The Possibilities of Criminal Justice Intervention in Domestic Violence: A Canadian Case Study

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In the last decade and a half Canada, like many other industrialised nations has undergone a sustained demand from women's groups to implement policies to respond to domestic violence. As a result of these lobbying efforts, programs have developed across the nation providing refuge and support services for victims and their children, programs for offenders, and new protocols for police and court intervention. While programs for victims and their children have been applauded, there has been a lively debate within the feminist community on the merits of criminal justice intervention in domestic violence cases. One school of thought argues that invoking a hierarchically structured, patriarchal legal system to intervene in domestic violence cases will only further disempower women (Snider 1994; Currie 1993). The other perspective focuses on the fact that women do call the police, and do use the courts to try to secure a violence free life. This perspective maintains that as long as women seek out protection and redress from the justice system the government must ensure that the police, the courts and corrections respond in a serious and sensitive way to those women (Dobash and Dobash 1992; Ursel 1995).

This article will focus on one specific jurisdiction in Canada, the province of Manitoba, that has attempted a substantial reform of the justice system to improve its response to domestic violence cases. This article is largely descriptive of the components and outcomes of the Manitoba model of reform. However, it is hoped that the outcomes in Manitoba may shed some light on the debate about the merits of criminal justice intervention in domestic violence cases.[1]

My examination of the reforms in Manitoba will cover three aspects of the issue. First, a look at the politics and the process of reform; second, an examination of the quantitive measures of change effected by these reforms; and finally, a consideration of the qualitative changes which have occured which illuminate both the potential and the limits of criminal justice reform.

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1 My particular focus on the criminal justice system in this article should *not* be read as a belief that criminal justice intervention is a sufficient response, rather, I view the CJS as only one component of a continuum of services required to confront domestic violence in our community.

The politics and the process of reform

There are five dates associated with five major initiatives that capture the history of reform in Manitoba. These events were not mapped out ahead of time, they evolved through a process of sequential reform. Reform within one component of the system, for example, at the police level, put pressure on the courts provoking a crisis, which, in turn, led to reform at the court level. The outcomes of this sequence of events was never guaranteed. At each stage the possibilities of and the voices for retrenchment were ever present. However, the strong, ongoing activism of women's groups countered the internal pressures for retrenchment and pushed the process forward.

In 1983 the Attorney General of Manitoba issued a directive to police to charge suspected offenders in all cases in which there were reasonable and probable grounds that an offence had occurred, regardless of the relationship between the victim and the accused. This directive was in response to lobbying by women's groups to end the double standard which prevailed at the time (that is, if you hit a stranger it was assault, if you hit a family member it was considered a private matter, not a matter for police).

Within a few months the number of spousal abuse cases coming to court increased. Without the explicit intention to do so the directive led to the public revelation of 'private' crimes. For the first time these crimes became a part of the public record, they became observable and calculable. The directive increased the profile of domestic violence cases not only in the courts but also in the press and public consciousness. A simple directive about enforcement set in motion a sequence of events which would have far reaching consequences.

The first response was a call for retrenchment on the part of a number of judges and a greater number of defence lawyers. These officers of the court publicly denounced the directive, claiming the courts were being cluttered with what were essentially 'social work issues' distracting from the 'real' work of criminal justice. While these were influential voices they were also minority voices. The press loved the directive and frequently covered the most outrageous sentences handed down in wife abuse cases. The press simultaneously educated the public about the magnitude of the problem and the inadequacy of the justice system's response. This 'public education' led to substantial public support for the directive. A city wide survey in 1984 indicated that 85 per cent of the respondents supported the new police charging policy.[2]

However, the most significant legacy of this first reform was the pressure it created within the social service system and the criminal justice system for further reform.

