. The Chief Judge may decide that nothing needs to be done, or he may reprimand the judge, take corrective measures or refer the matter to the Judicial Council. In the Northwest Territories, unlike some jurisdictions, there are no specified grounds for discipline by the Chief Judge.

If the Commissioner receives a complaint, he or she must refer it to the Judicial Council. The *Territorial Court Act* states that it is the function of the Judicial Council to receive complaints about the conduct of judges or how they perform their duties. The Judicial Council may refer the complaint to the Chief Judge, investigate the complaint or order an inquiry into the conduct of the judge.

An inquiry is conducted by a judge appointed for that purpose by the Commissioner. The results of an inquiry are presented to the Legislative Assembly and the Commissioner may, following the recommendation of the inquiry, take no action, remove, suspend or otherwise discipline a territorial court judge.

In some jurisdictions, such as the Province of Alberta, lawyers may complain anonymously to the Alberta branch of the Canadian Bar Association about the conduct of a judge. There are advantages to an anonymous complaint process, especially in jurisdictions where the legal community is small. The lawyer laying the complaint may feel that the anonymous process protects them and allows the issue to be dealt with without fear of reprisal in the courtroom.

RECOMMENDATION #73: That the Northwest Territories Branch of the Canadian Bar Association develop a procedure for lodging of anonymous complaints by lawyers respecting the conduct of Territorial Court Judges.

In order for the function of the Chief Judge of the Territorial Court to be carried out properly, there should be established guidelines to assist in the evaluation of complaints. It is inappropriate that this responsibility be imposed, yet there be no guidelines offered to assist in the function.[7]

RECOMMENDATION #74: That a code of conduct and judicial ethics be developed which specifies that conduct which ought to attract sanction or investigation.

One of the very contentious issues is the question of what constitutes grounds for discipline. The only grounds specified for discipline in the legislation are misbehaviour and inability to perform the duties of judicial office. Madam Justice Conrad in her recent inquiry found that "misbehaviour" does not extend to conduct outside of court " except for a criminal conviction for an infamous offence".[8] She also indicated that "this interpretation may seem narrow, especially in view of the current trend toward greater accountability of judges".[9] It would therefore be necessary to amend the *Territorial Court Act* before behaviour outside of court can form the basis on which to discipline a judge. Again, there must be a balance achieved in permitting persons holding judicial office to carry out their function independently and without fear that mere unpopularity or unfounded accusations will compromise their position. Yet there are greater expectations of accountability that are justified. Clearly, behaviour outside of the court which would erode confidence in that person's ability to be impartial ought to be grounds for investigation. Opinions expressed off the bench which indicate racism or sexism would leave large concerns about the individual's capacity to perform judicial functions.

RECOMMENDATION #75: That the *Territorial Court Act* be amended to provide that extra-judicial conduct be reviewable for disciplinary purposes if such conduct is of a kind which would erode the public confidence in the judge's capacity to perform his or

her function impartially.

It was also found by Madam Justice Conrad that the inability of a judge to perform his duties properly must be interpreted as meaning inability by reason of physical or mental infirmity.[10] Reasonable apprehension of bias could not amount to misbehaviour. There is in this whole issue the large danger of exposing members of the judiciary to discipline when aspects of their function may not be well understood. It should not be possible for discipline to occur for what people may incorrectly perceive as inappropriate attitudes. On the other hand, inappropriate attitudes, if they are allowed to exist among members of the judiciary, do not permit the impartial delivery of judgments and contribute to the erosion of public confidence in the administration of justice. In addition, other grounds of discipline must be included, such as neglect of duty and incompetence.[11]

RECOMMENDATION #76: That further study be undertaken with a view to developing more certain criteria in the *Territorial Court Act* for disciplinary action respecting members of the judiciary.

RECOMMENDATION #77: That sanction be available for breaches of a code of conduct and judicial ethics.

RECOMMENDATION #78: That the forms of sanction available be more diverse and that such sanctions be specified in the *Territorial Court Act.*

In addition, there must be greater awareness of the role of members of the judiciary as well as the legislation and procedures governing their conduct. Traditionally judges have maintained very isolated positions in our society. Society has demanded that judges hold themselves apart from the everyday skirmishes of ordinary people. Yet, while demanding this isolation, the public has also criticised the judiciary for it. In the same vein, we have demanded sensitivity, understanding, and at times perfection from the judiciary. We have

placed the judiciary apart, and have then criticised them for being so. The administration of justice is an imperfect system and while it is important to demand of it high standards, it is not possible to demand perfection.

RECOMMENDATION #79: That codes developed for judicial conduct allow members of the judiciary increased abilities to interact with members of the public.[12]

RECOMMENDATION #80: That members of the judiciary undertake efforts to better inform the public and the media of the nature of their function and the role that they are required to maintain in the court process.

RECOMMENDATION #81: That members of the judiciary participate on a more regular basis in public legal education, and that opportunities for such participation be extended to members of the judiciary by bodies responsible for such programs.

Federal judges

The conduct of judges of the Supreme Court of the Northwest Territories is subject to the review of the Canadian Judicial Council. In the Northwest Territories, although there are three resident superior court judges, there is no Chief Justice. In practise, the senior justice of that level of court has taken the primary responsibility for administrative function and scheduling. As the courts become increasingly busy, this task has become more and more onerous. It would be of some assistance to create the position of Chief Justice and for the person occupying this position to have responsibility not only for administrative matters but for responding to concerns raised about the conduct of judges of the superior court.

RECOMMENDATION #82: That the position of Chief Justice of the Supreme Court of the Northwest Territories be created and that the Chief Justice have primary administrative responsibility respecting the operation of the Supreme Court and responsibility to review at first instance concerns raised about the conduct of superior

court Judges and the administration of justice generally at that level of court.

The Canadian Judicial Council is composed of the Chief Justices of the superior courts of the provinces and territories. Although the Northwest Territories does not have a chief justice, it does have representation on the Council, which alternates with representation from the Yukon. The Canadian Judicial Council is responsible for investigating any complaints made concerning federally appointed judges. The only sanction that may be imposed by the Council is the removal from office. The Council may only recommend dismissal to the Federal Justice Minister.

As with the Northwest Territories Judicial Council, there should be lay representation on the federal Council. While persons not involved in the legal profession may not have first hand experience of the role of a judge, they none the less have a valuable perspective to offer. The administration of justice is an extremely important institution in society and the operation of it should benefit from those who have a broad perspective of the role of this institution. In addition, it would increase public confidence to have lay participation, in that the Council would not be seen as judges judging their own.

RECOMMENDATION #83: That provision be made for lay representation from various jurisdictions on the Canadian Judicial Council. Such representation should include a cross section of both gender and culture.

There may be conduct complained of, which while meriting sanction, does not merit dismissal. The absence of other disciplinary measures may inhibit the whole process of discipline such that only gross misconduct attracts sanction because of the severity of the only sanction available.

RECOMMENDATION #84: That there be a more diverse spectrum of sanction available respecting the conduct of superior court justices.

5. Judicial evaluation

In its 1989 report on "The Independence of Provincial Judges" the Manitoba Law Reform Commission recommended that a judicial evaluation program be established for provincial court judges in that province.[13] Judicial evaluation is a means of ensuring high quality performance by individuals who have security of tenure in their job. It allows problems to be addressed by a mechanism less complicated, expensive and potentially traumatic that the formal disciplinary procedure.

The Manitoba report considered that such evaluation could enhance the performance of judges, improve education programs and increase the confidence of the public without endangering the independence of the judiciary. While there are no working models of judicial evaluation in Canada, there are a number of programs in the United States.

RECOMMENDATION #85: That models of judicial evaluation be reviewed by the Northwest Territories Judicial Council with a view to adapting an evaluation mechanism for use in the Northwest Territories.

6. Justices of the Peace

Justices of the Peace in the Northwest Territories occupy a unique position. They have greater jurisdiction than their counterparts elsewhere and they are lay persons. They also play a unique role in the Northwest Territories because they are the only level of court easily accessible in most communities.[14]

In 1987 the Territorial Minister of Justice established a Task Force to examine the Justice

of the Peace program and make recommendations concerning recruitment, training, discipline and administration of the program. As a result of the task force, the justices of the peace program is now administered from within the Territorial Court. An administrator was hired for the program and is responsible for recruiting justices of the peace and for assessing training needs, and the preparation and delivery of training materials.

The Task Force recognized that the selection, discipline and removal of justices of the peace must be done "by a process which is independent and impartial".[15] They therefore recommended the creation of the Justices of the Peace Review Council. Such a Council was provided for in the legislation passed in the fall of 1989, but these amendments to the *Justices of the Peace Act* are not currently in force.

The Council is to be composed of five members, namely, the Chief Judge of the Territorial Court, one other Territorial Court Judge, a representative of the Minister of Justice, a justice of the peace and a representative of the public appointed by the Cabinet.

RECOMMENDATION #86: That the *Justices of the Peace Act* be amended to provide for the additional appointment of a second lay representative, in keeping with the provision of adequate public representation on bodies governing the appointment and conduct of judicial officers.

RECOMMENDATION #87: That the legislation as amended be proclaimed in force and appointments be made so that the Council may take up its functions.

Appointment of Justices of the Peace

Historically, the appointment of justices of the peace has been closely linked with the RCMP. It was not uncommon in the past for RCMP to put forward names for appointment. More recently, the practice of recruiting justices of the peace involves a measure of community

consultation. Various organizations at the community level, including the community council, are invited to submit names of possible candidates, which are then vetted by the Administrator and the RCMP.

