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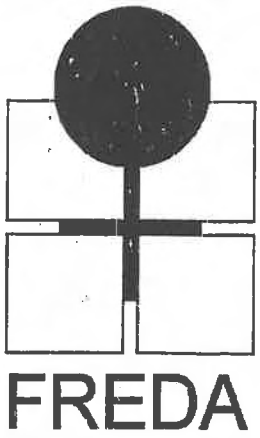

THE VIOLENCE AGAINST WOMEN IN RELATIONSHIPS POLICY:

A PRE- AND POST-POLICY EXAMINATION OF THE OUTCOMES OF SPOUSAL ASSAULT REPORTS IN PENTICTON, BRITISH COLUMBIA

by

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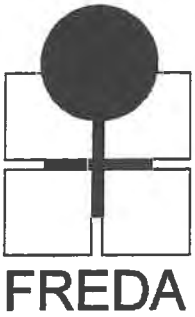

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ABSTRACT

The impetus for this project began with the author's experiences during front-line work with women who were victims of violence in intimate relationships. Communications with many of these women sparked questions concerning the efficacy and validity of the present justice system policies regarding mandatory arrest in reports of spousal assault. Paradoxes often arose between Victim Services' mandate to provide assistance to the victim, and the agency directives to adhere to the justice system's spousal assault policy guidelines. It was clear that in many cases, the policies appeared to be ineffectual at best, and at worst, more disruptive to the women than they had expected. On many occasions women found disappointment and regret from their experiences with these policies.

Part One of this project explores the debate surrounding mandatory arrest policies, questions the ideologies behind the policy's development and challenges the justifications claimed by the policy makers. It is the author's contention that these policies have been developed, encouraged and maintained based on invalid research claiming arrest is a deterrent. In addition, the lack of monitoring, public evaluation or research performed on these policies has allowed the justice system to bring further hardships on many women who have been exposed to the ramifications of such policies. The mandatory nature of the policy provides few, if any, options for those women who may find themselves in worse situations as a result of justice system intervention. Without adequate monitoring and research on the *impact* of such policies, new or existing policies intended to assist victims of violence in intimate relationships will be of little benefit to those who look to the justice system for help and protection.

In order to examine the level of impact these policies have had on incidents of spousal assault, a modest exploratory project was undertaken in the City of Penticton, British Columbia. Using the directives contained in the *Violence Against Women in Relationships Policy* (1993), a comparison of incident and charge outcomes was made between two sample years—the year prior to the implementation of the Policy (1992), and the year after it was established (1994). All spousal assault reports were followed for each year, from the time of reporting to the conclusion of the file. Using proportions and percentages, comparisons were made in a number of categories separated by agency. With the exception of a strong indication of harsher sentencing, it appears that the implementation of the *Violence Against Women in Relationships Policy* has had little impact on the overall outcomes of spousal assault incidents in Penticton.

CHAPTER ONE

INTRODUCTION

Violence and abuse within intimate relationships has been in existence for centuries. With the development of general attitudes of concern toward human rights, recognition has come, at a snail's pace, that this behaviour is unacceptable to society. Researchers from numerous disciplines have examined, and re-examined the phenomena of the "victim" and the "offender," resulting in a multitude of explanations for their behaviours and for the consequences of their behaviours. For the most part, society has developed a punitive approach to the issue and has categorized violent and abusive behaviour within intimate relationships as criminal. For example, Canada is recognized as the first country in the world to have developed and adopted nation-wide mandatory charging policies in wife assault cases.[1] This began in December 1983, when the Attorney General and the Solicitor General of Canada issued companion directives to police agencies and Crown Counsel offices, instructing them to "encourage rigorous investigation and prosecution of wife assault cases."[2] In association with these directives was suggestion that "the goal of deterrent sentencing should be pursued."[3]

More locally, and in growing recognition of the need for a coordinated response by the justice system, the British Columbia Ministry of Attorney General established the *Wife Assault Policy* in 1984. With a revision in 1986 and expansion in 1993, the *Violence Against Women in Relationships Policy (VAWIR)* included a wider definition of relationships, and reflected the reality that abuse within a relationship can apply to a varied range of criminal activity, from harassing phone calls to aggravated assault. The guidelines for this Policy also contained a commitment toward multi-agency coordination to address the complex, multi-stage issues regarding violence against women in relationships. Out of this commitment came the directive to assure that the victims of all reported spousal assaults received information and a referral to a victim services agency that would assist them through the court process and provide referrals to other community agencies. This mandate was reinforced with the recent 1996 revision of this Policy and with the proclamation of the *Victims of Crime Act (1996)*. In short, the main objectives of the *Violence Against Women in Relationships Policy* are: to implement mandatory arrest/charging; reduce the number of cases "stayed"[4] by Crown Counsel; issue harsher sentencing as a deterrent; and provide victim assistance services to minimize "secondary victimization" by the justice system.

There is much debate over what role should be taken, if any, by the justice system in responding to violence and abuse within intimate relationships. Arguments in favour of the Policy's directives claim they protect women who cannot protect themselves, and they are necessary in order to send deterrent messages to offenders and would-be offenders that violence in intimate relationships will no longer be hidden or condoned by society. Indeed, women's groups have claimed these policies to be empowering for women. Others, however, disagree with these claims stating the policies are anything but empowering for women and the mandatory nature of the policies are patriarchal in structure and merely represent an alternative form of control. In addition, many feel the policies are built on a false premise of deterrence, claiming the implementation of the directives has resulted in more hardship for many women in abusive relationships.

This report begins with an examination of the debate surrounding mandatory arrest policies and their associated objectives. The historical foundations for such policies are presented initially, with discussion on the patriarchal origins of the legal discourse in this area. An exploration of the mandatory charging debate follows, with a focus on the three main areas which form the policy's objectives. While very little research has been published examining the various aspects of these policies, this project is an attempt to add to that literature by including the results of a modest inquiry exploring the impact these directives have had on reports of spousal assault in the community of Penticton, British Columbia.

A HISTORICAL VIEW

Public policies, and the attitudes of those who both advocate for and implement them, are not static "inventions" or "discoveries"—they are subjective *creations;* products of innumerable personal, social, emotional, legal, and political factors that have interacted with and affected each other, forming a cultural history in the process of their development. Because of the historical underpinnings that impact on a policy's development, and in order to effectively interpret the existing issues and consequences, it is beneficial to examine the cultural-historical factors that have contributed to the development of the policy or policies in question. For example, present-day mandatory charging policies on the surface may appear to represent a culmination of efforts on the part of women's advocacy groups to gain a long-awaited public recognition of the seriousness of wife battery. They are touted to provide protection for battered women and a deterrence to those who batter. However, these policies have evolved from a long standing history of patriarchal ideologies that have permeated

political and legal discourse as well as the social systems and institutions they represent. Upon closer examination of the issues associated with the development and implementation of these polices, it is clear that still-held notions of patriarchal ideology are unwittingly (although some would argue "knowingly") maintained, often to the detriment of the very women the policy is designed to help. Consequently, these policies do not always protect, empower or deter.

LEGAL RESPONSES TO WIFE BATTERY

The issue of wife battery[5] has come to the forefront of public examination only in the last 20 years, however, as a phenomenon of human behaviour, it has existed for centuries cloaked in the secrecy of the private domain.[6] Within the realm of common law England, the ideology of marriage (which included the doctrines of marital unity, and chastisement) maintained that, once married, a woman became the "property" of her husband. Under this rubric, it was a man's duty to be responsible for his wife's behaviour, therefore providing him with the right to discipline her with physical force if necessary.[7] Until the nineteenth century, any discussion of abuses of this power was kept in the private sphere, usually between the family and their clerical counsel, with only the most serious cases entering the public legal domain for debate.[8] Once wife battery *did* enter legal discourse however, the debate took the form of discussing only the *extent* to which a man may discipline his wife,[9] while legal issues addressing the power to do so were not raised until many years later.

THE CANADIAN EXPERIENCE

Canada inherited the patriarchal beliefs endemic to the legal system in England, evidence of which can be found in the early Canadian legal responses to wife battery. The laws of marriage and divorce during the nineteenth century severely limited a woman's options should she find herself in an abusive situation.[10] As Carolyn Strange explains:

> *In concert with a wife's duty to obey was her duty of consortium, a combination of obligations which left women bereft of legal recourse, either to resist or to leave...the civil and the criminal law upheld the deeply patriarchal character of marriage, both by granting husbands enormous latitude in exercising their power, and by severely limiting married women's ability to extricate themselves from violent partners.*[11]

Gradually, women's groups and community activists, by forming, for example, the Temperance movement, began to condemn these practices offering moral dialogue on the propriety of domestic conduct based on white, middle-class ideals.[12] Although the Temperance movement was instrumental

in bringing the topic of wife battery to the public domain for discussion, the approach used was patriarchal in itself, by presenting the battered woman as a "victim" in need of "protection" by the laws and by the police.[13] In addition, the "temperance" arguments suggested that wife battery was not only an individual problem of morality (usually involving liquor) but also a problem of cultural morality as well. Frances Power Cobbe, an English temperance supporter, found strong public support for these issues through arguments that were ethnocentric and biased toward class and race. Consequently, the dynamics of gender and power within the relationship remained unquestioned:

> *Public debates in which Cobbe participated were more critiques of the working class and of various ethnic and racial minorities than they were critiques of inter-gender violence.... Cobbe declared in 1878 that the vast majority of wife beaters were the urban poor and the Irish who brutalized women in neighbourhoods where "facilities for drink and vice abound[ed]."*[14]

Evidence that these patriarchal and hierarchical attitudes were maintained in the legal systems *of the day* can be found by examining the trial cases of battered women such as, Fannie Coppen,[15] Esther Hawley Ham,[16] and Angelina Napolitano.[17] These three women of early Canada found that no legal rights were in place to benefit battered women in navigating the economic, racial, and patriarchal barriers they encountered in their fight to escape violence from their husbands. These cases reflect barriers and attitudes supporting a hierarchy of "white, middle-class" morality, the existence of racism, the constraints of economic inequality, and the pervasive (albeit unrecognized at the time) maintenance of patriarchal and gendered power relations. Sadly, these attitudes, proclaimed by individuals such as Cobbe and adopted by agents of the criminal justice system, persist today—nearly eighty years *after* the murder of Fannie Coppen by her husband.

TWENTIETH-CENTURY PROGRESS

Present-day academic and policy discourse surrounding wife battery began, at the international level, in the years after the Second World War.[18] Extensive research, sparked by a global concern for human rights, included the examination of the now clearly international issue of wife battery. The mass of research that was undertaken resulted in the dominant claims that: a) wife battery is related to gender inequalities; b) these inequalities are perpetuated through the structure of the "traditional" family and social institutions, and; c) that responses to wife battery have led to questions concerning the role that should be taken by the respective system(s) of criminal justice. According to the United Nations Centre for Social Development and Humanitarian Affairs:

> *Wife battery is a reflection of the broad structures of sexual and economic inequality in society. Studies show that rather than representing an aberration, violence in the home is widely accepted and tolerated. It is an extension of the role society expects men to play in their domestic sphere. In this analysis, the abuse of women can be seen as a display of male power, the outcome of social relations in which women are kept in a position of inferiority to men, responsible to them and in need of protection by them. These theories suggest that the social, political and economic dependence of women on men provides a structure wherein men can perpetuate violence against women.... In all countries where domestic violence has emerged as a serious issue, people involved with the law have been forced to confront a central question, which is what role, if any, the criminal justice system should play in the management of domestic violence.*[19]

These issues remain in the forefront of the Canadian context, with particular debate surrounding the efficiency of implementation, and validity of the existence, of mandatory arrest policies.

