

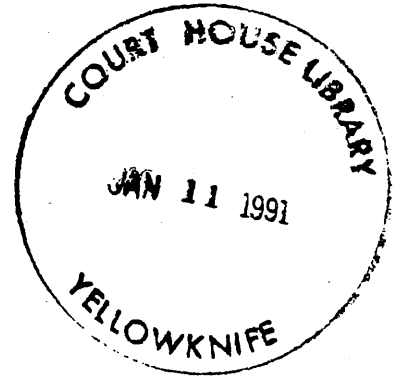
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"WILL WOMEN JUDGES REALLY MAKE A DIFFERENCE?"

The Fourth Annual Barbara Betcherman
Memorial Lecture

Osgoode Hall Law School
York University
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Madame Justice Bertha Wilson
Supreme Court of Canada

When I was appointed to the Supreme Court of Canada in the Spring of 1982 a great many women from all across the country telephoned, cabled or wrote to me rejoicing in my appointment. "Now", they said, "we are represented on Canada's highest court. This is the beginning of a new era for women." So why was I not rejoicing? Why did I not share the tremendous confidence of these women? The reasons form the theme of my lecture this evening.

First of all, of course, came the realization that no-one could live up to the expectations of my well-wishers. I had the sense of being doomed to failure, not because of any excess of humility on my part or any desire to shirk the responsibility of the office, but because I knew from hard experience that the law does not work that way. Change in the law comes slowly and incrementally; that is its nature. It responds to changes in society; it seldom initiates them. And while I was prepared - and, indeed, as a woman judge anxious - to respond to these changes, I wondered to what extent I would be constrained in my attempts to do so by the nature of judicial office itself.

In the literature which is required reading for every newly appointed judge it is repeatedly stated that judges must

be both independent and impartial, that these qualities are basic to the proper administration of justice and fundamental to the legitimacy of the judicial role. The judge must not approach his or her task with pre-conceived notions about law or policy, with personal prejudice against parties or issues, or with bias toward a particular outcome of a case. Socrates defined the essential qualities of a judge in the following manner. "Four things belong to a judge; to hear courteously; to answer wisely; to consider soberly and to decide impartially."¹

In Winters' *Handbook for Judges*², there is a section devoted to the essential qualities of a judge and these are defined as integrity and independence, impartiality, flexibility, creativity, responsibility and common sense. The late Justice Frankfurter was quoted as stating:

To practice the requisite detachment and to achieve sufficient objectivity no doubt demands of judges the habit of self-discipline and self-criticism, incertitude that one's own views are incontestable and alert tolerance toward views not shared. But these are precisely the presuppositions of our judicial process. They are precisely the qualities society has a right to expect from those entrusted with ... judicial power.³

In an article entitled "The Virtue of Impartiality" the late Judge Shientag of the Appellate Division of the New York

Supreme Court discusses the difficulty in attaining impartiality and states that the term implies an appreciation and understanding of the differing attitudes and viewpoints of those involved in a controversy.⁴ He quotes Lord MacMillan's description of the difficulty judges face in this regard:

The judicial oath of office imposes on the judge a lofty duty of impartiality. But impartiality is not easy of attainment. For a judge does not shed the attributes of common humanity when he assumes the ermine. The ordinary human mind is a mass of prepossessions inherited and acquired, often none the less dangerous because unrecognized by their possessor. Few minds are as neutral as a sheet of plate glass, and indeed a mind of that quality may actually fail in judicial efficiency, for the warmer tints of imagination and sympathy are needed to temper the cold light of reason if human justice is to be done.⁵

And later Lord MacMillan issues the following warning:

[The judge] must purge his mind not only of partiality to persons, but of partiality to arguments, a much more subtle matter, for every legal mind is apt to have an innate susceptibility to particular classes of arguments.⁶

Many have criticised as totally unreal the concept that judges are somehow super-human, neutral, above politics and unbiased, and are able to completely separate themselves from their

personal opinions and pre-dispositions when exercising their judicial function. For example, Lord Justice Scrutton doubted that complete impartiality was possible. He said:

This is rather difficult to attain in any system. I am not speaking of conscious impartiality; but the habits you are trained in, the people with whom you mix, lead to your having a certain class of ideas of such a nature that, when you have to deal with other ideas, you do not give as sound and accurate judgments as you would wish. This is one of the great difficulties at present with Labour. Labour says: "Where are your impartial Judges? They all move in the same circle as the employers, and they are all educated and nursed in the same ideas as the employers. How can a labour man or a trade unionist get impartial justice?" It is very difficult sometimes to be sure that you have put yourself into a thoroughly impartial position between two disputants, one of your own class and one not of your class. Even in matters outside trade-unionist cases ... it is sometimes difficult to be sure, hard as you have tried, that you have put yourself in a perfectly impartial position between the two litigants.