The Justice of the Peace Task Force recommends that the selection criteria "reflect local culture, language and social structure".[16] In addition to these criteria, there should also be an emphasis on achieving adequate representation of women.

RECOMMENDATION #88: That selection criteria for justices of the peace encourage the selection of aboriginal women such that adequate representation of women as justices of the peace is achieved.

Discipline of Justices of the Peace

The Task Force recommends the Chief Judge of the Territorial Court be given the responsibility for the investigation of complaints regarding a justice of the peace. The Chief Judge may refer the complaint to the Justice of the Peace Review Council. The Review Council may inquire into the complaint and recommend discipline by the Chief Judge or recommend removal by the Minister of Justice.

These provisions are much like the provisions for the discipline of Territorial Court Judges. The Review Council inquires into matters referred to it and the Council may hold a hearing. It may then recommend a reprimand, suspension or other discipline by the Chief Judge and this recommendation is binding.

Grounds for removal include if a justice of the peace is unable to act because of "infirmity", "has acted in a way that is incompatible with" or "has failed to perform" the duties of, a justice of the peace.[17] No grounds for other discipline are specified in the amendments.

Because the amendment to the *Justice of the Peace Act* is not in force, there is not at present any mechanism for making a complaint against a justice of the peace and there is no mechanism for discipline.

RECOMMENDATION #89: That grounds for discipline should be specified and it should be clear that grounds for discipline include behaviour out of court.

RECOMMENDATION #90: That the amendments to the *Justice of the Peace Act* be proclaimed into force so that mechanisms for the review of conduct of justices of the peace are available.

ENDNOTES

1. In the Fourth Annual Barbara Betcherman Memorial Lecture "Will Women Judges Really Make a Difference?" delivered at Osgoode Hall Law School, York University, February 8, 1990, p.2.

2. Canadian Judicial Council, *Commentaries on Judicial Conduct*, Les Editions Yvon Blais, Cowansville, Quebec, 1991, p.90.

3. The Ontario Judicial Appointments Advisory Committee, established in 1988, is unique in that the majority of its members are neither judges nor lawyers.

4. The 1981 "Deschenes Report" by Chief Justice Jules Deschenes, sponsored by the Canadian Judicial Council, examines these issues and recommends *inter alia* that judicial councils assume responsibility in the areas of administration of the courts, continuing education and a code of ethics. See *Masters in their own House: A study of the independent judicial administration of the Courts*, Montreal, September, 1981 (recommendation 164).

5. Peter Russell, *The Judiciary in Canada: The Third Branch of Government*, cited in Jeremy Webber, "The Adjudication of Contested Social Values: Implications of Attitudinal Bias for the Appointment of Judges", in *Appointing Judges: Philosophy, Politics and Practice*,

Ontario Law Reform Commission, 1991, p.16.

6. Figure from the National Judicial Institute (formerly the Canadian Judicial Centre).

7. The B.C. Provincial Court has had a Code of Judicial Ethics since 1976 and the Quebec Judicial Council has the responsibility for the Code of Ethics. The Manitoba Law Reform Commission in its 1989 report *The Independence of Provincial Judges* recommends the establishment of a code of judicial conduct to be drafted by the Manitoba judicial council.

Canadian Judicial Council, according to their 1989-90 report, were working on a Statement of Practical Ethics for federally-appointed judges.

8. "In the matter of an inquiry pursuant to section 13(2) of the Territorial Court Act, S.N.W.T. 1978(2),c.16 and In the matter of an inquiry into the conduct of Judge R. M. Bourassa", The Honourable Madam Justice Carole Conrad, Commissioner, September 28, 1990, p.242.

9. *Ibid.* p.242.

10. *Ibid.* p.259.

11. For example, the *Judges Act* (Canada) refers in paragraph 65(2)(d) to a judge having been "incapacitated or disabled by reason of (...) having been placed by his conduct or otherwise, in a position incompatible with the due execution of that office".

12. Breaking with precedent, the new British Lord Chief Justice held a press conference immediately after his induction in London, in March. Lord Justice Taylor referred at that time to the need for a more "user-friendly" judiciary.

> "Traditionally it has been right that, in the interests of the independence of the judiciary, we have kept ourselves apart and aloof. The task is to maintain the independence of the judiciary, which is extremely important, but at the same time make the judiciary more user-friendly".
> (Reported in the *Guardian Weekly*, March 8, 1992, p.4)

13. Report No. 72, June 28, 1989, Recommendation 68.

14. The Task Force on Justices of the Peace and Coroners, in their report (p.1) noted that justices of the peace encounter almost 80% of all matters arising in the Northwest Territories.

15. "Report of the Task Force on Justices of the Peace and Coroners", p.9.

16. *Ibid.* p.14.

17. Paragraph 2.09(2)(c) of *An Act to Amend the Justices of the Peace Act*, R.S.N.W.T. 1988, Chapter 39 (Supp.).

CONCLUSION

The issues which have been the subject matter of this Review are extremely diverse and complex. It is impossible in the space of time available to fully do them justice. There are significant areas of inquiry which may yet be undertaken, particularly in the areas of alternative dispute resolution, community justice and family law reform. This Report does not purport to answer all the issues nor to canvass them to the fullest extent.

The question of implementation of the recommendations made in this report poses a number of difficulties. Although this Review was undertaken for the Justice Minister of the Northwest Territories, a number of the recommendations touch upon areas over which that office has no jurisdiction or authority to implement change. This is true, for example of recommendations that affect crown prosecutors, police and the judiciary. For such matters, implementation will be at the instance of the organization or office affected. However, it is suggested that the policy division of the Department of Justice develop an action plan arising out of the recommendations in this report and that time frames for discussion, negotiation and implementation of recommendations be established. It would also be advisable to develop a working group composed of the major offices and organizations affected so that a coordinated approach may be developed. While this method can be slow and laborious, it does provide for consistency and accountability.

It is important that this Report be a public document. It is inappropriate to request the advice and counsel of people across the jurisdiction if they do not have the opportunity to know the product of that involvement. The Report should therefore receive broad circulation.

In reviewing the attitudes surrounding the treatment of women within any institution in our society, it is necessary to consider the position of women in our society as a whole. There remain a great many assumptions about the extent to which women are able to contribute as members of our society. There continues to be a tremendous devaluation of the contributions made by women. There remain a great many stereotypical attitudes about the reality of women's lives. It should therefore not be surprising that women suffer from these same barriers in one of society's most traditional institutions. In many issues faced by and resolved within the administration of justice, the larger picture is often missing. By scrutinizing detail, the social context is often lost. As one person so aptly put it, the "legal mind" is sharpened by the art of narrowing it. Yet the administration of justice has a special responsibility in protecting those who are most vulnerable in our society. It is therefore all the more important that it play a leading role in removing the barriers to women's equality.

It was clear that some persons in all functions and offices within the administration of justice suffer to some extent from the presence of inappropriate attitudes about women. In this respect, no aspect of the administration of justice in this jurisdiction is completely free from bias.

In undertaking this study, members of the Review had an opportunity to speak to a large number of women across the Northwest Territories. While some of the concerns raised varied from region to region, there was a fundamental commonality to the lives of many women in this jurisdiction. At some time in their lives most women have experienced the impact of authority exerted by men. In many cases this authority takes the form of overt violence. In some cases the use of authority is more subtle. Women have experienced physical and emotional pain and to a very large degree, many decisions made by women are affected by their fear of future violence. Indeed, this is experienced as much by the woman who has never been assaulted as the woman who has been repeatedly victimized. It is a fact

of every woman's life.

In dealing with this fear and with assault when it has occurred, the woman is left primarily to her own resources. The absence of services available is a tragic aspect of women's existence in this jurisdiction.

The provision of reasonable services to victims of violence will cost public money. We cannot expect this service to be undertaken by volunteers. While it may be argued that we do not judge the value of work by its level of remuneration, clearly the absence of remuneration makes some comment on how important the service or work in question is. There must be paid positions created for victim support and for counselling services. In times of economic restraint, it may be argued that although the need for such services is recognized, there are no public dollars available for such positions. We must carefully assess what the cost of **not** providing such services might be. The costs of administering the courts, of providing police services, of incarcerating convicted persons, of providing financial support to dysfunctional families, of providing medical treatment for victims are each individually significant. Together they represent a tremendous expenditure of resources. But the cost in human terms is truly immeasurable. It is therefore essential that priority be given to these issues and that resources be allocated accordingly.

While the provision of such services is critical, the services in themselves will not redress the problems faced by women in the Northwest Territories and elsewhere until there is widespread recognition of the barriers to equality that have been erected and maintained. This recognition must extend to both attitudinal bias as well as bias that is inherent in structures, or how we develop mechanisms and institutions to meet societal goals. Fundamental to this is the recognition of the unequal distribution of power and influence in our society. Gender bias will continue to exist in our society so long as we insist on

measuring the skills, needs, contributions and realities of women against male norms. It is therefore imperative that individuals and institutions such as the administration of justice emerge from the defensive mentality that is often adopted when considering the question of gender fairness. Denial does not solve the issue.

It is only when there is inherent in our dealings with both men and women a fundamental respect for one another that there will be erosion of gender bias.

SUMMARY OF RECOMMENDATIONS

RECOMMENDATION #1: That courts be conducted in the language appropriate to the venue of the sittings.

RECOMMENDATION #2: That the use of plain language in court proceedings be actively encouraged and be considered as required in the courtroom.