NOTES

1. Patricia Begin, *Violence Against Women: Current Responses*, A Background Paper (Ottawa: Political and Social Affairs Division, Library of Parliament, 1991), p. 17.

2. L. MacLeod, *Wife Battering and the Web of Hope: Progress, Dilemmas and Visions of Prevention*, discussion paper prepared for "Working Together: 1989 National Forum on Family Violence," Ottawa, p. 25.

3. MarianaValverde, Linda MacLeod and Kirsten Johnson, "Violence Against Women in Relationships Policy," in *Wife Assault and the Canadian Criminal Justice System: Issues and Policies*, ed. Mariana Valverde, Linda MacLeod, and Kirsten Johnson (Toronto: Centre of Criminology, University of Toronto, 1995), p. 338.

4. This refers to a stay of proceedings in which Crown Counsel has halted the judicial proceedings. This can occur when a victim/witness is unwilling or unable to testify, and there is insufficient additional evidence to proceed.

5. The terms "wife battery," "battered woman," "victim," and "spouse" are to be read collectively as "an assaulted or abused individual by an intimate partner or former partner" to encompass those cases in which the abused individual was/is not a married person or did not cohabitate with the offender. Additionally, while the vast majority of victims of spousal assault incidents are women, it is recognized that women may also be offenders in such cases.

6. A general statement taken from lectures (SFU Criminology 416, Term 96-3; Instructor: Kevin Bonnycastle).

7. C. Strange, "Historical Perspectives on Wife Assault," in *Wife Assault and the Canadian Criminal Justice System: Issues and Policies*, ed. Mariana Valverde, Linda MacLeod, and Kirsten Johnson (Toronto: Centre of Criminology, University of Toronto, 1995), pp. 293-304.

8. C. Backhouse, "Divorce and Separation," in *Petticoats and Prejudice: Women and Law in Nineteenth-Century Canada* (Toronto: Women's Press, 1991), pp. 167-199.

9. Strange (n. 7 above), p. 295.

10. Backhouse (n. 8 above), p. 178.

11. Backhouse (n. 8 above). Also, Strange (n. 7 above), p. 293.

12. Strange (n. 7 above), p. 296.

13. Ibid.

14. Ibid., pp. 296-298.

15. Ibid., p. 298.

16. MarianaValverde, Linda MacLeod and Kirsten Johnson, eds., *Wife Assault and the Canadian Criminal Justice System: Issues and Policies* (Toronto: Centre of Criminology, University of Toronto, 1995), pp. 293-4.

17. Strange (n. 7 above).

18. Karen Dubinsky and Franca Iacovetta, "Murder, Womanly Virtue, and Motherhood: The Case of Angelina Napolitano, 1911-1912," *Canadian Historical Review*, Vol. 72, No. 4, 1991, pp. 505-531.

19. See: *Strategies for Confronting Domestic Violence: A Resource Manual*, United Nations Centre for Social Development and Humanitarian Affairs, 1993, p. 1.

CHAPTER TWO

MANDATORY CHARGING POLICIES

PREAMBLE

Canada is recognized as the first country in the world to have developed and adopted nation-wide mandatory charging policies in wife assault cases.[1] In December, 1983, the Attorney General and the Solicitor General of Canada issued companion directives to police agencies and Crown Counsel offices, instructing them to "encourage rigorous investigation and prosecution of wife assault cases."[2] In addition to these directives, policy discourse suggested, "the goal of deterrent sentencing should be pursued."[3] The mandate of the 1983 Policy was to provide protection and assistance for "victims," and to ensure the full investigation and prosecution of spousal violence, irrespective of the wishes of the "assaulted spouse" to proceed with charges, or the apparent reluctance of the "victim" to provide testimony as a witness. Policy rhetoric indicates that this measure is designed to remove from victims the responsibility for initiating criminal charges against an abusive spouse. According to Linda Light, the development of mandatory charging policies "was motivated by a concern for victims of violence in relationships and [mandatory charging] is described as a woman-centred policy."[4] The parallel, but somewhat questionable intentions—of r*emoving from women the responsibility* while being a w*oman-centred policy*—are representative of the issues that have given rise to debate over the efficacy and validity of these policies. On the one hand, policy makers and advocates of mandatory charging feel the justice system is necessary in order to convey to the public that wife battery is a crime and will be treated with as much seriousness as any other assault. The Policy claims to provide protection and empowerment for battered women, and to act as a deterrent for batterers. On the other hand however, while very little is known of the overall impact of these policies, there appears to be substantial research to dispel the claim that mandatory arrest deters batterers. Despite this contradiction, the policies continue to be promoted and maintained.[5]

THE PLATFORM

If someone were to ask the question, "Do mandatory charging policies work?", three issues would need to be clarified before an appropriate response could be made. The first issue would pertain to the interpretation of the question. For example, the term "work" must be qualified. In other words, is this term meant to refer to "success" in meeting stated policy objectives, such as *protecting* women and deterring abusers? Or, does this term refer to a successful statistical *increase in arrests, prosecutions and convictions* of wife batterers, which, in turn is *presumed* to equal success in meeting stated policy objectives? The second issue of clarification would rest with the specificity of the term "mandatory charging policies." For example, is the question implying that we should examine the success or failure of the overall existence of mandatory charging policies? Or, does it presume the policies are clearly necessary, and it is only the dynamics of the implementation of these policies that should be examined in order to determine their success or failure? Finally, clarification as to who (or what agency) is *asking* the question and who (or what agency) is *answering* the question is needed, since this will likely affect the response that is made. The point to be made here is that the discourse surrounding mandatory charging policies varies greatly—from arguments in strong support, to admonitions of its potential harms—and it is well beyond the scope of this project to present a response that can address *all* perspectives. Consequently the following section will provide the perspectives of battered women, and will focus on the B.C. Attorney General's *Violence Against Women in Relationships Policy (1993).* The discussion will examine the three main areas of contention, those of *protection, deterrence,* and *empowerment.*

NOTES

1. Patricia Begin, *Violence Against Women: Current Responses*, A Background Paper (Ottawa: Political and Social Affairs Division, Library of Parliament, 1991), p. 17.
2. L. MacLeod, *Wife Battering and the Web of Hope: Progress, Dilemmas and Visions of Prevention*, discussion paper prepared for "Working Together: 1989 National Forum on Family Violence," Ottawa, p. 25.
3. MarianaValverde, Linda MacLeod and Kirsten Johnson, "Violence Against Women in Relationships Policy," in *Wife Assault and the Canadian Criminal Justice System: Issues and Policies*, ed. Mariana Valverde, Linda MacLeod, and Kirsten Johnson (Toronto: Centre of Criminology, University of Toronto, 1995), p. 338.

4. Linda Light and Shelley Rivkin, "Power, Control and Violence in Family Relationships: A Criminal Justice Response," in *Stopping the Violence: Changing Families, Changing Futures*, ed. Mary Russell, Jill Hightower and Gloria Gutman (Vancouver: B.C. Institute on Family Violence, 1996), pp. 175-184.

5. For further discussion on the validity of deterrence and arrest, see F.W. Dunford, et al. 1989; Hirschel & Hutchison, 1992; Pate & Hamilton, 1992; Schmidt & Sherman, 1993; and Sherman & Berk, 1984.

CHAPTER THREE

THE DEBATE

PROTECTION, DETERRENCE, AND EMPOWERMENT

According to the Attorney General and the Solicitor General Canada, mandatory charging policies were developed to address "a growing awareness within the criminal justice system, and generally among members of the public, of the serious problem of spousal assault."[1] Advocates of these policies proclaim this to be a victory for women's rights and equality, suggesting the criminal justice system and the state have finally taken a stand against wife battery. These initiatives are seen as beneficial by offering protection to women, and by promoting to public recognition that wife battery is a criminal offence and will not be tolerated by society. With reference to the B.C. Attorney General's *Violence Against Women in Relationships Policy* (1993), "one of the foundations of the Policy is the belief that arrest and prosecution of offenders is of paramount importance for the safety and security of victims of wife assault.[2] In an updated draft of the *Violence Against Women In Relationships Policy* of B.C., the document states:

> *The policy directs the justice system to emphasize the criminality of violence within relationships and to take the necessary measures to ensure the protection of women and children who may be at risk.*[3]

Included in these "necessary measures" is the police directive to bring charges against the abuser with or without the victim's support of such action, and to proceed with prosecution of said offender regardless of the victim's willingness to testify. The policy makers claim justification for these mandatory arrest measures by proclaiming the actions come in response to the recognition by the justice system "of the power imbalance and the dynamics which operate to prevent a woman from taking steps to end abuse."[4] Support for the directive to arrest stems from the much cited research by Sherman and Berk: the "Minneapolis Domestic Violence Experiment."[5]

According to the research on which these policies are based, the traditional methods used by the police in dealing with domestic disputes (which, for the most part, consisted of giving the couple advice or directing them to mediation services), "doubled the woman's risk of further violence over a six-month follow-up, compared with arresting the suspect."[6] In the Canadian context, similar support can be seen in the conclusions of the ten-year study of the Family Court Clinic in Ontario in

which it was found that "husbands' violence against their wives was significantly reduced in most cases where the police laid criminal charges against the abuser."[7] It is upon these premises that mandatory charging policies flourish, despite the fact that these claims of deterrence have been proven indisputably false.[8] Furthermore, it is stated by criminal justice policy makers, that all of the above initiatives to protect battered women and to deter their batterers cannot be successfully implemented without the integrated support of the respective communities and social service agencies:

> *Effective intervention depends on the community as a whole accepting responsibility for preventing wife assault, for protecting women from abuse and for offering services to victims, abusers and other family members who have experienced family violence...it is necessary to show the community's concern for the victim by validating her experience, and* ***to empower her by providing complete information, options and an opportunity to make decisions about her future*** *[emphasis added].*[9]

At face value, it would appear that mandatory charging policies, initiated to address the seriousness of woman battering, deter abusers, and protect as well as empower the battered woman, contain sincere, well-placed objectives that are designed to meet the needs of victims. However, closer examination reveals, notwithstanding these "good intentions," patriarchal values and gender related inequalities have not been truly addressed by these policies, and it is because of these deep-rooted ideologies that many women have found more harm than help from these policies.

DISTRUST, DISILLUSIONMENT, AND DISEMPOWERMENT

It was mentioned previously that mandatory charging policies have been viewed as formal recognition of the seriousness of wife battery. Where mainstream discourse in this area had previously admonished the police for not doing *enough* to protect women,[10] the state could now claim positive action was now being taken to effectively address the problem:

> *...police were challenged to intervene more proactively and to use their new arrest powers to an extent not previously contemplated. [Crown Prosecutors] were told that...the policy...was to intervene earlier and more effectively than in the past.* [11]

Consequently, the justice system and policy makers responded with an active campaign of mandatory charging policies to reflect the firm statement that wife battery is a *crime* and will not be tolerated.