The increased public awareness of family violence coincided with the mounting pressure exerted by women's groups for services for victims of domestic violence. This led to the second important reform date, 1985, when the provincial government created a new office to develop and fund wife abuse services. For five years the focus of government reform was on the social services with a special emphasis on developing and funding community

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2 The Winnipeg Area is an annual random sample survey of approximately 750 households selected from a computerised list of addresses compiled by the City Planning Department for the 1982 and 1989 assessments. A sample size of 530 or more for a population of 220 000 households or 600 000 individuals provides an error level of 4.1%, 19 times out of 20. Questions on criminal justice policy were included in the 1991 and 1995 survey, demonstrating continued high levels of support (over the 80% level) for police charging policy, the Family Violence Court, the specialised unit in corrections and for the changing sentencing pattern. Interestingly, women respondents consistently reported the highest levels of support.

based programs. From 1985 to 1990 provincial expenditure on wife abuse services grew from 30 cents per capita to $4.00 per capita, rising to $7.00 per capita by 1996. These expenditures increased the number of provincially funded wife abuse services from three in 1985 to 23 in 1995.[3]

A frequent concern articulated by critics of the criminal justice system, is that reform of the justice system will usurp all interest in and funding for social services. In Manitoba, the initial reform of the justice system, again quite unintentionally, galvanised support for a massive expansion of social services. The directive did not in and of itself create the reform, but it created the conditions which were used effectively by women's groups to push for change. The increased charges resulting from the directive produced the indisputable 'hard data' concerning the prevalence of domestic violence. This data was used to lobby for expanded services.

Another unintended consequence of the 1983 directive was the increased scrutiny of the courts in their response to domestic violence cases. As the number of cases going to court increased they attracted more press coverage. Since the press seems to equate bad news with good coverage the wife abuse court cases were grist for their mill. Betweeen 1985 and 1989 the local press frequently headlined some of the more outrageously light sentences of convicted wife abusers. This public scrutiny was extremely uncomfortable for the provincial Justice Department and intolerable for a government that had announced 'getting tough' on family violence as a major election issue. The solution to this political embarrassment emerged in the form of a specialised criminal court for family violence cases. Thus the third significant date in our history of reform was September 1990 when the Family Violence Court (FVC) became operative.

This court was mandated to handle all matters of family violence, including spouse abuse, child abuse and elder abuse. All persons in a relationship of trust, dependency and/or kinship were part of the case load of FVC. Relationships were broadly defined, including intimate same sex relationships, as well as former intimate relationships such as former, spouse, de facto partner or boyfriend, girlfriend.

Components of the specialised court include a special unit of crown attorneys (seven in number) who exclusively prosecute family violence matters; judges assigned to sit in the court on the basis of their interest and experience in presiding over family violence cases; and two victim support programs, the Women's Advocacy Program and the Child Abuse Victim Witness Program, which provide support and advocacy for women and children who have been victims of violence by their parents, partners or caregivers. The final component was the designation of specific court rooms to hear only family violence cases. By 1994 over 110 hours of court time were allocated each week to process these cases. The goals of the specialised court were threefold: 1) to avoid lengthy court delays and set court dates as quickly as possible; 2) to create a sensitive and supportive environment for victim/witnesses; and 3) to provide more consistent and more appropriate sentencing.

One specific outcome of court specialisation, a revolution in sentencing, became the motive force behind the next major reform event. Prior to specialisation the most frequent sentence for a person convicted of assaulting a spouse was a conditional discharge, with unsupervised probation and fines following in frequency. The most frequent disposition in

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3 Data on funding of wife abuse services was obtained from the Annual Reports of the Department of Family Services 1982 to 1995, Government of Manitoba. The 1996 figures were provided to me directly by the Family Disputes Branch of the Department of Family Services.

FVC is two years supervised probation and court mandated treatment, followed by incarceration as the second most frequent outcome. Suddenly the correctional institutions and probation offices were swamped with spouse abuse offenders who were court mandated for treatment.

The sentencing pattern in FVC created a powerful motive for restructuring corrections. Community-based treatment programs for batterers were small in number, limited in capacity and frequently reluctant to handle court mandated offenders. In the face of this reality, judicial sentencing was on the verge of being rendered meaningless unless the system could provide the mandated treatment. In response, in 1992 the Corrections Branch of the Department of Justice created a special unit of correctional officers to deliver treatment to convicted family violence offenders.