RECOMMENDATION #3: That the curriculum of elementary and high schools in the Northwest Territories be reviewed with a view to incorporating sections on the administration of justice. In particular, areas of curriculum development should include:

-an historical overview of the development of our present court structure;
-the structure of courts and the variety of jurisdiction exercised by different levels;
-the role of persons involved directly in the administration of justice, including the judiciary, crown counsel, defence counsel, counsel in civil disputes and administrative positions such as clerks, court reporters;
-a comparison of other means of dispute resolution and problem solving that are used in different cultures.

RECOMMENDATION #4: That Arctic PLEI receive increased funding from both levels of government as well as bodies such as the Law Society of the Northwest Territories so that it may provide appropriate and accessible public legal education.

RECOMMENDATION #5: That funding arrangements which currently exist between the Government of the Northwest Territories and the Federal Government be reviewed such that shared funding for the operation of legal aid schemes permit regional clinics to undertake public legal education and that public legal education be a mandated activity of regional clinics.

RECOMMENDATION #6: That interagency communication and cooperation, both at the policy and community level be developed and encouraged by the Ministers responsible for the Departments of Social Services, Health and Justice.

RECOMMENDATION #7: That gender fairness and awareness training be mandatory for all sitting members of the judiciary.

RECOMMENDATION #8: That future education programs offered to the judiciary address the questions of gender fairness and cultural awareness together such that difficult questions of the impact of each area on the other are fully canvassed.

RECOMMENDATION #9: That training materials addressing issues of gender fairness be developed for justices of the peace, and that such materials be considered an integral part of training received by justices of the peace.

RECOMMENDATION #10: That justices of the peace be encouraged to participate in any relevant interagency training offered in their community.

RECOMMENDATION #11: That the RCMP pursue affirmative action policies to encourage the recruitment of women.

RECOMMENDATION #12: That specialized training be offered at the time of recruitment respecting responses to and investigation of cases of spousal and sexual assault.

RECOMMENDATION #13: That the RCMP make greater efforts to inform the public of the existence of the RCMP Complaints Commission and how to go about making a complaint.

RECOMMENDATION #14: That interagency training in the area of gender fairness and the dynamics of family violence be offered at the community level to participants from various fields. RCMP officers, health workers, social workers, justice of the peace and other agencies should participate in the training. The costs of training should be shared between the two levels of government.

RECOMMENDATION #15: That Crown attorneys have access to training on gender issues including the dynamics of family violence and sexual assaults.

RECOMMENDATION #16: That all individuals who are employed in connection with the administration of justice, as legal counsel, legislative drafters, legal aid administrators, courtworkers and interpreters be required to take programs respecting the issue of gender bias and that such programs be offered on a regular basis by the Department of Justice.

RECOMMENDATION #17: That all practising lawyers who wish to undertake legal aid work and be eligible to be listed on legal aid panels for that purpose be required to undergo continuing education in the area of gender bias and cultural awareness in order to commence or continue that practice.

RECOMMENDATION #18: That the Law Society of the Northwest Territories be responsible for the development and delivery of programs respecting gender sensitivity and that all members of the profession be encouraged to participate.

RECOMMENDATION #19: That the Status of Women Council for the Northwest Territories undertake a major public awareness campaign directed at providing information concerning the position of women, the perpetuation of stereotypes and the limitations imposed on women as a result of a lack of understanding or refusal to understand the issue of gender bias.

RECOMMENDATION #20: That education materials that continue to portray stereotypes of women be removed from school curricula.

RECOMMENDATION #21: That the Department of Education review available materials directed at deterring violent conduct and that appropriate materials be developed for delivery in the Northwest Territories.

RECOMMENDATION #22: That a major public awareness campaign be launched by the G.N.W.T. directed at changing attitudes towards violence against women. This campaign must be adequately resourced. The campaign must use primarily not written materials, however funding for existing resources in this area such as the regular publication of the Spousal Assault Network Newsletter should be assured.

RECOMMENDATION #23: That sufficient resources be allocated to legal aid clinics to permit them to place greater emphasis on obtaining civil relief on behalf of clinic clients. In some cases this many require contracting the services of a second lawyer whose responsibility would be civil matters.

RECOMMENDATION #24: That the Legal Services Board approve or designate a specific category of eligibility respecting applications by person threatened with or apprehending violence.

RECOMMENDATION #25: That the Legal Services Board take steps to better inform the public of procedures involved in applying for financial assistance and the mechanisms available for the review of a decision respecting qualification.

RECOMMENDATION #26: That the *Domestic Relations Act* be amended to grant to justices of the peace jurisdiction to hear cases involving custody of and maintenance for children.

RECOMMENDATION #27: That the coordinator of the Justice of the Peace training program develop training materials respecting the hearing of civil law matters, with emphasis in the area of family law, and that such training be offered to justices of the peace coincidentally with training in the criminal law sphere.

RECOMMENDATION #28: That the *Maintenance Act* and the *Domestic Relations Act* be amended to provide the option of ordering non-monetary support.

RECOMMENDATION #29: That the *Maintenance Act* be amended to enable common-law spouses to obtain spousal support.

RECOMMENDATION #30: That the G.N.W.T. take such steps or allocate such resources as may be necessary to complete the review of family law in the N.W.T. and that the passage of legislation arising from recommendations be given priority.

RECOMMENDATION #31: That the *Limitations of Actions Act* be amended by removing the limitation period for civil actions arising out of sexual assaults.

RECOMMENDATION #32: That appropriate measures must be taken to ensure that the criminal injuries compensation program is adequately publicized.

RECOMMENDATION #33: That the federal government immediately reinstate funding for criminal injuries compensation and for other forms of victims assistance.

RECOMMENDATION #34: That policy directives be developed within the Royal Canadian Mounted Police requiring institution of charges under section 127 of the *Criminal Code* in instances where there are reasonable and probable grounds to believe that the terms of a restraining order have been violated.

RECOMMENDATION #35: That an appropriate protocol between the courts and the Royal Canadian Mounted Police be established which will enable the police to be accurately informed of existing custody orders and provide them with the capacity to enforce such orders.

RECOMMENDATION #36: That policy directives be developed within the Royal Canadian Mounted Police requiring the institution of appropriate abduction or kidnapping charges when reasonable and probable grounds exist respecting child abduction.

RECOMMENDATION #37: That the Maintenance Enforcement Office be better resourced by the allocation of permanent full time person years.

RECOMMENDATION #38: That the Maintenance Enforcement Officer be provided with access to legal advice either through the GNWT Department of Justice or through a contracted retainer for legal services.

RECOMMENDATION #39: That the availability of maintenance and enforcement remedies be better publicised by the production of television advertisements and pamphlets and posters translated into aboriginal languages.

RECOMMENDATION #40: That regulations pursuant to the *Corrections Act* be enacted to provide for the mandatory deduction of support payments from funds earned by inmates for paid labour or related activities. Such payments should not require the prior existence of a court order for support as most women will not seek support orders in these circumstances.

RECOMMENDATION #41: That the *Social Assistance Act* be amended to permit the Director of Social Assistance to apply to the court for child support or spousal support payments from non-custodial parents in instances where financial assistance has been provided by the Department to an applicant.

RECOMMENDATION #42: That the police charging policy with respect to spousal assaults continue to be rigorously enforced.

RECOMMENDATION #43: That counselling and support services be provided to victims to permit them to make informed choices about the prosecution of domestic violence offenses.

RECOMMENDATION #44: That Crown prosecutors abide by expressed wishes of the complainant unless there are compelling reasons to proceed with the prosecution.

RECOMMENDATION #45: That the Federal government allocate more Crown attorney positions to the Northwest Territories.

RECOMMENDATION #46: That a training program be instituted through the joint cooperation of the Department of Justice and the Department of Social Services to offer counselling and support services to victims;

RECOMMENDATION #47: That training be offered through Arctic College and existing programs of adult education respecting Victim's Assistance;

RECOMMENDATION #48: That training for victims' assistance and counselling be community based and culturally relevant.

RECOMMENDATION #49: That counselling services for both the victim and the abuser be available at the community level.

RECOMMENDATION #50: That paid positions for victim's assistants be available at the community level, and that these positions be funded in part from the victims of crime surcharge.

RECOMMENDATION #51: That protocol be developed between the RCMP, Department of Social Services, local resources such as shelters and Victims Assistants respecting contact with and support for victims at the earliest possible stage.

RECOMMENDATION #52: That communities be given the opportunity to develop appropriate mandates for victims' assistance as the type and method of support will vary and should be flexible.

RECOMMENDATION #53: That the Government of the Northwest Territories provide increased levels of financial support to the Department of Social Services Family Violence Program.

RECOMMENDATION #54: That the *Criminal Code* provisions dealing with the power to release or detain accused persons be amended to provide to the police the authority to impose conditions on release.

RECOMMENDATION #55: That release provisions requiring the accused to leave the community prior to trial or appearance be imposed and tested in the courts.

RECOMMENDATION #56: That, in appropriate circumstances, the court be closed to the public.

RECOMMENDATION #57: That for offenses that permit the Crown to make an election, in appropriate circumstances the Crown proceed by way of summary conviction.

RECOMMENDATION #58: That counselling programs specific to abusers be offered at all correctional facilities in the Northwest Territories and that such counselling be mandatory for persons convicted of offences of domestic violence.

RECOMMENDATION #59: That the use of Victim Impact Statements be expanded to all parts of the Northwest Territories and that the nature and purpose of the statement be explained to victims by police officers and completion of the statement be assisted and encouraged by the police.

RECOMMENDATION #60: That Crown attorneys be encouraged to use Victim Impact Statements at sentencing.

RECOMMENDATION #61: That Victim Impact Statements be available in languages appropriate to the community in which they are being used.

