DIS/MEMBERING THE FAMILY:
MARITAL BREAKDOWN, DOMESTIC CONFLICT, AND FAMILY VIOLENCE IN ONTARIO, 1830-1920

by

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ABSTRACT

This dissertation is a study of the history of marital breakdown, domestic conflict, and family violence in Ontario between 1830 and 1920. Building on previous work done in the fields of Canadian social history in general and legal, family, and feminist history in particular, this study seeks to examine and deconstruct one of the most ideologically and socially revered institutions of the nineteenth and early twentieth centuries: that of marriage. Legal documents and especially criminal court records gleaned from four levels of the criminal justice system - the magistrates or police court, the county court judges' criminal court, the court of general sessions, and the criminal assizes - form the bulk of the primary research. These historical records have proven to be particularly rich sources for probing and reconstructing the more obscure and often conflictual dimensions of marital and familial relations, especially since there are few other written sources available on the subject. As such, they offer evidence of the varied ways in which conflict, power, betrayal, and resistance exhibited themselves in conjugal relations and became matters for criminal and, in some cases, civil litigation.

Thematically, this study begins by exploring the complex religious doctrines and shifting legal rules designed to ensure what was constructed as 'appropriate' heterosexual coupling and 'legitimate' family formation. On this basis, it examines why certain marital unions were censured by local communities and christian churches or contested in the criminal courts by disapproving parents or disgruntled wives and husbands. The main body of this work, however, focuses on disentangling the contract of marriage, the so-called 'reciprocal' rights and 'mutually beneficial' obligations assigned to each spouse as delineated by christian and secular domestic ideologies, the shifting provisions of the law, as well as social customs. More specifically, separate chapters investigate the social and legal meanings of what were, to varying degrees, identified as direct violations of the

marriage contract - adulterous liaisons and bigamous unions, husbandly desertion and familial non-support, wife-battering and spousal murder. Each examines how these transgressions were censured by extra-legal regulatory practices, became the source of legal grievance among wives and, in some cases, husbands or, alternatively, were justified by them, and were adjudicated by the criminal courts. This inquiry, then, endeavours to expand our historical knowledge of the internal dynamics of marital and familial relations, by examining the competing gendered as well as generational expectations underlying them; the bases of contention, antagonism, and conflict; the moments when domestic friction and the assertion of a male household head's prerogatives precipitated the withdrawal of material resources or erupted into brutal expressions of patriarchal authority; and how some married women attempted to negotiate, contest, and even escape the economic struggles, physical dangers, and sexual constraints they confronted.

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The completion of this dissertation was a long and arduous process. Moving to Victoria in the early stages of my research, taking on a heavy teaching load in the Departments of History and Women's Studies, committing myself to too many projects at once, and not learning the meaning of the word 'no' were only some of the factors that contributed to the delay. Justifications aside, I can say that having reached this stage has brought enormous relief to my family, friends, colleagues, supervisor, and last but not least, myself. In the final stages of completion, the topic of this thesis took on a personal significance that I had not expected. But like many of the women in this study, I found myself drawing on the resources around me, the most crucial ones being my family and friends.

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In Victoria, it was my network of friends that sustained me especially over the last two years. The boundless energy, unwavering commitment, and contagious laughter of my

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Chapter 1

Introduction

> "Every journey conceals another journey within its line: the path not taken and the forgotten angle. These are the journeys I wish to record."[1]

These opening lines of Jeannette Winterson's novel, *Sexing the Cherry*, were not intended to describe the practice of historical inquiry, but they allude to what has become a more analyzed and debated aspect of the historians' craft. Carolyn Steedman captures what has taken up by some Canadian historians as the "temporariness" and "impermanence" of historical writings,[2] when she states that "the writing of history represents a distinct cognitive process precisely because it is constructed around the understanding that things are not over, that the story isn't finished: that there is no end."[3] In tackling ninety years of Ontario history, this study is necessarily temporary and partial. The period between 1830 and 1920 was, after all, an era of dramatic and complex social transformation. Among its decisive developments were: the ongoing displacement and marginalization of First Nations peoples;[4] the consolidation of colonial rule, the building of a nation, and the expansion of

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[1] Jeannette Winterson, *Sexing the Cherry* (London: Vintage, 1989), 9-10.

[2] Joy Parr, "Gender History and Historical Practice," *Canadian Historical Review* 76, 3 (September 1995): 355.

[3] Carolyn Steedman, "La théorie qui n'en est pas une; or, Why Clio Doesn't Care," *Feminists Revision History*, ed. Ann-Louise Shapiro (New Brunswick: Rutgers University Press, 1994), 91-92.

[4] See, for example, Olive P. Dickason, *Canada's First Nations: A History of Founding Peoples from Earliest Times* (Toronto: Oxford University Press, 1992); J. R. Miller, *Skyscrapers Hide the Heavens: A History of Indian-White Relations in Canada* (Toronto: University of Toronto Press, 1991); John L. Tobias, "Protection, Civilization, Assimilation: An Outline History of Canada's Indian Policy," *Historical Perspectives on Law and Society in Canada*, eds. Tina Loo and Lorna R. McLean (Toronto: Copp Clark Longman, 1994), 290-305; Kathleen Jamieson, "Sex Discrimination and The Indian Act," *Arduous*

state and legal institutions; the transition from a predominantly rural household-based economy to an urbanized and industrial-capitalist one, a development fuelled by successive waves of immigration and characterized by the expansion of the wage labour system, the 'making' of the working classes, and the instabilities of family waged economies;[5] and the emergence of a predominantly Anglo-Protestant middle-class social and moral reform movement, to which the gendered, racialized, and class-based crusades against sexual immorality and intemperance and campaigns for the expansion of non-Aboriginal women's legal and political rights were integrally connected.[6] Even within its self-selected parameters over this transformative period, this examination of marital breakdown, domestic conflict, and family violence, is necessarily only a partial journey, and no claims are made here to scholarly exhaustiveness or settled certainties.

Building on previous work done in the fields of Canadian social history in general

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Journey: Canadian Indians and Colonization, ed. J. Rick Pointing (Toronto: McClelland & Stewart, 1986), 112-36; Ann McGrath and Winona Stevenson, "Gender, Race, and Policy: Aboriginal Women and the State in Canada and Australia," *Labour/Le Travail* 38 (Fall 1996): 37-53.

[5] See, for example, Allan Greer and Ian Radforth, eds., *Colonial Leviathan: State Formation in Mid-Nineteenth-Century Canada* (Toronto: University of Toronto Press, 1992); Margaret A. Banks, "The Evolution of the Ontario Courts, 1788-1981," *Essays in the History of Canadian Law*, Volume 2, ed. David Flaherty (Toronto: University of Toronto Press, 1983), 492-572; Marjorie Griffin Cohen, *Women's Work, Markets, and Economic Development in Nineteenth-Century Ontario* (Toronto: University of Toronto Press, 1988); Bryan D. Palmer, *Working Class Experience: Rethinking the History of Canadian Labour, 1800-1991* (Toronto: McClelland & Stewart, 1992), chapters 1-4; "Social Formation and Class Formation in North America, 1800-1900," *Proletarianization and Family History*, ed. David Levine (New York: Academic Press, 1984), 229-309; Bettina Bradbury, "The Home as Workplace," *Labouring Lives: Work and Workers in Nineteenth-Century Ontario* (Toronto: University of Toronto Press, 1995), 412-76.

[6] See, for example, Mariana Valverde, *The Age of Light, Soap, and Water: Moral Reform in English Canada, 1885-1925* (Toronto: McClelland & Stewart, 1991); James G. Snell, "'The White Life for Two': The Defence of Marriage and Sexual Morality in Canada, 1890-1914," *Histoire sociale/Social History* 16, 31 (May 1983): 111-28; Wendy Mitchinson, "The WCTU: 'For God, Home and Native Land': A Study in Nineteenth-Century Feminism," *A Not Unreasonable Claim: Women and Reform in Canada, 1880s - 1920s*, ed. Linda Kealey (Toronto: Women's Educational Press, 1979), 151-67; Mariana Valverde, "'When the Mother of the Race Is Free': Race, Reproduction, and Sexuality in First-Wave Feminism," *Gender Conflicts: New Essays in Women's History*, eds. Franca Iacovetta and Mariana Valverde (Toronto: University of Toronto Press, 1992), 3-26.

and legal, family, and feminist history in particular, what this study does seek to do is examine and deconstruct various aspects of one of the most ideologically and socially revered institutions of the nineteenth and early twentieth centuries: that of marriage. In broad thematic terms, it begins by exploring the complex religious doctrines and shifting legal rules designed to ensure what was constructed as 'appropriate' heterosexual coupling and 'legitimate' family formation. On this basis, it examines why certain marital unions were censured by local communities and christian churches or contested in the criminal and civil courts by disapproving parents or disgruntled wives and husbands.

The main body of this work, however, focuses on disentangling the contract of marriage, the so-called 'reciprocal' rights and 'mutually beneficial' obligations assigned to each spouse as delineated by christian and secular domestic ideologies, the changing provisions of the law, as well as social customs. More specifically, it investigates the social and legal meanings of what were, to varying degrees, identified as direct violations of the marriage contract - adulterous liaisons and bigamous unions, husbandly desertion and family non-support, wife-battering and spousal murder - and considers the ways in which these transgressions became the source of grievance among married women and, in some cases, married men or, alternatively, were justified by them. Furthermore, how these particular offences were censured by extra-legal regulatory practices and adjudicated particularly by the criminal justice system is also scrutinized. In its thematic focus, then, this inquiry endeavours to expand our historical knowledge of the internal dynamics of marital and familial relations, by examining the competing gendered as well as generational expectations underlying them, the bases of contention, antagonism, and conflict, the moments when domestic friction and the assertion of a male household head's prerogatives precipitated the withdrawal of material resources or erupted into brutal expressions of patriarchal authority, and how some married women attempted to negotiate, contest, and even escape the economic struggles, physical dangers, and sexual constraints they

confronted.

Given that the conditions and expectations inscribed in the marriage contract were most explicitly revealed when household relations became a site of conflict, this study relies heavily on legal documents and especially criminal court records. Over the last decade, Canadian social and gender historians have come to recognize that these historical sources are valuable for broadening our understanding of legal regulatory processes and the complexities of gender, class, sexual, and racial relations. A growing number of scholars have explored how Canada's civil and criminal laws were interpreted and administered at various levels of court and within specific historical periods, the shifting meanings associated with various legal and criminal categories, and how assumptions about gender, class, and race/ethnicity shaped the operations of the legal system.[7] For my purposes, these historical records have proven to be crucial for probing, interrogating, and reconstructing the more obscure and often conflictual dimensions of married and family life, especially since there are few other written sources available on the subject.

During the course of my research, I literally mined the extant Ontario criminal records at four levels of court - the magistrates or police court, the county court judges' criminal court, the court of general sessions, and the criminal assizes - and compiled cases

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[7] The literature produced by Canadian social, gender, and feminist historians who use criminal records to explore various nineteenth- and early twentieth-century topics is growing. Some of the more influential works and anthologies include: Constance Backhouse, *Petticoats and Prejudices: Women and Law in Nineteenth-Century Canada* (Toronto: Women's Press, 1991); Karen Dubinsky, *Improper Advances: Rape and Heterosexual Conflict in Ontario, 1880-1929* (Chicago: University of Chicago Press, 1993); Carolyn Strange, *Toronto's Girl Problem: The Perils and Pleasures of the City, 1880-1930* (Toronto: University of Toronto Press, 1995), and her "Wounded Womanhood and Dead Men: Chivalry and the Trials of Clara Ford and Carrie Davies," *Gender Conflicts*, 149-88; Susan J. Johnston, "Twice Slain: Female Sex-Trade Workers and Suicide in British Columbia, 1870-1920," *Journal of the Canadian Historical Association* (Calgary 1994): 147-66; Steven Maynard, "Through a Hole in the Lavatory Wall: Homosexual Subcultures, Police Surveillance, and the Dialectics of Discovery, Toronto, 1890-1930," *Journal of the History of Sexuality* 5, 2 (1994): 207-42, and his "Sex, Court Records, and Labour History," *Labour/Le Travail* 33 (Spring 1994): 187-93; Jim Phillips, Tina Loo, and Susan Lewthwaite, eds., *Essays in the History of Canadian Law*, Volume 5 (Toronto: University of Toronto Press, 1994); Franca Iacovetta and Wendy Mitchinson, eds., *On the Case: Explorations in Social History* (Toronto: University of Toronto Press, 1998).

that directly or indirectly dealt with marital and familial issues. Initially, my intent was to focus exclusively on wife abuse and other manifestations of family violence, but I soon realized that there were other ways in which conflict, power, betrayal, and resistance exhibited themselves in conjugal relations and became matters for criminal and, in some cases, civil litigation. This led me to hitherto understudied territory: the ostensibly aberrant realms of defective and clandestine unions, adulterous women and offended husbands, female bigamists and male polygamists, deserted mothers and 'poor family men', wife-beaters and suspected husband poisoners. Given that the existing criminal records for the period between 1830 and 1860 are highly fragmentary, my analysis of these decades is less extensive.[8] Those produced at the turn of the century, however, indicate the extent to which particularly rural and urban working-class community members, including husbands and wives, parents and children, and extended kin turned to the legal system to settle a multitude of neighbourhood feuds, interpersonal disputes, and domestic conflicts. Despite the relative absence of surviving detailed records of the lowest level of the judicial hierarchy,[9] this formal use of the courts was most evident at the local level, where the justice of the peace or police magistrate became the arbitrator of and exercised wide

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[8] The early records I examined include Prince Edward County (Picton) Court of General Sessions Minutes, 1834-1847; Leeds and Grenville Counties (Brockville) Quarter Sessions Filings, 1798-1838; Northumberland and Durham Counties (Cobourg) Quarter Sessions Filings, 1803-1848; Northumberland and Durham Counties (Cobourg) Quarter Sessions Case Files, 1802-1846.

[9] According to one archivist at the Archives of Ontario, many of the police court records were destroyed in the 1970s because they were perceived as having less historical value than the records of the higher criminal and civil courts. Fortunately, some detailed records have survived, most notably the fourteen-volume Waterloo County (Galt) Police Court Minutebooks, 1857-1882, 1884-1920; Perth County (Stratford) Police Court Dockets, 1893, 1897-1906; Carleton County Crown Attorney/Clerk of the Peace (Ottawa Police Court) Case Files, 1910-1920; Peterborough County Police Court Case Files, 1872-1920. I also examined the police court minutebooks and justice of the peace returns of convictions for Belleville, 1874-1877; Picton, 1851-1882, 1887-1919; Galt, 1900-1911; Sarnia, 1910-1923; Sault Ste. Marie, 1907-1920.

discretionary power in adjudicating complaints and grievances.[10] As with other indictable offences, more serious marital 'crimes', after a preliminary hearing before the local magistrate or, in the case of murder, after the conclusion of a coroner's inquest, were referred to the higher courts - for a trial by judge in the county court[11] or a trial by jury in the criminal assizes and to a lesser extent, the court of general sessions[12] - where the

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[10] In her study of the Prescott board of police records between 1834 and 1850 and in their analysis of Hamilton's police court in the 1870s, Katherine McKenna and Michael B. Katz, Michael J. Doucet, and Mark J. Stern also found that the local courts were used by the lower classes as "a tool in negotiating social difficulties" as well as personal and family disputes. In both instances, however, a systematic analysis of the character of those inter-familial conflicts was not undertaken. Katherine McKenna, "Lower Class Women's Agency in Upper Canada: Prescott's Board of Police Records, 1834-1850," Paper presented at the Canadian Historical Association (Brock, May 1996); Michael B. Katz, Michael J. Doucet, and Mark J. Stern, *The Social Organization of Early Industrial Capitalism* (Cambridge, Mass.: Harvard University Press, 1982), chapter 6. For other investigations of this tribunal, see Gene Howard Homel, "Denison's Law: Criminal Justice and the Police Court in Toronto, 1877-1921," *Ontario History* 73, 3 (September 1981): 171-86; Paul Craven, "Law and Ideology: The Toronto Police Court, 1850-80," *Essays in the History of Canadian Law*, Volume 2, ed. David Flaherty (Toronto: University of Toronto Press, 1983), 248-307; Thomas Thorner and Neil B. Watson, "Keepers of the King's Peace: Colonel G. E. Sanders and the Calgary Police Magistrate's Court, 1911-1932," *Urban History Review* 12, 3 (February 1984): 45-55.

[11] The county court judges' criminal court minutebooks and case files for the following counties and districts were examined: Carleton, 1908-1920; Grey, 1869-1920; Elgin, 1879-1908; Haldimand, 1869-1891, 1911-1920; Niagara North, 1869-1919; Perth, 1872-1901; Peterborough, 1870-1907; Ontario, 1881-1920; Leeds and Grenville, 1881-1894; Stormont, Dundas, and Glengarry, 1870-1919, York, 1910-1920; Algoma, 1916-1920.

[12] The general sessions case files and minutebooks examined include: Algoma, 1916-1920; Lanark, 1880-1914; Peterborough, 1880-1887; York, 1902-1920. The criminal assizes case files for the following counties and districts were examined: Algoma, 1877-1920; Brant, 1859-1920; Bruce, 1876-1920; Carleton, 1859-1920; Dufferin, 1881-1920; Elgin, 1858-1920; Essex, 1859-1920; Frontenac, 1859-1920; Grey, 1859-1920; Haldimand, 1859-1920; Halton, 1859-1920; Hastings, 1859-1920; Huron, 1859-1920; Kent, 1858-1920; Lambton, 1859-1920; Lanark, 1859-1920; Leeds and Grenville, 1859-1920; Lennox and Addington, 1880-1920; Lincoln, 1859-1920; Manitoulin, 1903-1915; Middlesex, 1858-1920; Muskoka, 1893-1920; Nipissing, 1898-1920; Norfolk, 1881-1903; Northumberland and Durham, 1859-1920; Ontario, 1859-1920; Oxford, 1860-1920; Parry Sound, 1894-1920; Peel, 1892-1920; Perth, 1859-1920; Peterborough, 1862-1920; Prescott and Russell, 1859-1920; Prince Edward, 1853-1915; Rainy River, 1900-1920; Renfrew, 1881-1920; Simcoe, 1880-1920; Stormont, Dundas, and Glengarry, 1881-1920; Sudbury, 1909-1920; Temiskaming, 1914-1920; Thunder Bay, 1893-1920; Victoria, 1880-1920; Waterloo, 1860-1920; Welland, 1880-1920; Wellington, 1861-1920; Wentworth, 1880-1920; York, 1869-1920.

records of the courtroom testimonies are often more comprehensive.[13]

While the court transcripts culled from these levels of the criminal justice system form the principal basis of this study, other sources were consulted in an effort to situate them within the broader and shifting socioeconomic, ideological, and legal context, to examine how communities and churches responded to and regulated marital deviations and domestic strife, to postulate why married women from Anglo-Celtic rural and especially working-class backgrounds were disproportionately represented as plaintiffs in the criminal courts, and to understand the procedural rules of evidence related to specific offences as one basis for analyzing the dynamics of and the narratives produced in the courtroom. Thus, my research was supplemented by a survey of criminal statutes and provincial legislation pertaining to family law, federal and provincial government debates on specific legislative initiatives and issues related to divorce, published law reports on civil and criminal matters, the correspondence received and produced by the Ontario Attorney General's Office and the Department of Indian Affairs, and commentaries published in local newspapers.[14]

Despite the richness of the historical sources I examined, criminal court records in particular pose certain methodological challenges: they are, like many historical documents,

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[13] The case files produced in the higher courts at times also included other relevant information about a particular case, such as legal correspondence, letters of character, community petitions, and especially when the sanity of the defendant who committed violent crimes was at issue, medical evaluations from physicians and beginning in the early twentieth century, the psychiatric profession. It should also be noted that in compliance with a research agreement with the Archives of Ontario, all names of defendants and witnesses gleaned from the criminal case files have been partially anonymized; those that appear in public records such as newspapers have not.

[14] In addition, Lynne Marks, who has done extensive research on the Upper Canadian Presbyterian and Baptist church disciplinary records, generously shared some of her relevant cases with me. See, for example, Lynne Marks, "No Double Standard?: Leisure, Sex, and Sin in Upper Canadian Church Discipline Records, 1800-1860," *Gendered Pasts: Historical Essays in Femininity and Masculinity in Canada*, eds. Kathryn McPherson, Cecilia Morgan, and Nancy M. Forestell (Don Mills: Oxford University Press, 1999), 48-64; "Christian Harmony: Family, Neighbours, and Community in Upper Canadian Church Discipline Records," *On the Case*, 109-28.

often frustratingly incomplete and court transcripts are riddled with gaps and silences that require cautious analysis and contextual explanation. In the former case, while this study incorporates rudimentary statistics on who initiated criminal proceedings in, for example, bigamy, non-support, and wife abuse cases and on conviction rates and sentencing patterns, the fragmentary nature of the records and the inconsistent classification of certain offences by legal officials precludes accurate or meaningful quantitative analysis.[15] Even as powerful sources of qualitative evidence on how the institutions of marriage and the family and even the courtroom itself constituted sites of complex negotiations, power struggles, and at times intense confrontations, criminal records raise interpretive issues concerning the self-representation of both plaintiffs and defendants. Court depositions, as shaped by an often invisible line of inquiry and the process of cross-examination,[16] as filtered through and recorded by the police magistrate/court stenographer and, in some instances, as presented through the voice of a paid interpreter, constitute historical texts produced within

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[15] For example, as discussed in chapter 5, non-support could be prosecuted under the vagrancy act, the failure to provide necessaries statute, and after 1888, the Deserted Wives' Maintenance Act. Often, justices of the peace, police magistrates, or court recorders used vague terms such as 'failure to provide', wife desertion, or simply non-support when filling out the information. In addition, as noted in chapter 6, acts of verbal or physical aggression by husbands were usually prosecuted under general criminal code offences such as threatening, various degrees of assault, wounding, and attempted murder. Consequently, one of the most consistent sources for quantifying the number of wife abuse cases heard and adjudicated before a particular court - the criminal docketbooks and minutebooks in which the name of the plaintiff and the defendant, the nature of the charge, and the verdict and the sentence were meticulously recorded - are still problematic. This is principally because the precise relationship between the plaintiff and defendant (as well as other potentially pertinent information related to class and race/ethnicity) remain unspecified and because the terms 'wife-beating' and 'assault' were used interchangeably and inconsistently. Local prison registers pose similar difficulties. See, for example, the police court minutebooks and justice of the peace returns of convictions for Sarnia, 1910-1920; Belleville, 1874-1877; Picton, 1851-82, 1887-1919; Galt, 1900-1911; and Sault Ste. Marie, 1907-1920; the county court judges' criminal court minutebooks for Haldimand, 1869-1920; Elgin, 1879-1908; Carleton, 1908-1920; and Grey, 1869-1920; and the Perth County (Stratford) Jail Register, 1876-1924. See also Helen Boritch, "Crime and Punishment in Middlesex County, Ontario, 1871-1920," *Essays in the History of Canadian Law*, Volume 5, 431.

[16] Until the early twentieth century, court transcripts did not include the questions asked during the swearing of depositions or during cross-examination. In the case of police court records, these elements were never recorded.

specific systems of meaning and at the nexus of various relations of power. This process of re/construction - the question of who is speaking, what was said, and for what reason within an adversarial system of criminal justice - makes it difficult to locate what could be termed an 'authorial voice'. It also renders problematic the endeavour of feminist and other historians to gain access to the 'voices' and/or 'experiences' of the otherwise muted and marginalized subjects of their research.

A central premise of feminist and social history has long been to recover the historical experiences of the marginalized and illuminate how they themselves defined themselves and described their lived realities. Despite my initial, naive excitement at having discovered the 'voices' of disgruntled, neglected, and battered wives, it became increasingly evident, after reading hundreds of cases dealing with various forms of marital conflict, that women's court testimonies could not necessarily be read as literal renditions of their experiences. In the case of wife-battering, for example, the particulars of each case, as recorded in the trial records, were certainly distinct in terms of the specific context and patterns of husbandly violence, but equally striking is the degree of rhetorical sameness and the structured narratives that recurred in married women's court depositions. Thus, while criminal records are as close as feminist historians are going to get to the 'experiences' of battered wives historically, it is exceedingly difficult, if not impossible, to locate where 'experience' ends and 'narrative' begins. What seems more useful is to examine the socio-legal and gender context as well as the relations of power in which married women articulated their grievances. Furthermore, the 'repetitive rhetorical strategies' they and their accused husbands employed in the courtroom, what was required evidence and what was not, and the often powerful silences, should also be scrutinized.[17]

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[17] For discussion of some of these interpretative issues both in theory and practice, see, for example, the Joan Scott and Linda Gordon debate in *Signs* 15, 4 (Summer 1990): 848-60; Steven Maynard, 'Horrible Temptations': Sex, Men, and Working-Class Male Youth in Urban Ontario, 1890-1935," *Canadian Historical Review* 78, 2 (June 1997): 191-235; Joan Sangster, "'Pardon Tales' from Magistrate's

Historians have, since the 1970s, developed various approaches to the study of the institutions of marriage and the family and this work both builds on some of these traditions and also endeavours to move beyond them. It is evident from the central themes under investigation that this study cannot be faulted for 'over-sentimentalizing' marital and familial relations, for reproducing "the Victorian marital ideal" of "the loving companionate union of two kindred spirits," for illuminating the "'nicer' side of masculinity" devoid of issues of "power, domination and patriarchy," or for conceptualizing "the family as a monolithic entity in which all members shared common interests."[18] In fact, I took seriously Terry L. Chapman's challenge, elucidated over a decade ago, when she argued that one of the most pressing tasks of Canadian historians should be to construct "a more accurate portrayal of domestic life" and to reevaluate "the myth of marital bliss which has dominated studies into the history of the family."[19] In this process of reevaluation, however, I have consciously avoided invoking such concepts as the 'underside' or the 'dark side' of marriage and family life, given that these terms are often premised on a priori assumptions about and rigid dichotomies between what was 'normative' and what was aberrant or exceptional. In other words, the historical evidence concerning the nature and quality of marital and familial relations between 1830 and 1920, as viewed through the

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Court: Women, Crime, and the Court in Peterborough County, 1920-50," *Canadian Historical Review* 74, 2 (June 1993): 161-97; Tina Loo, "Dan Cranmer's Potlatch: Law as Coercion, Symbol, and Rhetoric in British Columbia, 1884-1951," *Canadian Historical Review* 73, 2 (June 1992): 125-65.

[18] Peter Ward, *Courtship, Love, and Marriage in Nineteenth-Century English Canada* (Montreal & Kingston: McGill-Queen's University Press, 1990), 167; Joan Sangster, "Beyond Dichotomies: Re-Assessing Gender History and Women's History in Canada," *left history* 3, 1 (Spring/Summer 1995): 117-18; Lynne Marks, *Revivals and Roller Rinks: Religion, Leisure, and Identity in Late-Nineteenth-Century Small-Town Ontario* (Toronto: University of Toronto Press, 1996), 10; Louise A. Tilly, "Women's History and Family History: Fruitful Collaboration or Missed Connection?," *Journal of Family History* 12, 1-3 (1987): 303-15.

[19] Terry L. Chapman, "'Til Death do us Part': Wife Beating in Alberta, 1905-1920," *Alberta History* 36, 4 (Autumn 1988): 22.

filtered lens of those who went to court and laid formal legal complaints on their own behalf, may conceal as much as it reveals.

Each of the following chapters explores a different dimension of marital and familial relations, entering relatively uncharted territory or expanding upon and refining previous historical work done on specific topics. Chapter 2 examines how the institution of marriage, defined as both a divine ordinance and as a civil contractual relation, was conceived in politics, religion, and law as the foundation of a 'civilized', moral, and stable social order. While entering the bonds of matrimony may have been perceived as the 'natural' destiny of adult women and men, it was a highly structured process and could be an exceedingly contested one. In an effort to understand these historical dynamics and the myriad of legal, religious, and social rules governing the formation of the marriage contract, I trace the development of the province's complex and shifting marriage laws, ones that were principally designed to prevent the formation of what were regarded as illegal, clandestine, inappropriate, and unnatural unions.[20] Furthermore, by investigating the constructed boundaries between what were identified as 'proper' and 'defective' marriages, this chapter also explores the regulatory practices of churches and communities as well as the social and legal circumstances that prompted women and men to challenge the legitimacy of their marital status and induced rural and middle-class parents to contest the marital choices of their sons and especially their daughters.[21]

Chapter 3 also examines the institution of marriage, but from the perspective of what law and custom defined as the 'mutually beneficial' rights, duties, and obligations of

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[20] For an analysis of Canada's changing marriage laws particularly in the context of the middle-class social and moral reform movements of the early twentieth century, see James G. Snell and Cynthia Comacchio Abeele, "Regulating Nuptiality: Restricting Access to Marriage in Early Twentieth-Century English-Speaking Canada," *Canadian Historical Review* 69, 4 (December 1988): 466-89.

[21] See Constance Backhouse, *Petticoats and Prejudices*, 9-39 for a detailed discussion of two legal cases illustrating the "law's treatment of bi-racial and multicultural marriages."

wives and husbands. While it scrutinizes the paternalistic impulse behind the gradual dismantling of the most oppressive features of coverture and expansion of married women's legal, economic, and maternal rights beginning in the mid-nineteenth, the main focus is a detailed exploration of the sexual contract of marriage and the sexual double standard. More specifically, I point out that whatever shifts occurred in married women's status in the nineteenth century, the legal rules that protected a husband's ownership of his wife's sexuality and his exclusive rights to her body remained largely untouched. For married women, this meant that whatever material or social benefits might accrue from marriage, their access to these entitlements was contingent on their sexual fidelity. While adultery was considered to be one of the most heinous matrimonial transgressions a married woman could commit, this chapter analyzes how this 'crime' was censured in both informal and formal ways, and explores how and to what extent the sexual double standard operated in various sites of moral regulation, including state and legal institutions, christian churches and local communities. Moreover, it examines how wives attempted, at times at considerable risk to their social reputations and their physical safety, to exercise some choice in their selection of sexual partners.

Bigamy, like adultery, was also perceived to be a serious transgression of the principles of sexual exclusivity, but this violation of monogamous marriage was subject to criminal prosecution and potentially harsh penalties. Although it is extremely difficult to ascertain how many such illegal marriages existed, my research into this relatively unstudied topic uncovered 191 men and 63 women, mostly from Anglo-Celtic working-class backgrounds, who were formally indicted for having entered into 'a form of marriage' while their first spouse was still alive.[22] Furthermore, sensational accounts about

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22 With the exception of James Snell, who has examined bigamy particularly in the context of formal and informal divorce in early twentieth-century Canada, bigamy as a criminal offence and a social phenomenon has not been the subject of detailed historical inquiry by Canadian historians. James Snell, *In the Shadow of the Law: Divorce in Canada, 1900-1939* (Toronto: University of Toronto Press, 1991).

the exposure of suspected bigamists and polygamists were a fairly common feature of turn-of-the-century newspaper reporting. Drawing on this historical evidence, chapter 4 explores a number of themes, including the complex patterns of marriage and remarriage, the mechanisms through which these illegal marriages were discovered, and how bigamists/polygamists, when defending their actions in court, tended to justify their transgressive behaviour. Furthermore, whether bigamous marriages were constructed as the result of heartless betrayal, escape from a 'bad' marriage, or casual self-divorce, the criminal prosecution of this offence suggests that despite high conviction rates, the sentences imposed were often shaped by assumptions about gender and class, by the mitigating circumstances under which bigamy was committed, and by contested definitions of what best served the interests of public morality in relation to the strict provision of the criminal code.

Finally, chapters 5 and 6 concentrate on issues that comprised the bulk of my research. If, as the criminal court records suggest, Ontario wives and husbands turned to the legal system to resolve a wide spectrum of marital conflicts, the problems of desertion and non-support struck at the heart of one of the basic tenets embedded in the contract of marriage. Throughout the nineteenth and early twentieth centuries, the provision of the basic necessities of life, regardless of class background or level of income, was identified as the principal legal, moral, and social obligation of husbands and fathers. While the provisions of common law offered married women certain protections against irresponsible spouses, by the late 1860s, social unease about what appeared to be an expanding population of deserted, neglected, and impoverished wives and dependent children and political concerns over rising public relief costs, prompted the enactment of a flurry of provincial statutes and criminal laws. Within this shifting legal environment, a growing number of aggrieved and often impoverished women, the majority of whom were from Anglo-Celtic working-class backgrounds, initiated criminal proceedings against their

negligent spouses, unambiguously laying claim to their right to material support. Based on a compilation of 372 cases and cognizant of how rules of evidence shaped courtroom testimonies, chapter 5 dissects the often completing claims of disgruntled married women and their accused husbands over the contested issue of wifely entitlements and husbandly responsibilities. What these courtroom narratives also suggest is that, even though non-support was often constructed by legal and social commentators as a product of working-class men's intemperance and idleness, marital struggles over the allocation of material resources in the household and patriarchal control over domestic consumption were just as likely to become sources of conflict within rural and especially working-class families. While such historical evidence challenges the notion of the commonality of interests and cooperative nature of rural and working-class household economies as developed by family historians,[23] the criminal records indicate that some married women used existent laws, with varying degrees of success, as a strategy to 'encourage' or compel their husbands to be more reliable breadwinners in hopes of salvaging the family-household economy; for others, it became one component in their overall struggle to support themselves and their dependent children in a wage labour system organized around an ideal working-class family structure comprised of a steady and sober breadwinner and a dependent and domesticated wife.

Finally, chapter 6 focuses on the harshest manifestations of the unequal distribution of power and privilege and the exercise of patriarchal prerogatives and authority within the

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23 This is not to discount the important insights this branch of family history has offered especially in regard to the sexual and generational divisions of labour within working-class households and the survival strategies adopted by working-class wives. See, for example, Louise A. Tilly and Joan W. Scott, *Women, Work, and Family* (New York: Holt, Rinehart, and Winston, 1978); selected articles in Bettina Bradbury, ed., *Canadian Family History: Selected Readings* (Toronto: Copp Clark Pitman, 1992); Bettina Bradbury, *Working Families: Age, Gender, and Daily Survival in Industrializing Montreal* (Toronto: McClelland & Stewart, 1993), and her "Women's History and Working-Class History," *Labour/Le Travail* 19 (Spring 1987): 23-43. For an overview of the field, see Tamara K. Hareven, "The History of the Family and the Complexity of Social Change," *American Historical Review* 96A (1991): 95-124.

institution of marriage, by examining wife abuse and spousal murder. Building on legal and socio-historical studies done on the issue of family violence in the United States, Britain, and to a lesser extent in Canada where the literature is much less extensive,[24] it begins by exploring the social and legal environment in which married women, and especially those from Anglo-Celtic rural and urban working-class backgrounds, initiated

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[24] A considerable amount of literature has been produced on marital cruelty and wife abuse in the United States, Britain and, to a lesser extent, in Canada. For discussions of feminist campaigns around and the development of social policy on the issue of wife abuse in Britain and the United States, see Margaret May, "Violence in the Family: An Historical Perspective," *Violence in the Family*, ed. J. P. Martin (Chichester: John Wiley & Sons, 1978), 135-67; Carol Bauer and Lawrence Ritt, "'A Husband is a Beating Animal': Frances Power Cobbe Confronts the Wife-Abuse Problem in Victorian England," *International Journal of Women's Studies* 6, 2 (March/April 1983): 99-118, and their "Wife-Abuse, Late-Victorian English Feminists, and the Legacy of Frances Power Cobbe," *International Journal of Women's Studies* 6, 3 (May/June 1983): 195-207; Elizabeth Pleck, "Feminist Responses to 'Crimes against Women', 1868-1896," *Signs* 8, 3 (Spring 1983): 451-70, and her *Domestic Tyranny: The Making of American Social Policy against Family Violence from Colonial Times to the Present* (New York: Oxford University Press, 1987). On marital cruelty in divorce proceedings, alimony litigation, and the Nova Scotia Society for the Prevention of Cruelty in Canada, see Backhouse, *Petticoats and Prejudice*, chapter 6; Lori Chambers, *Married Women and Property Law in Victorian Ontario* (Toronto: University of Toronto Press, 1997), chapter 2; James Snell, "Marital Cruelty and the Nova Scotia Divorce Court, 1900-1939," *Acadiensis* 18, 1 (Autumn 1988): 3-32, and his *In the Shadow of the Law: Divorce in Canada, 1900-1939* (Toronto: University of Toronto Press, 1991); Judith Fingard, "The Prevention of Cruelty, Marriage Breakdown, and the Rights of Wives in Nova Scotia, 1880-1900," *Acadiensis* 22, 2 (Spring 1993): 84-101. For socio-historical studies of wife-battering and women's resistance among the working classes within the context of the gendered divisions of labour, family waged economies, and plebian culture, see Kathryn Harvey, "'To Love, Honour and Obey': Wifebeating in Working-Class Montreal, 1869-1879," *Urban History Review* 19, 2 (October 1990): 128-40; "Amazons and Victims: Resisting Wife-Abuse in Working-Class Montréal, 1869-1879," *Journal of the Canadian Historical Association* (Kingston 1991): 131-47; "'To Love, Honour and Obey': Wife-battering in Working-class Montreal, 1869-1879" (MA thesis, Université de Montréal, 1991); Nancy Tomes, "A 'Torrent of Abuse': Crimes of Violence Between Working-Class Men and Women in London, 1840-1875," *Journal of Social History* 11 (Spring 1978): 328-45; Ellen Ross, "'Fierce Questions and Taunts': Married Life in Working-Class London, 1870-1914," *Feminist Studies* 8 (Fall 1982): 575-602; Pat Ayers and Jan Lambertz, "Marriage Relations, Money and Domestic Violence in Working Class Liverpool, 1919-1939," *Labour and Love: Women's Experience of Home and Family, 1850-1940*, ed. Jane Lewis (Oxford: Basil Blackwell, 1986), 195-219; Anna Clark, *The Struggle for the Breeches: Gender and the Making of the British Working Class* (Berkeley: University of California Press, 1995); Christine Stansell, *City of Women: Sex and Class In New York, 1789-1860* (Urbana: University of Illinois Press, 1987); Pamela Haag, "The 'Ill-Use of a Wife': Patterns of Working-Class Violence in Domestic and Public New York City, 1860-1880," *Journal of Social History* 25 (Spring 1992): 447-77. For the changing social construction and patterns of family violence over the nineteenth and twentieth centuries, see Linda Gordon, *Heroes of Their Own Lives: The Politics and History of Family Violence* (New York: Penguin Books, 1988); David Peterson, "Eden Defiled: A History of Violence Against Wives in Oregon" (PhD thesis, University of Oregon, 1993). On the legal treatment of wife-battering in Alberta, see Chapman, "'Till Death Do Us Part'," 13-22.

criminal proceedings against their abusive and violent husbands. What the historical evidence suggests strongly is that, as social issues, domestic discord and family violence were often displaced as working-class phenomena and were generally subsumed under the rubric of the many social ills caused by dissipated habits. Drawing on a compilation of 623 cases involving offences ranging from verbal threats to attempted murder, one of the main foci of this chapter, however, is to analyze the courtroom narratives of and rhetorical strategies employed by married women in their struggle to defend their ambiguously defined right not to be abused by their husbands and to assert their entitlement to legal protection. In the process, they not only presented compelling stories about their chronic marital difficulties and ongoing domestic struggles, but also offered their interpretations of what caused or precipitated their husbands' violence, ones which incorporated and went beyond the issue of intemperance. Not unlike cases of non-support, however, the courtroom itself became a forum where competing conjugal claims were often fought out. While most accused husbands either remained silent or proclaimed their innocence, others countered their wives' allegations, by invoking various external causes for their conduct or by presenting their own marital grievances as a means to absolve themselves of responsibility, justify their actions, and gain the empathy of legal authorities.

One crime, however, that had the greatest potential to unsettle any constructed myths about the quality of marital relations in the nineteenth and early twentieth centuries was spousal murder. It was certainly perceived to be the most heinous violation of the contract of marriage and the gravest transgression of the gendered obligations assigned to each spouse: the duty of husbands to act as guardians of their wives and the responsibility of wives to honour their would-be protectors. In addition, during the investigation and trial of an accused domestic murderer, the character and conduct of both the defendant and the victim as well as the history and nature of their often less than blissful marital relations were exposed to intense legal scrutiny, public interest, and community gossip. One of the

most striking features of these suspected murders, however, was that they were constructed as relatively isolated acts, for which a plausible and definitive explanation had to be found, whether by defining a cause, establishing a motive, and/or assessing culpability. In this process of reconstruction and explanation, spousal murder did not generate a social critique of the unequal power relations within marriage nor did it challenge the legitimacy of the institution itself. Rather, as indicated by the trials of 106 suspected wife murderers and 26 accused husband killers I examined, this crime was explained in legal and public discourse within fairly strictly defined, historical specific, and relatively safe parameters. These explanations not only incorporated assumptions about gender, class, and race/ethnicity, but also drew on and fuelled concerns about other social and moral issues, one of the most prevalent ones being, not surprisingly, the vice of intemperance.[25]

Despite the limitations of the historical sources, this study endeavours to dissect various aspects of marital relations and to remind us that marriage was an institution at times fraught with differing expectations, competing interests, intense conflicts, bitter betrayal, and brutal acts of violence. In a recent collection on Canadian family history, Lori Chambers and Edgar-Andre Monitgny have suggested that the "dominance of feminist studies in family history, while illustrating the gender inequalities within families and the numerous problems they created, has often meant that ... men only appear as villains. They

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25 Although spousal murder has not been the subject of detailed historical analysis in Canada and especially in Ontario, see, for example, Erin Breault, "Educating Women About the Law: Violence Against Wives in Ontario, 1850-1920" (MA thesis, University of Toronto, 1986), 47-70; E. Stoddard, "Conflicting Images: The Murderess and the English Canadian Mind, 1870-1915" (MA thesis, Dalhousie University, 1991); Karen Dubinsky and Franca Iacovetta, "Murder, Womanly Virtue and Motherhood: The Case of Angelina Napolitano, 1911-22," *Canadian Historical Review* 72, 4 (December 1991): 505-31; J. A. Sharpe, "Domestic Homicide in Early Modern England," *The Historical Journal* 24, 1 (March 1981): 29-48; Mary S. Hartmann, *Victorian Murderesses* (New York: Schocken Books, 1977); Ann Jones, *Women Who Kill* (Boston: Beacon Press, 1996); George Robb, "The English Dreyfus Case: Florence Maybrick and the Sexual Double-Standard," *Disorder in the Courts: Trials and Sexual Conflict at the Turn of the Century*, eds. George Robb and Nancy Erber (Houndmills: Macmillan Press, 1999), 57-77.

are the wife beaters, the deserters, the child molesters and the patriarchs ... Many studies focus almost exclusively on the family as a site of oppression and exploitation, particularly of women and children ... Numerous men accepted their responsibilities as brothers, fathers, husbands, sons and caregivers."[26] While this thesis does not suggest that there were no 'good' husbands or for that matter, 'bad' wives, my study is certainly skewed and if the above assertions indicate a new trend in family history, perhaps dated. As a materialist feminist historian, however, who seeks to uncover the historical complexities of marital and familial relations even at their most exploitative and oppressive, I make no apologies for the 'biases' that follow.

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[26] Lori Chambers and Edgar-Andre Montigny, "Introduction," *Family Matters: Papers in Post-Confederation Canadian Family History* (Toronto: Canadian Scholars' Press, 1998), xvi.

Chapter 2

Entering the Contract of Marriage: Religious Doctrines, Community Codes, and Legal Regulations

> "In the abstract, marriage is a natural, civil and ecclesiastical contract."[1]

In 1883, Ontario Justice John A. Boyd outlined the social importance of the contract of marriage, when he described it not only as "the most important of all human transactions," but also as "the very basis of the whole fabric of civilized society." For this reason, he emphasized that unlike other civil contracts, "many of the rights, duties, and obligations arising from it are so important to the best interests of both morality and good government that the parties involved have no control over them, but they are regulated and enforced by the public law."[2] Several years later, James Gowan, former judge of the District of Simcoe and then chair of the Senate Divorce Committee, made a rousing speech before his peers, congratulating the nation's citizens for their steadfast dedication to the institutions of marriage and the family. Armed with statistics which compared Canada's characteristically low parliamentary divorce rates with those in England and especially the United States, he drew what, in his view, was the obvious conclusion. "Thank God," he stated, "the people of Canada know how to estimate and so value and cherish the sacred character of the matrimonial tie, the purity and sacredness of the family -- they know these sentiments -- attributes of the higher law -- are the source and life of Christian civilization and that without them no nation can permanently prosper."[3]

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[1] Canada, *House of Commons Debates* (4 March 1880): 448.

[2] Cited in (1883) *Magurn v. Magurn*, 3 OR, 577-78.

[3] Canada, *Senate Debates* (28 February 1888): 55-59.

Although these lofty statements clearly emphasized the necessity to defend the institution of marriage through enforcement of strict matrimonial laws and through the preservation of the nation's restrictive parliamentary divorce system, they also reflected certain common views articulated by legal authorities, political legislators, church leaders, and moral reformers about how the fate of the nation was dependant upon sound matrimonial and well-regulated familial relations. As the only basis for 'legitimate' family formation and as the prescribed unit for containing heterosexual desire, the institution of marriage and more specifically legally sanctioned, monogamous, life-long, and preferably christian unions had long been identified as one of the most important foundations of a 'civilized', moral, and stable social order. In addition, since marriage was simultaneously defined as a divine ordinance and as a civil contractual relation, it may have been one of the most 'naturalized' and 'compulsory' institutions in civil society, but it was also one of the most regulated.

From the moment early colonial legislatures officially introduced English civil and criminal laws into Upper Canada in the late eighteenth-century (in 1792[4] and 1800[5]

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[4] (1792) "An Act Introducing the English Civil Law into Upper Canada," 32 Geo. III, c. 1, s. 3. Through this act, the first legislature of Upper Canada stipulated that "in all matters of controversy relative to property and civil rights, resort shall be had to the Laws of England as the rule for the decision of the same." Consequently, the Upper Canadian and Ontario judiciary relied heavily on English precedents in their case law rulings, which began to be published in 1824. In addition, at the time of the reception of English civil laws, the marriage law then in force in England was Lord Hardwicke's Act, Great Britain, *Statutes*, (1753) 26 Geo. II, c. 33, which recognized "marriage as a specifically civil contract, and removed the right to determine what constituted legal marriage from the Church to the State." Rachel Harrison and Frank Mort, "Patriarchal Aspects of Nineteenth-Century State Formation: Property Relations, Marriage and Divorce, and Sexuality," *Capitalism, State Formation and Marxist Theory: Historical Investigations*, ed. Philip Corrigan (London: Quartet Books, 1980), 97.

[5] Although English criminal laws were in force in what became Upper Canada by virtue of the Quebec Act, the official reception statute was (1800) "An act for the further introduction of the criminal law of England in this province, and for the more effectual punishment of certain offenders," 40 Geo. III, c. 1. The English criminal laws introduced were those in force as of 1792, at a time when over two hundred offences were punishable by death. In 1833, the legislature of Upper Canada reduced the number of capital offences to twelve through (1833) 3 Wm. IV, c. 3; in 1841, the number was reduced to five (murder, treason, rape, statutory rape, and buggery) through (1841) 4 & 5 Vict., cc. 24-26. For a discussion of these reforms, see John D. Blackwell, "Crime in the London District, 1828-1837: A Case Study of the Effect of

respectively), and began to enact a series of laws to 'provide for the future solemnization of marriages', the legislative basis for governing the institution of marriage in the province was established. During subsequent decades, a complex combination of British common law, an increasingly elaborate body of provincial marriage statutes, and a series of criminal laws grouped under the rubric of 'offences against conjugal rights' empowered the state and the legal system to regulate virtually every aspect of the matrimonial state. One segment of these laws sought to prevent the formation of what were identified as 'illegal' and 'defective' marriages, by decreeing who could solemnize marriages and issue marriage licenses, by prescribing the necessary procedures which should accompany the marriage ceremony, by restricting who could legitimately marry, by criminalizing any deviations from these rules, and by establishing judicial mechanisms whereby 'invalid' marriages could (in theory but less in practice) be nullified by the higher provincial courts. Another series of legal codes were designed to order and regulate the various contractual obligations that structured relations between husbands and wives, allocating the appropriate distribution of patriarchal power, rights, and responsibilities within the marital unit, and establishing procedures whereby various violations of them could be dealt with in the civil and criminal courts or, in a minority of cases, by the parliamentary divorce system.[6] Cumulatively, then, common law traditions, the province's marriage statutes, the enactment of various criminal laws against immoral practices, and the ideologies which informed this legislation were crucial in normalizing and legitimating certain sexual and marital relations,

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the 1833 Reform in Upper Canadian Penal Law," *Queen's Law Journal* 6 (1981): 528-59; Terry Chapman, "Sexual Assaults in Upper Canada: Sources and Problems," Paper presented at the Canadian Historical Association (Ottawa, June 1982); Constance Backhouse, "Nineteenth-Century Canadian Rape Law, 1800-92," *Essays in the History of Canadian Law*, Volume 2, ed. David Flaherty (Toronto: University of Toronto Press, 1983), 200-47.

[6] These latter legal codes will be examined in chapter 3.

and rendering others invalid, irregular, unnatural, or immoral.[7]

Despite the development of this complex web of marital regulations, the state and the legal system were not the only institutions interested in regulating heterosexual behaviour, in upholding the sanctity of marriage, and in encouraging legitimate family formation. As a number of historical studies have indicated, particularly during the early nineteenth century, the rudimentary legal system and fledgling state bureaucracies coexisted and, in some cases, competed with a number of other regulatory systems. First Nations peoples did manage to retain the ambiguous legal prerogative to practice their traditional marriage rites and it is probable that remnants of Aboriginal customary law survived the onslaught of Anglo-European colonization and the imposition of oppressive colonial legal codes. At the same time, state-sponsored and voluntary christian missionary societies, bent on eradicating 'heathen' beliefs and 'pagan' customs, became one of the principal and most tenacious agents of cultural colonization.[8] Besides undertaking this so-called 'civilizing' mission, prior to the 1860s some Protestant denominations, like the Baptists, Presbyterians, and Methodists, established their own church disciplinary procedures which investigated and censured their members for various transgressions, ranging from intemperate behaviour, sexual immorality, slanderous gossip, and marital conflict to

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[7] As Michel Foucault argued, "the law operates more and more as a norm, and that the judicial institution is increasingly incorporated into a continuum of apparatuses (medical, administrative, and so on) whose functions are for the most part regulatory." Michel Foucault, *The History of Sexuality* (New York: Vintage Books, 1978), 144.

[8] See, for example, Cecilia Morgan, *Public Men and Virtuous Women: The Gendered Languages of Religion and Politics in Upper Canada, 1791-1850* (Toronto: University of Toronto Press, 1996), 132-40; Carol Devens, *Countering Colonization: Native American Women and the Great Lakes Missions, 1630-1900* (Berkeley: University of California Press, 1992); J. R. Miller, *Skyscrapers Hide the Heavens: A History of Indian-White Relations in Canada* (Toronto: University of Toronto Press, 1991), chapter 6; Hamar Foster, "'The Queen's Law Is Better Than Yours': International Homicide in Early British Columbia," *Essays in the History of Canadian Law*, Volume 5, eds. Jim Phillips, Tina Loo, and Susan Lewthwaite (Toronto: University of Toronto Press, 1994), 41-111.

entering prohibited marriages.[9] Finally, throughout much of the nineteenth century, communities and neighbourhoods also exercised their own 'moral authority' and were active in disciplining or ostracizing those who violated certain social norms, marital customs, and moral standards through such informal mechanisms as community discipline, neighbourhood gossip, and local petitions.[10]

While some of these extra-legal mechanisms were gradually (but never completely) superseded by the growing hegemonic authority of a more bureaucratized and interventionist state, and by the growth of an organized Anglo-Protestant middle-class moral reform movement at the turn of the century,[11] these diverse and shifting modes of regulation can reveal a great deal about how christian doctrine, social customs, and the

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9 See Lynne Marks, "No Double Standard? Leisure, Sex and Sin in Upper Canadian Church Discipline Records, 1800-1860," *Gendered Pasts: Historical Essays in Femininity and Masculinity in Canada*, eds. Kathryn McPherson, Cecilia Morgan, and Nancy Forestell (Toronto: Oxford University Press, 1999), 48-64; "Christian Harmony: Family, Neighbours, and Community in Upper Canadian Church Discipline Records," *On the Case: Social History and Case Files Research*, eds. Franca Iacovetta and Wendy Mitchinson (Toronto: University of Toronto Press, 1998), 109-128; "Railing, Tattling, General Rumour and Common Fame: Speech, Gossip, Gender and Church Regulation in Upper Canada," Paper presented at the Canadian Historical Association (Brock University, May 1996); Peter Ward, *Courtship, Love and Marriage in Nineteenth-Century English Canada* (Montreal & Kingston: McGill-Queen's University Press, 1990), 19-31.

10 For perspectives on community discipline, see Bryan D. Palmer, "Discordant Music: Charivaris and Whitecapping in Nineteenth-Century North America," *Labour/Le Travail* 3 (1978): 5-62; Allan Greer, "From Folklore to Revolution: Charivaris and The Lower Canadian Rebellion of 1837," *Historical Perspectives on Law and Society in Canada*, eds. Tina Loo and Lorna R. McLean (Toronto: Copp Clark Longman, 1994), 35-55; Michael Cross, "'The Laws are Like Cobwebs': Popular Resistance to Authority in Mid-Nineteenth Century British North America," *Law in a Colonial Society: The Nova Scotia Experience*, eds. Peter Waite, Sandra Oxner, and Thomas Barnes (Toronto: Carswell Co., 1984), 103-123; E.P. Thompson, "Rough Music," *Customs in Common: Studies in Traditional Popular Culture* (New York: The New Press, 1991), 467-538.

11 See, for example, Karen Dubinsky, *Improper Advances: Rape and Heterosexual Conflict in Ontario, 1800-1929* (Chicago: University of Chicago Press, 1993), chapters 4 and 5; Mariana Valverde, *The Age of Light, Soap, and Water: Moral Reform in English Canada, 1885-1925* (Toronto: McClelland & Stewart, 1991); Margaret Banks, "The Evolution of Ontario Courts, 1788-1981," *Essays in the History of Canadian Law*, Volume 2, 492-572; Carolyn Strange and Tina Loo, *Law and Moral Regulation in Canada, 1867-1939* (Toronto: University of Toronto Press, 1997).

provisions of public law contributed to prevailing definitions of sexual morality and to structuring the process of appropriate and legitimate heterosexual coupling. In an effort to understand these historical dynamics more fully, this chapter will explore certain aspects of the institution of marriage within the changing social formation of the nineteenth and early twentieth centuries. By tracing the development of the province's elaborate and shifting marriage laws, and by examining the regulatory practices of churches and communities, it is possible to probe more deeply into the myriad of legal, religious, and social rules which governed the formation of the marital contract, and which were designed to prevent the creation of what were variously identified as illegal, clandestine, inappropriate, and unnatural unions. Furthermore, by investigating the constructed boundaries between what were identified as 'proper' and 'faulty' conjugal unions, this chapter will also explore the legal and social circumstances that prompted women and men to contest the legitimacy of their marital status and induced rural and middle-class parents in particular to challenge the marital choices of their sons and especially their daughters.

Regulating the Solemnization of Marriages: The Politics of Law and Religion

With the establishment of Upper Canada as a distinct geographical and political entity in 1791, the early legislative bodies of the province were soon confronted with the task of both adapting English civil and criminal laws to local circumstances, and enacting a series of rules, procedures, and penalties which would govern the solemnization of marriages. This protracted legislative process and some of the bitter controversies associated with it were connected to the broader colonial enterprise of building a so-called 'civilized' society out of what was perceived as a 'untamed' and 'heathen' land. For British colonial officials and the emergent Upper Canadian male conservative elite, imbued with a strong sense of loyalty to British institutions, the term 'civilized' was aligned to a particular vision of how political power, landed wealth, and social and religious authority should be

distributed, and how gender, class, and racial differences ought to be organized and managed in the developing 'white' settler colony. John Graves Simcoe, Upper Canada's first lieutenant-governor, for example, left little doubt that Britain's political, social, and religious institutions, and its "Customs, Manners, and Principles" would provide the appropriate model, thus guaranteeing the assimilation of "the colony with the parent state."[12]

The so-called "howling wilderness" where Upper Canadian settlements developed was, of course, a territory which had long been inhabited by Aboriginal peoples, whose pre-contact societies were characterized by complex political and social structures, diverse subsistence-based economies, complementary gendered divisions of labour, and varying sexual, marital, and divorce customs.[13] For colonial administrators, who "saw themselves as grand organizers" and as the conveyors of "civilized order to primitive chaos,"[14] the political subjugation, socioeconomic displacement, and cultural colonization of First Nations peoples was perceived as an essential prerequisite for the consolidation of British rule, for the expansion of white settlements and agricultural development, and for facilitating the desire by a growing number of American and, after 1815, British, Scottish, and Irish colonists to gain access to the land. Despite growing Aboriginal resistance to

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[12] E.A. Cruikshank, ed., *The Correspondence of Lieutenant Governor John Graves Simcoe*, Volume 1 (Toronto: Champlain Society, 1923-31), 27.

[13] The term "howling wilderness" was used by Richard Cartwright in 1810 to describe the region that became Upper Canada prior to white settlement. He noted that twenty-six years earlier, there was nothing "except the movable hut of the wandering savage" and "the solitary establishment of the trader in furs." Cited in Jane Errington, *The Lion, the Eagle, and Upper Canada: A Developing Colonial Ideology* (Montreal & Kingston: McGill-Queen's University Press, 1987), 3. This eurocentric vision and the erasure of pre-conquest Aboriginal societies has been the subject of serious critique and revision particularly by First Nations historians. See, for example, Olive P. Dickason, *Canada's First Nations: A History of Founding Peoples from Earliest Times* (Toronto: Oxford University Press, 1992).

[14] Howard Adams, *A Tortured People: The Politics of Colonization* (Penticton: Theytus Books, 1995), 10.

colonial policies, by the 1830s when jurisdiction over Native affairs was transferred to local administrators, colonization had already produced exceedingly devastating and destructive consequences. Some of the most serious ramifications included the ongoing demographic collapse of First Nations populations due to disease, the general social conditions of colonialism, and the disruption of their traditional economies through the expropriation of land and their growing marginalization and forcible removal on the reserve system.[15] Beginning in the 1850s, colonial legislators also instituted increasingly restrictive definitions of 'Indian status', a process which not only attacked matrilineal hereditary patterns through the imposition of patrilineage, but also stipulated that Native women's access to their band status was contingent on whom they married. Other legislation, like the Gradual Civilization Act of 1857 was designed to encourage total assimilation and "the progress of Civilization among the Indian Tribes" in Canada West, by linking First Nations men's rights to 'citizenship' with the level of 'civilization' achieved (based on such criteria as educational level and 'moral' character) and individual land ownership (rather than customary communal landholding practices). Finally, with the growing dominance of a culture premised on what were constructed as 'superior' christian and particularly Anglo-Protestant principles, much of the 'civilizing' and educational work among Aboriginal peoples was undertaken by state-supported and voluntary missionary societies. Determined to convert and assimilate Aboriginal peoples, their endeavours included a highly gendered programme designed to inculcate sedentary agricultural and domestic skills, to foster the patriarchal reordering of reciprocal sexual divisions of labour, and especially to eradicate

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15 For a discussion of these patterns, see, for example, *Report on the Indians of Upper Canada. 1839: The Sub-committee appointed to make a comprehensive inquiry into the state of Aborigines of British North America, present thereupon the FIRST PART of their general report* (Toronto: Canadiana House, reprt. 1968); Donald B. Smith, "The Dispossession of the Mississauga Indians: A Missing Chapter in the Early History of Upper Canada," *Historical Essays on Upper Canada: New Perspectives*, eds. J. K. Johnson and Bruce G. Wilson (Ottawa: Carleton University Press, 1989), 23-51; Dickason, *Canada's First Nations*, 188-91, 232-39, 247-56.

what were perceived as widespread 'pagan' practices, be they extramarital sexuality, polygamy, consensual divorce, or customary marriage rites. While colonial assumptions about the 'primitive' and 'debased' nature of Aboriginal societies were used to justify the process of political and socioeconomic subjugation, the promotion of christian-sanctioned monogamous marriages and patriarchal family models, and with them Anglo-European gender roles and standards of morality, became central sites of cultural intervention.[16]

In an effort to promote what Governor Simcoe termed 'British Customs, Manners and Principles' among the rapidly growing and increasingly diverse non-Aboriginal population, British colonial officials and the ruling elite were confronted with another set of challenges, some of which surfaced in the protracted and bitter political debates over the province's marriage laws. As an essential component in the broader agenda of stemming the tide of revolutionary republicanism, fostering loyalty to the British monarchy, and cultivating deference to 'natural' social hierarchies and to paternalistic authority among an often disrespectful and unruly populace, the conservative elite attempted to institutionalize direct state support of the Church of England. While the marginalization of so-called 'dissenting' religious denominations caused growing discontent over such issues as the disposition of clergy reserves and the allocation of educational funds, the question of whether non-Anglican ministers would have the 'privilege' to solemnize legally recognized and state sanctioned marriages became one source of increasingly bitter political and religious controversies. This conflict over the favoured position of the established church

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[16] For a more detailed analysis of these developments and First Nations resistance to them, see Miller, *Skyscrapers Hide the Heavens*, chapters 5 and 6; Kathleen Jamieson, "Sex Discrimination and The Indian Act," *Arduous Journey: Canadian Indians and Colonization*, ed. J. Rick Pointing (Toronto: McClelland & Stewart, 1986), 112-20; John L. Tobias, "Protection, Civilization, Assimilation: An Outline History of Canada's Indian Policy," *Historical Perspectives on Law and Society in Canada*, 291-93; Lykke de la Cour, Cecilia Morgan, and Mariana Valverde, "Gender Regulation and State Formation in Nineteenth-Century Canada," *Colonial Leviathan: State Formation in Mid-Nineteenth-Century Canada*, eds. Allan Greer and Ian Radforth (Toronto: University of Toronto Press, 1992), 173-75; Morgan, *Public Men and Virtuous Women*, 132-40; John D'Emilio and Estelle Freedman, *Intimate Matters: A History of Sexuality in America* (New York: Harper & Row, 1988), 6-9, 86-93, 107-08.

and the subordinate status of religious dissenters as dictated by the provincial marriage statutes took well over half a century to achieve some form of resolution.

The first marriage act passed by the Upper Canadian legislature in 1793 was one of the few bills which did not generate a lengthy political controversy, since it was merely designed to confirm and validate those Anglican marriages which, prior to 1792, had been contracted in an irregular manner by military officers, justices of the peace, or other public officials. According to legal scholar William Riddell, many of these marriage ceremonies had been performed in what he termed "the wild parts of the country," where it had been "impossible to observe the forms prescribed by law," given the absence of ordained Church of England clergy in most parts of the province. Even though some colonial couples, "on their return to civilization," had exercised prudence by having their marriages regularized through a second and official Anglican ceremony, others had seemingly neglected to undertake "this wise precaution." Consequently, some members of the colonial population, particularly those of the landed elites, were concerned about the "peril attached to these irregular marriages," namely the legal precariousness of their marital status and by extension the illegitimacy of their children, who were not "intitled (sic) to inherit their property."[17] In order "to quiet the minds" of and "afford relief" to these couples, the 1793 marriage act decreed that those marriages that had been "publicly contracted" before "any person in public office or employment" were "good and valid in law," legitimacy was retroactively conferred on their children, and all the parties involved were henceforth "entitled to all the rights and benefits, and subject to all the obligations arising from

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17 W. R. Riddell, "The Law of Marriage in Upper Canada," *Canadian Historical Review* 2, 3 (September 1921): 226-28, 241-43.

marriage and consanguinity" as defined under common law.[18]

While this early marriage act specifically sought to validate irregular marriages, to guarantee the legitimacy of any children born of such unions, and to facilitate the orderly transmission of landed property, it only applied to those marital unions which had been contracted according to the Church of England's Book of Common Prayer. The Upper Canadian legislature, however, was soon embroiled in what would become the most contentious and bitterly debated issue surrounding the province's marriage laws which, as mentioned, revolved principally around whether non-Anglican religious denominations would be granted the authority to solemnize valid marriages among their members. The law of marriage inherited by Upper Canada as part of English civil codes clearly specified that "the privilege of solemnizing that rite was to be limited to the clergy of the Church of England."[19] Colonial leaders like Governor Simcoe were "indignant that it should be even suggested that ministers of another church should have the power to marry." In his view, compromising on this issue would not only create "animosity and confusion," but also

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[18] (1793) "An act to confirm and make valid certain marriages heretofore contracted in the country now comprised within the province of Upper Canada, and to provide for the future solemnization of marriage within the same," 33 Geo. III, c. 5, s. I - II. For those Upper Canadian residents who wished to preserve evidence and obtain a certificate of their marriages and the birth of their children, the act also made provisions for the administration of an affidavit before any district magistrate within three years, and for the entry of this information into a public register, which would be "taken as sufficient evidence" of both "in all his Majesty's courts of law and equity." The total cost of undertaking this procedure, which included receiving a validation certificate, was five shillings. Although it is unclear how many irregularly married couples underwent these procedures, for those who had "neglected to avail themselves of the benefit of [this] enactment," the time limit for registering these marriages and births was extended for another three years in 1818, and for an additional six years in 1831. (1818) 59 Geo. III, c. 15; (1831) 1 Wm. IV, c. 1; Riddell, "The Law of Marriage," 228.

[19] This was one of the provisions of Lord Hardwicke's Act, (1753) 26 Geo. II. c. 33. The exception to this rule was the Roman Catholic Church, whose right to solemnize marriages was to be "tolerated" in Upper Canada by virtue of the Articles of Capitulation of 1760, the Quebec Act of 1774, and the Constitutional Act of 1791. See a series of four articles, entitled "The Marriage Laws," which attempted to tease out these complex legal questions, published in *Local Courts' and Municipal Gazette* 3 (1867): 129-30, 145-46, 161-63, 178-80.

make "Matrimony a much less solemn or guarded contract than good Policy will Justify."[20] Due to the 'deplorable' shortage of Anglican ministers, the 1793 marriage act did authorize appointed district justices of the peace to solemnize marriages, but this was clearly a conditional and temporary arrangement. For example, magistrates were instructed to follow the procedural and ceremonial forms as prescribed by English laws and the Church of England. Furthermore, they were only permitted to celebrate marriages if no Anglican minister was available within eighteen miles of the couple and only until the District General Quarter Sessions was notified by the government that five Anglican ministers resided in that district. Thereafter, such marriages would be deemed "null and void" and any justice of the peace violating the governmental decree was liable to be fined £20 for each ceremony performed.[21]

The exclusive privileges granted to the Church of England, however, did produce, as Governor Simcoe was forced to admit, a "general cry of Persons of all conditions," particularly given that Anglicans comprised a comparatively small proportion of the colonial population. This discontent also generated the submission of numerous petitions to the colonial legislature, a recognized and common form of political lobbying and protest in this era,[22] by various denominations (mainly Scottish Presbyterians, Baptists, and later

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20 Sheila Kieran, *The Family Matters: Two centuries of family law and life in Ontario* (Toronto: Key Porter Books, 1986), 18; Riddell, "The Law of Marriage," 228-29, 245.

21 (1793) 33 Geo. III, c. 5, s. III - V. This act also stipulated that any person convicted of falsifying, altering, forging, or counterfeiting any marriage certificate or the marriage register, or of destroying any register book of marriages "with an intent to avoid any marriage" were liable to be fined or face a term of imprisonment of not less than one year. For a discussion of the extensive administrative and magisterial powers of district justices of the peace in this early period, see Leo A. Johnson, *History of the County of Ontario, 1615-1875* (Whitby: The Corporation of the County of Ontario, 1973), 58-62.

22 See, for example, Janice Potter-MacKinnon, *While the Women Only Wept: Loyalist Refugee Women* (Montreal & Kingston: McGill-Queen's University Press, 1993), and especially "Patriarchy and Paternalism: The Case of the Eastern Ontario Loyalist Women," *Rethinking Canada: The Promise of Women's History*, eds. Veronica Strong-Boag and Anita Clair Fellman (Toronto: Oxford University Press,

Methodists) requesting the prerogative to administer the ordinance of marriage. Simcoe and other members of the colonial elite remained intransigent, denouncing these petitions as the product of "a wicked head and most disloyal heart," as emanating from "some of the weakest, the most ignorant, and in some instances the most depraved of mankind," and as representing the "encroachment of either infidelity or fanaticism and, the inseparable companion of each, sedition."[23] Nonetheless, after considerable political debate and especially after Simcoe's departure in 1796, the colonial legislature did affect a limited compromise in the face of the growing pressure from various religious groups. In 1798, ordained ministers of what were identified as 'established' and especially 'loyal' Protestant denominations - Presbyterians, Lutherans, and Calvinists - were granted the right to celebrate marriages among their adherents, but only after undergoing a fairly arduous certification procedure from which Church of England clergymen were exempted. In effect, these dissenting ministers, accompanied by seven "respectable" members from their congregation, were required to appear before at least seven magistrates at the District Court of General Sessions, to submit written proof and verbal confirmation of their ordination and ministerial status and, most crucially, to take an oath of allegiance to the British crown.[24] The Methodists, one of the largest single Upper Canadian denominations,

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1997), 57-69; J. K. Johnson, "'Claims of Equity and Justice': Petitions and Petitioners in Upper Canada, 1815-1840," *Histoire sociale/Social History* 28, 55 (May 1995): 219-40.

23 Riddell, "The Law of Marriage," 229-32, 245; Kieran, *The Family Matters*, 20. Besides wishing to exercise ministerial authority over marriage among their adherents, John Grant has argued that one of the practical reasons for these petitions was that during this period, "most ministers eked out a meagre living, [and] the inability to preside at marriages cut off the most lucrative source of additional income available." *A Profusion of Spires: Religion in Nineteenth-Century Ontario* (Toronto: University of Toronto Press, 1988), 87.

24 In undertaking this procedure, ministers were also required to pay up to ten shillings, which included obtaining a certificate which authorized them to perform marriages. (1798) "An act to extend the provisions of an act passed in the second session of the first provincial parliament of Upper Canada, entitled 'An act to confirm and make valid certain marriages, heretofore contracted in the country now comprised within the province of Upper Canada, and to provide for the future solemnization of marriage within the

however, were intentionally excluded from this legislation, since these so-called 'fanatical' preachers, many of whom had emigrated from the American colonies, were suspected of harbouring dangerous republican sentiments. By allegedly sowing the seeds of political subversion, undermining the loyalty of the colonial populace, and engendering hostility to the highly structured doctrines of the Church of England and its well-educated and professional clergy, these popular itinerant ministers and so-called social levellers were perceived as one of the greatest threats to colonial conceptions of social hierarchy and public order.[25]

Between 1799 and 1829, at least twenty-one petitions (mainly from Methodist denominations) were submitted to the colonial legislature, requesting equal recognition of their churches, the right of their ordained ministers to solemnize the rites of marriage, and the retroactive validation of all past marriages performed by them. In that same period, no less than eighteen legislative bills introduced on these issues were blocked or defeated by an intransigent Legislative Council. Finally, in 1829, by which time "the temper of the people was getting dangerous,"[26] a revised marriage act managed to pass in both houses, which extended the privilege to perform marriages to those ordained Congregationalist, Baptist, Independent, Menonist, Tunker, Moravian as well as Methodist ministers, who underwent legal certification and took the oath of allegiance. It also decreed that all previous marriages which had been publicly contracted before any justice of the peace or authorized

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same'," 38 Geo. III, c. 4, s. I - III.

[25] For discussions of Methodism in Upper Canada, see, for example, Morgan, *Public Men and Virtuous Women*, chapters 2 and 3; William Westfall, *Two Worlds: The Protestant Culture of Nineteenth-Century Ontario* (Montreal & Kingston: McGill-Queen's University Press, 1989), 3-125; Grant, *A Profusion of Spires*, chapters 2 and 3.

[26] Riddell, "The Law of Marriage," 233-38.

minister "shall be good and valid in law."[27] When it took another two years for the "notorious" bill to receive royal assent, some members of the Legislative Assembly could not contain their outrage, especially since for so many years, as Marshall Bidwell argued, "no measure had been more loudly and more unanimously demanded by the people of this Province." Placing the responsibility for the delay directly on Governor John Colborne, who had opposed the bill in the interests of maintaining the existent alliance between church and state, Bidwell further asserted that such "resistance to the voice of the nation ... shewed most clearly that the Executive of a Colonial Government was not depending upon the people, but *could* whenever it *choosed* (sic) to do so, resist their wishes and interests."[28]

In addition to this critique of the "system of Colonial Government" and especially the propensity of the executive to act "in direct opposition to the voice of the people," some reform members of the Legislative Assembly also argued that the provisions of the 1829 marriage bill remained much too restrictive. William Lyon Mackenzie, for example, asserted that "the people of [the] Province" had "*a strong and settled aversion to a dominant Church*" connected to and upheld by the colonial government and were strongly opposed to the "enjoyment of peculiar privileges to the exclusion and prejudice of various denominations." For this reason, he, like Bidwell, favoured extending "without preference or distinction" the prerogative to solemnize marriages to all Upper Canadian religious

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[27] Cited in the Upper Canadian Statutes as (1831) "An act to make valid certain marriages heretofore contracted, and to provide for the future solemnization of matrimony in this province," I Wm IV, c. 1. Complete copies of this bill were published in the *Kingston Chronicle and Gazette* on both 14 March 1829 and 19 March 1831. Furthermore, on 2 April 1831, a list of Upper Canadian Methodist, Baptist, and Presbyterian ministers, their place of birth, and length of residence in the province was also published. Finally, the illegality of marriages performed by these denominations prior to 1831 later served as the basis for challenging deeds and rights to property. See, for example, one civil case involving an early Methodist marriage in (1859) *Pringle v. Allan and Hyland*, 18 UCQB, 575-84.

[28] *Kingston Chronicle and Gazette*, 12 March 1831.

denominations, christian or otherwise. Peter Perry further stressed that deliberately withholding the right to perform marriages from any religious sect would simply incite greater popular discontent, a situation which could prove to be highly injurious to the colony:

> [T]housands of emigrants had been induced to come to this province, from an impression that here no religious distinctions existed, but that all denominations enjoyed equal rights in regard to marriages ... and yet when they came here, with their families and their properties, and embarked their all in the country, they discovered, if they did not happen to belong to certain denominations, they were excluded from an equal participation in those religious rights, and they in consequence became dissatisfied and disgusted with the country.[29]

Unmoved by these reformist arguments, Solicitor-General Christopher Hagerman, a prominent member of the 'Family Compact', remained unequivocal in his "objection to the [marriage] bill in every shape," arguing that in the interests of social stability, the "laws on this subject ... ought to be clear and well defined." Invoking the positive example of England where the prerogative to solemnize marriages continued to belong "exclusively to the established church" and where "dissenters," unlike their disgruntled Upper Canadian counterparts, were ostensibly "so satisfied" with the "propriety of this limitation that they did not seek or desire any extension of that right," he maintained that it was preferable and even essential that such a system be preserved in the colonial context. Otherwise, by "increasing the number of persons & sects who perform this ceremony," it would become more difficult, if not impossible to "prove marriages." This would cause rampant legal uncertainties around what he, as a member of the elite, viewed as the fundamental issue, namely hereditary "titles to real estates, and the rights of property." But Hagerman reserved his harshest critique for all those dangerous individuals "calling themselves ministers, going up and down the country, who were exceedingly ignorant persons ... and who

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[29] *Kingston Chronicle and Gazette*, 23 January 1830, 22 January, 5 and 12 February 1831.

would be utterly incompetent to comprehend the nature or execute the duties of the proposed enactment; and the consequence would be that ere long the Legislature would be called on to confirm more illegal marriages." In addition to the general marital chaos created by these "illiterate wanderers," he also condemned all forms of infidelism and religious dissension, including the "diabolical conduct" of the Methodist ministers who "run about the country interfering with politics ... and using their religious functions in propagating the most seditious doctrines." Mackenzie's response to this lengthy speech was brief but pointed: the "Solicitor General had talked a good deal about ignorance," but "the learned gentleman himself was the most ignorant man in the House."[30]

These ongoing debates and struggles over the province's marriage laws, and especially over the specific concessions introduced in 1829, foregrounded the differing perspectives on the relationship between church and state in Upper Canada, and on the issue of whether a 'state church' was desirable or even tenable in a province marked by substantial religious diversity. By the 1830s, however, this controversy had also become part of the arsenal of reformist grievances against the tyranny of the 'Family Compact', its equally elitist handmaiden, the Church of England, and the general suppression of political rights and religious liberties by the colonial government. While this discontent eventually culminated in the failed rebellion of 1837, the reorganization and limited democratization of colonial governance and, as Bruce Curtis has argued, the inauguration of an era of state-

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[30] *Kingston Chronicle and Gazette*, 5 February 1831. Furthermore, one editorial exchange between John Reynolds and Peter W. both of Belleville published in the *Kingston Chronicle and Gazette* in 1831 indicated that the Methodists' allegedly seditious practices and their right to celebrate marriages continued to be the focus of attack. Peter W., evidently a member of the Church of England and a local politician, concluded one of his letters by stating: "From their Fort (the Christian Guardian) down to the thread-bare coated Campmeetings, nothing is to be heard but revilings and persecutions against Church, State and Government. Something must shortly be done to keep down these rattle-snakes and boa-*constructors*, or we will soon have a pretty Province." *Kingston Chronicle and Gazette*, 10 and 24 September 1831.

building and the stabilization of male bourgeois political hegemony,[31] the extension of the marriage statutes to include all religious denominations without 'preference' or 'distinction' would require another two decades to become a legislative reality. In the 1840s, religious groups excluded from the 1829 marriage act continued to submit petitions requesting equal status under the law,[32] and some Legislative Assembly members remained opposed to any further relaxation of the existent rules as "exceedingly dangerous." Echoing earlier arguments, one legislator noted in 1847 that since "there were so many disputes as to ordination among Dissenters," tampering with the marriage laws would only "create uncertainty in the marriage contract." However, the main issue of contention still focused on the favoured status enjoyed by the Church of England clergy, in that they had "the unrestricted right, by virtue of their office, to unite persons in matrimony, but the Clergymen of other denominations were compelled to go before the Court of General Sessions and procure a Marriage License, by swearing that they had been regularly ordained." While some legislators viewed this as an "injustice" and as the underlying cause of so much past and present "jealousy and contention among religious denominations," others argued that these "hardships" far outweighed the "evil" of "one single marriage

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31 Bruce Curtis, "Preconditions of the Canadian State: Educational Reform and the Construction of a Public in Upper Canada, 1837-1846," *Historical Essays on Upper Canada*, 341-68; "Representation and State Formation in the Canadas, 1790-1850," *Studies in Political Economy* 28 (Spring 1989): 59-87; "Class Culture and Administration: Educational Inspection in Canada West," *Colonial Leviathan*, 103-33. Despite the introduction of 'responsible' government and the democratization of governance, it should be noted that political power was merely transferred from a white, male colonial elite to white, naturalized, adult, property-owning men.

32 For example, the Bible Christians submitted a petition to the Legislative Assembly in 1841 and again in 1842. In 1841, their petition coincided with a general debate on extending and revising the province's marriage laws to include all 'christian' denominations. *Debates of the Legislative Assembly of United Canada* (1841): 280, 349, 375-76, 391, 588, 617, 682-87, 831; (1842): 8, 131, 150; *Kingston Chronicle and Gazette*, 24 July 1841. Four years later, James Breakenridge of Canada West submitted a petition opposing any relaxation of the existing restrictions. *Debates* (1844-45): 948, 986.

illegally performed" and the "bastardiz[ation] of many innocent families."[33]

Given these divergent perspectives, another compromise was reached in 1847: the legal right to solemnize marriages was extended to ordained and certified ministers of all 'christian' denominations who took an oath of allegiance, but the Anglican clergy's exemption from these procedures continued to remain untouched.[34] By 1857, colonial legislators were forced to concede that the existent marriage laws were both "partial in their character" and "offensive" to both christian and non-christian religious groups, particularly in regard to the "insidious distinction [and] the present mark of inferiority" that existed in regard to dissenters.[35] Under the marriage act passed that year, ordained or appointed ministers of "every religious denomination in Upper Canada" including Jewish rabbis, were extended the right to solemnize marriages according to their own "rites, ceremonies, and usages" without undergoing the certification procedure.[36] In subsequent decades, certain sectarian denominations were also given special powers under the provincial marriage statutes, including Quakers, Disciples of Christ, the Salvation Army, the

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33 *Debates of the Legislative Assembly of United Canada* (1847): 353, 499, 516-17, 602-03, 633, 807-08, 831, 1187.

34 (1847) "An Act to extend the Provisions of the Marriage Act of Upper Canada to Ministers of all denominations of Christians," 10 & 11 Vict., c. 18. As further specified under this act, ministers were now required to appear before the County Registrar to take an oath of allegiance and provide evidence of ordination and ministerial status.

35 See, for example, the ongoing discussions of extending the marriage statutes in *Debates of the Legislative Assembly of United Canada* (1851): 847, 1325-26; (1852-53): 336, 1387, 1391, 1464, 1688, 2324, 2543, 2614, 3185, 3264-65, 3391, 3406, 3415-16.

36 (1857) "An Act to amend the Laws relating to the solemnization of Matrimony in Upper Canada," 20 Vict., c. 66. Although this act extended the right to celebrate marriages to Jewish rabbis, which was later confirmed by Justice Armour in (1893) *Regina v. Dickout*, 24 OR, 254, the census figures cited by Gerald Tulchinsky indicate that the number of Jews residing in Canada West in the 1850s was still relatively small: 106 in 1851 and 614 in 1861. Gerald Tulchinsky, "The Jewish Experience in Ontario to 1960," *Patterns of the Past: Interpreting Ontario's History*, eds. Roger Hall, William Westfall, and Laurel Sefton MacDowell (Toronto: Dundurn Press, 1988), 305.

Farringdon Independent Church, and the Brethems.[37]

Throughout these protracted debates over which 'religious' denominations would have the right to solemnize marriages recognized by the colonial state and the judicial system, First Nations' marriage rites were not only relegated well outside the boundaries of the existent legal and religious categories, but also, as elsewhere in British North America, their status remained much more ambiguous. According to historian Winona Stevenson, Indian agents and especially christian missionaries, who as self-defined experts on Aboriginal peoples often acted as advisors to colonial governments, were the two groups which most "strenuously objected" to the survival of First Nations' "customary marriage practices outside the church." Even though several late nineteenth-century civil cases did tenuously confirm "the validity of customary marriage in common law" and thus upheld the non-interventionist policies the British technically adhered to elsewhere in the empire, this legal recognition tended to be granted only under specific circumstances.[38]

Unlike some turn-of-the-century legal cases heard in the western provinces which considered the validity of marriages between First Nations women and men,[39] the precedent-setting civil trials in Quebec and Ontario focused on customary marriages celebrated between Euro-Canadian men and First Nations women and, more specifically, on the legitimacy and inheritance rights of children born of these unions. The most

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37 (1857) 20 Vict., c. 66, s. VII (Quakers); (1883) 46 Vict., c. 11, s. 2 (Disciples of Christ); (1896) 59 Vict. c. 39, s. 2, ss. 3 (Salvation Army); (1904) 4 Edw. VII, c. 10, s. 40 (Farringdon Independent Church); (1906) 6 Edw. VII, c. 19, s. 27 (Brethems).

38 Ann McGrath and Winona Stevenson, "Gender, Race, and Policy: Aboriginal Women and the State in Canada and Australia," *Labour/Le Travail* 38 (Fall 1996): 45-46; Constance Backhouse, *Petticoats and Prejudice: Women and Law in Nineteenth-Century Canada* (Toronto: Women's Press, 1991), 17.

39 These cases generally revolved around whether Aboriginal wives could provide evidence against their husbands who were accused of other criminal offences. See (1889) *Regina v. Nan-e-quis-a-ka*, 1 Terr. LR, 211-16, and 2 CNLC, 368-73; (1921) *Rex v. Williams*, 30 BCR, 303-05, 37 CCC, 126-28, and 4 CNLC, 448-50.

important trial in this regard was heard in the Superior Court of Lower Canada in 1867, and revolved around determining the validity of the marriage à la façon du pays contracted between William Connolly, an Irish-Catholic fur trader, and Susanne Pas-de-nom, a Cree woman, in the Athabasca region in 1803. Although this marriage was one of many Native-European unions which had been contracted in the context of the fur trade and which involved the "turning off" of the Aboriginal wife and the subsequent remarriage to a white woman,[40] it became the focus of the first and most extensive judicial assessments of First Nations marriage rites. Despite Justice Samuel Cornwall Monk's repeated references to the "uncivilized," "barbaric," and "peculiar" character of Aboriginal marriage customs and his condemnation of the "degrading" practice of obtaining a bride price as a crude form of selling Native daughters, he did uphold the validity of the first marriage and ruled in favour of the eldest son's right to inherit his father's estate. In justifying his decision, Justice Monk argued that because of the so-called "state of barbarism" that "prevailed in the Athabaska country in 1803" and the general absence of all "signs of progress" and "every element of European civilization," there were no "ministers, priests, or magistrates residing at Rivière-aux-Rats," who might have solemnized a legally sanctioned christian marriage.[41] As Constance Backhouse has argued, one of the reasons this case attracted so much interest throughout the Dominion was "because it asked whether Christian, European marital rites would be demanded of peoples of First Nations, or whether Canadian courts would honour First Nations' traditional practices," an issue which continued to surface in the civil courts

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[40] See, for example, Sylvia Van Kirk, *"Many Tender Ties": Women in Fur Trade Society, 1670-1870* (Winnipeg: Watson and Dwyer, 1980), chapter 8, and "'The Custom of the Country': An Examination of Fur Trade Marriage Practices," *Canadian Family History: Selected Readings*, ed. Bettina Bradbury (Toronto: Copp Clark Pitman, 1992), 67-92.

[41] (1867) *Connolly v. Woolrich and Johnson et al.*, 1 CNLC, 70-150; (1869) *Johnstone et al. v. Connolly*, 1 CNLC, 151-243; "Marriage," *Local Courts' and Municipal Gazette* 4 (March 1868): 34-35.

in the late nineteenth and early twentieth centuries.[42]

In 1891, a similar case was heard in the Ontario Court of Common Pleas, in which the judiciary was asked to rule on the validity of the marriage celebrated "according to Indian custom" between William Robb of Kingston and Supul-Catle of the Comox (now referred to as the Southern Kwakwaka'wakw) nation. As in the William Connolly case, the court's decision would determine the legitimacy and inheritance rights of their only surviving child, nineteen-year-old Sarah Robb. According to the evidence presented, William Robb had left Ontario in the 1860s and while living on the east coast of Vancouver Island married Supul-Catle, the daughter of Chief Wahkus, according to Kwakwaka'wakw custom: that is, after living in the house of Supul-Catle's father for some time, the band agreed to the marriage; William then gave presents in the form of twenty dollars to the chief and a feast was given "in honour of his daughter's marriage with a white man"; thereafter, the couple lived together as "man and wife" until Supul-Catle's death in 1879. That year, William and his daughter returned to Kingston and, in the years prior to his death in 1888, William consistently maintained that his marriage had been a legal one and, by all accounts, he publicly acknowledged, treated, and supported Sarah as his legitimate child.

In formulating his judgement, Judge Robertson clearly had little or no knowledge of the Southern Kwakawka'wakw peoples, erroneously describing them as a "nomadic tribe."[43] He also expressed some confusion over whether they should be regarded as "pagan" or whether they had been properly christianized. Evidently undeterred by this lack

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42 See Backhouse, *Petticoats and Prejudice*, 9-28, for a detailed analysis of this celebrated case.

43 Like most Northwest Coast societies, the Kwakwaka'wakw relied mainly on fishing and hunting for economic survival, but they cannot be characterized as 'nomadic'. William C. Sturtevant, ed., *Handbook of North American Indians*, Volume 7 (Washington: Smithsonian, 1990), 359-87.

of information, he felt sufficiently qualified to rule on the case,[44] relying mainly on the judicial arguments made at the William Connelly trial. Robertson's decision was largely premised on distinguishing between the social circumstances within which the two marriages were contracted. He argued that unlike the conditions in the Athabasca region in 1803, where "the distance from civilization was so great" that "there were no priests, magistrates, or other civil officers" who could perform a legal ceremony, British Columbia in the late 1860s was a well-established colony, and there would presumably have been religious or secular officials "within a reasonable distance" of where the "Indian ceremony" had taken place. From this and a rather vague statement made by William to his relatives, in which he had asserted that he had been "married in the same way, as they would have been, had the ceremony taken place in Ontario," the judge concluded that it was safe to assume that "a marriage according to the law of Christianity [had taken] place." And it was only on this basis that he ruled that Sarah was indeed William's "lawful daughter" and only "legal heir."[45]

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[44] This colonial legal process continues to the present day, particularly in Aboriginal land-settlement cases. This was illustrated in 1991, when Chief Justice Allan McEachern of the British Columbia Supreme Court rejected the land claims of the Gitksan and Wet'suwet'en people, based on "selected interpretations of early nineteenth-century fur traders' writings." He used these writings, rather than First Nations oral histories, to support his controversial conclusion that their life had been "primitive" and that "fishing-hunting-gathering societies occupied the lowest rung on the ladder of social evolution." See Allan McEachern, *Reasons for Judgement, Delgamuukw v. B.C.*, Supreme Court of British Columbia, Smithers, B.C. (1991); "Theme Issue: Anthropology and History in the Courts," *B.C. Studies* 95 (1992); Jennifer S. H. Brown and Elizabeth Vibert, eds., "Introduction," *Reading Beyond Words: Contexts for Native History* (Peterborough: Broadview Press, 1996), xii-xiii; Adams, *A Tortured People*, 145. McEachern's ruling, however, was overturned by the Supreme Court of Canada in 1998.

[45] In other cases, this kind of judicial logic was used to rule against the validity of marriages between Euro-Canadian men and First Nations women which had been celebrated according to Aboriginal customs. For example, in 1898, the marriage between an unnamed Cowichan woman and John Schmidt was ruled invalid by the British Columbia Supreme Court on the grounds that "at the time of the Indian marriage both parties were at all events nominally Christians, and *had abundance of facilities for being married in accordance with the laws of the then colony of British Columbia.*" (1898) *Smith v. Young*, 24 *Canada Law Journal*, 581 and (1898) CNLC, 656. Similarly, in a 1899 case heard in the North-West Territories Supreme Court, the Native marriage between Mary Brown (Awatoyakew or White-Tailed Deer Woman) of the Piegan nation and Nicholas Sheran, a Catholic miner, was ruled invalid because, as the

In constructing his argument in this manner, Judge Robertson carefully and even intentionally evaded making any direct pronouncement on the central issue raised by the trial: whether the marriage according to the "customs and usages" of the Southern Kwakwaka'wakw people, which he described as "quaint" in the eyes of a christian, was a good and valid one. While he expressed his doubts on this question, he did concede, based on English common law precedents, that despite the absence of christian rites, some components of a valid, albeit irregular marriage were present, including the mutual consent of the parties, consummation, and co-habitation.[46] In light of these often vague judicial rulings, Winona Stevenson has argued that "the Indian Department was forced to accept traditional Aboriginal marriages," and continued to do so until 1951, but as the published case law in other provinces suggests, there were a growing number of exceptions to this rule.[47] These ambiguous decisions also did not deter Protestant churches from continuing

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Supreme Court judge argued, when the marriage took place in 1878, "the Territories [could no longer] be considered a strictly barbarous country. It was then far removed from barbarism." Hence, unlike the circumstances under which William Connelly had married in 1803, by the 1870s, as a tangible symbol of the progress of 'civilization' in the region, there were available ministers and justices of the peace authorized to solemnize christian marriages. See (1899) *Re Sheran*, 3 CNLC, 636-47; "Crooked Lake Agency - Polygamy - (Indian Commissioner for Manitoba and Northwest Territories), 1899-1908," National Archives of Canada (hereafter NAC), RG 10, Department of Indian Affairs, Volume 3559, File 74.

[46] (1891) *Robb v. Robb et al.*, 20 OR, 591-603; 3 CNLC, 613-25. One Department of Indian Affairs official similarly noted in 1911 that "Tribal marriages are, of course, recognized by the courts, even though the ceremony may have been of ever so simple or crude a character." "British Columbia - Correspondence regarding Indian marriages, including the cases of William George Robb ..., 1890-1933," NAC, RG 10, Department of Indian Affairs, Volume 3282, File 64, 535.

[47] McGrath and Stevenson, 45-46; supra note 45. Also, according to the 1921 testimony of one Indian agent responsible for the Alert Bay district in British Columbia, the Department of Indian Affairs was obliged to recognize marriages according to "Indian custom" and "did recognize them." He further noted, however, that "five years ago instructions were sent out that the Indians must in future be married according to the marriage laws of the Province [of British Columbia], and no marriage by Indian custom entered into since that time has been recognized by the department." (1921) *Rex v. Williams*, 30 BCR, 303-05; 37 CCC, 126-28; 4 CNLC, 448-50. For an overview of the case law pertaining to the validity of First Nations marriages in various provinces, see "Correspondence regarding Indian Marriage and Divorce, 1914-1946," NAC, RG 10, Department of Indian Affairs, Volume 6816, File 486-2-8.

to protest against the laxness of government policies and their failure to "stamp out the immorality" on Ontario reserves. In 1913, for example, Reverend George Carpenter, speaking at the annual meeting of the Brantford District Methodist Church, "called for a [firm] pronouncement by the Federal Government on the marriage question as it affects the Six Nations Indians." He strenuously maintained that since "the Provincial Marriage Act does not apply to them ... the sanctity of the marriage tie is practically nil among a large number on the [Six Nations] reserve."[48] At the same time, these eurocentric observations only served to justify the ongoing presence of christian missionaries in First Nations communities, with conversion and reculturation perceived as the most effective methods in rooting out various 'immoral' practices.[49]

In spite of the gradual relaxation of the province's marriage laws in regard to religion over the course of the early nineteenth century and the equivocal legal toleration of Aboriginal marriage rites, provincial legislators turned their attention to introducing an alternative system of state regulation, by enacting stricter provisions to prevent the illegal solemnization of marriages. Prior to 1857, the certification of non-Anglican ministers before the Court of General Sessions and later the County Registry was principally designed to safeguard against anyone performing marriage ceremonies without appropriate

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[48] "Wants Marriage Act To Reach Indians: Rev. Geo. Carpenter Says Sanctity of the Tie That Binds is Nil on Reserve," *Sault Daily Star*, 22 May 1913. See also "Methodist District Conference - Inspecting the Indian Reserve," Toronto *Globe*, 16 September 1899.

[49] As Mariana Valverde points out, in an effort to reinforce the notion that Anglo-Protestants were "the real natives of Canada," Protestant churches tended to categorize their work among Aboriginal peoples as part of their 'foreign' missionary efforts. She further notes that even when First Nations peoples were re-classified under "the newer category of home missions" in the early twentieth-century, they became "part of a vast group of people, who came to be known ... as 'strangers'," comprised mainly of non-English speaking immigrants. Valverde, *The Age of Light, Soap, and Water*, 115-16.

credentials or "authority by law."[50] With the abandonment of these procedures, a more bureaucratized and centralized system of mandatory marriage registration was gradually introduced[51] and stricter penalties against unauthorized ministers "pretending" to solemnize marriages were enacted, which were eventually incorporated in Canada's criminal code in 1886. Under these latter provisions, any person who contracted a 'false marriage' by impersonating an ordained minister was liable to a fine or a maximum term of two years imprisonment.[52]

Nineteenth-century Ontario newspapers periodically issued public warnings against what were identified as 'clerical imposters', a particularly dangerous group of individuals who managed to masquerade as ordained ministers, or who used their ecclesiastical positions to engage in various unchristianlike and immoral activities.[53] Other ministers,

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[50] Beginning in 1821, specific legislation was also enacted to provide for the "more certain punishment" of persons who celebrated marriages "without authority by law," a crime which was defined as a misdemeanour and was punishable by a fine or imprisonment. (1821) "An act for the more certain punishment of persons illegally solemnizing marriages within this province," 2 Geo. IV, c. 11.

[51] Beginning in 1831, all dissenting ministers authorized to celebrate marriages in Upper Canada were required to submit an annual list of solemnized unions to the District Clerk of the Peace and failure to do so would result in a fine of £40. In 1857, the marriage act stipulated that all marriages were to be listed on a special schedule and were to be submitted to the County Register each year before 1 February; otherwise, ministers would be fined £1 per day. Beginning in 1869, however, separate legislation, entitled "An Act to provide for the Registration of Births, Marriages and Deaths," was passed, which required that all marriages were to be registered within ninety days at the Ontario Registrar General's Office, a centralized provincial body, and after 1896, marriage returns were to be made within thirty days. Fines also became more severe, ranging between $1 and $20 in 1869, and $50 in 1896. See (1831) 1 Wm IV, c. 1, s. VI; (1857) 20 Vict., c. 66, s. III; (1869) 32 Vict., c. 30; (1896) 59 Vict., c. 12, s. 5; "The Marriage Record. Clergymen Required to Notify The Local Registrar Of All Marriages They Perform," Toronto *Globe*, 9 November 1892.

[52] (1857) "An Act to amend the Laws relating to the solemnization of Matrimony in Upper Canada," 20 Vict., c. 66, s. III-IV; (1886) "An Act respecting Offences relating to the Law of Marriage," 49 Vict., c. 161, s. 1 (Can.).

[53] See, for example, "Villanous Imposter," Toronto *Globe*, 31 October 1861; "An Absconding Priest," Toronto *Globe*, 11 April 1860; "A Clerical Imposter," *Dumphries Reformer*, 24 October 1866; "R. Moffatt Neil's Alleged Bad Conduct," Toronto *Globe*, 7, 18, and 21 October 1890.

who were suspected of performing marriage ceremonies illegally, found themselves facing criminal charges in the courts. As indicated by the court records, these cases were rarely initiated by legal authorities nor did the trials specifically focus on the marriages in question. What they do illustrate, however, is the extent to which the celebration of marriage rites could become the focal point of internal denominational disputes and could generate intense opposition to the presence of certain unorthodox religious sects within local communities.

In October 1862, Charles P., a black minister of British Methodist Episcopal Church, was charged with illegally solemnizing a marriage between John T. and Emma S. in the Township of Colchester three months earlier.[54] Residing in an area with a relatively large and growing black population,[55] the couple had been living together for almost ten years and by formally marrying they evidently sought to legitimize their 'common law' union and the status of their three children. According to the evidence presented at the trial, however, the general conference of the British Methodist Episcopal Church had, prior to the celebration of this marriage, suspended and later expelled Charles P. from the church body, for a number of violations: "immoral conduct" compounded by "insubordination, circulating falsehoods, violations of ordination vows ... and Rebellion against the

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54 According to John Grant, the African Methodist Episcopal Church entered Upper Canada in 1838 and in 1856, the separate British Methodist Episcopal Church was established. Grant, *A Profusion of Spires*, 156.

55 Michael Wayne's study of the 1861 census indicates that the black population in Canada West in that year was about 17,053 (although estimates vary) and was concentrated mainly in southwestern Ontario, including the communities of Colchester, Windsor, and Chatham where the British Methodist Episcopal Church seems to have been active. Michael Wayne, "The Black Population of Canada West on the Eve of the American Civil War: A Reassessment Based on the Manuscript Census of 1861," *Histoire sociale/Social History* 28, 56 (November 1995): 465-85. See also Peggy Bristow, "'Whatever you raise in the ground you can sell it in Chatham': Black Women in Buxton and Chatham, 1850-65," *'We're Rooted Here and They Can't Pull Us Up': Essays in African Canadian Women's History*, eds. Peggy Bristow, et. al. (Toronto: University of Toronto Press, 1994), 69-81; Shirley J. Yee, "Black Women as Community Leaders in Ontario, 1850-70," *Canadian Historical Review* 75, 1 (March 1994): 53-73.

Government and discipline of the Church," especially when he had established his own unauthorized congregation in Chatham. After being censured and stripped of his ministerial status, he was henceforth disallowed from "preaching, marrying, baptising or performing any of the ordinances of the church." As indicated by lengthy testimony from various elders and ministers, this case was very much the product of a serious internal rift within the denomination, exacerbated by Charles' flagrant defiance of the disciplinary actions of church authorities. In the minds of the church elders, this latter violation was severe enough to warrant prosecution in the criminal courts.

The vigilance with which the British Methodist Episcopal Church elders sought to enforce church discipline might well have been rooted in what Evelyn Higginbotham has termed the 'politics of respectability', an anti-racist strategy which linked black struggles for equality with earning greater respect and acceptance within a white dominated culture.[56] During a period when "religious respectability" was increasingly measured against the standard of white, middle-class Protestantism, when African-Canadian denominations were generally viewed with "patronizing condescension," when black Methodists were "coldly received" in white congregations, and when black residents struggled against the daily effects of racial discrimination, African-Canadian churches, as the institutional backbone of many communities, emphasized and promoted the principles of 'racial uplift' and the efficacy of self-help.[57] In an effort to foster these goals and to elevate their own religious status, black church leaders also tended to insist upon strict conformity to church doctrines,

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[56] Although Higginbotham's study focuses on the African-American Baptist churches, she does note that "their story broadly characterizes the black church and black community," including the Methodist Episcopal Church. Evelyn Brooks Higginbotham, *Righteous Discontent: The Women's Movement in the Black Baptist Church, 1880-1920* (Cambridge, Mass.: Harvard University Press, 1993), 6, 14, 185-229, and "African-American Women's History and the Metalanguage of Race," *Signs* 17, 2 (Winter 1992): 270-73.

[57] Lynne Marks, *Revivals and Roller Rinks: Religion, Leisure, and Identity in Late-Nineteenth-Century Small-Town Ontario* (Toronto: University of Toronto Press, 1996), 13, 77; Grant, *A Profusion of Spires*, 156.

and to encourage morally upright behaviour among their members. In this context, wayward and undisciplined ministers and the constitution of illegal marriages could pose a direct threat to the legitimacy of the church and the respectability of the community. In Charles P.'s case, the British Methodist Episcopal elders were ultimately successful in disciplining the errant minister. The jury at the Sandwich Assizes returned a verdict of guilty and even though an appeal was launched in the Court of Common Pleas in March 1863, his conviction was upheld.[58] Seemingly undeterred by this conviction, Augustus G., the bishop of the same 'renegade' church, proceeded to conduct another marriage ceremony in Windsor one month later. Since he too had been suspended "from all official standing in the [British Methodist Episcopal] church" on the grounds of "rebellion against the govt and discipline of the church," especially in "calling off the members from the regular place of worship and forming societies in opposition to the meetings held by the minister in charge," he was also arrested and charged with "not being a minister of a religious denomination existing in Upper Canada," and for unlawfully solemnizing marriages. When the jury found him not guilty, however, it did offer the possibility for the survival and legal recognition of this small renegade church in the region.[59]

While the trials of Charles P. and Augustus G. emerged out of particular internal tensions within the black Methodist church in southwestern Ontario, other ministers prosecuted in the criminal courts were associated with certain religious sects which were either unwelcome in local communities and/or were suspected of adhering to doctrines and practices which went contrary to ecclesiastical and secular laws. When Reverend William

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[58] (1862) *Queen v. Charles P.*, Archives of Ontario (hereafter AO), RG 22-392, Essex County Criminal Assizes Indictment Case Files (hereafter CAI), Box 34.

[59] (1863) *Queen v. Augustus G.*, AO, RG 22-392, Essex County CAI, Box 34. See also (1863) *Queen v. George E.*, RG 22-392, Oxford County CAI, Box 112.

D., described as a "Holy Roller," established a congregation known as the Association of God in the township of Cornwall in 1919 and then proceeded to marry a local couple, hostile residents living in the small town of Mille Roches were quick to rally against him. The Cornwall Crown attorney took up their cause and wrote to the Office of the Attorney General, requesting information as to the status of this religious group under the marriage act. Three months later, the Deputy Attorney General sent a very terse reply. "On the facts as represented," he wrote, Reverend D. was "not entitled to solemnize marriages" and if he was not stopped, "great injury might result." Since another minister from the nearby town of Moulinette was eager "to lay a charge," he strongly advised that this would best be accomplished through criminal prosecution. The Cornwall Crown attorney, despite assurances from Reverend D. that he "would not perform any other marriage ceremonies," decided to heed this advice, especially given the "feelings in the community" and the need to protect the "interests of all parties" involved. Furthermore, because the legality of the marriage he had solemnized was seriously in doubt, it was deemed prudent that arrangements be made for the anxious couple to be remarried by a recognized minister.[60]

The acute dangers associated with Mormonism and its presence in the town of Niagara Falls became the focus of the trial of another minister, Reverend Dickout of the Church of Latter Day Saints, who was convicted before the local police magistrate for

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60 (1919) "Legality of Marriage performed by W. L. D[], designated as Ass. of God," AO, RG 4-32, Attorney General Criminal and Civil Files (hereafter AG), #240; (1919) *Rex v. William D.*, AO, RG 22, Stormont, Dundas, and Glengarry Counties Court Judges' Criminal Court (hereafter CCJCC) Case Files, Box 3. In another case, a Rev. F. B. from Kirkwall wrote the Attorney General's Office, requesting information about some of the technicalities of Ontario's marriage laws. He explained that he had recently attended a local wedding officiated by clergyman from Michigan, and someone in attendance had questioned the legality of the marriage, since the 1896 Marriage Act specified that ministers had to be residents of Canada. Not surprisingly, this had caused "a great deal of anxiety and a good deal of trouble" and, "for the sake of the couple concerned," he wished to know if they were legally married or whether "it [was] necessary to get another license and get married over again by a Minister resident in Canada." (1900) "Re. legality of marriage performed by a clergyman residing in [the] U.S.," AO, RG 4-32, AG, #193. It was only in 1914 that a provincial amendment allowed for non-resident clergy to perform marriages. (1914) "Statute Law Amendment Act," 4 Geo. V, c. 21, s. 33.

illegally solemnizing marriages and whose case was reserved for final ruling in the Court of Queen's Bench in 1893. The main issue debated in the higher court was whether the Latter Day Saints should be deemed "anti-Christian" given that the Book of Mormon (and not exclusively the Bible) served as the main foundation of its doctrines, and more seriously because the Mormons, and especially those residing in Utah, had gained a notorious reputation for encouraging the 'evil' practice of polygamy.[61] In the 1870s, for example, when the criminal courts in Utah were attempting to suppress polygamy within local Mormon communities, one Toronto *Globe* editorial was quick to condemn this "hideously unnatural" and "degrading" practice, arguing that "the genius of Christianity, and the weight of experience in all ages and among men in almost every condition of civilization, point unmistakably in favour of one man being the husband of one woman and one only."[62] Two decades later, an amendment to Canada's criminal code specifically prohibited what were termed "spiritual or plural marriages" among Mormons, the maximum penalty being five years imprisonment and a five hundred dollar fine.[63] In ruling on Reverend Dickout's case, Justice Armour, the higher court judge, decided to quash the conviction, but only after he was fully satisfied that the Niagara Falls congregation strictly adhered to the principle that "the law of God provides for but one companion in wedlock"

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[61] For an analysis of American campaigns against Mormon plural marriages and efforts to 'rescue' Mormon wives, see Joan Smyth Inverson, "A Debate on the American Home: The Antipolygamy Controversy, 1880-1890," *American Sexual Politics: Sex, Gender, and Race since the Civil War*, eds. John C. Fout and Maura Shaw Tantillo (Chicago: University of Chicago Press, 1993), 123-40; D'Emilio and Freedman, *Intimate Matters*, 116-18.

[62] "Polygamy," Toronto *Globe*, 4 October 1871.

[63] (1890) "Offences in Relation to Marriage," 53 Vict., c. 37, s. 5 (c), which became Section 278 (a) (iii) of the 1892 Canadian criminal code. For a brief discussion of the Mormon threat in the Western provinces, see Terry Chapman, "Women, Sex and Marriage in Western Canada, 1890-1920," *Alberta History* 33, 4 (Autumn 1985): 7.

and that "the doctrines of a plurality and the community of wives are heresies."[64]

Given the potential for criminal prosecution for celebrating illegal and 'pretended' marriages, the Office of the Attorney General periodically received letters from individual ministers, lawyers who had been hired by certain denominations, or in some cases concerned parents requesting information about "the strict letter" of the province's increasingly complex marriage laws, and the rights of particular ministers to perform marriages. These included queries concerning the legal status of what were referred to as "border line cases," namely such unorthodox sects as the Christodelphians, the Seventh Day Adventists, and the Apostolic Faith Church. By 1920, however, Ontario's Attorney General was forced to admit that because of the growth of various sectarian religious groups, it was becoming "very difficult in some cases to decide whether or not a marriage has been illegally performed." In fact, he remarked that when it came to "border line cases," formulating an "opinion is [often] impossible" or "simply ... a guess." Thus, he strongly advocated much stricter state controls, including an amendment to the marriage act which would (re)introduce the compulsory registration and certification of all ministers

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[64] (1893) *Regina v. Dickout*, 24 OR, 250-54.

"entitled to marry,"[65] an amendment which was enacted in 1921.[66]

That the institution of marriage in nineteenth- and early twentieth-century Ontario was inextricably bound up with religion is certainly not surprising, considering that christian doctrines and ecclesiastical rules had for centuries served as the foundation of Anglo-European marriage laws. Moreover, in the absence of legislation permitting civil marriages in Ontario prior to 1950, religious authorities had a social monopoly on the performance of valid marriage ceremonies, the only possible exception being Aboriginal conjugal rites. From the perspective of the state, however, since marriage was not only defined as a religious, but also a civil contract which determined such matters as private conjugal rights, family succession, and the disposition of property, it was necessary to subject religious officials to some form of legal regulation. In the context of Upper Canada and Ontario, the state's regulatory impulse tended to shift away from attempts to restrict who could celebrate marriages based strictly on religious allegiances toward establishing legal mechanisms designed to prevent the constitution of pretended, illegal, and indeed defective marriage contracts. While this legislative process could be interpreted as a

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65 (1904) "Re. right of members of members of [the] society of Christodelphians to perform ceremony of marriage," AO, RG 4-32, AG, #1229; (1920) "Asks as to right of Seventh Day Adventist Minister to perform marriage ceremony," Ibid, #3527; (1920) "Asks opinion as to Apostolic Faith Church," Ibid, #3498; (1915) "Asks re. jurisdiction in performing marriage ceremonies," Ibid, #1538. In areas where the marriage laws were less ambiguous, however, the views of the legal authorities were firm. In 1919, James F., a non-licensed Methodist minister from a small northern Ontario community of 450 inhabitants enquired about his right to perform marriage ceremonies in his capacity as the local justice of the peace, because of the "shortage" of "ordained Methodist Local Preachers" and the resulting "embarrassing inconvenience" to which parties who desired to be married were put. The Attorney General's Office replied by firmly stating that he should "disabuse [his] mind of the idea that a Justice can perform a marriage ceremony" and strongly suggested that the Methodist church consider placing a duly authorized minister in the district. (1919) "Asks as to right of J.P. to perform marriage ceremony," Ibid, #618.

66 (1921) "An Act to Amend The Marriage Act," 11 Geo. V, c. 51. Under this legislation, ministers authorized to solemnize marriages were required to register with the Provincial Secretary. This provincial body would maintain a record of certified ministers and would publish notices in the *Ontario Gazette* indicating which ministers' authority had been revoked. Ministers who celebrated marriages without undergoing this registration and certification procedure were liable to be fined $500 and to incur a maximum term of imprisonment of twelve months.

necessary response to the existent and especially the growing ethnic and religious diversity of the province as well as the increasing adherence to the principle of voluntarism, it should not be read as symbolic of the 'progressive' achievement of religious tolerance in the province, as some late nineteenth-century legal commentators seemed to suggest.[67] In 1893, for example, Chief Justice Armour declared that even though the province upheld the principle that "everyone is at liberty to worship his Maker in the way he pleases," and that "we have, or ought to have, in this country, perfect freedom of speech and perfect freedom of worship," he, like other state officials, specifically identified christianity as "the law of the land and ... of this Province."[68]

Even among christian denominations, definite religious hierarchies, doctrinal squabbling, and even working-class sectarianism continued to characterize the religious culture of the turn of the century.[69] Despite these ongoing tensions, Mariana Valverde has argued that, by the late nineteenth century, Protestantism, which now incorporated both the established churches and the previously beleaguered evangelical denominations, did achieve the status of "a kind of joint-stock state religion" in English-Canada. It served as one foundation for legitimizing the growing political, socioeconomic, and cultural hegemony of the Anglo middle classes within an increasingly industrial-capitalist social formation, and this took an organized form in the social and moral reform movements of

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[67] See, for example, "The Laws of Marriage - No. II," *Local Courts' and Municipal Gazette* 3 (October 1867): 145.

[68] (1893) *Regina v. Dickout*, 24 OR, 251-54.

[69] See, for example, Marks, *Revivals and Roller Rinks*, chapters 5 and 6; Darryl Newbury, "'No Atheist, Eunuch or Woman': Male Associational Culture and Working-Class Identity in Industrializing Ontario, 1840-1880" (MA thesis, Queen's University, 1992); Gregory S. Kealey, *Toronto Workers Respond to Industrial Capitalism, 1868-1892* (Toronto: University of Toronto Press, 1980).

the turn of the century.[70] In the face of an expanding wage labour system and growing immigration from Southern and Eastern Europe as well as Asia, the Anglo-Protestant middle classes increasingly defined themselves against a whole range of 'others', going beyond already existent hostilities toward the 'paganism' of Aboriginal peoples, the 'papalism' of the French and Irish Catholics, and the 'inferiority' of African-Canadian Protestants, to include unorthodox religious sects, the 'heathenism' of the Chinese, as well as the 'deicide' and 'sabbath-breaking' of the Jewish population. In 1913, for example, the Anglican Missionary Society, after establishing a new Jewish Committee in Toronto, resolved that its proselytizing efforts and its allocation of funds would "be carried under a new policy." Rather than sending missionaries to Jerusalem, it was unanimously decided that, since Canada had "sufficient Jews within her own bounds" in need of conversion, the attention and energies of Anglican missionaries and the economic resources of the Church of England would best be diverted to the "home field."[71] In this same spirit, church ministers and state authorities consistently emphasized the superiority of christian doctrines on marriage as opposed to the oppressiveness of 'other' religions. During the great religious struggles over the centuries, as one parliamentarian argued, "one of the greatest changes" initiated by the shift "from the Jewish to the Christian dispensation" was "the elevation of the married state," making the marriage tie "more sacred," the union between husband and wife "more intimate," and placing married women "in exactly the same

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[70] Valverde, *The Age of Light, Soap, and Water*, 26.

[71] "Jews In Canada To Receive Attention: Anglican Missionary Society Will Adopt New Policy. Home Field Opportune," Toronto *Globe*, 12 June 1913. The criminal courts also insisted that "Jewish bakers," for example, "must be guided by Gentile laws and not those that suit their own habits of industry." Otherwise they, like Albert Mandell, could be fined for "employing workmen on Sunday." "Jewish Bakers Not To Have Privileges," Toronto *Globe*, 7 February 1917.

position" as their husbands.[72]

Regulating 'Unnatural', 'Disgraceful', 'Forbidden', and 'Clandestine' Marriages

In 1833, the *Kingston Chronicle and Gazette* announced the marriage between Miss F., an English gentlewoman from New York to Reverend Peter Jones (Kahkewaquonaby), a converted member of the Mississauga nation and an influential Methodist missionary among Upper Canada's Aboriginal peoples.[73] Despite its status as a christian marriage, this interracial union was resolutely condemned in the press as both "unnatural" and as an insult to "the sacred name of religion." In exercising "neither taste or sense," Miss F.'s decision to marry "a man not of her own colour" became the principal focus of the report, and her conduct was described not only as "improper," but also as "revolting": "She has left the endearments and comforts of civilized life, to become the wife of an Indian, to mix in the society of savages and make her abode in the wilderness ... She has outraged the feelings of friends, set at nought the decencies and laws of society and broken through the order of nature, for, at best, a remote chance of doing good!" The reporter concluded by insisting that, "we believe that the Creator of the Universe distinguished his creatures by different colours, that they might be kept *separate* from each other and we know of nothing in what we consider religion, to warrant any violation of his evident arrangement."[74]

The "serious reprobation" of this particular marriage was reflective of what historians have identified as the growing Anglo-European intolerance of interracial liaisons which accompanied the growth of white settlements in the early nineteenth century. While

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[72] *Senate Debates* (28 April 1880): 421-22.

[73] Peter Jones is also known for his *History of the Ojebway Indians* (London [England], 1861) which was published posthumously and probably written after he retired from mission work in 1850.

[74] *Kingston Chronicle and Gazette*, 21 September 1833.

marital unions between Euro-Canadian men and First Nations women had been a fairly common by-product of the fur trade, with the economic shift from the harvesting of furs to agricultural production and the resultant marginalization of Aboriginal peoples, these unions were no longer necessary to cement trade alliances, to ensure the survival of white fur traders, or to mediate cross-cultural relations.[75] By the early nineteenth century, then, the imposed racial separation of Aboriginal peoples from white colonists, as 'sanctified' by the laws of God and nature, was not only represented in the geographical segregation of the reserve system, but also through the hardening of white attitudes toward Native-European sexual liaisons, marital unions, and the birth of 'half-caste' children. In recording her observations and assessment of the Mississauga people in Upper Canada in the 1830s, for example, Susanna Moodie may have conceded that the "dark strangers" she encountered did have certain redeeming qualities, but she nonetheless informed her readers that their "beauty, talents, and good qualities have been somewhat overrated, and invested with a poetic interest which they scarcely deserve." Moodie also noted what she perceived as the "deplorable want of chastity among Indian women of this tribe," which she attributed more to "their intercourse with the settlers in the country than from any previous disposition to this vice," failing to mention that it was white men who often assumed that they had unrestricted access to the bodies of First Nations' women. But her sharpest comments were directed at the products of these interracial liaisons, the "half-caste" or "half-Indian" which she characterized as a "lying, vicious rogue, possessing the worst qualities of both parents," and as having a propensity toward committing "crimes of the

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[75] Van Kirk, *"Many Tender Ties,"* chapter 8; Jennifer S. H. Brown, *Strangers in Blood: Fur Trade Company Families in Indian Country* (Vancouver: University of British Columbia Press, 1980); Olive Dickason, *Canada's First Nations*, 167-73. See also Clara Sue Kidwell, "Indian Women as Cultural Mediators," *Ethnohistory* 39, 2 (Spring 1992): 97-107.

blackest dye."[76] If Moodie's sentiments were indicative of increasingly entrenched colonial attitudes toward maintaining stricter racial boundaries and preventing miscegenation, the harsh condemnation of Peter Jones' and Miss F.'s marriage was reflective of this broader pattern. Of equal significance, however, was the fact that Jones' "Saxon bride" was "a lady of property and education,"[77] a woman, who by virtue of her class and race, was designated as one of the main agents of 'civilization' and as the 'reproducer of the race' within the colonial context. As Vron Ware and other historians have argued, protecting the purity of white and especially white middle-class womanhood from interracial sexual contamination, and thereby safeguarding the boundaries between colonizer and colonized, was and would continue to be one of the most enduring edifices of Anglo-European racism.[78]

Denunciations of interracial marriages involving white women were not confined to Native-European liaisons. Similar racial boundaries tended to apply to the province's growing black population, many of whom had fled north to escape American slavery and, after 1850, to evade fugitive slave hunters. Although some Upper Canadians did publicly condemn the viciousness of the system of slavery in the United States, offering philanthropic support to fugitive slaves, these forms of benevolence were not without their limits. In the late 1840s, for example, when rumours began to circulate that a black settlement in Raleigh township was being planned, irate white residents immediately

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[76] Susanna Moodie, "The Wilderness, and Our Indian Friends," *Roughing It In The Bush; or, Life in Canada* (London: Richard Bentley, 1852), 26-56, esp. 26, 54-55.

[77] Moodie, "The Wilderness, and Our Indian Friends," 31.

[78] Vron Ware, *Beyond the Pale: White Women, Racism and History* (London: Verso, 1992); Sarah Carter, *Capturing Women: The Manipulation of Cultural Imagery in Canada's Prairie West* (Montreal & Kingston: McGill-Queen's University Press, 1997); Laura Tabili, "Women 'of a Very Low Type': Crossing Racial Boundaries in Imperial Britain," *Gender and Class in Modern Europe*, eds. Laura L. Frader and Sonya O. Rose (Ithaca: Cornell University Press, 1996), 165-90.

launched a counter campaign, circulating petitions, organizing protests, and lobbying the provincial government. Emphasizing that blacks belonged "to a different branch of the human family" than whites, one petition, addressed to "all the inhabitants of Canada," presented arguments very similar to those articulated in the *Kingston Chronicle and Gazette* one decade earlier: "Nature ... has divided the same great family into distinct species for good and wise purposes, and ... it is our duty to follow her dictates and to obey her laws. Believing this to be a sound and correct principle, as well as a moral and a Christian duty, it is with alarm we witness the fast increasing emigration and settlement among us of the African race." For these white petitioners, the most frightful result of this trend was the introduction of "several hundreds of Africans into the very heart of their neighbourhood, their families interspersing themselves among them ... their children mingling in their schools, and all claiming to be admitted not only to political but to social privileges."[79] Several decades later, the St. Catharines *Journal* published an editorial reiterating these views. The writer argued that "there is a law higher, more ancient, and less capable of abrogation, than any law ever framed by Britain or any other country, namely, that instinct of humanity which loathes personal affinity between white and black races." Because of the allegedly "antagonistic and incompatible instincts" of members of the African-Canadian community, the writer declared that, "we honour the men who refuse to sit in a jury-box beside a negro; who will not eat at the same table; or sleep in the same bed with him." In responding to this article, the Toronto *Globe* was quick to take issue with some of these racist attitudes: "we had thought that the unreasoning hatred of the negro and all his belongings, characteristic of other days, had disappeared, as least so far as Canadians were concerned. In this, we are sorry to think we have been mistaken. At least one Canadian

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79 Bristow, "'Whatever you raise in the ground you can sell in Chatham'," 77-78. See also Linda Carty, "African Canadian Women and the State: 'Labour only, please'," *'We're Rooted Here and They Can't Pull Us Up'*, 197-204.

newspaper ... comes out strongly in condemnation of the idea of people of colour being regarded as the equals of the pure-blooded ruling race." While appearing to favour racial equality in the realm of politics, law, and education, the *Globe* editorialist did concede that "a good many" whites would "'revolt at such an unnatural proposition' as 'commingling in marriage'" with "coloured persons." In fact, he suggested that this form of "social intercourse" might indeed "be a risky business."[80]

Within this hostile climate, it is perhaps no wonder that some white women and black men who intermarried or formed 'common law' unions risked being subjected to forms of punitive discipline, such as charivaris. Constituting, as Bryan Palmer has argued, a method of enforcing community behavioral norms, moral codes, and marital customs through shaming or punishment,[81] it was Susanna Moodie's neighbour who provided one of the most detailed accounts of a charivari directed against an interracial marriage. Tom Smith, a runaway slave and fairly successful barber had, much to the bewilderment of the narrator, managed to persuade "a white girl ... not a bad-looking Irishwoman" to marry him. It was evidently "her folly" in entering a union with a black man and "his presumption" in marrying a white woman that generated so much indignation among the townspeople, and ignited their determination to "punish them both for the insult they had put upon the place." Unlike charivaris directed against other so-called 'mismatched couples', there was no ritualistic beating of tins and no demands of money involved here. Rather, this charivari party, comprised of "young fellows" and "young gentlemen" from "several respectable families," entered the couple's house, dragged Tom nearly naked from his bed, and "in spite of his shrieks for mercy, they hurried him out into the cold air - for it was winter ... rode him upon a rail, and so ill-treated him that he died under their hands."

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80 "Prejudice Against Colour," Toronto *Globe*, 30 March 1874.

81 Palmer, "Discordant Music," 7.

The whole "affair was [then] hushed up," after the "ringleaders" fled and the others "could not be sufficiently identified to bring them to trial."[82] Five decades later, at a time when this form of social discipline was on the wane, the Toronto *Globe* reported a similar incident, involving "a coloured man" who was "living with a white woman" in Anderdon township in Essex County. As the reporter noted, this interracial and presumably 'common-law' union "so enraged the white inhabitants that a few evenings since a part of them visited the domicile of the couple and inflicted upon them [a] most disgraceful mutilation." And not unlike the fate of Tom Smith's case, "traces were left whereby the parties may yet be identified, but in the neighbourhood very little effort is likely to be made, owing to the ill-repute of the maltreated parties."[83]

In addition to interracial liaisons, there were other marital deviations which could become the targets of 'rough' justice. These included marriages contracted between what were considered to be 'mismatched' couples: those who broke generational codes in their choice of marriage partners; or those widowers and widows who remarried too quickly or too frequently. When John Dawson embarked on his fifth marriage in Kingston in 1834, this anomaly did not go unnoticed by local inhabitants; in fact, because he expected a visit from a charivari party, he felt it prudent to send his new bride away until the ruckus was

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82 Susanna Moodie, "The Charivari," *Roughing It in the Bush or Forest Life in Canada* (Toronto: McClelland & Stewart, 1962), 147. For a similar charivari directed against what was perceived as an "unnatural" interracial marriage which took place in Cobourg in June 1841, see *British Colonist*, 21 July 1841. Michael Wayne notes, however, that according to the 1851 census figures in Canada West, 385 black men were listed as having white wives, who were mainly immigrant women from Europe or the British Isles. Wayne, "The Black Population of Canada West," 479.

83 "A Horrible Outrage," Toronto *Globe*, 12 June 1880. Ann McEwan also describes a charivari that occurred in St. Catharines which was also directed at a black man who had recently married a white woman. In this instance, he was stoned to death and it was only later revealed that the charivari party had targeted the wrong person. Ann A. McEwan, "Crime in the Niagara District, 1827-1850" (MA thesis, University of Guelph, 1991), 39-40.

over.[84] In 1876, an elderly West Belleville man, who had hastily remarried "after three weeks of widowship," was "taken from his house, ridden on a board, and severely handled by a crowd of young men."[85] One of the main purposes of censuring these couples, according to Susanna Moodie's neighbour, was to discourage what were identified as 'inappropriate' marriages: "When an old man marries a young wife, or an old woman a young husband, or two old people, who ought to be thinking of their graves, enter for the second or third time into the holy estate of wedlock, as the priest calls it, all the idle young fellows in the neighbourhood meet together to charivari them ... the charivari often deters old people from making disgraceful marriages, so that it is not wholly without its use."[86] The term 'disgraceful' seemed to incorporate a number of social concerns which went beyond the issue of supply and demand within the local marriage market. While substantial age discrepancies raised suspicions that there might be impure and lustful motives underlying these matches, especially when they involved older men and young women, hasty remarriages could imperil the inheritance rights of children of the earlier union(s) and tended to indicate a lack of respect for the memory of the deceased spouse.[87]

In his study of nineteenth-century courtship and marriage, Peter Ward has argued that charivaris were of "little influence" as an "instrument of social discipline in English Canada" and has dismissed them as a kind of Halloween-like ritual, "entitling the young to

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[84] *British Whig*, 18 March 1834.

[85] "Belleville. Disgraceful Proceedings at a Charivari," Toronto *Globe*, 24 May 1876.

[86] Moodie, "The Charivari," 145-49.

[87] Bishop McEvay, who delivered a series of sermons on matrimony at London's St. Peter's Cathedral in 1908, alluded to this latter concern. He argued that a widower "has a perfect right to marry a second time, and is urged not to wait too long, for the sake of the children. He should not be dissuaded from taking this step by neighbors saying that he did not respect his first wife. This is a business in which other people have no right to interfere." "Sermon on Matrimony," London *Advertiser*, 17 March 1908.

treats and fun at the expense of others."[88] This interpretation tends to overlook the social (as opposed to, for example, the numerical) significance of this form of community censure. While studies have shown that charivaris could vary in their purposes, ranging from mere frolicking and malicious pranks, the punishment of violent husbands, adulterous wives, gossiping women, abusive parents, or incestuous fathers, to more overt forms of racially motivated, political, and economic protest,[89] they also constituted one expression of community opposition to what were perceived to be 'unnatural' and 'disgraceful' marital unions. What is also significant is that despite all the complex and elaborate legal rules which defined who could and could not legitimately enter the bonds of marriage, the interracial and mismatched marriages which drew the attention of communities or offended local opinion were not formally prohibited or regulated by the codes of law.[90]

Both the provisions of Ontario's marriage laws and the Canadian criminal code did, however, attempt to bar certain individuals from entering the bonds of matrimony and to prevent what were variously identified and defined as 'forbidden' or 'irregular' marriages.

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88 Ward, *Courtship, Love, and Marriage*, 27, 115.

89 Although some of these issues will be discussed further in later chapters, see, for example, "Disgraceful Outrage," *Chronicle and Gazette*, 9 July 1842; "Melancholy Occurrence," *Chronicle and Gazette*, 21 and 28 May 1845; "Charivari - Death," *Chronicle and Gazette*, 2 April 1845; "Two Men Sentenced To Death," *St. Thomas Weekly Dispatch*, 3 May 1860; "The Woes Of A Widower: A Romantic Correspondence and its Sorry Termination," London *Advertiser*, 3 May 1884; (1862) *Queen v. Patrick G., George A., and Caroline A.*, AO, RG 22-392, Ontario County CAI, Box 108; (1876) *Queen v. Edward W.*, AO, RG 22-392, York County CAI, Box 204; Josephine Phelan, "The Tar and Feather Case, Gore Assizes, August 1827," *Ontario History* 68, 1 (March 1976): 17-23; Adam Givertz, "The Moral Geography of Incest," Paper presented at the Second Carleton Conference on the History of the Family (Ottawa, May 1994); (31 October and 1 November 1902) *CP v. Joseph O.*, et. al., AO, RG 22, Perth County (Stratford) Police Court Dockets (hereafter SPC), Box 4; Dubinsky, *Improper Advances*, 86-88; Palmer, "Discordant Music," 5-62.

90 Despite the waning of charivaris, however, scandalous marriages between old and young continued to draw comments in the press. See "Births, Marriages, Deaths," "An Elderly Female Marries a Youth Just for Spite," and "Great Falling Off in Birth Rate ... and Marriages Increased ... Some Odd Ones," Toronto *Globe*, 9 February 1881, 12 November 1884, and 30 October 1913. As will be discussed in chapter 4, this issue also surfaced in the condemnation of bigamous and polygamous marriages.

One preventative mechanism, inherited from English marriage laws and reinforced by provincial statutes, was to institute strict rules and procedures that had to accompany the solemnization of marriages. For example, a marriage contract could be deemed invalid or at the very least irregular, unless preceded by the public announcement or publication of banns. As early as 1798, Upper Canadian ministers were specifically instructed to declare the intention of a couple to marry "on three several Sundays ... openly, and with a loud voice, in the church, chapel, meeting house, or other place of worship." This constituted, as one colonial legislator emphasized, a form of security against the "evils" of "clandestine or improper marriages," giving fathers, guardians, and church members "timely notice" to voice their opposition to the union or to expose any legal impediments to it.[91] By the late nineteenth century, however, more elaborate rules were instituted, particularly with the introduction of more stringent residency requirements. Beginning in 1877, the proclamation of banns had to occur either in a church, "in which one of the parties has been in the habit of attending worship" or if they were strangers in the community, where s/he "for the space of fifteen days immediately preceding, had his or her usual place of abode."[92] If these formalities were ignored either prior to or after these amendments, the couple involved could face church censure, and the minister who celebrated the 'irregular' marriage could face criminal prosecution.[93]

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91 (1798) 38 Geo. III, c. 4, s. IV; *Kingston Chronicle and Gazette*, 22 January and 5 February 1831. For an overview of these regulations, see (1862) *Regina v. Roblin*, 21 UCQB, 354.

92 (1877) "An Act respecting the Solemnization of Marriages," R.S.O., c. 124, s. 2; (1896) "An Act to consolidate the Acts respecting the Solemnization of Marriage," 59 Vict., c. 39, s. 4 and s. 5. In 1896, it was also stipulated that the proclamation had to be made at least one week before the solemnization of the marriage.

93 A number of cases involving 'irregular' marriages appeared before the Presbyterian church courts, including the following: George M. and his wife were admonished for the "irregularity of their marriage" and "restored to the communion of the church" in (23 March 1834) Canadian Presbyterian Archives (hereafter CPA), Session Minutes (hereafter SM), First Presbyterian Church, Perth; John and

The secular alternative to the public announcement of banns was to obtain a marriage license from a government authorized issuer of such licenses, a procedure which was formally instituted in 1798.[94] Even though some early nineteenth-century legislators argued that this mechanism reduced the solemnity of marriage to a "common-place bargain" and permitted public officials to exact "exorbitant fees,"[95] this popular option also became the object of increasingly strict and intricate rules especially at the turn of the century. Under the 1877 marriage statute, before a license could be issued, one of the applicants would have to swear a detailed affidavit, confirming that there were no legal impediments to the marriage on the basis of affinity, consanguinity, or prior marriage. The applicant also had to affirm that one party had for the last fifteen days resided in the county or district where the marriage ceremony was to be performed, and if this was not the case, that it was "not in order to evade due publicity or for any other improper purpose." This fifteen day residency requirement continued to be enforced under subsequent statutes, but in 1913 those who could not meet the criteria were required to advertise their intention to marry in a

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Elizabeth T., who had "taken some irregular steps in connection with their marriage" and after acknowledging "their error" and asking "forgiveness" before the church session," it was "agreed that they should be admonished and dismissed; which was done accordingly" in (7 December 1839) CPA, SM, First Presbyterian Church, Perth; and an unnamed man, "who had paid the bail to allow a woman to skip her marriage banns and marry by license instead," was censured and suspended from church membership in (15 July and 8 September 1838) CPA, SM, St. Andrew's Presbyterian, Perth. In addition, in 1888, the non-publication of banns also became the basis for contesting the validity of the Catholic marriage celebrated between Margaret Walsh and John Nary in Lindsay in 1866. (1888) *O'Connor v. Kennedy*, 15 OLR, 20-25.

[94] The first mention of marriage by license in Upper Canada statutes was in (1793) 33 Geo., c. 6, s. 6, but (1798) 38 Geo. III, c. 4, s. IV made it clear that the power to grant such licenses was vested in the Governor, as the sovereign's representative and by virtue of royal instructions.

[95] For example, the question of marriage by license and especially the provincial revenues raised through the selling of licenses, often at "exorbitant and variable" prices, generated considerable political debate in the early 1840s. *Debates of the Legislative Assembly of United Canada* (1841): 686; (1843): 478, 703-08, 775, 808-12; (1844-45): 1785-91.

local newspaper for three consecutive weekly issues.[96] Furthermore, if either of the couple was under the age of 21 (or under 18 years after 1896), he or she would have to swear that his/her father (or if he was deceased, a lawful guardian or mother) had consented to the marriage and after 1896 this had to take the form of a "written consent."[97] Those marriage license applicants who knowingly lied in response to any of these questions could be charged with wilful perjury, a crime which carried a maximum penalty of between two and seven years imprisonment.[98] In addition, marriage license vendors, who were consistently perceived as a "dollar-hunting" and highly untrustworthy group, could be fined up to $100 for each unauthorized marriage license issued, and for failing to follow the correct procedures.[99] Finally, beginning in 1896, the marriage statutes also restricted the hours during which the actual ceremony could take place (between 6 am and 10 pm), unless the minister was "satisfied" that the "proposed marriage [was] legal" and the circumstances

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96 (1877) "An Act respecting the Solemnization of Marriages," R.S.O., c. 124, s. 11; (1896) "An Act to consolidate the Acts respecting the Solemnization of Marriage," 59 Vict., c. 39, s. 17; (1913) "Affidavit for Issue of License or Certificate," 3-4 Geo. V, c. 28, s. 2; "Sudden Marriages Will Be Stopped," Toronto *Globe*, 28 March 1913.

97 (1877) "An Act respecting the Solemnization of Marriages," R.S.O., c. 124, s. 11 and s. 13; (1896) "An Act to consolidate the Acts respecting the Solemnization of Marriages," 59 Vict., c. 39, s. 15 and s. 18. In 1919, however, the written consent of parents was decreed to be an "absolutely essential condition precedent to the formation or solemnization of a valid marriage"; without it, the marriage would be deemed "absolutely null and void." (1919) "The Act to amend The Marriage Act," 9 Geo. V, c. 35, s. 2; "Marriage Bill Was Approved: Strengthens Present Safeguards Respecting Minors," Niagara Falls *Evening Review*, 16 April 1919.

98 See *Debates of the Legislative Assembly of United Canada* (1841): 683-84; G.W. Burbidge, *A Digest of the Criminal Law of Canada* (Toronto: Carswell Co., 1890), 133-37; Henri Taschereau, *The Criminal Code of the Dominion of Canada* (Toronto: Carswell Co., 1893), 85-99.

99 "Marriage License Vendors 'Swarm Like Mosquitoes'," Toronto *Globe*, 12 August 1913. For regulations and penalties related to the issuing of marriage licenses, see (1877) R.S.O., c. 124, s. 4-10, 12; (1896) 59 Vict., c. 39, s. 8-14, 20-21. In 1891, for example, Charles C., an issuer of marriage licenses in the city of London, was charged with and convicted of failing to follow the correct procedures, when he issued a license to Charles S. and Jessie D. "without requiring the affidavit." As it turned out, Jessie was under the age of seventeen. (1891) *Queen v. Charles C.*, AO, RG 22-392, Middlesex County CAI, Box 90.

were "exceptional."[100]

These increasingly rigid rules and elaborate procedures were largely a response to intensifying concerns about the growing number of clandestine marriages or what were termed 'runaway matches' at the turn of the century. Although secret marriages were certainly frowned upon in the colonial context and runaway matches were as much a rural as an urban phenomenon, historians have argued that the combined forces of industrialization, the migration of single (and married) working-class men and women to urban centres in search of work, and growing rates of geographical mobility tended to undermine customary parental, church, and community controls over marital decisions.[101] In this context, clandestine unions, by virtue of the need to marry 'on the quiet', were associated with a whole series of 'defective' and 'bad' marriages. These included those prohibited by ecclesiastical and secular laws, including incestuous and bigamous unions; certain improper marriages otherwise opposed by the couple's parents, such as those crossing religious, class, or racial lines; the impulsive and ultimately unstable marriages of minors; and finally, the seduction of young women into 'feigned' marriages by unscrupulous single or married men. In the later case, newspapers frequently published cautionary stories about the "sad fate" and "moral ruin" of single and respectable women, like Carrie B. of Romney township. Against "her better judgement," she had been enticed into a 'mock', clandestine marriage in 1882 and shortly thereafter was cruelly abandoned

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[100] (1896) An Act to consolidate the Acts respecting the Solemnization of Marriage," 59 Vict., c. 39, s. 5 (2); "The New Marriage Act," *Stratford Evening Herald*, 7 August 1896. Although the question of restricting the hours during which marriages could be celebrated had been raised earlier in the century, it was generally deemed impractical since it "would subject parties - particularly those who had a great distance to travel, to much inconvenience." *Kingston Chronicle and Gazette*, 5 February 1831.

[101] See, for example, Backhouse, *Petticoats and Prejudice*, chapters 1 and 2; Ward, *Courtship, Love, and Marriage*, chapters 2 and 6; Dubinsky, *Improper Advances*, chapter 3; Carolyn Strange, *Toronto's Girl Problem: The Perils and Pleasures of the City, 1880-1930* (Toronto: University of Toronto Press, 1995).

by her deceitful 'husband'. While she, like other women in similar situations, found herself to be "only a wife in name" and had no basis for claiming any economic support for herself and her child,[102] those men who were caught and convicted of procuring a pretended marriage could face a maximum penalty of two years imprisonment. This was extended to seven years in 1892.[103]

Given the various procedural rules and legal restrictions associated with entry into the bonds of matrimony, it was left to the church and secular courts to deal with any 'deviant' marriages that came to their attention and/or with any legal challenges to them. This process could take a number of forms. During the early nineteenth century, as Lynne Marks has argued, Baptist and Presbyterian congregations were highly proactive in policing and disciplining violations of ecclesiastical doctrines and church rules among their members,[104] and Presbyterian elders seemed especially vigilant in censuring 'improper' marriages. In the criminal courts, most of the trials which dealt with marital irregularities tended to involve charges of perjury and/or fraudulently obtaining a marriage license. These criminal proceedings were usually initiated by fathers who for varying reasons opposed their daughters' marriages. In the more expensive civil courts, however, defective marriages became the focus of more extensive and varied legal actions. Since the institution

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[102] "Only A Wife In Name: A Romney Township Girl's Sad Fate. A Mock Marriage Followed by Barbarity and Abandonment," *Chatham Weekly Planet*, 25 October 1883.

[103] (1886) "An Act respecting Offences relating to the Law of Marriage," 49 Vict., c. 161, s. 2 (Can.); (1892) "Offences Against Conjugal Rights," 55-56 Vict., c. 29, s. 277 (Can.). This crime was specifically gendered male, in that "the male offender only is punishable." However, given the rules of evidence, requiring the corroboration of more than one witness, obtaining convictions tended to be difficult. See Taschereau, *The Criminal Code*, 287, 795; (1899) *Queen v. Harry J.*, AO, RG 22-392, Middlesex County CAI, Box 81; (1918) *Rex v. Lorne M.*, AO, RG 22, York County Crown Attorney/Clerk of the Peace (hereafter CA/CP) (CCJCC) Case Files, Box 2707.

[104] Marks, "No Double Standard?," 48-64, and "Christian Harmony: Family, Neighbours and Community in Upper Canadian Church Discipline Records," 109-128.

of marriage was defined under common law as a civil contract, it could, like other potentially defective or fraudulent contracts, be challenged or questioned "as to its validity."[105] If a marriage was declared invalid or void by the civil courts, it had wider marital, familial, and social consequences, such as imperilling a married woman's rights to dower and the economic support of her husband, undermining the legitimacy and inheritance rights of any children born of the marriage, jeopardizing the "peace and reputation" of the family, or providing the basis for wives, husbands, or members of their families to petition for the formal annulment of a marriage, a procedure which unlike divorce presumed the absence of a "proper" and "legal" marital union.[106]

Although common law allowed for the validity of marriages to be contested on a number of grounds, the decisions rendered by the Ontario judiciary indicate a real reluctance or even outright resistance to interfere with or dismantle 'irregular' marriages, especially if they had already been consummated. One of the technical reasons for this non-intervention, as repeatedly articulated by higher court judges, was that in the absence of ecclesiastical or divorce courts in the province, there was no provincial legal body that had the constitutional power to annul marriages. But even when the Ontario Supreme Court was granted jurisdiction in 1907 to hear actions for nullity involving the marriage of minors, the judiciary continued to approach these cases with extreme caution. As one legal scholar argued, despite the established principle that the marriage tie, "like any other contract may be voided ... public policy requires that marriages should not be lightly set aside." One of the main reasons for this wariness was that "there is in some cases the

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105 C. S. McKee, "Law of Divorce in Canada," (1922) 62 DLR, 19. See also (1912) "Re The Marriage Law of Canada," 7 DLR, 629-37.

106 See (1845) "Colonial Divorce," 2 *Upper Canada Jurist*, 5; (1846) *Doe Ex Dem. William Breakey v. Jane Breakey*, 2 UCQB, 349-61; (1860) *Baker v. Wilson*, 8 Gr. Chy., 376-80; McKee, "Law of Divorce in Canada," 13, 19.

strongest temptation to the parties, more immediately interested to act in collusion in obtaining a dissolution of the marriage tie. These reasons necessitate great care and circumspection on the part of the tribunal."[107] In other words, the suspicion and fear was that those who petitioned the civil courts for a marital annulment were utilizing or exploiting this alternative as an indirect and more reputable means for securing a divorce. In practice, this judicial resistance meant that regardless of how defective the marriage, it was virtually impossible to have it nullified, unless one of the parties had committed adultery or had remarried, and the other had the economic means and the tenacity to undergo the expensive and arduous process of obtaining a parliamentary divorce.[108]

These obstacles did not, however, prevent some irregularly married couples or members of their immediate families from turning to the criminal or civil courts in order to obtain some sort of remedy. That most of the litigants in these trials came from the propertied classes suggests strongly that they were more concerned about the general legalities of marriage than their working-class counterparts. The actual cases that reached the courts, however, reveal the types of marriages that were contested and the circumstances in which they were constituted. As we shall see, under common law, there

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[107] John A. Gemmill, *The Practice of The Parliament of Canada Upon Bills of Divorce* (Toronto: Carswell & Co., 1889), 39.

[108] During the nineteenth century, for example, there were three applications to the parliamentary divorce committee for marital annulments, of which two were successful. The first case involved J.H. Stevenson, a Toronto merchant who obtained an annulment in 1869 on the grounds that he had been a minor and had married without his father's consent, that the marriage had not been consummated, and that his 'wife' had remarried in New York. The other was granted to William A. Lavell, a physician from Smith's Falls in 1887, on the grounds that both he and his 'wife' had married under false names and without parental consent, that the marriage had not been consummated, and that she had also subsequently remarried. In both cases, then, the allegedly non-consummated marriage was followed by the remarriage, which in the eyes of the divorce committee could also be interpreted as an act of adultery on the part of the female partner. In the third case, the application of Mary White of Port Dover in 1888 on the grounds of non-consummation by reason of her husband's impotence was denied. See "Marriage of Minors," Toronto *Globe*, 14 November 1861; (1862) *Regina v. Roblin*, 21 UCQB, 352-58; (1869) "An Act for the relief of John Horace Stevenson," 32 & 33 Vict., c. 75; (1887) "An Act for the relief of William Arthur Lavell," 51 & 52 Vict., c. 128; Gemmill, *The Practice of The Parliament*, 154, 188-89, 191-92.

were a number of grounds for questioning the legal validity of a marriage. These included unions contracted within prohibited degrees of consanguinity and affinity; marriages which had been contracted when one of the partners, because of coercion or fraud, was prevented from genuinely consenting to the marriage, or lacked the capacity to grant her/his consent due to intoxication, insanity, or age; as well as unions which could not be consummated due to the impotency/frigidity of the husband or wife.[109]

Beginning in 1896, the Ontario marriage act stipulated that a detailed table must be included on marriage licenses, listing all the prohibited degrees of consanguinity and affinity which barred related individuals from entering the marriage contract. Marriage license vendors were also bound by law to ensure that applicants were aware of and understood these prohibitions.[110] These complex restrictions, designed to prevent what were often referred to as "incestuous marriages," were based on traditional canonical impediments to unions between those related by blood, and a sixteenth-century English statute, barring marriage within levitical degrees of affinity.[111] Besides being prohibited by ecclesiastical laws, by the early nineteenth century consanguineous relations and

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[109] Another ground under common law involved marrying a married person or entering a bigamous union, which will be discussed in greater detail in chapter 4. In addition, one celebrated case, heard in the Court of Queen's Bench in 1871 and followed with "considerable interest" by Ontario's African-Canadian population, considered the legal validity of a union contracted under American slavery. At issue was the marriage celebrated between two Virginia slaves, John Harris and Sarah Halloway, in 1825 and the right of Melford Harris, their eldest son, to inherit three acres of land his father, who had managed to escape to Ontario in the early 1830s, had purchased in the township of York in 1847. Justice Wilson ruled, however, that since slavery marriages were not recognized in the state of Virginia and both John and Sarah had subsequently remarried, their son had no claim to the land. "Legality of Slave Marriages," Toronto *Globe*, 5 December 1870; (1871) *Harris v. Cooper*, 31 UCQB, 182-200.