What is particularly significant about this sequence of reform is that for the first time the motive for reform was internally generated. Previous reforms provided conditions, and information that could be used by persistent lobbyists outside of the criminal justice system to generate change. However, the specialised court actually created the conditions for an internally generated demand for reform. The criminal justice system has an inherent interest in the implementation of court sentences, upon this simple fact much of its legitimacy lies. Thus a mainstream legal institution, by virtue of some administrative restructuring, found its own legitimacy dependent upon the realisation of the very reforms advocated by women's groups, that is, the expansion of treatment groups for offenders.

The final reform event occurred in July of 1993 when the police department implemented a new charging protocol. This protocol, labelled the 'Zero Tolerance Policy' mandated its officers to lay a charge in all cases in which a complaint had been made. All discretion was removed from the police level and tranferred to the special family violence crown attorney's unit. This policy was the culmination of a whole series of events including the above outlined reforms and a much publicised inquiry into a number of domestic homicides. While this policy was officially adopted in 1993 the police department had been moving steadily in that direction since the implementation of the specialised court, as is indicated by the rising arrest rate over time.

A quantitative assessment of reform

What difference did all of these reforms make? Do these changes benefit women and children at risk? To answer the first question I will outline the major quantifiable differences we have seen over the last 13 years of reform. To answer the second question I will look, in the final section, at a number of qualitative measures of change.

The data presented below is taken from the city of Winnipeg, the largest urban centre in Manitoba and the site of the Family Violence Court.[4] It was collected over a period of 13 years, seven years prior to the implementation of the specialised court and four years of data from the Family Violence Court (1995 and 1996 court cases are still being collected).

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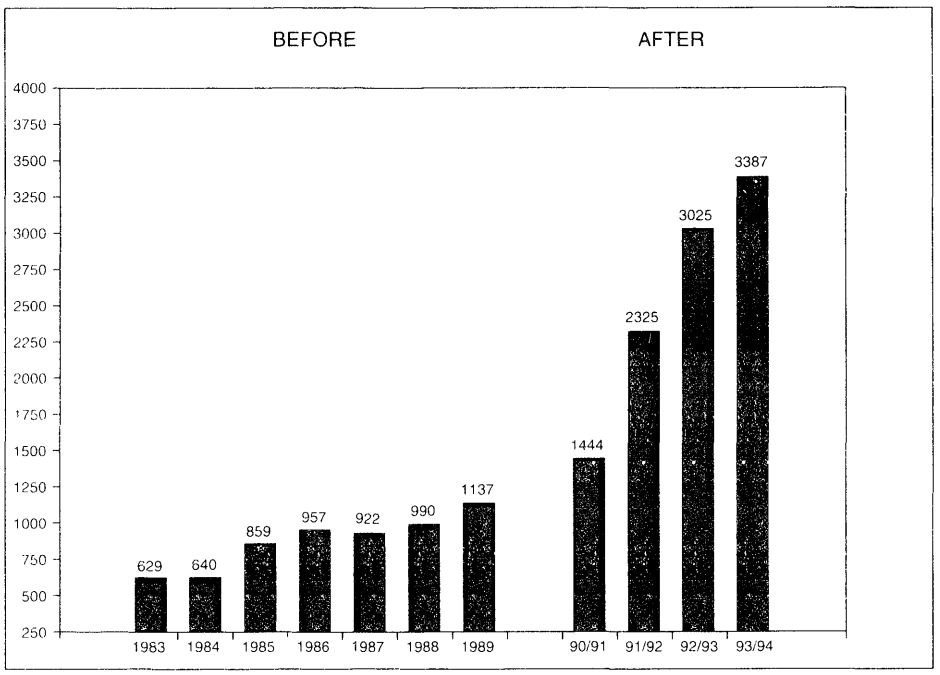
4 The City of Winnipeg has a population of 600 000, this gives us an arrest rate of 690 per 100 00 for 1995. This puts Winnipeg in the middle of the scale among police forces with compulsory charging policies. For example, Dade County Florida reports an arrest rate of 580, San Diego an arrest rate of 846 and Duluth an arrest rate of 896 per 100 000 for the year 1995. Information on these rates were obtained by direct fax and phone conversations with each jurisdiction.

While not all of the reforms within the criminal justice system are amenable to quantitative measures there are some useful quantitative indicators of goal achievement. First, one simple measure of the effectiveness of the 1983 directive to charge and the 1993 zero tolerance policy is the arrest rate. Because both reforms were designed to improve police response to domestic violence calls by increasing the arrest rate success would be indicated by a rising arrest rate.