In his text on *The Politics of the Judiciary*⁸, Professor Griffith caused a furor in legal and judicial circles in the United Kingdom when he questioned whether the English judiciary were capable of impartiality. He stated that for a judge to be completely impartial he or she would have to be like a political, economic and social eunuch and have no interests in the world outside the court. Because this is impossible, Griffith concludes that

impartiality is an ideal incapable of realization.⁹ He says of the English judiciary:

These judges have by their education and training and the pursuit of their profession as barristers acquired a strikingly homogeneous collection of attitudes, beliefs, and principles which to them represents the public interest.¹⁰

The public interest, in other words, is perceived from the viewpoint of their own class. Chief Justice Nemetz has suggested that the views of Professor Griffith may have some validity in Canada too, more particularly, Professor Griffith's view that judicial attitudes towards political and social issues reflect the lack of a proper understanding of the views of labour unions, minorities and the under-privileged.¹¹

Judge Rosalie Abella, Chair of the Ontario Law Reform Commission, also doubts that judicial impartiality is a realistic requirement. She emphasizes in her article "The Dynamic Nature of Equality" that "every decision-maker who walks into a court room to hear a case is armed not only with the relevant legal texts but with a set of values, experiences and assumptions that are thoroughly embedded."¹²

Judge Shientag refers to the fact that many judges believe that they have acted with the cold neutrality of an impartial judge when in fact they have completely failed to examine their prejudices and biases. He points out that the partiality and prejudice with which we are concerned is not overt, not something tangible on which the judge can put his or her finger. Yet many judges by failing to appreciate this are lulled into a false sense of security.¹³ Judge Sheintag emphasises that progress will only be made when judges recognise this condition as part of the weakness of human nature and then "[h]aving admitted the liability to prejudice, unconscious for the most part, subtle and nebulous at times, the next step is to determine what the judge, with his trained mind, can do to neutralize the incessant play of these obscure yet potent influences."¹⁴ Judge Sheintag concludes that "the judge who realizes, before listening to a case, that all men have a natural bias of mind and that thought is apt to be colored by predilection, is more likely to make a conscientious effort at impartiality and dispassionateness than one who believes that his elevation to the bench makes him at once the dehumanized instrument of infallible logical truth."¹⁵

But what, you may be asking, has all this got to do with my subject: "Will women judges really make a difference?" Well, I think it has a great deal to do with it and whether you agree with me or not will probably depend on your perception of the

degree to which the existing law reflects the judicial neutrality or impartiality we have been discussing. If the existing law can be viewed as the product of judicial neutrality or impartiality, even although the judiciary has been very substantially male, then you may conclude that the advent of increased numbers of women judges should make no difference, assuming, that is, that these women judges will bring to bear the same neutrality and impartiality. However, if you conclude that the existing law, in some areas at least, cannot be viewed as the product of judicial neutrality, then your answer may be very different.

Two law professors at New York University, Professor John Johnston and Professor Charles Knapp, have concluded, as a result of their studies of judicial attitudes reflected in the decisions of judges in the United States, that United States judges have succeeded in their conscious efforts to free themselves from habits of stereotypical thought with regard to discrimination based on colour.¹⁶ However, they were unable to reach a similar conclusion with respect to discrimination based on sex and found that American judges had failed to bring to sex discrimination the judicial virtues of detachment, reflection and critical analysis which had served them so well with respect to other areas of discrimination. They state:

"Sexism" - the making of unjustified (or at least unsupported) assumptions about individual capabilities, interests, goals and social roles solely on the basis of sex differences - is as easily discernable in contemporary judicial opinions as racism ever was.¹⁷

Professor Norma Wikler, a sociologist at the University of California, has reviewed a number of other studies of judicial attitudes by legal researchers and social scientists and states that these confirm that male judges tend to adhere to traditional values and beliefs about the "natures" of men and women and their proper roles in society. They have found overwhelming evidence that gender-based myths, biases and stereotypes are deeply embedded in the attitudes of many male judges as well as in the law itself. They have concluded that particularly in areas of tort law, criminal law and family law, gender difference has been a significant factor in judicial decision-making. Many have concluded that sexism is the unarticulated underlying premise of many judgments in these areas and that this is not really surprising having regard to the nature of the society in which the judges themselves have been socialized.¹⁸

A number of strategies have been tried in the United States for the elimination of gender bias from the courts - legislative reform, enhanced legal representation of women litigants, increased numbers of women lawyers and judges. These measures have been accompanied by an intensive educational program aimed at

judges right across the country. Women judges and women lawyers in the United States played a very active role in the creation of this program. They were able to persuade substantial numbers of their male peers that gender bias, like all other forms of bias they had worked so hard to eradicate, violated the core principle of judicial impartiality and neutrality and posed an increasing threat in the seventies and eighties to the maintenance of public confidence in the judiciary.

As might be anticipated, a direct frontal attack on gender bias in the courts and especially the institution of an educational program for judges on this subject, was highly controversial and would probably have died on the vine but for the support of a substantial number of the country's leading male judges and educators who recognized the profound changes that were taking place in the society including a major redefinition of the roles of men and women.

Professor Wikler has been one of the moving forces behind the United States program to sensitize judges to the problem of gender bias. She reports some modest indicators of success of the program, although she acknowledges that it is too early to assess the long term effects. She reports that requests for speakers and material generated from courses and workshops indicate

a growing interest as does also the positive evaluation by judges themselves of the courses presented. Even more gratifying, attorneys practicing in States where the program has been actively promoted report a noticeable increase in judicial sensitivity to gender bias. Program materials have been cited in the courts and quoted in the judgments. Judicial Conduct Commissions are disciplining judges for gender biased behaviour such as sexist remarks to women lawyers and litigants and inappropriate comments in rape cases. Professor Wikler concludes that one very important goal has been achieved: gender bias is now a subject which judges and judicial educators think and care about.¹⁹

Another development in the United States has been the establishment of judicially appointed Task Forces to investigate the extent to which gender bias exists in the judiciary. The first of these Task Forces was created in New Jersey in 1982 and, as stated by Chief Justice Wilentz, was mandated to "investigate the extent to which gender bias exists in the New Jersey judicial branch, and to develop an educational program to eliminate any such bias".²⁰ Since 1982 over twenty other States have created Task Forces. Lynn Hecht Schafran, in her article "The Success of the American Program", reports that the Task Forces have significantly enhanced judicial education programs and have created a level of public awareness that generates its own pressures for reform.²¹