[110] (1896) "An Act to consolidate the Acts respecting the Solemnization of Marriage," 59 Vict., c. 39, s. 19. These prohibited degrees, of which there were twenty in all, were formally listed in the Ontario statutes under (1902) "An Act to amend The Marriage Act," 2 Edw. VII, c. 23.

[111] "Concerning Incestuous Marriages," *Kingston Chronicle and Gazette*, 9 February 1839; (1533) Great Britain, *Statutes*, 28 Hen. VIII, c. 7, s. 7.

'inbreeding' were also identified as one of the principal causes of physical and mental degeneration, and were linked to such hereditary diseases as deafness, muteness, and especially lunacy. In the 1854 census report, for example, William Hutton, from the Board of Registration and Statistics in Canada West outlined some of the reasons why it was deemed necessary to adhere strictly to both natural and religious laws:

> The Consanguinity of Parents is now admitted to be, by the highest medical authorities, one of the most fruitful causes of this disease [lunacy]. It is an understood fact that families who intermarry too often *die out*, but the misery that precedes this dying out has been too little regarded, especially when the evil arises from a disregard of natural laws, which we are bound to obey; and when these calamities which afflict families are ascribed to Providence, it might be well to enquire whether Providence has not given us abundant warning to avoid them.[112]

Despite these strong prohibitions against consanguineous marriages, both the church and secular courts did occasionally hear cases which involved couples who had intentionally ignored these taboos. In 1855, the St. Andrew's Presbyterian church in Perth was alerted to the case of an unnamed female member of the congregation, who confessed to marrying her uncle, having a child by him prior to their marriage, "conceal[ing] the pregnancy and [leaving] the child exposed to the winter." Given the severity of her multiple violations, she was summarily expelled from the congregation.[113] Five decades later, twenty-one-year-old Charles T. of Dunnet township in the District of Nipissing was arrested and charged with perjury, for having sworn before the issuer of marriage licenses at the village of Warren that "there was no affinity or consanguinity to hinder the solemnization of the marriage" between himself and his eighteen-year-old niece. While this consanguineous relationship might never have come to the attention of legal authorities,

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[112] *Second Report of the Secretary of the Board of Registration and Statistics on the Census of the Canadas, 1851-2* (Quebec: John Lovell, 1854), 10, 21.

[113] (10 March 1855) CPA, SM, St. Andrew's Presbyterian Church, Perth.

Charles had not kept his marital intentions a secret. Three months prior to the marriage, he had written a letter to a local Catholic priest, requesting that the church grant him a special dispensation which would allow the union. In it, he explained that he had been courting his niece for almost a year, that "upon this earth she is the only girl that I like and I always like her more and more," and that if he did not obtain permission, "I will become crazy or I will die ... of grief becuse (sic) I will never love another." He also stressed that, since he was a devoted Catholic, he "wanted to have satisfaction ... with the church, for to get married outside of the Catholic Church never never would I do that," and he seemed confident that the church would agree with his request. Soon afterwards, Charles received an extremely angry reply. In the priest's mind, the intended marriage was not only forbidden "by civil and ecclesiastical law" and "by the law of nature," but it was also one which had been "inspired by Satan." He also warned that if Charles ignored his advice not to proceed, both he and his niece as well as the minister who officiated the ceremony were liable to face a term of imprisonment. Evidently unswayed by these admonitions, Charles nonetheless applied for and secured a marriage license, and his false affidavit eventually led to his arrest and conviction for perjury at the Sudbury Assizes in 1907.[114]

Among the long list of prohibited consanguineous and affine marriages, by far the most hotly debated and contentious one involved marital unions with a 'man's deceased

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114 (1907) *Rex v. Charles T.*, AO, RG 22-392, District of Nipissing CAI, Box 96. Two years later, Samuel R. of Palmerston was also found guilty of perjury as well as of disobeying Ontario marriage laws by contracting a marriage with his niece, Margaret B.. (1909) *Rex v. Samuel R.*, AO, RG 22-392, Wellington County CAI, Box 172. It should also be noted that the marriage of cousins, although not prohibited by law and not uncommon especially among the English upper and middle classes, also became the focus of growing scientific and medical discussions on the causes of hereditary diseases, such as "deaf-dumbness, idiocy, insanity, and consumption." See, for example, "Marriage of Near Kin," and "Marriage of Cousins," Toronto *Globe*, 29 October and 8 November 1875; *Senate Debates* (27 April 1880): 389, (28 April 1880): 418-19, (28 March 1882): 178. Leonore Davidoff and Catherine Hall have argued, however, that in England, cousin marriages principally "served to counteract the centrifugal tendencies of partible inheritances" and "provided a form of security in binding together members of the middle class in local, regional, and national networks, a guarantee of congenial views as well as trustworthiness in economic and financial affairs." *Family Fortunes: Men and Women of the English Middle Class, 1780-1850* (Chicago: University of Chicago Press, 1987), 219-21.

wife's sister'. Especially during the early nineteenth century, most established church authorities, including Roman Catholics, Anglicans, and Presbyterians, opposed these 'forbidden' unions, a position which was based on traditional ecclesiastical interpretations of the Old Testament and especially of levitical laws.[115] Consequently, those Presbyterian church members who violated this prohibition risked being called before and censured by the church disciplinary sessions. In 1823, the Perth Presbyterian church elders considered the case of James B., who had recently married his sister-in-law, and they "unanimously resolved" that because "his conduct in the whole affair had been marked with baseness and duplicity," he was to be excluded "from the communion of the Church." When this decision was presented "to the congregation on the following Sabbath," it was "accompanied with [a] suitable admonition."[116] Similarly, in 1866, the elders of the Knox Church in Bytown decided that an unnamed church member, who had also recently married his deceased wife's sister, should be paid a visit by the minister and one of the elders. Seven months later, these consultations had seemingly produced little effect: "since the couple refuse[d] to dissolve their marriage and it was expressly forbidden by the Westminster Confession of Faith," the Session had little choice but to expel the couple

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115 The main theological argument against these marriages was that they were in fact incestuous, since the relationship was one of both consanguinity and affinity. A literal interpretation of Genesis 2, which specified that husband and wife "become one in flesh," meant that by extension a man was related by blood to his wife's relations, including her sister(s). However, the most common argument was that this impediment was included by inference in the Levitical list of prohibited degrees and especially in Leviticus 18:16 and 20:21, which forbade a man "to uncover the nakedness of thy brother's wife." By analogous reasoning, it was argued, a man should not uncover the nakedness of his wife's sister. For an explication of these arguments, see two articles entitled, "The Marriage Law," by George Whitakker of Trinity College and William Gregg of Knox College published in the Toronto *Globe*, 8 December 1880; J.M. Hirschfelder, "Marriage of a Brother with a Deceased Brother's Wife," Toronto *Globe*, 23 April 1880.

116 Furthermore, another church member, John M., who had "countenanced and encouraged the above-mentioned marriage" was also brought before the session one month later, and after "acknowledging his error" and expressing penitence, he was "admonished and the matter [was] dropped." (23 November and 13 December 1823) CPA, SM, First Presbyterian Church, Perth.

from the congregation.[117] The only sign of hesitation occurred when the elders of the St. Andrew's Presbyterian Church in Smith Falls were confronted with the dilemma of whether or not to sanction such a marriage, after a child had already been born of the relationship. In 1842, Widow G. made a formal request before the church sessions to be admitted into the church and to obtain permission to marry William G., the brother of her late husband with whom she had had a child. Both she and William expressed "their deep contrition for the offence" and their "willingness to submit to the censure of the church." After some deliberation, the church elders were evidently unsure about how to proceed, resolving that since this case was a very peculiar one, they would have to seek the advice of the Presbytery of Bathurst as to the possibility and legality of solemnizing the marriage.[118]

Beginning in the mid-nineteenth century, the question of whether marriages with a deceased wife's sister should be permitted generated heated political and religious debate in Britain,[119] extensive discussion particularly among Roman Catholic and Protestant theologians in Canada,[120] and intense deliberation among federal parliamentarians,

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117 (30 May and 23 October 1866) CPA, SM, Knox Free Church, Bytown. See also the *fama* against William S., a member of the McNab and Horton Free Presbyterian Church, who was accused of running off and committing "incest" with his wife's sister. His name was summarily erased from the church role. (10 July 1853) CPA, SM, McNab and Horton Free Presbyterian Church.

118 Unfortunately, the response of the Presbytery was not recorded in the session minutes. (10 April 1842) CPA, SM, St. Andrew's Church, Smith's Falls.

119 Debates about these marriages began in Britain in the 1840s, but the removal of this prohibition was not enacted until 1907, twenty-five years after similar legislation was passed in Canada. For a discussion of these protracted debates, see Nancy F. Anderson, "The 'Marriage with a Deceased Wife's Sister Bill' Controversy: Incest Anxiety and the Defense of Family Purity in Victorian England," *Journal of British Studies* 21 (Spring 1982): 67-86.

120 See, for example, *Review of Several Late Publications On Marriage With A Deceased Wife's Sister: Condemning This Proposed Innovation in Our Religious Institutions* (Halifax: Wesleyan Conference, 1859); William Gregg, *Marriage with a Deceased Wife's Sister Prohibited by the Word of God* (Toronto: Adam Stevenson, 1868); John Laing, *Marriage with the Sister of a Deceased Wife: considered in connection with the Standards and Practice of the Canadian Presbyterian Church* (Toronto: Adam Stevenson,

especially in the two years prior to the passage of legislation in 1882, which officially removed this marital restriction.[121] In 1880, Desire Girouard, the M.P. for Jacques Cartier, who introduced the bill to legalize these marriages, argued that this matter was "of great social importance," since "marriage with the sister of a deceased wife" was virtually a "daily occurrence among all classes of our community, irrespective of creed or nationality." For this reason, he asserted that "this grave question should be ... regarded almost as a national question affecting the mass of the people of this Dominion." Despite Mr. Girouard's sense of urgency and his desire to offer "relief" to the "hundreds" of women and men, who had violated existent laws and had entered "these prohibited marriages ... during the last fifteen or twenty years,"[122] the contentious and protracted debate that followed indicated that parliamentary members, not to mention church theologians, were

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1868); *Marriage With a Deceased Wife's Sister: A Biblical Argument, With Facts Long Obscured* (Toronto, H. Russell, 1871); *Review of a Pamphlet from the Churchman's Magazine, Entitled Marriage with a Deceased Wife's Sister: A Bible Argument Long Obscured* (Toronto, 1871); Duncan Blair, *A Dissertation on the Degrees of Kindred Which Bar Marriage According to Leviticus XVIII and XX* (Halifax, 1873); Jacob M. Hirschfelder, *A Wife to Her Sister* (Toronto: Rowsell & Hutchison, 1878); Daniel V. Lucas, *Deceased Wife's Sister: Letters by the Rev. D. V. Lucas, M.A. in Reply to the Rev. H. Roe, D.D.* (Montreal 1882); Metropolitan Medley, Church of England, Province of Canada, *Extracts from a charge delivered at a meeting of the Synod of the diocese of Fredericton by the Metropolitan: relative to a late bill introduced into the parliament of Canada legalizing forbidden marriages* (n.d.); Robert D. McGibbon, *Marriage With a Deceased Wife's Sister: Letters to the Editors of the Montreal Gazette in Reply to the Rev. Henry Roe, D.D.* (Montreal, 1881); [Susie A. Wiggins], *The Gunhilda Letters, Marriage with a Deceased Wife's Sister: Letters of a Lady to the Right Rev. the Lord Bishop of Ontario* (Ottawa, 1881); Hibbert Binney, *Reasons for Rejecting the Proposed Alterations in the Marriage Law of the Dominion* (Halifax: Baillie and Anderson, 1880); William Gregg, *The Marriage Question: Facts, Opinions and Decisions of Church Courts* (Toronto: Presbyterian Print, 1885). Moreover, editorials which addressed this issue also appeared regularly in the Toronto *Globe* especially in the years 1880 and 1881.

121 Although legislation to permit these marriages was first introduced in the Legislative Assembly in 1860, it was reintroduced in the House of Commons in 1880. After two years of heated parliamentary debate, the prohibition against marrying a sister-in-law was repealed by (1882) "An Act concerning Marriage with a Deceased Wife's Sister," 45 Vict., c. 32. Subsequent to this legislation, the prohibition against marriages between "a man and the daughter of his deceased wife's sister" was also repealed by (1890) 53 Vict., c. 36, s. 1.

122 *House of Commons Debates* (16, 25, and 27 February 1880): 44, 196, 291; (14 April 1880): 1385.

deeply divided on this issue. On one level, much of the controversy revolved around whether or not the federal government had the constitutional authority to enact marriage legislation, which by virtue of the British North America Act, was technically within the jurisdiction of provincial legislatures. It also focused on deep seated concerns that the state was unduly encroaching on the doctrinal laws and ecclesiastical customs of individual religious creeds and interfering with their right to determine and uphold the matrimonial rules and prohibitive impediments that oftentimes were based on centuries of tradition. This latter consideration was especially vexing, since most Church of England theologians, many Presbyterian ministers, and the Roman Catholic church continued to oppose the legal elimination of this marital prohibition and "the formation of alliances of this kind."[123]

In addition to these complex constitutional questions and the thorny issues surrounding the relationship between the state and churches, another major source of controversy emerged out of radically divergent theological interpretations of biblical doctrine and differing perspectives on the domestic and social implications of sister-in-law marriages. Those politicians and religious authorities who favoured the legalization of these unions, strongly supported the notion that "the unyielding iron law of affinity" as imposed by most established christian churches had absolutely no biblical foundation, but had for centuries rested on an "entire misconstruction and misreading of a passage in the Book of Leviticus," and on a "mistranslation" and "misapprehension of ancient law." In fact, as both Rabbinical scholars and some Protestant theologians pointed out, a careful analysis of the oft-cited levitical passages, upon which this marital impediment was based, revealed that marriages with a deceased wife's sister were not only condoned and permitted, but also

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123 The Roman Catholic church did, however, allow sister-in-law marriages if a special papal dispensation was granted, which seemingly only occurred in rare cases. For discussions of these issues, see *House of Commons Debates* (27 February 1880): 299-305; (4 March 1880): 434-40, 446-50; (10 March 1880): 590-94; (14 April 1880): 1381-84; (13 March 1882): 320-26; (22 March 1882): 486, 490-92; *Senate Debates* (28 March 1882): 175-77; (30 March 1882): 204-11, 214, 216-18; (31 March 1882): 220-25, 227, 229-30; (4 April 1882): 269, 274-75, 280-84; (13 April 1882): 301-13; (14 April 1882): 316-21.

were presented as "proper and even laudable."[124] This theological reinterpretation also allowed for a fundamental redefinition of the status and role of single maternal aunts within family-household relations. In the opinion of many parliamentary supporters of the bill, if a widower decided to remarry, "no person is so suitable to take the place of a deceased sister as a surviving sister, or to take care of the children and exercise that kindly oversight which the departed would have wished." Otherwise, the position of stepmother would be assumed by a stranger, who might not feel the same 'natural' bonds of affection nor exercise the same degree of maternal protection toward the offspring of the first marriage.[125] Some adherents also claimed that the removal of this marital restriction would contribute to promoting greater morality among the poorer classes; rather than illicitly cohabiting with the surviving sister, the "poor man" could legally marry the woman, who would naturally be "more interested in the welfare of the children than any other person."[126]

Besides identifying the domestic and social benefits which would result from permitting the legal formation of sister-in-law marriages in the future, many parliamentary supporters were equally adamant in asserting that the passage of the proposed act offered a much welcomed and needed measure of judicial relief to those men and women who had

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[124] *House of Commons Debates* (27 February 1880): 294-99; (4 March 1880): 441-43; (31 March 1880): 952-53; (14 April 1880): 1387-91; *Senate Debates* (27 April 1880): 376-77, 381; (28 April 1880): 412-13, 425, 429, 431-33, 435-36; (28 March 1882): 178, 181; (30 March 1882): 208, 215; (31 March 1882): 228; (4 April 1882): 276; (14 April 1882): 319-20.

[125] *House of Commons Debates* (27 February 1880): 294; (4 March 1880): 445; (31 March 1880): 952-53; (14 April 1880): 1392; *Senate Debates* (28 April 1880): 412, 417-19; (31 March 1882): 228. These arguments tended to rely on traditional negative stereotypes associated with the unfeeling, neglectful, and cruel stepmother. For a discussion of the cultural meanings constructed around stepmothers in twentieth-century Quebec, see Peter Gossage, "*La marâtre*: Marie-Anne Houde and the Myth of the Wicked Stepmother in Quebec," *Canadian Historical Review* 76, 4 (December 1995): 563-97.

[126] *Senate Debates* (27 April 1880): 382, 390; (28 March 1882): 178; (14 April 1882): 320.

contracted such forbidden marriages either in Canada or by travelling to the United States where no legal prohibitions existed. Although these couples, many of whom were "of the very highest respectability and standing," may have believed "that there [was] no moral stain upon them," that they had "transgressed no law of God or man," and that "there [was] no blood relationship between them," it was nonetheless the case that under the existent laws, many were subjected to undue "hardship and inconvenience." These afflictions ranged from they themselves being "branded with disgrace," "inferiority," and "outlawry," to their offspring being "degraded" by the "unmerited taint" of "bastardy" and being deprived of the right to inherit their father's property.[127]

Those parliamentarians and religious scholars who opposed the legalization of sister-in-law marriages condemned these alliances as nothing less than morally "repugnant." Irrespective of Jewish interpretations of levitical injunctions, they insisted, "[t]he unanimous voice of Christendom" had "for centuries upon centuries" forbidden such unions since they directly contravened both divine and natural laws and the "moral sense of the community." In their opinion, if the proposed bill was enacted and if these "promiscuous," "degraded," and indeed "incestuous" marriages were permitted, the entire edifice of ecclesiastical doctrine would be subverted, a process which would not only undermine "the social and marital customs of the land, hallowed by long ages of usage," but also would invariably lead to the further tampering with long-established consanguineous and affine marital prohibitions.[128] These concerns were exacerbated by

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[127] *Senate Debates* (27 April 1880): 382-83; (28 April 1880): 412-13, 418, 424-25, 429-30, 435; (28 March 1882): 174, 177, 181, 186; (31 March 1882): 228; *House of Commons Debates* (4 March 1880): 441, 443; (14 April 1880): 1388, 1392.

[128] *House of Commons Debates* (14 April 1880): 1394; *Senate Debates* (27 April 1880): 378-80, 384-85, 387-88; (28 April 1880): 421-23, 427-28, 434; (28 March 1882): 180, 182; (30 March 1882): 211-12; (31 March 1882): 225-26; (4 April 1882): 271-73, 277, 279-80; (13 April 1882): 309-11; (14 April 1882): 318-19.

equally intense anxieties concerning the fact that the abolition of this matrimonial impediment would fundamentally transform the nature of the relationship between a husband and his wife's sister, from an association shielded and regulated by the rules of affinity and consanguinity to a connection no different than between any unrelated man and woman. This alteration, especially in instances when a single woman resided in the same household with her sister and brother-in-law, was perceived as creating a hazardous domestic situation in which the "moral fences that protect our homes" would be eliminated, and the purity and harmony of familial relations jeopardized.[129] One group of Anglican petitioners, for example, expressed their alarm at the introduction of the bill in the following terms:

> [A]ny such interference with the table of prohibited degrees will materially affect the welfare of the community and the comfort and happiness of many households in which persons connected together by affinity have been accustomed to regard each other in the same light as though they were connected by the ties of consanguinity, and enjoy the same happy intercourse as brothers and sisters without suspicion or thought of evil.[130]

In effect, as both political and religious opponents repeatedly pointed out, the repeal of this marital prohibition, which amounted to the "abolition of the sister-in-law" as a familial relation, would "open the door" to a whole series of domestic and social "evils of grave import." One of most serious ramifications would be that the proposed legislation would effectively "destroy the relations between brothers and sisters-in-law": the chaste "fraternal affection" and "the free, truthful and pure feelings with which a man regards the sister of his wife," emotions that hitherto had allegedly remained untainted by "corrupt passion or irregular desire." Within these altered circumstances, the unprotected sister-in-law would either be deprived of "the guardianship she should naturally have in her sister's house and

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[129] *Senate Debates* (27 April 1880): 385-86.

[130] Cited in *House of Commons Debates* (14 April 1880): 1386.

family" or her presence in the household would prove to be highly destructive of "domestic happiness." In the latter case, it would, among other things, "cause disturbance, trouble, and jealousies in many a household, when otherwise all would be peace and quiet," and would lead to "the possible temptation to get rid of a wife who stands between the husband and the sister, who has been thrown for years into close contact with him, and who, if this Bill passes, will be eligible to take her sister's place."[131] In the end, given the highly contentious nature of this issue with both supporters and opponents purporting to speak in the interests of the majority of the nation's population, it took two years of intense political, religious, and public debate, and the submission of countless petitions, including one signed by three hundred Montreal women who supported the bill, until the "Marriage with a Deceased Wife's Sister" Act managed to pass both houses of parliament.[132]

Despite the intensity of this controversy, no cases involving sister-in-law marriages surfaced in the Ontario criminal courts. They did, however, become the focus of a number of legal actions in the civil courts. These included a series of cases in which the inheritance and property rights of children born of these unions were contested by the offspring of the first marriage or a third party, as well as one application for an annulment initiated by a Mrs. May from Toronto in 1910, who had married her brother-in-law in 1893 and who had been abandoned by him eight years later. With one exception, the civil suits concerning legitimacy and inheritances were heard after the enactment of the 1882 "Marriage with a Deceased Wife's Sister" Act. Consequently, the courts ruled in favour of legitimacy based

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131 *Senate Debates* (27 April 1880): 380, 385, 388-89; (28 April 1880): 422-24; (28 March 1882): 179-81, 188; (30 March 1882): 213; *House of Commons Debates* (4 March 1880): 445; (14 April 1880): 1392.

132 These petitions as well as editorials published in local newspapers were discussed in detail during the course of the parliamentary debates on this bill. *House of Commons Debates* (14 April 1880): 1383-91, 1395; (23 February 1882): 74; *Senate Debates* (28 April 1880): 411, 413, 416-17, 419-20, 426-27; (28 March 1882): 183-87; (30 March 1882): 207-08, 213, 215, 217; (31 March 1882): 228; (4 April 1882): 270-71, 275-79; (13 April 1882): 314-15.

on the act's explicit provision that "all laws prohibiting marriage between a man and the sister of his deceased wife are repealed both as to past and future marriages ... as if such laws had never existed."[133] Mrs. May's suit of nullity was dismissed, however, not because her marriage was now considered legal (marital unions with brothers-in-law remained untouched by the act), but because she had failed to inform her husband about the civil action and because she could not provide any corroborating evidence that he was in fact the brother of her deceased husband.[134]

Besides attempting to restrict marital and sexual relations between men and women related too closely by blood and, to a lesser extent, by marriage, the provisions of common and canonical law stipulated that one of the essential components of a valid marriage was the ability of both parties to consent freely to the marital contract. Even though parents, particularly among the upper and middling classes, were usually involved in the selection and approval of a suitable match and both secular and religious literature offered a wealth of advice about making a prudent choice,[135] legal commentators nevertheless emphasized that "the parties must be free agents."[136] Consequently, those marriages, which were

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133 See (1862) *Hodgins v. McNeil*, Gr. Chy., 305-12; (1884) *Re Murray Canal - Lawson v. Powers*, 6 OR, 685-92; (1901) *Kidd et al. v. Harris et al.*, 3 OLR, 60-62.

134 (1910) *May v. May*, 22 OLR, 559-65. Although the legalization of marriages with brothers-in-law was initially included in the proposed legislation, this controversial issue was strongly opposed by a number of influential senators and hence was dropped after the 1880 parliamentary debates. See, for example, *Senate Debates* (27 April 1880): 384, 387-89; (28 April 1880): 414, 417, 419, 421, 427, 432; *House of Commons Debates* (16 February 1882): 42, (23 February 1882): 74, (13 March 1882): 322.

135 See, for example, "How to Choose a Husband," *Kingston Chronicle and Gazette*, 3 November 1838; "The Kind of Wife You Want," *Welland Tribune*, 9 January 1891; Annie S. Swan, *Courtship and Marriage and the Gentle Art of Home-making* (Toronto: W. Briggs, ca. 1893); Elizabeth Jane Errington, *Wives and Mothers, Schoolmistresses and Scullery Maids: Working Women in Upper Canada, 1790-1840* (Montreal & Kingston: McGill-Queen's University Press, 1995), chapter 2; Morgan, *Public Men and Virtuous Women*, chapters 3 and 4; Ward, *Courtship, Love, and Marriage*, chapters 6 and 7.

136 (1889) *Lawless v. Chamberlain et al.*, 18 OR, 296-97.

contracted under excessive duress as might occur in situations involving premarital pregnancy, could technically be declared invalid.[137] In 1889, Sydney Lawless and his father petitioned the Court of Chancery in Ottawa to have the marriage between Sydney and Maud Chamberlain, who were both minors, nullified on the grounds that Sydney had only consented to the marriage because he had been "in fear for his life." According to the evidence, when Maud's aging father discovered that his daughter was three months pregnant, he was so angry that he summoned Sydney to his house in Alymer, "held out a pistol," and threatened to "blow [Sydney's] brains out" if he did not repair the "disgrace" and "injury done to his daughter." Maud's uncle had made similar threats: "'you must either marry the girl, or you wont leave the house alive. I'll give you three minutes to make up your mind.'" Determined that his daughter would be married that evening, Mr. Chamberlain spent the next six hours attempting to find a minister willing to perform the ceremony. First, Mr. Cunningham, the local Anglican minister was summoned, but when he realized that the marriage was to proceed "at the head of a revolver," he declined to get involved. After further deliberation, Reverend Service of the local Methodist church was called, but he too refused to marry the couple, when Sydney told him that "there was no love in it, it was force." At four o'clock in the morning, an increasingly frustrated Mr. Chamberlain decided that they had little choice but to travel to Ottawa to secure a marriage license and to locate a more compliant minister. Despite her concerns that this might be a runaway marriage, Miss Yielding, an Ottawa marriage license vendor did, after some

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137 In cases of premarital pregnancy, seduction, or breach of promise of marriage, one parental solution was to use informal or legal means to pressure a pregnant daughter and the father of the child into marrying. See Errington, *Wives and Mothers*, 32; Constance Backhouse, "The Tort of Seduction: Fathers and Daughters in Nineteenth Century Canada," *Dalhousie Law Journal* 10, 1 (June 1986): 45-80, and *Petticoats and Prejudice*, chapters 1 and 2; Dubinsky, *Improper Advances*, chapter 3; W. Peter Ward, "Unwed Motherhood in Nineteenth-Century English Canada," Canadian Historical Association, *Historical Papers* (1981): 34-56; Rosemary J. Coombe, "'The Most Disgusting, Disgraceful and Inequitous Proceeding in Our Law': The Action for Breach of Promise of Marriage in Nineteenth-Century Ontario," *University of Toronto Law Journal* 38, 1 (1988): 64-108.

coaxing, agree to issue a license and at five o'clock that same morning the first available minister proceeded to perform the ceremony. In light of these circumstances - that the marriage had been brought about by Mr. Chamberlain's "intimidation and threats" and Sydney's father had not consented to the union - the Lawless's argued that a marital annulment was warranted. In his ruling, however, Justice Boyd disagreed, arguing that the degree of coercion exerted had not been sufficient to compel Sydney to go through the marriage against his will. More specifically, the level of his fear had not involved "danger of death," "bodily torment and distress," or "such amount of force as might naturally serve to overcome one's free volition and inspire terror." Justice Boyd further pointed out that there was ample evidence to suggest that Sydney may have resisted at first, but he had eventually admitted to being the father of the unborn child and had acquiesced to the marriage. It was principally on this basis that the application for nullification was dismissed.[138]

In addition to coercion, another legal basis which could potentially render a marriage null and void involved situations in which the bride or groom was incapable of genuinely consenting to the marital contract because of misrepresentation or fraud on the part of the other partner, such as lying about his/her identity or marital status. This principle, as Sarah Brennan, a middle-class woman from Hamilton discovered in 1891, did not extend to false representations in regard to birth, social position, fortune, health, temperament, or even the concealment of previous unchaste and immoral behaviour. Although Sarah was advised that attempting to have her marriage nullified would be futile, she did launch an unprecedented civil suit in the Court of Queen's Bench for damages against her husband's parents, arguing that, on the basis of their fraudulent statements, she had been induced and misled into marrying their son, Joseph. According to her testimony,

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[138] (1889) *Lawless v. Chamberlain et al.*, 18 OR, 296-310.

in 1883, during the pre-nuptial negotiations between the two families, Mr. and Mrs. Brennan had attested to their son's good character and secure financial standing: Joseph was, they emphasized, a "sober man" with an "unblemished moral character" who had an income of well over $3000 per year. Based on these positive statements, Sarah had agreed to and her parents had sanctioned the marriage. Sarah went on to testify that not long after their wedding, she realized that everything she had been told about her then future husband had been utterly false. First of all, Joseph had proven to be a "poor man, with only a small salary," and thus, by her standards, she had been "poorly maintained and not at all as comfortably ... as she had a right to be supported." Even more reprehensible was the fact that her husband had "a very immoral character": he was not only "passionately [addicted] to intoxicating drink" and had treated her with "unbearable cruelty," but was also prone to "lewd and licentious" behaviour, having fathered "one or more illegitimate children." For these reasons, Sarah had, after five years of marriage, ceased living with her husband, but because he had, at the instigation of his parents, fled to the United States to avoid paying alimony, she and her child had been "reduced to complete and permanent destitution." The ramifications of having been enticed into this intolerable marriage were, in her view, virtually irreparable: "she lost the support and maintenance which she had previously enjoyed from her father and her freedom to make another marriage, and became bound in life to an unkind, passionate, cruel, dissolute, unfaithful husband, and she suffered much annoyance, disgrace, reproach, contempt, abuse, and pain, and loss of health, comfort, and reputation, and suffered other great damage." For all of the injuries and the deception she had endured, Sarah sought a hefty $30,000 in damages.

Sarah Brennan's civil action, as noted by her lawyers and the presiding judge, was indeed a "novel" one. In the absence of any legal precedents, most of the argument for and against the plaintiff focused on the question of whether or not she had the right to maintain such an action. In rendering his decision, Judge Falconbridge was clearly incensed by a

claim of this kind, arguing that through their marriage "there ha[d] been a change of the position of the parties which can never be revoked ... and it would be against public policy, against public morals, and fraught with the greatest damage to the most sacred of domestic relations, if the plaintiff should be held entitled to succeed." He further maintained that "a girl of ordinary discernment would have discovered even in the very brief courtship that took place, that he was not a very safe person to whom to entrust her happiness." But since Sarah had taken her chances when she had agreed to the marriage, she was strongly advised to abide by the words inscribed in her contract, "'for better for worse, for richer for poorer.'"[139]

In addition to these unsuccessful attempts to contest the legality of marriages formed under circumstances of coercion and misrepresentation, one area of intensifying concern among Ontario legislators, moral reformers, and temperance advocates revolved around marriages which were contracted when one or both of the parties were drunk during the ceremony and, more seriously, were suffering from so-called idiocy, lunacy, or insanity. Initially, intoxication and insanity were identified as factors which could inhibit the capacity of an individual to consent intelligently to the marriage contract. In the former case and similar to instances of coercion, if such 'drunken' marriages were challenged, it was necessary to show that "there was such a state of intoxication as to deprive [the person] of all sense and volition," or to result in "a complete annihilation of will."[140] For example, in 1880, when a Mrs. Roblin of Sidney township initiated a civil action against her husband for alimony on the grounds of desertion and his refusal "to treat her as his wife," Mr. Roblin countered by arguing that their runaway marriage, contracted seventeen-years earlier, was invalid because his then pregnant wife had "induced [him] to marry her,"

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[139] (1891) *Brennen v. Brennen et al.*, 19 OLR, 327-39.

[140] Gemmill, *The Practice of The Parliament*, 40.

by forcing him to drink an excessive amount of intoxicating liquor prior to the ceremony. This, he contended, had rendered him completely incapable "of understanding what he was doing." Vice-Chancellor Proudfoot, however, found this story rather "incredible" since according to the justice of the peace who had performed the ceremony, he had answered all the standard questions lucidly and accurately.[141] In instances of insanity, common law rules were less ambiguous, in that, as one legal scholar noted, "neither idiots, nor lunatics are capable of consenting to anything."[142]

By the early twentieth-century, however, with the intensification of eugenics anxieties and social fears about the procreation of the so-called 'unfit', Ontario legislators enacted more stringent legal regulations, which were designed to prevent "undesirables" and especially those deemed 'genetically weak' from marrying.[143] Beginning in 1896, for example, ministers who were convicted of solemnizing marriages between two people knowing or believing either of them to be "idiot or insane" could be fined up to $500, and in 1913, despite considerable opposition from clergy, the maximum penalty was raised to an additional twelve months imprisonment. That same year, the much criticized marriage license vendors were subjected to similar penalties if they granted licenses to any person

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141 (1881) *Roblin v. Roblin*, 28 Gr. Chy., 439-49. See also the case involving George Reid, who unsuccessfully sought to have the marriage of his daughter nullified on the grounds that her 'husband' had also induced her to drink alcohol prior to the ceremony and thus, she was "incapable of reasonable thought and action." (1914) *Reid v. Aull*, 22 OLR, 68-78; 19 DLR, 309-19; 7 OWN, 85-95; "Was Wed While Under The Influence Of Alcohol," Toronto *Globe*, 30 October 1913.

142 For the common law rules on this issue, see (1911) *A. v. B.*, 23 OLR, 264-66.

143 See James G. Snell and Cynthia Comacchio Abeele, "Regulating Nuptiality: Restricting Access to Marriage in Early Twentieth-Century English-Speaking Canada," *Canadian Historical Review* 69, 4 (December 1988): 466-89; Angus McLaren, *Our Own Master Race: Eugenics in Canada, 1885-1945* (Toronto: McClelland & Stewart, 1990), 8, 13, 41, 74, 94.

who was "idiot or insane," or who was "under the influence of intoxicating liquor."[144] Furthermore, in an effort to restrict access to marriage to those who were classified as 'healthy' and 'sane', Dr. Forbes Godfrey, a Conservative backbencher from West York, after years of lobbying, introduced a bill in the Ontario legislature in 1918, which would require marriage applicants to "obtain a certificate from a properly qualified medical practitioner ... stating that neither party to the contract is an idiot, imbecile, epileptic, feeble-minded, lunatic, sexual pervert, drug habitue, habitual criminal, habitual vagrant and not suffering from venereal disease, tuberculosis or cancer."[145] Some clergymen and social reformers also advocated restricting marriage to those men who could prove that they were financially secure and had "a saving habit." As one minister speaking before the Canadian Conference on Charities and Correction argued, 'bad' matrimonial unions, including "early marriages of unskilled laborers" and careless ones "among [the] poor" (rather than low wages or unemployment) were largely to blame for "a great deal of poverty." In his view, "if the law would see that only fit people were married and that they carried out their duties it would cut the main root of poverty."[146]

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[144] (1896) "An Act to consolidate the Acts respecting the Solemnization of Marriage," 59 Vict., c. 39, s. 16 (2); (1913) "Penalty For Marrying Idiot or Insane Person," 3-4 Geo. V, c. 28, s. 1. Some ministers protested against this amendment on the grounds that "it would be practically impossible for a minister to tell whether a man or woman is weak-minded ... especially if they were on the border line." In their opinion, too much responsibility was being placed on them to make such determinations. See Toronto *Globe*, 4, 5, and 10 April 1913; *Sault Daily Star*, 28 March 1913.

[145] "Would Amend Marriage Act: Drastic Changes Proposed to Bar Undesirables From Wedding," Toronto *Globe*, 12 and 20 March 1918. See also "Restrict Marriage of Mental Defectives," *Ottawa Journal*, 22 January 1921.

[146] "Bad Marriages Cause Poverty" and "Marriage Bill Criticized," Toronto *Globe*, 27 November 1908 and 5 April 1913. Furthermore, in 1918, Charles and Lena M. of South Fredericksburg township were indicted for criminal negligence amounting to manslaughter when Lena's four-month-old child died of what the coroner determined was "starvation and neglect." Although not essential to the prosecution of the case, much of the court testimony as well as the judge's charge to the jury focused not only on the couple's hasty marriage, but also on their "below average level of intelligence" and hence, their unsuitability for parenthood. (1918) *King v. Lena M. and Charles M.*, AO, RG 22-392, Lennox and Addington Counties

While Anglo-Protestant social and moral reformers provided the main impetus behind these efforts to toughen the province's marriage laws and to ensure that the matrimonial bond became a privilege accessible only to those considered the most 'desirable', some of the legal cases which surfaced in the courts also added fuel to the fire. One such case involved a nineteen-year-old Toronto woman, known only as A., whose well-to-do father petitioned the Ontario High Court of Justice to have her marriage nullified on the grounds that she was of "unsound mind" at the time of the ceremony. While elements of this case strongly suggested that A.'s impulsive marriage was simply one of many acts of rebellion against parental authority, the evidence presented by her father, her family physician, and two doctors from the Toronto Asylum drew on and confirmed increasingly widespread beliefs about the incorrigibility, delinquency, and loose morals exhibited by female 'mental defectives', even those, like A. who came from "good circumstances."[147] Her father testified that his daughter, although always good in school, had been "incorrigible and untrustworthy" even as a young child. However, after she developed 'delusions' that her family was against her, she began to run away from home, and he had little choice but to have her committed to the Toronto House of Correction. After a successful escape from the institution, her behaviour went from bad to worse: she evidently "sought out the lowest and most vile resorts in the city," including a "house of low repute kept by coloured people." While consorting with these "persons of the lowest character," she met Max Birmen, "a recent immigrant of debased habits" and, after living together for several weeks and being told that she could avoid returning to the House of Correction if they married, she "consented to go through the form of marriage." Much to her father's horror, the ceremony was performed by a "coloured minister" and the

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CAI, Box 83.

[147] McLaren, *Our Own Master Race*, 41.

witnesses present were none other than common prostitutes. When his daughter was eventually apprehended and diagnosed as a "moral imbecile," he had her committed to the Toronto Asylum for the Insane. After hearing the evidence, Justice Clute did confess that there was little indication from A.'s appearance and statements that she was of "unsound mind," but he could not ignore the persuasive conclusions presented by the medical experts. Dr. Clark, the superintendent of the Toronto Asylum argued that, by marrying Max Birmen, the young woman had resorted to "the easiest method of attaining what she desired, which was to be free from the control of the school and of her parents." From this, the judge deduced that even though A. may have known she was "going through the ceremony of marriage," she did not appreciate what that implied. As a woman of "unsound mind," he declared, she was unable to distinguish between "right and wrong," exhibited no "shame for her manner of life or for what she had done," and was devoid of any "moral sense." In extending his deepest sympathies to the parents of the child, who was now safely ensconced in the Toronto Asylum, Judge Clute expressed his heartfelt regret that the court had no jurisdiction to nullify what he described as a "deplorable" marriage.[148]

Of all the 'irregular' marriages contested in the criminal and civil courts, however, the vast majority involved the clandestine unions of minors in the absence of parental consent.[149] Despite the existence of strict procedures in regard to the proclamation of banns and obtaining a marriage license, and the subsequent amendments to Ontario's marriage

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[148] (1911) *A. v. B.*, 23 OLR, 261-69; 18 OWR, 627-35. For other unsuccessful actions to have a marriage nullified on the grounds of insanity, see (1914) *Hallman v. Hallman*, 5 OWN, 976-78; (1923) *Weinbrom v. Weinbrom*, 24 OWN, 51.

[149] Under common law, the minimum age for marriage was twelve for females and fourteen for males, but under the 1896 marriage act, the minimum age was raised to fourteen for both sexes, except to prevent the illegitimacy of any children. See (1896) 59 Vict., c. 39, s. 16; (1897) 60 Vict., c. 14, s. 68; (1914) R.S.O, c. 148, s. 16 and s. 36. Moreover, as noted earlier, marriages under the age of 21 and, after 1896, under the age of 18, required the consent of the father if living or of the mother or other guardian if he was dead.

laws which were designed to strengthen parental control and to prevent hasty and ill-considered underage marriages, some young couples did successfully contravene these formalities and enter into clandestine unions, often against the express wishes of their parents.[150] Besides the possibility of eloping to another county or to a bordering state, the legal records indicate that one of the easiest methods to tie the conjugal knot secretly was for the couple to obtain a marriage license in another town. This process usually entailed lying about their age(s), claiming that they had parental consent if either or both admitted to being minors, or in the case of Alexander R. of Manvers township, declaring that his future bride's parents were both deceased.[151] As the Thessalon police magistrate complained in 1917, "the marriage license vendors think they call sell a license to anybody," even though they, as well as the officiating minister, might have grave doubts about the real ages or family circumstances of one or both of the applicants.[152] The records also suggest that those runaway matches, which became the focus of criminal or civil litigation, were rarely motivated by a sense of desperation, as might arise in cases of premarital pregnancy; rather they were often the product of a mutual desire to formalize a relationship forbidden by one or both of the parents. In 1875, for example, when sixteen-year-old Lottie P.'s father, a

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[150] According to one newspaper report, however, when the father of a nineteen-year-old Toronto tailor, Nathan Weisblatt, refused to grant his son permission to marry, Nathan "ran a muck in his home, brandishing a carving knife and threatening to take rat poison." After his arrest, he told the police constable that "he had not intended to carry out his threat," but "merely wanted to frighten his father into giving his consent." "Wields Large Knife to Get Father's Consent," Toronto *Globe*, 7 April 1917.

[151] (1893) *Queen v. Alexander R.*, AO, RG 22-392, Victoria County CAI, Box 159.

[152] (1917) *King v. Harvey L.*, AO, RG 22, Algoma District Crown Attorney (Sault Ste. Marie) Case Files, Box 1. It was for this reason that some church denominations and provincial politicians strongly "favoured the publishing of banns, instead of the issuing of licenses." "Banns To Take Place Of Marriage License. Instruction of Bishop Sweeny at Anglican Synod," Toronto *Globe*, 11 June 1913; "R. H. Grant Favors Marriage Banns. Would Do Away With Issuing of Licenses," *Ottawa Journal*, 25 January, 1921. Under a legal amendment in 1921, however, the issuance of marriage licenses was strictly limited to public officials and the examination of witnesses became an option prior to granting a license. (1921) "An Act to Amend The Marriage Act," 11 Geo. V, c. 51.

Richmond Hill farmer, discovered that she was corresponding and secretly meeting with William T., he forbade her "to have any [more] communication" with him. Lottie, however, disobeyed her father's orders, and soon after wrote William a letter, in which she discussed in considerable detail her plan for their elopement to Toronto and signed it, "I will have you or death soon."[153]

When clandestine unions were discovered, however, the parents of the runaway couple were faced with a choice between reconciling themselves to the marriage or turning to the criminal and civil courts for some form of retribution or remedy. As indicated by the cases that surfaced in the criminal courts at the turn-of-the-century, it was rural farmers and the fathers of underage daughters who were most inclined to use existent criminal legislation and to register their objection to the marriage, by charging their sons-in-laws with perjury or for fraudulently obtaining a marriage license.[154] While there may have been various reasons for this pattern, it might well have been that farmers expected their teenage daughters to contribute to the rural household economy until they reached the legal age of

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[153] (1875) *Queen v. William T.*, AO, RG 22-392, York County CAI, Box 201. The main exception to this pattern involved nineteen-year-old Margaret F. of Barton. Upon discovering that she was pregnant by her boyfriend, Robert S., a labourer who worked for her father, she consulted a Hamilton doctor and asked him "to prescribe medicine to set her right." The doctor declined and advised her "to get married at once." She and Robert decided to heed this advice, taking advantage of the temporary absence of Margaret's father. At the ceremony, she told one of the witnesses that Robert "was the only man she ever would marry" and if he did not, "she would poison herself." (1883) *Queen v. Robert S.*, AO, RG 22-392, Wentworth County CAI, Box 176.

[154] One exception to this pattern involved cases of criminal libel, one of which was initiated in 1902 by David M., the father of Louisa M. of the village of Lancaster. According to the evidence, William M., who worked in a local harness shop, travelled to Cornwall and obtained a marriage license which authorized the union between himself and Louisa. When Louisa's father learned that William was showing the license to some of his fellow workers and boarders, and telling them that he intended to marry his daughter, Mr. M. initiated criminal proceedings for libel. He argued that William had defamed his daughter, by falsely asserting that "she [was] desirous of being united in matrimony with him" and that "her consent" had been obtained prior to procuring the license. While the jury at the Cornwall Fall Assizes in 1902 determined that William was of "unsound mind" and unfit to stand trial, six months later, at its next sitting, he was found guilty and received a suspended sentence. See (1902) and (1903) *King v. William M.*, AO, RG 22-392, Stormont, Dundas, and Glengarry Counties CAI, Box 147.

marriage. Furthermore, as heads of rural households during a period of socioeconomic transformation, they also may have clung more tenaciously to traditional forms of parental authority and to the strict supervision of their daughters' marital choices.

In their court testimonies, some aggrieved and angry fathers expressed concern that their daughters were too young to take on the responsibilities of marriage. They also argued that given their impressionable age, daughters had been "enticed" away from the "care" and "protection" of what they referred to as paternal "government." This is how Patrick H., a Georgina township farmer, interpreted the marriage of his fourteen-year daughter, Lydia to Michael B., a North Gwillimbury yeoman in 1879. As he stated in court, when Michael had approached him and asked permission to marry Lydia, he had "positively refused" on the grounds that she was "so young, only a child." Not long after, Mr. H. was told by the parish priest in a nearby township that his daughter had, under an assumed name, "been published in the church (Roman Catholic)" to be married, but he managed to intervene in time to prevent the union. Seemingly unimpeded by these obstacles, Michael and Lydia then applied for and secured a marriage license in the nearby village of Sutton and, with the full knowledge of Lydia's mother, were married by the local Bible Christian minister. Mrs. H. seemed more resigned to the inevitable than her irate husband, stating that the reason she did not attempt to stop the union was because "they were bound to be together."[155]

Other parents opposed their daughters' marriages not only on the grounds of their youth, but also because of the inappropriateness of the union. Alexander R. of Manvers

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155 (1879) *Queen v. Michael B.*, AO, RG 22-392, York County CAI, Box 211. Other parents, like Francis and Hannah J. of Joy township, testified that it was not so much that they strenuously objected to their seventeenth-year-old daughter's friendship with Willfred M., nor that they particularly concerned about the fact that their daughter was a Roman Catholic and he was a Methodist. Rather, the main source of their displeasure was that the two had refused to wait eleven more months until their daughter's eighteenth birthday. *Queen v. Willfred M.*, AO, RG 22-392, Simcoe County CAI, Box 139. For a discussion of Catholic opposition to mixed marriages and tensions between Catholic priests and Protestant ministers over the right to perform the ceremony in these cases, see Backhouse, *Petticoats and Prejudice*, 28-39; "Middlesex Assizes. The Libel Suit," London *Advertiser*, 19 May 1884; (1917) "Rev. C. V. M[], Thessalon. Asks interpretation of certain sections of The Marriage Act," AO, RG 4-32, AG, #1619.

township, for instance, was well over twenty years older than Harriet V. when they married in Lindsay in 1893.[156] Josephine Y. complained to the Thessalon police magistrate in 1917 that Harvey L., who had on the previous day married her sixteen-year-old daughter, Millie, was not only "no good," but also had managed to "poison" her daughter's mind. While Millie attempted to defend her decision, by arguing that she had "got a good man who would keep [her]" and that she simply "wanted to get a home of [her] own," her mother remained adamant, insisting that "she is only a child ... and he is a man of nearly thirty years of age."[157] The issue of age differences could also be exacerbated by other parental concerns. Frederick E., a brewery worker from Augusta township, initiated criminal proceedings against James G., his friend of twenty years and a co-worker after he secretly married his sixteen-year-old daughter, Edna. While he stated in court that James had "asked [him] nothing about going with Edna" nor had he consented to the marriage, he also felt that the union was highly improper since James' wife, a close friend of the family, had only died eleven weeks prior to his remarriage.[158]

The most intense paternal opposition and disapproval emerged, however, when daughters secretly married across class and racial lines, making the match not only unsuitable but also raising suspicions that it had been motivated by economic gain. In 1884, for example, William K. and his wife Elizabeth of Vespra township testified that as soon as they noticed that John F., one of the "boys" employed on their farm, was "trying

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[156] Alexander was charged with three counts of perjury, two of which involved lying about his and Harriet's ages. He had told the issuer of marriage licenses that Harriet was seventeen years old, when she was apparently "much younger," and that he was thirty-seven, when in fact he was "much older." (1893) *Queen v. Alexander R.*, AO, RG 22-392, Victoria County CAI, Box 159.

[157] (1917) *King v. Harvey L.*, AO, RG 22, Algoma District Crown Attorney (Sault Ste. Marie) Case Files, Box 1.

[158] (1908) *Rex v. James G.*, AO, RG 22-392, Leeds and Grenville Counties CAI, Box 80.

to pay attention" to their sixteen-year-old daughter, Annie, they made it clear to him that he was no longer "wanted there" and warned their daughter not to "go with the likes of him." Although both parents were convinced that they had successfully separated the two, when she disappeared four months later, Mr. K., who suspected that they had run away together, began to make enquiries. After one week, he found them in a nearby town, having obtained a marriage license from a local vendor.[159] Similarly, John B., a Clarke township farmer also opposed the affections that developed between his sixteen-year-old daughter and one of his farm labourers, complaining to the Bowmanville police magistrate that he had "done everything to keep [Horatio] H[] from marrying" his daughter. When he discovered their budding relationship, he too had "asked him to leave," telling him he "did not want him to go with his daughter for he did not think he was able to keep a wife," and ordering him "never to come there again." His wife Elizabeth echoed these sentiments, informing Horatio that "he was not good enough for Bessie and he was never to enter my premises again." Bessie was also made to understand by her father that "if she was of age she might do as she liked," but "if she ever married Horatio H. I would cut her off with a dollar." Two weeks after initiating criminal proceedings against his son-in-law, however, Mr. B., had evidently resigned himself to the marital union, informing the Cobourg Crown attorney that he had decided to withdraw the charge, since he and Horatio had agreed "to settle and make up friends."[160]

Frances T.'s father, an Alnwick township farmer, was not so forgiving. When he

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[159] (1884) *Queen v. John F.*, AO, RG 22-392, Simcoe County CAI, Box 137.

[160] (1881) *Queen v. Horatio H.*, AO, RG 22-392, Northumberland and Durham Counties CAI, Box 103. As Terry Crowley has pointed out in his study of rural labour in nineteenth-century Ontario, independent farmers in particular not only "clung tenaciously to total control over employment on their farms," but also often harboured extremely "condescending attitudes" toward their hired hands, making them highly unsuitable matches. Terry Crowley, "Rural Labour," *Labouring Lives: Work and Workers in Nineteenth-Century Ontario*, ed. Paul Craven (Toronto: University of Toronto Press, 1995), 67-72.

realized that his sixteen-year-old daughter had eloped and married Richard B., a Chippewa labourer from the same township, he not only charged Richard with perjury, but also with the more serious crime of abduction. When testifying at the trial in 1879, Mr. T. stated emphatically that the principal reason he objected to the match was because the accused "was an Indian, and he didn't want any Indian blood in his family, for he had seen enough of them."[161] In an effort to prevent interracial marriages in general and those opposed by parents in particular, legal authorities and social commentators encouraged both marriage license vendors and especially ministers to exercise much more vigilance before sanctioning such unions. In 1912, the Toronto *Globe* reported positively that the "mixed marriage" between K. F. Sam, a young Chinese laundryman, and a sixteen-year-old Kingston woman had successfully been nipped in the bud by two local Methodist ministers, who had the foresight to interview the mother of the young woman prior to conducting the marriage ceremony. Although Sam was described as "far above ordinary Celestials in intelligence," and it was noted that the "girl [was] quite attached to her yellow lover," when the girl's mother expressed her opposition to the union, the two ministers refused to proceed further.[162] Those ministers who were less cautious could find themselves confronted with the full force of the law. In 1908, Robert Brown, ordained by the Congregationalist church and the minister of a new independent congregation in Toronto, the First Christian Chinese Church, was tried and convicted for illegally solemnizing a marriage, but he immediately appealed his conviction in the higher courts. Although the judicial hearing in the Ontario Court of Appeal focused principally on whether or not he was authorized to celebrate the marriage and if the church should be recognized as a religious body under the law, there

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161 "A Young Indian's Love. He Woos, Wins, and Carries off a Pale-face Bride of Sweet Sixteen" and "A Case of Perjury," Toronto *Globe*, 11 and 13 October 1879.

162 "Mixed Marriage Prevented: Two Methodist Ministers Refuse to Perform it for Chinese, Kingston," Toronto *Globe*, 7 November 1912.

were other underlying issues at stake in this case. These revolved around the status of the Chinese community in Toronto and the fact that the marriage in question had involved the union between a Chinese man and a white woman. In registering his opposition to conferring permanent legal status on this particular denomination, Justice MacLaren argued that, "here we have simply a body of foreign professing Christians, who are not citizens, and most of whom probably contemplate returning to their land." Justice Meredith, who also ruled in favour of upholding Mr. Brown's conviction, used various obscure growth metaphors to suggest that the Chinese church should be the object of suspicion: "it is to be hoped that the 'First Chinese Christian Church, Toronto', is of the good seed ... but it must await the growth of at least a characteristic quality if not some branches in which, with at least some degree of caution, nests may be builded, before entering on the business of mating."[163]

Although no laws were passed in Canada to prevent interracial marriages or miscegenation, in a period when scientific racism, eugenics ideas, anti-immigrant sentiments, and growing Anglo-Saxon fears of race suicide intensified, some social reformers did advocate the introduction of such measures.[164] Furthermore, one unnamed American couple, described in the press as a "white girl" and a "big negro," were

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[163] (1908) *Rex v. Brown*, 27 OR, 197-209; 14 CCC, 87-100. For discussions of the growing racist hysteria over the moral danger and sexual threat Chinese men posed to white women and the condemnation of interracial marriages, see Madge Pon, "Like a Chinese Puzzle: The Construction of Chinese Masculinity in Jack Canuck," *Gender and History in Canada*, eds. Joy Parr and Mark Rosenfeld (Toronto: Copp Clark, 1996), 88-100. Although Tamara Adilman does not discuss interracial marriages, she has pointed out that the increasingly exclusionary Chinese immigration policies passed by the Canadian government between 1886 and 1923 were principally designed to curtail Chinese population increases through reproduction. Tamara Adilman, "A Preliminary Sketch of Chinese Women and Work in British Columbia, 1858-1950," *British Columbia Reconsidered: Essays on Women*, eds. Gillian Creese and Veronica Strong-Boag (Vancouver: Press Gang, 1992), 309-39.

[164] See Valverde, *The Age of Light, Soap, and Water*, Chapter 3 and 5, and "'When the Mother of the Race Is Free': Race, Reproduction, and Sexuality in First-Wave Feminism," *Gender Conflicts: New Essays in Women's History*, eds. Franca Iacovetta and Mariana Valverde (Toronto: University of Toronto Press, 1992), 3-26; McLaren, *Our Own Master Race*; Snell and Abeele, "Regulating Nuptiality," 477.

confronted with the intensity of these racist attitudes in 1913. After living together for three years, their presence in Sarnia caught the attention of legal authorities and immigration officials when they attempted to get married in the city. Just prior to their deportation, at a time when black immigration to Canada was being strictly curtailed and the expulsion of "moral undesirables" was on the increase,[165] the woman allegedly remarked to the immigration official, "I thought ... that marriage between negroes and whites was quite common in Canada," to which he replied, "'I think you will find that you are very much mistaken."[166]

Even though criminal prosecution for perjury represented one mechanism for dealing with the secret unions of minors deemed unacceptable by parents, this process was fairly limited in its effects. While the conviction of an undesirable son-in-law might result in the temporary or permanent separation of the couple, in legal terms their marital status remained intact. Consequently, some disapproving fathers and, especially those from the middling classes, turned to the civil courts in an effort to have these marital unions declared null and void, a procedure which would legally permit both parties to remarry. Furthermore, as indicated by the civil suit launched by Reverend Charles Drinkwater of

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165 As Agnes Calliste points out, the 1910 Immigration Act empowered the governor-in-council to prohibit the entry of immigrants belonging to "any race unsuited to the climate or requirements of Canada" and, one year later, an order-in-council was "passed to prohibit black immigration for one year," but "was cancelled for political reasons." However, as one newspaper report noted in 1911, despite the absence of an explicit exclusionary act against black immigration, the policies of the government and of immigration officials tended to have the same effect. According to the Ottawa reporter, "while it is not impossible for a negro to enter Canada as an immigrant ... for the past five years the immigration officials have more strictly interpreted the law in the case of the few negroes who have sought admission to Canada than with regard to white immigrants ... The general policy of the Government is to encourage white immigration and discourage yellow and black." Agnes Calliste, "Race, Gender and Canadian Immigration Policy: Blacks From the Caribbean, 1900-1932," *Gender and History in Canada*, 71, 81; "Negroes Not Excluded: The Immigration Law Sufficient to Bar Any Undesirables," Toronto *Globe*, 25 February 1911.

166 "White Girl and Big Negro Deported at Sarnia. Had Lived Together, Though Not Married For Three Years," Toronto *Globe*, 5 April 1913. For a detailed study of Canada's deportation policies and practices, see Barbara Roberts, *Whence They Came: Deportation from Canada, 1900-1935* (Ottawa: University of Ottawa Press, 1988).

Peel township in 1857 after his adopted fourteen-year-old daughter, Georgina, secretly married Rowland Bell, whom he described as a man from "an inferior position in life," these legal actions were also motivated by a desire to protect children's inheritances from unscrupulous men, who in the minds of parents and guardians only hoped to benefit materially from the marriage.[167] Irrespective of the specific parental concerns involved and the absence of 'guardian' consent, higher court judges were inclined to deviate from English precedents and dismiss these petitions, ruling that these types of marriages might well be "irregular" or "illegal," but they were not "voidable" or "invalid."[168]

In 1907, however, as concerns about the social consequences of underage clandestine marriages intensified, the Ontario Supreme Court was granted legal jurisdiction to hear civil actions of nullity involving marriages between persons under the age of 18 without proper legal consent, provided that there had been no "carnal intercourse" before or after the ceremony.[169] Unfortunately for those who sought relief under this new legislation, the reported cases suggest that it had little impact on the decisions of the higher courts: most civil actions were dismissed because judges disbelieved the evidence presented and especially claims that the relationship had not been consummated;[170] they suspected

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[167] (1857) *Regina v. Bell*, 15 UCQB, 287-91. Georgina testified, however, that she had married Rowland "with her own free will" and desired to live with him on his farm. She further stated that she had absolutely no wish to return "to her former protector," because Reverend Drinkwater had treated her harshly.

[168] See, for example, "The Marriage Laws," *Local Courts' and Municipal Gazette* 3 (September 1867): 129-30.

[169] (1907) "The Statute Law Amendment Act, 1907," 7 Edw. VII, c. 23, s. 8; McKee, "Law of Divorce in Canada," 21-22.

[170] See, for example, (1913) *Malot v. Malot*, 4 OWN, 1405-06, 1577-78; (1917) *McIntyre v. Gental*, 18 OWN, 309-10; (1920) *Owen v. Craven*, 18 OWN, 237-38.

that collusion on the part of the couple was involved;[171] or they invoked legal and constitutional technicalities.[172] This judicial resistance and inaction so outraged one father, Valpy E., formerly of Toronto and the manager in a prestigious chartered accountant firm in London, England, that in 1922 he wrote directly to former Prime Minister Arthur Meighen and Prime Minister Mackenzie King, requesting that they intervene directly in his son's nullification suit. In a fifty-page document detailing the case, he recounted how for the past seven years he had been actively lobbying the Ontario Supreme Court to render a decision to nullify the unconsummated marriage of his then fifteen-year-old son, Cecil to his twenty-year-old first cousin, Edith B., which had been secretly contracted in Toronto in 1914. Since no decision had been forthcoming during this long period, Mr. E. warned that he was now seriously contemplating launching a law suit against the Ontario government for £5000 in damages on the grounds of "excessive delay" and "failure in the administration of justice." Describing his son's marriage as simply an act of "childish folly," he launched into a lengthy condemnation of the province's marriage laws and civil procedures, characterizing them as both "farcical" and a "dead letter." In his view, they merely served to subject litigants to "vexatious delays," and a "shocking waste of time, labour and money" in their attempts to "attain the ends of justice." While he concluded his letter by suggesting sarcastically that he hoped that the court would render a decision sometime before his and his son's "respective demises," three years later his son's application for an annulment remained in what his lawyer referred to as "legal cold

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171 See, for example, (1909) *Menzies v. Farnon*, 18 OLR, 174-81.

172 See, for example, (1916) *Peppiatt v. Peppiatt*, 36 OLR, 427-37. Seemingly two successful actions remained unreported; the hearings were held in camera and the records were subsequently sealed. For a review of the complex constitutional issues involved, see Alfred B. Morine, "Void and Voidable Marriages - Decrees of Nullity - Jurisdiction of Supreme Court of Ontario - Critical Review of Decided Cases," (1916) 30 DLR, 14-26.

storage."[173]

Finally, those wives or husbands who petitioned the civil courts for an annulment of their marriage on the grounds of impotency or frigidity did not fare much better. Once a marriage had been legally solemnized, its consummation was deemed to be essential to the "completion of the contract," a common law principle which underscored the sexual and the reproductive basis of the institution of marriage. When it came to challenging so-called unconsummated marriages, however, very strict rules applied. For instance, as one legal scholar stated, "physical incapacity," the inability to engage in sexual intercourse or to procreate, had to "exist unknown at the time of the marriage" and had to "be incurable." If impotency or any other 'malformation' developed after the marriage had already been consummated, there were no grounds to contest the marital contract, since "the parties [had] taken each other subject to all the vicissitudes of life which may arise."[174] In 1888, for example, Mary White of Port Dover petitioned the Senate Divorce Committee to have her sixteen-year marriage nullified on the grounds that her husband's impotence and malformation had rendered him incapable of consummating the union. In response to these allegations, her husband, Charles, insisted that even though he had been unable to consummate the marriage during the first year, since that time, sexual intercourse had occurred. In order to resolve these contradictory claims, both Mary and Charles were required to submit to a medical examination undertaken by two physicians, who reported "that there was no malformation apparent in [the husband] and that the physical condition of the Petitioner was such as to contradict her statement that the marriage had not been

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[173] (1917-25) "E[] v. B[]: Correspondence (1917-1925) and documents re constitutionality of Marriage Act in case of under age marriage without parents consent," AO, RG 4-32, AG, #2309.

[174] McKee, "Law of Divorce in Canada," 22. For a discussion of shifting social and medical definitions about the causes of male impotence, especially among the American middle classes, see Kevin J. Mumford, "'Lost Manhood' Found: Male Sexual Impotence and Victorian Culture in the United States," *American Sexual Politics*, 75-99.

consummated." In dismissing her application, some members of the Senate Divorce Committee were so outraged that Mary had knowingly presented fraudulent information, and were so incensed by what they termed the "filthy," "disgusting," and "prurient" nature of the evidence, that they ordered her to pay her husband's travel expenses to Ottawa, in addition to $180 to cover the expenses incurred by the case. At least two senators, however, went further, strenuously arguing that additional punishment was warranted. In an effort to deter other women from submitting similar petitions and to prevent Mary from applying for an annulment elsewhere, they advocated either the initiation of criminal proceedings for "direct and wilful perjury" or the creation of some form of "permanent record against her."[175]

Non-consummation on the grounds of frigidity was less clearly defined, but generally referred to a married woman's "refusal without reasonable cause to permit [sexual] intercourse," indicating an unwillingness to submit to and perform one of the essential wifely duties inscribed in the sexual contract of marriage.[176] In 1912, however, Mr. Leakim, a Russian immigrant, petitioned the Ontario High Court of Justice to have his marriage "declared invalid" and "dissolved" on the grounds that his wife's alleged "physical incapacity" had prevented the consummation of the union. He contended that, even though they had "lived together for some time," his wife "was born without [a]

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[175] *Senate Debates* (1 March 1888): 111-12; (22 March 1888): 180; (10 April 1888): 289-93; (16 April 1888): 325-26; (19 April 1888): 330-47; (14 May 1888): 717-18; Gemmill, *The Practice of The Parliament of Canada*, 191-92.

[176] McKee, "Law of Divorce in Canada," 25; Michael Bliss, "'Pure Books On Avoided Subjects': Pre-Freudian Sexual Ideas in Canada," Canadian Historical Association, *Historical Papers* (1970): 89-108; Sara L. Zeigler, "Wifely Duties: Marriage, Labor, and the Common Law in Nineteenth-Century America," *Social Science History* 20, 1 (Spring 1996): 79-83. As Sheila Jeffreys has argued, however, beginning in the 1920s, Anglo-European sexologists increasingly linked frigidity with 'deviant' women (celibates, spinsters, and lesbians) who rejected marriage, and those women who failed "to see sexual intercourse as desirable, vitally necessary, or pleasurable." Sheila Jeffreys, *The Spinster and Her Enemies: Feminism and Sexuality, 1880-1930* (London: Pandora, 1985), 165-85.

vagina, uterus, and tubes," and consequently, she was "physically incapable of copulation" and of procreation. Unfortunately, in the absence of surviving details concerning this case, it is difficult to ascertain if Mrs. Leakim contested these allegations. What we do know is that Mr. Leakim's initial application for an annulment and his subsequent appeal to the Ontario Divisional Court were summarily dismissed.[177]

During the nineteenth and early twentieth centuries, the institution of marriage was consistently constructed as one of the most important units in civil society, as the foundation of 'the whole social fabric', and as the basis for socially sanctioned procreation in the dominant political, legal, and religious ideologies of the period. At the same time, there is also considerable historical evidence to suggest that, even though entering the bonds of matrimony was perceived as the 'natural' destiny of adult women and men, it was not only a highly structured process, but could also be an exceedingly contested one. As we have seen, rural and middle-class parents, christian churches, local communities, and the legal system did, in varying ways, differentiate between what were construed as 'legitimate' and 'valid' marriages and those identified as 'inappropriate' or 'defective'. These distinctions became the basis for divergent modes of regulation, be it through community discipline, church censure, or the increasingly stringent preventative and punitive measures codified in Ontario's marriage laws or in Canada's criminal code. In the eyes of the state, however, the principles of prevention and punishment did not translate into judicial interference in the form of dissolving undesirable marital unions, "no matter how sad the circumstances may be" and especially if the contract had been 'completed'

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[177] (1912) *Leakim v. Leakim*, 2 DLR, 278-79; 6 DLR, 875. Another application for nullification initiated by a Mr. T. in 1907, which was heard by the Ontario High Court of Justice, also involved the alleged incapacity and impotence of his wife. The marriage was solemnized in 1906, and although the parties "lived together as man and wife," Mr. T. claimed their marital union had never been consummated. His wife denied these allegations, arguing that sexual intercourse had existed for a time, but was discontinued because of her husband's physical incapacity. In rendering his decision, the judge simply ruled that the court had no jurisdiction to nullify the marriage and that "the marriage had been validly solemnized and matrimonial relations established for many months." (1907) *T -- v. B* --, 25 OR, 224-26.

through sexual intercourse.[178] As C. S. McKee, a Toronto legal scholar, pointed out in 1922, the issue of marital annulments had always been and would continue to be a highly contentious question, since the judicial system was forced to weigh a number of conflicting considerations. On the one hand, nullifying marriages could be viewed positively, as a way of "releasing the person from an unhappy contract which was never contemplated or understood, of limiting the number of children of an undesirable physical type which are brought into the world, [and] of limiting the number of children declared to be illegitimate." On the other hand, judicial authorities were also intent on preventing and limiting "the type of immorality which enters into marriage, thinking that when tired of it, it can easily be annulled."[179] Despite the constructed boundaries between 'good' and 'faulty' marriages, it was this latter consideration that tended to predominate in the actual practices of the Ontario judiciary.

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[178] Morine, "Void and Voidable Marriages," 26.

[179] McKee, "Law of Divorce in Canada," 23.

Chapter 3

'Unruly' Wives and 'Bad' Husbands: Rights, Duties, and the Sexual Contract of Marriage

> "'Between a man and his wife a husband's infidelity is nothing; wise married women do not trouble themselves about the infidelity of their husbands. The differences between the two cases is boundless. The man imposes no bastards on his wife. A man to be sure is criminal in the sight of God, but he does not do his wife any very material injury'."[1]
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> "'Marriage ... may be as immoral an institution as we [women] know it to be a profoundly disagreeable one'."[2]

While nineteenth- and early twentieth-century Ontario legislators inherited and enacted various complex rules and regulations designed to ensure the solemnization of 'valid' marriages, once women and men formally entered into the contract of marriage, they were bound by what were constructed by legal authorities and social commentators as certain 'mutually beneficial' rights, duties, and obligations. As alluded to in the last chapter, the provisions of common law inherited by Upper Canada and the stipulations embedded in various late nineteenth- and early twentieth-century provincial and criminal statutes were principally designed to define and regulate these highly gendered contractual responsibilities. "Marriage is a civil status," declared one member of parliament in 1901, and "[b]y the state, its rights and privileges are guarded and its duties and liabilities are enforced."[3]

Although the precise conditions and expectations inscribed in the marriage contract

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[1] Cited in (1893) *Quick v. Church*, 23 OR, 278.

[2] Hamilton *Spectator*, 25 April 1883.

[3] Canada, *House of Commons Debates* (13 March 1901): 1415.

were most explicitly revealed at the moment when conjugal relations became the site of conflict, these shifting legal codes, together with prevailing domestic ideals and the gender inequalities that structured the pre-industrial and capitalist economies, served to legitimate and reproduce the hierarchical ordering of the institution of marriage. In this sense, the flurry of legislative reforms introduced in latter half of the nineteenth century may have eroded some of the most oppressive patriarchal restrictions imposed on married women under the common law rules of coverture, but these initiatives were not designed to challenge the institution of marriage itself, to undermine the asymmetrical relations of power between husband and wives, nor to promote the socio-sexual independence of married women. Rather, the underlying impulse behind these legal reforms was largely paternalistic: to extend some measure of legal and economic protection to those dutiful, respectable, and virtuous wives, whose main misfortune was to be bound to irresponsible, cruel, unscrupulous, and otherwise 'bad' husbands.

In this chapter, I will begin to unpack the gendered allocation of 'duties, rights and obligations' that contributed to shaping relations between wives and husbands during the nineteenth and early twentieth centuries. This broad overview will provide the framework for a more detailed exploration of the sexual contract of marriage. Despite the expansion of married women's economic and maternal rights beginning in the mid-nineteenth century, the legal rules which protected a husband's ownership of his wife's sexuality and his exclusive rights to her body remained largely untouched. For married women, this meant that whatever material or social benefits might accrue from the institution of marriage, their access to these entitlements was largely contingent on their sexual fidelity. This was, after all, an era when prescriptive moral codes and rigid legal doctrines dictated that genital intercourse within marriage largely for the purposes of reproduction constituted the most acceptable sexual relation. It was also a period when a married woman's 'absolute sexual chastity' was considered to be the foundation of a well-ordered marriage, the basis for the

certain paternity of children, the cornerstone of prevailing bourgeois standards of feminine respectability and propriety, and the hallmark of a socio-sexual order organized around the imperative of heterosexual monogamy. Within this restrictive environment, adultery was constructed as and considered to be the most 'heinous' matrimonial transgression a married woman could commit. Thus, by examining how the 'crime' of adultery and other moral offences, like illegal forms of cohabitation, were censured in both informal and formal ways, it is possible to assess how and to what extent the sexual double standard operated in various sites of moral regulation, including state and legal institutions, christian churches, and local communities.

Despite the moral strictures against extramarital sexual relations and various regulatory mechanisms designed to discourage them, there is considerable historical evidence to suggest that Upper Canadian and Ontario wives (and for that matter, husbands) did not necessarily adhere or conform to what were deemed to be permissible sexual and conjugal arrangements. While married women faced harsher legal penalties and more severe social punishments than their male counterparts, they did, often at considerable risk, attempt to exercise some choice in their selection of sexual partners. It is, of course, virtually impossible to quantify how many wives and husbands engaged in extramarital sexual relations or how many so-called 'illicit' unions were formed, but the historical records do indicate that these social phenomena went beyond representing minor exceptions to the general rule of conjugal stability, marital bliss, and heterosexual exclusivity.[4]

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[4] Described as a work which falls into the 'sentiments' approach to family history, Peter Ward's study of courtship and marriage among the white upper and middle classes in English Canada, while useful, tends to overly romanticize these institutions, and his work has rightly been the subject of critique. See Peter Ward, *Courtship, Love, and Marriage in Nineteenth-Century English Canada* (Montreal & Kingston: McGill-Queen's University Press, 1990); Bettina Bradbury, "Introduction," *Canadian Family History: Selected Readings* (Toronto: Copp Clark Pitman, 1992), 8-9; and Karen Dubinsky's review in *Ontario History*, 82 (1990): 317-20. For discussions of the mythologies surrounding marital and familial relations perpetuated in Canadian historical writings, see Emily M. Nett, "Canadian families in social-historical perspective," *Canadian Journal of Sociology* 6, 3 (1981): 239-60; Cynthia R. Comacchio, "Beneath the 'Sentimental Veil': Families and Family History in Canada," *Labour/Le Travail* 33 (Spring 1994): 279-302.

The Contract of Marriage: Rights, Duties, and Responsibilities

Prior to the mid-nineteenth century, when the legal status of colonial married women underwent a series of legislative reforms, they were, as a number of historians have noted, in one of the most disadvantaged positions under the law. Even though social and legal commentators assumed that marriage was the "state in society to which all women look[ed] forward,"[5] a married woman's legal disabilities largely stemmed from the common law interpretation of marriage, which created a 'unity of legal personality'. According to the English jurist, William Blackstone, whose *Commentaries* remained one of the leading authorities on common law until well into the nineteenth century, this entailed that "husband and wife are one and that one is the husband ... that is, the very being or legal existence of the woman is suspended during that marriage, or at least is incorporated and consolidated into that of the husband; under whose wing, protection and *cover*, she performs everything."[6] In 1856, one legal commentator writing in the *Upper Canada Law Journal*, described this absorption, or indeed extinction of a wife's civil existence in more explicit terms: "The *natural* rights of man and woman are, it must be admitted, equal; entering the married state, the woman surrenders most of them; in the possession of civil rights before, they merge in her husband; in the eye of the law she may be said to cease to exist. Equal before marriage, she becomes legally an inferior. The man surrenders no legal rights - the woman loses nearly all."[7] It was upon this patriarchal principle, according to Blackstone and his Upper Canadian judicial successors, that "almost all the legal rights,

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[5] *Upper Canada Law Journal* 8 (December 1862): 309, 311.

[6] George Tucker, ed., *Blackstone's Commentaries*, Volume II, 1803 (New York: Rothman Reprints, 1969), 242.

[7] *Upper Canada Law Journal* 2 (1856): 217-18.

duties, and disabilities, that either of them acquire by marriage" ultimately depended.[8]

While the subordinate and dependent status conferred on a woman through marriage carried with it various legal and socioeconomic consequences, in broad terms it entailed that her person, her children, her earnings, and most of the property she acquired both prior to and after marriage were under the guardianship and control of her husband. She was also prohibited by law from entering civil contracts in her own name and from suing or being sued independently of her husband.[9] The main rationale behind these common law disabilities, which were rooted in feudal property relations, was that not unlike the relationship between father and child, a married woman was under the physical and economic protection, as well as the moral authority, of her husband. In this sense, her dependent status as a 'chattel' or 'vassal' of her husband was generally constructed by lawmakers as a privileged one and signified one of society's concessions to her physical frailty and to her economic vulnerability.[10] From the perspective of a married woman,

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[8] *Blackstone's Commentaries*, 242.

[9] It must be noted that with the establishment of the reserve system, the introduction of patriarchal forms of male land ownership, and the enactment of the 1876 Indian Act, Six Nations married women, for example, gradually lost their customary position as household heads, their entitlement to hold land and, prior to 1884, widows were denied the right to inherit their husbands' "land, goods, and chattels." Ann McGrath and Winona Stevenson, "Gender, Race, and Policy: Aboriginal Women and the State in Canada and Australia," *Labour/Le Travail* 38 (Fall 1996): 49-51.

[10] As Blackstone pointed out, "Even the disabilities, which the wife lies under, are for the most part intended for her protection and benefit--*so great a favorite is the female sex with the laws of England*." *Blackstone's Commentaries*, 445 and cited in Clara Brett Martin, "Legal Status of Women in the Dominion of Canada," *Women of Canada: Their Life and Work* (National Council of Women of Canada, 1900), 37. For more detailed analyses of these common law principles, see, for example, Bridget Hill, *Women, work & sexual politics in eighteenth-century England* (London: UCL Press, 1994), 196-220; Joan Perkin, *Women and Marriage in Nineteenth-Century England* (Chicago: Lyceum, 1989), 10-31; Lee Holcombe, *Wives and Property: Reform of the Married Women's Property Law in Nineteenth-Century England* (Toronto: University of Toronto Press, 1983): 18-36; Carole Pateman, *The Sexual Contract* (Stanford: Stanford University Press, 1988), chapters 5 and 6; Norma A. Basch, *In the Eyes of the Law: Women, Marriage and Property in Nineteenth-Century New York* (Ithaca: Cornell University Press, 1982), chapter 1; Constance Backhouse, *Petticoats and Prejudice: Women and Law in Nineteenth-Century Canada* (Toronto: Women's Press, 1991), 167-227; Lori Chambers, *Married Women and Property Law in Victorian Ontario*

however, the terms of the marriage contract entailed that in exchange for legal subordination and economic dependence, the fulfilment of her socially assigned duties in the form of sexual services, domestic labour, and other contributions to the rural or urban productive family-household, as well as her willing submission, cheerful obedience, and unwavering fidelity, she was granted access to what were usually termed the benefits and protections of marriage. One of the principal compensations, as defined by common law, was that, unless a husband could prove 'just cause', he was not only responsible for her debts both prior to and after marriage, but also was under a 'lifetime' legal obligation to provide for her economic maintenance and that of her children. Furthermore, if her husband owned property, she also had rights to dower in the form of one-third life interest in his lands. This entitlement was intended to provide a widow with economic security "for the sustenance of herself and the education of her children," and to prevent them from living in "want" and becoming public liabilities.[11]

In the predominantly rural economy of Upper Canada, these common law principles and particularly the unfettered control of family property in the hands of the male head provided the legal and material basis for legitimizing the patriarchal authority of the husband/father and the hierarchical ordering of the family-household. As Marjorie Griffin Cohen has argued, the power vested in the male head of the household through his dominion over property and his control of the labour of his wife and children is crucial to understanding "patriarchal productive relations" within the rural family economy. Whether directed toward subsistence or market-oriented production, the viability and success of the agrarian household economy was heavily dependant on the pooling of the unpaid labour of

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(Toronto: University of Toronto Press, 1997), chapter 1.

[11] "The Law of Dower," *Upper Canada Law Journal* 3 (November 1857): 209; (1848) *Phipps v. Moore*, 5 UCQB, 19, 23.

all family members and on the gendered and generational division of tasks in an effort to enhance productivity or to facilitate the accumulation of capital. The chronic insecurities of Upper Canadian farming enterprises also meant that household incomes were often supplemented by the wage earning activities of various family members, including the seasonal employment of husbands and older sons, the hiring out of daughters into domestic service, the indenturing and apprenticing of younger children, or the market activities and casual waged labour of wives.[12] Despite the cooperative logic of rural household relations and the mutuality of interests presumably shared by all family members, Cohen has convincingly argued that, "the family in nineteenth-century Ontario was not an egalitarian unit and neither custom nor law considered that the family *per se* owned the means of production." Rather, both "in law and in practice," the means of production as well as the material products and financial profits generated by the family's productive and wage earning activities was under the ownership and control of the male head of the household.[13]

Although this concentration of economic power was intended to provide male household heads with the material resources to support their dependents and, in theory, was meant to benefit all family members, the restrictive rules of coverture had also "long

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12 See, for example, Marjorie Griffin Cohen, *Women's Work, Markets, and Economic Development in Nineteenth-Century Ontario* (Toronto: University of Toronto Press, 1988), chapters 3 and 4; Leo Johnson, "The Political Economy of Ontario Women in the Nineteenth Century," *Women at Work: Ontario, 1850-1930*, eds. Janice Acton, Penny Goldsmith and Bonnie Shepard (Toronto: Women's Press, 1974), 13-22; Terry Crowley, "Rural Labour" and Jeremy Webber, "Labour and the Law," *Labouring Lives: Work and Workers in Nineteenth-Century Ontario*, ed. Paul Craven (Toronto: University of Toronto Press, 1995): 17-39 and 127-30; David Gagan, *Hopeful Travellers: Families, Land, and Social Change in Mid-Victorian Peel County, Canada West* (Toronto: University of Toronto Press, 1981), chapter 4; Chad Gaffield, "Boom and Bust: The Demography and Economy of the Lower Ottawa Valley in the Nineteenth Century" Canadian Historical Association, *Historical Papers* (1982): 172-95, and "Canadian Families in Cultural Context: Hypotheses From the Mid-Nineteenth Century," *Canadian Family History: Selected Readings*, ed. Bettina Bradbury (Toronto: Copp Clark Pitman, 1992): 135-57.

13 Cohen, *Women's Work*, 43-44.

been recognized as a guarantee of connubial felicity." In particular, "the dependence of the wife upon the husband" and the father's exclusive custodial rights over his children were regarded as one of the most effective (and, indeed, non-coercive) means to discourage a married woman from absconding from her husband's household.[14] Given that "the law," as Chief Justice William Campbell noted in 1826, "was decidedly hostile to the practice of wives running away from their husbands," a married woman had relatively few legal alternatives if she found herself saddled with a 'bad' husband.[15] More seriously, without economic resources at her disposal and in the absence of readily available means to earn an independent livelihood, she could face considerable material hardship or even destitution should her husband decide to abandon his dependents and disappear without a trace, should he elect to evict his wife from the family-household, or should she seek to escape an unbearable or violent domestic situation. Even though family members, local acquaintances, private charities, or public relief officers might be willing to offer her material support or temporary refuge, these acts of benevolence often entailed exchanging one form of economic dependence with another.[16] Furthermore, in her study of early

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[14] *Upper Canada Law Journal* 4 (1858): 107.

[15] *Kingston Chronicle*, 15 September 1826. One legal option, which will be discussed in chapter 5, was the common law right of wives to pledge their husbands' credit under certain circumstances. While this entitlement was generally of little value to women of the lower classes, it was also relatively easy for married men to ensure that local merchants and traders would refuse to extend credit to absconding wives.

[16] While these broad patterns will also be discussed in greater detail in chapter 5, there is also historical evidence to suggest that both families and acquaintances considered these acts of benevolence as a temporary and at times an unwelcome economic burden that should rightfully be borne by the husband. See, for example, the alimony suit launched in 1826 by Sheldon Hawley, an Ernestown farmer, against his son-in-law, George Ham. Mr. Hawley sought £1000 to cover the costs of providing his daughter, Esther, with "meat, drink, washing, lodging and other necessaries" since her separation from the defendant twelve years earlier. As the evidence indicated, Mr. Hawley and his wife had rescued their daughter from her husband's household because of his excessively cruel behaviour. Although Chief Justice William Campbell argued Esther was not justified in leaving her husband since her life was not in jeopardy and strongly recommended that "not a farthing of damages ought to be given," the jury awarded Mr. Hawley £2 10s in damages. *Kingston Chronicle*, 15 September 1826; (1826) *Hawley v. Ham*, UCKB (Taylor, 2nd ed.), 385-90;

nineteenth-century wills, Cohen has also found that some Upper Canadian husbands, even in death, refused to relinquish ultimate control over their property, including the strict supervision of their wives' future. Among the various restrictive clauses contained within them, the most common ones stipulated that a widow would lose all property rights and even the guardianship of her younger children if she chose to remarry, or specified the conditions under which she would remain economically dependent on her inheriting sons.[17]

The provisions of common law, however, were not only applicable to relations within Upper Canadian rural family-households, but also shaped marital relations and the family economies within the growing ranks of the artisanal and labouring classes. By the 1840s, the presence of various strata of producers, including skilled craftsmen, propertyless journeymen, and the labouring poor, had increasingly become a permanent feature of colonial society, a process of class formation that was fuelled by a number of socio-historical forces. These included, among others, the massive influx of thousands of poor and destitute emigrants from the British Isles and especially Ireland, as well as the

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Backhouse, *Petticoats and Prejudice*, 167-75. Furthermore, while deserted wives usually qualified as members of the deserving poor, both private charities and especially public relief officials were principally concerned about keeping the social costs of supporting the poor and the indigent to a minimum. See Rainer Baehre, "Paupers and Poor Relief in Upper Canada," Canadian Historical Association, *Historical Papers* (1981): 57-80; Russell C. Smandych, "William Osgoode, John Graves Simcoe, and the Exclusion of the English Poor Law from Upper Canada," *Law, Society, and the State: Essays in Modern Legal History*, eds. Louis A. Knafla and Susan W. S. Binnie (Toronto: University of Toronto Press, 1995), 99-129; David R. Murray, "The Cold Hand of Charity: The Court of Quarter Sessions and Poor Relief in the Niagara District, 1828-1841," *Canadian Perspectives on Law and Society: Issues in Legal History*, eds. W. Wesley Pue and Barry Wright (Ottawa: Carleton University Press, 1988), 179-206; Richard Splane, *Social Welfare in Ontario, 1791-1893* (Toronto: University of Toronto Press, 1965).

[17] Cohen, *Women's Work*, 49-54. These conclusions are based primarily on her examination of wills in the counties of Stormont, Dundas, and Glengarry in the years between 1800-1811 and 1850-1858. David Gagan found similar patterns in Peel County as discussed in *Hopeful Travellers*, 54-56. Terry Crowley has challenged this interpretation, by citing contrary evidence from research done on wills among Tipperary Protestants in the Ottawa Valley and from Upper New York state. Crowley, "Rural Labour," 35-36. It is evident that more extensive research into early nineteenth-century wills is needed.

tightening restrictions on access to land, due to population growth, inheritance practices, and rising land prices. These developments may not have resulted in large scale proletarianization at mid-century as the search for cheap land shifted northward and westward, but the impetus toward the creation of an industrial capitalist economy and a permanent wage-earning class was gaining momentum. While skilled male artisans could, barring unforeseen financial disaster, achieve a level of relative economic comfort and attain a position among the 'respectable' classes, the precarious daily existence among semi- and unskilled labourers and the poor rendered them particularly vulnerable to vicissitudes of disease and destitution in an economy marked by declining subsistence wages, seasonal unemployment, and periodic economic downturns.[18]

Like their rural counterparts, the reproductive and productive labour of wives and children of the labouring classes was essential to the survival of household waged economies or to the success of small-scale family enterprises. Since domestic work, childrearing responsibilities, and various forms of casual labour undertaken within the household consumed much of the time and energy of working-class women, they were less inclined to enter the formal labour market than other family members and did so mainly in times of economic necessity. As Jane Errington has found, however, in urban centres like York, some craftsmen's wives did operate their own small shops and boarding houses. If successful, the economic assets amassed from these modest entrepreneurial ventures would

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[18] For more detailed perspectives on these developments, see, for example, Crowley, "Rural Labour," 41-50; Bryan D. Palmer, *Working Class Experience: Rethinking the History of Canadian Labour, 1800-1991* (Toronto: McClelland & Stewart, 1992), chapter 1, "Social Formation and Class Formation in North America, 1800-1900," *Proletarianization and Family History*, ed. David Levine (New York: Academic Press, 1984), 234-54, and "Kingston Mechanics and the Rise of the Penitentiary, 1833-1836," *Histoire sociale/Social History*, 13, 25 (May 1980): 7-28; Patricia E. Malcolmson, "The Poor in Kingston, 1815-1850," *To Preserve and Defend: Essays on Kingston in the Nineteenth Century*, ed. Gerald Tulchinsky (Montreal & Kingston: McGill-Queen's University Press, 1976), 281-97; Ruth Bleasdale, "Class Conflict on the Canals of Upper Canada in the 1840s," *Labour/Le Travailleur* 7 (Spring 1981): 9-39; Peter Russell, "Wage Labour Rates in Upper Canada, 1818-1840," *Histoire sociale/Social History* 16, 31 (May 1983): 61-80; Michael B. Katz, *The People of Hamilton, Canada West: Family and Class in a Mid-Nineteenth-Century City* (Cambridge, Mass.: Harvard University Press, 1975).

constitute a valuable contribution to the accumulation of household capital or could provide a monetary cushion during periods of financial difficulties.[19] Under restrictive rules of coverture, however, wives had no formal right to engage in independent economic activities without the consent of their husbands nor could they lay claim to the income generated by their reproductive or paid labour. For instance, as one legal commentator explained, the meagre wages that poor and working-class wives could earn in traditional female employments such as the needle trades, domestic service, and casual labour could, "at any moment" and without any legal recourse, "be carried off by the man who has deserted her." Alternatively, if an irresponsible husband chose to "lead an idle and dissolute life," there was little or nothing to prevent him from garnishing his wife's weekly earnings from an employer or from forcing her to surrender her income on demand. In other words, since male household heads were empowered by law to assume absolute control over the family's economic resources, they could use the earnings of their dependents solely for their own purposes, while leaving their wives and children "in want."[20]

Despite the potential injustices associated with a married woman's dependent and subordinate status under the rules of coverture, Upper Canada's lawmakers and other male members of the colonial ruling elite had a particularly strong vested interest in safeguarding the patriarchal ordering of marital and familial relations. From their privileged position as household heads, as wealthy property owners, and as self-defined civic 'fathers' of the people who cultivated notions about their 'natural' and 'divinely ordained' fitness to rule, such figures construed the patriarchal family as one of the fundamental bulwarks and as a microcosm of a stable and equally authoritarian and stratified social order. This rested on

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19 See Bettina Bradbury, "The Home As Workplace," *Labouring Lives*, 412-76; Elizabeth Jane Errington, *Wives and Mothers, School Mistresses and Scullery Maids: Working Women in Upper Canada, 1790-1840* (Montreal & Kingston: McGill-Queen's University Press, 1995), 189-241, 245-47.

20 "The Married Woman Question," *Upper Canada Law Journal* 3 (August 1857): 144.

the principle, as one Methodist minister pointed out in 1834, that the hierarchical relations of authority and deference were meant to order all social institutions, including those of marriage and family, state and church:

> In order for the existence of society, whether civil or religious, there must be governments, laws, officers, as well as subjects. The father of a family, the constituted authorities of a nation, and the ministers of the Church of God, must all have a sufficiency of power invested in them to enjoin and enforce obedience to such laws and regulations as are necessary to the peace, good government, and prosperity of the community over which they are placed.[21]

Writing in the *Upper Canada Jurist* in 1844, one legal scholar made a similar connection between well-ordered domestic relations and socio-political stability, by stressing the disastrous effects that could result from tampering with the property and inheritance laws that both structured and underpinned patriarchal familial relations: "Domestic duties are invaded, and parental authority disregarded. Children feel themselves no longer dependent, but are ready to indulge in any display of contempt of parental authority, and the fearful consequences that must ensue may ultimately destroy all rule and governance in the state."[22]

Within this hierarchically organized social and domestic order, it was both the responsibility and duty of the husband/father to ensure the maintenance of an obedient, disciplined, and well-regulated family-household. As the legal and social representative of his dependents, he could, by law, be held liable for his wife's misdeeds and accountable for his children's misconduct. During the early nineteenth century, however, both religious and secular literature did increasingly counsel male household heads not to rule as brute

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[21] *Christian Guardian*, 19 March 1834, cited in Cecilia Morgan, *Public Men and Virtuous Women: The Gendered Languages of Religion and Politics in Upper Canada, 1791-1850* (Toronto: University of Toronto Press, 1996), 127-28.

[22] (1844-45) "The Law of Primogeniture," 1 *Upper Canada Jurist*, 260.

tyrants nor engage in the excessive abuse of their masculine authority. As one article published in the *Kingston Chronicle and Gazette* in 1843 argued, "man" may well have been "styled as 'Lord of the Creation'," but "his reign" should not be marred by "mistaken notions of superiority" over his wife and "helpmate," nor sullied by domineering aloofness from the "kind influence" of the "weaker sex."[23] Rather, in governing the domestic realm and in exercising moral leadership, husbands/fathers, not unlike masters, were encouraged to rule their households with a benevolent but firm paternalism. When circumstances required the use of more punitive measures, the provisions of common law did allow male household heads to enforce discipline and to chastise noncompliant household dependents through what was ambiguously referred to as "moderate correction."[24]

Legal and social commentators, however, were equally quick to emphasize that one of the ideal qualities of a 'good wife' was her willingness to consent to her subordination and servitude, her "greatest ambition" and "sole aim" being to promote her husband's and children's "welfare and happiness." As the *Kingston Chronicle and Gazette* put it in 1837, "[a] wife acts not for herself, but she is the agent of many she loves, and is bound to act for their good, and not for her own gratification. Her husband's good order is the end which she should aim - his approbation her reward."[25] An equally important attribute was a married woman's capacity to exercise "patient forbearance," including her ability to placate

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23 "The Ladies," *Kingston Chronicle and Gazette*, 19 April 1843. For more on the marital duties as constructed in Upper Canadian newspapers, see Errington, *Wives and Mothers*, chapters 2, 3, and 4; Morgan, *Public Men and Virtuous Women*, chapters 3 and 4.

24 For example, as William Blackstone argued, "The husband also ... might give his wife moderate correction. For, as he is to answer for her misbehaviour, the law thought it reasonable to entrust him with this power of restraining her, by domestic chastisement in the same moderation that a man is allowed to correct his servants or children." *Blackstone Commentaries*, 444-45. See also "Authority of Husbands," *Kingston Chronicle and Gazette*, 14 July 1838.

25 "Economy in a Family," *Kingston Chronicle and Gazette*, 8 July 1837.

and if at all possible, to use her 'kind influence' to reform her husband's violent temper or tyrannical behaviour. "'It is the duty of a wife'," as one judge stated in 1844, "'to conform to the tastes and habits of her husband; to sacrifice much of her comfort and convenience to his whims and caprices; to submit to his commands, and to endeavour, if she can, by prudent resistance and remonstrance to induce a change and alteration'."[26] Although the early nineteenth century did witness the reshaping of masculine codes of appropriate husbandly behaviour, the socioeconomic power and domestic authority of male household heads, as protected by common law, remained largely unchallenged. Within a patriarchal and paternalistic social order that denied a married woman the rights to civil personhood or ready access to economic independence, her marital satisfaction and domestic welfare were highly dependant on the particular disposition and arbitrary goodwill of her so-called 'natural protector'.

By the late 1830s, however, some colonial legislators began to recognize that married women required some formal protection from the harsh disabilities and potential economic hardships associated with their status under common law. In 1837, as both Constance Backhouse and Lori Chambers have argued, the newly-created Court of Chancery became a forum in which a married woman could petition for a legal separation and, more crucially, for an alimony decree. If the evidence indicated that she was a 'virtuous' woman and justified in living apart from her husband because of his excessive cruelty, persistent neglect, outright desertion, or flagrant adultery, Chancery judges were authorized to issue an order, granting her a suitable monetary settlement or the payment of a regular maintenance allowance.[27] In expressing his support for the establishment of a court

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[26] (1844) *Dysart v. Dysart*, 1 Robertson, 541 cited in (1860) *Jackson v. Jackson*, 8 Gr. Chy., 506.

[27] See Constance Backhouse, "Married Women's Property Law in Nineteenth Century Canada," *Law and History Review* 6, 2 (Fall 1988): 214-17, and "Pure Patriarchy: Nineteenth-Century Canadian Marriage," *McGill Law Journal* 31, 2 (March 1986): 295-312; Chambers, *Married Women and Property*

of equity, Upper Canada's Solicitor General suggested that empowering Chancery judges to grant alimony decrees constituted a much needed legislative initiative. In his view, it would not only offer 'deserving' and 'chaste' wives some measure of economic protection during marital separation, but it might also prevent these 'helpless' women from swelling the ranks of local charity cases within their communities:

> [I]f he had occasion to regret the want of a Court of this nature, it was when he saw (and the case was by no means unfrequent) a poor helpless woman turned out of her home by an unfeeling husband, who possesses ample means of subsistence, and obliged to take refuge amongst the caritably (sic) disposed of her neighborhood, and when she seeks redress, she is told that it is denied. How often have our sympathies been excited by cases like that; and yet the erection of a Court of Chancery would afford a protection to such unfortunates ... and to make provisions against so enormous an evil.[28]

In the absence of surviving legal documents, it is unclear how many married women used the court of equity in the decades prior to the 1850s when the rules of coverture were the most restrictive.[29] What seems unmistakable, however, is that given the relatively high costs involved in launching an alimony suit in the Court of Chancery, expenses which were explicitly listed in the enabling act, this legal remedy was largely inaccessible to most married women and especially those of the lower classes.[30]

Beginning in the mid-nineteenth century, however, a series of legislative reforms contributed to the sporadic uncoupling of the 'unity of legal personality' and the

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Law, chapters 2 and 3.

[28] "The Chancery Bill," *Kingston Chronicle and Gazette*, 7 December 1836.

[29] Although the reported cases of alimony discussed by Constance Backhouse begin in the early 1850s, Lori Chambers' examination of Vice-Chancellor William Hume Blake's benchbooks revealed that he heard ten cases of alimony litigation between 1849 and 1859. Backhouse, "Pure Patriarchy," 295-312; Chambers, *Married Women and Property Law*, 28-52, 192-93.

[30] A detailed list of the potential costs that a plaintiff would be required to pay when launching an action in the Court of Chancery was included as an appendix to the legislation. "Plaintiff's Costs" in (1837) "AN ACT to establish a Court of Chancery," 7 Wm. IV, c. II, s. III.

modification of a husband/father's absolute authority, a legal process that was rooted in broader socioeconomic and ideological developments. Within the context of an industrializing economy, both the sundering of the realms of productive and reproductive labour and the declining economic role of children among the rising middle classes encouraged the growth and dissemination of increasingly sentimental ideals about bourgeois domesticity and integral to them, the valorization of both wifehood and especially motherhood. These shifts, together with the growing emphasis on the social importance of maternal care especially during a child's 'tender years', generated a gradual rethinking of the unfettered custodial rights of fathers and resulted in the enactment of legislation in 1855 which began to recognize married women's claims to the custody and guardianship of their younger children.[31] Furthermore, between 1859 and 1884, the enactment of a series of married women's property acts in the province gradually eroded a husband's absolute control of his wife's separate property, by initially granting a married woman the right to hold the property she had owned prior to or inherited during marriage, and later to manage and dispose of it independently of her spouse. As a number of historians have argued, the main intent of these statutes was to protect a married woman's separate property from an unscrupulous husband who misappropriated it for his own economic benefit and to insulate a portion of the family's assets from his creditors during times of financial crisis or in cases of marital breakdown.[32] Finally, the acute dislocations

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31 Constance Backhouse, "Shifting Patterns in Nineteenth-Century Canadian Custody Law," *Essays in the History of Canadian Law*, Volume 1, ed. David H. Flaherty (Toronto: University of Toronto Press, 1981), 212-48, and *Petticoats and Prejudice*, 200-27.

32 For detailed analyses of married women's changing property rights in Ontario and other provinces, see Martin, "Legal Status of Women in the Dominion of Canada," 34-40; Backhouse, "Married Women's Property Law," 211-57; Chambers, *Married Women and Property Law*, chapters 4-10; Ward, *Courtship, Love, and Marriage*, 38-49; Philip Girard, "Married Women's Property, Chancery, Abolition, and Insolvency Law: Law Reform in Nova Scotia, 1820-1867," *Essays in the History of Canadian Law*, Volume 3, eds. Philip Girard and Jim Phillips (Toronto: University of Toronto Press, 1990), 80-127; Philip Girard and Rebecca Veinott, "Married Women's Property Law in Nova Scotia, 1850-1910," *Separate*

wrought by the boom-and-bust conditions in an expanding competitive capitalist economy exposed the material vulnerability of working-class wives and children, who in the absence of a male breadwinner increasingly comprised a substantial proportion of the dependant poor. Given this volatile economic climate, together with pervasive assumptions about the chronic unreliability of working-class husbands and their propensity to squander the family's economic resources on alcohol, wives were steadily granted greater control over their own earnings and those of their minor children. Of equal significance, the late nineteenth century also witnessed the introduction of various legislative measures designed to reinforce the economic responsibilities of male breadwinners, beginning with the criminalization of non-support in the late 1860s, the passage of the Ontario Deserted Wives' Maintenance Act in 1888, and culminating in the expansion of definitions of what constituted criminal neglect in the early twentieth-century.[33]

The significance of this flurry of late nineteenth-century legislative reforms cannot be discounted. Cumulatively, these legal initiatives did begin to ameliorate some of the most oppressive features of married women's common law disabilities, and offered wives greater opportunities to petition the civil and criminal courts for economic and physical protection from irresponsible and violent husbands. This was not, however, an unrestricted process. As inscribed in common law traditions, as reflected by the inclusion of an adultery clause in various legal reforms, and as indicated by the practices of the civil and criminal courts, sexual fidelity remained one of the main conditions determining married women's access to the economic resources of their husbands, to their dower rights, and to the

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Spheres: Women's Worlds in the 19th-Century Maritimes, eds. Janet Guildford and Suzanne Morton (Fredericton: Acadiensis Press, 1994), 67-91; Chris Clarkson, "Liberalism, Nation Building, and Family Regulation: The State and the Use of Family Property on Vancouver Island and in the United Colony/Province of British Columbia, 1862-1873" (MA thesis, University of Victoria, 1996).

33 These legislative initiatives and their administration in the criminal courts will be examined in chapter 5.

custody of their children. In the case of dower, for example, the judicial rulings in two civil cases heard in the Ontario Court of Common Pleas in the late 1860s made it clear that, irrespective of "how and why" a particular marriage broke down or how reprehensible the husband's behaviour, be it in terms of physical violence, outright desertion, or subsequent remarriage, a married woman was still "bound to conduct herself properly" after marital separation. On this basis, Chief Justice Hagarty held that the female plaintiffs in both cases had forfeited their rights to dower, as there were no legal grounds to justify a married woman's voluntary adultery: "His compelling her to leave by his violence, or her leaving in consequence thereof, or his abandoning her without provision, alike fail to warrant or excuse her subsequent voluntary living in adultery."[34]

Similar conditions were usually enforced in marital disputes over the custody of children. As Constance Backhouse has argued, the first child custody legislation enacted in Canada West in 1855 was important in so far as it challenged the longstanding and unquestioned proprietary rights of fathers as sole custodians of children under all circumstances. This statute gave the judiciary formal authorization to award the custody of a child under the age of twelve and to issue a maintenance order to mothers where the court "saw fit." In practice, this latter condition generally meant that judges were reluctant to interfere with the 'natural' custodial prerogatives of a father unless the evidence indicated that his behaviour was so reprehensible or irresponsible that the welfare of the child was in serious jeopardy and that the mother's character and conduct was faultless. The inclusion of an adultery clause raised the stakes even higher for mothers. In effect, an act of sexual

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[34] (1869) *Woolsey v. Finch* and (1869) *Neff v. Thompson*, 20 UCCP, 132-135 and 211-13. This ruling was upheld in 1882, when Juliet Drummond of Oxford township also attempted to claim her dower after a fifty-year separation from her husband. In this case, Chief Justice Hagarty again held that since Mrs. Drummond had been living with Mark Grandy since 1833 and "had children to him," she had no basis for such a claim. As in his earlier judgements, he stated that "the conduct of the husband could be no excuse for the adultery of the plaintiff." "Sylvester v. McLean," Toronto *Globe*, 6 April 1882. For similar judicial arguments, see (1878) *In re Campbell*, 25 Gr. Chy., 480-85; "Kidd v. Kidd," *Stratford Evening Herald*, 23 March 1896; (1912) *Re S.*, 3 DLR, 896, 14 OLR, 536.

infidelity by a married woman, which one judge described as "an unpardonable fault,"[35] would automatically render her morally 'unfit' and 'undeserving' of the legal custody and guardianship of her children, a standard which was not explicitly applied to an adulterous husband. Although the temporary removal of the adultery restriction under the 1887 amendment to the legislation seemed to indicate a relaxation of the sexual double standard, this was not necessarily upheld in practice. The judiciary continued to wield enormous discretionary authority when assessing parental worthiness in child custody disputes, the main criteria now being the "best interests and welfare of the infant," "the wishes" of "the mother as of the father," as well as "the conduct of the parents." Given that motherhood was increasingly elevated as the highest function of a woman's nature and as a symbol of her moral superiority, the courts generally assumed that a so-called 'depraved' wife must be a 'bad' mother and rarely treated these as mutually exclusive categories.[36]

Since married women's applications for child custody could be undermined by allegations of sexual immorality, it is perhaps not surprising that some turned to the criminal courts in hopes of salvaging their character and reputation. In 1892, Alberta M. of Port Dalhousie petitioned the Surrogate Court in the County of Lincoln for custody of her infant daughter, who was under the care of her estranged husband. At the hearing, Louis P., a family friend who appeared as a witness on behalf of her husband, presented the most

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35 (1875) *In Re Kinney*, 6 PR, 248.

36 For a detailed discussion of how the changing custody legislation was administered in the civil courts in Ontario and in other provinces, see Backhouse, "Shifting Patterns in Nineteenth-Century Canadian Custody Law," 212-48, and *Petticoats and Prejudice*, 200-27. See also Rebecca Vienott, "Child Custody and Divorce: A Nova Scotia Study, 1866-1910," *Essays in the History of Canadian Law*, Volume 3, 273-302; Julia Brophy and Carol Smart, "From Disregard to Disrepute: The Position of Women in Family Law," *Feminist Review* 9 (October 1981): 3-16; Carol Smart, *The Ties That Bind: Law, Marriage and the Reproduction of Patriarchal Relations* (London: Routledge, 1984), 20, 93. Furthermore, by 1911, an adultery clause had been reintroduced in the child custody section of "An Act respecting Infants." It explicitly stipulated that no child custody or access order would be granted to any mother "against whom adultery has been established by judgement in an action for criminal conversation or for alimony." (1911) "An Act respecting Infants," 1 Geo. V, c. 35, s. 2.

damaging evidence concerning Alberta's alleged extramarital activities. He described, for example, how he had four years earlier observed William M., Alberta's brother-in-law, enter her house at about eleven o'clock in the evening. Then, while spying through the bedroom window for a period of two hours, he had seen the two "lying on the bed" together; Mrs. M. "had no clothes on but her nightgown" and William "had his coat vest and hat off." Well aware that these allegations could seriously threaten her civil case, Alberta immediately initiated criminal proceedings against Louis, charging him with the crime of perjury. Although she attempted to convince the jury at the Lincoln Assizes that his statements were blatantly untrue and that there had been no improper intimacy between herself and her brother-in-law, when the accused was acquitted of the perjury charge, this did not bode well for her claim to custody of her child.[37]

Not all child custody disputes, however, were adjudicated in the relatively expensive civil courts. As both newspaper accounts and the criminal court records reveal, the abduction of children by fathers or mothers represented one alternative to formal litigation, even though the penalties for what was defined as 'childstealing' were severe. As early as 1841, criminal legislation stipulated that any person convicted of abducting, enticing away, or detaining a child under the age of fourteen years with the intent to deprive a parent of the possession of that child could face a maximum penalty of seven years imprisonment.[38] When husbands and wives used this statute to launch criminal

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[37] (1892) *Queen v. Louis P.*, AO, RG 22-392, Lincoln County CAI, Box 85.

[38] (1841) "An Act for consolidating and amending the Statutes in this Province relative to Offences against the person," 4 & 5 Vict., c. 27, s. XXI. This childstealing statute remained relatively unchanged during the period under study. Other cases of child abduction involved attempts by parents and especially mothers to retrieve their children, who under varying circumstances, had either been adopted by a third party or had become wards of Children's Aid Societies. See, for example, "A Stratford Boy Kidnapped," *Stratford Evening Herald*, 6 April 1896; (1897) *Queen v. Emma S.*, AO, RG 22, Ontario County CA/CP CCJCC Case Files, Box 5; (1917) *Rex v. Hilda M. and George M.*, AO, RG 22, Grey County CCJCC Minutes, 1869-1920.

proceedings against each other, they sought to punish a number of offences, such as outright kidnappings, explicit violations of court-ordered custody arrangements, or informal interference with the declared wishes of the custodial parent. While these child abduction trials tended to highlight the intensity of parental struggles over the control of their children, they also suggested that at least some fathers and mothers were prepared to employ fairly drastic measures to obtain or regain the possession of their offspring particularly after the disintegration of their marriages.

These dynamics were illustrated by the case involving Fred H., a merchant and former resident of Toronto, who in 1910 was charged with kidnapping his six-year-old son from the custodial care of his ex-wife, Charlotte. According to the evidence presented at the trial, Charlotte had obtained a divorce in Indiana four years earlier on the grounds of her husband's cruelty and desertion and was awarded exclusive custody of the child. Within a month, Fred remarried, and Charlotte and her son moved back to Toronto. During the subsequent year, Fred became increasingly dissatisfied with the custody order imposed by the Indiana court, one which required him to contribute to his son's maintenance but denied him access to his child. Arguing that the conditions went contrary to the principles of "natural justice," he successfully petitioned for an amendment to the terms of the initial arrangement and was awarded custodial access to his son for three weeks each December and for three months each summer. When Charlotte received a notice outlining the amended arrangement in 1908, she made it clear to her former husband that she would "refuse absolutely" to comply with it, "contending that the amended decree was not binding on her." Clearly incensed by her intransigence, Mr. H. then travelled to Toronto, waited in a carriage outside his son's school, and when an opportunity presented itself, he abducted his son and took him as far as St. Louis. After his arrest and indictment one year later, one of the main issues of contention during the criminal proceedings was whether or not he had "unlawfully taken the child." Although the Ontario High Court of Justice had, several years

earlier, upheld the principle that "a child's own father may be guilty of child stealing" if sole custody had been formally awarded to the mother,[39] the childstealing statute explicitly exempted those persons from criminal prosecution, who claimed "in good faith a right to the possession of the child."[40] In the end, Mr. H. was unsuccessful in convincing the York County Court judge that he had acted "in good faith," particularly since the kidnapping had occurred in January in direct violation of the terms of the amended custody order. Although he appealed his conviction in the Ontario Court of Appeal, the five judges who heard the case unanimously agreed to uphold the verdict. Nevertheless, they did recommend that since the abduction had allegedly been motivated by Mr. H.'s concerns about the "child's welfare" and his "natural feelings" as a father, he should be released on a suspended sentence.[41]

What made Fred H.'s kidnapping trial relatively unusual was that Charlotte managed to emerge from the protracted ordeal with her status as a virtuous woman intact and her suitability as the primary custodial parent unchallenged. In contrast, William E., a former resident of Ottawa, invoked a particularly potent justification, namely his wife's alleged sexual infidelity, for laying claim to and attempting to regain possession of his ten-year-old daughter, Rosamond. As he explained to the Ottawa police magistrate, after he and his wife, Viola, separated in 1919, he moved to Winnipeg, obtained a divorce in the Manitoba Court of King's Bench on the grounds of his wife's adultery and, six months later, he was awarded sole custody of his child. Armed with the custody order, he made several trips to Ontario and eventually located Rosamond in Ottawa, where she was living

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[39] (1902) *The King v. Watts*, 5 CCC, 246-53.

[40] (1892) "Offences Against Conjugal and Parental Rights," 55-56 Vict., c. 29, s. 284.

[41] (1910) *King v. Fred H.*, AO, RG 22, York County CA/CP (CCJCC) Case Files, Box 2716; 27 CCC, 410-17; 22 OLR, 484-90.

with her mother and stepfather, a local salesman. However, when he appeared outside their home unannounced and struck up a conversation with his daughter, a violent dispute immediately erupted: Rosamond's stepfather rushed from the house, accused William, "the son of a bitch," of attempting to steal "his child" and proceeded to assault him; Mr. E. responded in kind, yelling repeatedly that "this is my child" and insisting that he had a right "to take her away"; and Viola frantically grabbed her daughter and pushed her back into the house. This incident prompted Mr. E. to charge both Viola and her second husband not with aggravated assault, but with detaining and abducting his daughter, with the intent to deprive him of his rightful possession.

In testifying in her own defense, Viola R. was well aware that her ex-husband's accusations of marital infidelity would be held against her. Consequently, she made a determined effort to contest the grounds upon which the original custody order had been granted. Adamantly denying that she had ever committed adultery, she reminded the Ottawa police magistrate that her husband's initial attempt to obtain a divorce in Ontario had failed, due to the absence of sufficient evidence of her marital misconduct. She also explained that, during the divorce proceedings in Winnipeg, she could not challenge the adultery allegations and was forced to withdraw her defense, because she "had not enough money" to travel such a long distance. Finally, in an effort to justify her husband's violent reaction to the plaintiff's unexpected appearance on their doorstep, Viola insisted that she had not "received any notice" from anyone informing her that he had "been given the custody of the child." "I honestly think," she insisted, that "I [have] the right to keep the child." Besides indicating that she had always taken it "for granted" that a child should remain with the mother, her principle reason for making this claim had nothing to do with her moral worth and everything to do with responsible parenthood: she had been "keeping" and "supporting" Rosamond ever since her marital separation, whereas her former husband had "never bothered with her." Although both Viola and her second husband were acquitted of

the formal charge of abduction, Mr. E. persisted in his efforts to secure the possession of his daughter by immediately initiating a civil action in the Ontario Supreme Court.[42]

Parental battles over the formal terms of court-ordered custody settlements were not the only situations which might precipitate the abduction of children. In a number of instances, irate husbands executed similar kidnappings when wives, with their children in tow, absconded from their households and refused to return.[43] Still others were instigated by married women, who were living apart from their husbands and, because of their involvement with another man, were denied any contact with one or more of their children. In attempting to arrange a temporary or permanent reunification, these women often relied on their male partners to do whatever was necessary to retrieve their children. In these situations, it was not the mother but rather her lover who ended up facing criminal prosecution in the courts.

This was precisely what happened to Frank S. of Bala. In 1907, Joseph W. of Fesserton charged him, the man with whom his estranged wife was living, with enticing

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[42] When acquitting both defendants, the Ottawa police magistrate held that, in his view, they "did not intend to commit an abduction in the sense of the term as defined in the Criminal Code." (1920-21) *King v. William R. and Viola R.*, AO, RG 22, Carleton County CA/CP Case Files, Box 3976; *Ottawa Evening Journal*, 8, 14, and 17 January 1921. For another abduction case involving the violation of a formal child custody order, see (1901) *Queen v. James A.*, AO, RG 22-392, Essex County CAI, Box 37. In this instance, Solomon W. of Amherstburg charged James A. with abducting his eleven-year son. This kidnapping allegedly involved forcibly confining the boy against his will and transporting him by steamer to Detroit. As the evidence further revealed, Margaret M., the former wife of Solomon and the mother of the child, had instigated the kidnapping. After her divorce from the complainant five years earlier and her loss of custody, she evidently wished to be reunited permanently with her son. See also the case of John Gooding, a Windsor autoworker, who also lost custody of his son when he legally separated from his wife and twice attempted to kidnap his son from her care. "Father's Second Attempt To Abduct His Young Son," Toronto *Globe*, 18 April 1921.

[43] See, for example, (27 November 1875) *William V. v. Edwin C.*, AO, RG 22-13, Waterloo County (Galt) Police Court Minutebooks (hereafter GPC), Volume 5; (1910) *King v. James C. and Thomas C.*, AO, RG 22, York County CA/CP (CCJCC) Case Files, Box 2716; "Charged With Abduction," and "She Didn't Like Being Prayed At ... Strange Abduction Case," Toronto *Globe*, 13 July 1910 and 4 October 1910; "Father Kidnaps Child," *Welland Tribune*, 29 December 1899; "A Runaway Wife and its Sad Result," Ottawa *Daily Citizen*, 3 February 1882; "A Family Quarrel," Toronto *Globe*, 3 February 1882; "Curious Case of Kidnapping," Toronto *Globe*, 17 April 1884.

away his fourteen-year-old son, Charles, contrary to his express wishes and explicit orders. While one witness indicated that the two men were generally "not on good terms," the incident that prompted the complaint occurred when Frank managed to convince the boy to leave his father's household and his place of employment at the local dredge, by offering him a job at the railway steam pump house at Severn Bridge. Knowing full well that Joseph was strenuously opposed to such an arrangement, Frank nevertheless secreted Charles away and took him by train to Bala. After realizing that his son was missing, Joseph immediately went "after the boy" and found him "living with S[] and his mother." When he appeared at their house and Frank threatened "to blow [his] brains out," Joseph was more determined than ever to punish the man who had not only 'stolen' his wife, but also had lured away his eldest son.[44] Two years later, Mr. Holmes, a McKillop township farmer, also found himself facing a childstealing charge after he assisted a Mrs. Hulley in the abduction of her eldest daughter, Maud, from the boarding house where she resided while attending school in Seaforth. According to the evidence, Mrs. Hulley and her husband, who were both employed on Mr. Holmes' farm, had decided to separate ten months earlier on account of "some family disagreements" and Jacob Hulley had left to seek employment elsewhere. Although Mrs. Hulley claimed that she had remained on the farm with six of her children because she wished to retain her position as Mr. Holmes' housekeeper, the Huron County Court judge remained wholly unconvinced, concluding that it could be strongly "inferred" from the evidence "that their relations [were] more intimate than would be involved in that situation." It was undoubtedly for this reason that Mr. Hulley, who insisted that Maud was under his legal "control," had expressly forbidden her from visiting her mother at the prisoner's house. Just before Christmas in 1908 and in direct defiance of her husband's orders, Mrs. Hulley managed to convince Mr. Holmes to

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[44] (1907) *Rex v. Frank S.*, AO, RG 22-392, Simcoe County CAI, Box 140. See also (1892) *Queen v. Jacob H.*, AO, RG 22-392, Welland County CAI, Box 165.

travel to Seaforth and to execute an elaborate plan to retrieve her daughter. After hearing the evidence presented at the trial, the presiding judge ruled that there was absolutely no justification for Mr. Holmes' actions. In his opinion, the fact that Mrs. Hulley had asked the accused to fetch her daughter was immaterial; what was relevant was that he had contravened the "will of the father." For this reason, he sentenced Mr. Holmes to two and half years imprisonment, a judgement which the prisoner immediately appealed in a higher court. Although Mr. Holmes' attorney strenuously argued that "the sentenced imposed was unreasonably severe," Justice Osler resolutely refused to interfere with the verdict or the sentence imposed by his "learned" colleague in the lower court. In his opinion, given "the scandalous relations" that existed between Mr. Holmes and Mrs. Hulley, the severity of the punishment was entirely warranted.[45]

This persistent judicial focus on the real or alleged immoral conduct of mothers and the concomitant bias in favour of the custodial rights of fathers was, however, most explicitly revealed during those child abduction trials in which the behaviour of both parents came under the scrutiny of the courts. In 1904, Annie I., who had separated from her husband, Edward, six years earlier and was living with John T., a Toronto labourer, told the Newmarket justice of the peace that she had little choice but to arrange for the 'abduction' of her eleven-year-old daughter, Ethel, from her husband's possession. She stated that she asked John to fetch her daughter after she received a disturbing letter from Phoebe R., one of her husband's neighbours. In it, Mrs. R. described how Ethel had taken refuge at her house, because Edward was "abus[ing] the children and that the child was afraid he would kill her." As Annie went on to explain, she was equally concerned about the physical safety of her other two children: "my husband [also] abused our eldest boy - he pounded him with a broom stick until he was black and blue." Ethel, who was also

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[45] (1909) *King v. Holmes*, 16 CCC, 7-11.

asked to provide evidence, corroborated her mother's version of events, stating that "I left home ... because papa - said he was going to kill us if he did not get rid of us. I went away from home of my own accord." Despite substantial evidence suggesting that Mr. I. was physically abusing his children and that his daughter had willingly left "without pressure," the Newmarket justice of the peace expressed extreme reluctance to dismiss the charges. In a letter addressed to the York County Crown Attorney, he stated that, even though there was little evidence to convict the prisoner on the charge of abduction, he nonetheless felt it prudent to pursue the case, especially since "the mother has been living in adultery with [the] Deft and is an unfit person to have the custody of the child." Without mentioning the father's conduct and evidently supporting his desire to retain "lawful care" of his daughter, the justice of the peace even went so far as to suggest that as many "necessary witnesses" as possible should be procured, who would attest to Annie's immoral character and maternal unfitness. While the jury at the subsequent trial before the York General Sessions did not put forward a bill of indictment and John was discharged from custody, there was nothing to indicate that his acquittal was in any way an affirmation of Annie's right to the custody of Ethel or, for that matter, her other two children.[46]

Dower and child custody disputes were certainly not the only marital conflicts in which the legitimacy and efficacy of a married woman's claims were contested and often jeopardized by allegations concerning her sexual incontinence.[47] These particular

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[46] (1904) *King v. John T.*, AO, RG 22, York County CA/CP (General Sessions) Case Files, Box 3950.

[47] In addition, Children's Aid Societies working in conjunction with the criminal courts were equally punitive of 'adulterous' wives who, by reason of their "grave misconduct," were deemed to be morally unfit and negligent mothers as defined by Ontario's child protection statutes. See, for example, "A Child And Her Mother," *Stratford Evening Herald*, 21 August 1896; (1913) "Application for release of Lillian H[] in Perth Gaol committed [for] neglecting her children," AO, RG 4-32, AG, #1582; (1918) *Rex v. Theresa P.*, AO, RG 22-392, Waterloo County CAI, Box 163. In contrast, the courts were less inclined to punish married men for creating an improper home environment and imperiling the morality of their children by virtue of living with a lover. See, for example, (1915) "Rex vs. H[] -- Re. Appeal under

confrontations do, however, illustrate the extent to which patriarchal moral principles infused the rules of common law and became embedded in many of the protective legislative reforms enacted in the late nineteenth century. During this period, some lawmakers were willing to concede that a married woman, while living with her husband, should no longer be expected to serve as "the slave of man's wants and of his passions ... in the same degree as formerly."[48] Such gestures toward a more companionate and egalitarian conception of marital relations did not, however, fundamentally alter the reciprocal duties within the institution of marriage: "the common law right of the husband to [his wife's] society and comfort" and his exclusive access to her personal and sexual services endured, as did his assigned position of authority as the "governor" and "head of the family." These shifting attitudes also did not diminish a married woman's obligation to treat her husband with "respect and regard" and to demonstrate her obedience and loyalty in exchange for his ongoing economic support and protection.[49] Within this legal environment, sexual fidelity, both during marital cohabitation or after a separation, continued to be the main criterion, determining if a married woman deserved access to the economic 'benefits' of marriage, to the guardianship and custody of her children, and to the paternalistic protections of the state. While the judicial system generally left it to the discretion of individual husbands to assert their economic and paternal rights in the courts if their wives proved to be unfaithful, these unyielding rules had broader ramifications. In effect, unless the couple was among the 345 Ontario spouses who managed to obtain a legally recognized divorce between 1830 and 1920, a husband, whether living with or apart

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Juvenile Delinquents Act," AO, RG 4-32, AG, #1126.

[48] Canada, *Senate Debates* (28 April 1880): 431.

[49] See, for example, (1897) *Lellis v. Lambert*, 24 OAR, 660; (1890) *Lee v. Hopkins*, 20 OR, 666-75.

from his wife, continued to hold what technically amounted to "a lifetime ownership of [her] sexuality."[50]

While the harsh legal sanctions imposed on adulterous wives were principally designed to safeguard the conjugal rights of husbands and to protect children from moral 'contamination', they were also intended to discourage married women from engaging in immoral and disreputable behaviour and to preserve a socio-sexual order that relied on the maintenance of women's chastity. Nonetheless, it still seems pertinent to consider why sexual infidelity was constructed and perceived as the "worst of all crimes against the comfort of society," or at least as "an offence more grave than many crimes."[51] In fact, the notion, promoted most forcibly by state and religious authorities and cultivated by middle-class moral ideals, that married women should be penalized legally and socially for violating their matrimonial vows and straying outside her husband's firm control was so taken for granted and 'naturalized' that it rarely required much explanation or justification. This is not to suggest, however, that married men's extramarital sexual activities were immune to legal regulation or social censure, especially when their moral lapses were classified as criminal (as in cases of seduction) or threatened the integrity and stability of the family unit. Even though they were generally permitted greater sexual liberties than their female counterparts, the assumption that men had naturally uncontrollable (and hence inevitable and pardonable) sexual drives coexisted and competed with the growing middle-class ethos of sexual self-restraint as a marker of masculine respectability and as a measure of married men's devotion to the ideals of bourgeois domesticity. In other words, the

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50 Jane Ursel, "The State and the Maintenance of Patriarchy: A Case Study of Family, Labour and Welfare Legislation in Canada," *Family, Economy and State: The Social Reproduction Process Under Capitalism*, eds. James Dickinson and Bob Russell (Toronto: Garamond Press, 1986), 176, and *Private Lives, Public Policy: 100 Years of State Intervention in the Family* (Toronto: Women's Press, 1992), 102.

51 *Chronicle and Gazette*, 15 February 1845; John A. Gemmill, *The Practice of The Parliament of Canada Upon Bills of Divorce* (Toronto: Carswell & Co., 1889), 105.

normative belief that an immoral wife was a 'bad' woman deserving of censure remained unchallenged; it was male sexual behaviour that became the more contested site particularly in the moralistic climate at the turn of the century.

Unfortunately, existing historical records tell us little about those extramarital relationships that did not become the source of marital conflict or those adulterous couples who discretely 'passed' as married. These sources do, however, provide the basis for examining the legal, religious, and social meanings attached to adultery and how the sexual transgressions of wives and husbands were both constructed and handled in various realms, be it in state institutions, christian churches, local communities, and the civil and criminal courts.

Divorce and Adultery: 'The Highest Matrimonial Offence'

In 1834, the *British Whig* told its readers that the practice of wife selling, a fairly common and ritualized alternative to formal divorce among the plebian classes in the eighteenth- and nineteenth-century England, was "in this part of the world, an occurrence which seldom happen[ed]."[52] Three decades later, the St. Catharines *Journal* announced that "one of the most extraordinary and singular cases ever tried before a Canadian court" would be adjudicated by a local judge in the coming week. Although lacking many of the ritualistic components associated with wife-sales, the newspaper report did describe an agreement struck between two married men residing near Smithville, who had decided to 'swop' wives. In negotiating this spousal exchange, the two men, identified only as Mr. G., the keeper of a small country store, and Mr. M., of an undisclosed occupation, had allegedly obtained the full consent of their wives. In fact, the two women were supposedly so "perfectly reconciled ... to the bargain made by their liege lords" that each, in a highly symbolic manner, "made the bed for the other." One week after the 'swop', however, both men expressed deep dissatisfaction with the new arrangement, especially when they realized that they were incompatible with their new partners. Consequently, as the newspaper reporter pointed out, "the most natural thing in the world, at least with people possessing such peculiar ideas of nuptial tie, [was] to 'trade back' and trade back they did, each man receiving his lawful wife, and each woman her lawful husband." This brief exchange might have passed unnoticed, had it not been for the fact that when Mr. G. had "obtained possession of Mrs. M.," he had solemnly pledged that he would share all his

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[52] *British Whig*, 22 August 1834. At the same time, Upper Canadian newspapers did periodically provide accounts of wife sales which occurred in England. See, for example, the *British Whig*, 8 July 1834 and 8 May 1835. For historical analyses of this ritualistic plebian practice, see E. P. Thompson, "The Sale of Wives," *Customs in Common* (New York: The New Press, 1991), 404-66; Samuel P. Menefee, *Wives for Sale: An Ethnographic Study of Popular Divorce* (Oxford: Basil Blackwell, 1981); Roderick Phillips, *Putting Asunder: A History of Divorce in Western Society* (Cambridge: Cambridge University Press, 1988), 289-94; and Lawrence Stone, *Road to Divorce: England, 1530-1987* (Oxford: Oxford University Press, 1990), 143-48.

worldly goods with his new 'wife'. Taking him at his word, when Mrs. M. left Mr. G. to rejoin her husband, she took "a portion of the goods with which he had endowed her." Mr. G., however, felt that this outcome was entirely unfair, especially because, when his wife returned home, she "brought ... nothing but her person." In an effort to rectify this injustice, Mr. G. charged Mr. and Mrs. M. with larceny and the two were committed for trial. When Mrs. M. was asked by the local reporter to comment on the "singular" character of this transaction and to reflect on how the presiding judge might react to this case, her response was simple and direct: "'Well, I dunno what he'll say, but he can't say nuthin'; because people trade horses, cows, pigs, and such like, and why shouldn't they trade themselves off - swop wives and husbands? What's the harm in it, if all's agreeable? I can't see it, and don't care what they say!'"[53]

Even though 'wife swapping' may not have been widespread practice in Upper Canada or Ontario, it did represent one of several possible methods used by those wives and husbands who wished to disentangle themselves from their marital bonds and to enter into a so-called 'illicit' or, in some cases, an 'illegal' union with a new partner. Whether occurring under relatively amicable or highly antagonistic circumstances, the social termination of marriages could take a number of forms. The most common patterns included negotiating a formal deed of separation, entering a mutual agreement to sever all matrimonial ties, or simply abandoning one's spouse, followed by the establishment of a common-law union or the constitution of a bigamous marriage.[54] In stark contrast to Mrs. M.'s flippant views on spousal swapping and existent mechanisms of 'self-divorce', under

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[53] "An Extraordinary Case," St. Catharines *Journal*, 23 October 1866, and reprinted in the *Dumphries Reformer*, 24 October 1866.

[54] For discussions of these self-divorce practices in England and Canada, see John R. Gillis, *For Better, For Worse: British Marriages, 1600 to the Present* (New York: Oxford University Press, 1985); Phillips, *Putting Asunder*, 279-313; James Snell, *In the Shadow of the Law: Divorce in Canada, 1900-1939* (Toronto: University of Toronto Press, 1991), 226-57; and chapter 4 of this thesis.

the law, the only legitimate means for wives and husbands to free themselves from their matrimonial obligations and obtain legal permission to remarry was to secure a marital annulment or to procure a valid and absolute divorce. For Upper Canadian and Ontario residents and especially for married women, however, the possibilities of securing a full dissolution of the matrimonial bond remained extremely limited. Given that a *divorce à vinculo matrimonii* required the passage of a private bill by the provincial legislature and, after Confederation, by the dominion parliament,[55] the whole procedure was not only cumbersome, arduous, and protracted, but also costly, making it particularly inaccessible to those without substantial economic means. Furthermore, political leaders clung tenaciously to the view that among the myriad of reasons why women and men might wish to release themselves from the 'legal bondage' of their marriages, adultery constituted the basic and only justifiable ground upon which a marriage could be dissolved.

When estranged wives and husbands began petitioning the colonial legislature for a full dissolution of their marriages in the late 1820s, the first issue of contention was whether or not Upper Canada would "enable married persons to obtain a divorce in certain cases" as prevailed in the Maritime provinces. In 1833, for example, when the first of at least six unsuccessful motions or bills calling for the establishment of a provincial divorce court was introduced in the Legislative Assembly, this controversial issue was not pursued after the bill's first reading. In responding to the proposed bill, the editor of the *Kingston*

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[55] Since provincial divorce courts were established in the Maritime provinces in the late eighteenth and early nineteenth centuries, residents of Nova Scotia, New Brunswick, and Prince Edward Island could avoid the parliamentary divorce system. Prior to obtaining provincial jurisdiction over divorce (British Columbia in 1877, the Prairie provinces in 1919, and Ontario in 1930), residents of these provinces as well as those living in Quebec were required to initiate a private bill in the Senate. For comprehensive discussions of the historical development of Canada's provincial and parliamentary divorce systems, see, for example, Kimberley Smith Maynard, "Divorce in Nova Scotia, 1750-1890," *Essays in the History of Canadian Law*, Volume 3, 232-72; Snell, *In the Shadow of the Law*, chapters 3-8; Wendy Owen and J. M. Bumsted, "Divorce in a Small Province: A History of Divorce on Prince Edward Island from 1833," *Acadiensis* 20, 2 (Spring 1991): 86-104; Backhouse, "Pure Patriarchy," 264-291, and *Petticoats and Prejudice*, 167-99; Robert Pike, "Legal Access and the Incidence of Divorce in Canada: A Sociohistorical Analysis," *Canadian Review of Sociology and Anthropology* 12, 2 (May 1975): 115-19.

Chronicle and Gazette noted that, "we in common with every other well-wisher for the welfare of the Province, cannot but express our regret" at the necessity of such a bill. Although he did concede "that divorces in flagrant cases [of adultery] should be permitted," he went on to add that "we trust there will be but few instances in this Province where the Judge will have it in his power to say 'write a Bill of divorcement'." To further underscore his argument that divorce should be a rare privilege rather than the common rule in a colony governed by christian laws, he provided the negative example of the easy divorce practices within the Jewish tradition: "divorcement was so common among the Jews, that a man might discard his wife, 'if she displeased him even in the dressing of his victuals!'"[56]

The official desire among Upper Canadian legislators to maintain a relatively divorceless society, a sentiment later shared by most parliamentarians, became one of the most enduring features of the political and judicial regimes of the nineteenth and early twentieth centuries. While political leaders usually cited christian doctrines and personal religious convictions when registering their rejection or disapproval of divorce,[57] this

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[56] Upper Canada, House of Assembly, *Journals*, 28 November 1833; *Kingston Chronicle and Gazette*, 30 November and 14 December 1833. Other motions calling for the establishment of a provincial divorce tribunal were introduced in 1845, 1846, 1858, 1859, and 1860, but all were dropped. See C. S. McKee, "Law of Divorce in Canada," (1922) 62 DLR, 17; "Motion for appointment of a select committee to draft a bill providing that jurisdiction shall be given to a proper legal tribunal in Upper Canada, in cases of Divorce, with power to decree the dissolution of Marriage"; "Bill to provide for the establishment of a Court of Divorce and Matrimonial Causes"; "Petition Praying that the English Law of Divorce May Be Introduced into Canada," *Debates of the Legislative Assembly of United Canada* (1858): 766; (1859): 84; (1860): 279.

[57] The Roman Catholic church adhered to the strict doctrine that "death alone can break a true conjugal contract." Consequently, Catholic politicians voted against all divorce bills as a matter of religious principle. At the same time, as James Snell has noted, "every major Christian denomination in Canada ... spoke out against divorce" and sanctioned it only on certain grounds. Snell, *In the Shadow of the Law*, 32, 40-43. See also "Lecture by Archbishop Lynch at St. Michael's: The Marriage Tie Indissoluble" and "Archbishop Lynch Continues His Lecture Upon Divorce: Sacredness of the Marriage Tie," Toronto *Globe*, 10 and 17 November 1884; "Divorce," Toronto *Globe*, 24 September 1882; "The Weak Get Divorces, Strong Inherit Patience," *Ottawa Journal*, 1 November 1921; "Can't Get Together On Divorce Problem," *Ottawa Journal*, 25 January 1921; "Methodists Strongly Opposed to Divorce," *Ottawa Evening Journal*, 11 November 1921.

opposition was also fuelled by persistent anxieties about the dire social and moral consequences that, in their view, would invariably ensue if easier access to divorce were permitted. As one legal writer warned in 1845, "[t]he necessity of providing for the care and education of the young; the fear of affording scope to the selfish passions, and the danger of allowing the least possibility of separate interest to spring up between husband and wife are unanswerable arguments for encouraging adherence to the contract of marriage, and discouraging its dissolution."[58] In addition, most state officials adhered to the view that divorce signified much more than a "private transaction" between the estranged couple immediately affected. Since marriage was constructed as the "essential bond" in civil society, the absence or presence of divorce was regarded as a barometer, indicating the level of marital purity, family stability, public morality, and general social order.[59] In 1845, for example, Mr. Neilson reminded his peers in the Legislative Council that they "were assembled to make laws for the peace, welfare, and good government of this Province." "Instead of being for the welfare of Her Majesty's subjects," he argued, the passage of divorce bills "struck at the root of civil society, by dissolving a marriage entered into, in the presence of God and man." What he found particularly abhorrent was the fact that by severing the matrimonial bond, they would be "authorizing a new marriage of the parties" which, in his view, was tantamount to "authorising a new adultery."[60] Four decades later, James McGowan, the chair of the Senate Divorce Committee, presented a similar argument, asserting that in matters pertaining to marriage and divorce, the main duties of the "highest tribunal of the land" were to serve as the "custodian" of the "morals

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[58] (1845) "Colonial Divorce," 2 *Upper Canada Jurist*, 2.

[59] *Debates of the Legislative Assembly of United Canada* (1841): 39; McKee, "Law of Divorce in Canada," 27.

[60] *Chronicle and Gazette*, 15 February 1845.

and the well-being of society" and to uphold the "supreme law," that being "the welfare of the people." When parliament was guided by these "highest considerations," he asserted, it was inevitable that some "individuals may suffer" and that "individual rights [would] be diminished or abrogated" so "that the greatest possible good may be wrought for the greatest possible number."[61]

Given that the infrequency of divorce was equated with the 'public good', it is no wonder that succeeding governments tenaciously defended the existent system, with its restrictive rules, arduous procedures, and high cumulative costs.[62] Beginning in the late nineteenth century, this defensive posture emerged most forcibly when various political and social critics proposed that "the time had arrived" for parliament to relinquish its jurisdiction over the dissolution of marriages, arguing that the country was "ripe and ready" for the establishment of provincial divorce courts overseen by competent judges in all provinces, including Ontario. Such a judicial court, they suggested, would relieve parliamentarians of the highly controversial, burdensome, and for many, disagreeable task of adjudicating divorce cases. It would also replace what was described as an antiquated, inefficient, arbitrary, and often absurd process, which offered matrimonial relief only "to the wealthy" in certain cases. The "poor" and even those of "moderate means," they argued, could ill-afford the estimated $800 to $1000 it cost to undergo the "tedious formalities," a situation which merely encouraged "aggrieved persons" from these classes to resort to remedies "of their own devising." These criticisms were usually greeted with a storm of protest. Most

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61 *Senate Debates* (14 June 1887): 381.

62 "Divorce Bills," Toronto *Globe*, 15 May 1888. Prior to 1888, the Legislative Council of Upper Canada and the United Provinces and, after Confederation, the Senate followed the rules and procedures developed by the English House of Lords for the adjudication of divorce cases. In 1888, the Senate developed and adopted its own body of rules, which created a "quasi-judicial process." These procedural rules were grouped under twenty-three main categories. Despite some amendments initiated in 1906, the whole process remained largely unchanged until 1930. Gemmill, *The Practice of The Parliament*, 75-147; McKee, "Law of Divorce in Canada," 17-19, 44-47.

political leaders, who assumed they were more in tune with public opinion, insisted that it was absolutely essential for parliament to retain "unrestrained" and "paramount power" over such a "solemn matter." Without a system which "placed very considerable impediments in the way of obtaining a divorce" and in the absence of procedures ensuring that the value of the evidence in each individual case was carefully scrutinized and judged by "men of learning, wisdom, and experience," the nation would be faced with a "deluge of immorality" and a potentially unlimited number of divorce applications.[63]

If the main purpose of retaining the legislative machinery was to limit the number of divorces, then it was highly effective. For instance, of the eleven recorded divorce petitions submitted to the Legislative Council prior to Confederation,[64] only four were successful

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[63] In parliament, bills or motions calling for the establishment of provincial divorce courts were introduced on a fairly regular basis (including the years 1870, 1875, 1879, 1888, 1891, 1901, 1916, 1919, and 1920), but all were defeated. Those members of parliament who were critical of the system generally focused on the expenses and delays involved, the publicity generated by scandalous details of each case, the tendency of some members to vote on divorce cases without having read the evidence, and the fact that decisions were based less on fixed principles and more on the degree of sympathy the case managed to generate and how successful the parties involved were in lobbying for votes among politicians. For these critiques and the responses to them, see, for example, *House of Commons Debates* (14 May 1888): 1414-15; (13 March 1901): 1411-21; *Senate Debates* (27 February 1888): 60-64, 74-75. Newspaper reporters, however, were usually more biting in their criticisms. In addition to the problems mentioned above, they argued that politicians were wholly incompetent to adjudicate divorce cases and that the responsibility should lie with trained judges bound by the rules of law. They also did not hesitate to expose the absurdities of the procedure. In commenting on the examination of witnesses in the Senate during the hearing of Peter Nicholson's case in 1883, one Toronto *Globe* reporter stated that, "the proceedings of the Senate Committee, sitting as a court, their ignorance of the legal rules of evidence, and the frequent altercations between Senators and counsel, strongly emphasize the absurdity of entrusting such a body with judicial functions." He further added that it "resembled a scene in one of Gilbert & Sullivan's comic operas rather than a court of justice." More than anything else, the "heated wranglings" of the senators and "the utter lack of order or dignity" merely offered "great amusement to the spectators." "Canadian Divorce Bills," Toronto *Globe*, 14 December 1876; "Committees," "Nicholson Divorce Suit," "Senate Divorce Committee," and "A Divorce Court" Toronto *Globe*, 6, 7, 14, and 17 April 1883. See also "Canadian Divorce Bills," "Divorce," and "A Divorce Court for Canada," Toronto *Globe*, 14 December 1876, 24 September 1892, and 2 March 1901; Gemmill, *The Practice of The Parliament*, 195-99.

[64] These included the following unsuccessful applicants, most of whose petitions were abandoned at an early stage: Margaret Daverne, the wife of the former secretary and superintendent of the Perth Military Settlement, in 1826; Henry McMurdo, a Scottish immigrant, in 1836; Reuben Parkinson, a Toronto wheelwright, in 1836; George and Elizabeth Korner of the District of Johnson in 1841; Alice Ann Keeler of Brantford in 1842; Flora Thomson of St. Clément de Beauharnois in 1844; and James Glennie of Woolwich

and all were granted to upper- and middle-class men on the grounds of their wives' adultery.[65] In the period between 1867 and 1900, parliament passed a total of seventy divorce bills, of which forty-six were granted to Ontario residents. Of those, eighteen women managed to secure full matrimonial relief, beginning with Mary Jane Bates of the County of Perth whose marriage contract was rescinded in 1877 after her husband was sentenced to two years imprisonment for bigamy. It was only in the first two decades of the twentieth-century that provincial (and national) divorce rates began to rise, increasing from an average of 2.4 per year between 1891 and 1900, 5.6 annually between 1901 and 1910, to 13.5 per year between 1911 and 1918, followed by a fairly dramatic increase in the immediate post-World War I period.[66] While the growing number of divorce bills tended to exacerbate the absurdities of the parliamentary process and intensified demands for the establishment of judicial divorce courts, the majority of politicians remained entrenched in

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in 1865 and 1866. See J. K. Johnson, "Friends in High Places: Getting Divorced in Upper Canada," *Ontario History* 86, 3 (September 1994): 207-08; *Debates of the Legislative Assembly of United Canada* (1841): 38-39; (1842): 132, 150, 152; (1844-45): 217, 265; (1865) 244; and (1866) 46, 51. The only exception to this trend was the divorce bill initiated by Captain Henry Harris in 1842 and again in 1844. Although he was granted a legislative divorce in 1845, it did not receive royal assent because both he and his wife had permanently left the country. *Debates* (1842): 132, 151; (1844-45): 254, 304, 1783-84, 1864, 1948, 1954-57, 2015, 2020-21, 2141-42, 2193-95, 2571; (1846): 140-41, 147; *Chronicle and Gazette*, 15 and 19 February, 15 March 1845.

65 For an analysis of the relative ease and rapidity with which John Stuart, a London lawyer and later clerk of the Talbot District Court, obtained Upper Canada's first divorce in 1841 on the grounds that his wife, Elizabeth Powell, had committed adultery and then eloped with John Grogan, see Johnson, "Friends in High Places," 201-18; (1841) "AN ACT for the relief of John Stuart," 3 Vict., c. 72. He argues that it was directly related to the fact that both John and Elizabeth were members of the colony's oldest elite families. In order to restore the disgraced Powell family to their previous respectable status and "to mitigate the degree of social punishment" which Elizabeth received, the members of the Family Compact "closed ranks" and ensured that the divorce bill was passed. The other three divorces were granted to: William Beresford, a former captain in the Rifle Brigade and Toronto gentleman, in 1853; John McLean, a Toronto merchant tailor and gentleman, in 1859, and James Benning of Montreal in 1864. (1853) 16 Vict., c. 267; (1859) 22 Vict., c. 132; (1864) 27 & 28 Vict., c. 175.

