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WORKING DOCUMENT

A REVIEW OF SECTION 264 (CRIMINAL HARASSMENT) OF THE *CRIMINAL CODE OF CANADA*

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Alderson-Gill & Associates Consulting Inc.
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Datalex Socio-legal Research and Consulting Ltd.

October 1996

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UNEDITED

Research and Statistics Division/
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Canada

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EXECUTIVE SUMMARY

The criminal harassment provisions of the *Criminal Code of Canada* came into force on August 1, 1993. The main intention of the new section 264 was to help protect women in Canada from physical attacks and harassment. The hope was that perpetrators would either be deterred by the threat of criminal prosecution, or be incarcerated or otherwise prevented from harassing or attacking their victims. The legislation is also available as a potential tool against harassment such as the stalking of children, harassment practiced by some members of politically motivated groups, or harassment related to business or personal matters not linked to violence against women.

This report presents the results of a review of the implementation of section 264 of the *Criminal Code.* The study is a first step in the Department of Justice's efforts to assess whether the new section is functioning as it was intended. It is based primarily on an analysis of a sample of 601 criminal harassment cases handled by the police, Crown and courts in the 1993 to early 1996 period, in Vancouver, Edmonton, Winnipeg, Toronto, Montreal and Halifax. The study also included a small number of interviews with police, Crown and others with experience handling the new charge, and a more detailed review of several cases that included interviews with the victims.

The study indicates that while section 264 is being used frequently by police and Crown to prosecute harassment, a majority of criminal harassment charges (58 percent) were stayed or withdrawn before they reached trial. Where the charge was stayed or withdrawn, about 40 percent of accused agreed to a peace bond as part of the resolution of the case. About 35 percent of accused were convicted. Of those, 25 percent received a jail term (usually four months or less) and 94 percent received a probation term. Toronto, Montreal and Vancouver were significantly more likely to use a peace bond resolution than were the smaller centres in the study. Charges were withdrawn or stayed at a fairly consistent rate, with the exceptions that Vancouver and Edmonton withdrew charges somewhat more frequently (28 percent and 26 percent of cases, as against the average of 20 percent), and Halifax withdrew only one case in the sample.

The great majority of accused in the cases reviewed were released prior to trial. Many of them had previous criminal records and a significant number had records of breaches of court orders, and were reported to have been violent with their partners in the past.

In the study sample, 91 percent of accused were men, and 88 percent of victims were women. About 57 percent of cases involved partners or former partners, and another 28 percent involved friends, acquaintances or co-workers who had not been involved in a relationship. Twelve percent of cases involved total strangers, and only four cases (.7 percent) involved the stalking of a public figure. Case outcomes did not vary significantly according to the nature of the relationship between victim and accused.

Section 264 is viewed by most people working in the criminal justice system as being a significant improvement over previous mechanisms for prosecuting harassers. It is generally seen as having the potential to be effective because it encompasses the range of behaviours of concern to victims of harassment, and because it enables prosecutors to invoke the broader context of the relationship between accused and victim in building the case. However, the data on case outcomes support the views of most people interviewed that the justice system is not at present delivering the strong message that was intended with the introduction of section 264 that harassment is a serious offence that will not be tolerated.

A number of barriers to effective implementation of section 264 were raised consistently by people interviewed. The case file data were consistent with these views, but further research will be required to substantiate them, and to analyze them in sufficient detail to provide a basis for remedial action. The barriers noted were:

- insufficient police resources devoted to investigating criminal harassment cases;
- insufficient Crown attention to preparing criminal harassment cases and interacting with victims, and pressure on Crown to meet requirements to avoid trial whenever possible;
- a lack of adequate victim service and victim/witness programs to serve the needs of victims and enable them to participate in a meaningful and constructive way in the prosecution of their cases;
- gender bias throughout the system that contributes to the above systemic barriers and results in extremely weak dispositions by the courts; and,
- insufficient training of some police and Crown as to the nature and complexities of criminal harassment, the result being that criminal harassment cases may not be handled as effectively and as sensitively as they could be.

The report recommends that the following measures be taken in response to the findings of this initial review of the implementation of section 264:

1. steps be taken to identify clearly what is considered to be a desirable result of the prosecution of criminal harassment in broad terms, and how to go about determining what is a desirable result in individual cases;

2. as an interim measure until full consideration is given to the identification of desirable results, policy officers at the federal, provincial and teritorial levels should develop guidelines or best practices to reduce the rate of charge stays, withdrawals and peace bond resolutions, and set higher standards for sentencing recommendations, particularly in negotiating guilty pleas.

3. guidelines be developed for police and Crown that set higher standards for the investigation and prosecution of criminal harassment cases. The standards for police should include the requirement for a thorough investigation of the relationship between accused and victim, and the documentation of any reported history of abuse or harassment. Prior history of breaches of court protective orders, whether or not they resulted in charges or convictions, should also be investigated and documented.

   Standards for Crown should include the requirement to interview the victim (subject to the consent of the victim) prior to the date of first appearance. There should also be a clear requirement to ensure that case preparation (including police investigation) is sufficient to enable Crown to present fully the complexity of circumstances involved in the case, including the history of the relationship and the impact that the harassment is having on the life of the victim. Consideration should be given to making the use of victim impact statements a routine feature of sentencing hearings in criminal harassment cases. Consideration should also be given to ensure that breaches of no contact orders are addressed by the criminal justice system and standards are set for when charges for such breaches can be stayed or withdrawn.

4. the actions of Crown in criminal harassment cases, and the reasons for Crown decisions, be made more transparent, perhaps through the use of simple case record sheets, so future decisions about Crown policy and practices will be based on better empirical information than is currently possible.

5. police and Crown be provided with training in the investigation and prosecution of criminal harassment in keeping with the guidelines that are developed. Judges should also be provided with workshops to ensure that they understand the relationship between (most) criminal harassment and women abuse, and the serious impact it can have on the lives of victims;

6. victim service/victim witness services be made available as widely as possible. Early information indicates that such services can make a significant contribution both to

enhancing the experience of victims during the criminal justice process, and to the preparation of stronger cases;

7. consideration be given to instituting some form of systematic follow-up/monitoring of criminal harassment cases to ensure that harassment is not recurring or escalating, and to enhance the communication of information about offenders across police jurisdictions;

8. police work with women's shelter organizations to develop approaches for the identification of higher risk offenders that is less focused on psychological profiling and more on indicators of abusive attitudes and behaviour in relationships;

9. the Department of Justice Canada undertakes further work on this issue to assess the impact of the justice response on the accused's behaviour; to consult with victims of criminal harassment on what they see as a desired outcome in criminal harassment cases and how to achieve those outcomes; and to conduct interviews with key actors in the criminal justice system to document the reasons for the outcomes observed in this study.

(CRIMINAL HARASSMENT)

> The adoption of these amendments falls into the government's priority to protect society, in particular the more vulnerable groups, such as women and children . . . Violence against women, in whatever form, . . . has no place in a society like ours; this message must be clearly transmitted and understood.[1]
>
> Whether the new law will be effective against either the specific violent behaviour to which it is directed or, more generally, against male violence is difficult to predict. . . Media attention to the issue of stalking has virtually ceased [as of September, 1993] . . . Stalking has been defined, discussed and dealt with--now it is time . . . for it to disappear.[2]

1.0 INTRODUCTION

The criminal harassment provisions of the *Criminal Code of Canada* came into force on August 1, 1993 on the heels of a number of highly publicized fatal attacks against women by their former partners, following periods of systematic stalking and other forms of harassment. The main intention of the new section 264 was to help protect women in Canada from physical attacks and harassment.[3] The hope was that perpetrators would either be deterred by the threat of criminal prosecution, or be incarcerated or otherwise prevented from harassing or attacking their victims. The legislation is also available as a potential tool against harassment such as the stalking of children, harassment practised by some members of politically motivated groups, or harassment related to business or personal matters not linked to violence against women.

This review of the implementation of section 264 of the *Criminal Code* is a first step in the Department of Justice's efforts to assess whether the new section is functioning as it was intended, to identify any limitations to its effectiveness, and to identify and build on its strengths.

In considering whether the *Criminal Code* amendment has been effective, it is necessary to look both at the direct results, changes in the way the justice system deals with stalkers, and

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[1] Then Minister of Justice Pierre Blais, *House of Commons Debates* 27 April 1993.

[2] Rosemary Cairns Way, "The Criminalization of Stalking: An Exercise in Media Manipulation and Political Opportunism" (1994) 39 *McGill Law Journal* 379 at 400.

[3] Department of Justice Canada, News Release, "Amendments to the *Criminal Code* Respecting Family Violence, Child Abuse and Violence Against Women" (27 April, 1993).

the broader picture of the extent to which the legislation has resulted in significantly safer circumstances for women who are being harassed. The focus of this study is a review of criminal harassment case files. As such, it centres on the response of the criminal justice system to reports of harassment, and is limited to the examination of cases in which police files were opened as a result of a preliminary investigation of reported harassment, and primarily cases in which charges of criminal harassment were laid. However, the study includes some interviews with police, Crown and defence attorneys, victim service workers and advocates and federal and provincial justice policy makers, as well as a small number of victims of harassment. These interviews by no means constitute a representative survey of perspectives on the effectiveness of section 264, but they do assist in providing a broader context for understanding the case file data, and they raise important questions that will need to be addressed in the future.

The report is organized into seven sections including this introduction. The next section presents a review of recent literature on criminal harassment. The third section describes the methods used to collect case file data and conduct interviews. Section four reports the findings of the case file data, and section five presents a small number of case studies, more detailed accounts of some individual cases that include the assessment of the victim and other major participants about the effectiveness of the justice response. Section six reports the findings of the interviews not related to the case studies. Section seven draws the case file data, case study and interview findings together into a set of conclusions, and provides recommendations to the Department of Justice for future approaches to criminal harassment.

2.0 A REVIEW OF THE SOCIO-LEGAL LITERATURE

This review examines 1) forms of criminal harassment[4] identified in the literature; 2) the most common form of criminal harassment: harassment of former intimates; 3) the effect of criminal harassment on victims; 4) the treatment of criminal harassers; 5) the introduction of criminal harassment legislation in the United States and Canada; and 6) the interpretation of section 264 of the *Criminal Code of Canada*.

2.1 Forms of Criminal Harassment

Criminal harassment is often categorized by a combination of the relationship between the perpetrator and the victim, and the diagnostic type of the perpetrator. Common labels include:

- simple obsessional (prior relationship between perpetrator and victim);
- erotomaniac (delusional perpetrator believes there is mutual love);
- love obsessional (perpetrator does not believe victim returns love, but might if the victim would get to know perpetrator);
- borderline obsessional (similar to love obsessional, but includes casual acquaintances); and
- sociopaths (serial murderers, sex offenders)[5].

There are, however, other forms of criminal harassment. Criminal harassment can take place at work, for reasons unrelated to the above categories. Such harassment may be perpetrated by co-workers (motivated perhaps by jealousy, or racist or sexist attitudes), by clients (unhappy with services or expected benefits), or by those who are protesting the

[4] Criminal harassment is more often referred to as stalking in the United States, and also by the Canadian media. A search of the Canadian Business & Current Affairs Database on September 2, 1995 turned up one item on criminal harassment and 335 items on "stalking." Approximately 200 of these items described criminal harassment events. The other uses of stalking were in the context of stalking wild animals, diseases, famine or business relationships. Way at 387 suggests that the media portrayal of the stalking victim plays on our cultural pornographic imagination.

[5] See, for example, Susan C. Anderson, "Anti-stalking Laws: Will they curb the erotomanic's obsessive pursuit?" (1993), 17 *Law & Psychology Review* 171; Mary Cooper, *Criminal Harassment and Potential for Treatment: Literature Review and Annotated Bibliography* (Vancouver: B.C. Institute on Family Violence, 1994); Nannette Diacovo, "California's Anti-Stalking Statute: Deterrent Or False" (1995) 24(2) *Southwestern University Law Review* 389; and, Kathleen G. McAnaney, Laura A. Curliss, and C. Elizabeth Abeyta-Price, "From Imprudence to Crime: Anti-stalking Laws" (1993) 68 *The Notre Dame Law Review* 819.

type of work carried out by the worker (anti-abortionists, etc.). Criminal harassment may also occur between bickering neighbours.[6] Where technology goes, stalkers will follow. More recently, the question of criminal harassment by e-mail has been raised.[7]

Criminal harassment is not always limited to the specific target of the stalking. At times, others associated with the target of the harasser (new partners, children, parents and other relatives) may become victims of harassment. In the case of erotomania, totally unrelated people may be affected, as in the case of John Hinckley, who shot President Reagan in order to get Jodie Foster's attention.

2.2 Criminal Harassment of Former Intimates

By far the most common type of criminal harassment, and that which has until recently received the least amount of attention in the literature and by justice officials, is the stalking of former intimates, typically (although not exclusively) the stalking or harassment of women by their former partners.[8] This is also the type of harassment that is most likely to lead to physical assaults and murders.[9] In such instances, stalking is

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[6] Kathleen G. McAnaney, Laura A. Curliss, and C. Elizabeth Abeyta-Price, "From Imprudence to Crime: Anti-stalking Laws" (1993) 68 *The Notre Dame Law Review* 819 at 822-823, add to this list classmates, gang members, former employees, and disgruntled defendants.

[7] Eileen S. Ross, "E-Mail Stalking: Is Adequate Legal Protection Available?" (1995) 13(3) *John Marshall Journal of Computer & Information* 405. At the time of her article, only four states (Michigan, Alaska, Oklahoma and Wyoming) specifically include electronic communication in their legislation. Ross concludes that the Michigan anti-stalking legislation is unconstitutional for vagueness and recommends a model anti-stalking statute. Also see "Email 'wooing' results in stalking charge" (May 28, 1994) *Vancouver Sun* A14.

[8] For example, Michael A. Zona, Kaushal K. Sharma, and John Lane, "A Comparative Study of Erotomania and Obsessional Subjects in a Forensic Sample" (1993) 38(4) *Journal of Forensic Sciences* 894, examined 74 case files from the Threat Management Unit of the Los Angeles Police Department. Despite the fact that they excluded domestic violence cases from their analysis, they found that 47% of the cases were "simple obsessional" (i.e., the people involved had had a prior relationship). Some authors estimate that stalking of former intimates represents 80% of all stalking. See J. Fahnestock, "All Stock and No Action: Pending Missouri Stalking Legislation" (1993) *University of Missouri-Kansas City Law Review* 783 as cited in Mary Cooper, *Criminal Harassment and Potential for Treatment: Literature Review and Annotated Bibliography* (Vancouver: BC Institute on Family Violence, 1994) at 42.

[9] The most common statistic cited in the United States literature is that almost one-third of women who are killed are killed by husbands and boyfriends, and up to 90% of these women are stalked prior to their deaths. See for example, Anderson, Susan C., Anti-stalking Laws: Will They Curb the Erotomaniac's Obsessive Pursuit?" (1993), 17 *Law & Psychology Review* 171 at 182. A United States Department of Justice survey found that "one in five of the women attacked by a family member or boyfriend said that the violence they experienced has been part of a series of at least three similar acts". Quoted in Nannette Diacovo, "California's Anti-Stalking Statute: Deterrent Or False" (1995) 24(2) *Southwestern University Law Review* 389 at 396.

merely an old problem with a new name.[10] Despite the wide range of behaviour covered by criminal harassment, it is predominately viewed by legislators and policy makers as an issue of domestic violence. In fact, New South Wales specifically limited its stalking legislation to stalking in the context of "domestic relationships", although it was criticized for taking this narrow approach.[11]

Perhaps the most useful development in the mainstream literature is the suggestion that stalkers who criminally harass former intimates have personality characteristics similar to wife batterers, and that stalking ought to be seen as the fourth step in Lenore Walker's theory of the cycle of violence.[12] The fact that leaving a batterer may expose a woman to more risk than remaining with the batterer is something that women have known for years, and that "experts" are only beginning to understand.[13] Bernstein writes,

> Many domestic violence victims who do leave their abusive partners, spend the rest of their lives "trying to avoid men fanatically dedicated to pursuing them, harassing them, or even killing them". It is estimated that at least half of the women who leave their abusive partners are followed or harassed as a result. In fact, domestic violence is more common among persons who have separated. Government data indicates that three-fourths of all domestic violence victims are separated at the time of the incident.

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[10] For example, Melissa Perrell Phipps, "North Carolina's New Anti-Stalking Law: Constitutionally Sound, But Is It Really A Deterrent?" (1993) *North Carolina Law Review* 1933 at 1951 writes, "Stalking is an old problem that has just recently captured the attention of law makers." She quotes Elizabeth Schneider, who commented that "what happened with sexual harassment, with battering [is now happening] with stalking" (at 1952).

[11] Matthew Goode, "Stalking: Crime of the Nineties?" (1995) 19(1) *Criminal Law Journal* 21 at 27. West Virginia's earlier anti-stalking law was also limited to behaviour between persons who had had a previous sexual or intimate relationship, however it was subsequently amended. Kathleen G. McAnaney, Laura A. Curliss, and C. Elizabeth Abeyta-Price, "From Imprudence to Crime: Anti-stalking Laws" (1993) 68 *The Notre Dame Law Review* 819 at 904.

[12] Susan E. Bernstein, "Living Under Seige: Do Stalking Laws Protect Domestic Violence Victims?" (1993) 15 *Cardozo Law Review* 525 at 559. Kathleen G. McAnaney, Laura A. Curliss, and C. Elizabeth Abeyta-Price, "From Imprudence to Crime: Anti-stalking Laws" (1993) 68 *The Notre Dame Law Review* 819 at 856.

[13] Lenore E. Walker, *Terrifying Love: Why Battered Women Kill and How Society Responds* (1989) at 256 writes, "leaving the batterer is in many cases, more dangerous than remaining . . . [as] separation is the time of greatest volatility and peril in battering relationships."