RECOMMENDATION #62: That mediation services for the resolution of civil law disputes in the area of family law be developed and publicly funded.

RECOMMENDATION #63: That training for mediators be mandated by legislation, together with legislation that governs the conduct and competence of mediators.

RECOMMENDATION #64: Because of weaknesses in the process, that mediation not be mandatory.

RECOMMENDATION #65: That the courts continue to develop means of receiving input from communities with respect to the administration of justice generally, and where appropriate, with respect to the disposition of particular cases. Community committees that may be organized for this purpose must have input from women at the community level and community input must not become a vehicle for legitimizing inappropriate actions towards or attitudes about women.

RECOMMENDATION #66: That the screening of potential candidates for judicial office include inquiries directed to attitudes about women and that this be a factor in considering the suitability of prospective judges.

RECOMMENDATION #67: That policy guidelines be developed for the appointment of lay persons to the Judicial Council which guidelines ensure representative appointments on the basis of both gender and culture.

RECOMMENDATION #68: That consideration be given to the expansion of the role of the Judicial Council such that it may assume greater administrative responsibilities respecting the operation of the courts, and further that it be able to assume a role in judicial education.

RECOMMENDATION #69: That lay representation on the committee responsible for vetting applications for judicial appointment to the Supreme Court of the Northwest Territories be a stipulated requirement and that policy directives be developed that prefer the appointment of qualified women candidates and members of visible minorities to the committee.

RECOMMENDATION #70: That the local committee have the power not just to review applications received from the Commissioner of Federal Judicial Affairs but to actively recruit judicial candidates.

RECOMMENDATION #71: That affirmative action policies be developed in the Northwest Territories to encourage the recruitment of qualified women for judicial office.

RECOMMENDATION #72: That further positions for superior court judges be created to reduce the present barriers to this position for those with child rearing responsibilities.

RECOMMENDATION #73: That the Northwest Territories Branch of the Canadian Bar Association develop a procedure for lodging of anonymous complaints by lawyers respecting the conduct of Territorial Court Judges.

RECOMMENDATION #74: That a code of conduct and judicial ethics be developed which specifies that conduct which ought to attract sanction or investigation.

RECOMMENDATION #75: That the *Territorial Court Act* be amended to provide that extra-judicial conduct be reviewable for disciplinary purposes if such conduct is of a kind which would erode the public confidence in the judge's capacity to perform his or her function impartially.

RECOMMENDATION #76: That further study be undertaken with a view to developing more certain criteria in the *Territorial Court Act* for disciplinary action respecting members of the judiciary.

RECOMMENDATION #77: That sanction be available for breaches of a code of conduct and judicial ethics.

RECOMMENDATION #78: That the forms of sanction available be more diverse and that such sanctions be specified in the *Territorial Court Act*.

RECOMMENDATION #79: That codes developed for judicial conduct allow members of the judiciary increased abilities to interact with members of the public.

RECOMMENDATION #80: That members of the judiciary undertake efforts to better inform the public and the media of the nature of their function and the role that they are required to maintain in the court process.

RECOMMENDATION #81: That members of the judiciary participate on a more regular basis in public legal education, and that opportunities for such participation be extended to members of the judiciary by bodies responsible for such programs.

RECOMMENDATION #82: That the position of Chief Justice of the Supreme Court of the Northwest Territories be created and that the Chief Justice have primary administrative responsibility respecting the operation of the Supreme Court and responsibility to review at first instance concerns raised about the conduct of superior court Judges and the administration of justice generally at that level of court.

RECOMMENDATION #83: That provision be made for lay representation from various jurisdictions on the Canadian Judicial Council. Such representation should include a cross section of both gender and culture.

RECOMMENDATION #84: That there be a more diverse spectrum of sanction available respecting the conduct of superior court justices.

RECOMMENDATION #85: That models of judicial evaluation be reviewed by the Northwest Territories Judicial Council with a view to adapting an evaluation mechanism for use in the Northwest Territories.

RECOMMENDATION #86: That the *Justices of the Peace Act* be amended to provide for the additional appointment of a second lay representative, in keeping with the provision of adequate public representation on bodies governing the appointment and conduct of judicial officers.

RECOMMENDATION #87: That the *Justices of the Peace Act* as amended be proclaimed in force and appointments be made so that the Council may take up its functions.

RECOMMENDATION #88: That selection criteria for justices of the peace encourage the selection of aboriginal women such that adequate representation of women as justices of the peace is achieved.

RECOMMENDATION #89: That grounds for discipline should be specified and it should be clear that grounds for discipline include behaviour out of court.

RECOMMENDATION #90: That the amendments to the *Justice of the Peace Act* be proclaimed into force so that mechanisms for the review of conduct of justices of the peace are available.

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APPENDICES

APPENDIX A

REVIEW OF GENDER EQUALITY IN THE JUSTICE SYSTEM

Background

The Government of the NWT has identified the need to examine in detail the functioning of the justice system as it involves and affects women and children. This need has been articulated repeatedly by concerned organizations, including the NWT Status of Women Council which has a statutory mandate to provide advice on such matters. It has also been identified by the Legislative Assembly, most recently in the form of a motion requesting that the Minister of Justice undertake a review of the justice system. In addition, the Conrad Inquiry, held in 1990 to investigate complaints made against a Territorial Court Judge, has demonstrated that a formal, public inquiry has limitations such as excessive formality, limited accessibility and high costs.

The Government, and in particular the Minister of Justice, is also acutely aware of the need to respect the independence of the judiciary, and to have the judiciary itself directly involved in identification of issues and any undertaking of change.

Definitions

Gender Bias can be defined as " behaviour or decision-making by participants in the justice system which is based on or reveals stereotypical attitudes about the nature and roles of men and women; cultural perceptions of their relative worth; and/or myths and misconceptions about the social and economic realities encountered by both sexes. " **Gender Equality** exists when all such bias is absent from the operations of the system.

The **Justice System** will be defined broadly to include the administration of both criminal and family law. This involves policing, prosecutions, legal aid, corrections, the operation of the courts, including JP court, the appointment and discipline of judges, and the law itself, both federal and territorial.

Purpose

The review will carry out its activities in order to improve the understanding of gender equality issues by the public and professionals involved in the system, and in order to make recommendations on ways to achieve gender equality in the system.

It will be viewed as the first phase of a long term undertaking, which may eventually include a more formally mandated process such as a task force, a commission, or a public inquiry. Such a larger process could potentially examine aboriginal as well as gender

issues.

Scope

The review may examine and address all and any aspects of the justice system for the presence, extent, nature and types of gender bias. This may include activities which are not currently within the jurisdiction of the GNWT.(e.g. policing, prosecutions) It will also involve liaison with other groups doing work in the same area i.e. the review will not have to actually do all the work itself. To date such groups include the Inuit Women's Association, the Dene Cultural Institute, Arctic Public Legal Education and Information and the Status of Women Council.

Timing

This review shall begin in December 1990 and last until March 31 1992. At the end of this project a full report including clear recommendations on the process to be used to continue this work, will be made to the Government and tabled in the Legislative Assembly.

Activities

The review shall be funded and supported to carry out the following activities:

1. Identification and initial examination of aspects of the justice system as their operations may relate to gender equality. This will include but not be limited to sentencing (especially in sexual/spousal assault cases), the role and mandate of the Judicial Council, the discretion of crown attorneys, legal aid, circuit lawyers, courtroom language, education and training of lawyers and judges, victim participation, and the relationship between issues of gender and culture. This will involve research and data collection by the project and/or by other agencies.

2. Identification of and research into reform options and models in other jurisdictions and their applicability to the NWT.

3. Public education and consultation, which may include community meetings and regional workshops, with individuals, professionals and organizations across the NWT, with a view to raising public awareness and facilitating the identification of reform options.

4. Examination of present and planned GNWT initiatives for their relationship to gender equality issues and for ways to address gender issues within them. This includes programs such

as the legal interpreters, victims' assistance, legal aid, public trustee, maintenance enforcement, justices of the peace, corrections and family violence prevention. It also includes funding initiatives such as Arctic PLEI, and the research into Dene custom law by the Dene Cultural Institute, and special projects such as Family Law Review.

5. Production of a "issue paper" for public release and discussion, and other documents, both internal and public. This may include papers for the meetings of fed/prov/terr Ministers of Justice and Status of Women in 1991, items for tabling and debate in the Assembly, and documents related to the Western Judicial Conference scheduled for 1991 in Yellowknife.

6. Participation in planning/funding/monitoring of initiatives on gender equality such as the research project of the NWT Status of Women Council, the workshop series of Arctic PLEI, the fed/prov/terr working group and the Western Judicial Conference. If acceptable to other players, the review should play a coordinating and planning role to limit overlap and ensure a planned approach which results in data from a variety of sources.

7. Liaison, in an appropriate fashion, with professionals involved in delivery of the system, in particular the judiciary, the crown, the private bar, justices of the peace and the police. This liaison should be designed to hear their ideas and concerns and to solicit their involvement in present and future activities.

8. Provision of advice and specific recommendations regarding actions to be taken by the GNWT to address gender equality issues. These may include but not be limited to legislative reform, policy and guideline development, funding initiatives, intergovernmental initiatives, education and training, research/data gathering and public relations. Where reforms could be made in the very short term, recommendations and advice will be given as soon as possible to facilitate early action by the responsible parties. In particular, recommendations will be made regarding the advisability, terms of reference, priority areas, planning needs and process for a second phase undertaking.