66 "Statistics of Divorces Granted in Canada, 1868-1921," *Canada Year Book 1921* (Ottawa, 1922), 825; (1877) "An Act for the relief of Mary Jane Bates," 40 Vict., c. 87.

the view that divorce reform would be a "curse," and would only encourage the further weakening of marital ties, the general loosening of moral restraints, and the corruption and destruction of the social fabric.[67]

For Ontario residents, then, the whole process involved in securing a legal divorce remained relatively unchanged in the nineteenth and early twentieth centuries. In addition to the procedural technicalities and economic barriers, the most basic rule was that adultery constituted the only valid ground for the full dissolution of the nuptial bond. This narrow provision rested on the Protestant doctrine that divorce was only permissible for the gravest of matrimonial crimes and when a marital reconciliation or the continuation of the union proved to be impossible. Since adultery constituted the only exception to the biblical ban on divorce, it acquired status as the foremost crime against marriage. In this sense, sexual infidelity was understood as direct violation of the vows of monogamy and the core of the marital bargain, resulting in the "diversion of [spousal] affections and feelings into strange channels," "the defilement of the marriage bed" and, most seriously, the destruction and severance of the unity and oneness of husband and wife as specified under divine law. From the perspective of the state, then, the union had been "*ipso facto* dissolved by the very nature of the crime"; if the innocent and unforgiving spouse who petitioned for relief could prove the guilt of his/her spouse and the absence of any collusion, connivance, or condonation, the granting of a divorce was construed as a "mournful remedy" for "such an

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[67] See, for example, "Divorce Applications Trebled in Five Years: Twenty-Two Already Entered For Coming Session - Two This Week," Toronto *Globe*, 11 October 1913; "Divorce Refused Quebec Banker By The Senate," *Sault Daily Star*, 16 May 1913; "Change In Divorce Law Defeated In Non-Party Division Of The House," *Ottawa Evening Journal*, 15 February 1916; Snell, *In the Shadow of the Law*, chapter 1. During and after World War I, demands for divorce reform or, at the very least, a reduction in costs were couched in terms of the needs of poor returned soldiers whose wives "proved faithless in their absence." "Facilitate Divorce For Wronged Soldiers," Toronto *Globe*, 5 February 1918.

outrage upon the most sacred obligations" of marriage and indeed of society.[68] Political leaders and religious authorities also assumed that just as impeding access to divorce would discourage sexually deviant behaviour, restricting the recognized grounds deemed sufficient for severing the marriage contract would effectively prevent marital dissatisfaction and encourage mutual forbearance. In this spirit, when George and Elizabeth Kornor of the District of Johnson, either naively or audaciously, submitted a divorce application to the provincial legislature in 1841 on the grounds of "incompatibility of temper," the petition was greeted with both condemnation and amusement from the legislators present. Sir A. MacNab argued that to consider George and Elizabeth's application would only serve to "loosen those ties, that society regards as sacred and inviolable" and would encourage other "parties, perhaps upon some temporary disagreement, to pray for that relief, that they might regret having applied for thereafter." He further insisted that, "if they were to be called upon to sever the matrimonial band (sic), merely on account of the ill temper of the parties," the Legislative Assembly would have more than "enough to do," a statement that drew raucous laughter from his fellow legislators. They were also greatly amused when Mr. Roblin stated that the petition should be refused because "they ought not to hold out an inducement for a man and his wife to quarrel." Needless to say, the divorce was not granted.[69]

Beginning in the late nineteenth century, however, the perceived "social demoralization" caused by the "lax" divorce laws and "wild-cat" practices in the United States became the most oft cited and potent justifications for resisting any relaxation of

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[68] See, for example, *Chronicle and Gazette*, 15 February 1845; "Colonial Divorce," 1, 7-9; *House of Commons Debates* (20 March 1883): 283; Gemmill, *The Practice of The Parliament*, 30-32, 49-51, 105-23.

[69] *Debates of the Legislative Assembly of United Canada* (1841): 38-39. This was the only divorce petition in the period under study that did not cite adultery as at least one ground for divorce.

established parliamentary rules. It was in the "mighty nation to the south," according to many political leaders and social commentators, where the sanctity of marriage had been reduced to "licensed adultery" and its "binding character" considered to be nothing more than "antique nonsense." In this overblown rhetoric, the United States became the ultimate signifier of marital disorder and "national depravity": "one vast brothel" where men and women simply married to "gratify a temporary passion" and then could divorce their spouses "as often as they pleased" on the most "frivolous" of pretexts. Given its close proximity, parliamentarians also sounded perpetual warnings that without constant vigilance and zealous precautions in the realm of divorce, the "malignant epidemic of evil" south of the border and the "poisonous principles" upon which it relied would spread northward.[70] At the same time, constant statistical comparisons showing the rates of divorce in both countries offered ample opportunities for expressions of moral smugness. As one senator declared in 1888, when it came to safeguarding the sanctity of marriage and the stability of families, Canadians could be "thankful that *we* can show a cleaner record than that of any other progressive people on the face of the earth."[71] Similarly, in 1901, during a heated discussion in the House of Commons about the growing number of Canadian residents who were flocking south of the border to secure divorces in the more accessible American courts, Prime Minister Wilfrid Laurier conveniently evaded this issue and pointed to the nation's solid moral record: "For my part I would rather belong to this country of Canada where divorces are few, than belong to the neighbouring republic where divorces are many. I think it argues a good moral condition of a country where you have

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[70] See, for example, "Divorces in the United States," *Local Courts' and Municipal Gazette* 3 (November 1867): 163; "Divorce Bills," Toronto *Globe*, 15 May 1888; *Senate Debates* (28 March 1882): 180; (30 March 1882): 212; (28 February 1888): 56-62; (24 March 1899): 92; *House of Commons Debates* (13 March 1901): 1422; (1910) *Rex v. Hamilton*, 22 OLR, 488, 27 CCC, 415.

[71] *Senate Debates* (28 February 1888): 59.

few divorces, even though they are made difficult - a better moral condition than prevails in a country where divorces are numerous and made easy by law."[72]

If the 'dangerous' example of the United States reinforced the determination of parliamentarians to restrict the grounds of divorce, the single-minded emphasis on adultery did have a number of consequences. The most obvious was that it created a strict hierarchy of matrimonial offences, reinforcing and perpetuating the notion that sexual infidelity, the main concern of upper- and middle-class men, constituted the worst transgression. As a result, such offences as wilful desertion and habitual cruelty, which for women could be equally disruptive of marital relations and often more devastating in their consequences, were considered insufficient causes for rescinding the marriage contract.[73] In addition, the singular focus on sexual infidelity, coupled with the need to maintain strict state-sanctioned procedures, also fuelled concerted efforts to eradicate the time-honoured divorce customs among Aboriginal peoples. In the minds of colonial state authorities, Indian agents, and christian missionaries, these 'heathen' traditions involved nothing more than "repudiation at will," the mere "casting off" of an undesirable spouse for "trivial causes," or the equally 'uncivilized' practice of "redemption" which required the repayment of the bride price at often inflated rates. Given the 'looseness' of these extra-legal practices, the colonial state

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[72] *House of Commons Debates* (13 March 1901): 1413-24. See also "Change in Divorce Law Defeated In Non-Party Division Of The House," *Ottawa Evening Journal*, 15 February 1916.

[73] In 1917, for example, Kathleen Steacy, writing in *Everywoman's World*, advocated the abolition of the parliamentary divorce system and all existing judicial courts. She favoured the establishment of a Court of Domestic Adjustment in each province, which would "hear all cases between a man and his wife, and ... grant divorce for serious and sufficient cause: adultery, desertion, cruelty, habitual drunkenness, non-support, venereal disease, insanity, and incompatibility when no reconstruction of the home is possible." *Welland Tribune*, 24 May 1917. C. S. McKee of the Toronto Bar supported greater accessibility to divorce, which included extending the recognized grounds. In his opinion, legal cruelty, incurable insanity, habitual drunkenness, and especially wilful desertion often had more serious consequences for married women than "a single act of adultery." McKee, "Law of Divorce in Canada," 36-40, 49-54. See also James Snell, "Marital Cruelty: Women and the Nova Scotia Divorce Court, 1900-1939," *Acadiensis* 18, 1 (Autumn 1988): 3-32; Snell, *In the Shadow of the Law*, 168.

resolutely refused to sanction or recognize the legitimacy of "Indian divorces." In 1914, for example, the Department of Indian Affairs distributed a circular, reminding its Indian agents that "the validity of Indian divorces has never been affirmed in Canada, and Indian marriages ... cannot be dissolved according to Indian customs, but only in such manner as other marriages may be dissolved."[74] Although state officials acknowledged that existing mechanisms for securing a legal divorce were beyond the reach of most First Nations men and women whether residing in Ontario or other provinces,[75] Indian agents, with the assistance of local missionaries, were entrusted with the task of enforcing colonial law, suppressing customary divorce within Aboriginal communities, and impressing upon "the Indians the need of taking a more serious view" of the "sanctity and obligations" of "the marriage relationship."[76] As the Department of Indian Affairs records indicate, these efforts focused on policing and penalizing those 'divorced' First Nations men and women who exercised their traditional right to remarry or to establish common law partnerships. Interpreting and indeed condemning these unions as bigamous or, in most cases, as

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[74] See, for example, (1867) *Connolly v. Woolrich and Johnson et al.*, 1 CNLC, 70, 105-06, 109, 125, 138-39; (1921) *Rex v. Williams*, 4 CNLC, 448-50; "Correspondence regarding Indian Marriage and Divorce, 1914-1946," NAC, RG 10, Department of Indian Affairs, Volume 6816, File 486-2-8, Pt 1; "Kenora Agency - General Correspondence Regarding Immorality On Reserves, 1895-1957, Ibid, Volume 8869, File 487/18-16.

[75] In 1895, for example, Ben J. of Chippewa Hill asked the local Indian agent for permission to obtain a divorce, since his wife had deserted him five years earlier and he had "no idea where she may be." Because he had "no house keeper and after working hard all day [had] to prepare his own meals," he wished to "get married again." In responding to this request, the Deputy Superintendent General of Indian Affairs, made it clear that Mr. J.'s only recourse, albeit an "expensive" one, would be "to apply for divorce in the ordinary way." He further added that his Department was not in a position to "give him the necessary legal advice and assistance in the matter." (1895) "Saugeen Agency - Application of Ben J[] For Permission to Divorce His Wife," NAC, RG 10, Department of Indian Affairs, Volume 2808, File 163, 526.

[76] See, for example, "Ottawa - A Circular Letter to Agents of the Indian Department in Ontario and Quebec Regarding Their Duty to Impress on Members the Proper View of Marriage and Damage Done By Immorality, 1899," NAC, RG 10, Department of Indian Affairs, Volume 2991, File 216, 447; "Policy Paper on Indian Marriages and Separations, 1908," Ibid, Volume 3990, File 180, 636.

adulterous, local missionaries usually intervened by attempting to 'persuade' the guilty couple to sever and abandon the 'illicit' relationship. If religious and moral pressure proved to be ineffective, Indian agents could implement more coercive measures, as specified under the repressive provisions of the 1876 Indian Act. Although not necessarily successful in eradicating informal divorce customs or the 'taking of another spouse', this legislation empowered Indian agents to withhold annuity and revenue monies from Aboriginal men who 'deserted' their families and especially from any First Nations woman who left her husband and lived "'immorally (ie. common law) with another man'."[77]

Although most state officials and political leaders were unwilling to even consider extending the grounds for divorce beyond adultery, the issue of whether or not parliament should strictly enforce the sexual double standard, as was the case in Britain, was much more contentious. Both prior to and after the establishment of the Court of Divorce and Matrimonial Causes in 1858, England was the only Protestant nation in Europe that maintained a gender distinction in its divorce laws: a husband could obtain a divorce on the basis of his wife's adultery alone, whereas a married woman was required to produce evidence of adultery compounded by another offence, such as incest, bigamy, rape, sodomy, bestiality, cruelty, or desertion. In 1888, when Eleanor Tudor-Hart, the wife of a Montreal gentleman, petitioned for a divorce solely on the grounds of her husband's

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[77] See, for example, "Manitowaning Agency - Correspondence Regarding ... Cases of Immorality in the West Bay, Sheshegwaning, Maganettawan and Wikwemikong Bands, 1896-1904," NAC, RG 10, Department of Indian Affairs, Volume 2875, File 176, 964; "Moravian Reserve - Removal from the Paylist of the Names of the Wife of Augustus S[], the Wife of Caleb A[] and the Wife of Joe S[] for Immoral Behaviour, 1879-1892," Ibid, Volume 2076, File 11, 243; "Moravians of the Thames - Correspondence, Reports, Memoranda and Report of Inspector J. Ansdell Macrae Regarding ... Morality Case Files, 1896-1897," Ibid, Volume 2834, File 170, 454-2; McGrath and Stevenson, "Gender, Race, and Policy," 46; Verna Kirkness, "Emerging Native Woman," *Canadian Journal of Women and the Law* 2, 2 (1987/88): 411; Sally Weaver, "The Status of Indian Women," *Two Nations, Many Cultures: Ethnic Groups in Canada*, ed. Jean Leonard Elliot (Scarborough: Prentice-Hall, 1983), 58-59. According to the 1901 census, in which statistical data on divorce was compiled for the first time, 86 First Nations men and women identified themselves as divorced, including 10 residing in Ontario. None of these individuals, however, had undergone state-sanctioned procedures.

adultery (he was, according to the petitioner, a "habitual frequenter of houses of ill-fame"), parliamentarians were confronted with the question of whether it should depart from established English rules and precedents. During the heated debate that ensued, it quickly became evident that there was little consensus on the matter.

The conventional justification for the dual standard in divorce proceedings, as inherited from England and staunchly defended by the House of Lords, was rooted in the longstanding principle that among the upper and middle classes (those who had any hope of securing a divorce), the adultery committed by a married woman was "entirely different" in its "quality" and "consequences" than that committed by a husband. Although a married man's sexual indulgences might be frowned upon as immoral and sinful, in legal terms, they were traditionally viewed as comparatively minor and pardonable offences. This was premised on the assumption that his extramarital encounters or his natural "impulse[s] of passion" would likely involve "a woman of loose character" and, in most instances, would occur "under conditions" which would not threatened the emotional integrity of the marital unit nor "produce children and thereby affect [the] inheritance" rights of his legitimate offspring. For these reasons, a model wife, as one of her "special duties" and out of concern for the interests of her innocent children, was expected to tolerate her husband's liaisons with patient endurance and tender forgiveness. If her domestic situation became too unbearable, she could, by law, petition for the civil courts for a formal legal separation and an alimony allowance, but since a future reconciliation was always possible, adultery alone was not considered sufficient for an absolute divorce.[78]

On the other side of the gender divide, the paramount value attached to female chastity and the biological certainty of fatherhood, especially among men who owned

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78 See, for example, McKee, "Law of Divorce in Canada," 35-36; Gemmill, *The Practice of The Parliament*, 52, 200-03, 210-12, 225-30; Backhouse, "'Pure Patriarchy'," 283-85; Phillips, *Putting Asunder*, 344-54.

property, were two of the cornerstones of a social order organized along patriarchal and patrilineal lines. In this sense, a married woman's 'fall from virtue' was considered irredeemable for two main reasons. Given that she was defined by law as the sexual property of her husband, her adultery was viewed as an 'intolerable insult' to his exclusive rights to her body and, by extension, her wifely and maternal value declined dramatically when 'corrupted' and 'polluted' by someone other than her legitimate owner. In addition, one sexual encounter might produce a child of uncertain paternity, which could have farreaching familial and social consequences, by endangering family succession and the legitimate transmission of property, and by 'imposing' an illegitimate child not only on her husband, but also on civil society. On these grounds, it was considered unreasonable to expect a "refined and virtuous" husband to forgive his contaminated and delinquent wife, making accessibility to divorce far more necessary for upper- and middle-class men than for women (or for that matter, members of the lower classes, who had little or no property to protect and whose moral standards were considered to be much more lax than those of their social superiors).[79]

During the heated debate over Eleanora Tudor-Hart's divorce bill, a number of senators strenuously opposed her petition. They maintained that the gender distinction in

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[79] For example, as one judge noted, "there are many freedoms which, in the unreserved contact of humble life, continually take place without imputation; whilst an equal license in classes of a higher order, and of a more refined education, would naturally lead to a very different conclusion." Cited in (1875) *Campbell v. Campbell*, 22 Gr. Chy., 331. For further discussion of these underlying principles, see, for example, Keith Thomas, "The Double Standard," *Journal of the History of Ideas* 20, 2 (April 1959): 195-216; Rachel Harrison and Frank Mort, "Patriarchal Aspects of Nineteenth-Century State Formation: Property Relations, Marriage and Divorce, and Sexuality," *Capitalism, State Formation and Marxist Theory: Historical Investigations*, ed. Philip Corrigan (London: Quartet Books, 1980), 93-100; Ursula Vogel, "Whose Property? The Double Standard of Adultery in Nineteenth-Century Law," *Regulating Womanhood: Historical Essays On Marriage, Motherhood and Sexuality*, ed. Carol Smart (London: Routledge, 1992), 147-65; Mary Poovey, *Uneven Developments: The Ideological Work of Gender in Mid-Victorian England* (Chicago: University of Chicago Press, 1988), 58-62; André Lachance and Sylvie Savoie, "Violence, Marriage, and Family Honour: Aspects of the Legal Regulation of Marriage in New France," *Essays in the History of Canadian Law*, Volume 5, eds. Jim Phillips, Tina Loo, and Susan Lewthwaite (Toronto: University of Toronto Press, 1994): 161-62.

divorce procedures, which had been "handed down ... from generation to generation," was not only "founded on common sense," but also reflected "sound judgement" and prudent policy. While these political leaders raised the conventional arguments about married men's need to protect their property through the imperative of reproductive certainty, the most pressing fear seems to have been that if parliament passed this bill, it would "establish a dangerous precedent for other cases." In other words, if married women were permitted to petition for divorces on the grounds of their husbands' adultery alone, it would inevitably result in a deluge of petitions initiated by disgruntled wives. Those senators, who supported Mrs. Tudor-Hart's petition and those legal scholars who later applauded the decision to grant her the relief she requested, focused less on the social effects of a married woman's infidelity and more on the moral dimensions of the issue and the need to protect wives from their husbands' depredations and weaknesses. Senator James Gowan, for example, invoked divine authority and christian ethics, arguing that there was no biblical basis for differentiating between the adultery "of the man and of the woman"; under scriptural prohibitions, both were equally culpable as 'sinners' against divine laws. "Will the Senate of Canada," he stated, "affirm by its decision that adultery may be practiced with impunity by husband and father in our Christian community, in the midst of our Christian homes? ... [T]here is but one alternative, we must either allow the proved adulterer to go forth triumphing in the impunity given to a vicious course of life, or we must free this [longsuffering and neglected] wife from a relationship which can now have no sanction before a pure God." Furthermore, in keeping with the protective impulses of late nineteenth-century legislative reforms, the sexual double standard violated the principle that the law was intended "to protect the weak against the strong." If the gender distinction was maintained, it was argued, "the weak" would continue to be denied the same rights and

remedies that had long been extended to "the strong."[80]

Although Eleanora Tudor-Hart's divorce bill was passed and the principle of gender equality was formally upheld,[81] this did not constitute a definitive blow to the sexual double standard. In his 1889 treatise on divorce, for example, John A. Gemmill lauded the precedent established in 1888; in fact, he went so far as to suggest that Canada, as "the most important colony in the Empire," had "shown England a better and a purer way." At the same time, he still maintained that, given the serious social consequences of a married woman's adultery, her crime should be 'punished' accordingly:

> Looking at it from a social, rather than from a moral standpoint, it is true that the wife's infidelity is followed by results of a graver character than those which follow the infidelity of the husband, and that it is therefore in the interests of society that the one should be punished more promptly and more severely than the other. But it is surely illogical and unjust to say that because the infidelity of the wife deserves a heavier chastisement than that of the husband, the husband's breach of vow is in every case to be reckoned venial - that it should never be regarded as a reason for a divorce except when aggravated by other offences, distinguished by a deep dye of turpitude, such as bigamy or incest.[82]

Three decades later, C. S. McKee of the Toronto Bar was prepared to take the latter argument somewhat further. Although he did not challenge the normative belief that a married woman's sexual infidelity was morally and socially reprehensible, his justification for the official removal of sexual double standard in all provincial jurisdictions was rooted in differentiating between past and modern assumptions about middle-class womanhood. "Adultery," he wrote, "strikes at the inmost privacy of married life, at the stability of the home, and at the happiness of the parties concerned." In the past, the naturally forgiving

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[80] For this debate, see Gemmill, *The Practice of The Parliament*, 51-57, 194-245; Backhouse, "'Pure Patriarchy'," 285-91.

[81] (1888) "An Act for the relief of Eleonora Elizabeth Tudor," 51 Vict., c. 111.

[82] Gemmill, *The Practice of The Parliament*, vi, 22, 52, 202-03.

wife was expected to tolerate her husband's indiscretions. In more modern times, however, what qualified her for equal access to divorce was her inherently "more sensitive nature and finer feelings"; what made her husband's philandering so "loathsome" was the constant risk and perpetual fear of contracting venereal disease.[83] Despite such paternalistic rhetoric, when it came to actual practice, as both Constance Backhouse and James Snell have found, many married women, either at the advice of their lawyers or simply out of caution, continued to cite aggravating grounds, such as bigamy, desertion, or cruelty, when petitioning parliament for the dissolution of their marriages.[84]

Given that divorce was simply not an option for the vast majority of the population, it is safe to assume that most Ontario wives and husbands, who were confronted with or offended by an unfaithful spouse, did not take their grievances to the provincial legislature or to the halls of parliament. Furthermore, despite the political rhetoric to the contrary, it also does not seem that the existence of a restrictive divorce environment necessarily prevented married women or for that matter men from breaking their vows of sexual exclusivity. The extent to which wives and husbands engaged in extramarital sexual activities, be it in the form of brief liaisons during marital cohabitation or the establishment of permanent unions after separation, is impossible to determine. It is equally difficult to ascertain whether heterosexual practices and conceptions of 'vice' and 'virtue' varied according to class, ethnicity, or race, even though the rigid moral distinctions constructed by the Anglo-Protestant middle classes were premised on the assumed lax moral standards of the working classes and the sexual depravity of 'foreigners' and racial 'others'. When marriages did disintegrate and new relationships formed, certain social conditions, such as

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[83] McKee, "Law of Divorce in Canada," 35-36.

[84] Backhouse, "'Pure Patriarchy'," 290, and *Petticoats and Prejudice*, 190-91; Snell, *In the Shadow of the Law*, 177-78.

successive waves of immigration to the province and high rates of transiency, especially among the landless population, did create an environment which made it relatively easy for adulterous couples to assume a single family name and to create the illusion of a legitimate marriage. For those 'unfaithful' wives and husbands with established ties to family, church, and community, however, the possibilities of detection and, depending on the circumstances, the risks of public censure were much greater. While churches and communities constituted two key institutions of moral regulation in the colonial period, by the late nineteenth century, middle-class moral reformers and social purity advocates increasingly insisted that, under the conditions of industrialization, urbanization, and immigration from non-Anglo-Celtic sources, such traditional regulatory mechanisms as religious education, church discipline, community surveillance, and other informal sanctions were no longer sufficient to discourage what they perceived as the rising tide of 'aberrational sexual conduct', be it in the form of adultery or illicit cohabitation. In the midst of the 'moral panic' that gripped the Anglo-Protestant middle classes at the turn of the century, social purity advocates mounted a protracted albeit unsuccessful campaign to have adultery classified as a criminal offence.

Punishing Adultery and Illicit Cohabitation: Churches, Communities, and Moral Reform

Since adultery was expressly forbidden by biblical doctrine, it is not surprising that both Roman Catholic priests and Protestant ministers were especially reproachful of those congregational members who were suspected of violating both the sanctity of marriage and the provisions of ecclesiastical laws. Between 1810 and 1855, for example, fifteen Upper Canadian women and seven men were summoned before various Baptist and Presbyterian churches to respond to specific complaints or local rumours that they were guilty of the 'sin' of adultery. While most christian churches upheld the biblical injunction that marital fidelity constituted a mutual obligation of both spouses and that "unchastity was as much a

sin for one sex as for the other,"[85] the church records indicate that Baptist and Presbyterian congregations developed fairly distinct disciplinary practices when confronted with sexually transgressive behaviour among their members.

When church investigations uncovered sufficient evidence to substantiate the allegations of adultery, the more evangelical and less established Baptist congregations were the most stringent in their policy, a pattern which Lynne Marks has found in regard to other sexual and moral infractions.[86] In keeping with the principle "no person living in adultery ... ought to be received or indulged in the church," both female and male offenders usually faced summary excommunication.[87] This was the fate of Sister Ira F., a member of the Oxford Baptist church, who in 1834 was charged by one of the elders with "making free with another man besides her husband." Two female church members, Sister Silus F. and Sister E. offered the most damaging evidence, informing the congregation that they had observed Mrs. F. consorting with Andrew C. on at least two separate occasions. Sister F., for example, recounted an incident that occurred one afternoon when she went to visit the accused. Upon her arrival, she surprised to find that the "door was fastened"; after knocking and while "looking in at the window" to see if Mrs. F. would answer, "she saw a man come out from the bed curtains." She also stated that, when Mrs. F.'s daughter was asked about the matter, she had confirmed that "her mother did go to bed with Andrew C[]." Given the seriousness of these allegations, one church elder asked three other church

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[85] Thomas, "The Double Standard," 203-04.

[86] Lynne Marks, "No Double Standard?: Leisure, Sex and Sin in Upper Canadian Church Discipline Records, 1800-1860," *Gendered Pasts: Historical Essays in Femininity and Masculinity in Canada*, eds. Kathryn McPherson, Cecilia Morgan, and Nancy Forestell (Toronto: Oxford University Press, 1999), 48-64.

[87] (1808) Canadian Baptist Archives (hereafter CBA), Church Minutes (hereafter CM), Oxford Baptist.

women to visit Mrs. F. and to "labour with her on the subject." While Mrs. F. admitted that Andrew C. had been at her house, she maintained that "he never was there before" and denied that he had been "in the room" with her. Despite her denials, "the Church voted to withdraw the right hand of fellowship" from its errant member.[88]

Unlike Baptist congregations, the Presbyterian church sessions demonstrated a greater willingness to restore adulterous men and women to "the communion of the church," but only after they agreed to undergo a rigorous process of public repentance and formal shaming before their respective congregations.[89] This humiliating procedure, which could last for several Sundays, was evidently not designed for the fainthearted. In 1854, Duncan F., who had been expelled from the Franktown Presbyterian church three years earlier on the grounds that he "had fallen into the grievous sin of adultery," articulated "a strong desire" to be readmitted into the church. Although expressing "genuine and deep"

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[88] (January and February 1834) CBA, CM, Oxford Baptist. In total, two men and four women were summarily "cut off" from their Baptist congregations for the 'sin' of adultery. See (24 October 1851) Daniel S., CBA, CM, Perth Baptist; (1 and 5 May 1859) Brother H., CBA, CM, Norwich Baptist; (12 August 1812) Anna S., CBA, CM, Boston Baptist; (28 August 1824) Polly M., CBA, CM, Woodstock Baptist; and (January 1833) Colleen A., CBA, CM, Oxford Baptist, who was found guilty of "going off with a man not her husband and other unChristianlike conduct." One case, however, was dismissed because of lack of proof. In 1831, Jonathan S. informed the Vittoria Baptist church that "about 2 years ago the latter part of February he saw Mrs. B[] and Charles H[] in such a situation that he verily believed they had committed adultery." After an investigation, the congregation concluded that there was "insufficient evidence" to censure the two. (April 1831) CBA, CM, Vittoria Baptist.

[89] Those church members, who refused to or could not undergo this procedure, were either excommunicated or suspended for an indefinite period. See (25 February 1833) John D., CPA, SM, St. Ann's Presbyterian, who was charged with adultery, but was suspended indefinitely when he refused to obey the summons to appear before the church sessions; (22 October 1820) Mrs. A., CPA, SM, First Presbyterian, Perth who, after eloping with Robert F., was excommunicated and "her name erased from the list of communicants"; (25 May, 1 June, and 27 November 1846) an unnamed woman, CPA, SM, St. Andrew's Presbyterian, Perth, who was "charged with adultery and desertion" and "after meeting with the Minister" was asked to appear before the church session. One week later, she obeyed this request and confessed her guilt, but was "dismissed from [the] membership for unrepentance," a decision supported by the Presbytery six months later; and (20 September 1834) Elizabeth B., CPA, SM, St. Ann's Presbyterian, who was accused of adultery by "common fame." But since she was at a distance, the preliminary steps of summoning her before the church sessions could not be taken and consequently, she was suspended from church privileges until they could.

sorrow for his "great sin," he was extremely reluctant to the undergo formal church censure, fearful "that he would not be able to stand a public rebuke before the congregation."[90] Those married men, however, who willingly confessed their guilt and expressed genuine "penitence" in proportion to the gravity of their sin, were "solemnly admonished" and "rebuked" for their conduct and were eventually restored to the "sealing ordinances" of their churches.[91] In contrast to their male counterparts, at least some adulterous wives were subjected to a more protracted and rigorous process before being pardoned and restored to the privileges of their respective churches. As illustrated by the experience of Elizabeth D. of Fergus, such arduous procedures were not simply reserved for aggravated cases, like committing the "heinous sin" of incestuous adultery.[92] In 1837, after confessing to the Fergus Presbyterian church elders that she had had sexual relations with Alexander M. and that her youngest child was the product of "this adulterous connection," Elizabeth was immediately admonished for the "sin and shame of her conduct" and suspended indefinitely. In order to "regain her position in the Church and society," two elders were instructed to visit and converse with Elizabeth, in the presence of her husband, on a regular basis in order to determine if there was an alteration in her behaviour. One year later, the elders did report that, by all accounts, Elizabeth was

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90 (26 January 1854) CPA, SM, Franktown Presbyterian Church.

91 See, for example, (10 June 1849) James M., CPA, SM, Beckwith-Franktown Presbyterian; (25 November 1854 and 24 February 1855) Anthony S., CPA, SM, Amherstburg Presbyterian.

92 For example, in 1848, Euphemia M. expressed "a desire to be absolved from the scandal" of her "heinous sin" of "adultery of an incestuous nature" so she could be admitted to the McDonald Corners Free church. Given the seriousness of her transgression, the church moderator asked the Presbytery "for direction in the case." The Presbytery responded by strongly recommending that the church sessions should exercise extreme caution, by first "ascertaining that the views and feelings of [the accused] showed evidence of repentance" and then by waiting an additional six months before she be admitted. Based on this advice, two members were appointed to "converse with her as often as circumstances admit and necessity may require to bring her to a right state of mind and feeling respecting the heinous sin of which she had been guilty." (15 June 1848) CPA, SM, McDonald Corners Free Church.

"conducting herself with great propriety and was fully sensible of the guilt and shame of her former conduct, was kind and affectionate to her children and diligent in discharging the various duties of a faithful wife." More importantly, they indicated that Elizabeth's husband had "forgiven the unfaithfulness of his wife" and was "satisfied with the change to the better which had taken place on her part." With the breach between the two having been "healed" and with Alexander M. agreeing to contribute to the maintenance of the child, the church session, after a severe admonishment, absolved Elizabeth from the "scandal of her guilty conduct" and restored her to the fellowship.[93]

Even when the Presbyterian church sessions concluded that accused wives were not guilty of adultery *per se*, this did not mean that they were automatically reinstated into the church. In 1839, Mrs. P. of Ramsay was asked to appear before the St. Andrew's Presbyterian church sessions in Perth to answer to accusations of "suspected adultery." Determined to defend her moral reputation, she managed to secure a number of witnesses, who testified that she might well be portrayed as a "giddy and flirtatious" woman, but her behaviour did not warrant being censured as "an adulterer." The church elders concluded, however, that her immodest behaviour still warranted being suspended from the church. It was only two and a half years later, after appealing to the Presbytery, that her disciplinary suspension was lifted by the Ramsay session and she "was admitted there to full communication with the church."[94] Furthermore, one unnamed married woman appeared

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93 (7 May, 4 June, 24 September, and 29 October 1837, 5 May and 15 June 1838) CPA, SM, Fergus Presbyterian. Similarly, Mrs. T. initiated two applications to the Amherstburg Presbyterian church session, requesting permission that the child born of her 'illicit' relationship with Andrew G., a private in the 79th Regiment, be "admitted to the rite of Baptism." While her first request was refused, by January 1834, the Moderator indicated that, since he "had met with Mrs. T[] once every week and conversed with her on the nature and seriousness of her crime," it was agreed that the baptism "not be delayed any longer." (1 January 1834) CPA, SM, Amherstburg Presbyterian.

94 (24 August and 14 December 1839, 12 April 1842) CPA, SM, St. Andrew's Presbyterian, Perth.

before Smith's Falls Presbyterian church sessions in 1860, expressing her desire to "clear up a fama against her," which also involved rumours that she was guilty of adultery. Over the next two months, church elders conducted numerous meetings during which various witnesses presented "conflicting evidence" about the nature of her sexual conduct. While the woman in question was eventually restored to "full membership," she was only able to clear her name after agreeing to take an "Oath of Purgation" in which she swore "her innocence before Almighty God."[95]

Church censure was not the only form of social discipline used to sanction those married women and men who had fallen into the 'sin' of adultery in the early nineteenth century. Besides publishing regular notices concerning runaway wives, some of whom eloped with lovers,[96] Upper Canadian newspapers also kept readers informed about local sexual scandals, especially when they involved members of the upper echelons of colonial society. These brief accounts tend to indicate what kinds of 'illicit' relationships merited public comment or became the main source of community disapproval. In 1835, the editor of the *British Whig* took the opportunity to remind his readers that, although "a matter of infamous notoriety," John Vincent, the editor of what was presumably a rival newspaper, the *Kingston Spectator*, had "for many years been living in open adultery with, and has a family by the wife of another man." Although this public rebuke was precipitated by the appearance of certain "wholly and totally false ... illusions" of an "improper" nature in a recent issue of the *Kingston Spectator*, the fact that his 'illicit' union was invoked as a sign

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95 (4 November 1860 and 2 January 1861) CPA, SM, St. Andrew's Presbyterian, Smith's Falls. By contrast, in 1847, George M., a member of the McDonald Corners Free Church, was absolved of the charge of having committed adultery with Elizabeth B. when no witnesses appeared against him. The church sessions merely "exhorted him ... to be more regular at church." (26 July and 26 August 1847) CPA, SM, McDonald Corners Free Church.

96 For a detailed discussion of the hundreds of notices published in Upper Canadian newspapers concerning runaway wives, see Errington, *Wives and Mothers*, 44-51, and chapter 5 of this thesis.

of his debased character was consistent with moral and legal codes that defined living with another man's wife as a form of theft of or trespass on a husband's matrimonial property.[97] This same logic also accounted for the scandal that arose when the relationship between an unnamed physician and the wife of a militia captain stationed at Sandwich was uncovered in 1838. As recounted in the *Plain Speaker*, the woman had travelled to Coburg with her three children, her sister, and the family doctor, and they all took up residence at the British Hotel. While the purpose of her visit was ostensibly to "improve her health," not long after her arrival, she and her entourage were asked to leave the hotel and seek lodging elsewhere. When the landlady "caught the Doctor taking *liberties*, which his profession did not warrant," she made it clear that they were no longer welcome, since she wished "to preserve the reputation which the house [has] uniformly maintained for respectability." A few days later, presumably to escape further scrutiny and interference, the doctor and "the lady," who took "only her infant," made their "escape by the window and eloped" to parts unknown.[98]

It was precisely these kinds of illicit unions involving 'fallen' wives and their lovers that seemed to generate the greatest community disapproval and could, in turn, provoke harsher forms of censure and punishment. In 1826, a number of Ancaster township residents were particularly offended by the fact that George Rolph, a local lawyer, was "living adulterously with a Mrs. Evans, who had run away from her husband because of ill treatment." One night, at least six men visited his house and, even though Mrs. Evans was absent, they dragged him outside and proceeded to tar and feather him. At the subsequent trial of three of the assailants, the defense attorney argued that the men's actions were entirely justified. "'In this country," he stated, "where there is no other punishment for so

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[97] *British Whig*, 11 December 1835.

[98] "Crim. Con. in High Life," *British Whig*, 4 July 1838.

gross a breach of public morals and public decency than public opinion and public rebuke, the men who stood forward to vindicate the rights of an outraged community deserved praise rather than punishment'."[99] Mrs. Plaxton, the forty-year-old wife of a farmer, confronted precisely this sentiment in 1874, when she returned to Oro township "to see her family" after abandoning her husband and five children, running off with a well-to-do local farmer, and living with him in a nearby town for almost a year. While local residents indicated that her reputation "for chastity" had never been "very good," it did not take long for her to realize that she had become a social outcast and that to remain in the township could be extremely hazardous. In fact, given that there was a great deal of "talk about shooting her" and her lover, Mrs. Plaxton felt it would be prudent "to go to the United States" to live with her brother.[100] In the 1860s, the residents of Garafraxa also sent a strong message to Eliza W. and her brother-in-law that their presence in the community had become an affront to local sensibilities. After Eliza's husband, Edward, was sentenced to life imprisonment for murder, he had asked his brother to "take charge" of his wife and children. In his absence, the two began to live together and she bore a number of illegitimate children. This situation became such a scandal in Garafraxa that incensed neighbours "tarred and feathered" the couple, set fire to and pulled the roof from their house, and drove her 'paramour' out of town. In this hostile atmosphere, Eliza also had little choice but to relocate to another community.[101]

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[99] Josephine Phelan, "The Tar and Feather Case, Gore Assizes, August 1827," *Ontario History* 68, 1 (March 1976): 17-23.

[100] "Crim. Con.," Toronto *Globe*, 19 November 1875.

[101] (1876) *Queen v. Edward W.*, AO, RG 22-392, York County CAI, Box 204; Toronto *Globe*, 11, 12, 17, and 22 May, 21 June, 13 October 1876. This incident came to light during the bigamy trial of Eliza's husband, Edward, which will be discussed in chapter 4. For charivaris directed at adulterous couples, see Bryan Palmer, "Discordant Music: Charivaris and Whitecapping in Nineteenth-Century North America," *Labour/Le Travail* 3 (1978): 6-7, 30-31.

Church investigations and community supervision of adulterous unions certainly did not disappear with the decline of Baptist and Presbyterian disciplinary procedures or the gradual waning of community forms of punishment in the late nineteenth century. What did shift in this period was the explicit desire among certain sectors of the provincial population for direct state regulation of extramarital sexual relations. In addressing the York Assizes in 1875, Justice Morrison expressed wholehearted support for the notion that adultery, like seduction, should "be placed on the criminal calendar" and should be punished by imprisonment.[102] This recommendation took concrete form in 1882, when John Charleton, the member of parliament from Norfolk North, introduced legislation which would simultaneously criminalize seduction and adultery.[103] Among the thirteen clauses contained in his bill, one proposed that adultery be prosecuted as a misdemeanor, allowing either "the husband or wife of one of the offending parties" to initiate criminal prosecution. As one of the most persistent political campaigners against all forms of immorality and sexual vice, Charleton defended his expansive bill, by declaring that the offences included in it were "of a very grave character" for which there was "no remedy in law." Citing similar laws which had been enacted in various American states, he also insisted that the proposed legislation would provide a multifaceted approach to "prevent licentiousness," to promote "public morality," and to introduce stringent punishments for those responsible for the destruction of "domestic peace." Despite the fervour with which he promoted this legislation, his fellow parliamentarians were less than enthusiastic about the prospect of criminalizing adultery. While most did not offer any explicit reasons for their opposition, one M.P.

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102 "Crim. Con.," Toronto *Globe*, 19 November 1875.

103 For a discussion of John Charleton and his eventual success in criminalizing seduction in 1886, see Karen Dubinsky, "'Maidenly Girls' or 'Designing Women'?: The Crime of Seduction in Turn-of-the-Century Ontario," *Gender Conflicts: New Essays in Women's History*, eds. Franca Iacovetta and Mariana Valverde (Toronto: University of Toronto Press, 1992), 31-38, and *Improper Advances: Rape and Heterosexual Conflict in Ontario, 1880-1929* (Chicago: University of Chicago Press, 1993), 66-71.

suggested obliquely that consensual sexual relations, however offensive, should not be the object of direct criminal prosecution. John A. Macdonald, however, was more forthcoming, insisting that it was necessary to draw "a line between what is a sin and what is a crime":

> The evils against which the Bill is directed strike, as we all know, at the very root of society - at the conjugal relation - and if it were possible by any means to restrain this class of immorality, it would be very desirable to do so. At the same time I feel very strongly that there are vices which cannot be reached by legislation, but that can be reached by education, and especially religious education, and by the maintenance of a high standard of morality among the people ... there are some offences which must be left to education and instruction and the self respect of the man and the woman.

To support his contention that religious education rather than criminal punishment would prove to be more effective in inculcating self-restraint and eradicating such illicit sexual activity, he cited compelling evidence that the introduction of adultery laws in the United States had been an utter failure: "[T]here are many States of the Union which have adopted laws of this kind; but I am afraid if we read the newspapers of the United States, and especially those published where these laws are predominant, we will see unmistakable evidence of the failure of these laws. In New York, which is one of these States ... there prevails a very grave state of immorality - greater indeed, I believe, than before the Bill passed."[104] Given the degree of political opposition to the adultery clause contained in the original bill, it was quickly and quietly eliminated by the parliamentary committee selected to review the legislation.[105]

The defeat of Charleton's legislation did not, however, end demands for the criminalization of adulterous relations and for the punishment of illicit forms of

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[104] *House of Commons Debates* (17 February 1882): 47; (13 March 1882): 326-27; (16 February 1883): 38; (6 March 1883): 123-24.

[105] *House of Commons Debates* (15 March 1883): 221, 224; (20 March 1883): 283.

cohabitation. Responding to what was construed as the destabilization of marital and family relations and as a general crisis in sexual morality wrought by an expanding industrial capitalist economy, rural depopulation, rapid urbanization, and rising rates of immigration from non-Anglo-Celtic countries, middle-class social reformers and social purity activists were at the forefront of efforts to eradicate all forms of 'vice', to mould a moral citizenry, and to promote the rejuvenation of the nation. In order to accomplish their goals, they relied on various mechanisms, from championing purity and civics education, urban renewal and 'social hygiene', to campaigning for the enactment of extensive anti-vice legislation.[106] As a number of historians have pointed out, both prior to and after the codification of Canada's criminal code in 1892, the Department of Justice received countless letters from moral reform groups and like-minded citizens urging lawmakers to make adultery a criminal offence as had been the case in New Brunswick since before Confederation.[107] Other citizens directed their concerns to the Ontario Attorney General's Office, complaining about specific cases of flagrant immorality and 'lewd' forms of cohabitation within their communities. In 1898, John E., who identified himself as "one of the common people,"

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106 For detailed discussions of the moral reform movements at the turn of the century, see Mariana Valverde, *The Age of Light, Soap, and Water: Moral Reform in English Canada, 1885-1925* (Toronto: McClelland & Stewart, 1991); Mariana Valverde and Lorna Weir, "The Struggles of the Immoral: Preliminary Remarks on Moral Regulation," *Resources For Feminist Research* 17, 3 (September 1988): 31-34; Carolyn Strange, "From Modern Babylon to a City upon a Hill: The Toronto Social Survey Commission of 1915 and the Search for Sexual Order in the City," *Patterns of the Past: Interpreting Ontario's History*, eds. Roger Hall, William Westfall, and Laurel Sefton MacDowell (Toronto: Dundurn Press, 1988), 255-77, and *Toronto's Girl Problem: The Perils and Pleasures of the City, 1880-1930* (Toronto: University of Toronto Press, 1995).

107 See, for example, James Snell, "'The White Life for two': The Defence of Marriage and Sexual Morality in Canada, 1890-1914," *Histoire sociale/Social History* 16, 31 (May 1983): 117-120; Graham Parker, "The Origins of the Canadian Criminal Code," *Essays in the History of Canadian Law*, Volume 1, 269-70; John McLaren, "White Slavers: The Reform of Canada's Prostitution Laws and Patterns of Enforcement, 1900-1920," *Criminal Justice History* 8 (1987): 80-84. The New Brunswick law referred to stipulated that "[w]hoever shall commit adultery shall be guilty of a misdemeanour and shall pay a fine not exceeding one hundred pounds, or be imprisoned for a term not exceeding two years." (1854) Revised Statutes of New Brunswick, c. 145, s. 3. For cases tried under this statute, see, for example, (1915) *Rex v. Strong*, 24 CCC, 430-37, 26 DLR, 122-27; (1918) *Ex parte Belyea*, 30 CCC, 284-87, 39 DLR, 24-27.

wrote a letter to former Premier Oliver Mowat, in which he described a situation in Woodburn, a small village comprised of fifty inhabitants:

> In this village there is now living a man who is now living with his 3rd woman. But was never married to nay of them. Three sons are now grown up from the 1st woman. The second woman being too old to bear children he put her off and took to himself a young woman. This woman is now being used by the Father and sons in common. [Four] children have already been born in about as many years as a result of the unholy compact. This stream of wickedness seems destined, in the not very distant future, to become a deluge.

Motivated by a strong desire to "save our Country from being cursed by such work as this," Mr. E. urged the former premier to "see to it that someone take up [this] matter," by passing requisite legislation to punish those individuals who persisted in this kind of sexual depravity. He also went on to advise that if such a law were enacted, it would be rendered "utterly useless" unless "definite provision for the enforcement of the same" was introduced. "There is no one in this community," he concluded, "that would dare prosecute those wretches, knowing as we do, that we would not be safe in our beds at night, if we did so."[108]

For most social purity advocates, who lobbied for or supported stricter laws for the punishment of sexual vice, the existence of and alleged rise in adulterous unions and illicit forms of cohabitation merely served as another indicator that moral degeneracy was sapping the social fabric of the province and nation. As the members of the grand jury at the Toronto Assize stated in their presentment in 1913, one of the main reasons why those persons living in "open and flagrant adultery" deserved severe legal punishments was because of their utter contempt for prevailing "moral sentiment[s]" and for established standards of "personal purity and decency." While conceding that "the suppression of vice in its varied forms" was becoming more difficult as "our civilization becomes more

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[108] (1898) "Suggests amendment to code for punishment of persons guilty of fornication," AO, RG 4-32, AG, #149.

complex," these unions were, in their view, having "disastrous" effects on local communities and especially on the impressionable young.[109] Other moral reformers, however, concentrated on what they perceived as the gender, class, and ethnic dimensions of these forms of sexual 'deviancy'. Much of the social purity work of maternal feminist organizations like the Woman's Christian Temperance Union and the National Council of Women focused on eradicating the 'evils' of alcohol, the suppression of 'white slavery', and 'rescuing' and rehabilitating prostitutes. At the same time, the campaign against adultery offered one forum to decry the double moral standard and to promote a new code of male sexual behaviour. While most first-wave feminists strongly advocated sexual continence and 'voluntary motherhood' within marriage, they also emerged as the most vociferous critics of what they identified as men's unbridled lust and licentiousness. By extension, they were equally outspoken about the debilitating effects of venereal disease, particularly on innocent wives infected by promiscuous husbands and its degenerative consequences for the future of the Anglo-Saxon race. For them, the solution was not to promote greater sexual self-determination for women nor to contest the social stigmatization of prostitution. Rather, they argued for a single standard of morality whereby the purity of 'good' women would be protected and men would be subjected to and judged by the same exacting criteria as had long existed for their heterosexual partners.[110]

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[109] (1913) "Grand Jury Presentment," AO, RG 4-32, AG, #971.

[110] See Wendy Mitchinson, "The WCTU: 'For God, Home and Native Land': A Study in Nineteenth-Century Feminism," *A Not Unreasonable Claim: Women and Reform in Canada, 1880s - 1920s*, ed. Linda Kealey (Toronto: Women's Educational Press, 1979), 161-64; Lori Rotenberg, "The Wayward Worker: Toronto's Prostitute at the Turn of the Century," *Women at Work*, 61-63; Constance Backhouse, "Nineteenth-Century Canadian Prostitution Law: Reflection of a Discriminatory Society," *Histoire sociale/Social History* 18, 36 (November 1985): 387-423, and "Involuntary Motherhood: Abortion, Birth Control and the Law in Nineteenth Century Canada," *Windsor Yearbook of Access to Justice* 3 (1983): 126-29. For American and British perspectives, see Mariana Valverde, "'When the Mother of the Race Is Free': Race, Reproduction, and Sexuality in First-Wave Feminism," *Gender Conflicts*, 12-13; Linda Gordon, "Voluntary Motherhood: The Beginnings of Feminist Birth Control Ideas in the United States," *Women and Health in America: Historical Readings*, ed. Judith Walzer Leavitt (Madison: University of

Many moral reformers, including first-wave feminists, also directed their energies toward investigating and combating what was considered the unacceptably low moral standards among First Nations peoples, the poor and working classes, and recent 'foreign' immigrants. In the latter case, the Finnish communities in northern Ontario seemed to receive a considerable amount of attention. Given that Finns and especially those aligned with the socialist movement had gained a notorious reputation for resisting church marriages or for rejecting the institution of marriage outright,[111] christian ministers and moral reformers actively lobbied legal officials for some form of state action which would halt such immoral practices. In 1907, Reverend A.M., a Presbyterian minister, dispatched a letter to the Office of the Attorney General, complaining about what he described as a common and "steadily growing abuse" occurring in Port Arthur. He was referring specifically to those Finnish men who purchased marriage licenses, but without undergoing "any marriage ceremony," simply lived "with the woman ... mentioned in the license." While he strongly suspected that at least some of "these compacts" involved "conjugal infidelity," what he found equally abhorrent was that these "infidels" had the audacity to object "to a marriage ceremony in which there [was] any references to the Deity" and then spoke "lightly" of their conjugal arrangements, claiming "that the possession of such [a] license [was] a sufficient and valid marriage." Furthermore, he had also heard that the

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Wisconsin Press, 1984), 104-16; Ellen Carol DuBois and Linda Gordon, "Seeking Ecstacy on the Battlefield: Danger and Pleasure in Nineteenth-Century Feminist Sexual Thought," *Pleasure and Danger: Exploring Female Sexuality*, ed. Carole S. Vance (Boston: Routledge & Kegan Paul, 1984), 31-49; Margaret Hunt, "The De-Eroticization of Women's Liberation: Social Purity Movements and the Revolutionary Feminism of Sheila Jeffreys," *Feminist Review* 34 (Spring 1990): 23-34; Lucy Bland, "Marriage Laid Bare: Middle-Class Women and Marital Sex, 1880s-1914," *Labour and Love: Women's Experience of Home and Family, 1850-1940*, ed. Jane Lewis (Oxford: Basil Blackwell, 1986), 123-46.

111 Varpu Lindstrom-Best, *Defiant Sisters: A Social History of Finnish Immigrant Women in Canada* (Toronto: Multicultural History Society of Ontario, 1988), and "Finnish Socialist Women in Canada, 1890-1930," *Beyond the Vote: Canadian Women and Politics*, eds. Linda Kealey and Joan Sangster (Toronto: University of Toronto Press, 1989), 196-216.

women of these illicit unions were deluded into believing "that they are within the laws of Canada by so consenting to live with a man" and did not realize they had "no legal rights as married women." He concluded by insisting that the whole matter "is sufficiently serious to call for action and if no law exists then one should be enacted to prevent such a practice." For him, what was at stake was the moulding of "good citizenship": "The number of Finns in these towns is large and they should be taught in some way that Canadian laws and [p]ractices should be respected."[112] Two years later, Mr. H. M., a field secretary in the Methodist's Department of Temperance and Moral Reform, raised a related concern.[113] He informed the Attorney General that he had received a letter from Copper Cliff, complaining about "several Finlanders" who were "living together as man and wife although they have not been legally married," and "in some instances the men have wives in their native land." It was well known in town that one "foreigner," for example, had "a wife and five children in the Old Country, and yet the man is living with another woman." While Mr. M. bitterly complained that "there is probably no law at present to touch such cases," he strongly suggested that these sexual irregularities should be dealt "with by deportation or in some other way."[114]

Despite this fairly persistent public pressure calling for more stringent state

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112 (1907) "Complaint of practice of Finlanders in procuring marriage licenses and inducing women to live with them without undergoing [a] marriage ceremony," AO, RG 4-32, AG, #667.

113 As Mariana Valverde has pointed out, the Department of Temperance and Moral Reform was established in 1902 and among its many social purity causes it promoted "civics education for children, the suppression of gambling and obscene literature, the need to enforce the abortion law ... to raise the age of consent, ban liquor, criminalize adultery, pass tougher obscenity legislation and provide more modern care for criminals and the feebleminded." The Department also warned about "the dangers of white slavery in Canada" and, by linking "sexual with national purity," it advocated "stricter control over immigrants." Valverde, *The Age of Light, Soap, and Water*, 53.

114 (1909) "[C]omplaint of certain Finlanders living together as man and wife at Copper Cliff," AO, RG 4-32, AG, #289. For a detailed discussion of how northern Ontario's reputation for immorality was constructed in gender, class, racial, and ethnic terms, see Dubinsky, *Improper Advances*, chapter 6.

measures to deal with common law unions and adulterous relationships, officials at the Department of Justice and in the Attorney General's Office, after "serious consideration," did not press for the inclusion of these offences in the nation's criminal laws.[115] The only legislation enacted was a rather ambiguous criminal law passed in 1890, which sought to regulate "unlawful cohabitation." This statute, which explicitly criminalized Mormon plural marriages and the general practice of polygamy, also included one clause stipulating that any one "who lives, cohabits, or agrees or consents to live or cohabit in any kind of conjugal union with a person who is married to another" was liable to be imprisoned for five years and to a fine of $500.[116] While this vaguely worded subsection was potentially open to wide judicial interpretation and at least one judge complained that he was unsure if "it mean[t] anything at all,"[117] the trial of James L. in Toronto in 1893 did, by all legal accounts, resolve the question of whether or not this statute was intended to punish adultery. When first arraigned in the Toronto police court, Mr. L. was formally charged with unlawfully living "in conjugal union" with Mary M., a married woman. After hearing the testimony of various witnesses, including Mary's husband and the proprietor of the Empress Hotel where the couple was discovered, the accused was committed for trial at the Toronto Assizes. When the case was called the next day, Chief Justice Armour held that it was unnecessary for the jury to hear the evidence and ordered the immediate release of the prisoner. Concluding that "the statute under which [the accused] was indicted was framed with the object of preventing polygamy," he ruled that "adultery [was] not indictable" under

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115 Parker, "The Origins of the Canadian Criminal Code," 269-70; Snell, "'The White Life For Two'," 118-20; McLaren, "White Slavers," 84.

116 (1890) "Offences in Relation to Marriage," 53 Vict., c. 37, s. 11, ss. 5 (d).

117 (1906) *The King v. John Harris*, 11 CCC, 254-56.

this enactment.[118] In subsequent decades, when angry husbands or police constables laid similar 'living in adultery' complaints, local magistrates tended to follow Chief Justice Armour's ruling. This was especially the case when they managed to arrange a marital reconciliation between the wayward wife and her offended spouse.[119]

While turn-of-the-century political leaders frequently waxed eloquent about the state's paramount duty to safeguard the purity and stability of marital and familial relations and to act as the guardian of public morality, adultery was one of the few 'moral' offences that remained untouched by direct criminal legislation. This persistent reticence led members of the grand jury at the Toronto General Sessions in 1913 to declare with deep "regret" that the "arm of the Law seem[ed] to be nerveless" in this matter.[120] The fact that adultery could not technically be classified as criminal activity certainly accounted for much of the political resistance to proceed on this issue. In addition, lawmakers may also have subscribed to the view that the educational and reformative work of non-state agencies would ultimately be more effective in inculcating sexual self-restraint and in curbing

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[118] (1893) *Queen v. James L.*, AO, RG 22-392, York County CAI, Box 256; Toronto *Globe*, 19 and 20 April 1893; 34 *Canada Law Journal*, 546; Henri Taschereau, *The Criminal Code of the Dominion of Canada* (Toronto: Carswell Co., 1893), 287-88.

[119] For example, in 1902, Galt's police magistrate dismissed two adultery cases within a matter of weeks: in May, Thomas W. of Galt charged Arthur S. with living with his wife; a few weeks later John H. and Lydia B., both married, were arrested by Galt's chief constable on charges of "living together in conjugal union as man and wife." (28 May 1902) *Thomas W. v. Arthur S.* and (18 June 1902) *Chief Constable William C. v. John H. and Lydia B.*, RG 22-13, GPC, Volume 12. In a more telling case, when Matthew S. was arraigned in the Elgin County court in 1903 on charges that he had, for one year, lived unlawfully in conjugal union with Mary S., a married woman, he assured the judge that "he would not further interfere between man and wife." Based on this promise and the fact that Mary S. and her husband were "willing and desirous to live together," the case was "not pressed further." (1903) *King v. Matthew S.*, RG 22, Elgin County CCJCC Docketbook, 1879-1908. The only exception to this pattern involved the case of Peter G. of Sault Ste. Marie, who was fined $250 plus $5 court costs in 1918 for "living in adultery." (12 and 27 August 1918) *R. G. V. v. Peter G.*, AO, RG 22, Algoma District (Sault Ste. Marie) Police Court Record Books, Volume 2.

[120] (1913) "Grand Jury Presentment," AO, RG 4-32, AG, #971.

extramarital unions. It is, however, also tempting to suggest that this resistance was at least partially motivated by a self-interested desire to protect otherwise 'respectable' married men from undue punishment and public scandal for their sexual lapses. However draconian such a law might have been, it would have offered wives the option of lodging complaints against their husbands based solely on their sexual misconduct. As it stood, most of the legal penalties and social sanctions designed to discourage adultery weighed heavily on various categories of 'fallen' women: be they 'impure' wives who transgressed the bonds of marital duty and sexual propriety; or 'hardened' prostitutes who bartered their chastity for economic gain and who were targeted as the main agents of male licentiousness. Furthermore, unlike married women, husbands and especially those of economic means did have access to various remedies when faced with behaviour on the part of their wives that they considered unacceptable, particularly if that conduct involved what the law defined as direct violations of their conjugal rights.

Adulterous Wives and Injured Husbands: Violating the Rights of Property

Although the proprietary nature of marital relations did undergo some legal modification in the latter half of the nineteenth century, a husband's claims over his wife's person as well as her domestic and sexual services did entitle him to seek monetary remuneration in the civil courts for various infringements on his marital rights. In instances when a married woman sustained physical injuries because of the negligence or violence of a third party, her husband could sue for damages, based on what was referred to as the "loss of consortium" or being deprived of his wife's "society," "companionship," and "services." In other words, since a husband was obliged to support a woman, who was temporarily or permanently incapable of performing her wifely duties, it was considered appropriate that he be compensated for his loss.[121]

A number of married men also launched successful civil actions against and recovered substantial damages from their wives' parents on the grounds that they had, without sufficient cause, interfered with and trespassed upon conjugal rights. This rested on the principle, as Justice Middleton pointed out in 1919, that a married woman's "rightful allegiance" and her higher duty should be directed toward her husband, her "true guardian." While he did acknowledge that parents retained the "right to guide [and] counsel" their daughter and by the late nineteenth century could, "from motives of kindness and humanity," legally offer her assistance and refuge when she sought "shelter from the oppression of her own lawful protector," he nonetheless stressed that, upon marriage, the relationship between parent and child became "subordinate." Consequently, "under all normal circumstances," parents had "no right to interfere between the husband and his wife." Referring specifically to the law of contract, Justice Middleton went on to explain

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[121] See, for example, (1870) *Campbell and Wife v. Great Western Railway Co.*, 20 UCCP, 345-51, 563-68; (1871) *Hunter v. Ogden*, 31 UCQB, 132-40; (1919) *Brawley v. Toronto R.W. Co.*, 46 OLR, 31-36. For similar cases in the American courts, see Sara L. Zeigler, "Wifely Duties: Marriage, Labor, and the Common Law in Nineteenth-Century America," *Social Science History* 20, 1 (Spring 1996): 77-79.

that anyone "who induces another to break a contract is liable in damages, unless there is justification for his course. One who without justification induces the wife to violate her obligations towards her husband is, on like ground, liable in damages."[122]

If under "normal circumstances" the rights of a husband superseded those of parents, the legal precedent established in 1891 by the British Appeals Court in the highly controversial case, *R. v. Jackson*, placed certain limits on a married man's control over his wife's person and her freedom of movement. The court ruled that if a married woman refused to live with her husband, he was no longer entitled to "forcibly take possession of her body" or "to keep her in confinement" in order "to enforce [the] reconstitution of conjugal rights." While this judgement did acknowledge a married woman's legal capacity to make independent decisions "as to her own custody" even if they contravened the will of her husband,[123] her parents could still be held liable for various forms of "misconduct and interference." These infractions included: "inducing" their daughter, through undue influence, persuasion, or duress, "to live apart from her husband"; causing a marital separation by maliciously "sowing the seeds of discord and hatred"; and/or unjustly "receiving and harbouring her against her husband's will." The damages in these cases, which could be considerable, were assessed according to the degree of wrong suffered by

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[122] (1919) *Osborne v. Clark*, 45 OLR, 601.

[123] (1891) *R. v. Jackson*, 1 QB, 671-86 (England). In this case, Emily Jackson's husband responded to her refusal to live with him by forcibly seizing her in the street and keeping her locked up in the house of one of his relatives. Three years later, Emily managed to regain her freedom after her friends successfully brought *habeas corpus* proceedings against him and the case reached the British Appeals Court. In addressing the legality of a husband's right to imprison his wife, the court was also compelled to consider a husband's related entitlement to chastise his wife physically. Holcombe, *Wives and Property*, 30; Philippa Levine, "'So Few Prizes and So Many Blanks': Marriage and Feminism in Later Nineteenth-Century England," *Journal of British Studies* 28 (April 1989): 167; Carol Bauer and Lawrence Ritt, "Wife-Abuse, Late-Victorian English Feminists and the Legacy of Frances Power Cobbe," *International Journal of Women's Studies* 6, 3 (May/June 1983): 202-203. For the controversy that this ruling generated in England, see Ginger Frost, "A Shock to Marriage?: the Clitheroe Case and the Victorians," *Disorder in the Court: Trials and Sexual Conflict at the Turn of the Century*, eds. George Robb and Nancy Erber (Houndsmills: Macmillan Press, 1999), 100-18.

the husband, based on the alienation of his wife's affections and his loss of consortium (or his right to her "services, comfort, and assistance").[124]

In 1893, for example, William Metcalf, a Simcoe County farmer, launched such a civil action against his parents-in-law, Samuel and Martha Roberts. In his deposition, he complained that they had exerted "undue influence" over his wife, Levinia, and in the process, persuaded her "to leave him." On the day of her departure, Mr. Roberts appeared at his house accompanied by two hired men, one of whom identified himself as a county constable, and he promptly informed his son-in-law that "they had come to take away his wife [and child], and threatened to use force if he offered any resistance." During the trial at the Barrie Assizes and later in the Court of Chancery, the main issue under consideration was whether or not Levinia's parents had "acted in good faith" and were in any way justified in their actions. While William flatly denied that he had ever given "his wife any just cause to leave him," Levina and her parents, however, told a different story, arguing that she had left "of her own freewill" and had valid reasons for refusing to live with her husband "under [any] circumstances." Levinia's main grievances focused on what she described as his persistent "ill-treatment," "bad conduct," and especially his "dirty actions," namely his insistence "on having sexual intercourse with her at inordinately short intervals of time and at unreasonable and improper hours and places." In rendering his decision, Justice Falconbridge immediately dismissed her complaints as "extremely improbable," concluding that "no case of cruelty, giving the wife good cause for leaving the plaintiff or refusing to live with him, had been proved." For this reason, he severely chastised her parents for not using the "influence which they possessed over her ... in the direction of

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[124] See, for example, (1917) *Webb v. Bulloch*, 13 OWN, 343-44. In this case, Mr. Webb of Brockville launched an action against his parents-in-law for inducing his wife to leave him immediately after their secret marriage, for deliberately preventing him from living with her by taking her to Manitoba, and for their role in planning and assisting her in obtaining a divorce in Ohio. For all of the "grievous wrong[s]" he had "suffered," he was awarded $5000 in damages.

persuading her to try and live with [her] husband." His harshest condemnation, however, was reserved for the "extreme and violent measures" and the "physical and quasi-official" forms of "intimidation" employed by Mr. Roberts when removing his daughter from her husband's household. This "invasion of the plaintiff's house" was, in his opinion, "a gross wrong" and an "outrage." It was principally on this basis that he ordered Mr. and Mrs. Roberts to pay what was a comparatively modest sum of $250 in damages plus the full costs of the suit. Levinia also received a stern rebuke from the judge. "It is a pity," he chided, "that the plaintiff's wife cannot overcome her apparently invincible objection to return and live with her husband."[125]

The proprietary nature of a husband's marital and sexual rights, however, was best exemplified in civil suits of criminal conversation.[126] Married men and especially those with sufficient economic means were legally entitled to seek monetary damages from those who had "debauched" or had "criminal connection" with their wives, and had "enticed"

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[125] (1893) *Metcalf v. Roberts et al.*, 23 OR, 130-42. See also (1919) *Osborne v. Clark*, 45 OLR, 594-605. In this case, Mr. Osborne, a young machinist, sued his parents-in-law for $10,000 in damages and obtained an award of $800. This latter verdict was, however, overturned on appeal. The evidence certainly revealed that his wife's parents were opposed to the marriage, that they treated their son-in-law "'with coldness and aversion'," and that their relations with him were marked by a number of violent altercations. But Mr. and Mrs. Clark successfully argued that they had taken their daughter in with the full consent of her husband because of her deteriorating physical and mental health after the birth of her first child. They also convinced the appeal judges that the reason they had refused to allow Mr. Osborne access to her room and later to their house was because her physician "considered it harmful" and not out of any malicious desire to deny him his "marital rights." Finally, since Mrs. Osborne returned to live with her husband after her recovery six months later, the presiding judges ruled that the verdict and judgement could not be sustained.

[126] The other explicit manifestation of a husband's proprietary right to his wife's sexual services was codified in the 1892 criminal code, which confirmed that marital rape was exempted from prosecution. Constance Backhouse, "Nineteenth-Century Canadian Rape Law, 1800-92," *Essays in the History of Canadian Law*, Volume 2, ed. David Flaherty (Toronto: University of Toronto Press, 1983), 234-35, and *Petticoats and Prejudice*, 178.

such women from familial authority and protection.[127] If successful, these civil actions provided a husband with financial compensation not only for the "loss of consortium" or the "alienation of his wife's affections," but also for sexual trespass or, as specified in one case, for "the injury done to the husband by the defilement of his wife, the invasion of his exclusive right to marital intercourse, and the consequences resulting therefrom."[128] As one Ontario judge pointed out in 1919, this action was based on the precept that "any outsider" who interfered with and deprived a husband of his conjugal rights, did "so at his peril." If "the wrongdoer [was] a man seeking the affection of the wife and enticing her from her rightful allegiance," he added, "the heinous nature of the wrong [was] obvious."[129] Particularly in the nineteenth century, a number of married men initiated this form of civil litigation prior to submitting an application for a legislative or parliamentary divorce, unless the adulterous couple managed to escape outside the jurisdiction of the provincial courts.[130] If the jury ruled in the husband's favour, such an action would not

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127 As Lawrence Stone has argued, criminal conversation suits emerged in England in the late seventeenth century at a time when the church courts began to decline, adultery was 'silently' decriminalized, the state began to suppress duelling as the main method of defending the affronted honour of upper- and middle-class husbands, and civil litigation for damages emerged as "an acceptable alternative to previous standard modes of revenge for cuckoldry" within an increasingly commercialized economy. Stone, *Road to Divorce*, 232-41. In her study of duelling in Upper Canada, Cecilia Morgan found that "an insult concerning the sexual chastity of a wife" did provoke a number of challenges. With the possible exception of the duel between John Stuart and John Grogan in the late 1830s, however, none involved an offended husband and his wife's seducer. Cecilia Morgan, "'In Search of the Phantom Misnamed Honour': Duelling in Upper Canada," *Canadian Historical Review* 76, 4 (December 1995): 529-62; Johnson, "Friends in High Places," 217.

128 (1900) *Bailey v. R.*, 27 OAR, 712.

129 (1919) *Osborne v. Clark*, 45 OLR, 601.

130 For example, John McLean, a Toronto gentleman and merchant tailor was unable to initiate an action against Alexander Gallagher, his wife's lover and a cooper by trade, since the adulterous couple and their "spurious" offspring were living in Ohio. William Beresford, another Toronto gentleman, was in a similar situation in 1851, when he discovered that his wife was living with David Gallagher, his former servant, in Rochester and in 1852 gave birth to an illegitimate child. (1859) "An Act for the relief of John

only provide monetary compensation for his 'pain' and 'injury', but it could also be offered as compelling proof of his wife's adultery.[131]

Given that criminal conversation suits were designed to compensate a married man for the violation of his exclusive rights in his wife, the loss of her society and affection, the destruction of his domestic happiness, and the public disgrace he suffered because of her adultery, these legal contests necessarily pitted the 'injury' endured by the husband against the 'villainy' of his male competitor. The role of the profligate wife in these often highly publicized dramas was that of object, the physical embodiment of violated, damaged, and alienated property as well as the symbol of his dishonour.[132] In order to make a legitimate claim for remuneration, however, the male plaintiff was required to provide definitive proof that he was in fact legally married to the adulterous woman, since in the absence of a valid matrimonial union, there could be no crime of adultery nor sexual trespass. This strict rule

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McLean," 22 Vict., c. 82; *Debates of the Legislative Assembly of United Canada* (1852-53): 1200-01, 1852-53, 2924-25; (1853) "An Act for the relief of William Beresford," 16 Vict., c. 267.

[131] For example, John Stuart obtained a judgement of £671-14-3 plus court costs in 1839; John Martin, a Cayuga barrister, obtained a verdict for $2000 in the early 1870s; and Andrew Irving, a Toronto clerk, was awarded $100 in the late 1880s. (1841) "AN ACT for the relief of John Stuart," 3 Vict., c. 72; (1873) "An Act for the Relief of John Robert Martin," 36 Vict., c. 126; (1888) "An Act for the relief of Andrew Maxwell Irving," 51 Vict., c. 109. In some cases, however, husbands may have obtained a favourable verdict, but were unable to recover the damages and costs. For example, in 1840, Captain Henry Harris received a judgement in the amount of £7500, but after the seizure and sale of the defendant's property and the payment of his debts, he only recovered £49. Similarly, in the 1870s and 1880s, Henry Peterson, a Guelph barrister, Walter Scott, a Nottawa gentleman, and George Hatzfield, a Hamilton accountant, each laid successful suits against their wives' lovers, with Mr. Peterson being awarded $5000 and Mr. Hatzfield receiving $1000. In each case, the men told the Senate Divorce Committee that they "exhausted every lawful means for the recovery of the amount ... without effect." "Capt. Harris's Divorce Bill," *Chronicle and Gazette*, 19 February 1845; (1875) "An Act for the relief of Henry William Peterson," 38 Vict., c. 98; (1877) "An Act for the relief of Walter Scott," 40 Vict., c. 88; (1885) "An Act for the relief of George Louis Emil Hatzfield," 48-49 Vict., c. 38.

[132] Under Ontario's law of evidence in civil cases, married women were not permitted to testify in their own defence prior to the passage of a statutory amendment in 1882. See (1869) "An Act to Amend the Law of Evidence in Civil Causes," 33 Vict., c. 13, s. 5 (b); (1882) "An Act for the removal of certain defects in the Law of Evidence," 45 Vict., c. 10, s. 4; "*Campbell v. Gordon* - Crim. Con.," Toronto *Globe*, 16 and 17 October 1873; (1894) *Murray v. Brown*, 16 PR, 125-26.

was principally designed to prevent fraudulent suits and invidious blackmail. As Chief Justice Robinson pointed out in 1848, it was "necessary to guard against the probability of persons setting up a marriage falsely, as a mere contrivance to recover heavy damages for the supposed violation of rights which never existed."[133] A husband was also barred from recovering damages if the evidence indicated that he had "'in some degree been a party to his own dishonour'," especially "'by giving a general license to his wife to conduct herself as she pleased with men generally, or by assenting to the particular act of adultery with [the] defendant'."[134]

With the exception of those relatively rare instances when the accused confessed to the crime or pleaded no contest,[135] one of the main responsibilities of the jury was to

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[133] (1848) *Phipps v. Moore*, 5 UCQB, 18. See also (1846) *Doe Ex Dem. William Breakey v. Jane Breakey*, 2 UCQB, 360; Gemmill, *The Practice of The Parliament*, 106-08; Alfred Morine, "Void and voidable marriages - Decrees of nullity - Jurisdiction of Supreme Court of Ontario - Critical Review of decided cases," (1916) 30 DLR, 17. For criminal conversation actions in which the proof of the marriage was at issue, see (1860) *Ford v. Langlois*, 19 UCQB, 312-13 in which Mr. Ford's suit could not be maintained, because he could not produce definitive evidence of a legal marriage, even though the woman involved "had lived with him as his wife" and was "reputed and known as such." See also (1864) *Frank v. Carson*, 15 UCCP, 135-62 which revolved around the validity of a Jewish marriage celebrated in Syracuse, New York in 1859.

[134] A husband was also disentitled to recover damages if the evidence showed that he had "'totally and permanently given up all advantages to be derived from [his wife's] society'." This was, however, one of the most contentious legal issues in criminal conversation suits. The main question debated by the judiciary was under what circumstances (for example, if the couple mutually agreed to separate, if the husband deserted his wife, or if he forced her to leave because of his cruelty) could it be said that a husband had relinquished his claims to his wife to the extent that her consortium became of "little or no value" to him. See (1869) *Patterson v. McGregor*, 28 UCQB, 280-94; (1904) *Milloy v. Wellington*, 3 OWR, 576-78, 4 OWR, 82-90; (1906) *Milloy v. Wellington*, 7 OWR, 298-300; (1904) *C. v. D.*, 8 OLR, 308-31; (1906) *C. v. D.*, 12 OLR, 24-27.

[135] See, for example, "Crim. Con. Plaxton v. Beardsall," Toronto *Globe*, 19 November 1875. In this case, Mr. Beardsall, a well-to-do farmer from Oro township, did admit "the truth of the charges" against him, by acknowledging he and the plaintiff's wife had "criminal intercourse" while she was living with her husband. In order to mitigate his culpability and the amount of damages, he insisted that when he left the township in 1874, Mrs. Plaxton "had followed him about, he had remonstrated with her, and told her to go home and mind her family." Even though he "wanted to get quit of her," she refused to return, informing him that "her home was no home, as she got nothing but abuse." Despite Mr. Beardsall's efforts, he was ordered to pay $500 in compensation, for "his extreme disregard of the happiness of others" and his "folly"

determine whether there was sufficient evidence indicating that "criminal intimacy" had indeed occurred between the plaintiff's wife and the male defendant. Often referred to as "an act of darkness" and one which usually occurred under conditions of "great secrecy," a married woman's adultery was regarded as one offence that was difficult to prove. In order to ensure that husbands were not denied compensation when warranted and that their "marital rights" continued to be protected, "direct evidence of the fact of adultery" was not required to sustain an action. Rather, besides taking into account "the character and conduct of the plaintiff and of his wife" and "the terms on which [they] were living prior to and at the time" of the alleged adultery, it was sufficient to prove "proximate acts and circumstances," from which the jury could reasonably infer that "the criminal act" had been committed.[136]

These rules of evidence were debated and upheld during the trial of James Carson at the York and Peel Assizes in 1865. Charged with having wrongfully enticed Sarah Frank to "deport and remain absent" from her husband, Abraham's "house and society" "without his consent and against his will," Mr. Frank's attorney called various witnesses, who were asked to evaluate the nature of the relationship between Sarah and her husband, and between her and the defendant. According to testimony of various family members, when Abraham threatened to murder his wife during one of their many quarrels, Sarah decided to leave him and she took up residence at a Toronto boardinghouse. While living there, as indicated by neighbours and acquaintances, she and James were frequently seen driving and walking together and he was known to visit her at her residence "at all hours." In

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in "going away with the woman and keeping her away" from her family.

[136] See, for example, (1875) *Campbell v. Campbell*, 22 Gr. Chy., 326-32; (1904) *Milloy v. Wellington*, 4 OWR, 88; (1921) *Maguire v. Maguire*, 50 OLR, 581. These same evidentiary rules operated in parliamentary divorce cases. Gemmill, *The Practice of The Parliament*, 108-23; McKee, "Law of Divorce in Canada," 29, 47.

addition, a rather suspicious purchase receipt confirmed that James had supplied Sarah with a bedstead and mattress and it was strongly implied that "he even paid her board" since she did not seem to have "the means of doing so herself." Equally damaging was the fact that James had admitted to one witness that he kept a "mistress" or a "fancy woman," and in a telegram sent to Mr. Frank, he indirectly referred to Sarah as his wife. This accumulation of circumstantial evidence, which included instances of "improper familiarity" in public and various possibilities for "privacy and concealment," led Justice John Wilson to conclude that "with all this intercourse and freedom," there were plenty of "opportunities for criminal intercourse." Furthermore, he maintained that there was no reason to believe that "these opportunities were not neglected by the parties." The jury agreed and awarded Mr. Frank $2000 in damages.[137]

Not all presumptive evidence was ruled as sufficient to sustain an action, however. In 1872, for example, Chief Justice Hagarty refused to allow a suit for $10,000 in damages launched by a Mr. McCabe against a Mr. Cooper to go to the jury at the York Assizes. In this case, the only incriminating evidence against the defendant was the testimony of Mrs. McCabe's "nurse-girl." She disclosed that Mr. Cooper often visited Mrs. McCabe while her husband was "absent at work." On one occasion, she had seen them "come from behind the parlour door, which was partly open. She previously heard a sort of scrambling, and when Mrs. McCabe came out her face was flushed, and her hair 'tosled'." During another visit, the girl recounted how she had "heard a noise as of running around the table in the parlour" and then overheard Mrs. McCabe say 'Stop'." Based on this testimony, Mr. McCabe's attorney suggested that, in light of the defendant's frequent and unjustified visits to the plaintiff's home in his absence, there was sufficient evidence to prove the allegations of 'criminal intimacy'. He went on to cite a recent successful suit in

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[137] (1865) *Frank v. Carson*, 15 UCCP, 135-62.

which "the only evidence was that the parties had been seen sitting on the sofa together." Chief Justice Hagarty, however, disagreed, stating that "he had never heard a case of *crim. con.* in which the evidence was so slight as this." In his opinion, "these visits might be very foolish, but surely the mere fact of a man visiting a married woman was not sufficient to ground an action for *crim. con.* upon. If the parties went away together; it would be a different thing." Under strong protest from Mr. McCabe's attorney, the judge ordered a non-suit and released the defendant.[138]

When members of the jury, however, determined that there was sufficient evidence of 'criminal conversation', one of their principal tasks was to calculate the appropriate amount of compensatory damages. These assessments tended to incorporate a number of considerations. Besides taking into account the social status of the plaintiff and the financial position of the defendant, juries were asked, based on the evidence, to assess "the actual value of the wife to the husband," which included the degree of happiness the couple had enjoyed prior to the criminal intercourse, the amount of honour he had lost as a result of his wife's adultery, and the estimated worth of her sexual, maternal, domestic, and other services. For example, when Mr. Maguire of Kingston was awarded $15,000 in 1921, the jury calculated the amount as follows: $5,000 was considered to be a "proper and reasonable" sum for the alienation of his wife's affections and his loss of consortium; and the other $10,000 was deemed highly appropriate for the "debauchment" and "corruption" of his wife, the "blow to his marital honour," the destruction of "his matrimonial and family life," and "the laceration of his feelings owing to the successful attack upon his

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138 "Alleged Crim. Con. - McCabe v. Cooper," Toronto *Globe*, 21 March 1872. Other criminal conversation suits in which the jury found the accused not guilty include "John Dopp v. William Hazelton," *London Free Press and Daily Western Advertiser*, 11 October 1862; and "Miller Boughner v. John McBride," a Port Dover businessman, Toronto *Globe*, 17 and 19 April 1883.

exclusive right of intercourse."[139] By contrast, William Hooper, described as "an Englishman of very respectable connection," attempted to recover £500 in compensation in 1861 from Peter Ellerby for "the loss of society of his wife" and for engaging "improper intimacy with her." There was little doubt that Mrs. Hooper had left her husband "without his knowledge or consent" in 1855. Two years later, she and the defendant began to live together in Toronto and the two eventually had a child. The testimony of various family members, however, strongly suggested that, prior to her departure, the Hooper's seven-year marriage had been far from "happy and contented." They characterized Mr. Hooper as an extremely "violent" man, who frequently struck and used the "whip-stock" on his wife. The evidence also revealed that he had shown spousal indifference when he had sent her an anonymous letter two years earlier, informing her that he had died in Australia. Although Mr. Hooper's lawyer attempted to convince the members of the jury that the plaintiff had suffered "very great pain" and loss when he discovered that his wife was living with Mr. Ellerby, they were not persuaded. In light of his conduct, they returned a verdict of only one shilling in damages.[140]

In addition to criminal conversation suits, married men also had the option of suing for damages purely on the grounds that another man's improper attentions had caused the alienation of his wife's affections. As Justice Hodgins pointed out in 1920, even in the absence of actual 'criminal intercourse', the husband could suffer both injury and loss: "'One who by improper means alienates a wife's affections from her husband, though she neither leave him nor yield her person to the seducer, injures the husband in that to which

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[139] (1921) *Maguire v. Maguire*, 50 OLR, 579-84. For a detailed discussion of the criterion used in assessing damages in English criminal conversation suits, which served as common law precedents in Ontario cases, see Stone, *Road to Divorce*, 262-73; Phillips, *Putting Asunder*, 228-29.

[140] "William Joseph Hooper v. Peter Ellerby," *Guelph Advertiser*, 16 November 1861 and reprinted in the Toronto *Globe*, 21 November 1861. See also (1904) *Milloy v. Wellington*, 3 OWR, 565-67.

he is entitled, brings unhappiness to the domestic hearth, renders her mere services less efficient and valuable, and inflicts on him a damage in the nature of slander'."[141] One of the main differences between alienation of affections and criminal conversation suits, however, was the possibility of a future marital reconciliation:

> The case of action for enticing away a wife is essentially different from the cause of action for criminal conversation with a wife. The former is brought, on the assumption of the wife's innocence, for the purpose of procuring her return to her husband, and for damages for his *temporary* loss of consortium ... The latter is brought on the assumption of the wife's guilt, and not for the purposes of procuring her to return to her husband, and for damages for his *permanent* loss of consortium, and because the law assumes that the husband will never condone his wife's adultery the damages are unrestricted.[142]

Despite these distinctions, the compensation awarded in alienation suits could be equally substantial. In 1913, Mr. Bannister launched a successful civil suit against Mr. Thompson, a councillor in the Church of Jesus Christ of Latter Day Saints. He claimed that, "by his wrongful acts," the defendant had "enticed away" his wife, Annie, thereby depriving him of her "love, services, and society" and "destroying the peace and happiness of his household." After considering all of the evidence presented at the Hamilton Assizes, the members of the jury declined to render a verdict on whether Mrs. Bannister and Mr. Thompson were actually guilty of adultery, even though they suggested "that the circumstances all point[ed] in that direction." They were, however, convinced that during the time when Mr. Thompson and his wife resided at the Bannister's house, he managed to acquire a "malign influence" over Mrs. Bannister, despite his claims that "all the advances were made by her." As a result, Annie "entirely ceased to discharge any wifely function. She slept in her own room, locking the door. She refused to speak to her husband: and he

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[141] (1920) *Ballard v. Money*, 47 OLR, 135.

[142] (1900) *Bailey v. R.*, 27 OAR, 713-14.

was as fully deprived of her *consortium* as if she lived in a separate building" or "had been forcibly abducted." In the mind of the jury, such treacherous behaviour warranted the payment of $1500 in damages.[143]

As in the case of criminal conversation suits, not all actions for the alienation of a wife's affections were successful, especially when the evidence indicated that the husband's motives for initiating the lawsuit were highly questionable. In 1913, when Dr. Rensellser Hunt of Hamilton sued Dr. James Anderson, the members of the jury at the Hamilton Assizes, after a short deliberation, exonerated the defendant. The basis of Dr. Hunt's complaint was that not long after he and his wife had arranged "to keep house" for Dr. Anderson, a recent widower, Mrs. Hunt became "intimate" with the defendant. She "would sit up at nights and play cards with Dr. Anderson," he stated, "but not sit up with him when he was at home." She would also "get up and have breakfast with the defendant, but would not eat her breakfast with him." Dr. Hunt's son presented further evidence, claiming that when his father was absent, he had observed the two holding hands. In testifying for the defence, Mrs. Hunt cast serious doubts on her husband's motives. Swearing that "all her relations with [the accused] were innocent," she revealed that her husband had asked her to "assist him in an efford (sic) to blackmail Dr. Anderson," but she had "declined to have [a] part in such a dirty business." What also did not bode well for Dr. Hunt's case was that he was forced to admit under cross-examination that "he had served a six months' sentence in [the] Central Prison and that he had kept a gambling house in the city." After hearing the verdict of the jury, Justice Middleton dismissed the action with

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[143] (1913) *Bannister v. Thompson*, 29 OLR, 562-67 and 15 DLR, 733-38. One year later, Mr. Thompson appealed the decision and Chief Justice Meredith reduced the damages to $1000. He argued that the "plaintiff had suffered no damage beyond the loss of his wife's affections, love, services, and society," and hence the $500 awarded for "enticement" could not be upheld. (1914) *Bannister v. Thompson*, 32 OLR, 34-37, 20 DLR, 512-15. See also (1920) *Morley v. Lewis*, 19 OWN, 225, in which the plaintiff recovered $800 in damages after the defendant was found guilty of paying "unusual attentions" to Mrs. Morley which resulted in his winning her affections.

costs, declaring that "it never should have been in court."[144]

Although the verdicts and the amount of damages awarded in criminal conversation suits depended on a series of factors, if the courts ruled against them, defendants were often ordered to pay fairly substantial sums. Faced with the prospect of financial ruin and a tarnished reputation, it is no wonder that some men pursued various means to have the verdicts overturned or, at the very least, to have the amount of damages reduced. These efforts usually involved launching an appeal in the higher courts, but in one case, criminal charges of perjury resulted. In 1861, Thomas L., a merchant and long time resident of Napanee, lodged such a complaint against Martia H., a domestic, and Thomas T., a local butcher. He argued that both had presented false evidence at his recent criminal conversation trial at the Kingston Assizes, where he was ordered to pay Henry T. $1000 in damages for having "sexual intercourse" with his wife, Margaret. Both defendants pleaded not guilty and recounted what they knew about the alleged affair. Martia stated that on two separate occasions she had accompanied Margaret, her employer, to Mr. L.'s shop and during both visits the two had 'criminal connection' in her presence. On one occasion, the act occurred "within six or eight feet of her"; she also heard Margaret telling Thomas "'not to squeeze her so hard'" and that "'it went like sawing wood'." One week later, they returned to the shop and once inside, Thomas immediately "locked the door," took hold of Margaret, the two again had sexual intercourse. Afterwards, she added, when he "let us out, his pantaloons [were] open in front and [his] voice trembled." Thomas T.'s testimony was equally damaging. He claimed that in January 1861, while spying through the kitchen window at Mrs. T.'s house, he saw her "sitting on a chair" and Mr. L. was "between her legs having ... criminal connection with her." Although Thomas and Margaret strenuously maintained that the depositions of both defendants were "utterly untrue" and accused Martia

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144 "Hamilton Physician Acquitted in Court: Charge Was Alienation of a Wife's Affections," Toronto *Globe*, 2 April 1913.

in particular of being "a great liar," the jury was of a different mind, acquitting both defendants of perjury and, by extension, upholding the verdict of the civil court.[145]

Civil suits of criminal conversation or alienation of affections were not the only legal mechanisms used by husbands to seek retribution from those men who engaged in sexual relations with and/or enticed away their wives. Some married men, who could ill afford a costly civil action, turned to the criminal courts in an effort to secure some form of redress. In 1906, William H., a Port Perry labourer, initiated criminal proceedings against William B., which also drew on the principles of 'sexual trespass' and 'loss of services'. In his deposition before the local justice of the peace, he asserted that Mr. B. had used "false" statements and promises as well as gifts of "money" and "clothes" to "induce" his twenty-one-year-old wife, Florence, to have "unlawful carnal connection" with him.[146] In fact, his suspicions that she was involved in an affair were aroused when Mr. B., who initially brought his "clothes to be washed," began visiting his house with greater frequency and at all hours when he "had no business" there. His misgivings were later confirmed when he discovered them in various compromising situations: on one occasion, he found them in the shed together; on another, he woke up to find them both "on the bed

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145 (1861) Queen v. *Martia Ann H. and Thomas T.*, AO, RG 22-392, Frontenac County CAI, Box 40. In 1852, David Rymal, a married man and a Westminster township yeoman, also attempted to set the record straight after being ordered to pay £800 in damages and £200 in court costs at the Woodstock Assizes for seducing the wife of David Gillett. Rather than appealing the verdict in the courts, he published a twenty-eight page statement in order to acquaint the public "with the whole affair" and "to expose to the world, the iniquity of which [he had] been the victim." In it, he detailed how the criminal conversation action was merely the culmination of a villainous and "deep laid plot" hatched by the plaintiff, his wife, and her mother "to enrich themselves at [his] expense." As a consequence of this infamous and unjust transaction, he argued, his character had been deeply injured, his "pecuniary affairs ... almost ruined," and his "peace of mind destroyed." (1852) *Statement Made By David Rymal Relative To The Late Action Brought Against Him By David Gillett For Seduction*," AO, Pamphlet, no. 40.

146 These charges were laid under Section 185 of the 1892 criminal code, which stipulated that anyone who "procures, or attempts to procure, any girl or woman under twenty-one years of age, not being a common prostitute or of known immoral character, to have unlawful carnal connection ... with any other person or persons" was liable to two years' imprisonment with hard labour. 55-56 Vict., c. 29, s. 185 (a).

... and he with his pants unbuttoned." While insisting that he had in no way condoned his wife's activities and had "frequently ordered" Mr. B. "from [his] house," the main source of his grievance was that because of her growing infatuation with the accused, Florence was frequently absent from home and began to neglect her children and her household responsibilities. When the two eventually eloped to Lindsay where they both obtained work in a local hotel, he was left with the impossible burden of earning a living and caring for their two young children. Firmly convinced that Mr. B. was directly responsible for "my wife acting as she has," he suggested that the reason he had them arrested was because he wanted Florence to return home and resume her domestic duties. In a sworn statement, Florence did not deny her relationship with the accused nor did she contest her husband's version of events. Her main defence was that she had consented to the wishes of Mr. B. because he had told her that her husband "wanted to get rid of [her] and was willing that [they] should have improper relations with each other." She went on to explain that she no longer had "the same feeling" for the accused as before, but that she believed she was "in the Family way" with him. When she agreed to return to her husband and children, however, the accused was released from custody.[147]

Charles C. of Uxbridge township used a more indirect legal mechanism in an effort to punish Frederick H., a married man from Newmarket, after he allegedly ran off with his wife Charlotte in 1898, by initiating criminal proceedings against him for theft. The stolen property in question was not Charlotte herself, but certain articles she had taken when she 'eloped' to Toronto with the accused: one trunk, one valise, two bags, and a quantity of household linen. The basis of his complaint was that the accused had assisted Charlotte in

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147 (1906) *King v. William B.*, AO, RG 22, Ontario Country CA/CP CCJCC Case Files, Box 8. In 1917, however, William S. of Toronto received a sentence of one year imprisonment and a fine of $100 for conspiring with and assisting Gertrude B. "to desert her family of seven children," while Gertrude was sentenced to one year at the Women's Industrial Farm for "contributing to the delinquency of her children." The couple was arrested as "they were making preparations to leave for the West." "Woman Runs Away From Her Family of Seven," Toronto *Globe*, 23 March 1917.

robbing him of these household items, which he claimed rightfully belonged to him. Mrs. C., the principal witness for the defence and, according to the local magistrate, showing great "animus against her husband," asserted that the criminal charge was ludicrous, arguing that each item she had taken was her own personal property. She also insisted that she had long warned her husband that she "would leave him" because of his violent behaviour and his threats "to take her life." The accused, she suggested, had merely assisted her in carrying out her intention and once she arrived in Toronto they had parted ways without at any point in having "intercourse." Local rumours, however, told a different story. In a series of memos detailing the investigation into the case, legal officials in Uxbridge township and Newmarket stated that a number of local residents were prepared to offer evidence verifying that Mr. H., who already had a 'bad reputation' for "consorting with loose women," and Mrs. C., "his wicked paramour," had "in fact eloped together." For example, various witnesses had seen the two in certain "compromising circumstances" and acts of "improper intimacy," including having "criminal connection," one evening near Charlotte's home. In light of this evidence and the fact that, under criminal law, "the adulterer" was liable for any goods (except clothes) taken when eloping with another man's wife, the accused was found guilty and sentenced to six months in the Central Prison.[148]

Even though married men were occasionally chastised for bringing their "wrongs and dishonour before the courts and the public," the notion that it was perfectly reasonable and understandable for aggrieved husbands to seek legal redress for sexual and other

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[148] (1898) *Queen v. Frederick H.*, AO, RG 22, Ontario County CA/CP CCJCC Case Files, Box 6. For the legal rules pertaining to larceny in cases of elopement, see Taschereau, *The Criminal Code*, 316-19. In a similar case, George Leney of Stratford charged his boarder, Thomas Rosealle with stealing "a quantity of furniture and a gold watch ... and incidentally [his] wife and two children." According to the evidence, while Mr. Leney was at work, Rosealle "made love to the wife" and the two eventually eloped. After the couple was traced to a farm near Woodstock, Mr. Leney "patched things up with his wife, and the pair returned to Stratford," while Rosealle was convicted and sentenced to two years in the Kingston Penitentiary for theft and forgery. "Stole a Man's Wife and Watch And Is Sent To Jail for Two Years," London *Advertiser*, 12 February 1908.

infringements on their marital rights went unchallenged in the nineteenth and early twentieth centuries. As Justice Anglin proclaimed in 1904, "[n]othing can be of greater advantage to a man, nothing can be a greater source of comfort or pleasure to him, than the society and companionship of a living, faithful wife; and because of that fact the injury that is done by depriving a man wrongfully of that pleasure is one of the cruellest and deepest wrongs that can be inflicted upon any man in this world."[149] Given these sentiments, there was little suggestion that the actions launched in the civil courts were less about a husband's injury and loss, and more about securing the maximum economic advantage from his wife's sexual transgression. This general sympathy for cuckolded husbands also surfaced in situations when they intimated that their wives' sexual misconduct had caused them such humiliation and anguish that they were driven to suicide (or, as we will see in a later chapter, 'crimes of passion'). In 1915, for example, Mike E., a labourer who had emigrated with his wife and child from Austria six years earlier, was brought before the Ottawa police court for attempting to take his own life. In testifying in his own defense, the accused explained that ever since he and his wife had separated six months earlier, he was tormented by the fact that she was consorting and living "with other men." To add insult to injury, when he appeared at her place of residence and attempted to regain possession of his child, Mrs. E., with the assistance of two men and in full view of a crowd of spectators who were all "laughing at him," "chased" and "threw" him "out of the house and locked the door behind him." During this altercation, he evidently drew a knife and stabbed himself in the stomach. Although convicted of attempted suicide, the Ottawa police magistrate, taking into account the nature of his domestic "troubles," released the accused on a suspended

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[149] "Crim. Con. Plaxton v. Beardsall," Toronto *Globe*, 19 November 1875; (1904) *Milloy v. Wellington*, 3 OWR, 563.

sentence.[150] The residents of Otterville were equally empathetic when they learned that, just one week after obtaining a steady position as the Grand Trunk Railway station agent, George Hogarth purchased a revolver at a local store and, in "a most determined" manner, shot himself in the head. The contents of a notebook found on his body ended all speculation and rumours about a possible motive. "Tired of life," it read, "tired of living with an unfaithful wife."[151]

Wayward Husbands and Injured Wives: Maintaining the Sexual Double Standard

While a married woman's adultery was perceived as an 'intolerable insult' to her husband's conjugal rights and was usually treated as a property offence committed by another man, this was not the case for women who were married to men of 'bad habits'. Under common law, for example, the right to launch actions for criminal conversation was defined as the exclusive preserve of an offended husband and remained so well into the twentieth century.[152] A few wives, however, did attempt to seek damages for alienation of their husband's affections by another woman. The only successful case in this regard involved the "highly sensational" civil suit for $5000 in damages launched in 1892 by Sarah Quick of Woodstock, whose husband had long held a position as foreman in a local organ factory. The female defendant was Agnes Church, the mother of eleven children and the recent widow of a wealthy Blandford lumberman and farmer. Given the enormous

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[150] (1915) *King v. Mike E.*, AO, RG 22, Carleton County CA/CP Case Files, Box 3972; *Ottawa Evening Journal*, 10 March 1915.

[151] "Tired of Life. Tired of Living With An Unfaithful Wife - A Suicide Complaint," *Stratford Evening Herald*, 8 July 1896.

[152] As late as 1945, one legal scholar pointed out that this civil action not only still existed in Ontario, but also that it "lies only at the suit of the husband; a wife has no corresponding right to damages." H. L. Cartwright, *The Law of Divorce in Canada and the Practice in Divorce Actions in Ontario* (Toronto: Canadian Law List Publishing Co., 1945), 111.

public interest generated by this "novel" case, the two women met in a "densely crowded" Brantford courtroom where, according to one newspaper reporter, they sat on "opposite sides of a narrow table, and, with compressed lips, glared at each other in a way that only really angry women can." In her deposition, Mrs. Quick described her at times troubled twenty-five year marital history. While this was not the first time her husband had been "charmed" by another woman, on that occasion he did eventually return after a two-year separation, was duly "forgiven," and they lived amicably together until, in her words, "that woman" came on the scene. She then went on to recount how Mrs. Church, over the course of about four years and "by her persuasive and winning ways," had managed to win her husband's affections, causing his frequent absences from home and considerable marital strife in the Quick household. When Mrs. Church's husband died in 1889, however, the two became "unduly intimate" and, one year later, her husband abandoned her and relocated to Green Bay, Wisconsin where he was living "in adultery" with the defendant and managed a hotel of which she was the proprietress. To reinforce her claim that Mrs. Church was to blame for her husband's desertion and had, in effect, "stolen her bread-winner," Mrs. Quick emphatically stated, "'I may have been peevish and fretful, but I wasn't so bad that Joe should have gone and left me'."

Even though Sarah Quick's civil action was cited as "the only one of [its] kind ever tried in Canada, or indeed in England," the jury was prepared to set a new legal precedent, by returning a verdict of guilty and ordering Mrs. Church to pay $4500 in compensation. Of that amount, $2500 was deemed to be reasonable compensation for being "deprived of the protection, comfort and enjoyment of the society" of her "hitherto kind, affectionate, and devoted husband" and for "the alienation of his affections"; the other $2000 was calculated for the loss of her "only means of support and maintenance." Mrs. Church, who had maintained her innocence throughout the trial, immediately appealed the verdict in the Court of Queen's Bench. Her lawyer insisted that, given that "there [was] absolutely no

evidence to support" any enticement on her part, the jury's verdict was "monstrous" and the damages were "excessive." The main grounds for the appeal, however, was that under common law a married woman could not sustain such a civil action, given that she had no "right of property" in her husband nor did she suffer "proprietary loss" of his consortium if he committed adultery. In an unprecedented decision, however, Chief Justice Armour ruled in favour of upholding the verdict. He asserted that the main impediment to a married woman suing for alienation of her husband's affections, namely the common law doctrine of marital unity, had been rescinded under the 1884 Married Women's Property Act. This legislation, he argued, permitted a wife "for her own benefit to sue for personal wrongs suffered by her" independently of her husband and any damages she recovered were deemed to be her separate property. Furthermore, given that he supported the equal distribution of rights and obligations within marriage, he argued that, "[w]hether we regard marriage as a contract or as a status, consortium was the foundation of it; it was the man and the woman casting in their lots together; it means marriage and all that marriage implies; and is as much the consortium of the man as of the woman, of the woman as of the man ... The action for criminal conversation may be a disgrace to our law, but it would be a still greater disgrace ... if it existed only for the husband and not for the wife."[153]

Four years later, however, Chief Justice Armour's judgement was overturned by the ruling of four higher court judges in the Ontario Court of Appeal. The civil suit in question, which was initially tried at the Toronto Assizes in 1895, involved Mrs. Lellis, the wife of a shopowner, who sued and recovered damages in the amount of $2250 from a Mrs. Lambert, a widow, for the wrongful "alienation of her husband's affections" and for "living in adultery" with him. As Mrs. Lellis insisted, because of Mrs. Lambert's misconduct, she was not only being deprived of her husband's "society, services and

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[153] (1893) *Quick v. Church*, 23 OR, 262-79; Toronto *Globe*, 27 September, 1, 3, 4, 8 and 12 November 1892.

support," but also had suffered "annoyance and disgrace," "mental and bodily pain," as well as the "loss of reputation" and the "esteem of her friends." When the verdict was appealed, Justice Osler reemphasized the novelty of this civil suit: "an action of this kind brought by a woman against one of her own sex must be said to be still somewhat of a novelty and an experiment in litigation in the Courts of this country." In a unanimous ruling, however, the justices maintained that neither common law nor more recent legislation concerning married women's property rights authorized wives to launch such an action or to obtain any remedy for the loss of consortium of their husbands. Rather, they insisted that "the right to maintain an action against an adulterer belongs only to the husband" and that this was "inherent ... in the relation of husband and wife." In dismissing this action and the corresponding damages, Judge Osler stated, "the action of the husband against the adulterer is one which has always been regarded as a blot upon English jurisprudence and social manners, and it cannot but be regretted if it shall appear that one result of the emancipation of the modern woman is to confer upon her the right to maintain a corresponding action against the adulteress. The damages in such an action are more of a sentimental character than are those recoverable in the husband's action."[154] Although some married women continued to appeal to the civil courts for redress against the seduction of their husbands by other women, judges consistently upheld the arguments laid out in Mrs. Lellis's case and its support of the notion that a married woman had no proprietary interest in her husband or in his sexual conduct. They even went to so far as to dismiss these legal actions as "frivolous" and "vexatious."[155]

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[154] (1897) *Lellis v. Lambert*, 24 OAR, 653-72.

[155] See, for example, the unsuccessful suit of a Mrs. Lawry of Hamilton, who sought $25,000 in damages from a single woman, who she claimed had, through "various seductive and wicked ways," induced her husband to commit adultery with her and then persuaded him to elope with her to the United States. Consequently, she not only "suffered mental and bodily pain, loss of reputation and the esteem of her friends and was otherwise damnified," but also was deprived of his support and "the exercise of the remedies

This sentiment also seemed to prevail when Annie T., the wife of a Toronto express wagon driver and furniture dealer, brought her marital grievances to the local police magistrate and later to the Toronto Assizes in 1891. After lodging a formal complaint against Annie M., a dressmaker by trade, for "living in adultery" with her husband, she explained that ever since her husband's niece had moved into her house two years earlier, she had become increasingly "dissatisfied":

> He was always with her ... Saw them kissing frequently ... I heard them in the kitchen and spoke to them both and objected to their kissing ... He laughed, she said nothing ... I have seen [the] prisoner in the act of adultery with [him]. Her room is next to my husband's room, and I sleep in a different room. I saw my husband coming out of the prisoner's room with his clothing mostly off him ... In February or March I caught the two at 11 at night on the lounge. She came to look in my room and then returned and five minutes afterwards I went in to [the] sitting room and found them in the act of adultery. Told them [the] next day. He denied it.

To reinforce her contention that she was being deprived of the affections of her husband, Mrs. T. further complained that he had refused to have "carnal connection" with her for over a year. What she found equally distressing, however, was the fact that Annie had, with the blessing of her husband, succeeded in deposing her from her rightful position as the manager of all domestic matters. As a result, she was being "treated as a servant" in her own household: "[She] says she is the mistress of the house ... [My husband] consults her and not me about food. She orders me about and forbade me [to] shop, so did he." Although it seems that Mrs. T.'s motivation for laying the criminal charge was simply to regain her wifely status, Judge McMahon, who presided over the trial at the Toronto Assizes, ruled that it was unnecessary for the jury to deliberate on a verdict and unilaterally dismissed the case. While not entirely convinced by Mrs. T.'s story, he did acknowledge that if it could be believed, there may well "have been acts of fornication" between Mr. T.

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provided by the criminal law ... for the non-support of wives." (1901) *Lawry v. Tuckett-Lawry*, 2 OLR, 162-65. See also (1909) *Weston v. Perry*, 1 OWN, 155-56; (1912) *Ney v. Ney*, 2 DLR, 884-85.

and his niece. But "under the circumstances," he asserted, "I have not the slightest doubt in my mind that the fact or facts made out here is or are not sufficient upon which to convict the defendant."[156]

Phoebe H. of Tilsonburg resorted to a less conventional method in an effort to punish her common law husband, Benjamin M., a prosperous farmer and sawmill owner from Guysboro. After living with him as his housekeeper and 'passing' as his wife for almost twenty years, the couple, for reasons not specified, drew up a formal deed of separation in 1891 and Phoebe left the farm. Not long after, she publicly accused Benjamin of sexual misconduct, namely that he was having intimate relations with two female neighbours. While it is unclear whether there was any basis to these allegations, what we do know is that she soon found herself facing charges of libel, for which she was required to pay $100 in damages. Whether angered by this verdict, by Benjamin's sexual disloyalty, or by his refusal to recognize her as his wife, she sent him an anonymous letter, threatening to have him whitecapped:

> This is to give notice that you will have to, within seven days from date of receiving this notice, in some way (we dont care how), deliver over to your wife the sum of one hundred dollars to defray expenses you caused her. We will find out in our own misterious way if you have done as commanded or not. If we find out you have refused then will we go out and make you a visit and give you the first degree of our impartial order. Remember we mean business. Signed The Whitecaps.

In the end, Phoebe's attempt at retribution backfired. Although she fled to St. Thomas immediately after posting the letter, Mr. M. was evidently so "alarmed" by the threat that he had police track her down and she was soon arrested on charges of attempted blackmail.[157]

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156 (1891) *Queen v. Annie M.*, AO, RG 22-392, York County CAI, Box 251; Toronto *Globe*, 21 and 22 January, 6 and 7 February 1891.

157 (1894) *Queen v. Phoebe H.*, AO, RG 22-392, Elgin County CAI, Box 31; "Blackmailed By His 'Wife'," *Chatham Daily Planet*, 8 January 1894.

Under the provisions of civil law, a married woman with sufficient economic means did have the option of petitioning the Court of Chancery for a legal separation and alimony if her husband was found guilty of sexual infidelity. By the late nineteenth century, she could also more readily prosecute him in the criminal courts for desertion and non-support. At the same time, despite the middle-class rhetoric about companionate marriage, the promotion of more rigid standards of masculine respectability, and the rise of the bourgeois ideal of the domesticated, monogamous, and sexually self-restrained husband, the Ontario judiciary was not prepared to challenge many of the basic assumptions underlying the sexual double standard: that "the wife [did] not necessarily lose the *consortium* of her husband" if he committed adultery and, unlike her male counterparts, any dishonour she might experience was "more easily healed." In other words, when husbands did lapse into 'bad habits', these indiscretions were not defined as a direct "injury to the character or person of the wife."[158] While Constance Backhouse has argued that the judiciary consistently refused to place "male adultery ... on the same legal footing as the adultery of women,"[159] it could also be argued that growing social disapproval of married men's sexual misconduct and existing legal sanctions designed to regulate their behaviour were premised on a series of different presuppositions. One area of particular concern, as reflected in the seduction laws, was the need to protect young, single women from being sexually exploited and permanently ruined by licentious men, including those married men who preyed on young innocents under the pretence of being bachelors.[160] In addition,

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[158] (1893) *Quick v. Church*, 23 OR, 270; Gemmill, *The Practice of The Parliament*, 113.

[159] Backhouse, "'Pure Patriarchy'," 291-95.

[160] For example, John Charleton's 1882 bill to criminalize seduction and adultery included a specific clause which would provide for the "punishment of seduction, by a married man, under the promise of marriage and pretence of being unmarried." *House of Commons Debates* (13 March 1882): 327. Furthermore, in 1890, the *Cornwall Freeholder* issued a public warning that Charles W., described as "a

growing concerns about public health, infant mortality, and the procreation of the 'unfit' led to heightened efforts by moral reformers, social hygiene advocates, and legal authorities to contain the spread of venereal disease, including the infection of innocent wives by promiscuous husbands. While prostitutes and other 'loose' women (and not their clients) continued to be blamed for being the main source of what was termed the "leprosy of lust" and remained the principal targets of heightened police efforts to suppress commercialized sex, the wartime scare over venereal disease resulted in the enactment of provincial legislation in 1918 making it a criminal offence to knowingly infect another person.[161] Finally, local officials were equally alarmed about the rising social costs associated with what was perceived as increasing rates of wife desertion at the turn of the century. In 1896, Peter Ernst, a hotel porter, was severely castigated in the *Stratford Evening Herald* for callously deserting his pregnant wife and six children and leaving them "penniless" and "totally unprovided for" after falling "in love with a younger woman." Given Mrs. Ernst's "delicate condition" and her inability to undertake paid work, she attempted to stave off destitution by charging her unfaithful husband with non-support. When he refused to appear in court, it became clear that her urgent plight would have to be taken up by local

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dashing young man" residing in Charlottenburgh township, was "passing" as a bachelor, even though reports indicated that he had "a wife and two beautiful children" living in the province. "Take care girls," it stated, "this is not the first time such a fame has been played successfully in our midst." Even though Peter R., the author of the statement, was forced to apologize for calling into question Mr. W.'s "uprightness" and his "character as a Christian gentleman," local residents were nonetheless now aware that he was a married man. (1890) *Queen v. Peter R.*, AO, RG 22-392, Stormont, Dundas, and Glengarry Counties CAI, Box 143. See also "A Berlin Masher: He Turns Out to be a Married Man," *Chatham Weekly Planet*, 25 October 1883.

[161] (1918) "An Act for the Prevention of Venereal Disease," 8 Geo. V., c. 42. For turn-of-the-century concerns about the spread of venereal disease, see Michael Bliss, "'Pure Books On Avoided Subjects': Pre-Freudian Sexual Ideas in Canada," Canadian Historical Association, *Historical Papers* (1970): 89-108; James G. Snell and Cynthia Comacchio Abeele, "Regulating Nuptiality: Restricting Access to Marriage in Early Twentieth-Century English-Speaking Canada," *Canadian Historical Review* 69, 4 (December 1988): 475; Suzann Buckley and Janice Dickin McGinnis, "Venereal Disease and Public Health Reform in Canada," *Canadian Historical Review* 63, 3 (September 1982): 337-54.

charities. In light of Mr. Ernst's heartless behaviour, the direct result of his involvement with another woman, the newspaper reporter concluded that he was wholly unworthy of calling "himself a man." Rather, in his view, he deserved "a medal for being one of the meanest men in the world."[162]

During the height of the social purity movement at the turn of the century, philandering husbands did increasingly risk prosecution for such crimes as seduction, 'habitually' frequenting a house of ill-fame, knowingly spreading venereal disease, as well as desertion and non-support. What distinguished their immoral conduct from that of female adulteresses was that these offences were not perceived as necessarily disrupting marital relations nor were they defined as direct violations of the sexual contract of marriage, involving such elements as loss of honour, personal injury, or the invasion of sexual property rights.

Sexual Scandal: From Slandered Reputations to Sensational Elopements

In 1893, Justice Armour identified another feature that differentiated the adultery of wives from the indiscretions of husbands. He stated that, when it came to "the relative degrees of chastity ... required of the husband and wife," it had traditionally been the case that "the adulterer retains his place in society, while the adulteress loses hers."[163] There were some married men who would undoubtedly have disagreed with this statement, especially when their real or alleged marital infidelities became the object of public scandal. Occasionally, church ministers and, to a lesser extent, local politicians did initiate slander suits, claiming that their religious and political opponents were conspiring to ruin them

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[162] "Calls Himself A Man! Yet Deserts the Penniless Mother of His Six Children and Consorts With a Younger Women," *Stratford Evening Herald*, 26 June 1896. See also "A Wife's Unhappy State: Her Husband's Affections Alienated by a Young Girl," *Stratford Evening Herald*, 21 August 1896.

[163] (1893) *Quick v. Church*, 23 OR, 278. See also (1892) *Mulligan v. Thompson*, 23 OR, 61.

through false allegations of sexual misconduct and disreputable behaviour.[164] Nevertheless, it was certainly the case that a married woman's 'fall from virtue' was widely regarded as an irretrievable stain on her moral character and permanent blow to her respectability. This was particularly the case for Anglo-Saxon middle-class women, who by virtue of their class and race, were expected to be the paragons of moral virtue and passive asexuality. In 1845, for example, when members of the Legislative Assembly were deliberating the divorce petition initiated by Captain Henry Harris of Canada West, one legislator declared that "he was happy to say" that Eliza Harris, who had eloped to New York with her lover five years earlier and had borne three illegitimate children, "was not a native" of the province and "he was glad to believe would never be domiciled here again." Captain Harris's lawyer was equally contemptuous, arguing that given her current "unholy life," she should be denied any contact with her legitimate children, since as an adulteress, she "would be a contamination to them."[165] Similarly, in 1887 the Senate Divorce

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[164] In 1860, for example, Joseph E., a minister of the Canadian Wesleyan Methodist New Connexion church, charged James J. and James Q. with the crime of conspiracy. He asserted that while he was preaching in Oxford township, these two "evil disposed persons" had devised a scheme to discredit him, by publicly accusing him of "immoral conduct" and, more specifically, of committing adultery with Charlotte L., the wife of a local yeoman. As a consequence, he argued, he had not only been robbed of his "good name" and "reputation," but also was subjected "to the damage and disgrace of being suspended and dismissed" from his "profession and calling" as a circuit minister. Similarly, in 1907, John W., a Township of Sandwich West farmer, distributed a scathing document entitled, "An Address to a Sandwich West Licentious Libertine," at a meeting of local ratepayers and council members. Although no name was mentioned in the address, David C., a council member and local farmer, soon realized that the statements contained in it referred to him. Among the various "dark deeds" of which he was accused, one of the most serious was that he had driven his wife and children away by disgracing the family name through a shameful sexual scandal. Infuriated that Mr. W., his acquaintance of twenty-five years, was attempting to "deprive him of his good name and reputation," to subject him to "great damage, scandal, and disgrace," and to undermine his position on the council, he laid criminal libel charges against him. (1860) *Queen v. James J. and James Q.*, AO, RG 22-392, Leeds and Grenville Counties CAI, Box 77; (1907) *King v. John W.*, AO, RG 22-392, Essex County CAI, Box 38. See also (1913) *King v. John R.*, AO, RG 22-392, Wentworth County CAI, Box 183, which also involved a criminal libel case launch by a minister, Reverend Charles R., the leader of a sectarian movement known as 'Millennial Dawnism' who in a public document was accused by Reverend John R. not only of being a "crank preacher," but also of immoral conduct.

[165] *Debates of the Legislative Assembly of United Canada* (1845): 2194; *Chronicle and Gazette*, 19 February 1845.

Committee engaged in a intensive debate over whether Dr. William Lavell, a physician from Smith's Falls, should be granted a divorce on the grounds of his wife's desertion, adultery, and bigamy or whether their clandestine and "false" union should be nullified. This latter option was premised on the fact that when the two married in 1882, Ada Lavell had been a minor and had not obtained her parents' consent, both had used fictitious names, and the union had not been consummated. After an extensive discussion about the legal validity of the marriage, a number of senators successfully argued in favour of a marital annulment. The main rationale behind this decision was that if Dr. Lavell was granted a divorce, Ada would be forced to suffer under a "terribly severe punishment," in that she would be publicly "branded all her life" with "a charge of adultery." "Not only will the stigma be attached to herself," as one senator argued, "but also to her widowed mother and all the rest of her relatives" as well as her future children.[166]

Given the social stigmatization and public disgrace associated with being branded a 'whore' or, in polite circles, an 'adulteress', a considerable number of married women, who were accused of immoral behaviour by their husbands or members of their communities, turned to the courts in an effort to challenge such insults to their character and reputation. Between 1873 and 1880, Eliza Campbell, the daughter of a clergyman and the mother of four children who was accused of committing adultery, fought an intensive battle against her husband, Robert, a well-to-do Whitby dry-goods merchant. After seven years of being embroiled in civil litigation and in what was described as "one of the most peculiar [cases] in the history of divorce in Canada,"[167] she did achieve a degree of vindication, by managing to regain her status as a virtuous woman, to obtain a judicial separation and a

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[166] *Senate Debates* (16 May 1887): 54-55; (31 May 1887): 163-64; (1 June 1887): 183-85; (14 June 1887): 378-95; Gemmill, *The Practice of The Parliament*, 188-89; (1887) "An Act for the relief of William Arthur Lavell," 50 & 51 Vict., c. 128.

[167] Gemmill, *The Practice of The Parliament*, 49.

substantial alimony settlement, and to secure the custody of her youngest child.

The long saga began in October 1873, when Robert Campbell initiated a suit of criminal conversation against George Gordon, a respected Whitby lawyer. Based primarily on the evidence presented by the plaintiff's brother and brother-in-law, James Campbell and John Anderson, Mr. Campbell's attorney insisted that "there could not be a shadow of doubt as to the truth of the charges" against the defendant. The two witnesses testified that the plaintiff's suspicions that Eliza was guilty of infidelity were heightened that August when he returned from a seven-week trip to England: he not only discovered a number of "objectionable" letters written to his wife by an acquaintance, Godfrey Parks, but more seriously, was informed by his servants and by his brother that Mr. Gordon had been a "constant visitor" at his house during his absence. Increasingly convinced that "his wife was an impure woman" and "not a fit guardian for [his] children," Mr. Campbell took what was considered to be appropriate measures by a man of his class, namely removing his children from the household. Just prior to taking them to Saugeen where he would remain for several days, he also asked his brother "to watch his house nightly" in order to establish "who was in the habit of going to the house" and to "see if anything improper occurred." As James and John went on to explain, on the evening of the 26 August, they noticed "a light in the parlour" at the Campbell household and while positioned outside the window, they overhead a highly incriminating conversation between Mrs. Campbell and Mr. Gordon, in which she complained of her unhappy marriage and expressed her desire to leave her husband and to go to California, asking the defendant to accompany her. This conversation was followed by a more intimate exchange and what they described as "rustling" sounds which left no doubt in their minds that "criminal intercourse" had occurred at least once. When Gordon left the house several hours later, James stated that he confronted him and denounced him as a "black-hearted and double-dyed villain"; the defendant, after some hesitation, allegedly made the incriminating statement, "'it was not

my fault; I could not help it'." Interpreting this as a confession, the two men immediately informed Mr. Campbell about the incident and despite Eliza's repeated requests to speak to her husband and offer an explanation, he refused to have any further contact with her or to recognize her as his wife. One month later, he had her forcibly removed from his household by two constables.

On the basis of this evidence and the testimony of two other Whitby residents who had, several months earlier, observed Eliza Campbell and George Gordon walking together, showing "great intimacy" and "'a kind o' loving attitude'," Robert Campbell's attorney asserted that the defendant, as "the author of all this disgrace, suffering, and ruin," deserved no compassion. In fact, despite the "great provocation" Mr. Campbell had "endured," he urged members of the jury to consider the fact that the plaintiff had shown remarkable self-restraint; rather than taking matters into his own hands, he "chose to submit his wrongs to the decision of the courts." What the attorney found most regrettable, however, was the defectiveness of the law in such cases: "while it punished a man for stealing ten cents, the man who robs another of his wife, and children of their mother, who steals the virtue and the fair name of the wife and of the mother, and who brings destruction and disgrace into a happy family circle, cannot be punished except by the payment of a cold fine." Nevertheless, he concluded, it was "the duty of the jury ... to give the only reparation offered by the law," that being to "award full damages" to the aggrieved husband. Despite the strong evidence against the defendant, Mr. Gordon's attorney attempted to cast doubts on the prosecution's version of events. While there was little doubt that Mr. Gordon had visited Eliza on the evening in question, he maintained that the plaintiff's case rested entirely on the credibility of James Campbell's and John Anderson's testimony. Insisting that the visit had been an "innocent and harmless" one, he reiterated the argument raised by Eliza's brother, namely that the two witnesses had "foully and knowingly perjured themselves." In effect, it was the defense attorney's contention that this

civil action was nothing more than an elaborate "conspiracy" orchestrated by plaintiff to get rid of his "defenceless" wife. As such, it was designed to destroy the hitherto "irreproachable" reputation and "virtuous" character of a woman of "the most respectable connection" and "of the highest education and culture." After a short deliberation, however, the jury ignored the arguments raised by Mr. Gordon's attorney and awarded Robert Campbell $3000 in damages.[168]

During the next two years, Eliza Campbell attempted to challenge the allegations concerning her adulterous conduct and what she considered to be her husband's unjust treatment by initiating two actions in the civil courts. The first involved petitioning the Court of Chancery for a decree of alimony on the grounds of desertion and non-support. After an exhaustive review of the evidence concerning her relationship with George Gordon, Mrs. Campbell's application was resolutely denied in September 1875. In a scathing judgement, Vice Chancellor William Blake maintained that, despite persistent claims to the contrary, there was no evidence to suggest that James Campbell and James Anderson had "manufactured" the story about Eliza's improper meeting with Mr. Gordon nor did they have any apparent motive for sinking "so low as to conspire to ruin an unfortunate woman, and to bring misery upon the husband, and reproach upon the children." Instead, he portrayed Eliza as a woman, who was "a very fit subject for any seducer" and predisposed to commit the crime of adultery: she had not only "contaminated" her mind by reading scandalous romantic novels, but also her correspondence with Godfrey Parks indicated a "depraved" and "warped" "moral nature." Vice Chancellor Blake also asserted that no adequate "reason or excuse" was given for Mr. Gordon's frequent visits to the Campbell household and his presence there on the night of 26 August. "I fail to perceive," he wrote, "what could be their cause unless it was the gratification of her animal

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168 "*Campbell v. Gordon* - Crim. Con.," Toronto *Globe*, 16 and 17 October 1873.

passions, or surrendering up her body to her paramour." Finally, in response to Eliza's persistent declarations of innocence, he was especially caustic in his depiction of the "faithless wife" who would not hesitate to commit wilful perjury:

> A wife who has been accused of unfaithfulness to her husband, will, I fear, go almost any length to negative such a charge. The crime is one which at all times that parties are too apt to deny; it has been so, at all events, from the days of Solomon: 'Such is the way of an adulterous woman; she eateth and wipeth her mouth, and saith, I have done no wickedness.' The heinousness of the crime, the breach which it is almost sure to cause between the husband and wife, the injury to the children, the disgrace cast upon relatives and friends, the loss of social standing, combine to lead one, placed in this terrible position, to make any statement which may have the effect of freeing her from the impending calamity. The accusation is so disgraceful in its character, and so dire in its results, that one feels justified in adding almost any other sin to it, in order to free one's self from the punishment so much dreaded, and to escape detection.

After weighing the evidence, Vice Chancellor Blake ruled that the irresistible logic of the facts clearly established that "an adulterous intercourse" had taken place between Mrs. Campbell and Mr. Gordon. Given the "grievous" nature of the crime, he had no choice but to reject the plaintiff's application for alimony. What he found most deplorable, however, was "the ruin which has been brought upon a household where existed, at one time, all that could have been thought necessary to render its members reasonably happy, if only self-control had been exercised." Having committed the 'unpardonable sin', he lamented, Mrs. Campbell would be "condemned forever, and thenceforth be shunned by all earth's dainty clay."[169]

While her alimony action was still pending, Eliza Campbell also sued James Campbell for slander at the Toronto Spring Assizes in 1874. She argued that, because of his 'false' testimony at George Gordon's criminal conversation trial, she had suffered great personal injury for which she sought $10,000 in compensation. Given that she was publicly accused of committing adultery, "her good name, fame, and reputation" had been

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169 (1875) *Campbell v. Campbell*, 22 Gr. Chy., 322-62.

"greatly injured." As a result, she was not only being "shunned and avoided by divers persons," but she had also lost "the society" and the "hospitality of friends ... who now refuse[d] to associate with her." She further emphasized that Mr. Campbell's libelous allegations had caused her serious economic consequences, in that her husband had "cast her off" and refused to support her, and she risked losing her rights to dower. Although the jury rendered a verdict in her favour and awarded her $1,000 in damages, this judgement was set aside in December 1875. As Justice Gwynne stated, the original verdict was "attributable to sympathy with the wife, rather than to an intelligent and impartial appreciation of the evidence." In his opinion, both the guilty verdict rendered at Mr. Gordon's criminal conversation trial and the unfavourable ruling given in Mrs. Campbell's alimony action were "conclusive" in determining that James Campbell had not unjustly defamed her character, but rather that she had indeed committed the crime of adultery.[170]

The next stage in the drama occurred in 1876 when Robert Campbell, backed by three separate judicial judgements, applied for a parliamentary divorce on the grounds of his wife's infidelity. During the initial examination of witnesses before a Senate select committee, however, Eliza refused to allow her husband's petition to go unchallenged and, in an unprecedented act, she submitted a counter-petition. While she continued to maintain that her husband's repeated accusations concerning her adultery were wholly false and constituted cruel and insulting treatment, she also charged her husband with "treacherously" deserting and refusing to maintain her and her youngest child "without sufficient cause." It was on these grounds that she requested a *divorce à mensâ et thoro* or a judicial separation from bed and board, which would provide her with an annual maintenance allowance and the custody of her youngest child. Over the next three years,

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[170] (1875) *Robert Campbell et. ux. v. James Campbell*, 25 UCCP, 368-76. For a similar slander suit, see *Knowlton v. Bacon* in "The Fall Assizes ... A Peculiar Slander Suit," Toronto *Globe*, 13 October 1881.

Mrs. Campbell's 'relief bill' became the subject of a protracted and heated debate in both houses of parliament. Given that it was the "first case of its kind," much of the controversy revolved around whether the federal government had the constitutional authority to enact judicial separations or if such matters as granting alimony and child custody were entirely within the jurisdiction of the provincial courts. The other issue of enormous contention was, not surprisingly, the persistent question of Mrs. Campbell's guilt or innocence. A highly vocal minority of senators and members of parliament wholeheartedly agreed with Vice Chancellor Blake's conclusion that she was unworthy of alimony and child custody, given that the evidence indicated that she was a woman of "licentious and depraved habits," who had grossly violated the "decencies of married life" to the great "outrage" of her offended husband. A growing majority, however, became increasingly convinced that she was indeed the "innocent" victim of "one of the most villainous, foul, low and cowardly conspiracies" and one which her "brute" of a husband had orchestrated to defame her character in order to obtain a divorce. Constructed as a "virtuous" woman who had been "cruelly wronged" and who had been forcibly cast out without any means of support, they concluded that she not only "deserved respect," but also was "justly and honestly entitled to what she claimed." Despite continued protests from a number of parliamentarians, Mrs. Campbell did eventually obtain the vindication she sought: the stain on her moral reputation was officially removed and she was awarded a "divorce from bed and board."[171] Under the conditions of her judicial separation, she was granted the custody of her youngest child

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[171] *Senate Debates* (21 February 1876): 41; (23 February 1876): 42; (8 March 1876): 91; (31 March 1876): 236; (5 April 1876): 293-95; (11 April 1876): 323-25; (20 March 1877): 226-29; (9 April 1877): 314-17; (12 April 1877): 347-56; (18 April 1877): 420-26; (19 April 1877): 437-40; (27 April 1877): 476; (26 March 1878): 292; (12 March 1879): 82-86; (17 March 1879): 89; (21 March 1879): 114-120; (27 March 1879): 145-47; (28 March 1879): 161-66; (1 April 1879): 195-96; (2 April 1879): 199-200, 207; (3 April 1879): 220; (7 April 1879): 250-51; (18 April 1879): 278-308; (23 April 1879): 340; (24 April 1879): 367-71; (25 April 1879): 373-80; (2 May 1879): 432-33; *House of Commons Debates* (24 April 1877): 1757-60; (26 April 1877): 1837-40; (28 April 1879): 1572; (2 May 1879): 1706-10; (9 May 1879): 1878-83; (13 May 1879): 2004-11. See also (1878) *In Re Campbell*, 25 Gr. Chy., 480-85.

and Mr. Campbell was required to pay her $700 a year in alimony. It took another appearance in the Court of Chancery, however, before Mr. Campbell agreed to pay his first instalment in April 1880.[172]

While the length and intensity of Eliza Campbell's efforts to prove her innocence were extremely uncommon, other wives who found themselves accused of adulterous or immoral conduct by their husbands were equally determined to obliterate publicly any defamation to their character by initiating criminal proceedings of libel. In 1903, Viola C. of Arkona laid such a complaint, after her husband began spreading rumours in the village and "abusing her" in the Presbyterian church she attended that she was an "unchaste" woman and was having "improper relations" with Bernard M.. Just before leaving town, he also sent a letter to Bernard's mother, explaining that he "thought it was [his] duty" to inform her about what Viola was "doing" with her son and to warn her that he risked being "ruined" by the woman he was "very sorry to say ... is my Wife." Needless to say, the gossip spread quickly. At the subsequent trial, Viola flatly denied the accusations of sexual infidelity made by her husband, insisting that he had been making similar allegations "ever since I married him" and that all the "very bad things" and the "wrongdoing mentioned in that letter [were] false." She also emphasized that she had little choice but to go "to the law about it," since she could no longer "live under this public disgrace." This was particularly because her husband had left her "for good" without any economic support and, given her tarnished reputation and social marginalization, she was unable to obtain any employment in the village where she had lived all her life.[173]

The motives of other married women, who laid similar complaints, seemed to

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172 (1879) "An Act for the Relief of Eliza Maria Campbell," 42 Vict., c. 79; "The Campbell Divorce Bill," Toronto *Globe*, 23 April 1880.

173 (1903) *Queen v. George C.*, AO, RG 22-392, Lambton County CAI, Box 72.

revolve more around ensuring that their husbands would have no legal justification to renege on their economic responsibilities. Some angry husbands, whose wives had left them, would publicly accuse them of sexual immorality as a way of deterring them from petitioning for economic support or from securing favourable separation agreements. In addition, for some married men, the very act of their wives abandoning them and refusing to live with them was tantamount to committing adultery. In 1917, Sophia P. of Sarnia stated in court that shortly after she and her husband separated two years earlier, he began sending her and William C., the minister of the church she attended, a series of "obscene" letters and "defamatory" postcards, in which he accused her of being a "whore" and insinuated that she was a "degraded" and "indecent" woman with "grossly immoral tendencies." She further argued that more recently he had begun harassing her on the street, publicly calling her "all sorts of bad names," "cursing [her] up and down," and threatening her so harshly that she was fearful of her life. In both instances, she insisted, her husband's intent was to "insult her" and to "injure her character ... in a public way." While the exact motives behind Mr. P.'s vicious attacks remained unclear, there was some suggestion that they were linked to her leaving him and a pending court settlement related to their marital separation.[174]

Not all local rumours and public accusations about a married woman's immoral conduct necessarily originated with husbands. As indicated by the early nineteenth-century church disciplinary records, married women were particularly susceptible to 'public talk' and to unsubstantiated accusations concerning their unvirtuous conduct.[175] In 1833, for

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[174] (1917) *King v. Joseph P.*, AO, RG 22-392, Lambton County CAI, Box 74.

[175] For the role of gossip and rumour in regulating moral behaviour within church congregations, see Lynne Marks, "Railing, Tattling, General Rumour and Common Fame: Speech, Gossip, Gender and Church Regulation in Upper Canada," Paper presented at the Canadian Historical Association (Brock University, May 1996).

example, the town of Perth was rife with rumours that two married women, both members of the local St. Andrews Presbyterian church, were guilty of "immorality" as well as "keeping indecent company and scandal." Upon hearing these reports, the church elders immediately forbade the two women to take communion and launched an investigation. After cross-examining various witnesses, the church session eventually dropped the charges, concluding that the accusations against the two women were groundless and the product of "inflated stories" and "wild rumours" that had surfaced after they had attended a "lively party" held in the community five months earlier.[176] Later in the century, churches continued to launch inquiries when one or more of their members were accused of sexual morality. In 1896, Margaret I. of Blenheim apparently began to spread rumours in the Baptist church she attended that another member, Euphemia B., a married woman, had "screwed [the] Preacher." This allegation was considered serious enough to warrant a flurry of church meetings and eventually a congregational vote. Although both she and Reverend S. were exonerated, when Euphemia received an anonymous letter which made the same claim, she and her husband decided that legal action was necessary. After laying a libel complaint against Margaret, Euphemia told the local police magistrate that the accused, whom she described as "a dangerous troublesome woman trying to make mischief," had harboured "unfriendly feelings" against her for at least three years and that they "had not been on speaking terms" for the past six months. These bad relations were evidently the product of various internal difficulties within the church and the fact that Euphemia had not supported Margaret's husband when he sought the position as church clerk. Although much of the trial focused on whether or not Margaret was the source of the original rumours and had indeed written the letter, Euphemia was principally concerned with putting an end to all the malicious gossip that had been circulating both within the church

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176 (3 February, 7 and 21 July 1833) CPA, SM, St. Andrew's Presbyterian, Perth. See also (1 February 1812) Joseph B., CBA, CM, Boston Baptist.

and increasingly throughout the town. As she indicated, the slanderous statements had not only created a local scandal and had poisoned her friendship with Reverend S.'s wife, but also were intended as a direct "insult," and thereby were designed to "deprive her of her good name and reputation" and to marginalize her within or have her expelled from the church congregation.[177]

A number of married women, however, seemed especially anxious to clear their names when the allegations concerning their immoral conduct were directed to their husbands, especially since such accusations had enormous potential to incite unfounded suspicions and to cause severe reprisals. In 1898, for example, Sarah R.'s husband received an anonymous letter in which she was also accused of being a "whore," namely that it was "all the talk" that she had committed adultery with James K. and various other men and that all "her children were bastards." While James K., who was suspected of writing the letter, soon faced two counts of criminal libel, Sarah made it clear to the Ingersoll justice of the peace that these wicked allegations were not only meant to disgrace her, but also "to cause her husband to believe her guilty of adultery" and to deprive her of his "confidence, affection, and support."[178] Similarly, in 1918, Dora D. of Cobalt accused Amanda R. of sending a malicious letter to her husband, in which she was also accused of committing adultery with a number of local men:

> [I] have had my eye on her ... I by chance went into the mens dressing room at the Harmony Hall and found your wife there giving a fellow a slice ... the fellow was Alic G[] who dances most every Thirsday night at the h. hall with her ... [T]he last was when ... I saw her ... between to box cars with Jack M[] ... I am a frend not a enemy and if you tak her to task, she mite be true to you yet.

While Dora intimated that Mrs. R. had harboured a grudge against her ever since they had a

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[177] (1896) *Queen v. Margaret I.*, AO, RG 22-392, Kent County CAI, Box 67.

[178] (1898) *Queen v. James K.*, AO, RG 22-392, Oxford County CAI, Box 115.

dispute over rent money, she nonetheless insisted that the defamatory statements were designed not only to "insult her" and "injure her reputation," but also to expose her to "hatred, contempt, and ridicule."[179] Alice Y. of Sault Ste. Marie, however, took a more direct approach. When she heard that one of her husband's co-workers at the local paper plant had told Mr. Y. that if he "went home [at 2.30] he would find a man sleeping with his wife," she marched to a local tavern and, armed with a "big piece of wood," struck him on the head, causing him severe bodily injury.[180]

If some married women went to considerable lengths to contest any verbal or written insults to their personal character and public reputation, for those wives whose extramarital activities were much more than innuendo, the risks were often great and their options generally few. As we have seen, the social and legal ramifications for those wives accused of sexual infidelity or caught having improper relations with another man could be severe. These ranged from moral condemnation and social marginalization, the loss of economic support and the custody of their children, to the possibility that their husbands might simply bypass the formalities of the law and resort to physical violence or murder to avenge his sense of 'injury'. Within this inhospitable environment, some adulterous wives attempted to reunite with their husbands; others sought to eradicate all evidence of their

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[179] (1918) *Rex v. Amanda R.*, AO, RG 22-392, Temiskaming District CAI, Box 152.

[180] (1924) *King v. Alice Y.*, AO, RG 22, Algoma District Crown Attorney (Sault Ste. Marie) Case Files, Box 6. While criminal libel cases relied on some form of written evidence of the alleged slanderous statements, the surviving police court records indicate that a more common form of litigation involved lodging abusive language complaints. Disputes between neighbours and feuds between working-class women frequently erupted in the heated exchange of verbal insults. Being called a 'god damn whore' (or a variation thereof) was not only one of the most common affronts, but was also constructed by female plaintiffs to be one of the most inflammatory. For discussions of the use of insults and the "insidious power of gossip" especially among lower class women, see Katherine M. J. McKenna, "Lower Class Women's Agency in Upper Canada: Prescott's Board of Police Records, 1834-1850," Paper presented at the Canadian Historical Association (Brock, 1996); Anna Clark, "Whores and gossips: sexual reputation in London, 1770-1825," *Current Issues in Women's History*, eds. Arina Angerman, et. al. (London: Routledge, 1989), 231-48, and *The Struggle for the Breeches: Gender and the Making of the British Working Class* (Berkeley: University of California Press, 1995), chapter 4.

'wrongdoing'; many, however, chose to sever all ties with their spouses and their communities.

In 1902, Phoebe H. wrote a letter to her husband, Hugh, a Toronto taxi driver, informing him that she had decided to "part with" her lover, John H., and that she wished to negotiate a reconciliation. This followed an incident that had occurred one month earlier, when Hugh discovered her and John in the bedroom of his house; during the violent altercation that ensued, Phoebe's husband had attacked and threatened to kill her, and John pulled out a revolver and after yelling, "hands off her or I will blow your brains," he fired a shot just missing its intended target. What Phoebe's letter made clear, however, was the unresolved tensions congealed in her romantic desires, her sense of marital duty, and her fears about permanently losing all contact with her children. "Now it is a pretty hard thing for me to give him up," she wrote, "but - I had decided to do so because it is right - that I should, not because I dont love him." She also insisted that she was not entirely to blame for becoming involved with another man: "You have driven me to desperation when I was trying to do my best ... While you profess to love me ... you must change your ways if you want to wish me back. If I dont turn up, it will not be my fault ... [Y]our manner to me hardened my heart." In a more contrite tone, she concluded by suggesting that the decision was ultimately in his hands: "If you turn me out - then all right -but if any thing should happen to me, I ask you to forgive me for all I have made you suffer and take care of the little ones for thank God they are all yours, and some men cant say even that." Not long after, she also informed John, who had escaped to Gowanda, New York to evade arrest, that the relationship was over. In a letter, he pleaded with her to join him in New York, assuring her that if she left her husband, it would not "be long till he will send the children to you ... for he will soon get tired of them." These intense negotiations were cut short several weeks later, when Jack was arrested and sentenced to two years imprisonment in the Kingston Penitentiary for attempted wounding, and Hugh seemingly agreed to take

Phoebe back "to bring up [his] children."[181]

Helen C. of Toronto and the mother of two children faced a very different dilemma in 1917. While her husband was fighting overseas, she met, Jack C., a married soldier at the local base hospital and they had a brief affair. Although she later insisted that she had ended the relationship as soon as Jack and his wife moved into her house, her difficulties surfaced when she discovered she was pregnant. Determined to "relieve" herself of her "trouble," she consulted a local doctor about procuring an abortion. When he refused to "have anything to do" with her, she made further enquiries and a friend eventually referred her to Dr. John W. of Cornwall, who agreed to perform the procedure for fifty dollars. By the time she managed to scrape together half that amount as well as the money to travel to Cornwall, she was already four months pregnant. After undergoing the procedure and returning to Toronto, she experienced severe complications and was forced to consult her family physician, who immediately contacted police. While Mrs. C. provided all the information that legal officials needed to arrest Dr. W., her attempt to deal with her pregnancy as discretely as possible before her husband's return was offset by the publicity generated by the subsequent trial.[182]

The safest route for those married women who wished to establish a more permanent relationship with their lovers was to join the ranks of 'runaway wives'. One common feature of newspaper reporting, especially at the turn of the century, was the inclusion of brief but sensational stories about the 'latest elopements' both locally and in other regions of the province. While their publication was undoubtedly designed to feed the

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[181] (1902) *Queen v. John H.*, AO, RG 22, Niagara North CCJCC Case Files, Box 7.

[182] (1917) *Rex v. Dr. John W.*, AO, RG 22, Stormont, Dundas, and Glengarry Counties CCJCC Case Files, Box 3. For the publicity generated by abortion trials, see Constance Backhouse, "Prosecution of Abortions under Canadian Law, 1900-1950," *Essays in the History of Canadian Law*, Volume 5, 252-92, "Involuntary Motherhood," 61-130, and *Petticoats and Prejudice*, 140-66.

reading public's appetite for sexual scandal, these accounts also contained subtle and not so subtle moral lessons. Cumulatively, they clearly identified those categories of men who potentially posed the greatest danger to husbands: the usual culprits were male servants and hired hands, boarders and brothers-in-law, as well as family physicians and local clergymen. Married men were also implicitly warned that once a woman fell from her state of virtue and decided to elope, she was capable of committing other acts of disloyalty, the most common being the theft of her husband's money and the abduction of his children.[183] Finally, the most sensationalized accounts not only recounted the known details of the elopement, but also assessed how husbands responded to their wives' infidelity and desertion.

In 1860, when Mary Louisa Thompson of Cornwall township took her two children and ran off with Louis King, her husband's servant, without leaving a single clue as to their destination, one *Cornwall Freeholder* reporter described it as "one of the most cunningly concocted elopements we have ever heard of." After launching an investigation and conducting an extensive interview with Mr. Thompson, he concluded that Mary's departure served as a useful reminder of one of the perils of mismatched marriages. Mary was after all a twenty-one year old, handsome looking French woman, who had five years earlier married a man thirty years her senior. "[I]t is not to be wondered," he wrote, "that she would grow tired of an old man like Thompson ... A man of [his] years might have foreseen this when he married a woman so young and ill suited to him. Woman is a strange

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[183] See, for example, "Hamilton News. A Runaway Wife," Toronto *Globe*, 18 November 1878; "Elopement Extraordinary," Toronto *Globe*, 17 October 1876; "A Doubly Faithless Woman," Toronto *Globe*, 9 May 1881; "An Elopement. A Man and Young Married Woman Leave for Chicago. They Carry Away Money and Clothing," Toronto *Globe*, 28 April 1882; "Hamilton. An Elopement," Toronto *Globe*, 23 June 1886; "Jennie Pew Ran Away," *Stratford Evening Herald*, 26 March 1896; "A Brantford Sensation. Mrs. Kedge Deserts Her Husband And Family," *Stratford Evening Herald*, 1 August 1896; "A Deserted Husband. Joseph Szulack is in Hard Luck," Toronto *Globe*, 4 June 1912; "Gains Wife's Freedom And She Deserts Him. Pathetic Experience of Patient Midland Husband. Twice Duped By Woman," Toronto *Globe*, 1 August 1913; "Father Charges Abduction. Mother Runs Away With Another Man, Taking Child Along," Toronto *Globe*, 4 June 1913.

being, and is not easily prevailed upon to live with antiquated old fellows, whose only advantage is the possession of a home." What the reporter did find strangely troubling, however, was that Mr. Thompson, whom he described as an "easy going man, who takes everything cooly," had "allowed King to remain in his house," even though "he had proof of his treachery." Why had he not, the reporter asked, treated his hired hand "to a dose of cold lead?" In response, Thompson stated that he "had thought of that, but on deliberation came to the conclusion that it would serve no good purpose." In the final analysis, he contended, he did not care what became of his errant wife; his only concern was regaining possession of his children.[184]

In contrast to Mr. Thompson's indifference, the most dramatic and indeed heroic accounts detailed how the more manly husband managed to avert his wife's elopement or how after a dogged search was able to track her down, depose his male competitor (preferably without injury or death), and reclaim his rightful husbandly status. In 1896, when Mrs. Simms, the wife of a prominent resident of Little Current and an active Woman's Christian Temperance Union worker ran off with the local Church of England minister, her husband managed to get wind of her impending departure. After boarding the same train as the illicit couple, Mr. Simms, while brandishing a revolver, threatened vengeance. Although the two managed to reach New Berry, Michigan unharmed and promptly registered at a local hotel as brother and sister, Mrs. Simms was eventually persuaded to return home. Not surprisingly, but perhaps wisely, the local minister, who undoubtedly had lost all credibility in the minds of his parishioners, left the country and

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184 "Startling Elopement: A Servant Runs Away With His Master's Wife and Children," *Cornwall Freeholder*, 1 August 1860, and reprinted in the *St. Thomas Weekly Dispatch and County of Elgin General Advertiser*, 2 August 1860. In contrast, when an Ottawa labourer told the local police chief in 1866 that his wife had recently "run off" with another labourer and left her three children, he was strongly advised "to place the children in the Orphans Home and to let the unnatural mother remain where she was." Ottawa *Citizen*, 24 November 1866. See also "Notes From Windsor. An Elopement," Toronto *Globe*, 14 November 1892.

disappeared without a trace.[185] Similarly, when the "wife of a prominent citizen in a town in the county of Peel" ran off with her attending physician, it was not surprising that the elopement created, as the Toronto *Globe* put it, "a social flutter." After a determined search, the husband managed to trace his "faithless" wife, who was "snugly ensconced in a private house in Brampton." During the ensuing scene, "the wife cried," the husband "stormed" and insisted he had "first claim to her," and the "disciple of Galen ingloriously made his exit through a window."[186]

Although these particular stories often concluded with the reconstitution of marital relations, other husbands were not so successful. In 1896, Frank Cranston of Clinton also initiated a determined attempt to locate his 'wayward' wife, when he discovered that she had eloped to Rochester with his hired hand and had taken $500 of his money. While his initial efforts proved to be futile, Mrs. Cranston, determined to terminate his search, contacted Rochester police, requesting that they dispatch a clear message to her husband, namely that "she was through with him" and even if he managed to find her in the city, she would never "return home."[187] Mrs. Hamilton of St. Thomas was more proactive. When she eloped with her brother-in-law in 1884, she left an explicit warning. In a note addressed to her husband, a "well-known peanut vendor," she strongly advised "him not to

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185 "Manitoulin Elopement: Student in Charge of a Mission Elopes With a Parishioner," *Stratford Evening Herald*, 6 April 1896.