> Studies have shown that the most dangerous time period for an abused woman is when she attempts to separate from her spouse.[14]

Bernstein explains why it is important to view stalking as the fourth phase in the cycle of violence:

> First, by labelling the stalking problem as a continuation of the domestic violence cycle, lawmakers, policy makers, and the courts will likely be more prepared to confront the issues seriously. Second, the problem is given social definition by identifying the violence that follows marital or intimate separation as phase-four of the domestic violence cycle. Third, by naming the problem within the framework of the cycle theory of violence, sanctions can be developed to specifically address the idiosyncrasies involved in this fourth phase of violence.[15]

> Practitioners and academics are finally making this connection. [16]

At the more critical level, stalking is seen as one more illustration of systemic male violence. Way writes,

> Stalking is one vicious manifestation of a broader spectrum of violence against women, one part of a multi-faceted whole, integrally linked to the systemic social, economic and political inequalities experienced daily by Canadian women. The statistics detailing the extent of violence against women in Canada provide horrifying evidence of the "brutal face of inequality".[17]

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[14] Bernstein, *supra* at 557.

[15] Bernstein, *supra* at 559.

[16] P. Randall Kropp, Stephen D. Hart, Christopher D. Webster, and Derek Eaves, *Manual for the Spousal Assault Risk Assessment Guide* (Vancouver: The British Columbia Institute on Family Violence, 1994) at 2.

[17] Rosemary Cairns Way, "The Criminalization of Stalking: An Exercise in Media Manipulation and Political Opportunism" (1994) 39 *McGill Law Journal* 379 at 382. This view is shared by the Federal/Provincial/Territorial Working Group of Attorneys General Officials, *Gender Equality in the Canadian Justice System*, Background Paper *Violence Against Women* (April 1992) at 39: "[Statistics] suggest that in our culture, gender-based violence is related to power. . . The story of violence against women . . . is really a story about power and inequality between the sexes." It is also found in the report of the Canadian Panel on Violence Against Women, *Changing the Landscape: Ending Violence--Achieving Equality* (Ottawa: Minster of Supply and Services Canada, 1993): "Violence against women, both now and in the past, is the outcome of social, economic, political and cultural inequality. This inequality takes many forms, but its most familiar form is economic" (at 14).

Examining violence against women or criminal harassment in this broader context points to the problems of trying to deal with the issue of violence against women, in the limited context of the criminal justice system. Real change will occur only once equity for women is achieved fully in the social, economic, political and legal spheres. However, women who are presently harassed do not have the luxury of waiting for this societal-wide change to occur.

2.3 The Effect of Criminal Harassment on Victims

While there has been little systematic research on the effects of stalking on victims,[18] common sense and anecdotal evidence suggests that to live in fear for one's life from an obsessed individual must have devastating effects on one's emotional and physical well-being.[19] The terror must be that much greater for victims of previous violence by former intimates, who thereby already know the brutality of their predators. There is some evidence that victims who live in fear for their lives and for the lives of those around them can suffer long term emotional trauma.[20] There is also evidence that some victims suffer post-traumatic stress disorder (PTSD), or at least some of its symptoms. In severe cases, victims may "experience reactions other than PTSD such as depression, substance abuse, phobic anxiety, generalized anxiety, obsessive-compulsive behaviours, and dissociative disorders."[21]

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[18] Cooper's otherwise comprehensive bibliography does not address this issue.

[19] Murray, J. of the Alberta Court of Queen's Bench stated that Parliament, in enacting the legislation, "recognized the self-evident risk of substantial harm such behaviour is capable of causing". *R.* v. *Sillipp* (1995), 99 C.C.C. (3d) 394 (Alta. Q.B.) at 415.

[20] Guy, Robert A., "The Nature and Constitutionality of Stalking Laws" (1993) 46 *Vand. Law Review* 991 as cited in Ellen F. Sohn, "Antistalking Statutes: Do They Actually Protect Victims?" (1994) 30(3) *Criminal Law Bulletin* 203 at 205.

[21] Kathleen G. McAnaney, Laura A. Curliss, and C. Elizabeth Abeyta-Price, "From Imprudence to Crime: Anti-stalking Laws" (1993) 68 *The Notre Dame Law Review* 819 at 850-853.

2.4 The Treatment of Harassers

Given the vast difference in, for example, criminal harassers who are erotomaniacs (who seldom act on their delusions)[22] and those who are former spouses (who treat their victims as personal possessions and often act violently on their obsessions and inabilities to accept separation),[23] it is perhaps unfortunate that the media[24] and the politicians view them both through a single lens. There are few systematic studies on how to change the behaviour of criminal harassers. The conclusions of those who work with them is that generally the prognosis for erotomaniacs, love obsessionals, and sociopaths is quite grim.[25]

Perpetrators who criminally harass former intimates are, in many respects, similar to those who engage in violence when they are still living with their partners; criminal harassment often continues the "relationship" beyond its natural life. Treatment techniques for both is the same, since the personalities and defence mechanisms of the two groups are similar.[26]

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[22] This is the conventional wisdom of clinicians, however there is little research on this issue. See the discussion by Mary Cooper, *Criminal Harassment and Potential for Treatment: Literature Review and Annotated Bibliography* (Vancouver: BC Institute on Family Violence, 1994) at 10-12.

[23] A review of the literature was done by Mary Cooper, *Assessing the Risk of Repeated Violence Among Men Arrested for Wife Assault: A Review of the Literature* (Vancouver: BC Institute on Family Violence, 1993). Her review of the literature was used to develop a Spousal Assault Risk Assessment Guide (SARA) "to assess the risk of future violence in men arrested fro spousal assault." P. Randell Kropp, Stephen D. Hart, Christopher D. Webster, and Derek Eaves, *Manual for the Spousal Assault Risk Assessment Guide* (Vancouver: The British Columbia Institute on Family Violence, 1994) at 1.

[24] The media portray stalkers as obsessed and pathological. See for example, Rosemary Cairns Way, "The Criminalization of Stalking: An Exercise in Media Manipulation and Political Opportunism" (1994) 39 *McGill Law Journal* 379 at 385. Efforts to pathologize those who criminally harass others are seen in the work of Dr. Park Eliot Dietz, a forensic pycho-therapist in the United States, who has characterized all stalkers as abnormal--"There is something wrong with each and everyone of them"--quoted in Nannette Diacovo, "California's Anti-Stalking Statute: Deterrent Or False" (1995) 24(2) *Southwestern University Law Review* 389 at 392. This characterization has the (perhaps unintended) side effect of identifying the harasser as "different" from the "rest of us," and as different from most people we know, when in fact most victims of harassment will know their perpetrators.

[25] Mary Cooper, *Criminal Harassment and Potential for Treatment: Literature Review and Annotated Bibliography* (Vancouver: BC Institute on Family Violence, 1994) at 13-24; Nannette Diacovo, "California's Anti-Stalking Statute: Deterrent Or False" (1995) 24(2) *Southwestern University Law Review* 389 at 393-395; Kathleen G. McAnaney, Laura A. Curliss, and C. Elizabeth Abeyta-Price, "From Imprudence to Crime: Anti-stalking Laws" (1993) 68 *The Notre Dame Law Review* 819 at 853-859.

[26] Kathleen G. McAnaney, Laura A. Curliss, and C. Elizabeth Abeyta-Price, "From Imprudence to Crime: Anti-stalking Laws" (1993) 68 *The Notre Dame Law Review* 819 at 856.

2.5 The Introduction of Criminal Harassment Legislation

The first criminal harassment legislation in North America (or "stalking" as it is more commonly referred to in the literature in the United States) was introduced in California in 1990.[27] While many authors attribute the origins of the legislation to celebrity- or star-stalking, it was the deaths of four women at the hands of their ex-husbands or ex-boyfriends in Orange County that motivated frustrated Municipal Court Judge John Watson on January 10, 1990, to propose stalking legislation to State Senator Edward R. Royce.[28] By 1993, 48 states had passed similar legislation, perhaps motivated by the United States Government's bill that required states to enact anti-stalking legislation by September 30, 1994 if they did not want to lose 25 percent of their federal Crime Act Funding.[29] States were also assisted by the federal initiative of September, 1992, in which the National Institute of Justice was asked by Congress to evaluate anti-stalking legislation and draft model legislation.[30] This it did, by October, 1993.[31] In addition, a federal bill was introduced in March, 1993, to make stalking a federal offence.[32]

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[27] While this is the position of most of the authors in the burgeoning literature, one author suggests that Canada's first "stalking" legislation (then called "intimidation" in Canada) became effective in 1970. Kathleen G. McAnaney, Laura A. Curliss, and C. Elizabeth Abeyta-Price, "From Imprudence to Crime: Anti-stalking Laws" (1993) 68 *The Notre Dame Law Review* 819 at 826. However, many of the states had similar legislation prior to the en masse introduction of stalking legislation. See Ellen F. Sohn, "Antistalking Statutes: Do They Actually Protect Victims?" (1994) 39(3) *Criminal Law Bulletin* 203 at 215-216.

[28] All four women had restraining orders against their killers, and all knew their lives were at risk. Susan E. Bernstein, "Living Under Seige: Do Stalking Laws Protect Domestic Violence Victims?" (1993) 15 *Cardozo Law Review* 525 at 543-4. The Senator introduced a Bill on February 26, 1990, which passed the Policy Committee (without dissent), then passed the Ways and Means Committee 21-1, the Senate 36-0, and the Assembly floor by 66-1. It became law on September 29, 1990 (Bernstein at 545-546).

[29] Julie Miles Walker, "Anti-Stalking Legislation: Does It Protect the Victim Without Violating the Rights of the Accused?" (1993) 71 *Denver University law Revie*w 273 at 275.

[30] This initiative was motivated by concern that anti-stalking laws might jeopardy constitutionally protected activities. Julie Miles Walker, "Anti-Stalking Legislation: Does It Protect the Victim Without Violating the Rights of the Accused?" (1993) 71 *Denver University law Revie*w 273 at 274.

[31] U.S. Department of Justice. Office of Justice Programs. National Institute of Justice. *Project to Develop a Model Anti-Stalking Code for States* (Washington, DC Superintendent of Documents, October, 1993).

[32] Julie Miles Walker, "Anti-Stalking Legislation: Does It Protect the Victim Without Violating the Rights of the Accused?" (1993) 71 *Denver University law Revie*w 273 at 275.

The numerous authors[33] who have published articles on stalking in United States legal journals all follow a similar pattern. They review some of the high profile stalking cases or case summaries of the various categories of stalkers, then they turn to the introduction of legislation in California and in one or more of the other states. The authors then compare and evaluate the stalking legislation in light of traditional remedies (tort, invasion of privacy, civil injunctions, Terrorist Threats Statute, Telephone Threat Statute, felony trespass, civil assault law) and discuss a number of enforcement and constitutional issues (vagueness and overbreadth, protected conduct, the right to bail or the prohibition against excessive bail, arrest without warrant). Some conclude with a model statute to overcome the problems they identify.

California has now moved into the second phase of stalking legislation, to strengthen the law against stalkers. The original legislation introduced in 1990 had a number of problems. The requirement that the stalker make a "credible threat" meant that otherwise non-threatening behaviour (sending gifts or love letters, and even following) was not seen as a threat. In addition, stalking was a misdemeanour, and penalties did not reflect the perceived seriousness of the crime.[34] On January 1, 1994, the California Legislature passed three bills to improve the anti-stalking laws. The definition of stalking was changed from "fear of death or great bodily injury" to "fear for his or her safety".[35] However, the continuing requirement that the threat be "credible" may not improve the position of the victim, as seemingly innocent behaviour is not covered.

Penalties were increased by giving the District Attorney the option of proceeding with the charge as either a misdemeanour (with county jail time) or a felony (with state time). Diacovo criticizes the discretion given to the District Attorney, and suggests that all stalking be treated as a felony. Simultaneous violation of the anti-stalking law and a restraining order (that was originally chargeable as a misdemeanour or felony, carrying a

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[33] For example, Jeanie M. Welch, "Stalking and Anti-Stalking Legislation: A Guide to the Literature of a New Legal Concept" (Fall, 1995) *Reference Services Review* 53, found 48 articles on stalking in law journals. Another useful annotated bibliography of a more interdisciplinary nature is Mary Cooper, *Criminal Harassment and Potential for Treatment: Literature Review and Annotated Bibliography* (Vancouver: BC Institute on Family Violence, 1994).

[34] Nannette Diacovo, "California's Anti-Stalking Statute: Deterrent Or False" (1995) 24(2) *Southwestern University Law Review* 389 at 406-409.

[35] The section now reads, "Any person who willfully, maliciously, and repeatedly follows or harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety . . ." Quoted in Nannette Diacovo, "California's Anti-Stalking Statute: Deterrent Or False" (1995) 24(2) *Southwestern University Law Review* 389 at 410.

maximum penalty of one year) was changed to a felony with a maximum penalty of four years.[36] Penalties for second offences, if the first conviction was a felony, were also increased (whether the offences were against the same person or not).

The California Penal Code was amended so that judges (not the Director of Corrections) decide whether convicted stalkers should receive mental health treatment.[37] The California Civil Code was amended so that those who want to obtain protective orders, restraining orders or permanent injunctions do not have to pay the $182 filing fee. Finally, the California Legislature created the tort of stalking, with general, special or punitive damages, and injunctions as possible relief.[38]

Prior to the introduction of Bill C-126 in Canada in 1993, there were a number of sections of the *Criminal Code* that could be used against criminal harassers: trespassing by night under section 177, uttering threats under section 264.1, assault by threatening under section 265(1)(b), indecent or harassing phone calls under section 372, and threatening, intimidating, following, besetting or watching for the purpose of compelling another to do something or to abstain from doing something under section 423, (1)(a) and (b). Those who feared for their personal safety, or that of their spouse or child, could also apply to the court under section 810 of the *Criminal Code* for a recognizance (commonly

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[36] Nannette Diacovo, "California's Anti-Stalking Statute: Deterrent Or False" (1995) 24(2) *Southwestern University Law Review* 389 at 412. Kathleen G. McAnaney, Laura A. Curliss, and C. Elizabeth Abeyta-Price, "From Imprudence to Crime: Anti-stalking Laws" (1993) 68 *The Notre Dame Law Review* 819 at 900-901, report that Delaware and Nebraska actually require a court order to be in existence prior to a charge being laid under the legislation. Other states have heavier penalties if stalkers violate court orders, while some, such as Hawaii, Kansas and Utah, do not address the difference. Alabama has a law in which sentences for violating a court order and stalking run consecutively, not concurrently.

[37] Nannette Diacovo, "California's Anti-Stalking Statute: Deterrent Or False" (1995) 24(2) *Southwestern University Law Review* 389 at 414. According to Kathleen G. McAnaney, Laura A. Curliss, and C. Elizabeth Abeyta-Price, "From Imprudence to Crime: Anti-stalking Laws" (1993) 68 *The Notre Dame Law Review* 819 at 902, Ohio has the most extensive mental health evaluation, including the consideration of an arrestee's mental health prior to granting bail.

[38] See Nannette Diacovo, "California's Anti-Stalking Statute: Deterrent Or False" (1995) 24(2) *Southwestern University Law Review* 389 at 410-416, for the changes to the legislation. Diacovo makes a number of recommendations for additional changes. First, the mental health provisions should be more specific, and should require that a convicted person undergo "mental evaluation and be placed within one of the three categories of obsessive behavior". The person should then be placed in a mandatory treatment programme designed for "the stalker's mental infirmities." Release should be probationary and closely monitored. In addition, police officers, judges and the general public should be educated about the nature and effect of stalking. Diacovo cites the example of a police officer telling a stalking victim, "you're so sexy, you must have done something to bring it on" (at 418). Judges have asked why they should put someone in jail "just for being a pest" (at 418). It is difficult to convey to the accused that he committed a crime, if the judge does not see it as a crime. The media portray the crime as "glamorous and trivial," which is hardly the perspective of the stalker's victim.

known as a peace bond), with or without sureties, in order to require the malefactor to "keep the peace and be of good behaviour". Civil restraining orders could also be obtained.[39] However, it was thought that the existing legislation required an overt threat, and that the Crown must prove an intent to harass. In addition, many of the offences are summary conviction offences (which have limitations regarding arrest and sentencing).[40]

The criminal harassment provisions of the *Criminal Code* came into force on August 1, 1993, on the heels of a number of highly publicized fatal attacks against women by their former partners, following periods of systematic stalking and other forms of harassment. While there was considerable public pressure on the federal government to protect women against such harassment and violence, the legislation was not passed without controversy. Many women's organizations, and some provincial government justice officials, objected to what they viewed as insufficient consultation in the drafting of the legislation, and to specific aspects of Bill C-126.[41]

Rosemary Cairns Way, a law professor at the University of Ottawa, reviewed three concerns that were raised by women's groups and witnesses before the Parliamentary Committee Hearings on the Bill. First, the Bill did not have a preamble similar to the one in Bill C-49 (the sexual assault legislation, 1992) which would "contextualize the reality of women's experience of criminal harassment." Second, the Bill required that victims' fear for their safety be "reasonable", and there was concern that this requirement would expose victims to cross-examination on their mental health or character. The addition of the words "in all of the circumstances" to the reasonableness requirement added "little of substance" to the legislation since circumstances are already

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[39] The use of Peace Bonds and Civil Restraining Orders are discussed in detail by Colin Meredith, *Review of the Use and Effectiveness of Judicial Recognizance Orders and Civil Restraining Orders* (Toronto: Abt Associates of Canada, 1994).

[40] See Marilyn, Pilon, "Anti-Stalking Laws: The United States and Canadian Experience" (Ottawa: Library of Parliament, Research Branch, 1993) at 6-7; T. H. Lytwyn, "Preliminary Thoughts on the Meaning of Section 264: Criminal Harassment in Canada" (unpublished paper, February 16, 1994; on file at the BC Institute on Family Violence) at 2-3; and *R.* v. *Sillipp* (1995), 99 C.C.C. (3d) 394 (Alta. Q.B.) at 417-418.