The review will work closely with the Advisory Committee on Aboriginal Justice and the Department of Justice in their activities addressing aboriginal issues in the justice system, particularly in areas of potential overlap or mutual concern. In particular, the Advisory Committee on Aboriginal Justice will be given the opportunity to review results and advice in areas where cultural and gender concerns interrelate, and to append their comments if consensus cannot be reached.

Details of these activities, along with the budget needed to carry them out will be further developed in a planning framework early in the review's work, and continually reviewed and refined.

Staffing

The review will be headed up by a **Special Advisor** who shall report directly to the Minister, as per the terms of reference set out in a contractual arrangement.

Full-time staff shall be provided by the GNWT. These will include, at a minimum, a **Co-ordinator**, who will possess research, analytical, writing, managerial, organizational and planning skills; and an **Administrative Assistant**, who will possess organizational, office management, clerical, secretarial and public relations skills. These staff people shall be GNWT employees, and shall report to the Special Advisor.

Funding and Support

Funding and administrative support will be provided by Justice, Social Services and the Women's Directorate. While Justice will maintain the lead responsibility, regular liaison and involvement of Social Services and the Women's Directorate shall be maintained. The Deputy Minister(s) shall facilitate the cooperation and availability of appropriate departmental staff as required. The assistance of the Bureau of Statistics regarding research methods and survey techniques will be provided.

Support provided will include office space, telephone/fax, xerox services, salaries/benefits, travel, contract funds and other O & M as set out in the budget referred to above.

Reporting

On behalf of the review, the Special Advisor shall report regularly to the Minister and shall have access to him on a priority basis. A quarterly progress report shall be made in writing and may be used for public release and/or to update the Legislative Assembly. An interim report, suitable for public release, will be submitted by September 30, 1991. A final report will be presented on March 31, 1992.

APPENDIX B

REGIONS AND COMMUNITIES VISITED BY THE SPECIAL ADVISOR

SOUTH SLAVE

Hay River:	May 13-15
Fort Smith:	May 15-17

DELTA:

Inuvik:	September 16-18
Fort MacPherson:	September 18-20

KEEWATIN:

Arviat:	September 30 - October 4
Rankin Inlet:	October 4-6

BAFFIN:

Iqaluit:	October 19-20, 24-25
Broughton Island:	October 21-23

KITIKMEOT:

Coppermine:	November 18-20
Cambridge Bay:	November 21-22

SAHTU:

Fort Good Hope:	December 9-11
Fort Franklin:	December 9-13

NORTH SLAVE:

Rae-Edzo:	January 16
Yellowknife:	January 18

Telephone 819-645-2953

RANKIN INLET, N. W. T.
X0C 0G0

REPORT TO: The NWT Gender Equality Review
REPORT FROM: The Hamlet Council of Rankin Inlet

September 1991

The Hamlet Council of Rankin Inlet would like to present their submission to your review on gender equality.

As a preamble, I would like to note that the Council members had difficulty in participating in this discussion as it was an area so diverse and complex and required a great amount of time to formulate concerns and thoughts on how one really feels. As you can appreciate, to compile a report of nine members of council with different involvements and knowledge of the justice system is an extremely difficult task. It is not the natural scope of work for the council and because of the time factors and constraints of a council, we are forced to only present a random mixture of thoughts

This is not to say that the Council did not feel the task at hand was important, quite the contrary. They felt that the task is extremely important and requires a review such as the one you are taking. The task that you have involves all aspects of life in the NWT. Many problems are interrelated and it may be necessary to go to some of the sources of the problems in order to realize the problems.

Thank-you for the opportunity to participate.

1. WITNESSES IN THE COURTROOM

The witness feels extremely uncomfortable. In a small community there is family intimidation in the courtroom directed towards the witness. It is a stressful ordeal for the witness as it is without this.

2. VICTIMS OF CRIME

The victim, especially in sexual assault cases is not dealt with by experienced personnel. Sometimes the victim has no support from home and the community. There is the trauma of the assault, the trauma of the investigation of the assault, (including the medical proof required), the trauma of the court case and the trauma of after the court case no matter what the outcome is. They are revictimized over and over again.

3. FACILITIES

There are few facilities that deal directly with the differences between men and women. For example, men having abused someone, have no where to go to help them deal with anger management. Women who are incarcerated are dealt with as a man would be dealt with. There are many other examples.

4. ACCESS TO JUSTICE

There is a lack of courtworkers and lawyers that can assist women who are victims. This can be in terms of advice and information on alimony, child support, sexual assault and other cases where women are victims. Traditional roles are changing but because they have not realized total equality as they never may, women are still the care giver, responsible for children etc. The lack of day cares addresses the problem of the woman and her career and job. The requirement to work is also affecting the teenagers that are forced to stay at home to babysit instead of being in the classroom. There teenagers are predominantly of the female gender.

5. ELDERS

It has been referred to several times that elders should be used in the justice system. It has to be considered that the times are more complicated than they were and the advice of some of the elders who have not kept up with the pressures of life in this day and age may be detrimental.

From infancy, the culture treats males and females differently. They may only be treated equally once they obtain elder status.

6. FAMILY VIOLENCE PREVENTION

The project requires more funding in order to obtain experienced councillors and to establish programs. To help women get out of being victims and starting all over again it will require people trained in intervention and resources. For example, women in

smaller communities can not apply for housing from the Housing Association. They are forced to remain in sometimes a dangerous situation.

7. PENALY OF THE CRIME

Some of the penalties are not in accordance with the crime. A man charged with sexual assault may be penalized by not being able to carry a fire arm. If the man did not hunt this is no penalty. If the man did hunt for subsistence then it penalizes his whole family. Restraining orders and peace bonds in small communities are not an effective means.

8. JUDGES

Judges have to be sensitized to the culture that they are dealing with. They have to be clear of their influence. The Union of Judges or whoever oversees the Judges should be required to educate judges. The culture is in transition and there are many organizations that are providing services. Training is an essential element to equality.

9. MEDIATION

There is credence to mediation rather than charging. If it can be applied to the situation then the parties may be able to resolve more. Communities can resolve less serious issues if they are trained. JP's can deal with the less serious crimes. This would free up the court system in order to deal with serious crimes expeditiosly.

These are a few thoughts that we bring forward for your review.

Respectfully,

Marla Limousin
Senior Administrative Officer

Presentation For:

THE NORTHWEST TERRITORIES GENDER EQUALITY REVIEW
October 25, 26, 1991

I would like to express my appreciation to the Minister of Justice for providing a forum for people in the Northwest Territories to examine the administration of justice and how it affects women.

In our work in Mental Health, we are often worked with people involved with the justice system. We work with victims of crime, witness and also with individuals accused and convicted of crimes. The incidents in which people are involved with the justice system may include making contact with RCMP where there has been abuse including physical, sexual abuse or threatening behaviour on the part of someone else. It includes contact with crown prosecutors, judges, lawyers, court workers, J.P.'s, juries, the Baffin Correctional Centre, youth workers, youth justice and other justice committees. It may also include contact with Child Welfare authorities and social workers.

Individuals may also be involved with members of the health system, including Mental Health, as part of an incident involving the justice system. In some instances we are involved with the justice system as enforcer of the Mental Health Act.

We may work with individuals before, during, following many years after they are involved with the Justice System.

Following are some comments made as a result of my experience during the past 2½ years in the Baffin Region.

1) Introductory Comments:

a) What happens to women involved with the justice system is highly significant in their lives. The effects of their involvement may follow them for years.

b) Women's experience of the justice system appears to be similar in general to their experience of other systems including health, education, social services.

c) Within a particular community, community values, attitudes, and concerns appear to play a most important part in terms of a woman's experience of the justice system. That is true whether or not community values support those of the justice system.

2) Women as victims of violence:

A woman is often extremely reluctant to involve the justice systemwhen she experiences violence from a close family member. She usually waits until matters are dangerous for her children or upsetting for others around her before actually reporting. She will often tell a very little part of the whole story at first. She may feel either or both fear and shame when she lets an RCMP member or even a nurse know the nature of physical abuse. When sexual abuse is involved she may be even more reluctant to reach out for help and protection. When another service such as health, school or social services are involved she may feel she has no choice but even then it may be extremely difficult for her.

The initial response of the first person who responds to a woman from the justice system is of vital importance for it is easy for a woman who is or has experienced violence to both feel she has deserved it and to feel despair that anyone will really help her. She may feel undeserving or not ask for information.

Those of us who work with people who have been hurt can and often do feel impatient with their seeming lack of concern for themselves, their willingness to be resigned to their situation, to go back again and again into a violent relationship. We need to become more aware of why this happens and aware of our own feelings. Otherwise we project disapproval and irritation and not only cannot assist them but contribute to their feelings of helplessness, guilt and shame.

Those in the justice system may also react with indifference, lack of energetic and active reaching out to care and do something when presented with a woman who has experienced violence, particularly when it has happened over and over again.

Many of the women I work with have felt judged, shamed and ill-treated by justice officials at all levels. Some resign themselves to confusion and a feeling of being an unimportant person undeserving of information, politeness and consideration. Not only does this perpetrate a situation, it often leaves a woman feeling doubly abused - both by the perpetrator(s) and the justice system.

3) Access to Justice:

This is an interesting question because it must refer not only to access to justice personal, the system, service; it means also to justice itself. And because a woman's life is so

intertwined with children, family, and community, justice cannot exist for her without existing for these others, equally; a man is a son, brother, or father in a community, although he may also have abused a woman or child.