186 "A Doctor's Escapade. He Runs Off With His Female Patient, Ottawa *Citizen*, 21 February 1882. See also "A Norwich Scandal. An Elopement and its Attendant Circumstances. The Guilty Pair Surprised," Ottawa *Citizen*, 4 February 1882 and Toronto *Globe*, 4 February, 1882; "Found His Faithless Wife," *Stratford Evening Herald*, 13 July 1896; "Deserting Wife Returns," Toronto *Globe*, 9 September 1913.

187 "A Wayward Woman. A Clinton Wife Who Eloped to Rochester Refuses to Return," *Stratford Evening Herald*, 28 March 1896. See also "A Toronto Elopement," Toronto *Globe*, 16 May 1888; "After A Runaway Wife," *Stratford Evening Herald*, 26 August 1896.

follow her" and threatened that if he did, she would "shoot him on sight."[188]

During the nineteenth and early twentieth centuries, the strength of the sexual double standard and prevalence of strict moral codes meant that a married woman's real or alleged infidelity was more costly and more risky for her than for her male counterpart. Nevertheless, despite the extensive legal penalties and severe social sanctions designed to discourage female adultery and to protect a husband's exclusive rights to his wife's sexual services, the spectre of eloping wives served as a constant reminder that married women's conformity to patriarchal norms embedded in the sexual contract of marriage and their loyalty to the principle of monogamy were fragile at best. As we shall see in the next chapter, violations of the rules of monogamy could surface in other forms. Whether motivated by a need to escape an unsatisfactory marital relation and/or the desire to establish a more permanent union with a new partner, marital breakdown could also translate into the illegal reconstitution of another and, in some cases, multiple marriage(s).

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188 "St. Thomas ... Mrs. Hamilton Elopes," London *Advertiser*, 20 May 1884, and Toronto *Globe*, 20 May 1884.

Chapter 4

'Too Much Married': Bigamous and Polygamous Marital Relations

> "Marriage ... the voluntary union for life of one man and one woman to the exclusion of all others ..."[1]

At nine o'clock on the morning of 11 August 1890, the badly decomposed and mangled body of Desirah Day, lying at the bottom of a 200-foot precipice at Whirlpool Rapids Park, Niagara Falls, was discovered. On the previous day, Desirah's sister-in-law, Mary Quigley, guided the police to the location of the corpse, which had been in the dense trees and rocks for just over two weeks. Once the perilous task of placing the body in a coffin and hoisting it up the embankment had been accomplished, a coroner's jury was quickly assembled. Based solely on Mary's testimony, the jury concluded that Desirah met her death at the hands of her husband, Arthur Hoyt Day, a twenty-five-year-old former painter and hotel porter turned commercial traveller from Rochester, who had, during a Sunday trip to the Falls with his wife and sister, allegedly pushed her over the edge of the cliff. At two o'clock that afternoon, Day was brought to Ontario by detectives on the pretext that he was to identify the body and was immediately arrested. That evening, after a preliminary hearing during which he angrily grilled his sister on the veracity of her accusatory statements, Day was committed for trial at the next Welland Assizes on the charge of wilful murder, to which he pleaded not guilty.

What made this particular case of spousal homicide unique and the subject of so much public interest was that two days prior to his arrest in Ontario, Day had been charged with bigamy in Rochester, and the body found at Niagara Falls was that of his first wife, who had been reported missing once the bigamy investigation commenced. At the

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[1] (1914) "Despatch relating to marriage between women professing the Christian religion and other persons belong[ing] to countries where polygamy is legal," AO, RG 4-32, AG, #1019.

subsequent October murder trial, jurors were asked to consider a number of possible scenarios concerning what might have occurred on that fateful Sunday. Based on various contradictory statements made by Day to Welland police,[2] his defense counsel contended that Desirah had either committed suicide, accidently stumbled over the cliff or, most likely, that Mary, a self-confessed thief and prostitute and the alleged wife of four husbands, committed the murderous deed and once she realized "her neck [was] in jeopardy" had concocted the tale about her brother admitting to her that he had pushed his wife over the embankment. What could not be explained so easily, however, was why Day had so hastily and heartlessly returned to Rochester, without alerting police about his wife's fatal fall. His defense lawyer attempted to dismiss this potentially incriminating question by arguing that, even though Day's actions may have indicated that "his hatred for his wife was such that he would let her lie there a broken and mangled corpse without a care," such a response by an otherwise "sober, industrious, hard-working" husband was understandable given that the evidence had shown Desirah to be a woman of bad character; "a harlot" who allegedly consorted "with strange men."[3] The counter theory, as developed

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[2] The issue of whether the statements made by Arthur Day during his interrogation by Welland detectives were properly admitted into evidence became the subject of a reserved hearing in the Court of Queen's Bench in November 1890. In his ruling, Justice Armour determined "that evidence obtained by such questioning ... is admissible." (1890) *Regina v. Day*, 20 OR, 209-11; *Welland Tribune*, 28 November 1890.

[3] This portrayal of Desirah Day by the defence attorney drew at least one letter of protest written by J. W. Munroe, an acquaintance from Rochester and one which was "endorsed by as respectable people as this city affords." In an effort to "show the esteem in which Mrs. Deseriah Day was held by the people who knew her best," this letter provided a detailed defense of Desirah's character: "No one dare come to this city and call Mrs. Day a harlot in the hearing of her friends, who have known her from childhood ... [Her] worst misfortune was her connection with [the Day] family - an honest, hard-working woman who worked more years to support her worthless husband than he ever spent days in supporting her; and who never received anything better than blows and abuses from him, and slander from his mother. It was only the evening before her murder that she made ... the statement that she was utterly destitute of the necessaries of life and should go supperless to her bed unless some one would give her supper." The writer concluded by attacking the defence's line of argument: "With all that his counsel thinks it proper to say was there to be no word of sympathy for that poor murdered woman left to fester in the broiling August sun for two long weeks ... The people of Canada should know what sort of a man it is who seeks to escape the doom he richly

by the crown prosecutor, was equally if not more compelling: that this was nothing less than a callous act of premeditated murder, with a particularly sinister and heinous motive. According to this version, Arthur and Desirah, who had previously charged her husband with non-support and often complained of being neglected, "were not living on terms of friendship or love, that dissensions having arisen between them, he desired to be rid of her." More ominously, two weeks prior to the murder, he had secretly "contracted an alliance with another woman" and "had so complicated himself that the presence of his wife was a burthen (sic) and he conspired with his sister or determined in his own mind" to do away with his wife. Constructed in the press as exceptionally cool and indifferent (except when he was caught smiling through pinched nostrils when initially shown the clothing from his deceased wife's remains), it was not entirely unexpected that after two and a half hours of deliberation, the jury, convinced of the Crown's version of events, handed down a verdict of guilty with no recommendation of mercy and Day was immediately sentenced to be executed.

After any hopes for a commutation of Day's death sentence were dashed,[4] the Welland press not only published the prisoner's final written statement in which he continued to maintain that he was neither "a murderer nor a bad man," but also offered its readers an account of his last hours, which were spent lustily singing his favourite gospel

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deserves, on a mere quibble - which, may God in his infinite justice, forbid." *Welland Tribune*, 14 November 1890.

[4] Although a campaign was launched to have Day's death sentence commuted to life imprisonment, it did not seem to generate a great deal of local support. His main defender was Reverend F. McCuaig, a local Presbyterian minister, who like the defense argued that the main evidence against Day had been provided by Mary, a woman whom he characterized as "a notoriously bad woman" and "unhuman sister" on "whose word one ought not hang a dog, and whose connection with the awful tragedy was not above suspicion." He concluded his public appeal by asking, "Is it right to hang a man whose faults, and they are many, are small in comparison with the infamous life and character of his accuser, as proved in the witness box." Despite his impassioned plea, the petition he initiated was, according to the press, "not largely but quite influentially signed." *Welland Tribune*, 28 November and 5 December 1890.

hymns and writing letters to his relatives, the most scathing one addressed to his sister. Expressing his deepest hope that his "few last lines" would find her "in misery" and so guilt-ridden that she was unable to "sleep a wink night or day," Day did not mince words about who he believed was responsible for his wife's death and who had falsely sworn his life away to "save her own neck." "I hope you won't have a friend in Rochester," he wrote, "they ought to tar and feather you and ride you out of town on a rail ... and if you was my wife I would feed you on sawdust ... Oh you hag, you hag, you hell-bound." While there had been some discussion in the press about the fact that Mary had managed to evade prosecution as an accomplice, most agreed that Day's spiteful letter provided further confirmation of his malicious character, that his status as a bigamist had incited "murder in his heart," and that given his "criminal disposition" and "strong passions," he had sought, "as so often the case, to save himself from the consequence of one crime by committing another." One Welland reporter, who like so many others strongly believed that his sentence was a just one, also viewed this case as a positive example of the workings of the criminal justice system particularly in dealing with criminal 'outsiders': "whilst it is to be regretted that so foul a tragedy should stain the soil of our county, it is also a matter for congratulation that the guilty perpetrator was not a native of Canada, and that Canadian justice has again been administered with praiseworthy certainty and dignity."[5] Two years later, the Toronto *Globe* was pleased to announce that Lizzie Breen, Day's second wife who had initially laid the charge of bigamy against him, was to be married to a respectable farmer in Trenton, Ontario. In effect, by November 1892, with Day having "paid the righteous penalty for his fearful crime on the gallows" and with Lizzie on the verge of

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[5] After Day's execution, Reverend McCuaig, who had also acted as his spiritual advisor, admitted that, even though Day continued to implicate his sister, he had "stated on his knees within half-an-hour of eternity, that he ... was guilty." The details of this case have been gleaned from the following sources: (1890) *Queen v. Arthur Hoyt Day*, NAC, RG 13, Capital Case Files, vol. 1427, no. 246A; *Welland Tribune*, 15 and 29 August, 26 September, 10, 17, and 24 October, 14 and 28 November, 5, 12, 19, and 26 December 1890; and Toronto *Globe*, 12 August, 7 and 8 October, 19 December 1890.

legally remarrying, a sense of calm had been restored in the region,[6] and local memory of this crime was only revived three decades later when another wife murderer in the county faced execution.[7]

While Arthur Day's murder of his legal wife was certainly the most definitive means of ensuring the legitimacy of his second marriage and of evading prosecution for the crime of bigamy, most Ontario bigamists did not resort to such drastic measures. During the investigations into two other suspected wife murders - involving Cook T., a fifty-year-old blind man from Flesherton charged with poisoning his young pregnant bride in 1884 and Robert C., a poor farmer from Tuscarora accused in 1896 of beating his wife to death after six weeks of marriage - the evidence quickly revealed that both men were bigamists and that the victims had been their second wives. But, besides offering further corroboration of their less than 'enviable characters', their illicit marital status did not become the principal focus of the trials nor was it constructed as the primary motive for their murderous deeds.[8]

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[6] Toronto *Globe*, 18 November 1892.

[7] "Last Capital Crime In Welland When Arthur Day Hanged: He Killed His Wife at Niagara Falls By Pushing Her Over the Cliff" and "The Death Sentence Five Times Pronounced in Welland County," Niagara Falls *Evening Review*, 1 and 6 March 1919. This murder case involved Frederick Fountain, a twenty-nine-year-old native of the Bahamas and resident of Niagara Falls who after two trials in 1919, was found guilty of cutting the throats of his wife and two young children. Although he was sentenced to be executed, his sentence was eventually commuted to life imprisonment in the Kingston Penitentiary on the grounds of temporary insanity. (1919) *Rex v. Frederick Fountain*, NAC, RG 13, Capital Case Files, vol. 1501, no. 635A, 647A, CC108; (1919) "Rex vs. Fountain - Murder: As to examination of accused as to sanity," RG 4-32, AG, #1641; Niagara Falls *Evening Review*, 19, 20, 21, 22, 24, and 28 February, 1 March, 16 October 1919.

[8] (1884) *Queen v. Cook T.*, AO, RG 22-392, Grey County CAI, Box 46; (1896) *Queen v. Robert C.*, AO, RG 22-392, Brant County CAI, Box 8. Hence, out of a compilation of 106 wife murder and 26 husband murder trials found in the Ontario court records and newspapers in the period between 1830 and 1920, Arthur Day's case was the only one directly linked to his bigamous marital status. In addition, Dr. Albert Walker of Waterdown attempted to murder his wife and committed suicide in 1876. According to the newspaper account, Mrs. Walker had allegedly "taunted her husband with having another wife" after a woman had appeared and claimed him as her spouse one year earlier. Her constant accusations apparently so

If spousal murders precipitated by the potential complications associated with bigamous marriages were a relatively rare phenomenon in nineteenth- and early twentieth-century Ontario, bigamy itself was not. Even though it is extremely difficult to ascertain how many such illegal marriages existed yet remained undetected by legal authorities, particularly since 'successful' bigamists effectively wrote themselves out of history, criminal and other historical records do provide a glimpse into those cases that did come to the attention of the criminal justice system, or to federal parliamentarians when bigamy constituted grounds for divorce. In the latter case, historians like James Snell have examined bigamy particularly within the context of formal and informal divorce in early twentieth-century Canada,[9] but bigamy as a criminal offence and a social phenomenon has not been the subject of detailed historical inquiry.[10]

In the period between 1830 and 1920, my research has uncovered 191 men and 63 women who were formally prosecuted for having entered into what was termed a 'form of marriage' while their first spouse was still alive. This does not include an additional 11 men and 13 women who, particularly beginning in the 1900s, were charged as accessories,

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"enraged" him that at the mere mention of the matter, "he drew a revolver and fired two shots at [her]." "The Waterdown Tragedy," Toronto *Globe*, 30 May 1876.

9 James Snell, *In the Shadow of the Law: Divorce in Canada, 1900-1939* (Toronto: University of Toronto Press, 1991).

10 This has not, however, been the case elsewhere. See, for example, Lawrence Stone, *The Family, Sex and Marriage in England, 1500-1800* (New York: Harper and Row, 1977); Roderick Phillips, *Putting Asunder: A History of Divorce in Western Society* (Cambridge: Cambridge University Press, 1988); Alexandra Cook and David Cook, *Good Faith and Truthful Ignorance: A Case of Transatlantic Bigamy* (Durham & London: Duke University Press, 1991); Joan Smyth Inversen, "A Debate on the American Home: The Antipolygamy Controversy, 1880-1890," *American Sexual Politics: Sex, Gender and Race since the Civil War*, eds. John C. Fout and Maura Shaw Tantillo (Chicago: University of Chicago Press, 1993), 123-40; Richard Boyer, *Lives of the Bigamists: Marriage, Family, and Community in Colonial New Mexico* (Albuquerque: University of New Mexico Press, 1995); and Angus McLaren, *Trials of Masculinity: Policing Sexual Boundaries, 1870-1930* (Chicago: University of Chicago Press, 1997), 60-70.

namely for knowing that their marriage partner had another living spouse, nor the numerous accounts of suspected bigamists and polygamists contained in local newspapers. While comparatively fewer cases seemed to have reached the criminal courts in the 1830s, 1840s, and 1850s, this did not necessarily mean that bigamous marriages were less prevalent; rather, given the social conditions in Upper Canada/Canada West, the requisite 'flow of information' about illicit marriages could be hampered in a number of ways.[11] Moreover, in this early period, the legal system was not the only institution in which bigamy cases were heard and adjudicated. Between 1798 and 1860, for example, the disciplinary proceedings of various Baptist and Presbyterian churches investigated at least eight cases of bigamy involving, with two exceptions, female church members.[12] By the latter half of the nineteenth century, however, sensationalized accounts about the exposure of suspected bigamists became a relatively common feature of newspaper reporting, and bigamy cases were prosecuted with growing frequency in the lower and especially the higher criminal courts of the province.

Whether entering into a bigamous marriage occurred in the backwoods of Upper Canada in the early nineteenth century or in burgeoning urban centres like Toronto in the early twentieth century, criminal court records and newspaper accounts offer a window into a number of socio-historical processes, including patterns of marriage and remarriage, the mechanisms through which the 'clandestine' became 'public', and how legal authorities and social commentators viewed this crime against the institution of monogamous marriage. Thus, by examining the various circumstances in which bigamy was committed,

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[11] In addition, as mentioned in chapter 1, the surviving criminal court records for this early period are much more fragmentary than after 1860.

[12] Peter Ward has also examined a number of cases involving bigamous marriages and requests for church dispensations to remarry which were brought to the attention of Upper Canadian Catholic bishops. Peter Ward, *Courtship, Love, and Marriage in Nineteenth-Century English Canada* (Montreal & Kingston: McGill-Queen's University Press, 1990), 22-23.

it is possible to probe more deeply into the character of marital relations, some of the complexities associated with marital breakdown, and especially how bigamists, when presenting their cases in the criminal courts, tended to justify their transgression of the monogamous marriage contract. In analyzing the processes through which bigamous marriages were brought to the attention of the legal system, these criminal cases reveal that entering into a bigamous marriage went beyond violating and betraying the marriage contract *per se*; rather, bigamy was committed at the nexus of the various relations, including those of community, acquaintances, family, and the marriage partners involved. Despite the growing presence of state agencies in the exposure of bigamous marriages in the early twentieth century, these socio-familial relations were crucial in determining whether illicit unions would remain clandestine or would enter the realm of the 'criminal'. Finally, when exploring the legal regulation and criminal prosecution of what was generally considered to be a serious "disregard for the sanctity of the marriage tie,"[13] it becomes evident that bigamy posed particular dilemmas for legal authorities. Consequently, while the convictions handed down by judges and juries were premised on the strength of the evidentiary proof that bigamy had actually been committed and that the criminal laws had been violated, the sentences imposed were often shaped by assumptions about gender and class, by the 'mitigating circumstances' under which bigamy was committed, and by contested definitions of what best served the interests of public morality in relation to the strict provisions of the criminal code.

Committing Bigamy: Im/migration, Desertion, Separation, and Illegal Divorce

In contrast to the stipulations of British criminal laws against bigamy officially inherited by Upper Canada in 1800 and the explicit sanctions against polygamy enacted by

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[13] See, for example, the bigamy case of Sarah Jane Harper, Toronto *Globe*, 24, 25, and 31 January 1912.

federal parliamentarians in 1890,[14] historical studies of First Nations societies have shown that, in addition to considerable sexual autonomy and relatively easy access to divorce, polygamy was a custom condoned within some Indigenous groups. In the minds of many colonial legislators, legal authorities, and christian missionaries, however, this "anti-Christian usage" was simply perceived as "one of the incidents or privileges of barbarian life," and was considered to be one of the most heinous among a long list of 'uncivilized' and 'heathen' practices.[15] Consequently, as Winona Stevenson has argued, even though the legal system may have been willing to tolerate First Nations marriage rites in certain circumstances, it resolutely "refused to acknowledge polygamy," and "in an attempt to curb it, the Indian Department withheld treaty annuities and band revenues from any persons engaged in polygamous unions." She further notes that while "this strategy was generally effective," it also meant that this custom, like so many others, was simply driven underground, with "more traditionalist factions merely conceal[ing] their polygamous arrangements," particularly from the prying eyes of Christian missionaries and local Indian agents.[16]

Despite the colonial assumption that Aboriginal men had a propensity to have 'many wives', the Ontario legal records yielded no criminal cases similar to that of Bear's Shin Bone of the Blood nation, that involved the prosecution of First Nations men and women

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[14] (1800) "An act for the further introduction of the criminal law of England in this province, and for the more effectual punishment of certain offenders," 40 Geo. III, c. 1; (1890) "Offences in Relation to Marriage," 53 Vict. c. 37, s. 5 (a), which in 1892 became Section 278 (a) (i) of the Canadian criminal code.

[15] See, for example, (1867) *Connolly v. Woolrich and Johnson et al.*, 1 CNLC, 74; *Census of the Three Provisional Districts of the North-West Territories, 1884-5* (Ottawa: Maclean, Roger & Co., 1886), xvi; Sylvia Van Kirk, "'The Custom of the Country': An Examination of Fur Trade Marriage Practices," *Canadian Family History: Selected Readings*, ed. Bettina Bradbury (Toronto: Copp Clark Pitman, 1992), 67-92.

[16] Ann McGrath and Winona Stevenson, "Gender, Race, and Policy: Aboriginal Women and the State in Canada and Australia," *Labour/Le Travail* 38 (Fall 1996): 45.

for such marital transgressions as bigamy (which would have included customary divorce followed by remarriage) or polygamy (which was not characteristic of the matrilineal and matrilocal societies of the Six Nations of the Great Lakes region).[17] With few exceptions, those who were formally tried for these particular conjugal crimes were white colonizers, the vast majority of Anglo-Celtic heritage (20 men and 9 women were not) and most of working-class backgrounds.[18] Furthermore, even though these suspected bigamists and polygamists were considered to be violators of both ecclesiastical and secular laws which sought to enforce heterosexual monogamy, unlike the often sweeping racist 'othering' of First Nations peoples, their marital transgressions were not constructed as forms of 'barbaric savagery', as remnants of 'pagan' practices, or as reflections of general 'depravity'. Rather, membership within non-Aboriginal society ensured that they were judged as 'criminal' or in some cases, as 'foolish' acts, depending on a number of factors, including the particular situations in which bigamy or polygamy were committed.

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[17] See (1899) *Regina v. Bear's Shin Bone*, 3 CNLC, 513-16; 3 CCC, 329-32; "Blood Agency - Polygamy, 1898-1899," NAC, RG 10, Department of Indian Affairs, Volume 3559, File 74, 19; "Moose Mountain Agency - Polygamy, 1904-1908," Ibid, Volume 3559, File 74, 3; "Manitoba - Polygamy among the Indians, 1892-1911," Ibid, Volume 3881, File 94, 189; "Berens River Agency - Polygamy, 1901-1908," Ibid, Volume 3559, File 74, 27; Constance Backhouse, *Petticoats and Prejudice: Women and Law in Nineteenth-Century Canada* (Toronto: Women's Press, 1991), 25-26. Although it is unclear whether criminal charges were laid, the Department of Indian Affairs files reveal that Indian agents were either aware of or launched investigations into bigamous marriages on First Nations reserves in Ontario. See the case of Peter W. in "Manitowaning Agency - Correspondence Regarding ... Cases of Immorality in the West Bay, Sheshegwaning, Maganettawan and Wikwemikong Bands, 1896-1904," NAC, RG 10, Department of Indian Affairs, Volume 2875, File 176, 964; the case of Catherine S., a Mohawk woman, in "Tyendinaga Agency - Correspondence regarding charges of bigamy against Catherine ... S[], 1894-1896," Ibid, Volume 2749, File 147, 708; and the case of Big Blood of the Islington Band in "Kenora Agency - General Correspondence Regarding Immorality On Reserves, 1895-1957," Ibid, Volume 8869, File 487/18-16, 1.

[18] Of the 191 accused male bigamists in my compilation of cases, twenty defendants can be identified as non-Anglo-Celtic, including six French-Canadians, four Jews (plus one accessory), three Italians, three Germans/Swiss, one Finn, one Macedonian, one African-Canadian, and one South Asian. Among the 63 female defendants, six were French-Canadian, one was German, one was Italian, and one was Jewish. Of the cases in which the class background of male bigamists was specified, at least 75 per cent were working class; the vast majority of female bigamists were also working class, although the evidence for this is largely impressionistic.

During nineteenth- and early twentieth-century bigamy trials, the court testimonies of the main protagonists, and their reconstruction and re-creation of the events leading up to the remarriage revealed that husbands and wives entered into bigamous marriages in a variety of circumstances. As with all criminal trial testimonies and newspaper accounts, these narratives should be 'read' with caution since their recounting usually occurred in the courtroom, in which the accused invariably sought an acquittal or judicial leniency, the aggrieved plaintiff and her/his supporters generally desired some form of punishment, and the judge and/or jury were empowered to decide the guilt or innocence of the defendant and to impose a sentence adequate to the crime. In addition, nineteenth- and early twentieth-century criminal statutes against bigamy stipulated four situations in which remarriage during the lifetime of the first spouse would not be considered a 'criminal' act: if the first marriage had been declared null and void by a court of competent jurisdiction or if it had been dissolved through a valid and recognized divorce; or on a less formal level, if the accused,"in good faith and on reasonable grounds," believed his or her spouse was dead, or if the defendant's wife or husband had been continuously absent for the previous seven years and it could not be proven that the defendant knew that the absent spouse was alive at any point during that time.[19] As indicated in the last two chapters, securing the nullification of a defective marriage or procuring a parliamentary divorce was exceedingly difficult if not virtually impossible for the vast majority of Ontario residents. This may have accounted for the relative absence of references in most bigamy narratives to even attempting to obtain a formal divorce prior to remarriage, and in only one case was Canada's restrictive parliamentary divorce procedure explicitly invoked as a line of defense. Although it is

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[19] See (1841) "An Act for consolidating and amending the Statutes in this Province relative to Offences against the person," 4 & 5 Vict., c. 27, s. 22; (1869) "An Act respecting Offences against the Person," 32 & 33 Vict., c. 20, s. 58; (1892) "Offences Against Conjugal and Parental Rights," 55 & 56 Vict., c. 29, s. 275 (3). See also G. W. Burbidge, *A Digest of the Criminal Law of Canada* (Toronto: Carswell Co., 1890), 253-55; Henri Taschereau, *The Criminal Code of the Dominion of Canada* (Toronto: Carswell Co. Law Publishers, 1893), 279-80.

tempting to conclude that bigamy was committed *because* of the inaccessibility of divorce, Roderick Phillips has convincingly suggested that this is perhaps an erroneous assumption, stating that "the easy availability of divorce does not necessarily lead to the disappearance of bigamy, even though it would seem to rule out the necessity of committing the offence in order to remarry."[20] Without engaging in undue speculation about what might have been, what can be said is that whether because of the expenses and arduous procedures involved, due to the survival of 'old world' plebian customs of self-divorce, or simply because it represented the least practical solution to marital breakdown, the issue of formal divorce was a non-existent factor in the vast majority of bigamy and polygamy trials, especially in those involving working-class men and women. Conversely, a whole series of other explanations and justifications, including the presumption of death and the seven-year rule provided the ingredients which shaped how bigamy (and to a lesser extent polygamy) stories were constructed.

With this in mind and despite the intricacies of each bigamy case, a number of common trends can be identified concerning the various circumstances in which bigamy was committed. Seemingly one of the most favourable contexts which carried the least risk of (immediate) detection involved situations when married couples, for various reasons, became separated geographically, especially through the process of transcontinental immigration or internal North American migration. Given the varying streams of Anglo-Celtic, European, and increasingly Asian immigrants who flocked to Canada during this extended period and given the mobile character, particularly of the non-Aboriginal landless population, these were by no means uncommon experiences among those who came to

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[20] Phillips, *Putting Asunder*, 301. This argument seems to be supported by the fact that bigamy cases continue to appear in Canadian criminal courts. Recently, Mario Donald Sauve was fined $1,000 and received one year's probation in a Calgary court after being convicted of going through "a form of marriage with another woman" in 1993 while living in Cape Dorset in the Northwest Territories and after leaving his wife and two children in Quebec. See, *The Globe and Mail*, 17 May 1997.

reside either temporarily or permanently in Ontario.[21]

During the colonial period, a number of bigamy trials revealed that some married women, who had emigrated from the British Isles to Upper Canada/Canada West with their husbands, found the climate and conditions in the 'new world' so inhospitable or felt their marital relations had become so intolerable that they decided, particularly if they had access to sufficient economic means, to return to their home countries. In some cases, their husbands interpreted these departures as the symbolic 'death' of the marital union, which in turn prompted them to assume the identity of a widower so that they could remarry, and thereby engage the essential domestic labour of a new marriage partner.[22] In 1839, for example, Mary Chambers, who had emigrated to Upper Canada with her husband and their nine children some years earlier, decided to leave her husband after twenty years of marriage and return to England. Unable to endure her husband's ill-treatment any longer, she took advantage of the fact that "she had some money there, and would go and live on it." Eight years later, when her husband, Philip, then a resident of Toronto, announced that he intended to marry a "rich old widow," his brothers and sisters-in-law felt it prudent to

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[21] For general immigration trends to Upper Canada and Ontario, see Elizabeth Jane Errington, *Wives and Mothers, Schoolmistresses and Scullery Maids: Working Women in Upper Canada, 1790-1840* (Montreal & Kingston: McGill-Queen's University Press, 1995); Alison Prentice, et. al. *Canadian Women: A History* (Toronto: Harcourt Brace & Co., 1996). For studies of geographical mobility and transiency, see, for example, J. David Wood, "Population Change on an Agricultural Frontier: Upper Canada, 1796 to 1841," *Patterns of the Past: Interpreting Ontario's History*, eds. Roger Hall, William Westfall, and Laurel Sefton MacDowell (Toronto: Dundurn Press, 1988), 55-77; Michael Katz, *The People of Hamilton, Canada West: Family and Class in a Mid-Nineteenth-Century City* (Cambridge, Mass.: Harvard University Press, 1975), chapter 3; David Gagan, *Hopeful Travellers: Families, Land, and Social Change in Mid-Victorian Peel County, Canada West* (Toronto: University of Toronto Press, 1981), chapter 5; A. Gordon Darroch, "Migrants in the Nineteenth Century: Fugitives or Families in Motion?," *Journal of Interdisciplinary History* 6, 3 (Fall 1981): 257-77.

[22] For example, during the 1861 bigamy trial of John McKeown, a Toronto tailor, an Irish acquaintance testified that the defendant had told him that after his legal wife came to Canada West from Ireland in 1850s with their infant and realized "the climate did not agree with them," "he had sent them back home again." Once she was gone, the accused had informed him that she had "died immediately upon her return to Ireland." The evidence further revealed that since emigrating to Canada West, John had married at least two other women. Toronto *Globe*, 11, 14, 15, and 29 October, 2 November 1861.

remind him that Mary, with whom they had corresponded periodically, was still very much alive, and to warn him about the risks of remarrying. In spite of this unsolicited advice, Philip's second marriage was solemnized in 1849, after which he declared confidently that "it would never matter ... he had got a good wife, and that his first wife would not come back." For the next seven years, with Mary safely residing in England and Philip's relatives remaining silent, there was little reason to believe that this bigamous marriage would be exposed to the legal authorities. Evidence at the trial, however, suggested that in 1856, when the previously amicable relationship between Philip and his brother, Timothy, disintegrated over a series of bitter civil suits related to several pieces of property, what had over the years remained a well-kept family secret became the source of sibling blackmail. After threatening to prosecute his brother for bigamy, unless "he did what was right to him" and "gave up certain lands," Timothy's determination to punish his brother for "cheating him" resulted in his travelling to England to arrange for Mary's return after a seventeen-year absence so that criminal proceedings could be launched against him.[23]

Upper Canadian legal authorities were also aware of the fact that the process of immigration could create situations in which bigamous marriages were constituted. One Kingston magistrate, following the bigamy trial of Alexander Ely in 1835, stressed what he perceived to be the principal lesson of the case, particularly given the relatively fluid population in the colony. In his view, the illicit marriage between Alexander, a young shoemaker who had emigrated from Ireland to Waterloo in 1834, and Elizabeth Adzit, the daughter of a Kingston township resident, should serve as a clear "warning to families residing in this country, to beware of admitting strangers into the bosoms of their homes with such slight prior acquaintance." Within a few months of his arrival in Upper Canada, Alexander began to "pay his addresses" to Elizabeth and soon approached her father to

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[23] Toronto *Globe*, 23 October 1857.

procure the necessary permission to marry her. As Mr. Adzit later testified in court, Alexander acknowledged that he had been "married in Ireland," but told his future father-in-law that he "did not think the marriage was a legal one" and more convincingly, that his wife "had died of Cholera" upon her arrival at Grosse Isle, which was by no means an unbelievable story during this period.[24] After witnessing Alexander "lament her death with tears in his eyes" and seeing him "so overwhelmed with grief," the much affected Mr. Adzit had consented to the marriage. Shortly after their union in 1835, however, Jane Hyland unexpectedly appeared in town and angrily upbraided Alexander for his conduct and especially for his refusal to acknowledge her as his legal wife. In claiming him "as her own particular property," she asserted that she had married him three years previously in Ireland, that she was the mother of his child, and that they had lived together until shortly before emigrating to North America. Needless to say, the news spread quickly. Mr. Adzit, incensed by the possibility that he had been deceived by his son-in-law, immediately reclaimed his daughter, returned her to her paternal home, and initiated criminal proceedings in order to settle the matter. At the subsequent trial, Eliza and William Ely, the sister and brother of the accused, acknowledged that they had played a significant role in Alexander's deception, when they told the magistrate that he had, shortly before his second marriage, admitted to them that Jane was probably alive. According to his version of events, after living together for one year, he and Jane had quarrelled over money matters, and "in consequence she had left him and gone off to America," allegedly stealing much of his money and most of his valuables. While his wife's robbery as well as her departure and disappearance had, at least in Alexander's mind, signalled the end of their marriage, he had

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24 The years 1832, 1834, 1849, and 1854 witnessed major cholera epidemics in Lower and Upper Canada and, beginning in 1832, emigrants were forced to disembark at Grosse Isle, which was set aside as a quarantine station. See, for example, Rainer Baehre, "Pauper Emigration to Upper Canada in the 1830s," *Histoire sociale/Social History* 28 (November 1981), 339-67; Geoffrey Bilson, "Cholera in Upper Canada, 1832," *Ontario History* 67, 1 (March 1975): 15-30, and *A Darkened House: Cholera in Nineteenth-Century Canada* (Toronto: University of Toronto Press, 1980).

explicitly warned Eliza "not to say any thing relative to Jane Hyland being alive," and she had evidently agreed to respect her brother's wishes. William also remained silent, remonstrating his brother *not* for remarrying "under such circumstances," but rather for not waiting "until he got a chance of a[n] [Irish] wife from the Old Country."[25]

While the departure of emigrant wives and the complicity of bigamists' families could offer a convenient space for the constitution of bigamous marriages, a more common trend, which surfaced periodically in the nineteenth and early twentieth centuries, involved the process of chain immigration, namely situations in which husbands emigrated to Canada, with promises that they would eventually send for their wives and then, unbeknownst to them, decided to remarry. In these cases, the narratives that emerged either in the courtroom or in newspaper accounts were frequently reconstructed as sordid tales of desertion, deception, and betrayal. In August 1861, for example, John Williams, alias John Shillabeer, an English dockworker turned itinerant street preacher, was charged in the Toronto police court with bigamy, having remarried seven months earlier while his first wife, Elizabeth, was still alive and residing in Plymouth, England. Although rumours had been circulating that John was already married, shortly before his second marriage, he too employed the common strategy, assuring his friends and particularly his future father-in-law that he had been informed that his first wife was dead. During his trial, however, the testimony of friends and the evidence contained in a series of letters written by Elizabeth to a Toronto acquaintance revealed that she had begun making enquiries about her husband in 1857. While her initial correspondence indicated that she was unsure if he was still alive, since she had received no word nor any financial support for over three months, her main concern was that, due to her increasingly distressed circumstances, she would be forced to apply to the local parish for relief. Two years later, her husband finally responded to her

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[25] *Kingston Chronicle and Gazette*, 4 November 1835; *British Whig*, 3 November 1835.

periodic enquiries, providing a series of elaborate explanations for his neglectful conduct. Describing Perth as "the worst place he ever was in in Canada," and portraying Toronto as equally "horrid" with its frigid temperatures, rampant unemployment, and widespread destitution, he strongly advised Elizabeth not to even consider coming to Canada. In his letter of June 1860, John elaborated on his tales of hardship, informing his wife that the reason he had not sent her any financial support was because he had "not picked up enough to pay for what I have to eat," and with Ontario still "in the depths of the winter" with "deep snow and bitter cold" together with his chronic kidney and back complaints, he found it extremely difficult to venture out to work. Despite her husband's rather belated justifications, Elizabeth was not at all appeased and her subsequent letters, now being sent from the pauper workhouse in Plymouth, revealed her growing sense of indignation, accusing her husband not only of desertion, but also of maliciously spreading false rumours regarding her death. Finally, after being informed of her husband's second marriage and his subsequent arrest, she willingly provided the necessary legal proof of her marriage to the accused and expressed her deep hope that he would be convicted and punished for his "heartless conduct."[26]

Fortunately for Elizabeth Shillabeer, her acquaintances within the English immigrant community in Toronto kept her fairly well informed of her husband's marital indiscretions. Other wives, however, like Mary Smith and Janetta M., who also resided overseas, did not have the same direct access to information about their husbands' lives in Canada, and these situations often had rather unexpected consequences. In the case of Mary Smith, who charged her husband, a London railway employee, with bigamy in 1870, it was only when she finally emigrated to Ontario to be reunited with her husband that she was "not a little taken aback to find that he had, for fifteen years been cohabiting with

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[26] Toronto *Globe*, 7, 8, and 9 August, 10 and 31 October, 1 November 1861.

another, who considered, she too, was lawfully married to him." Throughout this protracted period, Mary had seemingly suspected nothing, particularly since her spouse had consistently and dutifully "corresponded with her in the character of a husband." Needless to say, according to the newspaper report, "the domestic hearth of the delinquent ... became a scene of considerable turmoil, confusion and uproar." And not untypically, "Wife No. 2 hastily abandoned him ... and has not since consented to see him, while No. 1, after long reflection upon the wisest course to follow, concluded to put him through a course of law."[27] Five decades later, the experience of Janetta M., a domestic servant who also resided in England, was somewhat similar. According to her court testimony in April 1916, three days after her marriage to Harold M. in 1910, she had given her husband, an unemployed butler, all the money she possessed to purchase the necessary fare to emigrate to Canada so that he could find employment and eventually establish a permanent home for the two. Just over a year later and without her knowledge, Harold married Elizabeth M. of Whitby. While Janetta and Harold corresponded regularly during that year, Harold's letters revealed his growing opposition to the notion of his wife coming to Canada, suggesting that she should wait until he was more financially stable. His correspondence also contained frequent and increasingly perturbed requests for money and for various other articles, the most suspicious being a ring that he had pawned prior to leaving England. Still intending to join her husband at some point, it was not until four years after his bigamous marriage that Janetta began to believe the gossip circulating in her neighbourhood about her husband's second marriage, rumours that Harold had in a letter jokingly denied. Increasingly determined to find out the truth, she decided to travel to Ontario and with the assistance of a Montreal solicitor she managed to locate her husband. After making further enquiries and substantiating her suspicions, she immediately laid a complaint against him

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[27] *London Free Press*, 15, 16, and 24 June 1870.

before the Whitby police magistrate.[28]

While transcontinental distances could potentially provide bigamists with some degree of (temporary) protection, married women like Janetta M. and particularly wives who had been deserted by their husbands displayed considerable determination in tracking down their errant spouses, by travelling long distances and incurring considerable expense. Local newspapers frequently published reports about the arrival of deserted wives in particular towns or cities, who were searching for their 'truant husbands'. In the case of Sophia Danless, who travelled from Vermont to Ottawa in February 1867 to locate her husband, the conclusion of that search, during which she was reported to have "displayed all the acuteness of a detective," was the discovery that Joseph Shroeder, her "recreant spouse," was living in a dilapidated shanty in Glouces-ter "with a woman whom he called his wife." Once evidence began to be gathered for his ensuing trial at the Carleton Assizes, it was soon discovered that he had married two other women since his desertion of Sophia five years earlier. Responding to the mounting evidence and the two charges of bigamy against her husband, Sophia stressed that as his "real wife," she only wished to "prove her wifehood and punish Shroeder for his crimes ... and have nothing more to do with him."[29] For Mrs. Tresinsky of Riga, Russia, in contrast, her weary twenty-year search for her

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[28] (1916) *King v. Harold M.*, AO, RG 22, Ontario County CA/CP CCJCC Case Files, Box 16. For other bigamy cases involving chain immigration, see, for example, (1890) *Queen v. Henry R.*, AO, RG 22-392, Wentworth County CAI, Box 178, and 20 OR, 212; (1882) *Queen v. William McKay*, London *Advertiser*, 4 and 7 April, 1882; (1911) *Rex v. Yovan N.*, AO, RG 22, York County CA/CP (CCJCC) Case Files, Box 2717, 19 CCC, 102-10, and 24 OLR, 306-13; (1913) *Rex v. Henry Green*, Toronto *Globe*, 9 December 1913; (1884) *Queen v. John Geddes*, Toronto *Globe*, 15, 16, 20, and 27 May 1884; (1894) *Queen v. William Parker*, Toronto *Globe*, 13, 21, and 30 April 1894; (1913) *Rex v. Louis L.*, AO, RG 22, York County CA/CP (CCJCC) Case Files, Box 2719; (1913) *Rex v. John Galbraith*, Toronto *Globe*, 12 and 20 April 1913; (1915) *Rex v. Samuel N.*, AO, RG 22, York County CA/CP (CCJCC) Case Files, Box 2724; and (1920) *King v. Alexander D.*, AO, RG 22, Carleton County CA/CP Case Files, Box 3975, RG 22, Carleton County CCJCC Minutes, 1908-20, and *Ottawa Journal*, 6 March 1920.

[29] Ottawa *Citizen*, 16 February, 10 May 1867.

deserting husband ended in February 1882, when she finally located him near Berlin, Ontario. While she had long assumed that her husband was dead, three years earlier a Russian immigrant had allegedly informed her that he was living in Canada. Not untypically, her sudden appearance at her husband's prosperous farm and her determination to claim her wifely rights and those of their twenty-year-old son, caused "a great deal of consternation" and "severe shock" among the members of his large family.[30]

Another factor associated with this pattern of desertion and bigamy was that rooted in the highly transient character of North American society in the nineteenth and early twentieth centuries. Whether for purposes of employment, travel, or to advance their fortunes, men's greater mobility also provided the context within which husbands temporarily or permanently abandoned their wives (and any children) and eventually entered into bigamous marriages. In 1874, after what was described as three years of "connubial bliss," William M., an Irish machinist, decided to leave his home in Passaiac, New Jersey, presumably to seek his fortune out West. After "some wanderings," he "turned his steps toward Canada" and eventually reached the village of Newmarket, where he, "like a faithless man," soon married Margaret T.. Thereafter, William did eventually renew contact with Catherine, his legal wife, writing her a series of letters in which he begged her to send him some funds which he promised to use to pay for his trip home. While he strongly suggested that she might have no reason to trust him because of his hasty departure and his long absence, he insisted that if she did not send him some money immediately, she would "not see me aliva ... for I am starving for thara is no worka hera." Vowing "never [to] do such a meene trick again," he concluded his letter by stating ironically that "bad as i am I am still your living husband" and expressing his hope that

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30 "Found At Last. A Deserted Wife Discovers Her Truant Husband's Location. A Twenty Year's Search Ended," Toronto *Globe*, 27 February 1882. See also "Deserted In Ottawa," *Stratford Evening Herald*, 18 August 1896.

"god will soften your hart." Rather than forwarding him the requested funds, however, Catherine, suspecting that her husband may have been feeding her a pack of lies, appeared in Toronto several months later to lay bigamy charges against him.[31]

Although this pattern of abandonment and remarriage tended to be a fairly common one, some of the harshest denunciations were directed towards those deserting and bigamous husbands whose perceived betrayal of their first wives was compounded by other transgressions, such as masquerading as widowers or bachelors as well as violating generational and moral codes against marrying and indeed preying on unsuspecting younger single women. Not unlike sordid tales of seduction and the sexual entrapment of young innocents (albeit under the guise of marriage),[32] these middle-aged men were frequently condemned in the press as 'lecherous scoundrels', who deserved the severest punishment under the law. When the business ventures of fifty-year-old Henry B., a travelling peddlar from Toronto, brought him to Brantford in 1881, he registered at a local hotel under an assumed name, presented himself as a widower, and quickly became enamoured with a young woman named Rosa W.. Although she initially consented to marry him, she soon had second thoughts, but assured "the disappointed wife-hunter" that her acquaintance, Martha C., a nineteen-year-old domestic, had agreed to "have him." Ironically, on the day Henry obtained the marriage license, his first wife, Ann, received a

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31 (1875) *Queen v. William M.*, AO, RG 22-392, York County CAI, Box 200; Toronto *Globe*, 28 July, 5 and 7 October, 5 and 6 November 1875. For a similar pattern, see (1917) *Rex v. William P.*, AO, RG 22, York County CA/CP (CCJCC) Case Files, Box 2727.

32 For discussion of these issues, see Bryan Palmer, "Discordant Music: Charivaris and Whitecapping in Nineteenth-Century North America" *Labour/Le Travail* 3 (1978): 5-62; Karen Dubinsky, "'Maidenly Girls' or 'Designing Women'?: The Crime of Seduction in Turn-of-the-Century Ontario," *Gender Conflicts: New Essays in Women's History*, eds. Franca Iacovetta and Mariana Valverde (Toronto: University of Toronto Press, 1992), 27-66, and *Improper Advances: Rape and Heterosexual Conflict in Ontario, 1880-1929* (Chicago: University of Chicago Press, 1993), chapter 3; Carolyn Strange, *Toronto's Girl Problem: The Perils and Pleasures of the City, 1880-1930* (Toronto: University of Toronto Press, 1995), 62-65.

letter, "declaring he was homesick and was anxious to be at home again." But several weeks later, suspicious that her husband may have deserted her since she had not heard from him again, she wrote to the hotel enquiring about his whereabouts. The hotelkeeper made the connection, informed Ann about his recent marriage, and a warrant was issued for his arrest. According to the newspaper account, even though Ann sought to explain her husband's behaviour by suggesting that his "mind is not very strong, the result of slight paralysis," she hoped that he would henceforth never come near her. Martha, described as "rather fine-looking for a domestic" who was just beginning to realize the "horror of the situation" and the possibility that "her life [had] been ruined," also stated contemptuously that she wanted nothing more to do with the "naughty rascal" and, despite his alleged mental imbalance, that "she could not forgive him."[33]

Of all the wife deserters/bigamists, however, the various matrimonial crimes of Edward E., alias William B., the son of a prominent Montreal contractor, not only drew considerable attention in Ottawa during his trial in 1914, but perhaps the greatest opprobrium in the press. His conduct was rather melodramatically described as "one of the most astounding tales of faithlessness and desertion: of the wronging of a young and pretty woman who in her unsophistication implicitly believed his lying statements; and of the leaving in straitened circumstances the mother of his children." Weeping in court, Jennie, his first wife and the mother of three children, testified that after her marriage to the accused in 1901, they lived together in Montreal until May 1913, when he, for no apparent reason, disappeared without a trace. When he reappeared one year later, he claimed he had been "out west," but two days later, he abandoned her a second time, stealing the last seven dollars she possessed. Twenty-year-old Eva T., his second wife, stated that she had met the accused in early September 1913, they courted for a month, and he proposed marriage.

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[33] (1881) *Queen v. Henry B.*, AO, RG 22-392, Elgin County CAI, Box 29; RG 22, Elgin County CCJCC Docketbook, 1879-1908; Toronto *Globe*, 15, 25, and 28 February, 21 and 27 April 1881.

At first she refused his proposal, informing him that she "had not known him long enough" and that she felt he was too old for her. When he wrote her a letter threatening to commit suicide, however, she finally consented to marry him out of fear "that he would carry out his threat." Four months after their marriage in Ottawa, Edward suddenly disappeared for a week and, upon his return, he dramatically proclaimed that "he had been drugged and taken to Smith's Falls" and it was only later that she learned that he had been visiting his first wife. Finally, when he told her that he intended to enlist and several days later disappeared again, she began to make enquiries at the local armories, and subsequently discovered that he had been masquerading under an alias and that he had a wife and family living in Montreal. After contacting and visiting Jennie to confirm the information, she laid a complaint against him. Although Edward admitted to marrying two women, he apparently showed little remorse "for the misery and suffering" he had caused and defended his actions by claiming that he had fully intended "to do his best to support both of his wives." After hearing the evidence, however, the judge decided that it was unnecessary for the jury to deliberate upon the verdict, but unilaterally pronounced the accused guilty. When sentencing the prisoner to four years in the Kingston Penitentiary, he stated: "'I could give you seven years for this despicable crime ... and I want you to understand you are getting off easily'."[34]

If those bigamists who reneged on their husbandly and fatherly obligations by deserting their first wives and children and then unscrupulously victimized younger women were generally looked upon with a disdain by both the community and the legal system, the marital careers of male 'trigamists' or 'polygamists' who had more than two living spouses or who, in some instances, managed for a time to maintain several functioning marriages

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34 (1914) *King v. Edward E.*, AO, RG 22-392, Carleton County CAI, Box 25; RG 22, Carleton County CCJCC Minutes, 1908-20; "The King v. Edward G. E[] alia William B[] - Bigamy," RG 4-32, AG, #1286; *Ottawa Evening Journal*, 24 September, 28 and 29 October 1914.

were usually greeted with even greater vilification, combined at times with a high degree of public fascination.[35] Certainly, by flaunting both religious and legal prescriptions which sought to uphold heterosexual monogamy, these married men's multiple marriages had the greatest potential to raise the spectre of matrimonial and indeed social anarchy. In 1831, Upper Canada's Attorney General warned his fellow legislators that unless stricter procedures for obtaining marriage licenses and for verifying the "eligibility of the parties" were established in the province, there would continue to be few safeguards against the "evils" of illegal marriages: "it was well known and crying evil that abuses of this kind did exist - that persons are sometimes married three or four times over, which was not only a religious and moral, but a civil evil, affecting the legitimacy of children and the rights of property, against which it was the interest of every person in the country to guard."[36] Three decades later, both the *Ecclesiastical Record* and the Toronto *Globe* felt it necessary to issue a strong public warning against John Mavors, a young educated store clerk who had emigrated to Kingston from Scotland in the early 1850s and who was portrayed as a "villanous imposter" dangerously on the loose. For eight years, he had, under the cover of at least six aliases and through the use of forged documents, travelled from town to town in Canada West and New York state, masquerading and procuring positions as a school

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35 Readers of Ontario newspapers were also kept abreast of 'polygamy' cases, which surfaced in the United States, particularly when they involved defendants previously convicted of bigamy in the province or involved marriages to (one or more) Ontario residents. See, for example, the case of George Newbold of Campbellford who was sentenced to two years imprisonment for bigamy in 1876 and eight years later was tried in Toledo for marrying at least two more women. Toronto *Globe*, 28 and 29 November, 1 December 1884. See also "The Career of a Bold Villain: He Marries Eleven, and Perhaps More Wives," *London Free Press and Daily Western Advertiser*, 10 February 1860; "A Polygamist on Trial for Bigamy," Toronto *Globe*, 7 and 20 May 1880; "Arno as a Bigamist: One Wife in Windsor, Another at Eastport, Mich.," *Chatham Daily Planet*, 13 November 1893; "No Less Than Five Wives," Toronto *Globe*, 1 January 1894; "A Man of Many Wives ... Believed to Have Married at Least a Dozen Women ... Toronto Actress Among the Number," Toronto *Globe*, 1 June 1908; "London Man Amongst the Victims: Fifth Husband of Notorious Bigamist," London *Advertiser*, 24 February 1908.

36 *Kingston Chronicle and Gazette*, 5 February 1831.

teacher and most seriously as an ordained Presbyterian minister. His "infamous doings" also included contracting at least three marriages to respectable young women, each of whom he had treated with great cruelty, and fathering two children. While Mr. Mavors had a reputation for earning the confidence and respect of his employers, parishioners, and members of the community, each time he anticipated that local suspicions about his identity were being aroused, he hastily escaped and in so doing effectively managed to evade both church and legal authorities for nearly a decade. Consequently, this public exposé, as well as those appearing in American and Montreal newspapers, were meant to serve as a caution to the general public, church ministers, and indeed young women to guard against this "notorious imposter." It was also hoped that the inclusion of a detailed description of his physical features, character traits, the various aliases he had used, and the fact that he was last sighted in Cornwall would facilitate his eventual arrest.[37]

Besides the publication of warnings, local newspapers also provided readers with highly sensationalized accounts of the various matrimonial 'adventures' and the eventual discovery, capture, and trials of those husbands with 'more than their fair share of wives'. These reports often included speculative explanations about men's motives in marrying so many women as well as evaluative comments about their physical qualities and their general character. Joseph Shroeder, alias John Halleck, a fifty-year-old native of Switzerland who had three living wives and was arrested in 1867 on two counts of bigamy, was not only described as a man who grew despondent each time he found himself "in a solitary condition," but was also portrayed in less than flattering terms as "short and stout, with a dark complexion" and "as positively ugly." This led the Ottawa *Citizen* to proclaim how "most astonishing" it was that his first living wife, described as a "woman of rare intelligence" and as "really good looking," or for that matter his other wives "could have

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37 "Villanous Imposter," Toronto *Globe*, 31 October 1861. This article was a reprint of one that appeared in the *Ecclesiastical Record.*

fancied such a man."[38] In contrast, Jean Fortin, the forty-five-year-old French Canadian "trigamist" from Ottawa, who worked as a raftsman and a farm labourer, was portrayed as a captivating man whose search for love, "fondness for brunettes," and seemingly irresistible charm had caused at least three young women "to yield readily to his solicitations" and had resulted in his "brilliant matrimonial manoeuvres." In a thronged courtroom, filled with people "who wished to gaze on the face of one who had dared to so flagrantly violate the laws of matrimony," the court heard evidence from his second and third wives, who expressed their determination to have "that horrible husband," who had so "cruelly wronged" them, "punished at all hazards." His first wife, Amelia, however, who had initiated the criminal proceedings, was visibly absent, leading to speculation that her refusal to testify against him was premised on the hope that she could "restore her husband to her affections again." When the accused himself was asked to explain why he had deserted his first two wives and children and had married so often, he allegedly replied, "scarcely conscious of the enormity of his conduct," that "'a bad notion, I suppose took me; the devil must have been in my head'."[39] Finally, Sergeant John M., alias Albert R. of Ottawa, who was arrested and charged with two counts of bigamy while honeymooning with his fifth living wife in 1917, was portrayed as a thirty-year-old man with an exceptionally "warm heart." He apparently liked "the ladies" so much that he was overcome by a matrimonial "mania," resulting in multiple marriages. Having wedded five women in eight years, he visited each wife "at regular intervals." After hearing the evidence at trial, during which four wives testified and which revealed that he had already served a term of imprisonment in Montreal for his first bigamous marriage, the magistrate concluded

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[38] Ottawa *Citizen*, 16 February 1867.

[39] Ottawa *Citizen*, 25, 26, and 27 May, 9 and 18 June 1880; Toronto *Globe*, 24 and 26 May 1880.

that the accused had persisted in "ruining these women's lives in a most deliberate manner," and that he could be imprisoned for fourteen years for his offences. At least two of his wives, displaying a not usual degree of loyalty, attempted to intervene and expressed their deepest hope that "he would be dealt with leniently."[40]

If male polygamists were generally perceived as 'predatory' and 'faithless scoundrels', who were much too "greedy in the matter of wives,"[41] who suffered from what was termed "marrying mania,"[42] or who were engaged in shady but potentially lucrative "marriage schemes,"[43] the seemingly less frequent multiple marriages of female 'trigamists' did not become the subject of such harsh public or legal condemnation. While there was little doubt that these women had violated their 'sacred matrimonial vows', given the 'naturalized' nineteenth- and early twentieth-century assumption that the institution of marriage was the most appropriate and indeed desired place for both middle- and working-class women, their multiple marriages were explained in other but equally gendered terms. One common explanation focused on the relative youth and/or naivete of the women involved. Nellie Chandler of Hamilton was portrayed as "only about 25 years of age" with

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[40] (1917) *King v. John M.*, AO, RG 22, Carleton County CA/CP Case Files, Box 3973; *Ottawa Evening Journal*, 15, 17, and 22 January 1917. Similarly in the case of William E., who was charged with two counts of bigamy, it was noted that his first wife "stood by him ... in true fashion" and after his imprisonment, began circulating a petition for his release. His third wife was allegedly "also sweet on Willie" and hoped he would return to her upon his release. (1893) *Queen v. William E.*, AO, RG 22, Elgin County CCJCC Docketbook, 1879-1908; *Stratford Evening Herald*, 23 and 31 March, 8 September 1896.

[41] See (1919) *Rex v. Harry W.*, AO, RG 22, York CA/CP (CCJCC) Case Files, Box 2730.

[42] See, for example, the case of George Smith of St. Thomas, who within a two-year period married five Ontario women. Toronto *Globe*, 22 and 27 September, 1, 3, 10, and 18 October 1913.

[43] See, for example, the case of Edward H. of Steelton, whose "regular marriage scheme" involved marrying at least three women with economic means and was allegedly connected to the financial difficulties he was having in his upholstery business. (1915) *King v. Edward H.*, AO, RG 22-392, Algoma District CAI, Box 3; RG 22, Algoma District (Sault Ste. Marie) Police Court Record Books, Volume 2; *Sault Daily Star*, 21 and 25 August, 22 and 23 September 1915.

four living husbands, having over the course of six years married the brother of her legal husband in North Bay not long after her first marriage; Charlie Lee, a Chinese resident of Toronto who soon deserted her and returned to his home country; and most recently, Calvin Campbell of Hamilton. While she "got into trouble" over this "last matrimonial venture," as the mother of her last husband laid a complaint against her, she explained to the Hamilton magistrate that after discovering that Charlie Lee, her third husband, had a wife in China, she "thought it quite proper" to marry again.[44] In instances when youth was not as significant a factor, female 'trigamists' were usually regarded as women who, by circumstance, design, or economic necessity, had become what one newspaper reporter termed, seasoned 'matrimonial experts'. Emma K., a fifty-year-old carpet sewer, told the judge in the Toronto Court of General Sessions in 1912 that there was no doubt in her mind that her first husband, who had left her for another woman and her second husband, from whom she had separated because of his violent behaviour, had both died in England after her emigration to Canada and prior to her marriage to John K. of Toronto in 1906, with whom she had lived less than a year. When the Crown attorney asked sarcastically, "'I suppose you would be surprised to find that ... your first husband is still alive and living in England?'," she replied emphatically, "'I certainly would'." Perhaps more unexpected was the court appearance of her second "dead" but "resurrected" husband, who claimed that she had known all along that he too had emigrated to Canada and was residing in Alberta.[45]

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[44] Toronto *Globe*, 11, 12, and 19 July 1906. Similarly, Jennie Flynn of Gananoque, who pleaded guilty to a charge of bigamy in 1916, was portrayed as a twenty-eight-year-old "matrimonial expert," having married three times and having borne eight children, who were at the time of her trial scattered in different parts of the province. "Gananoque Woman: A Matrimonial Expert: Only 28 Years Old, She Has Been Married Thrice - Has 8 Children," *Ottawa Evening Journal*, 9 March 1916.

[45] (1912) *King v. Emma K.*, AO, RG 22, York County CA/CP (General Sessions) Case Files, Box 2701; "Wife Accused Of Bigamy By Resurrected Husband: Her Second 'Dead' Husband Now Says First Still Lives," Toronto *Globe*, 30 May 1912. See also the case of fifty-year-old Verille McBain in "Woman

In addition to instances involving immigration and migration, desertion and multiple marriages, many husbands and wives defended their remarriage by insisting that they had been 'driven' to commit bigamy, a claim which usually implied that they had been the 'unfortunate victims' of an unbearable marriage or, alternatively, had been abandoned by their legal spouse. In both cases, male bigamists, undoubtedly in hopes of soliciting the empathy of juries and especially judges, were particularly forthcoming, providing a whole litany of complaints about the character flaws and misconduct of their first wives. In 1875, John H., a Toronto carpenter, pleaded guilty to the charge of bigamy, but proceeded to justify his recent second marriage by providing the judge with both a verbal and written history of his married life. Speaking with "volubility," he stated that it had simply been "impossible for him to live with his first wife" because she had proven to be "a bad woman," and that "all of his [former] neighbours" in Goderich were prepared to testify to that effect. He also argued that he had "told his second wife all the circumstances before he married her" and hence, there was "no deceit" involved.[46] In the testimonies of other bigamous husbands or those of defense witnesses, the particularly elastic category, 'bad woman', tended to encompass a whole series of wifely transgressions: at the trial of Atcheson Nixon, a carpenter by trade, the evidence offered by his sister revealed that because her brother's first wife had been much "too extravagant," he had found it impossible to maintain her; James C., a Toronto stone-mason, and William McKay, a London garment cutter, argued that they had little choice but to reject and abandon their legal wives because of their intemperate habits; Jacob Schermerhorn of Belleville reminded the court that his wife was a woman of "loose character" and that her recent sentence of six

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Thrice Married Has Admitted Her Guilt," Toronto *Globe*, 6 March 1918.

[46] (1875) *Queen v. John H.*, AO, RG 22-392, York County CAI, Box 200; Toronto *Globe*, 5, 7, and 13 October, 6 November 1875.

months imprisonment in the Reformatory for "immoral conduct" offered more than enough proof of his allegation; and Edwin Terry of Toronto asserted in 1912 that he was forced to leave his wife because he could no longer tolerate not being recognized and treated as the "head of the household."[47] Alternatively, in 1876, Thomas Crawford, a young painter employed at the Oshawa Mason Works, explained to the magistrate that he had gone to the considerable trouble of writing to his wife in Hamilton, explicitly warning her that unless she agreed to live with him, he would soon marry an East Whitby woman, whom he had recently met at a local dance. Since their secret marriage, his first wife had consistently refused to cohabit with the accused on the grounds that "he was not a steady worker, and ... did not earn enough to pay his own board." As Thomas failed to receive an immediate reply, he proceeded to remarry. One month later, his first wife, seemingly having had second thoughts, arrived in Oshawa "to look after him," but when she found her husband "in possession of his second wife," she immediately "had him arrested."[48] Finally, some husbands, like Jordan P., a London street car conductor and former president of the local Street Railway Employees' Union, and John L., a Toronto carpenter, seemed to interpret their wives' confinement in an asylum as at least a partial justification to leave them and marry other women, presumably because they were temporarily or permanently incapable of fulfilling their domestic and other wifely duties. Hence, under cross-examination, Esther P., who had laid the bigamy charge against her husband, not only declared that Jordan had left her one year earlier "for part unknown," taking their fourteen-year-old son, but was also forced to admit under cross-examination that she had "been an inmate of an asylum for

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47 (1884) *Queen v. Atcheson Nixon*, Toronto *Globe*, 28 and 29 April, 1, 7, 10, 12, 14, and 20 May 1884; (1876) *Queen v. James C.*, AO, RG 22-392, York County CAI, Box 202, Toronto *Globe*, 4, 5 and 8 January, 1 February 1876; (1882) *Queen v. William McKay*, London *Advertiser*, 4 and 7 April 1882; (1893) *Queen v. Jacob Schermerhorn*, *Chatham Daily Planet*, 22 November 1893; (1912) *King v. Edwin Terry*, Toronto *Globe*, 1 and 7 February 1912.

48 Toronto *Globe*, 11 November 1876.

two different terms."[49] Gertrude L. also acknowledged that in 1899, after five years of marriage, "I was put in the Kingston Asylum and stayed there seven or eight years altogether," during which time her husband had remarried and fathered four children.[50]

Like their male counterparts, some bigamous married women also did not hesitate to express their dissatisfaction with their first marriages, their most common grievances being that they had been the victims of their husbands' desertion and/or physical violence. Under these circumstances, as they themselves seemed to suggest, it was quite logical that they would seek out a more economically reliable and indeed amiable marriage partner. This pattern was evident in the rather hasty remarriage of Annie V. of Hamilton in 1883. Her husband, a labourer, "left her" after about three weeks of marriage, because in his words, "she bore a bad character. She drank and was sickly. I found that she was thoroughly depraved and I could do nothing with her." It took Annie less than one month to find another marital candidate in Hamilton and to reenter the bonds of matrimony.[51] At her bigamy trial in Kingston in 1913, twenty-three-year-old Charlotte Meeks was much more forthcoming, complaining that five years earlier, her first husband had simply declared that "he was sick of keeping her" and shortly thereafter had "skipped out." Her most "shocking disclosures," however, revolved around the brutal treatment she and her two surviving children had endured during her four years of marriage. As she pointed out,

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[49] (1899) *Queen v. Jordan P.*, AO, RG 22-392, Middlesex County CAI, Box 91; Toronto *Globe*, 16 and 18 September, 25 November 1899.

[50] (1910) *Rex v. John L.*, AO, RG 22, York CA/CP (CCJCC) Case Files, Box 2716; Toronto *Globe*, 4 October 1910. In a few cases, male bigamists contended that they had been threatened and coerced into the bigamous marriage by relatives of their second wives. See, for example, (1916) *King v. George M.*, AO, RG 22, Carleton County CA/CP Case Files, Box 3973, *Ottawa Evening Journal*, 25 February, 3 March 1916; (1918) *King v. John K.*, AO, RG 22, York County CA/CP (General Sessions) Case Files, Box 2707, *Ottawa Journal*, 12 and 29 March 1918.

[51] (1883) *Queen v. Annie V.*, AO, RG 22-392, Wentworth County CAI, Box 176; Hamilton *Spectator*, 4, 5, 24, 25 and 26 April 1883; Toronto *Globe*, 5, 6, 9, 26 and 30 April 1883.

her husband was responsible for the death of one of her children when he gave the "little one" laudanum, stating afterwards that "he wished she had died when the baby did." She also bitterly declared that he "used to heat irons and burn me, and left me with not a bite in the house to eat, or a stock of wood for the stove."[52] Finally, a number of women remarried while their husbands were serving terms of imprisonment, using their temporary absence as an opportunity either to formalize another relationship or to terminate an otherwise 'bad' marital and familial situation. In 1860, while Ellen Rogers' first husband, who had left her three years earlier, was serving a sentence in the Kingston Penitentiary, this "well-known 'woman of the town'" married George Irwin, a professional gambler, with whom she had been keeping company for a number of years.[53] Elizabeth C.'s principal motive for rejecting her first husband, William, and then remarrying was likely the breakdown of their marriage in 1908 after his conviction and sentence to five years in the Kingston Penitentiary for "a criminal charge against his daughter" and her sentence of one year in the Mercer Reformatory "as an abettor in the crime." After her release, Elizabeth decided to return to her hometown of Picton, and two years later married sixty-three-year-old Daniel M., who had been widowed "but a few weeks previously." When William was paroled in 1912 after serving four years, he "hunted up his wife" only to learn that she had remarried and consequently, "set about to have her punished when she refused to again live with him."[54]

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[52] Toronto *Globe*, 7 and 8 August 1913. See also (1913) *Rex v. Alice S.*, AO, RG 22, York County CA/CP (CCJCC) Case Files, Box 2720; Toronto *Globe*, 19 December 1913.

[53] Toronto *Globe*, 3 and 11 April 1860. This is the same Ellen Rogers who, together with Mary Hunt, charged four Toronto men with raping them in 1858. See Backhouse, *Petticoats and Prejudice*, 81-101.

[54] (13 February 1912) *William C. v. Elizabeth C. and Daniel M.*, AO, RG 22, Prince Edward County Police Court Return of Convictions (Picton), 1887-1919; Toronto *Globe*, 14 February 1912.

Besides those male and female bigamists who strongly implied that they had little choice but to terminate their first marriage and to remarry, bigamy was also committed after husbands and wives parted by obtaining a legal separation or, more often, by mutually agreeing to separate.[55] While the cause of the marital separation was often constructed differently by each spouse (for example, what might be identified as a consensual separation by one spouse could just as easily be defined by the other as a marital crisis precipitated by, for example, neglect, cruelty, or adultery), once the couple had agreed to separate, husbands and wives seemed to have specific interpretations of the conditions attached to it. If one spouse subsequently entered into a bigamous marriage and ended up in the criminal courts, the informal terms agreed upon, rather than the strict provisions of the law, often served as the basis for arguing that he or she had the 'right' to remarry.

Some bigamists simply claimed that after their marital separation, they lost touch with their legal spouse and, upon remarriage were unsure whether s/he was alive or dead.[56] Others, like Richard O., a Blenheim farmer, reminded his first wife after his arrest that their agreement to separate had been premised on mutually swearing "to let alone if let

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55 Separations by mutual agreement were more common among the working classes, likely because they did not involve the costs of the hiring legal counsel or civil/criminal litigation. James P., a Toronto brassfinisher and his wife Elizabeth, however, were one working-class couple who obtained a formal legal separation. Their agreement, dated 16 January 1886, specified that the couple, because of "divers unhappy ... disputes," had "consented and agreed to live separate and apart from each other during their natural life," and James had agreed to pay his wife "41/2 a month for [the] support of [the] 3 children." Ironically, in June 1886, Elizabeth charged her husband with bigamy, for having married sixteen-year-old Ella A. in Detroit three months prior to the formalization of their agreement to separate. (1886) and (1887) *Queen v. James P.*, AO, RG 22-392, York County CAI, Box 237 and Box 241; Toronto *Globe*, 17, 18, 23, 25, 26, and 30 June 1886; 13 OR, 226-53.

56 See, for example, (1862) *Queen v. George W.*, AO, RG 22-392, Perth County CAI, Box 120; *Stratford Beacon Weekly*, 31 October, 7 November 1862.

alone," even if it implicitly entailed the possibility of eventually "settling down again."[57] But many male bigamists provided a much more explicit justification for their remarriage, arguing that their wives' immorality and/or adultery had symbolized the permanent breakdown of their first marriage and that this act alone had 'freed them' from the matrimonial bond. This was certainly the justification provided by Samuel J., a labourer residing in Huron township, after he was charged with bigamy in 1885. As he attempted to explain to legal authorities and especially to his second wife, Elizabeth, who initiated the criminal inquiry, he was first married to Jane B. in England in 1876, but seven years later, he had "caught another man in bed with his wife," and after she "took my furniture to another house," they had decided to separate. Although "they [had] parted friendly" and he had subsequently emigrated to Canada, the two main conditions of their separation were that, because of her adultery, Jane "could not claim anything from him for maintenance," and that "neither of them [would] trouble each other in the future." From his perspective, then, the sexual infidelity of his first wife had, in effect, "left him free," since she no longer had "any claim" on him. As part of the initial investigation into the bigamy charge, Jane was traced to a woollen factory in Bradley, England, where she worked as a weaver, and she verified the terms of their marital separation. When asked if she would assist in the prosecution of the accused, by swearing an affidavit confirming that she was his legal wife, she adamantly refused, stating that "her and J[] had parted good friends and that she wanted no more to do with him ... and that if he had done wrong she could not help it." The court testimony also revealed that she became "very indignant" over the nature of this

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[57] (1883) *Queen v. Richard O.*, AO, RG 22-392, Kent County CAI, Box 65; *Chatham Weekly Planet*, 8 November 1883; Hamilton *Spectator*, 6 November 1883. In this case, the accused's first wife testified that after twelve or thirteen years of marriage, they agreed to separate because "he treated me unkindly and I could not live with him." Thereafter, she returned to live with her father and then began "keeping house for her brother-in-law."

inquiry and the fact that "any ... person should interest [them]selves in such matters."[58] Carswell P. of Frankville also cited his first wife's infidelity as an explanation for remarrying in 1919. According to his testimony, during the years he was fighting overseas, he had received a letter and a newspaper clipping informing him that his wife had run away with another man. Not long after, he also heard that she had remarried in Ogdensburg, New York, and that she and her second husband had been arrested and convicted on charges of bigamy. Consequently, as he told the Ottawa morality inspector who arrested him, when he returned to Canada in 1919, "he thought if his wife had committed bigamy he had a perfect right to marry again." In other words, he considered himself "a free man."[59]

While many male bigamists like Samuel J. and Carswell P. sincerely believed or merely claimed that their wives' breach of the sexual contract of marriage through adultery or bigamy was sufficient to allow them to marry again, not all marital separations were settled quite so amicably. After Ezra Gable, a railway employee from Windsor, was arrested in Detroit in 1892 when he was on the verge of marrying for the third time, he claimed that there were "extenuating circumstances" associated with his second marriage, namely that his first wife, who was fifteen-years-old at the time, "was very fond of running around nights, and they had so many quarrels over the matter that they finally separated, he

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58 (1885) *Queen v. Samuel J.*, AO, RG 22-392, Bruce County CAI, Box 11. Despite Jane's refusal to provide evidence, her aunt, Sarah S., swore a lengthy affidavit before the local justice of the peace in Keighley, England, confirming the first marriage. In it, she suggested that the couple "did not live happily together" during the six or seven years of their marriage and that she believed Jane "was compelled to leave him twice during such period in consequence of his illtreatment." She further asserted, not mentioning Jane's alleged adultery, that it was Samuel who had "broke[n] up his home" when he emigrated to Canada.

59 (1919) *King v. Carswell P.*, AO, RG 22-392, Carleton County CAI, Box 25; RG 22, Carleton County CCJCC Minutes, 1908-20; *Ottawa Journal*, 24 September 1919.

taking their only child."[60] William M., an Adelaide farmer, also told one of his acquaintances in 1880 that, after a twenty-three year consensual separation, "he had a right to get married again, for his wife [Mary] has been lying in another man's arms ... for the past ten years." The extensive testimony at his trial, however, revealed a very different scenario, as witnesses recounted how Mary, two weeks after their marriage in 1857, had been "sent away by [the] prisoner" and her mother-in-law, who evidently disapproved of the union and "used to boss [her son] round." Six years later, Mary allegedly attempted to renew contact with William, but when she visited the house where he and his mother were living, they made it abundantly clear that she was unwelcome and that the marriage was over: "the mother refused her admittance into the house ... the prisoner rushed at his wife and [struck] her, and the mother picked up a stick and was going to strike her." After this incident, there had been no further contact between the couple.[61]

Unlike their male counterparts, female bigamists who had separated from their first husbands tended to justify remarriage in rather different terms, rarely alluding to any sexual indiscretions on the part of their spouse. Rather, what they seemed to emphasize was that they had been separated for the requisite seven year period, had negotiated a verbal contract with their estranged husbands, or upon separation had obtained 'permission', not from the state, but from their mates to 'do as they liked'. Susan Gibbard explained to the Toronto police court magistrate that, after obtaining an order of separation on the grounds of her husband's habitual neglect, drunkenness, and cruelty, and after living apart from him for eight years, she considered herself a 'widow', and identified herself as such when she remarried in Barrie in 1906. She further pointed out that there was no secrecy associated

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[60] Toronto *Globe*, 15 and 16 November 1892.

[61] (1884) *Queen v. William M.*, AO, RG 22-392, Middlesex County CAI, Box 89; London *Advertiser*, 29 April, 2, 14 and 15 May 1884.

with her second marriage; rather, "the boarders in her house had communicated the facts to her first husband."[62] Conversely, when Ellen F.'s husband was told in 1885 that she was intending to remarry, he did not raise any objections. In his view, even though they had been married by a minister, he thought that "he was clear of her" not only because "he had no ring when married nor did he purchase a license," but also because they had been separated for over six years.[63]

For other female bigamists, however, striking a verbal agreement with or obtaining a form of consent from their husbands at the time of separation was synonymous with being permanently free from the bonds of marriage. In 1912, Sarah Jane Harper of Toronto explained that when she and her first husband "separated by mutual consent" two weeks prior to her remarriage, they agreed "that each could marry again and that nothing would be said about their being previously married."[64] The evidence presented at the trial of Florence K. of St. Catharines in 1902 also revealed that, after two days of marriage in October 1900, she and her first husband, for reasons not specified, decided to separate. After a deed of separation was obtained nine months later, her husband, in a highly symbolic and fairly common gesture, took the marriage deed and the wedding ring, and told her that "you can go and do as you like." Seemingly taking her husband at his word, Florence stressed that, in her view, "when I got the separation I could do as I pleased ... that freed me."[65]

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62 "She Was Not A Widow: Separation Of Seven Years Is Not Divorce," Toronto *Globe*, 15 September 1906.

63 (1885) *Queen v. William M.*, AO, RG 22-392, Simcoe County CAI, Box 138.

64 Toronto *Globe*, 24, 25, and 31 January 1912.

65 (1902) *Queen v. Florence May K. and Curtis D.*, AO, RG 22, Niagara North CCJCC Case Files, Box 7. Her second husband, Curtis D., whom she married in 1902 and who was charged as an accessory, also suggested that he thought "she had a right to get married" and, after consulting two friends, he became convinced that there was no legal impediment preventing him from marrying her.

Twenty-one-year-old Olive B. of Lowe township, however, was much more candid when she told the Carleton County Court judge in March 1915 that "she did not believe that divorce proceedings from her first husband were necessary, or that the law required anything further of her than that she produce her first husband's [written] sanction that she might marry again." As she further stated, prior to her second marriage to an Ottawa labourer, she had written to her first husband with whom she had lived for only six months, requesting that he sign a statement which would release them both from their "marriage vows." Soon after, she received a very terse reply, in which her husband stated explicitly: "I am not bothering you ... You can go and get married if you like. You can go wherever you like." Considering his consent as an effective annulment of their marriage contract, she was "firmly convinced in her own mind" that she was committing "no wrong in marrying a second time."[66]

Although this notion of consent may have served as a convenient mechanism for displacing responsibility away from bigamous wives and for gaining the sympathy of the courts (after all, these women implied that they had not in any way challenged the authority of their husbands),[67] it also emerged in the testimonies of married women, who charged their husbands with bigamy. In 1917, for instance, Ada G. of Uxbridge made it very clear

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[66] (1915) *Thomas B. v. Olive B.* and (1915) *King v. William C.*, AO, RG 22, Carleton CA/CP Case Files, Box 3970; *Ottawa Evening Journal*, 3 March 1915. Rather ironically, however, one year after her second marriage and for reasons unspecified, it was her first husband who initiated the criminal proceedings against Olive and her second husband, who was charged with knowing she was a married woman.

[67] At the same time, a husband who "released" his wife "from her conjugal duty" and "renounced all control" over her was barred from obtaining a divorce on the grounds of her adultery and bigamy. For example, shortly after separating from his wife in 1879, Charles Smith of Warkworth, a miller by trade, wrote two letters to his spouse in which he "pledged" his "word and honor" that, "in the event of her marrying again," he would "not throw a straw" in her way nor "molest or control or take any steps against her." Six years later, however, when he petitioned for a parliamentary divorce, his bill was rejected on the basis that he had acquiesced to and encouraged her adultery by his "criminal connivance." See John A. Gemmill, *The Practice of The Parliament of Canada Upon Bills of Divorce* (Toronto: Carswell & Co., 1889), 182-83.

to the Ontario County Court judge, that even though she and her husband had separated eight years previously and even though she knew her husband had been living with another woman for the past five years, she had not "*consented* that he should marry any body else." (my emphasis)[68]

In addition to bigamous marriages which followed informal separation agreements between husbands and wives, some such unions were constituted prior to or after obtaining forms of divorce not recognized under Canadian law. In at least one instance, the 'selling' of a bigamous wife was portrayed as an upper class alternative to the public scandal of a criminal trial. This case involved an unnamed young woman "fresh from boarding school" and the daughter of "one of the wealthiest residents" of an unspecified town in South Simcoe. According to the newspaper account, she had, in 1880, managed to secure the consent of her parents to marry a young law student, despite their initial opposition on the grounds that his poverty made him an unsuitable match. After only one month of marriage, however, her husband, unable to stomach the relentless insinuations that he was "living at the expense of others," decided to leave his bride and "push his fortune in California." Six months later, while living with her parents, the daughter met a commercial traveller from Montreal and after a very brief, but highly public and scandalous courtship, the couple decided to elope, evidently "indifferent about public opinion and heedless of the consequences." In an effort to protect their family name from further gossip and to restore their daughter to "public favour," the parents began to circulate rumours concerning their son-in-law's tragic death "in the mines of Nevada." When the 'dead' husband returned to South Simcoe two years later, he soon learned what had occurred in his absence, but not desiring to "repossess himself of his false wife," he decided to negotiate a lucrative

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[68] Although Duncan G. pleaded guilty to the charge of bigamy, he "claimed he had legal advice that his first marriage was void because his wife had deserted him." (1917) *Rex v. Duncan G.*, AO, RG 22, Ontario County CA/CP CCJCC Case Files, Box 17; Toronto *Globe*, 27 March 1917.

solution, the result being "that husband No. 1 received a solatium to the extent of $1000" from the second husband. While the newspaper reporter found it "strange" that "this wife of two husbands was almost indifferent as to the result of the consultation," declaring that "if they could agree about her ownership she would be satisfied with the decision," the privileges of class combined with the seemingly satisfactory nature of the proprietary transaction between the two men meant that it was "unlikely that an appeal to law" would be made.[69]

Most suspected bigamists, whether female or male, who were subjected to this degree of public exposure and who were invariably named in the press, could not so easily evade the criminal courts, including those who claimed that they had secured a form of divorce prior to their remarriage. Within the growing Jewish communities in Ontario and particularly in Toronto at the turn of the century, for example, obtaining a *ghet* from a rabbi offered a viable albeit illegal alternative to the arduous procedures established by the parliamentary divorce system.[70] When two Jewish sisters, Sarah Welasier and Edith Schwartz together with their second husbands were arrested in 1917 on charges of bigamy, they told the Toronto morality officer that "they did not know that their second marriages were unlawful, as the rabbi who conducted the ceremonies signed statements which he said acted the same as a divorce." During her subsequent trial in the Toronto Women's Court, Edith openly admitted that she had been married in Montreal eight years previously, but argued that after her husband had deserted her and had relocated to Winnipeg, she had secured a *ghet* from a Montreal rabbi and shortly thereafter she had learned that her

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69 "Faithless. A Bride of Eight Months Takes an Additional Husband. The First Spouse Sells His Wife for a Thousand Dollars," Toronto *Globe*, 9 February 1882.

70 For an overview of Jewish emigration to Ontario and the rising tide of anti-Semitism at the turn of the century, see Gerald Tulchinsky, "The Jewish Experience in Ontario to 1960," *Patterns of the Past*, 301-27. See also Ruth Frager, *Sweatshop Strife: Class, Ethnicity, and Gender in the Jewish Labour Movement of Toronto, 1900-1939* (Toronto: University of Toronto Press, 1992), esp. chapter 1.

husband had remarried. She further asserted that when she herself decided to marry again, she disclosed these details to Rabbi Maurice Kaplan of Toronto, who appeared satisfied with the validity of the divorce and without hesitation solemnized the second marriage. Based on these disclosures, Rabbi Kaplan was also arrested, convicted, and fined twenty dollars for performing "a marriage ceremony in which the woman already had a husband living." For Anglo-Protestant legal officials, however, the ramifications of these two trials went far beyond the criminal prosecution of another bigamist or the complicity of a religious official, and their responses were both alarmist and anti-Semitic. At Rabbi Kaplan's arraignment, the Crown Attorney, for example, raised the spectre of a widespread underground network of illegal Jewish divorces, when he declared that "hundreds of Jewish people, anxious to destroy the bonds of holy matrimony, leave Toronto each year and go either to Buffalo or Montreal to obtain what is called a 'ghet' or Jewish divorce." Another Toronto rabbi who testified at the trial attempted to assure the court that "their authorised rabbis were instructed never to marry people who had been granted nothing more substantial than the Jewish 'ghet'", undoubtedly in an effort to prevent any future public or legal harassment which such publicized statements might incite. But Rabbi Kaplan was much more defiant in defending the legitimacy of customary Jewish laws, declaring that "he would marry anybody armed with a license and a 'ghet'."[71]

An equally contentious but much more common issue deliberated among legal authorities revolved around those Ontario residents who had obtained a 'foreign' divorce prior to their second marriage, particularly in the more accessible and inexpensive courts in the United States. As Dr. William G., a medical doctor and Ottawa civil servant, pointed out to the court at the Carleton Assizes in 1882, the reason he had applied for an American divorce was because he believed "in common with many others that the expense and

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[71] Toronto *Globe*, 22 February, 15 and 23 March 1917.

exposure attending the obtaining of such in this country by having the suit brought before Parliament was too great." He went on to suggest that "if divorce courts were established here as in the States and in England, our neighbours across the borders would receive far less of our money for such purposes than they do now."[72] The main legal controversy, however, revolved around whether or not the Ontario judiciary would recognize the validity of American divorces, especially since they were granted on much broader grounds than was possible in Canada's more restrictive parliamentary divorce system.[73] Given that there was no definitive legal ruling on this question, many of these cases, even after convictions were obtained in the criminal courts, were referred to the Court of Queen's Bench or later the Ontario High Court of Justice for judicial deliberation and final judgement. In most instances, the higher courts tended to take a very dim view of 'foreign divorces'. In 1878, two judges in Court of Queen's Bench heard the reserved bigamy case of Tadaypala R., described as a "converted" Brahmin priest originally from Madras who had resided in Toronto for six months. According to the evidence heard at his criminal trial at the Toronto Assizes, he had married Mary R. in Philadelphia in 1875, and after obtaining a divorce in Utah on the grounds that she had proven "to be a bad woman and went off with another man," he married Mary G. in Toronto in 1878. Although the jury returned a guilty verdict, the presiding judge decided to postpone judgement until "certain questions of Law which arose [at] the trial," namely the validity of Mr. R.'s divorce, were considered by the Chief Justice Robert Harrison and Justice Armour in the Court of Queen's Bench. After reviewing the evidence, these two higher court judges were not at all hesitant to uphold the conviction, particularly when they realized that the accused had managed to secure a

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[72] Ottawa *Daily Citizen*, 29 April 1882. See also C. S. Clark, *Of Toronto The Good* (Montreal: Toronto Publishing Co., 1898), 117.

[73] For a much more extensive analysis of the illegalities associated with 'foreign divorces', see Snell, *In the Shadow of the Law*, 77-79, 83-90, 153-56, 183-88, 205-09, 228-33.

divorce from the Probate Court of the County of Salt Lake without having resided in or even travelling to the territory. Equally disconcerting was the fact that in Utah a full dissolution of marriage could be obtained on such 'flimsy' grounds as irreconcilable differences, namely if "the parties could not live together in peace and unity, and therefore it was to the welfare of both, that they should be separated." In his ruling, Chief Justice Harrison could not contain his outrage, concluding that "the [divorce] laws of that part of the United States" were "a disgrace ... to civilized society." Justice Armour echoed his sentiments, characterizing "the easy system of divorce as adopted by many of the States as a most iniquitous one," a situation which required that "the women of this Dominion must be protected from unprincipled men 'pirating' wives."[74]

Even though Justice Armour strongly suggested that Canadian women were the ones in need of protection from the laxness of the American divorce system, James Snell has argued that securing a full dissolution of marriage in the United States was an increasingly and particularly popular alternative among married women in Canada especially in the early twentieth century.[75] In my compilation of cases, only four wives, who were later accused of bigamy, had applied for or secured a formal divorce in the United States prior to their remarriage in Ontario. Nevertheless, each argued, as did their male counterparts, that after undergoing these proceedings, they had been advised or were themselves convinced that they were "acting in good faith" and were "free to remarry."[76]

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[74] (1878) *Queen v. Tadaypala R.*, AO, RG 22-392, York County CAI, Box 210; Toronto *Globe*, 9, 17, 18, and 24 April, 28 May, 21 June 1878.

[75] Snell, *In the Shadow of the Law*, 230.

[76] See, for example, the following cases: Augusta Blair of Dereham, who obtained a divorce in Ohio, in "Thought She Was Free: But Divorcee who Married Again Faces Bigamy Charge," Toronto *Globe*, 8 September 1913; Christina Salisbury, in "Tacoma Divorce Is Set Up As Defence," Toronto *Globe*, 31 January 1917; and Lavina S. and Arthur F., the latter charged as an accessory, in (1917) *Rex v. Lavina S. and Arthur F.*, AO, RG 22, York County CA/CP (CCJCC) Case Files, Box 2726, and

While such arguments may have swayed some judges towards leniency, the outcome of the high profile bigamy trial of Minnie Woods in the Toronto Court of General Sessions in 1901 was presented as the crucial test case, one which would "determine the validity of hundreds of marriages contracted by persons in this country who have relied on decrees of divorce obtained in the United States." The evidence presented at her trial revealed that her first husband, Dr. William Barnhardt, a resident of Toronto, had managed to secure a divorce decree in Detroit on the grounds of her "extreme cruelty" and "for causing him great mental anguish and physical pain and inconvenience."[77] Thereafter, Minnie had been advised by her own divorce lawyer that "she was free to marry as she chose," which she did six months later in Toronto. While her defence attorney attempted to argue that she acted "innocently" and "had no intention when she married again of breaking the law," the prosecution countered by asserting that "goodness of intention could have no place when the question of guilt was under consideration." Judge McDougall agreed, using his charge to the jury as an opportunity to harangue the American divorce system:

> With regard to the divorce proceedings in Detroit, neither party had any grievances which would constitute sufficient grounds for a divorce in Canada. Any half-fledged lawyer in this country, with only a limited knowledge of the law, would have declined to advise an application for a divorce here for such reasons as were advanced in B[]'s petition ... He deplored the shocking facility with which decrees were obtained in some States of the Union, on most frivolous pretexts.

"American Divorce Defence of Bigamy: Lavina S[] and Arthur F[] Contend No Criminal Intent," Toronto *Globe*, 22 and 25 September 1917.

[77] When Dr. Barnhardt had filed for a divorce in the Detroit Surrogate Court in 1900 on these grounds, Minnie immediately countered with a cross-petition, denying "her husband's charges of cruelty," and then proceeded to file her own divorce bill in the same court also on the grounds of "extreme cruelty." After considerable negotiation between the lawyers of the estranged couple, Minnie dropped her own divorce proceedings, pleaded no contest to her husband's petition, and allowed the latter to go forward. In the eyes of the Canadian courts, however, these events and the fact that "no evidence was taken or proof given in support of [Dr. Barnhardt's] charges" were viewed with a great deal of suspicion and as evidence of collusion between the two.

He also told the jurors that to acquit Minnie of the bigamy charge would set an extremely dangerous precedent, in that "if the decree was held as valid in Canada there would be a tremendous exodus to Detroit on the part of dissatisfied married persons here." With little working in Minnie's favour, it is not surprising that the jury returned a verdict of guilty. Two years later, her conviction was upheld by three judges in the Ontario Court of Appeal, a decision which was meant to send a strong message to Ontario residents that even though a woman and a man could be declared "strangers" in another country, they were still considered to be "man and wife" in their own.[78] If obedience "to the laws of Canada in respect of marriage and divorce" was a "dead letter," as another Ontario judge pointed out in 1907, "what was to prevent the indulgence, without limit, in duality or plurality of wives or husbands ... Such a state of things would obviously be against the peace, order and good government of Canada."[79]

The only exception to this general pattern of legal non-recognition of 'foreign divorces' in my compilation of cases involved Joshua C. of Toronto, who after over thirty years of marriage obtained a divorce in Ohio despite the vigorous opposition of his wife, and then remarried in 1901 in Niagara Falls, New York. While residing in Toronto, he was arrested on a charge of bigamy. After hearing the evidence at his trial at the Toronto Assizes in 1902, Chief Justice Meredith, in an unprecedented and unchallenged decision, "took the case from the jury" and acquitted the defendant, stating that "there was nothing to show that C[] had any desire to evade the Canadian criminal law by going to Ohio for a divorce." What was equally unusual was his public denunciation of the restrictiveness of the parliamentary divorce system when he asserted that, "the defendant had gone to the United

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[78] "Divorce Is Not Valid: American Decree Not Applicable to Canadian Marriages," Toronto *Globe*, 3 October 1901; (1903) *Rex v. Woods*, 6 OLR, 41-48, 7 CCC, 226-39.

[79] (1907) *King v. Jasper T. Brinkley*, 14 OLR, 455, 12 CCC, 479.

States ... because of the injustice in Canadian law which limited the granting of divorces to Parliament, where nine-tentsh (sic) of the people could not afford to go if they wished to be free from an unhappy marriage."[80]

The 'Clandestine' Becomes 'Public' and 'Criminal'

If entering into what were defined under criminal law as bigamous marriages occurred in diverse contexts and circumstances, so too did the process of 'getting caught'. With the exception of those bigamous marriages which were discovered and challenged posthumously, resulting in civil litigation over dower and inheritance rights by the surviving spouse(s) or other family members,[81] suspicions were usually aroused through the circulation of rumours, a verbal slip on the part of the bigamous partner or, most frequently, through the sudden 'resurrection' of the first spouse. This latter factor also figured in sensational newspaper accounts of bigamous marriages which were miraculously averted. In February 1882, at Notre Dame Cathedral in Ottawa, a wedding ceremony was rather dramatically interrupted by the appearance of "an indignant female on the scene who forbade the marriage to go on," stating that she was the legal wife of the groom, and had the marriage certificate and "two charming children" to prove it. Needless to say, the ceremony was cancelled, the "unsuspecting maiden" rescued from being entrapped "in so heartless a manner" and from a "most unhappy fate." According to the Ottawa *Citizen*, the

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80 (1902) *Queen v. Joshua C. and Melinda A.*, AO, RG 22-392, York County CAI, Box 263; Toronto *Globe*, 8 and 14 January 1902. Melinda, Joshua's second wife, was also exonerated of the charge of being an accessory, for having left Canada to go through a form of marriage with a man whom she knew to be already married.

81 See, for example, "Two Widows Claim Estate: Property of John Graham in Dispute in Court"; "One Man's Three Widows, A Singular Case in Court at London, Ont."; "Two Wives, Three Sons: Ing Quong Divided Estate Among Them"; "Lee Jim Left Widow Here and in China," Toronto *Globe*, 6 November 1901; 16 January 1902; 7 November 1912; 17 March 1917; (1918) *Rex v. Eliza D.*, AO, RG 22, York County CA/CP (CCJCC) Case Files, Box 2728, and 31 CCC, 122-26.

"faithless husband" deservedly became the object of "profound contempt."[82]

Another fairly common pattern involved instances when married women accidently discovered incriminating evidence concerning their husbands' marital crimes. Bridget Ross, who lived in Detroit and was separated from Dr. William Ross, the acting medical superintendent of the Byron Asylum in London, happened to stumble on a newspaper notice, announcing her husband's recent (re)marriage. Without a moment's hesitation, a very indignant Mrs. Ross contacted the London Crown attorney, informed him that one of the city's prominent citizens was in fact a bigamist, and upon "returning from his honeymoon," Dr. Ross was immediately taken into custody.[83] Equally unexpected were situations when second wives of bigamists either discovered or received highly revealing letters, which alluded to the first marriage: for example, Mary Parker of Toronto learned from "old letters of her supposed husband that he had a wife and children in Ireland"; Sarah Geddes, the second wife of a Toronto labourer, found a letter in her husband's pocket which conveyed "the startling information that he had a wife in Ireland and that she was [already] on the way to Canada" on a steamship bound for Montreal; and one and a half years after her marriage in 1914, Anna R. of Ottawa discovered a letter recently written by her father-in-law, which informed her husband, a former town clerk in the village of Shawville, that his first wife was intending to apply for a divorce in the United States.[84]

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[82] "A Scoundrel Foiled: A Young Girl's Narrow Escape from a Would-be Bigamist," Ottawa *Citizen*, 22 February 1882; "The Would-Be Bigamist: A Marriage Ceremony Interrupted by the Bridegroom's Wife," Toronto *Globe*, 23 February 1882. See also "A Hamilton Man Contemplated Bigamy in Michigan"; "Wedding is Off: Young Man Hears That His Intended is Married," Toronto *Globe*, 6 December 1883; 15 September 1906.

[83] Toronto *Globe*, 31 October, 24 and 27 November 1913.

[84] *Queen v. William Parker*, Toronto *Globe*, 13, 21, and 30 April, 5 May 1894; *Queen v. John Geddes*, Toronto *Globe*, 15 May 1884; (1915) *King v. Mervin R.*, RG 22, AO, Carleton County CA/CP Case Files, Box 3971, and *Ottawa Evening Journal*, 6 December 1915.

More malicious was the case of Janet P.. After three weeks of marriage in 1919, she received a postcard addressed to her and her husband, Carswell P.. Sent by her husband's first wife, who herself had been convicted of bigamy in New York state a few years earlier, the card congratulated the newly married couple "in the joy that has come to you" and joked about their bigamous marriage: "I didnt die with the flue, you know and I am very much alive ... But good luck in the bigamie line. Ha! Ha! and Good bye forever. You can name your first girl Adeline if you like. Hope that Jan got a nice wedding ring, something I did not get. From your ex but legal wife, Adeline."[85]

Gossip, suspicion, or even the discovery that a particular marriage may have been bigamous, however, did not necessarily mean that the legal authorities would be alerted or that criminal proceedings would be initiated. The prosecution of bigamy was often contingent on the willingness of the first or second spouse, her/his family, or members of the community to inform the appropriate authorities. As indicated by those who actually laid the complaint against a suspected bigamist and by the vague testimonies of neighbours and acquaintances in which they spoke in evasive terms about the "reports" they had heard,[86] this did not seem to be a crime in which members of the community tended to intervene directly. Ada G. of Uxbridge, who charged her husband with bigamy in 1917, stated in a letter to the local justice of the peace that, even though she knew that her husband, Duncan, had been cohabiting in Uxbridge township with another woman since 1912, she had only very recently discovered that he actually married her in that same year. She went on to complain that, "I think almost every one in town knew he was married to

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[85] (1919) *King v. Carswell P.*, AO, RG 22-392, Carleton County CAI, Box 25; *Ottawa Journal*, 24 September 1919.

[86] See, for example, (1862) *Queen v. Guy B.*, AO, RG 22-392, Leeds and Grenville Counties CAI, Box 78; *Brockville Recorder*, 23 October 1862.

the woman before I did."[87] It is likely that her acquaintances and neighbours in Uxbridge shared the sentiments of Henry D. who, when his friend, William M., an Adelaide farmer, told him about his bigamous marriage, simply replied, "that's your business not mine."[88]

At the same time, even if acquaintances were not prepared to divulge their 'knowledge' to legal authorities, this should not necessarily be read as unambiguous community tolerance, since bigamous couples could find themselves sanctioned in more informal ways. Some friends felt it their duty to warn would-be bigamists (as well as their intended spouses) against committing so "criminal an act," even though these efforts were more often than not to no avail.[89] Other acquaintances, who knew about an illicit marriage, registered their disapproval by refusing to condone the cohabitation of the bigamous couple, particularly when the latter sought boarding within a particular community. This scenario was starkly revealed during the 1876 bigamy trial of James C., a thirty-year-old stone-mason from Brooklyn who worked periodically in Toronto when seasonal employment was available, and who usually boarded at the residence of Mary Ann O.. According to the testimonies of Mrs. O. and another boarder, William S., James had openly discussed the nature of his relationship with his first wife, Margaret, a millworker, admitting frankly that "he had not used her well," but declaring that he fully intended to send for her and "to treat her better." When she did come to Toronto in April 1875, it soon became evident to those living in the boardinghouse that relations between the two were far from amicable, particularly when the defendant angrily confided to them that, because

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87 (1917) *Rex v. Duncan G.*, AO, RG 22, Ontario County CA/CP CCJCC Case Files, Box 17.

88 (1884) *Queen v. William M.*, AO, RG 22-392, Middlesex County CAI, Box 89; London *Advertiser*, 14 May 1884.

89 For example, when Thomas Crawford and Mary Jane Scott of Oshawa were advised by acquaintances not to marry because Thomas's first wife was still living, they refused to take the advice, declaring that "they did not care anyway." Toronto *Globe*, 11 November 1876.

Margaret was "given to drink," he could no longer live with her and hence, he had arranged for her to go to Boston. After her very reluctant departure, James then managed to convince William, his co-worker in the stone-masonry trade and fellow boarder, to write a letter to Margaret, telling her that he "had left the City," that his whereabouts were unknown, and that henceforth "he did not wish to be bothered with her." Assuming that he was now relieved of his marital obligations, James proceeded to remarry that September, but when he and his second wife, Elizabeth, attempted to secure lodging from the same boardinghouse keeper, Mrs. O. was very firm in her refusal. Even though Elizabeth knew he had been previously married and even though Mrs. O. would respect James' wishes "to say nothing about" his remarriage, she wanted absolutely "nothing to do with it." As a consequence, she would not allow them to "stop at [her] house," for the very simple reason "that no man could have two wives." While the couple did manage to obtain rooms at another boardinghouse and James remained confident that his first wife would not be able to locate him, it was William who eventually exposed the couple, not by telling the police, but by writing to Margaret about the second marriage as well as her husband's exact whereabouts.[90]

While bigamous couples could face various forms of informal censure and indirect exposure, the court records strongly suggest that the responsibility for actually alerting legal officials largely remained an 'intra-familial' matter and tended to rest in the hands of

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[90] (1876) *Queen v. James C.*, AO, RG 22-392, York County CAI, Box 202; Toronto *Globe*, 4, 5, and 8 January, 1 February 1876. For a similar pattern, see, for example, the case of William McKay in London *Advertiser*, 4 and 7 April 1882. In one instance involving Henry Green of London, however, it did seem that his former boardinghouse keeper was the person who exposed him to the police. Two weeks after he remarried, she "received a letter from England" in which his first wife inquired "after the safety of her husband" and this information resulted in his arrest. Toronto *Globe*, 9 December 1913.

one of the offended spouses, or of a relative or family member.[91] By the 1900s, however, local police constables and, especially in cities like Ottawa and Toronto, morality inspectors began to lay formal complaints with greater frequency, a pattern which seemed to reflect certain self-serving motives. Even though these latter defenders of public morality usually responded to information provided by those immediately affected, by crediting themselves with the arrest they could demonstrate in symbolic terms their personal vigilance in rooting out illicit marital practices.[92] At the same time, the establishment and expansion of a growing network of state agencies, and increasing communication among them within and across provincial and national boundaries seemed to have enhanced the risks of detection. In 1911, Sophia S., the wife of Yovan N. alias James T., a twenty-seven-year-old Macedonian labourer, began to initiate inquiries as to the whereabouts of her husband, who had emigrated to Canada eight years earlier. Unlike many married women living overseas, rather than utilizing more informal channels, she sought the assistance of the British Consul at Monastir. The Consul immediately contacted the police department in Toronto, possibly

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[91] In the nineteenth century, for example, it was only on rare occasions that police intervened more directly. In 1871, when the first wife of John P., a black labourer residing in Toronto, appeared at his house and claimed him as her husband, a violent row "to decide the ownership of the prisoner" allegedly broke out between his two white wives. When a constable appeared on the scene to investigate, Mary M., his second wife, vowed to put her husband "through for it," and the "gay Lothario" was immediately arrested and conveyed to the lock-up. (1871) *Queen v. John P.*, AO, RG 22-392, York County CAI, Box 190; Toronto *Globe*, 22, 23, and 29 August, 31 October 1871.

[92] As Carolyn Strange has argued, the Toronto Morality Department (or officially known as the Staff Inspector's Department) was the 'brain-child' of Mayor William Howland and was established shortly after his election in 1886. Its main priority was the "repression of vice and moral depredation" in the city. Carolyn Strange, *Toronto's Girl Problem*, 35, 55-57, and "Patriarchy Modified: The Criminal Prosecution of Rape in York County, Ontario, 1880-1930," *Essays in the History of Canadian Law*, Volume 5, eds. Jim Phillips, Tina Loo, and Susan Lewthwaite (Toronto: University of Toronto Press, 1994), 220. It is less clear when the Morality Department was established in Ottawa, but inspectors became increasingly active in laying bigamy complaints in the 1910s.

because of the city's relatively large population of Macedonian male sojourners,[93] and not long after local detectives discovered that Yovan was indeed residing in Toronto, and that he had, five months earlier under the guise of being a bachelor, married a local waitress.[94] In addition, investigations launched by the ever vigilant local Children's Aid Societies could also lead to unexpected discoveries. After the wife of Ernest M. was sentenced to two months imprisonment in the Barrie gaol, he moved to Berlin and shortly thereafter married Lena S., described as an impoverished "blind invalid." For reasons not specified, the inspector of the Berlin Children's Aid Society was asked to investigate the couple, and his inquiries eventually led to Ernest's arrest on charges of both bigamy and perjury, and Lena's arrest as an accessory.[95] Finally, during the First World War, a number of unsuspecting wives, who applied for dependence allowances from the Militia Department while their husbands were overseas, were rather rudely informed that they were not the only claimants, and that an investigation was being launched to account for the discrepancies. In the case of Corporal Herbert D. of Ottawa, when his second wife applied for her allowance while his first wife was already drawing one, the legal authorities immediately traced him to Halifax and arrested him for bigamy just prior to his departure

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[93] In her study of the Macedonian community in Toronto, Lillian Petroff argues that prior to World War I, "the majority of Macedonian males who first came to Toronto ... did not intend to stay"; rather they were "seasoned sojourners who came to earn good industrial wages." This pattern shifted dramatically when the Balkan War ended in 1913: with the introduction of the repressive policies of the new Greek regime, many Macedonian male sojourners sought to bring their families to Toronto. Lillian Petroff, "Contributors to Ethnic Cohesion: Macedonian Women in Toronto to 1940," *Looking into My Sister's Eyes: An Exploration in Women's History*, ed. Jean Burnet (Toronto: Multicultural History Society of Ontario, 1986), 125, and *Sojourners and Settlers: The Macedonian Community in Toronto to 1940* (Toronto: University of Toronto Press, 1995).

[94] (1911) *Rex v. Yovan N., alias James T.*, AO, RG 22, York County CA/CP (CCJCC) Case Files, Box 2717; Toronto *Globe*, 25 February 1911; 19 CCC, 102-10; 24 OLR, 306-13.

[95] (14 September 1912) *Rex v. Ernest M.* and (21 September 1912) *Rex v. Lena S.*, AO, RG 22-13, GPC, Volume 13; Toronto *Globe*, 16 September 1912. In this particular case, Ernest's sentence was remanded and Lena was sent to the House of Refuge.

overseas in 1916.[96]

Despite the growing presence of the state in the actual process of uncovering bigamous marriages, particularly in the early decades of the twentieth century, the court records nonetheless indicate that the aggrieved spouse(s) and/or extended kin played the most decisive role in exposing bigamists and in initiating criminal proceedings. For example, in my compilation of male bigamy cases in which the complainant was specified, first wives were particularly active in this regard, laying charges on their own behalf in at least 35 per cent of cases, whereas second wives did so less frequently in about 14 per cent. Of equal significance, in only 3 per cent of cases did a relative or family member of the first wife lay the complaint, while this pattern occurred in at least 13 per cent of cases involving a relative of the second wife, suggesting that they were more reluctant to do so or already knew that they and their husbands had committed bigamy. But in order to explain these patterns in greater detail, it is necessary to consider what being married to a bigamist meant to each wife from her respective position, and the possible motives she may have had for laying or not laying a complaint.

According to the court testimonies of legal wives, the issue of sexual jealousy or marital infidelity rarely emerged as a declared or an explicit motive in prosecuting husbands. Honora B., the wife of the proprietor of the Ferry House hotel in Belleville, who charged her husband with bigamy in 1879 and Christina H., who was the principal witness against her husband at his bigamy trial in Sault Ste. Marie in 1916, were partial exceptions. In the former case, Honora was so distressed by her husband's frequent absences from home and his association with Annie M., the keeper of a well-known house

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[96] (1916) *King v. Herbert D.*, AO, RG 22, Carleton County CA/CP Case Files, Box 3973; *Ottawa Journal*, 15 June 1916. The polygamist, John M., was also exposed when three of his five wives applied for allowances, leading authorities to conclude that "something [was] wrong" and that an investigation was warranted. (1917) *King v. John M.*, AO, RG 22, Carleton County CA/CP Case Files, Box 3973; *Ottawa Evening Journal*, 15, 17, and 22 January 1917.

of ill-fame known as 'The Farm', that she finally sought the advice of Belleville's chief of police. In response to her complaints and her desire to "win [her husband] back," Chief M. immediately contacted Annie, demanding that she "send Arthur B[] away from her house home to his wife and family" and strongly advising her that if she did not comply with this request, "it would result in trouble." Seemingly undeterred by this admonition, Annie remained defiant, informing the police chief that "she was satisfied he [Arthur] would never live with Mrs. B[]; that they had lived very unhappily ever since marriage in consequence of Mrs. B[] being jealous, and in consequence of difference in creed." Although she was subsequently arrested and fined for keeping a house of ill-fame at Honora's insistence, these warnings did not prevent Annie and Charles from deciding one morning, whilst out on a drive and after getting drunk, to stop at the nearby town of Stirling to obtain a fraudulent license and to get married by the local Church of England minister.[97] In a somewhat similar scenario, Christina H., the wife of a Sault Ste. Marie tug boat captain, stated that, during the last few months that she had lived with her husband and prior to their separation, his 'friendship' with Edith P., a family acquaintance and the woman he eventually married, reached a level that was "more than I could bear." Their relationship involved what she described as constant "petting" in her presence and afternoon sexual liaisons in her husband's bedroom, which eventually resulted in the birth of a child. Although she suggested that she feared raising her objections with her husband, once the child was born and the scandal had settled, her spouse made it clear that he wished to live with the mother of his child. At that point, she took the lucrative monetary settlement he offered her and moved to a nearby town. When her husband remarried one year later, however, it was undoubtedly his claim that they had obtained a divorce in South Dakota on the grounds of *her* desertion that intensified her desire to take criminal action against him

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[97] (1879) *Queen v. Charles B. and Annie M.*, AO, RG 22-392, Hastings County CAI, Box 53; Belleville *Weekly Intelligencer*, 14, 21, and 28 August, 23 October 1879.

and his second wife.[98]

If sexual jealousy and the alienation of a husband's affections by another woman was either a peripheral or an unarticulated issue in the court testimonies of most legal wives, the concern that surfaced much more frequently was that the bigamous marriage would mean the permanent elimination of first wives' access to the economic support of their husbands. Consequently, their sense of marital 'ownership' seemed to be much more rooted in the economic (rather than the sexual) component of the marriage contract. This was indicated by the fact that some husbands were charged by their wives with both non-support and bigamy,[99] or by situations in which a non-support complaint could result in the subsequent exposure of a bigamous marriage. In 1912, while Edwin Terry was residing in St. Catharines, his son tipped off local police, informing them that "the Toronto police [department] held a warrant charging [his father] with deserting his wife in that city." After this information was substantiated, Edwin was arrested for non-support, but in the meantime detectives in St. Catharines also ascertained that he had committed bigamy three

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[98] (1916) *King v. Albert H. and Edith P.*, AO, RG 22, Algoma District Crown Attorney (Sault Ste. Marie) Case Files, Box 1. When Frances Davis of Niagara Falls charged her husband, Herbert, a local plant worker, with bigamy in 1919 after they had been separated for about nine years, she argued that what she found most intolerable was not so much that her husband had remarried; rather, it was the behaviour of his second wife's family. Asserting that she was perfectly content to "shift for herself" and was employed at a local store, she told Judge Piper that the main source of her "scorn" was that ever since her husband's remarriage two months previously, "she received phone calls from the kin of wife No. 2, telling her of the delightful time the bride and groom were having, how nicely they paddled on the matrimonial sea. Not only that ... but occasionally some member of the 'other woman's' household happened into the store and told of the wonderful affinity that existed between Mr. Davis and his new bride." Niagara Falls *Evening Review*, 14 March 1919.

[99] See, for example, the non-support and bigamy charges laid against the following husbands: twenty-four-year-old Charles Gregory, in Toronto *Globe*, 27 and 28 February, 8 and 13 March 1882; Herbert Evans, a printer, whose first wife travelled from Rochester, in Toronto *Globe*, 15 May 1884; and Henry P., in (1888) *Queen v. Henry P.*, AO, RG 22-392, York County CAI, Box 244, and Toronto *Globe*, 20, 24, and 28 September, 3, 4, 6, and 11 October 1887; 24 January 1888.

months earlier.[100] Annie O., the wife of a Grand Trunk Railway employee, however, waited until ten years after her husband's second marriage and the birth of four children before she felt compelled to expose him to legal authorities. Although she was allegedly aware of his "dual relationship," it was her charge of non-support against him in 1914 which resulted in his arrest and conviction for bigamy.[101]

For other legal wives, testifying against their bigamous spouses seemed to provide them with a welcome forum within which to voice their grievances about deserting and often abusive husbands. Sophia L. of Tuscarora township told the court in 1861 that after four years of marriage, her violent and negligent husband simply left her and her two children with "nothing to live on" and during the subsequent two years she was forced "to support herself." Consequently, when she heard he was living in South Norwich township under an alias and that he had married again, she immediately investigated and, after confirming the rumours, laid a complaint against him.[102] Similarly, in 1920, Annie G. of London, England, who provided evidence *vive voce* at the bigamy trial of her husband, a resident of Nepean township, wrote that "I am not at all surprise[d] to hear that he has got married again. I sent him my marriage [lines]] out as he said that he was going to make me a allowance and I have not heard anymore since." Her principal complaint, however, was that, in the absence of her husband's economic support, she was in "very poor circumstances and I have got a very hard job to live but I am still looking after myself the

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100 Toronto *Globe*, 1 and 7 February 1912.

101 (1914) *King v. John O.*, AO, RG 22, Carleton County CA/CP Case Files, Box 3971; *Ottawa Evening Journal*, 17 August 1914.

102 (1861) *Queen v. John O.*, AO, RG 22-392, Oxford County CAI, Box 112.

best as I possibly can."[103] The main source of Mary P.'s bitterness, as she explained to the Toronto police magistrate in 1916, was that during the four months she and her husband, a labourer, had lived together, she not only had to "make my own living" as an operator, but also her "quarrelsome" and indolent spouse insisted that she "go on the street and make [more] money" so he could "stay at home."[104] Conversely, those first wives who seemed reluctant to testify against their husbands suggested that they had little reason to prosecute since their spouses had, in spite of remarriage, always been both kind husbands/fathers and had continued to be stable economic providers.[105] Matilda Lindlay of Michigan, the first wife of a prosperous Nelson township farmer, in contrast, was paid a lucrative enough financial settlement to guarantee her silence.[106]

Related to the issue of economic support was also the fear expressed by some wives that their husbands would attempt to take possession of any children of the first marriage. Consequently, the threat of exposing their husbands to the legal authorities or of testifying against them at an upcoming trial could be employed as a form of prevention or even subtle blackmail. In 1861, Mary G. of Litchfield wrote her husband, a shanty worker,

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103 (1920) *King v. Alexander D.*, AO, RG 22, Carleton County CA/CP Case Files, Box 3975; *Ottawa Journal*, 6 March 1920.

104 (1916) *Rex v. William W.*, AO, RG 22, York County CA/CP (CCJCC) Case Files, Box 2725.

105 See, for example, (1909) *King v. Walter B.*, AO, RG 22, Niagara North CCJCC Case Files, Box 8.

106 In 1876, after her husband, Henry Lindlay, had developed a relationship with seventeen-year-old Annie Moodie, Matilda Lindlay decided to end their fourteen-year marriage and to move back to Michigan with her five children. Two years later, when she heard that he had married Annie, she immediately travelled to Nelson township to "reconoitre." The result was that "through the interposition of a former reverend friend of the family, a compromise was effected, Lindlay agreeing to settle upon the companion of his early love his entire interest, amounting to $2,000 in the homestead of which he is now residing." She then returned to Michigan and did not appear to testify against him at his trial. Toronto *Globe*, 28 November, 2 and 7 December 1878.

who was awaiting his trial for bigamy in Ottawa, stating that she had heard he was "going to take the 2 little children" and in particular their son Jack from her. She strongly intimated, however, that if he would reconsider such an action, neither she nor her brother with whom she was then living, would testify against him, adding that save for him wanting the children, "I have nothing against you."[107] Thirty-year-old Agasia D., an Italian boardinghouse keeper in Timmins, in contrast, implied that testifying against her bigamous husband, Moffi C. of Sault Ste. Marie, was closely related to her repeated yet unsuccessful attempts to recover the custody of her three children. She bitterly informed the court that when her husband abandoned her two years earlier while she was convalescing in a Montreal hospital, he took the children, placed them in Montreal foster homes, and then disappeared without a trace. From her perspective, if her husband was convicted of and imprisoned for bigamy, her latest and still pending child custody battle would undoubtedly have been strengthened significantly.[108]

One common thread, however, which emerged in the court testimonies of many first wives and particularly those who had been deserted by their husbands, was the strong desire for some form of justice and retribution for what they often viewed as their husbands' broken promises, betrayal, deception, and general failure to fulfil their responsibilities. Even during the particularly scandalous trial of William W., the former editor of the Oshawa *Vindicator* and the recently appointed Oshawa police magistrate, who was charged with bigamy in 1913, this seems to have been the case. While local newspapers strongly intimated that his "rabid" political opponents were principally responsible for the sudden revelation of his alleged bigamous marriage and for the

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[107] (1861) *Queen v. Daniel G.*, AO, RG 22-392, Carleton County CAI, Box 15; Ottawa *Citizen*, 18, 22, and 25 October 1861.

[108] (1918-19) *King v. Moffi C.*, AO, RG 22, Algoma District Crown Attorney (Sault Ste. Marie) Case Files, Box 1.

unexpected appearance of his first wife, who had travelled from California, Annie W.'s testimony revealed that she herself had a whole series of grievances against her husband, particularly as she recounted the details of her "unbearable" marriage to the accused. Under intense examination, she spoke bitterly about her husband's intemperate habits, his habitually neglectful and abusive behaviour toward her and her three children, and how he had, while she was living in California, suddenly terminated the twelve dollar monthly allowance she had received after their separation because he was, in his words, "sick and tired of supplying [her] with money." What was equally reprehensible in her view was his effort to "rid himself of [the] troublesome encumbrance" of their marriage by attempting to secure a divorce in South Dakota under false pretences, claiming that she had deserted him when, in fact, she knew she had been driven away. She concluded by stating that, regardless of the rumours in the press, her main motivation for coming forward was prompted by a desire for justice both for the community and herself: she not only hoped "to protect the people of Oshawa from having a man dispensing justice to them who did not know anything about justice himself," but also given the innumerable humiliations she had endured she felt he more than deserved to be punished.[109] Finally, with the exception of a few legal wives who seemed willing to forgive their bigamous husbands, especially if they would "return in good faith to [their] duties as a husband and father,"[110] a general

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[109] (1913) *King v. William W.*, AO, RG 22, Ontario County CA/CP CCJCC Case Files, Box 13; Whitby *Gazette and Chronicle*, 1 and 8 May 1913; Toronto *Globe*, 28 April, 2 May 1913. See also (1892) *Queen v. Henry B.*, AO, RG 22-392, Essex County CAI, Box 36.

[110] (1876) *Queen v. Edward K.*, AO, RG 22, Niagara North CCJCC Case Files, Box 2; Toronto *Globe*, 15 December 1876. In this instance, Edward's father-in-law, a Hamilton blacksmith who laid the complaint, might have been much less forgiving, given that Edward had deserted his daughter and their three children three to four weeks prior to his remarriage. In addition, Dugald MacKenzie, a Toronto tailor, also managed to convince his first wife to forgive him for his marital crime. After she charged him with bigamy, a warrant was immediately issued for his arrest. Prior to being taken into custody, however, the couple apparently reconciled and attempted to escape together, but were eventually tracked down by police in St. Thomas. Toronto *Globe*, 10, 12, and 15 May 1884.

determination to ensure that husbands be disciplined for their marital crimes was also revealed by the fact that wives rarely withdrew their complaints, and often emphasized that the act of bigamy had effectively ended the legal marriage and that they would henceforth sever all ties.

This desire for justice and retribution was often intensified during the course of bigamy investigations and subsequent trials, especially when legal wives received threats from their husbands designed to deter them from testifying,[111] or were forced to defend the validity of their marriages and indeed their own characters against what they perceived as the malicious allegations of their spouses. And these latter marital battles were not only fought in the courtroom, but invariably also in the press. In 1882, when Dr. William G., a fifty-year-old medical doctor and Ottawa civil servant employed in the Department of Railways and Canals, was arrested, he immediately made a series of public statements to local reporters, justifying his second marriage to Florence G., an eighteen-year-old school girl and the daughter of a respectable Ottawa grocer. Claiming that his first marriage to Margaret G., contracted twenty-four years earlier in Markham, was illegal because he had been secretly "drugged" prior to the ceremony, he further contended that when he later learned that his wife was the mother of two illegitimate children and guilty of unfaithfulness, they had decided to separate in 1878. Thereafter, each had filed for a divorce in the United States, but only he had been successful in obtaining one. Dr. G. also attempted to defend his "good character" by arguing that despite his estrangement from his wife, he continued to support his seven children, and when he notified her about his remarriage, she responded positively, "expressing every wish for his future happiness and

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[111] In 1883, for example, Richard O., a Blenheim farmer, wrote a threatening letter to the brother of his first wife, in which he stated, "you can tell your sister ... that their (sic) is a constible (sic) looking for her for a witness against me to prove that she is my wife," and then made it very clear that he would shoot her if she testified against him. (1883) *Queen v. Richard O.*, AO, RG 22-392, Kent County CAI, Box 65; *Chatham Weekly Planet*, 8 November 1883; Hamilton *Spectator*, 6 November 1883.

welfare."

During an interview with her hometown newspaper, the Fergus *News Record*, Margaret G. adamantly asserted that her husband's allegations, motivated only by his desire to salvage his now tarnished reputation because he found himself in the "strong grip of the law," were utter nonsense: "he never, to my knowledge, accused me of any infidelity during the whole time we lived together; I was aware that he was endeavouring to obtain a divorce, but if he got one it was without my consent; the statement that I went to the United States to get a divorce is utterly false." She also pointed out that she knew nothing about his second marriage, and it was only when his maintenance remittances suddenly ceased that she decided to investigate. Convinced that her account bore "out what people [in Fergus] who have been acquainted with the family knew or believed to be true" regarding her highly favourable character, the Fergus newspaper concluded that even though Mrs. G. had a reputation for being "too extravagant" and for not being "the most thrifty of housekeepers [and] not the best manager in the world," she was "at least a woman of much meekness, great patience and unblemished ... virtue." Local sympathy was also extended to the children of the marriage, particularly when at the conclusion of the trial, a letter written to Dr. G. by one of his daughters was discussed in the Ottawa press. In it, she outlined the highly damaging effects that her father's insinuations had on members of the immediate family, making "her mother disreputable and herself, her sisters and brothers illegitimate."

In the end, these two divergent renditions of the couple's marital history were settled when Dr. G. was convicted at the Ottawa Assizes, an outcome which ensured that Mrs. G.'s social reputation was exonerated and the legitimacy of her children was confirmed. In fact, prior to sentencing, a number of additional details about Dr. G.'s questionable character, which had not surfaced at his trial, were leaked to the Ottawa press. This information strongly intimated that he had a reputation for being "a general admirer of

the fair sex" and out of a dozen women he had courted while searching for a new wife, he had eventually chosen a well-educated and respectable woman young enough to be his daughter. Equally reprehensible, in the mind of the reporter, was a further suggestion that this "cold blooded wrong" had been motivated by the possibility of substantial financial gain, given that his father-in-law was a fairly successful businessman and Dr. G.'s career had not brought him significant worldly success. Finally, after his arrest, Dr. G. seemingly had "the impudence" to upbraid his father-in-law for initiating criminal proceedings against him, and had "told him that it would have been better to have given him and Florence a thousand dollars, and they could have gone to some part of the States and lived where no one knew." This led the Ottawa *Citizen* to conclude that "the suggestion that a father should be a consenting party to his daughter's living a life of disgrace could only come from a lunatic or a scoundrel of the worst class."[112]

Although Margaret G. and her children were ultimately redeemed in the eyes of the public, such a satisfactory conclusion was not necessarily shared by all legal wives, particularly those who could not so easily lay claim to such 'unblemished virtue'. During the bigamy trial of Edward W. in 1876, his first wife Eliza, a boardinghouse keeper in Chatsworth who laid the information against him, was seemingly so intimidated by the scathing allegations he made about her past behaviour that she simply declined to appear at his subsequent jury trial. At his preliminary hearing in the Toronto police court, Edward stated that he had intentionally entered a plea of not guilty because he wished to provide evidence of his "good character" and offered the police magistrate a written statement to be read in court. In it, he also sought to blame Eliza for his domestic and legal troubles by recounting the stormy history of their marital relations. Things began to go awry in the

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[112] (1882) *Queen v. John William G.*, AO, RG 22-392, Carleton County CAI, Box 18; Ottawa *Citizen*, 6, 13, 15, 16, and 24 February, 18, 27, and 29 April 1882; Toronto *Globe*, 4, 6, 7, 13, 16, and 18 February, 21 April 1882. For another case in which an accused male bigamist attempted to deny the validity of his first marriage, see (1856-57) *Regina v. Secker*, 14 UCQB, 604-05.

1850s, when he had, while working as a tavern keeper and farmer in Garafraxa, been convicted of murdering a black lodger during a quarrel over the alleged "misconduct" of his wife. Although sentenced to be hanged, his penalty was commuted to life imprisonment and, after thirteen years, he was released on account of his good conduct on the condition that he would never live with his wife again. This latter condition, he contended, was applied because, during his term of imprisonment his wife had apparently "misbehaved herself in a very gross manner," by living with another man and bearing a number of illegitimate children. In fact, her conduct had been such a scandal in Garafraxa that her incensed neighbours had 'tarred and feathered' her and her 'paramour', and had set fire to their house. After Edward's statement was read and entered into evidence, the police magistrate, convinced of his version of the couple's "melancholy" history, concluded that the plaintiff, whom he refused to bind over to provide evidence at the jury trial, was a "bad woman."

Eliza W. was so outraged by this latter characterization and the fact that the "Magistrate should take the word of a Murderer - a Discharged convict and Since his discharge a Bigamist," that she submitted a detailed written statement to legal authorities, offering her version of past events in an effort to defend herself against the "falsehoods" being perpetuated by her husband, "the man," she added wryly, "that should be my protector." First, she argued that the murder of the black lodger had not occurred because of 'her misconduct', but rather had resulted from a quarrel over a dog. She went on to assert that after her husband had been sentenced to be hanged, "it was in compassion for me and my two young children that his Sentence was commuted to imprisonment for Life." Then, while struggling to support her two children, she had also been instrumental in securing his early release, by initiating two petitions and by spending two years' savings personally taking one of them to Ottawa and arguing his case before the Governor General. When she learned, however, that during her clemency campaign, Edward was writing

letters to people in Garafraxa, telling the "most willful falsehoods," she was so angered, especially "after all I did for him, that I never looked after him after he got out of Prison." She also railed against the sexual double standard: while not denying that she had been tarred and feathered by the residents of Garafraxa, she stated that her husband had failed to mention the identity of her alleged paramour, that being his own brother William whom he had sent to "take charge of myself and children," and who performed that duty by robbing her of all she possessed. In fact, as she pointed out, his brother's conduct was so bad that when the neighbours in Garafraxa "got him away the[y] pulled the Roof of the House so that he should not return to that place again." At the same time, her husband had very conveniently overlooked the fact that Ellen D., the woman he had bigamously married in Toronto in 1872, had "a child when he married her, which child he is now supporting but not without being well paid for so doing." And finally, he had also avoided disclosing that after his remarriage, he had gone to her aunt's at Prescott where she had left her daughter, and after taking her with him, had threatened to kill her "if she did not say that I was dead." She concluded by stating that "I can get good Testimonials from all the places that I lived and I defy him to the proof of what he has asserted at the Police Court. He knows it is not true, but it is done to prejudice the Public against me ... Time will show whether the Magistrate can pronounce me a bad woman on the word of such a person." This written statement was the last that was heard of Eliza W.; when her husband was arraigned before the Toronto Assizes on the charge of bigamy, no witnesses appeared to testify against him, and he was subsequently discharged from custody.[113]

If the first wife of a bigamous husband was often but certainly not always perceived as the injured or the wronged spouse, the unsuspecting second wife, particularly if she was young and from a respectable family, was usually constructed as having been 'ruined' or at

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[113] (1876) *Queen v. Edward W.*, AO, RG 22-392, York County CAI, Box 204; Toronto *Globe*, 11, 12, 17, and 22 May, 21 June, 13 October 1876.

the very least socially disgraced by the experience. One Toronto judge, who presided over three cases of bigamy at the Fall Assizes in 1875, suggested that the crime of bigamy inflicted "the most serious wrong ... on the woman [who was] the subject of the second marriage," since she had no claim to being a "wife at all."[114] In other words, as one member of parliament further pointed out, "she loses her position of honor, she becomes the mere concubine of this man, without having any legal right to his name, and [the] children ... become illegitimate."[115] These considerations may have at least partially accounted for the fact that it was often members of the second wife's family who initiated the process of confirming any suspicions they might have had about the validity of the marriage. In 1829, for example, Mr. S. R., the father of Lucina Jones of New York, placed three ads in the *Kingston Chronicle* seeking information about John Jones, the man who had married his daughter seven months earlier but had recently "packed up what Cloths he had and when she was A sleep Runaway and has not been heard from since." The ad went on to explain that since his son-in-law's departure, Mr. R. had learned that he had another wife and two children living in Canada, probably in Kingston, and that he had abandoned them in a similar manner. Hence, the main purpose of publishing this notice was to inform "his Wife That her husband is Married once more," and to request that she or "any Persons connected with the Person or Persons Abused by such Conduct" write to him at the address provided.[116] It is not known whether Mr. R. obtained the information he requested or whether criminal proceedings were ever initiated, a task which was made especially onerous by the fact that his daughter's alleged husband had disappeared and

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[114] Toronto *Globe*, 5 October, 6 November 1875.

[115] Canada, *House of Commons Debates* (15 June 1887): 1024-25.

[116] *Kingston Chronicle*, 14 March 1829.

especially because he had no specific information as to the identity or whereabouts of the rumoured first wife.

More generally, given the choice between remaining silent or charging the bigamist, the second spouse as well as members of her family often had to balance the requirements of the law against the social and legal consequences that such exposure and the loss of status of 'being a wife' might entail. These could include everything from being robbed of respectability, the threatened legitimacy of any children who were the product of the second marriage, the potential collapse of an otherwise functioning marital relation, the difficulties of securing the nullification of the bigamous marriage, to the possibility that the second wife could be charged as an accessory.[117] These considerations may have partly accounted for the fact that some second wives seemed very reluctant to believe any rumours circulating about their bigamous marriage and, initially at least, were prepared to believe the explanations their husbands provided. Both prior to and after her elaborately planned secret marriage to Walter B. in Lockport, New York in 1908, Alice K. of St. Catharines admitted to the County Court judge that she had heard various rumours about him being a married man. But as she went on to explain, "I asked prisoner more than once if he was married. He denied it ... and I believed him ... I had reason to believe him when he said he was not married. He said when he made [an] application to get on [the] fire dept he had to say he was married. As a single man [he] could not get a job."[118]

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[117] As late as 1920, for example, Justice Middleton ruled that the Ontario Supreme Court had no "jurisdiction to declare a bigamous marriage invalid" and thus was "powerless to grant ... relief" in the form of an annulment. (1920) *Ranger v. Ranger*, 18 OWN, 66.

[118] (1909) *King v. Walter B.*, AO, RG 22, Niagara North CCJCC Case Files, Box 8. Similarly, Eliza C., the second wife of William D., a railway contractor living in the Osnabruck township, testified that "I did hear a report last fall ... that my husband had another wife living which he denied and I believed him and considered the report to be false and only this day heard anything more about it." (1890) *Queen v. William D.*, AO, RG 22-392, Stormont, Dundas and Glengarry Counties CAI, Box 143. In some cases, however, such claims were more clearly an attempt to evade being convicted as an accomplice. For example, after Barbara N. was charged with marrying Percy B. despite warnings that he was a married man,

Other second wives, like Georgina G., a domestic, simply denied being married to an alleged bigamist. In a letter addressed "to whom it may concern," Georgina seemed determined to bring halt to all the gossip surrounding the nature of her relationship with and secret marriage to Harry J., alias John D., a coal yard labourer who told her he was a reporter for the London *Free Press*, by providing the following statement: "This is to certify that John W. D[] never promised to marrie me nor are we married nor had noe intentchen as I noe he is a married man and I want noe married man for my Husband as there is lots of Single men in the world and as for being in the family way he has nothing to do with it nor have I any hold on him . . . And if I am in the family way that is my Bissness and noe body elses Bissness."[119] The response of Gertie Price of Hamilton was much more drastic. Described as the "unfortunate victim of her husband's criminality," she was seemingly so mortified by the discovery that her husband was already married and by the possibility that she could be pregnant with his illegitimate child, that she sought out an abortionist and subsequently died of complications resulting from the procedure.[120] More generally, however, once the necessary enquiries had been made, the rumours had been confirmed, and criminal prosecution was imminent, many second wives abandoned their deceiving husbands, or were 'secreted away' by their fathers or another family member. And some, in order to avoid further public scandal or because they were, according to

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she also stated that she had "believed B[] when declared he was not married." When asked about the letter her mother had received from Percy's first wife, warning her that "if your daughter interferes with my husband, I will make trouble with him," Barbara did admit seeing the letter, but at the time had simply dismissed it as a plot "to part them." She may have had good reasons for denying any culpability in the crime and was eventually acquitted, given that just prior to her trial, Percy was convicted of bigamy and sentenced to twenty-three months in prison. (1912) *King v. Barbara N.*, AO, RG 22, York County CA/CP (General Sessions) Case Files, Box 2702; Toronto *Globe*, 3 August, 19 September 1912.

119 (1899) *Queen v. Harry J.*, AO, RG 22-392, Middlesex County CAI, Box 81. The accused was also charged with procuring a 'feigned' marriage with his second wife.

120 Toronto *Globe*, 13, 20, 21, 27, and 30 March 1894.

physicians' reports, suffering from a bout of ill-health often aggravated by "mental excitement and worry," refused to or were extremely reluctant to undergo the ordeal of the actual trial.[121]

It is undoubtedly for these various reasons and the fact that the second wife's family honour was also invariably tarnished by any public scandal associated with the bigamous marriage that fathers or other family members often intervened on behalf of their daughters, sisters, or other female relatives, by alerting the legal authorities and initiating criminal prosecution. This form of intervention was not only motivated by a desire to salvage the social reputation of a female relative and shield her from community gossip, but also, in some cases, to protect her economic interests. In 1860, Hugh M. of Malahide township stated in court that his sister-in-law, Ann, had specifically asked him to investigate the rumoured first marriage of her husband, Hiram S., a highly respected Malahide yeoman. This was largely because she had been advised not to be too hasty in leaving him until her suspicions were confirmed and because the various contradictory reports circulating within the community remained unclear as to whether his legal wife was dead or had run off with another man thirteen years earlier. While Hugh did eventually locate Eve H., the woman purported to be Hiram's first wife, in a neighbouring county, one of the main reasons he laid the bigamy complaint was because he wished to purchase some property from the accused on behalf of his sister-in-law. In order to "make the land good," the issue of the legality of the first marriage, and particularly the question of Eve's dower rights needed to be settled by the courts. Criminal proceedings in this case were particularly essential, since Eve had verbally confirmed her marriage to the accused but had no certificate to prove it, and because she had made it very clear that she would not sign her

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[121] See, for example, (1913) *King v. William W.*, AO, RG 22, Ontario County CA/CP CCJCC Case Files, Box 13; (1892) *Queen v. Joseph P.*, AO, RG 22-392, Waterloo County CAI, Box 161; (1884) *Queen v. Atcheson Nixon*, Toronto *Globe*, 29 April, 1, 7, 10, 12, 14, and 20 May 1884.

dower rights away for less than fifty dollars.[122]

For other male relatives and particularly for fathers, a suspected bigamous marriage involving a female family member could also provide a ready means to bring an end to a marital relationship they had opposed from the beginning. Joseph E. of Blenheim had explicitly warned Richard O. that he "would send him to the Penitentiary" if he married his sister, even though Richard insisted that he was quite sure his first wife was dead. After Joseph followed the couple to the train station at Chatham and later heard a "general report" that they had married in Michigan, he immediately charged his brother-in-law with bigamy.[123] Somewhat similarly, in 1894, during one of his tours as a travelling watchmender and jewellery peddlar, twenty-four-year-old Ernest M. of Toronto stopped at the Fullarton farm of Joseph B., where he met and became enamoured with the farmer's eighteen-year-old daughter. After the two eloped to the nearby town of Mitchell and Mr. B. was informed that they had married that same day, he immediately alerted the police. Undoubtedly disapproving of the relationship, particularly since his daughter was under the legal age of marriage, Mr. B. pressed the matter and a more intensive investigation was launched. Less than a week later the bigamist was arrested.[124]

Despite the sense of shock and social disgrace associated with uncovering the 'truth' about the illegal second marriage, this did not necessarily inhibit second wives from confronting their delinquent husbands and demanding some kind of explanation, and these confrontations, as recounted in the courtroom, seem to have drawn varying responses. In

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[122] (1860) *Queen v. Hiram S.*, AO, RG 22-392, Elgin County CAI, Box 28; *St. Thomas Weekly Dispatch and County of Elgin Advertiser*, 19 April, 25 October 1860.

[123] (1883) *Queen v. Richard O.*, AO, RG 22-392, Kent County CAI, Box 65; *Chatham Weekly Planet*, 8 November 1883.

[124] (1894) *King v. Ernest M.*, AO, RG 22, Perth County CAI, Box 121; Toronto *Globe*, 13 March, 2 April 1894.

1885, for example, an enraged Elizabeth H., the second wife of Samuel J., paid her husband a surprise visit at his place of employment in Mosboro determined to find out why he had "so deceived her" and why he had silently stood by, while she and her mother had incurred so much expense sending a family friend to England to trace his first wife. Reverend William B., the minister who performed the second marriage and accompanied her on her mission, was equally reproachful, stating that "you are a mean man. You have blasted the prospects of this young woman for life by marrying her when you had another wife living in England, and you are so mean that she wants to have nothing more to do with you." Although Samuel initially denied the allegations, when faced with the evidence about his first marriage that had been gathered in England, he became increasingly remorseful and even "pathetic." Claiming that he had never intended "to do her any injury," he insisted that he would do anything he could "to repair the wrong done" and the trouble he had caused, and repeatedly promised that if Elizabeth would continue to live with him, he would attempt to obtain a divorce even though he had always been "too poor to do so." Unconvinced and noncommittal, Elizabeth replied that she would make "no promises to a married man."[125] John B., a steel plant worker, who resided intermittently in Roxborough township, found himself in the rather uncomfortable position of being confronted by both wives, with whom he had managed to maintain ongoing relationships for about three years. After Sarah B., John's first wife of thirty-two years, received a letter from Mary S., asking if she was legally married to the accused and informing her that "if you are his wife I am his wife too," Sarah replied, stating that "yes she was John B[]'s wife," and invited her "to come and see for [her]self." During the subsequent visit, both women became acquainted, confirmed that they were both married to the same man, and since John was living with Sarah at the time, Mary concluded that given the circumstances, some answers were

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[125] (1885) *Queen v. Samuel J.*, AO, RG 22-392, Bruce County CAI, Box 11.

warranted. When John strolled into the kitchen, Mary demanded to know "if he was not ashamed to have two wives" and threatened to have him arrested. Sarah did not think it necessary to order her husband away immediately, but rather, "as I was busy getting dinner I invited her [Mary] to stay and have dinner which she did and she also remained at our house till the constable came for him today." Responding to Mary's accusations, John simply laughed and declared that he was "not ashamed to have two women." John's mother, who testified at his trial, also suggested that when she had learned about his having two wives about two years previously, "I scolded him and told him he should be ashamed of himself and he said 'Oh that is nothing ... I ha[d] the girl in trouble and had to marry her'." She went on to point out that, because Sarah was "a little hard of hearing," she was unsure whether she had overheard this particularly revealing conversation, but added that generally her son did not seem "to hesitate talking about his second wife at any time and before his family."[126]

Although many second wives seemed to or claimed to have been the victims of deception, there were also a considerable number of them, some of whom were charged as accessories, who at the time of their marriage were well aware that their husbands were already married. In 1884, the Ottawa police were alerted to the "curious" case of David Wallace, who had married the sister of his first wife a few weeks prior to his arrest, and more scandalously, that "all three live[d] together on a farm in Gloucester."[127] However, it was particularly when the relationship between the bigamous couple became the site of

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[126] (1915) *King v. John B.*, AO, RG 22-392, Stormont, Dundas, and Glengarry Counties CAI, Box 149.

[127] Ottawa *Citizen*, 24 April 1884; Toronto *Globe*, 25 April 1884. In 1880, Mr. Flint, a senator from Belleville, told his peers about a similar case involving a farmer near Brockville, who was "said to have two wives." "They had two houses," he stated, "and he lived with one wife one week and with the other the next week; turn about. He had two families by those wives, and supported them comfortably, and settled them all on good farms." What Mr. Flint found most peculiar, however, was that "these two wives did not quarrel." Canada, *Senate Debates* (28 April 1880): 412-13.

conflict or began to disintegrate that second wives could potentially use their knowledge about the previous marriage to 'punish' their deserting, violent, or otherwise 'bad' husbands. Mary M., for example, who married John P. in 1878 knowing that he had a wife living in London, complained that the morning after their marriage in the village of Suspension Bridge, New York and while setting up their household in Guelph, John broke into her trunk, stole all her money, and then left town. While she was able to obtain funds from the Guelph mayor to travel to Toronto to obtain work and made arrangements to store her trunks and furniture with a Mrs. D., she later learned that her husband had confiscated and sold most of her possessions to a local pawnshop. Hence, the charges she laid against her husband included not only bigamy, but also larceny.[128] Mary G., the second wife of Richard E., a doctor by profession, also told the York County Court judge in 1912 that when she became acquainted with the accused in England four years earlier, she knew all about his first wife and two children. After emigrating to Canada in 1909 and living together for almost three years, it was her pregnancy which prompted them to travel to Niagara Falls, New York and to go through "a formal marriage for the sake of the child ... which was born to them some months ago." Thereafter, as Mary testified between "convulsive sobs," her "life ha[d] been an awful one" and she had little choice but to leave her husband because of his ill-treatment. When she attempted to return home, "he locked the doors and threatened to stab me," an incident which likely precipitated her laying the bigamy charge against him.[129]

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[128] (1879) *Queen v. John P.*, AO, RG 22-392, York County CAI, Box 212; Toronto *Globe*, 20 and 21 December 1878, 21 and 23 January 1879.

[129] (1912) *Rex v. Richard E.*, AO, RG 22, York County CA/CP (CCJCC) Case Files, Box 2718; Toronto *Globe*, 5 December 1912. In a different scenario, the anger of Margaret Henriss, the second wife of David Wray of Toronto who described herself as a "poor working girl," was aroused when her husband after a ten-year separation from his first wife resumed living with her when she reappeared in Toronto. Toronto *Globe*, 6 and 7 February 1882.

If the wives of male bigamists tended to have specific motives for initiating or not initiating the criminal prosecution of their husbands, in cases involving female bigamists, it was generally the first and less often the second husband who laid the formal complaint. In only one case, involving Maria Grigor of Kingston, did another family member intervene. After separating from her husband because of an unhappy marriage, Maria became acquainted with and married Charles Eward, a young Kingston moulder still under the legal age of marriage. From the very outset, Charles' mother had adamantly opposed the relationship, refusing to give her consent to the marriage, and "when she could not otherwise separate" the two, she "lodged a complaint against her daughter-in-law, accusing her of bigamy." While Maria insisted that because of her attachment to Charles, she would remain "true to him," even "if sent to [the] penitentiary for 20 years," her mother-in-law asserted that even though her son was also liable to being prosecuted, she would "prefer to see [him] in the Penitentiary to living with Mrs. Grigor."[130]

On the whole, unlike married women, prosecuting husbands were less explicit in specifying their motives for laying bigamy complaints. While they undoubtedly shared some of the same concerns as wives, particularly in regards to the deception and betrayal involved, some legal husbands, including soldiers who returned from the front after World War I, also interpreted their spouses' remarriage as a direct invasion of their marital and proprietary rights. This situation at least partially motivated one angry husband, Robert McCulloch of Hamilton, to take matters into his own hands. When Robert was released after serving a term of imprisonment in the Central Prison in 1886, he soon discovered that Jane, his wife, had been "keeping company with" and had married James Begley in New York state during his incarceration. Upon his return home, Jane and her new husband had apparently given him "a cool reception, and threatened [him] bodily injury," and Robert

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130 Toronto *Globe*, 28 November, 10, 11, and 17 December 1884.

retaliated by laying bigamy charges against them. Several days later, however, while "maddened by drink," Robert forcibly entered the house where the couple was staying, and attempted to slash both of their throats with a razor, causing Jane extensive bodily injuries. When they all appeared in court ten days later, the bigamy charge against Jane was dismissed due to the lack of sufficient evidence and Robert was committed for trial at the Hamilton Assizes for attempted murder.[131]

What my compilation of cases also suggests is that considerably fewer women than men were charged with bigamy (which is consistent with national statistics compiled for the early twentieth-century) and the vast majority of those brought to trial were from working-class backgrounds.[132] It is certainly possible that married women and, especially those from the middling classes, committed bigamy less frequently given that their daily lives and their marital decisions were more closely supervised.[133] But it could also be argued that many more bigamous marriages involving working-class women went undetected, given that once a marriage had permanently broken down, poor and working-class husbands had less of a vested interest in initiating criminal prosecution in the event that their estranged partner remarried. Unlike most wives, who were dependent on the institution of marriage for economic survival, one of the potential benefits for husbands who remained silent was that they would no longer be financially responsible for their wives and any children of the marriage. In fact, William Grigor, a Toronto carpenter, expressed immense relief and

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131 Toronto *Globe*, 23, 24, and 28 June, 4 July 1886. For cases involving wives, who remarried while their husbands were fighting overseas or soon after their return, see (1918) *King v. Annie F.*, and (1920) *King v. Mildred C.*, AO, RG 22, York County CA/CP (CCJCC) Case Files, Box 2728 and Box 2734.

132 Snell, *In the Shadow of the Law*, 236-37.

133 See, for example, Ward, *Courtship, Love, and Marriage*, chapters 4, 5, and 6; Backhouse, *Petticoats and Prejudice*, chapter 2.

"pleasure" at having finally "gotten rid" of his estranged wife through her remarriage, and her subsequent conviction for bigamy guaranteed that he would finally secure custody of their child.[134] Alternatively, some second husbands, who discovered or were aware that their wives had committed bigamy, also sought to relieve themselves of any legal liability for their wives' economic maintenance by exposing the illegality of their marriages. In the early nineteenth century, as Jane Errington has pointed out, a number of indignant men, who found out that their wives were already married, published notices in local newspapers, warning merchants and tradespeople not to extend these women any credit in their name for they would no longer be responsible for any debts they might contract.[135] Others, like Robert Ward, who found himself facing a charge of non-support in 1912, simply retaliated by laying a bigamy complaint against his estranged wife, Sarah, arguing that he was unaware that she had another living husband until she broke the news to him several weeks after they were married.[136]

Prosecuting Bigamous and Polygamous Marriages

Prior to the 1860s, the still rudimentary criminal justice system was only one institution that investigated and sanctioned bigamous marriages. In this early period, a number of cases caught the attention of various Upper Canadian Presbyterian and especially the Baptist churches, and like other infractions, were subject to church discipline and censure. Given that bigamy constituted a serious violation of ecclesiastical laws, it is not surprising that the vast majority of church members who acknowledged or were found

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[134] Toronto *Globe*, 28 November, 10, 11, and 17 December 1884.