[41] See Rosemary Cairns Way, "The Criminalization of Stalking: An Exercise in Media Manipulation and Political Opportunism" (1994) 39 *McGill Law Journal* 379, for a summary and analysis of the objections and concerns. Way argues that, as with the bills in the United States, the enactment of section 264 was "characterized by inordinate haste. The Bill took less than six weeks to proceed through First, Second and Third Readings in the House of Commons. A scant three and one-half weeks after the Bill was tabled in the House, it was sent to Parliamentary Committee" (at 397). Way suggests two reasons for the haste with which legislation was enacted in Canada and the United States: first, the high social status of potential victims (media attention on celebrities and other public figures like legislators, judges and politicians) and the fact that the criminal justice system is much more likely to act on their concerns if there is a law (at 386), and second, the media portrayal of the stalking victim which played on the cultural pornographic imagination--stalking seen in terms of man as hunter, woman as prey (at 387).

considered in the concept of reasonableness. Third, the initial Bill required intent on the part of the harasser which would be difficult to prove given the nature of some harassing behaviour. The addition of the phrase "recklessly as to whether the other person is harassed" was "insubstantive" and indicated that "the legislators did not accept the submissions that harassing conduct is sufficiently serious in and of itself to warrant criminalization."[42]

Section 264 creates a hybrid offence, and the maximum penalty if the Crown proceeds by way of indictment is a term of imprisonment not exceeding five years. The maximum term of imprisonment for a summary conviction offence remains at six months, although the maximum term of imprisonment for uttering threats under section 264.1 has recently been increased to 18 months. Section 264 sets out and defines the offence of criminal harassment:

> 264(1) No person shall, without lawful authority and knowing that another person is harassed or recklessly as to whether the other person is harassed, engage in conduct referred to in subsection (2) that causes the other person reasonably, in all the circumstances, to fear for their safety or the safety of anyone known to them.
>
> (2) The conduct mentioned in subsection (1) consists of
>
> (a) repeatedly following from place to place the other person or anyone known to them;
> (b) repeatedly communicating with, either directly or indirectly, the other person or anyone known to them;
> (c) besetting or watching the dwelling, or place where the other person, or anyone known to them, resides, works, carries on business or happens to be; or
> (d) engaging in threatening conduct directed at the other person or any member of their family.

Section 515(4.1) states that the justice at a show cause hearing for a person charged under section 264 (and other offences) "shall consider whether it is desirable, in the interests of the safety of the accused or any other person, to include as a condition of the order that the accused be prohibited from possessing any firearm or any ammunition or explosive substance for any period of time specifically in the order and that the accused surrender any firearms acquisition certificate that the accused possesses." In

[42]Way at 395-399.

addition, section 515(4.2) requires that the justice also "consider whether it is desirable, in the interests of the safety of any person, to include as a condition of the order that the accused abstain from communication with any witness or other person expressly named in the order, or be prohibited from going to any place expressly named in the order." Moreover, these provisions are being strengthened further with the passage of Bill C-68. Section 515(4.1) of the *Criminal Code* will require the justice to prohibit the accused charged under s.264 from possessing any firearm, prohibited weapons, etc., until the accused is dealt with according to law, unless the justice considers such a prohibition unnecessary. In addition, if no such prohibition is made, reasons must be given. However, these provisions have not yet been proclaimed in force.

2.6 The Interpretation of Section 264 of the *Criminal Code*

While there have been a number of trial court decisions under section 264,[43] only two cases are reported in the *Criminal Reports* or *Canadian Criminal Cases*. In *R.* v. *Sillipp* (1995), 99 C.C.C. (3d) 394 (Alta. Q.B.) the accused argued that section 264 was of no force and effect, in that it was unconstitutional for vagueness, contrary to section 7 of the *Charter*, and that it infringed the right to freedom of expression under section 2(b) of the *Charter*.[44] In dealing with the section 7 argument, Mr. Justice Murray outlined what the Crown must prove:

> It must prove that the accused person intended to do a s-s (2) act, that he did it, that he did so without lawful authority, that another person was harassed by those acts, that he knew that the person was harassed by such conduct on his part or he was reckless as to whether that person was so harassed, that such behaviour caused that other person to fear for his or her safety, and that in all of the circumstances that person's fear was reasonable. I agree with the decisions of the Ontario Provincial Court in *R.* v. *Lafreniere* (1994) 22 W.C.B. (2d) 519 . . . and *R.* v. *Baszczynski* (1994), 24 W.C.B. (2d) 153 . . . It is not necessary that the Crown prove that he knew

[43] Statistics Canada reports that in 1995 4,374 incidents with an occurrence of criminal harassment were reported by selected police in Canada. The data is drawn from reports provided by approximately 46% of Canada's police forces. The reporting forces include most major centres--Fredericton, Quebec City, Montreal, Toronto, Regina, Saskatoon, Calgary, Edmonton and Vancouver. Incident-based Uniform Crime Reporting Survey, 1995, Table 4.10, Policing Services Program, Canadian Centre for Justice Statistics, Ottawa.

[44] The court also dealt with a third argument under section 11(h) of the *Charter*, in that the accused was found in civil contempt for the same factual matters as the charges under section 264. The court dismissed this argument, because refusal to obey a court order was not an element of the offence under section 264.

> that the "other person" feared for his or her safety which would be difficult to do (at 403).

Following a review of the law on vagueness, as discussed by the Supreme Court of Canada in *R.* v. *Morales* (1992), 77 C.C.C. (3d) 91 and *Young* v. *Young* (1993), 108 D.L.R. (4th) 193, Murray, J. concluded that the section did not violate section 7, or the principle of fundamental justice that laws must not be too vague:

> I would think that anyone reading the section would receive [the] message loud and clear. I do not believe that it has the effect of permitting a "standardless sweep" so as to allow the police, or for that matter, the judiciary, to simply use its discretion in how they interpret or apply its provisions . . . I am satisfied that the legislation permits the framing of a meaningful legal debate with respect to the objectives contained in the legislation. . . [I]t provides "an adequate basis for reaching a conclusion as to its meaning by reasoned analysis applying legal criteria". There are a number of terms which will not doubt be the subject-matter of judicial interpretation. Amongst these are "lawful authority", "harassed", "fear for their safety", "repeatedly follow", "besetting or watching". Certain of these terms have not been the subject-matter of judicial interpretation and for the moment one may be obliged to depend on the Oxford Dictionary for a meaning within the context of s. 264 (at 406).

Since the accused was charged under subsections 264(1) and (2)(a) and (c), the judge limited his discussion of section 2(b) of the *Charter* to those subsections. He applied the framework developed by the Supreme Court of Canada in *Ford* v. *Quebec (Attorney-General)* (1988), 54 D.L.R. (4th) 577, *Irwin Toy Ltd.* v. *Quebec (Attorney-General)* (1989), 58 D.L.R. (4th) 577, and *R.* v. *Keegstra* (1990), 61 C.C.C. (3d) 1. First, Murray, J. examined whether the accused's activity was the kind that is protected under section 2(b) of the *Charter.* He found that the accused's behaviour was a form of expression, an attempt to convey meaning. In deciding that the behaviour was excluded as a protected form of expression on the basis that it was an act of violence, he relied on Judge Craig of the British Columbia Provincial Court in *R.* v. *Hau*, [1994] B.C.J. No. 677:

> [Section 2] freedoms are not absolute and were not intended to justify latently violent conduct. Moreover, in our democratic society, the freedom in s. 2 must never serve to diminish a person's

right to be free from and protected against violence, or the threat of violence brought about by harassing conduct (at 411).

Alternatively, assuming an error in his decision on section 2(b) of the *Charter*, Murray, J. considered the remaining analysis in *Irwin Toy*, whether the legislation was enacted to restrict attempts to convey meaning through the activities enumerated in section 264. Murray, J. concluded that "the purpose of s. 264 is to control attempts by persons to convey meanings of latent physical violence and direct psychological violence to other persons by restricting the form of such an expression which is tied to its content" (at 413). If this behaviour is not exempt from protection, as he earlier decided, then the section infringes section 2(b) of the *Charter*.

Murray, J. then considered section 1, and the test as set out in *R.* v. *Oakes* (1986), 24 C.C.C. (3d) 321 (S.C.C.). Although it appears as though he had a considerable amount of material to consider, he noted that "many of the comments and speeches made were rhetorical and in some cases the statistics quoted were inaccurate" (at 414). Nevertheless, he decided that criminal harassment was a pressing and substantial issue.[45] He examined whether the means in section 264 were proportional to the ends that Parliament was trying to achieve. Murray, J. found that section 264 was "carefully designed to achieve the objective desired", and continued, "I do not accept that it is either arbitrary, unfair or based on irrational considerations but rather I find it to be rationally connected to the objective" (at 417). He also found that section 264 did not suffer from vagueness, that it represented a minimal impairment of freedom of expression, and that there was a "proportionality between the effects of s. 264 in limiting freedom of expression of the nature prescribed and the objective . . .[was] found to be of 'sufficient importance'" (at 419). Accordingly, section 264 was demonstrably justified under section 1.

R. v. *Ryback* (1996), 105 C.C.C. (3d) 240 was an accused's appeal from a summary conviction appeal court which dismissed his appeal from his conviction of criminal harassment. The British Columbia Court of Appeal considered three issues: 1) was the trial judge entitled to admit and rely on evidence of behaviour that took place prior to the enactment of section 264 on August 1, 1993, 2) did the trial judge err in finding that the accused "harassed" the complainant, and 3) did the trial judge err by finding that the accused's behaviour could be described as "repeatedly communicating"?

[45] The court also relied on *R.* v. *McCraw* (1991), 66 C.C.C. (3d) 517 (S.C.C.), where the Supreme Court of Canada decided that "the freedom Parliament was attempting to protect by enacting s. 264.1, freedom of personal choice and action, was a matter of fundamental importance to members of a democratic society" (at 415).

The Court of Appeal held that the pre-charge (and pre-enactment) behaviour was relevant to the charge, to establish whether the complainant's fear for her safety was justified in all the circumstances. It also found that the accused's behaviour in this period was admissible to prove his intent; that is, to show "whether he knew or was reckless as to whether his conduct harassed the complainant" (at 246):

> The [accused's] state of mind would, of necessity, depend in large part on his past association with, and conduct towards, the complainant. His knowledge that the complainant was harassed, or his recklessness as to whether she was harassed, could be realistically decided only by looking back to what had gone before. Similarly, pre-charge conduct which tended to show an innocent state of mind on the appellant's part would also be admissible (at 246-247).

The Court also found that three instances of communication (the delivery of presents and a note a week before Christmas, the delivery of a dinner invitation a week before Valentine's Day, and a personal appearance on Valentine's Day), in the context of the interactions between the accused and the complainant, were clearly harassment as defined by the Alberta Court of the Queen's Bench in *Sillipp*. In addition, the three contacts, in the circumstances, were sufficient to constitute communicating "repeatedly."

3.0 METHODOLOGY

Research for this review included four elements: 1) a review of the socio-legal literature on the criminalization of stalking and other forms of harassment; 2) an analysis of police, Crown and court information in files involving cases of criminal harassment; 3) interviews with selected people involved in the implementation of section 264; and 4) a small number of case studies of specific criminal harassment cases. The methods employed for each of these elements is described below.

3.1 Literature Review

A literature review was included in the study to assist in understanding the social and legal issues that arise in efforts to address the problem of harassment through the criminal justice system. Our review of the literature considers socio-legal literature in the broad sense, covering the subject from the sociological, psychological, criminological and legal perspectives. It includes available Canadian literature, and a selection of American and other literature that appeared to be relevant to the Canadian situation. Literature focusing on the phenomenon of stalking from a strictly psychological perspective is not included, but some articles are included that examine the psychological and social antecedents of stalking behaviour.

3.2 Case File Data Collection

The major focus of this review has been the collection of data from police and Crown case files, the purpose being to examine how the justice system has handled cases of criminal harassment since August, 1993. The sample of 601 cases was drawn from cases in Halifax, Montreal, three divisions in Metropolitan Toronto, Winnipeg, Edmonton and Vancouver. Whether Crown or police files were used depended on where the case files were kept at each site after the cases were completed. In Vancouver, Winnipeg, Edmonton and Halifax, Crown offices retain possession of the files, including police briefs and any other information used in presenting the case. In Toronto and Montreal, the files wre returned by Crown to the police for archiving once the case was completed. They too contained both police and Crown information.

In Halifax, the Toronto divisions, Winnipeg and Edmonton the sample included all criminal harassment cases that were completed as of December, 1995 or January, 1996 (the dates varied slightly by research site).[46] In Vancouver, a sample of 80 cases was

[46]At each site there were small numbers of files that could not be located, and were therefore not included in the sample. There is no reason to believe that those unavailable files would have been significantly different in any predictable way than the files included in the sample.

drawn randomly from 222 total cases at the Vancouver Provincial Court for the 1993-1995 period. The sample included only cases which were closed at the time the sample was drawn. Substitutes were selected for eight files that were rejected for a variety of reasons (no criminal harassment charges, lost or gutted files, and waivers from other jurisdictions).

In Montreal, the sample was drawn randomly from a list of 1,019 cases for 1994 and the first ten months of 1995. The list included cases that were not completed, and cases for which no charges were laid (no method was available to list only completed cases). While we do not know with certainty the number of completed cases from which the sample was drawn, the order of magnitude can be inferred from the fact that we drew an initial sample of 225 files, and obtained 117 files (52 percent) that were completed and were therefore appropriate for inclusion in the study. We also know that in the period covered by the case list provided in Montreal, there were 310 cases in which a criminal harassment charge was laid.

In Toronto, Montreal, Vancouver and Edmonton additional samples of files were selected for which no charges had been laid, but for which an investigation had taken place on a complaint of criminal harassment. Overall, cases in which no charge was laid accounted for 21 percent of the total sample of 601 cases. The purpose was to obtain some insight into the reasons that charges are not laid despite complaints of harassment. The cases we examined that did not result in charges all involved behaviour that appeared to be criminal harassment as section 264 defines it. In most cases, charges were not laid because the harassment had stopped and the victim did not wish to pursue the matter any further, the matter was still under investigation, or one of the parties no longer resided in the jurisdiction and the harassment had reportedly stopped. The sample does not include complaints for which no investigation was conducted, such as complaints for which patrol officers decided no report was warranted, or where police concluded in the report that no investigation was required. Thus, this review's ability to comment on police investigation and charging practices (or decisions to recommend to Crown that charges be laid, in British Columbia and Quebec) is limited.

In Vancouver, a list of 120 incidents of criminal harassment filed with the Vancouver City Police for 1995 was generated. Of these, 54 (45 percent) had not resulted in charges being laid at the time of the study. From those 54, a random sample of 25 cases was selected. In Toronto, a total of 152 occurrences of criminal harassment were reported to 52 Division in downtown Toronto for 1995 and early 1996. Of these, 84 cases (55 percent) had not resulted in charges being laid at the time of the study. Twenty-nine of these files were selected randomly for inclusion in our sample. In Edmonton, all sixteen cases that were identified as criminal harassment cases but that did not result in a charge were included in the sample.

In Montreal, it was difficult to obtain an accurate estimate of the number of real occurrences of criminal harassment, because the lists of occurrences included many cases that did not proceed to a charge because there appeared to be no substantial evidence of criminal harassment. We included 59 selected files from Montreal in our sample of "no-charge" cases, screening out those cases that indicated insufficient evidence.

Table 1 Case File Sample

Site	Cases with Charge	Cases with No Charge	Charge Sample as % of Total Charges	"No Charge" Sample as % of Total "No Charge" Sample
Halifax	10	0	100%	n/a
Vancouver	80	25	36%	46%
Edmonton	38	16	100%	100%
Winnipeg	49	0	100%	n/a
Toronto, 52 Div.	104	29	100%	35%
Toronto 42 Div.	35	0	100%	n/a
Toronto, 31 Div.	40	0	100%	n/a
Montreal	117	59	38%	don't know
Total	474	127	59%	

* Sample of cases with a charge of criminal harassment, as a percentage of the total number of completed cases with charges in the 1993 to early 1996 period. Where the figures is 100 percent, it does not take into account a small number of files that could not be located when the research was being conducted.

The sample drawn for this study provides a strong representation of criminal harassment cases in Canada's major urban centres: about 59 percent of all criminal harassment charges in the locations selected for the research (Table 1). In Vancouver the sample is about 36 percent of cases where charges were laid, and about 46 percent of cases in 1995 where no charge was laid. In Toronto, where three of the city's 17 police divisions were included, the sample comprises all criminal harassment charges in these three divisions. This is approximately 23 percent of all cases in Metro Toronto in which criminal harassment charges were laid.[47] In Toronto the sample of "no-charge" cases represents 35 percent of "no charge" files at 52 Division. This is small in comparison

[47]This estimate is based on 1995 and early 1996 figures. Reliable figures for the full 1993-1996 period for all of Metro Toronto were not available. In 1995 and through until the end of March, 1996, the three divisions we selected cases from had 22.6% of all Metro criminal harassment charges. Our sample includes all cases in those divisions.

with the total number of such cases in Metro (about 3 percent), and is therefore not necessarily representative of Metro as a whole.

In Montreal the sample of cases with charges represented 38 percent of all charges laid in 1994 and the first 10 months of 1995. The representativeness of the "no charge" sample is less clear, for reasons discussed above. In Edmonton, Winnipeg and Halifax, all available case files were included in the sample.

We did not examine in this study how the justice system has handled criminal harassment cases in smaller urban centres and in rural areas. Some people interviewed suggested that there is a reduced likelihood that police and Crown in those locations would have had access to guidance and training in the application of the new section, and that they and the judges presiding in criminal harassment cases would have had less experience with the charge over the period of the study due to significantly less numbers of occurrences. It is also possible that community attitudes, including those of the police, Crown attorneys, judges, and victims of criminal harassment, may result in a different approach to the application of section 264 than is the case in major urban centres. Further study will be required to examine the implementation of section 264 outside the major urban centres.