Figure 1 Number of Spousal Assault* Cases Where Charges Were Laid Winnipeg Before and After FVC

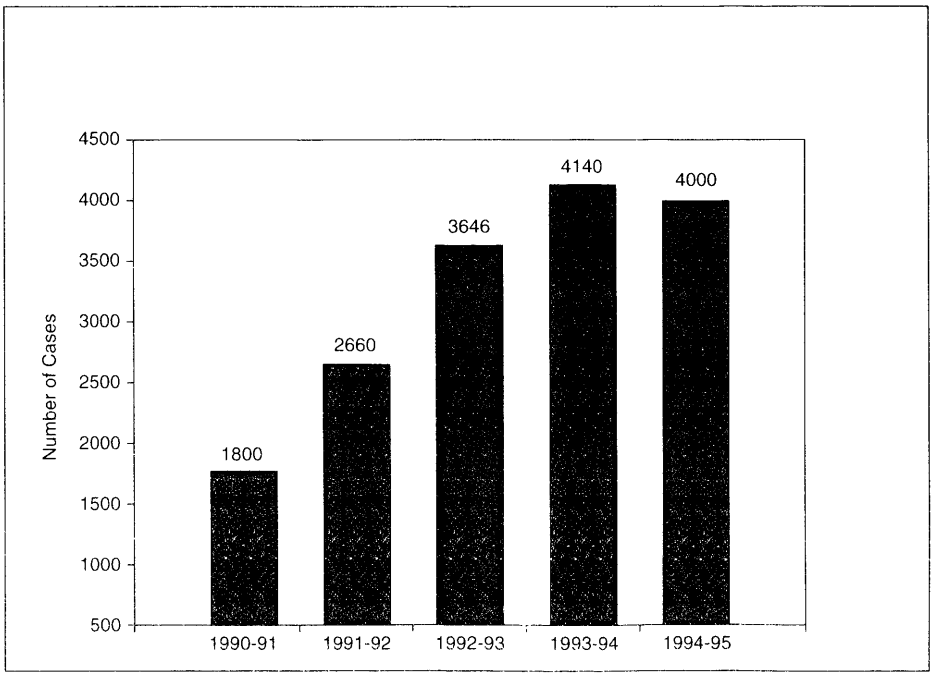


* Spousal Assault include those cases in which a spouse and child were assaulted.

Figure 1 indicates quite clearly that policy changes at the police level did substantially change police behaviour in terms of arrests. Interesting to note is the fact that the introduction of the specialised court had as big an impact on increasing arrest rates as did actual changes in police policy. This testifies to the important effects reform in one part of the system has on the other components.

The four years of FVC data provide us with a variety of measures of the impact of the court as well as the characteristics of the cases. Figure 2 indicates the number of cases which have entered the specialised court in the first five years of its operation.

Figure 2 Number of Cases Heard in Family Violence Court by Year



One of the primary purposes of court specialisation was to expedite the processing of family violence cases. While the court began in 1990 with 52 hours of court rooms scheduled per week this doubled within the first year to handle the volume of cases. At present the majority of cases are processed in a month or two, because of the frequency of guilty pleas. In addition FVC has been able to set trial dates more rapidly than the general court. Crown attorneys can usually secure a trial date within one or one and a half months for accused held in custody, two or three months for accused out on bail.

From the inception of the court the majority of cases have been wife abuse cases; further, the increased volume of cases in the first four years are all attributable to increased arrests in spousal abuse cases. Table 1 identifies the number of cases analysed by type of abuse for the first four years.

Table 1 Number and Percentage of Cases by Type of Abuse in FVC by Year

		Spousal		Child		Elder	
Year	**Cases Analysed**	**No**	**%**	**No**	**%**	**No**	**%**
1990–91	1699	1302	77	371	22	26	1
1991–92	2381	2014	85	331	14	36	2
1992–93	3485	3119	89	327	9	39	1
1993–94	3893	3543	91	283	7	67	2
Total	11 458	9978	87	1312	11	168	2

Note: Percentages do not always add up to 100 due to rounding off.