It is interesting that society has gone from the previous position, where there was "widespread belief that what goes on in the privacy of the home is not a matter for state intervention,"[12] to one

that clearly focuses on the premise that, "[e]ffective intervention [by the criminal justice system] breaks the cycle of violence and ensures the protection of the victim."[13] From this, it would appear that social institutions, such as the justice system, possess a certain degree of "social control" in the ability to manipulate the direction of mainstream consciousness:

> *Emphasis upon how the CJS might be instrumental in preventing wife assault is reflected in a number of briefs and reports prepared for the public as well as for parliamentarians. Of these documents, the CACSW reports have been the most accessible and influential. Beginning from the premise that "one of the most important roles of the CJS is a symbolic one: it reflects and helps to promote emerging values"...*[14]

Since much of the existing literature on this issue focuses on, and maintains, the link between the *"action"* of wife battery and the *"reaction"* of the law, it seems the "legal response" has been firmly established in the mainstream of social consciousness with the premise that it is the *only* way to *effectively* deal with "the problem."[15] This is somewhat disturbing, in that the approach taken only addresses the *action* of the crime and the *reaction* of the justice system to it. The policy does not seem to address the underlying issues suggesting that the *action* of wife battery is a *reaction* itself to the prolific existence of patriarchal values and gendered inequalities that permeate social and family structures within society.

The family is an institution that embodies traditions, roles, and beliefs about the proper place for men and women and thus provides both the structure and an ideology that endorses a higher status role for men. Violence against wives is believed to be fostered by the unequal status that exists between men and women within marriage that historically has been codified in law, and the acceptance of the legitimacy of this inequality by both men and women.[16]

From this analysis, the policy itself and the rhetoric that accompanies it, appears to present somewhat of an illusion to battered women (and to the public at large) that the state has taken progressive action against wife battery. As Dawn Currie explains:

> *...wife battery as a social issue has been transformed into a policing issue. Within this discourse the issues concern legal rights, police protection, and criminal justice: technical issues that can be safely met within the current system without any meaningful redistribution of power. For this reason, the effect of intervention could well be the strengthening of the very same processes and institutions that gave rise to the demand for justice in the first place.*[17]

In the wake of these policies, one might ask: Are these policies making a difference to the actual phenomenon of violence and abuse in relationships; or are these policies merely establishing the illegality of something we already know is wrong?

In this view, mandatory charging policies have hardly been an empowering experience for battered women. On the contrary, these practices have resulted in a high degree of disillusionment for many of them. According to the Final Report of the Canadian Panel on Violence Against Women, "[t]he feminist lens reveals that while all women are at risk of male violence because of gender, their experiences of that violence are essentially informed by their race and class....[so] are the *responses* to their experiences"[18] (emphasis added). This is also the contention of Miriam H. Ruttenberg,[19] in her analysis of the consequences of mandatory charging policies relative to women of colour; and Dianne Martin and Janet Mosher,[20] in their critique of these policies with respect to immigrant women. These authors address some of the "risks, fears and harms"[21] that mandatory charging policies can represent, particularly for already marginalized women, such as the potential loss of economic security, (unsolicited) intervention by child protection or social service agencies, racist responses (to both the women and their spouses) by police and, of particular debate, fear of retaliation. The following is a quotation from a woman's submission to the House of Commons Subcommittee on the Status of Women, presented in February, 1992:

> *Why did I ever call the police? They took my family, my home, my security, my dignity, and my belief in what is right. I would rather be beaten every day of my life by my husband than have a bunch of strangers take my life away without ever asking.*[22]

Additionally, while policy states that community groups and social services must be integrated in order for these policies to be effective, the reality is that this "necessary" support is not often available:

> *Mandatory charging policies and the best intentions on the part of the police officer may have little effect on alleviating the violence over the long term if the woman lives in an area with no shelters or counselling services for either herself or her husband, and if she has no family support, no financial resources, and no foreseeable way of supporting herself and her children.*[23]

As this discussion has indicated, mandatory charging policies, with the associated objectives to charge and prosecute regardless of the wishes of the victim, do little to empower women. To legislate these justice system directives without tantamount legislation providing adequate support systems, presents an *illusion* of protection for many women who have felt the impact of these policies. This, in turn, can result in distrust if they have undergone further discomfort or harm as a

consequence of that experience. Furthermore, this experience may prevent them from ever initiating police intervention again.

Since one of the most empowering possessions that women in a democratic society have is their ability to choose, any policies that diminish that power either directly or indirectly, should be re-evaluated. It is a contradiction to claim mandatory charging policies empower women while, at the same time, they imply women are incapable of making decisions in *their own best interests*:

> *...victim preferences should be considered in formulating any policy.... Despite her emotional involvement and trauma, the victim is usually in a better position than patrol officers to determine the likely impact of an offender's arrest.*[24]

> *Our conclusion emphasizes that empowering battered women involves recognizing the diversity of needs and the competence of women to identify the most appropriate strategies for their survival.*[25]

Some may conclude that mandatory charging policies are patriarchal by their very nature by basing their justifications on the presumption that the reason(s) that prevent a woman from "taking steps to end abuse"[26] is her inability or indecisiveness to lay criminal charges herself.

The final issue that will be discussed regarding the mandatory charging policy debate rests with the main premise for its development—the consistent claim that arrest will present a deterrence to future violence. As mentioned, supporting data based on the Minnesota experiment and the Ontario research was used as the basis for this contention. However, Janell Schmidt and Lawrence Sherman—two researchers who, incidentally, have reversed their previous claims to the contrary—*now* conclude that, "...the role of arrest as a deterrent to domestic violence is deeply flawed."[27] In another article, Schmidt and Sherman (co-authors of the Minneapolis study) examined the results of six experiments, all of which studied the relationship between arrest and repeat violence against the same victim. Their conclusions revealed that not only did arrest *fail* to deter the violence, but, in some cases acted as a catalyst for *further* violence against the victim.[28]

In light of the evidence of disillusionment, disempowerment, and distrust that mandatory charging policies present to many women, it is somewhat misguided to continuously promote these practices without concurrently ensuring support systems for the victims to minimize the potential negative impact the mandatory arrest policies may have. While they can help some women escape a harmful situation, it is clear that the policies themselves often present further hardships by

unmindfully providing the battered women with no more choice than merely "the frying pan or the fire."

WHAT, THEN, ARE WE TO DO?

From this examination of mandatory charging policies and the continuing debates, it is questionable whether this is the role that the justice system should be taking, and whether it is a justice system response that is required at all. Existing policies have presented little if any opportunity for women to claim any degree of empowerment and, for most women, they have resulted in disillusionment and distrust in the justice system to provide protection for them and deterrence for their batterers. This is not to say that *arrest* is ineffectual in *all* cases, but that *mandatory* arrest is likely not the all-encompassing response that should be taken. What policy makers need to do is simple. They need to *listen* to the women they are attempting to help. For example, in two independent studies, it was found that by simply giving the battered woman the *opportunity* to have the charges dropped after an arrest has been made, the offenders in both studies were "significantly less likely to again batter the woman within 6 months."[29] In addition, the argued premise that spousal assault should be treated as any other assault also contains misconceptions. It is important to realize that spousal assault is *not* the same as common assault. The issues and intricacies within the relationship between offender and victim in the case of wife battery are categorically different from those of stranger-assault and to continue to treat them as the same, skirts the root issues.[30] By allowing for more dialogue between the battered women the policy is intended to help, and the policy makers, a more appropriate response may be developed that could more successfully match the needs of the women with the provisions of the justice system. As Ferraro and Pope state:

> *Any legal or policy changes that increase the power of police without simultaneously striving for the empowerment of women will have the potential to decrease rather than improve the level of women's safety.... Women know their situations and needs, and are capable of developing strategies that fit their particular circumstances. When criminal justice agents acknowledge this ability, interventions are more likely to succeed.*[31]

In short, many of the problems associated with mandatory charging policies stem from the already established gender inequalities that prevent women from accessing the necessary resources to free themselves from the constraints and the harm of a violent relationship. As long as the patriarchal values that are endemic to society and to the justice system continue to portray women as being unable to deal with empowerment and being in need of "institutional" protection, the

policy of mandatory charging will continue to be of little help in ending violence against women in relationships.

NOTES

1. Documents concerning this and other justice issues can be found on the World Wide Web at: http://canada.justice.gc.ca/
2. B.C. Ministry of Attorney General, "Community Coordination to Stop Violence Against Women in Relationships: A Framework," draft document, July, 1993.
3. B.C. Ministry of Attorney General, *Policy on the Criminal Justice System Response to Violence Against Women and Children: Violence Against Women in Relationships Policy*, 1993, p. 2.
4. Ibid., p.3.
5. Lawrence Sherman and Richard Berk, "The Specific Deterrent Effects of Arrest for Domestic Assault," *American Sociological Review*, Vol. 49, 1984, pp. 261-272.
6. As cited in Holly Johnson, "In the Aftermath of Violence," in *Dangerous Domains* (Toronto: Nelson Canada, 1996), p. 210.
7. Patricia Begin, *Violence Against Women: Current Responses*, A Background Paper (Ottawa: Political and Social Affairs Division, Library of Parliament, 1991), p. 18.
8. L. MacLeod, *Wife Battering and the Web of Hope: Progress, Dilemmas and Visions of Prevention*, discussion paper prepared for "Working Together: 1989 National Forum on Family Violence," Ottawa, p. 25.
9. B.C. Ministry of Attorney General (n. 2 above), p. 5.
10. N. Zoe Hilton, ed. *Legal Responses to Wife Assault: Current Trends and Evaluation* (London: Sage, 1993), p. 3. See also, D.H. Currie and B.D. MacLean, "Women, Men and Police: Losing the Fight Against Wife Battery in Canada," in *Rethinking the Administration of Justice in Canada*, ed. D.H.Currie and B.D. MacLean (Halifax: Fernwood, 1992), pp. 251-274.
11. Eve S. Buzawa and Carl G. Buzawa, *Do Arrests and Restraining Orders Work?* (London: Sage, 1996), p. 6.
12. Johnson (n. 6 above), p. 158.
13. B.C. Ministry of Attorney General (n. 2 above), p. 4.
14. D.H. Currie and B.D. MacLean, "Women, Men and Police: Losing the Fight Against Wife Battery in Canada," in *Rethinking the Administration of Justice in Canada*, ed. D.H. Currie and B.D. MacLean (Halifax: Fernwood, 1992), pp. 257-258.

15. For relevant discussion on the terminology used in legal discourse, see *Male Violence in Relationships and the Justice System* (Ottawa: National Action Committee on the Status of Women, 1989).

16. Johnson (n. 6 above), p. 209.

17. Johnson (n. 6 above), p. 207.

18. *Final Report of the Canadian Panel on Violence Against Women* (Ottawa, 1993), p. 20.