[135] Errington, *Wives and Mothers*, 47-48.

[136] Toronto *Globe*, 24, 25, and 31 January 1912.

guilty of this wrongdoing were excommunicated and those who had previously been excluded because of their bigamous marriages were refused readmittance into the church fellowship.[137]

Although the exact relationship between church discipline and the existing criminal justice system in Upper Canada has yet to be studied in detail, some church cases heard in the 1840s and 1850s do suggest that these were not entirely independent tribunals. What they also indicate is that, as in cases involving adultery, Baptist congregations tended to treat bigamy more severely. In 1844, Sarah J., who had been excluded several years earlier from the Yarmouth Baptist Church because of her bigamous marriage, wrote a letter requesting reinstatement within the church fellowship. While she expressed her deepest apologies for bringing such a "dearth on the church," her main line of defense was that she had not remarried until after she learned that her husband had done so. If this had not been the case, she contended, "I might have been taken for bigamy but now I am clear by all laws both human and divine; therefore I think if the Brethern had as much sympathy for me as I have for the cause of God & the Church as I feel, they would not be so hard with me." Despite her arguments, which did seem to imply that she had been absolved by the secular courts, her request did create considerable controversy among the Yarmouth membership: some church members felt that "she ought to be restored without any retraction or acknowledgement"; others argued that "she might be restored by acknowledgement for her misconduct"; while some firmly rejected her application, stating "she has no right to membership in the Church." In the end, members of the church committee, comprised of

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[137] For those excommunicated on the grounds of bigamy, see the following cases: (8-10 April 1809) James V., CBA, CM, Beamsville Baptist; (March 1821) Nancy P., CBA, CM, Oxford Baptist; and (March 1822) Bro. M., CBA, CM, Wicklow Baptist. In 1833, Phoebe H. was excluded for "insulting the character of another woman" and marrying a married man. (2 March 1833) CBA, CM, Jerseyville Baptist. Mrs. M. was refused entry into the Knox Free Church in Perth in 1855 because she "married a second husband, without having previously obtained any evidence of the death of her first husband" and was "living in a state of separation" from him. (25 January 1855) CPA, SM, Knox Free Church, Perth.

various members of the congregation, took a very dim view of Sarah's case, ruling that in their opinion, "any person marrying while they have a wife or husband living are improper persons for members of Christian churches" and that she "ought not to be a member of the Church." They also went so far as to recommend that those brethren who had supported her request had acted wrongly, and hence should "humble themselves before Almighty God."[138]

By contrast, Mrs. H., who applied for readmission to church privileges in 1851 after her suspension from the Stamford Presbyterian church, was treated with greater leniency, particularly given what were considered to be the "very peculiar" and mitigating circumstances surrounding her bigamous marriage. In 1843, her marriage to James H., a man who "had a habit of drinking," ended when he "proved the hypocrisy of his professions and his unfaithfulness to her by departing from her and leaving her helpless." After being separated for four and a half years, she "concluded that she was at liberty to marry again." Furthermore, because her circumstances were so "trying" and she was "under the dark anticipation of the future," she simply desired "to have a home and a friend to provide for her and [her] children," which resulted in her bigamous marriage to William H.. After a twelve month investigation, the church elders concluded that despite evidence of her past immoral conduct, they were "satisfied that her previous husband ... [had] left her without any just cause whilst his conduct previous to deserting her was such as to render her most unhappy." They further resolved that since she gave "every evidence of deep repentance for the errors of the past," was held in "much esteem" in her neighbourhood, and showed "Christian deportment and consistent walk and conversation," she was worthy of restoration to church privileges. Nonetheless, the church elders did insist that before they could authorize her readmission, it was necessary that "her marriage

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[138] (29 August and October 1844) CBA, CM, Yarmouth Baptist.

with William H[] be placed on [a] footing recognized by Law so that at no future period there should arise any collision between the civil law and any proceedings of our church courts."[139]

Despite the eventual decline of the church disciplinary procedures beginning in the 1860s, congregations continued to investigate possible bigamous marriages, as illustrated in the highly publicized case of Peter Stanford, a black minister, who in 1882 was charged by his Baptist congregation in London with bigamy, the desertion of his second wife, and other marital irregularities. While this was not the first time he had been forced to answer to these allegations, at a large public meeting held at London's Victoria Hall, he challenged his "enemies" to substantiate their charges, and then presented a brief history of his "eventful life" and an exhaustive defence of his character and marital conduct. Arguing that he had not legally married the woman whom his opponents identified as his first wife and claiming that his legal spouse, who lived in the United States, had "refused to come to Canada and live with him," he closed with "an eloquent and touching appeal for justice and fair treatment, declaring that he ... would not leave this city until so directed by God." After an intensive review of the evidence and a "lively discussion," the minister who presided at the meeting declared him "an innocent man" and he was evidently exonerated through a church vote. However, given that the local press continued to express strong suspicions that he had been lying about his marital history and despite a second effort to salvage his reputation through a public letter, Reverend Stanford decided to relocate to another Baptist church as soon as the opportunity presented itself.[140]

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139 (29 October 1851, 23 January, 27 September, 18 October 1852) CPA, SM, Niagara-on-the-Lake Presbyterian Church.

140 "Rev. P.T. Stanford: An Answer to the Charges Brought Against Him," "The Stanford Trouble: A Letter From His Wife," and "The Stanford Trouble," London *Advertiser*, 16, 20, and 21 February 1882. See also Toronto *Globe*, 16 and 22 February 1882; *Ottawa Citizen*, 10, 17, and 22 February 1882.

Not unlike many Protestant church authorities, secular officials also tended to invoke christian principles when condemning the practice of bigamy. In 1867, one crown prosecutor made the emphatic statement that the "evil effects" of bigamy "upon the community at large" could not be measured, particularly since it struck at "the very roots of morality" and represented a gross violation of "the laws of God and man."[141] Consequently, one of the features of the crime of bigamy which set it apart from other marital transgressions was that, if discovered and brought to the attention of the legal system, it carried particular risks, not least of which was a maximum penalty of seven years imprisonment. Beginning in 1892, those bigamists who were convicted of a second offence were liable to be imprisoned for fourteen years in the Kingston Penitentiary.[142]

Not surprisingly, in some instances the prosecution of a suspected bigamist was virtually impossible, particularly when he/she resided or fled outside the court's jurisdiction,[143] or managed to jump bail and to disappear while awaiting trial. When Charles B. failed to respond to his name being called at the Belleville Assizes in 1879, the frustrated judge repeatedly ordered the court crier to speak louder and he was soon joined by several gentlemen "of the long robe" present in the courtroom. Eventually, Charles' defence attorney rose to speak, remarking sarcastically that "if the crier wished B[] to hear, he would have to call loud enough to be heard in Texas," since it appeared that the

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[141] Ottawa *Citizen*, 16 February 1867.

[142] (1892) "Offences Against Conjugal and Parental Rights," 55 & 56 Vict., c. 29, s. 276.

[143] See, for example, "Another Case of Bigamy," Ottawa *Citizen*, 12 April 1867; "Alleged Case of Bigamy," *Guelph Herald*, 19 October 1875; "Family Complications," Toronto *Globe*, 21 April 1882; "A Charge of Bigamy. Warrant Issued for Arrest of a London Barber," Toronto *Globe*, 3 April 1913. In one 1882 case, Frank Cooper of Niagara Falls charged James W. Jackson, a wealthy jewellery merchant from St. Catharines, with bigamy for having married his legal wife. The reason for this unusual charge was that Julia, who had married both men, had disappeared one year earlier and "neither husband now knows where she is." Toronto *Globe*, 28 March 1882.

defendant and his second wife had fled south "across the lines."[144] Because of this risk of flight, local police were often advised to "keep close watch" on a suspected bigamist prior to being taken into custody lest s/he decided "to skip."[145] Furthermore, magistrates were often reluctant to grant bail pending a trial in the higher courts.

Although the majority of accused bigamists in my compilation of cases were eventually (re)arrested and brought to trial, legal officials also suggested that bigamy was one criminal offence that was particularly difficult to prove. According to the stringent rules of evidence and even when the accused confessed to the crime, in order to secure a conviction, the prosecution had to produce irrefutable proof, be it in the form of written evidence or the verbal testimony of a third-party present at the ceremony, that the first marriage had been solemnized, that it was in fact a legally recognized and valid conjugal union, and that the accused had entered into a second 'form of marriage'. These strict rules were deemed necessary in order to prevent fraudulent claims and to avoid any "looseness of proof" in the prosecution of such a serious crime.[146]

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[144] Belleville *Weekly Intelligencer*, 23 October 1879. When Dugald Bell and Hattie Duran, who were both charged with bigamy, did not appear at their trials at the Toronto General Sessions in 1899, the Crown Attorney similarly concluded that "they had left the country" and a bench warrant was issued for their arrest. Toronto *Globe*, 19 September 1899.

[145] See, for example, (1918-19) *King v. Moffi C.*, AO, RG 22, Algoma District Crown Attorney (Sault Ste. Marie) Case Files, Box 1.

[146] If the accused confessed to the crime of bigamy, the rules of evidence required some form of corroboration, either by witnesses present at the marriage ceremony or through the production of a marriage certificate. This heavy burden of proof was designed to prevent fraudulent claims, a ruling which was upheld in the reserved case of Mr. Duff of Hamilton in the Court of Common Pleas in 1878. According to the presiding judge, Mr. Duff had conjured up a prior marriage allegedly celebrated in England in order to challenge the validity of his current marriage, and thereby prevent his estranged wife from making any claims on his property and evade paying her alimony. On this basis, his conviction for bigamy was overturned. (1878) *Regina v. Duff*, 29 UCCP, 255-60. The conviction of Henry Ray of Hamilton was also overturned in the Court of Queen's Bench on the grounds that, despite his admissions that he had been married previously in England, "no one was called to prove the first marriage who was present on the occasion; nor was documentary evidence adduced." As Chief Justice Armour argued: "It is not a good thing to allow looseness of proof. A marriage in law must be strictly proved." (1890) *Regina v. Ray*, 20 OR,

When appearing in court, a number of husbands simply denied having married their first or second spouse and/or argued that the alleged marriage had not been a legal one, placing the onus of proving otherwise directly on the plaintiff and/or on the crown prosecutor. Under certain circumstances, securing sufficient evidentiary proof proved to be extremely difficult. Some of these difficulties emerged during the bigamy trial of Alexander Ely in 1835, in which the main issue of contention was whether the accused and Jane Hyland, who claimed to be his legitimate wife, had been legally married in Ireland, particularly since Jane could not produce a marriage certificate. According to the testimony of several Irish acquaintances, there had been local reports that the couple had married, but the ceremony had been conducted in secrecy since Jane had not secured the consent of her father. Moreover, the rumours also indicated that the marriage had been solemnized by Parson Scott, a local minister, who had a reputation for marrying couples who wished to "have the business done quietly" and whose marriages were rumoured to be "no marriages" at all. Given that "no legal proof could be procured of the marriage" and since "great doubt existed whether the person said to have married [them] was legally qualified," the Kingston magistrate, who was personally convinced of the defendant's guilt, expressed his deep regret that he could not proceed further with the matter and that he was "obliged to dismiss the case." Before releasing the accused from custody, however, he took the opportunity to give him a stern lecture "for the profligate course he had pursued."[147]

While obtaining sufficient evidence of the first marriage in particular was especially onerous when it had been contracted in another country or when the first spouse lived

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212-13; AO, RG 22-392, Wentworth County CAI, Box 178; Toronto *Globe*, 1 September 1890. For similar arguments, see also (1848) *Phipps v. Moore*, 5 UCQB, 16-30.

147 *British Whig*, 3 November 1835; *Kingston Chronicle and Gazette*, 4 November 1835.

overseas and could not be traced,[148] prosecutors faced similar challenges when both unions were solemnized in Canada West/Ontario. In 1860, Hiram S., a Malahide yeoman, was acquitted of bigamy not only because his first wife, Eve, had no certificate to prove their marriage which had been contracted in the village of Canboro seventeen years earlier, but also because the Presbyterian minister, who officiated the ceremony, failed to record the union in his marriage registry and could only swear that it had taken place "sometime between the years 1840 & 50."[149] Furthermore, despite the introduction of stricter late nineteenth-century provincial laws, which stipulated that ministers were required to register all marriages at the Ontario Registrar General's Office, the investigation into the bigamy complaint laid against John P., a Toronto labourer, revealed that these rules were not necessarily followed. In a frustrated letter to the crown prosecutor, the Registrar General noted that no returns had been made of either of Mr. P.'s alleged marriages, both of which had been contracted in Toronto within a seven-month period. Referring specifically to the second marriage, he also warned that some criminal action might be warranted: "I may note that the Act requires the officers responsible for the registration of Births, Marriages and Deaths in each District to prosecute the person who should have made [the] return of this

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[148] For example, during the bigamy trial of Moffi C. in Sault Ste. Marie in 1918-1919, Agasia D., his first wife, testified through an interpreter that they had been married in the village of San Savario, Italy in 1907, but she had not brought a marriage certificate with her when she emigrated to Canada in 1912. Under gruelling cross-examination, she also stated that she could not remember who had attended the ceremony. The only proof she had of the marriage was the baptismal certificate of her first child issued in Montreal in 1914, which was evidently insufficient to convict the accused. (1918-19) *King v. Moffi C.*, AO, RG 22, Algoma District Crown Attorney (Sault Ste. Marie) Case Files, Box 1. Furthermore, the indictment in the bigamy case of Thomas T. of Belleville stated that in January 1863, the accused had married "one woman whose maiden name is unknown" in the town of Barnley, England and then in October 1863 had feloniously married Elizabeth D. in Belleville. (1863) *Queen v. Thomas T.*, AO, RG 22-392, Hastings County CAI, Box 52.

[149] (1860) *Queen v. Hiram S.*, AO, RG 22-392, Elgin County CAI, Box 28.

marriage."[150] These problems with procuring adequate documentary evidence of one or both marital unions were also compounded by the fact that some husbands managed to confiscate or to destroy marriage certificates when separating from their legal wives or after entering a bigamous union.[151]

In general, then, the inability of the plaintiff and the prosecution to produce sufficient written or verbal evidence to substantiate the existence or the validity of one or both marriages was one of the principal reasons why accused bigamists were exonerated by the courts.[152] Other defendants were discharged because they were able to persuade either judges or juries that, in keeping with the criminal statutes, they had neither seen nor heard from their first spouse for seven years and/or "conscientiously believed" that s/he was dead.[153] This was the main rationale behind the acquittal of Samuel N., a Jewish photographer from Toronto, in 1920. The evidence presented to the York County Court judge indicated that after he had deserted his first wife twelve years earlier and then had

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[150] (1871) *Queen v. John P.*, AO, RG 22-392, York County CAI, Box 190.

[151] In 1915, for example, Mary S. told the Avonmore justice of the peace that after she married John B., who she later discovered had another wife, he insisted on taking the marriage certificate because he wanted "to get it framed and he then put it in his trunk." (1915) *King v. John B.*, AO, RG 22-392, Stormont, Dundas, and Glengarry Counties CAI, Box 149. See also (1899) *Queen v. Harry J.*, AO, RG 22-392, Middlesex County CAI, Box 91.

[152] See (1882) *Queen v. Charles Gregory*, Toronto *Globe*, 27 and 28 February, 8 and 13 March 1882; (1883) *Queen v. Jonathan H.*, AO, RG 22-392, Haldimand County CAI, Box 49; (1884) *Queen v. Herbert Evans*, Toronto *Globe*, 15 May 1884; (1894) *Queen v. William Parker*, Toronto *Globe*, 13, 21, 30 April, 5 May 1894.

[153] See, for example, (1882) *Queen v. William McKay*, London *Advertiser*, 4 and 7 April 1882, and Toronto *Globe*, 4, 7, 17 April 1882; (1883) *Queen v. Richard O.*, AO, RG 22, Kent County CAI, Box 65, *Chatham Weekly Planet*, 8 November 1883, and Hamilton *Spectator*, 6 November 1883; (1906) *Rex v. George L.*, AO, RG 22, York CA/CP (General Sessions) Case Files, Box 3852, and Toronto *Globe*, 18 September 1906; (1913) *King v. Henry J.*, AO, RG 22, Ontario County CA/CP CCJCC Case Files, Box 13, and Whitby *Chronicle and Gazette*, 5 and 12 June 1913; (1898) *Queen v. Edith G.*, AO, RG 22-392, Oxford County CAI, Box 115, and Toronto *Globe*, 23 March 1898.

emigrated from Russia to Canada, there had been no further contact between the two until she "landed in Canada" eight weeks prior to his trial. Furthermore, in a written statement submitted to the presiding judge, Samuel's defense attorney was also successful in raising some doubts about the legality of the second marriage, arguing that the person who had performed it did not hold a position as "an authorised nor recognized Rabbi." "This in itself," he wrote, "would have proved a complete defence to any action of bigamy, but owing to the fact that we understand that a considerable number of marriages have been performed in this way in Toronto in the past, we did not wish to raise it in this case, owing to the serious results which might be brought about if this matter had to be judicated upon."[154] Regardless of the specific nature and weaknesses of the evidence, being acquitted by the courts, which occurred in about 20 per cent of the cases in my compilation, brought enormous relief to those involved, particularly among otherwise respected members of communities. When Hiram S., the highly regarded Malahide farmer, was discharged from custody and left the St. Thomas courthouse in 1860, "a number of people outside cheered him loudly, and took him downtown in triumphal procession."[155]

Despite the strict rules of evidence and the various challenges associated with prosecuting bigamists, my compilation of cases nonetheless indicates that conviction rates tended to be relatively high, reaching about 80 per cent for both female and male bigamists, rates which are consistent with national figures cited for the early twentieth-century.[156] Given that bigamy was generally considered a 'very high offence' and a serious violation

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154 (1920) *King v. Samuel N.*, AO, RG 22, York County CA/CP (CCJCC) Case Files, Box 2735. In a few cases, defendants were acquitted because the changes were withdrawn by the plaintiff. See (1901) *Queen v. Emma Loughead*, Toronto *Globe*, 19 October 1901; (4 February 1918) *King v. William F. and Vera P.*, AO, RG 22-13, GPC, Volume 14.

155 *St. Thomas Weekly Dispatch and County of Elgin Advertiser*, 25 October 1860.

156 Snell, *In the Shadow of the Law*, 236-37.

of conjugal rights, securing a conviction was generally perceived as essential for protecting the sanctity of the institution of monogamous marriage. It was also deemed necessary because this particular crime tended to pose a direct challenge to the state's regulation of marital relations. As discussed in an earlier chapter, the binding of the matrimonial tie not only entailed the establishment of a consensual contract between a man and a woman, but also consisted of entering into a contract with the state, the church, and the community. Thus, the marriage union involved those state officials empowered to issue marriage licenses, a representative of a church who officiated the ceremony, the presence of witnesses from the community, and the entry of the union into the public record.

One of the most consistent features of most bigamy trials was the testimony of the officials who had issued the marriage licenses and/or of the church ministers who had married the couple. While their testimony was necessary to confirm that both marriages had been performed and were legally valid, in the process of providing such evidence public officials and church ministers often attempted to absolve themselves of any culpability in the crime and any risk of legal prosecution, by assuring the judge that they had followed all the correct procedures as outlined in the marriage laws. This included, as we have seen, asking a standard question as to marital status. Reverend George F., the minister of the Central Methodist Church in Sault Ste. Marie, who performed the second bigamous marriage of Edward H., for example, was adamant in insisting that "when strangers come to me to get married I always try to ascertain if either were married before." And even though Edward had, during the ceremony, seemed confused and had given contradictory responses when asked about his marital status, the mere fact that the aunt of the bride was present convinced him that the marriage was legitimate.[157] In fact, church ministers often indicated (in retrospect) that the bride or the groom had seemed overly insistent on being

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157 (1915) *King v. Edward H.*, AO, RG 22-392, Algoma District CAI, Box 3; *Sault Daily Star*, 21 and 25 August, 22 and 23 September 1915.

married immediately, or had appeared excessively anxious and nervous. Charles B., who was allegedly drunk when he and Annie M. decided on a whim to get married in 1879, even became angry when asked the routine question related to his marital status, snapping back at Reverend Thomas G., the Church of England minister, with the question, "No, do you doubt my word?" In this instance, even though Reverend G. also suspected that "there was something wrong ... and thought it was not bona fide," when Charles finally affirmed that he was single, he proceeded to perform the ceremony. He also reiterated at least three times in his court testimony that he "would not marry any persons if they were drunk."[158] In other cases, however, church ministers became more directly involved in the initial bigamy investigation either at the request of one of the spouses or perhaps as a way of salvaging their ecclesiastical reputations. In 1920, the parish rector, who had hastily performed the second marriage of Nicholas G. in Sault Ste. Marie, testified that three weeks after the ceremony, he learned that the accused had previously been married and that his first wife, Rose, was also residing in the city. Even though Nicholas denied these allegations, claiming that he had lived with Rose for a number of years but had never married her, the rector nonetheless began to make enquiries, which included contacting Nicholas's first wife and obtaining the certificate of the first marriage. After gathering the necessary information, he invited the bigamous couple to visit him at the church and, upon their arrival, a police constable was waiting to arrest the accused.[159]

Within this general context, committing bigamy entailed a form of defrauding state

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[158] (1879) *Queen v. Charles B. and Annie M.*, AO, RG 22-392, Hastings County CAI, Box 53; Belleville *Weekly Intelligencer*, 14, 21, and 28 August, 23 October 1879.

[159] (1920) *King v. Nicholas G.*, AO, RG 22, Algoma District Crown Attorney (Sault Ste. Marie) Case Files, Box 1. For other cases involving the investigations undertaken particularly by local Roman Catholic parish priests, see (1900) "A.G. Browning, District Attorney, North Bay. Asks if attempt to commit bigamy is an offence under section 539 of Criminal Code," AO, RG 4-32, AG, #715; (1912) "Thomas Dixon, Crown Attorney, Walkerton. Asks as to taking proceedings against one B[] for bigamy," Ibid, #1020.

officials and church authorities, and these deceptions often included the widespread use of aliases and the swearing of false oaths. This latter violation also accounted for the fact that 'would-be bigamists' could be charged with perjury. Robert R., for example, after receiving a severe lecture from the Ottawa police magistrate, was sentenced in 1919 to one year in the Ontario Reformatory for swearing that he was a bachelor when he applied for a marriage license.[160] In addition, William M. of Sinclair township, who was charged with two counts of perjury in 1885, seemed so desperate to marry because he had told "the boys [in Sinclair] he was going to bring back a wife" that he was willing to resort to fairly drastic measures. When applying for his first marriage license, Mr. H., the issuer of the licenses, refused to grant the certificate on the basis that it was well known that Ellen F., the woman he intended to marry, was not a widow, but had a living husband. William responded by insisting that he thought the marriage would be legal, because she had been separated from her first husband for seven years and her second husband was now dead. He also urged Mr. H. to grant the license, "as no one would find it out." At that point, he was strongly advised to drop the matter, otherwise he and Ellen "would be on their way to the Penitentiary." Several days later, William returned to apply for another marriage license, stating that "he had made up his mind to drop that woman altogether, and have nothing more to do with her, as her character was such," but that he had found another woman, Sarah R. who had agreed to marry him. As it turned out, after the marriage license was granted, it became clear that Sarah had no desire to marry him, and hence the second charge of perjury.[161] Finally, other aspects of the rather elaborate deceptions associated with

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[160] (1919) *King v. Robert R.*, AO, RG 22, Carleton County CA/CP Case Files, Box 3976; "Would-Be Bigamist Gets Year in Jail. Robert W. R[] Secures License For Second Ceremony When Law Intervenes," *Ottawa Journal*, 16 October 1919.

[161] (1885) *Queen v. William M.*, AO, RG 22-392, Simcoe County CAI, Box 138. For other cases involving perjury charges against 'would-be bigamists', see, for example, (1895) *Regina v. Henry G.*, AO, RG 22, Perth County CCJCC Case Files, Box 3; (1893) *Queen v. Francis P.*, AO, RG 22-392,

bigamous marriages included tampering with and forging marriage documents,[162] and on a less formal level, hasty trips to and clandestine marriages in another town or, more frequently, in bordering states like Michigan or New York. At least 9.5 per cent of the bigamy cases involved American marriages, with Niagara Falls, New York being one of the most popular destinations.[163]

If the crime of bigamy represented a form of defrauding representatives of the state and church, it also reflected an ultimately dangerous transgression or a form of opting out of one of the basic organizing principles of civil society: that of monogamous marriage. One crown prosecutor remarked in 1875 that even though "this was a practice that was permitted in Utah or the land of the Grand Turk," it was "not allowable in a land like Canada," a country which prided itself in its sound 'christian' principles and its defense of 'civilized' laws.[164] In this regard, legal officials frequently condemned bigamy not only

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Prescott and Russell Counties CAI, Box 126; and (1918) *King v. Albert O. and Clara Q.*, AO, RG 22, Carleton County CA/CP Case Files, Box 3975. In this latter case, Albert O. and Clara Q., in an attempt to obtain a marriage certificate, swore a declaration before an Ottawa justice of the peace, stating that they had been married in Halifax in 1912, but had lost their certificate and all other records had been destroyed in the Halifax explosion. After a police investigation, it was discovered that Clara was already married, that her husband was fighting overseas, and that the story she and Albert had concocted was untrue.

[162] In one 1881 case, involving Henry B., alias Edward T., a travelling peddlar, the charges against him included both bigamy and forgery with the intent to defraud and deceive. The basis of the second indictment was that after contracting his second marriage, he had tampered with the marriage certificate by erasing his alias and replacing it with his legal name. (1881) *Queen v. Henry B.*, AO, RG 22-392, Elgin County CAI, Box 29.

[163] In order to secure a bigamy conviction in the case of American marriages, the prosecution had to prove that the accused was a British subject resident in Canada and had left the country with the "intent" to enter into "a form of marriage," the latter being the most difficult to ascertain. See (1897) *In the Matter of Sections 275 and 276 of the Criminal Code, 1892, Relating to Bigamy*, 1 CCC, 172-206; (1894) *Regina v. Plowman*, 25 OR, 656-57; (1910) *Rex v. John L.*, AO, RG 22, York County CA/CP (CCJCC) Case Files, Box 2716, and "Did Not Intend To Get Married. L[] and Miss B[] Went to States Together. He is Not a Bigamist," Toronto *Globe*, 4 October 1910.

[164] Toronto *Globe*, 5 November 1875.

because the crime was "evil in its moral effects on the community" and hence "should be treated severely," but also because of its potentially dangerous social consequences. One St. Catharines magistrate argued that, "marriage in this country cannot be set aside if a man gets tired of his wife and wants to live with another woman," a pattern which not only challenged the sanctity of marriage, but also frequently resulted in husbands reneging on their economic responsibilities toward their legitimate wives and children. Furthermore, after three bigamy cases were investigated by the Toronto morality department within two weeks in early 1912, one staff inspector expressed particular concern over any children born of the second marriage, since a permanent "blot was left on their lives."[165] Hence, given that the marriage contract was often constructed as the 'most important of all human transactions' and as the basis of 'civilized' society, treating bigamy lightly would potentially encourage matrimonial anarchy, undermine public morality, and threaten the legitimacy of state regulation of marital relations. From the perspective of legal officials, then, what was required was not turning a blind eye, but rather some form of discipline, and this was certainly indicated by the vigilance with which they pursued the securing of convictions.

Interestingly, however, even though bigamy was generally considered to be a serious offence, once the accused was convicted, the wide variation in sentences imposed by judges, who did wield enormous discretionary power, seemed to indicate certain ambiguities associated with the punishment of this crime. As one defense lawyer reminded an Ottawa judge in 1916, sentences could "run from one day to seven years"[166] and suspended sentences were not uncommon. These trends may have partially accounted for

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165 "Terry Gets Three Years For Bigamy" and "Third Bigamy Case Within Two Weeks," Toronto *Globe*, 7 February 1912.

166 (1916) *King v. George M.*, AO, RG 22, Carleton County CA/CP Case Files, Box 3973; *Ottawa Journal*, 25 February 1916.

the fact that some bigamists did not seem particularly concerned about the fact that they had been exposed and arrested. When William M., an Adelaide farmer, was advised in 1884 to settle out of court by offering his first wife several thousand dollars, he did not consider it necessary, since he was convinced he would only spend "one or two nights in [the] gaol."[167] Similarly, in 1920, Alexander D. wrote his second wife, Mamie, from the Ottawa gaol, expressing his concern that she had taken ill since his arrest, and reassuring her that "there is a silver lineing (sic) behind every cloud." Emphasizing that "the five months I have been with you as my wife has been the happiest in my life" and that he did not "mind doing time for a good girl like you," he also suggested that he could not possibly "get more than two years" and more likely would receive only thirty days.[168] In many respects, the confidence and optimism expressed by both men was not entirely misplaced. In my compilation of cases, only 14 per cent of convicted male bigamists faced sentences of three years or more (including 4 per cent who faced five years or more). Of these, one polygamist, George Smith, received the unprecedented sentence of fourteen years imprisonment in 1913, and two bigamists, Thomas R., alias James W. in 1907 and James Anderson in 1908, were the recipients of the maximum penalty of seven years. While the severe penalties imposed in these cases were justified on specific grounds, they were also reflective of broader sentencing patterns.

The exceptionally harsh punishment imposed on George Smith, a fifty-four-year-

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167 After spending seven months in the London gaol awaiting trial at the Middlesex Assizes, William was found guilty of the charge and was sentenced to twenty-four hours imprisonment. Upon his release, he told reporters that he had "had enough courting to last him his life time." (1884) *Queen v. William M.*, AO, RG 22-392, Middlesex County CAI, Box 89; London *Advertiser*, 14 and 15 May 1884.

168 (1920) *King v. Alexander D.*, AO, RG 22, Carleton County CA/CP Case Files, Box 3975; RG 22, Carleton County CCJCC Minutes, 1907-20; *Ottawa Journal*, 6 March 1920. Alexander was acquitted of the bigamy charge, after successfully arguing that he could not remember getting married in England while on a military leave because he had been drunk at the time, and also that he had heard that the woman purported to be his wife had committed suicide.

old Scotsman residing in St. Thomas, was largely a consequence of the multiple crimes of which he was accused: his two-year "marrying mania," which claimed at least five Ontario "victims"; various allegations of marital cruelty and wife-beating; and accusations of extorting money under false pretences from at least one of his wives. Although Mr. Smith's defense attorney attempted to have him declared "mentally deficient," since evidence suggested that he had spent five years in an Iowa asylum, when confronted by the presence of four of his wives in court, he eventually pleaded guilty to three counts of bigamy. Equally damaging to his case was the fact that throughout the protracted investigation and during his trial, the accused consistently displayed little or no remorse for his marital crimes; rather, he was reported to have been "greatly amused" by the proceedings. In fact, at one point during the Ontario-wide search for his multiple wives, he even went so far as to taunt the St. Thomas magistrate by promising to disclose the location of his fourth wife, but only *if* and *when* police managed to locate his third one.[169]

While George Smith's penalty was exceptionally severe, most convicted male 'trigamists' and 'polygamists' faced relatively stiff sentences, usually ranging between three and five years. This was certainly not surprising, particularly in cases when the evidence indicated that they had deliberately and flagrantly violated the laws of marriage. In addition, in 1920, Harry W., an electric welder from Toronto who was serving a two-year sentence for having three living wives, made an application to the Solicitor General to be released on parole after serving eleven months at the Toronto Municipal Farm in Langstaff. After a considerable amount of correspondence between the Dominion Parole Board and the County of York Clerk of the Peace concerning the specifics of the case, his application for executive clemency was resolutely rejected by the Governor General and the Department of the Secretary of State. One of the main reasons for this denial was because,

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[169] Toronto *Globe*, 22 and 27 September, 1, 3, 10, and 18 October 1913.

as one judge stated in his report, "this fellow was altogether too greedy in the matter of wives. Three living at the same time is too long a list to justify."[170]

Thomas R.'s sentence of seven years in 1907 was passed in conjunction with a conviction for theft for which he received three concurrent years in the Kingston Penitentiary,[171] which was also representative of a broader pattern. In general, those convicted bigamists, both female and male, who had a previous criminal record or who were convicted of other crimes simultaneously also tended to receive relatively harsh penalties. In 1860, Ellen Rogers of Toronto received the unprecedented sentence for a female bigamist of four years hard labour in the Kingston Penitentiary, a penalty directly related to her status as a "well-known 'woman of the town'" and her frequent appearances in the Toronto courts for "theft and other offences."[172] Another bigamist with an extensive and "diversified" criminal record was Willi L., a labourer, who was sentenced in 1917 to four years in the penitentiary for forgery and to two years for committing bigamy, after he eloped with and illegally married Hazel B., "a young woman" from a "reputable" Owen Sound family.[173] Under these circumstances, a defendant's pleas for mercy also tended to

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[170] (1919) *Rex v. Harry W.*, AO, RG 22, York County CA/CP (CCJCC), Box 2732. See also "Three Wives Were Not Enough For Him. Peter Shram Is Wanted By Chatham Police For Bigamy," Toronto *Globe*, 24 March 1913.

[171] (1907) *Rex v. Thomas R.*, AO, RG 22, Grey County CCJCC Minutes, 1901-20.

[172] Toronto *Globe*, 3 and 11 April 1860. Elizabeth C. of Picton also had a previous criminal record and was sentenced to eighteen months incarceration in the Mercer Reformatory. (13 February 1912) *Wm. C. v. Elizabeth C.*, AO, RG 22, Prince Edward County (Picton) Police Court Return of Convictions, 1887-1919; Toronto *Globe*, 14 February 1912.

[173] (1917) *Rex v. Willi L.*, AO, RG 22, Grey County CCJCC Minutes, 1869-1920; "Diversified Record of a Young Criminal," Toronto *Globe*, 2 August 1917. Similarly, in 1913, Patrick L., a Toronto brakeman, was simultaneously sentenced to two years imprisonment for theft and two years for bigamously marrying fifteen-year-old Anne J.. In addition, at the 1918 bigamy trial of Archibald M., a soldier, the prisoner's criminal record, which included seven convictions for theft and shopbreaking dating from 1914, was entered into evidence. "Considering his record, which had commenced in his youth," the judge did not

fall on deaf ears. When Nicholas C. of Brockville was arrested in 1893 on the charge of bigamy laid by his first wife, he initially boasted to local reporters that, in his opinion, "nothing would come of the charge." However, when both of his wives appeared in court "armed with their necessary documents to substantiate the claim," he pleaded guilty and then wrote a letter to the local sheriff, outlining the reasons why he should receive a lenient sentence:

> I have been around Brockville 8 years. I have always been a good worker and good to my wife and family and never got in any trouble in my life before, the reason that I write these few lines to you is that I feel bad about my 4 little children that I am leaving behind me unprovided for, you will do me a great favour by useing (sic) your little Influence with Judge McDonald for the Childrens sake for a light Sentence.

In this case, however, his trial at the same County Court sitting on the charge of having had incestuous relations with the eleven-year-old daughter of his second marriage and the similar allegations made by his first wife may have at least partially accounted for the comparatively harsh sentence of four years imprisonment he received for the bigamy indictment.[174]

Finally, James Anderson, the fifty-five-year-old Brockville Inspector of Schools and former public school principal, also received the "full limit of the law," and his case best illustrates how gender and class could influence the decisions of some judges when passing sentence. While suspected male bigamists from the middling and professional classes usually found themselves to be the focus of an inordinate amount of local publicity

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hesitate to impose a penalty of three years in the Kingston Penitentiary on the bigamy charge. (1913) *Rex v. Patrick L.* and (1918) *Rex v. Archibald M.*, AO, RG 22, York County CA/CP (CCJCC) Case Files, Box 2720 and Box 2729; "Two Years For Bigamy" and "Three Years For Soldier Bigamist: Pte. A. D. M[] Had No Idea of Duty to Society, Says Judge," Toronto *Globe*, 31 October 1913 and 5 February 1918.

[174] (1893) *Queen v. Nicholas C.*, AO, RG 22, Leeds and Grenville Counties CA/CP CCJCC Case Files, 1881-94; *Brockville Recorder*, 14 and 21 December 1893. Although the accused was acquitted of the charge of incest laid by his second wife, the "substantial" testimony of his first wife accusing him of being "guilty of incest during the time she lived with him" did not surface until the bigamy trial.

and scandal, if they were convicted judges were at times inclined to treat them as 'moral examples' when deciding on an appropriate penalty. While committing bigamy did violate bourgeois ideals of appropriate husbandly and fatherly behaviour, which emphasized, among other things, strong devotion to the institutions of marriage and family,[175] a number of other reasons can be identified, which partially explain why these men were at times judged according to stricter standards of moral conduct than, for example, their working-class counterparts. First, while judges routinely condemned bigamous marriages that involved both desertion and deception, it did seem that the moral stakes were raised and the degree of injury was augmented when it was otherwise virtuous middle-class wives who had been abandoned and betrayed by their husbands, and especially when it was innocent young women from respectable families who became the victims of deceit, disgrace, and ruin. From the moment of his arrest at the home of his second wife's parents in Renfrew, James Anderson was subjected to what he likely viewed as a series of public humiliations. After being transported to Renfrew for his arraignment in court, it seems that "hundreds awaited the arrival of the train at the station ... and were given an excellent opportunity of viewing the prisoner as he was taken on foot about two blocks to the Chief of Police's office." Once in the courtroom, he immediately pleaded guilty to the charge of bigamy, admitted he had no justification for his actions, and threw himself at the mercy of the court. The presiding judge, evidently unimpressed by his penitence, ruled that this case warranted imposing the severest penalty possible, especially given the nature and extent of the defendant's matrimonial crimes. These included his failure, for many years, to contribute to

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[175] For constructions of middle-class masculinity, see Cecilia Morgan, *Public Men and Virtuous Women: The Gendered Languages of Religion and Politics in Upper Canada, 1791-1850* (Toronto: University of Toronto Press, 1996); Lynne Marks, *Revivals and Roller Rinks: Religion, Leisure, and Identity in Late-Nineteenth-Century Small-Town Ontario* (Toronto: University of Toronto Press, 1996); Janet Guildford, "Creating the Ideal Man: Middle-Class Women's Constructions of Masculinity in Nova Scotia, 1840-1880," *Acadiensis* 24, 2 (Spring 1995): 1-20; Leonore Davidoff and Catherine Hall, *Family Fortunes: Men and Women of the English Middle Class, 1780-1850* (Chicago: University of Chicago Press, 1987).

the support of his first wife and nine children, his masquerading as a widower and, perhaps most seriously, his wilful deception of and marriage to the highly accomplished and very popular twenty-one-year-old daughter of the local Methodist minister.[176]

In stark contrast to James Anderson, who offered no statement in his own defence, Dr. William G., the Ottawa medical doctor and civil servant we encountered earlier, made a "long, elaborate and carefully prepared public statement," in which he attempted to vindicate himself by attacking the "value of the evidence" produced against him and by outlining the reasons he should be treated with the utmost leniency. Throughout his speech, he appealed to the judge's empathy, invoking his class position, his otherwise sterling reputation, and the inevitable suffering he had already endured because of the public scandal accompanying his trial. "I have held a superior and prominent position in the country," he began, "and my character has always been, I am proud to say, unblemished, which can be testified to by hosts of witnesses, including some of the highest in the land." Referring to the alleged illegality of his first marriage and his application for an American divorce, he argued that "common sense will almost dictate that if I did not think I was free to do what I did, I would not have deliberately placed myself in the power of the law, ruined my prospects, and destroyed my happiness and that of another." He concluded by suggesting that surely the judge would understand that he had already been punished enough: "I have already undergone about three months [in prison], during which time my constitution, previously delicate, became still more impaired. The agony of mind I suffered already at being placed in the unfortunate position, is of itself a heavy penalty to me." According to the Ottawa *Citizen*, however, his statement "had less than no effect on those who heard it." These sentiments were shared by the presiding judge, who stated that "he

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176 The final indignity in this saga occurred at the conclusion of his trial, when James' "house at Brockville was seized by the bailiff" because, as noted by one newspaper reporter, he had neither "paid for his wedding clothes" nor any of the household furniture. Toronto *Globe*, 1, 2, and 8 June 1908.

considered this case a very clear" and "aggravated" one. "If there was, ever a case which would warrant the infliction of the utmost penalty allowed by law," he added, "it was this one." This was because the prisoner "had ruined the happiness of his first wife and family, and had inflicted a cruel and irreparable wrong on a young girl and her relations." While the judge declared that "he would not inflict the maximum penalty," he still "felt it his duty to be severe" and sentenced Dr. G. to three years' imprisonment in the Kingston Penitentiary.[177]

Another issue of particular concern in trials involving male bigamists from the middling classes centred on the disputed legitimacy and threatened inheritance rights of any children born of the second marriage. Conversely, in instances when bigamists denied the validity of their first marital union as a line of defense, they were, in the minds of legal authorities, potentially robbing their children of their legitimate status and declaring them to be 'bastards'. This question was raised most directly at the two trials of Henry B., a respected Toronto dry goods merchant, who was charged with bigamy by his first wife in 1871 and, after skipping bail, was rearrested four years later in Galt. During both trials, Henry consistently maintained his innocence, claiming that he had never been legally married to Anne B.. He insisted that they had simply lived together for twenty-eight years, when he was forced to abandon her and their eight children in 1870, because of intense disagreements between them concerning his "being out at nights." Thereafter, he had lived with and one year later, had married a considerably younger woman, whom he judged to be his lawful wife, and they had one child. In the absence of any public record in Ireland of his 'secret' first marriage and because Henry had, according to one witness, admitted to burning their "marriage lines" so Anne could not "do anything to him," both trials focussed principally on determining whether or not the first marriage had in fact been solemnized.

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177 "The Bigamy Case. G[] Goes for Three Years to Kingston," Ottawa *Citizen*, 29 April 1882.

While the extensive testimonies of the couple's acquaintances, members of Anne's family, and Henry's business partners certainly confirmed that Anne had "passed" as his wife for nearly three decades, that she had signed at least one property deed in that capacity, and that one family friend had seen a copy of their marriage certificate twenty years earlier, it was ultimately left to members of the jury to decide whether they were convinced that the two had legally married. There were, however, a number of more disturbing moral issues at stake in this particular case, which surfaced most explicitly during the closing arguments of the defense attorney and especially the crown prosecutor. Mr. B.'s defense counsel declared that the only real issue that required consideration was the fact that the Crown had failed to produce any definitive proof of the first marriage. He further contended that Anne's allegations were simply the product of a "spirit" of jealous hatred, aroused by her 'irregular' and 'insecure' status as Henry's common-law wife. This, in his view, was substantiated by the fact that she had been "a little put out" after Henry's remarriage and had threatened to shoot him for keeping a "mistress," for starving his own family, and for refusing to return home. Furthermore, the defense attorney also emphasized that even though Henry had "acknowledged the fathership" of his eight children and "his duty in supporting them," there was "no law against a man living with a woman who was not his wife." He concluded by stating that, by "pressing this action against the father of her children," it was Anne who had done irreparable damage, bringing "the family into disgrace," making them the subject of undue scandal and publicity, and ensuring that no verdict could restore "to these persons ... the social position that had been lost."

The crown prosecutor countered by describing this case as "the most disgraceful he ever heard in the whole course of his professional life," and his arguments focused less on the legal issues in question, but more on the moral implications of Henry B.'s conduct. Unlike the defence attorney, who "had endeavoured to make little of the laxity of morals shown by the prisoner, who had been living with that woman for so many years, and

become the father of so many children, without being married," he considered Mr. B.'s actions - refusing "to render to a woman the even justice that would have made her wife," showing himself capable of "bastardizing his children," and then cruelly deserting his family - as a clear indication of the real "heartlessness" and "baseness of his nature." In his opinion, a verdict of guilty was necessary, not only to preserve the interests of public justice and religious morals, but also to redeem the prisoner as a "better man." In effect, such a verdict would uphold the legality of the first marriage and restore Anne to her rightful status, it "would place these children in their proper place," and it would show that "he was not so bad a man as he said he was." After deliberating twice, the jury, evidently moved by the prosecution's arguments, returned a verdict of guilty. Although Mr. B. "begged for the mercy of the Court," Chief Justice Harrison, when sentencing the prisoner to two years imprisonment, justified the penalty as follows:

> The prisoner denied the legality of the first marriage, which, if he was right, would still leave him in a very blamable position. If he had been married in Ireland he was properly convicted; if he had not been married in Ireland his conduct in living for so many years with her who had been supposed his wife, and the result of his conduct, which was to bastardize the children by her, showed a great want of feeling.[178]

A final factor which seemed to influence sentencing patterns was that judges expected male members of the middling and educated classes to be well-versed in the laws of marriage (as opposed to the perceived 'ignorance' of the working classes and the 'naivete' of women). Even though unfamiliarity with the matrimonial laws was ruled as an insufficient justification for committing the crime of bigamy, judges did not hesitate to chastise these respectable men, insisting that they knew full well that they were committing a criminal act. In sentencing Edwin Terry to three years in the Kingston Penitentiary, for example, the St. Catharines police magistrate declared that, despite the defendant's

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[178] (1871) and (1875) *Queen v. Henry B.*, AO, RG 22-392, York County CAI, Box 188 and Box 199; Toronto *Globe*, 18, 26, 28, and 30 August, 1 September 1871, 6 and 27 October 1875, 3 and 4 February, 20 April 1876.

promises to return to and support his first wife and children, "there were no extenuating circumstances" to warrant his desertion and his masquerading as a bachelor in order to remarry. He further stated that since the accused "was educated and knew he was committing both bigamy and perjury," he was "entitled to no leniency."[179]

During the course of bigamy trials and prior to sentencing, however, most defendants did not hesitate to point out the 'extenuating circumstances' associated with their bigamous marriages; in many instances, judges were not at all adverse to taking these into consideration when passing sentence. This pattern is reflected in a further breakdown of the sentences imposed on convicted male bigamists: 63 per cent faced prison terms of one year or less (of which 11 per cent were suspended sentences); and 20 per cent received sentences of between fifteen months and two years.[180] Although only a minority of judges provided an explicit rationale for the penalties they imposed, a few general patterns can be identified. In cases involving male bigamists, the greatest leniency of the courts was usually reserved for married men, with an otherwise 'good reputation', who managed to persuade the judge that the reason they had remarried was because their first wives had left them without just cause, were women of 'bad' character or, most seriously, had committed adultery. In 1913, for example, John Galbraith, an employee of the St. Thomas Packing Company, explained to the judge that he had not only been forced to leave his Scottish wife two years earlier because she had not been "true to him," but also that he had truthfully informed his second wife, Clara, and her mother about these circumstances before his

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[179] Toronto *Globe*, 1 and 7 February 1912.

[180] In addition, three convicted bigamists, who were residents of the United States, were given nominal sentences of between forty days and three months imprisonment, and then were to be deported. See "Faced the Three Women. Fred Gargoni Gets 40 Days in Jail and Deportation," Toronto *Globe*, 4 April 1913; the trial of John K., a returned soldier originally from Chicago and a press-feeder by trade; and that of Arthur J., a paper-maker, who was celebrated as "Chicago's first wounded hero to return from American lines," in (1919) *King v. John K.* and (1919) *King v. Arthur J.*, AO, RG 22, York County CA/CP (CCJCC) Case Files, Box 2731.

remarriage. After weighing the prisoner's general "reputation" and his first wife's "provocation," Judge Colter released the accused on a suspended sentence on the grounds that "he was held in high regard by his ex-employers" and that "his wife in the old country had been unfaithful to [him]."[181] These factors were also taken into consideration during bigamy trials involving returned soldiers in the post-World War I period. While one soldier, Robert Rae of Toronto, declared that he had been so "shell shocked" when he first married in France that he "forgot" that the event had occurred, others did admit to remarrying, but claimed that, in their opinion, it was not without good reason. In 1919, Thomas V. told the Ottawa morality officer who arrested him that when he had returned from the front one year earlier, he "didn't live with [his wife] because she was living with an Italian" and "she had given birth to a child" in his absence. After hearing the evidence at his trial, which included the testimony of Lieutenant Colonel C., who commended the prisoner for his excellent military record in both France and Canada, the judge allowed a suspended sentence, but warned that his decision should not be taken as a precedent.[182]

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[181] Toronto *Globe*, 12 and 20 August 1913. For other cases in which defendants received lenient sentences because of the desertion, bad reputation, and/or adultery of their first wives, see (1860) *Queen v. John J.*, AO, RG 22-392, Middlesex County CAI, Box 86, *London Free Press and Daily Western Advertiser*, 2 November 1860; (1871) *Queen v. John P.*, AO, RG 22-392, York County CAI, Box 190, Toronto *Globe*, 31 October 1871; (1875) *Queen v. John H.*, AO, RG 22-392, York County CAI, Box 200, Toronto *Globe*, 13 October and 6 November 1875; (1882) *Queen v. David Wray*, Toronto *Globe*, 7 February 1882; (1908) *King v. Norman Roberts*, London *Advertiser*, 19 and 24 March 1908; (1914) *King v. John O.*, AO, RG 22, Carleton County CA/CP Case Files, Box 3971, *Ottawa Evening Journal*, 17 August 1914; (1917) *Rex v. Duncan G.*, AO, RG 22, Ontario County CA/CP CCJCC Case Files, Box 17, Toronto *Globe*, 27 March 1917; and (1919) *King v. Carswell P.*, AO, RG 22-392, Carleton County CAI, Box 25, *Ottawa Journal*, 24 September 1919.

[182] "Forgot He Had a Wife, So Married a Second," Toronto *Globe*, 23 December 1919; (1919) *King v. Thomas V.*, AO, RG 22, Carleton County CA/CP Case Files, Box 3975, RG 22, Carleton County CCJCC Minutes, 1908-20, *Ottawa Journal*, 3 and 25 March 1919. Ernest F., a former Toronto railroad worker, was another returned soldier, who received a suspended sentence, but in his case he was placed in "the care of the Repatriation League" for "medical treatment." William H., an Ottawa bookkeeper, would have received a much harsher penalty than fifteen months in the Ontario Reformatory had it not been for "his service at the front." See (1918) *Rex v. Ernest F.*, AO, RG 22, York County CA/CP (CCJCC) Case Files, Box 2728; (1919) *King v. William H.*, AO, RG 22, Carleton County CA/CP Case Files, Box 3975, and *Ottawa Journal*, 2 June 1919.

In addition to such factors as 'reputation' and 'provocation', some judges were also inclined to impose lighter sentences when there was no deception associated with the bigamous marriage. This was rooted in the notion that the crime of bigamy tended to inflict the "most serious wrong" or greatest "injury" on the second wife. If she was aware of the prisoner's marital history and was not "desirous of having him punished," members of the judiciary often felt justified in taking a more lenient view of the case.[183] This rationale partially accounted for the nominal sentence of one month imprisonment imposed on Dugald MacKenzie, a Toronto tailor, in 1884. Equally influential, however, was the fact that his first wife indicated that she was prepared to "forgive" her bigamous husband, and the fact that his second marriage to a "common prostitute" (as opposed to a 'respectable' middle-class woman) was considered to be more of a "foolish" act than a criminal one.[184] More generally, the intervention of 'forgiving' wives or other family members could potentially sway judges toward greater leniency. After Sidney K., a poverty-stricken Toronto salesman, was convicted of bigamy and larceny in 1917, his daughter, Gertrude, and his second wife, Elizabeth, each wrote a letter to Judge Coatsworth, requesting that he "give the lightest sentence possible." Writing on behalf of her mother and Sidney's first wife, Gertrude asserted that a lengthy term of imprisonment would cause undue economic hardship on their family. "[M]y mother," she wrote, "is over 50 years of age & almost an invalid & unable to work. I am working at the T. Eaton Co. & earning $10.00 a week & it is not enough to support my mother and myself." She went on to suggest that since her

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[183] See, for example, (1875) *Queen v. William M.*, AO, RG 22-392, York County CAI, Box 200, Toronto *Globe*, 5 October, 5 and 6 November 1875; (1878) *Queen v. Tadaypala R.*, AO, RG 22-392, York County CAI, Box 210, Toronto *Globe*, 21 June 1878; (1906) *King v. George G.*, AO, RG 22, Niagara North CCJCC Case Files, Box 8; (1906) *Rex v. James L.*, AO, RG 22, Elgin County CCJCC Docketbook, 1879-1908, Toronto *Globe*, 6 September 1906; (1914) *Rex v. Joseph S.*, AO, RG 22, York County CA/CP (CCJCC) Case Files, Box 2722.

[184] Toronto *Globe*, 10, 12, and 15 May 1884; London *Advertiser*, 10 May 1884.

father was "sorry for what he has done" and her mother was "willing to forgive him" after twenty-seven years of marriage, she hoped the judge "would be as kind" as he possibly could. Elizabeth also informed the judge that it would cause her a great deal of "anguish" if Sidney received a severe punishment for his various "misdeeds." Although she recognized that she had "no claim" on him, she expressed her willingness "to make his life better in his declining days." After reviewing the evidence and the letters of appeal, Judge Coatsworth sentenced the accused to a total of six months in the local gaol.[185]

In the case of convicted female bigamists, on the other hand, the vast majority, or 91 per cent, received sentences of six months or less (of which 26 per cent were suspended sentences), while the remaining 9 per cent were sentenced to eighteen months or more. In many cases, the question of age and level of knowledge of the marriage laws combined with the circumstances of the first marriage seemed to predominate in the minds of juries and judges. In fact, a number of women charged with bigamy were between the ages of fourteen and seventeen years of age when they first married. In 1895, when Mildred W. of Mono township was found guilty of bigamy, the jury strongly recommended mercy "on account of her extreme youth." She had been seventeen years old when she married in Hamilton four years earlier, but three weeks after the ceremony she left her husband, allegedly because "she could not get on with [her] husband's mother," and returned to her father's home.[186] Charlotte Meeks of Kingston stated at her bigamy trial in 1913 that she had been fourteen years when she married her first husband in Cloyne, Ontario, and that she had not heard from him since he had deserted her and her two children five years earlier. While this in itself may have warranted a suspended sentence, when the judge heard

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185 (1917) *King v. Sidney K.*, AO, RG 22, York County CA/CP (CCJCC) Case Files, Box 2726; Toronto *Globe*, 26 April 1917.

186 (1895) *Queen v. Mildred W.*, AO, RG 22-392, Dufferin County CAI, Box 27.

her "shocking disclosures" of the ill-treatment she and her children had endured at his hands, he was convinced that no jail term was warranted.[187]

Other female bigamists, like Hattie F., a Toronto dressmaker, also received "a mild sentence" of five days' imprisonment, after strenuously arguing that she had little choice but to remarry after her husband deserted her ten years earlier, and she was left "struggling to make a living, with no assistance coming from her spouse."[188] Still others managed to convince judges that they were unaware that they were committing a criminal act. The fact that Susan Gibbard remarried in 1906 after being separated for seven years because she thought or claimed that that in itself constituted a divorce was viewed by the Toronto police magistrate as a "blunder" and not as a crime, and warranted a suspended sentence.[189] The most revealing trial in this regard, however, involved twenty-one-year-old Olive B. who, like many female bigamists, received a nominal sentence of one month imprisonment. In a unanimous plea for leniency, both the defense attorney and the crown prosecutor argued that this was clearly a case of "experience and ignorance and not a case of intentional criminality." They also suggested that the interests of the "law had been vindicated by the

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[187] Toronto *Globe*, 7 and 8 August 1913. See also the 1881 case of Maud Brown of Toronto, who was fourteen years old when she first married in Belleville in 1876. Given her young age and the fact that "her second husband only wished to be freed from her," the sentence imposed by the Toronto police magistrate was reported to have been "extremely light." Similarly, Eva M. of Cornwall was also fourteen and Blanche Rancome, an Italian woman living in Toronto, was fifteen when they first married; the former was sentenced to four months in the common gaol and the latter to six months in the Mercer Reformatory for committing bigamy. "The Young Bigamist," Toronto *Globe*, 27, 28, and 29 January, 1, 2 and 9 February 1881; (1918) *Rex v. Eva M.*, AO, RG 22, Stormont, Dundas and Glengarry Counties CCJCC Case Files, Box 3; "A Girl Bigamist," Toronto *Globe*, 7 and 10 February 1912.

[188] (1913) *King v. Hattie F.*, AO, RG 22, York County CA/CP (CCJCC) Case Files, Box 2719; "Five Days For Bigamists. Judge Morgan Lenient Because of Sympathetic Case," Toronto *Globe*, 27 November 1913. See also (1920) *James B. v. Flora P.*, AO, RG 22, Carleton County CA/CP Case Files, Box 3976; *Ottawa Journal*, 29 December 1920.

[189] "She Was Not A Widow. Separation of Seven Years Is Not Divorce. Police Magistrate Tells Mrs. Susan Gibbard That Her Blunder Meant Bigamy," Toronto *Globe*, 15 September 1906.

entry of the plea of guilty." Equally significant was the consensus that emerged over the issue of whether the couple should remain united after the completion of Olive's term of imprisonment. In the opinion of both lawyers, the "interests of public morality" over the technicalities of the law would best be served if the union remained intact, particularly since both she and her husband were "leading a respectable life in the community and were raising a child." From this, they came to the conclusion that, even though the law had been broken, the couple was "more decent and respectable than many married families in Ottawa" and despite the fact that "the second marriage was not a marriage in the eyes of the law, on the morality side, it was a satisfactory unity."[190]

What these deliberations exposed were some of the dilemmas and contradictions with which the legal system had to contend. The judiciary certainly remained adamant that criminal sanctions against bigamy were necessary to uphold heterosexual monogamy and these concerns were best reflected in comparatively high conviction rates. At the same time, in a relatively divorceless society, in which marriage was one of the most revered institutions, bigamous unions did, at least on the surface, lend a certain respectability, normalcy, and permanency to what might otherwise be construed as illicit or adulterous relationships. At the outset of the bigamy trial of thirty-seven-year-old Polly B. at the Toronto Assizes in 1889, for example, the presiding judge reminded the jury that "this woman," who had told an acquaintance that "she had divorced herself from her former husband," was not on trial as an adultress, but *simply* as a bigamist." (my emphasis)[191] In effect, the more consistently lenient sentences imposed on female bigamists suggested that

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[190] (1915) *Thomas B. v. Olive B.*, AO, RG 22, Carleton County CA/CP Case Files, Box 3870; *Ottawa Evening Journal*, 3 March 1915.

[191] (1889) *Queen v. Mary W., otherwise called Mary B., otherwise called Polly B., otherwise called Mary H.*, AO, RG 22-392, York County CAI, Box 247; Toronto *Globe*, 27 December 1888, 23 and 24 January 1889.

even though the state was required to regulate the contract of marriage, it was equally important that women in particular remained within the confines of some form of marital relation, be it for economic survival or in the interests of public morality.

In the end, the circumstances in which bigamy was committed, the degree of injury felt by those most closely affected, and the influences of gender and class tended to determine how bigamous unions were perceived, constructed, and punished. Although the legal system was by no means prepared to tolerate bigamy and resolutely condemned polygamy, the wide variations of sentences imposed by the courts did suggest a certain ambivalence, as judges and juries seemed not at all inimical to taking into account certain 'mitigating' factors that had led to the formation of a second marital union. Under these circumstances, Arthur Hoyt Day's defense counsel may have been right all along, when he suggested that it was not Day's fear of being convicted of bigamy, but rather his intense hatred of his wife, Desirah, that drove him to push her over the cliff on that August Sunday in 1890.

Chapter 5

Interrogating Family-Household Economies: Desertion, Non-Support, and Criminal Neglect

> "'Men must be taught that they must support their wives and children'."[1]

In 1912, London's police magistrate made the rather shocking disclosure to the press that in the nineteen months he had served on the bench, at least three hundred local couples had appeared before him "dissatisfied with their marital relations" and "to many of them he had granted separation[s]." In an era when intemperance served as one of the more pervasive social and legal explanations for marital discord and familial ills, he not untypically attributed "most of the trouble to liquor" and, more specifically, to husbands "spending their wages on drink" and "neglecting their wives."[2] Equally disconcerting was a statement made by one Detroit magistrate a few months earlier, complaining bitterly about the number of Ontario couples who were flocking south of the border and clogging up the city's criminal justice system with their seemingly endless "domestic difficulties." Referring to the most recent non-support case involving a Canadian couple brought before him, he stated frankly that henceforth he was "going to throw all other Windsor and Canadian marital cases out of court." "You people," he stated, "cannot expect to come over here and clog up our Courts with your troubles ... The [problem] is that a lot of people fly into matrimony over on the other side. Then they come over here and expect American courts to settle their troubles ... For my part I am going to make it a thing of the past in this court." If the laxness of American attitudes about marital separation and divorce had long

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[1] St. Catharines' Police Magistrate Campbell, Toronto *Globe*, 7 February 1912.

[2] "Three Hundred Couples Who Are Dissatisfied: London's Magistrate Has Had Many Cases Of Domestic Troubles," Toronto *Globe*, 9 November 1912.

provided a convenient foil for expressions of national boosterism on the part of Canadian political and social commentators, the image of Detroit's police court as a "clearing house" for the settlement of unhappy Ontario marriages was nothing short of alarming.[3]

While Ontario wives and husbands did turn to the legal system to resolve a wide spectrum of marital conflicts, the issues of desertion and non-support struck at the heart of one of the basic tenets embedded in the marital contract. As one prosecution attorney stated in 1882, "the duty of a husband to provide necessaries for his wife is a natural duty," referring to the long tradition of common law rules which defined the appropriate distribution of authority and obligations within the institution of marriage.[4] Throughout the nineteenth and early twentieth centuries, the provision of the basic necessities of life, regardless of class background or level of income, was identified as the principal legal and moral responsibility of those men who assumed the role of husband and father. During that same period, married women were the most keenly aware that any material benefits they might accrue from this 'natural' arrangement depended in the first instance on the benevolence of their so-called economic 'protectors'. When husbands failed to or refused to perform their duty to provide, the provisions of common law and the establishment of the court of equity in Upper Canada did provide wives with a modicum of protection against husbands who reneged on the economic contract of marriage. However, as the expansion of the wage labour system was gaining momentum in the latter half of the nineteenth century, growing social unease about what appeared to be an increasing number of deserted, neglected, and impoverished wives and children prompted the enactment of a flurry of provincial statutes and criminal laws. As will be examined in this chapter, these

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3 "Canadians Clog Court With Marriage Cases: A Detroit Judge Uses Frank Language In Dismissing Case," Toronto *Globe*, 15 August 1912.

4 (1882) *Regina v. Bissell*, 1 OR, 515-16.

legal initiatives and the severe penalties encoded in some of them, were principally designed to censure delinquent husbands, to 'encourage' them to be industrious, reliable and sober breadwinners, to protect the economic welfare of those positioned as family dependents, and to offer the cheapest social solution to the insecurities of household economies created by a competitive industrial-capitalist economy.

Within this shifting legal environment, and particularly beginning in the 1870s, a growing number of deserted and neglected married women, whose domestic circumstances deviated substantially from the ideal model of marital relations comprised of the steady and respectable male breadwinner and the dependent and domesticated wife, initiated criminal proceedings against their negligent husbands under various legal categories of non-support. Despite considerable variations in their marital histories and their immediate material circumstances, the 372 female plaintiffs in my compilation of cases, the majority of whom were from working-class backgrounds, unambiguously laid claim to the conditions and promises embedded in the economic contract of marriage. In their court testimonies, however, these aggrieved and often impoverished women did not concentrate on the value of their reproductive labour within family-household economies as the basis for claiming their entitlement to material support.[5] Rather, in keeping with the rules of law, they tended to invoke the language of dependency and worthiness when furnishing the required evidence that they and their children were both in economic need and deserving of financial maintenance from husbands/fathers and the legal protection of the state. While their courtroom narratives and the counter-narratives of husbands tended to expose divergent interpretations of what constituted legitimate wifely entitlements and reasonable husbandly obligations, it was left to police magistrates and, to a lesser extent, higher court judges to

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[5] According to Bettina Bradbury's calculations, the estimated value of a married woman's domestic labour in Ontario ranged from a minimum of $150 annually in the 1860s to $200 in the 1880s. Bettina Bradbury, "The Home as Workplace," *Labouring Lives: Work and Workers in Nineteenth-Century Ontario*, ed. Paul Craven (Toronto: University of Toronto Press, 1995), 456-59.

adjudicate these competing claims. Even if convicted, however, criminal justice officials were less inclined to impose harsh penalities on delinquent husbands and more intent on ensuring that, whenever possible, the costs of maintaining wives and children would remain the primary responsibility of male breadwinners, rather than becoming a social burden on local charities or public relief.

'Poor Family Men': The Legal Politics of Protection and Punishment

Susanna Moodie's reminiscences about her experiences in Upper Canada in the 1830s included the story of Ellie Nott, the mother of four children living in the isolated township of Dummer, who was deserted and left destitute by her debt-ridden and drunken husband. At face value, this account seemed to confirm one of Moodie's main contentions about the suitability of particular classes of colonial settlers for the isolation and rigours of backwoods life. With the exception of the upper echelons of the male colonial hierarchy, which enjoyed the trappings of relative material comfort and immense social privilege, Canada was, she argued, "the best country in the world for the industrious and well-principled man, who really comes out to work, and to better his condition by the labour of his hands; but a gulf of ruin to the vain and idle."[6] In the latter case, she was specifically referring to the "higher class" of army and navy officers and "their families," who constituted "a class perfectly unfitted by their previous habits and education for contending with the stern realities of emigrant life."[7] While Moodie attributed the downfall of Captain Nott, an Irish half-pay officer and gentleman, to a number of factors, which she contended had "been the ruin of so many of his class," her sternly moralistic tale also revealed the

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6 Susanna Moodie, "The Walk to Dummer," *Roughing It In The Bush; or, Life in Canada*, Volume II (London: Richard Bentley, 1852), 229.

7 Susanna Moodie, "Introduction to the First Edition," *Roughing It in The Bush or Forest Life In Canada* (Toronto: McClelland and Stewart Ltd., 1962), xvii.

extreme economic vulnerability of those wives and children who were bound to and dependent on husbands and fathers who, in her words, turned out to be "degraded" and "worthless" masters.[8]

According to Moodie, after Captain Nott obtained a large grant of land "in this remote and untried township," he laid "out much, if not all, of his available means in building a log house, and clearing a large extent of barren and stony land." For a man of his class, however, it was "the want of society - a dreadful want to a man of his previous habits - the total absence of all the comforts and decencies of life" which "produced inaction, apathy, and at last, despondency." The economic viability of his rural homestead was further jeopardized by the fact that he "was a proud man - too proud to work" or "to receive with kindness the offers of service tendered to him by his half-civilized, but well-meaning neighbours" whose informal assistance was often crucial in times of material scarcity and economic crisis. Increasingly ostracized by those he considered to be his social inferiors and faced with growing debts and crop failures, Captain Nott seemingly alleviated his growing sense of despondency through the "constant and immoderate use of ardent spirits." His excessive drinking habits, which early nineteenth-century temperance advocates identified as one of the principle causes of the downward social mobility of even the most respectable of men,[9] accelerated his downhill path to a state of "mental and moral degradation" and to further ruin. After selling all of his livestock and most of his land and household items and converting the proceeds "to whiskey," he then abandoned his family, taking with him his eldest son "who might have been of some service at home." The results

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[8] Moodie, "The Walk to Dummer," 232, 257.

[9] See, for example, "The Drunken Husband," *Kingston Chronicle and Gazette*, 24 May 1834; Jan Noel, *Canada Dry: Temperance Crusades before Confederation* (Toronto: University of Toronto Press, 1995), chapters 6, 7, and 9; Cecilia Morgan, *Public Men and Virtuous Women: The Gendered Languages of Religion and Politics in Upper Canada, 1791-1850* (Toronto: University of Toronto Press, 1996), 163-69.

were disastrous: Mrs. Nott and her young children, isolated on a remote homestead, were reduced to "a dreadful state of destitution" and were soon on the verge of starvation, being left "without money or food."

Although Moodie condemned Captain Nott's conduct as morally reprehensible, given that the land, the livestock, and most if not all of the domestic goods were under his ownership and control, he, like other male household heads, was authorized by law to sell his property at will, and regardless of how much his wife and children contributed their labour to the rural homestead, he could (mis)use the financial proceeds as he wished. When this disposal of the family's economic resources was compounded by outright desertion, the injustices of the common law rules of coverture and especially the enforced economic dependence of wives were fully exposed. In Ellie's case, it was her nearest neighbours who assumed the responsibility for offering her some much needed assistance. As a temperate and virtuous gentlewoman and the mother of several young children victimized by an irresponsible and dissipated husband, she was also the perfect candidate for the outpouring of community sympathy and compassion. Once rumours began to circulate concerning her "forlorn situation," Moodie and her friend Emilia, motivated by a sense of charitable duty, embarked on a "long and hazardous journey" to her homestead to bring the family some "immediate relief" in the form of foodstuffs. They were also asked to investigate if the stories about her "miserable circumstances" were "true," since the "ladies" of the nearby town of Pusue had indicated that they "were anxious to do what they can for her." Not long after, a subscription of forty dollars was raised for the "poor lady and her children," several "benevolent individuals" at Pusue secured a cottage for them, and many others donated money, food, and clothes. For several years, the family was, according to Moodie, well cared for by members of the community. From Ellie's perspective, however, without any viable means to eke out an independent livelihood for herself and her family, this philanthropic support, however benevolent, merely entailed exchanging one form of

economic dependence for another. This may have been the main reason why she eventually decided to leave the comforts of Pusue to rejoin her husband in the United States, where, according to Moodie, the family "again suffered all the woes which drunkenness inflicts upon the wives and children of its degraded victims."

As Moodie pointed out, the main purpose in recounting the story of Captain Nott's downfall and his family's subsequent plight was to send a strong "warning to others," who were unaware of and ill-prepared for the potential "trials and privations" of backwoods life.[10] She also presented what would increasingly become a standard theme in nineteenth-century temperance literature, namely that "the frightful vice of drinking" posed one of the gravest threats to the economic stability of families, with women and children being its main casualties.[11] What is much more difficult to ascertain is whether the outright desertion of family dependents was at all a common phenomenon in Upper Canada particularly among male household heads who had established roots on the land or within their communities. Although there was little to prevent husbands who were dissatisfied with their marriages from disposing of their property and disappearing without a trace, it does seem that ownership of land and property did strengthen men's ties to their households, especially if farm or entrepreneurial enterprises proved to be profitable. These social conditions did not, however, necessarily diminish married women's vulnerability within marriage. As Jane Errington has noted, some husbands proclaimed that they were fully justified in "turning out" and denying any further economic support to what they portrayed

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[10] Moodie, "The Walk to Dummer," 222-57.

[11] See also Susanna Moodie, *Life in the Clearings* (Toronto: MacMillan Co. of Canada, 1959), 44-52.

as their "impudent," intemperate, neglectful, or otherwise misbehaving wives.[12] Furthermore, in 1830, Mary O'Brien, while living in Vaughan township near Thornhill, recounted the experience of one "unhappy young woman," whose husband "had used her so ill" that he drove her away and then two years later took "another wife." This pattern, she suggested, was a "fearfully common" one.[13]

In instances when married women were either 'turned out' or 'forced out' of their husbands' households, the provisions of common law did technically offer them some economic protection. One of the legally defined rights of marriage was a wife's entitlement to pledge her husband's credit for "necessaries suitable to his circumstances and station in life." This meant that during cohabitation, a married woman and even a woman who was recognized and allowed to "pass as [a] wife" had access to her husband's credit "for the supply of goods for herself, or [his] household."[14] He, in turn, was legally responsible for the payment of any purchases she made in his name. Even though "necessaries" was recognized as a "relative term," since what would be "considered necessaries" among the wealthier classes "would be useless luxuries if the parties were in a different rank of life," marital disputes could and did arise over conflicting interpretations of what constituted legitimate purchases and what disapproving husbands considered to be their wives'

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[12] Elizabeth Jane Errington, *Wives and Mothers, School Mistresses and Scullery Maids: Working Women in Upper Canada, 1790-1840* (Montreal & Kingston: McGill-Queen's University Press, 1995), 44-45.

[13] Audrey Saunders Miller, ed., *The Journals of Mary O'Brien, 1828-1838* (Toronto: MacMillan of Canada, 1968), 78, 140. See also (1826) *Hawley v. Ham*, UCKB (Taylor, 2nd ed.), 385-90; *Kingston Chronicle*, 15 September 1826; Constance Backhouse, *Petticoats and Prejudice: Women and Law in Nineteenth-Century Canada* (Toronto: Women's Press, 1991), 167-75.

[14] This rule concerning women who 'passed' as wives and especially those who were represented as such to merchants and tradespeople by their husbands was upheld as late as 1912: "'Where a man lives with a woman as his wife, she has implied authority to pledge his credit, during the continuance of the cohabitation, to the same extent as if she were legally married to him'." (1912) *Redferns Limited v. Inwood*, 27 OR, 213-18.

extravagant spending on fineries and/or their excessive accumulation of debts.[15]

The provisions of common law also specified the conditions under which wives could or could not continue to pledge their husbands' credit for their own maintenance after marital separation. Women who merely "passed" as wives were left particularly vulnerable, since their common law husbands could, upon separation, simply "discharge" themselves from any liability for their support, "by proving that they were not lawfully married" and thereby deny her any further access to his credit. When legally married couples separated, and especially if husbands refused to provide their wives with an "adequate allowance," it was the circumstances under which they parted and the subsequent behaviour of wives which determined whether or not husbands were obliged to supply them with necessaries by allowing purchases on account. For instance, married men who deserted wives, expelled them from the family home without 'just cause', or were guilty of excessive cruelty remained liable for their wives' maintenance: "Where a husband wrongfully turns away his wife ... [or] personally ill-treat[s] his wife, and [is] guilty of cruelty towards her, so that from reasonable apprehension of further personal violence, she is obliged to quit his roof," she "goes to the world clothed with an implied credit for necessaries." If, however, a married woman left her husband without sufficient reason or without his consent, or committed adultery either prior to or after marital separation, her husband was entitled to deny her any access to his credit or any other form of economic support: "Where a wife is guilty of adultery, and either elopes from her husband or is expelled from his roof on that account, or even when, being compelled by his cruelty to leave him, she is afterwards

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15 "Husband and Wife," *Local Courts' and Municipal Gazette* 4 (June 1868): 84. For varying marital disputes and legal actions involving married women's spending on credit, see, for example, (1873) *Zealand v. Dewhurst*, 23 UCCP, 117-22; (1872) *Archibald v. Flynn*, 32 UCQB, 523-28; (1912) *Scott v. Allen*, 26 OLR, 571-76; Erika Rappaport, "'A Husband and His Wife's Dresses': Consumer Credit and the Debtor Family in England, 1864-1914," *The Sex of Things: Gender and Consumption in Historical Perspective*, eds. Victoria de Grazia with Ellen Furlough (Berkeley: University of California Press, 1996), 163-87.

guilty of this offence ... he is not liable even for the bare necessaries of life supplied to her after her adultery and during their separation."[16]

These legal regulations accounted for the frequent publication of 'cautions' in early nineteenth-century Upper Canadian newspapers, in which husbands sought to release themselves from their marital obligations. Through these fairly standardized notices, a husband usually announced that, because of his wife's misbehaviour, he was forced to "turn her away," but most often that she had "absconded from bed and board." Unlike the notices published by masters offering rewards for the return of deserting apprentices,[17] husbands seemed less inclined to request that their runaway wives return and reclaim their position within his household. Rather, the intentions of these published announcements were largely twofold. First, a husband usually sent out a general warning to relatives, friends, and members of the community that if they harboured his wife or offered her any other protection, they could expect no monetary compensation from him for providing her with food, clothing, and lodging. Second, he also explicitly cautioned shopkeepers and merchants not to trust his wife nor extend her any credit in his name. In this way, a married man sought to absolve himself of any economic obligation for his wife's maintenance or for any debts she might contract after her departure. Merchants and shopkeepers were also well advised to heed these warnings: if they ignored them or failed to exercise appropriate 'caution' when extending credit, their attempts to retrieve the price of the goods supplied to

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[16] *Upper Canada Law Journal* 2 (August/September 1856): 161-62; 181; (1862) *Tait v. Lindsay et al., Executors of McKillop*, 12 UCCP, 414-17; (1872) *Archibald v. Flynn*, 32 UCQB, 523-28; (1910) *Price v. Price*, 21 OLR, 454-56.

[17] See Bryan D. Palmer, *Working Class Experience: Rethinking the History of Canadian Labour, 1800-1991* (Toronto: McClelland & Stewart Inc., 1992), 54-56. Some of these notices also sent out explicit warnings. James McLaughlin of Kingston inserted the following notice: "RUN AWAY. From the subscriber, about a month ago an indented Apprentice to the Shoemaking Business, named William Wolfe. All persons are hereby forbid trusting or harbouring said Apprentice, under Penalties of the law." *Kingston Chronicle and Gazette*, 17 August 1833.

a married woman through civil litigation could prove to be difficult.[18]

Unfortunately, these announcements provided few details regarding the impetus behind a wife's desertion, be it her desire to escape an intolerable marriage, to live with a lover, or simply to lead an independent life. In keeping with common law rules, however, husbands generally specified that her departure had not been provoked by his behaviour and that she had left without 'just cause'. In 1834, for example, the notice published twice weekly for almost four months in the *British Whig* by Jacob Hillman of Bath was fairly typical: 'WHEREAS my wife, has left my bed and board without any just cause, I hereby forbid all persons harbouring or trusting her on my account as I will pay no debts of hers contracted after this date."[19] Other husbands, like George Counter of Waterloo, who ran four advertisements in the *British Whig* in May 1835, also alerted the public as to the circumstances of his wife's desertion:

> CAUTION. THIS is to give notice that in consequence of the absconding from my bed and board of my wife, Elizabeth Counter, late Elizabeth Whitcombe, widow. I will be no longer answerable for any debts she may contract. Elizabeth Counter left her home on the 16th April in company with a young man named Frederick Thomas and a female child about ten years of age. The parties were last heard of in Watertown, N.Y. and are supposed to be now travelling towards the city of New York.

In order to ensure that this information reached these American destinations, Mr. Counter also requested that the New York *Commercial Advertiser* and the Albany *Argus* make the same insertions in their newspapers.[20] Some notices, however, included more serious allegations. In addition to absconding from bed and board, runaway wives were accused of other marital crimes, such as adultery and theft of their husbands' property. In February

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[18] See, for example, (1873) *Zealand v. Dewhurst*, 23 UCCP, 117-22.

[19] *British Whig*, 15 July 1834. This notice appeared twice weekly until 4 November 1834.

[20] *British Whig*, 1, 8, 12, and 19 May 1835.

and March 1845, James Hall of Kingston announced that his wife, Jane, had not only eloped "with one Edward Reilly," but also that "the Deed for the Lot upon which my house is built in Ontario Street and also a Deed for a Lot of Wild Land" were missing from his possession. Consequently, in an effort to protect his lands from being sold by his delinquent wife or her adulterous lover, Hall cautioned the "public against purchasing such property, as no authority has been given by me to any person to sell the same."[21]

Given the cost of these notices (in the early 1840s, the basic cost of a first insertion under six lines was 2s 6d and any subsequent ones cost 71/2d each), it is likely that most of the married men who published them were from the propertied or artisan classes with some disposal income and indeed with some credit and/or property to protect.[22] Jane Errington has also found that the appearance of these announcements could generate angry responses, especially from those wives who continued to reside in the close vicinity of their husbands. Since they were being publicly accused of being 'bad' wives and were likely denied credit from wary merchants, some women sought to salvage their reputations and to expose the falsity of their husbands' allegations by publishing their own counter-statements.[23] In later decades, when the publication of these advertisements became more

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21 *Chronicle and Gazette*, 19 and 26 February, 15 March, 1845.

22 For a discussion of wage rates and the credit system in Upper Canada, see Peter Russell, "Wage Rates in Upper Canada, 1818-1840," *Histoire sociale/Social History* 16, 31 (May 1983): 61-80; Douglas McCalla, "Rural Credit and Rural Development in Upper Canada, 1790 to 1850," *Patterns of the Past: Interpreting Ontario's History*, eds. Roger Hall, William Westfall, and Laurel Sefton MacDowell (Toronto: Dundurn Press, 1988), 37-54. Furthermore, depending on their level of income, some husbands, like Andrew Patterson of Kingston, were also remarkably persistent when publishing 'cautions'. In order to guarantee that the readership of the *Kingston Chronicle and Gazette* and particularly local tradespeople were informed that his wife had left his "bed and board without a just cause" and that he forbade "any person or persons from harbouring or trusting her with anything on my account," he published at least nineteen ads between June and August 1843.

23 Errington, *Wives and Mothers*, 49. See also Sheila Kieran, *The Family Matters: Two centuries of family law and life in Ontario* (Toronto: Key Porter Books, 1986), 21.

sporadic, married women also turned to the criminal courts to contest what they viewed as their husbands' false claims and their unjust denial of credit. On 11 March 1870, a notice appeared in the Ottawa *Citizen*, in which J. C. Mills issued the characteristic warning: "Caution. Martha Mills, my wife, having left my house without cause, the public are cautioned against giving her credit in my name." The next day, Martha appeared in the Ottawa Police Court and charged her husband with beating, or as one newspaper reporter put it, "reconstructing her with a hard wood log." Although Mr. Mills asserted that his wife had "aggravated him by [her] intemperate habits," he was found guilty and fined five dollars and costs.[24] Eight years later, Catharine G. of Galt also turned to the local justice of the peace, after her husband had "advertized in the papers not to give [her] credit." She explained that she felt wholly justified in leaving her husband after thirty years of marriage because he would not "pay more than 2.50 per week for his own board" and wilfully refused to supply her and her two sons with "wood, food, and clothing." What she found most reprehensible about his conduct was the fact that he earned a decent wage, owned two lots, collected rents on two houses, and had good "food credit in town." During the first month after her departure, she did manage to obtain basic necessities "from one store" to support herself and her two sons, but when her husband's notice appeared in the Galt newspaper, the storekeeper declined to extend her any further credit. "[I] am not working for wages but am doing my own housework," she asserted, and "[I] cannot carry on the house without more necessaries." One of her sons, an apprentice in the cabinetmaking trade, echoed these sentiments, stating that at one point he was forced to leave home for two months because "my father would not provide sufficient necessaries." "My mother has been industrious and hard working ever since I can recollect," he added, "but her health is now failing from hard work and bad usage from my father." While these formal legal

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[24] Ottawa *Citizen*, 11, 12, and 14 March 1870.

challenges were meant to compel husbands to fulfil their legal obligation to provide basic necessities for their family dependents, what is left unclear in the criminal records is whether they had any tangible effects.[25]

Although the entitlement to pledge their husbands' credit provided one protective mechanism, which technically allowed married women to gain access to the economic resources of their husbands, it was relatively easy for married men to publish an advertisement and discharge themselves of any future responsibility for their wives' support and maintenance. By the late 1830s, as suggested in an earlier chapter, growing concerns about the number of otherwise 'good' women who were evicted or driven away by 'heartless' husbands and left to the mercy of their neighbours and communities prompted colonial legislators to empower the Court of Chancery to grant legal separations and alimony decrees.[26] However, both legal remedies - the right to pledge a husband's credit and to launch a costly alimony suit - were generally of little use to married women of the poor and labouring classes. Whether ranked among the growing number of destitute immigrants that began to arrive in Upper Canada in the 1830s or simply relying on the already insecure wages earned by male labourers, the loss of the economic support of a male breadwinner through desertion or separation could be particularly devastating for women of the lower classes. This was especially the case if they had no family networks to draw upon for maintenance or if their children were too young to be apprenticed or sent out

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25 (20 April 1878) *Catharine G. v. John G.*, AO, RG 22-13, GPC, Volume 6. In another case, Mary Ellen M. also charged her husband with refusing to support her when he sent the following letter to her boardinghouse keeper in July 1882: "Mrs. H[], West Main St. Please take notice that I will not be responsible for any debts Mrs. M[] contracts. Charles E. M[]." (1882) *Queen v. Charles M.*, AO, RG 22-392, Waterloo County CAI, Box 161. See also (1875) *Robert Campbell et. ux v. James Campbell*, 25 UCCP, 368-76; (1904) *Milloy v. Wellington*, 4 OWR, 83; (1916) *Rex v. Nils Peter M.*, AO, RG 22, Algoma District Crown Attorney (Sault Ste. Marie) Case Files, Box 1; (1917) *King v. Joseph P.*, AO, RG 22-392, Lambton County CAI, Box 74.

26 "The Chancery Bill," *Kingston Chronicle and Gazette*, 7 December 1836; (1837) "AN ACT to establish a Court of Chancery," 7 Wm. IV, c. II.

to work. While some deserted and otherwise destitute wives likely sought casual or formal paid work, given the notoriously low wages paid in female employment sectors, patching together a livelihood for themselves and their dependents could prove to be extremely difficult if not impossible. Under the most desperate of circumstances, economic survival would mainly depend on obtaining some form of informal assistance from acquaintances, private charities, or poor relief officials.[27] As a last resort, it was also possible for impoverished women and/or their children to enter one of the Houses of Industry established in urban centres like York and Kingston in the early decades of the nineteenth century.[28]

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[27] For the development of private charities and the poor relief system in Upper Canada, see Patricia E. Malcolmson, "The Poor in Kingston, 1815-1850," *To Preserve and Defend: Essays on Kingston in the Nineteenth Century*, ed. Gerald Tulchinsky (Montreal & Kingston: McGill-Queen's University Press. 1976), 290-95; Russell C. Smandych, "William Osgoode, John Graves Simcoe, and the Exclusion of the English Poor Law from Upper Canada," *Law, Society, and the State: Essays in Modern Legal History*, eds. Louis A. Knafla and Susan W. S. Binnie (Toronto: University of Toronto Press, 1995), 99-129; David R. Murray, "The Cold Hand of Charity: The Court of Quarter Sessions and Poor Relief in the Niagara District, 1828-1841," *Canadian Perspectives on Law and Society: Issues in Legal History*, eds. W. Wesley Pue and Barry Wright (Ottawa: Carleton University Press, 1988), 179-206; Richard Splane, *Social Welfare in Ontario, 1791-1893* (Toronto: University of Toronto Press, 1 965); Rainer Baehre, "Paupers and Poor Relief in Upper Canada," Canadian Historical Association, *Historical Papers* (1981): 57-80, who notes that by the 1830s deserted women had access to various forms of 'occasional aid'.

[28] Terry Crowley points out that between 1847 and 1867, "women consistently outnumbered men in the Kingston House of Industry," but he does not specify whether they were single, married, or widowed. Terry Crowley, "Rural Labour," *Labouring Lives*, 29. Furthermore, as Sarah Ann Collins discovered in 1857, placing her four children in the Toronto House of Industry because of her distressed circumstances carried considerable risks. For example, in response to her repeated requests, the institution's superintendent and matron refused to disclose the whereabouts of two of her children, stating that in accordance with the apprenticeship policy introduced in 1853, they had been "placed" somewhere "out in the country." More seriously, when she realized that her six-year-old daughter was being severely "ill-treated" and was in a extremely "dirty" and "emaciated" condition, she was determined to remove her child from the institution. After complaining to various city officials, including the mayor, she eventually received permission to bring her daughter home. By then, however, she was already in an acutely weakened physical state and died shortly thereafter of acute "tubercular degeneration" accelerated by "a vitiated atmosphere," the lack of proper nourishment, and "a want of sufficient clothing." At the conclusion of the coroner's inquest that followed, the jury submitted a scathing report, in which they strenuously argued that "the system of medical attendance at the Institution is radically defective" and "ought to be reformed." "Alleged Death From Starvation. Inquest," "Adjourned Inquest," and "The House of Industry," Toronto *Globe*, 10, 11, and 18 September, 1857. For a discussion of the Toronto and Kingston Houses of Industry and its policies toward "abandoned, orphaned, or destitute" children, see Patricia T. Rooke and R. L. Schnell, "Childhood and

Given these bleak prospects, some desperate wives seemed determined to locate their so-called 'lost' or 'missing' husbands or at least to ascertain whether their spouses' temporary absence had turned into a permanent one. In Upper Canada, this could take the form of publishing "information wanted" notices in local newspapers.[29] In 1843, Mrs. Flin of Kingston described herself as the "dejected" wife of William Flin, a cooper and formerly of Cork, Ireland. Emphasizing that her "last recourse" was the possibility that her husband would read and respond to her advertisement, she also requested that all Canadian and American newspapers publish the same insertion.[30] In May 1838, the *Kingston Chronicle and Gazette* published a notice, initiated by the "afflicted wife" of John Mahon, who had "left his house and family" at Chisholm Rapids, near Rawdon two months earlier. While Mrs. Mahon, whose family was evidently in "very poor circumstances," thankfully requested any information about the whereabouts of her husband, the editors of the newspaper also noted that because of her inability to cover the costs of the announcement, they had "waived the usual advertising fees."[31] Finally, Mrs. Berry of Kingston also sought information regarding Richard Berry, a blacksmith, who had left Kingston about two months earlier for Hamilton or Dundas, and had "not been heard of since." She further specified that "any person knowing aught of the above will confer an obligation on a wife

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Charity in Nineteenth-Century British North America," *Histoire sociale/Social History* 15, 29 (May 1982): 164-65.

29 Given that the geographical separation of married couples and other relatives often occurred during the process of emigration or migration, the "information wanted" sections were also filled with notices inserted by Upper Canadian residents or recently arrived emigrants who were searching for lost relatives, including wives who had lost touch with their husbands. See, for example, a Mrs. McKenny who arrived in Kingston and was looking for her husband, Michael McKenny. *Kingston Chronicle and Gazette*, 20 September 1843.

30 "Information Wanted," *Kingston Chronicle and Gazette*, 23 August 1843.

31 "Missing Husband," *Kingston Chronicle and Gazette*, 2 May 1838.

and four children by addressing a letter directed to [her]."[32]

Major depressions of the late 1850s and the 1870s, which produced severe socioeconomic dislocations, perhaps prodded Ontario legislators to recognize that poor and working-class women required greater formal protection in instances when their husbands neglected or refused to support them. The first legislative reform, which was strongly promoted by women petitioners and gained the support of most provincial politicians in the late 1850s, accorded labouring wives greater control over their own earnings. Among its advocates, however, this initiative was not constructed in terms of the rights of wage-earning women to manage the products of their labour. Rather, the arguments in favour of this reform relied on class-specific assumptions about the pervasive unreliability of poor and working-class husbands and their propensity to squander the family income on drink. One petition, submitted on behalf of lower-class women, emphasized the "manifold evils" that resulted from the fact that husbands, under the rules of coverture, had "absolute power" to misappropriate their wives' wages: "She may work from morning to night to see the produce of her labour wrested from her, and wasted in a tavern ... Such cases are within the knowledge of every one."[33] Similarly, one legislator stressed how alcohol transformed an otherwise industrious and respectable working-class husband into a man devoid of any sense of responsibility toward his family dependents, an argument which would become another standard theme among turn-of-the-century temperance advocates:

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32 "Information Wanted," *British Whig*, 12 September 1834. See also the notice which appeared in the *British Whig* and presumably initiated by a Mrs. McGlowin of Kingston. It requested information concerning "John McGlowin, Shoemaker, a native of County Derry in Ireland, who left his wife and child in Montreal about two years since. He is supposed to be in the United States. Persons knowing aught of the absentee are requested to communicate with this office." "Information Wanted," *British Whig*, 25 July 1834.

33 "Women's Rights," Toronto *Globe*, 19 January 1857 and cited in Backhouse, *Petticoats and Prejudice*, 179, and "Married Women's Property Law in Nineteenth-Century Canada," *Law and History Review* 6, 2 (Fall 1988): 223.

> Among the poorer classes ... everyone in large cities must have felt that misery resulting from the conduct of one who passed from careful industry and sobriety into dissipation and wretchedness, reducing the unfortunate partner of his affections, as well as her children, to misery. In these cases, where the wife is honest and industrious, and desires to protect the children from their father's extravagance, she may be able, after a time, to use her earnings so as to enable her to live in comfort, yet the moment her pittance is such to enable her to do so, her husband can step in, take away all her honest earnings, and dissipate them without the slightest hesitation.[34]

In an effort to address these concerns, the first married women's property act enacted in Canada West in 1859 included a stipulation which allowed married women to petition a local magistrate for an order of protection to retain their own wages. In accordance with the prevailing emphasis on protection rather than rights, however, such an order would only be granted in situations when a husband's 'bad' conduct or extended absence might cause undue economic hardship. In other words, this statute applied to the following categories of women:

> Any married woman having a decree of alimony against her husband, or ... who lives apart from her husband, having been obliged to leave him for cruelty or other cause which by law justified her leaving him and renders him liable for her support, or ... whose husband is undergoing sentence of imprisonment in the Provincial Penitentiary, or in any gaol for a criminal offence, or ... whose husband from habitual drunkenness, profligacy or other cause, neglects or refuses to provide for her support, and that of his family, or ... whose husband has never been in this Province, or ... who is

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[34] Cited in Lori Chambers, *Married Women and Property Law in Victorian Ontario* (Toronto: University of Toronto Press, 1997), 82. As various historians have pointed out, middle-class women's temperance organizations, like the Woman's Christian Temperance Union, viewed male intemperance from a similar class and gender bias, by constructing it predominantly as a male working-class vice, with the attendant economic and physical consequences for wives and children. Mixed working-class temperance associations and working-class organizations like the Knights of Labor, however, focused on how intemperance undermined the dignity of labour and the struggle for class justice. See Lynne Marks, *Revivals and Roller Rinks: Religion, Leisure, and Identity in Late-Nineteenth-Century Small-Town Ontario* (Toronto: University of Toronto Press, 1996), 91-106; Sharon Cook, "'Continued and Persevering Combat': The Ontario WCTU, Evangelicalism and Social Reform" (PhD thesis, Carleton University, 1990), 184-94; Wendy Mitchinson, "The WCTU: 'For God, Home and Native Land': A Study in Nineteenth-Century Feminism," *A Not Unreasonable Claim: Women and Reform in Canada, 1880s - 1920s*, ed. Linda Kealey (Toronto: Women's Educational Press, 1979), 151-67; Gregory S. Kealey and Bryan D. Palmer, *Dreaming of What Might Be: The Knights of Labor in Ontario, 1880-1900* (Toronto: New Hogtown Press, 1987), 312.

deserted or abandoned by her husband.[35]

Although it is unclear to what extent married women petitioned the courts on this basis,[36] they were eventually relieved of undertaking this formal legal procedure under the married women's property act of 1872. This amendment decreed that wives were entitled to hold "their wages and personal earnings ... and any acquisitions therefrom ... free from the debts or disposition of the husband"; they were also authorized to dispose of them without the consent of their husbands, as if they were *femme sole*.[37] Five years later, wives were also allowed to obtain a court order to protect the earnings of their minor children.[38]

While these legislative reforms were significant in empowering married women to control and dispose of their own earnings and, in some cases, those of their children, these legal developments did not alleviate the ongoing difficulties most working-class women and especially those with young children had in earning a viable living wage. In fact, given the sexual division of labour that characterized most working-class households, the gender-segregated structure of the labour market, and the ongoing wage disparities between female and male workers within the expanding industrial-capitalist economy, the position of married women in working-class life and the viability of the family-household economies was just as or more dependent on "the number and age of their children and above all, the presence or absence of male support" as it was on the capacity of wives to retain their own

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[35] (1859) "Act to Secure to Married Women Certain Separate Rights of Property," 22 Vict., c. 34, s. 6.

[36] No petitions requesting such a protection order surfaced in the legal records I examined. In fact, I found only three indirect references to working-class husbands misappropriating their wives' wages. See "Police Court," Ottawa *Times*, 13 May 1867; (1898) *Queen v. Frederick H.*, AO, RG 22, Ontario County CA/CP CCJCC Case Files, Box 6; (1873) *Queen v. Elizabeth Workman*, NAC, RG 13, Capital Case Files, volume 1410, no. 64A, *Sarnia Observer*, 22 April 1873, Toronto *Globe*, 20 June 1873.

[37] (1871-72) "An Act to Extend the Rights of Property of Married Women," 35 Vict., c. 16, s. 2.

[38] (1877) *Revised Statutes of Ontario*, s. 125.

earnings.[39] Nor was the issue of women's wages addressed by social reformers and provincial legislators, who lobbied for and supported the passage of protective labour legislation beginning in the 1880s or those organized skilled workers who struggled for the right to earn a family wage. In the former case, these provincial statutes, which prohibited child labour in manufacturing and selectively restricted women's participation in the paid work force, tended to encourage and reinforce the economic dependence of wives and children on a responsible male breadwinner and on a functioning family-household economy.[40] In the latter case, the demand for the breadwinner wage, which remained much more of an ideal than a reality for most labouring men, may have reflected a strategy based on the principle of class solidarity and may have been designed to benefit working-class families as a whole, but this ideal also tended to legitimate male workers' comparatively privileged status in the labour market and to fortify their authoritative position within the family unit.[41]

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39 Christine Stansell, *City of Women: Sex and Class in New York, 1789-1860* (Urbana: University of Illinois Press, 1987), 45. See also Marjorie Griffin Cohen, *Women's Work, Markets, and Economic Development in Nineteenth-Century Ontario* (Toronto: University of Toronto Press, 1988), chapter 6; Jane Ursel, *Private Lives, Public Policy: 100 Years of State Intervention in the Family* (Toronto: Women's Press, 1992), 75-101; Bettina Bradbury, "The Family Economy and Work in an Industrializing City: Montreal in the 1870s," Canadian Historical Association, *Historical Papers* (1979): 71-96; "Women and Wage Labour in a Period of Transition: Montreal, 1861-1881," *Histoire sociale/Social History* 17, 33 (May 1984): 115-131; *Working Families: Age, Gender, and Daily Survival in Industrializing Montreal* (Toronto: McClelland & Stewart Inc., 1993), chapter 6; John Bullen, "Hidden Workers: Child Labour and the Family Economy in Late Nineteenth-Century Urban Ontario," *Labour/Le Travail* 18 (Fall 1986): 163-87.

40 For a more detailed discussion of these developments, see, for example, Veronica Strong-Boag, "Working Women and the State: the Case of Canada, 1889-1945," *Atlantis* 6, 2 (Spring 1981): 1-9; Backhouse, *Petticoats and Prejudice*, 260-92. For similar developments in England, see Sonya O. Rose, "Protective Labor Legislation in Nineteenth-Century Britain: Gender, Class, and the Liberal State," *Gender and Class in Modern Europe*, eds. Laura L. Frader and Sonya O. Rose (Ithaca: Cornell University Press, 1996), 193-210.

41 For differing theoretical and historical perspectives on the family wage, see, for example, Jane Humphries, "Class struggle and the persistence of the working-class family," *Cambridge Journal of Economics* 1 (1977): 241-58; Maria Mies, *Patriarchy and Accumulation on a World Scale: Women in the*

One area where late nineteenth-century legislators did increasingly direct their attention was toward the more extensive legal regulation and enforcement of the economic responsibilities of husbands and fathers. Beginning in 1876, the provisions of the Indian Act sought to discourage Aboriginal men from 'casting off' and/or deserting their wives without just cause, and to protect the economic interests of their family dependents. Under this statute and its subsequent amendments, a married woman could petition the local Indian agent for access to her husband's annuities, the interest monies on his lands, or any other proceeds from his property for her maintenance and that of her legitimate children.[42] In most instances, these claims were not adjudicated in the colonial courts; rather, they were usually investigated and settled by the Indian agent in consultation with the General Superintendent of the Department of Indian Affairs.[43]

International Division of Labour (London: Zed Books Ltd., 1986), 103-11; Laura L. Frader, "Engendering Work and Wages: The French Labor Movement and the Family Wage," *Gender and Class in Modern Europe*, 142-64; Jeanne Boydston, *Home and Work: Housework, Wages, and the Ideology of Labor in the Early Republic* (New York: Oxford University Press, 1991), chapters 6 and 7; Bettina Bradbury, "Women's History and Working-Class History," *Labour/Le Travail* 19 (Spring 1987): 29-43. Christina Burr has argued that even though the Knights of Labor advocated equal pay for women workers, this strategy "would protect the position of male workers in the workplace and further ensure a 'living wage' ... by preventing an influx of underpaid women workers." Christina Burr, *Spreading the Light: Work and Labour Reform in Late-Nineteenth-Century Toronto* (Toronto: University of Toronto Press, 1999), 146-47.

42 "Ottawa - A Circular Letter to Agents of the Indian Department in Ontario and Quebec Regarding Their Duty to Impress on Members the Proper View of Marriage and Damage Done by Immorality, 1899," NAC, RG 10, Department of Indian Affairs, Volume 2991, File 216, 447; "Kenora Agency - General Correspondence Regarding Immorality On Reserves,1895-1957," Ibid, Volume 8869, File 487/18-16; "Policy paper on Indian marriages and separations, 1908," Ibid, Volume 3990, File 180, 636.

43 See, for example, "Manitowaning Agency - Correspondence Regarding Interest Payments and Cases of Immorality in the West Bay, Sheshegwaning, Maganettawan and Wikwemikong Bands, 1896-1904," NAC, RG 10, Department of Indian Affairs, Volume 2875, File 176, 964; "Six Nations Agency - Correspondence, reports and affidavits regarding the separation of William J[] of the Six Nations Reserve and his wife Fannie C[] J[], a member of the Mississaugas, New Credit Reserve, 1894-1898," Ibid, Volume 2742, File 145, 905; "Six Nations Agency - Investigation into the Claim of Susan H[] Against Her Husband For Injury and Desertion, 1897-1898," Ibid, Volume 2933, File 194, 301; "Six Nations Agency - Investigation into the Claim of Lucy C[] Against Her Husband William C[] For Desertion, 1898," Ibid, Volume 2934, File 194, 782.

For the non-Aboriginal population, non-support was criminalized under two separate sections of the criminal statute in 1869. As part of the pre-codification campaign to consolidate Canada's criminal laws, the first piece of legislation, "An Act respecting Vagrants," built on existent local by-laws which were introduced in many Upper Canadian constituencies beginning in the 1830s and 1840s and were designed to regulate "Drunkards, Mendicants and Street Beggars."[44] Unlike these earlier laws, this sweeping criminal statute encoded a broad classification of what constituted vagrancy and sought to punish such infractions as idleness and begging, transience and living without employment, drunk and disorderly behaviour, and frequenting or working in a house of ill-fame. While principally intended to impose social discipline on those individuals who were increasingly perceived as public nuisances, potential criminals, and members of the 'dangerous classes', this statute also classified those able-bodied men who "wilfully refused or neglected" to work and to "maintain themselves and [their] families" as vagrants. If convicted of this offence, husbands and fathers could be fined up to fifty dollars or sentenced to a prison term of up to two months with or without hard labour. In 1874, the maximum term of imprisonment was extended to six months, a penalty that remained in effect at least until the 1920s.[45] Furthermore, a legal precedent established in 1917 ruled

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[44] See, for example, Malcolmson, "The Poor in Kingston," 296-97; Leo A. Johnson, *History of the County of Ontario, 1615-1875* (Whitby: The Corporation of the County of Ontario, 1973), 215-22. The Galt Police Court Minutebooks, encompassing the period between 1857 and 1920, constitute one of the few surviving detailed records of the administration of justice in the lowest court of the judicial hierarchy. In the period prior to 1869, most of the cases that surfaced involved breaches of local by-laws, including charges of drunk and disorderly behaviour as well as vagrancy.

[45] (1869) "An Act Respecting Vagrants," 32 & 33 Vict., c. 28, s. 1; (1874) "An Act to Amend 'An Act respecting Vagrants'," 37 Vict., c. 43; (1881) "An Act to remove doubts as to the power to imprison with hard labour under the Acts respecting Vagrants," 44 Vict., c. 31. Furthermore, as one judge noted in 1902, this was the only offence incorporated under the vagrancy act in which the term 'wilfully' was included. Hence, the issue of intent constituted one determining factor in the prosecution of husbands/fathers under this sub-section. (1902) *Anonymous Case (H- v. H-)*, 6 CCC, 163-66. Similar provisions against vagrancy were also incorporated into municipal by-laws, particularly with respect to persons being "without any visible means of support and unable to give any satisfactory account of himself

that the "wilful refusal by the father to support his illegitimate infant child, when able to do so" also constituted an criminal offence under the vagrancy act. In other words, "an illegitimate child, whether resident with the father or not" was "included in the term family" as contained in this section of the criminal code.[46]

Canadian historians have generally interpreted the introduction of the vagrancy laws as a highly repressive state response to the socioeconomic dislocations and instability of employment wrought by industrial capitalism. In their view, these legal provisions were not only intended to police the socially marginalized and the homeless, the poor and the unemployed, and the highly vilified tramp population, but also to punish those who rejected such prized bourgeois values as respectability, morality, discipline, and sobriety.[47] When the act was first passed, legal officials did express their wholehearted support for this legislation in precisely such terms. Toronto's chief constable remarked that "if strictly enforced," vagrancy laws would "tend more to the prevention of crime than any Acts hitherto passed by the Legislature." Ottawa's police magistrate stressed that "the city and its environs will feel the good effects of it. Vagrancy, a good many idlers will find, is by no means as pleasant a mode of life as heretofore."[48] Beginning in the late 1880s, both grand

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or herself." See, for example, (1901) "By-Law No. 166 of the Municipality of the Township of Grey, County of Huron," Division No. 8, Section 7.

[46] *R. v. Barthos*, 17 CCC, 459-62.

[47] See, for example, James M. Pitsula, "The Treatment of Tramps in Late Nineteenth-Century Toronto," Canadian Historical Association, *Historical Papers* (1980): 116-32; Jim Phillips, "Poverty, Unemployment, and the Administration of the Criminal Law: Vagrancy Laws in Halifax, 1864-1890," *Essays in the History of Canadian Law*, Volume 3, eds. Philip Girard and Jim Phillips (Toronto: University of Toronto Press, 1990), 128-62; David Bright, "Loafers Are Not Going to Subsist Upon Public Credulence: Vagrancy and the Law in Calgary, 1900-1914," *Labour/Le Travail* 36 (Fall 1995): 37-58.

[48] Cited in Paul Craven, "Law and Ideology: The Toronto Police Court, 1850-80," *Essays in the History of Canadian Law*, Volume 2, ed. David H. Flaherty (Toronto: University of Toronto Press, 1983), 264; Ottawa *Citizen*, 22 October 1869. See also Justice Gwynne's address to the grand jury at the "York

juries and local authorities also sent a steady stream of angry complaints to the Office of the Attorney General about the growing 'tramp menace' and the burgeoning indigent population. In order to halt what they identified as their chronic "begging" and "stealing," these bodies recommended the imposition of harsher prison terms, mandatory hard labour, and minimal food rations.[49] While social regulation was certainly one central feature of the vagrancy laws, what has received less attention in the historical literature is how the legal definition of vagrancy made explicit links between so-called socially deviant behaviour (drunkenness, disorderliness, immorality, transiency, and above all, the rejection of a disciplined work ethic on the part of male breadwinners) and the precariousness of poor and working-class family wage economies. It was precisely these aspects of the law that were used by working-class wives as well as working-class parents as mechanisms to discipline their 'shiftless' and intemperate husbands and to assert authority over their 'incorrigible' and economically burdensome children.[50]

Winter Assizes" in 1876. Toronto *Globe*, 12 January 1876.

[49] See, for example, "Welland High Court," *Welland Tribune*, 16 October 1890; (1898) "Grand Jury Presentment, St. Thomas," AO, RG 4-32, AG, #22; (1898) "Grand Jury Presentment, Cornwall," Ibid, #1744; (1899) "Grand Jury Presentment, Welland," Ibid, #422; (1899) "Grand Jury Presentment, Peterborough," Ibid, #529; (1899) "Grand Jury Presentment, Perth," Ibid, #676; (1899) "Re. Arrest of tramps," Ibid, #1186; (1900) "R. Arrest and punishment of tramps," Ibid, #869; (1903) "Re. Tramps," Ibid, #878; (1903) "Grand Jury Presentment, Perth," #1576; (1905) "Re. Tramps," #674; (1906) "Re. Tramps," #1078; (1907) "Re. Tramps," #466; (1908) "Re. Tramps," #614, #1057; (1910) "Re. Tramps," #239; (1911) "Re. Tramps," #853. For the classification of various categories of tramps and vagrants as constructed in Toronto's penny press and their treatment in the local police court, see Chris Burr, "'Roping in the Wretched, the Reckless, and the Wronged': Narratives of the Late Nineteenth-Century Toronto Police Court," *left history* 3, 1 (Spring/Summer 1995): 85-94. For socio-historical and legal analyses of tramps and vagrants in the United States in the nineteenth and early twentieth centuries, see Eric H. Monkkonen, ed., *Walking to Work: Tramps in America, 1790-1935* (Lincoln: University of Nebraska Press, 1984).

[50] While the use of the vagrancy act by working-class parents is beyond the parameters of this study, the cases that surfaced in the police courts can be classified into three broad categories. First, some elderly fathers or mothers charged their older sons with vagrancy in situations when the latter became economic burdens, by refusing to undertake steady work, neglecting to pay room and board, and/or being habitually drunk. See, for example, (15 August 1885) *Mr. L. v. John L.*, AO, RG 22-13, GPC, Volume 9; (31 August 1885) *Constable M. v. John C.*, Ibid, Volume 9; (21 August 1889) *Constable M. v. John C.*,

Although less explicit in targeting the poor and working classes, similar concerns resulted in the introduction of another and much more widely used section of the 1869 criminal statute, one which was grouped under the broader category entitled "duties tending to the preservation of life." In this section, the wilful refusal of husbands and fathers to provide their wives and children with "necessary food, clothing, and lodging" without "lawful excuse" was explicitly defined as a criminal offence. If this omission caused bodily harm, life endangerment, or permanent injury to health, the accused could face a maximum penalty of three years' imprisonment in the penitentiary.[51] In 1892, this statute underwent greater clarification: it not only encoded the legal liability of a husband and/or "parent, guardian or head of family" to provide for his wife and/or "any child under the age of sixteen years," but it also included death caused by the omission to supply necessaries within its definition of criminal responsibility (unless that death amounted to culpable

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Ibid, Volume 10; (23 January 1903) *William W. v. John W.*, Ibid, Volume 12; (8 and 9 September 1901) and (12 and 13 September 1901) *Michael O. v. Thomas O. and Michael O. Jr.*, AO, RG 22, Perth County (Stratford) Police Court Dockets (hereafter SPC), Box 4; (19 and 21 April 1902) *CP v. Joseph O., Michael O., and Peter O.*, Ibid, Box 4; (15 September 1904) *Florence P. v. David G.*, Ibid, Box 7; (7 and 8 September 1906) *Alvine S. v. Ernest S.*, Ibid, Box 10. Second, parents were also inclined to use the vagrancy law as a way of disciplining their disobedient and uncontrollable younger sons, who did not work or go to school, hung around the streets, and/or committed petty crimes. See, for example, (29 August 1887) *Angus O. v. Daniel O.*, AO, RG 22-13, GPC, Volume 9; (24 September 1892) *Eliza J. v. Thomas J.*, Ibid, Volume 10; (13 March 1899) *Jane T. v. Joseph T.*, AO, RG 22, SPC, Box 2; (25 and 31 July 1902) *Amelia M. v. Edward M.*, Ibid, Box 4; (5 and 5 May 1904) *Mary Ann M. v. Joseph M.*, Ibid, Box 7. Finally, parents or other guardians such as grandmothers invoked the vagrancy act as a mechanism to restrain their 'wayward', 'promiscuous', and defiant (grand)daughters. See, for example, (2 November 1881) *Mrs. B. v. Lydia B.*, AO, RG 22-13, GPC, Volume 8; (15 May 1885) *Constable M. v. Agnes M.*, Ibid, Volume 9; (17 December 1886) *Wilhelmina E. v. Mary E.*, Ibid, Volume 9; (18 March and 12 April 1902) *Lucy R. v. Jessie R.*, AO, RG 22, SPC, Box 4; "Police Court. Vagrancy," Hamilton *Spectator*, 26 April 1883. For a similar pattern later in the twentieth century, see Joan Sangster, "Incarcerating 'Bad Girls': The Regulation of Sexuality through the Female Refuges Act in Ontario, 1920-1945," *Journal of the History of Sexuality* 7, 2 (October 1996): 239-75.

[51] (1869) "An Act respecting Offences against the Person," 32 & 33 Vict., c. 20, s. 25. It should also be noted that in addition to husbands/fathers, this act also included other persons, such as "parent, guardian, or committee, master or mistress, nurse or otherwise," who were legally liable to provide necessaries for a "child, ward, lunatic or idiot, apprentice or servant, infant or otherwise."

homicide).[52] In 1913, the definition of criminal non-support was broadened substantially through the addition of a sub-clause, which specified that in instances when the neglect of a husband, father, or head of a family was not necessarily life-threatening, but nonetheless caused destitution or necessitous circumstances, he was liable to a fine of five hundred dollars and/or one year's imprisonment. This amendment also expanded the definition of "husband" and "father" to include common-law relationships and 'illegitimate' children, thus enforcing the economic responsibilities of any man who "cohabited with a woman," "in any way recognized her as being his wife," and "in any way recognized children as being his children."[53]

In addition to broadening definitions of what constituted criminal non-support, the competency of wives to act as the principal witnesses against their deserting or negligent husbands under this section was eventually recognized through a formal amendment to the criminal statute in 1886. Prior to this amendment, married women did swear depositions in court, but defence attorneys frequently objected to the admissibility of their evidence, citing the general common law rule which prohibited wives from testifying against their husbands except in criminal cases which involved "personal injuries effected by violence or

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[52] (1892) "Duties Tending to The Preservation of Life," 55 & 56 Vict., c. 29, s. 210. In section 211, a master or mistress, who had "contracted to provide necessary food, clothing or lodging for any servant or apprentice under the age of sixteen years" was subject to similar stipulations and penalties. Furthermore, as one legal scholar pointed out in 1893, if the neglect of "certain natural and moral duties towards others," referring specifically to relations between husbands and wives, parents and children, and masters and servants, resulted in death, this amounted to the crime of manslaughter, an offence that carried a maximum penalty of life imprisonment. Henri Taschereau, *The Criminal Code of the Dominion of Canada* (Toronto: Carswell Co. Law Publishers, 1893), 198-99.

[53] (1913) "Duties Tending to the Preservation of Life," 3 & 4 Geo. V, c. 13, s. 242a and 242b. In 1919, this section was further expanded, in that "evidence that a man has, without lawful cause or excuse, left his wife without making provision for her maintenance for a period of at least one month from the date of his so leaving, or for the maintenance for the same period of any child of his under the age of sixteen years, shall be *prima facie* evidence of neglect to provide necessaries." Canada, *Revised Statutes*, 1907-1919, c. 146, s. 242 (C). In addition, the responsibility of fathers for the maintenance of their illegitimate children was further enforced by (1921) "An Act for the Protection of the Children of Unmarried Parents," 11 Geo. V., c. 54.

coercion."[54] In 1882, a junior judge presiding over Court of General Sessions in the County of York decided to refer the case of Joshua Bissell, a Rama township farmer, to the Court of Queen's Bench, requesting both clarification on this matter and a ruling on whether or not the accused had been rightfully convicted for refusing to provide for his wife and four children for the past five years. In a majority decision to acquit the accused, Chief Justice Hagarty and Justice Cameron ruled that a husband could not be convicted of non-support solely on the basis of his wife's testimony. They held that, because the crime in question was "wholly one of omission" and not one of "violence to [her] person or liberty," it did not "fall within the exceptions" provided under common law. Although in the minority, Justice Armour strongly disagreed. In his opinion, criminal non-support constituted more than simply a crime of "omission," but entailed "a 'wrong' to the wife" and an "actual personal injury." He further asserted that, since a married woman was often the only person who could prove that the neglect of her husband "happened 'wilfully' and without lawful excuse," any stipulations which prevented her "from testifying in such cases" was tantamount to denying "the benefit of the statute to the persons it [was] designed to protect." By quashing Mr. Bissell's conviction, he insisted, his judicial colleagues were, in effect, rendering this section of the criminal code "vain and useless" and this amounted to "a practical repeal of the Act." Four years later, this rationale resulted in the amendment to the criminal statute which formally allowed married women to act as competent witnesses. Some parliamentarians, however, expressed grave concern that, under these new evidentiary rules, wives would have unfair advantage in non-support

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[54] For these rules of evidence, see, for example, "Evidence of wife against husband," *Local Courts' and Municipal Gazette* 3 (June 1867): 93-94, and (August 1867): 116. For cases in which the competency of wives to act as principal witnesses was challenged, see, for example, (1877) *Queen v. Alexander N.*, AO, RG 22-392, York County CAI, Box 207; (1878) *Queen v. William H.*, AO, RG 22-392, York County CAI, Box 209; (1880) *Queen v. Edward C.*, AO, RG 22-392, Oxford County CAI, Box 112; (1880) *Queen v. John R.*, AO, RG 22-392, York County CAI, Box 216; (1881) *Queen v. Marcus J.*, AO, RG 22-392, Northumberland and Durham Counties CAI, Box 103.

cases and, hence, husbands were also officially granted the right to testify in their own defence.[55]

The introduction of and amendments to these two sections of Canada's criminal legislation went beyond the existent legal provisions which granted wives access to the economic resources of their husbands, in the form of pledging a husband's credit or suing for alimony. These criminal statutes and the penalties inscribed in them were more explicitly designed to deter married men from reneging on their economic duties as primary breadwinners and to punish those who refused or neglected to fulfil their responsibilities. In 1910, one judge emphasized that "unless there is some lawful excuse," a married man was bound to a "lifetime obligation" to supply his wife with necessaries, and even if he was not "able to earn enough money to support his wife, this [did] not affect the legal obligation." He also stressed that, although the courts might be lenient "in a case of hardship," one of the main reasons for these stringent provisions was that "if the law were not that way, all a husband would have to do, in order to evade that legal obligation, would be to lead an idle life, and earn nothing."[56] In this sense, loafing husbands were indeed held accountable for various social and familial ills, up to and including driving their wives into the ranks of petty criminals. In 1913, when two Toronto scullery maids were charged with stealing food from the Marlborough Apartments where they were both employed, the Crown Attorney stated that the "women's husbands were to blame. They were loafers and

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55 "A Yorkvillite Charged With Neglecting His Family. Turned Out By His Wife," Toronto *Globe*, 17 August 1882; (1882) *Regina v. Bissell*, 1 OR, 514-26; Canada, *House of Commons Debates* (19 May 1886): 1382; (1886) "An Act to amend 'An Act respecting Offences against the Person'," 49 Vict., c. 51, s. 1. However, in 1913, when this section of the criminal statute was expanded, the issue of a married woman's competency to act as the principal witness was again reopened, requiring an amendment to the Evidence Act. (1914) *Rex v. Allen*, 17 DLR, 719-24.

56 (1910) *Rex v. Fred Y.*, AO, RG 4-32, AG, #1490.

the poor creatures had to drag the food home for them to eat."[57] Furthermore, given that destitute women and children continued to comprise a large proportion of the inmates in local Houses of Refuge, city councillors and municipal officials were particularly interested in ensuring that whenever possible, the costs of maintaining family dependents would be borne by husbands/fathers, rather than by the existing system of social welfare.[58]

The criminal records further indicate that social concerns about maintaining the economic viability of working-class family economies also influenced the administration of justice in the lower and higher courts. When husbands, for example, were convicted of minor infractions such as public drunkenness or more serious criminal offences such as wounding or theft, police magistrates and higher court judges often weighed the potential social benefits of imposing a fine or a lengthy term of imprisonment against the immediate economic needs of family dependents. As both a stern disciplinarian and benevolent paternalist, Peter O'Loane, Stratford's police magistrate, for example, frequently deferred the payment of fines or adjusted his sentences when it was evident that the defendant's family was in distressed circumstances or if he felt that a harsh penalty would cause undue economic hardship on wives and children. The case of James H., a tinsmith, who in January 1905 was convicted of public drunkenness, was fairly typical. Although he was ordered to pay a ten dollar fine or be incarcerated for ten days in the local goal, O'Loane, who meticulously made notations on the outcome of even the most minor of offences, described the accused as a "decent man of 45 with a wife and 5 children" who were depending on him for support. Evidently out of concern for their welfare, he reduced the

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[57] "Loafing Husbands Blamed: Two Scullery Maids, Forced to Steal Food, Go to Trial," Toronto *Globe*, 10 September 1913.

[58] See, for example, Ursel, *Private Lives, Public Policy*, 65-66.

fine to two dollars, with the balance to stand "so long as Deft keeps sober."[59] Six months later, Alfred M., an unemployed labourer, was fined five dollars for public drunkenness and, because he had no money to pay, would likely have spent ten days at hard labour in the local gaol. After a neighbour intervened on behalf of Mr. M.'s wife and child, however, O'Loane decided to release the accused: "It is represented to me by Mrs. G[] a neighbour that Defts wife is very ill and that their infant child is not expected to live through the day. With all this B4 me I have had Deft discharged without paying anything. He promises to pay as soon as he can get work."[60] Finally, when Frank M., a Stratford labourer, was convicted of wounding a fellow worker during a dispute at the Grand Trunk Railway yard in 1905, O'Loane initially sentenced him to three months' imprisonment in the Central Prison. After further consideration, however, he felt it best to suspend his sentence: "It is represented to me that Deft has a wife and 2 small children and is only 3 weeks in Canada, that he has no means for the support of wife and children and that all together it is best to suspend sentence or at least not put above sentence into force so long as he Deft will behave himself and keep right."[61]

In the higher courts and especially in cases involving more serious crimes, judges were often swayed by community petitions, letters of character, or pleas for leniency from

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[59] (4 and 5 January 1905) *Chief of Police v. James H.*, AO, RG 22, SPC, Box 8. For similar patterns, especially in cases of extreme poverty, see, for example, (9 and 10 December 1901) *John M. v. Albert P.*, Ibid, Box 4; (9 and 10 March 1905) *Chief of Police v. Patrick M.*, Ibid; (24 May, 8 and 14 June 1905) *Ann J. v. Thomas D.*, Ibid; (26 June 1906) *Chief of Police v. Charles H.*, Ibid, Box 10.

[60] (15 July 1905) *Chief of Police v. Alfred M.*, AO, RG 22, SPC, Box 8. For other cases in which family illness was invoked as a ground for the exercise of leniency by police magistrates, see, for example, (5 and 6 September 1904) *Chief of Police v. Isaac Y.*, Ibid, Box 7; (1 and 2 June 1906) *Chief of Police v. Edward F.*, Ibid, Box 10; "His Starving Family," Toronto *Globe*, 28 September 1887.

[61] (30 April, 1 and 2 May 1905) *John B. v. Frank M.*, AO, RG 22, SPC, Box 8. For an exception to this pattern, see "Babe Is Dying: Father In Jail. Pathetic Case of East Side Family Revealed to Police. Mother's Plea In Vain. Breadwinner Lost Job, Took to Drink and Was Arrested - Charge is Vagrancy, but Officers Could Not Grant His Release," Toronto *Globe*, 14 August 1913.

wives and other family members.[62] When Gardner H. of Haileybury was convicted of manslaughter at the Nipissing Assizes in 1907, 105 residents of various Ontario towns and cities submitted a petition, requesting that the judge "see fit to impose the lightest punishment possible to meet the requirements and further the ends of Justice." While attesting to the prisoner's "good character," they also reminded the presiding judge that "his family consists of three small children under the age of five years."[63] Similarly, while Jacob L. of Uxbridge was awaiting trial for stealing nine dollars in 1893, the section foreman at the Grand Trunk Railway's Ballantrae Station, where the prisoner had worked for four years, wrote a letter to the Ontario County Court judge emphasizing that accused was generally a "trustworthy and honest" man, this being the first time he was "in trouble" with the law. He also emphasized that "if you find him guilty please be as easy as possible as he has a wife and family depending on him for there (sic) living."[64]

The intervention of wives and other family members, however, often provided even more compelling arguments for leniency. In 1917, after twenty-two-year old Russell N. of

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62 Although the submission of petitions was a fairly common occurrence when men and women were convicted of serious criminal offences, the judges who presided over the County Court Judges' Criminal Court in the County of Ontario seemed to be particularly active in soliciting character references from local justices of the peace, police constables, and members of the community. At the same time, the criminal records of this particular court are the most detailed of the available County Court records and this may account for the number of letters and petitions still contained in the surviving case files.

63 (1907) *King v. Gardner H.*, AO, RG 22-392, District of Nipissing CAI, Box 96 (1898-1908). The petitioners included residents from Haileybury, North Bay, Toronto, New Siskeard, Brethour Mills, Orillia, Pembroke, Cobalt, Renfrew, and Callandar.

64 (1893) *Queen v. Jacob L.*, AO, RG 22, Ontario County CA/CP CCJCC Case Files, Box 3. See also the case of Jessie D. of Uxbridge township, who was caught "red handed" stealing grain from a local farmer. After his conviction in the Ontario County court, twenty-two men, including two justices of the peace, submitted a petition to the judge, which also emphasized that the accused had "a wife and family of six small children who are left in very peculiar circumstances owing to [his] committal." After some consideration, Judge Burnham noted that "in view of the petition presented to me ... I am of [the] opinion that the ends of justice will be as well served by reducing the term of imprisonment" from three years to two years hard labour in the Kingston Penitentiary. (1895) *Queen v. Jessie D.*, AO, RG 22, Ontario County CA/CP CCJCC Case Files, Box 4.

Trenton pleaded guilty to a charge of larceny, his wife wrote a heartrending letter to Judge McGillvray, the Ontario County Court judge, requesting that he let her husband off on a suspended sentence. "I know he has done wrong," she wrote,"but I am only asking you ... to think a moment to give him one chance and I know he will never be guilty of such a thing again as he has certainly leard (sic) a good lesson since He has been in prison." She went on to lament that there was nothing worse than having "your husband in trouble." "I need his care more now than ever before," she added, so "please do have a little sympathy for me ... only this once." To reinforce her point, she ended her letter by apologizing for having written with a "led pencil," noting that it was because her supply of ink was "frozen." Russell's aging parents, who also lived in Trenton, wrote a similar letter, asking the judge to "spare" their son, the "baby of the family" who had always been a "good boy," had kept "good company," had never been "in trouble before," and had regularly attended "church and Sunday school." Promising that they would ensure that he would be "a good boy" in the future, they emphasized that he was their "only support" and they desperately needed his assistance since his father was "crippled" and could not "do any work" and his mother "was so badly broken over this that she is very sick and it is shortening her days."[65]

Legal officials, however, were decidedly less sympathetic when the male defendant's domestic behaviour was less than exemplary. What these criminal cases tend to highlight is that a working-class husband's character was just as likely to be measured by

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[65] (1917) *King v. Russell N.*, AO, RG 22, Ontario County CA/CP CCJCC Case Files, Box 17. Some wives, like Grace H. of Washago, also intervened on behalf of husbands found guilty of such crimes as indecent assault. In her statement to legal officials three days after her husband was convicted of indecently assaulting a married woman, Mrs. H. stated that if he was "sentenced to [the] gaol," she would be "in dire straights in the coming winter," given that her husband had "lost all his savings" and she had six children under her care all between the ages of eighteen months and fourteen years. Furthermore, she was "in the family way and expect[ed] to be confined in a few months, and I have no person at our home to help me." In light of these circumstances, she "humbly" prayed that "his Honour will deal leniently with myself and my little children in passing sentence" on her husband. In the end, he was released on a suspended sentence. (1909) *Rex v. Charles H.*, AO, RG 22, Ontario County CA/CP CCJCC Case Files, Box 10.

his performance as a reliable and sober breadwinner as it was by other criteria, such as industriousness in the workplace, the steadiness of his employment history, and even the presence or absence of a previous criminal record. In 1912, when John M. of Thorold was suspected of stealing some dressed leather from the Robson Leather Company in East Whitby township, local police, "after a great deal of chasing and telegraphing," eventually arrested him "at the home of his father." As part of their investigation, Whitby's chief constable and the Ontario County Crown Attorney contacted the Thorold police magistrate, requesting information about the accused. In his response, the magistrate noted that while the prisoner had one previous conviction for petty theft, the main reason he considered him to be "no good" was that sometime earlier, "he left his wife" and children, "went over to the States with a young girl," and it was only "after a good deal of trouble [that] he was got back." On this basis, he felt that a "suspended sentence would be of no use" and that he "ought to have a term of imprisonment."[66] Cornelius V. of Uxbridge, who was charged with stealing some wood from his neighbour in 1907, also did not receive a positive character reference from the local justice of the peace. Even though the accused had "steady work in the tannery," he wrote, his wife and family were "not in very good circumstances." According to the justice of the peace, this was principally because the accused "spends altogether too much his earnings in beer," especially "on the nights of pay day," and in his opinion, his committal would "have a wholesome effect."[67] Finally, Hiram T., an Oshawa labourer who over a fifteen year period was convicted of a number of larceny offences and in 1891 received a suspended sentence on a charge of theft on the condition that he would "undertake to conduct [him]self properly," received repeated

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[66] (1912) *King v. John M.*, AO, RG 22, Ontario County CA/CP CCJCC Case Files, Box 12. Although the defendant's wife also attempted to intervene on his behalf, Mr. M. received a sentence of three months in the common gaol at hard labour.

[67] (1907) *King v. Cornelius V.*, AO, RG 22, Ontario County CA/CP CCJCC Case Files, Box 9.

warnings from local officials to "reform" his behaviour. Besides his criminal record, he was denounced as "a drunken worthless person," who both neglected his family and illtreated his wife. In 1894, for example, the County Crown Attorney wrote him a stern letter, in which he reminded Mr. T. that the conditions of his earlier suspended sentence still applied. Given that a complaint had recently been made that "you have been guilty of drunkenness and disorderly conduct, and that you do not support your wife and children," he dispatched a strong admonition: "Take notice that unless you immediately abandon your drinking and disorderly habits and support your wife and family properly, I will have a warrant issued for your arrest and use my best efforts to have you sentenced to a long term of imprisonment either in the Central Prison or penitentiary ... I am giving you this chance to reform and to use your wife and children properly." Four years later, Hiram was again summoned before the County Court judge, for not having fulfilled the conditions of his original suspended sentence: "Compt having been made by [your] wife of illtreatment," he was bound to keep the peace toward his wife for two years. He was also ordered "to apply half of his earnings in and towards the support of his family."[68]

Finally, some male defendants cited difficulties securing steady work and the burdens of attempting to provide for family dependents as explanations for committing such crimes as theft. While periodic or chronic unemployment was by no means an uncommon phenomenon under the wage labour system,[69] in certain situations, these justifications fell on deaf ears. This was especially the case if legal officials interpreted them

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[68] (1898) *Queen v. Hiram S.*, AO, RG 22, Ontario County CA/CP CCJCC Case Files, Box 6.

[69] Occasionally, male workers also cited unemployment as the motive behind attempting to commit suicide. See, for example, (1894) *Queen v. Thomas T.*, AO, RG 22, Ontario County CA/CP CCJCC Case Files, Box 3; (1906) *King v. Frederick H.*, AO, RG 22, Niagara North CCJCC Case Files, Box 8. When Joseph Lawlor of Toronto found himself "out of work," he proceeded to get drunk and was so "ashamed to face his family" that he attempted to jump into the bay at the Sherbourne street wharf. "Ashamed to Meet His Family - Joseph Lawlor Attempts Suicide," Toronto *Globe*, 2 December 1889.

as mere excuses devised by the indolent or those who otherwise constituted a drain on the public purse. In 1908, Henry G., a blacksmith's helper by trade, and Alfred V., a labourer, who had recently emigrated from England with their families, were both arrested for stealing a bag of coal from the Grand Trunk Railway yard at Cedar Dale. In testifying in their own defense, they both assured the County Court judge that they were temperate men. They further explained that they had not been able to obtain work for the last six months and simply could not afford to buy basic necessities. "Why I took the coal was because I am out of work," Henry argued, "and I could not see my wife and [three] children sitting without a fire. They are not only cold but they go without food too. My wife is expecting a baby every hour now. I take it because I cant buy it you see." Unmoved by his explanation, legal officials in Oshawa and Cedar Dale reminded the County Court judge that three months earlier, Henry had been acquitted of a charge of vagrancy on the condition that he "get to work and do better." In their opinion, however, neither defendant had "made any great effort ... to find employment" and, for the last six months, both men and their families had relied on public relief. Characterized as "undesirable" immigrants and "idle and worthless" men, local authorities strongly recommended that the whole lot should "be deported." On this basis, both men were given indefinite prison sentences, pending the processing of their deportation orders by the Department of the Interior.[70] Finally, legal officials were at times decidedly hostile when they suspected that working-class husbands were exploiting their responsibilities as breadwinners as a way of obtaining the leniency of the courts. In 1906, Alexander B. of Uxbridge, who pleaded guilty to a charge of obtaining a load of lumber under false pretences, asked the local justice of the peace to write a letter to the Ontario County Court judge, so that he might "be lenient with him because of his family," having a wife and two young children to support. The justice of the peace did

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70 (1908) *King v. Henry G. and Alfred V.*, AO, RG 22, Ontario County CA/CP CCJCC Case Files, Box 10.

comply with this request, but the letter contained a scathing assessment of Alexander's character. Given his "poor reputation in town," he was portrayed as "a very undesirable ... resident of any place." While the justice of the peace did concede that Alexander's family was in distressed circumstances, he was nonetheless convinced that the accused was "not of much use to them" and that they were "better [off] without him." In light of his otherwise bad reputation, he added, Alexander's "strong plea for leniency because of his family is the only one he knows would have any effect."[71]

Given the extent to which married men's performance as family breadwinners became the object of social and legal scrutiny and the degree to which non-support was increasingly viewed as a serious social problem at the turn of the century, when deserted and neglected wives took their grievances to the criminal courts, they could usually expect to receive a judicious hearing. In practical terms, however, the existing criminal laws that were meant to deal with non-support were not without significant limitations. Especially prior to the 1913 amendment, the circumstances under which husbands could be prosecuted for failing or refusing to supply necessaries were quite restrictive. In effect, a married woman not only had to provide evidence that her husband was capable of providing for her and that his failure to do so was "wilful and without lawful excuse," but also that her health and life were injured or endangered because of that omission. Members of the judiciary also emphasized that it "would be absurd to convict the husband as a criminal" if his wife was "in no need whatever of support," if she "without justification" absented "herself from [her] husband's roof, and without excuse refuse[d] to return," or

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[71] (1906) *King v. Alexander B.*, AO, RG 22, Ontario County CA/CP CCJCC Case Files, Box 8. He was sentenced to six months imprisonment at the Central Prison at hard labour.

indeed if she was consorting with or "living with another man."[72] Finally, even if convicted, the punishments meted out both under the vagrancy act or the failure to supply necessaries provisions may have offered a way of censuring and punishing husbands, and 'encouraging' them to be better providers, but they offered little tangible basis for alleviating the immediate economic distress of wives and children. Nor did these punishments provide any guarantees that husbands would, after paying a fine or being released from the local gaol, contribute anything further towards the survival of members of their families.

The enactment of the Ontario Deserted Wives' Maintenance Act in 1888[73] and its subsequent amendments represented an attempt on the part of Ontario legislators to overcome some of the limitations associated with treating a husband's non-support as a criminal offence. Similar to legislation passed in Britain in 1878,[74] it also reflected an even greater commitment on the part of the state to ensure that whenever possible in cases of temporary or permanent marital separation, the costs of maintaining working-class wives and children would remain the primary economic responsibility of husbands and would not become a social burden on municipalities or on local charities. More specifically, as the

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72 (1877) *Queen v. Nasmith*, 42 UCQB, 242-50; (1869) *Patterson v. McGregor*, 28 UCQB, 291; (1882) *Regina v. Bissell*, 1 OR, 514-26; (1897) *Queen v. Robinson*, 1 CCC, 30; (1906) *King v. Wilkes*, 11 CCC, 226-31; (1911) *The King v. Wood*, 19 CCC, 15-25.

73 (1888) "An Act respecting the Maintenance of Wives deserted by their Husbands," 51 Vict., c. 23 (Ont.).

74 The 1878 Matrimonial Causes Act empowered magistrates to grant wives legal separations "with maintenance, together with limited rights over custody of children." Subsequent acts in 1884, 1886, and 1895 consolidated and expanded the powers of magistrates to grant separation orders. Rachel Harrison and Frank Mort, "Patriarchal Aspects of Nineteenth-Century State Formation: Property Relations, Marriage and Divorce, and Sexuality," *Capitalism, State Formation and Marxist Theory: Historical Investigations*, ed. Philip Corrigan (London: Quartet Books, 1980), 96; Margaret May, "Violence in the Family: An Historical Perspective," *Violence and the Family*, ed. J. P. Martin (Chichester: John Wiley & Sons, 1978), 149-50.

political debates over the act suggest, the proposed legislation sought to grant poor and working-class wives the same opportunity to petition for maintenance allowances in the lower criminal courts as enjoyed by middle-class married women seeking alimony settlements in the more costly civil courts. One legislator, Mr. Meredith, pointed out that "everybody must sympathize with the object of the bill," particularly since the existing legal mechanisms were "practically a denial of justice for the poor." Premier Oliver Mowat was more explicit in outlining the main purposes of the act: "At present a husband who deserts his wife and family or neglects to support them is liable to fine and imprisonment, but this remedy is a very unsatisfactory one for the family. The bill proposes that the same tribunal, namely a magistrate or two justices of the peace, shall have power to order payment of an allowance in such a case. The Superior Courts now have this power, but the procedure is too expensive for many women to undertake."[75]

Under this legislation, a wife deserted by her husband could summon him before a police magistrate or two justices of the peace and obtain a court order for the payment of a weekly sum, not exceeding five dollars[76] towards her support and that of her children. (The maximum weekly allowance was raised to ten dollars in 1911 and to twenty dollars in 1920.)[77] In 1897, the definition of a 'deserted wife' was enlarged, going beyond a

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[75] *Ontario Legislative Assembly Debates*, 16 February 1888.

[76] This was reduced from the initial proposal of ten dollars a week.

[77] *Ontario Legislative Assembly Debates*, 16 February and 15 March 1888; (1911) "An Act respecting the Maintenance of Wives deserted by their Husbands," 1 Geo. V, c. 34, s. 2; Allan M. Dymond, *The Laws of Ontario Relating to Women and Children* (Toronto: Clarkson W. James, 1923), 36-41. In 1921, similar legislation was passed in Ontario to enforce the economic responsibilities of adult children for the support of parents who, because of age, disease, or infirmity, could not maintain themselves. Under its provisions, a dependent parent or a third party could summon a son or daughter before a police magistrate or two justices of the peace, and if it was determined that s/he had sufficient means to provide for the parent, the son or daughter was liable to pay a weekly allowance not exceeding twenty dollars. In the case of non-payment, the son or daughter could be fined or be sentenced to a term of imprisonment. (1921) "An Act to provide for the Maintenance of Parents by their Children," 11 Geo. V, c. 52.

husband's withdrawal of financial resources. This broadened definition included a wife who was voluntarily living apart from her husband because of his refusal or neglect to provide for her maintenance or as a result of "repeated assaults or other acts of cruelty."[78] The major significance of this amendment was that it provided the first statutory mechanism whereby working-class wives could leave their brutal and neglectful husbands, without necessarily relinquishing access to necessary support or subsistence. Not surprisingly, the main restrictive clause stipulated that if the courts established that the female plaintiff had committed adultery (unless condoned) before or after the order for weekly payments had been made, her right to maintenance would be disallowed or rescinded. If she committed adultery, her economic support would become her own responsibility, or that of her immediate family, her lover, or if she remarried illegally, her bigamous husband.

Although the Deserted Wives' Maintenance Act itself did not generate heated opposition in the Ontario legislature, there was some controversy over the specific parameters of the legislation. When it was first introduced, Mr. Meredith sarcastically suggested that two "companion piece[s]" might prove to be legally useful and necessary, one providing "for the maintenance of husbands deserted by their wives," and the other offering "relief [for] wives who have to support husbands that haven't the decency to desert."[79] While his suggestions were not the subject of further discussion, the question of legal jurisdiction became one of the main sources of debate and contention. Several legislators insisted that because the "question of a woman's virtue" would invariably be raised in cases adjudicated under this legislation, the most accessible legal forum - the local police courts - constituted a highly inappropriate tribunal. The main rationale behind this

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[78] (1897) "An Act respecting the Maintenance of Wives deserted by their Husbands," 60 Vict., c. 14, s. 34 (Ont.). It also seems that First Nations women were "entitled to the benefit of [this] Act, it being the only one for white people and Indians." (1908) *In Re Woodruff*, 26 OLR, 348-49.

[79] Toronto *Globe*, 28 January 1888.

objection was that legislators assumed that "women would be deterred from taking proceedings ... by the fact that the tribunal was the Police Court" presumably because the hearings would be held in these notoriously public forums within their local communities. Equally objectionable was the fact that lay magistrates and justices of the peace, who were frequently maligned for their lack of legal training and experience and for their propensity to dispense criminal justice according to their own "whims and prejudices,"[80] were not competent to adjudicate cases involving such a serious issue as "a wife's chastity" nor should they be given such extensive powers as to "grant alimony." For these reasons, it was strongly urged that these cases should be heard at the county court level, in the presence of suitably qualified, educated, and experienced judges. Other legislators, including Oliver Mowat, consistently maintained that the police courts constituted the best possible and most accessible forum, especially since maintenance cases could be tried summarily and poor women would be relieved of the financial burden of hiring lawyers. After considerable debate on this question, a compromise was reached. According to the provisions of the legislation, these cases could, at "the discretion of the magistrate or justices, be heard in private," a procedure which one Toronto grand jury later argued, should become the general practice in all criminal cases involving non-support:

> Non-support seems to be on the increase and your Jury feel that the present

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[80] For example, in 1883, the presiding judge at the Middlesex Spring Assizes stated that "a good magistrate in a neighbourhood was an exceedingly useful public functionary, but when he induced petty contentions among neighbours, instead of being a benefit he was an actual curse to the community. It was a pity the magistrates of this country were not always selected by reason of their qualifications to discharge the important duties devolving upon them. They were frequently selected from political considerations ... [but] should be selected by reason of their fitness." Toronto *Globe*, 26 April 1883; Graham Parker, "The Origins of the Canadian Criminal Code," *Essays in the History of Canadian Law*, Volume 1, ed. David H. Flaherty (Toronto: University of Toronto Press, 1981), 267-68. Colonel George T. Denison, who presided over Toronto's police court from 1877 to 1919, was perhaps the most notorious in this regard. As a political appointee with "no particular expertise with regard to crime," Colonel Denison had "no use for legal technicalities and niceties," but relied on intuition and common sense when dispensing his form of justice. Colonel George T. Denison, *Recollections of a Police Magistrate* (Toronto: The Musson Book Co. Ltd., 1920); Gene Howard Homel, "Denison's Law: Criminal Justice and the Police Court in Toronto, 1877-1921," *Ontario History* 73, 3 (September 1981): 171-86; Craven, "Law and Ideology," 267-86.

> legal procedure does not give sufficient protection, as many women, rather than face the shame of Police Court proceedings, will for years tolerate and support shiftless, worthless husbands. In this connection, we would suggest that some means be devised whereby such cases will be heard in camera ... Some such method would, in our opinion, afford protection to the wife, which is now entirely lacking without distasteful proceedings.[81]

Although the periodic discussion over the question of legal jurisdiction and the protection of married women's anonymity was partially motivated by a desire to facilitate the better prosecution of delinquent husbands, there is little indication in the criminal records that 'shame' inhibited poor and working-class women from lodging non-support complaints or from claiming maintenance. In its original form, what the whole debate did indicate was the extent to which Ontario legislators anticipated that determining the plaintiff's moral character would be a central aspect of the legal proceedings. In practice, the inclusion of an adultery clause under the Deserted Wives' Maintenance Act and in non-support cases more generally seemed to have had two main consequences. First, it did tend to ensure that, in the majority of instances, only 'virtuous' wives dared to lay criminal charges or attempt to petition the court for economic maintenance.[82] At the same time, it also provided one ingredient which shaped the dynamics of the criminal trials, in that married women were positioned in such a way that they had to persuade the magistrate that

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[81] (1909) "Grand Jury Presentment, York County," AO, RG 4-32, AG, #249. As Dorothy Chunn has argued, similar arguments were made by Ontario middle-class reformers in advocating the establishment of domestic relations or family courts in the 1920s. Dorothy E. Chunn, "Regulating the Poor in Ontario: From Police Courts to Family Courts," *Canadian Journal of Family Law* 6, 1 (1987): 85-102.

[82] In fact, among the petitions for economic maintenance under the Deserted Wives' Maintenance Act, only one case surfaced in which the adultery of the plaintiff became a central issue. In 1918, Eugene E. of Eastview contested the legitimacy of his wife's application for a maintenance order, by charging her with perjury. He contended that five days earlier, when she appeared in the Ottawa police court, she had lied when she swore that since her marriage, she "had not kept company with other men." While this did not necessarily constitute adultery in the formal sense, Mr. L. strongly suggested that given her immoral behaviour, the petition for weekly maintenance was wholly unjustified. Upon her conviction for perjury and after receiving a sentence of twenty-four hours' imprisonment in the common jail at hard labour, it was unlikely that the police magistrate would grant her a maintenance order. (1918) *Eugene L. v. Marie L.*, AO, RG 22, Carleton County CA/CP Case Files, Box 3975.

they were not only economically, but also 'morally', deserving of the financial support of their husbands. If interpreted broadly, this clause also provided male defendants with a potentially potent weapon for claiming that their wives' were unworthy of both economic and legal protection.