While the number of cases increased the number of people being sentenced also increased and the pattern of sentencing changed dramatically. Tables 2 and 3 identify sentences in FVC. These sentences are to be contrasted with the pattern that existed prior to court specialisation. In the past the most frequent disposition in domestic violence cases was conditional discharge, 28 per cent, followed by fine, 24 per cent with incarceration being the least frequent sentence, occuring in only 11 per cent of the cases that proceeded to sentencing (Ursel 1995:180).

Table 2 Most Frequent Sentences by Year

		Probation		Incarceration at Sentence		Total Incarceration*	
Year	**Total Sentences**	**No**	**%**	**No**	**%**	**No**	**%**
1990–91	1080	789	77	252	25	252	25
1991–92	1354	1002	74	269	20	269	20
1992–93	1718	1374	80	389	22	538	31
1993–94	1815	1228	68	463	26	657	36
Total	5967	4393	74	1373	23	1716	29

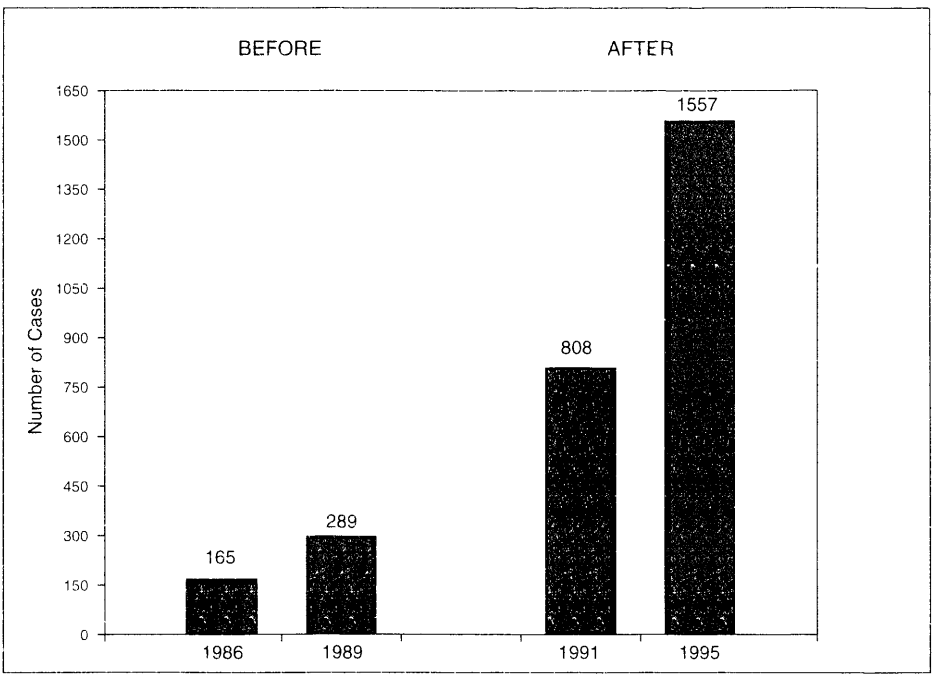
* Total Incarceration includes data on time in custody which was available for the third and fourth year. In the third year 149 and in the fourth year 194 offenders received time in custody as part of sentence.

Table 3 Less Frequent Sentences by Year

		Fine Restitution		Conditional Discharge		Absolute Discharge	
Year	**Total Sentenced**	**No**	**%**	**No**	**%**	**No**	**%**
1990–91	1080	196	18	102	9	17	2
1991–92	1354	170	13	196	14	20	1
1992–93	1718	325	19	268	16	33	2
1994–95	1815	296	16	308	17	38	2
Total	5967	987	17	874	15	108	2

One of the most obvious conseqences of the changing sentencing pattern in FVC is the high volume of work passed on to corrections. Since the majority of supervised probation sentences contained an order for court mandated treatment the pressure for treatment programs from correctional services escalated. Figure 3 contrasts the active case load of family violence offenders in Winnipeg probation offices for selected years before and after court specialisation.