3.3 Interviews

Interviews were conducted at the six research sites with police, Crown attorneys, defence attorneys, federal and provincial justice policy officials and victim advocates, including representatives of womens' shelter organizations and court-based victim assistance programs. These are distinct from the interviews conducted with participants in the specific cases presented as case studies. They were conducted as structured, open-ended interviews using the interview guide that is appended to the report. The interviews focused on five areas of inquiry: the usefulness and effectiveness of section 264; the effectiveness of its administration by the police, Crown and courts; barriers to using the new section effectively to deter harassment and protect women; linkages between the criminal justice system and relevant community services; and, views on specific elements of the section itself.

The interviews are supplemental to the case file data, and are intended to assist in analyzing the data with a broader understanding of the needs and concerns of victims and their advocates, and the constraints under which section 264 is administered. They cannot be seen as necessarily representative of the views of victims, victim advocates, or members of the criminal justice system.

The numbers of people interviewed are listed below. In addition to the thirty-six formal interviews, the great majority of which were conducted in person, the authors also met and had informal discussions with many other people, particularly the police officers and Crown attorneys present during the case file data collection. Where appropriate, the report indicates views expressed during these discussions.

Table 2 Breakdown of Interviews Conducted

Police	12
Crown	9
Policy Officials	9
Victim Advocates	6
Total	36

3.4 Case Studies

The study also included a detailed review of six specific cases, including interviews with the victims, the investigating officers, the Crown attorneys handling the cases, and in some cases victim advocates. We also met with three of the six defence attorneys, but solicitor-client privilege prevented them from discussing the specific cases in any meaningful way. The case studies were included in recognition of the fact that the case file data present a limited and somewhat clinical perspective, and that a closer examination of individual cases could reveal important details that would assist in understanding how the prosecution of a criminal harassment case is experienced, particularly by the victims but also by the other participants. Although the six cases examined in detail here provide only a glimpse of that experience, they can assist in designing future research.

4.0 CASE FILE DATA

This section presents the results of the collection of data from criminal harassment case files at the six research sites. It is organized into six sub-sections: 1) demographics; 2) the offences and accompanying circumstances; 3) the charges laid; 4) pre-trial release; 5) duration of proceedings; and, 6) disposition of charges. In each sub-section, the data is presented in text and tables, and observations are made as to what the data tells us concerning the implementation of section 264. In later sections, the issues are addressed in more depth as we interpret the data in conjunction with the interview and case study findings.[48]

As discussed in Section 2.0, 601 Crown and police files were examined in six cities across Canada. The coding sheet used for recording information from these files is appended to the report. Table 3 sets out the number of files examined in each location.

Table 3 Breakdown of Cases by Research Site

	Frequency	Percent
Halifax	10	1.7
Vancouver	104	17.3
Edmonton	54	9.0
Winnipeg	49	8.2
Toronto, 52 Division	133	22.1
Toronto, 42 Division	35	5.8
Toronto, 31 Division	40	6.7
Montreal	176	29.3
Total	601	100.0

4.1 Demographics

Police and Crown files contain only a minimum of demographic information on the people charged with criminal harassment, and even less on the victims. Aside from name, date of birth and current address, which are recorded routinely in police reports,

[48]Where totals in tables do not add up to the full sample of 601 cases, it is because the information was not available for all cases, or the table is not appropriate for some cases. In all cases, the reported percentages are calculated with the missing cases factored out.

demographic information is available in the files at the discretion of the investigating officers, usually in the form of written narrative intended to provide the Crown with a basis for proceeding at a bail hearing. Police report forms often allow for the recording of employment information and an indication of apparent race (for identification purposes), but these parts of the forms are not systematically filled out, and we cannot assume that the information has been confirmed. In the case of the race of the accused, the most that is typically recorded is "white" or "non-white", and in many files the "x" that has been typed in is between the two boxes, making it difficult to interpret.

As a result of these limitations, there has been no attempt in this study to draw inferences about relationships between demographic factors (race, socio-economic status) and variables such as numbers of charges and case outcomes. The data is presented below to provide readers with an overall sense of the population involved in the 601 cases examined.

As expected from the review of the literature and media publicity, the vast majority of the accused in the cases examined (91 percent) were men, and the majority of the victims (88 percent) were women. The employment status of the accused was recorded in 66 percent of the cases, and of those recorded, 60 percent of the accused were unemployed. Forty-two percent of the accused had their occupation recorded, and of these 30 percent worked in unskilled labour jobs, 22 percent in sales and services, 16 percent in skilled labour, 15 percent were students, 8 percent were professionals, 6 percent worked in management or administration, and 4 percent held clerical or secretarial jobs.

The age of the accused ranged from 15 to 76, and their average age was 37. Mental or psychological problems were noted in the files for 14 percent of the accused, and alcohol or drug abuse was noted for an additional 10 percent. Similar observations of the complainants were noted in only .5 percent and .3 percent of the files, respectively, although these figures are much less likely to be reliable than the figures for the accused because the information about the accused was usually recorded in relation to their behaviour after the arrest, bail recommendations or consideration of their ability to stand trial, and no such purpose existed for recording information on the complainant.

4.2 The Offences and Surrounding Circumstances

In this sub-section we present data that describes the nature of the offences that led to complaints and charges of criminal harassment, and some factors that may have influenced the police and Crown response to the complaints.

4.2.1 Relationship of Accused and Complainant

Table 4 shows the relationship between the complainant and the accused. A small majority (57 percent) of the criminal harassment cases were between partners or former partners.[49] This means that section 264 is being used by police for a broader range of circumstances than may have been anticipated by some observers. These other circumstances include the significant number that involved acquaintances such as clients harassing doctors or lawyers, neighbours harassing each other over property or other disputes, or people harassing neighbourhood acquaintances or school mates.

Data reported by Statistics Canada based on police crime reporting indicate that 31 percent of criminal harassment incidents reported to police involve spouses or ex-spouses, 15 percent involve friends (including intimates), and 28 percent involve acquaintances.[50]

Table 4 Relationship between Complainant and Accused

		Frequency	Percent
Current Partner	1	91	1.5
Former Partner	2	331	55.3
Friend	3	28	4.7
Co-worker	4	16	2.7
Acquaintance	5	124	20.7
Stranger	6	70	11.7
Public Figure	7	4	.7
Other	8	11	1.8
Relative	9	6	1.0
Total		599	100.0

[49]The relationship was defined as "partner or ex-partner" if the file indicated that the accused and the victim were at any time involved in an intimate relationship that went beyond casual dating. In almost all these cases, the two had been married or had lived together at some point. The exceptions were cases involving students who had dated for an extended period, and cases in which the two kept separate dwellings but had frequently stayed with each other and had maintained an on-going intimate relationship.

[50]Incident-based Uniform Crime Reporting Survey, 1995, Table 4.10, Policing Services Program, Canadian Centre for Justice Statistics, Ottawa.

Of the 340 cases involving partners or ex-partners, the great majority (95 percent) had a male accused and a female victim. Sixteen women were accused of criminal harassment against a partner or former partner, and twelve of them were charged. While a number of women's advocacy groups have raised the issue of s. 264 being used by men to lay counter complaints it might be noted here that we found no evidence of this practice is the case files reviewed in this study. Finally, the sample also included five same-sex partner cases, two involving men and three involving women.

There were some regional differences in the relationship between the complainant and the accused. The greatest percentage of cases involving former partners was found in Edmonton (78 percent), followed by Montreal (60 percent), Winnipeg (59 percent), Vancouver (52 percent), Halifax (50 percent) and Toronto (46 percent). It is difficult to say to what extent this variation is due to variation in the incidence of different types of harassment, and to what extent police practices come into play.

The third most frequent category overall for the relationship between the complainant and the accused was "stranger" (12 percent). Typically these involved men following women persistently during commutes to and from work, men harassing waitresses or store clerks, or anonymous strangers leaving a series of notes on victims' cars or in their mailboxes, or otherwise stalking them close to their residences. "Public figures," as complainants, were involved in only .7 percent of the cases. This is of note because the popular portrayal of stalking often involves public figures, and what appears to be a greatly disproportionate share of literature on stalking (particularly in the United States) refers to the phenomenon of men and women stalking public figures. It also suggests that the focus of law enforcement research on the psychology of stalkers and the categorization of stalkers according to a range of psycho-pathologies may be based on incorrect assumptions about the relative frequency of "psychopathic" stalking behaviour as against harassment having more to do with power relations between the accused and victims, or other factors.

4.2.2 Characteristics of the Harassment

Table 5 sets out the nature of the harassment that was reported to have taken place. The types of behaviour are listed in an increasing order of apparent seriousness, based on the authors' reading of the case files. Each case is assigned to the "most serious" category that it belongs. Each type of harassing behaviour may have (and very often did) include the types of behaviour above them in the list. For example, harassment involving threats of violence almost invariably also involved repeated following, personal contact at

home or at work, and harassing phone calls or letters. Harassment would often begin with relatively friendly (albeit unwanted) letters or phone calls, and escalate to personal contact, repeated following and sometimes violence or threats of violence.

The most frequent type of harassment involved unwanted personal contact at home or at work but no repeated following (35 percent). "Repeated following" cases included those involving persistent following either on foot or in a vehicle, or driving by or parking near the victims' work or residence to let them know they were being watched. About 20 percent of cases involved repeated following, but no persistent threats of violence and no actual physical violence. Persistent threats of violence were reported in 17 percent of cases, and physical violence took place in 14 percent of cases.

Table 5 Nature of the Harassment

	Frequency	Percent
Phone Calls, Letters	69	11.5
Personal Contact at Home, Work	207	34.4
Repeadedly following; Watching and/or	122	20.3
Threats of Violence	99	16.5
Threats with Weapon in Person	13	2.2
Threats with Firearm in Person	1	.2
Physical Violence	82	13.7
Physical Violence with Weapon	7	1.2
	600	100.0

The duration of the harassment is likely to have a significant influence on how serious the impact is on the victims' lives. Other factors being equal, we would expect that duration could also influence the way the Crown and the courts handle the cases. The duration of the harassing behaviour was ascertained in 585 cases. The harassment lasted for less than one month for 30 percent of the complainants, from one to three months for 28 percent, between three months and a year for 23 percent, and for more than a year for 18 percent.

The repetitiveness of the harassing behaviour is one of the determining factors in deciding whether criminal harassment has taken place. Its repetitiveness will also, it is reasonable to presume, influence how threatening or invasive the harassment is found to

be by the victim. The number of harassing contacts was determined in 553 cases. These may be individual letters or phone calls, personal contacts or following incidents. There were fewer than 10 harassing contacts in 28 percent of the cases, 10 to 20 in 18 percent of the cases, and more than twenty harassing contacts in 54 percent of the cases. Case outcomes did not vary significantly among these three groups of cases.

In a large majority of the files (85 percent) there was no physical injury to the victim recorded. Since physical violence was reported in about 14 percent of cases, there is no reason to believe that this figure underestimates the frequency of injury to victims in the sample. However, it is possible that cases involving more serious injury would not be treated as criminal harassment because the police and Crown would be focusing on the harassment component, but rather on the assault or another serious crime.

4.2.3 Criminal History, History of Violence

There were previous complaints made to police, against the perpetrator by the same complainant, in 32 percent of the cases. In some of those cases more than one complaint was reported (Table 6). Where the accused and complainant were partners or former partners, there were previous complaints in 39 percent of cases. These figures may underestimate the reality. Complaints made to the same police detachment would likely be recorded in the files, but reports made to police in other detachments and other jurisdictions, particularly if they did not result in a charge being laid, would very likely not be recorded in the current file. Where previous complaints were reported in the files reviewed for this study, they often resulted in the police warning the perpetrator to cease the harassing conduct, often reportedly at the request of the victim. In some cases the result of the previous complaint was that the complainant was advised to record incidents of harassment, tape telephone calls, or otherwise document the harassment.

Previous violence in the relationship was reported in 50 percent of "partner" cases. This figure may also underestimate the reality, because it relies on the investigating officers having sought out and recorded the information in the file as part of the case summary or the brief prepared for bail hearing. This would not necessarily be done, particularly where no physical violence relating to the current complaint was apparent. The figure also relies on the complainant having reported the previous violence. Particularly in the case of partner or ex-partner harassment, this would not necessarily be the case.

Table 6 Previous Complaints

	Frequency	Percent
None	409	68.1
One	117	19.5
Two	47	7.8
Three	7	1.2
More than three	21	3.5
	601	100.0

In describing the cases, police briefs sometimes referred to prior breaches of restraining orders on the part of the accused, at times but not always relating to the same victim. This occurred in 18 percent of the files reviewed. In a third of those cases, there was more than one breach reported. Convictions for a prior breach of a restraining order involving any victim were recorded in four percent of the cases, and more than one such conviction was recorded in three percent of the cases. It was not possible from the files to determine whether the reported breaches were acted upon by police, and if so what action was taken and to what effect. It is common for breach charges to be dropped or stayed as part of a guilty plea arrangement, and breach charges may also not result in convictions for other reasons.

As Table 7 indicates, the accused had criminal records in 53 percent of the cases. Of those who had records, 6 percent were for criminal harassment, 28 percent were related to harassment, 25 percent were for assaults (unrelated to harassment), and 41 percent were for other offences.[51]

[51]Where no charge of criminal harassment was laid, the file usually did not include the criminal record of the person against whom the complaint was registered. This accounts for the reduced number of cases in which criminal record is known.

Table 7 Criminal Record of Accused

	Frequency	Percent
No Record	222	46.7
Assault Unrelated to Harrassment	64	13.5
Harassment Related to Charges	71	14.9
Criminal Harassment	15	3.2
Other	103	21.7
Total	475	100.0

4.3 The Charges Laid

We examined 474 cases in which a charge of criminal harassment was laid. Charges were laid by the police in 94 percent of the cases, and private informations were sworn in 6 percent of the cases. All but three of the private informations were sworn in Toronto. Two were in Edmonton and one was in Montreal. Police in Toronto indicated (and this was born out in the files we reviewed) that these were generally cases involving neighbour disputes or disputes between partners for which the police had already determined that charges were not appropriate. The complainants subsequently laid a private information before a justice of the peace, and police were required to investigate again. Indeed, some police indicated considerable frustration with the justices of the peace, because they considered that their time was being wasted. Of the 27 cases in our sample, 10 resulted in all charges being dropped, and 10 resulted in charges being dropped in exchange for a peace bond. Six of the others resulted in convictions for criminal harassment, and one resulted in an assault conviction. Where a conviction or a peace bond resulted, both parties to the dispute often received the same outcome. Fifteen of the cases involved former partners.

Crown counsel's decision to proceed by way of summary conviction or indictment was recorded in 463 cases. Most of the remaining cases resulted in no charge. The Crown proceeded by way of summary conviction in 71 percent of the cases, and by way of indictment in 28 percent of the cases. Three cases went to Youth Court. There was wide regional variation. The Crown proceeded by way of indictment for 68 percent of the cases in Edmonton, 57 percent in Winnipeg, 51 percent in Montreal, 50 percent in Halifax, 12 percent in Vancouver, and five percent in Toronto.

Some of this variation could be the result of inadvertent sampling bias, but interviews with Crown counsel confirm a preference for one or the other. In Vancouver,

for example, the view was expressed that these cases require a quick response and a quick solution. If the Crown proceeds by way of indictment, the accused could elect trial by judge of the Superior Court or judge and jury, which would involve a preliminary hearing and a much slower process. Another prosecutor explained that the penalties imposed for most of the cases would never approach the maximum six months for a summary conviction offence, so nothing would be achieved by going by way of indictment. This Crown counsel also commented that the penalties imposed in Provincial Court in Vancouver were nowhere nearly as harsh as the penalties imposed for offences in, for example, Alberta.

Crown in Edmonton indicated a preference for proceeding by indictment in order to send out the message that the charge was considered to be a very serious one. Crown in several locations suggested that there were plea bargain implications in opting for summary or indictment proceedings. For example, defence counsel might recommend a guilty plea to their client on a summary conviction, but recommend going to trial on indictment because the length of the proceedings could work to their benefit, and because the penalty imposed on a guilty plea could be harsher, making it more worthwhile to fight the charges.

Our data indicate some differences in cases related to whether cases were proceeded with summarily or by indictment. On case outcome, the only significant difference is that 27 percent of summary cases resulted in charges being dropped in exchange for a peace bond, whereas this was the result for 18 percent of cases proceeded with by indictment. In sentencing (as one might expect), 81 percent of those convicted summarily received no jail term, whereas 61 percent of those indicted and convicted received jail terms. Jail terms tended to be more severe by indictment as well, with 13 percent of convictions resulting in terms longer than four months, as compared to two percent for summary convictions.

There were charges in addition to criminal harassment laid against 327 of the accused (69 percent of the cases in which charges were laid). There were two charges laid in 202 cases, three charges laid in 82 cases, four charges laid in 28 cases, and five or more charges laid in 15 cases. Additional charges were most often for uttering threats, assault, breach of recognizance or additional charges of criminal harassment. Particularly in the period soon after section 264 was available as a charge, there tended to be multiple charges of criminal harassment and charges laid for uttering threats, mischief and other conduct that were subsequently dropped or dismissed because they formed part of the primary criminal harassment case. As police and Crown gained experience in using the new section, the frequency of these types of multiple charges was reduced.

4.4 Case Proceedings

Pre-trial release information was recorded in 441 cases (Table 8). In the other cases either no charges were laid, or (in 25 cases) no arrest was made and the accused was served with a summons or issued an appearance notice to appear in court. The majority of accused (62 percent) were released on conditions by a judge or justice of the peace, 19 percent were not released, and 11 percent were released by the police with conditions. About two percent of accused were released without conditions by the police or by a judge or justice of the peace. The files did not usually indicate the position taken by the Crown at bail hearing, the police often recommend detention in the briefs they prepare for the bail hearing, but these recommendations are not necessarily followed by the Crown. Indeed, there is a view held by at least some Crown that police tend to recommend detention routinely, and that their assessment is often not realistic in terms of what the courts will do.