Desertion and non-support were by no means new phenomena that suddenly appeared with the expansion of the wage labour system in the late nineteenth century. Nor were poor and working-class husbands, as was often assumed, the only perpetuators of these 'crimes', given the number of respectable middle-class men and well-to-do farmers who were sued for alimony in the civil courts.[83] Nevertheless, under the industrial-capitalist system in which the state sought to strengthen the institutions of marriage and family as basic units of civil society, the shifting legal environment did increasingly offer both rural and working-class married women the space to initiate criminal proceedings against what they identified as violations of the economic contract of marriage. This did not mean, however, that their complaints went uncontested: once in the courtroom, wives and husbands often confronted each other with very different and competing interpretations of the boundaries between wifely rights and husbandly responsibilities.

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83 For example, in her extensive survey of the Court of Chancery records, Lori Chambers compiled 311 alimony cases and argued that "although the occupations of the husbands in these cases varied widely, all had achieved at least moderate economic success." Chambers, *Married Women and Property Law*, chapter 2, esp. 31.

Tales of Desertion and Non-Support, 1870-1920

Despite the enactment of various criminal laws and protective legislation which defined the legal parameters of what constituted non-support and desertion, these provisions were rendered irrelevant if husbands abandoned their families and temporarily or permanently disappeared without a trace. While the socioeconomic consequences of desertion were not dissimilar to situations when family economies were undermined by the death, disability, and injury of the primary breadwinner,[84] the intentional abandonment of wives and children, without warning or reason, usually elicited severe social and legal condemnation. These irresponsible and callous actions were not only constructed as a transgression of the codes of respectable manhood and as a threat to the stability of individual family economies, but also as the violation of a 'public obligation'. As a number of legal authorities emphasized, the failure to fulfil the "natural and moral duties" of providing basic necessities for family dependents, of which desertion was the harshest manifestation, constituted both a "private injury" and "an outrage upon the moral duties of society."[85]

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[84] See, for example, "Death and Destitution," Toronto *Globe*, 9 April 1883, which recounted the story of Peter Ferguson, a labourer, who had been unemployed for the last six months and then died of pneumonia. Shortly after his death, two neighbourhood women visited the house and "found his wife and six children without food." The report also noted that, during the period when her husband was unemployed, Mrs. Ferguson had not "applied to [any] charitable institution for assistance, having worked for her living." In some instances, however, newspapers published calls for subscriptions to assist working-class families in dire need and especially those who were considered "deserving of assistance" because of the injury or unemployment of the primary breadwinner. "A Cruel Warning," Toronto *Globe*, 4 February 1882; "A Deserving Case," Toronto *Globe*, 18 December 1884; "Family Were Starving: A Pitiful Letter Received By City Magistrate," Toronto *Globe*, 10 December 1908.

[85] Taschereau, *The Criminal Code*, 148, 198-99; (1897) *Regina v. Robinson*, 28 OR, 407-09, 1 CCC, 28-30; "Prince Edward Spring Assizes," Toronto *Globe*, 17 May 1876. For perspectives on the connection between the male breadwinner ideal and respectable manhood, see, for example, Anna R. Ingra, "Male Providerhood and the Public Purse: Anti-Desertion Reform in the Progressive Era," *The Sex of Things*, 188-211. In addition, some husbands took offence at insinuations that they were inadequate family providers. In 1891, for example, Joseph B. and Jesse W. of Galt came to blows when the former allegedly insulted the latter, by suggesting that his performance as the male breadwinner was substandard. As Jesse declared in his deposition to the local police magistrate, the "deft says what is not true, have always

Not surprisingly, then, when William Armstrong, a London tailor, packed his bags, took "every cent he could lay his hands on" to purchase a ticket to Philadelphia, and left his elderly wife to care for their dying twelve-year-old daughter, his "conduct" was described in the local press as "heartless in the extreme." "The husband, who should have stood by the family in the house of affliction," wrote the London reporter, "actually ran away the morning before the child died." After interviewing the neighbours, he was also in a better position to evaluate the Armstrong's domestic situation. "Unhappily, the man took to drink," he wrote, "and soon the family became reduced in circumstances ... He not only ran debt, but would come home drunk and knock things around, even in the room where the sick child was." He concluded by emphasizing that Mr. Armstrong had absolutely no justification to leave his now "destitute" and "distressed" family: "the woman has been a good wife to him, and her children obedient and industrious."[86] What was often considered equally reprehensible was when the abandonment of wives and children was precipitated by the desire to pursue a relationship with another woman. In 1898, Frederick H. of Newmarket was charged with theft in connection with his elopement with a married woman from Uxbridge township. In a scathing letter written to the Ontario County Crown Attorney, one Newmarket legal official stressed that, given his hardhearted and immoral behaviour, "jail is the only fit place for him":

> A few years ago he came around here and met an old maid who had a few Hundred dollars - and married her -; then squandered her money running

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supported my wife and family." (30 July 1891) *Jesse W. v. Joseph B.*, AO, RG 22, GPC, Volume 10.

[86] "A Sad Case Of Desertion: An Unfeeling Husband Runs Away from His Wife and Dying Child," London *Advertiser*, 2 May 1884. See also "Distress," Toronto *Globe*, 6 November 1876; "Left Town," *Stratford Evening Herald*, 29 June 1896; "Man Deserts His Sick and Helpless Wife and Family," Toronto *Globe*, 8 September 1906; "The Mysterious Husband," Whitby *Gazette and Chronicle*, 10 July 1913. Newspapers also published accounts of Ontario wives, who were deserted and left stranded and penniless in the United States. See, for example, "Wife Desertion. A Canadian Bride Deserted in Chicago," Toronto *Globe*, 11 March 1882; "Hunting For A Bad Husband," Toronto *Globe*, 1 October 1887; "An Alleged Toronto Husband," Toronto *Globe*, 30 November 1889.

> around with loose women - when everything was gone he deserted his wife - and she has been working out for a living - and contributing frequently to him a portion of her earnings - only a short time ago the woman lived with a man by [the] name of W. W. P[] for a pottery sum of $2.50 per month - and her brute of a Husband went to P[] and drew one month of her wages without her knowledge and ran off to Goodwood with the money to see his wicked paramour ... he wont work and wont do a thing toward supporting his lawful wife but spends his time consorting with loose women ... he was a very great Salvation army man - [but ran] after every loose character in the army - of whom there were several.[87]

In addition to situations of outright abandonment, the insecurities of seasonal work, periods of unemployment, or low wages did, as mentioned in the last chapter, contribute to high rates of migration and transiency among single and married male workers. These circumstances could offer husbands the opportunity to escape their marital relationships and relieve themselves of the burdens of their role as breadwinners.[88] While this may have been a common form of 'self-divorce', especially among the poor and working classes, the economic inequalities within a male family-wage economy meant that the husband's desertion posed no substantive threat to his livelihood, but could drive a married woman to

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[87] (1898) *Queen v. Frederick H.*, AO, RG 22, Ontario County CA/CP CCJCC Case Files, Box 6. See also "A Husband Reclaimed. The Experiences of a Sewing Machine Agent," Hamilton *Spectator*, 6 November 1883; "Deserted," Toronto *Globe*, 3 December 1880; "A Lobo Couple Depart in Company," Toronto *Globe*, 4 November 1889; "An Erring Husband Found," Toronto *Globe*, 28 December 1888; "Leaving His Wife Destitute" and "The Alleged Elopement," St. Catharines *Journal*, 23 November and 3 December 1880; "Canadian," Toronto *Globe*, 30 November 1883; "Elopement of a Married Man with a 17-Year-Old Girl," Toronto *Globe*, 16 October 1884; "A Deluded Girl" and "McColl's Elopement," Toronto *Globe*, 23 May and 9 June 1884; "An Exciting Scene: Intercepting a Runaway Husband at the Great Western Station," Toronto *Globe*, 22 October 1879; "The Alleged Elopement," Toronto *Globe*, 25 January 1888; "Calls Himself A Man! Yet Deserts the Penniless Mother of His Six Children and Consorts With a Younger Woman," *Stratford Evening Herald*, 26 June 1896; "A Guilty Pair," Toronto *Globe*, 28 November 1889; "Woman In Hospital Deserted By Husband: Small Children Were Left to Care For Themselves ... Police Are on Trail of Delinquent Husband, Who is Believed to Have Eloped With Another Woman," Toronto *Globe*, 10 September 1910.

[88] It should be noted that, while working-class husbands' temporary absences could easily translate into permanent abandonment, it was generally the married woman left behind who determined if and when that line had been crossed.

the point of real desperation.[89] In 1913, when Mary N. of East Whitby township was arrested for stealing a quantity of coal from a Grand Trunk Railway car, while enroute to the Ontario Malleable Iron Works in Oshawa, she implored the Oshawa police magistrate to treat her with leniency. "I couldn't help it," she stated, "my husband left me more than three months ago and didn't send me no money. I have four children and the children feel cold and it was first time I went to take coals to make warm for the house. I ask you to deal kindly to me and my children."[90] The domestic situation of twenty-four-year-old Evyline W. of Stratford was equally precarious. As she explained to the local police magistrate in 1897, when her husband, a labourer, "lost his situation here and could not easily get work" because "his habits were not good - he was a drinking man," he decided to leave her and her three young children, "saying he was going to the United States to look for work." Since his departure, she had neither "heard from him" nor had he "remitted [her] any money." For a short time, she was able to generate some income through "small sales of my furniture," but with her financial resources "now gone," she was forced to rely on aid "from those kind enough to bestow it." Fortunately, her friend, Mary, who worked at a local mill, had been giving her most of her wages, since she had "no means whatever of supporting her children." But as Evyline further revealed, her distressed circumstances were not only caused by the absence or desertion of her husband. Having married at the age of fourteen and borne three children, she indicated that "on account of the care that I have had to give my children," she could not learn a trade and had "not been able to do

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[89] In fact, some married women were evidently so disheartened by their husbands' desertion that they were driven to suicide. "Suicide at Hamilton. Mrs. Lindberg Hangs Herself At The Cemetery ... Her Husband's Absence Thought to Have Preyed on Her Mind" and "Husband Missing," Toronto *Globe*, 14 and 15 September 1906; "Woman Begs Police To Let Her End Life. Deserted By Husband, Mrs. Jessie Duncan Takes Carbolic Acid," Toronto *Globe*, 9 February 1912; "Despondent Woman Dies. Mrs. Sarah Finch Drinks Carbolic Acid," Toronto *Globe*, 14 February 1912.

[90] (1913) *King v. Mary N.*, AO, RG 22, Ontario County CA/CP CCJCC Case Files, Box 13.

anything in the way of earning money." She also suggested that, while she might be able to earn a livelihood for herself "by work and labor," she was no longer able to support her children. Since they were "now in actual need of food and clothing," she was "anxious" to turn them over to the County of Perth Humane Society.[91]

When husbands did disclose their intention to go 'tramping' in search of work, some wives, however, exhibited considerable determination in attempting to avert their spouses' desertion,[92] or in securing information about their whereabouts. In 1877, Andrew S., a lather by trade, notified his wife that because of the constant and at times violent disputes with his stepson, he could no longer tolerate living in the same household with her and her children and that he was going to the United States to secure employment. After his departure, Mrs. S. immediately made enquiries at the Galt train station in order to pinpoint his exact destination and learned that he had "only taken his ticket" as far as Dundas," where as she later discovered he was living with his father and working in a local

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91 (8 December 1897) *George D. v. Margaret W., Maud W., and William W.*, AO, RG 22, SPC, Box 1. Twenty-two-year-old Mary Z. of Hesson found herself in an equally vulnerable position. As she explained to the Stratford police magistrate, she was forced to enter the local House of Refuge after her husband, a labourer, deserted her and her four children, all of whom were under the age of five years. She too stated that she had little choice but to place two of her children in homes and thought it "best and right" to hand the other two over to the County of Perth Children's Aid Society. (23 June 1898) *George D. v. Mary Z.*, Ibid. For other cases in which deserted wives felt compelled to give up or abandon their children, see (1862) *Queen v. Christina M.*, AO, RG 22-392, Lanark County CAI, Box 75; (7 July 1897) *James K. and James C. v. John G., Avery G. and Claribel G.*, AO, RG 22, GPC, Volume 11; "A Deserted Infant," Toronto *Globe*, 19 May 1892. As single mothers, deserted wives faced other difficulties as well. In 1912, for example, when fifteen-year-old William A. of Reach township was charged by a local farmer with arson, his impoverished mother asked the County Court judge to treat her son with leniency. She asserted that after her husband deserted her, she was left with the responsibility of supporting her mother and four infant children. While she did "washing for a living," her son "helped her to support the family" by handing over all of his earnings. In contrast, Mary K. of Eastview, who had also been deserted by her husband, told the local justice of the peace in 1911 that as a working mother, she could not control her "disobedient," "troublesome," and "disorderly" thirteen-year-old son. Consequently, she explicitly asked the magistrate to send him to "an Industrial School for boys." (1912) *Rex v. William A.*, AO, RG 22, Ontario County CA/CP CCJCC Case Files, Box 11; (1911) *Mary K. v. William K.*, AO, RG 22, Carleton County CA/CP Case Files, Box 3970.

92 See, for example, "Constable Brings Back An Erring Husband: Shows Him The Foolishness of Deserting Wife and Secures Him Work," Toronto *Globe*, 12 December 1913.

shop as a lather.[93] Furthermore, if husbands were absent for a prolonged period without word, wives might employ a whole series of methods to determine what had become of them: some read death notices on a regular basis or launched investigations after reading newspaper accounts about unidentified men who had been killed in another town;[94] others asked for the assistance of police in locating their husbands' last known place of residence or requested that local newspapers insert notices soliciting information;[95] and still others went 'tramping' in search of their 'truant' spouses. The arrival of deserted wives in a particular town or city, however, could elicit a mixed response. While they were at times applauded for their resourcefulness, legal officials were inclined to offer those women on the verge of destitution sufficient money to travel to the next town, lest they decide to remain and become part of the local population of relief applicants, vagrants, or petty

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93 (22 January 1877) *Agnes S. v. Andrew S.*, AO, RG 22-13, GPC, Volume 5. In 1880, Mary C. of Toronto testified at her husband's nonsupport trial that, when he left her about fifteen months earlier, "he said he had got a situation in St. Thomas and as soon as he got settled down he would send for me, but he ... never sent for me ... I heard he was in Chatham and I went there and found he was in that place ... He promised to send me money but never has." (1880) *Queen v. Edward C.*, AO, RG 22-392, Oxford County CAI, Box 112. Some wives, like Mrs. Cambridge of London, went one step further. After realizing that her husband had abandoned her and gone to Hamilton, she immediately alerted local authorities, who issued a warrant for his arrest on charges of non-support. "London ... Abandonment of a Wife," Toronto *Globe*, 29 January 1881.

94 See, for example, (1882) *Giles v. Morrow*, 1 OR, 527; "Was It Martin? Mrs. Martin in Search of Her Lost Husband," Hamilton *Spectator*, 5 April 1883; "A Missing Man," Toronto *Globe*, 6 April 1883.

95 For example, Mary Pepper from Eccles near Manchester wrote to the Provincial Secretary asking for information as to the whereabouts of her husband of whom she had lost all trace. She stated that the last she heard was that he was working on a farm in Parkdale, six miles from Toronto. "His little boy has died and his wife is anxious to hear from him." The report also stated that "any information forwarded to the Provincial Secretary's Office will be communicated to his wife." "A Missing Husband," Toronto *Globe*, 13 October 1884. Similarly, Mrs. C. F. Masters, the wife of a Buffalo clothing salesman who was left "in destitute circumstances" when her husband deserted her, sought information as to his whereabouts through Ontario newspapers. Toronto *Globe*, 4 October 1890. See also "The Girl He Left Behind," Toronto *Globe*, 30 May 1884; (1908) "J. M. E. S[], 163 Canningate, Edinburgh. Asks assistance ... locating one Wm D[] who has deserted his wife," AO, RG 4-32, AG, #1245.

criminals.[96]

Given these general patterns, legal officials increasingly advocated greater vigilance in locating and apprehending absconding husbands, believing that this would simultaneously reduce the number of wife desertions and save social welfare costs. In 1914, Walter H., the Crown attorney for the District of Parry Sound, wrote the Attorney General's Office requesting permission to use public funds to dispatch a constable to Medicine Hat to arrest a Mr. S. and return him to the province to face charges of wife desertion. He described it as a "flagrant case: an abandonment without cause of a wife and two or three children, all of whom were immediately thrown on the town for maintenance." In an effort to justify the expense, he cited two other recent cases, arguing that "desertion of the kind in question has become much too common, encouraged doubtless by the immunity from pursuit where refuge is taken in the far West." For these reasons, he expressed confidence "that the money spent will be well spent, and must ultimately act as a deterrent to others having similar designs."[97] Beginning in the 1910s, Ontario legal authorities also advocated strengthening Canada's criminal laws, by introducing a provision whereby a married man who deserted his wife and eloped with another woman

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[96] See, for example, "His Wife A Sleuth: She Owned a Bicycle and Made Use of it," *Stratford Evening Herald*, 22 July 1896; "Where Is Joseph Sutton? A Woman Travels from City to City in Search of Her Husband," Toronto *Globe*, 10 April 1883; "Police Court," *Ottawa Times*, 18 June 1870; "A Sad Case," Toronto *Globe*, 4 November 1876; "Looking For A Runaway Husband," Ottawa *Citizen*, 24 April 1882; "A Modest Request," Toronto *Globe*, 20 December 1888; "A Pitiful Case," Toronto *Globe*, 17 October 1890; "The Gambler's Wife. Pitiful Tale of Mrs. Tufts, who was Stranded at London," *Stratford Evening Herald*, 6 May 1896. The response of local officials could also be more punitive. When Elizabeth B. was arrested in Galt in 1874 for "being drunk on the public streets and incapable of taking care of herself," she stated that she had come "from Woodstock to look after her husband who was at work in one of the Tanneries." The local magistrate discharged her on the condition that she leave town immediately. (12 June 1874) *William B. v. Elizabeth B.*, AO, RG 22-13, GPC, Volume 4.

[97] (1914) "As to bringing one S[] charged with wife desertion from Medicine Hat for trial," AO, RG 4-32, AG, #862.

would be liable to a term of imprisonment.[98] In addition, state officials, social reformers, and child welfare advocates lobbied for the expansion of the extradition treaty between Canada and the United States so that "men who desert[ed] their families" and escaped "across the line" could "be brought back at the public expense and compelled to support" their wives and children.[99]

If tracking down and prosecuting absconding husbands was largely motivated by the desire to reduce local relief costs, some married women, who were struggling to stave off destitution in the absence of a steady family income and against the insecurities of seasonal employment, expressed considerable resentment at being treated as local 'charity' cases. This was especially true when they felt that legal officials were interfering unduly in their domestic affairs. In December 1915, Mrs. E. M. of Huttonville wrote an angry letter addressed to the Ontario premier, enquiring whether the local magistrate had the right to visit her home, to threaten to "break up my home and family," and to force her and her two children to enter the Brampton House of Refuge. Although silent about the whereabouts of her husband, she did not deny that the family had fallen on hard times and that their situation had become desperate during the otherwise difficult winter months: "all of [us are] able to work," she wrote, but "we cannot get work very much just now." Describing herself as a "good knitter," she lamented the fact that the only work she could obtain was "some sewing sometimes." More seriously, her young son, who usually worked for a dollar a day as a farm labourer, had been injured during the last "haying time" and, after

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98 "Deplores Failure Of Canadian Law To Reach Elopers ... No Penalty As Law Now Stands," *Sault Daily Star*, 7 May 1912.

99 When this initiative was proposed in 1913, the Ontario government, with an eye on saving public funds, argued that perhaps "a more effective plan" would be for Canada and the United States to include provisions for the deportation of men charged with desertion and non-support in their immigration laws. (1913-14) "Extradition with United States: Deserters of wives and families," NAC, RG 25-G-1, Department of the Secretary of State, Volume 1134, #561. See also "Favors Extradition For Wife Deserters. Mr. J. J. Kelso Takes Matter Up With Justice Department," Toronto *Globe*, 19 April 1921.

being laid up for most of the summer, could, in recent months, only get "a days work once in awhile." Despite their difficult circumstances, Mrs. H. emphasized that she had not asked the police magistrate "for anything" even though they badly needed flour and coal. She also insisted that they would all "prefer to starve" than go to the poorhouse. Invoking their status as British-born subjects, who had "worked hard ... [to] make our own living," she strongly urged the premier to use his political weight to restrain the meddlesome magistrate: "if this is a free country" and "if the Magistrate cannot force us to go [to] the Poor House," then "for God's sake kindly tell him to give us peace."[100]

Beginning in the 1870s, a growing number of married women, whose deserting or negligent husbands were available for prosecution, took their marital grievances to local police magistrates by laying criminal charges of vagrancy or more frequently of non-support.[101] Despite considerable variations in their domestic histories and their immediate material circumstances, the 372 female plaintiffs in my compilation of cases, the majority of whom were from working-class backgrounds,[102] unambiguously laid claim to the promises contained in the economic contract of marriage. While vagrancy cases generally

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[100] (1915) "Complains of D. M[], J.P. who threatens to send them to the house of Refuge," AO, RG 4-32, AG, #308.

[101] It should be noted that married women acted as complainants in about 90 per cent of the non-support cases in my compilation. Local police initiated 7 per cent of the complaints and these usually involved charges of vagrancy. The remaining 3 per cent were lodged by another family member or a third party. Furthermore, the only case in which a married woman was charged with neglecting to supply necessaries for her husband involved Hannah D. of Port Hope. In 1882, she was indicted for refusing to provide shelter for her seventy-five-year-old, "sick, weak, infirm, [and] helpless" spouse when he suddenly appeared one after living away from home for a period of seven years. Although she did eventually admit him into the house despite his threats to "take [her] life," when he died two days later of what the coroner's jury determined as "exposure and want of care and necessary nourishment" and her "harsh and inhuman treatment," Mrs. D. was also charged with manslaughter. After an extensive trial, she was acquitted of both indictments. (1882) *Queen v. Hannah D.*, AO, RG 22-392, Northumberland and Durham Counties CAI, Box 103.

[102] Although not all the criminal case files or newspaper accounts provide details concerning the class background of the defendant, an estimated 76 per cent were from working-class backgrounds.

involved complaints about a husband's 'bad habits' and/or his refusal to work, wives who laid charges of criminal non-support constructed themselves as women who had experienced particular 'marital wrongs'. In keeping with the strict rules of evidence, they emphasized that their appearance in court was the culmination of a series of futile attempts, often in the presence of witnesses, at informal negotiations with their husbands, a process they often tellingly described as "applying for assistance."[103] While these failed negotiations were introduced as proof that their husbands' neglect or refusal to maintain them was 'wilful', female plaintiffs were also shouldered with the burden of convincing the court that they were either willing to live with their spouses or that they had 'reasonable grounds' for absconding from the household. They were also responsible for furnishing evidence that their husbands were capable of supporting them and had no 'lawful excuse' for not doing so. Finally, most stressed that, as a consequence of their husbands' failures as family providers, they were living 'in want' which was having detrimental effects on their physical health and the general welfare of themselves and their children. Although neglected wives necessarily couched their sense of entitlement to financial maintenance in the language of dependency, their individual stories also indicated the myriad of ways they did manage to make ends meet in the absence of adequate or non-existent male support. Furthermore, their narratives as well as the counter-narratives of their husbands, albeit structured by the specific laws and moulded by the evidentiary rules that governed the prosecution of such cases, do offer a glimpse into the kinds of negotiations, antagonisms, and struggles that could surface within rural and especially working-class family-households as well as the gendered expectations underlying these particular marital

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[103] See, for example, (1878) *Queen v. William H.*, AO, RG 22-392, York County CAI, Box 209; (1881) *Roblin v. Roblin*, 28 Gr. Chy., 440.

conflicts.[104]

For some women, the problem of non-support surfaced immediately after marriage, especially when a husband, for divergent reasons, failed to or was unwilling to establish an independent household for the couple and simultaneously relinquished any responsibility for her maintenance. In 1892, Mary Ann R. told the Trenton police magistrate that immediately after her marriage one year earlier, her husband, Michael, a labourer on the Grand Trunk Railway, returned to board in his father's household and she went to live with her uncle. When asked whether he had offered any reason for refusing to live with her, she replied that he had on "several occasions" made the "excuse" that it was "on account of his people." More specifically, Michael's father, a local farmer, had apparently warned his son that if he went to live with his new wife, "he would get nothing." For her, one of the most demeaning aspects of this situation was the fact that her husband was always "friendly" when they "were alone" at her uncle's, but if she met him "downtown" or if "he was with any of his people," he refused to speak to her or to acknowledge her existence. These humiliations were further compounded by his unwillingness to contribute to her support and maintenance. While Mary Ann's father- and sister-in-law assured the police magistrate that Michael did provide his wife with money when he managed to obtain steady work and after paying his board, Mary Ann insisted that even though he "showed me some money" during one of their conjugal visits, he had not "since our marriage given

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[104] In the following discussion, I did not include cases in which widowers were charged with neglecting to supply necessaries for their children. In some cases, it seems that these men found it difficult to maintain the household in the absence of their wives and often relied on their daughters to take responsibility for the domestic duties. See, for example, (1907) *Rex v. George H.*, AO, RG 22, Ontario County CA/CP CCJCC Case Files, Box 9; (1904) *George D. v. William A.*, AO, RG 22, SPC, Box 7. In other instances, widowers arranged for their children to be cared by a relative or a third party, but reneged on their maintenance agreements or deserted them. (1899) *Wright v. McCabe*, 30 OR, 390-97; (1893) *Queen v. Edward M.*, AO, RG 22, Ontario County CA/CP CCJCC Case Files, Box 3; (21 August 1885) *Charlotte M. v. William M.*, AO, RG 22-13, GPC, Volume 9; (21 March 1907) *Elizabeth L. v. Dorothy D.*, Ibid, Volume 13.

me any assistance."[105]

Parental disapproval of a marriage was not the only justification used by husbands to explain why they had never lived with their wives. In 1913, one unnamed Toronto man, who was arrested for deserting his "young wife" and child "immediately after their marriage," did admit that he had only contributed two dollars toward their maintenance. His main line of defence, however, was that his father had coerced him into the marriage and that "he did not want anything to do" with his family nor had he ever intended to live with them.[106] Furthermore, when Edward R. of Windsor faced charges of non-support in 1897, he argued that prior to his marriage three months earlier, he and his twenty-two-year-old wife, Elizabeth, agreed that each would return to live with his/her parents and continue to be supported by them until he secured "a situation where he could earn sufficient for their maintenance." Although Elizabeth did not deny that this arrangement had been made and that she had been living with and largely dependant on her mother since her marriage, she insisted that her economic circumstances had altered after becoming pregnant. Until very recently, she could give her mother the "small amount" she earned working as a hairdresser to cover some of her board and food and with their combined earnings, they had not "suffered for want" nor was her life "in danger at present from want of necessaries." But because she expected "to be confined soon," she could no longer work and even though she and her mother would not "starve" without her wage contribution, it did create an additional strain on the household economy. She also claimed that her

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105 (1892) *Queen v. Michael R.*, AO, RG 22-392, Hastings County CAI, Box 55; RG 22, Hastings County, Trenton Police Court, Duty Report Book of Chief Constable William and Police Constable H. H. Coleman, 1891-93. Not untypically, the Trenton police magistrate adjourned the case six times over the course of one month to see if the couple could come to "an amiable settlement." When this appeared to be impossible, Michael was eventually committed for trial at the Belleville Assizes, where he was found guilty of refusing and neglecting to supply necessaries.

106 "Young Wife Deserted," Toronto *Globe*, 11 September 1913.

husband's financial situation had altered and he now possessed "ample means" to contribute to her maintenance. In her opinion, however, there was no indication that he had any intention of fulfilling the conditions of the original agreement: "I have had no chance to ask him for support," she stated, because "he keeps out of my way."[107]

While it was not uncommon for deserted or neglected wives to take refuge in their parental home or the household of a relative, they were, at times, under considerable pressure from family members to initiate criminal proceedings, especially when they could not contribute to their own 'upkeep' because of illness, pregnancy, or childcare responsibilities. It was generally fathers and occasionally brothers who were the most insistent in this regard, expressing considerable resentment at being encumbered with the additional financial burden. Such sentiments were premised on the strong expectation that once a daughter or sister was married off, male household heads would be relieved of any further obligation to ensure her daily survival.[108] This was certainly the predicament that Thurza A. of Pickering township faced. In an effort to persuade her husband, William, to provide her and her two children with "a place to live" and to supply her with necessaries, she laid two complaints against him, one in the fall of 1879 and another in the summer of 1880. She testified that when they married in 1878, William gave up his position as a schoolteacher, decided to rent her father's farm, and the two lived together in her parent's household. After about a year, having grown tired of running and working on the farm, William left her and her child and moved in with and began to work for his brother. One

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[107] (1897) *Queen v. Edward R.*, AO, RG 22-392, Essex County CAI, Box 37; 1 CCC, 28-30; 28 OR, 407-09.

[108] While initiating criminal proceedings offered one option, some fathers launched civil actions in an effort to recover the costs of maintaining their daughter and her children if she was unjustly "turned out of doors" or forced to leave her husband because of "his cruelty or ill-treatment." See, for example, "Matrimonial Difficulty: Cochrane v. Russ," *London Free Press and Daily Western Advertiser*, 2 November, 1860 and *St. Thomas Weekly Dispatch and County of Elgin Advertiser*, 25 October 1860; (1873) *Griffith v. Paterson*, 20 Gr. Chy., 615-20.

week later, Thurza wrote him a letter, "asking him if he intended to get me a place to live in," but when she received no reply, she charged him with non-support. At his first court appearance, he did agree to rent a house for her, but it was now one year later and he had yet to fulfil his promise. Thurza further emphasized that "the primary cause" for lodging her most recent complaint was not the fact that "he was going round with other women and to dances." Insisting that she would be "willing to go and live with him if he had got a place" and that she had always been "ready and willing to be protected by him," her main motivation was that "I d[o] not want to depend on my folks altogether." Thurza's father, however, was much less congenial, angrily telling the court that his son-in-law had no financial justification for not fulfilling his promises to provide a home for his daughter, especially given that prior to leaving the farm, he had raised several hundred dollars from the sale of his implements, feed, and horses. What he found equally inexcusable was that William had simply left his daughter and her two children in his home, without making "any arrangement with me for the keeping of her" and not once offering him any remuneration for their maintenance. He was also outraged by the fact that when Thurza was confined six months earlier, William did not have the decency to come see her or enquire "whether she was dead or alive." Denying claims that he had threatened to shoot his son-in-law and members of his family, he stated that he was more than "willing to have my daughter go and live with [the defendant] as soon as he got a house to live in."[109]

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[109] (1880) *Queen v. William A.*, AO, RG 22-392, Ontario County CAI, Box 108; AO, RG 22-391, Ontario County, Crown Office, Criminal Indictment Assize Clerk Reports, 1880-1899. In 1920, Albert S. of Carleton Place and the father of Mabel M. also complained that, when his twenty-four-year-old son-in-law, a railroad fireman, deserted his daughter shortly after returning from overseas one year earlier and took up residence in the United States, he was forced to take her in. Given that he took everything she had and she was "unable to work," she had "no means of her own." (1920) *Mabel M. v. Stanley M.*, AO, RG 22, Carleton County CA/CP Case Files, Box 3976. Furthermore, Lavinia D. of Newmarket told the local justice of the peace in 1878 that when her husband abandoned her and "went to the [S]tates" six years earlier, she and her children were able to stave off destitution because her father agreed to take her in and had "wholly" supported her for four years until she could obtain work and contribute to her own maintenance. (1878) *Queen v. Edward D.*, AO, RG 22-392, York County CAI, Box 208. For other cases in which neglected wives were forced to rely on the support and protection of their fathers and in one case, a

Members of May D.'s immediate family were equally infuriated by the conduct of her husband, Franklin. As May herself explained to the Marshville justice of the peace in 1880, five days after her marriage, her husband abandoned her and eventually moved to the village of Jordan to work for his father in the butcher trade. Emphasizing that he "had no lawful excuse for deserting [her]" and that he was financially capable of "keeping her," she recounted how she had made various "efforts to get him to live with me and do his duty as a husband." These included writing to him to request money and sending her brothers and a family friend to visit him in Jordan to demand that he return to Marshville and/or provide her with a house. Despite Franklin's repeated promises that he would live with his wife and support her, she maintained that he consistently and deliberately "kept away" from her. Given that she could not earn her own living because of a serious and life-threatening illness, she had relied fully on the support of her parents and her brother, who out of "charity" had provided her with a room and with "medical attendance." As a witness for the prosecution, May's mother also emphasized that she knew of no "excuse or cause" to justify Franklin's treatment of her daughter and insisted that at the very least she expected him to pay "two dollars a week for the payment of her board," with clothing being extra. It was May's brother, however, who was the most incensed by Franklin's irresponsible behaviour. As the main breadwinner in the family comprised of his elderly parents and his sister, he had, in his words, grown "tired [of] supporting another mans (sic) wife."[110]

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grandfather, see, for example, (1880) *Queen v. Charles M.*, AO, RG 22-392, York County CAI, Box 215; (1897) *Queen v. William P.*, AO, RG 22, Niagara North CCJCC Case Files, Box 6; (1903-04) *Rex v. Robert F.*, AO, RG 22, York County CA/CP (General Sessions) Case Files, Box 3949; (1905) *King v. Alfred H.*, AO, RG 22-392, Lambton County CAI, Box 72; (1881) *Queen v. Marcus J.*, AO, RG 22-392, Northumberland and Durham Counties CAI, Box 103.

[110] (1880) *Queen v. Franklin D.*, AO, RG 22-392, Welland County CAI, Box 164. In 1896, Lucy M. of North Dumfries also suggested that after her husband, a porter, "got out of work" and "went away," she took her children and went to live with her brother. After a time, however, "he refused to keep [her]" and she was forced to live with another brother. Given that her husband had only given her $1.80 in the past year despite her requests for support, she began working for her aunt so that she could provide for her children. (9 September 1896) *Lucy Anne M. v. James M.*, AO, RG 22-13, GPC, Volume 11.

A similar pattern emerged when deserted and neglected wives were forced to rely on non-familial forms of assistance. While Sarah W. of Merriton emphasized that it was "usual for neighbours to borrow and lend" and acquaintances were usually willing to provide emergency aid in times of distress,[111] they were just as or oftentimes more likely to view the latter as a temporary arrangement. In May 1875, Hannah R. of St. Catharines testified that, since her marriage eight months earlier, her husband, Patrick, had refused to live with her or provide for the support of herself and her infant child, despite her repeated "application[s]" that he do so. Consequently, she was forced to seek refuge at the house of a friend, Martin M., who also had "several conversations" with the accused. Although Mr. M. had made an agreement with Hannah's husband that he would shelter and maintain her and her child during the previous winter and emphasized that without his assistance "she would have been exposed to extreme privation," it was now early summer and he was still burdened with all the expenses for their upkeep.[112]

In addition, even though deserted or neglected wives, who were otherwise of 'good' character, were usually considered to be 'deserving' of poor relief, local officials were equally if not more interested in ensuring that absconding husbands were compelled to assume economic responsibility for their family dependents.[113] In 1881, at the non-support trial of Thomas C., a blacksmith, Matthias K., a member of the St. Mary's town

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[111] (1897) *Queen v. William P.*, AO, RG 22, Niagara North CCJCC Case Files, Box 6.

[112] (1875) *Queen v. Patrick R.*, AO, RG 22, Niagara North CCJCC Case Files, Box 2.

[113] For divergent analyses of the development of Ontario's private and public relief systems in the late nineteenth century, see, for example, Stephen Speisman, "Munificent Parsons and Municipal Parsimony: Voluntary vs. Public Poor Relief in Nineteenth Century Toronto," *Ontario History* 65, 1 (March 1973): 33-49; Lynne Marks, "Indigent Committees and Ladies Benevolent Societies: Intersections of Public and Private Poor Relief in Late Nineteenth Century Small Town Ontario," *Studies in Political Economy* 47 (Summer 1995): 61-87; Mariana Valverde, "The Mixed Social Economy as a Canadian Tradition," Ibid, 33-60.

council and chair of the relief committee, explained to the local justice of the peace that the defendant's wife, Elizabeth, had applied for relief one year earlier, several months after her husband abandoned her and her five young children. Given that she was left "without means" and all her children were under the age of eleven and still too young to work, the relief council decided to grant her a temporary allowance of "$4 per month." As Elizabeth herself asserted, when Mr. C. departed for Brantford fifteen months earlier, he promised "he would be back in 5 or 6 weeks, but I never heard from him since." She further emphasized that during this period, she had barely managed to support herself and her children "with my own work, what I got from the Relief of St. Marys, and some from my mother" as well as emergency "goods" provided by an acquaintance.[114] Although local relief officials determined that, given her desperate circumstances, Elizabeth was eligible for monthly assistance, the domestic situation of Charlotte B. of Raylan generated a more ambiguous response from her acquaintances and members of the East Whitby council. In their depositions at Edward B.'s non-support trial in 1888, several neighbours pointed out that ever since Charlotte's husband, a sailor and labourer, had deserted her eighteen months earlier, she and her three young children were reduced to "a very destitute" and "suffering state," without "anything to eat and no wood to keep her & the children from freezing." While recognizing her exceedingly difficult and distressed circumstances, their testimony focused almost exclusively on her slothful character and inadequate domestic skills, rather than on her husband's desertion and neglect. Portraying her as a "helpless, indolent creature," the two nearest neighbours indicated that Charlotte and the children were living in an extreme state of "dirt and filth." Mrs. H. stated frankly that, in her opinion, Charlotte "might do better than she does with the means at her disposal"; Mrs. G. disclosed that she had often "advised her to wash herself and [the] children and look a little decent." They

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114 (1881) *Queen v. Thomas C.*, AO, RG 22, Perth County CCJCC Case Files, Box 1; RG 20-F-40, Perth County, Stratford Jail Register, Volume 4.

also agreed that Mrs. B., who refused to allow her husband to take away the children, was "incapable" or "fit to care and bring [them] up" properly. Despite their deep sense of disapproval, the neighbours did not seem hesitant to provide her with immediate assistance. Some supplied food and fuel and, as Charlotte herself indicated, "sometimes we could not [have] lived if it had not been for the neighbours." In addition, Mr. H., a local yeoman, was willing to petition the East Whitby council on her behalf. While members of the council did eventually agree to give her two dollars and a three-dollar food voucher so as "not to let her suffer," they were initially very reluctant to provide her with any relief, arguing that "they did not like to take a young woman like her."[115]

While deserted and neglected wives were frequently constructed as economic liabilities by family members, close neighbours, and local officials, most married women who laid criminal complaints of non-support did stress that they had little choice but 'to make their own way' and to patch together a subsistence. In their daily struggles against material hardship or extreme deprivation, they emphasized how they were forced to rely on private and public assistance, on the meagre earnings of their older children (with an older son being the greatest economic asset), and/or, unless afflicted by illness or advanced age, through their own casual and formal waged work. At the same time, the legal proceedings also offered them the opportunity to voice a wide spectrum of other marital grievances. Irrespective of whether their husbands were residing in or were absent from the household, these aggrieved women did not hesitate to reproach their spouses for their character weaknesses and/or chastise them for their irresponsible and callous conduct.

The notion and expectation that a 'good' working-class husband was a man who undertook steady work and handed over all or most of his wages to his wife to cover at least part of the basic household expenses provided one measure by which married women

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115 (1888) *Queen v. Edward B.*, AO, RG 22, Ontario County CA/CP CCJCC Case Files, 1881-1898.

assessed their spouses' shortcomings and failures as male breadwinners. In this sense, one complaint that both drew on and fuelled the connection between a dissolute domesticity and the absence of a disciplined work ethic focused on the hostility to husbands, physically and otherwise fully capable of contributing to the family wage economy, who had become unreliable providers because they were squandering their earnings on alcohol and gambling. As Jane H., a mother of three young children, stated in 1893, "I am obliged to go out to work to provide myself with a living," because her husband, a Gananoque watchmaker, had for one year neglected to provide for them. "If he did not drink liquor," she added, "he would be able to support his family."[116] In 1910, sixty-three-year-old Grace Y., who two years earlier had left her husband because of his violent behaviour and subsequently worked as a charwoman in Toronto, also complained that during the thirteen years she lived with Mr. Y., "he could make money, good money" as a boot and shoemaker and then as a cobbler "if he would only keep it." But, as she noted bitterly, while "I kept house for him ... and did all I could for him," "he would go to the tavern and drink his money, and I only had a piece of bread; he would leave me without anything, hardly."[117]

The connection between intemperance and the failure to provide, however, was most explicit when wives and, in some cases, other family members charged husbands with vagrancy. Susannah P., the mother of two children, appeared before the Galt police magistrate in 1888 with the following complaint: "My husband gets drunk and will not support his family, we have to do the work ourselves. It is a year last July he has done any

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[116] (1893) *Queen v. John H.*, AO, RG 22, Leeds and Grenville Counties CCJCC Case Files, 1881-1894. Similarly, a Mrs. Beard of London told the local police court magistrate that "her husband was always kind to her, and but for his drinking habits could support her comfortably." "Latest From London ... Refusing to Support his Wife," Toronto *Globe*, 7 June 1876.

[117] (1910) *Rex v. Fred Y.*, AO, RG 4-32, AG, #1490.

work. Have not got more than five dollars from him during the last three months."[118] Similarly, in 1910, Mari D. of Eastview, after repeatedly complaining to the local constable about her husband, finally laid charges of vagrancy and non-support against him, informing the Ottawa police magistrate that he had "been drinking and wont work." For over month, she added, "he has given me no money or food ... He wont feed the children either ... I have to work [by day] for my living for myself and 3 children."[119] Finally, when Robert P. of Galt, charged his son-in-law, William P., a labourer, with vagrancy, he argued that the accused have done nothing to support his daughter and her children for last six months:

> [H]e has been drinking and neglecting his family for a number of years ... his wife and family have been in starvation and in poor circumstances and have been depending on the public for their livelihood. A short time ago sent a pair of pants to be made for the children which he Mr. P[] wore himself and which he is now wearing. Have done every thing ... to reform him but he would spend everything he get hold of on drink, drink seems to have control over him. [They] have five children, two of them staying with them at present. [I] rented a house for my daughter and supported her for about a year. He promised to do better and he was allowed to come back and live with her. The improvement lasted for a short time, then he became

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[118] While the Galt police magistrate decided to defer Alexander's sentence "on [the] condition of his good behaviour," two months later, he returned to court for "misbehaving" again, by being drunk and disorderly in his own house and was committed as a vagrant for three months. (21 September 1888) and (1 December 1888) *Susannah P. v. Alexander P.*, AO, RG 22-13, GPC, Volume 9. See also the complaint against John S. of Galt for being a vagrant and neglecting to provide for his family for which he received six months. (27 September 1894) *Chief Constable John A. v. John S.*, Ibid, Volume 10. Both prior to and after this date, he appeared periodically in the Galt police court on charges of vagrancy, drunk and disorderly behaviour, and on one occasion, for assaulting his wife. (19 June 1890) *Constable M. v. John S.*, drunkenness and vagrancy, Ibid, Volume 10; (13 July 1892) *John A. v. John S.*, vagrancy, Ibid, Volume 10; (19 August 1894) *John A. v. John S.*, drunk and disorderly, Ibid, Volume 10; (24 October 1899) *John A. v. John S.*, vagrancy, Ibid, Volume 12: *Mary Anne S. v. John S.*, assault, Ibid, Volume 12; (18 June 1902) *Chief Constable William C. v. John S.*, drunk and disorderly and vagrancy, Ibid, Volume 12; (9 November 1904) *Constable B. v. John S.*, vagrancy, Ibid, Volume 12.

[119] (1910) *Mari D. v. John D.*, AO, RG 22, Carleton County CA/CP Case Files, Box 3970.

as bad as ever and continued so.[120]

Laying criminal charges against husbands was only one mechanism used by married women to pressure their spouses to moderate their drinking habits and to prevent them from draining the family income. While some historians have argued that the tavern represented "a stronghold of working class culture," in that it offered labouring men male comradeship, essential information about available work, as well as a welcome escape from the bleak insecurities and harsh discipline of the wage labour system,[121] working-class wives' disapproval of male tavern culture emerged from their position as domestic managers and household budgeters. In fact, some were so distressed or angered by their husbands' drinking habits that they would scour local taverns in hopes of inducing them to return home. This practice, however, could prove to be highly risky, particularly when husbands resented this form of wifely interference. In 1874, Jane M. of Galt told the police magistrate that she had frequently asked Robert C., a local innkeeper, not to sell her husband, James, any alcohol and warned him that if he did, "I would have [him] punished." "My husband," she stated, "is in the habit of getting drunk since he came to Galt" three months earlier. Consequently, he had "done no work," and "had been illtreating

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120 (23 May 1893) *Robert P. v. William P.*, AO, RG 22-13, GPC, Volume 10. In some cases, family members also provided detailed accounts concerning how much of his earnings a husband spent on alcohol. For example, in 1872, Ann H. and William P. of Galt charged their father with "neglecting his family" and being "under the influence of liquor for the last two weeks." During that period, they asserted, he had not only threatened to kill one of his sons, but also had received $2.17 in wages from his boy and earned $7.50 shearing sheep at the local tannery. Out of that income, "he spent for the house $3.45, [and] the rest he spent on liquor or lost." (21 June 1872) *Ann H. and William Edward P. v. William P.*, Ibid, Volume 3.

121 See, for example, Bradbury, *Working Families*, 103-05; Kathryn Harvey, "'To Love, Honour and Obey': Wife-battering in Working-class Montreal, 1869-1879" (MA thesis, Université de Montréal, 1991), 69-73; Peter Delottinville,"Joe Beef of Montreal: Working-Class Culture and the Tavern, 1869-1889," *Labour/Le Travailleur* 8/9 (Autumn/Spring 1981/82): 9-40; Lynne Marks, "Religion, Leisure, and Working-Class Identity," *Labouring Lives*, 305. In the American context, see, for example, Roy Rozenzweig, *Eight Hours for What We Will: Workers and Leisure in an Industrial City, 1870-1920* (Cambridge: Cambridge University Press, 1983).

her." One Sunday evening, suspecting that he was at Mr. C.'s inn, she went to investigate, only to discover that James was not only drinking, but also spending the family's meagre resources "treating" two other men. "My husband was going to strike me for coming for him," she added, but the tavernkeeper's wife warned him "not [to] strike me there." When the couple returned home, however, James angrily declared that she "had no authority to go to C[]s for him" and "it was then that he struck me."[122]

Beginning in the early 1900s, under the provisions of the Liquor License Act, local authorities instituted what some perceived as one potential solution to the problems of habitual drunkenness as well as non-support, namely the introduction of the 'prohibited' or, in the racially-ordered vernacular of this period, the 'Indian' list. This legal measure took the form of notices that were issued to "drunks" who appeared regularly in the police courts; they were also initiated by wives or other family members who complained directly to the local police magistrate about husbands or relatives who were "using liquor to excess." The "papers" were then distributed to all tavernkeepers in the vicinity with explicit instructions not to sell or serve alcohol to the person identified on the list. If hotelkeepers (or, for that matter, any third party) refused to comply with the ban, they could face criminal prosecution. Similarly, as the London *Advertiser* noted in February 1908, if the listed person "even dares to loiter around a hotel, he is liable to a fine of $10 or 20 days'

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[122] In this case, the defendant, Robert C., was charged with "furnishing and supplying liquor" without a license and was fined twenty dollars plus court costs. (31 March 1874) *William B. v. Robert C.*, AO, RG 22-13, GPC, Volume 4. This was not, however, the first time that Mr. C. found himself in trouble with the law. Eight months earlier, he was charged by a local constable with furnishing customers with alcohol on Sunday. This complaint was initiated by Mary H., who also "went to look for [her] husband on [a] Sunday night" and "threatened to hand up" the defendant for selling liquor. When she attempted "to induce her husband to go home," however, she and a Mrs. B[] quarrelled and Mrs. B[] struck her in the face." (22 July 1873) *William B. v. Robert C.*, and *Mary H. v. Mrs. B.*, Ibid, Volume 4. For similar patterns, see also "Looking For Her Husband," Toronto *Globe*, 4 February 1882; (29 January 1897) *Constable A. v. Henry H. and William S.*, GPC, Volume 11. In the latter case, Mrs. K., the wife of Galt's town caretaker, went to the Iroquois Hotel one evening at midnight in hopes of persuading her husband "to come home" only to find him playing cards and gambling with two other men. She immediately complained to a local police constable, who charged the proprietors with "allowing games to be played on their premises."

imprisonment." In commenting on this regulatory measure, London's Police Magistrate Love and the local license inspector both expressed confidence that its introduction in the city was "having a decidedly beneficial effect." While being barred from local hotels was perceived as "a greater punishment" than being fined or imprisoned, these local officials also contended that the prohibited list was proving to be a particularly "powerful weapon in the hands of wives who have drunken husbands." "Several of these women," they argued, "are said to have reformed their husbands almost entirely by threatening that if they get drunk again they will have them placed on the Indian list."[123] Magistrate Love also applauded the potential effectiveness of this legal initiative in tackling the issue of non-support. In an interview with the London *Advertiser*, he stated that "[t]here are a very large number of non-support cases coming up lately," many of which were "due to drunkenness on the part of the husband." It was for this reason, he added, that "so many men [were] being placed on the Indian list."[124]

Despite such optimistic pronouncements, the police court records indicate that being placed on the prohibited list did not necessarily prevent men in general and husbands in

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123 "Indian List Is a Great Weapon to Frighten Erring Husbands," London *Advertiser*, 20 February 1908. See also "License Inspectors On the Warpath: Provincial Official in London," London *Advertiser*, 12 February, 1908; "On the Indian List," London *Advertiser*, 2 March 1908; "Jags For Indian Listers," London *Advertiser*, 22 September 1909. According to these newspaper reports, since the introduction of the prohibited list in London, the number of names on it had been growing steadily. By February 1908, for example, it included at least 70 names, an increase of 35 within a seven week period. Furthermore, even though there were "men of every occupation on the list," carpenters, tailors, and cigarmakers seemed to predominate.

124 "Many Non-Support Cases in London," London *Advertiser*, 5 March 1908. See also "Whisky Has The Best Of Husband. Ill-Treats His Family and Is Placed on Indian List," London *Advertiser*, 25 March 1908. As noted, wives were not the only ones who placed a family member on the prohibited list. For example, in 1904, Thomas D. of Stratford initiated the distribution of notices against his brother. (15, 18, and 20 April 1904) *John C., License Officer v. William H. and Jacob H., City Hotel*, AO, RG 22, SPC, Box 7.

particular from breaking the ban.[125] In March 1905, for example, Dollie D. of Stratford, whose husband had "been drinking to excess" since they were married, distributed the following notice to seventeen hotels in the city: "I Dollie A. D[] of City of Stratford hereby notify you not to deliver intoxicating liquors of any sort to John R. D[], my husband for 12 months, otherwise she will prosecute." One month later, when John came home "so drunk ... he could scarcely get into [the] house," she confronted Henry M., the proprietor of the Ontario Hotel and initiated criminal proceedings for supplying liquor to her husband while on the prohibited list.[126] Nellie C., the wife of a Stratford painter, was especially sceptical about the overall effectiveness of this regulatory measure. As she told the police magistrate, "I have had notices served on the Hotel Keepers of the City not to supply [my husband] with whiskey." "Yet," she added, "some of them" persisted in doing so.[127]

At the turn of the century, legal officials, social reformers, women's organizations,

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[125] See, for example, "An Indian Lister," London *Advertiser*, 15 September 1909; "Tell Your Troubles To A Policeman," London *Advertiser*, 24 September 1909. Furthermore, between May 1907 and November 1910, twenty-nine men appeared in the Galt police court on charges of being under the influence of alcohol while on the prohibited list and were fined an average of ten dollars plus court costs. An additional seven men were charged with supplying liquor to a person on the list and were fined up to twenty-five dollars plus court costs.

[126] (18 April, 1 and 17 May 1905) *C. L. v. Henry M.*, AO, RG 22, SPC, Box 8. See also (10 and 11 July 1905) *Robert M. v. Edward G.*, Ibid, a case in which Mr. M. charged a Stratford labourer with buying a pail of beer from the Cabinet Hotel and giving it to his two sons, William M. and Robert M., even though "he knew then that notices were up" against them. That same day, Emma M. initiated criminal proceedings against her husband, Robert M., a junkdealer, for refusing and neglecting to provide necessaries for herself and her children. (10, 11, and 15 July 1905) *Emma M. v. Robert M.*, Ibid. Maggie P. of Stratford also laid an information against Frank W. for unlawfully supplying intoxicating liquor to her husband, Alfred, a teamster, "knowing that notices were placed in all places licensed to sell liquor" in the city prohibiting its sale to him. Seven months later, however, he had evidently broken the prohibition and was arrested by the chief of police on a charge of drunkenness, for which he was fined two dollars or if unable to pay, would spend ten days in the local gaol. (27 and 30 January 1905) *Maggie P. v. Frank W.*, AO, RG 22, Ibid; (15 and 16 August 1905) *C.P. v. Alfred P.*, Ibid, Box 9.

[127] (14, 23, and 24 February 1903) *Nellie C. v. Alonzo C.*, AO, RG 22, SPC, Box 5; RG 20-F-40, Perth County, Stratford Jail Register, Volume 4. For other cases in which wives were instrumental in having their husbands placed on the list, see, for example, (23 and 26 July 1904) *Angus N. v. John P.*, AO, RG 22, SPC, Box 7; (6, 7, and 8 October 1905) *Mary B. v. Thomas B.*, Ibid, Box 9.

and temperance advocates constructed male intemperance as one of the principal causes of most if not all of the ills that afflicted families, including everything from ill-health and insanity, poverty and idleness, non-support and child neglect, to the commission of violent and non-violent crimes.[128] While some neglected wives who appeared in court did identify alcohol as the primary source of their and their children's economic distress, my compilation of non-support cases suggests that a husband's drunkenness and related concerns about refusing to work, the squandering of wages on alcohol or gambling, and indulging in other forms of masculine sociability surfaced in only about 27 per cent of cases for which detailed testimony is available. As the complaints of other married women indicate, a husband's refusal or neglect to supply necessaries had less to do with his 'bad habits' and had much more to do with the unequal distribution of economic resources and the hierarchical relations of power that structured relations within rural and working-class households.

When rural husbands decided to absent themselves from the family farm, it not only resulted in the withdrawal of much needed economic resources, but also the withdrawal of essential labour power. In 1899, Mary M. of Downie township, told the Stratford police magistrate that her husband's decision to abandon her, his eight children, and their fifty-acre farm in April 1898 came at the worst possible time, namely just "before seeding." This meant that she had to scramble to procure some seed on credit and her eldest son, with the assistance of neighbours, was left with the responsibility of planting and harvesting the

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[128] See, for example, "Coroner's Inquest, 6 November 1871; "A Sad, Sad Story. A Corpse in one Corner and a Drunken Husband in Another," *Ottawa Daily Citizen*, 28 March 1882; "Shocking Scenes. Drunken Parents Neglect to Bury Their Dead Babe. Drinking and Carousing in the Same Room with the Corpse," London *Advertiser*, 30 October 1884; "Filthy and Starving," *Ottawa Evening Journal*, 1 August 1890; "Prohibition Proves Benefit To Children," Toronto *Globe*, 1917; supra note 33; D. Owen Carrigan, *Crime and Punishment in Canada: A History* (Toronto: McClelland & Stewart, 1991), 60-63. In the case of non-support, one newspaper reporter in commenting on the complaint against William Beard of London stated that, "As usual, drink was at the bottom of the neglect." "Latest From London ... Refusing to Support his Wife," Toronto *Globe*, 7 June 1876.

crop. This most recent incident, as Mary went on to explain, was only one of many manifestations of her husband's irresponsible and often violent behaviour. While residing on the farm, her husband had never been a good provider, but fortunately she had "managed to get on" by raising fowl, making butter, and selling eggs. She did, however, blame the death of two of her children on constant overwork and his habitual "bad usage," which seemed to escalate when she was pregnant or after childbirth: "He kicked and beat me and I had to go to [the] end of farm and milk and carry the milk home and that led [to] the trouble ... [L]ast fall he shoved and threw me around - since I have been in the family way ... He [then] pulled me out of bed by the hair 4 days after I was confined." What made her current economic situation so difficult was that since his departure, he had not given her "a cent of money," the children had no "proper clothing," and he only occasionally supplied some basic foodstuffs for which he demanded partial payment. This meant that they were at times "without bread and without anything but potatoes." Furthermore, even though her eighteen-year-old son was helping on the farm and two of her daughters, aged fourteen and twelve, were working out, the five other children were "entirely dependent on [her] for support." What ultimately prompted her to lay a complaint against her husband, however, was the fact that in the last month he decided to give up the farm, arranged to lease the property to another farmer for seven years, and began selling off the farm livestock and implements. Five months pregnant, Mary was fearful of what would happen to her and the children: they no longer had a cow to supply milk, had no implements to carry on the farm and, if evicted, would be left homeless.[129]

For other married women, the principal site of conflict was not their husbands' absence or withdrawal of support, but rather was rooted in ongoing struggles over the allocation of the material resources within the household. Even though working-class

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[129] (3, 20, and 25 February 1899) *Mary M. v. John M.*, AO, RG 22, SPC, Box 2; RG 20-F-40, Stratford Jail Register, Volume 4.

men's position within a waged labour economy was often characterized by insecure wages and periodic unemployment, given their status as primary breadwinners, some husbands felt justified in asserting their patriarchal authority through the tight proprietary control of their earnings, the tyrannical supervision of all household spending, and/or the strict management of domestic consumption. One Hamilton grocer, who testified at the non-support trial of Michael W. in 1891, stated that when he spoke to the defendant's wife about "a small bill which she owed me," she was so fearful that her husband would find out that she had spent the money he gave her for something other than paying the food bill, that she "begged" him not to "say anything about it."[130]

One of the most detailed accounts of the marital tensions that could arise within some working-class families over the distribution of basic necessities was provided by Florence P. of Merriton in 1897. Having charged her husband, William, a carpenter by trade, with both desertion and neglecting to supply necessaries for herself and her three children, she recounted how over the past four years she became increasingly "dissatisfied with the way [her husband] provided for the house." This situation surfaced after he resolved to "change his domestic arrangements," evidently because he "was anxious to get out of debt" and because he interpreted his wife's inability to make ends meet as a sign that she was mismanaging the household finances. Rather than handing over his wages to his wife as he had always done, he decided to "run the house" himself. Florence stated that, at the time, she did not object to this new arrangement "as long as he gave us something to eat." She also conceded that, when her husband was able to obtain short-term employment, she "had no reason to complain for we had meat [and potatoes] every day for dinner." There were nevertheless many occasions when he refused to supply her with money to purchase food and they were frequently without bread, butter, sugar, and milk: "We have

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[130] (1891) *Queen v. Michael W.*, AO, RG 22-392, Wentworth County CAI, Box 179.

been at times without any provisions in the house. For full two days we had only two meals, and should have been entirely without if the neighbours had not sent some food in to us." During these periods when they were either "without food" or relying on the assistance of "strangers," Florence maintained that her husband was "getting food [for] himself from his mother," went "dining" at his parents' home, or would eat "what there was in the house," leaving her and her children "without." While she did acknowledge that the daily subsistence needs of the principal wage-earner should take priority and that she was always "anxious" that her husband "should have a good meal as he had to work," she nonetheless asserted that "if we could have shared it out it would have been better." This was especially the case during her recent pregnancy when "there was every reason for my having proper nourishment on account of the state I was then in." She also bitterly complained about the fact that he refused to provide money to cover her children's medical expenses. On one occasion, when "she took $10 out of his pocket" in order to purchase supplies for her coming "confinement," he became angry and threatened her so severely that she felt compelled to flee to the neighbours. At one point, tensions within the household became so intolerable and their material circumstances so tenuous that Florence seriously contemplated visiting her husband's workplace to "see if she could not have some of his wages."

Florence P. also disclosed that during periods of severe financial uncertainly when, in her words, her husband got the "bounce" or "threw off his jobs for no reason," he adamantly refused any form of assistance and prohibited any interference from neighbours. For example, after discovering that one neighbour had brought some provisions to aid the family, he apparently threw the foodstuffs out of the house and, in a fit of anger, declared that, "I won't have people coming into my house bringing food for my children and that 'woman' meaning his wife disgracing my people like this." Finally, two months before the birth of her fourth child and with "over a year's rent" outstanding, her husband abandoned

her without telling her "where he was going." Just before his departure, she reminded him "that that was the last food we had in the house," but he allegedly replied that 'he did not care'." Under these circumstances, Florence had no choice but to sell what furniture the family possessed, to live with a neighbour temporarily, and eventually to move into her mother's house in Toronto and place three of her children in local shelters.[131]

The domestic situation of Rebecca P. of Ingersoll was equally if not more precarious. She told the local justice of the peace in 1883 that, particularly over the last six months and despite repeated requests, her husband refused to supply her with basic necessities and her "medical adviser" had recently informed her that her "system was completely run down for want of proper nourishment." His wilful neglect, she contended, was not because he did not have sufficient means to buy food and he certainly supplied himself with provisions. Rather, when there was food and especially meat in the house, he forbade her "to get any of it" or "he put it out of [her] way." Rebecca further emphasized that her husband had exercised this form of control of the household consumption for much of their ten-year marriage: when the couple was residing in Salford seven years earlier, for example, "the neighbours were so indignant at this that my husband received a letter from some person threatening to tar and feather him for not supplying such necessaries." In addition, given that she "could not have lived in what he presented for me" and needed "to earn some money" to buy food and clothing, she found employment in an Ingersoll shirt factory. But her husband objected to her engaging in paid work as well, constantly threatening to "lock her out" if she persisted in doing so. Several neighbours, who were called as witnesses, substantiated her claims, stating that they had overhead Mr. P. refusing to buy her certain foods (such as meat, eggs, milk, bread, and butter) and that she had on many occasions come to their homes, "saying she was hungry and wanted something to

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131 (1897) *Queen v. William P.*, AO, RG 22, Niagara North CCJCC Case Files, Box 6.

eat." Under these circumstances, they had no choice but to supply her with food or to lend her money. Insisting that the accused was quite capable of providing "reasonable necessaries for his wife" and that her health was "endangered," Norman B., a close acquaintance of the couple, also noted that the only provisions he had ever seen in the house were turnips, potatoes, apples, and graham bread and that these food items were generally "hid away."[132]

If husbandly control over the allocation of basic necessities could become one source of considerable marital tensions, married women also disclosed how some husbands wielded their authority by dictating the conditions under which they, as dependents, could remain in the household. Leaving the premises as an act of self-protection or defying a husband's wishes could, for example, precipitate being locked out of the house. Janet W. of Hamilton testified in 1891 that her husband, Michael, had "used such language a week ago" that she was forced "to leave the house" and immediately after her departure, he "barred [it] so that I could not get in." Upon her return two days later, she discovered that he had already "sold out all the household goods" and given "up the house." While she intimated that during the five years she lived with him, she "pawned goods in order to get food for [her] children," when she and her mother paid him a visit and asked him for four dollars so that they would not starve, he stated explicitly that, "I will not give you one cent."[133] Seventeen-year-old Ettie H. of Sarnia found herself in a very similar situation. She testified in 1904 that her marital "trouble" had surfaced one year earlier, caused principally by her husband Alfred's "drinking" and, on at least one occasion, by his "raising [a] disturbance" within the household. As a result of this latter episode and against his explicit orders, she decided that it would be best "to go to [her]

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132 (1883) *Queen v. Dewit P.*, AO, RG 22-392, Oxford County CAI, Box 113.

133 (1891) *Queen v. Michael W.*, AO, RG 22-392, Wentworth County CAI, Box 179.

mother's." Upon her return the next morning, she also found that "the house was locked up," "the windows nailed down," and the sparse food cupboard latched shut. When she confronted her husband about what had occurred and "tried to coax [him] to remain with me in our home," he "refused," stating that "he made up his mind to leave" her and she was forced to return to live with her parents. Since then, she had lodged three complaints of non-support against him and despite a court order directing him to pay her an allowance of two dollars a week, she insisted that he had "not offered me any money nor any necessaries for my support or to provide me with a home." She further argued that, even though her husband knew she was "living in town," he had "never inquired" about her nor asked if she "needed assistance." In fact, when asked under cross-examination if she had explicitly asked Alfred for support, Ettie retorted that when she met him on the street, he consistently "turned away" and "refused" to speak to her. She also added that even if she did have the opportunity to request assistance, "he would most likely tell me as he did before to go and earn" a livelihood herself. When the defense attorney probed further about the reasons why she did not undertake paid work, she stated that her health had always been "poor," and in the past year she had been under constant medical care. "I think my health would be better if I had a home and proper care," she insisted, "and if my husband treated me as a husband should treat his wife ... I am willing to live with him. If he wont live with me I want something from him for my support. I am not able to support myself."[134]

The infidelity of a husband could also have serious economic consequences for a married woman, especially when it resulted in his abandonment or precipitated her eviction from the household. In 1887, Emiline L. laid a complaint against her husband, a labourer from the village of Iroquois, for refusing and neglecting to support her. At the trial, she stated that he had deserted her to live with another woman "that he liked better than me."

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[134] (1905) *King v. Alfred H.*, AO, RG 22-392, Lambton County CAI, Box 72.

Upon his departure, he simply told her that "we might look for ourselves," leaving her and the children without household provisions. When Mr. L. did intermittently appear at her home, she noted sarcastically, he only brought provisions "for himself to eat, as he said he did not want to live off of me."[135] Caroline R. of Toronto was particularly bitter when her husband, John, a local hotelkeeper, evicted her from his household after twenty years of marriage. "It was not from any misconduct of my own that I was put out of the house," she testified. While she had previously complained to him about his relationships with other women, on the last occasion, he "drove me out and said I should not stop with him any longer":

> [M]y Husband brought into the house another woman, she came as a visitor in the first place, and then [he] engaged her as a servant ... afterwards he made her his housekeeper. I was prior to this housekeeper and mistress of the house, there were no complaints in my manner of keeping the house. I objected to this woman being kept as housekeeper, she was acting as housekeeper about a month before I was sent away ... When my husband told me to go away I refused ... unless he ... found me a room and paid the rent ... My husband repeated that I must go away. I replied that was my house and I was going to stop there ...[T]he reason that [he] wanted me to leave the house was that [he] one night was in bed with Mrs. A[] ... when my husband came out of [her] room I called him a nasty dirty whoremongering thief and he said he would break my neck if I said so again. I did say it again.

As Caroline went on to explain, her husband did eventually agree to rent a room for her and pay her an allowance of three dollars a week. However, one week prior to lodging the non-support complaint, he abruptly informed her "he would pay me no more." Without any money at her disposal, her landlord offered to provide her with a few days' shelter and food; otherwise, she added, "I would have had to have gone begging." Having little choice but to return home, she immediately realized upon her arrival that her presence continued to be unwelcome: "[W]hen I went home R[] pushed me out of the door and fastened the door

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135 (1887) *Queen v. James L.*, AO, RG 22, Stormont, Dundas, and Glengarry Counties CCJCC Case Files, Box 2.

on me and said I should not go in there." In addition to being barred from her husband's household, Caroline also emphasized that her precarious economic situation was exacerbated by the fact that she had "no other means" and that her health was "very poor." "I have [a] disease of the heart," she stated, "which sometimes prevents me working and earning my own subsistence." In light of her desperate circumstances, Caroline emphasized that she expected her husband to fulfil his marital obligations just as she had always done: "before this woman came my husband and I always [lived] happily together, he always did his duty toward me and I towards him. I am willing to go back and live with my husband if he will send this woman away and do his duty to me."[136]

Finally, for those married women who were struggling to support themselves and their children and whose husbands were unencumbered by dependents and earning a decent wage, what seemed to elicit the greatest resentment was what they viewed as the vast incongruity between their own economic circumstances and that of their spouses. In this sense, they emphasized that while they were experiencing often extreme material hardship, their husbands had ample or at least sufficient means to support them. In 1877, Annis H. stated that after she and her husband, a pastry cook by trade, had separated one year earlier, he agreed "in writing" to pay her five dollars a week for her support and that of her seventeen-month-old child. Two months later, he terminated her payments and, despite repeated requests for "assistance," he "refus[ed] to pay her anything more." Unable to pay

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[136] (1880) *Queen v. John R.*, AO, RG 22-392, York County CAI, Box 216. For other non-support cases involving a husband's infidelity, see, for example, (1877) and (1878) *Queen v. Alexander N.*, AO, RG 22-392, York County CAI, Box 207 and 210, a case which will be discussed later in this chapter; (1886) *Queen v. John W.*, Ibid, Box 238. In this latter case, Elizabeth W. laid a non-support complaint against her husband, an excavator, two weeks after she and her nine-year-old daughter arrived in Toronto from England. Armed with a deed of separation issued in 1879 in which her husband was ordered to pay her an allowance of seven shillings a week and undertake the custody and support of his children, Mrs. W. asserted that he had failed to fulfil the terms of the agreement. While one direct consequence of this omission was that one of her daughters "had to be sent to the Poor house in the Old country," she was equally angry about the fact that he "was living with another woman" in Toronto and "refused to recognize" her and her daughter as his legal wife and legitimate child.

the rent and facing destitution, Annis' landlord "went to see her husband"; when Mr. H. made it clear he would no longer contribute to her living costs, she was immediately evicted from the boarding house. Eventually, Annis approached an acquaintance, Harriet L., who hired her as a domestic servant at half wages, which amounted to five dollars a month plus food for herself and her child. As Mrs. L. testified at the trial, when Annis "came to me with her child," she "seemed to be destitute. [S]he had no clothing but what she had on and was obliged to wash the childs clothes at night for it to wear the next ... Her work was worth $10 a month if she had no child." However, with her employment contract now terminated, Annis was again penniless: "I have been compelled to go to the House of Industry [for coal and bread]. I have nothing now to support myself with. I have not got a dollar." By contrast, she noted bitterly, her husband earned good wages in the bakery business, his income ranging "from $75 to $100 a month."[137] Isabella K. was equally reproachful of her husband, Thomas, who worked much of the year away from home in the carpentry trade. As she explained to the Stratford police magistrate, the main problem was that over the last eight years, when the family was living in New Dundee and Listowel, he "would leave home in spring, summer and fall" and "only work for himself." "He never sent me a cent during those seasons," she stated, "and in winter he would come

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137 (1878) *Queen v. William H.*, AO, RG 22-392, York County CAI, Box 209. Similarly, in 1878, after lodging a second complaint against her husband when he reneged on an agreement entered five months earlier to pay her rent and an allowance of three dollars a week, Alice M. testified that while she and her eleven-month-old child were "in want of necessaries through his neglect," Mr. M., as an agent in a Toronto rope manufactory, was "making plenty of money." (1878) *Queen v. George M.*, AO, RG 22-392, York County CAI, Box 209. For similar arguments, see (1880) *Queen v. Charles M.*, AO, RG 22-392, Ibid, Box 215, in which the defendant's wife stated that with an income of seven dollars a week, her husband had "plenty means"; (1904) *Rex v. James H.*, AO, RG 22, York County CA/CP (General Sessions) Case Files, Box 3950, in which Ethel H. argued that her husband, who worked as a plasterer, "earns good money and can support me if he likes"; (1911) *Rex v. George B.*, AO, RG 22, York County CA/CP (CCJCC) Case Files, Box 2717, in which the plaintiff claimed that her husband, a seventy-seven-year-old evangelist, was "the owner of many hundreds of dollars and is well able to keep me, but has refused to do so"; (1913) *Rex v. Edward N.*, AO, RG 22, York County CA/CP (CCJCC) Case Files, Box 2720, in which the plaintiff argued that her husband, a Toronto sheet metal worker, "earns good wages," but would not pay her anything despite the fact that their two-year-old child was ill and she could not "go out to earn money to support us."

home," refuse to work even if it was offered to him, and would "live on me and the family." Three months prior to laying the non-support complaint, he proposed that "the family should move to Stratford" and "I was quite agreeable and came with him." He only "remained in the house with us 2 or 3 days," she added, "then left saying he would go back to Listowel where his work was" and since then had not given her "a cent." Consequently, in order to support herself and her youngest son, she did washing and "any other work" she could get"; her five older children, who had been "working out" since they were "9, 10 or 11," had "to support themselves" as well as assist her in paying the rent. In a biting tone, she concluded by emphasizing that, while she and the children often went without food and fuel, her husband managed to "dress well," to furnish his lodgings in Listowel, and perhaps worst of all, she had on a number of occasions seen him "put money into a church envelope when we had no bread" and "not a bite of meat in the house."[138]

Husbandly Claims of 'Just Cause'

Being brought to the local court on charges of vagrancy or non-support and being confronted with the often bitter grievances of their wives elicited varying responses from husbands. Some defendants were prepared to acknowledge that they had been inadequate providers. William Y., an iron foundry worker, for example, admitted to the Galt police magistrate that since he left the house seven weeks earlier after having a "row" with his wife, Annie, he had "given nothing" to his family for their sustenance. While Annie asserted that she "did not want to live" with her husband unless "he would behave himself," she was principally concerned about the welfare of her three youngest children who could not yet work. After a brief negotiation, William agreed that on the basis of his average earnings of $11.50 every two weeks, "I am willing to keep and support my

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138 (3 and 17 May 1899) *Isabella K. v. Thomas K.*, AO, RG 22, SPC, Box 2; RG 20-F-40, Perth County, Stratford Jail Register, Volume 4.

children," by paying his wife two dollars a week until "he prepare[d] a house for them" at which point he would "provide for them in all respects."[139]

The vast majority (about 85 percent) of male defendants, however, pleaded not guilty. Given that much of the burden of proof, particularly in criminal non-support cases, rested on the prosecution, many married men felt it prudent (or their legal counsel advised them) not to make statements in their own defence. In instances when they did verbally respond to the charges, husbands' counter-narratives tended to reflect certain recurring patterns. Some male defendants, for example, directly challenged their wives' testimonies, by strenuously arguing that they had presented an inaccurate assessment of their performance as breadwinners. In 1898, for example, William P., the Merriton carpenter we encountered earlier, insisted that when he could secure work, he had "conscientiously" given all of his earnings to his wife "to carry on my house" and had always "provided for her to the best of my ability." "There was never to my knowledge," he added, "a day passed when there was no food in my house. I was always willing to buy shoes or other things for her when I had the money." At the same time, William did concede that after quarrelling with his wife over the household finances, he decided to reorder the "domestic arrangements." "On account of my wife always being so hard up," he asserted, "I thought I would take the thing in hand and see what I could do. I then began to buy provisions" and generally "to run the house myself." In stark contrast to the evidence presented by his wife, Florence, and the neighbours, William strenuously argued that once he began to manage the household spending, the family's domestic situation improved substantially: "I provided for the house much more liberally than my wife had ever done so before."[140]

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[139] (19 December 1899) *Annie Y. v. William Y.*, AO, RG 22-13, GPC, Volume 12.

[140] (1897) *Queen v. William P.*, AO, RG 22, Niagara North CCJCC Case Files, Box 6. In order to substantiate his claims, various witnesses, including the local grocer and butcher, were called to provide a list of provisions Mr. P. had purchased in recent months.

James L., a labourer from the village of Iroquois, also countered his wife's argument that he had deserted her to live with another woman and since then refused to supply her and her child with food and clothing. He stated that since his departure, he had on various occasions supplied his wife with cash and basic necessities. He also insisted that he did not leave the household on his own initiative: "She ordered me out of the house, told me to leave, did not want me there at all, she threw my coat and cap out on the street and told me to leave. This I can prove all." Since "she wanted me to go so bad," he concluded, "I said I would and would not be an annoyance to them."[141]

Besides contesting their wives' assessment of the domestic situation, the rules of evidence in criminal non-support cases stipulated that the 'ability to support' constituted an essential element in determining a husband's criminal responsibility. As one defence attorney argued in 1910, "it is a hardship not contemplated by the law that a man should be sent to gaol because he is too poor to support his wife."[142] Consequently, married men often argued that their failure to supply necessaries was not wilful or intentional; rather, due to such external factors as indebtedness, illness, unemployment, and/or difficulties finding steady work, they were rendered incapable of contributing to the family-household economy. William A. of Pickering township, a schoolteacher by occupation, stated emphatically that the allegations made by his wife and his father-in-law about his refusing to support her and the suggestion that he had ample means to do so were "a wholly gotten up story ... for the purpose of injuring me." He argued that when he left his wife, he "was fifty dollars worse than nothing if my debts were paid ... and that I have not the means to support my wife. I have not been in good health so as to enable me to work. I have not

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[141] (1887) *Queen v. James L.*, AO, RG 22, Stormont, Dundas, and Glengarry Counties CCJCC Case Files, Box 2.

[142] (1910) *The King v. Yuman*, 27 CCC, 476.

earned a dollar since I left her and I have been compelled to subsist at the mercy of my friends."[143] Defense witnesses were also called to provide collaborating evidence concerning the employment patterns and earning capacity of the defendant. Daniel R., who testified at his son's trial at the Trenton Police Court, insisted that when his son was able to obtain steady work as a labourer on the Grand Trunk Railway, earning about $1.25 a day, he not only paid board at home, but also contributed to "his wife['s] support ... as long as he had the money." In the last two weeks, however, he had "not done a days work" and consequently, had "nothing of his own excepting ... what he has on his back."[144] Finally, in 1880, at the trial of Edward C. of Oxford County whose wife accused him of leaving her fifteen months earlier and "not giving [her] any support either directly or indirectly" in that period, the defendant's employer testified that Edward had worked as a "foreman over a gang of navvies" and did earn forty dollars a month for a time. For the past seven months, however, he received "50 cents or a dollar now and then for tobacco," but otherwise

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143 (1880) *Queen v. William A.*, AO, RG 22-392, Ontario County CAI, Box 108. Under cross-examination, William's father-in-law countered this argument by stating that "I have not heard of def being sick but have saw him at work at his Brothers when I have been passing." For other cases in which defendants or defense witnesses argued that temporary illness had undercut the defendant's earning power, see, for example, (1880) *Queen v. Franklin D.*, AO, RG 22-392, Welland County CAI, Box 164; (1897) *Queen v. William P.*, AO, RG 22, Niagara North CCJCC Case Files, Box 6; (22 and 23 September 1904) *Catherine C. v. John C.*, AO, RG 22, SPC, Box 7; "Husband and Wife Air Grievances," Toronto *Globe*, 7 September 1906. Others, like seventy-three-year old Fred Y., a Toronto shoemaker by trade, argued in 1910 that "there is no shoemaking now-a-days" and hence, he only managed to earn an average of five to six dollars a week as a cobbler. (1910) *Rex v. Fred Y.*, AO, RG 4-32, AG, #1490.

144 (1892) *Queen v. Michael R.*, AO, RG 22-392, Hastings County CAI, Box 55. Similarly, in 1881, Thomas C., a St. Mary's blacksmith who had left his wife and five young children fifteen months earlier to seek work in Brantford, argued that the reason he had failed to send his family any money was because "I was out of Employment and could not get it." (1881) *Queen v. Thomas C.*, AO, RG 22, Perth County CCJCC Case Files, Box 1. Thomas King of Toronto went one step further by directly blaming his wife for his unemployed status. He testified that, "he had supported her, and would have continued to do so, but she had gone down to his employer and made complaints against him so that he had been discharged and had not since had work." As a consequence, "he had not been able" to provide for her. "Thomas and Cyrilla," Toronto *Globe*, 13 October 1887.

worked only "for his board and clothing."[145]

In addition to arguments outlining the reasons why they, through no fault of their own, were incapable of supporting their wives and children, husbands countered their wives' complaints by presenting their own litany of marital grievances in an effort to legitimate their withdrawal of economic resources and/or to absolve themselves of their legal obligations. In 1899, Thomas K., a Listowel carpenter, stated that, even though he was "able to keep" his wife and youngest child and would "do it if I am required," one of the reasons he "did not send [his wife] any money" when he was working away from home was "because she was always fault finding."[146] Stanley M., a railroad fireman and returned veteran who had relocated to the United States in 1919, insisted that because his wife had "abused" him during their brief marriage, "I wont support her."[147] Finally, Andrew S., a lather by trade, told the Galt police magistrate in 1877 that he had left his wife, Agnes, eight months earlier because of escalating conflicts with his eldest stepson. These culminated in a violent altercation during which the boy brandished a knife and threatened to take his life. Given that his wife "always took my son['s] part when we quarrelled" and refused to allow him to interfere with her boys, he informed her that as long as her son lived in the house, he would reside elsewhere. He further insisted that when he decided to leave and secure work in another town, he offered to take his wife with

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145 (1880) *Queen v. Edward C.*, AO, RG 22-392, Oxford County CAI, Box 112. In contrast, Robert F., a Toronto clerk, argued that he had "no means" to furnish his pregnant wife with a room and support payments, even though his employer testified that he was earning "nine dollars wages per week." (1903-04) *Rex v. Robert F.*, AO, RG 22, York County CA/CP (General Sessions) Case Files, Box 3949.

146 (3 and 17 May 1899) *Isabella K. v. Thomas K.*, AO, RG 22, SPC, Box 2. Similarly, in 1887, Daniel Moulton, a Grand Trunk Railway worker, informed the Toronto police magistrate that, during the last month, "when he was returning with his wages fully intending to give them to [his wife], he 'found her as cross as a bear with a sore heart'." As a result, rather than handing over his earnings, he "went off and got drunk." "Poor Family Men," Toronto *Globe*, 21 September 1887.

147 (1920) *Mabel M. v. Stanley M.*, AO, RG 22, Carleton County CA/CP Case Files, Box 3976.

him, but only on the condition that she sever all contact with her son. When "she refused to go with me," he stated, he felt wholly justified in declining "to have anything more to do with her." Once Agnes discovered that her husband was living and working in Dundas, she visited him on five occasions, the last time accompanied by a Galt police constable, in an effort to exact some maintenance. During these protracted negotiations, he offered to pay her an allowance of one dollar a week, which he claimed "was as much as I could afford to pay her." Agnes, however, rebuffed his proposal and demanded three dollars every two weeks.[148]

Another common explanation for the withdrawal of financial support was rooted in one of the central conditions and expectations embedded in the contract of marriage, namely that a wife's entitlement to economic maintenance was contingent on the diligent and competent performance of her domestic, childrearing, and other marital obligations. In the minds of some husbands, perceived laxity in the realm of reproductive labour and in the provision of household services constituted a reasonable ground for abandoning their wives and/or rescinding access to economic support. In 1888, Edward B., a sailor and labourer, made it clear to the Ontario County Court judge that his wife's persistent neglect of her domestic duties had compelled him to leave her after four years of marriage: "About a year and six months ago I left my wife Mrs. Charlotte B[] and said I would and could not live with her any longer. She was so dirty and neglectful ... The house was no cleaner than a pig pen & the children was seldom washed and cleaned." While Charlotte's neighbours testified that since his departure, she and her children were living "in a very destitute state,"

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[148] (22 January 1877) *Agnes S. v. Andrew S.*, AO, RG 22-13, GPC, Volume 5. Other wives also accused their husbands of relinquishing economic responsibility for their stepchildren. In 1880, Mary Ann W., the wife of a Toronto dry goods peddlar, testified that when her husband left her one week earlier, he informed her that "he would not support me or his own boy" unless she "turned" his two stepchildren "out of the house." In fact, he stated that he would rather "go to the Penitentiary for two years before he would come back to the house or work a blow" for her or the children. (1880) *Queen v. Charles W.*, AO, RG 22-392, York County CAI, Box 216.

Edward further insisted that even though he was willing to support "the children and bring them up properly" and to provide for his wife "to a certain degree," he was firmly convinced that she could maintain herself on large sums of money she presumably obtained from her father.[149] William F., a Galt fencemaker, was equally dissatisfied with how his wife, Augusta, performed her wifely and household duties. Besides objecting to her "being away so much from home, all the time gadding about until eleven or 12 oclock at night" and "making the home a little hell" by constantly quarrelling with his adopted daughter and nephew, the incident that drew his greatest ire occurred about three months earlier when he came home for dinner and discovered that she "had been using [stagnant] cistern water for cooking."[150] "I took the pot and threw the contents on the shanty floor," he stated, and "said I cannot stand this any longer and took hold of her and put her out of doors." One week later, when Augusta returned and demanded her personal belongings, he forbade her to remove them until she signed an agreement, stating that she had left his "bed and board with no cause or provocation" which she refused to do because, in her words, "it was not true." "I put my wife out of the house," he declared, "because she was the agressor (sic) in the quarrell." But, by way of qualification, he further insisted that, "I have never refused my wife a home and she can come home <u>now</u> if she likes."[151]

While the failure to fulfil the standards of a subservient and industrious wife emerged as recurring grievances articulated by male defendants, a number of husbands or their defense lawyers attempted to argue for 'just cause' by claiming that the female plaintiff

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[149] (1888) *Queen v. Edward B.*, AO, RG 22, Ontario County CA/CP CCJCC Case Files, 1881-1898.

[150] In her deposition, Augusta argued that the reason she was forced to prepare the meals with rainwater was because "the water had been shut off" and her husband refused to pay the bill. "He said I should fetch the water from [the] foot of [the] hill," she stated, and I "told him I would not, was not able."

[151] (6 December 1892) *Augusta F. v. William F.*, AO, RG 22-13, GPC, Volume 10.

was undeserving of financial maintenance because of certain irregularities associated with the marriage contract or because she was a woman of 'disreputable habits' and 'questionable character'. In 1917, for example, Herbert E., a Toronto salesman, protested against the non-support complaint lodged against him, stating that "he did not know the woman" who claimed to have married him a few weeks earlier. In fact, he insisted that since "he was intoxicated" when they allegedly tied the knot, he "should not be compelled to live with" or maintain her.[152] When it came to a husband's accusations concerning the plaintiff's 'bad' character, some prosecution attorneys seemed to anticipate this line of defense and accordingly solicited sufficient witnesses who could attest to her status as a respectable woman deserving of her spouse's financial support.[153] In 1880, for example, May D.'s mother and brother testified that they were unaware of any "excuse or cause" for the defendant, Franklin, to abandon his wife or for refusing to maintain her. William B., a family acquaintance, echoed these sentiments, stating that he had known the plaintiff since "her childhood and never heard anything against her." Describing her as a "worthy and respectable girl before and since her marriage," he knew of no "reason why he should treat her in this way."[154]

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[152] (1917) *Rex v. Herbert E.*, AO, RG 22, York County CA/CP (CCJCC) Case Files, Box 2727; "E[] Now Aware Of His Marriage. His Wife Has Him Committed For Trial On Non-Support Charge," "Herbert E[] Charged With Non-Support. Says He Does Not Remember Alleged Recent Marriage Ceremony," Toronto *Globe*, 2 February, 29 March, and 3 April 1917. It seems that John N. of Chatham also attempted to contest the validity of his marriage as a means to absolve himself of any economic responsibility for his wife, Juliana. In 1892, he was charged with perjury, on the grounds that during the hearing of an alimony suit initiated by his wife, he falsely swore that he had "never represented [the plaintiff] ... to any one in my life as my wife" when, in fact, he had done so to "different persons." (1892) *Queen v. John N.*, AO, RG 22-392, Kent County CAI, Box 66.

[153] For example, prior to the non-support trial of William H., a Toronto pastry cook, in 1878, the prosecution attorney prepared a "Brief of Evidence." Included in it was a list of possible witnesses who would attest to Mrs. H.'s good "character" in the event that it came under attack. (1878) *Queen v. William H.*, AO, RG 22-392, York County CAI, Box 209.

[154] (1880) *Queen v. Franklin D.*, AO, RG 22-392, Welland County CAI, Box 164.

Some married women, however, were forced to defend their reputations, especially when being cross-examined by defense attorneys or when husbands exercised their prerogative to interrogate all witnesses. Given the extent to which social commentators condemned female intemperance, constructing it "as ten times worse than in men" and as one of the principal causes of women's moral degradation as well as domestic and child neglect,[155] it is perhaps not surprising that female plaintiffs were frequently asked probing questions about their drinking habits. In 1891, for example, Janet W. of Hamilton underwent direct cross-examination by her husband, Michael, who according to her testimony had evicted her from their home one week earlier. When grilled about her alcohol consumption, she stated, "I am not in the habit of drinking only when you sent me for it. A week ago last Saturday you sent me for a half a gallon of beer. I only had two glasses of it." While the neighbourhood grocer confirmed that he "never saw the woman drunk," Janet herself shot back at Mr. W. by declaring angrily that before being "put out" of the house, she had to "pawn goods in order to get food for my children."[156] Margaret M. of

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155 See, for example, Canada, *Royal Commission on the Liquor Traffic* (Queen's Printer, 1895), 529; Ottawa *Citizen*, 17 October 1866; "A Homeless Child," Toronto *Globe*, 7 May 1884; "Hard on the Husband," Toronto *Globe*, 24 September 1887; "A Drunkard's Wretched End," Toronto *Globe*, 9 April 1883; "Pitiable Case of A Ruined Fireside. A Young Woman of Thames Street Has Little Regard for Her Three Children," London *Advertiser*, 23 September 1909; "Neglected Babe Dies After Police Rescue From Mother's 'Care'. Horrible Story of Neglect of Children While Mother Lies in Drunken Stupor - House Littered With Bottles - Another Child Recovering in Hospital," Toronto *Globe*, 13 January 1921; Cheryl Krasnick Warsh, "'Oh, Lord, pour a cordial in her wounded heart': The Drinking Woman in Victorian and Edwardian Canada," *Drink in Canada: Historical Essays*, ed. Cheryl Krasnick Warsh (Montreal & Kingston: McGill-Queen's University Press, 1993), 70-91. In 1916, Maggie N. of East Whitby was so insulted by the fact that an male acquaintance stated in court that he had seen her drunk, requiring that she be "carted home" that she laid a complaint for perjury against him in an effort to salvage her reputation. "I am a member of the Salvation Army about two years and eight months," she testified before Oshawa's police magistrate, "and I have not been drunk since becoming a member." (1916) *Rex v. Theodore G.*, AO, RG 22, Ontario County CA/CP CCJCC Case Files, Box 16.

156 (1891) *Queen v. Michael W.*, AO, RG 22-392, Wentworth County CAI, Box 179. Caroline R. was also asked about her drinking habits when being cross-examined by her husband's lawyer. When questioned about one particular night when she remained away from home, she replied that, "I was not drunk. I was sick when I was at home I took beer, when in need of brandy I took it. I never got drunk on it. I never hid any from my husband or took it upstairs." (1880) *Queen v. John R.*, AO, RG 22-392, York

Hamilton found herself in a similar position. She testified in 1881 that after fourteen weeks of marriage, her husband left her one Friday evening and since then had "not contributed any thing to my support" despite at least two formal requests that he do so. Given that he earned $1.25 a day "in the summer and up to Christmas" at the Hamilton waterworks, she further stressed that it was "a reasonable wage for a man in his position in life to support himself and me." While Mr. M. insisted that he would not maintain her unless "compelled" to do so and "not before," Margaret's deposition focused principally on refuting various allegations made by the accused. She did admit, for example, that she might take "a little beer, nothing to hurt me," especially when she was "tired," but resolutely disavowed that she was "in the habit of drinking to excess" or of "treating any other women." She also denied that her husband had repeatedly threatened to leave her if she "did not stop drinking and getting drunk" and that she was under the influence of alcohol on the evening he abandoned her. She also rebuffed the claim that she neglected to prepare his meals, that she left "the butter running over the table," and that she had often "stay[ed] out until 1 of AM in the morning." "I was a good and loving wife to him," she insisted, "I tried to please him ... I am prepared to live with him."[157] Finally, in 1877, Annis H. was also forced to defend her reputation as a temperate and respectable woman. "I was not in the habit of getting drunk," she argued, "I was always sober when living with my husband ... We did not part on a/c of my drunkenness." She also refuted the insinuation that she had earned a livelihood by "telling fortunes." Finally, while she did admit that prior to her marriage, she bore two illegitimate children, she adamantly disavowed having "married before" either in England or in Canada. "My husband was aware I had a child before I was married," she argued, and "[h]e was aware of all the circumstances of my connection with [Allan] H[]

County CAI, Box 216.

[157] (1881) *Queen v. Peter M.*, AO, RG 22-392, Wentworth County CAI, Box 174.

when he married" me.[158]

As occurred during Annis H.'s cross-examination, probing questions concerning the alleged 'irregular' or errant sexual conduct of the plaintiff potentially offered the most potent means to contest the legitimacy of her complaint and to undermine her claim to economic maintenance.[159] In 1891, Lavina R. of Hamilton testified that her husband had "refused to live with [her] for nearly two years" nor did he give her or her children "any support." Her daughter, Ethel, also disclosed that when she asked the accused for her "school fees" and "money for [her] brother when he was sick," he consistently responded by claiming that "he had none to give." Under cross-examination, however, the question of Lavina's relationship with George S., a close neighbour, arose. "I do not carry [his] meals to him," Lavina insisted, "my children sometimes do. S[] does not sleep at my house ... I do not know how long it is since I walked or rode with S[] ... I get my coal and wood from [him]. His meals goes toward wood and coal." Ethel was also interrogated about her mother's friendship with the neighbour: "I bring George S[] his meals to the yard ... [M]y mother sends me and my little brother ... My mother goes with me sometimes. I have never scene (sic) S[] at my mothers house. I go to bed about 9 oclock and I get up at seven in the morning."[160] Jessie B.'s experience on the witness stand in the Stratford police court in

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158 (1878) *Queen v. William H.*, AO, RG 22-392, York County CAI, Box 209.

159 In an effort to highlight their moral respectability, some married women made a point of mentioning in their initial depositions that all of their children were the legitimate offspring of their husbands or those of a previous marriage. See, for example, (3, 20 and 25 February 1899) *Mary M. v. John M.*, AO, RG 22, SPC, Box 2; (1891) *Queen v. William R.*, AO, RG 22-392, Wentworth County CAI, Box 179.

160 (1891) *Queen v. William R.*, AO, RG 22-392, Wentworth County CAI, Box 179. In 1904, Ethel H., the wife of a Toronto plasterer, also was made to respond to insinuations concerning her drinking habits and her moral conduct. "I drink beer occasionally," she stated, "I was convicted in Buffalo of being drunk, nowhere else. I was not convicted here for drinking ... I know John C[]. I never was in Stanley Park with him or any other man." (1904) *Rex v. James H.*, AO, RG 22, York County CA/CP (General Sessions) Case Files, Box 3950.

1906 was much more gruelling. In her deposition, Mrs. B. recounted in grim detail the marital "difficulties" she had endured over the past seven years. Even though her husband earned $1.75 per day working as a carpenter on the Grand Trunk Railway, she spoke about how her husband refused to support her adequately. "He gives me his wages [and] cheques," she stated, "and then takes the money from me." She also bitterly complained about his intemperate habits and "bad language," his violent abuse and threats to kill her, and finally her expulsion from the family home three weeks earlier:

> He drinks too much - He was in the Police Court before and was bound over to keep the peace. He has threatened to kill me with an axe and would if I had not got out of the way. He broke a chair over me - I defended myself - He uses language not fit to be used to any one before our children - About 3 or 4 weeks ago Deft assaulted me. He put me out of our house. He struck my son - I left the House the night before last. He used such bad language to me that to avoid it I had to leave the house and when I went back shortly after I found that I was locked out - He has put me out of the house in the winter.

However, when her husband's lawyer produced a letter allegedly written by her brother-in-law and containing an invitation that the two meet, the direction of the proceedings shifted dramatically as the defence attorney began grilling her about her relationship with Mr. S.. Although Jessie did admit that her husband had accused her of "going with S[]" and that these wild suspicions had precipitated his jealous rages and her expulsion from the family home, she adamantly denied having seen the letter in question and insisted that whenever she was in Mr. S.'s presence, her "little daughter" was with her. When probed further, she stated emphatically that despite her husband's wild suspicions over "every man that comes about," he had no justification for calling her "a damned whore master," in that "S[] never made love to me." She also denied having made "appointments" to meet with a former boarder nor did she have improper relations with him. Despite her attempts throughout this arduous cross-examination to redirect the court's attention to what, in her view, were the main issues - her husband's violent and negligent behaviour - these efforts proved

unsuccessful. At one point, Jessie refused to respond to any more questions, stating that "I am so rattled now that I cannot answer questions as I ought to do."[161]

Some husbands, like George L., a nurseryman, took a more proactive approach. Prior to his non-support trial at the York Fall Assizes in 1891, he submitted a written affidavit, in which he outlined in detail why he believed he had "a good defence to this action" and should no longer be held legally liable for his wife's maintenance. He recounted how shortly after marrying his wife, Sarah, "her desire for intoxicating liquors reached such a point that she was continually under the influence of liquor, and during my absence from home she committed adultery with different men ... with at least five persons, and how many others there may be I do not know." Given that he found it "impossible to live with her," he gave her sufficient funds to return to Ireland on the condition that she would not return. After a short stay there, however, Sarah reappeared in Toronto and, as he claimed, "began again harrassing and annoying me": "She was continually drunk on the Streets and in other places. She was either two or three times arrested and in jail, and once ordered to leave Town within twenty-four hours by the police magistrate." Although Mr. L. insisted that, "I did not consider myself bound to support her after the way she acted," he did eventually agree to pay her an allowance of five dollars a week if "she kept sober" and until "such time as she could get something to do." But, Sarah allegedly refused to comply with this arrangement, continuing "to get drunk" and persisting in accosting him on the local streets. Finally, he felt fully justified in discontinuing any further payments after making enquiries in Ireland and discovering that she was not a widow when he married her; rather he had gathered sufficient evidence to establish that her first husband was still alive and residing in Dublin. In light of her

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161 (26 and 27 June 1906) *Jessie B. v. John B.*, AO, RG 22, SPC, Box 10. For another case in which a husband invoked his wife's "irregular conduct" as a line of defense, see "Wife and Family Neglect," Toronto *Globe*, 28 October 1876.

persistent 'bad' behaviour and her previous marriage, he expressed confidence that he had ample legal justification "for refusing to support her."[162]

While a married woman's immoral conduct could operate as the most recognized legal justification for relinquishing any responsibility for her economic maintenance, in cases involving extreme jealousy, the consequences could potentially be fatal. In 1916, Armetta M., the Norwegian wife of a Danish carpenter who began farming in Point Aux Pins in 1914, laid three complaints against her husband, Nils: two counts of wilfully refusing to provide her and her infant child with necessary medical attention, which she argued caused her infant's death shortly after childbirth; and one count of theft of her personal property, which included various items he refused to return after she left the farm. In her lengthy depositions, Armetta disclosed the details of the disintegration of her four-year marriage, precipitated by her husband's strict management of the family's finances, his uncontrollable jealous rages, and his escalating abusive and threatening behaviour. While emphasizing that, since moving to the farm, she had been an industrious wife, always doing "the chores" and getting "the meals ready," she described how her husband maintained absolute control of the household spending, ordering all the provisions himself and refusing to supply her with money with the exception of two dollars she received since she was married. He also refused to provide her with adequate clothing, arguing that he did not have "money for any more clothes" and since he had worn his "for ten years, and I had only had mine four years," her requests for such items were unreasonable.

The main source of contention between the couple, however, was what Armetta constructed as her husband's unfounded accusations concerning her sexual infidelity. Two years earlier, for example, when he saw his son shortly after his birth, he angrily declared that because "the baby had black hair," it "wasn't his" and thereafter, refused to recognize

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[162] (1892) *Queen v. George L.*, AO, RG 22-392, York County CAI, Box 253.

the child as his own. More seriously, during her last confinement in 1915, she asked her husband to secure the services of a physician when she became seriously ill four days prior to the birth of the child. "He said," Armetta recounted, "you had no respect for me as your husband and now you can help yourself." Although Nils did eventually contact the local doctor, when she regained consciousness, she was alone in the house, "the baby was dead on the bed beside me," and her fifteen-month-old son "was lying naked on the floor of the room." Finally, because of her acutely weakened state, the doctor strongly advised Mr. M. to hire a nurse to attend to his wife during her recovery and to assist her with the household chores, but he resolutely refused, informing her "to do the work herself." In effect, then, by initiating these criminal proceedings, Armetta made a direct connection between her husband's negligent behaviour and the death of her child. The medical evidence as presented by Dr. L., who attended the birth, was less definitive. He stated that, in the absence of an autopsy, it was difficult to determine the exact cause of death. While suggesting that the infant was born with a "weak heart," he did not outrule the possibility that "there was neglect" and that the child would have lived "had it received proper care." In his opinion, however, this situation had less to do with the defendant's wilful negligence and had more to do with the couple's 'foreign' origins. "The surroundings were not good," he testified, and "these conditions are more confined to foreigners than natives ... [The infant] required heat and warmth ... It may have been a chill that killed the child." Given the equivocal nature of the medical evidence, Mr. M. was exonerated of the two counts of criminal neglect.[163]

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[163] Not all charges of criminal neglect, however, could be attributed to acute jealousy. In 1908, for example, Richard Lindsay of Jackson's Corners was indicted for neglecting to provide "necessaries of life and medical aid for his wife and thereby causing her death" and that of her newborn twins. According to the evidence, when the accused went to obtain the services of a doctor to assist his wife in childbirth, he "took a cow along with him to sell." After securing the necessary funds, he allegedly "forgot all about the doctor, and proceeded to spend the money for liquor." "Neglected Mother Died Alone," "Did Neglect Cause Death. Belleville Man Said to Have Been Drinking While Wife Lay Dying," and "Lindsay Was Acquitted," London *Advertiser*, 5, 20, and 21 March 1908. In a somewhat different scenario, Thomas M., a Toronto Island

Armetta M.'s grievances did not end there, however. As she further recounted, her husband's abusive behaviour worsened, especially after his conviction in 1915 in Sault Ste. Marie, Michigan on charges of transporting Austrian 'aliens' from Canada to the United States, for which he was sentenced to be imprisoned for four and a half months.[164] During her regular visits to the gaol, he solemnly promised that he would "be good" to her "after he came out." According to Armetta, however, his wild suspicions and violent behaviour merely escalated upon his release:

> My [h]usband was mad at me after he came home from gaol ... Told me he thought I was in a family way ... [He] said youre getting stout ... He said he would have nothing to do with me, and would have a bed of his own. He accused me with having improper relations with other men while he was in gaol ... He charged me with relations with hired man ... He said F[] and every other son of a B. in town had been with me ... He said he was married before and had no child and as I had one every year they could not be his ... He told me I was looking to start bad business, and looking for men with money ... There was no truth in that ... I have never [given] him any reason for these charges. Have always been fine to my husband ... He told me at different times that he would kill me, then those rich men wouldn't get me. He had revolver, shot-gun and rifle in the house ... [He] scolded, screamed, threatened to take me out of the world where no body would get me ... He said no matter who came along to get hold of me he would shoot them down ... He said he could do with me what he pleased and could shoot me if he wanted to ... No occasion at all for these jealous

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fisherman, was charged in 1914 with two offences: omitting to provide the necessaries of life for his wife whereby her life was endangered and criminal negligence, when he allegedly refused to obtain medical attention while his wife was in childbirth. As one Island resident testified, "I found prisoner's wife lying on verandah in child birth. I told prisoner and he said he did not want to hear it or to see her and he refused to do anything for her. He was about 150 yards from where his wife was." (1914) *Rex v. Thomas M.*, AO, RG 22, York County CA/CP (CCJCC) Case Files, Box 2721. For other cases in which husbands were indicted for manslaughter and for criminally neglecting their wives, when they allegedly failed to secure "necessary medical and other necessary attendance" during childbirth or illness, see, for example, (1917) *Rex v. Ferdinand D.*, AO, RG 22-392, Huron County CAI, Box 62; "Stewart Acquitted of Neglecting His Wife," Toronto *Globe*, 15 September 1906; (1919) *Rex v. Sanderson*, 31 CCC, 60-61. Furthermore, in 1903, William B., an extremely impoverished labourer living in Anderdon township, was charged with criminal negligence and manslaughter, when his wife was found frozen to death after the door of their shanty was left open overnight. (1903) *King v. William B.*, AO, RG 22-392, Essex County CAI, Box 38. In all cases, the defendants were given the benefit of the doubt and exonerated of the charges.

164 "M[] Only Given Four Months And A Half By Judge," *Sault Daily Star*, 25 September 1915. According to the evidence presented at his trial, Mr. M. "confessed to bringing 13 Austrians" across the border "at different times" and, by way of compensation, "charged them as much as he could get."

> moods or threats ... I have been a true wife to him, there is no truth in his charges of unfaithfulness with other men.

Given his persistent threats that he would "shoot her" and "kill the baby," she considered "it dangerous to live with him" and she eventually fled to the house of a friend. When her husband published a notice in the *Sault Star* announcing that she had left him, she returned to the farm on a number of occasions in an effort to discuss their difficulties and, finally, to retrieve a trunk containing her personal belongings. "When I knocked," she stated, "he would not admit me and said you dont belong to me and dont belong to this home ... [I]f I let you in I'd have to support you, you'd be sticking around me to get money ...You'll not get a God Damn Cent." While she did eventually retrieve her trunk, she soon discovered that various valuable items were missing and immediately charged her husband with theft. "I told my troubles to the magistrate, she concluded, "who told me that under the circumstances the law would not force me to stay there with him. If the law forces me I will go back but I dont want to, as I cant trust him. I know him now ... I am afraid to live with him."

In his own deposition, Mr. M. strenuously maintained that Armetta's accusations and denials were "all lies." Disavowing that he had ever "called [her] bad names," threatened her, or stolen her personal belongings,[165] he remained firmly convinced that both prior to and especially during his term of imprisonment, she had improper relations with at least two hired hands and that both of the children she bore were illegitimate. "I then understood my wife was against me," he argued, "[She] told me I might just as well give her up for she could go with other men and spend all the money I could make." Despite the fact that, in his mind, Armetta had married him for his money and since then, had been "on

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[165] Upon his arrest and while awaiting trial, two physicians were asked by the court to examine Mr. M. to determine his sanity. In his report, one doctor wrote that the accused "is severe in his condemnation of his wife and is inclined to abuse her but he has no symptoms of any form of insanity." The other concluded that the defendant was "perfectly rational," having "no delusions or hallucinations of any kind. He shows some slight irritability of temper but it takes considerable provocation to annoy him."

a bad road," he strenuously maintained that he had always been good and loving husband as well as a steady provider: "I married my wife because I loved her and gave her as good a home as I could. She got a good living, all the clothes she wants, lots of jewellry ... My wife has cost me 2000.00 for herself ... When [she] left me it was more hard on me than going to gaol. My home is all broken up ... I believe my wife is not straight but I love her just the same."[166]

Prosecuting Non-Support: Convictions and Challenges

While deserted and neglected wives brought a wide spectrum of grievances to the courts and at least some husbands responded with their own justifications and counter-recriminations, it was left to local magistrates and, to a lesser extent, the higher criminal courts to determine the guilt or innocence of the accused, to impose an appropriate sentence, or to encourage the estranged couple to negotiate some form of settlement. All vagrancy and most non-support cases were adjudicated or prosecuted summarily by local justices of the peace or in the police magistrate's courts. It was here, at the lowest level of the judicial hierarchy, that married women first encountered the criminal justice system and the discretionary power wielded by the local magistrate, whose verdicts and sentences seemed to depend less on the technicalities of the law and the rules of evidence, and more on an immediate assessment of a case, judicial familiarity with the parties involved, and knowledge about the history of the embattled domestic relations. At the same time, given that the failure or refusal to supply necessaries was categorized as an indictable offence, some cases prosecuted under this statute were referred either to the county court judges' criminal Court for trial before a judge, or to the court of general sessions or the criminal

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166 Despite his claims of innocence, Mr. M. was convicted and sentenced to eight months' imprisonment for the theft of his wife's property. (1916) *Rex v. Nils Peter M.*, AO, RG 22, Algoma District Crown Attorney (Sault Ste. Marie) Case Files, Box 1.

assizes for trial by jury, depending on the declared wishes of the defendant.

While state officials, child welfare advocates, and legal authorities were certainly concerned about the socioeconomic and familial consequences associated with desertion and non-support, these considerations did not translate into high convictions rates nor into harsh punishments imposed on negligent husbands. As indicated by the outcome of the 372 cases in my compilation prosecuted under the various legal categories of non-support, at least 38 per cent of the male defendants were acquitted by the courts. Although the precise rationale for these verdicts was not consistently recorded, a number of general patterns can be identified. While a minority of cases were dismissed because the plaintiff failed to appear to prosecute[167] or withdrew her complaint,[168] other defendants were released on the grounds that the couple managed to 'reconcile' or 'settle' their marital 'difficulties'. James Bennett of Hamilton, for example, was acquitted of the charge of "neglecting to support his wife" in 1876 on the basis that the two "decided to cry quits and endeavour to

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[167] See, for example, (13 November 1899) *Mary H. v. Frank H.*, AO, RG 22-13, GPC, Volume 12; (10 October 1900) *Rachel H. v. William H.*, Ibid, Volume 12; (10 September 1912) *Henry F.*, Ibid, Volume 13; (6 November 1919) *James C.*, Ibid, Volume 14. Occasionally, police magistrates assumed that the plaintiff's failure to appear indicated that the couple had "settled their difficulties." "Neglect of Family," Toronto *Globe*, 2 February 1881.

[168] In the majority of cases, however, the criminal records do not specify the reasons why plaintiffs withdrew their complaints and thus, it is difficult to assess whether a settlement had been reached or whether some form of intimidation was involved. See, for example, (24, 27, and 30 March 1911) *James S.*, AO, RG 22-13, GPC, Volume 13; (31 May 1913) *Sadie W. v. Percy W.*, Ibid, Volume 14; (21 December 1919) *Mrs. C. v. Edward C.*, RG 22, Lambton County (Sarnia) CA/CP Justice of the Peace Records, 1910-1923; (17 February 1920) *Mrs. A. L. v. Arthur L.*, Ibid; (1920) *Emma T. v. Edward T.*, AO, RG 22, Carleton County CA/CP Case Files, Box 3976. Some cases, however, offer some clues as to the motivation behind the withdrawal of complaints. In 1877, William Kirkwood was charged both with assaulting his wife and neglecting to maintain her. The fact that he was convicted of and bound to keep the peace for twelve months on the first charge, likely accounted for his wife's withdrawal of the non-support complaint. "Neglecting Maintenance of Family," Toronto *Globe*, 11 July 1877. For a similar pattern, see (18 and 21 September 1906) *Eliza D. v. George D.*, AO, RG 22-13, GPC, Volume 13 and RG 22, Waterloo County Police Magistrate (Galt) Return of Convictions, 1900-1911.

live amicably together for the future."[169] In addition, some married women seemed to indicate that the act of lodging a complaint was enough of a rebuke to pressure their husbands to agree to support them or to make the necessary arrangements for their maintenance. When Mary F. of Galt appeared in the local police court after laying a complaint of non-support against her husband in 1881, she stated, "Do not wish to prosecute my husband any further, am satisfied that he will support me now." After the court costs of $8.25 were paid, the defendant was released.[170] Lavina D. of Newmarket also withdrew her complaint in 1878, after initiating a series of negotiations with her husband, Edward. She testified that six years earlier, he had abandoned her and went to the United States, "without telling me any cause and without telling me when he was going." Although he "left no money," she and her child were not "destitute and in want" since her father had taken her in and supported her. Upon Edward's return to Newmarket two weeks earlier, she had an "interview" with him, asking him if he was prepared to "take me from my father's house and find a home for me" and demanding to know "when he would do it." When he replied that "he did not know perhaps never," she immediately laid an information against him. Since commencing the criminal action, as she went on to explain,

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169 "Hamilton News. Wife Desertion," Toronto *Globe*, 24 April 1876. In contrast, when Albert Beatty, a post office clerk, appeared in the Toronto police court in 1890 on a charge of non-support, the magistrate "dismissed the case and advised the couple not to lose their tempers at the same time, as it was bad policy." "The Police Court," Toronto *Globe*, 15 October 1890. For other cases that resulted in a marital reconciliation, see, for example, "Poor Family Men," Toronto *Globe*, 21 September 1887; (28 July 1919) *Gertrude L. v. Clarence L.*, AO, RG 22, Prince Edward County (Picton) Police Court Returns of Convictions, 1887-1919; (21 December 1919) *Emma C. v. Marshall C.*, Ibid; (3 March 1920) *Bertha N. v. Everett N.*, Ibid; (1918) *Rex v. James M.*, AO, RG 22, York County CA/CP (CCJCC) Case Files, Box 2729.

170 (6 June 1881) *Mary F. v. William F.*, AO, RG 22-13, GPC, Volume 8. For other cases in which defendants were discharged on the basis that they "agreed" to provide for their wives or to "amend" their behaviour, see "Police Court. Neglecting Maintenance of Family," Toronto *Globe*, 10 July 1877; "Ready to Make It Up," Toronto *Globe*, 28 September 1887; (1908) *Rex v. George O.*, AO, RG 22, Grey County CCJCC Minutes, 1869-1920. Owen H. of Picton, however, was only released in 1915 on the condition that he "report [his] conduct fortnightly." (31 March 1915) *Louise H. v. Owen H.*, AO, RG 22, Prince Edward (Picton) Police Court Return of Convictions, 1887-1919.

her husband became more compliant, offering to "give me or my father fifty dollars" to cover her board and maintenance for the next three months during which time he "would endeavour to make arrangement[s] for providing a home for us." She firmly rejected this offer on the grounds that "I had not confidence that he would provide a comfortable home and thereafter keep it for me." One week later, however, she informed the justice of the peace that she "did not wish to press the prosecution" after receiving "ten dollars with which to pay her board."[171]

For those complaints prosecuted under the failure or refusal to provide necessaries statute, however, the capacity of the accused to launch an effective defense for 'lawful excuse' or the inability of the plaintiff to meet the burden of proof accounted for a considerable proportion of acquittals. In the former case, husbands who provided compelling evidence that their wives had committed such serious marital offences as adultery and bigamy were, predictably, absolved of their legal liabilities.[172] Meyer B., a Toronto operator, for example, managed to discharge himself of his financial obligations on the grounds that his wife Dora's first and "lawful" husband was still alive. At his first trial before the York County Court judge in 1913, Dora testified that for the last two months her husband had omitted to provide her with necessaries and as a consequence "she had developed [an] illness which made her incapable of heavy work." She also responded to her husband's allegations concerning her first marriage, by arguing that her divorce

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171 (1878) *Queen v. Edward D.*, AO, RG 22-392, York County CAI, Box 208. For other cases in which the defendant was discharged on the grounds that the couple "mutually arranged" or "settled" the "breach of relations," see, for example, (13 March 1911) *Rebecca B. v. Clarence B.*, AO, RG 22, Prince Edward (Picton) Police Court Return of Convictions, 1887-1919; (1 August 1917) *Lilly D. v. Russell D.*, Ibid; (8 July 1918) *Jamie and Harriet B. v. Emmett B.*, Ibid.

172 Although not necessarily recognized under the law as a justifiable grounds for non-support, at least one husband was acquitted because of his wife's intemperate habits. In 1881, the complaint against Edward Getier of Toronto was dismissed on the basis that his wife "had been in a state of drunkenness ever since her last appearance in Court" one week earlier. "Neglecting His Wife," Toronto *Globe*, 12 April 1881.

papers "had been torn up." Convinced by her testimony, Judge Morgan found the defendant guilty and before imposing sentence, lectured him on "the duties of a husband in supporting his wife." Unlike some social commentators, who argued that "there is more wife desertion among the Jew in Toronto than among any other nationality,"[173] the judge "expressed surprise at a Jew not supporting his [wife], as they had a reputation for looking after their families." Rather than imposing a fine or term of imprisonment, Mr. B. was given a suspended sentence on the condition that he pay his wife six dollars immediately and a three-dollar weekly allowance thereafter. Four years later, however, Mr. B. returned to court, prepared to launch an appeal in Toronto's Court of General Sessions based on further evidence he had accumulated concerning Dora's first husband. As part of the trial proceedings, Judge Coatsworth ordered that a special hearing be held in Chicago, where a number of witnesses testified that they had been present at the marriage between Dora B. and Beryl C. in Satanof, Russia in 1895 and confirmed that Beryl, a tailor by trade, was currently residing in Chicago. In addition, one acquaintance disclosed that, two years earlier, Mr. B. had located his wife's first husband and, in an effort to gather evidence for his appeal, had asked him to sign an affidavit stating that he was legally married to Dora. Not wishing to "have anything to do with the business," Beryl had resolutely refused to do so. The evidence further revealed that Dora had also travelled to Chicago twelve months earlier in an unsuccessful attempt to persuade her first husband to accompany her to the Jewish Aid Society and arrange a divorce before one of the local rabbis. In light of these damaging affidavits, Judge Coatsworth overturned Mr. B.'s previous conviction,

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[173] This perspective was articulated by Miss Cook, a Toronto Children's Aid Society worker, in 1908. See AO, RG 29-75, J. J. Kelso Clippings (1893-1940), Volume 19, 1.

rescinded the maintenance order, and discharged him of "all obligations" as a husband.[174]

Perhaps the most influential judicial ruling that determined the outcome of cases prosecuted under the criminal non-support statute was decided in the Court of Queen's Bench in 1877. This case involved Alexander N., a Toronto carpenter, who was charged that year with neglecting to supply necessaries for his wife, Ellen, and his three children. In her initial deposition before Toronto's police magistrate, Mrs. N. related the difficult circumstances surrounding the collapse of her marriage and her protracted efforts to "induce" her husband to contribute to her and her children's maintenance. Although she disclosed that Alexander had "treated [her] badly from the first" by frequently threatening and beating her, Ellen's testimony focused principally on her husband's ten-year affair with Hannah H., his periodic desertions, and his refusal to maintain her and the children. When he first disappeared in 1867 to live in Chicago with his lover, she was left "utterly without means of support" and "without a cent to buy bread." With the rent in arrears, the landlord "seized everything" and "I was turned out with children into the streets." After appealing to the mayor, she managed to obtain "a pass," allowing her to take the children to Goderich where she left them with her husband's mother and she herself "returned to service in Toronto." One year later when Alexander returned to Toronto, he asked her to forgive him and persuaded her to live with him again. Another child was born, but her marriage continued to deteriorate. "He again treated me badly," she complained, "and continued his intimacy with the woman ... he divid[ed] his earnings between myself and Hannah. He

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174 (1913 and 1917) *Rex v. Meyer B.*, AO, RG 22, York County CA/CP (CCJCC and General Sessions) Case Files, Box 2706; "Judge Morgan Dwells on Husband's Duties: Heard Story of Romance and Domestic Trouble and Gave Advice," Toronto *Globe*, 16 May 1913. George L., a Toronto nurseryman, was also acquitted of neglecting and refusing to supply necessaries in 1892, after convincing the jury at the York Assizes that his wife was not only guilty of habitual drunkenness and flagrant adultery, but also of bigamy. (1892) *Queen v. George L.*, AO, RG 22-392, York County CAI, Box 253. The rule concerning bigamy did not apply in cases when a married woman had strong evidence from which she could reasonably presume that her husband had died prior to her second marriage. (1898) *Regina v. Holmes*, 29 OR, 362-64, 2 CCC, 131-34.

would spend some of his nights with her and some at home ... [H]e was very unkind to me often beating me with his clenched fist." When Alexander abandoned her a second time and "went boarding" with Hannah and their infant child, she asked Toronto's police magistrate to intervene on her behalf; after dispatching "a note" to Mr. N., he agreed to pay her an allowance of four dollars a week. Nine months later, however, he discontinued his payments and once again disappeared to the United States. Having exhausted all informal means at her disposal, she eventually launched an alimony suit in the Court of Chancery. Even though Alexander was ordered to pay her an allowance of $112 per year and despite various writs of execution issued against him, she stated that, "I have never received any of this money." Consequently, during the last four years in particular, she had barely managed to make ends meet:

> I maintained myself and my children ... by needlework and washing until my health gave way, and by the advice of friends I placed the children in the Girls Home and went out to service where I have since remained. I have to contribute to their support in [the] home [amounting to three dollars a month] and pay for their clothes leaving me barely enough to support myself. The childrens health is suffering ... and they do not get the care and attention I would like ... They have been there 4 years.

In concluding her deposition, she also emphasized that her husband "had no cause to leave me ... I was never of intemperate habits for years and years after I was married ... I never showed him violent temper ... I consider that in consequence of the neglect of my Husband the health of myself and children has suffered."

At Alexander N.'s subsequent trial at the Toronto Summer Assizes in 1877, much of the evidence presented by Ellen N. was collaborated by various witnesses, including the couple's acquaintances, boardinghouse keepers, and John B., a neighbourhood missionary, who had assisted her during periods of acute distress. Portraying her as an "industrious and sober" woman who had long sought some form of "justice," they further disclosed that when asked about his wife, Mr. N. usually stated that owing to "her jealous temper ... he could not live with her" and that "he would rather go to jail than give [her]

any support, any money." Other witnesses, including Alexander's employer and some of his co-workers, however, insisted that his periodic 'travels' to the United States had little to do with the abandonment of his family dependents, but were largely precipitated by the dullness of work in Toronto's carpentry trade. Furthermore, with the exception of "this bother about his wife," they attested to his solid character, lauding him as a "good mechanic" and as a "sober and industrious" worker. After hearing the evidence, members of the jury did find the defendant guilty of refusing to supply necessaries for his wife and children, but insisted that various points of law required consideration by the higher courts.

In the Court of Queen's Bench, Chief Justice Harrison and Justice Wilson deliberated two main issues that would determine Mr. N.'s criminal responsibility under the refusal to supply necessaries statute: the first was whether he earned sufficient wages to maintain his dependents; and the second was whether Mrs. N. was in actual need of support. In the preamble to the ruling, the judges' interpretation of the case deviated substantially from the evidence recorded in Mrs. N.'s original deposition. Without mentioning Alexander's adulterous liaison or his repeated absences, they maintained that the reason the couple could not "live together in peace" and had separated was because of Ellen's "jealous disposition." They further argued that the evidence strongly indicated that, particularly during the past four years, Mr. N. only managed to secure "occasional employment" and hence, there was no "clear" proof of "his ability to contribute to her support" or that his neglect to do so was in any way "wilful." In addition, given that the children were being "supported in the Orphans' Home" and Ellen managed to maintain herself "by her own exertions," the judges also maintained that there was little evidence to suggest "that the wife was in much, if any, need of support." In their opinion, then, "the weakness of the present prosecution is, that it does not sufficiently appear in the evidence that the wife, at the time alleged in the indictment, was in need of food, clothing, or lodging, or that at such time the husband had the ability to do what was needed."

Furthermore, there was no indication that she had suffered any "bodily harm" or that "her health was endangered by her husband's neglect." As a result, at the next sitting of the Toronto Assizes in January 1878, Mr. N.'s previous conviction was quashed.[175]

In light of this judicial ruling, those neglected wives who used the criminal non-support statute to achieve legal redress (especially prior to 1913 when the legal parameters of this offence was expanded[176]) could find themselves in an untenable situation. If they managed to salvage the family-household economy by patching together a livelihood for themselves and their children or if they were maintained by family members or the "charity of friends," a "charge of non-support could not be substantiated" or "sustained." Thirty years later, this decision was upheld by Justice Osler in the Ontario Court of Appeal, when Thomas Wilkes, a Hamilton worker, appealed his conviction for omitting to supply his wife and child with the necessaries in the Wentworth County court. As Justice Osler pointed out, even though a "legal duty" is "cast upon the husband to provide necessaries for the wife, facts must be found which create the criminal responsibility for the omission to perform it, and these facts are either that the death of the wife has been caused ... or that her life is endangered, or that her health is or is likely to be permanently injured by such omission." In the case under deliberation, the evidence revealed that, when Mrs. Wilkes had justifiably left her husband in 1902, she and her child were taken in by her mother and since then were both completely dependent on her "charity," having no other means of support. In Justice Osler's opinion, however, given that the mother supplied all their needs, neither Mrs. Wilkes nor her child had "suffered [any] privation" nor were they

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175 (1877) and (1878) *Queen v. Alexander N.*, AO, RG 22-392, York County CAI, Box 207 and 210; (1877) *Regina v. Nasmith*, 42 UCQB, 242-50.

176 As noted earlier, under the 1913 amendment to this statute, the parameters of what constituted criminal non-support went beyond life endangerment or permanent injury to health to include 'destitution' and 'necessitous circumstances'.

living "in want." As a result, even though Mr. Wilkes earned "30 cents per hour" and usually worked "50 hours per week," the judge quashed his conviction and rescinded the order directing the defendant to pay his wife $3.50 per week.[177]

The other issue raised in the judicial decision in Alexander N.'s case was the question of whether Ellen had provided convincing evidence that she "was ready and willing to live with the defendant" as indicated in the original indictment. Although Chief Justice Harrison and Justice Wilson did not render a decision in Mrs. N.'s case, they did outline the legal rules on this matter: "While ill-usage will justify a wife in leaving her husband, if he promise her better treatment, and offer to support her, he cannot be convicted of wilfully refusing to support her." They further argued that, "it would be absurd to convict the husband as a criminal" if his wife "without justification ... absents herself from the husband's roof, and without excuse refuses to return."[178] In 1910, Judge Denton reiterated this argument, stating that "a husband supplies the house and it is the wife's duty to live with [him], so long as he is able to support her and does support her. He has the right to say to her, 'You must live with me', and she must do it, unless there is some reason why she should not. One reason is, excessive cruelty on the part of the

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177 (1906) *The King v. Wilkes*, 11 CCC, 226-31. For other cases prosecuted under this statute in which the defendant was acquitted on similar grounds or because of the absence of sufficient evidence, see, for example, (1917) *Rex v. Herbert E.*, AO, RG 22, York County CA/CP (CCJCC) Case Files, Box 2727, "Health Not Impaired By Husband's Neglect. Wife's Claim Against Youthful Husband For Non-Support Dismissed," Toronto *Globe*, 3 April 1917; (1880) *Queen v. John R.*, AO, RG 22-392, York County CAI, Box 216, in which the County Crown attorney argued that the plaintiff would be "foolish" to reject her husband's offer of a three-dollar weekly allowance, given that the issue of her "actual" need was being called into question by the defence; (1880) *Queen v. Edward C.*, AO, RG 22-392, Oxford County CAI, Box 112; (1880) *Queen v. William A.*, AO, RG 22-392, Ontario County CAI, Box 108, RG 22-391, Ontario County, Crown Office, Criminal Indictment Assize Clerk Reports, 1880-1899; (1884) *Crown v. Donald M.*, AO, RG 22, Grey County (Owen Sound) CCJCC Minutes, 1869-1920; (3 May 1888) *Elizabeth S. v. Frank S.*, AO, RG 22-13, GPC, Volume 9; (1902) *King v. James W.*, AO, RG 22, York County CA/CP (General Sessions) Case Files, Box 3948.

178 (1877) *Regina v. Nasmith*, 42 UCQB, 242-50.

husband which endangers her health or her life."[179] It was on these grounds that a number of defendants were also acquitted. Joseph F. of Toronto, for example, was exonerated of the charge of criminal non-support in 1903 not only because the prosecution offered no direct evidence against him, but also because his wife had left him, presumably without sufficient cause.[180] Furthermore, in 1914, Charles Dolson of Galt responded to his wife's charge of neglecting to supply her and his child with necessaries, by offering to support her "if she will live with him." When she refused to comply with this proposal, the case was dismissed.[181] Finally, even if wives argued that they were forced to leave their violent husbands and seek refuge elsewhere, the courts seemed reluctant to convict. Margaret Ellen M. of Toronto told the police court magistrate in 1880 that because her husband "treated me very cruelly and beat me often," she was forced to live under the "protection" of her father. Although Mr. M. would only agree to support her "if I would live with him," she emphasized that, "I am afraid to live with him, he has threatened me so often." When the case was heard before the grand jury at the next Toronto Assizes, however, no bill of

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[179] (1910) *Rex v. Fred Y.*, AO, RG 4-32, AG, #1490.

[180] (1902-1903) *King v. Joseph F.*, AO, RG 22, York County CA/CP (General Sessions) Case Files, Box 3948. In 1881, Marcus J., a schoolteacher in Cramabe township was also acquitted for refusing and neglecting to provide necessaries for his wife, Ida, when the evidence disclosed that her grandfather had provided all her and her child's needs and supplied them with "good comfortable home" for the last eight years. Ida also admitted that, during that period, she had "never offered to go and live with" her husband. In her opinion, however, since Mr. J. was the one who left her, "if he wanted to live with me it was his place to come and say so." (1881) *Queen v. Marcus J.*, AO, RG 22-392, Northumberland and Durham Counties CAI, Box 103; RG 22-391, Northumberland and Durham Counties, Crown Office, Criminal Indictment Assize Clerk Reports, 1859-1929.

[181] (24 March 1914) *Mrs. D. v. Charles D.*, AO, RG 22-13, GPC, Volume 13. Edward N., a Toronto sheet metal worker, was exonerated of the charge of failing to supply necessaries for his wife and child in 1913 on the grounds that the couple "had only lived together nine months out of nine years of married life." (1913) *Rex v. Edward N.*, AO, RG 22, York County CA/CP (CCJCC) Case Files, Box 2720; "Long Time Married But -," Toronto *Globe*, 25 March 1913.

indictment was forwarded.[182]

In addition to those cases which were, for varying reasons, dismissed by the courts, an additional 11 per cent were allowed to stand, were adjourned, or remanded indefinitely. For police magistrates, one rationale for imposing these indeterminate verdicts was to give couples an opportunity to settle their differences or to negotiate some form of 'mutually' acceptable agreement. In 1881, when William Hulme of Toronto appeared in the local police court to answer to the charge of neglecting to support his wife, "both parties accused the other of incompatibility of temper." The magistrate advised them "to make it up, and adjourned the case" for a week "to see if they could do so."[183] James Donovan of Toronto, who was also charged by his wife with neglecting to support her, expressed his willingness to pay her "$4 or $5 per week." The police magistrate "remanded him for a week, and advised him to settle the matter in some way before that day."[184] Moreover, these indeterminate verdicts also enabled either the defendant or, in some cases, the plaintiff to 'make good' on any promises made before the police magistrate. When William Beard appeared in the London police court in 1876 charged with "refusing to support his wife and family of three," he "admitted the charge" and solemnly vowed to amend his drinking habits and support his dependents. "In order to give him a chance to do his duty," the police magistrate adjourned the case for a week and if he fulfilled his promise, the "charge

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182 (1880) *Queen v. Charles M.*, AO, RG 22-392, York County CAI, Box 215. In addition to these rules, some defendants were discharged on various legal technicalities despite the incriminating evidence against them. See (1908) *In Re Woodruff*, 16 OLR, 348-49; (1910) *Rex v. Fred Y.*, AO, RG 4-32, AG, #1490 and 27 CCC, 474-82.

183 "Neglect of Wife," Toronto *Globe*, 30 September 1881. See also "Remanded On Charge. Non Support Family," *Ottawa Journal*, 24 January 1921.

184 "Police Court. Neglecting His Family," Toronto *Globe*, 10 May 1878.

[would] be withdrawn."[185] Conversely, John Schofield responded to the non-support complaint laid against him in Toronto's police court in 1887, by arguing that "he had left" his wife "'because she was drinkin' and one thing or another'." When asked if he was willing to "keep her," he replied in the affirmative, but only "'if she will stand up beside you and swear she will never touch drink again'." In order to offer her an opportunity "to take the pledge and win back her recreant spouse," the police magistrate remanded the case for one week.[186]

Given the number of acquittals and indeterminate verdicts, the actual conviction rate in my compilation of non-support cases reached about 51 per cent. Of those, 5 per cent of defendants were required to pay a fine, 16 per cent were sentenced to a term of imprisonment, 33 per cent were released on suspended sentences, and 41 per cent were ordered to pay a weekly allowance. What these patterns suggest is that both police magistrates and higher court judges were reluctant to 'punish' delinquent husbands, especially since the imposition of a fine or a term of imprisonment offered few tangible benefits to the defendant's distressed wife and children.[187] In effect, these sentences, particularly among the poor and working classes, would merely serve to drain family

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185 "Latest From London. Refusing to Support his Wife," Toronto *Globe*, 7 June 1876. In 1887, when Thomas King of Toronto "promised to support" his wife "as soon as he got work," his case was also "remanded till called on." "Thomas and Cyrilla," Toronto *Globe*, 13 October 1887. See also (21 September 1888) and (1 December 1888) *Susannah P. v. Alexander P.*, AO, RG 22-13, GPC, Volume 9 in supra note 118.

186 "He Wanted a Teetotaller," Toronto *Globe*, 13 October 1887.

187 See, for example, (1916) "Re. Rex v. John R[]. Prosecution for failing to supply necessaries to wife," AO, RG 4-32, AG, # 2256. In this case, the defendant appealed his sentence of six months imprisonment imposed by the Guelph police magistrate on the grounds of legal technicalities and the fact that "there [was] nothing to show that the wife's health was endangered or likely to be permanently injured" since her needs were being supplied by her parents. In the meantime, the couple had "made up their troubles" and agreed to live together again. This led the County Crown attorney to conclude that there was "nothing to be gained by forcing the conviction" and "having him locked up for six months."

resources further or potentially exacerbate the insecurities of household economies. In most instances, husbands who were required to pay a nominal fine or were sentenced to prison terms were convicted under the provisions of the vagrancy act. The harshest penalties were generally reserved for those defendants whose offences not only involved neglecting to provide for their families, but also included habitual drunkenness, persistent refusal to work, and/or the physical abuse of their wives and children.[188] Furthermore, while the maximum penalty under the failure to provide necessaries statute was three years' imprisonment, this sentence was rarely imposed. London's police magistrate stated in 1908 that he had only "sent down" two defendants "for that time, as they were extreme cases" and in my compilation, six husbands received prison sentences of between one and two years.[189] By 1913, some social reformers and child welfare advocates expressed growing dissatisfaction with this statute, arguing that it was "so worded that conviction and

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[188] Prison sentences tended to range from fifteen days in the local gaol to six months in the Central Prison. In 1872, for example, William P., a Galt labourer, was given a nominal sentence of fifteen days in the local goal for being drunk and "for neglecting his family." Six years later, he appeared in the police court on similar charges, including public drunkenness, frequenting public houses, and neglecting to provide for his family. The $4.30 found on his person was "given to his wife" and he was sent to the gaol for six months. (21 June 1872) *Ann H. and William P. v. William P.*, AO, RG 22-13. GPC, Volume 3; (23 October 1878) *Police Constable R. v. William P.*, Ibid, Volume 7. Thomas S., a Stratford plasterer, was charged twice in 1881 for refusing to support his wife and on both occasions he was discharged by the police magistrate. In 1882, however, he was indicted for both wounding and refusing to support his wife and was sentenced to two years in the Kingston Penitentiary. (21 July 1881), (2 November 1881), and (5 July 1882) *Thomas S.*, AO, RG 22-F-40, Perth County, Stratford Jail Register, Volume 4. For a similar pattern, see (1880) and (1881) *Queen v. John H.*, AO, RG 22, Elgin County CCJCC Dockets, 1879-1908 in which the defendant was sentenced for six months in the Central Prison for assaulting and neglecting to support his wife in two consecutive years.

[189] "Many Non-Support Cases in London," London *Advertiser*, 5 March 1908. See also the following cases: (16 June 1908) *Mary F. v. Thomas F.*, AO, RG 22-13, GPC, Volume 13, who was sentenced to twenty-three months concurrent in the Central Prison for failing to supply necessaries for his wife and infant child; (26 January 1917) *Ada H. v. Miles H.*, Ibid, Volume 14 and (11 August 1917) *Minnie G. v. Herbert G.*, Ibid, who both received sentences of 1 year and 364 days in the Ontario Reformatory for endangering the health of their wives; (13 November 1911) *Mary S. v. John S.*, AO, RG 22, Algoma District (Sault Ste. Marie) Police Court Record Books, Volume 1, who was sent to the Central Prison for one year for wife desertion; (9 March 1916) *Susan H. v. George H.* and (13 May 1916) *James F. v. George J.*, AO, RG 22, Lambton County (Sarnia) CA/CP Justice of the Peace Records, 1910-1923, who were both sentenced to one year in the Ontario Reformatory for wife desertion.

punishment [were] almost impossible." In order "to prevent fathers from so lightly escaping their responsibility," to spare mothers "untold misery," and to save "the public" from assuming the "costly burden" of supporting neglected wives and children, they petitioned the Minister of Justice to amend this section of the criminal code. In their recommendations, they not only advocated expanding the parameters of what constituted criminal non-support which did occur in 1913, but they also suggested that if a husband/father was convicted and sentenced to a term of imprisonment at hard labour, the "proceeds" of his labour would "go to support the wife and family." For reasons not specified, however, this latter provision was not incorporated in the 1913 amendment.[190]

One common alternative to the imposition of a fine or a term of imprisonment was releasing the defendant on a suspended sentence. This occurred in cases when some form of settlement between the couple seemed imminent or an agreement had been reached, which could be reinforced through the provision of sureties. In 1881, for example, Felix P. of Gloucester township was indicted at the Carleton Assizes for neglecting to provide for his wife, Delimer, but the judge "decided not to pass sentence for a time in order to give the husband and wife a chance to come to an amicable settlement, in which case sentence will not be passed at all." Four days later, the defendant was "allowed to depart on his own recognizance, as negotiations [were] in progress for a settlement between him and his wife."[191] James P. of Stratford, in answering to the charge of refusing and neglecting to maintain his wife and children in 1905, requested an adjournment, stating that "he will at once endeavour to obtain employment here and live at home with his wife and support her and family in the very best manner his means will allow." Given that his wife's counsel

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190 "Wife Desertion Commented Upon. Children's Aid Society Believes This Should be Counted a Crime," *Sault Daily Star*, 4 June 1913.

191 (1881) *Queen v. Felix P.*, AO, RG 22-392, Carleton County CAI, Box 17; Toronto *Globe*, 13 and 17 October 1881.

considered this "proposal as a reasonable one," Police Magistrate O'Loane adjourned the case for three weeks. When the hearing resumed, Mr. P. produced a letter from a "firm" in Collingwood "offering him work." Upon agreeing "to go there to work and ... take his family there and do for them the very best he can and in such a manner that there can be no cause for complaint," he was released on a suspended sentence.[192]

Suspended sentences were also imposed when the accused was 'willing' to swear a formal 'pledge' in court, vowing to fulfil his husbandly duties, to reform his behaviour, and become a sober and diligent family breadwinner. In 1904, John C., a Stratford labourer, pleaded guilty to the charges of public drunkenness and failure to supply necessaries for his wife, but claimed that he was "laid up with Rhumatism" and could not work. While he explicitly asked to receive a suspended sentence, his request was granted only on the condition that he "stop drinking," "keep sober for a year," and "do his full part in contributing to the support of the house (his wife)."[193] Robert M., a Stratford junkdealer, who was on the local prohibited list and pleaded guilty to the charge of non-support initiated by his wife, signed the following pledge in 1905:

> Deft is told that his plea of guilty may result in his being sent to prison for two years should he not keep his promises now made - that he will never again drink to excess nor will he neglect his family in any way - and that he will do his very best to occupy a respectable position in the community and

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192 (26 December 1904, 4, 11, 19, and 27 January, 1 February 1905) *Birdie P. v. James P.*, AO, RG 22, SPC, Box 8. For other cases in which defendants received suspended sentences because they promised to "go back and live with" their wives, take them back, and/or support their families, see, for example, (1897) *Queen v. Daniel P.*, AO, RG 22, Elgin County CCJCC Docketbook, 1897-1908; (8 October 1912) *Mrs. D. v. George D.*, AO, RG 22-13, GPC, Volume 13; (1 August 1917) *Sarah K. v. William K.*, Ibid, Volume 14; (31 October 1918) *Mrs. B. v. Charles B.*, Ibid; (18 December 1918) *Mrs. P. v. Joseph P.*, Ibid.

193 (22 and 23 September 1904) *Catherine C. v. John C.*, AO, RG 22, SPC, Box 7. This was not, however, the first time that the defendant had made similar promises. In 1902, he managed to avoid being sent to the Central Prison for three months for vagrancy, by pledging to "keep perfectly sober for one year." One year later, when charged by his wife with assault, he also received a suspended sentence on the condition that he "do the right thing." (5 November 1902) *CP v. John C.*, Ibid, Box 5; (22, 23, and 24 June 1903) *Catherine C. v. John C.*, Ibid, Box 6.

> amongst his fellows ... If I were at any time hereafter to indulge in excessive drink - which I now of my own free will pledge my word of honor as a man never again to do. Nor will I at any time hereafter be guilty of the offence of neglecting my wife and family - and should I at any time (which God forbid) so far forget my manhood and break the pledges and promises here made - I ask the Police Magistrate to sentence me to two years in the penitentiary well know that I will fully deserve same and all this I do of my own free will.[194]

In other instances, defendants were required to enter into agreements which were specifically designed to monitor their future 'good' behaviour or to ensure that they fulfilled their verbal commitments. In 1906, Edward G, a Stratford labourer, who was found guilty of both theft and neglecting to support his wife, expressed "great regret and sorrow" for his failure to provide and "pledge[d] his word that he will keep sober and do the right and just thing towards wife and family." Police Magistrate O'Loane allowed the case to stand, on the condition that the "prisoner report by self or wife every 2 weeks." Moreover, "if he will keep sober, support his family, and conduct himself generally in a decent sober and honest manner, eventually sentence will be suspended."[195] When Gad C., another Stratford labourer, pleaded guilty to the charge of refusing to provide his wife and five children with necessary food and clothing in 1900, he received a suspended sentence after paying a

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[194] As noted earlier, Robert M. was placed on the prohibited list by his father and on the same day, Mrs. M. laid an information charging him with refusing and neglecting to support her and his children. (10, 11, 17, and 25 July 1905) *Robert M. v. Edward G.*, AO, RG 22, SPC, Box 8; (10, 11, and 15 July 1905) *Emma M. v. Robert M.*, Ibid. Patrick K., a Stratford mason, who was charged with vagrancy in 1905, also admitted his guilt and gave his "word as a man" that he would cease drinking and provide for his wife and children: "[S]hould I unfortunately break this my solemn pledge and refuse or neglect to work and apply the proceeds to the support of my wife and children as I am in duty bound to do - then ... I ask the Police Magistrate of Stratford to commit me to the Central Prison for 6 months ... And I assert here that I sign this pledge and make the promises herein contained of my own free will and accord." One month later, however, he was arrested for being drunk on the streets, but fortunately his employer promised to pay his fine of five dollars. (7 August 1905) *Wm O. v. Patrick K.*, Ibid, Box 9; (4 and 5 September 1905) *CP v. Patrick K.*, Ibid.

[195] The theft charge involved stealing a smock from a local tailor which the defendant stated he would not have taken had he not been drunk. (27 and 28 November 1906) *John S. v. Edward G.*, AO, RG 22, SPC, Box 10; (28 and 29 November 1906) *Maggie G. v. Edward G.*, Ibid.

surety of $200 and promising "to keep sober, go to work and be kind and good to his family." In addition, he signed the following order authorizing his wife to draw his wages: "I Gad C[] of Stratford, Laborer, hereby authorize and request my employers whoever they may be to pay my earnings to my wife Elizabeth C[] and for so doing this shall be their authority and protection. I do this of my own free will and for my own good as well as for the benefit of my family."[196]

With the enactment of the Deserted Wives' Maintenance Act in 1888, police magistrates also had the option of issuing a summary order requiring the defendant to pay a weekly maintenance allowance, especially when it was evident that there was no possibility for a marital reconciliation or for some form of mutually agreed upon settlement. One contentious issue that could arise was fixing the amount the defendant could afford or was prepared to pay, depending on 'means at his command' and the number and age of his dependent children. In 1898, William S., a Stratford veterinary surgeon, did admit to the local police magistrate that he had deserted his wife and family and that he had "not paid [her] any money for over a month." Although he insisted that "it was not my fault" and that he could not "live with them," the more pressing question was "how much he should contribute" to his wife's maintenance. Despite his income, which he variously cited as over $500 a year or between $75 and $84 a month, he went on to explain that he was burdened with so many personal and occupational expenses and his profession had become so insecure, he could not possibly afford to pay his wife more than three dollars a week (one dollar less than he paid for renting a stable for his horse and rig). Police Magistrate O'Loane, however, was not entirely persuaded by his argument, and ordered him to pay

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196 (19 and 21 July 1900) *Elizabeth C. v. Gad C.*, AO, RG 22, SPC, Box 2. In 1910, Robert B. of Galt was also asked to give "an order on [his] employer." (25 July 1910) *Mrs. B. v. Robert B.*, AO, RG 22-13, GPC, Volume 13.

his wife five dollars a week for two months, and four dollars a week thereafter.[197] Other maintenance agreements, however, contained more explicit conditions, taking into account the possibility that the plaintiff might supplement her allowance through paid labour or that the defendant's wages would fluctuate. In 1903, the Galt police magistrate ordered Charles S. to pay his wife an allowance of three dollars per week, but he included a clause stipulating that should she obtain "a position" the amount would be reduced to two dollars.[198] Furthermore, Alfred R. of Stratford responded to the non-support complaint laid by his wife in 1903 by promising to adhere to the following arrangement:

> By way of settlement of [the] charge of non-support made against me by my wife I hereby promise to pay her $10.00 per week for the support of the family and for clothing of herself and [the] children and for rent and fuel on the understanding that she will not incur any debts over and above what she pays out of that allowance. If my wages should fall below the rate of $12 per week then a proportionate reduction shall be made (during the time the wages are below $12 per week) in the weekly allowance of $10.00. I am to pay for my own mid-day meal except at times when I am at home for it.[199]

Even though a considerable number of married women in my compilation of cases did obtain formal settlements or maintenance orders, this did not necessarily mean that husbands would fulfil the conditions contained within them. While some married men simply fled to the United States in an effort to evade their legal obligations,[200] others

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[197] (16 and 19 November 1898) *Ellen S. v. William S.*, AO, RG 22, SPC, Box 1.

[198] (2 September 1903) *Mrs. S. v. Charles S.*, AO, RG 22-13, GPC, Volume 12.

[199] (4 and 6 November 1903) *Ann R. v. Alfred R.*, AO, RG 22, SPC, Box 6. Other orders of maintenance also contained additional provisions. In 1892, William F. of Galt was not only required to pay his wife an allowance of two dollars per week, but was also ordered to give her "everything" in the household "that belong[ed] to her." (6 December 1892) *Augusta F. v. William F.*, AO, RG 22-13, GPC, Volume 10.