Schafran identifies four reasons why a judicially appointed Task Force is important as opposed to other groups outside the court system focussing on particular concerns. The first is that a gender bias Task Force is able to look at a broad range of issues and demonstrate a pattern of gender bias that manifests itself throughout the judicial system. The second reason is credibility. She explains this critical reason in the following manner:

When a coalition of rape crisis counsellors asserts that rape victims are ill treated in court, or a women's bar association claims that women attorneys are denied a fair share of appointments to challenging and lucrative civil and criminal cases, these charges are heard as the claims of special interest groups. When a blue ribbon panel appointed by a state's chief justice makes these same charges, people listen. There was little in what the New Jersey and New York Task Forces reported that numerous women's rights organizations and feminist legal commentators have not been saying for years, but the task force reports twice made the front page of the New York Times.²²

The third reason relates to the administration of the Task Force. The Chief Justice of the State is in a position to authorize funds, compel co-operation, endorse and propose reforms and ensure their implementation, and support judicial education on the subject. A final reason in favour of the Task Force route to reform is that such a task force brings together judges, lawyers, law professors, and community activists to study an issue which many of

them do not initially appreciate is an issue at all. Schafran reports that Task Force members from New Jersey and New York "who start out with no knowledge of gender bias in the courts, or even a conviction that the idea is nonsense, emerge from the data collection process convinced that the problem is real and has deeply serious implications for the administration of justice."²³

So, where do we stand in Canada on this matter?

Well, as you might expect, feminist scholars in Canada have over the past two decades produced a vast quantity of literature on the subject, some of it, in my view, very insightful, very balanced and very useful, and some of it very radical, quite provocative and probably less useful as a result. But all of it, it seems to me, is premised, at least as far as judicial decision-making is concerned, on two basic propositions, one that women view the world and what goes on in it from a different perspective from men, and two that women judges, by bringing to bear that perspective on the cases on which they sit, can play a major role in introducing judicial neutrality and impartiality into the justice system:

Let me say right away from my own experience as a judge of fourteen years' standing, working closely with my male colleagues on the bench, that in my view there are probably whole areas of the law on which there is no uniquely feminine perspective.

This is not to say that the development of the law in these areas has not been influenced by the fact that the lawyers and the judges have all been men. But rather that the principles and the underlying premises are so firmly entrenched and, in my opinion, so fundamentally sound that no good would be achieved by attempting to re-invent the wheel, even if the revised version did have a few more spokes in it. I have in mind areas such as the law of contract, the law of real property and the law applicable to corporations. In some other areas of the law, however, I think that a distinctly male perspective is clearly discernable and has resulted in legal principles that are not fundamentally sound and should be revisited as and when the opportunity presents itself. Canadian feminist scholarship has, in my view, done an excellent job of identifying those areas and making suggestions for reform. Some aspects of the criminal law in particular cry out for change since they are based on presuppositions about the nature of women and women's sexuality that in this day and age are little short of ludicrous.

But how do we handle the problem that women judges, just as much as their male counterparts, are subject to the duty of impartiality? As we said at the outset, judges must not approach their task with pre-conceived notions about law and policy. They must approach it with detachment and, as Lord MacMillan said, purge their minds "not only of partiality to persons but of partiality

to arguments."²⁴ Does this then foreclose any kind of "judicial affirmative action" to counteract the influence of the dominant male perspective of the past and establish judicial neutrality through a countervailing female perspective? Is Karen Selick, writing recently in the *Lawyers Weekly*, correct when she argues that offsetting male bias with female bias would only be compounding the injustice?²⁵ Does the nature of the judicial process itself present an insuperable hurdle so that the legislatures rather than the courts must be looked to for any significant legal change?

I think in part this may be so. Certainly, the legislature is the more effective instrument for rapid or radical change. But I see no reason why the judiciary cannot exercise some modest degree of creativity in areas where modern insights and life's experience have indicated that the law has gone awry. However, and I think this is extremely important, it will be a Pyrrhic victory for women and for the justice system as a whole if changes in the law come only through the efforts of women lawyers and women judges. The Americans were smart to realize that courses and workshops on gender bias for judges male and female are an essential follow-up to scholarly research and learned writing. In Canada we are just beginning to touch the fringes.

The first national, interdisciplinary conference on the relationship between judicial neutrality and gender equality was held in Banff, Alberta, in May of 1986. At the conference judges, academics, practicing lawyers and experts in anthropology, political science, sociology and social welfare examined judicial behaviour in equality related matters. The judicial acceptance of traditional stereotypes concerning women was noted as well as its impact in Canada on important areas of constitutional equality litigation, family law, criminal law, tort law and human rights.²⁶

Mr. Justice Rothman of the Quebec Court of Appeal, one of the speakers at the conference, endorsed the approach adopted in the United States to counteract gender bias through nation-wide educational programs for judges and the creation of judicial task forces. In his perception, women face the same kind of discrimination in Canada as they do in the United States and we should be working to change the old attitudes now. He suggested that conferences and seminars for newly appointed judges would be a good place to start but, in addition, courses on gender bias should be part of the continuing education programs for judges at all stages of their careers. Justice Rothman added that it is not, however, going to be enough to sensitize judges to equality issues if lawyers are not sensitized to them as well!²⁷

The Canadian Judicial Council and the Canadian Judicial Centre have both recognized the need for judicial education in this area and will include gender issues in their summer seminars for judges this year. I understand that the Centre hopes to subsequently present the program in a number of locations across the country and the course materials will be available to all Canadian judges. I heartily endorse this initiative. It is, in my view, a significant first step towards the achievement of true judicial neutrality. But it is only a first step and there is a long way to go.