Table 8 Pre-trial Release

	Frequency	Percent
Released by Judge, JP with Conditions	275	62.4
Release by Police with Conditions	48	10.9
Released with No Conditions	9	2.1
Summons, Appearance Notice	25	5.7
Detained	84	19.0
Total	441	100.0

In the files we reviewed it was common for the courts to release an accused on bail despite a criminal record or current evidence of breaches of no-contact orders. In our sample 55 percent of accused with more than one breach reported in the police file were released on bail, and 63 percent with one reported breach were released. Eighty-six percent of accused with no reported breaches were released. A similar pattern is true where the accused has a criminal record of breaching a no-contact order (not necessarily relating to the same victim). Those with more than one breach conviction were released in 31 percent of cases, those with one conviction were released in 52 percent of cases, and those with no breach convictions were released in 85 percent of cases. This review did

not track individual accused to monitor re-offending after the offences in question. Section 264 had not been in operation long enough at the time of the study for such an approach to be cost-effective, but this is an area that would be critical to explore in any future research.

It took an average of 142 days (four months and three weeks) for cases to be processed, from the date of arrest to disposition.[52] Duration varied only slightly according to whether cases proceeded summarily (an average of 146 days) or by indictment (an average of 138 days). There was some regional variation in the duration of the proceedings, with cases proceeding somewhat faster in Edmonton (an average of 103 days), Montreal (128 days) and Winnipeg and Vancouver (139 days), and cases slightly slower in Toronto (an average of 159 days).

Without supporting information such as input from complainants, victim advocates and Crown, it is difficult to assess the impact that the duration of proceedings might have had on outcomes. Certainly, it is frequently argued that a longer proceeding decreases the likelihood of conviction by diminishing the resolve or the ability of the victim to be an effective witness, and that longer proceedings certainly work against the interests of the victim, in that they must endure a longer period of fearing further harassment or reprisal, and wondering what the outcome might be. As well, we have already noted that the time frame within which cases are processed can influence the plea bargaining process, potentially resulting in weaker penalties than would be the case if procedures could move more quickly.

About 17 percent of the cases we reviewed went to trial. Whether or not the Crown proceeded by indictment appears to have had no influence on whether the case went to trial. Nor did the criminal record of the accused appear to influence this. The proportion of accused with criminal harassment or harassment related records was elevated slightly among those who went to trial (up to 23 percent from 18 percent) and those with assault records unrelated to harassment or spousal abuse were represented less among those going to trial (eight percent down from 14 percent) than the average.

Presentence reports (PSR's) and victim impact statements (VIS's) were rarely used in the cases we reviewed. PSR's were considered in only five percent of cases in which a conviction was obtained. VIS's were used in seven percent of cases that went to trial and

[52]The exact date of the laying of charges was not available in most files because the files contained photocopies of the informations without the date stamped on them. However, where that date was available it was within one or two days of the arrest date, except in the few cases where a warrant had been issued for the accused but the accused had remained at large for some time.

five percent of cases in which a conviction was obtained. We cannot comment on whether or not these documents would have been appropriate in the individual cases that we reviewed, but their infrequent use means that, particularly in the case of the VIS's, the courts may not have at their disposal some information that could influence case outcomes and sentencing.

4.5 Disposition of Charges

Crown counsel withdrew or stayed 58 percent of the 474 criminal harassment charges in our sample. Twenty-five percent of the accused pleaded guilty, 10 percent were found guilty, and seven percent were found not guilty. Looking at the outcomes of cases including all charges (more meaningful, since this is the way that the Crown, defence and the courts generally plan strategies and make decisions), we see that in 29 percent of cases all charges were dropped in exchange for a peace bond, and in an additional 20 percent of cases all charges were dropped or stayed unconditionally (Table 9). A conviction on at least one charge was obtained in 46 percent of the cases. Fifteen percent of accused pleaded guilty to all charges, and eight percent were found guilty of all charges. In nine percent of cases the accused was convicted of criminal harassment, and all other charges were withdrawn or stayed.

Table 9 Overall Charge Outcomes

	Frequency #	Percent
All Charges Dropped, Peace Bond	135	28.5
All Charges Dropped, Stayed	93	19.6
Pleaded Guilty, All Charges	71	15.0
Plead Guilty Crim Harass, Others Dropped	38	8.1
Found Guilty, All Charges	37	7.8
Found Not Guilty, All Charges	22	4.4
Drop Crim Harass, Plead Guilty Un-Related Offence	19	4.0
Drop Crim Harass, Plead Guilty Related Offence	19	4.0
Plead Guilty Crim Harass & Some Other Offences	7	1.5
Drop Crim Harass, Found Guilty Related Offence	6	1.3
Not Guilty Crim Harass, Found Guilty Some Other Offences	6	1.3
Guilty Crim Harass, Other Charges Dropped	5	1.1
Found Guilty Crim Harass, Not Guilty Other Offences	5	1.1
Not Guilty Crim Harass, Others Dropped	3	.6
Charges Still Pending	3	.6
Found Guilty Crim Harass & Some Other Offences	2	.4
Not Guilty Crim Harass, Plead Guilty Other Charges	2	.4
Drop Crim Harass, Found Guilty Un-related Offence	1	.2
Total	474	100.0

The rate at which criminal harassment charges in our sample were stayed or withdrawn (58 percent) is considerably higher than comparable rates for criminal charges in general, and for other specific categories of charges. Statistics Canada data on case outcomes in six provinces and the two territories in 1994 shows a rate of about 26 percent for all federal, provincial and municipal by-law offences, and this figure includes a component of charges that were dismissed at preliminary hearing (this would likely be relatively insignificant proportion of the total). For *Criminal Code* offences as a whole, the Statistics Canada figure for stays/withdrawals is 27 percent. The figures for violent offences, assault level 1, and property offences were 29 percent, 24 percent and 24

percent respectively.[53] The rate from the same data for guilty outcomes (guilty pleas and found guilty) was 55 percent for all offences, 43 percent for *Criminal Code* offences as a whole, 41 percent for violent offences, 59 percent for assault level 1, and 56 percent for property offences. These are compared to 35 percent guilty outcomes in this study's criminal harassment cases. Acquittal rates were close to the same for criminal harassment and for the charges reported by Statistics Canada.

Figures for Ontario, which were not included in the above statistics but were available from Statistics Canada through a different data collection process, indicate a much higher stay/withdrawal rate in that province, about 46 percent for all *Criminal Code* offences between April, 1994 and March, 1995. The rate in Ontario for all federal, provincial and municipal by-law offences ranged from 43 percent in 1992-93 to 40 percent in 1994-95.[54] Incorporating Ontario statistics into the national figures would clearly raise the average significantly higher than the 24-29 percent range reported above, but it would still be considerably lower than the rates found in this study for criminal harassment charges. It is unclear how statistics from British Columbia, Alberta, Manitoba and New Brunswick would influence the national average. The Ontario rate for guilty outcomes of *Criminal Code* charges in 1994-95 was 34 percent, and for all offences was 43 percent, 39 percent and 40 percent in the 1992-93, 1993-94 and 1994-95 periods respectively.

Looking again at the criminal harassment outcomes in this study, there were no significant variations in outcomes according to the relationship of victim and accused, with the exception that partners or former partners were somewhat more likely to plead guilty to an assault charge (14 percent as against 8 percent) in exchange for the dropping of the criminal harassment charge. Where there was reported to be previous violence in the relationship, peace bond resolutions and guilty pleas were somewhat less likely than when no previous violence was reported (22 percent of cases as against 27 percent, and 7

[53] *Adult Criminal Court Statistics*, 1994, Case Characteristics Component, Table 6, Canadian Centre for Justice Statistics, Statistics Canada, Ottawa. The figures are calculated from data drawn from courts in Newfoundland, Prince Edward Island, Nova Scotia, Quebec, Saskatchewan, Yukon and the Northwest Territories. It is reported as indicators of case characteristics rather than precise measures because of methodological limitations.

[54] *Adult Criminal Court Caseload Trends*, 1992-93 to 1994-95, Calculated from Tables 1 and 6, Canadian Centre for Justice Statistics, Statistics Canada, Ottawa. This data is reported as indicators of charge dispositions rather than precise measures because of methodological limitations. The fact that the figures reported include a greater proportion of cases in rural and smaller urban locations than national figures would, may influence the reported dispositions. For example, if charges were less likely to be laid in small centres than in the more "anonymous" larger cities we might expect cases in the smaller centres to be stronger on average. Also, the fact that Crowns lay charges in British Columbia and Quebec while police lay them in the other provinces may influence than likelihood that charges will be stayed or withdrawn.

percent as against 18 percent, respectively). Also, where there had been previous complaints to police by the same victim, it was less likely that the charges would be dropped (20 percent as against 16 percent for one previous complaint, and 7 percent for two previous complaints).

Where the harassment was restricted to phone calls and letters or personal contact without repeated following, charges were dropped in about 20 percent of cases, but where repeated following or physical violence was involved, charges were dropped in 12 percent of cases. Similarly, the frequency of peace bond resolutions dropped between the two groupings of cases, from about 30 percent to about 18 percent.

Of the twelve women charged with criminal harassment against a partner, three had peace bond resolutions, two had all charges dropped, two pleaded guilty to criminal harassment and two were found guilty at trial. The three remaining women were convicted of other charges.

There is some significant variation in case outcomes among the research sites. Vancouver and Edmonton dropped all charges more frequently than the other sites (28 percent and 26 percent of cases respectively). The others measured somewhat fewer than the overall figure of 20 percent, with Montreal at 19 percent, Winnipeg at 18 percent, Toronto at 16 percent and Halifax at 10 percent (one case). The larger centres used peace bond resolutions most frequently (Montreal 35 percent, Toronto 33 percent, Vancouver 30 percent), whereas Edmonton (13 percent), Winnipeg 12 percent, and Halifax 0 percent) were less frequent users of peace bonds. Toronto was notable in having a greater frequency of "found guilty" outcomes (10 percent) and fewer "not guilty" outcomes (only one case) than the other sites (Vancouver had 9 percent found guilty, and Halifax had 30 percent three cases). We do not know to what extent this relates to bargaining strategies (and thus the nature of the cases going to trial), or other factors such as the predilections of individual judges or the resources and skill applied to the cases that go to trial.

Looking at criminal harassment charges only, Vancouver, Toronto and Montreal withdrew or stayed charges with considerable frequency (68 percent, 61 percent and 56 percent respectively). Winnipeg withdrew or stayed 49 percent, Edmonton 47 percent and Halifax 20 percent (2 cases). Peace bond resolutions where criminal harassment was the only charge were most frequent in Montreal (35 percent), less frequent in Vancouver and Toronto (26 percent and 20 percent), and least frequent in Edmonton (13 percent), Winnipeg (10 percent) and Halifax (no cases).

The criminal harassment conviction rate in Halifax was 80 percent (8 cases). In Winnipeg it was 45 percent, in Edmonton 42 percent, in Toronto 36 percent, in Montreal 31 percent and in Vancouver 22 percent.

The case files we reviewed rarely contained reliable information on the reasons for the case outcomes. In cases where charges were dropped outright or in exchange for a peace bond, where the criminal harassment charge was dropped and other charges proceeded with, or cases where no charges were laid, we recorded information on the reasons, where it was available (Table 10). In 40 percent of these cases, the criminal harassment charge was dropped in exchange for a peace bond or a guilty plea to another charge. We can make no determination in these cases as to why the Crown chose this route in these particular cases, but the Crown we spoke to indicated that a number of factors come into play in determining the Crown's strategy in dealing with defence counsel:

- the stated desire of the victim whether or not to proceed with the case;
- the strength of evidence, particularly where the victim is not likely to be an effective or willing witness;
- heavy Crown caseloads, and the accompanying pressure to avoid taking cases to trial where other outcomes are available (especially if they are acceptable to the victim);
- the likelihood that a finding of guilt will result in probation rather than incarceration except in very serious cases or cases where the accused has an extensive record;
- the likely benefit to the accused of having the proceedings extend in time; and,
- defence counsel's awareness of the above factors.

As Table 10 indicates, in about 20 percent of the cases in which charges were dropped or stayed, the file indicated that the victim wanted the charges to be dropped, or that the victim did not cooperate with the prosecution of the case in some way. The files in no cases indicated that these were determining factors in the Crown's decision, but it is clear from our interviews that most Crown see no point in taking a case to trial without the victim being willing to testify in keeping with the original statements taken by the police.

Table 10 Reasons for Charges Dropped, Stayed

	Frequency	Percent
Insufficient Evidence	66	17.3
Victim Request	39	10.2
Victim Cooperative	38	9.9
Plea to Other Charge	154	40.3
Accused Medical Problem	6	1.6
Other	13	3.4
No Reason Recorded	61	16.0
Lay Other Charges	5	1.3
Total	382	100.0

Of the 165 accused who pleaded guilty or were found guilty of criminal harassment, 42 (25 percent) received some jail time, ranging from three accused who received one day in jail to one accused who received 35 months. When we include all charges laid against the accused, 16 percent of those convicted received jail sentences. Where an accused is convicted of more than one charge, it is usually not possible to separate out the sentences for each charge.

Statistics Canada data show an average 1994-95 rate for jail sentences of 44 percent of charges resulting in conviction across all *Criminal Code* offences. For violent offences, 41 percent of convictions resulted in jail sentences. The rates for assault level 1, property offences, theft over $1,000, theft under $1,000 and traffic offences were 26 percent, 45 percent, 56 percent, 35 percent and 26 percent respectively.[55]

Table 11 provides a breakdown of jail sentences imposed. With only 165 cases resulting in criminal harassment convictions, breakdowns of jail sentences by research site provide figures too low to be reliable indicators of sentencing patterns, but it is worth noting that in our sample no jail sentences were imposed for criminal harassment convictions in Vancouver, and in Toronto 20 percent of convictions resulted in jail sentences. In Montreal, Winnipeg, Edmonton and Halifax the figures were 33 percent, 36 percent, 37 percent and 50 percent respectively. Including all charges, six percent of those convicted in Vancouver received jail sentences (three people) 15 percent in Toronto

[55]*Adult Criminal Court Statistics*, 1994, Calculated from various tables.

and Montreal, 24 percent in Winnipeg, 28 percent in Edmonton and 43 percent in Halifax (four people).

Error! Reference source not found.Table 11 Jail Terms Imposed

All Charges	Criminal Harassment			
	Frequency	Percent	Frequency	Percent
No Jail Term	123	74.5	293	83.7
Up to 30 Days	13	7.9	21	6.0
1-2 Months	11	6.7	13	3.7
2-3 Months	6	3.6	10	2.9
3-4 Months	4	2.4	5	1.4
More than 4 Months	8	4.8	8	2.3
Total	165	100.0	350	100.0

Nineteen of those convicted of criminal harassment (12 percent) were given fines, ranging from $100 to $1000. Probationary terms were imposed in 144 cases (87 percent of those convicted of criminal harassment), and in 72 percent of those cases probation was the only sentence. The length of probation ranged from six to 36 months, with a median of 24 months.

4.6 Summary Observations

In this section we have presented data drawn from 601 criminal harassment cases in six major Canadian cities. The data provide some preliminary insights into how section 264 of the *Criminal Code* is being used by the justice system to protect people from harassment, and to deter offenders and potential offenders from such conduct. The following observations can be made based on the data:

1. There is a substantially lower proportion of criminal harassment cases in our sample involving partners or former partners (57 percent) than was anticipated by some observers, given the fact that section 264 was designed specifically to address the problem of men harassing their former partners. It is difficult to assess whether sufficient numbers of charges of a given crime are being laid because it presumes knowledge of the number of crimes being committed. In the case of criminal harassment, it is particularly difficult because there is no history

against which to compare current charge rates. As we noted in Section 2.0, there are what appear to be significant numbers of charges being laid in at least some of Canada's major cities, but how the figures relate to the actual incidence of harassment is unknown.

2. The proportion of cases in our sample that suggests a psycho-pathological motivation for the harassing behaviour is minimal. Four cases out of 601 involved the stalking of public figures (a popular portrayal of stalking), and 14 percent of accused were reported as having been treated for, or as requiring treatment for, a psychological disorder. Much of the literature on criminal harassment, and much of the current research in the law enforcement community, focuses on efforts to characterize stalking behaviour according to categories of psychological profiles. The intent is to try to develop predictors of repeat or escalating stalking behaviour, in other words, to use psychological profiling to assist law enforcement in assessing the risk that a given offender poses.[56] This work may well have useful applications in some cases, but our data suggest that there may be an overemphasis in the law enforcement community on psychological, as opposed to other motivations for harassing behaviour, such as those relating to power relations between men and women and the presumption of entitlement to control over the lives of partners or former partners.

3. The great majority of cases in the sample involved behaviour that went beyond harassing phone calls and correspondence, to include repeated direct personal contact. On the other hand, very few cases in the sample involved harassment escalating to physical violence causing serious injury. In order to examine how harassment leads to serious violence and to death it would be necessary to do an in-depth analysis of cases which involved serious violence and death. For example, Rajwar Gakhal had complained of harassment by her former husband before he killed her and eight members of her family in Vernon, British Columbia on April 5, 1996. She and her family had not, however, wanted charges laid against him in these earlier complaints. He then committed suicide. Even had he survived, it is unlikely that a charge of criminal harassment would have been laid. Those who harass their victims and then cause them serious bodily harm are unlikely to be charged simply with harassment.

[56]Police across the country who we spoke to, who have attended seminars, training sessions and conferences on criminal harassment, all referred to the guidance they were receiving and the leading edge research available from law enforcement officials in Los Angeles, California, who (one presumes) face a significant problem with "public figure" harassment.

4. Judging by the outcomes of the sample of cases in this study, the justice system appears to have mounted a weak response to the problem of criminal harassment. About 58 percent of criminal harassment charges were withdrawn or stayed (significantly higher than is indicated in data for most other charges), and of the 165 accused who pleaded guilty or were tried and found guilty of criminal harassment, 72 percent received only probation. Twenty-four percent of those convicted of criminal harassment received a jail sentence, most for less than three months. This is comparable to jail sentence rates for common assault and traffic offences, but considerably less frequent than the rates for *Criminal Code* offences as a whole (44 percent), and for all violent offences (41 percent), property offences as a whole (45 percent) and even theft under $1,000 (35 percent). This kind of result does not appear to achieve a key objective in instituting section 264, which was to treat criminal harassment as a serious crime that will not be tolerated in Canada.