[200] In 1897, for example, Edward R. of Windsor received a suspended sentence and entered a recognizance after "an arrangement was made whereby the deft should support his wife." At the Essex Assizes six months later, Justice Ferguson "ordered the recognizance to be estreated," given that Mr. R. had "not done anything toward observing the agreement" and "he and his father who was bail for him had left

angrily informed local police magistrates that they were finding it difficult to meet the payment schedule. When Thomas K., a Listowel carpenter, was convicted of neglecting to supply necessaries for his wife and children in 1899, he requested a suspended sentence on the condition that he paid his wife ten dollars per month in advance for seven months and eight dollars in advance for the balance of the year. He also agreed that if he defaulted on his payments, Stratford's police magistrate could impose the appropriate sentence. Seven months later, he wrote a letter to Police Magistrate O'Loane, acknowledging that he had fallen behind on his remittances. While indicating that he had recently sent another five dollars to his wife, he went on to add that, "this is more then I am able to do my Libalities (sic) Have been hevy all this summer ... Now if I am pressed much harder you will have to take me to Galle For I cant do eny better."[201]

When husbands failed to or refused to comply with the financial terms included in their separations agreements, alimony decrees, or maintenance orders, some married women returned to the courts and laid further complaints for non-payment.[202] In 1897, at

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the country." In 1902, however, the County Crown attorney noted that the defendant, who had presumably returned to Windsor, was being taken into custody to await another trial. (1897) *Queen v. Edward R.*, AO, RG 22-392, Essex County CAI, Box 37.

[201] (3 and 17 May, 4 December 1899) *Isabella K. v. Thomas K.*, AO, RG 22, SPC, Box 2.

[202] For example, included among the conditions agreed to in the 1879 articles of separation between John N. of Clifton, an employee of the Great Western Railway Company, and his wife, Amanda, was the stipulation that Mr. N. would pay her fifteen dollars per month for her support and "the maintenance and education of their daughter." Four years later, Mrs. N., who was living in Niagara Falls, charged her husband with failing to fulfil the conditions of the agreement and for neglecting to supply her with necessaries. (1883) *Queen v. John N.*, AO, RG 22-392, Welland County CAI, Box 165. Similarly, in 1894, Marion Ward of Toronto secured an alimony decree in the Court of Common Pleas on the grounds of cruelty and her husband, a Bracebridge farmer, was ordered to pay her an allowance of five dollars a week. Three years later, she laid a criminal complaint, arguing that with the exception of twenty-one dollars, her husband had contributed nothing to her support. "I am in need of money to support myself," she stated, "and have no means of my own. I am in poor health and in need of medicine but have no means to buy some. I am depending on my relatives for food and clothing." (1896) *Queen v. William W.*, AO, RG 22-392, York County CAI, Box 260; (1896) *Young v. Ward et al.*, 27 OR, 423-30. For similar patterns, see, for example, (1878) *Queen v. George M.*, AO, RG 22-392, York County CAI, Box 209; (1886) *Queen v.*

the conclusion of William P.'s protracted non-support trial, he and his wife, Florence, managed to reach an "amicable" settlement. The agreement specified that William would take custody of two children and pay his wife a weekly sum of three dollars cash to cover her maintenance and that of the other two children. Although the court recorder noted that the "defendant positively refused to put his proposition in writing," he "solemnly promised" to carry out its terms and "husband and wife shook hands upon it." Several weeks later, however, Florence returned to court and complained that she had yet to receive any remittances. In the absence of a source of income, she was relying entirely on her mother's material support and since the children refused to live with their father, she had placed three of them in various local children's shelters at a cost of one dollar per month each. Although Mr. P. was acquitted of the second complaint, the court record remains unclear as to whether he remained liable for the original three-dollar weekly allowance.[203] Nevertheless, as this case suggests, one of the main challenges that married women potentially faced was that husbands would default on their weekly payments. Accordingly, some police magistrates began to affix specific requirements to maintenance orders. In 1909, Robert B. of Galt was ordered to pay three dollars per week for the support of his wife and children. Nine months later he reappeared in the Galt police court on another charge of non-support. Given his unreliable record, the police magistrate stipulated that henceforth the weekly remittances had to be paid through his employer.[204] In the case of Peter O., a Stratford labourer, his separation agreement not only directed him to pay his

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John W., Ibid, Box 238; (1905) *King v. Alfred H.*, AO, RG 22-392, Lambton County CAI, Box 72.

203 (1897) *Queen v. William P.*, AO, RG 22, Niagara North CCJCC Case Files, Box 6. For other cases in which husbands reneged on their maintenance payments, see, for example, (1905) *King v. Alfred H.*, AO, RG 22-392, Lambton County CAI, Box 72; (1919) *Re Wiley and Wiley*, 46 OLR, 176-80; "Left Wife to Starve," Toronto *Globe*, 14 September 1906.

204 (22 October 1909) and (25 July 1910) *Mary B. v. Robert B.*, AO, RG 22-13, GPC, Box 13.

wife two dollars per week "so long as she remain[ed] apart from him," but also instructed him to make his weekly payments at the police court.[205]

Another problem that some wives confronted was that, even though they may have obtained deeds of separation or orders for maintenance, this did not necessarily deter resentful and angry husbands from resorting to various forms of retaliation. In 1898, Catherine D. of Roxborough township charged her husband, Andrew, with maliciously setting fire to certain buildings in the village of Moose Creek, which included a saddler, butcher, and machinery shop as well as an icehouse and a woodshed. At the preliminary hearing, Catherine testified that she had left her husband one month earlier because of his intemperate and abusive behaviour and, after launching an alimony suit against him, a deed of separation was executed several weeks later. According to the terms of the settlement, she secured possession of the buildings in question, which she intended to rent out for her own support and that of her seven children; she also planned to live in the dwelling house located on the same property. Evidently angered by the terms of the separation, Mr. D. began making a series threats, warning Alexander C., who agreed to rent the buildings, "not [to] have anything to do with [them] as he was not half through with it." The evidence further indicated that the accused, while "tearing round the house," told his sons that "he would see everything go up in smoke." Peter D., a neighbour, however, offered the most incriminating testimony, stating that two days after relinquishing possession of the

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[205] (12, 25, and 26 October 1901) *Julia O. v. Peter O.*, AO, RG 22, SPC, Box 4. In the previous year, Peter O. was sentenced to four months in the Central Prison for wounding his wife. At this earlier trial, Julia complained that, even though her husband usually supplied her with food and clothing, "some weeks [he] spends all his wages for drink." (10 and 11 July 1900) *Julia O. v. Peter O.*, Ibid, Box 2. Some police magistrates were also inclined to order husbands to make their weekly payments at the police court if they reneged on their weekly maintenance payments and/or if their criminal record demonstrated a persistent failure to provide. See, for example, (2 April 1913) *Alice A. v. Charles A.*, (23 December 1914) *Samuel S. v. Charles A.*, (4 January 1915) *Samuel S. v. Charles A.*, AO, RG 22, Prince Edward County (Picton) Returns of Convictions, 1887-1919; (10 July 1914) *Nellie B. v. Elmer B.*, (15 February 1915) *H. M., Picton Children's Aid Society v. Charles B., William B., and Wilson B.*, (31 July 1916) *Nellie B. v. Elmer B.*, Ibid.

property, Mr. D. asked him to "put a match" to the harness shop" and "burn it up." When he refused "to do the job," the neighbour observed the accused entering the woodshed and minutes later, it was in flames. After completing the deed, Mr. D. then warned the neighbour that "he would shoot [him] if [he] screamed" or attempted "to put out the fire." While the defense attempted to argue that because of his intemperate habits, the defendant's mind was not sound and he was not responsible for his actions, Mr. D. was committed for trial and eventually pleaded guilty to the charges. Several months later, after Mrs. D. received "full restitution for the property destroyed by fire," she informed legal officials that she did "not desire to prosecute my husband on the charge of arson now pending against him, and am quite willing that he should be released on [a] suspended sentence."[206]

Catherine D. suggested that the arson committed by her husband was not only intended to deprive her of the property, but also that it was meant to "injure her." Other married women, who secured marital separations and/or maintenance allowances, explicitly related how their angry husbands retaliated by harassing and/or physically abusing them. One year after Mary M. lodged a complaint against her husband, a Downie township farmer, for non-support, she returned to the Stratford police court to lay charges of trespass and assault. He pleaded guilty to the charges and was given a suspended sentence on the condition that he undertook "not to repeat [the] offence or go onto compts place or in anyway interfere with compt or her belongings."[207] Similarly, in 1920, Mary B. of Sault Ste. Marie obtained a separation agreement, stipulating that her husband pay thirty dollars a month for the upkeep of her children and he was allowed "access to the children" for two hours each week. Two weeks later, Mary returned to the local police court, complaining

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[206] (1898) *Queen v. Andrew D.*, AO, RG 22-392, Stormont, Dundas, and Glengarry Counties CAI, Box 146.

[207] (21, 22, and 23 June 1900) *Mary M. v. John M.*, AO, RG 22, SPC, Box 2.

that the accused had not "paid anything on it yet" and charging him with trespass and assault. Testifying through an interpreter, she argued that ever since the separation agreement had been executed, Mr. B. appeared at her house on a regular basis and, on the preceding afternoon, he had surfaced four times. On the second occasion, he struck her on the head with a stone and punched her in the chest and face. Although she managed to evade him by taking refuge at a neighbour's house, when he reappeared in the middle of the night wielding "a big stick," her brother and a boarder seized him and alerted police.[208]

This form of violent retribution also emerged as one explanation for the murder of Catherine W. of Smith's Falls by her fifty-two-year-old husband, Rufus, in 1910. Although the deceased was depicted in local newspapers as a respectable and industrious charwoman who was forced to support herself and her three younger daughters because of her husband's intemperate and indolent habits, Mr. W. presented a very different portrait of his wife's character. Prior to his trial at the Lanark Assizes, the accused made a statement in which he candidly outlined what had incited his murderous act: "My wife did not treat me right. She would go to hotels and work. She also drank beer and whiskey. She was intemperate for years ... I never lived agreeably with my wife ... [and] I have frequently charged [her] with misbehaviour ... She brought it on herself. I spoke roughly to her. She said 'Go to Hell' ... She threw a tea pot at me, then I grabbed her and choked her to death, and I guess she got her dues." One of his principal grievances, however, was the fact that Catherine had, allegedly "on a pack of lies and a pack of other women" and "for nothing," initiated criminal proceedings against him for non-support, resulting in his imprisonment in the Central Prison for six months. During the trial, the "plea of the defense" was that Mr.

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[208] (1920) *King v. Pete B.*, AO, RG 22, Algoma District Crown Attorney (Sault Ste. Marie) Case Files, Box 1. For a similar pattern, see (1920) *King v. Charles R.*, Ibid; (1906) *Rex v. Thomas Q.*, AO, RG 22, York County CA/CP (General Sessions) Case Files, Box 3952. In this latter case, the Mr. Q., a Toronto teamster, was charged with refusing to support his wife and four days after laying the complaint, while the case was under adjournment, he assaulted her causing actual bodily harm.

W. "was provoked by his wife" while "he was under the influence of liquor, thereby so enraging him that he had lost control of his senses." By contrast, the crown prosecutor developed the portrait of an "unhappy domestic life in which drinking, jealousy, and quarrelling seem to have been almost the daily portion." Ultimately, however, he contended that the accused "had made up his mind to kill his wife for revenge," given that, as Mr. W.'s eldest daughter testified, "ever since he was released" from prison, her father had "been vowing vengeance."[209]

In the face of such violence and antagonism, some married women articulated a desire to sever all ties with their husbands and lead an independent economic existence, although such action was by no means the norm. When Joseph Rouse appeared in the Toronto police court in 1887 on a charge of drunkenness, his wife demanded a separation on the grounds that the defendant had "turned her out of the door at night" and she could no longer "get along" with him. In negotiating the terms of the separation, she fully accepted her husband's promise that he would henceforth "avoid her," declaring that "all she wanted was peace" and accordingly, "could keep herself."[210] Similarly, Ellen C., the wife of a Stratford labourer who began boarding with her sister after her husband left her, was equally firm in her refusal to live with him, despite his concerted and at times violent efforts

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209 After a short deliberation, the jury found Mr. W. guilty of murder and he was executed on 14 December 1910. (1910) *King v. Rufus W.*, AO, RG 22-392, Lanark County CAI, Box 76; NAC, RG 13, Capital Case Files, vol. 1458, no. 436A; RG 22-F-31, Lanark County (Perth) Jail Journal, Volume 7; Toronto *Globe*, 2 May, 13 October, 15 December 1910. Similarly, in 1919, Fannie C., the wife of a labourer, died mysteriously in a fire the day after her estranged husband was summoned to appear in Toronto's police court to answer to a charge of omiting to provide her with necessaries and refusing to uphold his agreement to pay her seven dollars per week and to allow her "the privilege of seeing her child when she returns from work." After an extensive investigation and a lengthy trial, Mr. C. was convicted of deliberately setting the fire and of murdering his wife. Although sentenced to be executed, he obtained a reprieve of life imprisonment in the Kingston Penitentiary. (1920) *Rex v. George C.*, AO, RG 22-392, York County CAI, Box 280; NAC, RG 13, Capital Case Files, vol. 1505, no. 645A/CC139; "Links C[] With Death Of His Wife," Toronto *Globe*, 22 December 1919.

210 "All She Wanted Was Peace," Toronto Globe, 22 September 1887.

"to get her back." He "wants me to live with him," she stated, "and I will not ... [He] dont support me - he wont get a home for me - he wont supply me with clothes - he dont give me the purse - I can work for a living."[211]

Under the terms of the marriage contract, then, the duty to supply material subsistence and economic support for wives and children constituted a husband/father's most entrenched social, legal, and moral obligation. To be sure, husbands/fathers were not the only household members who could face prosecution or, in some cases, harsh social condemnation for omitting to provide necessaries for those positioned as legal dependents. Occasionally, adult sons who failed to provide for their elderly parents,[212] masters who neglected their servants,[213] and household heads who invoked religious beliefs as grounds

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211 (30 April, 9 and 11 May 1904) *Bertha G. v. Fred C.*, AO, RG 22, SPC, Box 7.

212 In 1900, for example, Charles S., a Osprey township farmer was charged by his estranged sister with omitting to provide necessaries for their elderly mother and mentally challenged sister. Under his father's will, Charles was entrusted with the responsibility of furnishing them with "meat, drink, washing, lodging, apparel and attendance," but according to the complainant, the two women were living in a state of extreme dirt and filth; their bodies were "crawling with lice" and covered with sores, and their bed linen and clothes remained unwashed. Mr. S., however, successfully argued that his sister's assessment of the domestic situation was wholly "exaggerated," in that he and his wife had consciously cared for both women and supplied all their basic needs. He also blamed his hired labourers for introducing the "vermin" infestation in his house. (1900) *Queen v. Charles S.*, AO, RG 22-392, Grey County CAI, Box 47. In general, the neglect of elderly parents particularly by older sons drew severe social condemnation. When a farmer named Logan, who lived near Amaranth Station brought his ninety-year-old mother to Orangeville to be jailed as a vagrant, the *Dufferin Advertiser* could not contain its outrage over this act of the "meanest inhumanity." As the newspaper reporter put it, "the poor old lady" had evidently "outlived her usefulness as a household drudge" and her heartless and unfilial son decided to have her committed in the county jail "to save himself the commitment and expense of providing for her." "Man's Inhumanity," *Stratford Evening Herald*, 27 April 1896. See also the case against Richard and Ellen Forbes in "A Dublin Case," *Stratford Evening Herald*, 6 April 1896 and AO, RG 20-F-40, Perth County, Stratford Jail Register, Volume 4, as well as "A Gruesome Story. Horrible Death of an Aged Widow Lady," and "No Person to Blame," Toronto *Globe*, 12 and 13 January 1894; "Heraldic Toots," *Stratford Evening Herald*, 5 October 1896; "Aged Woman Found Starving. Destitute, Although Son and Daughters Were Working," Toronto *Globe*, 31 January 1912.

213 See, for example, (1899) *Queen v. William M.*, AO, RG 22-392, Bruce County CAI, Box 13 which involved the physical neglect of the defendant's nineteen-year-old indentured "servant boy"; (1920) *Rex v. George D.*, AO, RG 22-392, Dufferin County CAI, Box 28 which revolved around the death of the accused's thirty-two-year-old housekeeper from uterine sepsis caused by an allegedly self-induced abortion.

for refusing to secure medical aid for family members[214] could also find themselves on trial in the criminal courts. But the burden of support clearly lay with most weight on male heads of households.

Within the socioeconomic conditions of pre-industrial Upper Canada and the expanding industrial capitalist system in Ontario, the institutions of marriage and family thus represented a pragmatic institution of material survival for most married women and, according to the provisions of the law, the entitlement to economic maintenance was construed as one of the principal rights and so-called benefits of the matrimonial state. While the fracturing of rural and working class family-household economies occurred under varying circumstances, desertion, non-support, and criminal neglect exposed how structural dependency on male support could easily translate into economic vulnerability, extreme destitution, or life endangerment. As indicated by the legal records, however, married women were prepared to use existent laws, however limited, to assert their claims to material or financial maintenance either to salvage the family-household economy or to survive with their dependent children outside of it. These court documents also suggest that in adjudicating the complaints of wives and the counter-claims of husbands, the provisions of the law and the practices of the courts did not consider the value of married women's

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214 The defendants in these manslaughter trials were usually members of the Christian Scientists or the Zionites, controversial religious groups which prescribed faith and prayer rather than any form of medical intervention in cases of illness. As indicated by the court records and newspaper reports, the main issues of contention revolved around whether the rule of law and concerns about public health should take precedence over the freedom of religious conscience. See, for example, (1901) *Queen v. James Henry L.*, AO, RG 22-392, York County CAI, Box 263, "Guilty Of Manslaughter," Toronto *Globe*, 6 November 1901, (1903) *The King v. Lewis*, 7 CCC, 261-77; "The Mills Inquest," Toronto *Globe*, 16 January 1902; (1904) *Queen v. Marshall H.* and (1904-05) *Queen v. Eugene B.*, AO, RG 22, Ontario County CA/CP CCJCC Case Files, Box 8; (1904) *Queen v. Elias M.*, AO, RG 22-392, Perth County CAI, Box 122 and RG 20-F-40, Perth County, Stratford Jail Register, Volume 4; "Law Should Interfere And Bring Christian Science Under Subjection," Toronto *Globe*, 15 September 1906; (1909) *Rex v. Benjamin B.*, AO, RG 22-392, Welland County CAI, Box 166 and (1909) "Correspondence," RG 4-32, AG, #1338; "Died Under Treatment. Mr. John Bailey Believes in Christian Science," Toronto *Globe*, 14 May 1910; (1915-16) *King v. Dickson B.*, AO, RG 22-392, Simcoe County CAI, Box 141 and (1915) "Re. Inquest as to cause of death of Loy B[] of the Township of Tay," AO, RG 4-32, AG, #1691.

reproductive labour as the underlying basis for extending some form of legal protection; rather much of the focus was on such competing criterion as a wife's 'need' and 'worthiness' and a husband's 'ability' and 'character'. At the same time, in the interests of 'protecting' deserving women and conserving local relief costs, both the law and the courts were primarily concerned with bolstering the institution of the family supported by a reliable breadwinner as the basic economic unit within civil society.

Chapter 6

From Husbandly Threats to Spousal Murder: Deconstructing Patterns of 'Family' Violence

> "Instances of wife-beating are of every day occurrence, and cause little or no excitement."[1]
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> "Alas! whence does crime mostly spring? ... The house of Searing was known as a 'drinking house'. Here we have the explanation of everything. When man drugs down his reason he is the fiercest and most hateful of all brutes. This Searing, when he swore to love and cherish his wife, no doubt meant to do so. But he drank, and perhaps led on the wife to drink, and hence it became chronic that he should beat her three times a week."[2]

If the nineteenth- and early twentieth-century Ontario criminal court records and local newspapers indicate that desertion and non-support remained critical issues that wives and dependant children might confront, the problem of domestic violence, in all its manifestations, was no less prevalent. When beginning my research into wife abuse, I assumed that I was embarking on a futile endeavour. If, as contemporary studies indicate, married women are often inhibited from prosecuting or leaving their abusive and violent husbands for socioeconomic, ideological, legal, or psychological reasons,[3] then women in the past must have suffered in comparative isolation and silence. It soon became apparent, however, that apart from the direct connection made by legal authorities and temperance reformers between alcohol consumption and marital/familial discord, the lack of public

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[1] "A Brutal Father. He Assaults His Wife and Feloniously Wounds His Little Daughter. A Wretch Justly Dealt With," Toronto *Globe*, 11 April 1881.

[2] "The Murder of Emma Searing," Toronto *Globe*, 16 July 1874.

[3] See, for example, Canadian Research Institute for the Advancement of Women, *Factsheet on Violence Against Women and Girls* (Ottawa: CRIAW, 2000), 5-6.

"excitement" over or extensive social analysis of domestic violence in general and wife battering in particular was not necessarily matched in married women's personal practice. Based on a compilation of 623 wife abuse cases prosecuted in the criminal courts between 1830 and 1920, the historical evidence indicates that married women did seek protection and redress through the legal system. In responding to one of the harshest and often brutal manifestations of the asymmetrical power relations within marriage, most of these women attempted to defend, assert, and/or negotiate their ambiguously defined right not to be beaten and abused by their husbands.[4] By examining the social and legal context within which abused and battered wives and especially those from Anglo-Celtic rural and urban working-class backgrounds brought their grievances to the local justice of the peace or police magistrate, it is possible to dissect some of the rhetorical strategies they employed to strengthen the legitimacy of their complaints, how their husbands responded to their grievances, and the ways in which the legal system tended to adjudicate these often competing marital claims.

Spousal murder, however, was one marital crime that did become the focus of intense legal scrutiny, public interest, and community gossip. It was generally perceived as the most abhorrent violation of the contract of marriage and gravest transgression of the gendered obligations assigned to each spouse: the duty of husbands to fulfil their role as guardians of their wives and other dependents and the responsibility of wives to honour their protectors. Perhaps one of the most striking features of the 106 suspected wife murders and 26 alleged husband killings I examined, however, was the extent to which they were constructed as relatively isolated acts for which a plausible and definitive

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[4] The criminal court records also indicate that other familial relations could also be highly conflictual, such as those between fathers and sons. Occasionally, wives were also charged with threatening or abusing their husbands or, in two cases, with attempting to poison them. While I will refer to some of these cases in this chapter where relevant, it should be noted that cases of wife abuse far outnumbered other instances of 'family' violence in the historical records I examined.

explanation had to be found. The compulsion to achieve this sense of closure on the part of the criminal justice system as well as local communities meant that, even though not essential for securing a conviction, certain 'truths' behind the homicidal deed needed to be unravelled, be it in the form of defining a cause, establishing a motive, and/or assessing culpability. In this process of reconstruction, interpretation, and explanation, spousal murder did not generate a social critique of the unequal power relations within marriage nor did it challenge the legitimacy of the institution itself. Rather, this crime was explained in legal and public discourse within fairly defined, historically specific, and relatively safe parameters. These explanations incorporated nineteenth- and early twentieth-century assumptions about gender, class, and race/ethnicity, but they also drew on and fuelled concerns about other social and moral issues, one of the principal ones being the vice of intemperance.

Confronting Family Violence: Community, Church, and Legal Sanctions

The provisions of common law did offer married women and children some safeguards against the 'excessive cruelty' of husbands/fathers, but one of its underlying assumptions was that family dependants did not require the explicit protection of the law because they were, in theory, under the guardianship of male household heads.[5] At the same time, as legally responsible for the (mis)behaviour of their dependents, husbands/fathers were not only expected to 'guide' their wives and children, but were also entitled to 'correct' them within what was ambiguously termed 'reasonable bounds'. In 1883, one Ontario judge stressed that some degree of force was to be expected and tolerated within the institution of marriage: "At common law a man has the right to resort to the moderate correction of his wife for her misbehaviour, but not that I am aware to turn

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[5] (1873) *Rodman v. Rodman*, 20 Gr. Chy, 443-44.

her out or lock her out of doors. She is entitled to the protection of his domicile, even if he takes her in and administers proper castigation for her faults. It is not, however, for magistrates or courts to step in and interfere with the rights of a husband in ruling his own household."[6] In the absence of clearly defined limits, the vagueness inscribed in the concept of 'reasonable' and 'moderate correction' created a series of tensions between, on the one hand, strengthening Anglo-Protestant middle-class ideals of companionate marriage based on the principles of "mutual confidence, affection, and respect" and the paternalistic vision of the male household head as the benign 'natural protector' of his dependents and, on the other, the traditional virtues of unqualified wifely obedience, respect, and submission, and the duty of a husband/father to govern a well-ordered family-household even if it meant exercising his prerogative to administer 'proper castigation'.[7] Although religious and secular literature admonished male household heads not to rule as brute tyrants, it was usually left to community members, local churches, legal authorities, and ultimately married women themselves to address this ambiguity, determining when male household heads had unjustly abused their authoritative position and exceeded tolerable or acceptable boundaries.

During the early nineteenth century, when the formal authority and legitimacy of

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[6] These are the words of a Judge Hughes cited in Erin Breault, "Educating Women About the Law: Violence Against Wives in Ontario, 1850-1920" (MA thesis, University of Toronto, 1986), 16.

[7] Such ambiguity was not, however, unique to the nineteenth and early twentieth centuries. As Susan Dwyer Amussen points out, legal, theological, and moral texts on matrimonial relations produced in England between 1550 and 1750 revealed "confusion about the extent of a husband's power over his wife." "'Being Stirred To Much Unquietness': Violence and Domestic Violence in Early Modern England," *Journal of Women's History* 6, 2 (Summer 1994): 71-72. For a discussion of the historical development of the principle of 'moderate correction' in Europe, see Roderick Phillips, *Putting Asunder: A History of Divorce in Western Society* (Cambridge: Cambridge University Press, 1988), 323-34. See Elizabeth Jane Errington for the tenets of companionate marriage and the "considered discipline" of children in Upper Canada in her, *Wives and Mothers, School Mistresses and Scullery Maids: Working Women in Upper Canada, 1790-1840* (Montreal & Kingston: McGill-Queen's University Press, 1995), 33-35, 72-73.

Upper Canada's legal system remained tenuous particularly in rural areas,[8] historical evidence suggests that community and church discipline of disorderly households and domestic conflicts constituted two forms of third-party scrutiny and extra-legal regulation of what was perceived as inappropriate familial and marital conduct. Bryan D. Palmer has argued that, like other individuals who offended local morals and standards, abusive parents and violent husbands could become targets of the disciplinary practices of charivaris and, in later decades, of whitecapping.[9] Although it is unclear how widespread such expressions of community disapproval were in the province,[10] public shaming and swift punishment could relieve an abused wife of the burden of complaint associated with formal legal action and ongoing community surveillance might mitigate against possible retaliation by her aggressor.[11] Prior to the 1860s, as Lynne Marks has shown, Baptist and,

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[8] See, for example, Susan Lewthwaite, "Violence, Law, and Community in Rural Upper Canada," *Essays in the History of Canadian Law*, Volume 5, eds. Jim Phillips, Tina Loo, and Susan Lewthwaite (Toronto: University of Toronto Press, 1994), 353-86.

[9] Bryan D. Palmer, "Discordant Music: Charivaris and Whitecapping in Nineteenth-Century North America," *Labour/Le Travail* 3 (1978): 46-48. In 1896, for example, Mary Koehler of Wilmot township, was stripped, beaten, tarred, and ridden upon a rail by four disguised men for allegedly abusing her stepdaughter. "Whitecaps In Waterloo" and "Three Year's for Whitecaps," *Stratford Evening Herald*, 26 May and 10 June 1896.

[10] Given that the historical evidence of various forms of community discipline is more extensive in England, historians, such as E. P. Thompson, have pointed out that, by the early nineteenth century, brutal husbands began to supersede insubordinate, nagging, or violent wives as the main targets of rough music, suggesting a possible decline in patriarchal authority, a shift in gender relations, and the growth of community intolerance for wife-battering. More recently, A. James Hammerton has argued that such conclusions should not be exaggerated, in that "the coexistence of tolerance and condemnation of domestic violence ... was evident at least as early as the seventeenth century, and continued in modified form in the Victorian period." E. P. Thompson, "Rough Music," *Customs in Common: Studies in Traditional Popular Culture* (New York: The New Press, 1991), 505-13; A. James Hammerton, "The Targets of 'Rough Music': Respectability and Domestic Violence in Victorian England," *Gender and History* 3, 1 (Spring 1991): 23-26.

[11] In 1913, for example, one writer described an incident in which an Ontario farmer, living in an undisclosed hamlet, was ridden on a fence rail by a group of men for beating his wife with a splinter. They also warned him that "if he beat his wife again treatment more drastic would be meted out to him." John

to a lesser extent, Presbyterian churches were also prepared to monitor and mediate marital and familial conflicts among their respective members. While such interventions were much less extensive than those involving disputes between unrelated individuals, their main intention was to "restore harmony" within the domestic realm and, by extension, within the church community. Given, however, that Baptists and especially Presbyterians tended to uphold the patriarchal structure of the family unit with husbands as rulers of the household and wives and children as obedient subordinates, church disciplinary practices indicated a greater desire to restore and preserve established familial hierarchies than to punish wrongdoing. What most differentiated the two denominations, according to Marks, was that all members participated in disciplinary matters in Baptist congregations, which may have accounted for their willingness to offer married women some degree of protection by censuring violent husbands. In contrast, the hierarchical Presbyterian church sessions, overseen by the minister and elders, tended to support "male ... authority regardless of the circumstances."[12]

The legal system also offered wives certain safeguards against abusive husbands, but these remedies were not without limitations. With the establishment of the Court of Chancery in 1837, a married woman was entitled to launch a civil suit for alimony on the grounds of marital cruelty.[13] If the court ruled in her favour, matrimonial relief from a

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MacDougall, *Rural Life in Canada: Its Trends and Tasks* (Toronto: The Westminster Co., 1913), 45-46.

12 Lynne Marks, "Christian Harmony: Family, Neighbours, and Community in Upper Canadian Church Discipline Records," *On the Case: Explorations in Social History*, eds. Franca Iacovetta and Wendy Mitchinson (Toronto: University of Toronto Press, 1998), 119-23.

13 The jurisdiction of the Court of Chancery to grant alimony decrees was challenged and upheld in the mid-nineteenth century in two cases involving marital cruelty: (1851) *Soules v. Soules*, 3 Gr. Chy., 118-21; and (1852) *Severn v. Severn*, 3 Gr. Chy., 431-48. In 1859, the provincial legislature clarified the mandate of the court and the grounds upon which alimony could be granted, namely desertion, adultery, and cruelty. Lori Chambers, *Married Women and Property Law in Victorian Ontario* (Toronto: University of Toronto Press, 1997), 30.

violent spouse was coupled with the possibility of extracting financial maintenance during marital separation. As several historians have pointed out, however, the judgements found in the reported alimony cases indicate that, to varying degrees, Chancery judges were reluctant to subvert the authority of the husband, to undermine the patriarchal institution of marriage, or to sanction the disintegration of the family unit.[14] In their deliberations, chancellors were guided by the circumscribed official definition of legal cruelty rooted in English precedents. Referring to conduct that would "cause danger to life, limb, or health, bodily or mental, or to give rise to a reasonable apprehension of such danger,"[15] the judiciary could discount isolated incidents of violence as adequate grounds for granting an alimony decree.[16] As Chancellor J. G. Spragge argued in 1873, "the law as laid down in the more modern cases, as well as in older ones, lays upon the wife the necessity of bearing some indignities, and even some personal violence, before it will sanction her leaving her husband's roof."[17] For some female plaintiffs, this meant that they had to provide evidence that repeated and sufficiently brutal acts had occurred and that they had not previously 'condoned' or 'forgiven' their husbands' violent behaviour.[18] Furthermore, the judiciary tended to consider a married woman's defiance of her husband's authority or

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[14] See, for example, Constance Backhouse, "'Pure Patriarchy': Nineteenth-Century Canadian Marriage," *McGill Law Journal* 31, 2 (March 1986): 295-312; Breault, "Educating Women About the Law," 31-46; James Snell, *In the Shadow of the Law: Divorce in Canada, 1900-1939* (Toronto: University of Toronto Press, 1991), 97-102.

[15] This definition was based on the 1790 English case, *Evans v. Evans*, which established the precedent in alimony litigation involving marital cruelty. R. R. Evans, *The Law and Practice Relating to Divorce and Other Matrimonial Causes* (Calgary: Burroughs & Co., 1923), 43-52, 326-30.

[16] (1858) *English v. English*, 6 Gr. Chy., 580-81; (1891) *Aldrich v. Aldrich*, 21 OR, 448.

[17] (1873) *Rodman v. Rodman*, 20 Gr. Chy., 430-31.

[18] (1896) *Bavin v. Bavin*, 27 OR, 571-82.

evidence of verbal or physical provocation as sufficient justification to "excuse considerable severity in the husband" and as adequate grounds to undermine her entitlement to matrimonial relief.[19] In addressing one female plaintiff in 1858, Chancellor William Hume Blake chastised her for disregarding her wifely duties: "She must remember ... that it is her duty as a wife to submit and accommodate herself as far as possible to the temper of her husband; but if instead of exercising patient forbearance, she allows herself to commit such acts of violence and misconduct ... she cannot hope for relief here. In that event her misery and degradation will have been the unavoidable result of her own misconduct."[20]

Based on her examination of the nineteenth-century unpublished civil court records, however, Lori Chambers has challenged the reliance on published law reports as offering an accurate representation of how alimony suits, the majority of which were launched on the grounds of marital cruelty, were adjudicated. In fact, she has argued that the biases of what historians have characterized as a "conservative male judiciary" was not the main obstacle that married women confronted. Even though chancellors "accepted masculine authority in the family" and expected wives to obey their husbands, they were nonetheless sympathetic to the plight of battered women and supportive of their need for legal protection. By the early 1870s, this form of paternalism was manifested in their willingness to apply a less restrictive definition of legal cruelty, especially by taking into account "apprehensions of personal violence" as sufficient grounds for granting wives alimony. What was much more prohibitive for married women was the high cost of initiating and sustaining a protracted civil suit coupled with the real possibility of losing custody of their children. As a result, a high percentage of alimony suits were abandoned before they "advanced to a hearing" and even if wives were granted maintenance, "few received

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19 (1852) *Severn v. Severn*, 3 Gr. Chy., 431-48.

20 (1858) *McKay v. McKay*, 6 Gr. Chy., 383.

support from their estranged husbands."[21]

Under the provisions of British criminal and common law, as inherited by Upper Canada, a married woman was also entitled to exhibit articles of the peace against her husband and local justices of the peace were empowered to bind him to keep the peace.[22] In addition, despite the restrictive conditions of coverture and unlike the strict evidentiary rules that formally applied to failure to supply necessaries complaints prior to 1886, she was legally permitted to act as a competent witness against her spouse, the common law exception applying to offences involving "personal injuries effected by violence or coercion."[23] In 1829, Sarah H., the wife of a Haldimand township yeoman, availed herself of this entitlement, by petitioning for "sufficient sureties to keep the peace" after bearing what she described as "great cruelty and barbarity" over the past eight years. Given her husband's more recent and repeated threats that he would "kill her," she felt compelled to

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21 Chambers, *Married Women and Property Law*, chapter 2.

22 As Margaret Hunt has pointed out, this entitlement was, in theory, available to married women in England as early as the sixteenth century. Margaret Hunt, "Wife Beating, Domesticity and Women's Independence in Eighteenth-Century London," *Gender and History* 4, 1 (Spring 1992): 18. In her study of the court records of Kings County, Nova Scotia in the late eighteenth and early nineteenth centuries, Judith Norton found several cases in which married women petitioned for peace bonds. Judith A. Norton, "The Dark Side of Planter Life: Reported Cases of Domestic Violence," *Intimate Relations: Family and Community in Planter Nova Scotia, 1759-1800*, ed. Margaret Conrad (Fredericton: Acadiensis Press, 1995), 182-89.

23 For an overview of these rules of evidence, see (1882) *Regina v. Bissell*, 1 OR, 514-26; (1914) *Rex v. Allen*, 17 DLR, 721-24. The only wife abuse case in which a defense attorney objected to a married woman giving evidence against her husband was during the trial of Dr. Joseph S. of Gloucester township, who was accused of attempting to murder his wife and mother-in-law in 1906. The Carleton county police magistrate immediately overruled the objection, arguing that "always in common law, as I understand it, the wife's evidence or testimony is taken because there might be no other way of proving the offence committed against [her]." (1906) *King v. Joseph S.*, AO, RG 22-392, Carleton County CAI, Box 23.

seek "Protection from the Laws of This Country."[24] In addition, married women could also lay complaints against their husbands for such offences as assault and battery and, as occurred when Nancy Kilduff, the wife of an elderly Kingston Irishman, did so in 1835, these cases could be prosecuted summarily by local magistrates.[25]

Growing legal and public concern about wife abuse, as various historians have argued, "does not ebb and flow with the actual incidence of the crime, but surges when domestic violence becomes symbolically linked with other concerns."[26] Beginning in the 1830s, as discussed in the last chapter, "the inordinate use of intoxicating liquors" increasingly emerged as one of the most prevalent explanations for various social ills afflicting the province, ranging from the perceived rise in disorder and lawlessness, marital and familial discord, to acts of 'unmanly' brutality against wives and children.[27] In this

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24 (1829) *Articles of the Peace Exhibited by Sarah H[] Against her Husband Daniel H[]*, AO, RG 22-32, Northumberland and Durham Counties (Cobourg) General Quarter Sessions Filings, Box 3, File 6. Similarly, Mary L. also appeared before the Cobourg General Quarter Sessions, asserting that for the last six months, her husband, a Smith township farmer, had "without any provocation whatsoever from her ... most cruelly beat and flogged her with his fists and a rope and hath frequently thrown her down on the floor and kicked and stamped upon her and used other and repeated acts of cruelty, barbarity and violence." Furthermore, given that he had repeatedly threatened to "kill her," she was "put in utmost fear and danger and verily believe[d] that he will put his said threats into execution." (1836) *Articles of the Peace of Mary L[] Against Thomas L[] Describing His Assaults Against Her*, Ibid, Box 4, File 2.

25 "Kingston Police," *Kingston Chronicle and Gazette*, 14 November 1835. See also (1841) "An Act for consolidating and amending the Statutes in this Province relative to Offences against the person," 4 & 5 Vict., c. 27, s. XXVII.

26 See, for example, Anna Clark, "Humanity or Justice?: Wifebeating and the law in the eighteenth and nineteenth centuries," *Regulating Womanhood: Historical Essays on Marriage, Motherhood and Sexuality*, ed. Carol Smart (London: Routledge, 1992), 187; Linda Gordon, *Heroes of Their Own Lives: The Politics and History of Family Violence* (New York: Penguin Books, 1988), esp. chapter 1 where Gordon argues that "family violence has been historically and politically constructed," in that "what constitutes unacceptable domestic violence, and appropriate responses to it, developed and then varied according to political moods and the force of certain political movements."

27 In his address before the grand jury at the Midland District Assizes in 1835, Judge Sherwood identified the need for "virtuous education," both "moral and religious ... in early life" as the most "effectual method of restraining vice of all kinds" and "the most efficient and lasting preventative of crime." By

context, the brutish drunken husband came to represent one of the gravest threats to domestic harmony and one of the principal causes of the disintegration of the family unit. An article published in the *Kingston Chronicle and Gazette* in 1834 insisted that, when a husband/father "forgets the duties he once delighted to fulfil" and becomes a "creature of intemperance," the implications for the family unit were so grave that they far outweighed all the "common calamities of life," including "poverty, sickness, and even death." According to the writer, it was the drunkard's wife who endured the greatest suffering:

> It is here, above all, where she, who has ventured every thing, is lost. Woman, suffering woman, here bends under direst affliction. The measure of her cup is in truth full, whose husband is a drunkard. Who shall protect her, when he is her insulter, her oppressor? What shall light her when she shrinks from the sight of his face, and trembles at the sound of his voice ... There, while the cruel author of her distress, is drowned in distant revelry, she holds her solitary vigil, waiting, yet dreading his return, that will wring from her by his unkindness, tears even more scalding than those shed over his transgression ... and [she] asks, if this can really be him? sunken being, who has nothing for her but the sot's disgusting brutality.[28]

For other early nineteenth-century legal authorities and social commentators, however, domestic violence was an outgrowth of the rough and turbulent culture of the lower classes and especially Irish immigrant communities, with their chronic drunkenness,

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"inculcating the principles of integrity, honour and religion, on the minds of youth ... sobriety and virtue [will] become habitual to them," especially given that the "baneful habit of intemperance ... tends to the greatest offences." *Kingston Chronicle and Gazette*, 25 July 1835. For legal and political discussions of intemperance as one of or the principal cause(s) of crime, disorderliness, and domestic discord in the early nineteenth century, see, for example, "Home District Assizes" and "York Assizes," Toronto *Globe*, 8 and 19 January 1850; J. Jerald Bellomo, "Upper Canadian Attitudes Towards Crime and Punishment (1832-1851)," *Ontario History* 64, 1 (March 1972): 13-14; D. Owen Carrigan, *Crime and Punishment in Canada: A History* (Toronto: McLellan & Stewart, 1991), 45-48; Cecilia Morgan, *Public Men and Virtuous Women: The Gendered Languages of Religion and Politics in Upper Canada, 1791-1850* (Toronto: University of Toronto Press, 1996), 163-69, 208-11.

[28] "The Drunken Husband," *Kingston Chronicle and Gazette*, 24 May 1834.

quarrelling, and brawling.[29] In a letter to the editor published in the *Kingston Chronicle and Gazette* in 1837, one local citizen, who identified himself as "A Lover of Order," complained that the Kingston magistrate was not implementing "more effectual means for confining drunken and disorderly persons" who were disrupting his neighbourhood:

> There is a man living opposite the English Church, who is a complete nuisance in the neighbourhood. The neighbours have, through their representations, had him taken up; but after a few days' confinement he has been again let loose upon Society only to repeat his former disgusting conduct, such as beating his wife and children, breaking the windows of his house and making use of language unfit for the ears of any decent person and otherwise making himself an eyesore to the more respectable persons living in the immediate vicinity. I have been in smaller towns than Kingston where such conduct would have been taken notice of immediately by the proper authorities and the persons made to suffer for it.[30]

Police court records indicate that, in later decades, neighbours continued to initiate criminal proceedings against disreputable members of disorderly households. In some instances, when both husband and wife were prone to intemperate habits and despite evidence of wife abuse, local citizens were principally concerned with containing or eliminating the cause of such disruptions in their midst. In 1870, Thomas S. of Galt charged Samuel V. and his wife, Sophia, with "disturbing the neighbourhood by swearing and using obscene and abusive language." As several neighbours testified, not long after Mrs. V. spoke to a local constable, complaining that her husband "wanted to cut her throat," the couple "began to quarrel" and she allegedly "began to swear at him and bring old charges against him when he went down the town." Sometime later, Mr. V. was heard firing a pistol and "both commenced swearing and using profane language," with Samuel warning his wife that he "had a pistol" and she "had better hold her tongue." Constructing

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[29] See, for example, Patricia E. Malcolmson, "The Poor in Kingston, 1815-1850," *To Preserve and Defend: Essays on Kingston in the Nineteenth Century*, ed. Gerald Tulchinsky (Montreal & Kingston: McGill-Queen's University Press, 1976), 296.

[30] *Kingston Chronicle and Gazette*, 15 July 1837.

both husband and wife as equally unruly and emphasizing that both were "often drunk," these witnesses maintained that since such "disturbances" were "of frequent occurrence" and their "disgraceful language" was "spoken in the presence of children and other people," the couple was considered "a nuisance and annoyance" to the neighbourhood and should be censured accordingly.[31]

At the turn of the century, legal authorities, social reformers, and temperance advocates continued to subsume domestic dissensions and family violence under the rubric of the various problems caused by dissipated habits within the province, be they ill-health, insanity, "crime, destitution, misery [or] neglect."[32] Although this connection diverted attention away from the hierarchical and unequal relations of power within the familial and marital unit, the growing campaigns against intemperance, as Kathryn Harvey has argued, created "a vocabulary" that an increasing number of women "could and did use to publicly name the crime of wife-battering," particularly when seeking protection or redress in the criminal courts.[33] In addition, by the late nineteenth century, wife-beating was perceived as a sufficiently serious social issue to warrant specific legislative initiatives.

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31 (4 July 1870) *Thomas S. v. Samuel V. and Sophia V.*, AO, RG 22-13, GPC, Volume 2. For a similar case, see (27 August 1879) *Constable M. v. Richard L. and Eliza L.*, Ibid, Volume 7. In other instances, when neighbours or fellow boarders complained about a couple's constant quarrelling and 'rowing', some landlords did not hesitate to serve them with eviction notices. See, for example, (1912) *King v. William W.*, AO, RG 22, Ontario County CA/CP CCJCC Case Files, Box 12; (1916) *King v. Wasil B.*, AO, RG 22, Ontario County CA/CP CCJCC Case Files, Box 16.

32 "The Responsibility of Liquor Dealers," *Dumfries Reformer*, 14 December 1870; "The Current Assize And Its Lessons," Toronto *Globe*, 8 November 1875; "York Winter Assizes," Toronto *Globe*, 12 January 1876; "Drink and Crime," Toronto *Globe*, 10 December 1888; *Ontario Legislative Assembly Debates*, 13 April and 1 May 1893; "Crime Diminished," Toronto *Globe*, 5 April 1894; Canada, *Royal Commission on the Liquor Traffic* (Queen's Printer, 1895), 529-32; S. G. E. McKee, *Jubilee History of the Ontario Woman's Christian Temperance Union, 1877-1927* (Whitby: C.A. Goodfellow & Son, n.d.), 17; (1905) "Grand Jury Presentment, York Assizes," AO, RG 4-32, AG, #1928.

33 Kathryn Harvey, "Amazons and Victims: Resisting Wife-Abuse in Working-Class Montréal, 1869-1879," *Journal of the Canadian Historical Association* (Kingston, 1991): 138.

Under the amended Ontario Deserted Wives' Maintenance Act of 1897, working-class married women were entitled to petition the lower criminal courts for a maintenance order on the grounds of marital cruelty. More specifically, this amendment extended the definition of a 'deserted wife' to include a woman who voluntarily separated from her husband because of "repeated assaults and other acts of cruelty."[34] What was significant about this broadened definition was that, unlike the penalties imposed in the criminal prosecution of wife abuse and despite the legislative desire to save public relief costs, it did provide the first statutory mechanism whereby working-class husbands became economically liable for the financial support of their battered wives.[35] Nonetheless, in contrast to the number of alimony suits launched in the civil courts and the extent to which wives petitioned the criminal courts for maintenance on the grounds of non-support, my compilation of cases indicate that relatively few married women, who laid assault complaints against their husbands, specifically requested and obtained formal separation agreements and/or orders of maintenance.[36]

What the criminal records do indicate is that most violent husbands/fathers were prosecuted under general criminal code offences, which ranged from uttering threats, various degrees of assault, wounding, to attempted murder. In 1909, 'wife-beating' was first mentioned in the criminal code under an amendment which introduced whipping as a

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34 (1897) "An Act respecting the Maintenance of Wives deserted by their Husbands," 60 Vict., c. 14, s. 34.

35 In other provinces, abused (and deserted) wives also had recourse to other institutions such as the Montreal Society for the Protection of Women and Children established in 1881 and the Nova Scotia Society for the Prevention of Cruelty, "an animal protection society" established in 1876 "which extended its attention to humans in 1880." Judith Fingard, "The Prevention of Cruelty, Marriage Breakdown and the Rights of Wives in Nova Scotia, 1880-1900," *Acadiensis* 22, 2 (Spring 1993): 84-101, and *The Dark Side of Life in Victorian Halifax* (Porters Lake: Pottersfield Press, 1989), chapter 8.

36 In fact, the granting of formal separations and/or maintenance orders was recorded in only 2 per cent of the cases compiled.

discretionary punishment for husbands convicted and imprisoned for assault causing bodily harm.[37] Already in the early 1880s, however, when a similar bill was unsuccessfully introduced in the House of Commons,[38] some magistrates and judges expressed their wholehearted support for this legal initiative. Judge Mackenzie, who presided over the York County court in September 1881, explicitly identified wife-beating as a problem which was "rapidly becoming a scandal to the country." "Scarcely a day passes," he contended, "but there are cases of that sort cropping up, and unless vigorous means are promptly instituted to stop such a glaring abuse of human and moral law it would be hard to say where the matter will end." Citing recent statistics of the number of Toronto husbands, "calling themselves men," arrested on charges of illtreating and threatening their wives and neglecting to provide for their families, he stressed that, however "much his nature revolted from flogging," if "the law ever was justified in punishing by the lash it was in cases of wife beating." He concluded by suggesting that Colonel George Denison, Toronto's police magistrate, "heartily endorsed his views" on this matter.[39]

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[37] (1909) 8 & 9 Edward VII, c. 9, s. 2 (c). Three American states - Maryland in 1882, Delaware in 1901, and Oregon in 1905 - also implemented whipping-post laws against wife-beaters. Elizabeth Pleck, *Domestic Tyranny: The Making of American Social Policy against Family Violence from Colonial Times to the Present* (New York: Oxford University Press, 1987), 108-21; David Peterson, "Eden Defiled: A History of Violence Against Wives in Oregon" (PhD thesis, University of Oregon, 1993), chapter 5.

[38] After a second reading, the 1883 bill was referred to a select committee and seems to have died there. *House of Commons Debates* (12 March 1883): 287.

[39] "County Court and General Sessions," Toronto *Globe*, 14 September 1881. At times, prosecution attorneys also invoked the lash as an appropriate penalty in severe cases of domestic violence. When William Moore appeared in the Toronto police court in 1884 charged with assaulting his wife and wounding his fourteen-year-old daughter by striking her on the head with a belt buckle, the prosecution argued that "this was a case where the lash would prove beneficial. If this man was flogged every month for a year it might tend to reform him." "A Brutal Father," Toronto *Globe*, 11 April 1884. In her study of the police court columns in Toronto's popular press, Chris Burr cites one reporter who in 1883 asserted that "[j]udging from the Police Court records, the sooner the whipping-post is established as a punishment for wife-beaters the better." Chris Burr, "'Roping in the Wretched, the Reckless, and the Wronged': Narratives of the Late Nineteenth-Century Toronto Police Court," *left history* 3, 1 (Spring/Summer 1995): 99.

In subsequent decades, the Attorney General's office periodically received recommendations from grand juries and private citizens favouring the "judicious application of the strap" for "the habitual drunkard and wife-beater." As the grand jury at the York Assizes in 1899 argued, "short terms of imprisonment has been found of no value as a reforming agent." In their opinion, indeterminate sentences and the lash, as constituting "the only means of reformation," should be applied to those men who had lost "every honest sentiment" and thus "indulge[d] in such brutal conduct."[40] Mr. E. D., the vice-president of F. F. Dalley Ltd. in Hamilton, who advocated the use of whipping for various offences, wrote the Attorney General in 1907 to suggest an alternative approach. He was highly critical of imposing a term of imprisonment on a husband who drank to excess and abused his family, asserting that his wife and children merely lost their source of economic support and when the man was released, "he is a worse villain than when he went in." "[I]f he got a dose of the cat-o-nine tails," he argued, "and knew that the dose would be repeated every time ... he committed any crime of that sort, he would stop, because they do not like to suffer the pain or the disgrace."[41] Finally, by the early twentieth-century, the predominantly middle-class Ontario Woman's Christian Temperance Union, which since its establishment in the 1870s had attempted to expose the "atrocious" consequences of intemperance on family relations and particularly the "suffering" it caused innocent wives and children, had also become a fervent supporter of flogging. In its view, the penalties imposed on wife-beaters were highly inadequate, whereas the lash would offer a more effective deterrent: "The cycle of events was - 'drunk, beat up wife (maybe children too);

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[40] (1899) "Grand Jury Presentment, York Assizes," RG 4-32, AG, #855. One decade later, the grand jury at the York Assizes maintained that, since "prison with its food and comfort are no deterrent" to "men who beat their wives," they recommended that "the lash [be] well and thoroughly applied." (1909) "Grand Jury Presentment, York Assizes," Ibid, #1534.

[41] (1907) "E. A. D[], Dalley & Co. Ltd., Hamilton. Suggests use of lash in certain criminal offences," AO, RG 4-32, AG, #1545.

hailed into court; fined'. The only dint made was in the man's pocket book, and he soon forgot that and repeated the offence. So the exasperated women concluded that a dint in his anatomy might be more effectual." After passing a resolution that "the use of the lash be made a penalty for the first offense" and that "such punishment be followed by disenfranchisement," the WCTU directly petitioned members of parliament to adopt its recommendations.[42]

Despite support for the corporal punishment of wife-beaters from a number of sectors, when the bill was introduced in the House of Commons in 1909, it did generate considerable debate as politicians grappled with the general issue of the best means to deter certain violent crimes, including possession of concealed weapons, highway robbery, assaults upon females, as well as wife-battering. Some parliamentarians articulated their opposition to the use of the lash as a matter of principle. For them, it constituted a regressive measure, a return to "the days of barbarism" in direct opposition to the spirit of progressivism and the tenets of liberalism. As A. B. Aylesworth, the Minister of Justice argued, "I regard it merely as a survival of the days of primitive man, when the only canon of punishment known was the law of retaliation" and the "infliction of bodily pain." "We

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[42] McKee, *Jubilee History of the Ontario Woman's Christian Temperance Union*, 87-88. First-wave feminists, including the WCTU, however, took differing positions on the issue of flogging. As David Peterson found, the WCTU in Oregon was largely silent on the issue. Other scholars point out that feminists in the United States and England were divided on its implementation, with some arguing that it would be more effective than imposing a fine or imprisonment which merely deprived the wife-beater's family of economic support and others maintaining that it increased wives' reluctance to prosecute and heightened the risk of retaliation. See, for example, Peterson, "Eden Defiled," 255-57; Elizabeth Pleck, "Feminist Responses to 'Crimes against Women', 1868-1896," *Signs* 8, 3 (Spring 1983): 451-70; Carol Bauer and Lawrence Ritt, "Wife-Abuse, Late-Victorian English Feminists and the Legacy of Frances Power Cobbe," *International Journal of Women's Studies* 6, 3 (May/June 1983): 195-207; Margaret May, "Violence in the Family: An Historical Perspective," *Violence and the Family*, ed. J. P Martin (Chichester: John Wiley & Sons, 1978), 144-49. Some contemporary feminists have become increasingly critical of a similar punitive law-and-order approach as the solution to violence against women which resurfaced in the 1980s, arguing that aggressive criminal justice intervention does little to address the root causes of that violence. See, for example, Dianne L. Martin and Janet E. Mosher, "Unkept Promises: Experiences of Immigrant Women With the Neo-Criminalization of Wife Abuse," *Canadian Journal of Women and Law* 8 (1995): 3-44; Judy Rebick and Kiké Roach, "If There's a Will, There's a Way: Ending Male Violence Against Women," *Politically Speaking* (Vancouver: Douglas & McIntyre, 1996), 123-37.

consider ourselves, in modern days, to have become more civilized," he added, "to have attained truer ideas of the principles upon which punishment legally and judicially imposed for offences against the criminal law ought to be administered."[43] In this spirit, it was also possible that most judges would "be loath to impose" the lash and hence it would "be looked upon by the criminal as so much dead wood which he need not take into account."[44] Other members of parliament were principally concerned with the degrading and demoralizing impact such a punishment would have not only on the prison official required to administer the lash "to the back of one of [his] fellow creatures," but also on the prisoner himself who might well be permanently "disgraced" and "ruined" by the whipping, "so that he cannot pluck up his courage and become an honest man again." Equally disconcerting was the possible effects it would have on the offender's relationship with his wife, who, as one senator mused, may have "in some way offended him, yet they must live together, and for a woman to have to live with a man who has been whipped ... would justify an increase in the divorce courts."[45] Finally, while most politicians were not prepared to condone unprovoked assaults on wives, some strongly asserted that corporal punishment was too harsh a penalty for the crime. "You can readily understand," asserted Senator Ellis, "that sometimes husband and wife will quarrel; it just means, that if the husband gave his wife a slight blow on the cheek he is liable to two years' imprisonment and to be whipped. I believe men should treat their wives properly ... but this is carrying things too far altogether, that for a mere trifling assault a man shall be made liable to such a

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[43] *House of Commons Debates* (4 February 1909): 556-58, 563-64, 566.

[44] Ibid, 565-66.

[45] Ibid, 557-58, 563-65, 570; *Senate Debates* (18 May 1909): 678-79.

penalty as imposed here."[46] One member of parliament, however, went further, arguing that some wives deserved to be disciplined:

> I have no regard or sympathy for the man who hangs about the house, a drunken loafer, living by the earnings of his wife. But what about the diligent hard working man who works eight or ten hours per day, and when he comes home finds his supper not ready, his children not washed and his wife gallivanting about the country. What is sauce for the goose might very well be sauce for the gander, and the mover of this measure might well be asked to incorporate in it husband as well as wife beating.[47]

While those politicians who supported the bill were accused of pandering to certain "blood-thirsty individuals in the community" and exhibiting the punitive impulses of "former days,"[48] this strident opposition did not prevent the amendment from being enacted. Despite his misgivings, even the Minister of Justice asserted that among the offences under discussion, sentencing wife-beaters, "whom no man would wish to protect," to be whipped was the most "justifiable," especially if such penalties were "sparingly pronounced."[49] This sentiment was echoed by Prime Minister Wilfrid Laurier, who stated "there is a class of beings who beat their wives and they deserve no sympathy from anybody. I would have no compunction whatever in giving the man who beats his wife or who beats a female a taste of his own medicine."[50] Other parliamentarians, however, expressed confidence that flogging represented "the surest and best means of

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[46] Another senator made the somewhat startling assertion that although "a man who assaults his wife deliberately may deserve to be whipped," such a provision "may be a temptation for some woman to provoke her husband to such an extent that the husband may whip her." *Senate Debates* (18 May 1909): 678-79.

[47] *House of Commons Debates* (4 February 1909): 564-65.

[48] *Senate Debates* (18 May 1909): 679; Ibid, 563.

[49] *House of Commons Debates* (4 February 1909): 560.

[50] Ibid, 562.

putting a stop to these offences." Robert Bickerdike, the M.P. from St. Lawrence who initiated the bill, urged his fellow parliamentarians to consider that some men "will beat their wives in the fall in order to get six months comfortable lodgings in jail during the winter ... Instead of giving such a man six months in jail for beating his wife, I would give him thirty days and thirty lashes. If that is done, he will never beat his wife again."[51] This appeal to retributive justice, with its strong class undertones, was also couched in highly paternalistic rhetoric. Without considering the possibility that the severity of the punishment and the risks of retaliation might deter married women from laying complaints against their abusive husbands, a number of politicians were convinced that such a measure could only benefit the "unfortunate victim." Arguing that it was their duty as legislators and as men "to resort to any means that may be necessary to protect the women of this country," W. B. Northrup, the M.P. from East Hastings, stated that "on behalf of the inoffensive portion of the community, the women and children of this land, I am prepared to support this legislation."[52]

It was within this social and legal environment that married women, who constituted the complainants in 82 per cent of the cases compiled, initiated criminal proceedings against their husbands for offences ranging from verbal threats to attempted murder.[53] Furthermore, some desperate wives sought to remove uncontrollably violent

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51 *House of Commons Debates* (25 January 1909): 92-93.

52 Mr. Northrup was also prepared to "go a step further," by advocating whipping as a punishment for those shiftless men who refused to work and were supported by "honest, industrious" wives. Rather than sentencing husbands convicted of non-support "to the county jail where, all during the winter, he lives in comfort and luxury, while the poor woman ... is obliged to go out and support herself and her family," the lash would "have the effect of compelling them to do their duty." *House of Commons Debates* (4 February 1909): 561-62. See also Ibid, 566-67.

53 While wives represented the vast majority of complainants, 12 per cent were initiated by police, 4 per cent by neighbours or friends, and 2 per cent by family members.

spouses from the household by charging them with being insane and hence dangerous to members of the family and the community. In 1898, Sarah W., the wife of a Downie township farmer, made such a claim before the Stratford police magistrate, arguing that ever since she had her husband arrested for assault causing grievous bodily harm one year earlier, his threatening language, violent outbursts, erratic conduct, and increasingly wild delusions that family members were "against him" had escalated to an unbearable level. Increasingly fearful for her physical safety and that of her six children, Mrs. W. insisted that her husband "would not do what he does if he were not insane - There is something wrong with [him]."[54] Similarly, Mrs. Niece brought her husband, a Colchester North township farmer, before the Windsor police magistrate in 1896, stating that "he had formerly been confined to a lunatic asylum and that he was again becoming dangerous." Mr. Niece agreed, telling "the court that he had become discouraged over his farm, his crops having been destroyed by rain, and that he wanted to be locked up as he feared that if he were left at liberty, he would kill his wife and children."[55]

While the initiative demonstrated by these married women did reflect their strong sense of grievance and their unwillingness to tolerate their husbands' abuse, other factors also contributed to their high representation as plaintiffs. As indicated by the police court records, legal officials, especially in cases involving what were classified as 'petty' offences such as verbal threats and common assault, seemed to place the onus of complaint on women themselves. In 1873, Galt's chief constable was called to investigate the beating of Catharine B. who, in her battered and bleeding condition, asked that her husband be arrested. The constable informed her "that she must lay an information first, and that if she

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54 (29 March, 4 and 5 April 1898) *Sarah W. v. John W.*, AO, RG 22, SPC, Box 1. See also (26 January 1885) *Doreen M. v. Walter M.*, AO, RG 22-13, GPC, Volume 9.

55 "Niece's Terrible Fear. That He Would Become Insane and Kill His Wife and Children," *Stratford Evening Herald*, 1 August 1896.

wished to do so to come to the office in the morning." In the meantime, she remained at the house of a neighbour where she had taken refuge.[56] This legal practice did, at times, have detrimental consequences. At the trial of James K., a Galt labourer charged in 1870 with attempting to slash his wife's throat with a "heavy pocket knife," one local constable testified that on the previous Sabbath, the defendant's children had twice summoned him to the house. On the second occasion, Mrs. K. apparently stated that "there was not a quieter man when he was sober, but when drunk would abuse her." Upon being asked "if she wished to lay an information," she declined. When the accused was subsequently arrested for attempted murder, Mrs. K. was too severely injured to lay a complaint and, as occurred in other severe cases of wife-battering, it was the police constable who initiated criminal proceedings.[57]

Class and ethnicity also seemed to influence whether or not abused wives were inclined to turn to the criminal justice system. Anglo-Celtic urban and, to a lesser extent, rural working-class women demonstrated the strongest sense of entitlement to legal protection or redress by their active presence on their own behalf in the lower criminal courts. Despite class differences, this presence may have been partially based on a sense of ethnic affinity with legal authorities, a common language, and a familiar British-based system of justice, which other groups of marginalized women might not have so readily shared. In my compilation of cases, only two Aboriginal men were charged by their wives with assault, suggesting that if and when such incidents occurred particularly on provincial

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56 (14 February 1873) *Catharine B. v. Francis B.*, AO, RG 22-13, GPC, Volume 3.

57 (8 December 1870) *Constable Thomas D. v. James K.*, AO, RG 22-13, GPC, Volume 2; "Nearly a Murder in Galt. An Intoxicated Man Attempts To Cut His Wife's Throat," *Dumphries Reformer*, 14 December 1870.

reserves, they were, like other matrimonial matters, adjudicated by the local Indian agent.[58] Not surprisingly, in instances when a battered woman could not speak English and required the services of an interpreter when swearing her deposition, a police constable or, in one case, an acquaintance laid the formal complaint.[59]

The comparative absence of middle-class women as plaintiffs in the criminal courts is also noteworthy. At the turn of the century, this might well have been interpreted as evidence that wife abuse was predominantly a working-class phenomenon. As one newspaper commentator asserted in 1878, it was "among the artisan and labouring classes that we are chiefly, if not exclusively, to look for the dangerous wife-beater" and especially among those "drunken, idle, ruffianly fellows who lounge about the taverns instead of working for their families." Among the upper and middle classes with their masculine codes of respectability, discipline, and self-control, he further intimated, violence against wives was not only much less prevalent, but also never exceeded "the occasional blow or two of a not dangerous kind." And even though these latter incidents might become a source of "gossip in the particular circles concerned, or as things whispered ... by aggrieved domestics," he noted positively that the prudent protection of "family honour" necessitated that they "rarely if ever" came to "public discussion in a Court of law."[60] If the

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58 Ottawa *Citizen*, 10 January 1870; (1916) *King v. Patrick B.*, AO, RG 22, Algoma District Crown Attorney (Sault Ste. Marie) Case Files, Box 1. In the latter case, after being convicted of assaulting his wife and causing her bodily harm in 1916, Mr. B. faced at least three charges of non-support and was eventually handed over to the Indian agent. (28 December 1917) *Jennie B. v. Patrick B.*, AO, RG 22, Algoma District (Sault Ste. Marie) Police Court Record Books, Volume 2; (4 March 1918) *Mary C. v. Patrick B.*, Ibid; (4 July 1919) *Jennie B. v. Patrick B.*, Ibid.

59 This pattern occurred in ten cases in my compilation.

60 "Wife Torture In England," Toronto *Globe*, 20 April 1878. This writer was responding to Frances Power Cobbe's analysis of the class dimensions of wife-battering in the "kicking districts" of England as elucidated in her influential essay published in *Contemporary Review* in April 1878. In his opinion, her conclusions had direct relevance among the "corresponding ranks" within Ontario and especially Toronto society. For a recent reprint of Cobbe's article, see "Wife Torture in England,"

civil court records indicate that his class assumptions were inaccurate, it does seem that the hesitation of middle-class women to turn to the criminal courts was at least partially the outgrowth of strengthening Anglo-Protestant bourgeois notions of companionate marriage, domestic privacy, and class propriety. The flip-side of these ideals was the apparent desire to avoid the glare of community scrutiny and public scandal. This would have been unavoidable since all criminal cases of wife abuse were initially heard and most were tried summarily before local justices of the peace or in the notoriously public police magistrate's courts,[61] where working-class family and community members in particular appeared to settle a wide range of interpersonal disputes and neighbourhood conflicts.

This is not to deny, however, that various factors could and did inhibit married women, regardless of their class or ethnic background, from launching criminal proceedings against abusive spouses. In swearing a deposition against her husband, a Toronto carpenter, for non-support in 1875, Ellen N. recounted that, shortly before her confinement ten years earlier, she was asked by her doctor to disclose who "gave [her] the black eye & swollen arm." Hesitant to identify her aggressor, she simply replied that "it was a family matter."[62] Jane W. of Sarnia told a neighbour in 1862 that, even though her husband, a labourer, habitually abused her and frequently threatened to kill her, the reason

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'Criminals, Idiots, Women, and Minors': Victorian Writing by Women on Women, ed. Susan Hamilton (Peterborough: Broadview Press, 1995), 132-70. For discussions of the significance of her essay in exposing the problem of wife-beating in England and in garnering support for the passage of the Matrimonial Causes Act of 1878, see, for example, Carol Bauer and Lawrence Ritt, "'A Husband is a Beating Animal': Frances Power Cobbe Confronts the Wife-Abuse Problem in Victorian England," *International Journal of Women's Studies* 6, 2 (March/April 1983): 99-118; May, "Violence in the Family," 147-50.

[61] Like other indictable offences, more serious wife assault cases involving grievous bodily harm, wounding, and attempted murder were, after a preliminary hearing before the local magistrate, usually referred to the County Court Judges' Criminal Court for trial before a judge, or to the Court of General Sessions or the Criminal Assizes for trial by jury, depending on the declared wishes of the defendant.

[62] (1877) *Queen v. Alexander N.*, AO, RG 22-392, York County CAI, Box 207.

she did not follow her friend's advice and contact authorities was because she "didnt like to expose him or herself.[63] Other considerations, such as self-blame, concerns about losing their main source of economic support, and/or fears of retaliation may also account for the refusal of some abused wives to lodge complaints against their husbands or their reluctance to testify against them when criminal proceedings were initiated by a third party or local police.[64] In 1881, for example, Charles C. of Whitby was brought before the local justice of the peace by Constable Jacob B. for "striking, choking, and otherwise abusing his wife," Jannie. As several neighbours testified, they were alerted to Mrs. C.'s screams and, since they had interfered "to stop similar disturbances" on previous occasions, they rushed to investigate. Finding the door to the residence locked, two neighbours, apparently reluctant to enter the premises, watched the assault through an open window, overhearing Mrs. C.'s repeated appeals to her husband "not to choke her anymore" and Mr. C.'s angry threats that he would "dash her brains out and break her neck." When Constable Bryan arrived on the scene, he arrested the defendant, telling the magistrate that this was not the first time he had been summoned to investigate "similar rows" at that household. In her court statement, however, Jannie denied that her husband had mistreated her and, even though the neighbours maintained that the defendant "did not appear to be drunk," suggested that whisky was the cause of his behaviour: "My husband did not hurt me last night. I was afraid he would, he never struck me in his life. My husband is kind to me except when he gets whisky. My husband locked the door, I don't know for what cause.

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63 (1862) *Queen v. James W.*, AO, RG 22-392, Lambton County CAI, Box 69.

64 See, for example, "Old Story, Wife Wouldn't Prosecute," *London Advertiser*, 2 March 1908. In this case, Charles Webster, a Dorchester farm hand, was charged by his brother, a local butcher shop proprietor, with assaulting his wife and abusing his mother. When the latter parties refused to testify against him, the charge was altered to "disorderly conduct." For a similar pattern, see Nancy Tomes, "A 'Torrent of Abuse': Crimes of Violence Between Working-Class Men and Women in London, 1840-1875," *Journal of Social History* 11, 3 (Spring 1978): 333-34; Kathryn Harvey, "'To Love, Honour and Obey': Wife-battering in Working-Class Montreal, 1869-79," *Urban History Review* 19, 2 (October 1990): 137.

He had his hands around my neck but he did not squeeze any. He was the worse of liquor last night or he would not have done it."[65]

"She would not stand it any longer": The Courtroom as Site of Struggle

There were certainly wives who, like Jannie C., sought to shield their husbands from prosecution. In my compilation of cases, however, most women, when swearing their depositions, did defend their right to physical safety and articulated a sense of entitlement to legal protection. The rules of evidence at least partially dictated the structure and content of wives' testimonies in that they were usually responsible for furnishing sufficient proof concerning the nature and severity of the offence and consequently, they provided a detailed account of the incident in question. Married women also went to great lengths to establish the validity of their complaints not only by commenting on the general nature of their marital relations, assessing their husbands' character, and offering their opinions on what had caused or precipitated the violence, but perhaps most importantly, by defending their status as 'good wives and mothers' either on own initiative or in response to their spouses' angry denials, paltry justifications, or bitter counter-accusations. Whenever possible, this evidence was corroborated by a varying number of prosecution witnesses, including children, relatives, boarders, and/or neighbours who had overheard or observed the altercation and could comment on the couple's marital history, police constables who were summoned to make the arrest, as well as medical practitioners who, in more serious cases, had attended the plaintiff.

When lodging complaints for verbal abuse (as occurred in 79 cases), the female plaintiff necessarily specified the nature of her husband's threats, the most common being his intent to 'smash her brains out' or to 'prepare for death'. The legal premise underlying

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65 (1881) *Queen v. Charles C.*, AO, RG 22, Ontario County CA/CP CCJCC Case Files, 1881-1898.

these proceedings was fear, the argument being that unless the accused was required "to find sufficient sureties to keep the peace," the complainant and/or her children might well become the victims of serious or fatal physical injuries. Mary C. of South Gower township made precisely this claim before the Kempville justice of the peace in 1884, stating that over the past three weeks, she had became increasingly fearful that her husband would "do her some bodily harm" or take her life. More specifically, two weeks earlier, when her husband came home, he "commenced cursing and swearing as soon as he opened the door." In order "to be out of his way," she hid in a small room off the kitchen, while he sat at the stove warning her that "if he could get his hands on me he would rip me open with his knife and then he took out his knife and opened it." He also "said the first chance he could get he would be sure he would not leave any breath in me and then he would cut his own throat ... and then would not be hung for it." Since that incident, she added, "he has threatened my life often and I have not been able to stay at home when he was there. When I saw him go away I would go home to my children and when he would return I would go away again." As her daughter disclosed, her mother had good reason for evading her father, given that more recently he "brought the axe in the house and said he intended to kill mother."[66]

This kind of intimidation did, in rare instances, take the form of written threats. In 1911, Mary Jane M. of Michipicoten River received a letter from her husband, Edward, who two weeks earlier had gone to work in the woods. In it, he threatened to "do her grievous bodily harm," stating that "[w]hen I get home, I will kick you full of holes." Testifying before the Wawa justice of the peace, Mrs. M. asserted that this was merely the latest manifestation of her husband's "most unkind" treatment over the past ten years and its escalation since the birth of their last child seven months earlier. Convinced that the

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66 (1884) *Queen v. James C.*, AO, RG 22, Leeds and Grenville Counties CCJCC Case Files, 1881-1894.

infant was "not his," he left her without any assistance during and after childbirth and "said he would fix me and that damned kid when it came." "Once when I endeavoured to defend myself against his charges of being unfaithful to my marriage vows," she added, "he took me by [the] throat, choked me and knocked my head against the logs of the House and made as if to get the gun saying he would make a clean sweep of us all ... if he could not have me no one else would." She also disclosed that Mr. M. often complained that "he was tired [of] working for us 'sons of bitches' (a name he commonly gave me)" and prior to leaving for the woods, he gave her explicit "instructions that if I did not get the wood out from the bush and haul it in on the toboggan and have everything in good order and have the chickens laying, He would blow my brains out and would also blow out his own and the childrens brains. [I]t would only take him a few minutes to make a clean sweep of the whole damned lot." Given her husband's previous violence and his persistent threats, evidence verified by her three children, Mrs. M. maintained that upon receiving his letter, she was "really afraid he was coming home to carry out his threat to kill me."[67]

When married women testified against their husbands in cases involving physical violence, their depositions, in compliance with the rules of evidence, necessarily included a detailed account of the actual assault. Furthermore, for the purposes of classifying and proving the offence under the distinct categories contained in the criminal code, wives specified whether or not the accused had used a deadly weapon and described the nature and extent of their injuries.[68] In my compilation of cases, two defendants were indicted for

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[67] (1911) *King v. Edward David M.*, AO, RG 22-392, Algoma District CAI, Box 2.

[68] In some cases, a married woman's injuries were so serious that the local justice of the peace took depositions at her place of residence or postponed the preliminary hearing to allow her time to recover (or to ascertain *if* she would recuperate). In 1895, Sarah S. of Port Perry accused her estranged husband of firing several shots at her, one of which hit her foot and left her disabled. Since she was not "in a condition to move from bed" to appear at the preliminary hearing, the justice of the peace ordered that it be held at her house. (1895) *Queen v. Arthur S.*, AO, RG 22, Ontario County CA/CP CCJCC Case Files, Box 4. In the most critical cases, when a battered woman could not appear in court to testify, magistrates had to rely on

uttering threats and committing arson, two others for attempting to poison their wives, 23 used shotguns, and 33 brandished knives. Most violent husbands, however, seized whatever instruments were immediately available, such as household implements and work tools, or relied on sheer physical force in the form of choking, kicking, slapping, or striking with clenched fists.[69]

While court depositions suggest that married women often appeared before magistrates with visible signs of 'ill-usage', they also indicate that, at times, expressions of husbandly rage targeted those areas of their wives' bodies that signified their femaleness, whether sexual or reproductive. The doctor who attended Yustena B. of Cedardale testified in 1916 that the wounds she sustained not only included "chunks of skin knocked off her neck and face as though taken off by finger nails," but more seriously, a "large red bruise [lump] on her left breast" apparently caused by her husband's knee.[70] A more ominous case involved Almeda S., who in 1886 was brutally beaten by her enraged husband, a plasterer, on a village street in Kenyon township. Several members of the small community who attempted to intercede on her behalf informed the justice of the peace that, despite Almeda's pleas "for mercy" as she knelt before him, Mr. S.'s repeated kicks were directed

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the evidence presented by physicians, children, or other witnesses. Jennie W. of Belleville, for example, was in critical condition after her husband, during a "dispute about an axe," kicked her in the side when she was "near her confinement" causing a "rupture." As a result, the preliminary hearing was postponed for over a month and then proceeded without her testimony. (1881) *Queen v. Charles W.*, AO, RG 22-392, Hastings County CAI, Box 53. Flora G. of Niagara Falls was also, as one witness testified, in such a "low condition" after her husband struck her on the head with a club that she could not appear before the local police magistrate. (1884) *Queen v. John G.*, AO, RG 22-392, Welland County CAI, Box 165.

69 In an effort to establish and classify the severity of the assault, a number of female plaintiffs specified or were asked to stipulate whether their husbands had hit them with an open or closed fist. See, for example, (1890) *Queen v. Charles D.*, AO, RG 22, Ontario County CA/CP CCJCC Case Files, Box 2; (14 and 18 July 1904) *Nellie C. v. Alonzo C.*, AO, RG 22, SPC, Box 7; (1921) *King v. William B.*, AO, RG 22, Carleton County CA/CP Case Files, Box 3977; (1913) *Rex v. Robert F.*, AO, RG 22, York County CA/CP (CCJCC) Case Files, Box 2719.

70 (1916) *King v. Wasil B.*, AO, RG 22, Ontario County CA/CP CCJCC Case Files, Box 16.

at her "private parts." As one witness declared, "[i]t was the most brutish act I ever saw."[71] Finally, if pregnancy (like illness) diminished a married woman's capacity to provide household and sexual services or if, in poor families, the impending birth of a child was regarded as an added financial burden, this was also a period when women were especially vulnerable. In describing her injuries to the Oshawa justice of the peace in 1912, Ethel W. testified that her husband, an ironworker, had not only struck her on the head and attempted to choked her, but also kicked her in the abdomen, a particularly dangerous assault given that she was eight months pregnant. "[H]e tries to hit me where no one can see," she further emphasized, "he is cunning."[72]

When recounting the particulars of the assault in question, female plaintiffs also disclosed the various ways they responded to or resisted their husbands' aggression, indicating their efforts to contain, halt, or escape a violent situation. Some wives attempted to cajole or subdue their spouses, especially when they anticipated 'trouble'. In 1885,

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[71] (1886) *Queen v. Samuel S.*, AO, RG 22, Stormont, Dundas and Glengarry Counties CCJCC Case Files, Box 2. Similarly, the post-mortem examination of Jane W. of Sarnia concluded that, in addition to contusions over her entire body caused by her husband's beating, there was "no doubt that [she] died from the effects of an external injury received on or about the private parts." Jane's neighbour, who cared for her prior to her death, declared that "the private parts were so black and swelled, I could hardly look at it." (1862) *Queen v. James W.*, AO, RG 22-392, Lambton County CAI, Box 69.

[72] (1912) *King v. William W.*, AO, RG 22, Ontario County CA/CP CCJCC Case Files, Box 12. For other cases in which pregnant wives suffered similar injuries, causing some of them to suffer life-threatening miscarriages, see (1877) *Queen v. Joseph S.*, AO, RG 22-392, York County CAI, Box 207; (1881) *Queen v. Charles W.*, AO, RG 22-392, Hastings County CAI, Box 53; (1887-88) *Queen v. William T.*, AO, RG 22, Perth County CCJCC Case Files, Box 2. In 1880, Mary Jane C. of Reach township died when she gave birth to a premature, dead, and putrefied infant eight weeks after she received a severe kick in the side by her husband, a former police constable, because he allegedly found fault with her for not pulling some of the "seed beans" as instructed. Consequently, Mr. C., who had a reputation for abusing and starving his wife and seven children, was indicted (and acquitted) on two charges: assaulting "a woman quick with child" as well as wife murder. (1880) *Queen v. Thomas C.*, AO, RG 22-392, Ontario County CAI, Box 108; RG 22-391, Ontario County, Crown Office, Criminal Indictment Assize Clerk Reports, 1880-1899; "A Wife Murdered By Her Husband," and "Ontario Assizes," Toronto *Globe*, 27 March, 10 and 12 April 1880. See also the case of Nancy Gilvier of Barriefield who "died in childbed" in 1834 after allegedly being struck or kicked in the abdomen by her husband. "Coroner's Inquest," *British Whig*, 8 July 1834, *Kingston Chronicle and Gazette*, 12 July and 13 September 1834.

Catherine D., the wife of a Peterborough farmer, described her futile attempts "to humour" her husband so as to "ward off trouble" when he returned home and showed "signs of being drunk." "I was afraid of him," she stressed, since he usually became "very violent" when intoxicated.[73] Despite the risks of escalating their husbands' abuse by 'speaking back',[74] other married women were prepared to stand their ground, by declaring, as did Josephine S., the wife of an East Whitby township labourer, that only "a coward would use a woman so"[75] or by threatening legal action. Ann B. of Port Perry asserted that after her husband struck her on the head with his fist, she issued a stern warning, stating that "she would take the Law on him if he kept on striking her."[76] Sarah L. of Gananoque also disclosed that as soon as her husband began to pound her, "I told him to be careful, or I would have him sent up again." When he angrily replied that "if I did, it would be for something more than a black eye," she immediately sent her little boy to alert the local

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[73] (1885) *Queen v. William D.*, AO, RG 22, Peterborough County CCJCC Case Files, 1881-1907. Similarly, Lizzie S. of Oshawa testified in 1915 that when her husband "got ugly" and began to knock "the dishes off the table" because their eldest daughter had not returned home, "I tried to pacify him," by trying "to talk to him" and by suggesting that the children were frightened and "crying in bed." (1915) *King v. James S.*, AO, RG 22, Ontario County CA/CP CCJCC Case Files, Box 15. Jennie B. of Sault Ste. Marie told the police magistrate that she had strongly advised her husband, who flew into rage over her refusal to serve him dinner, to leave the house on the assumption that he would "feel better" when he returned. (1916) *King v. Patrick B.*, AO, RG 22, Algoma District Crown Attorney (Sault Ste. Marie) Case Files, Box 1.

[74] In 1921, when Edith B.'s husband "struck her twice in the face," causing her to fall to the floor, "she got up and said you should not do that. He said dont speak back to me," and commenced to strike her again, "battered her head against the wall," and threatened "to have her life." (1921) *King v. William B.*, AO, RG 22, Carleton County CA/CP Case Files, Box 3977.

[75] (1905) *King v. William S.*, AO, RG 22, Ontario County CA/CP CCJCC Case Files, Box 8.

[76] (1887) *Queen v. Albert B.*, AO, RG 22, Ontario County CA/CP CCJCC Case Files, Box 1.

constable.[77] There were also a number of plaintiffs who were prepared to admit to magistrates, sometimes unabashedly, that, however unwomanly, they had resorted to more than words to defend themselves, seizing or throwing whatever household item was immediately available. One complainant, Ethel W. of Oshawa, who emphasized that "there has never been a week go over my head that he [her husband] has not done something to me," expressed regret that she had not been more assertive during her husband's most recent and exceptionally brutal assault. "I did not strike him," she stated, "that is where I am such a fool."[78]

For many wives, however, one common and viable response was simply to escape from the household and secure the assistance of legal authorities and/or their nearest neighbour or relative. Alice M., a Pembroke candy shop proprietor, testified in 1894 that she took great offence to certain sexually suggestive comments her husband made in the presence of two other men and expressed her displeasure by calling him a "dirty mean scat." Angered by the insult, Mr. M. commenced to punch her in the face and grabbed her by the neck, but she managed to "pull away from him" and leave the house. Despite the late hour, she proceeded directly to the local magistrate's residence to lay a complaint and "did not return [home] until after my husband had been arrested."[79] While court transcripts indicate that most neighbours and relatives did not hesitate to furnish battered wives with temporary refuge, some were also prepared to act as family mediators or stern protectors. Mary Ann D. of Uxbridge township testified in 1892 that when her husband assaulted her, threatened the family, and ordered them out of the house in the middle of winter, she and

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[77] (1882) *Queen v. Patrick L.*, AO, RG 22, Leeds and Grenville Counties CCJCC Case Files, 1881-1894.

[78] (1912) *King v. William W.*, AO, RG 22, Ontario County CA/CP CCJCC Case Files, Box 12.

[79] (1894) *Queen v. John M.*, AO, RG 22-392, Renfrew County CAI, Box 133.

her three children had no choice but to trek over icy roads to the next farm. That same night, Mr. D. came to retrieve them, but was told by the neighbour, "'never mind Billy - they are all right here ... I will go back with you and get their things'."[80] Emma F.'s "next neighbour" was less congenial. Although Mrs. F. expressed relief that she managed to escape to the home of Bert S., given that her husband, a Percy township labourer, hit her repeatedly with his fists, struck her several times with an axe, and threatened to kill her and her children, this did not prevent him from pursuing her. Upon entering the neighbour's house uttering threats, however, Mr. S. told the defendant "to get out or he would shoot him."[81]

With the exception of those instances when husbands intentionally attempted to secure a degree of privacy before assaulting their wives or when third parties hesitated to get involved, most married women emphasized that the assistance of children who ran for help, boarders who intervened, or neighbours who responded to their 'cries of murder' were also critical in halting the aggression. In 1880, Johanna R. of the Village of Iroquois found herself in the former situation. She explained that when her husband, a labourer, "came home intoxicated" and began striking her with a board and kicking her in the side, the problem was not only that there was "no one present at the time" and that his blows left her "breathless and speechless" so she "could not call for anyone," but also that he "made

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[80] (1892) *Queen v. William D.*, AO, RG 22, Ontario County CA/CP CCJCC Case Files, Box 2.

[81] (1900) *Queen v. George F.*, AO, RG 22-392, Northumberland and Durham Counties CAI, Box 106. In a similar vein, Joseph K. of Galt testified in 1900 that his son-in-law, Thomas F., appeared at his house, where Mrs. F. had taken refuge, with the intention of reclaiming "his property." When asked by his father-in-law whether he "would use his property right," Thomas replied that it was "none of [his] business and that "he would do as he liked." In an effort to protect his daughter, Mr. K. asked Thomas to leave. Undeterred and angered by the request, his son-in-law attempted to strike him and a violent altercation ensued, leading to Mr. F.'s arrest. (15 October 1900) *Joseph K. v. Thomas F.*, AO, RG 22-13, GPC, Volume 12. For a similar dynamic, see (1906) *King v. William M.*, AO, RG 22, Ontario County CA/CP CCJCC Case Files, Box 8; (1894) *Regina v. William D.*, AO, RG 22, Perth County CCJCC Case Files, Box 2; (30 April, 9 and 11 May 1904) *Bertha G. v. Fred C.*, AO, RG 22, SPC, Box 7; "Hamilton News," Toronto *Globe*, 7 December 1878.

me hook the door before he commenced to abuse me."[82] Even if, as transpired in most cases, some form of direct intervention occurred, some men were so hostile to outside interference into what they considered their legitimate right that their responses to it could be equally violent.[83] In 1886, several members of a Kenyon township village testified that they attempted to intercede on behalf of Almeda S., who was being brutally beaten by her husband on the street. Their efforts were greatly hindered, however, when Mr. S. pulled

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[82] (1880) *Queen v. William R.*, AO, RG 22, Stormont, Dundas and Glengarry Counties CCJCC Case Files, Box 1. In a number of cases, prosecution witnesses also suggested that a 'locked door' was meant to hinder outside intervention. At the attempted murder trial of Alexander B. of Bentwick in 1860, the defendant's twelve-year-old son testified that his father "came into the house this forenoon" and even though Mrs. B. pleaded with him not to touch her, he "turned round and locked the door and pulled a knife out of an inside pocket and seemed to push it right at her heart." (1859-60) *Queen v. Alexander B.*, AO, RG 22-392, Grey County CAI, Box 43. Charles C. of Belleville disclosed that when he heard "a woman screaming" at his neighbour's house, he and his brother rushed to investigate and found the door "locked." (1880-81) *Queen v. Charles W.*, AO, RG 22-392, Hastings County CAI, Box 53. Conversely, Julia O., the wife of a Stratford labourer, deposed that her husband was so incensed that she had destroyed the "bottle of whiskey" he requested that he took her "around the block and when we got to a place where we could not be seen - he struck me, he beat me, he struck me in the mouth and made it bleed." (10 and 11 July 1900) *Julia O. v. Peter O.* AO, RG 22, SPC, Box 3.

[83] In fact, there were relatively few cases where the evidence indicated that a third party showed or expressed an unwillingness to intervene. At the trial of William B. in Ottawa's police court, Almeda S., a neighbour, testified that when Mr. B. commenced to beat his wife, "I interfered and he punched me and then punched his wife again ... I opened the door and said in the name of god is there any men in the house to rescue the woman or would then be murder. A man came down the steps and said he would have nothing to do with it." (1921) *King v. William B.*, AO, RG 22, Carleton County CA/CP Case Files, Box 3977. Court depositions further suggest that men who did not intercede, particularly in serious assaults, were perceived as highly unchivalrous, cowardly, and unmanly. At the attempted murder trial of Joseph A., an unemployed stone mason from Cornwall, the crown prosecutor asked one witness repeatedly why he had not done more to prevent the accused from slashing his wife's face and severing her finger. The witness justified his actions by insisting that, because the defendant was wielding a knife, he was alone, and had nothing "to defend myself with," he "wasn't going to run any chances." The prosecutor concluded his cross-examination, by declaring "I hope you will do better the next time." (1908) *King v. Joseph A.*, AO, RG 22-392, Stormont, Dundas, and Glengarry Counties CAI, Box 148. Similarly, two plumbers who were working at the house of William L., a Peterborough machinist, at the time he shot his wife were also questioned about their failure to "stop the quarrel" between the couple, to attempt to prevent the shooting, or to assist Mrs. L. after they heard the shot fired. They too insisted that they did not want to take "no chances," especially when they overheard the accused saying "he would shoot us if we came down[stairs]." "You were going to save your own hide[s] by staying upstairs?," asked the defence attorney. "Certainly," was their response. (1912) *Rex v. William L.*, AO, RG 22-392, Peterborough County CAI, Box 124.

out a pistol and "threaten to shoot any one who would interfere."[84] Family members were also not immune to such vehement reactions. George G. of Muskoka township disclosed in 1909 that, before proceeding to remove various household items and farm produce from their rented property, Albert B., his stepfather, dragged his mother outside and tied her up with a harness strap. Although he immediately attempted to "unloose" her, Mr. B., in a fit of anger, turned his aggression on his stepson and commenced to brutally strike and kick him.[85] In fact, a number of assault cases that appeared in the court records involved violent altercations between older sons who, as James A. of Galt declared in 1897, "would not stand idly by and see my mother abused any longer" and abusive husbands/fathers who tenaciously defended their position of authority and their right to do as they "damn pleased" in ruling their own household.[86] In 1894, Alexander S., a tinsmith from Carleton Place, candidly told the local justice of the peace that two evenings earlier, he had ordered his daughter to make his bed and insisted that he "wanted it better maid (sic) then what it had been." When his wife chastised him for speaking to the child in that manner, "I steped

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[84] (1886) *Queen v. Samuel S.*, AO, RG 22, Stormont, Dundas, and Glengarry Counties CCJCC Case Files, Box 2. For similar patterns, see, for example, (1837) *Lewis D. v. Ralph D.*, AO, RG 22-32, Northumberland and Durham Counties (Cobourg) General Quarter Sessions Filings, Box 4, File 4; (1884) *Queen v. John G.*, AO, RG 22-392, Welland County CAI, Box 165; (9 and 11 1904) *Mary P. v. Samuel P.*, AO, RG 22, SPC, Box 7; (1914) *King v. Francis W.*, AO, RG 22, Ontario County CA/CP CCJCC Case Files, Box 14. Occasionally, married men were charged with abusing their wives as well as violently resisting arrest. See, for example, (22 February 1872) *Mary M. v. Samuel M.* and (23 February 1872) *Thomas D. v. Samuel M.*, AO, RG 22-13, GPC, Volume 3; (1880) *Queen v. Charles S.*, AO, RG 22-392, Oxford County CAI, Box 112; "Attempt To Murder," *Brockville Recorder*, 26 October 1893. Finally, some husbands were charged with assaulting those 'outsiders' who they perceived as unduly interfering in their marital affairs, but no complaints were laid against them for wife abuse. See, for example, "Colborne District Assizes," *Chronicle and Gazette*, 30 April 1845; (27 September 1873) *Catharine G. v. Albert H.*, AO, RG 22-13, GPC, Volume 4; (18 September 1874) *John S. v. Albert H.*, Ibid; (13 June 1882) *Charles M. v. Lachlan M.*, Ibid, Volume 8.

[85] As a result, Mr. B. was tried on two separate indictments, one for assaulting his wife and the other his stepson. (1909) *Rex v. Albert B.*, AO, RG 22-392, Muskoka District CAI, Box 95.

[86] (8 September 1897) *James A. [Sr.] v. James A.*, AO, RG 22-13, GPC, Volume 11.

towards her and tould her that I did not want her to speake to me at all ... I then caughter her by the haire of the head and pulled her away and shoved her over on to the lounge." At that moment, he noticed his son "with the gun aimed at me" and when he attempted to dodge, Robert fired, just missing the intended target. Interpreting this as an unjustified act of aggression, Mr. S. lodged a complaint against his son for attempted murder.[87]

In addition to the presentation of evidence concerning the nature and dynamics of the violent incident in question, the majority of wives, in an effort to strengthen the validity of their complaints, emphasized that it was by no means an isolated occurrence or reminded legal authorities that this was not the first time they had initiated criminal proceedings. Mary Ann D. of Stratford indicated that one month earlier, her husband, a labourer, returned home, "ordered me to get his supper," and then commenced to strike and bite her, causing severe injuries to her head and to her face, which remained "black and swolen (sic) for a week after." "The prisoner has beaten me often before and since that," she added, "After the [last] row ... we lived together quietly till the next row."[88] Similarly, Catherine M., a boardinghouse keeper in Grantham township, testified in 1875 that when her husband came home drunk four days earlier, he commenced "breaking things" and kicked her

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[87] (1894) *Queen v. Robert S.*, AO, RG 22-392, Lanark County CAI, Box 76. In a similar case, sixteen-year-old George Rennardson was indicted for fatally shooting his father, a respected Toronto gunsmith in 1877. As the court testimony disclosed, the deceased not only habitually abused his wife, but also caused the family considerable "grief" because of his "going with other women." On the evening in question, Mrs. Rennardson apparently "taxed" her husband "with his conduct, as she [had] repeatedly done before, upon which he turned on her and struck her on the side of the head with his fist." This "exasperated" the son to such an extent that he threatened his father with a pistol and during the ensuing scuffle, "a shot was discharged." "Melancholy Shooting Affair" and "The Rennardson Shooting Case," Toronto *Globe*, 28 and 30 June 1877. For other violent altercations involving older sons or other family members who sought to protect mothers/wives from their abusive husbands by intervening, see, for example, (6, 7, 8, and 9 December 1905) *Fred R. v. George R.*, AO, RG 22, SPC, Box 9; (1901) *Rex v. Phillip G.*, AO, RG 22, Perth County CCJCC Case Files, Box 3; (24 and 26 July 1900) *Patrick O. v. Johanna B.*, AO, RG 22, SPC, Box 2; (3 May 1905) *Charles E. v. Isaac E.*, Ibid, Box 8; (1865) *The Queen v. Samuel McDowell*, 25 UCQB, 108-15; "Shoots His Son and Self In East Oxford," London *Advertiser*, 11 and 12 February 1908.

[88] (1880) *Queen v. James D.*, AO, RG 22-392, Perth County CAI, Box 120.

severely. While she managed to get "away" by throwing "a pail of scalding water at him," she informed the justice of the peace that over the course of their four-year marriage, he had "beat her many times, cannot remember how often." She also alerted him to the fact that "I have been here twice."[89]

Prosecution witnesses, including police constables who were summoned on previous occasions, neighbours or boarders who could comment on the couple's marital relations and, of course, children living in the household, were frequently asked to verify wives' claims of persistent abuse. In his deposition at Robert R.'s assault trial in 1903, John P., the Weston county constable, stated that he was familiar with the defendant and his wife, having "heard them quarrelling several times when passing by." Furthermore, Mrs. R. had called him to the house on at least two occasions when her husband was "the worse of liquor" and "there was trouble." During one incident, the accused was holding a knife and threatening "to use it on her." "I told him to lay down the knife and behave himself," he continued, "or else he should spend the night in the cells."[90] In 1909, two female neighbours corroborated the testimony of Julia Y. who informed the Niagara justice of the peace that her husband, a labourer, was prone to get "ugly," to hit and "threaten to kill her," as well as drive her out, especially "when drunk." Both asserted that they had "often heard quarrelling" at the couple's house and on a number of occasions, Mrs. Y. appeared at their doors with blackened eyes and a bloodied face, requesting "to remain all night as she was afraid to go home." Most recently, the "third time within a week that she came over to stay all night" after being beaten, she was, as one neighbour disclosed,

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89 (1875) *Queen v. William M.*, AO, RG 22, Niagara North CCJCC Case Files, Box 2.

90 (1903) *King v. Robert R.*, AO, RG 22, York County CA/CP (General Sessions) Case Files, Box 3949. See also (4 June 1888) *Constable John A. v. John M.*, AO, RG 22-13, GPC, Volume 9.

determined to have her husband arrested as "she would not stand it any longer."[91]

Given this pattern of abusive behaviour, some wives invoked their role as protective mothers, arguing that the volatile domestic situation was having a detrimental effect on their children. Minnie R. informed the Weston justice of the peace in 1903 that, when she reprimanded her husband for coming home "half shot," he "used me pretty rough," by threatening to "run his clinched fist through her," striking her, and twisting her arms. "[T]his is not the first trouble I have had with my husband," she added. Particularly over the past four years, "he gets more ugly and abusive every time he gets the worse of liquor ... [H]e has threatened me ever so many times within the past three months and has threatened to kill me." Equally serious, in her opinion, was that "these threats has been made before the children, the oldest is nine years old ... he swears and uses the worst language before them and I think it will have a bad effect on them."[92] Most married women, however, used such evidence of chronic abuse to reinforce their claim that if it persisted and unless they obtained legal protection, they might well become the fatal victims of their husbands' aggression. Many wives echoed the sentiments of Hanora C. of Merrickville, who told the local justice of the peace in 1890 that after her husband assaulted her, attempted to choke her, and repeatedly threatened to kill her, "I have not slept in my house for over a week for fear that he would carry out his threats to murder me."[93]

When swearing their depositions, married women also offered their interpretations

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91 (1909) *Julia Y. v. John Y.*, AO, RG 22, Niagara North CCJCC Case Files, Box 8. See also (30 November 1881) *Elizabeth S. v. Fulton S.*, AO, RG 22-13, GPC, Volume 8; (1921) *King v. William B.*, AO, RG 22, Carleton County CA/CP Case Files, Box 3977.

92 (1903) *King v. Robert R.*, AO, RG 22, York County CA/CP (General Sessions) Case Files, Box 3949.

93 (1890) *Queen v. Charles C.*, AO, RG 22, Leeds and Grenville Counties CCJCC Case Files, 1881-1894.

of what had precipitated or caused their husbands' abusive behaviour. In at least 65 per cent of cases, drunkenness was foregrounded as the principal and underlying catalyst. During her repeated appearances before the Stratford police magistrate, Nellie C., the wife of a painter, merely reiterated the same complaints about her husband's excessive drinking and habitual abuse: "he gits drunk" and "treats both me and my children very badly." "[N]early every Sunday," she added one year later, "there are rows and disturbances in our house and nearly always the result of his drinking."[94] Given the pervasive societal connection made between dissipated habits and domestic violence and the prevalent assumption that inordinate consumption of alcohol could engender a dangerous "ferocity of temper" in men,[95] this predominance in wives' testimonies is perhaps not surprising. In effect, wives, like Alice M., who in 1905, charged her husband, a Stratford labourer, with wounding were rarely required to explain or justify why being shackled with an irritable, demanding, unreasonable, and shiftless drunken husband constituted a valid marital grievance. As a woman of good character, her short deposition seemed to be all the evidence that was needed to satisfy Stratford's police magistrate that she had a legitimate case:

> I was out at work ... and came home at 6.15 - I found my husband lying on the floor drunk - He at once opened on me with the most abusive and obscene language - I kept quiet and went on to get tea - then he threw a cup

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[94] (14, 23, and 24 February 1903) *Nellie C. v. Alonzo C.*, AO, RG 22, SPC, Box 5; (14 and 18 July 1904) Ibid, Box 7; (6, 7, and 12 July 1906) Ibid, Box 10; (6 and 13 August 1906) Ibid. In 1904, Mary P. told the Stratford police magistrate that when her husband, a labourer, came home at noon "under the influence of liquor," he "acted like a mad man," striking her and her daughter repeatedly with his fists. (9 and 11 August 1904) *Mary P. v. Samuel P.*, Ibid, Box 7. For other wives who reappeared in the local courts on a fairly regular basis and argued that they "did not know what to do" with their drunken and abusive husbands, see, for example, (6 October 1873) *Mary A. v. William A.*, AO, RG 22-13, GPC, Volume 4, (10 February 1876) Ibid, Volume 5, (5 February 1877) *Constable R. v. William A.*, Ibid, (23 November 1877) *Mary A. v. William A.*, Ibid, Volume 6, (14 October 1878) *Constable R. v. William A.*, Ibid, Volume 7; (3 February 1877) *Elizabeth S. v. Fulton S.*, Ibid, Volume 5, (29 September 1880) Ibid, Volume 8, (30 November 1881) Ibid, (16 September 1889) Ibid, Volume 10.

[95] (1873) *Rodman v. Rodman*, 20 Gr. Chy., 430.

> at me - it struck the wall and broke - after he threw a saucer at me - it broke too - and when [I] got his supper ready and on the table, hot bacon onions bread and butter and tea all hot - He says - what bleeding stuff is that you are putting up to me - then he took up the plate containing the meat, onions and gravy all hot and threw the whole at me - at my face - I dodged it but got it on my arm ... and my arm was scalded ... quarrels and abuse are common - he is a drunkard and does not provide for me and the children. I work out and support my children. Deft is a wicked man and I am afraid of him - I will not live with him any more - My life is in danger.[96]

In some cases, however, wives were hesitant to attribute their husbands' abuse to drink alone, lest legal officials infer that the accused was not "conscious of what he was doing."[97] What they did suggest was that alcohol merely exacerbated their spouses' already violent tendencies. As Sarah L. of Gananoque informed the justice of the peace, "it is mostly when [my husband] is drunk that he treats me bad," but this did not wholly explain his behaviour. "I cannot tell how many times he has misused me," she added, "Whenever he came in the house, if everything was not just so he would strike me, slapping me on the face and seemed to take delight in pounding me."[98]

Although intemperance emerged as a prevalent explanation for husbandly violence, court transcripts suggest that there were other sources of tension and conflict within rural and working-class families. In the former case, struggles over the possession and control of property were identified as having enormous potential for precipitating violent confrontations. Regardless of whether or not male household heads were legally entitled to the family assets under dispute, some were prepared to employ drastic measures to assert

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96 (5, 6, and 9 October 1905) *Alice Mary M. v. Frank Bernard M.*, AO, RG 22, SPC, Box 9. See also (1880) *Queen v. Charles G.*, AO, RG 22, Stormont, Dundas, and Glengarry Counties CCJCC Case Files, Box 1.

97 (1880) *Queen v. Charles S.*, AO, RG 22-392, Oxford County CAI, Box 112.

98 (1882) *Queen v. Patrick L.*, AO, RG 22, Leeds and Grenville Counties CCJCC Case Files, 1881-1894. For a similar argument, see (1885) *Queen v. William D.*, AO, RG 22, Peterborough County CCJCC Case Files, 1881-1907.

proprietary control or to express their resentment at the lack of it. In 1895, Sarah S., the estranged wife of a Port Perry yeoman, maintained that she had every "right" to go to premises where her husband resided and retrieve her spinning wheel from the stable, since the deed to the property was "in my own name." Mr. S., however, evidently interpreted her presence as an intrusive act and her desire to reclaim her property as theft. After firing four shots at her without warning, he shouted, "get out of [the stable] you devil."[99] Margaret G. of Pickering township testified in 1891 that, despite her second husband's repeated threats over the past three years, she had persistently refused to transfer the ownership of her house and its contents to his control. Two days prior to appearing in court, he became so enraged at her noncompliance and recalcitrance that he not only threatened to shoot her and their two daughters, but also wilfully set fire to the house after they fled. As a number of neighbours who investigated the blaze disclosed, the defendant "was in front of the house swearing that if any man or woman entered the premises he would shoot them" and hence, "nothing could be saved."[100]

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[99] (1895) *Queen v. Arthur S.*, AO, RG 22, Ontario County CA/CP Case Files, Box 4. In 1897, Joseph M. of Grantham township testified that he received a similar reception from his father when, acting on behalf of his mother, he attempted to retrieve her bedstead which she claimed as her property. Making it clear that he would not relinquish the item in question, his father, in a fit of rage, first attempted to strike him with a hammer and an axe and then shot at him, wounding him in the leg. (1897) *Queen v. Patrick M.*, AO, RG 22-392, Lincoln County CAI, Box 85. The violent dispute that erupted between Martin W. and his wife, Catherine, over who owned the cows on their small South Easthope township farm and who had the right to sell them came to a fatal end. When Mr. W. attacked "the old woman" with an axe, she begged her son-in-law, Ludwig, to intervene which he did, striking his father-in-law on the head with a hand spike. Upon the latter's death two days later, Ludwig was charged with murder and Catherine as an accessory. Both were acquitted. (1861) *Queen v. Ludwig G. and Catherine W.*, AO, RG 22-392, Perth County CAI, Box 119.

[100] (1891) *Queen v. Joseph G.*, AO, RG 22, Ontario County CA/CP CCJCC Case Files, Box 2. In 1898, George C., a North Grimsby township fruit grower, was charged by his wife and son with attempted murder. According to their testimony, the altercation occurred during a heated quarrel over the recent transfer of the ownership of his father's business to the son. Accusing them both of conspiring to "rob him" of his property and "insurance money" and declaring that they "did not care anything for him," he "pulled out the revolver from his coat pocket and shot" at them both. (1898) *Queen v. George C.*, AO, RG 22-392, Lincoln County CAI, Box 85.

This is not to suggest, however, that disputes over property were unknown in working-class families. Elizabeth G., the wife of a Stratford Grand Trunk Railway worker, asserted in 1903 that her husband was so incensed that she may have sold the pig without consulting him that he struck her and threatened to murder her while wielding a knife. Although she claimed the animal as her own, having bought and paid for it with her earnings, Mr. G. made it clear to her that "he would run the house," including maintaining control over and making all decisions about when to dispose of family assets.[101] More frequently, however, the main sources of strife in poor and working-class families were rooted in strong parental and marital expectations related to the survival of the family waged economy. When Ernest W., a Stratford labourer, charged his twenty-year-old son with causing a violent row in his house, he also complained that his son had become a general nuisance and financial liability to the family. "He gets drunk - comes home in that condition," he stated, "He uses very foul and abusive language. Deft is not working now, he has not paid for his board for a long time."[102] Conversely, eighteen-year-old Marcella C. from East Whitby township initiated criminal proceedings against her father, an

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[101] (10 and 12 January 1903) *Elizabeth G. v. Andrew G.*, AO, RG 22, SPC, Box 5. In 1893, Antoine T. of Cornwall township and his father, a labourer, had a similar dispute over the family's most valuable asset, a cow. As Antoine disclosed, he attempted to prevent his father from selling it at his mother's request, because she needed it "to pay a doctor's bill." Claiming to be the animal's sole owner who had the right to sell it if he wished, the father did not take kindly to his son's efforts and fired several shots at him, causing him severe injuries. (1893) *Queen v. Joseph T.*, AO, RG 22-392, Stormont, Dundas, and Glengarry Counties CAI, Box 145. For a discussion of the significance of farm animals within working-class family economies, see Bettina Bradbury, "Pigs, Cows, and Boarders: Non-Wage Forms of Survival among Montreal Families, 1861-91," *Labour/Le Travail* 14 (Fall 1984): 13-27.

[102] (18 and 23 February 1906) *Ernest W. v. Daniel W.*, AO, RG 22, SPC, Box 10. See also (22, 23, and 25 August 1903) *Ernest W. v. Daniel W.*, Ibid, Box 6. Mary W. of Whitby, who laid at least four complaints between 1895 and 1901 against her son for brutally assaulting and threatening her and driving her out of her house, articulated similar grievances in 1899: "I own the house where I live. Deft has no claim to it, he has no right to live there unless I choose. I let him live in the house as long as he behaves himself ... He will not go out and work for his living but insists on staying with me and I dont want him in the house as I am afraid of him. He has no means of support, only what I give him." (1895), (1896), (1899), and (1901) *Mary W. v. Edward W.*, AO, RG 22, Ontario County CA/CP CCJCC Case Files, Box 4.

unemployed labourer, for kicking her because she refused to hand over the fourteen dollars he demanded. Although she indicated that he routinely denounced her as "a lazy cow," this was, in her mind, an unfair criticism. Having worked steadily at the local woolen mill for three years, she had dutifully paid her parents' board every two weeks, contributed towards the family's doctor bills and clothing purchases, and banked the remainder of her wages "in case of sickness" and "so no one can take it from me." In her opinion, despite her father's claims and expectations to the contrary, he had no right to exact more of her earnings and she would no longer tolerate his use of physical force in order to do so.[103]

As domestic managers and household budgeters, the frustrations of working-class wives often concentrated on their husbands' failure to fulfil their duties and responsibilities, particularly by squandering their earnings on alcohol or by refusing to make adequate contributions to the household economy. It was frequently when married women refused to surrender the wages already allocated to the household budget or criticized their spouses for their lapses that the latter became abusive.[104] In 1884, Jane M. of St. Catharines, who charged her husband, a labourer, with aggravated assault, complained to the local magistrate that he only "works occasionally and gets drunk with his evenings [and] I have three children living." On the day in question, she had scolded him for not "being at work that day" and for "coming home drunk" for the noon meal. She also insisted that he should

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[103] (1911) *King v. Adolphus C.*, AO, RG 22, Ontario County CA/CP CCJCC Case Files, Box 11.

[104] In a number of cases, acts of physical aggression on the part of husbands were not only precipitated by wives' refusal to 'give up' breadwinner wages, but also by married men's allegedly unfounded accusations that their wives had pinched money from them. See, for example, "Horrible Murder. A Man Murders ... His Children. Attempt to Take His Wife's Life," Toronto *Globe*, 13 June 1873; (1881) *Queen v. Matthew M.*, AO, RG 22, Ontario County CA/CP CCJCC Case Files, 1881-1898; (1874) *Queen v. George S.*, AO, RG 22, Niagara North CCJCC Case Files, Box 2. For an analysis of how money was central to marital disputes among working-class couples in Liverpool in the inter-war period, see Pat Ayers and Jan Lambertz, "Marriage Relations, Money, and Domestic Violence in Working-Class Liverpool, 1919-39," *Labour and Love: Women's Experiences of Home and Family, 1850-1940*, ed. Jane Lewis (Oxford: Basil Blackwell, 1986), 195-219.

"stay [away] when he got his liquor." "When I said this to him," she testified, "he ran at me with the knife now produced in court. He struck me in the back with the knife ... and struck me with his fist."[105] Jennie B. of Sault Ste. Marie was prepared to go further, warning her husband that she intended to withdraw all domestic services unless he contributed to household expenses. In her deposition before the police magistrate in 1916, she stated that the two of them "quarrel near all the time," but added, "I go away before he hurt me usually." Ten days earlier, however, she not only reprimanded him for kicking her fourteen-year-old daughter, but also announced that, since she "worked to pay [the] rent and groceries," she "wouldnt board him any longer" nor "give him any more meals" until "he gave me some money." When he responded by declaring that she "could go to hell for he wouldn't give me anything," she kept her word and refused to "give him any dinner," something husbands often considered to be a particularly serious breach of wifely duties.[106] Infuriated by her obstinacy and the absence of a proper supper, he threw her twice against a trunk, the second time breaking her arm.[107]

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[105] Fortunately for Mrs. M., the knife apparently bent when it struck a bone in her corset and she was spared what could have been a fatal injury. (1884) *Queen v. Patrick M.*, AO, RG 22, Niagara North CCJCC Case Files, Box 3. For a similar case, see "Husband Is Charged With Assaulting Wife," Toronto *Globe*, 20 September 1913.

[106] In 1904, for example, Mary N., the wife of a Stratford engine driver, stated that her husband arrived home the "worse of liquor" at mid-afternoon. "I was out just at the moment," she testified, "I came in at once. Deft was in a violent temper and swore at me for not having his dinner ready - I was or had been busy washing and I told him so - I told him I would not get it for [him] - that as he was not working he should have been home at noon (dinner time)." Enraged by her defiance, he continued to scold her and then proceeded to beat and choke her "until I was nearly dead." (6 September 1904) *Mary N. v. John N.*, AO, RG 22, SPC, Box 7. See also (25, 26, and 27 December 1905) *Nellie N. v. William N.*, Ibid, Box 9; "The Marriage Question in the Police Court," Toronto *Globe*, 28 December 1888.

[107] (1916) *King v. Patrick B.*, AO, RG 22, Algoma District Crown Attorney (Sault Ste. Marie) Case Files, Box 1. In a letter to the police magistrate, the couple's former employer, William G. from St. Mary's Rectory in Sault Ste. Marie, Michigan, stated that when the two worked for him, the defendant "treated his wife unkindly ... squandered money given him and did not support her as he was bound to do. What money she had was what she could make at odd jobs. When they left my employ, I know she was hard up." Furthermore, subsequent to Mr. B.'s arrest for wife assault, he was charged at least three times

Given intensifying social and legal concerns about idle and non-supporting husbands particularly beginning in the late nineteenth century, the question of whether or not the defendant was a steady worker and a reliable breadwinner, while not required evidence at wife assault trials, did became an integral component of married women's courtroom narratives. Not unlike the issue of intemperance, wifely complaints about spouses who were not only violent and abusive, but also inadequate providers did potentially carry considerable legitimacy. In 1881, Jane S. of Galt told the police magistrate that her husband came to her house in a drunken state, began "knocking things over," struck her, and threatened "to knock the life out of her." When he refused "to be quiet," her son drove him out and "locked the door." In her opinion, they were fully justified in evicting him as "he does nothing to support the family, comes to the house occasionally."[108] Emma R. of St. Thomas informed the local police magistrate in 1881 that on the previous day, the accused came home "the worse of liquor" and struck her repeatedly "on the head and face with the potatoe (sic) masher" when she reprimanded him for selling a dog and their only two chickens "all to get whiskey." Emphasizing that this was "not the first time the defendant has assaulted and threatened my life," Mrs. R. went on to complain bitterly that he was equally guilty of reneging on his responsibilities as a breadwinner and his work duties in the household. "The defendant is a shoemaker," she stated. "I have not received a dollar of his money since Christmas. I have of my own labor had to provide for myself, pay rent & buy fire wood. Yesterday while I was out washing

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with non-support. See (28 December 1917) *Jennie B. v. Patrick B.*, AO, RG 22, Algoma District (Sault Ste. Marie) Police Court Record Books, Volume 2; (4 March 1918) *Mary C. v. Patrick B.*, Ibid; (4 July 1919) *Jennie B. v. Patrick B.*, Ibid.

[108] (3 November 1881) *Jane S. v. Robert S.*, AO, RG 22-13, GPC, Volume 8. Two months later, the defendant again appeared at the plaintiff's house "pretty drunk." While wielding a "piece of iron," he began "swearing and tearing round the yard" and tried "to get in at the back door." His son and another man managed to take hold of him until the Mrs. S. got the constable and he was arrested for being drunk and disorderly. (3 January 1882) *Jane S. v. Robert S.*, Ibid.

the defendant instead of cutting wood to burn broke up two of the chairs for fuel."[109] Alvina T., who in 1903 charged her husband, a boilermaker, with punching, threatening, and putting her "out of doors after they had "some words" at breakfast, presented similar grievances. While her principal aim was to "have him bound over to keep the peace," she also took the opportunity to underscore his failures as a husband and father: "Deft does not supply me with sufficient means to keep the house and I have had to take in washing and go out to work to earn enough to buy clothes for self and [five] children ... I have been informed that he gets $2 a day ... Deft does not pay rent -- we have been served with [a] notice to quit if the rent [is] not paid."[110]

If the criminal records indicate that wives were not immune to prosecution for physically punishing their children beyond what was considered "reasonable" bounds,"[111]

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[109] (1881) *Queen v. William R.*, AO, RG 22-392, Elgin County CAI, Box 29; RG 22, Elgin County CCJCC Docketbook, 1879-1908. Similarly, Elizabeth W. of Stratford and mother of eight children pointed out that her husband, a labourer, was not only an abusive drunkard, but also that "for the last year at any rate Deft has not contributed more than $2 or $3 a week for the family - My 2 boys almost entirely support the house. Today Deft came home drunk, he was ugly and abusive. He broke one of the doors. He wanted some money back that he gave me last night and I would not give it to him ... He did not give me $10.00 at once in 2 years past - Deft has not worked at steady work all summer, he could have got it - if he would do it he would earn a little then drink it." (16 September, 3 October, 18 December 1899) *Elizabeth W. v. John W.*, AO, RG 22, SPC, Box 2. See also "A Wife Beater Punished," Toronto *Globe*, 18 December 1884.

[110] (23 and 30 October 1903) *Alvina T. v. David T.*, AO, RG 22, SPC, Box 6. On the day she swore her deposition and the case was adjourned, her husband assaulted her again forcing her to lodge another complaint. (17 and 31 October, 3 November 1903) Ibid; (31 October and 2 November 1903) Ibid. Some married women also laid separate complaints for assault and non-support on the same day. See, for example, (1880) and (1881) *Queen v. John H.*, AO, RG 22, Elgin County CCJCC Docketbook, 1879-1908; (1906) *Rex v. Jessie W.*, AO, RG 22, Grey County CCJCC Minutes, 1869-1920; (29 February 1896) *Mary M. v. Thompson M.*, AO, RG 22-13, GPC, Volume 11; (17 September 1906) *Eliza D. v. George D.*, Ibid, Volume 13; (1920) *Emma T. v. Edward T.*, AO, RG 22, Carleton County CA/CP Case Files, Box 3976.

[111] In 1892, the common law prerogative to discipline children through 'reasonable' physical force was encoded in Canada's criminal code, specifying that it was "lawful for every parent, or person in the place of a parent, schoolmaster or master, to use force by way of correction towards any child, pupil or apprentice under his care, provided that such force is reasonable under the circumstances." (1892) "Correction of child by force," 55-56 Vict., c. 29, s. 56. Both prior to and after its enactment, some

in wife-battering cases, married women consistently emphasized their intermediary function as protective mothers. More specifically, they argued, as did Eliza R. of Niagara Falls in 1881, that it was her efforts to intervene and "save" her young daughter from unjustified and excessively harsh paternal discipline that caused her resentful husband to turn his aggression on her.[112] Jessie J., the wife of a Mulverton carpenter, made a similar claim before the Stratford police magistrate in 1903. She asserted that, despite her husband's claims to the contrary, she did "not put the children up to disobey their father" and she recognized his "right to punish them," but also intimated that there were limits. The "trouble" occurred "at supper time." A quarrel immediately arose over her husband's complaint that the meal consisted of only potatoes and tea but no butter or bread, with Mrs.

(step)mothers or guardians were indicted for using excessive force in whipping or otherwise punishing their children. See, for example, (1880) *Queen v. Annie G.*, AO, RG 22-392, Leeds and Grenville Counties CAI, Box 79; (1882) *Queen v. Mary Ann F.*, AO, RG 22-392, Huron County CAI, Box 60; "London," Toronto *Globe*, 23 November 1889; "Ill-Treating A Child," Toronto *Globe*, 8 February 1890; (11 July and 5 August 1903) *Florence W. v. Maria W.*, AO, RG 22, SPC, Box 6. Two cases of child cruelty which were identified as particularly heinous involved Cynthia B. of Ottawa who was tried in 1896 for routinely whipping and torturing her two grandchildren over a three-year period and Iva B. of Winchester, described as "an inhuman monster," who so ill-treated and neglected her twelve-year-old niece that she died one year after she was sent to assist her aunt in the household. At the latter trial in 1912, the judge "scolded the neighbors," who were aware that the child was being mistreated, "for not informing authorities of the awful conditions." Children's Aid Societies used this case as showing the need for neighbourhood vigilance and for child protection agencies to be established in each community. (1896) *Queen v. Cynthia B.*, AO, RG 22-392, Carleton County CAI, Box 21; "Cruelty Nearly Incredible" and "Imprisonment for Life. Mrs. B[] Of Ottawa Sentenced For Fiendish Cruelty To Her Grandchildren," *Stratford Evening Herald*, 13 March and 20 April 1896; (1912) *King v. Iva B. and Clayton B.*, AO, RG 22-392, Stormont, Dundas, and Glengarry Counties CAI, Box 149; (1912) "Correspondence re. Spring Assizes," AO, RG 4-32, AG, #4; "Children's Aid Is Doing Good Work In Sault Ste. Marie," *Sault Daily Star*, 2 June 1913. Some mothers also used this criminal code provision to lay complaints against teachers for exceeding acceptable limits in strapping their children in school. See, for example, (26, 27, and 29 August 1898) *Elizabeth A. v. Robert E.*, AO, RG 22, SPC, Box 1; (28 and 30 September, 3 October 1898) *Minnie T. v. Russell S.*, Ibid; "Teacher Walloped the Boy," *Stratford Evening Herald*, 13 June 1896.

[112] (1881) *Queen v. Angus R.*, AO, RG 22-392, Welland County CAI, Box 184. In one case, the issue did not revolve around discipline, but the refusal of a father to provide his son with sufficient food. As Marion H. of Hamilton township testified in 1882, when her son became ill with diphtheria, the doctor advised her that without "care and good nourishment" he would not recover. Her husband, however, wanted the boy "removed to an old unoccupied house" and threatened "to break my damned head" if she killed a chicken or supplied him with food. Consequently, she was forced to "go round the neighbours to beg for him." (1882) *Queen v. Bustard H.*, AO, RG 22-392, Northumberland and Durham Counties CAI, Box 103.

J. reminding him that the reason these items were absent was because he refused to purchase them that morning. When, however, her boy failed to get the salt his father requested, his irritation over the inadequate dinner quickly turned to rage, as he "took the child by the neck and threw him against the cupboard." "I got up and interfered," she stated, "by slapping my husband on [the] shoulder with the palm of my hand. He then turn[ed] on me" and beat her severely on her body and face.[113]

Married women rarely disclosed much about their sexual lives in their court depositions, but some did imply, often in veiled language, that their refusal to have intimate relations with their spouses was another factor that could incite husbandly anger and brutal acts of aggression. While married men may have assumed that they had unrestricted access to their wives' bodies, these women made a point of emphasizing that they had valid reasons for not fulfilling this aspect of their conjugal duties. In 1876, Harriet S., the wife of a Norway harnessmaker, revealed that, although her husband had never assaulted her prior to the incident in question, one source of tension between them was that she had objected to his late visits at the house of a neighbour, Martha E.. Two weeks earlier, her husband "asked [her] to go into the bedroom." When she refused, he inquired if "there was any possibility of our getting along happier than formerly," to which she replied, "I thought

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[113] (10, 11, and 13 February 1903) *Jessie J. v. Eli J.*, AO, RG 22, SPC, Box 5. For other wife-battering cases that involved mothers who attempted to protect their children, see, for example, (1837) *Lewis D. v. Ralph D.*, AO, RG 22-32, Northumberland and Durham Counties (Cobourg) General Quarter Sessions Filings, Box 4, File 4; (1870) *Queen v. Almiron R.*, AO, RG 22, York County CAI, Box 187 and "County Assizes," Toronto *Globe*, 18 October 1870; (1920) *King v. Louis C.*, AO, RG 22, Algoma District Crown Attorney (Sault Ste. Marie) Case Files, Box 6; (1901) *Queen v. John S.*, AO, RG 22-392, Grey County CAI, Box 47; "A Brutal Husband And Father," Toronto *Globe*, 8, 10, and 13 January 1894. Although fathers were occasionally indicted on separate charges for whipping their 'disobedient' or 'dishonest' children beyond reasonable limits or assaulting their 'defiant' older sons, a number of cases of ill-treatment that appeared in the court records involved adopted or apprenticed children living in the household. See (1904) *King v. George J.*, AO, RG 22, Ontario County CA/CP CCJCC Case Files, Box 8; (17 and 19 December 1904) *William C. v. Charles M.*, AO, RG 22, SPC, Box 7; (1878) *Queen v. John G.*, AO, RG 22-392, York County CAI, Box 207; (17, 26, and 29 1903) *George D., Agent of Children's Aid Society v. George L.*, AO, RG 22, SPC, Box 6; "A Barnardo Boy's Story. Charges Distressing Cruelty Against His Employer," *Stratford Evening Herald*, 30 May 1896.

not under such circumstances as were at present." At the point, he angrily declared that she "had been the cause of it all," drew a revolver, fired three shots at her head, and struck her on the forehead with a flat iron.[114] Ann B. of Port Perry told the local justice of the peace in 1887 that while the latest beating she received from her husband occurred when she accidently broke a dish which he interpreted as an act of "spite," previous assaults were precipitated by her refusal to "sleep with him": "[S]ince we came in the house where we live now, we have slept together. [T]he reason I did so was for the sake of peace. [I]f I did not do so violence would he use to me." Her reluctance to engage in sexual intercourse, as she further argued, was "on account of the condition he was in," namely "he had the bad disorder" and she herself had seen "him doctoring himself."[115] Emma S., the wife of an Ellice township farmer, however, was the most explicit in describing a series of incidents in which she was physically punished and violently threatened by her husband because she "objected [to] sleeping with him" when he was drunk:

> He was drunk - He wanted me to go to bed with him - I refused going with him - He threw me on the bed ... He took hold of my left arm with force ... He pulled me around the room and swore at me - He told me I might keep my damned hole to my self and that he would break my back - that scene lasted for an hour or hour and a half - My arm was bruised and he bit me on the arm and it was discolored - it was black and blue then yellow ... My leg was marked - either kicked or done by his throwing himself on me ... On Friday and Thursday of last week he abused me again ... I went upstairs, he followed me, locked me in the room and was going to throw me on the bed - He said he should break my damned neck, he had the butcher knife in his hand ... I was very much afraid of him ... For the last 2 week[s] his abuse occurred every night that I would not sleep with him.[116]

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[114] (1876) *Queen v. John S.*, AO, RG 22-392, York County CAI, Box 204; "The Courts," Toronto *Globe*, 13 October 1876.

[115] (1887) *Queen v. Albert B.*, AO, RG 22, Ontario County CA/CP CCJCC Case Files, Box 1.

[116] (18 October and 11 December 1905) *Chief of Police v. Conrod S.*, AO, RG 22, SPC, Box 9. The evidence presented at other trials suggest further reasons why wives were reluctant to have sexual relations with their husbands. In 1924, Mary S., the wife of a Galacian worker, testified that shortly after she gave birth to a stillborn child, her husband, convinced that the infant was not his, began to denounce

Married women also expressed both frustration and fear at their husbands' 'fits of jealousy', especially when they precipitated unfounded accusations, verbal threats, and physical abuse. In 1906, Margaret P. related how her husband, a Stratford machinist, had shown a "jealous disposition" ever since they were married three years earlier. Portraying herself as a "virtuous" woman and "careful in my conduct," she maintained that she had "never in her life" given him "the slightest occasion to be jealous of me." On one occasion, however, he charged her "with being too intimate with one Alex W[] and because I denied it he struck [me] in [the] face and blackened my eye." Most recently, she recounted how, ever since her brother had moved into the same boarding house, her husband repeatedly accused her of "being out the room at night." On the previous evening, she and her husband had "retired to bed at the usual time about 10 oclock," but several hours later, he "awoke me and charged me with having been out of the bed room and taking a pillow with me." When she denied it, he declared, "Do you think I am blind - You thought I was snoring when you went out - I made you believe I was asleep." In a fit of anger, he denounced her as a liar, attempted to strike her, and threatened to "clear out." While Mrs. P. told the police magistrate that she was afraid that her husband would "do me some bodily harm," she also argued that even though he earned "24 cents an hour when he

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her as a "whore" and threaten her life. He also insisted on "laying with her" and when she refused, he attempted to choke her. (1924) *Rex v. Mike S.*, AO, RG 22-392, Ontario County CAI, Box 110. Moreover, at the preliminary hearing into the murder by suffocation of Clistie D. of Belmont township in 1910, one female neighbour was asked whether the deceased had ever commented on her relationship with her husband who stood accused of the crime. She testified that, just before the birth of her last child three months earlier, Mrs. D. had stated that because "her and him were cousins," she "didn't wish to have many of a family." The deceased had also told her that "she wasn't going to yield to Mr. D[] so much as before, and she wondered if all men were like him." Although this line of questioning was halted due the reluctance of the witness to provide further details, the coroner's report indicated that Mrs. D. had been penetrated anally "by an object large enough to cause distension of the orifice." (1910-11) *King v. Hugh D.*, AO, RG 22-392, Peterborough County CAI, Box 124; (1911) "Correspondence re. Spring Assize," AO, RG 4-32, AG, #29; "D[] Committed. Goes To Trial On The Charge Of Killing His Wife," Toronto *Globe*, 14 October 1914.

works," he "loses a great deal of time watching me."[117] In fact, a number of wife-battering cases suggest that married men were often acutely suspicious of relationships between their wives and male boarders. In 1918, Florence M. of Ford City testified that while the "troubles" with her husband, a local plant worker, began two years earlier and "was over a man," his most recent assault occurred when he strenuously objected to her "playing checkers" with a Russian boarder. Accusing her of indecent behaviour, he drove the boarder out and, after raging around the house for two days, he stuck her, "without any warning," on the head three times with a wooden mallet, causing her such severe injuries she had to be hospitalized for a week.[118] The testimony at the attempted murder trial of Peter K. of Copper Cliff also indicated that the accused and his wife had quarrelled over her "conduct" with one of the boarders. Testifying through an interpreter, Mrs. K. disclosed that while brandishing a revolver, her husband demanded to know "if I would live with him or not." Without awaiting a reply, "he caught me by the hand and shot me. He shot me in the throat."[119]

One issue that invariably arose in wives' depositions or under cross-examination, was whether they had, through words or actions, provoked their husbands' violence. In a few cases, married women did concede a degree of culpability, suggesting as did Mary L.

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[117] (20, 21, and 26 February 1906) *Margaret P. v. James P.*, AO, RG 22, SPC, Box 10.

[118] After striking his wife, Mr. M. then attempted to commit suicide by cutting his throat and wrists with a razor. (1918) *King v. Archie M.*, AO, RG 22-392, Essex County CAI, Box 39.

[119] (1910) *King v. Peter K.*, AO, RG 22-392, Sudbury District CAI, Box 151. For other cases in which jealousy was identified as the main motive, see (1 December 1874) *Fanny H. v. James H.*, AO, RG 22-13, GPC, Volume 4, in which the plaintiff charged her husband with striking and threatening her life, using "unchaste and abusive language" towards her, and accusing her of "unfaithfulness"; (1895) *Queen v. Michael P.*, AO, RG 22-392, Haldimand County CAI, Box 48, in which the defendant attempted to murder his wife by cutting her throat with razor and then attempted to commit suicide; "London. Almost a Murder," Toronto *Globe*, 4 May 1880; "With A Pistol. David Saunders Attempts to Kill His Wife," Toronto *Globe*, 18 November 1889; "Felled His Wife," Toronto *Globe*, 22 October 1890.

of Galt that, when her husband assaulted her for breaking a trestle and a violent row ensued, "[m]y temper was up as well as his."[120] Nevertheless, these women often stressed that their anger was justified and its expression did not warrant the abuse they endured. Josephine S. of East Whitby township testified in 1905 that she and her husband, a labourer, had separated twice over their twenty-six year marriage, largely "because we could not get on together." Since being reunited four months earlier, "[w]e have had a good many tangles" and she remained sceptical that they could ever "live together in peace," especially since her husband made it clear that he "hates the ground I walk on." "I cant say that he was always to blame," she continued, "I may have said more than I should have said. I never purposely offended him. I never started the trouble. I have been provoked beyond bearing. But I always spoke the truth ... it was unpleasant truth to him. I never said anything about his conduct. But I contradicted him sometimes in what he said." Most recently, however, her husband, who contributed so little of his earnings to the household, objected to her taking their son to the Whitby fair and stated that the money should be used to buy the boy a pair of pants. In response, she declared that "the money was my own earnings" and that "he ought to be ashamed to think it was my place" and not his "to earn money to get the boy cloths (sic)." This statement so enraged her husband that he struck her repeatedly and "threw me out doors as rough as he could."[121] In 1914, Mary W. of Oshawa also strenuously argued that she had legitimate grounds for being perturbed with her husband. Two weeks earlier, she observed him "pack up his things" including his "tool box" and upon inquiring "where he was going," he told "me to shut my mouth." "There was an empty pail in the hall," she added, "and I threw it at him"; he, in turn, punched her in the eye and attempted to choke her. While admitting that she did strike the "first blow"

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120 (21 January 1895) *John L. v. Samuel L.*, AO, RG 22-13, GPC, Volume 11.

121 (1905) *King v. William S.*, AO, RG 22, Ontario County CA/CP CCJCC Case Files, Box 8.

and then hurled the coffee pot at him, in her opinion, she was justified: "I was so angry to think that my husband would go away and leave his children and myself when he knew there was a month rent owing ... I had a notice to get out in three days or lose my things." Furthermore, the fact that he was the one who "sent for the policeman" to have her arrested was equally exasperating. "He was a coward," she declared, and "no one could say I was in the wrong."[122]

Most married women, however, strenuously argued that they had in no way incited their husbands' anger and abuse.[123] Elizabeth W. told the Stratford police magistrate in 1899 that, when her husband, a labourer, came home drunk in the middle of the night, raised a disturbance, and began "to strike and beat up all," she tried to "make peace." "I did nothing to provoke the row," she maintained, but "did all I could to stop it." For her efforts, however, she was beaten so severely "that I was unable to leave the house for 2 or 3 weeks."[124] Under cross-examination, Mary Jane S., the wife of a Keppel township farmer, also denied provoking her husband, causing him to brutally beat her son and to strike her repeatedly with a sleigh stake, an iron rod, and a whip stock. "It was not I who broke the [stove] grate," she asserted, "I threw nothing at him ... I didnt jaw at the father. I dared not."[125] Similarly, Elizabeth G., the wife of a Stratford Grand Trunk Railway worker, stated emphatically, "I am not a bad tempered woman nor am I bad tongued - I

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122 (1914) *King v. Francis W.*, AO, RG 22, Ontario County CA/CP CCJCC Case Files, Box 14.

123 See, for example, (1874) *Queen v. Patrick M.*, AO, RG 22, Niagara North CCJCC Case Files, Box 2; (1914) *Rex v. John L.*, AO, RG 22, York County CA/CP (CCJCC) Case Files, Box 2721.

124 (16 September, 3 October, and 18 December 1899) *Elizabeth W. v. John W.*, AO, RG 22, SPC, Box 2.

125 (1901) *King v. John S.*, AO, RG 22-392, Grey County CAI, Box 47; RG 22, Grey County (Owen Sound) CCJCC Minutes, 1869-1920.

never scold."[126] At the same time, as the cross-examination of Paraska S., the wife of a Russian Pole, by the Sault Ste. Marie police magistrate in 1920 indicates, a wife's conduct, regardless of how severe the beating or how habitual a husband's abuse, was never completely ruled out as the possible cause of his violent behaviour:

> Q. What was the fight about with your husband?
> A. We had a little quarrel amongst ourselves.
> Q. About what?
> A. I asked him to help me do some little work around the house.
> Q. And what did he do?
> A. And he refused.
> Q. So you went at him with the broom stick to make him work?
> A. No, I just asked him if he would do any work and he refused, so I said two or three words again, and then he beat me.[127]

Within a legal environment where the character and conduct of married women was closely scrutinized, most married women tended to portray themselves, as did Alvina T., the wife of a Stratford boilermaker, as "a strictly sober hard-working woman" who did "the best" she could for her family.[128] Furthermore, whatever their husbands' complaints to the contrary, they further maintained that they dutifully discharged their domestic duties and

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[126] (10 and 12 January 1903) *Elizabeth G. v. Andrew G.*, AO, RG 22, SPC, Box 5. For a similar statement, see (1921) *King v. William B.*, AO, RG 22, Carleton County CA/CP Case Files, Box 3977.

[127] At the same preliminary hearing, the defendant was also charged with two other assaults that had occurred five weeks later on the street and involved his wife and a family friend, Trofin R., who attempted to intervene on her behalf. Under cross-examination by the accused's defense attorney, Mr. R. was asked about his alleged 'improper relations' with Mrs. S. which he denied. (1920) *King v. Andrew S.*, AO, RG 22, Algoma District Crown Attorney (Sault Ste. Marie) Case Files, Box 6. As the Sault Ste. Marie police court records reveal, this was not the first nor the last time the defendant faced charges of beating his wife and other offences. See (14 February 1914) *Ralph V. v. Andrew S.*, wife-beating, AO, RG 22, Algoma District (Sault Ste. Marie) Police Court Record Books, Volume 2; (14 September 1915) *Ralph V. v. Andrew S.*, making threats, Ibid; (14 February 1916) *Nick N. v. Andrew S.*, assault, Ibid; (24 December 1919) *Ralph V. v. Andrew S.*, wife-beating, Ibid; (29 December 1919) *Ralph V. v. Andrew S.*, assault and violation of the Ontario Temperance Act, Ibid; (1918) *Rex v. Andrew S.*, assaulting a peace officer, AO, RG 22, Algoma District Crown Attorney (Sault Ste. Marie) Case Files, Box 1; "Hangs Himself Rather Than Go To Prison. For Brutal Assault Upon His Wife, Sentenced To Two Years," Toronto *Globe*, 3 January 1921.

[128] (23 and 30 October 1903) *Alvina T. v. David T.*, AO, RG 22, SPC, Box 6.

rarely faltered in the provision of expected household services. As Lizzie S. of Oshawa argued in 1915, "I never gave my husband any cause for the treatment he gave me. I did not refuse geting (sic) my husband anything to eat at this time or any other. I always got up and got meals for him when asked to do so."[129] Minnie D. of Galt asserted in 1888 that, when her husband came home drunk on the previous day, he had no reason to punch her in the mouth and slap her face because, in her words, "[t]he dinner was on the table."[130] Ethel W., the wife of an Oshawa ironworker, also maintained that besides "always get[ting] his meals ready," "I keep my own house clean as I can." She also invited the justice of the peace to "go down and see" for himself or to ask her neighbour, Mrs. A., who "was down and undoubtedly looked around a bit."[131]

Whenever possible, prosecution witnesses, including neighbours, boarders, and police constables, were asked to offer statements of character. In 1895, James M., a London neighbour from whom Margaret M. sought refuge, corroborated her statement that she was "perfectly sober" when her husband assaulted her: "M[] and his wife have frequent quarrels always so far as I have seen on his side - he is a drinking man. She does not drink so far as I know. I never saw any appearance of liquor on her."[132] Constable M. of Galt testified in 1880 that when he arrested Fulton S. for kicking his wife "without cause" and tearing her clothes, the defendant "was partly under the influence of liquor," but

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129 (1915) *King v. James S.*, AO, RG 22, Ontario County CA/CP CCJCC Case Files, Box 15.

130 (9 March 1888) *Minnie D. v. John D.*, AO, RG 22-13, GPC, Volume 9.

131 (1912) *King v. William W.*, Ontario County CA/CP CCJCC Case Files, Box 12.

132 (1895) *Queen v. Thomas M.*, AO, RG 22-392, Middlesex County CAI, Box 91. In 1862, Hannah S. of London also assured the local justice of the peace that, "I was not drunk nor under the influence of liquor" when her husband struck and kicked her and turned her out of the house. (1862) *Queen v. James S.*, AO, RG 22-392, Middlesex County CAI, Box 88.

emphasized that Mrs. S. "was perfectly sober, not the appearance of having drunk anything."[133] In 1916, Micheal C. and Lucy R., who boarded in the same house as Wasil B. and his wife in Cedardale and assisted her after being beaten by her drunken husband, both attested to Yustena B.'s reputable character, describing her as "a good woman, not drunken or quarrelsome." When asked about the rather suspicious cut on Mr B.'s forehead, Lucy asserted, as had Yustena, that, "she would not hurt her husband, only to defend herself."[134] Finally, Ellen W.'s complaint against her husband, a Pickering township farmer, for aggravated assault was assisted considerably by a series of letters submitted by neighbours and acquaintances. Emphasizing that she was not only "a good neighbour" and an "honest, hardworking, and respectable woman," but also a "good and faithful wife and mother" who "raised a large, respectful family," whose "character is above reproach," and who was "worthy of the confidence of her husband," these community members identified the ideal traits of a woman who ill deserved such brutal treatment and who was, by extension, worthy of the protection of the courts.[135]

"If a man's wife does not obey him, what can he do?"

Not unlike cases of non-support, the most common response of husbands to their

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133 (29 September 1880) *Elizabeth S. v. Fulton S.*, AO, RG 22-13, GPC, Volume 8. At times, however, such stellar character references were not forthcoming. At the assault and battery trial of Thomas Kilduff before the Kingston magistrate in 1835, one neighbour testified that "he had heard frequent quarrels" between the accused and his wife, "they were both given to habits of intemperance," and that he "had seen Kilduff sober when his wife was drunk, but had never seen [Mrs. Kilduff] sober when her husband was drunk." "Kingston Police," *Kingston Chronicle and Gazette*, 14 November 1835.

134 (1916) *King v. Wasil B.*, AO, RG 22, Ontario County, CA/CP CCJCC Case Files, Box 16.

135 (1898) *Queen v. Frederick W.*, AO, RG 22, Ontario County CA/CP CCJCC Case Files, 1881-1898. Similarly, Mrs. Kirkwood of Toronto, who charged her husband and stepson with uttering threats, submitted "several certificates as to character" to the police magistrate. These were "in rebuttal of statements made by her husband" presumably justifying his threats. "Police Court. Threatening," Toronto *Globe*, 10 April 1880.

wives' complaints was silence. "I have nothing to say" constituted the most common statement recorded in the criminal case files. Given the rules of evidence and the fact that at least 70 per cent of defendants pleaded not guilty or conceded to pleading guilty to a lesser offence such as common assault, it is likely that, after being cautioned by the presiding magistrate or judge, they felt it wise or were advised to say nothing lest they provided potentially self-incriminating evidence.[136] While this stony silence on the part of husbands makes it difficult to grasp how they interpreted their own actions, their muted presence in the courtroom could also reflect and exude a degree of power and control over the proceedings. More specifically, given the dynamics of these particular trials, in which wives were largely responsible for providing the burden of proof and in which their conduct often came under intense scrutiny, the strategy of silence could effectively deflect the court's attention away from the accused and divert its focus more directly on the plaintiff. In addition, even if husbands did not offer a statement in their own defense, they did exercise their legal prerogative to cross-examine all witnesses at the preliminary hearing, giving them an opportunity to challenge the veracity of their wives' statements and, in some cases, those of their children.[137]

Within a social and legal climate in which wife-beating was increasingly denounced as 'brutish', 'cowardly', and 'unmanly' behaviour,[138] the statements of those married men

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136 In 1905, William S., an East Whitby township labourer who was charged with assaulting and beating his wife, informed the justice of the peace that "on the advice of his counsel ... he has nothing to say." (1905) *King v. William S.*, AO, RG 22, Ontario County CA/CP CCJCC Case Files, Box 8.

137 In the latter case, defendants intimated that their wives had coached the children, telling them "what to say in evidence." See, for example, (1911) *King v. Edward M.*, AO, RG 22-392, Algoma District CAI, Box 2; (1905) *King v. William S.*, AO, RG 22, Ontario County CA/CP CCJCC Case Files, Box 8.

138 This climate likely accounted for the criminal libel suit initiated by Charles S. of Sault Ste. Marie against John M. and Robert R., after a letter appeared in the *Sault Star* imputing that the plaintiff got "drunk in a disreputable house" and afterwards "pounded" and illtreated his wife. (1897) *Queen v. John M. and Robert R.*, AO, RG 22-392, Algoma District CAI, Box 1. Similarly, Alex Christie, a machinist whose

who formally responded to their spouses' complaints rarely included bold declarations that as heads of households they had a 'right to beat' their wives with impunity; rather, their responses tended to range from outright denials to laments about and justifications based on their wives' behaviour. In the former case, even if the evidence against them was substantial, some husbands remained defiant, maintaining that they knew "nothing about" the matter and that they were innocent of the offense.[139] In 1881, Ellie R. of Lancaster township appeared before the local magistrate on a charge of beating his wife in the road ditch opposite his house. His son testified that he had witnessed his father whipping his mother on several occasions and a neighbour asserted that "it was known all over that [the accused] is in the habit of ill-using and thrashing her." Mr. R., however, adamantly repudiated his guilt, stating "I am not in the habit of thrashing my wife ... I will not thrash her, I will leave her."[140] William Moore of Toronto was equally emphatic. While he admitted to "licking" his disobedient daughter, he "broke forth several times" during his wife's testimony concerning his assault on her, launching "into a torrent of denials" and

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case of wife assault was dismissed by the Stratford police magistrate, sued the *Mail and Empire* for $5000 in damages after a correspondent "wired a sensational report ... alleging that he had attempted to murder his wife by cutting her throat with a butcher knife and that he should be examined as to his sanity." "An Exaggerated Story. A Slight Family Disturbance Magnified by a Correspondent of the Mail-Empire," "Will Sue for Libel," and "Retraction and Apology. The London Free Press Makes the Amenda Honorable in Respect of Alex Christie," *Stratford Evening Herald*, 12, 13, and 14 August, 11 September 1896.

[139] In 1880, Charles S. of Woodstock used precisely these words, denying that he had given his wife "a crack" on the head with a broomhandle. (1880) *Queen v. Charles S.*, AO, RG 22-392, Oxford County CAI, Box 112. For a similar statement, see (1887-88) *Queen v. William T.*, AO, RG 22, Perth County CCJCC Case Files, Box 2.