19. Miriam Ruttenberg, "A Feminist Critique of Mandatory Arrest: An Analysis of Race and Gender in Domestic Violence Policy," *The American University Journal of Gender and the Law*, Vol. 2, No. 1, Spring 1994, pp. 171-199.

20. *Final Report of the Canadian Panel* (n. 18 above), p. 24.

21. As stated by Martin and Mosher, in *Final Report of the Canadian Panel* (n. 18 above), pp. 24-32.

22. As cited in Martin and Mosher, "Unkept Promises: Experiences of Immigrant Women with the Neo-Criminalization of Wife Abuse," *Canadian Journal of Women and the Law*, Vol. 8, No. 3, 1995, p. 4.

23. Johnson (n. 6 above), p. 215.

24. Eve S. Buzawa and Carl G. Buzawa, *Domestic Violence: The Criminal Justice Response* (London: Sage, 1990), p. 103.

25. K. J. Ferraro and L. Pope, "Irreconcilable Differences," in *Legal Responses to Wife Assault: Current Trends and Evaluation*, ed. N. Zoe Hilton (London: Sage, 1993), p. 97.

26. B.C. Ministry of Attorney General (n. 3 above), p. 2.

27. Buzawa and Buzawa (n. 11 above), p. 11.

28. Ibid., pp. 43-53.

29. Ibid., p. 246.

30. Ferraro and Pope (n. 25 above), p. 121.

31. Ibid., p. 120.

CHAPTER FOUR

THE RESEARCH PROJECT

THE VIOLENCE AGAINST WOMEN IN RELATIONSHIPS POLICY (1993)

As discussed previously, the B.C. Ministry of Attorney General established the *Wife Assault Policy* in 1984 in response to the growing need to recognize the seriousness of violence against women in intimate relationships. While this Policy was revised in 1986, again in 1993, and more recently in 1996, it was the 1993 revision (at which time it was renamed the *Violence Against Women in Relationships Policy — VAWIR*), that was the most comprehensive.[1] The *VAWIR Policy* provides general directives for police/RCMP instructing them to *not* ask victims if they wish to lay charges, whether or not there are any signs of physical abuse. Where there are no signs of abuse, and the victim does not provide a statement, a written statement by an independent witness is adequate to proceed. With respect to Crown Counsel, the Policy recognizes the "charge standard" that states in order to proceed with charges there must be a "substantial likelihood" of conviction, and the prosecution of the accused must be in the public interest. However, the *VAWIR Policy* directs prosecutors to pursue charges, even if the nature of the offence is minor. Finally, the *VAWIR Policy* directives in the area of sentencing suggest that, since violence against women is a persistent problem, the goal of deterrent sentencing should be pursued. In layman's terms then, the three main areas of concentrated implementation are: mandatory arrest, "no-drop" prosecutorial policies, and harsher sentencing.

Because of these sweeping changes, critics of the 1993 revision stated, "...the revised *Ministry of Attorney General Wife Assault Policy* represents a major step toward the creation of an absurdly broad definition of abuse."[2] While women's groups applauded the *VAWIR Policy*, critics suggested that the sweeping definitions of abuse (from harassing telephone calls to physical harm), and the severity of the recommended penalties were so extreme that, "...women may become afraid to report incidents of domestic violence....[and]...[t]he likelihood of a man earning a criminal record for something as mild as a one-time shoving match would certainly make some women think twice before calling the police."[3] In response to these criticisms, the Policy makers point out statistics which indicate a woman in an abusive relationship may experience as many as 35 episodes of escalating violence before she seeks police intervention. The Policy makers and women's groups claim that serious intervention by the justice system is necessary in order to prevent a "one-time shoving match" from escalating into

more serious episodes. Discretion was also a contentious issue on both sides of the debate. It was pointed out by justice officials that the Policy drastically curtails the discretion previously held by responding police officers and Crown attorneys. Conversely, while some women were quite happy to have the responsibility for laying charges removed from themselves, others reported feeling "quite harassed by the very officials that seek to obtain justice for them."[4]

While debate over the consequences of these revisions continues, research on the efficacy of the Policy has been slow in coming. Little, if any, research has been completed on the perspectives of the individuals who must experience the impact of these policies (i.e., the women and the offenders), while *some* statistical research has been performed on the implementation of the directives.[5] It is the latter topic that has prompted the questions leading to the development of the research for this project.

PROJECT ENVIRONMENT

Penticton, British Columbia is a mid-sized municipality with a population of approximately 32,000. Justice personnel and associated agencies proclaim their recognition of the need to address the issues of family violence. However, efforts made to better coordinate the justice and community response toward this issue have recently faltered. A community coordination committee was established, consisting of representation from all relevant agencies: Crown Counsel, RCMP, Victim Assistance, Probation, Penticton Counselling Services, Transition House, and the Ministry of Social Services. These agencies met on a monthly basis to discuss policy concerns and to make a coordinated effort toward the improvement of services. Sadly, due to a lack of dedicated participation and representation by some members of the justice system and others, the coordination committee dissolved its efforts in February of this year. At present, there is no formal monitoring program in place to gauge the progress of these types of efforts, or to measure the impact the *VAWIR Policy* has had in the Penticton jurisdiction. As such, this inquiry was a modest attempt to explore the efficiency of the RCMP, Crown Counsel, and the Court, in implementing the *VAWIR Policy* directives.

PROJECT DESCRIPTION

The fundamental purpose of this project was to explore the impact of the 1993 *Violence Against Women in Relationships Policy (VAWIR)* on the case outcomes of spousal assault incidents reported in the jurisdiction of the Penticton RCMP detachment. Each incident, once reported, may be concluded at any one of the three main intersections of the justice system—the RCMP, Crown Counsel, or through

the Court process. As discussed, each of these agencies has been instructed by the Attorney General and/or the Solicitor General to implement the directives of mandatory arrest, rigorous prosecution and deterrent sentencing. Using these points of reference as indicators, this inquiry was designed to discover the differences, using a number of categories, between all spousal assault incidents reported in 1992, the year prior to the *VAWIR Policy*, and those reported in 1994, the year after its implementation. It was hypothesized by the researcher that 1994 results would show statistically significant differences in outcomes for the incidents reported in the areas relevant to the Policy directives.

Proportions of Outcomes 1992 = Proportions of Outcomes 1994

Null Hypothesis H_0: $P_1 = P_2$

Hypothesis tested H_1: $P_1 = P_2$

METHODOLOGY

This research project can best be described as archival in method and quasi-experimental by design. A variation on the interrupted time-series design[6] was used with the *Violence Against Women in Relationships Policy (1993)* as the independent variable.

INCIDENT OUTCOMES 1992 ← VAWIR POLICY 1993 → **INCIDENT OUTCOMES 1994**

This design allowed for the comparison of a number of "outcome" categories for spousal assault files from two time periods. Proportions of the total were recorded, for each year, that fell into the following categories:[7]

Main Categories	Sentence Sub Categories
Incidents	**Suspended Sentence + Probation**
Cleared	**Jail + Probation**
Unfounded	**Fine + Probation**
Purged	**Probation**
RCC	**Jail**
Approved	**Fine**
Gender	**Prohibition**
Charge	**Other**
Verdict	
Sentence	

SAMPLING

To generate the samples for each year, a query was done on the RCMP OSR database requesting all Penticton RCMP files flagged as "K" files (this designation indicates a spousal assault—or related charges—separating it from common assault, as there are presently no distinct criminal code sections for inter-relationship violence and abuse). While it is recognized that this sample may not be exhaustive due to coding errors (which may have improved by the second sample year), an in-depth examination of the physical files for *all* assaults as well as other related charges was not possible in the time frame allowed. Therefore, this observation was noted in the analysis of the data and the same sampling method was used for both years.

DATA COLLECTION

A database was designed[8] to accept input of the sample data, as well as organize and comparatively analyze the results for each year. Once the proportions had been calculated for all categories, the 1994 percentages for Penticton were then compared with 1993 figures (in the same categories) reported in a similar project completed for the entire province.[9] Information contained in the RCMP database included: number of reports, first appearance and end dates, the number and type of charges associated with each incident, the number and gender of persons recommended for prosecution to Crown Counsel (RCC), and the number of incidents cleared by the RCMP. Files that were not concluded at the RCMP level (RCC'd) were then tracked, by court file number, through the databases of the Penticton Court Registry, to obtain details on their outcomes. This method allowed for the examination of the three main points of intersection at which the report may be concluded: RCMP, Crown Counsel, and Sentencing.

In addition to this data, the community-based Victim Assistance Program was queried to extract the RCMP file numbers associated with all spousal assault cases the agency handled in 1992 and 1994. For additional insight, the RCMP file numbers gathered from Victim Assistance files were matched with those extracted from the RCMP. This process provided an indication of the number of "victims" who had received some contact from Victim Assistance workers and the number who did not. The data collected from both the RCMP and Victim Assistance consisted entirely of statistics, excluding all case-specific and personal information pertaining to the victim, the offender, or the circumstances of the incident.

NOTES

1. B.C. Ministry of Attorney General, *Survey of Spousal Assaults Reported to Police in British Columbia: 1993-1994* (Police Services Division, December 1996), p. 7.
2. Robin Brunet, "When in doubt charge the husband," *British Columbia Report*, Vol. 4, No.32, 1993, p. 28.
3. Ibid.
4. MarianaValverde, Linda MacLeod and Kirsten Johnson, eds., *Wife Assault and the Canadian Criminal Justice System: Issues and Policies* (Toronto: Centre of Criminology, University of Toronto, 1995), p. 4.
5. A recent report (December 1996), by the Ministry of Attorney General Police Services Division included the results of a project entitled: *Survey of Spousal Assaults Reported to Police in British Columbia: 1993-1994.* The report calculated statistical details on the outcomes of spousal assault incidents as recorded in the RCMP OSR/PIRS database. These results were then compared to the outcomes recorded (for the same incidents) in Crown Counsel records.
6. M.G. Maxfield and Earl Babbie, *Research Methods for Criminal Justice and Criminology* (Toronto: Wadsworth, 1995), pp. 121-150.
7. Further explanation of these categories can be found in the Appendix.
8. Copyright for the database belongs jointly to Peter W. Wilmshurst (Anigraphics) and the researcher, Susan Wilmshurst.
9. B.C. Ministry of Attorney General (n. 1 above).