5. Nineteen percent of accused were detained until trial. Many of those released had records of breaching no-contact orders and previous criminal records.

6. The findings on the numbers of breaches of no-contact orders and related convictions are not conclusive, but to the extent that they are reliable they are troubling because they indicate that a significant number of breaches do not result in convictions (and some do not result in charges). While it is common to bargain away "lesser" charges in exchange for guilty pleas, the negative consequence is that the offender's criminal record will not reflect the breach, and therefore the offender's propensity to breach court protective orders. Also, in the case of criminal harassment the act that constitutes a breach will usually be just another incident of harassment that gets rolled up into the original charge (at least in the course of plea bargaining, if not at the outset), rather than, for example, an assault that results in a new charge independent of the original charge. Thus, some offenders who breach no-contact orders may be receiving the message that this is not a serious matter.

   Bill C-27, now before Parliament, will address this issue in part by directing courts to consider as an aggravating factor for sentencing the fact that the offender contravened a protective court order or recognizance at the time the offence was committed. However, it will require that the police report the breach in their Crown brief, and that the Crown bring the breach to the attention of the court.

7. Presentence reports and Victim Impact Statements were almost never used to support sentencing recommendations in the cases reviewed. It may be that the

courts (and even the Crown, in the case of the VIS's) do not have access to sufficient information to base their decisions on.

8. The fact that in about 40 percent of "partner" harassment cases there were previous complaints to police reported, suggests a high risk that a mild initial response to harassment, such as a warning by police, will not have the desired effect. Where it proves effective, it is appealing because it requires few of the increasingly scarce police resources, and is often in keeping with the wishes of the victim not to initiate criminal proceedings. Where it is not effective, however, it carries a risk to the victim. In 29 cases in the sample, a woman incurred physical violence (three of them with a weapon) after they had reported being harassed, and a charge did not result.

9. The fact that 50 percent of victims of "partner" harassment were reported to have experienced previous violence in the relationship indicates a strong link between spousal abuse and harassment, and that current approaches to spousal abuse such as mandatory charging, and approaches being promoted such as enhanced police investigations and access to victim assistance programs, may be worthy of consideration in cases of "partner" harassment.

10. The recording of information in case files, particularly information relating to the Crown's role, is extremely weak. A review of the files offers little (and often no) indication of the Crown's approach at bail hearing or at trial, usually does not indicate when, or if, the victim has been interviewed at any point in the proceedings, and does not indicate the Crown's position in plea bargaining and the reasons for that position. This lack of information makes it difficult to assess the reasons for case outcomes, which is a critical element in assessing the effectiveness of the implementation of section 264.

5.0 CRIMINAL HARASSMENT CASE STUDIES

To supplement the case file data analysis this review included six case studies, which involved a detailed accounting of the events themselves and reporting of the views of the victims, police, Crown attorneys and (in a few cases) victim advocates, based on in-person interviews. The case studies involve cases from across the country, and not necessarily ones that were part of the data sample. They were selected purposefully to reflect a range of types of harassment cases, and a range of types of outcomes, and do not necessarily represent harassment cases in general. They are included in order to provide a flavour of the way the prosecution of criminal harassment cases is viewed by the various participants, and to raise issues that need to be considered in assessing the effectiveness of the new criminal harassment provisions. The cases are reported here in a way that ensures the anonymity of the people interviewed. The points of view of the accused are not represented, and no attempt is made to argue the facts of the cases themselves. Rather, the cases are presented as reported in the police accounts, and as elaborated by the victims.

5.1 Corletta

Corletta met this man in late August, and they began a relationship in which they lived separately but he would stay at her apartment at times, with her and her children. After a few months together, she saw that he was becoming increasingly possessive and forceful in manner, and she decided that she would end the relationship. "I had been in a violent relationship, and I could see what was going on. There was no way I was going to get myself involved in anything like that again!" In October she told the man that she didn't want to see him for a while, and that she was going to New York to visit her brother. He was angry about her backing out of the relationship, and accused her of going to New York to see another man. An argument ensued, at which time he pushed her head several times and threatened to throw a pot of boiling water (which was on the stove at the time) into her face.

Corletta called the police. Two officers arrived, and they removed the man from the apartment and warned him to stay away from her. No charges were laid at the time. The man's harassment of Corletta began that same afternoon, and persisted continuously until his arrest in early February the following year. The harassment consisted of telephone calls, buzzing her apartment and banging on her door, often many times in the same day and at all hours. Despite Corletta's clear insistence that the relationship was over and that he should stop bothering her, the harassment continued. On a number of occasions the police were called, but he would leave before they arrived and could not be located (he officially resided at a relative's home, but was often not there). The message

he presented to her was consistent: they belonged together, and no other man could have her.

One week, after more than 100 phone calls, Corletta had her telephone number changed and unlisted. The man persisted in buzzing her apartment and banging on her apartment door whenever he could gain entrance to the building (the security man knew to watch out for him, but security was not difficult to circumvent). On one occasion soon after this, he told Corletta he had a gun and that if he saw her in the street he would "muck her up", which she understood to mean that he would harm or kill her. The police were called on that occasion, but the man could not be located. In January, the man accosted her outside the laundry room of her building, twisted her arm behind her back and insisted that she take him back. He then confined her for about an hour in an elevator (with the door open, but not allowing her to go up to her apartment or leave the elevator), letting her go finally when she insisted that she had to look after her children. At this point the harassment had become a serious impediment to Corletta's life. She was afraid to leave her apartment, and had friends do her shopping for her. One day in January, her 9-year-old daughter was confronted by the man, who threatened her with his fist and demanded their new phone number. Corletta found her daughter one day soon after, carrying a knife because she was afraid.

Corletta finally came to the conclusion that the harassment was never going to stop, and she went to a justice of the peace at the court house to obtain a restraining order. The J.P. told her that the address she had for the accused was not sufficient for a restraining order. "The J.P. was just blasé about the whole thing, he didn't offer me any support or assistance, he basically told me there was nothing he could do." Fortunately, a woman working as a victim advocate at the court house saw Corletta crying, brought her into her office and heard her story. She called the police and asked them to come and take a statement. The police did so, agreed that it was criminal harassment, and went that day to arrest the accused. "When I first went in to the police station after meeting (the victim advocate) the police questioned whether I was serious about following through with the charge."

The man was charged with criminal harassment, threatening and two counts of assault, and released on bail. Corletta ran into him on a bus, and the man threatened her. While he was out on bail awaiting trial, he continued to phone her but would be silent, and would buzz her apartment but not say anything. "The restraining order didn't do much to stop the harassment, but at least it had the effect of letting him know I was serious."

About one week before the trial, Corletta met with the same victim advocate who had assisted her earlier, and received a description of the court process, how the trial

would proceed, and what her role would be. She was not contacted by the Crown prior to the trial. On the day of trial, she waited at the victim assistance office for an hour or so, and then was told by the same victim advocate that the accused had pleaded guilty. Corletta was asked if she thought the man needed counselling, and she agreed that he did. The Crown never met with her to discuss sentencing recommendations. The accused was found guilty of criminal harassment, and given a suspended sentence and one year's probation, with conditions to keep the peace and be of good behaviour, to have no contact directly or indirectly with the victim or any member of her immediate family, and to not enter the grounds where she resides. All other charges were withdrawn. The issue of counselling for the accused never arose at the hearing.

Corletta was dissatisfied with the result, and still extremely angry (about one year later) with the impact this incident had had on her life. "He should have gotten three years probation, not just one. He'll do it to someone else for sure. In a way, I wish there had been a trial so I could have said publicly what he did to me and what he's like. I only feel safe at home now. He's told me he'll never give up on me. What makes me really angry is that I don't think I'll ever really love a man again."

The position of the Crown in this case was that a probation period was reasonable given that the man had expressed remorse and had not harassed the victim since he was charged. This point is disputed clearly by Corletta in our interview with her. She did not report the subsequent harassment because she knew she had no proof. The Crown was not aware of these subsequent harassments. The fact that the man was now involved with another women was viewed as decreasing the likelihood that the harassment of Corletta would resume.

Overall, Corletta's assessment is that without the chance encounter with the victim advocate at the court house, she would still be being harassed continuously by the accused, and that she did not receive any support or assistance except from the advocate. The criminal justice process helped in that she is not now being harassed and the accused is aware of how serious she is about ending the abuse, but she is not confident that it is over for good, and she believes he will continue to behave in the same way with other women.

5.2 Ann

Ann met the person who harassed her through her work in the service industry, where part of her job was to greet people and be friendly towards them. The encounter with the man who harassed her began with eye contact and a smile. It moved to "let's go for coffee, dinner, etc." Her response was a firm "no". She also added that she had a

boyfriend, and was not interested. This went on for a year. She was then off work for over a year for unrelated reasons. Upon her return, the man approached her, apologized for his early actions, and resumed his behaviour. He said he still wanted to be friends. She said, "We never were friends, and I don't want to be your friend." He went from being very friendly, to being extremely angry, "that's not good enough for me, I want to be friends." At one point he leaned over the counter to sniff at her, and returned to ask her out. He sent Ann notes and gave her a Christmas present. One love note made reference to their compatibility in the "spiritual world". Ann found it eerie. She didn't know how to deal with him or the gift. She said clearly to him that she wanted him to leave her alone.

For Valentines Day, almost three years after first being harassed by him, he came by with a dozen red roses and other gifts on a silver platter. At this point she said she felt physically ill. She called her boss, but he was out of the store. She called over a clerk to witness the encounter, and said that she hoped the gifts were not for her. He became angry and upset. She told him clearly to get out of the store, and to not come back. On her way home from work Ann stopped at the police station to see if anything could be done to make him stop harassing her. She thought, "I can't take this any more. I'm not going to wait until he gets me." He would be outside her store before six a.m., jogging or whatever, when she arrived at work, even though he didn't live anywhere near. He now knew her last name and what shifts she worked. The police told her to go home and call 911 to get a unit out. The police officers she spoke to in response to her call didn't think that they could make the charge stick. According to them, there was no real intent or threat. He was sending flowers and gifts.

Ann called someone she knew at the police station, who referred her to a special unit. This police officer was far more supportive. He told her that, given what she told him, there was sufficient evidence for a criminal harassment charge against the man. The man was arrested (through the use of undercover police officers), and underwent a psychiatric assessment to see if he was fit to stand trial.

The investigating officer was convinced that this was a strong case of criminal harassment, when he first heard the circumstances. There was no ambiguity, the complainant was consistent in making it very plain that she was not interested, and yet the man persisted. The officer arrested the accused and interviewed him. The man's statements were very bizarre (he stated he was having telepathic sex to heal his homosexuality). The investigating officer did not speak to Crown counsel during the investigation. The case was strong. The Crown and police wanted a 30-day assessment, but the judge agreed only to a 10-day assessment period. The officer's 15-year experience told him that this was a very serious case, and that the accused should be in custody because of the possibility of escalation of harassment or violence.

According to the investigating officer, it would have been much more difficult to lay a charge in this case without section 264. Ann perceived a threat, but there was nothing overtly threatening; the man was sending gifts. There was no other obvious section under which to lay a charge. It might have been possible to lay a mischief charge, or to ask for a section 810 (peace bond), or proceed under the mental health legislation, but nothing would be as successful as section 264.

The Crown counsel who dealt with the disposition of this case got the file the day before the accused returned from a psychiatric assessment, suggesting that he was fit to stand trial. The Crown counsel was pleased with the work done by the investigating officer, and thought she had a strong case of harassment. However, the accused was schizophrenic, and there was a possibility that he could be found not criminally responsible on account of mental disorder. She called another Crown counsel who took cases before the Review Board, and concluded there was a risk that the accused might be given an absolute discharge. This risk was increased by the fact that the accused had expressed remorse and because there was no physical violence involved. The prosecutor thought that the case might be considered less serious by the Review Board, even though she considered it to be serious. Defence counsel agreed to a probation order, perhaps because there was always the risk that the accused could be confined indefinitely if found not criminally responsible on account of mental disorder.

Crown counsel asked for a suspended sentence, but the accused was given a conditional discharge and three years probation, with a number of conditions, including no contact with the complainant, and a prohibition on possessing weapons. The accused also agreed to attend at a psychiatric outpatient clinic for treatment and medication. If he did not take the treatment, he would be required to see a probation officer every day. The probation order also included a probation review after three months. The Crown was satisfied with the results, up until the day we spoke with her. She had just received a call from the psychiatrist indicating that the accused was seriously mentally ill. He had been certified under the mental health legislation for a brief period, and all indications were that he was no longer taking his medication. In retrospect, maybe she should have taken her chances with the Review Board. The Probation Review was coming up in a few weeks, and she was also considering a breach of probation charge. There was no indication that the harasser was obsessing about Ann. Defence counsel thought that section 264 was effective in that the accused was intimidated by the process and it deterred him from future contact with Ann.

The officer was satisfied with the work of the Crown counsel and with the results of the case. The prosecution of this case has had a positive effect. It was the best that could be expected. The accused's behaviour could be dealt with by medication.

Ann felt disappointed and let down by the results of the court case. According to her, the probation order was "just a piece of paper." She would have liked to see him locked up for a month or two or three, maybe in medical facilities. The police officer from the specialized unit kept her informed about the case. She talked with the Crown on the phone before the trial and after the trial. Although there was very little communication, Ann was more or less satisfied, except that she thought someone should have told her when the accused was going to court. She would have liked to have been there when he was sentenced. Victim Services was very helpful, and she still talks to the counsellor. The intervention of the criminal justice system did stop the accused's behaviour so far. Ann is not any less scared; the harasser is still there. However, she realizes that she has to educate herself: "I will not let someone take over my life."

Ann has done a number of things to protect herself. She carries pepper spray, and has taken up boxing. She says she is now more violent herself, and has a very low tolerance level for unacceptable behaviour. It has affected her relationships. She thinks the system could be improved by providing better feedback to victims. The victim assistance program was very helpful; it showed that there are people who care. Ann would call the police again if faced with similar circumstances.

5.3 Susan

Susan was involved in a boyfriend-girlfriend relationship with a man for a few years, and the relationship had been getting increasingly abusive. She had never reported the violence because, she said, in her ethno-cultural community she would have received no support - in fact she would have been shunned if she had taken the matter outside the community (to the police). Within her community, the predominant view was that once you were in a relationship with a man, it was for life regardless of how much he abused you.

In August several years ago, Susan was working in the evening at a retail outlet, and the accused came into the store and punched her unconscious. She was taken to hospital, and the police took a statement from her there. Even then, she said she would not have reported the incident, but since it was done in public she had no choice. Three or four weeks after the assault, she was contacted by a victim advocate who suggested a meeting prior to the trial. Susan took her number but did not return the call. Within a day or two the police called, asking her to come to speak to them about the case. She told them to drop the matter, and that she didn't want anything to do with the man. The police called three or four times to try to convince her, and the victim advocate called one more time. Ultimately, the man pleaded guilty of assault and was given a conditional discharge

and eighteen months probation. Susan found out the result months later when she made inquiries.

The man moved out of town with his family after the trial, but Susan was forced to leave her community and move elsewhere because her family was being shunned, and because she was being treated like a pariah for having involved the police and not staying with the man. She was studying at university, but was being forcefully urged to drop her studies and return to her assailant.

Three months later, the man began to call her through friends (in contravention of the terms of his probation). He returned to the city where she lived, and they spoke several times on the phone. "He seemed to have changed, so I agreed to talk to him a bit". He and two mutual friends showed up where she was studying and convinced her to go on a day trip with them (despite her repeated refusals to accompany them). She went, and they took pictures of the four of them together. On that day and on subsequent days, he pressed her to get back together with him, but she refused. Soon, she began noticing the man's friends, or other young men from their community, watching her at work and following her around. She was also receiving anonymous telephone threats and direct threats from the accused. On one occasion she was followed home from her place of work, and she called a mutual friend and was told that the accused had arranged for friends to follow her and watch her wherever she went. She was ready to take action at this point, and called the police.

The police came and took a report, and arrested him right away. She said she was very impressed with the way the police handled the case, and how seriously they took her complaint and her concerns. The accused was detained in jail for two weeks on a charge of failure to comply with a probation order, and then was released on bail. Susan was not informed about his release, she had to "chase down" the information herself. The police then told her that she would have to attend trial, and she was ready to do it at this point.

Immediately after the man's release on bail, the harassment began again, and the calls became extremely threatening. They were done in ways that would make it difficult for the accused and his friends to get caught. One evening, driving home from classes, Susan's car was smashed from behind on a major highway by a car containing people she recognized as friends of the accused. The accident was serious enough that her car was totalled and she was knocked unconscious. She chose not to tell the police that she knew who had caused the accident because the threats on her life had become so serious, and because they had also threatened to ruin the reputation of her sister in the community by posting notices that she was a whore.

As the man's trial for breach of probation was approaching, the harassment continued, and the man was at the same time trying to extort money from Susan, demanding that she steal from her family, sell herself, or whatever it took to get the money. Ultimately, Susan arranged to have money placed in a bank account, and she agreed to meet with the accused to get him the money, on the understanding that he would then leave town and stop bothering her (the threat on her sister's reputation appeared in our interview to have had a major impact on her choice of action she was convinced her sister's life would be ruined by these people). When they met, the man insisted that she stay with him for several days until the day of the trial, and he brought her to a motel room where she remained for several days. For most of the time there she said she was not physically forced to stay, but there was no doubt in her mind that there would be serious consequences if she left (for example, when he went off to get money from her account). The money could only be withdrawn in relatively small amounts, so this process took several days.

Throughout the period in the motel room, the accused demanded that she testify on his behalf, and that she return to him, but she refused. The night before the trial, he got violent, beating her and tying her to the bed. The following day, she managed through trickery to phone her father and advise him of her whereabouts. The police arrived and arrested the man. They found clothes hidden in the motel by the accused and materials used to tie her to the bed. They also had the testimony of her father about the phone call, with her showing obvious fear.