Figure 3 Impact of FVC on Winnipeg Probation Active Case Load of Family Violence Offenders



A recent file review conducted in the Winnipeg correctional programs reveals a program capacity commensurate with the number of offenders court mandated to treatment. In 1995 Winnipeg probation services, the agencies they contract with and the two correctional institutions servicing the Winnipeg area provided groups for 899 registrants.[5] Given that court mandated treatment sentences are typically paired with a two year supervised probation order, current program capacities within correctional services could provide treatment to 1800 individuals in a two year (term of probation) period (Ursel 1996). Thus there is strong quantitative evidence that the restructuring of corrections and the creation of the specialised family violence unit has responded to the increasing demand for batterer's treatment groups.

While the quantitative measures provide unambiguous evidence of change within the criminal justice system the more critical question is do these changes benefit the women and children victim/survivors?

A qualitative assessment of reform

Our assessment of change within the criminal justice system is narrow. The nature of the study focused on evidence from the system itself. We recognise that the best measure would include feedback from the clients themselves. Our resources and research mandate has not permitted client interviews to date. As a result, we are constrained to examine changes within the system which are designed to be more supportive of the complainants who appeal to the system for justice.

The first qualitative change which occurred as a result of court specialisation was the redefinition of crown culture within the specialised prosecuting unit. Prior to specialisation both the structure and the values of the crown attorney's office could be seen to be inimical to the needs of victims of domestic violence. In the past the crown attorney's office was a fairly macho environment, hard living, hard drinking guys who were every bit as tough as the customers they prosecuted. Their definition of success was conviction and the higher the profile of the case the better it was for their career.

In this environment, 'domestics' were low profile, messy cases with minimal chance of conviction because of the ambivalence of the victim/witness concerning her interest in testifying. Under these circumstances, if the case proceeded, more established crowns passed these 'less desirable' cases on to junior prosecutors. Often a case would go from desk to desk with a number of crown involved in some way before the case was heard. This lack of interest and lack of continuity did nothing to inspire the confidence of the victim and many of these cases were stayed before they got to court.

The structure of the system actually punished crown attorneys who invested time in domestic cases, as long as the definition of success was conviction. Prior to specialisation a number of crown attorney revealed to me that they would often walk out of court after an unsuccessful case angrier with the victim than the accused. Prosecutors experienced the victim as the major impediment to their success.

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5 At the time that the special unit in Corrections was mandated to deliver treatment programs for batterers the Manitoba government also set aside $100 000 to contract for services. Corrections would contract with a community agency to avoid backlog and to provide culturally specific services when required. In 1995 Winnipeg corrections contracted with three agencies who delivered programs to approximately one quarter of the offenders on the case load.

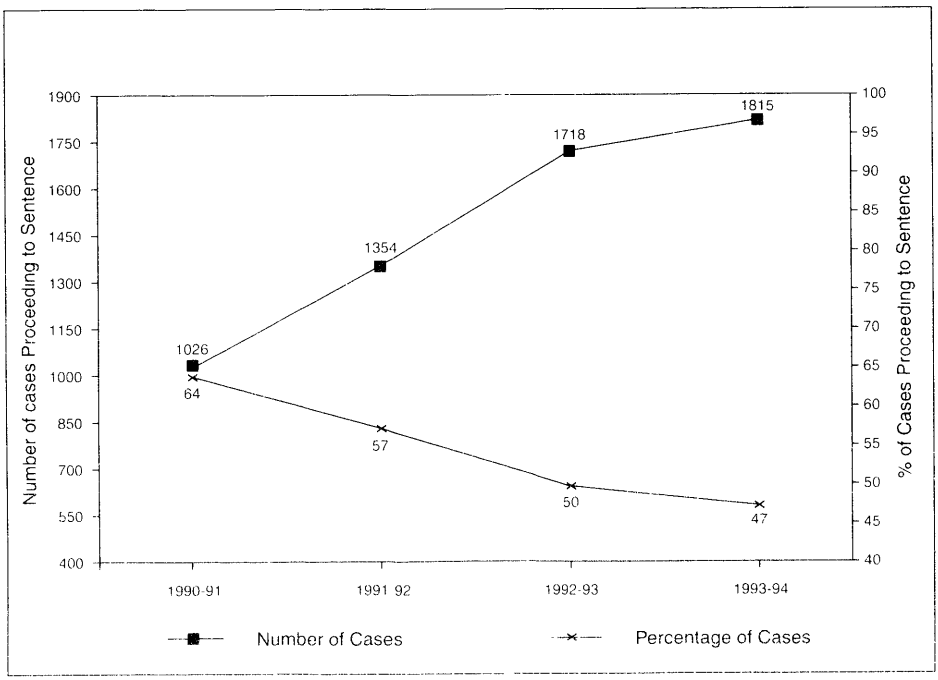
The creation of the specialised court and the special unit of prosecutors was designed to change this culture which was so hostile to the needs and interests of the victim. First, 'domestics' were redefined, from low priority cases which could be sloughed off to junior crown to high priority cases. Further these cases were understood to be difficult, requiring the most skilled and sensitive of court personnel to handle them. This redefinition was undertaken by the most senior officials of the justice department, including the Minister of Justice. As a part of the overall restructuring a policy for prosecuting domestic cases was developed which specified that in all cases rigorous prosecution should be pursued but not at the expense of the victim. This dual and frequently contradictory mandate was a much closer reflection of the complex nature of these cases than the old simplistic definition of conviction as success. To ensure that there was equal attention to both aspects of this mandate crown were not to declare witnesses hostile, were not to put witnesses in a position to be held in contempt of court or badger them with warrants. In the six years that the court has been in operation, no victim has been declared a hostile witness and no victim has been held in contempt of court; if she does not show for the court date the warrant is cancelled in two weeks.