CHAPTER FIVE

THE RESULTS

OVERVIEW OF DATA

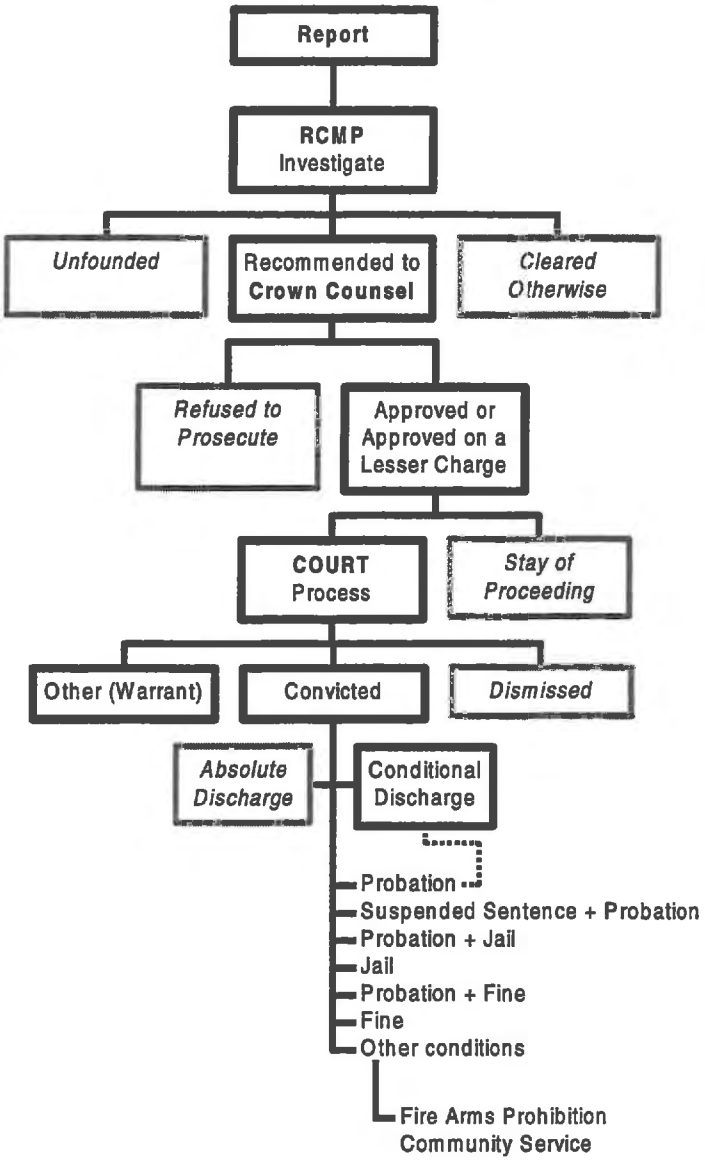
As discussed previously, this project was designed to examine the differences in statistics for spousal assault incidents between 1992 and 1994. The data were organized into three sections in an attempt to isolate the main directives of the *Violence Against Women in Relationships Policy*, and the changes, if any, for each of the justice agencies responsible (RCMP, Crown Counsel, Court). *Table 1* indicates the directives, the agencies responsible, as well as the data gathered pertaining to those agencies.

Table 1 **AGENCY, DIRECTIVES, AND DATA GATHERED**

AGENCY	**RCMP**	**CROWN COUNSEL**	**COURT**
DIRECTIVE	Mandatory Arrest / Charging	"No-Drop" Prosecutions	Deterrent Sentencing
DATA GATHERED	Number of Incidents Number of Charges Cleared or Unfounded Files Purged Gender of accused Charge by *CCC* section RCC (Recommended to Crown Counsel)	Charges Approved Charges Reduced Charges Refused Stay of Proceedings	Verdict Sentence Sentence Details – Probation time – Jail time – Fine amount – Prohibition length – Other details

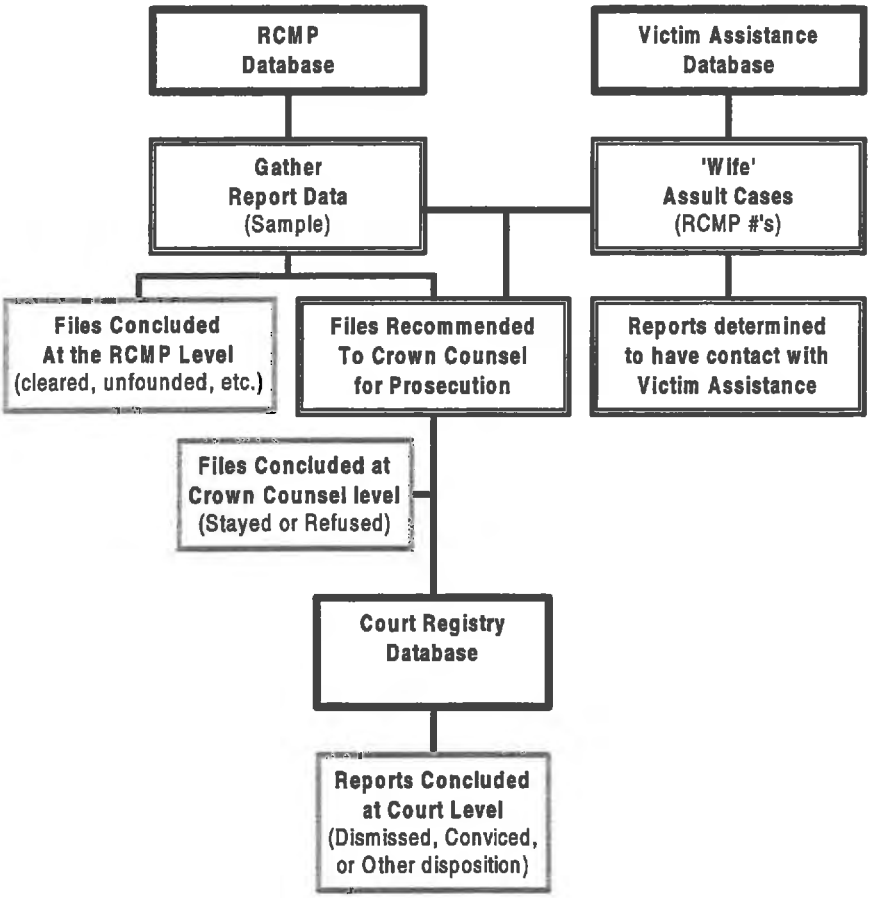
In order to access and organize this data, flow charts were created showing the various paths a report of spousal assault may take, from first reporting to closure of the file (see *Figures 1* and *2*).

Figure 1 **FLOWCHART OF OUTCOMES**



The boxes with bold borders in *Figure 1*, Flowchart of Outcomes, indicate "active" incident files. The boxes with gray borders indicate incident files that have been concluded. Tracking the gray boxes to the originating bold-border box will reveal the criminal justice agency having had determination over the conclusion of the file.

Figure 2 **FLOWCHART OF DATA GATHERING**



The boxes with bold borders in *Figure 2*, Flowchart of Data Gathering, represent the databases from which the information was accessed. In this flowchart, the double-bordered boxes represent "active" incident files that are forwarded on to the appropriate justice agency, and the gray boxes indicate the point at which incident files have been concluded. In the following sections, the research data have been organized into tables and/or graphs for analysis. This opportunity to view the results from a number of different perspectives, provides greater insight for analysis of agency activity.

By Incident

All figures in the "incident" category have been calculated using the data from *Table 2*, below.

Table 2 **NUMBER OF REPORTED INCIDENTS** *(Data linked to Figure 3)*

YEAR	Total
1992	n = 119
1994	n = 157

Totals in *Table 2* include 2 incidents in 1992, and 3 incidents in 1994 of which the files had been "purged" (i.e., removed and destroyed), thus no further information beyond the report of the incident was available. In an effort to include rather than exclude the existence and relevance of the purged reports, these files have been included in all calculations referring to *total incidents*. However, because the charge-related information on these files was unavailable, all calculations using *total charges* are exclusive of the purged files.

Table 3 **NUMBER OF REPORTED INCIDENTS PER MONTH**

	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
1992	10	9	5	7	11	14	13	11	14	6	4	15
1994	13	11	15	12	12	15	19	10	13	12	12	13

Table 3 shows the number of reported incidents categorized by calendar month for each of the sample years.

Table 4 **STATUS OF INCIDENTS**

	1992	% of Yr.	1994	% of Yr.
Cleared	39	33%	52	33%
Unfounded	1	<1%	2	1%
File Purged	2	2%	3	2%
RCC	77	65%	100	64%
TOTALS	119	100%	157	100%

Table 4 indicates the number of incidents concluded at the RCMP level and the number that were recommended to Crown Counsel for prosecution (RCC). These percentages have been calculated using the totals from *Table 2* "Number of Reported Incidents."

Table 5 **INCIDENTS BY GENDER OF ACCUSED** *(Data linked to Figure 4)*

	Male	% of Total	Female	% of Total	Both	% of Total
1992 n = 119	102	86%	3	3%	12	10%
1994 n = 157	128	82%	16	10%	10	6%

Table 5 displays the number and percentage of accused by gender category. Here again, the figures have been calculated using the total number of incidents. The category labeled "both" represents those incidents in which both spouses/partners accused each other of assault.

By Charge

The following data have been calculated using the *total charges* as the base line. The totals in *Table 6* below are *exclusive* of the five files that had been purged, (two in 1992 and three in 1994), as no information specific to charges was available.

Table 6 **TOTAL CHARGES** *(Data linked to Figure 3)*

YEAR	Total
1992	n = 143
1994	n = 244

Table 7 **CHARGES BY CRIMINAL CODE SECTION – 1992**

No.	1	1	1	6	5	109	10	1	1	2	1	4	1	Total no. of chgs. = 143
Sec.	86	87	127	145	264	266	267	268	270	348	380	430	810	Total no. of sec. = 13

Table 8 **CHARGES BY CRIMINAL CODE SECTION – 1994**

No.	3	1	2	5	1	1	3	10	1	1	18	155	15
Sec.	73	85	86	87	91	129	139	145	239	249	264	266	267

No.	3	1	2	4	1	11	2	4	Total no. of chgs. = 244
Sec.	270	271	279	348	355	430	740	810	Total no. of sec. = 21

Tables 7 and *8* display the number of charges per *Canadian Criminal Code* section. In 1992, there were 143 charges divided into 13 separate Criminal Code sections. In 1994, this number almost doubled, showing 244 charges spread among 21 Criminal Code sections.

Table 9 STATUS OF CHARGES

Status	1992	%	1994	%
Concluded at RCMP level	40	28%	54	22%
Refused to Prosecute by Crown	11	8%	16	7%
Approved for Prosecution	88	61%	172	70%
Approved on a lesser charge	4	3%	2	1%
Totals	143	100%	244	100%

Table 9 reveals that a total of 103 charges were recommended to Crown Counsel by the RCMP in 1992. The number of charges recommended in 1994 totaled 190. Of these charges, 92 were approved for prosecution by Crown Counsel in 1992 and 174 were approved in 1994. The outcomes of the *approved* charges are shown in *Table 10*, below.

Table 10 OUTCOMES OF CHARGES APPROVED BY CROWN COUNSEL

(Data linked to Figure 10)

Outcome	1992	% of Yr.	1994	% of Yr.
Absolute Discharge (no sentence attached)	—	—	1	.41%
Conditional Discharge (sentence attached)	3	2%	5	2%
Convicted	33	23%	45	18%
Dismissed	11	8%	5	2%
Stay of Proceedings	45	31%	116	48%
Warrant Issued	—	—	2	.82%
Totals	92	64%	174	71%

In *Table 10*, the outcomes of charges approved by Crown Counsel have been divided into six categories. Note that the categories of "absolute" and "conditional discharge" include charges for which the accused person has been found guilty but the court has allowed a discharge (i.e., no conviction will be registered), with the provision of a sentence (such as a probation period) or without the provision of a sentence. The category labeled "convicted" includes all charges for which the accused person was found guilty, convicted, and sentenced.