The fact is that most justice officials are neither women nor people who have experienced violence directed toward them other than in the course of their work. Those women who work within the justice system sometimes, by the very nature of the work, take on its characteristics and lay aside those that conflict with their role as woman. Those characteristics include a disregard and insensitivity to feelings both immediate and long term.

The system has so very many ways to be uncaring, closed to sharing information, frightening in its processes. The very push toward objectivity is often unjust by definition. Is it possible to be objective, technical where a person's feeling, self-worth, identity has been underminded? Most jury cases in the Baffin where sexual abuse or violence are concerned result in acquittal of the perpetrator. Many times a woman has little support from family and community where her revelation of the truth causes a man to have to leave the community and his family. If justice includes punishment or alienation even of an emotional nature for either victim or perpetrator, it is not really justice, is it?

The justice system cannot, by itself, dispense justice. There needs to be community agreement, awareness and support for justice in order for it to be realized.

Many times women with whom I've worked have been victimized by family, community and the experience of the justice system in addition to the initial abuse. Women who have appeared as witnesses have experienced confusion, fear and retaliation as a result. Women who've merely sat and listened to a trial, or who have witnessed abuse, have experienced is as traumatic, sometimes for years.

Access to justice must surely result in a feeling that justice has occurred for it to be real justice. Access to justice needs to mean access to feelings of self-worth, hopefulness, peace and self-control. The adversarial system often means someone's on top, someone's on the bottom, someone wins, someone loses. In a community if anyone loses, everyone loses.

4) Services to Victims of Violence:

Those who have experienced violence need support, advice, information, immediate attention, understanding, encouragement, and a chance to talk about what happened, a chance to resolve feelings created by the violence, to heal from physical, emotional or sexual wounds.

While it is important to have justice officials at all levels and service providers at all levels sensitive, aware and available to victims of violence throughout their experience,

there are many more people than these, involved in providing necessary service. Family, friends, elders, media, churches, health personnel, school and politicians need also to expand their awareness.

5. Policing:

Women react during times of crisis and violence, just as all people do, with their own feelings of helplessness, with shame, with fear and with lack of confidence. It is incumbent for police to take seriously requests or help. There is often much more beneath the surface of an original call than seems apparent at the time.

It is frustrating for police to experience changed minds, refusal to give evidence or to lay complaints. Women live in very real fear of being killed by an abuser. The experience of abuse even to others, heightens fears and feelings of being controlled by faces outside oneself. Violence is a complex matter: the relationships within which it occurs become convoluted and hard to understand. The things the justice system considers to be important do not always seem that way to individuals and communities.

If police blame a victim of violence for causing her own victimization she becomes doubly victimized. If they blame people for not supporting the justice system by complaining, giving evidence, their blame is misplaced.

Police need to be very aware of their own feelings, values, judgements and attitudes in order to respond wisely to people involved in violent relationships. This might include their own response to conflict, anger, sexuality or pain.

6. Community Justice Initiatives:

Community involvement in the justice system is not just positive, it is vital.

When cultural differences exist, the justice system needs to be structured in such a way as to make room for culturally involvement, influence and power. Where women are concerned the justice system needs to be prepared to examine everything from its purposes to its approach.

We have seen an increase in the numbers of cultural knowledgeable and Inuit employees in the justice system in the Baffin. While it would be optimistic to suggest that this involvement changes and shapes the system to respond appropriately, this is simply not the case. It may be partly because people in positions of power and decision making are not such people. However, it is largely due to the fact, it seems to me, that people who join a system, rather than being encouraged to change it, are encouraged to adapt to it and to take on its values, purposes, its view of the world.

People belonging to a subordinate culture often see their own people as having betrayed their culture when they work for and support a system from the dominant culture. At the least these people may be subjected to compromising situations frought with frustration and confusion.

For Justice Committees to be successful they need to be taken seriously. Alternative systems need as much support and power as the system now in effect. There are models of effective alternative systems from around the world; there needs to be a will to seriously want to create a system that is appropriate culturally for Inuit in the Baffin.

7. Concluding Comments:

Where issues are concerned that relate to women and the justice system in the Baffin there are two equally important factors:

1) How can the justice system better treat women fairly, and

2) how can it respond fairly to a different culture?

Where a culture is experiencing tremendous pressure and change here, and women worldwide are beginning to press for a non violent world, there appears to both be more violence to be and more awareness of its roots.

The justice system can either help or hinder a movement toward Justice and Equality for all.

Responses to injustice include suicide, depression, despair and more violence.

Thank you for letting me express my opinions.

Florence Flynn,
Regional Mental Health Specialist

A BRIEF ON

GENDER EQUALITY

OCTOBER 3, 1991

BY KEEWATIN LEGAL SERVICE CENTRE SOCIETY

GENERAL DELIVERY

RANKIN INLET

NORTHWEST TERRITORIES

X0C 0G0

Brief for Gender Equality Review

Prepared by Agnes Krantz for Keewatin Legal Services Centre Society
October 1, 1991

If the justice system is essentially a mechanism for the resolution of conflicts among citizens or between citizens and their Government, then it is not useful or possible to look at the justice system in isolation. What are conflicts, or what creates conflicts is very much part of the whole social fabric. The justice system is just one small mirror that reflects part of a larger body. Focusing on the justice system may have some justification, by way of manageability so long as the justice system, is not made to answer for all of the wrongs done to women.

The Keewatin Legal Centre Society has some points to be made to The Gender Equality Review, some are recommendations, others are observations.

I. EDUCATION

In 1985 a Task Force on Spousal Assault delivered a report to the Honourable Dennis Patterson, Minister Responsible for Status of Women in the Government of the Northwest Territories. A number of the recommendations in that Report dealt with Education.

At Page 41

" that family life education should begin in the School and the Churches".

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At Page 42

"that curriculum planners from the Government of the Northwest Territories Department of Education in consultation with the coordinator of family life education in the Department of Health develops a family life education curriculum suitable for students from the early grades through high school. This curriculum should include information and lessons abut family violence including spousal assault".

At Page 43

"that the clergy should consider family life education as an important part of their liturgy".

At Page 56

"that the CBC Northern Service and the Inuit Broadcasting Corporation be encouraged to continue to present programs on spousal assault. These could be panel discussions programs, phone-in shows, average of seminars, presentations of plays and other programs for radio and television".

Education is still an important issue. Keewatin Legal Services Centre Society endorses all of the above recommendations. The family life education curriculum which is in place should be evaluated to ascertain if it is fulfilling the needs it was intended to meet. A public legal education component should also be built into the school curriculum.

Given that the justice system has been imposed on the people of the Keewatin with little, if any, modification to accommodate their culture, more public legal education should be provided for the population as a whole. If an unfairness has been perpetrated

by imposing a set of foreign rules on the Inuit, the unfairness is magnified if the Inuit are not adequately educated as to what these foreign rules are. Also, one cannot expect the Inuit to recommend how the imposed system can be modified to suit then until they understand what the imposed system and its rules are.

Education is important for the offenders as well. There has been approval of Alberta's approach to Impaired Drivers, in various reports throughout Canada. Alberta has provided a model that could be adapted to more offenses than impaired driving.

Alberta's IMPACT program is a residential program which runs from Friday evening to Sunday afternoon. It attempts to lead participants to look at the consequences of their mood altering drug use and investigate alternative behaviours. In addition an assessment and a set of recommendations is prepared for each participant. This is a format that has proved effective for impaired driving. It could be adopted for spousal abuse and any offense where alcohol was a factor. It could also be looked at with regard to sexual abusers.

Public legal education directed at Offenders is important and potentially very effective. The most powerful deterrent is social approbation. With impaired driving there was a deliberate campaign co-ordinated by Government funded agencies to change public opinion. The campaign has become so socially acceptable that even

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the manufacturers of alcoholic beverages advertise to not drink and drive. The Campaign has been successful; opinion has changed the number of impaired driving offenses has fallen off every year for the last 10 years. It is no longer socially acceptable to drink and drive.

That same kind of campaign can be directed at offenders who abuse their spouses, children or others. There should be a concerted effort directed at men to get them involved in the discussion against abuse.

II. SPECIAL FAMILY COUNSEL

Not many women in the Keewatin resort to the Courts to deal with their matrimonial problems. Those who have, have not had an entirely positive experience. Here in the Keewatin, as elsewhere, women do not have the funds to hire a lawyer from their own resources. They must apply for Legal Aid.

The offices of the Keewatin Legal Services Centre Society will assist with the application for legal aid and send it by fax to Legal Aid in Yellowknife asking that Counsel be appointed in Yellowknife. The reason for Yellowknife counsel is that Supreme Court sits in the Keewatin with extreme irregularity.

Sometimes there is a delay at the Legal Aid Office. Then there can be a further delay at the Lawyer's office. The Family Law Bar in

Yellowknife is very busy. This delay seems very long to the ladies in distress in the Keewatin. By leaving their spouse, they are often proceeding contrary to their community values, these ladies are unsure of what is going to happen to them and they can be quite passive. They deserve to have Legal Services delivered to them more quickly and someone who can take the time to give them support.

Keewatin Legal Services Centre Society recommends that there be staff counsel for legal aid in Yellowknife whose function it is to get the initial orders - restraining, interim custody, interim possession of the home, interim maintenance - expeditiously. After the emergency orders have been secured the files could be passed to the private bar.

III. WINDOW DRESSING

There are a number of serious problems with the justice system as it is experienced here in the Keewatin and elsewhere.

A. Firstly, the justice system has been imposed on people with little or no thought for the difference in culture. There is much discussion of community based justice but that community based justice is still meant to work within the present Justice System framework.