While some might say that the contradictory mandate of vigorous prosecution and victim sensitivity is unworkable, this has not proved to be the case with specialisation. The special crown attorney's unit has risen to the challenge and introduced some creative strategies to get the job done. One of the most creative is the idea of testimony bargaining. While plea bargaining (a mainstay of our criminal justice system) focuses on crown negotiation with the accused or his/her lawyer, testimony bargaining focuses on crown negotiation with the witness. The typical pattern of bargaining goes like this: The victim/witness indicates to the crown that she will not testify because she can't afford to have her husband go to jail. The crown response is to ask the victim/witness what ideally she would like to see happen. More often than not she responds that she just wants the violence to end, she doesn't want to leave him and she doesn't want him to go to jail. In response to this the crown may offer to drop the most serious charge that could lead to a jail sentence, and recommend probation and court mandated treatment in return for her testimony. Typically, if she agrees the crown notifies defence that the witness is willing to testify and most often the case is resolved through a guilty plea.

This is not orthodox criminal justice procedure, but we know that orthodox procedure has often victimised the witness in domestic violence cases. Testimony bargaining gives the victim/witness a voice in the outcome of criminal proceedings, it indicates that the crown not only represents the interest of the state but also the interest of the victim. Over time crown in the family violence unit have come to redefine success. They understand that women's ambivalence to testifying lies deep in a complex personal and family history. As a result of their deeper understanding of the dynamics of domestic violence, crown have become more humble in their assessment of their role. They, like refuge workers, now understand that a single trip to a refuge/court cannot in and of itself undo a lifetime pattern. Conviction is no longer their sole measure of success. They view their role as providing a service but the woman must determine how much of that service she needs to use. She may not be ready to testify today but she may be back in a month or a year and she should view the court as a resource.

One consequence of a prosecution policy that is as attentive to the victims' needs as it is to the matter of prosecution is an increasing rate of stays of proceedings. While more offenders are being convicted the percentage of convictions is declining. Figure 4 identifies this pattern over four years.

Figure 4 Number and Percentage of Family Violence Cases Proceeding to Sentence in FVC



This apparent contradiction, more offenders being sentenced while the rate of conviction declines, reflects the interesting dynamic between court and police. It appears that the redefinition of success is filtering from the crown's office to the police desk. Police policy now requires police to charge if a complaint in a domestic violence incident is made. In the past police often gave as an explanation for not charging the fact that the victim would never testify so what was the point. In other words they measured success by the same yardstick as the crown. When the crown changed their measure of success, police found their old measure irrelevant.