Table 11 CHARGE SECTIONS BY GENDER OF ACCUSED

1992 n = 143

Section	Male	Female	Both
86	1		
87	1		
127	1		
145	6		
264	5		
266	97	3	9
267	10		
268	1		
270	1		
348	2		
380	1		
430	4		
810	1		
Totals	131	3	9
Percent	92%	2%	6%

1994 n = 244

Section	Male	Female	Both
73	3		
85	1		
86	2		
87	5		
91	1		
129	1		
139	3		
145	10		
239	1		
249	1		
264	18		
266	130	16	9
267	13	1	1
270	3		
271	1		
279	2		
348	4		
355	1		
430	10	1	
740	1	1	
810	4		
Totals	215	19	10
Percent	88%	8%	4%

By Sentence

Table 12 displays information relating to the outcome category labeled "court." The percentages have been calculated using the total number of charges *sentenced.*

Table 12 SENTENCE BY CATEGORY OF OPTIONS

Option	1992	% of Total	1994	% of Total
ABD	—	—	1	2%
SS + P	23	64%	10	20%
SS + P + O	1	3%	2	4%
P	3	8%	5	10%
F + P	—	—	5	10%
F	1	3%	—	—
F + O	—	—	1	2%
J + P	6	17%	20	39%
J	2	6%	2	4%
J + P + O	—	—	3	6%
W	—	—	2	4%
TOTALS	$n_1 = 36$	100%	$n_2 = 51$	100%

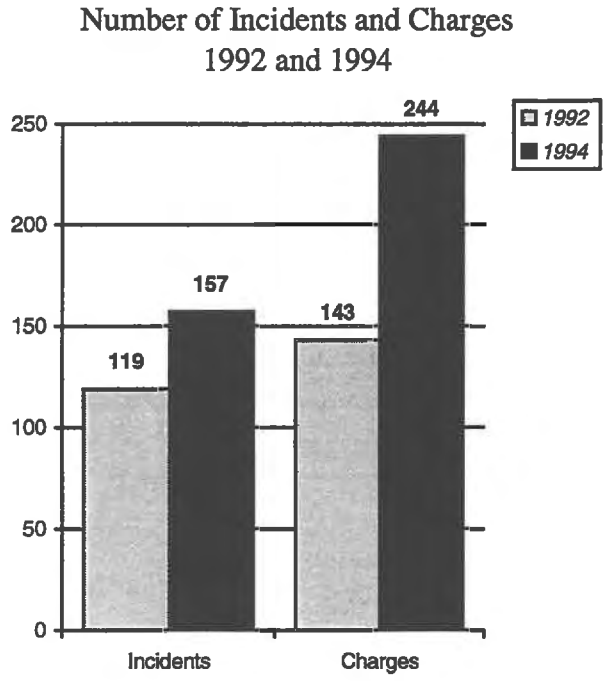
ABD = Absolute discharge
SS = Suspended Sentence
P = Probation
J = Jail
F = Fine
W = Warrant
O = Other condition (prohibition, community service hours, etc.)

HIGHLIGHTS OF DATA: BY AGENCY

RCMP

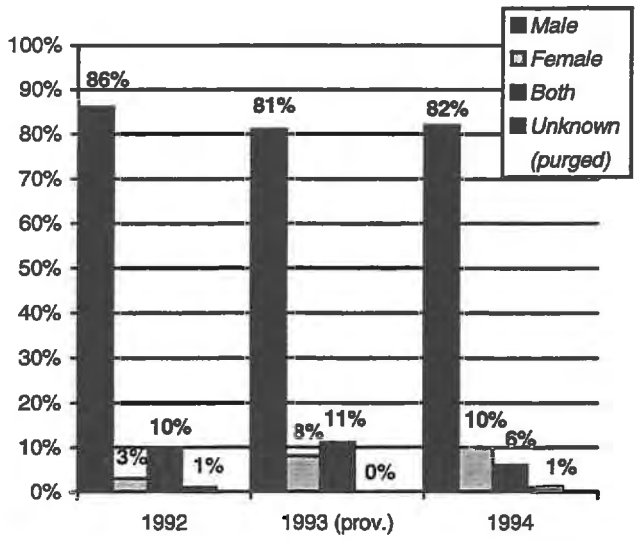
The following charts reflect information pertaining to the outcome category labeled "RCMP."

Figure 3 *(Data linked to Tables 2 and 6)*



The total number of incidents examined at the RCMP level were 119 and 157 for 1992 and 1994, respectively. These figures include the five files (two in 1992 and three in 1994) that were purged. Because of the unavailability of further information for those files, the total numbers of charges shown in the chart above do not include charges that may have been associated with the purged files.

Figure 4 *(Data linked to Table 5)*



As can be seen in *Figure 4*, incidents categorized by gender of the accused reveal that *males* made up 86% in 1992; 82% in 1994, with 81% being the 1993 (provincial) figure. The accused were *female* in 3% of the incidents in 1992; 10% in 1994; with the provincial data showing 8%. The number of incidents in which *both* a male and a female were accused totaled 10% in 1992; 6% in 1994; and 11% in the 1993 provincial statistics.[1] The total number of *charges* categorized by gender of the accused (*Figure 5*) produced similar findings.

Figure 5 *(Data linked to Table 11)*

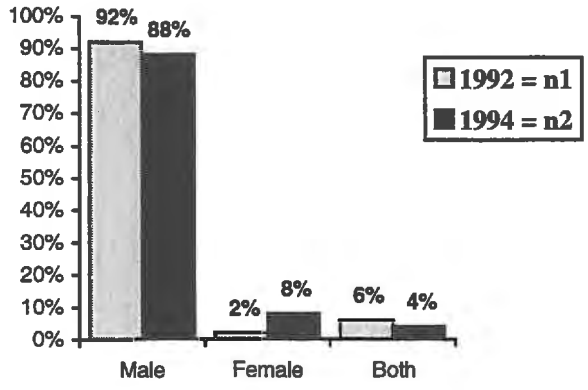
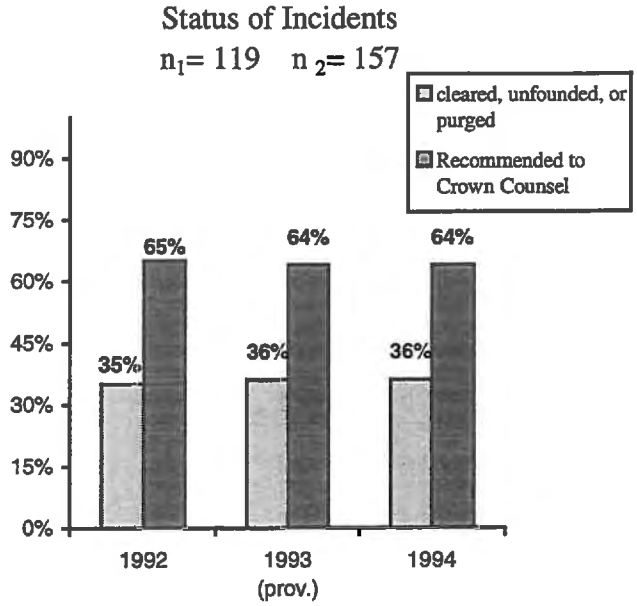


Figure 6 *(Data linked to Table 4)*



Monitoring the incident reports as they moved through the justice system, data revealed 35% of the incidents in 1992 were concluded at the RCMP level (refer to *Table 4*). The percentage for 1994 was 36%, which matched the 1993 provincial statistic in this category of 36% also.[2] The percentage of incidents *recommended to Crown Counsel* (RCC) by the RCMP for prosecution totaled 65% in 1992 and 64% in 1994. These figures are comparable to the 1993 provincial data, which showed 64% of incidents sampled were recommended to Crown Counsel.[3]

Crown Counsel

Of the 77 incidents recommended by the RCMP for prosecution in 1992 and the 100 incidents recommended in 1994, there were 103 and 190 charges associated with them respectively. Of these charges, 85% were *approved* in 1992, and 91% in 1994. The provincial report indicated an 81% approval rate in 1993.[4]

Figure 7 *(Data linked to Table 9)*

Status of Charges sent to Crown Counsel
$n_1 = 103 / n_2 = 190$

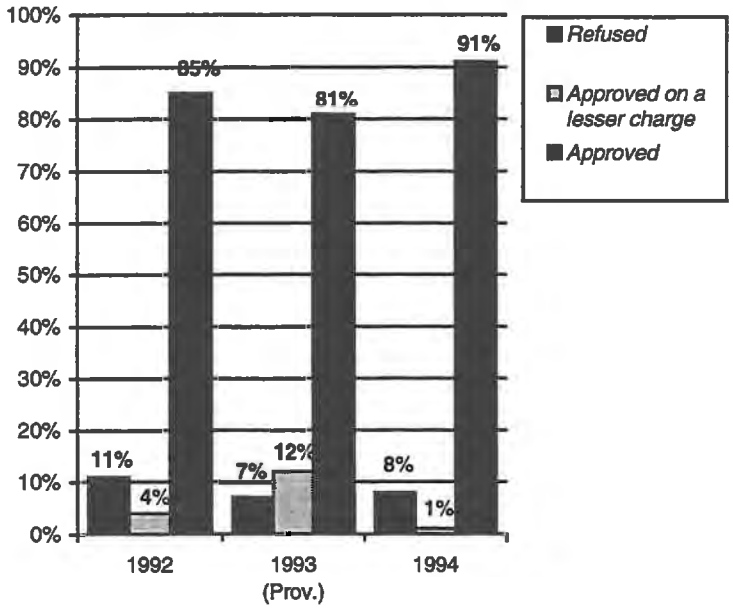


Figure 8 *(Data linked to Table 10)*

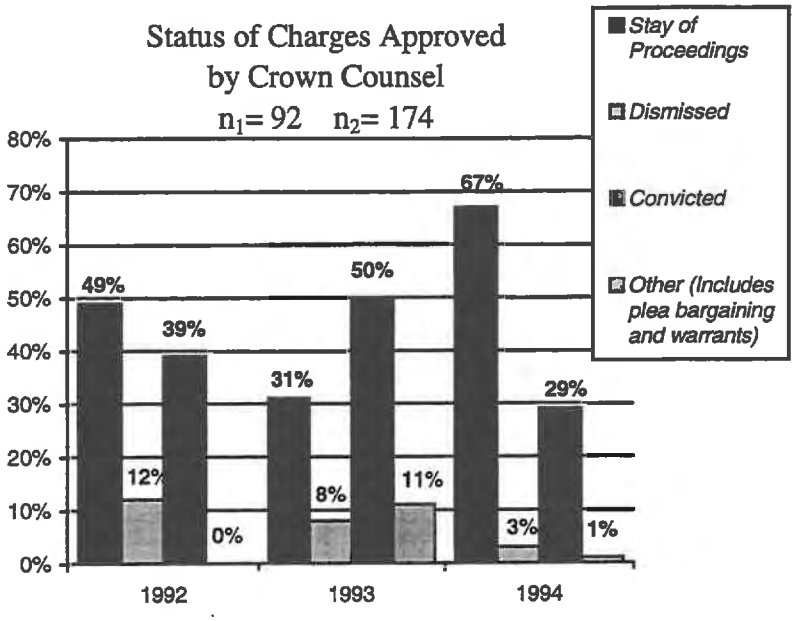


Figure 8 displays the outcomes of those charges approved by Crown Counsel. As can be seen, 49% of the approved charges in 1992 ended in a stay of proceedings by Crown Counsel. This number was 67% in 1994. The 1993 provincial data on stays of proceedings showed a percentage of 31%.[5]