The trial on the breach of probation charge was delayed because of the new charges. The man was charged separately with forcible confinement, and went to trial on that charge first. Susan was informed of the new trial date less than a week before, and was never informed at all about how it would proceed, until the victim advocate called in the last week to meet with her. Then, the trial was delayed several times, first because the case was re-assigned to a Crown who had not had time to review it. The case was subsequently re-assigned, and Susan met with the new Crown two days before the trial, and again with the Crown and the victim advocate the night before the trial. She came to court on the trial date, but a strike at the court house resulted in the case being delayed and reassigned again. In the end, Susan had to come to court eight times, and the trial itself was split into five separate dates. The defence denied that there had been forcible confinement. The accused was found not guilty, because it was felt that there was doubt about whether the confinement had been forcible, given that she had gone to the motel without physical coercion, and because the defence brought forward evidence that she had willingly spent time with the accused prior to the incident in question (for example the photographs from the day trip she took with the accused and their mutual friends, which Susan came to believe had been set up deliberately for this purpose). Throughout the trial (until the judge ordered the courtroom emptied) the accused's friends who had assisted in

the harassment sat in the courtroom and behaved in ways clearly designed to intimidate Susan. This was clear to the Crown and to the police, and is recorded in their records.

Susan met subsequently with the Crown and the police, and they decided together not to pursue the remaining charges, including criminal harassment, threatening death and failure to comply with a probation order. The Crown and police said that the decision was made primarily with a view to meeting the interests of the victim, who simply wanted the whole thing ended. There was concern that most of the evidence had already been entered into the record in the unsuccessful confinement case, and that this might prejudice the case at hand. Overall, the Crown said, it was still felt that there was ample evidence and a reasonable likelihood of conviction, but that the overall best result for the victim was to not proceed. The Crown also said that the police investigations had been thorough. The victim agreed with the assessment that it was best to drop the matter, both in the meeting with the Crown and police and at our interview with her.

Susan told us that the night after the finding of not guilty on the confinement charge, the harassment started again. This time, however, she decided not to inform the police. "It is obvious to me that the justice system can do nothing to protect me. The judge refused to look past the defence arguments to what was really happening and what had been happening for a long time. He obviously felt no responsibility to put a stop to this behaviour. This guy puts me and my family through hell, and I have absolutely nothing to show for it!" Susan told us that she had every expectation that the harassment would continue and would escalate, and that there was a serious risk that she would be killed eventually by the accused. But, she said, she will not call the police again because the result will be of no benefit to her and it would likely worsen the harassment, both from the accused and his friends, and from the community in general.

5.4 Barry

Barry owns a service business. One day, an acquaintance came to his business and threatened him. He yelled and swore at Barry, and told him that his friends from jail were going to "get him". Later, the harasser phoned and said, "You're dead." The harasser was a customer who had been coming in off and on for years. At one point he had been told never to return. He apparently held a grudge. Barry thought his life had been threatened, and he really didn't know why. Not wanting to become a victim, he called the police. A police officer arrived within an hour, and Barry was satisfied with their approach.

By the time the police arrived, the perpetrator had already left. However, the police officer knew the harasser from previous contact. He had been in jail for harassing

a woman, and there was another investigation under way on threatening and harassment charges. The police officer arrested the accused, and was of the view that he had a strong case of harassment. His past experience with the harasser added credibility to the victim's case, and made his investigation easier. He was well aware of section 264. and considered it important to proceed with the case if there was evidence of harassment. Prior to section 264, the case could have been dealt with as uttering threats. The officer did not hear what the final disposition was, and had had no contact with the accused or the victim since that time.

There were a number of other outstanding charges against the accused, so the Crown told Barry that he did not have to testify. Barry heard there had been a restraining order against the harasser, and so when he called Barry, Barry told him that he wasn't supposed to contact him. Apart from the phone call, the restraining order has been effective. Barry said his experience "went as good as it could go." However, in speaking to some female friends, he found that they didn't know how they would deal with harassment. He thought there should be more public education on the issue. He recognized that the harassment he experienced was quite different because "I am a guy". This perpetrator was mad at him personally, "thinking I had wrecked his life by not allowing him in the (business). The women Barry had spoken to had to deal with infatuated guys who wouldn't let them go. For Barry, his was just an isolated incident, and the system "cleaned it up very quickly." The incident had little impact on him.

5.5 Maureen

In January of the year in question Maureen began finding notes on the windshield of her car from an anonymous person indicating that he was watching her, and suggesting, for example, that she should smile more. For a few weeks the notes were left three or four times a week, and then they started getting more frequent and more suggestive in nature. One note was a clipping of a newspaper story about a sexual assault case, with the harasser's commentaries on it. Another was a Valentine suggesting that Maureen go on holidays with the accused. Finally, in mid-February, she found a note inside her car, and she decided to call the police. At this point Maureen had no idea who the perpetrator was.

The police came and took a statement and the notes she had collected, and told her that an investigator would call her. When she received more notes, she informed the police again. In about a week, investigating officers came to meet with her. They suggested that she maintain her usual routine, and that they would monitor her car. They also suggested that she buy personal alarms for herself and her son, which she did. Over a four-month period, the police periodically monitored her car, but were unsuccessful in

apprehending the harasser. Toward the end of this period, the notes indicated that the man was watching her as she read the notes, and this made Maureen extremely fearful.

In April, the police came to Maureen's apartment to inform her that the man had been identified through fingerprints on the notes (he had been arrested in the past for assault causing bodily harm and assault; the former charge had been withdrawn and the latter had been withdrawn in exchange for a peace bond). The man was a fellow resident in Maureen's apartment building who she did not know. The police said that he had been arrested, and that she would hear about the upcoming trial but that it would take a while. She was told that he had been released on a recognizance, on condition that he not contact her in any way and not go in the underground parking garage of the apartment building.

The notes stopped, but three days later she was in the underground parking garage with her son and the man addressed her - this was the first time she had seen him knowing that he was the harasser. The man apologized to her, but she viewed it as being just an excuse to confront her. In subsequent days he would stop and say "hi" to her in the apartment hallways. Maureen called the police on these occasions, feeling that he was deliberately harassing her; she said she never found out what happened as a result of these calls, but that she was never asked for a statement. She no longer called the police, even though she said the accused sent neighbours in the building down to her apartment to tell her that he was harmless, and spread rumours about her to people in the building so that she became aware of people staring at her. "At that point I didn't know whether the charges had been dropped, or what. I didn't know if I was supposed to keep contacting police, or keeping track of information or what."

In December, Maureen was called by a victim advocate. She met with the advocate and had the court process explained to her, and some questions answered about what was going on in the case. At that time the possibility of a peace bond resolution was raised, and Maureen objected to this approach, and expressed concern for her safety, particularly in light of the post-arrest behaviour of the accused, and how it was affecting her home life. A note registering her objections was made in the case brief by the victim advocate. One week before trial in February Maureen met again with a victim advocate and made it clear she was still fearful, and wanted absolutely no contact with the accused. The victim advocate advised the Crown and the police of Maureen's concerns, and expressed her own position against a peace bond solution.

Later in February, on the way down the hall to trial, the police asked her to sign a paper agreeing to a peace bond, saying that the Crown had decided to proceed on that basis; she never met with the Crown. She said she was a bit overwhelmed by the process and didn't say anything at the time, but that she felt extremely angry about it afterwards. "I had heard from others that peace bonds were garbage, so I didn't want that." The

Crown's position was that there had been no action since the arrest (disputed by Maureen), the man had no criminal record, and there had been no violence. He viewed the file the first time on the day of trial (the common practice except in particularly serious crimes), and had spoken to the defence counsel, who indicated that the accused had already started to move out of the building, and was going to be leaving the country for a week or so. He informed defence counsel that he had clear evidence the fingerprinted notes and a statement from the accused admitting to the harassment. To avoid trial, defence agreed to a peace bond, with a condition that the accused move out of the building. Almost three months later, the man had still not moved out. Maureen had never received a copy of the peace bond, and had never received word about what had happened at the hearing where the peace bond was supposed to have been put into force. The man was still living normally in the apartment building, still spreading rumours about Maureen, still in the laundry room etc. "I have to avoid him! It's like I'm the criminal."

At the time of the interview (three months after the peace bond resolution was agreed to), the police were still investigating reports that the man had not yet moved, and there was speculation that he might be charged with a breach of the peace bond, but no definite action had been taken.

Overall, Maureen felt very much betrayed by the justice system. "I wouldn't bother calling the police again. I've lost all faith. I try to teach my son to do the right thing, and to call the police if there is a problem. Now he sees (the accused) all the time, and asks me why he's still around bothering us. All I can do is say there's nothing we can do. I've lived in this building nine years, and they're not going to push me out, why should I have to move. I've already gotten rid of my car so he can't trace me." Maureen did say it felt good to have support from the victim advocates, to have someone she could trust and who made her feel like she had not done anything wrong.

The victim advocate is also extremely dissatisfied with the handling of this case. "The Crown had no basis for concluding that the guy was harmless. Peace bonds carry no accountability with them. It was absolutely the wrong decision. (Maureen) needed a result that included an enforceable restraint, someone responsible and accountable to monitor the accused's behaviour, someone to assess the need for counselling for the accused, and a record of a guilty plea. The peace bond offers none of these. It would have been no more work to press for a guilty plea."

5.6 Cathy

Cathy's former boyfriend would not leave her alone. There were numerous telephone calls at all hours of the night. He would come to her home and yell at her from

the street. He called her at work, and said "I am going to take our job from you." He was trying to embarrass her. She didn't really fear for her physical safety, but she feared not knowing what he would do next. After a couple of weeks, she called 911, and two police officers came to see her. The perpetrator had just called, and he showed up after the police had arrived. The police talked to him. They tried to settle Cathy down. As far as Cathy was concerned, the police officers had no intentions of doing anything about it. They didn't write up a report. They asked Cathy, "Did you know he had a criminal record?" The implication was "you knew what you were getting into." The police officers appeared to see it as a lovers' quarrel. When they spoke to the perpetrator, he was calm and agreeable. Within ten minutes of the police leaving, the perpetrator was yelling through her window.

This was Cathy's first contact with the police, and she was not impressed with the results. She felt that they didn't know what to do, that they didn't think it was serious enough. Cathy thought she would have to be hurt for her complaint to be considered valid. She was prepared to go to the station to speak to someone about it, but they said it wasn't necessary. She expected the police officers to write up a report and to lay harassment charges. They were not prepared to take a formal statement, or to tell her when she could go down to the station. She had expected them to tell her what to do. She also expected some follow-up, and there was none. She had wanted charges laid, and for the person to be taken away, given a warning, and perhaps jail time.

She finally called someone she knew in the specialized sexual assault unit, and things improved immensely. The investigating officer made her feel safe in that he was actually doing something about the harassment. He also gave her advice, and told her to hang up if the harasser called. If the harasser showed up at Cathy's home, the investigating officer would arrest him. A few days later the harasser called Cathy, and he was arrested. He was held for a psychiatric evaluation, and his bail conditions included a no-contact order.

The investigating officer was first contacted by someone who worked in his unit and knew the victim. The police officers who had responded to the 911 call thought that a warning would be appropriate. That didn't work, so the investigating officer brought the accused into the police station, and had him sign a statement that he understood that he would be arrested if he ever contacted Cathy again. When he did, he was arrested. The officer thought he had a strong case (especially with the earlier acknowledgement), and did not need to talk to Crown counsel about it. The accused was known to police, but not to his division. The officer felt that while there was never really enough time to do everything that you want to, he was satisfied he had done what he could on the case. Section 264 was helpful, in that it is a more powerful tool, and it is not necessary to show the victim was in danger, only that she had a well-founded fear. The only other option

prior to the criminal harassment section would have been for an order under section 810. A criminal harassment charge is a much more effective means of halting harassment than a peace bond. At first Crown counsel didn't think that having the harasser sign the statement was a good idea, but the officer felt that the prosecutor might have changed his mind when the accused pleaded guilty. The victim was very upset, but he has heard that she is apparently doing fine now.

Cathy preferred not to go to court. She just wanted her former boyfriend to stay away. She would also have liked him to receive some jail time, and two years probation with a no-contact order. She was prepared to go to court if that was the only way she could get a lengthy restraining order. In the end, the harasser was given a one-year probation order. Cathy would have preferred two years, in the hope that it would be sufficiently long for him to forget her and move on. She would have found the one year more acceptable if that was the result after she had gone to court. The victim services organization sent her two letters containing questionnaires. It appeared as though the forms were for victims who wanted compensation. She didn't fill them in, and the Crown didn't mention it. In fact, she found it quite bothersome to get mail about the case when she didn't even get a follow-up call from the police. She was also uncomfortable that her name was now on the records.

Cathy had support from her family and friends, and she said the situation wasn't that bad. It made her empathize with women who are really badly off, and who don't have a contact in the police department or who don't run across a sympathetic investigator. In order to protect herself, Cathy has moved, installed an alarm system, purchased two bulldogs, and acquired a parking pass for secure parking. Her number is unlisted. She is surprised that she has not heard from the accused, but she is in a much better position if he comes back. She now realizes that she has to take matters into her own hands to get things done; calling the police doesn't mean they will help. She is also confident that the investigating officer would arrest the accused if he returned to harass her. She feels that the criminal justice system worked in that the harassing behaviour stopped. She would not call 911 again in similar circumstances, as even the operator wasn't helpful. Cathy had insisted that someone come by, but the operator couldn't tell her when or who it would be. It took the police officers a long time (it seemed to Cathy like an hour, but it is not known how long it actually took) to come by.

For Cathy, it was a "bad experience", and she had a number of suggestions for improving the justice system. When a woman makes an initial contact with the police, there should be one person to act as a liaison. She should not have to put her life on the table for every officer who is on duty that night. There should be a follow-up in terms of how she was dealing with the situation. She eventually got a second copy of the probation order, after she called the court house and ordered her own copy. The Crown

should take more than five minutes to talk to the complainant. Complainants should be given the option to go to court and say what they want. The accused needed counselling, as he would do the same thing to someone else. It would have been useful if someone had spoken to the accused before it got as bad as it did. But, she feels he is a person who has no fear of the police, and so maybe it wouldn't have worked. It would have been useful to Cathy to have had someone to talk to confidentially, and be told the best way to get rid of him.

6.0 INTERVIEW FINDINGS

In addition to the interviews conducted for the case studies, we interviewed a total of thirty-six front-line victim advocates, Crown attorneys, police, justice policy officials and defence counsel across the country. The intention of the interviews was to make a preliminary assessment of the effectiveness of section 264, and to identify issues requiring further investigation. The findings reported here are not necessarily representative of the full range of opinion about the new criminal harassment provisions, but they offer a variety of perspectives from key groups involved in their implementation. The findings are organized into three sub-sections: the legislation itself; the administration of the new provisions; and, barriers to effectiveness.

6.1 The Legislation

We asked the people interviewed to comment on whether the new section is proving useful in dealing with the kinds of harassment it was intended to address, and whether it appeared to be an improvement over *Criminal Code* sections available to police and the Crown.

- Police unanimously supported the new provisions, saying that they represent a substantial improvement in the charges available to address harassment. In many cases prior to August 1993, police could see that harassment was taking place and that it was having a serious impact on the victim, but unless there was a clear and substantiated threat of harm they could do little except to advise the victim to seek a restraining order. Now, they say, there is an effective vehicle to deal with such cases, particularly since the charge encompasses both threatening and harassment, and allows for consideration of background information in establishing whether the complainant has reason to fear for her safety. They said that the admissibility of pre-charge behaviour and pre-August 1993 behaviour is positive, and that the courts also appear to be taking into account gender as a factor, even though the "reasonable person" standard still applies, and that "safety" was being viewed as including psychological as well as physical well-being.

- Police also said that having criminal harassment be a hybrid offence as opposed to a summary conviction offence is of assistance in that it gives police broader powers. Some police said the maximum penalties available (even for summary conviction offences) are never imposed, so the existing maximums are more or less adequate. Others said raising the maximums would be beneficial because the courts would be more inclined to raise the sentences being imposed, even though the maximums would still never be reached.

Several officers noted that raising the maximum penalty for a summary conviction to 18 months (as it is under section 364.1) would allow most cases to be heard in provincial court with no preliminary hearing, and would result in speedier outcomes.

- With two exceptions, Crown attorneys found section 264 to be an effective means to prosecute harassment. One noted, "I don't know what we did without it....We use it all the time." Crown generally pointed to the same advantages as those attributed to the police above, but some additional points were raised:

  - the section provides for another means to deal with violence against women, and stalking is often seen as more serious than wife assault (as one Crown noted, because it also happens to men). There has been a long history in our society of accepting wife beating. Men could rape their wives legally until 1982. But there is not the same history of saying its alright to follow someone, so criminal harassment can be seen by some judges as more serious. "Some judges still don't see wife assault as assault."

  - victims are often blamed, particularly in spousal abuse cases, but less so with stalking, because they have said no. It gets rid of some of the victim-blaming.

  - more evidence is admissible on the stalking charge than on, for example, assault, and it is easier to show how serious the behaviour is, even when the individual contacts may not seem that serious. Stalking deals with the whole relationship and puts it in context.

- Two Crown attorneys agreed with Manitoba's proposal to stiffen penalties, especially for a second offence or an offence where a restraining order is in place at the time. They said this would send a message to judges that Parliament sees this as more serious.[57] (Crown generally thought the existing maximum penalties were adequate, mainly because they were never approached in any case.)

- One prosecutor said there should be a preamble to the legislation, as in the case of the rape shield law, to illustrate to criminal justice personnel what Parliament was concerned about in enacting the legislation.

[57]A Bill currently in Parliament proposes two amendments relating to sentencing in cases of criminal harassment, including a directive that courts consider as an aggravating factor for sentencing the fact that the offender contravened a protective court order or recognizance at the time the offence was committed, and that murder be considered first degree murder when the death is caused while committing or attempting to commit criminal harassment with the intent to cause the person to fear for her safety or the safety of anyone known to her.