Our justice system can be strange to other people as

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well, new immigrants, Native Indians. However the people here are in a different situation. Here the dominant Euro Canadian culture is imposing its justice system in an isolated enclave where there is little other Euro Canadian Society to give the Justice System a context in which to operate.

For example, on a very elementary level; men having to remove their hats in Court. Here that is done only for judges. The tradition of men removing their hats as a symbol of respect or good manners has no historical context here. It is hardly essential to the concept of justice, but court administration still insist that it happen even where the indigenous people Customarily do not remove their outdoor clothing while indoors.

B. Secondly, The Euro Canadian justice system has its roots in a patriarchal land-oriented value system that has little relevance to the espoused principles of this society at the end of the twentieth century.

Matters involving family, perhaps including spousal assault and sexual assault, should not be dealt with in an adversarial system that teaches the participants how to fight instead of how to reconcile and heal.

Making what amounts to cosmetic changes to a basically inappropriate justice system does not make sense. Six

years ago there was a Task Force on spousal abuse. Were all the recommendations followed? Now there is money being spent on Gender Equality. What next? Perhaps it is time to question the basic premises. For example: There is a suggestion that "things" will be better when we have more women players, judges, and lawyers, in the justice system. That's not necessary true because we are playing with men's rules. The gender of the Judge will not necessarily make a difference as long as we continue to use antiquated concepts that originated when societal values were very different from today.

Because the justice system is so inappropriate here, it looks like a smoke screen to discuss Gender Equality. To ask if only women are misused in the justice system is to suggest it does work for men. To ask if women are hurt in only the justice system overlooks that the justice system reflects the values of the Euro Canadian Society.

If the Government of the Northwest Territories is sincere about cultural sensitivity, then why look at just Gender Equality.

IV. TREATMENT

In the material attached to the Task Force on Spousal Abuse Report the issue of treatment for sexual offenders and spousal abusers

was called time and time again. Treatment was a specific recommendation of that Task Force. There is no treatment for offenders in the Northwest Territories. In the Keewatin spousal abuse and sexual assault constitute are the major part of the criminal problem.

When an offender is identified for the first time there is an opportunity then to save future victims. It is obvious from looking at criminal records that prison is not deterrent. Then why not encourage treatment? The offenders here are going to come back to their own small home communities and in alot of cases to the very home where of the offenses occurred.

Many of the sexual offenders are also victims. There is a cycle. So far there is some treatment only for victims who have managed not to become offenders. Is this a form of gender bias? Women who have been abused will often manifest their hurting by becoming submissive, passive, increasing their victimization. Men who have been abused will act out their hurt by becoming abusers. We punish one set of victims only and so far offer treatment to the other.

Violence is a social problem, the justice system no matter what cosmetic changes are made cannot cure social problems.

V. LEGISLATIVE CHANGES

A. In the short term, it would be appropriate to have legislative

changes that would permit diversion for some cases of spousal abuse and even sexual assault so long as treatment is taken. The legislation should make the provision of treatment mandatory.

A change to the criminal code to permit probation terms of longer then three years would be useful. Realistically, some treatment programs will take longer.

B. In the long run, a major change of the whole Justice system.

VI. SOME ADDITIONAL THOUGHTS

Victim Impact Statements should have some objective content as well as the feeling of the victim. There have been victims who have been abused by others as well as the accused. Also, there may be reasons for a complainant's emotional upset other than the offense before the court.

SUMMATION

Keewatin Legal Service Centre recommends that:

1. An effective public legal education program be instituted.

2. That treatment be provided for offenders as well as victims in spousal abuse and sexual assault cases.

3. That there be legal aid staff counsel to provide quick and thorough service in the initial stages of separation.

THE NORTHWEST TERRITORIES GENDER EQUALITY REVIEW

Brief entitled

Are Women and Children Treated Fairly

By the Justice System?

Prepared by
The Status of Women Committee
Northwest Territories Teachers' Association

FORWARD

The Status of Women Committee of the Northwest Territories Teachers' Association is a sub-committee of the above named parent organization. The objectives of the committee are:

To promote and protect the interests of women in education

To foster and promote the interests of female students and the general student body

To encourage women to take leadership roles and to seek positions of responsibility

To liaise with other women's groups and to establish a network of contacts in all schools of the N.W.T.

The Northwest Territories Teachers' Association represents 1,009 teachers of which approximately sixty percent are female.

OUTLINE

The intent of this submission is to describe the prevalence of violence against women and children in the N.W.T., to outline the impact of violence on women and children of the N.W.T., to discuss the effects of the judicial system on women and children of the N.W.T., to advocate the rights of women and children and to offer recommendations to improve the quality of life of women and children of the N.W.T.

The issue central to this submission is violence against women and children and the ramifications for women and children.

"Violence continues to be the number one concern of many women in the N.W.T."[1] It is estimated that 1 in 4 women in the N.W.T. has been assaulted by her partner.[2] Public opinion toward violence is directly and indirectly influenced by current sentencing practices, the treatment of victims in courts and by the attitudes of members of the justice system. Hence, the justice system must play a fundamental role in recognizing the severity of the violence epidemic, the impact it has on all members of society and consequently play a role in protecting and advocating the rights of women and children.

THE PROBLEM AND THE CAUSES

L. (her name has been changed to protect her identity) is but 15 years old and already she has experienced the N.W.T. justice system first-hand. She was

sexually abused by several men in her community. Four men went to court, one was charged. The justice system did little to protect her and her family and did little to offer her support in the way of counselling to deal with the assaults and the violation of her rights. She functions well below her peers emotionally and academically. She and her family have since left the community.

According to the 1991 N.W.T. Sexual Assault Sentencing Report, girls between the ages of 13 and 18 are the group at the highest risk of sexual assault, while girls between 7-12 years are the second highest risk group. Given that the N.W.T. has the highest incidence of assault in the nation, the time to act is now! Of the sexual assault cases studied in this report, 90% of the assaults were committed by someone the victim knows (family member, friend, acquaintance, former partner) and of that 90%, 20% were family members.

There are a number of factors that contribute to violence against women and children in the N.W.T. The shift from outpost camp life to community/settlement life has had profound effects on the traditional roles of men and women and a major role reversal has occurred. Men may no longer be the providers of the family. "This may contribute to the central underlying reason for the alarming rates of spousal assault that plague northern communities: men feel threatened by their loss of status and identity, by the increased power and status of women - to restore their sense of a balance of power, men hit women."[3]

Substance abuse is often cited as the reason for loss of control that leads to violence, violence most often perpetuated by men against women. In the N.W.T. of the sexual assaults studied in the N.W.T. Sexual Assault Sentencing Report, 1991, in 50% of the cases the offender has consumed alcohol prior to the assault.

It has been determined that abuse is cyclical. If a person has witnessed abuse of has been subjected to abuse, that person is more likely to accept violence as a means of conflict resolution as this has been his/her experience. "Violence is learned as a source of power and control in their first group, the family."[4]

If and when police intervention is sought or provided, the victim is usually given little support or information needed to begin to deal with the assault. R.C.M.P. officers must receive on-going training in dealing with assault cases and in assisting victims of assault.

Very few shelters and transition houses exist in the North, thus it is the women and children who are forced to leave their home and community, are obliged to seek shelter with friends or family often in already overcrowded housing conditions, or they must remain in the abusive situation because they have nowhere else to go.

PROPOSED SOLUTIONS

A: JUSTICE SYSTEM

The justice system of the N.W.T. must respect and reflect current aboriginal values and protect individual rights while respecting community values. This may include:

- advocating the establishment of services that provide support/counselling by trained and qualified personnel for the victim at the community level
- sentencing that reflects the severity of the assault and incorporates mandatory counselling and mandatory participation in a treatment program provided by trained and qualified personnel for the offender.
- a commitment to deal with court cases as expeditiously as possible so that lengthy delays do not occur.

B: R.C.M.P.

R.C.M.P. members must receive on-going, yearly training on violence and assault and each officer should show an awareness and understanding of the impact of assault on women and children. Each detachment should develop procedures in assisting victims of assault and each member shall direct victims of assault to the community support network and give the victim accurate information on the legal and support services available to her. The training program should be developed with input from various related sources including community support groups, women's groups and the Department of Social Services.

C: Funding for shelters

Funding for emergency shelters and transition houses must be provided to communities. The funding should be made available through federal and territorial sources and should provide funding to adequately cover the building, operational, staffing and child care costs and to ensure the continued, long-term operation of the facility. Temporary facilities might be made available through community housing corporations.

D: COUNSELLING/SUPPORT/TREATMENT PROGRAMS

Support and counselling must be available to victims and should be provided by qualified personnel in communities. The establishment of community support groups for both victims and offenders should be advocated and established in all communities. Mandatory treatment programs for offenders as an integral part of sentencing should also be instituted.

E: ON-GOING RESEARCH

Funding for on-going research into the causes of violence and assault against women and children must be made available to groups willing to carry out such research and further that funds be available to develop educational programs aimed at changing societal attitudes toward violence.

F: PUBIC AWARENESS EDUCATION

A vigorous public awareness campaign on violence and assaults against women and children should be developed and launched by the Justice Department, the Department of Social Services and the Department of Education in consultation with the Status of Women Council of the N.W.T. This might include the development of radio and television programming and commercials, information brochures and kits available to the public, list of support services and networks, teaching units and suggested activities on violence prevention for Kindergarten to grade 12 students to be used in all N.W.T. schools.

CONCLUDING REMARKS

The number of assaults against women and children in the N.W.T. has reached proportions that can no longer be ignored. Through a pro-active, community-based, educative approach, we shall chip away at the circle of abuse until it is broken

The time for action is now!