Coming back then to the question whether the appointment of more women judges will make a difference. Because the entry of women into the judiciary is so recent, few studies have been done on the subject. Current statistics, however, show that just over nine percent of federally appointed judges are women²⁸ and it is reasonable to assume that more and more women will be appointed to the Bench as more and more women become licensed to practice law. Will this growing number of women judges by itself make a difference?

The expectation is that it will; that the mere presence of women on the bench will make a difference. In an article entitled "The Gender of Judges" Suzanna Sherry, an Associate Law Professor at the University of Minnesota, suggests that the mere

fact that women are judges serves an educative function and helps to shatter stereotypes about the role of women in society that are held by male judges and lawyers as well as by litigants, jurors and witnesses.²⁹

Judge Gladys Kessler, former President of the National Association of Women Judges in the United States, defends the search for competent women appointees to the bench. She says:

But the ultimate justification for deliberately seeking judges of both sexes and all colors and backgrounds is to keep the public's trust. The public must perceive its judges as fair, impartial and representative of the diversity of those who are being judged.³⁰

Justice Wald has expressed similar sentiments. She believes that women judges are indispensable to the public's confidence in the ability of the courts to respond to the legal problems of all classes of citizens.³¹

Diane Martin, a criminal lawyer writing in the *Lawyers Weekly*, sees another way in which the presence of women on the bench is helpful and constructive. It is easier, she says, for women lawyers to appear as counsel before a woman judge. She says the "difference is that you are "normal" -- you and the judge have certain shared experiences and a shared reality that removes, to a

certain extent, the need to "translate" your submissions into "man talk" or a context that a male judge will understand".³² The woman judge does not see you as "out of place" or having "something to prove by appearing in a courtroom arguing a case before her."³³

For women counsel, appearing in front of a woman judge also decreases the risk of sexist comments and inappropriate efforts at humour. The courtroom treatment of women litigants, witnesses and lawyers was examined by the New Jersey and New York task forces. The New York Task Force found that "[w]omen uniquely, disproportionately, and with unacceptable frequency must endure a climate of condescension, indifference, and hostility".³⁴ The New Jersey Task Force found strong evidence that women are often treated differently in courtrooms, in judges' chambers and at professional gatherings.³⁵ As Justice Rothman pointed out at the Banff conference, there is no excuse for a judge allowing himself or anyone else in his courtroom to make unprofessional or inappropriate references to gender. He saw as a possible solution the appointment of more women judges and more courteous and sensitive male judges!³⁶

Some feminist writers are persuaded that the appointment of more women judges will have an impact on the process of judicial decision-making itself and on the development of

the substantive law. As I mentioned earlier, this flows from the belief that women view the world and what goes on in it from a different perspective from men. Some define the difference in perspective solely in terms that women do not accept male perceptions and interpretations of events as the norm or as objective reality. Carol Gilligan, a Professor of Education at Harvard University, sees the difference as going much deeper than that. In her view women think differently from men, particularly in responding to moral dilemmas. They have, she says, different ways of thinking about themselves and their relationships to others.³⁷

In her book, *In a Different Voice*³⁸, Gilligan analyses data she collected in the form of responses from male and female participants in a number of different studies. These responses, she submits, support her central thesis that women see themselves as essentially connected to others and as members of a community while men see themselves as essentially autonomous and independent of others. Gilligan makes no claim about the origins of the differences she describes. She does, however, use the psychoanalytical work of Dr. Nancy Chodorow as a starting point.³⁹ Chodorow postulates that gender differences arise from the fact that women do the mothering of children. Because the gender identity of male children is not the same as their mothers, they tend to distance and separate themselves from their mothers' female characteristics in

order to develop their masculinity. Female children, on the other hand, define themselves through attachment to their mothers.⁴⁰ Masculinity is therefore, according to Gilligan, defined through separation and individualism while femininity is defined through attachment and the formation of relationships. The gender identity of the male, she submits, is threatened by relationships while the gender identity of the female is threatened by separation.⁴¹

Gilligan's work on conceptions of morality among adults suggests that women's ethical sense is significantly different from men's. Men see moral problems as arising from competing rights; the adversarial process comes easily to them. Women see moral problems as arising from competing obligations, the one to the other, because the important thing is to preserve relationships, to develop an ethic of caring. The goal, according to women's ethical sense, is not seen in terms of winning or losing but rather in terms of achieving an optimum outcome for all individuals involved in the moral dilemma.⁴² It is not difficult to see how this contrast in thinking might form the basis of different perceptions of justice.

I think there is merit in Gilligan's analysis. I think it may in part explain the traditional reluctance of courts to get too deeply into the circumstances of a case, their anxiety to reduce the context of the dispute to its bare bones through a

complex system of exclusionary evidentiary rules. This is, it seems to me, one of the characteristic features of the adversarial process. We are all familiar with the witness on cross-examination who wants to explain his or her answer, who feels that a simple yes or no is not an adequate response, and who is frustrated and angry at being cut off with a half truth. It is so much easier to come up with a black and white answer if you are unencumbered by a broader context which might prompt you, in Lord MacMillan's words, to temper the cold light of reason with the warmer tints of imagination and sympathy.⁴³

It may explain also the hostility of some male judges to permitting intervenors in human rights cases. The main purpose of having intervenors is to broaden the context of the dispute, to show the issue in a larger perspective or as impacting on other groups not directly involved in the litigation at all. But it certainly does complicate the issues to have them presented in polycentric terms.