[140] (1881) *Queen v. Ellie R.*, AO, RG 22-392, Stormont, Dundas, and Glengarry Counties CAI, Box 142. See also (1904) *King v. John L.*, AO, RG 22-392, Algoma District CAI, Box 1.

proclaiming that she "was the worst liar under the sun."[141]

Besides such declarations of innocence, some defendants argued that they had no choice but to defend themselves against physically aggressive wives[142] and, by extension, should not be held responsible for any 'accidental' injuries that ensued. Patrick B. of Sault Ste. Marie maintained in 1916 that, despite his wife's allegations, she "is stronger than me" and when "[s]he came and ran to me ... I shoved her back and took [a] stick away from her." He further contended that, while chasing him around the house, she fell accidentally which accounted for her broken arm.[143] William B. of Ottawa directly contradicted the testimony of one neighbour who witnessed him beating his wife, by insisting that her swollen and disfigured face and blackened eye was not his doing: "I hit her 3 or 4 times with the flat of my hands and she went out of the house and fell on her face on the pavement and thats (sic) what caused the marks on her face. Her nose bleed many times in the house. I could not say [if] she was running away from me when she fell ... I did not swear at her ... I did not have a butcher knife in my hand. I did not threaten her life and

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141 "Brutal Father," Toronto *Globe*, 11 April 1884. In other cases, prosecution witnesses recounted highly incriminating statements made by the accused despite his formal plea of innocence. In 1859, after rumours began to circulate in Bentwick that Alexander B. "had stabbed his wife with a knife" and escaped into the bush, three local men organized a search party and eventually tracked him down. When he surrendered, Mr. B. reportedly stated that "he was sorry he had not butchered her up like a pig, and if he only had his Son Jims life that he would hang then willingly." (1860) *Queen v. Alexander B.*, AO, RG 22-392, Grey County CAI, Box 43.

142 In 1871, for example, Harcourt Gowan admitted threatening and striking his wife, "but stated, as she had struck him in the eye with such violence as to disfigure him, he felt he was justified in the course he had adopted ... and she probably would get more had it not been for some parties who were present." "Police Court. Threatening," Toronto *Globe*, 28 August 1871. Almiron R. of Whitchurch township also pleaded self-defense, arguing that when he reprimanded his daughter for "being out late with a young man," both his wife and daughter began to strike him and he fought back, wounding Mrs. R. in the eye. (1870) *Queen v. Almiron R.*, AO, RG 22-392, York County CAI, Box 187; "County Assizes," Toronto *Globe*, 18 October 1870.

143 (1916) *King v. Patrick B.*, AO, RG 22, Algoma District Crown Attorney (Sault Ste. Marie) Case Files, Box 1.

never did."[144]

In an effort to diminish the seriousness of the offence, married men also claimed that their wives' version of the incident was an exaggeration. Charles C. of Merrickville assured the local justice of the peace in 1890 that he did not throw his wife to the floor, twist her arms, or attempt to choke her, but insisted he merely "put my arms around her neck" because "I wanted to kiss her." She then began to shout, "pulled my whiskers," and later "got a stick of wood," struck him and threatened to murder him. "I never intended to either harm or hurt her or do anything wrong with her," he declared, "and never will till the day I die."[145] David T., a Stratford boilermaker, intimated that he did not exceed a certain threshold of violence during a quarrel with his wife, admitting that he "took hold of her and pushed her out the door," but disavowing that he struck or "threatened to kill her."[146] Finally, William S., a Port Perry yeoman, claimed in 1895, that when he fired several shots in the presence of his estranged wife, he "never pointed the revolver at her but into the ground." Although one bullet left a hole in her dress and another struck her foot, he insisted that the former "was torn with a nail" and the other injury was an accident. "God knows, I did not want to hurt her," he stated, "I believe she came to take away more of my stuff" and hence merely wanted "to scare her away." Mr. S.'s defence was assisted considerably by a petition signed by seventy-four local citizens, including the reeve and the chief constable, which outlined the reasons why the defendant should be treated with "deep sympathy" and judicial leniency. In their opinion, there was little doubt that both Mrs. S. and her twenty-four-year son (who the petitioners noted had deserted his young wife and

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144 (1921) *King v. William B.*, AO, RG 22, Carleton County CA/CP Case Files, Box 3977.

145 (1890) *Queen v. Charles C.*, AO, RG 22, Leeds and Grenville Counties CCJCC Case Files, 1881-1894.

146 (23 and 30 October 1903) *Alvina T. v. David T.*, AO, RG 22, SPC, Box 6.

three children and left them to be supported by the Port Perry council) were directly responsible for the defendant's "present domestic trouble" and for his violent actions. They urged the County Court judge to consider seriously the "inhuman manner in which he has been treated and the unbearable provocation which he had to bear for the last few years." In their determination "to get rid" of him and "in order to rob him of a comfortable home that by his care and industry he hoped to enjoy in his declining years," the two had "persecuted, betrayed and provoked the man beyond endurance." The petition concluded by emphasizing that, "we ... know him to be a sober industrious and loyal citizen, somewhat excitable but perfectly harmless and obliging."[147]

Other married men suggested that they found it necessary to use a degree of coercion to restrain their drunken and/or quarrelsome wives. William G. and John T. of Galt were alerted to a disturbance at a nearby house in 1859 and heard Anne L. "hollering" as if her husband "was beating her." Upon their arrival, they "tried to open the door and found it fastened." When they asked Mr. L. "to let her go," he stated "she had got liquor and he wanted to keep her in the House and let her holler there."[148] In 1899, Lizzie M. complained to the Stratford police magistrate that her husband, a labourer, "runs around with other women, bad women" and disclosed that when she discovered him at Maud M.'s, she was infuriated and slapped her in the face. At that point, her husband interceded, threatening to "take my heart out and show it to me - I tried to get in, he kept shoving me back and because I was giving him lip he caught me and shoved me into the corner - he caught me by the throat - He choked me and said if I did not shut up he would kill me." In

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[147] This petition was further supported by a letter written by the defendant's physician who argued that, due to an "injury to his head" sustained several years earlier as well as the fact that he had "suffered from the effects of sunstroke some time in the past," Mr. S. "is more readily vexed, worried or crossed, which may even go so far that he is barely responsible for his actions." (1895) *Queen v. Arthur S.*, Ontario County CA/CP CCJCC Case Files, Box 4.

[148] (9 June 1859) *Constable A. v. David L. and Anne L.*, AO, RG 22-13, GPC, Volume 1.

responding to these allegations, Mr. M. denied harming his wife, but asserted that he simply "wanted to keep the racket down," by keeping the two women apart. "I might have called her a damned fool," he stated, "and I told her that she was crazy - I did not call her a whore - I did not say any thing about taking her heart out or brains - I may have talked rough to her to get her away and to keep her quiet."[149]

When husbands appeared more remorseful, their regret was often constructed around certain external causes that either justified or precipitated their violent behaviour. In 1905, Edith H., who charged her husband, a Stratford machinist, with assault, stated that she and her husband generally "lived happily enough - had occasional tiffs," but he had "a nervous disposition" and was "easily excited." On the evening in question, he apparently took great "offence" to her "going up town" and "walking" with a female acquaintance. Upon her return, her husband brandished an open pocketknife and declared, "I will kill you for this going out." In his court statement, the defendant conceded that his wife's testimony was "true," but explained his actions by suggesting that "I smoke cigarettes to excess - and was not well and quite off my head."[150]

Being "quite off my head" as an explanation for violent conduct most often referred to instances when husbands argued that they had been provoked to an uncontrollable or irrational state of mind as a consequence of their wives' alleged improper conduct. In 1899,

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[149] (28 and 29 November 1899) *Lizzie M. v. Patrick M.*, AO, RG 22, SPC, Box 2. Three months later, Lizzie also laid a complaint against Maud M. for assault after the two had an altercation at the Commercial Hotel and another on the street. Testifying in her own defense, Maud stated that she had "not had anything to do with compts husband to cause her jealousy." (13, 14, and 15 February 1900) *Lizzie M. v. Maud M.*, AO, RG 22, SPC, Box 2. Over a period of nine months, Mrs. M. charged her husband with assault causing grievous bodily harm or threatening on at least five other occasions. (3 and 4 July 1898) *Lizzie M. v. Patrick M.*, AO, RG 22, SPC, Box 1; (29 December 1898 and 27 January 1899) Ibid, Box 2; (11 and 27 January 1899) Ibid; (6 and 30 March 1899) Ibid; (27 and 31 March, 1 April 1899) Ibid.

[150] In this case, Mrs. H. laid two complaints against her husband: assault with the intent to kill her and assault with the intent to do grievous bodily harm. Stratford's police magistrate, however, reduced the charge to "threats of personal violence." (13 October 1905) and (14 and 23 October 1905) *Edith H. v. George H.*, AO, RG 22, SPC, Box 9.

Philip D., a Galt labourer, was charged by his wife with assaulting and threatening to take her life as well as "nailing the doors and windows shut so that [she] could not get in the house." In his statement, he repudiated these allegations, but did emphasize that, despite her denials, his wife's conduct and the rumours circulating in town had caused him considerable mental anguish:

> I was full last night. I have been troubled in mind lately. Jim K[] has been getting his washing done at our place and he made more trips than I thought necessary to get his washing and had met my wife outside at different places. On one occasion she told me she was going to a bake shop. In place of that, she met this Jim and never went near the bake shop. I took her by the hand and begged of her to keep him away without my saying anything ... I have heard talk about the goings on at my place.[151]

Joseph S., a Toronto patternmaker, was much more forthright in mounting his defense. Indicted in 1877 for wounding his pregnant wife causing a life-threatening miscarriage, he submitted a statement to the presiding judge at the York Assizes, outlining the 'mitigating' circumstances under which the assault occurred. Although he was convicted of a similar offence two years earlier and had violated his six-year pledge to keep the peace towards his wife, Mr. S. emphasized that on the day prior to the assault, he had intercepted a telegram sent by Edward G. and addressed to her which read, "Come to Port Credit this afternoon on train that leaves at three twenty, home tonight." When she was absent from home that night and despite her claim that she was visiting her uncle, this provided indisputable evidence, in his mind, that "my wife had proved unfaithful to me." He further maintained that her conduct both prior to and after the incident in question offered further proof that she had consistently failed "to perform her duty as a wife and mother." Among her transgressions, Mrs. S. had driven him into a state of poverty through her "extravagant living" and, after his arrest, had removed all his household furniture to an undisclosed location and placed two of their children with "public charities." Mr. S. was not alone in

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[151] (17 October 1899) *Solphia D. v. Philip D.*, AO, RG 22-13, GPC, Volume 12.

insisting that he was minimally responsible for his violent actions. In a petition, seven prominent Toronto citizens, including the mayor and four aldermen, "humbly" requested that the judge "deal leniently" with the defendant. Describing him as a "sober and industrious mechanic and a loving father" who had already spent over two months in the local goal, the petitioners emphasized that, because they had "every reason to believe" that Mrs. S. had "on many occasions proved herself untrue to her husband and very neglectful of the duties of a wife and mother," the defendant had "already paid a very severe penalty for his offence."[152]

If suspicions of marital infidelity offered one line of defence, other husbands cited drunkenness as both an explanation and a justification for their violent behaviour, very much in keeping with the arguments constructed by temperance reformers. In 1882, Patrick L., a Gananoque millworker, attempted to absolve himself of any responsibility for brutally

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[152] (1877) *Queen v. Joseph S.*, AO, RG 22-392, York County CAI, Box 207; Toronto *Globe*, 14, 16, 17, and 18 July, 26 September, 29 October 1877. In 1891, Thomas S. of Brantford, who was described by the arresting constable as bearing the reputation of being a "good man" and a "steady" worker," was committed for trial for wounding his wife with a gun shot, when he caught her working as a prostitute at their place of residence. (1891-92) *Queen v. Thomas S.*, AO, RG 22-392, Brant County CAI, Box 8. Some jealous husbands were also involved in violent altercations with men who they perceived as being too 'familiar' with their wives or when they suspected that they were having improper relations with their spouses. See, for example, (2, 3, and 5 December 1903) *Daniel C. v. Harry B.*, AO, RG 22, SPC, Box 6; (1909) *King v. William S. and King v. Dr. James M.*, AO, RG 22, Ontario County CA/CP CCJCC Case Files, Box 10; "Almost A Tragedy. A Quarrelsome Husband Assumes the Role of an Assassin," London *Advertiser*, 18 April 1882. When such incidents ended in murder, the injured husband, as the 'wrong' party who was merely defending the ownership of his wife, did garner considerable public sympathy and trials usually resulted in acquittals or reduced charges of manslaughter. In 1884, after Horace Alkins, a Toronto artist, shot his wife's clandestine lover in the groin and killed him to avenge the ruination of his happiness, his case aroused immediate sympathy from the public. When the jury at the Toronto Assizes acquitted him of all charges, "[t]here was loud applause in court" and he was "warmly congratulated by numerous friends." "An Injured Husband: Shoots His Faithless Wife and Her Paramour," Toronto *Globe*, 3, 4, 10, 11, and 26 April 1884; "Not Guilty," London *Advertiser*, 25 April 1884. See also the case of a Mr. Mays of Arthur township in Toronto *Globe*, 14 May and 1 June 1850; "A Jealous Husband. He Follows His Wife and Shoots at Her Escort," Toronto *Globe*, 13 November 1884; (1913) *King v. Wasil B.*, AO, RG 22, Wentworth County CAI, Box 183, "A Shocking Crime," Whitby *Chronicle and Gazette*, 26 June 1913, "Wasil B[] Guilty of Manslaughter," Toronto *Globe* 5 April 1913. For similar patterns, see Angus McLaren, "Males, Migrants, and Murder in British Columbia, 1900-1923," *On the Case: Explorations in Social History*, eds. Franca Iacovetta and Wendy Mitchinson (Toronto: University of Toronto Press, 1998), 172-75.

assaulting and beating his wife, Sarah, by explaining to the justice of the peace that, "I don't remember striking [her] ... I think liquor was the cause of it." In the same breath, he went on to insist that his wife was equally blameworthy: she "was drunk three nights in succession, and I had to get my own supper. She asked me to carry the child upstairs, which I did, and she fell across the bed. Last week she was drunk two nights in succession. She had been drinking last night." In responding to her husband's claims, Sarah stood firm, arguing that she had not given him "the least provocation" for his "treatment" and even though he may have been drinking before "he hammered me from room to room," he was "not as drunk as he pretended to be."[153] In 1905, Conrad S., an Ellice township farmer, also blamed alcohol for what amounted to sixteen years of habitual abuse. "I did not intend to hurt, I did not intend to break her back," he stated, "I think I would get on all right if it were not for whiskey - I was always sorry for what I did to my wife and I apologized to her - So far as drinking I intend to quit ... and become a sober man." Although Mrs. S. did indicate that "[w]hiskey has been the great trouble," making her husband "very unreasonable," excessively violent, and more of a liability than an asset on the family farm, she also attributed his behaviour to another factor, which had little to do with his intemperate habits: "All his abuse is carried on in anger and wickedness, but with the intent to boss me and control."[154]

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153 (1882) *Queen v. Patrick L.*, AO, RG 22, Leeds and Grenville Counties CCJCC Case Files, 1881-1894. Similarly, when George R., a Stratford labourer, appeared in court charged with assaulting his wife causing her grievous bodily harm and wounding his son when he tried to "save her" from further injuries, the defendant also stated, "I had more liquor than I ought to have had ... I do not remember striking her." (6, 7, 8, and 9 December 1905) *Fred R. v. George R.* and *Augusta R. v. George R.*, AO, RG 22, SPC, Box 9. See also "The Police Court," Toronto *Globe*, 18 February 1881.

154 (18 October and 11 December 1905) *Chief of Police v. Conrod S.*, AO, RG 22, SPC, Box 9. In responding to a charge of wounding his wife, Andrew Shea of Toronto also stated, "'I'm guilty, but I was drunk'." When asked by Toronto's police magistrate, however, how often his wife had him "up for assaulting her," he replied, "'About a hundred times. She wants to get rid of me'." "The Police Court," Toronto *Globe*, 28 November 1889. For similar arguments, see (14 and 18 July 1904) *Nellie C. v. Alonzo C.*, AO, RG 22, SPC, Box 7.

Defendants also employed a more direct approach in an effort to gain the empathy of legal authorities, by launching into various complaints about their wives' failures, whether in the provision of expected household services, the performance of an assigned task, or simply not complying with their wishes. In their minds, these deficiencies were constructed as legitimate marital grievances and instances of undue provocation. In 1870, David Mageen of London responded to the wife-beating charge lodged against him, by stating emphatically that his spouse had not only provoked him by hitting him with two bottles and calling him "all the names she could lay her tongue to," but also by failing miserably in her housekeeping duties: "[A]ll I want her to do is to keep the house clean, and make things like I have been accustomed to, but she don't do that, but lets the house get like a pigsty, if I am away for a little while."[155] August D., a Stratford labourer, asserted that on the previous day, he "came in for breakfast" and "[t]here was coffee and bread in house and nothing else." Although Mrs. D. maintained that he had no grounds to complain or, for that matter, to throw "his coffee on me" since he had only contributed one dollar in seven years toward household expenses, she was still blamed for the absence of an adequate breakfast: "I was mad and broke some dishes - threw coffee on floor - I took her chair away from under her but she did not go down on the floor."[156] William W., an Oshawa ironworker, who was charged with striking and kicking his wife, was prepared to admit that he took "hold of her by the arms and shook her" because he "found fault with the fish she was cooking" and on the five occasions that she left him, "I might hit her once or twice." "I live a wretched life," he argued by way of justification, because "she dont look

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[155] "Police Intelligence. Wife Beating," *London Free Press*, 15 June 1870.

[156] (15 and 16 February 1900) *Caroline D. v. August D.*, AO, RG 22, SPC, Box 2.

after me."[157] Finally, John H., an Oshawa storekeeper, accused of striking his wife and throwing a bag of onions and a thirty-pound roll of paper at her when she scolded and cursed him for being "out so long," simply emphasized her personal failures: "My wife is not very smart. Whatever anyone comes to tell her she believes it and she get mad at me and I never have a good time with her."[158]

In addition to these alleged failures, wifely disobedience constituted another common source of grievance. In 1828, Edward R. of Hamilton township appeared before the local justice of the peace to answer to a charge of assault against his wife. According to a neighbour who happened to be passing the accused's house, he heard the defendant call to his wife in the field and "when she did not answer, he instantly jumped over the fence and when he overtook her he knocked her down with his fist, he told her to get up, she did so and he knocked her down again with his fist and beat her with something like a stick of wood." He then proceeded to throw "stones at her while she was on the ground." In responding to the allegations, Mr. R. did admit that he misused his wife and indicated that he was "ashamed of himself," but argued that "it was owing to his wife Getting intoxicated" and her stubbornness when she "would not Return to his House according to his wishes."[159] In 1892, William D., an Uxbridge township farmer, was equally perturbed with his estranged wife, when she failed to light the lantern in the house as he requested. Although denying that he kicked her, he maintained that he was provoked into using threatening language: "[S]he has not spoken a civil word to me for three months past.

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157 (1912) *King v. William W.*, AO, RG 22, Ontario County CA/CP CCJCC Case Files, Box 12.

158 (1912) *King v. John H.*, AO, RG 22, Ontario County CA/CP CCJCC Case Files, Box 12.

159 (1828) *Queen v. Edward R.*, AO, RG 22-32, Northumberland and Durham Counties (Cobourg) General Quarter Sessions Filings, Box 3, File 4.

When I came home last night I called to have the lantern lit for me ... I went in the house to get the lantern - the lantern was not lit - they were all in bed but my wife. I swore - it was a queer thing, I had worked all these years and had no body to light a lantern for me. She said the drunken sot was home again ... I said people who would aggravate anyone like that should have their brains knocked out."[160] Finally, when Matthew M. of Whitby was given an opportunity to answer to his wife's complaint that he had attempted to choke her because she failed to have a supply of whiskey in the household when he demanded it, the only statement he made was "if a man's wife does not obey him what can he do."[161]

Prosecuting Violence Against Wives

In 1904, Adam F. of Reach township appeared before the Port Perry magistrate charged with attempted suicide. According to a number of witnesses, he had clearly tried to take his own life by cutting his throat with a butcher knife. Although not necessarily essential to the prosecution of the case, the question that seemed to linger throughout the trial was why Mr. F. had committed this seemingly desperate act. One witness stated that the accused claimed to have "done it" because "he wanted to get out of trouble." The meaning of this phrase did not become evident until Mr. F. took the stand on his own behalf. He candidly informed the judge that on the day in question, he had, for reasons he did not disclose, taken an axe and broken the stove and then proceeded to assault his wife by slapping and kicking her. "My wife cried murder," he added, "my wife went over to Mrs C[] place. Mrs C[] came to our House and she threatened the Law, and I thought to get out of trouble I would take my life without a minutes thought. I took my knife now

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160 (1892) *Queen v. William D.*, AO, RG 22, Ontario County CA/CP CCJCC Case Files, Box 2.

161 (1881) *Queen v. Matthew M.*, AO, RG 22, Ontario County CA/CP CCJCC Case Files, 1881-1898.

produced in Court and cut my throat with it. I intended to kill myself at the time." Mrs. C., his sister-in-law, offered additional details, suggesting that Mr. F. had not only been "drinking a good deal" and was generally "dissatisfied with his marriage," but also had abused his wife for years and to such an extent that she was afraid to live alone with him. Unfortunately, the recorded testimonies did not provide any possible explanation for why threatening Mr. F. with 'the Law' would have precipitated his attempted suicide. Did it represent an act of remorse? Did he fear a loss of reputation should his abusive behaviour became public? Or did he suffer from "bad spells" and "convulsions" as hinted at during the trial? Despite all the unanswered questions associated with this case, Mr. F. was convicted of the charge and, for want of another feasible explanation for his act, the judge concluded that Mr. F. was insane at the time, warranting his detainment in custody until the Lieutenant Governor decided his fate.[162]

Although Adam F. constructed his suicide attempt as a response to the possibility of criminal prosecution, conviction rates and sentencing patterns indicate that most violent husbands had little to fear in terms of harsh penalties if convicted of these offences. Based on my compilation of cases, 22 per cent of defendants were acquitted by the courts. Although the rationale behind these dismissals was not recorded with any degree of consistency, 5 per cent of husbands were found to be insane and hence not criminally

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[162] (1904) *King v. Adam F.*, AO, RG 22, Ontario County CA/CP CCJCC Case Files, Box 8. In my compilation of cases, six husbands who attempted to murder their wives committed suicide, two others attempted to take their lives, and one hanged himself in jail after being sentenced to two years' imprisonment for "brutally assaulting his wife." See "The Late Tragedy in Waterloo," *Galt Reporter*, 2 July 1858; "Suicides Yesterday ... Attempted Wife Murder and Suicide at Waterdown," Toronto *Globe*, 29 and 30 May 1876; "The Attempted Murder At Woodbridge" and "The Woodbridge Shooting Case. The Body of Bonnet Found in the Woods," Toronto *Globe*, 10 and 13 September 1881; "A Domestic Tragedy at Toronto. Man Shoots His Wife and Suicides," *London Advertiser*, 14 February 1908; "Suicide Follows Attempted Murder. E. D. Wellman Shoots His Young Wife, Then Himself," Toronto *Globe*, 16 and 17 December 1912; "A Second Shooting Tragedy in London. L. G. Chiswell Attempts to Murder His Wife. Finally Kills Himself," Toronto *Globe*, 6 October 1913; (1895) *Queen v. Michael P.*, AO, RG 22-392, Haldimand County CAI, Box 48; (1918) *King v. Archie M.*, AO, RG 22-392, Essex County CAI, Box 39; "Hangs Himself Rather Than Go To Prison," Toronto *Globe*, 3 January 1921.

responsible for their violent actions,[163] 7 per cent of cases were 'settled',[164] and at least 39 per cent were discharged on the grounds of the plaintiff's 'bad' character[165] or because she failed to appear in court,[166] withdrew her complaint,[167] or explicitly shielded her spouse

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[163] See, for example, (1894) *Queen v. Peter G.*, AO, RG 22, Elgin County CCJCC Docketbook, 1879-1908; (1882) *Queen v. Alexander H.*, AO, RG 22, Perth County CCJCC Case Files, Box 1; (1895) *Queen v. Oliver M.*, AO, RG 22-392, Carleton County CAI, Box 20; (1909) *King v. Edmund K.*, AO, RG 22-392, Hastings County CAI, Box 56 and (1909) "Correspondence re. Fall Assizes," RG 4-32, AG, #1338; (1916) *King v. Charles B.*, AO, RG 22-392, Peterborough County CAI, Box 124. In a few cases, the defendant's lawyer attempted unsuccessfully to pursue an insanity defence. See, for example, (1895) *Queen v. Michael P.*, AO, RG 22-392, Haldimand County CAI, Box 49; (1908) *King v. Joseph A.*, AO, RG 22-392, Stormont, Dundas, and Glengarry Counties CAI, Box 148.

[164] The arrangements in such cases tended to vary. In 1900, for example, the settlement reached between Georgina M. and her husband, who she charged with assault and pointing a double barrel gun at her when she attempted to escape, was that she and her child would take "a separate house." (12 October 1900) *Georgina M. v. Thomas M.*, AO, RG 22-13, GPC, Volume 12. Conversely, Jessie J., the wife of a Mulverton carpenter, who charged her husband with wounding and stated in court that "I will not go back to live" with him because of his violent behaviour, agreed to reunite with her spouse and they "made other arrangements with a view of not proceeding further" with the trial. (10, 11, and 13 February 1903) *Jessie J. v. Eli J.*, AO, RG 22, SPC, Box 5.

[165] In 1878, for example, Hamilton's police magistrate decided to dismiss the wife-beating complaint against Samuel Reid, arguing that on "account of her drunken habits the wife deserved all the correction her husband had bestowed on her." "Hamilton News," Toronto *Globe*, 7 December 1878. At times, magistrates bound both husband and wife to keep the peace. This is what happened to Mrs. O'Brien of Ottawa who charged her husband with wife-beating in 1869. According to the magistrate, given that her "temper was ... as bad as her husband's fists and the principal cause of them," both were required to furnish two sureties in $100 each and to be of good behaviour. "Police Court," Ottawa *Times*, 5 April 1869.

[166] See, for example, "Police Court. Wifebeating," *London Free Press and Daily Western Advertiser*, 22 June 1860; "Police Court," Toronto *Globe*, 16, 17, 20, and 22 August, 1870; "Police Court," Toronto *Globe*, 22 October 1870; "Police Court. Assaulting His Wife," Toronto *Globe*, 21 July 1871; "Savage Assault" and "Police Court," Toronto *Globe*, 26 September and 3 October 1871; "Police Court," Toronto *Globe*, 7 October 1876; "Whiskey's Work," Toronto *Globe*, 29 April 1884; "General Local News," Toronto *Globe*, 8 December 1888; "General Local News," Toronto *Globe*, 17 December 1888; (7 March 1904) *Mary M. v. Thomas M.*, AO, RG 22-13, GPC, Volume 12; (12 April 1911) *Louisa M. v. Fred M.*, Ibid, Volume 13; (4 June 1915) *Victoria C. v. Percy C.*, Ibid.

[167] In most cases, the historical records do not specify why married women withdrew their complaints, but some cases offer some clues as to their motivations. In 1870, Mrs. Boyer of Ottawa withdrew her wife-beating complaint, when her husband promised "better conduct in the future." "Police Court," Ottawa *Times*, 21 July 1870. In 1890, Mrs. Palmer of Toronto withdrew the wounding charge against her husband after being granted a marital separation. "City and Suburban News" and "Police Court," Toronto *Globe*, 9 and 15 October 1890. Elizabeth B. of Galt, however, was motivated by economic

from prosecution. In these latter cases, wives tended to argue that their spouses were "not to blame in the matter"[168] or corroborated their husbands' version of events. In 1893, for example, John F., the proprietor of a Toronto cigar store, was charged by a local police constable with wounding his wife and assaulting Maud T., a friend, when she interceded on her behalf. At the preliminary hearing, Maud acted as the principal witness, stating that the prisoner came home, dragged his wife out on the yard, and repeatedly kicked her in the face. On the basis of this evidence, the accused was committed for a jury trial at the York Spring Assizes. By then, Maud was dying of consumption and could not appear, but her deposition was read in court and a local doctor confirmed that he had been called to attend to Mrs. F. and found her "in a badly bruised condition, her eyes blackened and face scratched." In his defence, the defendant, who conducted his own case, stated that he came home at noon, "found his wife drinking with Maud" and "remonstrated with her, but did not use any violence towards her." Insisting that Maud had "perjured herself," he claimed that his wife "had fallen on the steps in the yard and had thus received the bruises referred to." When called by her husband to testify and despite being pressed by the prosecutor

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considerations. After lodging a complaint against her husband for assaulting her in 1871, the police magistrate bound him in $200 and two sureties in $100 each to keep the peace. Because he could not secure the necessary sureties, he risked serving a term of imprisonment. Not wishing that her husband be send to the gaol, Elizabeth withdrew her complaint. Three months later, however, Mr. B. was back in court, charged with having threatened to "take the damned bitch's life" and striking her on the head with a "stick of wood." When the constable arrived on the scene, she told him that "she was afraid to live in the house" with her husband. On this occasion, he received thirty days hard labour in the local gaol. (19 and 20 October 1871) and (4 January 1872) *Elizabeth B. v. Edward B.*, AO, RG 22-13, GPC, Volume 3.

[168] "Hamilton News," Toronto *Globe*, 2 December 1878. Mrs. Bozeaux of Toronto, for example, admitted that she "had struck the first blow" and as a result, the assault charge against her husband was dismissed. "Police Court. Assault," Toronto *Globe*, 4 November 1876. Mrs. McBedlucre told the Toronto police magistrate that her husband's assault was "a very trifling affair" and "she had not been struck at all to speak of"; hence the accused was discharged. "Police Court," Toronto *Globe*, 15 October 1881. Mrs. Gardner requested that the assault complaint against her husband be dismissed as he was the worse of liquor at the time. "Police Court," Toronto *Globe*, 23 June 1876. Finally, Mrs. Warwick, who charged her husband with shooting at her, seemingly "owned up to having the common failing of all women - that of having the last word, which had caused [her husband] to fire up so" and the accused was discharged. "The Marriage Question in the Police Court," Toronto *Globe*, 28 December 1888.

about her earlier statements concerning his "shameful abuse," she corroborated Mr. F.'s testimony "in every particular." In his charge to the jury, Justice Falconridge described this as "a most singular case." "The person said to have been assaulted denies any assault," he asserted, and "[i]t all depends on the credibility of Maud T[]." After thirty minutes' deliberation, the jury acquitted the accused on both charges.[169]

When husbands were convicted as occurred in 78 per cent of cases, the sentences imposed tended to vary according to the nature of the charge and the severity of the offence. In at least 50 per cent of these cases, defendants received suspended sentences, usually on the condition that they furnished bonds and/or sureties binding them to keep the peace for periods up to three years, 22 per cent were required to pay fines when convicted of common assault or, in some instances, drunk, disorderly, and abusive behaviour in the lower courts (of those 24 per cent were also required to supply peace bonds), 26 per cent faced terms of imprisonment ranging from two days in the local gaol to life in the Kingston Penitentiary (of which 4 per cent were ordered to furnish peace bonds upon release), and the remaining 2 per cent resulted in the granting of formal separations or maintenance orders.[170]

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[169] (1893) *Queen v. John F.*, AO, RG 22-392, York County CAI, Box 256; "A Case Without Parallel," *Chatham Daily Planet*, 13 November 1893. See also (1906) *King v. William M.*, AO, RG 22, Ontario County CA/CP CCJCC Case Files, Box 8; "Police Court," Toronto *Globe*, 11 October 1870; "A Brutal Husband And Father" and "Brookmeyer Discharged," Toronto *Globe*, 8, 10, and 13 January 1894; "Woman Hit With Bottle: Says It Was An Accident," Toronto *Globe*, 4 June 1912; "Man Stabbed His Wife" and "Wife Shields Husband," Toronto *Globe*, 27 November and 9 December 1913.

[170] In 1900, for example, John W., a Stratford labourer, was ordered to pay his wife $4.00 a week or face imprisonment in the Central Prison for wounding his wife and not supporting his family. (16 September, 3 October, 18 December 1899 and 15 June 1900) *Elizabeth W. v. John W.*, AO, RG 22, SPC, Box 2. William H., a Stratford boilermaker convicted of assaulting his wife causing bodily harm, received a suspended sentence after posting bail of $500 and on the condition that he fulfil the "terms of the agreement entered into between him and his wife" and pay her $15.00 a month. (22, 23, 24, and 27 August 1900) *Tillie H. v. William H.*, AO, RG 22, SPC, Box 2. Finally, Joseph F. of Nepean township, found guilty of beating his wife and hitting her infant, was ordered by the local justice of the peace to pay his wife fifteen dollars a week and "provide a place of residence for himself." Mrs. F. was granted the "use of [the] house and the custody of the children." (1920) *King v. Joseph F.*, AO, RG 22, Carleton County CA/CP Case

What seems evident is that in most cases, the criminal courts were less inclined to punish violent husbands than endeavour to mediate marital relations and restore order within the community by attempting to regulate or modify their behaviour. Unlike the imposition of a fine, for example, one of the underlying premises of binding a married man to keep the peace was the extraction of a public promise, often reinforced by a bond and sureties, of better conduct towards his wife in the future.[171] The outcome of one 1897 assault case involving Cornelius B. was fairly typical. The Elgin county court judge ruled that if the accused would "take back his wife" and "treat [her] properly," the court would suspend sentence. When the defendant agreed to the conditions by entering into his own recognizance to keep the peace for one year and to appear for sentence when called upon, he was discharged from custody.[172] At the same time, the stipulations attached to peace bonds could vary depending on the judge's or magistrate's assessment of the evidence. Thomas M., who was tried before the Grey county court judge in 1915 for assaulting his wife occasioning her actual bodily harm, was ordered, as the condition of his suspended

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Files, Box 3976.

171 Of the fourteen cases of wife abuse found in the early nineteenth-century criminal records and newspapers, at least ten resulted in husbands being required to furnish peace bonds: (1838) William W., a Montague yeoman; (1838) Dominick C., an Elmsby labourer; (1829) Daniel H., a Haldimand township yeoman; (1836) Thomas L., a Smith township farmer; (1837) Ralph D., a Hamilton yeoman; (1843) Hector M., (1844) Robert M., Manvers township yeoman; (1844) John M., Percy township farmer; (1846) John C., Cobourg carpenter; and Thomas Kilduff of Kingston was fined £5 for assault and battery and bound to keep the peace towards his wife for two years. AO, RG 22-15, Leeds and Grenville Counties (Brockville) Quarter Sessions Filings, Box 1, File 25; RG 22-32, Northumberland and Durham Counties (Cobourg) General Quarter Sessions Filings, Boxes 3, 4, 5; "Kingston Police," *Kingston Chronicle and Gazette*, 14 November 1835.

172 (1897) *Queen v. Cornelius B.*, AO, RG 22, Elgin County CCJCC Docketbook, 1879-1908.

sentence, to stay "away from his wife" as well as "keep the peace."[173] In a number of instances, the terms not only included a promise to be of "good behaviour," but also, as occurred in the case of George M., a Stratford labourer convicted of wounding his wife with a butcher knife, "to keep thoroughly sober in the future."[174] In 1904, John P., a Downie township mason, after also being found guilty of wounding his wife, signed a formal agreement, permitting her to place his name on local prohibited lists throughout Perth County for the period of her "natural life" and, in the interests of granting her more control over the household budget, authorizing her to collect and manage all the wages earned by his two sons.[175] Similarly, Nellie C. of Stratford, who lodged several complaints against her husband for assaulting and threatening her and, on each occasion, complained that he had violated his promise to keep sober as a condition of his suspended sentence, finally obtained an court order in 1906, authorizing her to "draw all his earnings" directly from his employer (less fifty cents a week).[176]

Particularly for poor and working-class wives with dependent children, this form of mediation could potentially serve to modify a husband's violent behaviour without risking

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[173] (1915) *Rex v. Thomas M.*, AO, RG 22, Grey County (Owen Sound) CCJCC Minutes, 1869-1920. In the interim, however, he was sentenced to forty days in the common gaol for unlawfully escaping from custody after being arrested for wife-beating.

[174] (4, 5, and 12 July 1904) *Jennie M. v. George M.*, AO, RG 22, SPC, Box 7. See also (24 November, 6 and 9 December 1902) *Ellen P. v. William P.*, Ibid, Box 5.

[175] (23 and 26 July 1904) *Angus N. v. John P.*, AO, RG 22, SPC, Box 7. Thomas B., a Stratford labourer, also received a suspended sentence for assaulting his wife on the condition that she placed him on the local prohibited list. He was also warned by the police magistrate that if he indulged in excessive drinking, he would be sent to the Central Prison for his offence. (6, 7, and 8 October 1905) *Mary B. v. Thomas B.*, Ibid, Box 9. For other abusive husbands placed on a prohibited list, see, for example, "Whisky Has The Best of Husband. Ill-Treats His Family and Is Placed on Indian List," London *Advertiser*, 25 March 1908; (8 August 1914) *Mrs. G. v. Michael G.*, AO, RG 22, Lambton County (Sarnia) CA/CP Justice of the Peace Records, 1910-1923.

[176] (6 and 13 August 1906) *Nellie C. v. Alonzo C.*, AO, RG 22, SPC, Box 10.

the financial difficulties that a protracted trial in the higher courts or a prison sentence would entail. Given the general economic vulnerability of many married women and their reliance on a male wage for their own and their childrens' material support, even the temporary absence of male breadwinners could seriously threaten the often precarious rural and urban working-class family economies. Anna C. of Sault Ste. Marie was confronted with this situation, when her husband, who was accused of assaulting her causing bodily harm, elected a trial by jury in 1920. Before being remanded into custody, Mrs. C. made an "application to her husband for a cheque for 15.00 to purchase necessary food" for herself and her seven children. He, however, declined to provide the funds, claiming that he had no money and asserting that the "children should keep the house." The only advice the local police magistrate could offer was, "if you have no funds in the house, it will be some time before the accused is at home again, and you will have to go to the City Indigent Committee."[177] Minnie R. of Weston, who charged her husband with assault occasioning actual bodily harm in 1903 and requested that he be bound to keep the peace, also became concerned about the material fate of herself and her three young children when he was imprisoned while awaiting trial at the General Sessions because he was unable to supply a sufficient bond to appear. In a letter written by the Weston justice of the peace to the County Crown attorney, the accused was described as "a drunken, worthless fellow" who "abuses and maltreats his wife cruelly." He further argued that four years earlier, Mrs. R. had her husband bound to keep the peace and even though "he behaved fairly well" for a time, more recently, his conduct was "as bad if not worse than ever." Nevertheless, Mrs. R. found it necessary to appeal on his behalf two weeks after lodging her complaint. Arguing that after a "few days experience of gaol conditions" he seemed "quite penitent and gives hope of permanent reform," she asked, albeit unsuccessfully, that he "not be

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[177] (1920) *King v. Louis C.*, AO, RG 22, Algoma District Attorney General (Sault Ste. Marie) Case Files, Box 6.

compelled to appear at the Sessions."[178]

Given these considerations, it is not surprising that many married women specifically requested that legal authorities bind their husbands to keep the peace. Some wives, however, who returned to the courts to lodge further complaints were more sceptical about the effectiveness of peace bonds in preventing further assaults. As Catharine B. of Galt told the magistrate in 1873, "[h]e is drinking all the time, it is the drink that causes the disturbance between us. When he was bound over last year to keep the peace towards me, he has been worse since, [I] do not want him bound over to keep the peace again, it is no use."[179] Elizabeth W. of Pickering township, who informed the local justice of the peace in 1905 that she had left her husband eleven times over an eight-year period because of his drunken, disorderly, and abusive behaviour, seemed equally discouraged. Eighteen months prior to appearing in court, the couple had signed a formal agreement, specifying that Mr. W. was "in future [to] use his wife properly or she is to leave without any disturbance" and "he must [do] everything desirable of a husband toward his wife"; she, in turn, "must be a proper wife towards her husband." Despite this arrangement, as Mrs. W. further disclosed, she was neither treated 'properly' nor was her eventual departure 'without disturbance'. Not long after she took up residence with and began to work for Luther M., a neighbour, her husband appeared on the premises, accused Mr. M. of "keeping his wife" and, while pointing a loaded shotgun at his wife, declared that "he came to do murder" and she "either had to go home with him or ... get shot." When the accused pleaded guilty to common assault, he was released on a suspended sentence on the

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178 (1903) *King v. Robert R.*, AO, RG 22, York County CA/CP (General Sessions) Case Files, Box 3949.

179 (14 February 1873) *Catharine B. v. Francis B.*, AO, RG 22-13, GPC, Volume 3.

condition that he keep the peace towards his wife and Luther M. for one year.[180]

In some instances, court decisions were shaped by the perceived economic needs of the particular family involved as opposed to the potential benefits of imposing harsher penalties. In 1913, Nathan K., a Whitby junkdealer, was convicted of beating his nineteen-year-old daughter, Solphie and was released on a suspended sentence, on the condition that he keep the peace for two years. Two years later, he was back in court on charges of assaulting his wife, Etta, occasioning her actual bodily harm for which he received the same sentence. In the period between the two trials and during the year after his second conviction, a series of letters between Solphie, the Attorney General's office, the local justice of the peace, and the Oshawa police department revealed that Mr. K. was not 'keeping the peace', a situation which created a dilemma among legal authorities as to whether or not a harsher penalty should be imposed. What these various communiques offer is a relatively rare glimpse into the deliberations of legal authorities in domestic violence cases, particularly since the family was desperately seeking some form of protection.

Solphie, acting on behalf of the family and particularly her non-English speaking mother, requested that the Attorney General's Office intervene in the case by writing a series of complaints and a letter that recounted nightmarish stories of the brutality her father was inflicting on the family. "The same thing happens nearly every day and night," she wrote, "My father treats us so harshly we cannot stand it any longer. Oh! God have mercy on my poor mother." Soon afterwards, a briefly worded telegram declared: "No protection here - Father ill-treating Mother." Solphie also strongly intimated that local police constables were condoning her father's behaviour, noting that their lame attempts at reasoning with him using "gentle words" were largely ineffective in preventing further

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180 (1905) *King v. John W.*, AO, RG 22, Ontario County CA/CP CCJCC Case Files, Box 8.

abuse. These latter accusations prompted a stern letter from the Attorney General's Office to the Crown attorney in Whitby, which stated, "Once more Miss K[] has complained about the treatment of her mother. She alleges that on Thursday last ... her mother was assaulted and seriously injured by her father, but that the Police will not take the matter up. I think it would be well to enquire as to this and insist if necessary that the Police shall do their duty in the matter." Oshawa's acting chief constable hastily denied these allegations, depicting Mrs. K. as a volatile and hysterical woman of questionable character and strongly implying that there was little indication that her husband's behaviour warranted more direct police intervention. The more pressing issue raised in the correspondence, however, was whether the mounting evidence of Mr. K.'s habitually abusive behaviour over a three-year period warranted imposing a stiffer sentence. According to the Attorney General's Office, there were at least two considerations involved: "I need not remind you that for wife beating when the assault is serious, the man is liable to be whipped ... [but] there is some hesitation about imprisoning K[] because it would leave his family destitute." By December 1916, the County Court judge had apparently come to a similar conclusion, indicating that the economic stability of the family in question should take precedence. In his final verdict on the case, he stated, "nothing has been brought before me to cause me to think that matters would be improved by imposing sentence at present. Sentence is further suspended."[181]

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[181] (1913) and (1915-1916) *King v. Nathan K.*, AO, RG 22, Ontario County CA/CP CCJCC Case Files, Box 13 and Box 15. See also (6, 7, and 12 July 1906) *Nellie C. v. Alonzo C.*, AO, RG 22, SPC, Box 10. Other husbands, however, who violated the conditions of their suspended sentences were treated with less leniency. Alfred Dingman of Bothwell was sentenced to one year in the Central Prison after he "hit his wife with his fists, knocked her against the wall, and told her he would like to walk over her dead body in a coffin" while being on a suspended sentence. Although he "wept as he thought of his wife and three children, whom he would have to leave practically penniless" and despite the fact that "[h]is wife was ready to forgive him and take him back," the magistrate maintained that while "he deeply sympathized with the children ... the law must be enforced," especially given that the accused "had been addicted to occasional sprees." "Wife Beater Sentenced. Brutal Treatment Wins Him a Year in the Central Prison," London *Advertiser*, 4 March 1908.

What the details of this case suggest, then, is that the economic well-being of the family unit which required the presence of a functioning (albeit habitually abusive) male breadwinner was the foremost consideration in the decision of the court. Like many abused wives and daughters, Etta and Solphie also had to weigh their economic survival against their desire for personal safety and freedom from physical violence, but given their persistence in seeking some form of legal protection, they were likely more discouraged than heartened by the outcome. Furthermore, as Florence N., the wife of a Toronto labourer learned in 1920, even if husbands were treated with leniency in the interests of salvaging the family waged economy, there were no guarantees that, once released, they would support their dependents. After Mr. N. was convicted of beating and ill-treating Florence, the County Court judge ruled that "[w]ith a view to aiding her support and giving him another chance to make good his promise to do better," he would "remand him on a suspended sentence." Not long after, however, Mrs. N. again appealed to the judge, stating that she was unable to work and even though her husband was "working steady," she was "reduced to great poverty" by his refusal to pay her a decent allowance and his general "neglect of [the] family."[182]

Regardless of any potential hardships that might ensue, however, some wives articulated the desire to have their husbands removed from the household as a means of reclaiming a modicum of control over their domestic lives. In her initial complaint, Mary Jane M. of Michipicoten River informed the Wawa justice of the peace in 1911 that, given that her husband had been "most unkind" to her "for the last ten years" and his escalating threats to take her life, "I wish him sent to prison ... [f]or the protection of myself and

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182 (1920) *King v. Harry N.*, AO, RG 22, York County CA/CP (CCJCC) Case Files, Box 2734.

children."[183] In 1908, Elizabeth A. of Cornwall, who charged her husband, an unemployed stone mason, with attempted murder after he attacked her with an iron stove shaker and then, while attempting to cut her throat, gashed her face and severed her finger, also asserted that she was "tired of this kind of life." While maintaining that her spouse had often threatened her life during their thirty-year marriage, she concentrated on the difficulties of living with an extremely "jealous minded" husband, with an "ungovernable" and "very bad irritable temper" who "got mad without the least offence" and a father who had a propensity to sink into dark moods which elicited enormous fear among her children. Even though she expressed sorrow that he "brought himself to this," she asserted that it was "his own seeking" and that the family, which over the past five years had been supported by her older sons, "have a happy home now without him."[184] Similarly, after enduring sixteen years of habitual and brutal abuse which was "only getting worse," Emma S., in testifying before the Stratford police magistrate in 1905, also suggested strongly that she wished to live apart from her intemperate husband, having recently considered fleeing to Michigan with her seven children. As the owner of their Ellice township farm, including the stock, implements, and household furniture, and with a grown son who could help on the farm, however, she saw no reason why she should depart. Taking these factors into account, the magistrate, after convicting Mr. S. for assault causing grievous bodily harm, released the defendant on a suspended sentence under stringent conditions. After furnishing a bond of $1000 and one surety of $500, the prisoner was to "leave the County" that day and agreed that he would not return "except on the written consent of his wife"; if he

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183 (1911) *King v. Edward David M.*, AO, RG 22-392, Algoma District CAI, Box 2. The defendant was released on a suspended sentence.

184 (1908) *King v. Joseph A.*, AO, RG 22-392, Stormont, Dundas, and Glengarry Counties CAI, Box 148.

violated these terms, an appropriate sentence for his offence would be imposed.[185]

In some cases, husbands did receive fairly lengthy terms of imprisonment especially if convicted of attempted murder or seriously injuring their wives with a deadly weapon.[186] At the same time, despite the heated debates about flogging as a discretionary punishment for married men found guilty of assault causing grievous bodily harm, this sentence was rarely imposed.[187] By far the severest penalty was reserved for Thomas M.

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[185] (18 October, 11 December 1905) *Chief of Police v. Conrod S.*, AO, RG 22, SPC, Box 9.

[186] Jacob H. of Moulton township, for example, was sentenced to seven years in the Kingston Penitentiary in 1883 for shooting with intent to murder his wife, when he fired three shots at her seriously injuring her in the breast and back. As Mrs. H. testified, "I solemnly swear that he intended to kill me outright and he also said that he would kill the children ... I also depose that on several other occasions he has attempted to take my life by shooting at me in my sick bed when my baby was only three weeks old and at other times by striking me with an axe and ... [drawing] a knife across my throat." (1883) *Queen v. James H.*, AO, RG 22-392, Haldimand County CAI, Box 49; "The Courts. Haldimand," Toronto *Globe*, 14 April 1883. In 1870, William Quaff of Picton faced three years in the penitentiary for assaulting his wife causing grievous bodily harm, when he attacked his wife with a razor, broke her arm with a chair, and disabled her. "Picton Assizes," Toronto *Globe*, 14 October 1870. See also "The General Sessions," Toronto *Globe*, 24 September 1887 where Thomas Jackson, a Black man, also received three years for stabbing his wife and daughter.

[187] In my compilation of cases, three defendants received this punishment: Wasil B. of Whitby township was sentenced to one month in prison and five lashes with "the usual cat on the fifth day after imprisonment"; William W. of Oshawa was convicted of assaulting and beating his wife resulting in what the examining physician described as extensive bodily injuries and was sentenced to three months in prison and "to be whipped six stripes with the cat o nine tails at the end of the second month"; and Peter Easton who was "sentenced to thirty days in jail and ten lashes" for "kicking his wife." (1916) *King v. Wasil B.*, AO, RG 22, Ontario CA/CP CCJCC Case Files, Box 16; (1912) *King v. William W.*, AO, RG 22, Ontario CA/CP CCJCC Case Files, Box 12; "Ten Lashes For Cruelty," Toronto *Globe*, 5 April 1913. In two cases, the Sault Ste. Marie police magistrate gave defendants, who opted for trials in the higher courts, a stern warning. After hearing the evidence presented at the preliminary hearing of Louis C. on the charge of severely beating his wife and son, he expressed deep sorrow that "such a thing as this can occur in any home in this country." He further added that if the accused had not elected a trial by jury (where, five months later, he would be acquitted of the charge) and if the assault had occurred as Mrs. C. had described, "I would have imposed the lash in addition to the sentence." (1920) *King v. Louis C.*, AO, RG 22, Algoma District Crown Attorney (Sault Ste. Marie) Case Files 6. When Peter B. of Sault Ste. Marie told the police magistrate that he wished to be tried summarily on the charge of repeatedly entering the home of his estranged wife and assaulting her, the accused was strongly advised to opt for a trial in the higher courts: "If you were tried by me I would impose the lash in addition to three or four years in the Kingston Penitentiary so you better go to another Court where you will be shown more leniency." The District Court judge sentenced him to six months for entering his wife's house with the intent to commit an indictable offense. (1920) *King v. Peter B.*, AO, RG 22, Algoma District Crown Attorney (Sault Ste. Marie) Case Files, Box

of South Dorchester township who was accused of and tried at the Elgin Assizes for attempting to poison this wife by giving her spanish flies under the pretence of administering medicine for her remitting fever and kidney disease over a five-month period. In a severely weakened state, Mrs. M. recounted how she had grown increasingly suspicious "that he was going to Poison me or make away with me some way." Over the course of two or three months, she maintained, "whenever he came into the House he asked me how I was. [I]f I said better he appeared angry, if I said worse, he appeared pleased." Her misgivings escalated when she became extremely ill after drinking various teas he prepared for her and when he would make statements like, "why do you not get ready to die." She went on to disclose that a week before his arrest, she finally asked him outright, "how is it that I cannot please you, you seem dissatisfied with everything that I do and I do the best I can. [H]e said you are as good a Housekeeper as I want but I see other women that I like better and I cannot help it." Although Mr. M. attempted to convince the jury that the poisoning had been accidental and despite his efforts to "intimidate" his "paramour" from giving evidence by "winking and squinting" at her in court, she did admit "to her disgrace that he was the father of her illegitimate child and had frequent criminal intercourse with her." On this basis, the jurors determined that "the evidence was conclusive as to the guilt of the prisoner." Given that the apparent motive of his crime was "a desire to get rid of his wife with a view of living with [the] unfortunate girl," he was sentenced to life imprisonment in the Kingston Penitentiary for what the judge condemned as a "treacherous" and "premeditated" act.[188]

With few exceptions, however, whatever sentence defendants received or the terms

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[188] (1860) *Queen v. John M.*, AO, RG 22-392, Elgin County CAI, Box 28; "Assize Intelligence," *St. Thomas Weekly Dispatch and County of Elgin Advertiser*, 25 October 1860.

of the arrangements made between couples, there were few guarantees that incidents of violence would abate or cease. For Sarah L. of Gananoque, who had her husband "sent up before" and despite the six month prison sentence he received for beating her in 1882, the last words he said to her after his arrest was that "he would make me suffer for this."[189] Other husbands, like William Moore of Toronto, greeted his three month prison sentence with what one Toronto *Globe* reporter described as "a number of blasphemous threats as to what he would do when he was released."[190] When Hannah S. of London reappeared before the local magistrate, she indicated that when her husband was sentenced to twenty days imprisonment for beating her, she "got the mayor to liberate him from jail." Within a week, he had beaten her three times, cutting her "on the head against the stove," blackening her face, and on the last occasion, striking and kicking her very severely about the body and turning her out of the house." "I am afraid," she stated, "if he cannot be bound to keep the peace that he will do me greater injury."[191]

Rather than initiating criminal proceedings, some married women decided to leave their abusive husbands. Whether spouses interpreted these acts as a direct violation of their proprietary rights, ignited intense feelings of jealousy, or caused resentment due to the withdrawal of conjugal services, these wives were at considerable risk of being punished for their defiance. As Jennie L. of Blind River explained to the local justice of the peace in 1904, when her husband came to her shop two days earlier, he demanded to know "are you going to live with me or are you going to live by yourself." When she replied, "I will never live with you," he apparently grabbed her by the neck, stating that "I am sorry but I

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189 (1882) *Queen v. Patrick L.*, AO, RG 22, Leeds and Grenville Counties CCJCC Case Files, 1881-1894.

190 "A Brutal Father," Toronto *Globe*, 11 April 1881.

191 (1862) *Queen v. James S.*, AO, RG 22-392, Middlesex County CAI, Box 88.

have to cut your throat ... you have carried my name for 5 years, you wont carry it any more." At that point, he drew a knife, "cut my throat and as I ran away he stabbed me on the cheek." In explaining why she refused to live with her husband, she maintained that, "[a]bout a year ago he attempted to kill me. He threatened me on Friday last, he said you are not going to live here very long because I will shoot you. I have been married 5 years come July. During that time I have left him three times as he dont support me and always abuses me."[192]

In many respects, Jennie L. and all the married women who sought some form of protection or relief from verbal or physical abuse did have legitimate grounds for being fearful of their husbands. Although they struggled in various ways in the courts for their right to physical safety and their entitlement to legal protection, the competing claims that emerged in the courtroom, while certainly fashioned by their and their husbands' attempts to gain the attention and/or empathy of legal authorities, were also rooted in varying expectations and sense of entitlements within marital relations. What neither the law nor the practices of the courts could do or did do was directly challenge the unequal distribution of power and privilege and the sense of male prerogatives that shaped relations between husbands and wives. It was at least partially for these reasons that, as the criminal trials

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[192] (1904) *Rex v. John L.*, AO, RG 22-392, Algoma District CAI, Box 1. Similarly, in 1881, Mary T. of Barton township stated that she had left her husband three times during their seventeen-month marriage because of his drinking habits, his jealousy, and his physical abuse. Most recently, while residing with her mother, her husband appeared at the house wishing to speak with her, but when he was refused admittance, he broke one of the window panes and fired a shot directly at her, wounding her arm. (1881) *Queen v. William T.*, AO, RG 22-392, Wentworth County CAI, Box 174. In 1920, Saima R. of Sault Ste. Marie testified through an interpreter that she had left her husband two months earlier because "he drinks right along and is very bad to me" and by "working out every day," she was "entirely independent," supporting herself and her two children. Despite the fact that she had forbidden him to come to her place of residence, on the previous day, she discovered him "lying on my bed, in my room, in my house" and when she ordered him to leave, "he threw [a] stone at me and he hit me on the head with it." (1920) *King v. Charles R.*, AO, RG 22, Algoma District Crown Attorney (Sault Ste. Marie) Case Files, Box 1. See also "Stabbing," *Chronicle and Gazette*, 18 January 1845; "A Brutal Husband," Toronto *Globe*, 6 March 1894; "Wife Slashed With Razor: Accused Husband Missing," Toronto *Globe*, 22 September 1913; "With Intent To Kill His Wife," *Stratford Evening Herald*, 29 April 1896.

involving wife murder suggest, it was often a fine line between being a battered wife and being a dead one.

'Murder Most Foul': Who Done It and What Became of Them

In the period between 1830 and 1921, at least 106 Ontario husbands and 26 wives were arrested on charges of murdering their spouses. (These figures do not include the ten married men who committed suicide immediately or shortly after completing their homicidal acts[193] nor the four married women who were accused of conspiring with a third party to 'do away' with their spouses.[194]) Once arrested, most suspected murderers/murderesses became entangled in a fairly elaborate legal process, which in the minds of judicial authorities, constituted the requisite machinery of a fair and impartial system of criminal justice.

The most crucial phase, determining whether a suspect would be committed for a criminal trial, was the coroner's inquest, a relatively informal hearing designed to

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193 These killings were attributed to drunken quarrels, domestic bickering, or insanity, but most often the identified cause was husbandly jealousy and/or retaliation against wives who refused to live with their abusive spouses. See, for example, "Horrible Murder and Suicide," *Kingston Chronicle and Gazette*, 10 May 1834, *British Whig*, 13 May 1834; "Wife Murder And Suicide ... The Results Of Domestic Bickerings," Toronto *Globe*, 16 February 1881; "Terrible Tragedy In A Hamilton Home ... Drink Caused Trouble," Toronto *Globe*, 19 September 1912 and Whitby *Gazette and Chronicle*, 26 September 1912; "Murder And Suicide In Fit Of Insanity," Toronto Globe, 26 April 1917; "Floyd Dresser Shot Wife And Self," Toronto *Globe*, 14 May 1910; "Terrible Tragedy. Double Murder and Suicide in Hamilton. Jealousy The Cause," Toronto *Globe*, 22, 23, and 24 June 1882; "Murdered His Wife And Shot Himself," *Hamilton Spectator*, 18, 20, and 23 May 1912; "Jealous Husband Kills Another Man, Wife And Himself," Niagara Falls *Evening Review*, 28 February 1919.

194 For those wives indicted as accessories prior to or after their husband's murder, each of whom were suspected of having adulterous relations with the prime suspect, see the highly controversial case, "The Sombra Tragedy. Trial of William H. Smith and Mrs. Finlay," Toronto *Globe*, 24 and 29 May, 30 October, 1, 2, and 3 November 1875, (1876) *Regina v. William Henry Smith*, 38 UCQB, 218-39, "The Criminal Law," Toronto *Globe*, 6 October 1876, "Circumstantial Evidence," Toronto *Globe*, 21 April 1894; (1885) *Queen v. Ranson F. and Sarah James S.*, AO, RG 22-392, Elgin County CAI, Box 30; "Another Murder Trial. His Wife and Her Alleged Paramour Charged With O. Monette's Death," Toronto *Globe*, 7, 9, 10, 11, and 13 October 1890; (1890) *Regina v. Peter Edwin D. and Mary Martha E.*, AO, RG 22-392, Hastings County CAI, Box 54.

investigate all violent or otherwise 'unnatural' deaths. After viewing the body and considering the evidence presented by medical experts and any witnesses to the alleged crime, the coroner's jury was asked to rule on the medical cause of death, whether it was indeed the result of foul play, or alternatively the consequence of disease, accident, or suicide.[195] At this stage, five husbands initially thought to be culpable for the death of their spouses, were discharged from custody. In 1872, when Mary Ray, the wife of a Toronto salesman, died several days after laying assault charges against her drunken husband, a coroner's jury was immediately impanelled to investigate her suspicious death. In this case, it ruled that her fatal head injuries had not been caused by her spouse's physical violence, but rather were the result of "accidentally falling downstairs."[196] In some instances, controversial or unpopular coroner's verdicts could generate direct intervention by the deceased's dissatisfied relatives or acquaintances who would press for a more rigorous investigation. After Elizabeth Thurlow, the wife of a well-to-do Nissouri farmer, was found suspended from the rafters of the family barn in 1886, the coroner's jury ruled her death to be a suicide. Her friends, who launched their own independent inquiry, were outraged, insisting that the inquest had been a farce, that Mrs. Thurlow's alleged suicide note was a forgery, and that her husband, who was rumoured to be having improper relations with another woman, had strangled her and then made it appear as if she had taken her own life. Given the mounting campaign against Henry Thurlow, local legal officials had little choice but to arrest him for murder and order the exhumation of his wife's body

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[195] For an examination of coroner's inquests in cases of suicide, see Susan J. Johnston, "Twice Slain: Female Sex-Trade Workers and Suicide in British Columbia, 1870-1920," *Journal of the Canadian Historical Association* (Calgary 1994): 147-66.

[196] "Coroner's Inquest," Toronto *Globe*, 22 and 23 March 1872. See also "Suspected Murder. Adjourned Inquest," Toronto *Globe*, 13 and 14 July 1871; "Suspected Murder ... The Husband Arrested and Subsequently Released," Toronto *Globe*, 22 September 1882; "The Weldons Discharged. Finding of the Coroner's Jury in Mrs. Weldon's Death," Toronto *Globe*, 5 May 1900.

for the purposes of holding a post-mortem examination and another inquest.[197]

If, as occurred in the vast majority of suspected spousal homicide cases, the coroner's jury found that there was sufficient evidence to commit the accused for trial, the case had to await the next scheduled sitting of the county criminal assizes, presided over by a travelling judge, a grand jury which was responsible for forwarding a bill of indictment, and a petit jury which would weigh the evidence and render a verdict. It was during this latter phase in the judicial process, usually before a crowd of interested spectators, that the history and nature of the relationship between the accused and the deceased, what had occurred at the time of the alleged homicide, as well as statements of character were presented, contested and, at times, debated by medical experts, police constables, witnesses, and of course family members. After hearing the evidence, the closing arguments of the crown and defense attorneys, and the judge's charge, the jury was asked to determine whether the defendant was guilty of premeditated murder which carried the death penalty; of manslaughter which took into account the absence of intent and acts of provocation and carried a maximum penalty of life imprisonment; or deserved to be acquitted on the grounds of insanity, justifiable homicide, or insufficient evidence.[198] In instances when the accused was found guilty of murder and particularly when juries recommended mercy, she or he had access to one last court of appeal, that being the Governor General who upon the advice of the Executive Council and the Minister of Justice would determined whether there were mitigating enough circumstances to commute the sentence of death to life imprisonment or to incarceration in one of the province's

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197 "Charge of Wife-Murder. Henry Thurlow, the Nissouri Farmer, Charged with Murdering his Wife," Toronto *Globe*, 8 July 1886.

198 For legal definitions of murder, manslaughter, and recognized grounds for acquittal, see G. W. Burbidge, *A Digest of the Criminal Law of Canada* (Toronto: Carswell Co., 1890), 216-19; Henri Taschereau, *The Criminal Code of the Dominion of Canada* (Toronto: Carswell Co. Law Publishers, 1893), 153-212, 860-63.

asylums.[199]

While legal authorities prided themselves on the dignity, fairness, and impartiality of the criminal justice system, rooted as it was in British laws, procedures, and traditions,[200] the determination of guilt or innocence in the courtroom was a complex process, relying as much on legal interpretations of the evidence as on a number of other factors. With the exception of those husbands and wives who confessed to their crime or who committed the homicidal act in the presence of reliable witnesses, a number of trials concluded with lingering questions left unanswered,[201] and in some cases, the verdict and/or sentence became the subject of considerable controversy. In addition, a jury's verdict could be influenced by a whole series of variables: whether or not the accused, depending on gender, class, and racial background, had sufficient economic means to hire

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199 For a discussion of this process, see Carolyn Strange, "Stories of Their Lives: The Historian and the Capital Case File," *On the Case*, 25-48.

200 See, for example, the statement made by the grand jury at the Northumberland and Durham Spring Assizes in 1863: "the general contentment and loyalty of our inhabitants arising we believe in a great measure from the protection afforded through our laws and institutions and the invariable impartiality with which they are administered." AO, RG 22-391, Northumberland and Durham Counties, Crown Office, Criminal Indictment Assizes Clerk Reports, 1859-1929. See also "The Current Assize And Its Lessons," Toronto *Globe*, 8 November 1875.

201 While this was, as we will see, most often the case in poisoning deaths, the question of who had murdered Hannah L. of Ceylon in 1912, by striking her with a hatchet in the neck, slashing her throat, and throwing her down into the cellar of her home, also remained a mystery. Despite maintaining his innocence, her husband, a teamster, was convicted of and executed for the crime largely based on circumstantial evidence and the incriminating testimony of his fourteen-year-old son, Arnold. At a religious meeting eight years later, however, Arnold confessed to killing his mother and later told legal authorities that she had whipped him every day for a month with a razor strap and refused to allow him "to go with the other children." On the basis of a medical report presented by Dr. Harvey C., the medical director of Ontario Hospitals, he was classified as "an abnormal mental type" with an "unstable emotional personality," making his confession both unreliable and the product of a "morbid imagination." (1913) *King v. Charles L.*, AO, RG 22-392, Grey County CAI, Box 48; NAC, RG 13, Criminal Case Files, vol. 1463, no. 483A; "Terrible Murder In Ceylon Village," Toronto *Globe*, 13, 16, 17, 24, and 31 December 1912, 18, 19, 20, 21, and 24 March 1913, 28 May 1913; (1920) "With reference to the confession of one Arnold L[] that he, and not his father who was hanged therefor, was the murderer of his mother in 1913," AO, RG 4-32, AG, #1956.

a skilled defence attorney or found one who was willing to defend the case without remuneration; the degree of legal and rhetorical prowess displayed by the defense and the prosecution in presenting the evidence and their arguments in the courtroom; the tenor and direction of the judge's charge to the jury; and the extent to which the decision of jury members was influenced by all the speculation, opinions, gossip, and even outrage surrounding the case which were invariably printed in the local press or circulated on the street.

Of the 101 husbands who were formally tried at the county criminal assizes, ten faced charges of poisoning their wives and the remaining ninety-one for causing their deaths through physical or other forms of violence. By contrast, of the twenty-six wives indicted for being directly responsible for their husbands' deaths, ten were suspected of poisoning them, the method usually associated with female killers, and sixteen of resorting to other methods. Furthermore, despite common assumptions that crime in general and family violence in particular were poor and working-class phenomena, a substantial proportion (42 per cent) of those husbands accused of killing their wives were moderately to well-to-do farmers or were members of the middle or professional classes; among married women suspected of husband murder, about 46 per cent were married to established farmers. In addition, if social reformers, social purity advocates, and legal authorities increasingly targeted non-Anglo men and immigrant 'foreigners' for generating social disorder and for their alleged propensity to commit violent offenses, the vast majority of wife murderers were white and most were of Anglo-Celtic heritage, the exceptions being two Aboriginal men, four men of colour, two Italians, and five French-Canadians. Similarly, among those wives accused of murdering their husbands, one was Italian and two were women of colour. The table below offers a breakdown of convictions by gender, and what became of those accused of spousal murder during this period:

	Husbands	Wives	Female Accessories
Hanged	23	3	
Commutation	12	1	
Imprisonment/Manslaughter	28	0	
Acquitted	38	22	4

One striking feature of these statistics is that in contrast to their male counterparts, married women accused of killing their husbands seemed to have 'gotten away with murder' on a fairly routine basis. While masculine chivalry and gendered mercy on the part of all-male jurors did seem to operate in some trials,[202] five married women were acquitted on the grounds of insanity as were eight husbands. What tended to differentiate these verdicts, however, was that especially among wives who murdered their husbands using deadly force, insanity verdicts went largely unquestioned.[203] This pattern was at least partially rooted in the uncharacteristic brutality of such crimes coupled with the medical assumption that women, with their complex reproductive systems, were more prone to mental disorders or madness.[204] Among married men, insanity judgements did, in some

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202 For a discussion of chivalric justice, see Carolyn Strange, "Wounded Womanhood and Dead Men: Chivalry and the Trials of Clara Ford and Carrie Davies," *Gender Conflicts: New Essays in Women's History*, eds. Franca Iacovetta and Mariana Valverde (Toronto: University of Toronto Press 1992), 149-88.

203 Jane McIntyre of Markham, for example, beat her drunken and abusive husband to death with a hoe and stated at her trial that "for the last 20 years [she had] intended to kill [him] as he was determined to kill her." "Murder Near Markham," Toronto *Globe*, 5, 9, and 14 November 1850. Margaret Schlachter, who was known to suffer from epileptic fits, admitted to splitting her "imperious and quarrelsome" husband's head open with an axe. "Dreadful Murder in Waterloo," *Galt Reporter*, 14 November 1862. See also (1883) *Queen v. Bridget B.*, AO, RG 22-392, Northumberland and Durham Counties CAI, Box 103, "The Courts. Northumberland and Durham," Toronto *Globe*, 16 April 1883; and the case of Amelia Scott in "Sarnia Assizes," Toronto *Globe*, 30 March 1889.

204 Wendy Mitchinson, *The Nature of Their Bodies: Women and Their Doctors in Victorian Canada* (Toronto: University of Toronto Press, 1991); Geoffrey Reaume, "Mental Hospital Patients and Family Relations in Southern Ontario, 1880-1930," *Family Matters: Papers in Post-Confederation*

instances, generate considerable controversy whether as the outcome of actual trials or as grounds for the commutation of death sentences. Despite the general impression among neighbours and the local press that Samuel Hopkins, a contractor from Lynedoch who was tried for fracturing his wife's skull with a grubbing hoe in 1876, was feigning symptoms of lunacy after his arrest and during his murder trial, the superintendent of the Kingston Insane Asylum and the Simcoe goal physician argued for his acquittal by reason of insanity. Six months later, the medical superintendent of London's Lunatic Asylum determined that he was "of sound mind" and maintained that his madness had been "a pretence."[205] Equally contentious was the decision to commute the death sentence of Christopher Ward, a Caledon East farmer, who, according to the evidence, killed his wife, dismembered her body, and then set fire to the house on the night before she had intended to leave him because of "the daily abuse ... of the most degrading kind" she had endured during their short marriage. Although there were suggestions at the trial that he had a brief history of mental illness and suffered from delusions that he was being poisoned, he was nonetheless sentenced to be executed at the Brampton Assizes in 1876. The commutation of his sentence, however, generated intense controversy among local residents as well as in the press, the argument being that a new breed of medical experts, with their "extreme"

Canadian Family History, eds. Lori Chambers and Edgar-Andre Montigny (Toronto: Canadian Scholars' Press, 1998), 271-72.

205 "A Woman Murdered. Her Husband Suspected Of The Crime" and "The Hopkins Murder," Toronto *Globe*, 24, 25, and 29 January, 20 May, 3 November 1876. For other wife murderers acquitted at trial on the grounds of insanity, see, for example, "Jealousy and Murder in Puslinch" and "Wellington Fall Assizes," *Galt Reporter*, 22 April 1859 and Toronto *Globe*, 22 November 1859; the case of George Untucknapp in "Guelph," Toronto *Globe*, 11 October 1879; (1891) *Queen v. William C.*, AO, RG 22-392, Wellington County CAI, Box 170; (1905) *King v. Alexis D.*, AO, RG 22-392, Simcoe County CAI, Box 140; (1918) *King v. Charles G.*, AO, RG 22-392, Waterloo County CAI, Box 163; (1917) *King v. Louis D.*, AO, RG 22-392, Prescott and Russell Counties CAI, Box 127, "Farmer Kills Wife: He Is Thought Insane," Toronto *Globe*, 15 March 1917; (1908) *King v. James H.*, AO, RG 22-392, Middlesex County CAI, Box 92, "Atrocious Murder Near City. Woman Slashed To Death ... Husband, Thought To Be Insane, Is Arrested," London *Advertiser*, 4, 5, 6, 7, 11, 12, 13, 15, 17, 18, 19, 20, and 29 February, 2, 23, 24, 25, and 27 March 1908.

theories, were generating an 'insanity craze' among suspected murderers and that there was no evidence to suggest that, when Ward committed the crime, he was "other than a responsible agent" or "insane only in the same sense as a man under the influence of malignant and brutal passions may be said to be insane and in no other."[206]

In the majority of cases, however, husband murderers were discharged because of the lack of sufficient evidence. This partially reflected the difficulties associated with convicting both wives and husbands suspected of what was referred to as the 'secret crime', that of poisoning their victims.[207] The often protracted murder trials involving poisoning deaths tended to rely on the strength of the circumstantial evidence and uncovering a strong premeditative motive.[208] Of the ten husbands accused of wife

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206 (1876) *Queen v. Christopher Ward*, NAC, RG 13, Capital Case Files, vol. 1414, no. 108A, "Melancholy Death in Caledon," Toronto *Globe*, 7, 8, and 10 April, 12, 13, 15, 16, and 25 May, 10, 15, and 17 June, 17 November 1876, "The Criminal Law," Toronto *Globe*, 6 October 1876, "The Insanity Craze," Toronto *Globe*, 25 November 1876. For other husbands convicted of wife murder whose death sentences were commuted on the grounds of insanity, see, for example, (1874) *Queen v. Timothy Topping*, NAC, RG 13, Capital Case Files, vol. 1411, no. 77A, "The West Oxford Murder," Toronto *Globe*, 23 and 31 December 1873, 2, 3, 4, 6, and 9 April, 13 June 1874, 2 October 1876; (1919) *Rex v. Frederick Fountain*, NAC, RG 13, Capital Case Files, vol. 1501, no. 635A, 647A, CC108, (1919) "Rex vs. Fountain - Murder: As to examination of accused as to sanity," RG 4-32, AG, #1641, Niagara Falls *Evening Review*, 19, 20, 21, 22, 24, and 28 February, 1 March, 16 October 1919.

207 See, for example, "Poisoning As A Fine Art," Toronto *Globe*, 26 August 1876. The other homicidal method that was difficult to prove and relied on strong circumstantial evidence was drowning, particularly given that the defense could argue that the death was an accident or suicide. Of the three husbands suspected of drowning their wives, one was convicted of murder and two were acquitted. See (1871) *Queen v. William Caulfield*, NAC, RG 13, Capital Case Files, vol. 1409, no. 51A, "Found Drowned. Murder Suspected," Toronto *Globe*, 7 November 1871, 3 May 1872; (1892) *Queen v. Frank W.*, AO, RG 22-392, York County CAI, Box 256, "Was It Crime Or Mishap? Did Frank W[] Slay His Wife and Daughter?," Toronto *Globe*, 2, 7, 8, 10, 11, and 12 October 1892; (1914) *King v. Joseph L.*, AO, RG 22-392, Algoma District CAI, Box 3, *Sault Daily Star*, 19 and 22 May, 12 June 1913, 7, 8, and 9 May, 15, 16, and 17 September 1914.

208 As George Robb has pointed out, "[i]deally, to secure a conviction in a poisoning case, the prosecution had to prove 1) that poison was the cause of death, 2) that the suspect had acquired poison, and 3) that the suspect had administered the poison." George Robb, "The English Dreyfus Case: Florence Maybrick and the Sexual Double-Standard," *Disorder in the Court: Trials and Sexual Conflict at the Turn of the Century*, eds. George Robb and Nancy Erber (Houndmills: Macmillan Press, 1999), 59.

poisoning, five were found guilty of murder and sentenced to be hanged, but these verdicts were premised on what juries interpreted as sufficiently incriminating evidence. At the trials of Dr. William King of Cobourg in 1859, James Deacon of Clarendon township in 1870, and Archie McLaughlin, an Uxbridge bookkeeper, in 1910, the prosecution successfully argued that these men's deliberate and calculated deeds were inspired by their villainous and heinous desire to 'get rid' of the wives they had "sworn at the altar to love and cherish" because of their "infatuation with" or "passion for another woman."[209] In 1884, Cook T., a fifty-year-old bigamist from Eugenia who was discovered with a half-empty bottle of strychnine in his possession, and in 1898, after three trials, William Hammond, a young law student from Gravenhurst, were both convicted of poisoning their new brides. In both cases, the alleged motivation was to collect substantial life insurance policies they encouraged their wives to procure at the time of their marriages.[210]

In contrast, George McCabe, a moderately well-to-do farmer from Euphemia, was tried and acquitted for murdering two wives. Two years after marrying Elizabeth in 1877, she suddenly took ill, showing symptoms of aconite poisoning and, as the physician who

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[209] Each of the convicted men eventually confessed to their crimes and admonished others to beware of a similar fate. In his last statement, Dr. King entreated others "to take warning from my fate, and to beware of the temptations of the evil one. I have been blinded by the wicked passions of our corrupt nature and seduced into the greatest of crimes through the instigations of the corrupt flesh and the snares of the devil." "Justice Perverted" and "Sentence On Dr. King," *Galt Reporter*, 15 and 22 April, 17 June 1859. Mr. Deacon also warned "all men to flee from temptation whenever the evil one tries to ensnare them," maintaining that he had been "completely bewitched" by and came under "the evil influence" of "a false and wicked girl" who urged him to poison his pregnant wife. "Trial Of A Wife Poisoner," Toronto *Globe*, 11, 12, 14, 18, and 20 November, 14 and 15 December 1870. Finally, Mr. McLaughlin, who was not only convicted of poisoning his wife with strychnine, but also setting fire to his house which killed his two youngest children, cautioned "young men to '[b]e careful of the company you keep, and above all things keep away from all forms of strong drink, which has been my undoing'." *King v. Archibald McLaughlin*, NAC, RG 13, Capital Case Files, vol. 1457, no. 428A, (1910) "Correspondence re. Spring Assizes," AO, RG 4-32, AG, #808, "The Whitby Assizes," Toronto *Globe*, 10, 11, 12, 13, and 14 May, 14 July 1910.

[210] (1884) *Queen v. Cook T.*, AO, RG 22-392, Grey County CAI, Box 46, Toronto *Globe*, 2, 3, 16, and 17 November 1883, 6 December 1884; (1896-98) *Queen v. William Hammond*, NAC, RG 13, Capital Case Files, vol. 1433 (1-4), no. 293A, 1 CCC, 373-401.

attended her testified, she was asked, in her dying moments, to verify the authenticity of a recent (and, as later revealed, fraudulent) will which left all her property, including her valuable Ingersoll farm, to the accused. At the conclusion of two trials held in Woodstock in 1879, Mr. McCabe was discharged by the presiding judge, who ruled that "there was so much contradiction" and conflicting interpretations of the medical evidence that "it would not be safe for the jury to convict."[211] Five years later, his second wife, Ann, a hotelkeeper in Westminster township, died abruptly of strychnine poisoning a few weeks after she and the defendant "made wills mutually in each other's favor, the survivor to have all." On this second indictment, the prisoner's defence attorney managed to convince the jury that, in spite of the testimony of Mrs. McCabe's acquaintances that the deceased had "a very cheerful disposition," she had committed suicide. Upon releasing the prisoner in 1884, Chief Justice Wilson, who had presided over both cases, found it necessary to give Mr. McCabe a stern warning, given that he had twice been accused of the same offence and that each had been committed under suspiciously similar circumstances: "this is not the first time you have come before me on a charge of poisoning your wife after she had made a will in your favor. You had better take care that such a proceeding as this shall not take place again ... or you may not fare so well."[212]

During the criminal trials of suspected husband poisoners, it seems to have been

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211 "The McCabe Case" and "The McCabe Poisoning Case," Toronto *Globe*, 16 and 17 October 1879.

212 "On A Terrible Charge. George McCabe, of London South, Arrested for Wilful Murder, And Charged with Poisoning His Wife. Accused of Murder for the Second Time," London *Advertiser*, 26, 28, and 29 April, 6, 14, and 15 May, 1, 3, and 8 November 1884. For other husbands acquitted of poisoning their wives, see, for example, (1862) *Queen v. William H.*, AO, RG 22-392, Northumberland and Durham Counties CAI, Box 101; "Accused Of Poisoning," and "The Assizes. No Bill in the Truesdale Case," Toronto *Globe*, 14 and 22 October 1890. David Barranger of Brighton, who was sentenced to be hanged for poisoning his wife in 1871, had his execution stayed by Chief Justice Hagarty given that "the evidence was not quite conclusive" and was eventually acquitted. (1871) *Queen v. David Barranger*, NAC, RG 13, Capital Case Files, vol. 1409, no. 43A; "Sentence Of Death" and "The Barranger Poisoning Case," Toronto *Globe*, 6 November, 15 December 1871.

even more difficult to establish a 'clear chain' of strong circumstantial evidence, particularly since the daily household routines of married women involved the preparation of food and drink and, in some instances, the care of their ailing husbands.[213] At the same time, it was their very responsibility for these domestic tasks that often made them the prime suspects when married men died under suspicious circumstances and especially if post-mortem examinations revealed traces of poison in the deceased's internal organs.[214] But, even though during some murder trials, most notably those of Josephine W. of Brantford in 1901 and Maria H. of Burford township in 1894, witnesses intimated that the accused harboured an intense hatred of her spouse or had expressed a wish that he were dead,[215] none of the ten accused wives confessed to poisoning their husbands nor was the evidence conclusive enough to convict them of wilful homicide.[216]

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213 See, for example, "Trials At Chatham. Mrs. Wallace Acquitted of Poisoning Her Husband," Toronto *Globe*, 3 November 1890.

214 (1896) *Queen v. Henrietta N.*, AO, RG 22-392, Essex County CAI, Box 37, "Did Mrs. N[] Murder?," *Stratford Evening Herald*, 11 and 12 September 1896.

215 (1901) *King v. Josephine W.*, AO, RG 22-392, Brant County CAI, Box 8, "Murder Trial At Brantford. Mrs. W[] Charged With Poisoning Her Husband," Toronto *Globe*, 23, 24, 25, 26, and 28 October 1901; (1894) *Queen v. Maria H.*, AO, RG 22-392, Brant County CAI, Box 8.

216 See "The Breeze Case. A Verdict of Acquittal Entered by Order of the Judge," Toronto *Globe*, 8 November 1889; "A Lucan Mystery. A Strange Poisoning Case," Toronto *Globe*, 3, 10, and 14 September 1877, 8 November 1878; (1913) *King v. Grace B.*, AO, RG 22-392, Oxford County CAI, Box 115, "Mrs. B[] Placed On Trial," *Hamilton Spectator*, 18 June 1913; (1921) *King v. Margaret S.*, AO, RG 22-392, Perth County CAI, Box 122, "Woman Is Acquitted Of Killing Husband," *Ottawa Evening Journal*, 28 October 1921. Two partial exceptions to this trend included the case of Olive S. of Rainham township who in 1896 was accused of poisoning her husband. She was initially convicted and sentenced to death, but given various discrepancies in the evidence, another trial was ordered by the Minister of Justice and she was acquitted of the charge in May 1898. (1896-98) *Queen v. Olive S.*, AO, RG 22-392, Haldimand County CAI, Box 49, NAC, RG 13, Capital Case Files, vol. 1431, no. 286A; 1 CCC, 1-5. Catherine H. of Logan township initially confessed to administering strychnine tablets to her husband in 1921, but later retracted her statement, arguing that at the time she was so "panic-stricken" and "crazed with grief" that "I did not know what I was saying." (1921) *King v. Catherine H.*, AO, RG 22-392, Perth County CAI, Box 122, "Hoped To Cure, Not Kill, Mrs. H[] Now Says," Toronto *Globe*, 19 April 1921. This acquittal rate is in stark contrast to the pattern in England, where women tried for poisoning their husbands between 1830 and

The second noteworthy feature related to spousal murder convictions was that manslaughter appeared to be a crime that was gendered male. In an effort to explain this phenomenon, it is necessary to explore one of the most common explanations for marital conflicts and spousal murders at the turn of the century: the vice of intemperance. Of the twenty-eight cases which resulted in manslaughter verdicts, 75 per cent of them were directly attributed to alcohol. In effect, it was particularly during the trials of murders linked to the 'evils of drink' that the character and conduct of both the accused and the victim became the subject of intense legal scrutiny and hence, the questions of intent, provocation, and culpability seemed to emerge most forcibly. Moreover, if the guilt or innocence of murderous wives tended to be perceived in binary terms, in the case of husbands, the whole issue of the possible 'mitigating circumstances' under which the crime was committed did, with some notable exceptions, gain the sympathetic attention of the courts.

The Vice of Drink

In 1877, after the exhaustive trial of John W., a brickmaker accused of beating his wife to death at his home in the village of Weston, the judge took the opportunity to comment on what he deemed to be the bitter lesson to be learned from this "wretched crime." "This case," he stated, "spoke more eloquently than a thousand temperance lectures upon the great evils arising from whiskey drinking." In concluding his charge to the jury, he outlined the difference between murder and manslaughter, adding that even though "drinking was no excuse for crime ... it was often taken into consideration as inclining the scales to mercy." After five hours of deliberation, however, the jury returned a verdict of guilty of murder with a strong recommendation to mercy and the accused was sentenced to be executed for his offence. Despite the jury's inclination and three petitions, initiated by

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1920 were "convicted 60 percent of the time." Robb, "The English Dreyfus Case," 62-63; George Robb, "Circe in Crinoline: Domestic Poisonings in Victorian England," *Journal of Family History* 22 (April 1997): 176-90.

prominent members of the community and several members of the jury, requesting that his sentence be commuted, the death penalty was not overturned and Mr. W. paid the ultimate "atonement" for his crime before a crowd of prison officials, newspaper reporters, and spectators.

The potential deterrent and reformative value of this highly-publicized case was so great that, on the day after the execution, the Toronto *Globe* felt it prudent to recount and comment on the details of the case for the moral benefit of its readers. The "Weston murder," according to the reporter, was "perhaps the most impressive sermon ever preached in Canada on the subject of intemperance ... To this doubly accursed liquor, and to it alone, can be attributed the terrible fate which befel Mrs. W[], the more terrible atonement made to the world for blood shed by her husband, and the still more terrible situation in which his innocent family are left." He went on to insist that the lessons of this crime should give his readers reason to ponder: "The details of the tragedy are ghastly in the extreme, and were it not for the powerful lesson which their recapitulation is calculated to teach, had better not have been here exhumed. That reperusing them might cause one individual to pause and consider is justification enough for again placing before the public the story told in the Court."

In all respects, the narrative constructed around the Weston case, from the disintegration of John and Ann W.'s marriage to his execution, contained many of the elements of a tragic melodrama, one which might well have been written by any of the numerous temperance organizations proliferating in Ontario in the late nineteenth century. For the first eighteen years of their marriage, the couple had seemingly lived on good terms and John was said to have been a peaceable, "decent, hard-working man," well-liked by his employer and members of the small community. This amicable situation quickly deteriorated, when two years prior to the murder, their marital relations were "disturbed by the husband's intemperance." Throughout this increasingly difficult period, Ann remained,

by all accounts, a "true woman" of virtually flawless character. She was described as "respectable, steady, [and] inoffensive," the hardworking mother of thirteen children, and a "good wife," who, despite occasionally scolding him for his drinking habits, had "borne with her husband in his excesses with exemplary patience and forbearance." She had also, according to the press, silently endured her husband's unprovoked drunken rages and increasingly "inhuman treatment," "waiting to forgive and forget, always anxious for his comfort and welfare." On the day of her murder, as explained by a neighbour, it was evident that her husband had recently assaulted her, as "her face was dreadfully beaten," and not unlike many battered wives, Ann had told her that "she expected nothing else but that he would murder her some time." Her premonitions proved correct. That evening, her husband, while drinking and carousing with two male acquaintances and after boasting all day about the recent "licking" he had given his wife, angrily swore that "he would kill her the next time." The next morning Ann was found dead, her death, according to the coroner, having been caused by a severe head injury and a ruptured liver.

While John W.'s "inordinate use of drink", which had transformed an otherwise peaceable, inoffensive husband into an "unnatural" instrument of brutality, was identified as the principal cause of Ann's death, William S. and James C., the two men present at the house on that fateful night, were also condemned for their complicity in the tragedy. After spending the day of the murder on the "hunt for whiskey," it had been these two men who had thoughtlessly supplied Mr. W. with "a half-gallon jar of whiskey," knowing "full well" how it might affect him. This act, which the press found "incomprehensible," was equalled by the reprehensible and callous indifference they displayed when John openly threatened to murder his wife, doing nothing "to protect Mrs. W[] from the drunken fury of her husband." And finally, during the night when one of the children repeatedly asked the two men to intervene because his father was "licking" his mother, they both refused, stating that "they [had been] quarrelling the night before, and it would not amount to

anything." For this inaction, William S. was arrested as an accessory to the murder on "account of his apathy and neglect to interfere when he knew that something was wrong." Although his case never came to trial,[217] the two men came to symbolize the other evil consequences of intemperance, including working-class idleness and more seriously, the failure to assume their manly obligation to protect a defenceless woman. In open court, the judge, unable to contain his outrage, denounced their cowardly and unchivalrous behaviour: "Here were men who should have been working drinking all day and at all times, and the result was that thirteen children were left motherless, their mother deprived of life and found under such horrible circumstances, their home made a charnel house, and their father in his awful position."

While William S. and James C. had doubly transgressed the codes of acceptable masculine behaviour and hence were denounced for contributing to Ann's death, John W., in the final act of this temperance drama, was ultimately redeemed in the eyes of the press and much of the community. Even though he had, after his arrest, consistently denied knowing (or remembering) anything about the matter, insisting that he was "as innocent as the Child unborn," it was during the last days of his incarceration and after all hopes for a reprieve were dashed, that he underwent his final metamorphosis. Under the guidance of a local minister, he composed a stirring public confession, which contained all the elements necessary to draw accolades and to create a sense of closure. Assuring the public that "no man" was "more prepared to die" than he was and that he was deeply grateful for fairness with which he had been treated by the court, he stressed that his greatest hope was that, "his terrible fate would exercise a deterrent influence on others given to the use of drink." He attributed his downfall to two factors, which reflected and confirmed late nineteenth-century notions about the underlying causes of criminal and intemperate behaviour. By

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217 (1877) *Queen v. William S.*, AO, RG 22-392, York County CAI, Box 207. In his case, the grand jury found no bill on the indictment at the 1877 Toronto Autumn Assizes.

running away from home at an early age and severing all ties with his parents, his life had been devoid of proper parental authority and moral guidance. From that moment on, as he went on to point out, he had "neglected God too," having seldom "darkened a church door" and spending his Sundays "idling and fooling his time away." With this emotive final statement, addressed to his children, friends, and the general public, John W.'s identity as a brutal drunken husband capable of a gruesome murder was quickly supplanted by that of a "most unfortunate man," with many officials expressing keen regret that "the law was irrevocable." As the case drew to a close, however, Ann W. had become an increasingly shadowy figure, whose principal misfortunes had very simply been the intrusion of alcohol into her marriage and the absence of strong male protection, be it from her husband or other men.[218]

The 'Weston case' was atypical not for its excessive moralizing about the evils of intemperance, but because of the severity of the sentence imposed. Of the more than forty-one wife killings directly linked to alcohol in the period between 1830 and 1920, only three other husbands, including James Carruthers, an Essa township farmer, and Thomas K., a Toronto plasterer, were sent to the gallows. In the former case, Mr. Carruthers, who after his conviction confessed to whipping his wife to death, was described as bearing "an excellent character for honesty in all his dealings" but as "unhappily addicted to drink, which acted with ultimately fatal results" on a "naturally" high-spirited temperament. While the frequent quarrels and disturbances between him and his wife, the alleged possessor of "an evil tongue," were "attributed equally to both," he "repudiated the plea of insanity ... induced by a morbid jealousy" which the defense pursued during his trial. Rather, while awaiting execution, he attributed his murderous violence "to drink alone" and, like John

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[218] (1877) *Queen v. John W.*, AO, RG 22-392, York County CAI, Box 208; NAC, RG 13, CCF, vol. 1415, no. 119A; "Another Weston Horror. A Woman Beaten to Death by Her Husband," Toronto *Globe*, 24 September, 30 and 31 October, 1 December 1877.

W., earnestly admonished others to beware of "that curse."[219] The explanations surrounding Thomas K.'s homicidal deed, the way in which he was constructed in the press, and the dynamics of his murder trial, however, differed significantly from those of the other condemned wife killers. During John W.'s trial, for example, press reporters frequently commented that the accused did not have the physical appearance of a murderer, since his features did not suggest a "strong animal or treacherous nature," but rather that of a respectable-looking and ordinary man of average mental calibre and physical vigour.[220] By contrast, from the moment the badly beaten body of Mary K. was discovered in the couple's "wretched hovel" in 1889, the public renditions of this "unparalleled atrocity" contained few elements of a tragedy and Mr. K. himself was described in virtually subhuman terms. As a destitute labourer, he came to symbolize and confirm late nineteenth-century assumptions not only about the interconnection between intemperance and "poverty, squalor and vice," but also about how a latent brute animalism characteristic of the male members of the 'lower orders' could be unleashed through the inordinate consumption of alcohol. In providing detailed descriptions and sketches of the scene of the crime, Toronto newspaper reporters commented on how the scantily-furnished apartment and the absence of domestic amenities clearly indicated that all of Mr. K.'s meagre wages had gone to the purchase of whiskey. The crime itself was portrayed as a "cruel and callous butchery," the result of the "hideous and fiendish brutality of an enraged animal." What made this murder particularly revolting to the public was the fact that after committing the "hideous" deed, Thomas had lain down on a lounge beside his dead wife's battered and bloody body and, after sleeping away his "drunken orgy," he had, with an "appalling

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219 (1873) *Queen v. James Carruthers*, NAC, RG 13, CCF, vol. 1410, no. 65A; "Guilty of Wife Murder - Sentenced" and "The Execution of James Carruthers," Toronto *Globe*, 21 April and 12 June 1873.

220 See, for example, "The Weston Murder," Toronto *Globe*, 30 October 1877.

coolness," attempted to conceal the evidence and then spent the day in another "drinking bout" with friends.

Given the degree of outrage and sensationalism this case generated and the certainty with which the Toronto *Globe* predicted that Thomas K. would "atone for his cruel and callous butchery on the gallows," once the trial began, the selection of a reasonably impartial jury proved to be a difficult and protracted process. In fact, it was so onerous that at one point a search for more potential jurors had to be conducted on nearby streets. That his conviction was more or less a foregone conclusion, despite his claims of innocence, was further attested by the fact that during the proceedings, which spanned no more than a few hours, no defence witnesses were called. The jury, after a short period of deliberation, did return a verdict of guilty with a recommendation to mercy on the grounds that "the prisoner was under the influence of liquor when the crime was committed," but this verdict was quickly denounced in one letter to the editor as both "disgraceful" and as a dangerous precedent. The Minister of Justice and the Executive Council agreed, arguing in a written statement that clemency would not be granted because "they did not consider being under the influence of alcohol as a sufficient excuse for such a crime." When taken to the gallows and much to the disappointment of the reporters and spectators, the condemned husband refused to confess to the crime nor did he offer an eloquent speech of remorse and repentance. This display of stoic fearlessness confirmed what many had suspected about his character: a "careless indifference that betokened callousness of the worst kind."[221]

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[221] (1890) *Queen v. Thomas K.*, AO, RG 22-392, York County CAI, Box 249 (1890); "Whiskey Did It. Frightful Tragedy in the West End. Woman Slain By Her Husband," Toronto *Globe*, 18 and 19 November 1889, 15 and 16 January, 5, 10, and 13 February 1890. See also "A Disgraceful Verdict," Toronto *Globe*, 29 January 1890. Jeremiah Dempsey of Hamilton, who was described as a "poor drunken creature [and] well known to the *habitues* of the Police Court," was also sent to the gallows for beating his intemperate wife to death. While the press maintained that, "[a]s a natural result of their habits, quarrels were of frequent occurrence between the wretched pair and the weaker of the two was the subject of severe beatings and general ill usage," Dempsey admitted that to "put a stop to her going out at night," he "may have kicked her" and "then got her by the hair of the head, and jammed it several times on to the floor." "Brutal Murder" and "The Hamilton Murder Case," Toronto *Globe*, 7 and 13 November 1861.

With the notable exception of four married men, the majority of husbands, whose wife killings were directly linked to intemperance, were convicted of manslaughter and received sentences ranging from one to twenty years. What this suggests is that despite the fairly consistent hard line rhetoric of legal authorities and the harsh punishments handed down in selected cases, judges and juries (as well as abusive husbands themselves) seemed to share the view that, particularly in instances of beating or other violent deaths, drunkenness signified a 'loss of control' and obliterated the 'intent' to kill. In other words, the legal argument was that a man's "state of intoxication was such as to prevent him from appreciating the nature and [probable] result of his acts."[222] Furthermore, as illustrated by the case of Thomas S., a York township labourer who shot his wife in the chest in 1870 and was sentenced to four years at hard labour for manslaughter, the excessive consumption of alcohol was also perceived as potentially "inflaming" various forms of "mania," including violent yet, in this instance, unfounded fits of jealousy.[223] More generally, manslaughter verdicts also allowed judges to exercise considerable discretion when sentencing prisoners to terms of imprisonment, ones which often depended on the recommendations of the jury or on the circumstances under which the offence was committed.

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222 (1909) *The King v. Blythe*, 15 CCC, 224-36.

223 The jury's verdict was also swayed by Mrs. S.'s dying declaration in which she stated, "I don't think he meant to shoot me, but only to frighten me." Furthermore, the comparatively lenient prison term he received was likely influenced by a petition signed by 106 inhabitants of York County and addressed to the presiding judge. In it, the petitioners pointed out that the defendant, as a long time resident of York township, had shown himself to be an otherwise "quiet and orderly Citizen." On the basis of "his general character" and the fact that "a lasting impression has been produced upon him by what he has already undergone," they argued that "a Moderate Punishment will produce all the effect intended to be accomplished by the Law as fully as a Sentence of a more severe character." Thus, they requested "that the Sentence passed may be as lenient as Your Lordship feels is consistent with the demands of Justice." (1870) *Queen v. William S.*, AO, RG 22-392, York County CAI, Box 188 (1870-71); "Shocking Murder. Jealousy The Cause," Toronto *Globe*, 16 July, 13, 17, and 31 October 1870. See also "Simcoe Assizes. The Queen v. Hugh McDonald," *London Free Press and Daily Western Advertiser*, 23 May 1860.

One factor that did tend to tip the scales of justice was the fact that not all married women were of such an exemplary character as Ann W.. Particularly when wives were also prone to drunkenness, defence attorneys had sufficient ammunition to argue that the death had been the result of a drunken row between what was often constructed as two equals or to make a strong case for provocation. After all, as social commentators and temperance advocates were apt to point out, "drunkenness among the women" was "ten times worse than in men, because it causes them to lose their maternal instinct and feeling, and they become thoroughly degraded."[224] In this context, degradation was associated with various transgressions of proper wifely conduct and feminine respectability, which ranged from neglecting their domestic duties to being quarrelsome or most seriously, being physically aggressive. Hence, unlike the dynamics of wife battering or attempted murder trials, in which married women attempted to (and could) defend their characters and sought to convince magistrates that they were undeserving of their husbands' cruelty, the strength of the prosecution's case in wife murder trials had to rely on statements of good character provided by family members, acquaintances, and neighbours. In some instances, however, such positive endorsements were not forthcoming. This was particularly evident when the deceased was known within her community to be a woman of intemperate and disorderly habits. In fact, in a number of situations, the death of wives might have been prevented had neighbours been more inclined to maintain a watchful eye or to intervene during marital 'disputes'.[225] In 1883, when Margaret E., the wife of a Hamilton labourer, died of

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224 This statement was made by J. J. Kelso, the Superintendent of the Children's Aid Society in Toronto, and was included in the Reverend Joseph McLeod's majority report after the hearings of the Royal Commission on the Liquor Traffic held between 1891 and 1895. Canada, *Royal Commission on the Liquor Traffic* (Queen's Printer, 1895), 529.

225 For cases in which the evidence suggested that neighbours were not inclined to intervene because the couple was quarrelsome and "given to drink," see, for example, (1874) *Queen v. David S.*, AO, RG 22-392, York County CAI, Box 198, "City News. Suspected Murder," Toronto *Globe*, 13, 14, and 16 July, 30 September, 10 October 1874; (1908) *King v. James H.*, AO, RG 22-392, Middlesex County CAI,

exposure after her husband beat her and drove her out of the house in the depths of winter, her nearest neighbours were quick to point out that she had a bad reputation for being "addicted to liquor" and, as a mark of her social marginalization, that they had rarely if ever visited her at her home. On the day in question, a number of them had heard the couple quarrelling, which was cited as a frequent occurrence, and at least one neighbour had seen Mr. E. push his scantily-clad wife down the front steps and lock her out of the house. But given the social and moral distancing strongly implied in their testimonies, no one seemed predisposed to assist her or to offer her refuge. Rather, as they themselves admitted, the next thing they heard was that her half-frozen body had been discovered lying behind a neighbour's rain barrel.[226]

That there was 'nothing worse' than having a drunken, quarrelsome, and neglectful wife was also a complaint that many abusive and murdering husbands voiced in the courtroom when attempting to explain their crimes or when speaking in their own defence. As John L. of Middlesex County who was accused of beating his wife to death in 1859

Box 92, "Atrocious Murder Near City. Woman Slashed To Death ... Husband, Thought To Be Insane, Is Arrested," London *Advertiser*, 4, 5, 6, 7, 11, 12, 13, 15, 17, 18, 19, 20, and 29 February, 2, 23, 24, 25, and 27 March 1908. In one case, racism seems to have been the main factor accounting for the lack of intervention. See (1894) *Queen v. Hiram R.*, AO, RG 22-392, Kent County CAI, Box 66, "Horrible Murder. A Dresden Colored Man Slays his Wife. Kicked to Death on the Street. The Crime is Witnessed by Three White Men, who do not Interfere," *Chatham Daily Planet*, 6 and 7 November 1893, 9 and 11 April 1894.

226 (1884) *Queen v. Robert E.*, AO, RG 22-392, Wentworth County CAI, Box 177; Toronto *Globe*, 7, 12, and 20 December 1883, 11 January 1884. Similarly, at the murder trial of James W., a Sarnia labourer, Edward S., a local carpenter and next door neighbour of the accused, testified that when the defendant's wife stopped at his house, "grumbled" about her husband's repeated beatings, and asked if she could take refuge there, "I said no, she could stop in her own house." "I paid no attention to what she said," he added, "because I could smell liquor on her." (1862) *Queen v. James W.*, AO, RG 22-392, Lambton County CAI, Box 69.

maintained, "its bad enough for a man to be drunk but for a woman its awful."[227] In these cases, juries and judges were confronted with the tension between a husband's obligation to act as a male protector and his real or self-perceived prerogative to chastise his wife for her alleged failings. In instances when physical 'punishment' resulted in death, manslaughter verdicts seemed to incorporate this very tension and to offer a form of compromise, devolving some of the responsibility onto husbands and their weakness for alcohol, but much of it onto the actual effects of drunkenness and/or onto wives themselves. As one judge stated, in summing up the evidence in the 1882 murder trial of James Bibby, a Riverside labourer accused of killing his intemperate wife, "in a case where a man came home, found his wife drunk, and in moment of temper [fatally] stuck her ... a jury would be likely to look leniently upon the sad occurrence." In this instance, the jury agreed, finding the prisoner guilty of manslaughter but recommending as lenient a sentence as possible.[228] Similarly, when passing judgement on Patrick Buckley, a poor Brockton gardener, also convicted of manslaughter in 1882, the judge could in one breath condemn his intemperance and the beating death of his wife whom he had "sworn to cherish and protect" and, in the next, express gratitude to the jury for taking "a merciful view of the case." Again, the resolution of this ambiguity seemed to rest on the extent to which Mrs. Buckley deserved to be cherished and protected. As a "troublesome" and quarrelsome woman who, according to defence witnesses, allegedly squandered her husband's wages on and exchanged household provisions for whiskey, purchased alcohol on Sundays, and neglected to have his dinner ready when he returned from work, Mrs. Buckley had

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227 (1859) *Queen v. John L.*, AO, RG 22-392, Middlesex County CAI, Box 86. Murder suspects could also use their wives' intemperance to argue that the injuries they sustained were the result of drunken falls. See, for example, (1873) *Queen v. Timothy M.*, AO, RG 22-392, York County CAI, Box 195.

228 "Died In The Night. A Riverside Woman found Dead in Bed. Her Husband Committed To Gaol," Toronto *Globe*, 17 and 29 August, 1, 5, 6, and 7 September, 10, 13, and 14 October, 1882.

transgressed so many codes of proper womanly behaviour that her status as a deserving wife had diminished considerably.[229]

While this judicial logic was a common one, particularly when charges were reduced from murder to manslaughter, the general character of the deceased could also sway government officials in the direction of mercy or could prompt juries to opt for an acquittal. In 1870, Arthur Pierce's death sentence was commuted to life imprisonment on the grounds that, even though the evidence showed that he had beaten his wife to death while under the influence of alcohol, the prisoner "when he commenced his prolonged and brutal beating and kicking, did not have it in his mind at that time, to take the life of his wife." The other argument which seemed to work in his favour was the claim that his wife "was as bad as the man," being of "a depraved and brutal nature."[230] Dan Whale, a hotelkeeper from the town of Mitchell, was pardoned by the Minister of Justice in 1896 after serving several years of a life sentence for killing his wife on the grounds that Mrs. Whale had "a very bad temper and had incited her husband to the murderous deed."[231] Finally, in 1891, after his second trial, Christopher M., a Toronto labourer accused of murdering Jane H., his common-law wife, was eventually acquitted of a reduced charge of manslaughter. While Mr. M.'s reputation was by no means spotless, having been charged for minor offenses such as drunkenness and vagrancy, Jane H. was definitely a woman with a past. She was, after all, the proprietress of two Toronto whiskey dives, described as

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229 "Probable Murder At Brockton," Toronto *Globe*, 24, 25, 26, and 27 May, 29 and 30 June 1882.

230 (1870) *Queen v. Arthur Pierce*, NAC, RG 13, CCF, vol. 1408, no. 31A; "Brutal Wife Murder at Paris, Ontario," *London Free Press*, 23 June 1870; "Arthur Pierce, the Wife Murderer," *Dumfries Reformer*, 14 December 1870.

231 "Going Into Business. Dan Whale of Mitchell, Who Killed His Wife To Open Up Hotel In Toronto," *Stratford Evening Herald*, 6 April 1896.

"iniquitous dens" in which "toughs of the city congregated," "where numerous crimes were planned and executed," and as "so notorious that people in the neighbourhood lived in constant jeopardy." She was also well-known not only for her drunken habits, but also for her close associations with various criminal gangs, her intimacies with "several men who bore the hardest order of character," and her criminal convictions on charges of larceny and felonious assault. In recounting in detail her life of infamy and crime, the Toronto *Globe* constructed her death as one of the clearest validations of the "scriptural lesson" that "'the wages of sin is death'." At the trial, however, the actual medical evidence and eye-witness testimonies strongly suggested that her death had not been caused by her sinful ways, but rather had been the result of injuries sustained when Mr. M. threw her down a flight of stairs during a quarrel over "whiskey money" which she refused to give him. Nonetheless, even though the judge charged strongly against the prisoner, the jury, after five hours deliberation, returned a verdict of not guilty. Interestingly, the acquittal of 'Kit' M. drew no comments or editorials in the press, as if it were self-evident to all who had followed the trial that the verdict was a just one.[232]

Besides the character and reputation of the deceased, another factor which was highly influential in determining the guilt or innocence of those husbands accused of murdering their intemperate wives was the 'expert' testimony of medical doctors, who were often asked to determine whether the death had been cause by alcohol-induced disease or from the effects of physical violence. At the inquest on the body of Ellen Stevens in 1871, for example, the evidence indicated that her husband, described as "a steady workman" and "pensioner," had beaten and kicked her several days prior to her death. Based on the medical evidence presented by the doctor who conducted the post mortem

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232 (1891) *Queen v. Christopher M.*, AO, RG 22-392, York County CAI, Box 252; "The Wages Of Sin. A Career of Infamy and Shame Ended. Killed By A Paramour," Toronto *Globe*, 16, 17, 20, 26, and 27 February, 22 and 23 April, 26 June 1891.

examination, however, the coroner's jury concluded that she had been suffering from a "complication of diseases" of her "vital organs" associated with her acute addiction to alcohol. The scientific rationale in this case was that even though the injuries she sustained may have "hastened her death," there was no definitive connection between the two nor was there "positive proof" as to who had inflicted the injuries.[233] In a few instances, medical practitioners went even further, arguing in a curious twist of logic that had the battered woman been of temperate habits, she would have likely survived the beating of her husband.[234]

One case, however, involving Octavius Mcrae, an independently-wealthy and highly respected gentleman from the town of Westlawn who was charged in 1876 with murdering his intemperate wife, best illustrates the extent to which class privilege and social influence could also operate in favour of the accused. When Victoria Mcrae died after what was officially termed a "brief illness," there seemed to be little reason to hold a coroner's inquest had it not been for various "rumours" circulating "on the streets." The main source of these rumours appears to have been a female cook employed in the Mcrae household who had promised the deceased that, in the event of her death, she would ensure that it was investigated. During the protracted inquest and the subsequent murder trial, one of the fundamental issues of contention was whether Mrs. Mcrae's death had been caused by liver disease or a brain hemorrhage and, if the latter was the cause, whether it had been

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233 "Inquest," and "Suspected Murder. Adjourned Inquest," Toronto *Globe*, 13 and 14 July 1871. A similar medical logic seemed to operate in the death of Matilda D. of Ottawa in 1898. While a neighbour testified that she had witnessed Mrs. D.'s drunken husband beating her with his fists and a broom, the physician who attended her and those who conducted the post-mortem examination testified that her convulsions and injuries could have been caused either by "a beating with a stick or some such instrument" or by "a person [experiencing] an epileptic fit." In light of the ambiguous medical evidence, the prisoner was acquitted. (1898) *Queen v. William D.*, AO, RG 22-392, Carleton County CAI, Box 21.

234 See, for example, the manslaughter trial of Thomas Bailey, a cooper from Pittsburg at the Midland District Assizes in 1829 in *Kingston Chronicle*, 14 March and 26 September 1829.

due to physical violence or alcohol-related disease and/or excitement. The testimonies of the Mcrae's large contingent of servants and the statement of one daughter certainly revealed that Mr. Mcrae was prone to drunken rages and physical abuse, frequently threatening and assaulting his wife and keeping her a virtual prisoner and in a perpetual state of fear within the 'privacy' of their household and the isolation of her bedroom. As Annie Foster, formerly employed as a domestic testified, after beating his wife usually behind closed doors, Mr. Mcrae would order the servants to inform "anyone who called that no one was at home." Several of the witnesses, including the daughter, further revealed that they had heard him threaten to kill his wife and then strike her shortly before she lapsed into a delirious state and died. Mrs. Mcrae's acute addiction to alcohol was also well-documented, far overshadowing the intemperance of her husband. The coachman, for example, caused a sensation in the courtroom, when he testified that during the six months he had worked for the Mcrae's, he had secretly delivered at least four "Hennessy's quart bottles" per week to the deceased and often removed as many as two dozen empty ones at one time.

Although this evidence went far toward publicly exposing the gentlemanly Octavius Mcrae as a habitually cruel and violent husband and revealing Victoria Mcrae as a 'terrorized' woman of dissipated habits, the burden of proof largely hinged on two very divergent interpretations of the medical evidence. This pitted the Mcrae's two family doctors, who had attended the deceased during the last weeks of her life and had undertaken the initial post-mortem examination, against three other local medical practitioners, who had conducted a second post-mortem after her body was exhumed. Throughout both the inquest and the trial, the family's physicians remained firm in their conclusions, arguing that there was no doubt that Mrs. Mcrae had died of intemperance: liver disease combined with a brain hemorrhage produced by a "fit of quick temper" or "excitement" to which she was allegedly prone. The other doctors, however, were equally

convinced that she had died of physical violence and that the cerebral hemorrhage had been caused by the blow of a fist or more likely a blunt instrument. Unfortunately for the latter three physicians but fortunately for Mr. Mcrae, the highly contentious blood clot could not be re-examined, since it had been (either intentionally or unthinkingly) destroyed by the family physicians immediately after the first post-mortem. Besides the lack of agreement on the exact medical cause of death, the prosecution's case faltered completely when the daughter, who had presented highly damaging evidence against her father at the coroner's inquest, could not appear to testify after having been secreted away to a private school in Liverpool, England. Under these circumstances and despite protests from the Crown Attorney at this latest turn of events, the case was brought to a rather abrupt end when the judge ordered the acquittal of the prisoner. While this verdict may not have ended all the speculation and scandal that had surrounded this highly-publicized trial, Mr. Mcrae was able to leave the courtroom with the blessing of the judge and, by all accounts, with his social reputation, at least among his peers, relatively unscathed.[235]

While the verdicts and sentences in alcohol-related wife murders could be determined by a number of factors, it was nonetheless the case that intemperance emerged as one of the most pervasive social and legal explanations for wife killings, particularly in cases of beating and other violent deaths. In fact, when legal authorities speculated about the possible motives behind a suspected wife murder, alcohol frequently emerged as the predominant cause. In a letter written by the Carleton County Crown Attorney to the Deputy Attorney General in 1915, informing him about the upcoming trial of Noe P., an oiler on the Canadian Northern Railway in Ottawa charged with beating his ailing wife to death, he listed several possible motives for this murder, including everything from his rumoured intimacy with another woman to the insurance policy he held on Mrs. P.'s life.

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235 "Inquest at Hamilton. Excitement Over The Death Of The Late Mrs. J. O. Macrae," Toronto *Globe*, 15, 16, 17, 18, 19, 20, 23, 24, 27, and 29 May, 30 November, 1 December 1876.

But in concluding his letter, he rejected each of these theories, stating that "the attack on her was probably due to the brutality of the husband when under the influence of liquor, rather than to a premeditated assault upon her with the object of causing her death."[236]

Certainly the prevalence of intemperance argument emerged out of nineteenth- and early twentieth-century and predominantly Anglo-Protestant middle-class concerns and campaigns around the innumerable social ills associated with alcohol. Moreover, as we have seen, it was this vice that was directly implicated for causing husbands, and particularly those from the poor and working-classes, to drink excessively, to indulge in masculine forms of sociability, to commit violent crimes, to squander their earnings on alcohol, to neglect or abandon their duties as breadwinners, to 'forget' their marriage vows and to beat their wives, and to lose all semblance of masculine respectability. In 1884, when sentencing Robert E., a labourer, to five years hard labour for the manslaughter of his wife, the judge took the opportunity to lecture the prisoner on what he considered to be some of the fundamentals of true manhood. While he began by suggesting that "a man who will beat his wife must have lost all self-respect and all feelings of a man," the judge quickly went on to add that the prisoner "had been brought to beating his wife through drink; in fact drink was really what had led to her death." These circumstances dictated that "it would not do to be too lenient, as it would only be holding out an inducement to other men to follow in his footsteps." In concluding his statement, the judge expressed the hope that "the main lesson" of this crime would not be lost: "that temperance was an essential to

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236 (1915) "Rex v. Noe P[]," AO, RG 4-32, AG, #21; (1915) *King v. Noe P.*, AO, RG 22-392, Carleton County CAI, Box 25. Despite the defendant's contention that his wife's extensive injuries "were due to a fall or falls against the stove and furniture when in an intoxicated condition," the medical examiner testified that he found no "evidence of over indulgence of drink" and it was highly unlikely that her injuries could have been sustained "from falling." In addition, a succession of witnesses asserted that he frequently beat his wife. On the basis of this evidence, he was convicted of manslaughter and sentenced to twenty years in the Kingston Penitentiary at hard labour.

true manhood."[237]

The connection between intemperance and wife killings also fed into ethnic and racial prejudices directed against various marginalized groups, including 'hot-blooded foreigners' like Italians as well as First Nations peoples. In the case of Italians, one member of parliament from West Huron argued in 1909 that, "immigrants who come from southern Europe ... are accustomed to carry stilettos, knives and other implements with which to avenge their fancied wrongs."[238] Such assumptions were certainly confirmed when Frank W., an Italian labourer from Niagara Falls who was described as a "worthless, drunken, and quarrelsome" as well as habitually abusive husband, was arrested in 1909 for stabbing his "hard-working, thrifty Italian" wife in the neck with a carving knife during a quarrel over money, killing her instantly. When sentencing the prisoner to ten years in the Kingston Penitentiary for manslaughter in 1910, the judge felt compelled to point out that, "[t]he Italians were as free with knives as other persons with revolvers, but the results were much more serious."[239]

In the case of Aboriginal peoples, the so-called protective and paternalistic provisions of the 1876 Indian Act made it a separate criminal offence to sell alcohol to Natives, while social reformers and home missionaries often portrayed First Nations men

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237 Toronto *Globe*, 11 January 1884.

238 *House of Common Debates* (1 March 1909): 1716. See also *House of Commons Debates* (12 May 1909): 6388-89 where another member of parliament asserted that "[f]orty per cent of our convict population are alien immigrants who have come into this country."

239 (1900) *Queen v. Frank W., alias O.*, AO, RG 22-392, Welland County CAI, Box 166; "Woman Murdered," *Welland Tribune*, 1, 5, and 12 December 1899, 25 May 1900. After the sentence was imposed, one *Welland Tribune* reporter argued that Mrs. W. may have been "hard-working and thrifty," but "if not the aggressor" in the quarrel, "at least bore an equal share." In his opinion, when Mr. W. refused to hand over his wages on the day in question and after sharing a bottle of wine, "the woman give the man a terrible tongue-lashing, calling him all the names she could think of" and her husband, "who is none too well balanced mentally, became insane with passion, and plunged a carving knto the woman with fatal effect." "The Frank W[] Case," *Welland Tribune*, 1 June 1900.

as treating their "women as mere drudges."[240] Contrary to these presuppositions, only one case of suspected wife murder that was directly linked to an alcohol-related beating death appeared in the Ontario court records between 1830 and 1920. When the news broke that Jonas F., the proprietor of a small grocery store on a Onondaga reserve near Brantford, had killed his wife while under the influence of alcohol, however, newspaper headlines seemed to imply that this was a relatively common occurrence: "A Brantford 'Brave' Kills His Wife ... Whiskey Again to Blame." Besides blaming alcohol, newspaper accounts also attributed this "fiendish" crime to his heathenism, as a form of "judgement" on the accused since he had, a few weeks prior to the murder, been one of the chiefs in the band council who had refused to allow a Protestant minister to preach on the reserve. After Mr. F.'s trial, when the verdict of manslaughter was returned and he was sentenced to ten years imprisonment, the press announced that a remarkable discovery had been made: that the prisoner was of mixed-ancestry. During the American Revolutionary War, his white father had been abandoned by his parents while still an infant and had been raised by a Loyalist Onondaga couple, who had actively supported the British cause. This hitherto unmentioned chronicle of his "romantic ancestry" certainly transformed him from the "vicious brave" of earlier accounts to the rather "fine looking and intelligent man" who had been spared from the gallows. It also seemed to have offered the public a thinly veiled justification for the lenience of his sentence,[241] a fate which was not shared by the other First Nations man and

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[240] See, for example, John L. Tobias, "Protection, Civilization, Assimilation: An Outline History of Canada's Indian Policy," *Historical Perspectives on Law and Society in Canada*, eds. Tina Loo and Lorna R. McLean (Toronto: Copp Clark Longman 1994), 290-305; Mariana Valverde, *The Age of Light, Soap, and Water: Moral Reform in English Canada, 1885-1925* (Toronto: McClelland & Stewart 1991), 114-16; (1909) "Grand Jury Presentment, Middlesex Assizes," AO, RG 4-32, AG, #909.

[241] (1881-82) *Queen v. Jonas F.*, AO, RG 22-392, Brant County CAI, Box 8; Toronto *Globe*, 5 September, 6 September, 7 September, 13 October 1881; 12 April 1882.

most men of colour accused and convicted of wife murder.[242]

In a number of murder trials, however, the issue of intemperance emerged under rather different circumstances. Between 1830 and 1920, at least five working-class women, including Elizabeth Workman of Mooretown, Catherine S. of Billings Bridge, and Eleanor N. of Ernestown township, were arrested and tried for killing their drunken and/or abusive husbands.[243] The outcome of these three trials differed markedly: Mrs. Workman was hanged for her offence, Mrs. S. was acquitted on the grounds of self-defence, and the death of Mrs. N.'s husband was (reluctantly) ruled an accident largely because of the absence of sufficient evidence to convict her. While two of these murder trials illustrate that the criminal justice system did indeed exercise its punitive and chivalric side when confronted with married women who admitted to resorting to physical violence against their husbands, the third reveals how a 'bad' wife and mother came to be suspected of murder

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[242] With two exceptions, harsher standards seemed to apply to First Nations men and men of colour, who were accused of killing their wives, than was the case with their white counterparts. In the criminal trials which resulted in the execution of the defendant, both Henry White, a Black labourer from Peel township convicted of beating his wife to death in 1875, and Benjamin C., an Onondaga farmer similarly convicted in 1880, might well have been found guilty of manslaughter or had their sentences commuted according to the criteria which guided similar cases involving white men. Anderson V., a Black barber from Amhertsburg who was also hanged for cutting his wife's throat in 1893, clearly displayed symptoms of insanity both prior to and at his trial, but both the judge and the jury maintained that he "knew the difference between right and wrong" at the time he committed the crime. Thus, besides Jonas F., Hiram R., a Black labourer from Dresden, was the only other man of colour who was convicted of manslaughter for the beating death of his wife. It should be noted that the motive attributed to all of these murders was sexual jealousy. See (1875) *Queen v. Henry White*, NAC, RG 13, CCF, vol. 1414, no. 100A, "The Peel Murder," Toronto *Globe*, 14 August, 6 and 12 November, 24 December 1875; (1880) *Queen v. Benjamin C.*, AO, RG 22-392, Brant County CAI, Box 7, NAC, RG 13, CCF, vol. 1417, no. 141A; (1893) *Queen v. Anderson V.*, AO, RG 22-392, Essex County CAI, Box 36, "A Brutal Murder. An Amherstburg Barber Cuts His Wife's Throat - The Husband's Jealousy Was The Cause," Toronto *Globe*, 13, 15, and 23 September, 15 November 1892, 14 April 1893; (1894) *Queen v. Hiram R.*, AO, RG 22-392, Kent County CAI, Box 66, "Horrible Murder. A Dresden Colored Man Slays his Wife," *Chatham Daily Planet*, 6 and 7 November 1893, 9 and 11 April 1894.

[243] I have not included Angelina Napolitano's case in my discussion here, since it has already been the subject of a detailed study. See, Karen Dubinsky and Franca Iacovetta, "Murder, Womanly Virtue, and Motherhood: The Case of Angelina Napolitano, 1911-1922," *Canadian Historical Review* 72, 4 (December 1991): 505-31.

based more on reputation than on direct evidence against her.

In 1872, when Elizabeth Workman, a washerwoman, was arrested and tried for beating her husband to death with a piece of wood as he lay in bed, there was little operating in her favour. Unable to afford a lawyer, she was eventually represented by an inexperienced defence attorney who only had a few hours to prepare the case and who seemed to harbour strong class prejudices against his client. In commenting on the case, he wrote that the Workmans were clearly of "a very low class" and even though Mr. Workman was known in Mooretown as a "drunken brutal cruel husband," he was convinced the murder was the result of other factors: "a licentious loose life had weakened or destroyed all fine domestic feelings on the part of husband and wife. Coarse language and blows were common." He concluded by stating rather glibly that "no one seemed surprised that their wretched life ended as it did." The actual evidence presented at the trial, however, suggested a rather different story. Witnesses described Mrs. Workman as a "quiet, industrious, hard-working woman" who had for years been subjected to the drunken and "tyrannical violence" of her husband. She was also routinely coerced into giving her meagre wages to him so he could purchase more alcohol. Despite evidence of her otherwise good character, the history of habitual abuse, and the fact that the prosecution was unable to prove that she had acted with "murderous intent," the jury, after a brief trial, returned a verdict of guilty with a strong recommendation to mercy and she was sentenced to be hanged.

Shortly after her conviction, however, both the trial itself and the severity of Mrs. Workman's sentence began to generate considerable criticism. Her growing number of supporters, including the *Sarnia Observer*, levelled the harshest critique at the presiding judge who, in his charge to the jury, had expressed the unequivocal "opinion that their verdict would have to be murder or nothing." During sentencing, he was equally emphatic when he warned the prisoner that, despite the jury's unanimous and strong

recommendation of mercy, he held out little hope for commutation. In the end, he was proven correct. The efforts of a locally-organized clemency campaign, which included numerous petitions on her behalf and a trip to Ottawa by two Lambton County councillors who personally argued her case, proved to be futile. In attempting to convince the government that Mrs. Workman was worthy of "sympathy and leniency," her supporters did not go so far as to suggest that this was a case of justifiable homicide; rather they simply pointed out that she was a woman of generally good character, that there was no indication that the murder had been premeditated, and that the mitigating circumstances or undue provocation under which the crime was committed should be taken into consideration. In light of her husband's "system of abuse," as one petition stated, "there is a widespread feeling amongst all classes of the community that this unfortunate woman, if guilty of crime, has been far more sorely tempted than human beings usually can be." The Executive Council, however, declined to interfere in the case on the grounds that they had "failed to perceive such mitigating circumstances ... as might give reason for the exercise of clemency." Given the degree of sympathy Mrs. Workman's case had generated within the local community, her execution was very poorly attended; nonetheless, it did send a bitter message to those battered wives who might retaliate against their abusive husbands, rather than enduring the violence or calling the police.[244]

Seven years later, Catherine S., the wife of a poor labourer and mother of six children, was also arrested and tried for murdering her husband, by striking him several times with an axe during a 'drunken brawl'. While the circumstances of the crime did not differ substantively from that of Elizabeth Workman, her murder trial took a dramatically different direction. Initially, Mrs. S., dubbed the "green-eyed monster," drew little

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[244] (1873) *Queen v. Elizabeth Workman*, NAC, RG 13, CCF, vol. 1410, no. 64A; *Sarnia Observer*, 22 April 1873; Toronto *Globe*, 20 June 1873; Neil Boyd, *The Last Dance: Murder in Canada* (Scarborough: Prentice Hall Canada, 1986), 82-83.

sympathy from the inhabitants of Billings Bridge nor from the Ottawa newspaper reporters. After conducting extensive interviews of village locals and the couple's children who had witnessed the "fatal row," the press constructed a history of the S.'s volatile marital relations and one version of the crime. Neighbours were quick to point out that both Octave and Catherine S. not only had a "bad reputation" for their addiction to alcohol, but also for "terrorizing the community" with their increasingly violent marital wars. At times, these battles had erupted over "trivial" matters but most often were fuelled by Mrs. S.'s scandalous and "passionate fondness" for attending every dance in the vicinity which met with the disapproval and reprobation of her husband. Consequently, for years, as the Ottawa *Citizen* put it, they had "blackened and bruised each other, sometimes the man coming out victorious, and other times his wife." More recently, as one daughter told the reporter, it became increasingly evident that "one of the two would have to be sacrificed" and "it was just a matter of courage and strength who that one would be." The climax to this constant and escalating marital warfare, according to the children, occurred during a "drunken brawl": Mr. S. threw his wife to the floor and attempted to choke her; then, after insisting that "one of us must die to-night," proceeded to attack her with a whiskey bottle; Mrs. S., who had armed herself with an axe, responded by "butchering" her husband, striking him several times, and for two days hesitated to call a physician as he lay dying of head injuries. While the accused later told a neighbour that she was "very sorry" for what she had done, she explained that she was "mad with drink" and would not have retrieved the axe had her husband not "vexed her." Given the gruesome details of this "final act in the bloody drama," one Ottawa reporter concluded that this case would prove to be "one of the most powerful temperance lectures on record."

At Catherine S.'s subsequent trial on a charge of wilful murder, the main issue considered by the court was whether she had intentionally killed her husband, was unduly provoked, or acted in self-defence. From the very outset, however, it was evident that the

tenor and direction of the trial would differ significantly from that of Elizabeth Workman. In his opening statement to members of the jury, the crown prosecutor stated that after fifty-years experience with the bar, he found this case to be a "peculiarly lamentable one," especially since the main witnesses for the prosecution were the couple's children "who had lost one parent, and on whose testimony ultimately rested the losing of the other." For this reason, he added that "it was not, therefore, unreasonable to suppose that they would seek to mitigate the offence as far as they could," conceding that a verdict of manslaughter rather than murder might be a just one. At the same time, after the evidence of medical practitioners, neighbours, and the children had been presented, the prosecution attorney, in his closing arguments, adamantly rejected the defence's contention that this was a case of justifiable homicide. Arguing that there was no doubt that Mrs. S. had struck the fatal blow, which was, he stressed, "one of great violence," he further asserted that the children's testimonies were highly untrustworthy, particularly in regard to their "shocking" portrayal of their father as a "monster" who had over the years coerced his wife to drink alcohol and who had routinely and with harsh brutality abused his family. While he contended that it was "natural that the children should stand by the mother," extending "warmth and sympathy to their only living parent," in his view, it was simply illogical to think that any "person could be coerced or forced to drink against their will," inconceivable that "any man" could do "such a succession of monstrous acts as those attributed to him [Mr. S.] without aggravation," and ludicrous to conclude that Mrs. S. actually feared that her husband would take her life. In concluding his final arguments, he reminded the members of the jury that they had "a duty to society to perform" and if they carefully weighed the facts in the case, they could not possibly acquit the prisoner on the grounds of self-defence.

In contrast, the closing address of Mrs. S.'s defence attorney contained a stirring and emotive appeal not only on behalf of his client, but also in the name of justice. He

contended that if the jury "disabuse[d] their minds of any prejudice caused by sensational newspaper reports" and considered the evidence presented to them, there was little doubt that "the woman should be free to walk out of the box." In effect, his statement contributed to transforming Mrs. S. from the "green-eyed monster" who had "butchered" her husband to the multiple victim of his intemperance. It was this factor which had turned a previously sober and respectable woman into one with a "strong appetite" for alcohol and had precipitated Mr. S.'s "barbarous" and "cannibalistic" acts of verbal and physical violence. "With such terrible brutality as this," he thundered, "did not the poor woman have a terrible life?" "Was not this sufficient to excite the passions of any human being, no matter how amicable or how Christian-like a character?" After recounting a detailed history of Mr. Sabourin's excessively abusive behaviour and the events of the fateful night, he concluded by stating emphatically that "he, the aggressor, now filled a grave, and, she, the aggrieved, lived" and that there was little doubt that the "poor abused woman [had] committed the act in self-defence." For this reason, he was convinced that the "jury to-day would say 'not guilty' to one ... whose sufferings cry to heaven for protection."

At the conclusion of the trial, the presiding judge asked the jury to consider whether "the killing was done after provocation or in self-defence," a choice which virtually outruled the possibility of a verdict of 'vengeful' murder. After a short deliberation, the jury returned a unanimous verdict of not guilty and Mrs. S. was immediately discharged from custody.[245] What requires explanation, however, is why a basically 'good' woman like Elizabeth Workman was executed for killing her abusive drunken husband and Catherine S., a woman of 'questionable' character, was exonerated. Certainly, in the latter instance, the defendant benefitted from the rhetorical abilities of her lawyer who developed

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245 (1880) *Queen v. Catharine S.*, AO, RG 22-392, Carleton County CAI, Box 16; "Murder At Billing's Bridge. A Terrible Drunken Brawl. A Man Dying from Wounds Inflicted by his Wife with an Axe," Ottawa *Daily Citizen*, 31 January, 2 and 3 February, 24 April 1880.

a convincing and heartrending argument for acquittal and from a relatively sympathetic judge who had stated in his charge to the jury that "the husband's conduct, as related, surpassed anything in barbarity he had ever heard of." More generally, the period between Mrs. Workman's hanging and Mrs. Sabourin's acquittal also witnessed the growing involvement of women in the temperance movement either in mixed-gender lodges like the Sons of Temperance or in the WCTU which became a province-wide organization in 1877.[246] Even though there is no evidence to suggest that the local chapter of the WCTU was directly involved in Mrs. S.'s case nor did she necessarily represent the classical innocent victim found in temperance narratives, it does seem that, within an increasingly politicized context, the members of the all-male jury were persuaded that she was worthy of their benevolent masculine protection, something her disreputable husband had not provided.[247]

In most respects, Catherine S.'s character was ultimately redeemed by the argument that her husband had been directly responsible for her addiction to alcohol. In contrast, Eleanor N., the wife of a destitute labourer and the mother of four children, was one of several married women who led 'irregular' or dissipated lives and who found themselves, despite their claims of innocence and in the absence of direct evidence against them, on trial

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246 See, for example, Wendy Mitchinson, "The WCTU: 'For God, Home and Native Land': A Study in Nineteenth-Century Feminism," *A Not Unreasonable Claim: Women and Reform in Canada, 1880s-1920s*, ed. Linda Kealey (Toronto: Women's Educational Press, 1979), 151-67; Lynne Marks, *Revivals and Roller Rinks: Religion, Leisure, and Identity in Late-Nineteenth-Century Small-Town Ontario* (Toronto: University of Toronto Press, 1996), 81-106.

247 In 1921, Isabella Adams, the wife of a Toronto stockyard worker, was also acquitted of a charge of murdering her husband on the grounds of self-defence. According to the evidence, Mr. Adams came home on Christmas day "inflamed by liquor," ordered his wife "out of the house," and when she refused, he seized an army knife and "declared his intention of cutting her throat." In the ensuing struggle, Mrs. Adams turned the knife toward him, stabbing him in the heart and "killing him instantly." While "drink" was identified as the cause "of the trouble," as a woman of temperate character who had endured years of abuse, 'Bunny' Adams, unlike Catherine S., garnered considerable support from the public and local women's groups, including the National Council of Women. "Father Lies Slain By Knife; Mother Is Cast Into Cells; Rum's Cruel Yuletide Toll," Toronto *Globe*, 27, 28, and 30 December 1920, 5 and 6 January 1921.

for the murder of their husbands.[248] In 1880, when Mrs. N. sounded the alarm among the inhabitants of Ernestown township that her husband had accidently killed himself while splitting wood in a drunken stupor, her story was immediately disbelieved. These "grave doubts" about the veracity of her statements about the accident were largely fuelled by her neighbours who clearly harboured strong feelings against her and who collectively vowed that "no effort" would be spared to ensure that the person responsible for Edward N.'s death would be brought to justice. At the coroner's inquest, a succession of local citizens condemned her as a woman with an "exceedingly bad moral and social reputation." By all accounts, she was not only a "confirmed drunkard" who would "sell everything she could lay her hands upon so as to satisfy her morbid craving for that terrible curse," but also a negligent mother whose "natural instincts" had been destroyed by her love of drink and who was responsible for the "poverty, suffering, and misery" that her "poor helpless children suffered." She was also portrayed as a "dangerous" woman with a sinister "gipsy like countenance and large, dark piercing eyes" who had, according to one witness, frequently threatened and abused her "industrious, honest, and inoffensive" husband. Given Mrs. N.'s marginalization within this small rural community, it is perhaps not surprising that local residents expressed resounding approval when she was placed on trial for murder. During the subsequent proceedings, however, it soon became evident that there was no incriminating evidence to dispute her claim that her husband had died an accidental death. Although some suspected that she had coached her son before he testified in her defence and that she may have planted evidence to support her story, the jury was left with little choice but to acquit the prisoner. Whether guilty or innocent, the moral lesson of the case became a very familiar one: according to the press, there was "not the slightest doubt

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[248] See, for example, (1880) *Queen v. Hannah K.*, AO, RG 22-392, Grey County CAI, Box 44, "Suspected Murder in Holland," Toronto *Globe*, 10 and 31 May 1880; (1897) *Queen v. Louise V.*, AO, RG 22-392, Algoma District CAI, Box 1, "Brutal Murder! In the Township of Rayside," *Sudbury Journal*, 21 and 28 October, 9 December 1897.

but that drink, and drink alone, has been the primary cause" of this "tragedy."[249]

Intemperance was not the only explanation which emerged out of incidents of spousal murder -- material greed and sexual jealousy being others. In addition, some husbands, like John B., a Cedardale tailor who was indicted for fracturing his wife's skull with an axe and then setting fire to their house, directly implicated his spouse for her own exceptionally brutal death. While the testimony at his trial revealed that he had habitually abused her, had threatened "to do the old woman in" ever since they were married eight years earlier, and more recently, had demanded $500 "which he claimed was due him for money he had spent on the property, which belonged to her," he offered the following statement to explain his crime: "The 8 years I [was] with the late Mrs B[] should have been the most useful part of my life but her obstinacy discouraged out everything ... I think she was suffering from recurrent insanity ... I think in this case I should be acquitted, [I] have always been a peacemaker ... I never had any intention to kill Mrs B[], only to frighten her from keeping such a flock of cats, the said cost as much to keep them as ourselves. These cats frequently evacuated between the sheets and on top of bed clothing, vomited there, also exasperating me frequently to an uncontrollable state of mind."[250]

Nevertheless, intemperance did surface as a particularly potent and prevalent explanation for domestic killings in the nineteenth and early twentieth centuries. This was at least partially because the 'vice of drink' increasingly became the condenser of various Anglo-Protestant middle-class anxieties associated with industrialization, urbanization, the

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249 (1881) *Queen v. Eleanor N.*, AO, RG 22-392, Lennox and Addington Counties CAI, Box 82; "A Family Tragedy. Mysterious Death of a Labourer near Ernestown. A Sad End Caused by the Use of Strong Drink. The Wretched Condition of the Wife and Family," Toronto *Globe*, 22 and 23 November 1880, 19 and 22 April 1881.

250 (1912) *King v. John B.*, AO, RG 22, Ontario County CA/CP CCJCC Case Files, Box 11; RG 22-392, Ontario County CAI, Box 110; NAC, RG 13, Capital Case Files, vol. 1463, no. 471A; "Murder at Oshawa," Whitby *Gazette and Chronicle*, 12 September, 10 October 1912; "Aged Man Arrested On Serious Charge," Toronto *Globe*, 6, 9, and 13 September, 7, 10, and 11 October 1912.

shifting racial/ethnic composition of the province, and the perceived breakdown of marriage and familial relations. Within this context, the connection between spousal murder and the inordinate consumption of alcohol as constructed by legal officials, newspaper reporters, temperance advocates, and defendants themselves not only confirmed and fuelled these anxieties, but also displaced one identified cause of domestic violence as peripheral to the patriarchal institutions of marriage and the family and to the exercise of husbandly and fatherly authority. Consequently, intemperance was largely perceived as a tragic and disruptive invasion into otherwise harmonious and sacrosanct marital and familial relations and was considered to be one of the principal sources of male violence and female depravity.

For these reasons, those spousal homicide trials in which drunkenness was a factor not only resembled temperance dramas as played out in the courtroom, but also became part of a broader moral and social critique of the liquor traffic, rather than an indictment of family violence and its rootedness in the unequal relations of power between husbands and wives. This focus accounted for certain ambiguities associated with the prosecution of alcohol-related murders. In the case of husbands, the relative frequency with which manslaughter verdicts were handed down reflected the tensions between the strong rejection of intemperance as an 'excuse' for murderous violence and the more empathetic consideration of the effects alcohol had on otherwise 'good' albeit morally weak men or the mitigating circumstances under which the crime was committed. These tensions also overlapped with the perception that drunkenness and violence were more likely to occur among the socially marginalized, be they the poor and working classes, First Nations peoples, or immigrant 'foreigners'. In the case of murdered and murderous wives, the close association between female intemperance and wifely degradation shaped the way in which they were constructed in the courts in death and were dealt with by the criminal justice system in life. Public and legal assessments of their character determined whether

wives were perceived as culpable for their own deaths, were constructed as dangerous, axe-wielding, and vengeful women, or were considered the undeserving and suffering victims of their husbands' vice and depravity.

Wife abuse and spousal homicide, regardless of the identified cause or motive, provided little space for sentimentality about marital relations and often exposed them at their most brutal. While the courtroom became a site in which the conduct and character of the accused and the victim became the subject of intense legal, medical, and community scrutiny, in the end, the connection among intemperance, wife abuse, and spousal murders ultimately left two myths unchallenged: first that strong drink not male dominance was the principal cause of domestic violence; and second, that one of the main benefits of the institution of marriage was that it served, at least for 'good' wives, as the primary source of their physical and economic protection. In this way, legal authorities, medical practitioners, local communities and, at times, defendants themselves could most easily 'make sense' of physical violence against wives and these most foul of murders without fundamentally threatening the hegemony of that most revered of institutions, that of marriage.

Chapter 7

Conclusion

> "The Marriage Question in the Police Court ... Is marriage a failure?"[1]

In commenting on the number of "matrimonial infelicity" cases surfacing in Toronto's police court in December 1888, one *Globe* reporter felt compelled to ask the logical question for which he provided no answer: "Is marriage a failure?" At a time when political legislators, legal authorities, and Anglo-Protestant middle-class social reformers constructed the institution of marriage (and more specifically legally-sanctioned, monogamous, and life-long conjugal unions), the process of 'legitimate' family formation, and the existence of well-regulated and economically viable family units as essential for national progress, economic prosperity, and the maintenance of a stable, moral, and 'civilized' social order, there seems to be sufficient historical evidence to suggest that at least some Ontario wives and husbands would have interpreted the above question as a legitimate and pertinent one. This study, however, has not endeavoured nor presumed to offer a scholarly response to that query. Without making any grand claims about what was 'normal' or 'aberrant' marital behaviour or what were 'functional' or 'dysfunctional' family-household units, I have attempted, by examining the trajectory from the potentially contested terrain of marriage formation to its demise through violent deaths, to contribute to our understanding of the historical complexities and internal dynamics of marital and to a lesser extent familial relations in the period between 1830 and 1920.

Rather than conceptualizing marriage and family in isolation, this work has attempted to situate these institutions and especially the struggles of married women in the broader historical context of the nineteenth and early twentieth centuries. Despite the

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[1] Toronto *Globe*, 28 December 1888.

dramatic shifts from a predominantly rural household-based economy to an increasingly urbanized and industrial-capitalist one, family-household economies continued to rely on the productive and/or reproductive labour of women and children to maintain standards of living. In certain cases, this unremunerated material contribution was critically important to survival. These reciprocities were, however, rooted in a socioeconomic environment organized around the structures of female dependency and the limited economic opportunities for women with children to survive independently. Within this context, christian doctrine, prevailing domestic ideals, the shifting and often protectionist and paternalistic provisions of marriage and family laws, as well as the campaigns of moral and social reformers, contributed to defining the contractual rights, duties, and responsibilities of wives and husbands. These social mores and legal provisions tended to reproduce the hierarchical ordering of and unequal distribution of power within the institution of marriage. One of the main impulses of the reforms of the late nineteenth and early twentieth centuries was not to promote the socio-sexual independence of women, but rather to extend some measure of legal and economic protection to those dutiful, respectable, and virtuous wives, whose main misfortune was to be bound to irresponsible, cruel, unscrupulous, intemperate, and otherwise 'bad' husbands.

Despite its limitations, this reforming impulse did create some space for married women. Anglo-Celtic rural and working-class wives in particular used the criminal courts to articulate their grievances, initiating complaints against husbands who violated their contractual obligations whether through a bigamous marriage, the withdrawal of material resources, or verbal and physical violence. For some, the law and its courts seemed to offer a mechanism to punish husbands for varied transgressions; for others, it constituted a strategy to salvage the family-household economy with or without the physical presence of a male breadwinner; and for others still, it reflected an attempt to secure a degree of physical safety for themselves and their children. In addition, the networks of

communities, neighbours, and extended kin could be crucial resources in providing wives and especially those of 'good' character material support, temporary refuge, and direct intervention in times of economic crisis and physical danger. In the end, however, the provisions of the law, the practices of the courts, neighbourhood assistance, and/or community surveillance could not necessarily guarantee economic survival or freedom from violence. In this sense, the historical record provides two rather different scenarios: on the one hand, tragic tales of married women who with their children existed in the direst of poverty, became the fatal victims of their husbands' violence, or took matters into their own hands; and, on the other, tantalizing glimpses of wives who, despite the risks of being the target of malicious gossip, moral censure, and retaliatory punishment, sought to escape an unsatisfactory marriage and exercise a degree of autonomy by eloping with a lover or entering an illegal marriage.

In addition to examining the above themes and developments, this study has attempted to contribute to our historical knowledge by engaging in a general rethinking of the institution of marriage and considering the myriad of ways it could be a site fraught with opposing gendered expectations, competing economic interests, and intense proprietary and sexual conflicts. One potential outcome of this work would be to dispel certain contemporary myths, misconceptions, and nostalgic constructions, particularly as promoted by 'family values' advocates, about the existence of stable and harmonious marital and familial relations in the past and their seeming disintegration and crisis in the present, a process often attributed "to the erosion of the 'patriarchal nuclear family'" in which the lines of authority and the allocation of conjugal roles, once seemingly clear, have become blurred.[2] It might also challenge the conception as articulated by Judy Anderson,

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[2] "Disgusting Study," Victoria *Times-Colonist*, 22 November 1995. This constituted one response to an article, announcing the research objectives of the Canadian Families Project at the University of Victoria.

the President of the Ontario chapter of Real Women, who argued in October 1996, that the "tried-and-true model" of "traditional marriage/childbearing-rearing has proven to be a comparatively safe environment for children and women ... [A]cross time and in all societies, this model has overwhelmingly proven to be the basis for personal and communal stability."[3]

Contemporary feminists have, since the 1970s, sought to expose publicly the overwhelming statistical evidence indicating that the institutions of marriage and family are environments that are highly unsafe for women and children. Notions about their 'timeless' and 'protective' nature obscures longstanding patterns of subordination, abuse, and violence. Yet the political issues raised by a feminist reading of the history of marriage and the family are often sidestepped in the dance of distortion common in much current commentary on the 'crisis of the family' in contemporary society. It is unfortunately necessary, then, to provide copious evidence from the past to establish what feminists have been arguing for decades: there has been no 'golden age' of marital security and familial stability in this country. Rather than a 'haven in a heartless world', marriage and the family have always been sites of contestation and contradiction, microcosms of larger social relations, which could translate into cruelty and danger for women and children. To those who would look to the record of the past, especially since part of it was made in the narratives of marital breakdown, domestic conflict, and family violence as they were told before judges and juries, the family has always and obviously been a dis/membered institution.

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[3] *Globe and Mail*, 9 October 1996.

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