Figure 9 *(Data linked to Tables 9 and 10)*

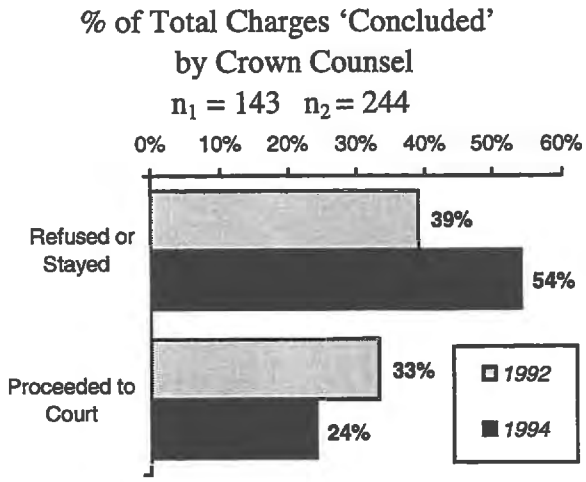
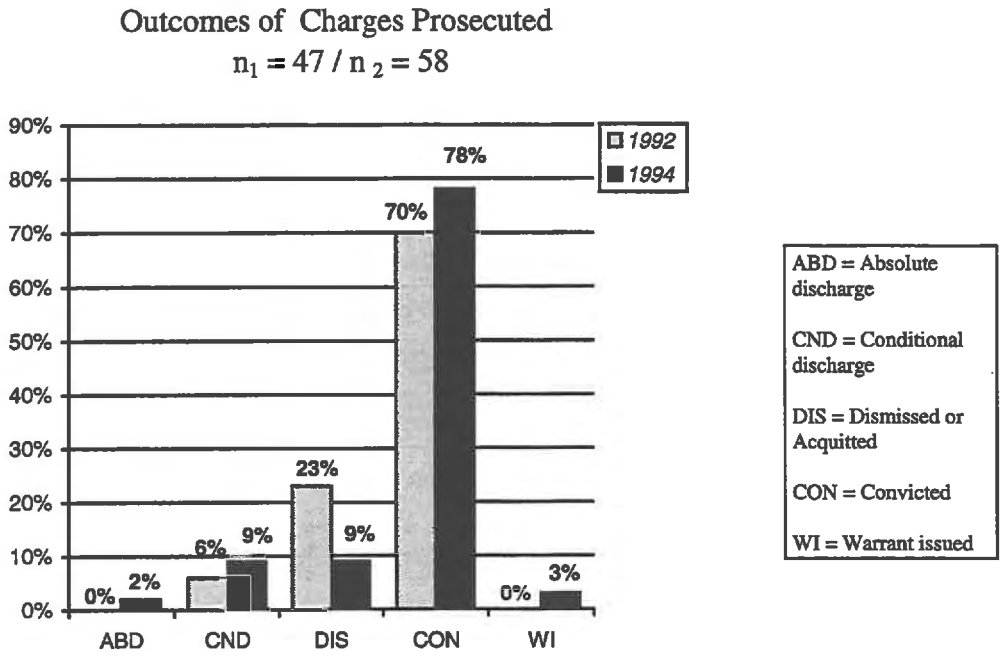


Figure 9 displays the outcomes of the charges at the Crown Counsel level. The number of charges "stayed" combined with the number Crown Counsel refused to prosecute, form the total number of charges said to have been "concluded" at the Crown Counsel level. The remaining charges have proceeded to the level of "court."

Court/Sentencing

Of the number of charges that proceeded through court—47 in 1992 and 58 in 1994—(calculated using *Table 10* data totals, less the figures in the category "stay of proceedings"), the outcomes have been divided into five categories.

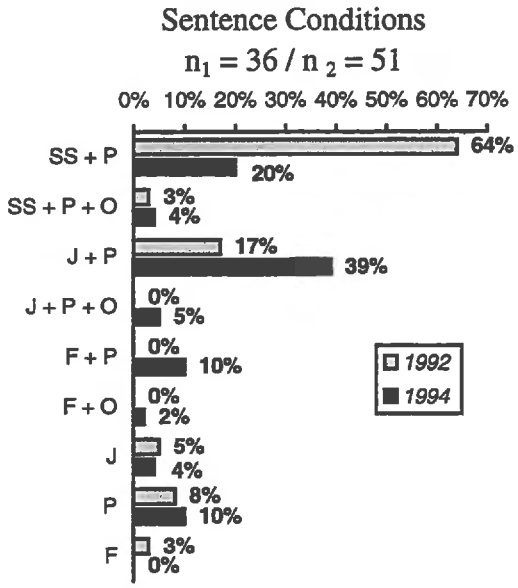
Figure 10 *(Data linked to Table 10)*



The figures in this graph have been calculated as a percentage of the total number of charges prosecuted. As can be seen, the number *dismissed or acquitted* totaled 23% in 1992, and 9% in 1994. It should be noted here that the categories of absolute and conditional discharge include charges in which the accused was guilty, but the court chose to discharge their conviction absolutely (absolute discharge) or on condition of a sentence (conditional discharge). For this reason they have been separated from those charges which received a conviction. Charges resulting in a conviction totaled 70% in 1992, and 78% in 1994. If all three categories of "convicted," "absolute discharge," and

"conditional discharge" are combined, the percentage of charges *found guilty* would be 77% in 1992 and 88% in 1994.

Figure 11 *(Data linked to Table 12)*



Data show 36 charges received sentences in 1992 compared to 51 charges in 1994. *Figure 11* displays comparisons categorized by sentence type. The discrepancy of 6% in 1994's figures can be attributed to those charges that received either an absolute discharge (2%) or those in which a warrant was issued due to non-appearance of the accused (4%).

Figure 12

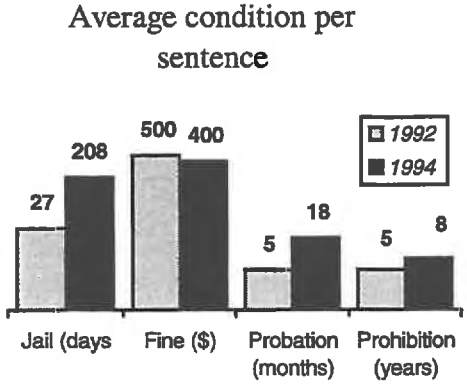
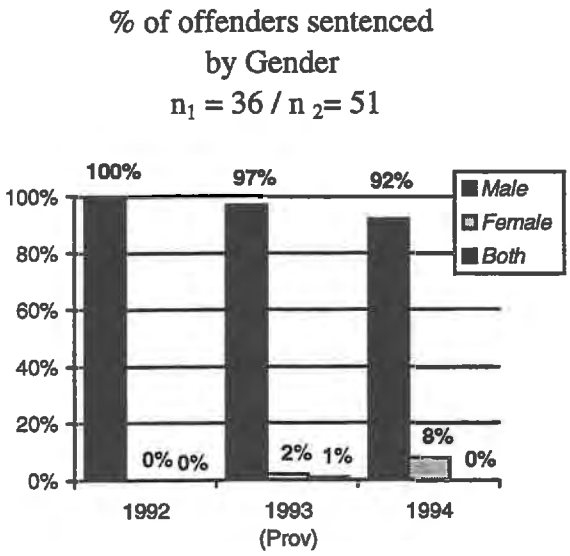


Figure 12 displays the differences in sentence details between 1992 and 1994. These figures were calculated by dividing the amount of the sentence "condition" by the number of sentences receiving that condition (i.e., 218 jail days were handed down among 8 sentences in 1992, giving an rounded average of 27 days per sentence). As can be seen, the average amounts for the conditions of "jail," "probation," and "prohibition" all increased from 1992 to 1994.

Figure 13



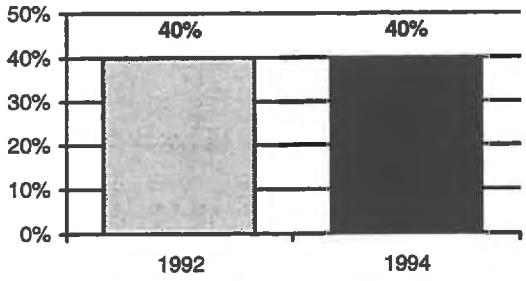
In 1992, 100% of the offenders sentenced were male, compared with 1994 in which 92% were male and 8% were female. The 1993 provincial statistics for these categories were *male* 97%, *female* 2%, *both* 1% (i.e., both a male and a female were charged for assaulting each other in the same incident).[6]

Victim Assistance Contact

The final graph, *Figure 14*, displays information regarding Victim Assistance contact. Of the 119 total incidents in 1992, Victim Assistance records showed contact with 47 cases (40%). This remained virtually the same in 1994 with 63 out of 157 cases showing contact (40%).

Figure 14

% of Incidents showing
contact with the
Victim Assistance Program
$n_1 = 119 / n_2 = 157$



NOTES

1. B.C. Ministry of Attorney General, *Survey of Spousal Assaults Reported to Police in British Columbia: 1993-1994* (Police Services Division, December 1996), pp. 8-12.
2. Ibid.
3. Ibid.
4. Ibid.
5. Ibid.
6. Ibid.

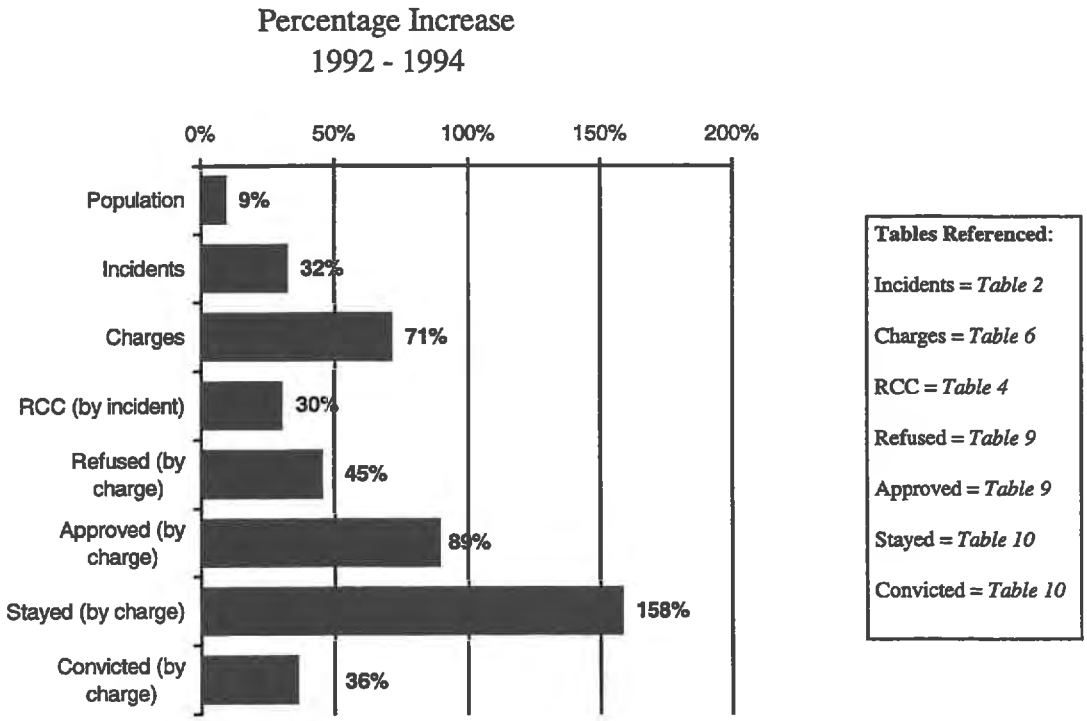
CHAPTER SIX

CONCLUSIONS

OVERALL PERCENTAGE INCREASE

The following chart displays the overall percentage increases in the relevant categories. While Statistics Canada data showed there was a 9% increase in population for Penticton from 1992 to 1994, the number of incidents reported increased by 32%. The most noticeable difference occurred in the category of "stayed (by charge)," with a percentage increase of 158%.