Professor Patricia Cain of the University of Texas in an article entitled "Good and Bad Bias: A Comment on Feminist Theory and Judging" says:

What we want, it seems to me, are lawyers who can tell their client's story, lawyers who can help judges to see the parties as human beings, and who can help remove the separation between judge and litigant. And, then, what we want from our judges is a special ability to listen with connection before engaging in the separation that accompanies judgment.⁴⁴

Obviously, this is not an easy role for the judge - to enter into the skin of the litigant and make his or her experience part of your experience and only when you have done that, to judge. But I think we have to do it; or at least make an earnest attempt to do it. Whether the criticism of the justice system comes to us through Royal Commissions, through the media or just through our own personal friends, we cannot escape the conclusion that in some respects our existing system of justice has been found wanting. And as Mr. Justice Rothman says - the time to do something about it is now.

One of the important conclusions emerging from the Council of Europe's Seminar on Equality between Men and Women held in Strasbourg last November is that the universalist doctrine of Human Rights must include a realistic concept of masculine and feminine humanity regarded as a whole, that human kind is dual and must be represented in its dual form if the trap of an asexual abstraction in which "human being" is always declined in the masculine is to be avoided.⁴⁵ If women lawyers and women judges

through their differing perspectives on life can bring a new humanity to bear on the decision-making process, perhaps they will make a difference. Perhaps they will succeed in infusing the law with an understanding of what it means to be fully human.

Endnotes

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27. M. Rothman, "Prospects for Change in Canada: Education for Judges and Lawyers", in Martin and Mahoney, *supra*, note 12, pp. 421-427.
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32. D. Martin, "Have Women Judges Really Made a Difference?", (1986) 6 *The Lawyers Weekly*, No. 14, 5 at p. 5.
33. *supra*, note 32 at p. 5.
34. *supra*, note 20 at p. 419.

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36. *supra*, note 27 at p. 427.
37. See C. Gilligan, *In a Different Voice - Psychological Theory and Women's Development*, (1982), Harvard University Press.
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39. *supra*, note 37 at p. 8.
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42. *supra*, note 37, see for example, pp. 16-18, 24-32 and 163-165.
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Speaker: The Hon. Richard Nerysoo, M.L.A.

Question O336-91(1): Effective Date Of Federal Gun Control Legislation

MR. PUDLUK: (Translation) Thank you, Mr. Speaker. My question is directed to the Minister of Justice. The federal government is trying to initiate regulations with regard to the use of guns or rifles, where they can only use five bullets at one time in a magazine. Have you received any indication as to when these regulations will come into effect? Thank you.

MR. SPEAKER: Thank you. The honourable Member for Yellowknife North.

Return To Question O336-91(1): Effective Date Of Federal Gun Control Legislation

HON. MICHAEL BALLANTYNE: Thank you, Mr. Speaker. As Members know, that issue has now been with a committee of the House of Commons for some time. The particular piece of legislation has caused a certain amount of controversy on both sides of the issue. There are those people who say that it is too strong, there are those who say that the legislation is too weak. I understand that the number of bullets that a magazine can hold is one of the issues that is being discussed at the committee level. There has not been a final decision yet, to my knowledge. Thank you, Mr. Speaker.

MR. SPEAKER: Thank you. Oral questions. The honourable Member for Deh Cho.

Question O337-91(1): Location Of Native Court Workers

MR. GARGAN: Thank you, Mr. Speaker. I would like to direct my question to the Minister of Justice. Mr. Minister, I would like to thank you for your response with regard to court workers. However, I would like to ask the Minister why most of the court workers that are working for the territorial government are located where lawyers are located. I would like to ask the Minister the reasoning for that.

MR. SPEAKER: I have some difficulty with the question because the determination of court workers is really not a matter that is within the responsibility of the Minister of Justice. I believe he determines the financing, but he does not determine the location of the native court workers. That is a matter for another board to determine. The honourable Member for Yellowknife North.

HON. MICHAEL BALLANTYNE: Thank you, Mr. Speaker. I have some difficulty with the question also. I can assure the Member, though, it is not a requirement that court workers live in communities where there are lawyers. What I can do is that I can get for the Member information as to why court workers are in one community or another community. I will have to take the question as notice. Thank you.

MR. SPEAKER: Thank you. Oral questions. The honourable Member for Tu Nede.

Question O338-91(1): Status Of Study On Management Of Great Slave Lake

MR. MORIN: Thank you, Mr. Speaker. My question will be for the Minister of Economic Development and Tourism. Mr. Minister, as you are aware, I sit on the Great Slave Lake advisory committee to represent the Dene Nation. People in the communities, especially Snowdrift, have tried to get, for the past three years, a study done on the East Arm management of the Great Slave Lake. Your department, as well as the Department of Renewable Resources and the federal Department of Fisheries and Oceans, are all responsible for working on that study. We have not had much luck to get it passed into the community consultation process.

I am wondering if you could use your influence as a Minister, a shaker and a mover, to get this thing going because the community of Snowdrift still suffers from not being able to benefit from economic development.

MR. SPEAKER: Thank you. The honourable Member for Kivallivik.

HON. GORDON WRAY: Thank you, Mr. Speaker. I will take a look at the situation and where it stands today and I will see what can be done. Probably what I will do is that I will report back through a return. I guess I will take it half as notice and report to the Member on just where it is at and what has to be done. Thank you.