Since the zero tolerance policy, the police have no discretion, crown decide whether the charges should be stayed or whether to proceed. Many cases are stayed and the police often return to the same residence over and over again. How do they make sense of the old pattern under new circumstances? Increasingly police are taught during inservices to challenge their old concepts of 'a job well done'. They are reminded that the police job is to respond to the call, stop the violence, make the arrest. The question is posed: If women use the police to stop the violent episode, to give some weight to her side in the balance of power with her partner, why can't that be a successful intervention? People who work with women who have been battered must abandon the all or nothing expectation. Survival and recovery are seldom a 'one-off' proposition. This means we must change our definition of success within the justice system from short term outcome (conviction) to a longer term process (redressing an imbalance of power). This changes the process of intervention. The rigidity and hierarchy of the mainstream legal process becomes evidently counter productive to the actors, themselves encouraging them to move to greater flexibility and sensitivity. This, in turn, encourages the intervenor, police, crown attorney or judge, to assume a more humble role to move from decision maker to facilitator.

If we change the purpose of intervention from one of conviction to one of redressing an imbalance of power that is dangerous and often lethal, it may be possible for the criminal

justice system to offer women at risk a meaningful intervention. Of course changing the purpose of intervention and the definition of success flies in the face of criminal justice system tradition. In Manitoba we have chosen specialisation as a means to bypass rather than challenge that tradition head on. However, this quick solution is building a weight of precedents that have the potential (in the time honored legal sense) of changing tradition overtime. What is most interesting and perhaps most hopeful about the Manitoba model is the rapid change of behaviour that was evident at all three levels, police, court and corrections. The work culture was restructured and redefined to reward people for working with domestic cases and to assist them in understanding the complexity of these cases so they could meaningfully redefine success in their own workplace. The intransigence of old, negative attitudes may in some cases be survival strategies within a particular work structure. When we changed the structure behaviours did change; perhaps, over time, the attitudes may change as well.

At this point I think the Manitoba experience holds out the possibility that a rigid, hierarchical 'justice' system could become more flexible and respond to social as well as legal imperatives. It is clearly a system in the process of improving. However, with changes we take risks and in the area of domestic violence the consequences of a 'bad' risk are life and death. The incredible importance of respecting the victim and giving her a voice in the system has at times had tragic consequences. We can count the number of homicides that have been a result of judges respecting the woman's assessment that she is not in danger and that she supports her husband's bail request. We can count the number of homicides that have resulted in a woman agreeing to see her partner despite the restraining order. These are not 'blaming the victim' stories, these are stories of the complexity of domestic violence cases. When victims and the families that love them are not able to assess risk, there is always a danger/cost to a system that respects women's assessment and does not presume to know her circumstances better than she does. This is the reality that refuge workers have to struggle with and agonise over, but what is the alternative?

Our experience in Manitoba has impressed upon us how limited is the role of the justice system. This is no excuse for doing it badly and every effort must be made to continue the process of reform. Our failures, our tragic cases, must not be seen as a reason to abandon the project of reform but rather as the impetus for broadening the reform project beyond the courts. Domestic violence is a crime so deeply imbedded in our culture and our history that no single institution has the solution. However, no single institution should be exempt from struggling to improve its response.

REFERENCES

Currie, D (1993) 'Battered Women and the State: From the Failure of Theory to a Theory of Failure', *Journal of Human Justice*, vol 1, no 2.

Dobash, R and Dobash, R E (1992) *Social Change*, Routledge, London.

Hirschel, J and Hutchinshon, I (1992) 'Female Spouse Abuse and the Police Response: The Charlotte North Carolina Experiment', *Journal of Criminal Law and Criminology*, vol 83, no 1.

Sherman, L W (1992) *Policing Domestic Violence: Experiments and Dilemmas*, Free Press, NY.

Snider, L (1990) 'The Potential of the Criminal Justice System to Promote Feminist Concerns', *Studies in Law, Politics and Society,* vol 10.

Stubbs, J (ed) (1994) *Women, Male Violence and the Law*, Institute of Criminology, Sydney.

Ursel, E J (1995) 'The Winnipeg Family Violence Court' in Valverde, M, MacLeod, L and Johnson, K (eds) *Wife Assault and the Canadian Criminal Justice System*, University of Toronto Centre of Criminology, Toronto.