Figure 15



It is duly noted here that, while all of the percentage increases in *Figure 15* appear to be significant, tests of "statistical significance" were performed using a 95% and 99% confidence level. Calculations revealed that *none* of the above increases is, in fact, *statistically* significant. In light of this, the original hypothesis claiming the *Violence Against Women in Relationships Policy (1993)* would have a *significant* effect on the outcomes of the 1994 incidents, must be rejected. A larger sample taken over a longer period of time would be necessary to explore whether these findings are anomalous to Penticton, or if similar conclusions could be arrived at elsewhere.

SUMMARY

In those categories where a comparison was possible, the Penticton data percentages and proportions appear to be in line with those reported for the province.[1] Indeed, with few exceptions, the outcomes of spousal assault incidents have changed very little from 1992 to 1994, despite the implementation of the *Violence Against Women in Relationships Policy* in 1993. The noticeable difference in the number of reports made between 1992 and 1994 (32%) may reflect a heightened public awareness of the *VAWIR Policy* surrounding the time of its proclamation. It is also recognized that the inclusion of a report of spousal assault in the sample would be dependent on the coding given to the file at the time of entry. It is likely that some incidents within the *VAWIR* mandate may not have been coded properly as a spousal incident. With expressed interest by the Ministry of Attorney General to monitor this area, more attention may have been paid to proper coding practices in the year *after* the *VAWIR Policy* was implemented.

With respect to the RCMP, the data showed a substantial increase of 71% in the number of charges attached to these incidents, indicating a willingness by the RCMP to lay charges. At the Crown Counsel level, while the percentage of the recommended charges approved for prosecution remained virtually the same (89% in 1992 and 92% in 1994), there was a considerable 158% increase in the number of those charges that resulted in a *stay of proceedings*. This may be interpreted a number of ways. It may be that the RCMP were "too efficient" in following the mandatory charging directive and Crown Counsel could not proceed with the "overzealous" charging. Or, it may indicate that Crown Counsel personnel are "not efficient enough" in following the directive to proceed with charges in every possible case, regardless of the reluctance of the victim to testify. Without a careful case-by-case study, the specific reasons for these significant shifts cannot be known. Thus, with respect to the mandatory arrest and "no-drop" prosecutorial directives, it would appear that, while the numbers have shifted in an accordion fashion to some extent, the *Violence Against Women in Relationships Policy* has had no significant impact on the overall outcomes of spousal assault incidents in Penticton. Again, it is recognized that a larger sample of data (from the B.C. Lower Mainland for example, or the entire Okanagan region), over a longer period of time (three to five years before and after the *VAWIR Policy*, perhaps), may display a more reflective pattern of improvement in the outcomes of spousal assault incidents that may be attributed to the *VAWIR Policy*.

With respect to the level of "Court/Sentencing," three of the more noticeable findings can be seen in the sentencing categories. There was a substantial *decrease* in the percentage of *suspended sentences with probation* from 64% to 20%; a considerable *increase* in sentences of *jail plus probation* from 17% to 39%; and a noticeable increase in sentences receiving a *fine plus probation*, from 0% to 10%. Although the details of each incident are not known (such as the severity of the assault, previous convictions, or other mitigating circumstances that may affect sentencing), these differences may be interpreted as a valid attempt on the part of court justices to address the *VAWIR* mandate of deterrent sentencing for spousal assault offenders. Despite the above mentioned fluctuations however, the percentage of total charges that actually resulted in a conviction remained virtually the same at 23% for 1992, and 18% for 1994.

Finally, data showed the percentage of cases that had contact with Victim Assistance appears to be rather low for both years (at 40%). This may be due to the possibilities that the responding officer did not provide the victim with Victim Assistance referral information, or the referral was made and the victim chose not to access the services, or a combination of both. In addition, it should be pointed out that in many of the cases in which Victim Assistance was involved, the victim initiated contact on her own, or was referred by an agency other than the RCMP.[2] Future research may benefit from an in-depth study of the process of referral, including a survey of those victims that chose not to contact Victim Services after the referral was offered.

FUTURE RESEARCH

From the information gathered in this research project, it appears that little has changed in the outcomes of spousal assault in Penticton, British Columbia. There seems to be an indication that the RCMP are attempting to follow the directives for implementation of the *Violence Against Women in Relationships Policy (1993)*. The increase in arrests and charging is somewhat ineffectual however, if those incidents are "sloughed" away at the Crown Counsel level because they do not have "a substantial likelihood of conviction." A more detailed survey of reasons for the drastic increase in stays of proceedings would likely yield adequate justification for this. However, from these statistics, it would seem the well-meaning intentions of the *VAWIR Policy*, with the directives of mandatory charging and "no-drop" prosecutorial practices are not reaching the stated objectives. More research is vital in this area to determine the degree of discretion still held by police and prosecutors, and for the protection of the victims, to monitor those cases "stayed" for an escalation in violence and/or recidivism.

While this was a modest exploratory project yielding *some* information, this research *does* indicate the *Violence Against Women in Relationships Policy* needs to be evaluated further. The evaluation must be a comprehensive one, taking into consideration the perspectives of both those formulating and interpreting the Policy as well as those who may feel the impact of its implementation (i.e., the victims of relationship violence and abuse). In order to truly evaluate the efficacy of the *VAWIR Policy*, the appraisal must include not only a statistical examination of the indicators of implementation such as the present project, but also a qualitative survey of justice personnel, community agencies and, most importantly, the women whom the Policy is reputed to protect.

NOTES

1. B.C. Ministry of Attorney General, *Survey of Spousal Assaults Reported to Police in British Columbia: 1993-1994* (Police Services Division, December 1996).
2. Accurate statistics on this information are unavailable due to the incomplete entries found in the Victim Assistance database. In the category of "referring agency," on some cases it was noted that the referral was made by Crown Counsel, Social Services, self, or another "Community Agency," while other cases had no entry for this category.

APPENDIX

DATA QUALIFIERS

1. The number of spousal assaults represents the number of records which contain supplementary information indicating that a spousal assault has occurred. The number of spousal assault charges were listed from the most serious offence with which they were associated. This number does not count the number of different victims of spousal assault. For example, if the same person is a victim of spousal assault at different times, this would be recorded in separate incidents and, in effect, the same victim would be counted more than once.
2. Spousal assault data were retrieved from the PIRS/OSR SYSTEM originating in Ottawa at RCMP Headquarters. The data were retrieved in January of 1997.
3. For the purpose of scoring spousal assault offences, the PIRS/OSR system uses the following definitions: spousal assaults include assaults that occur as a direct result of a spousal relationship, including, a) assaults that result from an ongoing marriage or common-law relationship, and b) assaults that result after subjects are separated or divorced that are a direct result of the relationship. Spousal relationships include marriages, common-law marriages, same-sex relationships, and intimate-partner relationships.
4. The number of incidents categorized as "Male Offender" represents those incidents reported to police in which an assault has occurred against a spouse or intimate partner and the offender is male. This does not necessarily imply that the victim is female since the definition of a spouse includes same-sex couples. However, there are very few incidents involving same-sex couples. In the case of the present research project, no incidents involving same-sex couples were found in the sample.
5. Similarly, the number of incidents categorized as "Female Offender" represents those incidents reported to police in which an assault has occurred against a spouse or intimate partner and the offender is female. This does not necessarily imply that the victim is male since the definition of a spouse includes same-sex couples. However, there are very few incidents involving same-sex couples. In the case of the present research project, no incidents involving same-sex couples were found in the sample.

6. The number of incidents categorized as "Both Offenders" represents those incidents reported to police in which both parties of a spousal relationship, or intimate partners, assaulted each other. These incidents are mutually exclusive of either of the above two categories, Male Offender and Female Offender. However, in those instances where only the male was charged or only the female was charged, those incidents were transferred into the appropriate category when computing percentages.
7. The number of charges "RCC'd" by the RCMP represents the number of offences in which police filed a report to Crown Counsel alleging an offence had occurred. This does not imply the swearing of information or prosecution of those offences, as Crown Counsel may return the case to police due to insufficient evidence, or take no further action. Crown may also proceed with a charge other than what the police recommend. Sometimes in order to secure a guilty plea or because the evidence is stronger, a different charge is laid by Crown Counsel although the police may have sufficient evidence for a more serious charge. In these cases, the original more serious offence is scored, but it is cleared by the lesser offence.
8. The number of charges "Cleared" by the RCMP represent the number of offences where police could not complete an RCC. An offence may be cleared for any of the following reasons: suicide of the accused, death of accused (not suicide), death of complainant, diplomatic immunity, accused under 12, accused committed to mental hospital, complainant is uncooperative or declines to identify the offender, accused involved in other incidents, or accused already sentenced.
9. Court disposition data were retrieved from records containing supplementary information indicating the disposition for the incident. These data were collected from the Penticton Court Registry database. The Court "outcomes" refer to all the charges within each incident, and are not directly associated with any specific spousal assault offence.

Outcome Terms are Defined as Follows:

Absolute Discharge: A sentence by which the accused is discharged, although the charge is proven or a plea of guilty is entered.

Conditional Discharge: A sentence by which the accused is deemed to be discharged after serving a period of probation.

Convicted: refers to the number of offences within an incident to which the offender pleads guilty or is convicted.

Dismissed: refers to the number of offences within an incident which were dismissed by a judge or in which the accused was acquitted.

Reduced/Changed: refers to the number of offences within an incident which have been reduced to a lesser charge by Crown Counsel, or where Crown Counsel has entered into a plea bargain with the accused.

Refusal to Prosecute: refers to the number of offences in which Crown Counsel refused to proceed with the laying of charges.

Stayed: refers to the number of offences where Crown Counsel enters a stay of proceedings or withdraws a charge.

Warrant: For the purposes of this paper, "warrant" was listed in those cases where the charges were brought before the court and the accused did not appear as required. At the time of this research, the bench warrants were still outstanding.

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