MR. SPEAKER: Thank you. Just on a matter of the rules, there is no half point, you cannot take half notices in the House. Is the honourable Member taking the question as notice?

HON. GORDON WRAY: Yes, Mr. Speaker.

MR. SPEAKER: Thank you very much. Oral questions. The honourable Member for Natilikmiot.

Question O339-91(1): Hiring Process For Economic Development Officer, Spence Bay

MR. NINGARK: Thank you, Mr. Speaker. My question is for the Minister of Economic Development and Tourism. Mr. Minister, it is my understanding that the economic development officer position is vacant in Spence Bay. If the position is vacant, I wonder if the local council could take part in the hiring process of that position. Thank you.

MR. SPEAKER: Thank you. The honourable Member for Kivallivik.

Return To Question O339-91(1): Hiring Process For Economic Development Officer, Spence Bay

HON. GORDON WRAY: Certainly, Mr. Speaker, we have a general competition out right now for EDOs for unspecified locations. We are trying to build a file of names, but certainly we could involve a representative of the council in the hiring of the Spence Bay officer.

MR. SPEAKER: Thank you. Oral questions. The honourable Member for Rae-Lac la Martre.

Question O340-91(1): Allocation Of Person Years For Office/Warehouse Complex, Lac La Martre

MR. ZOE: Thank you, Mr. Speaker. Again, my question will be directed to the Minister responsible for Renewable Resources. Mr. Speaker, the Minister indicated earlier on that the construction of the office/warehouse complex in Lac la Martre would be completed in early 1992. Could the Minister please tell me how many person years will be allocated to Lac la Martre to work out of and run this complex?

MR. SPEAKER: The honourable Member for Amittuq.

Return To Question O340-91(1): Allocation Of Person Years For Office/Warehouse Complex, Lac La Martre

HON. TITUS ALLOOLOO: Thank you, Mr. Speaker. We have no existing person years or where we are not anticipating increasing person years within the department. But what we have proposed so far is that we will make a person year available to fill the position that will be assigned to work in that particular community. We are working at this moment to find that PY. Thank you.

Question O333-91(1): Opportunities For Businesses To Participate In Expo '92

MR. LEWIS: Thank you, Mr. Speaker. My question is for the Member for Kivallivik. I would like to ask the Minister, since there are many companies in the NWT that are very experienced in the hotel and catering business - I am thinking of the EVAZ group in the Keewatin, I am thinking of the co-operative movement throughout the NWT that has been involved in catering and hotels, country foods, the selling of arts and crafts, going all the way back to 1958. In light of the fact that we really want to encourage the business community, I would like to ask the Member why is it that the business community was not asked to submit proposals for the participation of the NWT at Expo in Seville in 1992?

MR. SPEAKER: Honourable Member for Kivallivik.

Return To Question O333-91(1): Opportunities For Businesses To Participate In Expo '92

HON. GORDON WRAY: Thank you. Simply because the Department of External Affairs asked our government to run it and I did not actually go back to them and ask if we could privatize it. But I suspect that the answer would have been, "Well if you want to get private companies to run it for you, then we, the Government of Canada, have a lot of private companies we can give the contract to." I guess that is the only answer I have.

MR. SPEAKER: Oral questions. Honourable Member for Yellowknife Centre, supplementary.

Supplementary To Question O333-91(1): Opportunities For Businesses To Participate In Expo '92

MR. LEWIS: Since this is a very dynamic Minister, Mr. Speaker, and since he really wants to encourage business opportunities in the NWT, will he then consider asking for proposals from the various business communities in the NWT to run this pavilion on a businesslike basis in 1992, if in fact we approve it and get the money to do it?

MR. SPEAKER: Honourable Member for Kivallivik.

Further Return To Question O333-91(1): Opportunities For Businesses To Participate In Expo '92

HON. GORDON WRAY: No, Mr. Speaker, I do not have time.

MR. SPEAKER: Thank you. Oral questions. Honourable Member for Baffin South.

Question O334-91(1): Petroleum Distribution Contract, Lake Harbour

MR. ARLOOKTOO: (Translation) Thank you, Mr. Speaker. My question is directed to the Minister of Energy, Mines and Petroleum Resources. In Lake Harbour the petroleum distribution contract is handled by the Lake Harbour co-op and they have had the contract now for 10 years. This contract is renewed every three years and I believe that in June 1991 the contract is going to expire. My question is, will the co-op be awarded the same contract if they bid on it. We fully believe that co-operatives in the communities are a major business and I wonder if they will be awarded the same contract. Thank you.

MR. SPEAKER: The honourable Member for Inuvik.

Return To Question O334-91(1): Petroleum Distribution Contract, Lake Harbour

HON. TOM BUTTERS: Mr. Speaker, the contracts for petroleum distribution will be up in many communities this year. The department, I believe at the end of this month or in the first week of April, will be taking a proposal call around to all those communities in which the service is provided by a contractor, explaining what is required and requesting proposals from the interested groups and parties. I believe that the proposal will require a longer period of time of service and it will give the successful party an opportunity to not only pay for their equipment during that time but also house it as well.

MR. SPEAKER: Oral questions. The honourable Member for Baffin South, supplementary.

Supplementary To Question O334-91(1): Petroleum Distribution Contract, Lake Harbour

MR. ARLOOKTOO: (Translation) Thank you, Mr. Speaker, a supplementary to the question. I have a concern with regard to Lake Harbour due to the expiration of the contract and if it will be advertised, I would not want to see it contracted by somebody who is outside the community. That is my concern and that is why I raised that question. Thank you.