- Two Crown we interviewed suggested that while the new section is generally a big improvement over what was available before, there are several problems with the wording of the section that make it unduly difficult to obtain a finding of guilt. First, they said that the reference to "repeatedly" in subsections (2)(a) and (2)(b) is being defined in different ways, and that some judges have interpreted it as meaning "repeated many times", whereas the intent was probably less stringent than that. Second, they said that the whole of subsection (1) was chaotic and unnecessary, in that it creates a complex configuration of what has to be proven. For example, they said that "knowing...or recklessly" sets an unduly high standard just the intention to commit the acts delineated in subsection (2) should be sufficient. There is no need for including the subjective element of fault, and it lays the section bare to a drunkenness defence. As well, they said that the reasonable standard of fear required in subsection (1) is counter to the overall sense of the section, which is that the behaviour in question is inherently fear provoking. In summary, they said that their problems with the legislation would be taken care of largely by eliminating the whole of subsection (1).[58]

- One Crown noted that whereas the charge of watching and besetting that was previously used in some harassment cases required a very high standard of repetitiveness, section 264 reduces the standard for repetitiveness because of the fear element. The same Crown pointed out that because section 264 covers multiple conduct under one charge, there tends to be a less strict standard for each element.

- Defence counsel generally saw section 264 as a reasonable and useful section, but they expressed a few concerns:

    - some Crown don't just view section 264 as another offence, they view it as something of a political tool, and they can be a bit too eager to lay charges where they are not warranted.

    - the charge can be difficult to prosecute because conduct doesn't always fit into the three areas neatly. There is a bit of a grey area as to the accused having doubt about the finality of the break-up and about where on a continuum of ignorance and criminal behaviour a particular conduct lies. Attitudes and levels of tolerance can vary considerably among police, Crown and judges.

[58]Arguments similar to these respecting the undue limitations imposed by subsection (1) were made before the Justice Committee reviewing Bill C-126 in representations by a number of provincial justice ministries prior to the enactment of the legislation.

- one defence counsel characterized criminal harassment as an offence in which there is not a lot of evidence, "just one person's view".

- The views of victim advocates varied considerably, from strong support for the legislation to strong opposition to it.[59]

- The fact that the new section takes into account the social context of a relationship between victim and offender was viewed by most advocates as an important improvement over previous offences used.

- Women who report harassment to advocates are generally encouraged to call 911, in order to help build a file of evidence against the accused.

- One advocacy group was of the view that sufficient legislation was in place prior to the enactment of section 264 (such as public nuisance, trespassing, threatening, watching and besetting, interference), and that the new section is of no assistance in protecting women. In fact, they said, the legislation was making the protection of women more difficult, in that some men were using section 264 to harass battered women by laying complaints themselves. Such counter-complaints, they said, were less common before. The organization has dealt with a number of cases in which they had to lobby strongly to get charges of harassment against battered women dropped. This advocacy group indicated that the section has done more harm than good because it has created a false sense of security and a public belief that women are better protected, when in fact it has done nothing to protect women.

6.2 Administration of Section 264

We asked respondents whether they thought the new section was being effectively implemented by the police, Crown and courts.

- police we interviewed thought that some of their fellow officers understood the new section well and conducted good investigations, while others did not.[60] As

[59]Advocates included battered women support service workers, rape crisis workers and court-based victim service workers, the latter employed within the criminal justice system.

well, some officers treat criminal harassment as part of the criminal justice response to violence against women, while others tend to view it as just another charge they can use. This difference, they say, can have major implications for the way criminal harassment cases are investigated. On the positive side, an officer who understands the context of spousal abuse will tend to collect better, more relevant evidence and will be more likely to probe beyond the obvious circumstances of the cases. On the negative side, some officers are reported to have a sceptical view of cases involving spousal violence or harassment (in part because they have handled so many cases in which the victim ends up not cooperating with the prosecution, and in part because they have seen so many offenders get barely a slap on the wrist from the courts). As a consequence, they may be reluctant to enter into a lengthy investigation on a harassment charge unless it appears quite serious to them.

- Crown generally said police have learned since 1993 to use the new section effectively, that the evidence they collect is usually sufficient to make the case. One Crown noted that police have consulted with them on numerous occasions about criminal harassment charges, which indicates to the Crown that the police are taking the charge seriously. Crown said that they have to go back to police only occasionally to get additional information.

- One Crown suggested that it would be a good idea for police to have a checklist to use for investigating criminal harassment cases, as they do in some jurisdictions for other domestic violence charges.

- Victim advocates were again divided on how effectively the police were enforcing section 264. Some said that the police were becoming more responsive to women's 911 calls, especially in periods following serious murder cases involving former spouses. They noted that where there was a special unit to deal with spousal violence, there was more likely to be an effective police response.

- other advocates were entirely unsatisfied with the police response. They said the same situation exists today as it did prior to the legislation: the response is slow, inadequate and ineffective. The police are viewed as having no problem responding quickly to male complaints, but do not take complaints from women seriously. They suggest that the requirement to respond quickly and effectively to

[60]In most jurisdictions in our study bulletins have been circulated by Crown offices to police, and police have had at least some specific training in handling criminal harassment cases.

calls from women who are battered should be written into police job descriptions, and that there should be specific sanctions for not doing so, such as the withholding of funds from police units or individual officers.

- the latter group of advocates said they have had to lobby police on a number of occasions to ensure that police laid charges against an harasser. They believe that citizens should be able to engage the law without the assistance of an advocate. If there is insufficient evidence the police should be required to conduct further investigation. They said that police advice to women to keep a journal documenting incidents of harassment is "outrageous and unacceptable" That is "the job of the police...it's called an investigation."

- advocates said that police are wasting their time creating profiles of stalkers so they can determine who are the most dangerous stalkers, and when they should respond. The police are seen by some advocates as preferring to deploy staff to fight property crimes, and what they see as more high profile or macho kinds of crimes. They said the police are quite aware of what is going on, but simply refuse to respond to women's calls and know they can get away with it.

- other advocates indicated that they have dealt with many officers who are very dedicated and understand domestic violence and its relationship to criminal harassment, but that they have dealt with others who simply don't know how to conduct a sufficient investigation in such cases, and fall back too easily on blaming the victim for not wanting to go to court and testify.

- police generally felt that they were holding up their side, but that the crown and the courts were letting offenders back out on the streets with only very minor sanctions, and that this was delivering a clear message to offenders that they can get away with the behaviour.

- police, advocates, some provincial policy officers and even some Crown agreed that the Crown was far too often dropping charges or bargaining charges down to peace bonds or guilty pleas with suspended sentences. (To greater or lesser degrees they thought that time and resource pressures were largely responsible for the approach taken by the Crown.) They also agreed that the sentences imposed by the courts are usually far too lenient to be effective.

- Crown were criticized by advocates for not spending enough time on individual cases, including spending sufficient time with complainants to understand adequately the nature and seriousness of the harassment and the impact it was having on them. It was felt that victims generally do not receive sufficient support within the system, and are thus often not willing to undergo what is demanded of them by the Crown. They said that the Crown should be required to proceed with a charge if the victim wants them to, and should send the police back for further investigation if it is needed to strengthen the case.

- most Crown agree that being able to conduct interviews with victims and spend some time on individual cases is crucial to effective prosecution, but say that pressure is actually moving things in the opposite direction that the trend is toward keeping as many cases as possible out of court.

- some advocates said that far too many cases are being prosecuted as summary offences rather than by indictment, and that this contributes to the charge not being taken as seriously. On the other hand, some Crown point out that they are instructed to send only cases where significant violence is involved or where the harassment is tied to another indictable offence, to superior court. "We get a lot of flack if we take 'garbage' up to superior court".

- some Crown said that pressure on the courts to limit incarceration is resulting in far too many suspended sentences with probation, and too many references to treatment and anger management programs that are not available within a reasonable time period.

- the extreme caseload demands of Crown are widely viewed as undermining prosecution efforts.

6.3 Barriers to Effective Implementation of Section 264

We asked respondents to identify the barriers that exist to using section 264 effectively to deter harassment and to protect victims and potential victims, and in particular women.

- many respondents viewed resources for police and the Crown (and the lack of political will indicated by the lack of resources allocated) as a major barrier to an

effective criminal justice response to harassment. Limited resources and heavy caseloads are viewed as resulting in investigations that are not as thorough as they could be, Crown who are not familiar with cases they are responsible for prosecuting and who are instructed to avoid trial at all costs, and victims who have barely been talked to prior to trial.

- gender bias is also viewed widely as being a major barrier to the effective handling of criminal harassment. As one Crown put it, "...the majority of criminals are men, the police are men, and defence counsel are men (women don't last as defence counsel, at least with the more serious crimes). There are women Crown counsel, but the managers and decision makers are men. Most judges are men. The decisions by women judges are more sensitive to the lives of women. Women judges are starting to make a difference, but there are still areas where there are very few women judges."

- judges were singled out by many respondents as being particularly insensitive to the impact that criminal harassment has on women's lives, and for reflecting this insensitivity and lack of understanding in the meagre sentences they impose on offenders. Some variation is acknowledged in fact, it was pointed out frequently by police, Crown and advocates that it is often easy to predict the outcome and disposition of cases just by knowing in whose court a given case is to be tried.

- some respondents pointed out that in most jurisdictions criminal harassment is not treated, either by police or the Crown, as a kind of women abuse, and is therefore not usually under the responsibility of special units trained to handle such cases. Where special units (particularly police units, but also dedicated Crown units and even courts, in the case of the Winnipeg Family Violence Court) are assigned to criminal harassment cases that involve partners or former partners, the cases are viewed as being better handled and resulting in a more satisfactory result for women victims.

6.4 Conclusion

This section reported the findings of a small sample of interviews with people involved in the implementation of section 264. In the next section of the report, the authors' conclusions and recommendations are presented.

7.0 CONCLUSIONS AND RECOMMENDATIONS

This final section of the report draws together the findings from the case file data analysis, case studies and interviews, and presents conclusions that these findings suggest about the effectiveness of section 264 in prosecuting harassment behaviour, and in protecting victims and potential victims of harassment, primarily women. Some recommendations are also provided for the Department of Justice and for other departments and agencies responsible to implement an effective criminal justice response to harassment.

7.1 Conclusions

1. There have been significant numbers of charges of criminal harassment laid in the major centres covered by this study; sufficient to begin assessing how the criminal justice system is handling the new section 264. This study did not attempt to assess how the number of charges might compare to the number of incidents of harassment that have taken place. An accurate count of incidents of criminal harassment would be impossible to obtain, but surveys of the general population, such as Statistics Canada's General Social Survey or Victims of Wife Assault Survey could provide some indication as to its prevalence if criminal harassment were tracked separately from other variables.

2. The numbers of criminal harassment charges withdrawn or stayed by Crown, and the numbers of charges withdrawn in exchange for a peace bond, are very high in comparison to outcomes for *Criminal Code* charges as a whole and for most specific categories of crime. The fact that almost 60 percent of criminal harassment charges are withdrawn or stayed cannot be seen as conveying the kind of strong message that was intended by the so-called anti-stalking legislation: that criminal harassment is a serious offence and will not be tolerated. The fact that 75 percent of those convicted of criminal harassment received either probation only, or a suspended sentence, also compares negatively with figures for most other crime categories in terms of strength of sentence. The experience to date conveys the message that offenders will, in the large majority of cases, be let off with no penalty, and that even if they are convicted, the justice system will impose only a mild rebuke. A previous criminal record, a record of violence against the same or other women, or a record of breaching court protective orders by no means assure a stronger sanction from the justice system.

3. Sentences imposed by the courts in criminal harassment cases have been weak relative to what was hoped for by everyone consulted for this study, including people involved in developing the legislation.

4. The great majority of accused are released prior to trial; many of them have previous criminal records and a significant number have records of breaches of court orders, and are reported to have been violent with their partners in the past. Courts understandably view the removal of a person's liberty as a serious matter, and set a high standard for pre-trial detention. On the other hand, in the case of criminal harassment it can be argued (and shown clearly in many cases) that the personal liberty of the victim can be effectively removed if the accused is at large. It may be that the courts (and perhaps the Crown as well) do not have sufficient information in specific cases, or understanding of the phenomenon of harassment in general and its inherently repetitive and invasive (and usually insidious) nature, to properly assess what constitutes a risk that harassing behaviour will take place once the accused is released.

5. While the data are not conclusive, they suggest that breaches of no-contact orders often do not result in convictions, in part because the charges are bargained away in favour of guilty pleas on other charges. The result is that offenders do not carry a record of the breach of a court order, and that the courts in subsequent hearings do not have the information they should have to make decisions about pre-trial release or detention, or about appropriate sentencing.

6. Section 264 itself is generally viewed as being a major improvement over previously existing mechanisms for prosecuting harassers--it has the potential to be effective because it encompasses largely the range of behaviours of concern to victims, and enables prosecutors to invoke the broader context of the relationship between accused and victim in building the case.

7. Some serious barriers are widely viewed as preventing the effective realization of the objectives of the legislation, including:

- insufficient police resources devoted to investigating criminal harassment cases;

- insufficient Crown attention to preparing criminal harassment cases and interacting with victims, and pressure on Crown to meet requirements to avoid trial whenever possible;

- A lack of adequate victim service and victim/witness programs to serve the needs of victims and enable them to participate in a meaningful and constructive way in the prosecution of their cases;

- gender bias throughout the system that contributes to the above systemic barriers and results in extremely weak dispositions by the courts; and,

- insufficient training of some police and Crown as to the nature and complexities of criminal harassment, the result being that criminal harassment cases may not be handled as effectively and as sensitively as they could be;

8. Victims of criminal harassment, according to the limited information collected for this study, are marginalized during the prosecution process, are rarely interviewed by Crown counsel and even if they are interviewed are rarely consulted about how they think the case should proceed. This certainly has a negative impact on their experience of the criminal justice intervention, and may also reduce the ability of the prosecution to obtain a good result. Where specially trained police or victim service workers were available, victims said they found a positive difference.

9. Presentence reports and victim impact statements were almost never used in the cases reviewed for this study. It may be that courts and even Crown may be making decisions about sentencing and prosecuting cases without sufficient information.

10. Follow-up by the criminal justice system to investigate the longer term outcome of cases is almost non-existent; the one exception is that victim advocates and some police keep in touch with some victims for a while, in an informal way. Some high profile cases have shown that repeated harassment can escalate to violence and even to murder, and that the intervention of the Justice system does not necessarily provide protection or deterrence as it currently operates. The case outcomes documented in this study, and the views expressed by victims in our case studies, are consistent with this conclusion. Some form of systematic follow-up on criminal harassment cases, and improvement in the communicating of information across police jurisdictions, will be critical to assessing and enhancing the effectiveness of the new criminal harassment provisions.

11. This study did not include follow-up with victims (with the exception of a small number of case studies) to assess the overall effectiveness of section 264 in deterring offenders and protecting victims. Consultation with victims is needed to determine what would constitute an effective handling of criminal harassment cases from their point of view, and how it could be achieved.

12. Only a small percentage of criminal harassment cases in this study involved offenders with an apparent serious psychological illness. Other causes, having to do with men seeking power and control over women, appear on the face of it to be more plausible.

13. Little information is available in the case files on the prosecution of criminal harassment cases. The Crown's approach to bail hearings, plea bargaining and sentencing recommendations, the reasons for the decisions that are made, and the kinds of inputs that influenced the decisions (such as interaction with victims) are largely unknown because this information is typically not recorded, and Crown handle so many cases that they often cannot remember details about specific cases.

7.2 Recommendations

Based on the findings of this review, it is recommended that:

1. steps be taken to identify clearly what is considered to be a desirable result of the prosecution of criminal harassment in broad terms, and how to go about determining what is a desirable result in individual cases;

2. as an interim measure until full consideration is given to the identification of desirable results, policy officers at the federal, provincial and teritorial levels should develop guidelines or best practices to reduce the rate of charge stays, withdrawals and peace bond resolutions, and set higher standards for sentencing recommendations, particularly in negotiating guilty pleas;

3. guidelines be developed for police and Crown that set higher standards for the investigation and prosecution of criminal harassment cases. The standards for police should include the requirement for a thorough investigation of the relationship between accused and victim, and the documentation of any reported history of abuse or harassment. Prior history of breaches of court protective orders, whether or not they resulted in charges or convictions, should also be investigated and documented.

   Standards for Crown should include the requirement to interview the victim (subject to the consent of the victim) prior to the date of first appearance. There should also be a clear requirement to ensure that case preparation (including police investigation) is sufficient to enable Crown to present fully the complexity of circumstances involved in the case including the history of the relationship, and

the impact that the harassment is having on the life of the victim. Consideration should be given to making the use of victim impact statements a routine feature of sentencing hearings in criminal harassment cases. Consideration should also be given to ensure that breaches of no contact orders are addressed by the criminal justice system and standards are set for when charges for such breaches can be stayed or withdrawn;

4. the actions of Crown in criminal harassment cases, and the reasons for Crown decisions, be made more transparent, perhaps through the use of simple case record sheets, so future decisions about Crown policy and practices will be based on better empirical information than is currently possible;

5. police and Crown be provided with training in the investigation and prosecution of criminal harassment in keeping with the guidelines that are developed. Judges should also be provided with workshops to ensure that they understand the relationship between (most) criminal harassment and women abuse, and the serious impact it can have on the lives of victims;

6. victim service/victim witness services be made available as widely as possible. Early information indicates that such services can make a significant contribution both to enhancing the experience of victims during the criminal justice process, and to the preparation of stronger cases;

7. consideration be given to instituting some form of systematic follow-up/monitoring of criminal harassment cases to ensure that harassment is not recurring or escalating, and to enhance the communication of information about offenders across police jurisdictions;

8. police work with women's shelter organizations to develop approaches for the identification of higher risk offenders that is less focused on psychological profiling and more on indicators of abusive attitudes and behaviour in relationships;

9. the Department of Justice Canada undertakes further work on this issue to assess the impact of the justice response on the accused's behaviour; to consult with victims of criminal harassment on what they see as a desired outcome in criminal harassment cases and how to achieve those outcomes; and to conduct interviews with key actors in the criminal justice system to document the reasons for the outcomes observed in this study.

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