ENDNOTES

1. Status of Women Council of the N.W.T., Annual Report 1990-91 (Yellowknife: Status of Women Council of the N.W.T., 1991) 6

2. ---. Fact Sheet on N.W.T. Women - Wife Assault (Yellowknife: Status of Women Council of the N.W.T., 1991)

3. "Gossip" - A Spoken History of Women in the North, ed. Mary Crnkovich, (Ottawa, Canadian Arctic Resources Committee, 1990) 152.

4. Federation of Women Teachers' Associations of Ontario, "Violence Against Women and Children" FWTAO Newsletter, December 1990/1991:2

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---, Wife Battery, (Ottawa, Canadian Advisory Council of the Status of Women, 1985)

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January 29, 1992

Mrs. Katherine R. Peterson, Q.C.
Special Advisor on Gender Equality
Box 1320
Yellowknife, N.W.T.
X1A 2L9

Dear Mrs. Peterson,

I am writing to tell you a story about a woman who came into my office two days ago. Her dilemma seems to typify that of many women who find themselves in predicaments with no satisfactory solutions. I experience a sense of frustration because our legal system actively supports such situations.

The woman, whom I will call Mary, had returned to the Community on Friday after attending a course. Her husband who has abused her over a period of several years, was intoxicated. He kept her a prisoner in her bedroom over the weekend, along with her little girl. At one point Mary managed to get out on the porch but the cries of her still imprisoned child caused her to reenter the house.

There was no food in the house and even with the child crying because of hunger, Mary was not permitted to go to a neighbour's to ask for food. Mary's husband did not on this occasion abuse her physically but he threw things around, frightening the child and conveying an indirect threat of violence to Mary. On Monday Mary managed to leave the house to go to work and the daughter went to school with instructions from Mary to not go home after school. Mary came to my office after having tried in vain to find shelter at homes of two relatives. They were not at home. Mary would stay that night at the home of a relative, an elderly woman in a small house devoid of plumbing. She felt dirty and wanted a shower. We devised a plan for her to obtain clothing from her house and then go to my house for a shower. She was exhausted, broke, and discouraged. She was concerned about her child who had sat silently and unsmilingly at school during the day. Mary's husband refused to leave the house and Mary was afraid to go home.

Mary talked to me about the long history--about twenty years--of her troubled marriage. She has held down a responsible position in the Community for about seventeen years. Mary pays all the bills. Not too long ago she lent her husband $40,000 to purchase a vehicle to use in a private business. The vehicle is registered in both of their names and despite promises the husband has never repaid Mary any money. Mary continues to make payments on the vehicle as well as pay all other bills and so she is always short of money. Mary's husband has been convicted in the past for spousal assault but he resists seeking help for his alcoholism or his abusive tendencies. Mary has left him on several occasions but her husband's promises to change and her wish to believe them as well as the absence of alternatives have induced her each time to try once again. Mary not long ago decided to seek legal help and she applied for legal aid. This was denied because Mary earns a good salary. She has no money to engage a lawyer because her husband does not accept responsibility for any bills. Mary does not have much chance of obtaining a house for herself, given the shortage of houses and prevailing attitudes about the obligation of women to remain with their husbands and the predictable pattern of women agreeing to reconciliations repeatedly.

Mary called the R.C.M.P. and asked if they could remove her husband from the house. Well, No they could not but they would charge him. Mary would make out a statement the next day. The next day Mary once again acceded to her husband's plea that she return.

I am concerned about Mary and other women like her. It does not surprise me that they develop a cynical attitude towards the justice system which provides so little help to them and so much help to thir husbands. I agree with the principle of a person being assumed innocent until proven guilty. But there should be another principle recognized by the law and given even greater priority. That is, a person complaining of violence should be assumed to be in danger until proven otherwise. If a violent spouse were forced to leave until the woman agreed she felt safe enough to allow him to return then we might not need so many shelters and the displacement of the perpetratator might induce an effort to deal with his problems.

I know the Gender Equality Review Committe will consider these issues in the final report but I feel impelled to state my views on the need to change the Justice system.

Kim Campbell, Minister of Justice
Michael Ballantine, Minister of Justice

My daughter has just turned four; a year ago, just after she'd turned three, she was sexually molested by a teenaged boy babysitter, son of trusted friends.

The doctor who examined her said something had happened to her; the social worker said something had happened to her; the RCMP said something had happened to her; the Crown lawyers said something had happened to her; even the parents of the boy said they believed her story. But the accused and his lawyer had the power to stop any further proceedings including going to court. We could have gone to court at the expense of our daughter and her well-being, and knowing that we would probably lose the case.

It seems like a high price to pay for being three, and being female.

It's taken me a year to address this issue, to channel my anger and my fear for other children and women who, for whatever reason, cannot speak the language needed to convict in the place where people are convicted, that is, the courtroom. My daughter and my family were never badly treated in the whole process of laying charges and meeting with crown lawyers; in fact, we were treated with care and compassion. But that is not to say that it was a "good experience" for us. The negative part of the experience was having to repeat over and over what had happened, and have people believe us, except the people that "counted". Something is wrong with a justice system that does not protect those least able to protect themselves -- young children, shy children, children and women who are afraid.

If you cannot speak with a clear, emotionless voice,
if you speak without confidence,
if you can't survive all those questions,
and if you are too young to be a "credible witness",
YOU WILL NOT GET JUSTICE

I don't know what the answer is. I only know that it has taken us awhile to recover from what was thankfully just a minor sexual assault. There's got to be another way to say NO! YOU CAN'T DO THAT in a way that benefits, not punishes, the perpetrator.

Time heals most wounds, and our family is as close to being back to "normal" as we can make it. But I will never experience Easter weekend now without remembering 1990. And there's a part of me that I don't want to heal. I want to stay wounded and angry until something is done. It's too easy to just get on with life and try to forget.

There's got to be another way than a trial, and another place rather than an adversarial courtroom where things like this can be dealt with.

Can you do something?

Will you do something?

cc.Don Avison, Crown Attorney
Katherine Peterson

APPENDIX D

INITIATIVES IN OTHER JURISDICTIONS

Attorneys General established a Federal/Provincial/Territorial Working group on gender equality in justice system in October 1990 which will report to the Attorneys General in September 1992.

Status of Women Ministers, in cooperation with the Ministers of Justice, in October 1990, set up a 3-year study of Women and Criminal Justice System.

Federal Minister of Justice Kim Campbell organized a National Symposium on Women, Law and the Administration of Justice, held in June 1991 in Vancouver (recommendations should be made public shortly).

Health and Welfare Canada, in cooperation with five federal departments announced in April 1991, the Family Violence Initiatives of $138 million over 4 years.

The Canadian Council of Law Deans has established a Committee on gender bias with Don McRae as the Ottawa chair.

The Canadian Bar Association named Berthe Wilson, formerly of the Supreme Court of Canada, to head a 5 member task force on gender equality and women in the legal professions.

In August 1991, Mary Collins, Federal Minister responsible for the Status of Women, set up a Canadian Panel on Violence against Women. The Panel recently visited a number of communities in the N.W.T.

In the spring of 1991, Justice Canada announced a 3-phase Family Law Reform Strategy aimed at amending the *Divorce Act*.

In July 1990, the B.C. Provincial Court Judges established a committee to examine gender bias in provincial courts and to prepare materials for judicial education. The Superior Court Judges followed suit.

The Law Society of British Columbia created a Special Committee on Gender Bias with Ted Hughes as chair. Their report was released recently.

The Alberta chapter of the Canadian Bar Association has established an informal system whereby complaints from lawyers concerning judges can be referred anonymously to the Chief Judge.

The Saskatchewan chapter of the Canadian Bar Association, the local law society and the University of Saskatchewan law school has set up a joint committee on gender bias with a one year mandate.

The Manitoba Association of Women and the Law has published two studies on gender bias and the justice system. (see Bibliography)

In August 1991, the Domestic Violence Review into the Administration of Justice in Manitoba was published with a number of recommendations.

A pilot project Family Violence Court with specially trained judges and prosecutors was set up in Winnepeg in September 1990.

The Domestic Assault Tracking Project in Manitoba will monitor the movement of domestic assault cases through the justice system over a two year period ending in May 1993.

The Law Society of Manitoba has conducted workshops for federal and provincial judges on gender equality.

The Women's Advocacy Program, operating out of the Manitoba Community Services Department assists women whose partners have been charged by the Winnepeg police.

The Law Society of Upper Canada has a committee looking at gender equality issues.

The Ontario Women's Directorate has established a gender equality committee.

The Nova Scotia Barristers Society has set up a Committee on Gender Equality.

APPENDIX E

LAKE LOUISE DECLARATION

ON VIOLENCE AGAINST WOMEN

BY FEDERAL/PROVINCIAL/TERRITORIAL MINISTERS RESPONSIBLE FOR THE STATUS OF WOMEN

We, the Ministers Responsible for the Status of Women in Canada, are committed to achieving full equality for women in all aspects of life. As Canadians, we value the inherent worth and dignity of every individual and we expect all persons to treat one another with respect. Since violence and its threat are depriving many women of their ability to achieve equality, we declare that:

1. Violence against women is a crime and punishable under the law.
2. Women are entitled to live in a safe environment.
3. Offenders must be held accountable for their behavior.
4. The elimination of violence against women requires a response including prevention, public education, services and enforcement of the law.
5. Every individual, community and government in Canada must do everything possible to help the women, children and families affected by violence; we must all work together to achieve a society free from violence.

May 31, 1990
Lake Louise, Alberta