MR. SPEAKER: Thank you. The honourable Member for Inuvik.

Further Return To Question O334-91(1): Petroleum Distribution Contract, Lake Harbour

HON. TOM BUTTERS: No, the department and the government shares the Member's concern. I am advised that officials of our department will be going into the communities and sitting down with the people in the communities to indicate what is being expected of them, so that they will be totally familiar with what will be required in making proposals. Yes, they will know.

MR. SPEAKER: Thank you. Oral questions. The honourable Member for Hudson Bay.

Question O335-91(1): Protection Of Legal Rights Of NWT Citizens

MR. CROW: Thank you, Mr. Speaker. I would like to direct my question to the Minister of Justice. Mr. Speaker, will the Minister assure this House that the Government of the Northwest Territories is prepared to use territorial statutes to protect the legal rights of its citizens?

MR. SPEAKER: Thank you. The honourable Member for Yellowknife North.

Return To Question O335-91(1): Protection Of Legal Rights Of NWT Citizens

HON. MICHAEL BALLANTYNE: Thank you, Mr. Speaker. I have some difficulty answering that question because there is a certain amount of supposition. I would have to know exactly what rights, and I would have to know what statutes the honourable Member is referring to before I could answer that question.

MR. SPEAKER: Oral questions. The honourable Member for High Arctic.

MR. SPEAKER: Point of order. The honourable Member for Rae-Lac la Martre.

MR. ZOE: Or point of privilege. Mr. Speaker, I had my hand up and you did not recognize me for my supplementary.

MR. SPEAKER: The honourable Member for Rae-Lac la Martre, I called oral questions, I looked at you and your hand was not up, so I made the assumption that you were not going to ask a supplementary. Oral questions. The honourable Member for Baffin Central.

Question O341-91(1): Technician For Radio Station In Pangnirtung

MR. KILABUK: (Translation) Thank you, Mr. Speaker. I have a question directed to the Member for Amittuq in regard to the radio station in our community in that we cannot get anybody in that community to repair it. You have said that the CBC staff cannot assist. What is the position of the communications department? Maybe you can help locate somebody independent from Iqaluit who would be able to fix the radio station because I am quite positive there is somebody and I would like to be able to communicate with my community through the radio. Can you check into this? Thank you.

MR. SPEAKER: Thank you. The honourable Member for Amittuq.

Return To Question O341-91(1): Technician For Radio Station In Pangnirtung

HON. TITUS ALLOOLOO: (Translation) Thank you, Mr. Speaker. We have been advised after the fire in the radio station building that CBC was able to assist in setting up and moving the equipment. When the community moved the equipment back to the old place, they did not contact CBC, therefore CBC did not make a technician available. We have been advised today that there is only one CBC technician in Iqaluit and he has a heavy workload and the other technician is on holidays. They are presently trying to get somebody from Inuvik to go to Iqaluit and if they do they will then be able to send somebody within two weeks to Pangnirtung. I hope this is satisfactory as this is the case right now. Thank you.

MR. SPEAKER: Thank you. Oral questions. The honourable Member for Baffin Central, supplementary.

Supplementary To Question O341-91(1): Technician For Radio Station In Pangnirtung

MR. KILABUK: (Translation) Can you not find anybody independent from Iqaluit who is not a technician who does not necessarily have to be from CBC? Can you check into this?

MR. SPEAKER: Thank you. The honourable Member for Amittuq.

Further Return To Question O341-91(1): Technician For Radio Station In Pangnirtung

HON. TITUS ALLOOLOO: (Translation) Thank you, Mr. Speaker. I will ask the CBC to see if they can locate a technician because it is owned by the CBC so it has to be repaired by CBC staff. Thank you.

MR. SPEAKER: Thank you. Oral questions. The honourable Member for Aivilik.

Question O342-91(1): Inuit Artifacts In Churchill Museum

MR. ERNERK: (Translation) Thank you, Mr. Speaker. This question is directed to the Minister for Culture and Communications. I think the Minister is aware that in the museum in Churchill, there are a lot of items to be seen. I think most of them are from Inuit artifacts. How much have you been working in that museum? What did you do to get the artifacts returned to the communities? Thank you, Mr. Speaker.

MR. SPEAKER: Thank you. The honourable Member for Amittuq.

HON. TITUS ALLOOLOO: (Translation) Thank you, Mr. Speaker. About two years ago the Member asked me this question and my department has been doing some work on it, but I do not have all the information at this time. I will get back to you later on. Thank you, Mr. Speaker.

MR. SPEAKER: Thank you. Is the honourable Member taking the question as notice?

HON. TITUS ALLOOLOO: Yes, Mr. Speaker.

MR. SPEAKER: Thank you. The honourable Member is taking the question as notice. Oral questions. The honourable Member for Deh Cho.

Question O343-91(1): Review Of Scientists Act

MR. GARGAN: Thank you, Mr. Speaker. I would like to direct my question to the Minister of Renewable Resources. With regard to scientific studies, we presently have a Scientists Act that has not been reviewed or amended since 1985. As far as scientific studies go, the definition could vary from study to survey, to base line review, to research. We really do not have any teeth with regard to the act itself. You cannot apply it in law without it being challenged. I would like to ask the Minister whether or not there is any anticipation of changing this act, which is really outdated?

MR. SPEAKER: Thank you. The honourable Member for Iqaluit.

Return To Question O343-91(1): Review Of Scientists Act

HON. DENNIS PATTERSON: Thank you, Mr. Speaker. Mr. Speaker, the Scientists Act falls under my responsibilities as Minister responsible for the Science Institute of the Northwest Territories. I can tell the honourable Member that I am aware that the act is a few years old and further that the Science Institute has just, within the last two weeks, met to review the provisions of that act to see whether they would recommend changes, to see whether it was still relevant and I am awaiting the results of that review at this moment. They did a thorough review, Mr. Speaker, and when I get the results of their thorough review I will inform Members of the House about the general gist of the recommendations. Thank you.

MR. SPEAKER: Honourable Member for Deh Cho.

Supplementary To Question O343-91(1): Review Of Scientists Act

MR. GARGAN: Mr. Speaker, since we are still going on the basis of the old act, is it still the Commissioner who issues licences for scientific research as opposed to the Ministers?

MR. SPEAKER: Honourable Member for Iqaluit.

Further Return To Question O343-91(1): Review Of Scientists Act

HON. DENNIS PATTERSON: The short answer to that question is yes, but I would clarify to the Member that day-to-day work is done in the office of the Science Institute and there is an officer in the Science Institute who is responsible for handling, receiving and approving applications for scientific research.

MR. SPEAKER: Thank you. Oral questions. Honourable Member for Deh Cho.

Supplementary To Question O343-91(1): Review Of Scientists Act

MR. GARGAN: Mr. Speaker, I am not too sure I understand the Government Leader's response with regard to the issuing of licences. Has the Scientists Act been changed since 1985 to delegate the responsibility of issuing of a licence to an individual in the Science Institute now, as opposed to the Commissioner? I do not recall it ever being changed.

MR. SPEAKER: Honourable Member for Iqaluit.

Further Return To Question O343-91(1): Review Of Scientists Act

HON. DENNIS PATTERSON: Mr. Speaker, what I meant to say to the Member is yes, in fact the authority for issuing permits for scientific research under the Scientists Act comes through the Commissioner. However, Mr. Speaker, as an administrative matter, the day-to-day work of processing the applications and approving them has been delegated to an officer in the Science Institute. So it is under the authority of the Commissioner but the work is done by an official under delegated authority. Thank you.

MR. SPEAKER: Oral questions. Honourable Member for Rae-Lac la Martre.

Question O344-91(1): Person Year For Lac La Martre

MR. ZOE: My question is directed to the Minister of Renewable Resources. Mr. Speaker, the Minister indicated that he has not determined how he is going to man the facility in Lac la Martre. When will he decide how he will man that facility?

MR. SPEAKER: Honourable Member for Amittuq.

Return To Question O344-91(1): Person Year For Lac La Martre

HON. TITUS ALLOOLOO: Thank you, Mr. Speaker. My department is reviewing our existing PYs to determine what is possible to us in terms of allocating a person year to Lac la Martre. At this moment because of the restraint within our government, we will not be seeking increased PYs in our department, rather we will be looking in house to possibly assigning a PY from our existing number.

MR. SPEAKER: Honourable Member for Rae-Lac la Martre, supplementary.

Supplementary To Question O344-91(1): Person Year For Lac La Martre

MR. ZOE: Mr. Speaker, the Minister did not answer my question. I asked when will he decide how he is going to man that facility. My question is when, in what time period. All he indicated to me was the options that are available to the department. My question was when is he going to decide

the options that he is going to take?

MR. SPEAKER: Honourable Member for Amittuq.

Further Return To Question O344-91(1): Person Year For Lac La Martre

HON. TITUS ALLOOLOO: Mr. Speaker, the building will be constructed late this year or early next year to be completed and we have a bit of time to look into our department for an available person year. We will have a chance to look for a person year until the building is completed. Thank you.

MR. SPEAKER: Honourable Member for Rae-Lac la Martre.

Supplementary To Question O344-91(1): Person Year For Lac La Martre

MR. ZOE: Mr. Speaker, maybe I will rephrase my question for the Minister. I am trying to put it in layman's terms but he is not understanding my question. He indicated that he has a number of options he is reviewing. He will decide on one of those options. My question to him is: When is he going to decide what option he is going to take? One of the options he indicated that most likely would not occur would be to seek another PY and he is saying he is going to look internally. My question is: When are you going to decide what option you are going to take?

MR. SPEAKER: Thank you. Honourable Member for Amittuq.

Further Return To Question O344-91(1): Person Year For Lac La Martre

HON. TITUS ALLOOLOO: Thank you, Mr. Speaker. I do not know. If all of the PYs are filled within the department then we will not have a PY to allocate to Lac la Martre. If we can find a vacant PY then we might be able to move that position over to Lac la Martre. I do not know the answer of when we will be putting a person up there. Thank you.

MR. SPEAKER: Thank you. Oral questions. Honourable Member for Rae-Lac la Martre.

MR. ZOE: Supplementary, Mr. Speaker, but before I proceed with my supplementary, can I seek unanimous consent to extend question period.

MR. SPEAKER: Thank you. The honourable Member for Rae-Lac la Martre is seeking unanimous consent to extend question period. Are there any nays? There are no nays. Proceed.

Supplementary To Question O344-91(1): Person Year For Lac La Martre

MR. ZOE: Mr. Speaker, my final supplementary. I do not know which other way I can rephrase my question to the Minister. The Minister indicated he has a number of options that his department is considering and a decision will have to be made in regard to which option they go with. My question to the Minister was: When is that decision going to take place?

MR. SPEAKER: I believe the honourable Member has answered the question already. However if the honourable Member wants to continue answering the question. The honourable Member for Amittuq.