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be pursued on the crime of criminal harassment. Only then will it become possible to reach any firm conclusions concerning the usefulness and effectiveness of the criminal harassment provision.

**THE CRIMINALIZATION OF STALKING:
ADDRESSING THE BEHAVIOUR OR THE POLITICS?**

By

TARA LEE MULKERN, B.A.

A thesis submitted to
the Faculty of Graduate Studies and Research
in partial fulfilment of
the requirements for the degree of

Master of Arts

Department of Law

CARLETON UNIVERSITY

Ottawa, Ontario

January 16, 1996

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The Criminalization of Stalking: Addressing the Behaviour or the Politics?

submitted by **Tara Lee Mulkern, B.A. (Wilfrid Laurier)**

in partial fulfilment of the requirements for
the degree of Master of Arts

Thesis Supervisor

Chair, Department of Law

Carleton University
January 19, 1996

ABSTRACT

This thesis examines the rationality behind the change in the legislation, and questions whether Bill C-126, the criminal harassment provision, was an appropriate response to deal with stalking. The challenge in conducting this research, was that there has been little academic research on the Canadian criminal harassment law since its enactment in 1993. The goal of this thesis was to discover how this law is presently being used, and to determine whether it is working to protect victims of stalking. To accomplish this, it was necessary to utilize information gathered largely from interviewing various individuals within the legal field, and women's organizations concerned about violence against women. Both women and men connected with law enforcement and the criminal justice system feel that the law is working, and is effective in dealing with cases of stalking. This thesis concludes however, that much more research is needed concerning this law.

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INTRODUCTION

Violence against women has existed for centuries (Dobash and Dobash, 1974). However, only recently, due in large part to media accounts of a few sensational events, a substantial amount of attention has been devoted to female victims of unwanted and potentially dangerous harassing behaviour, popularly referred to as *stalking*. Stalking is neither new behaviour, nor particularly distinct from other aspects of violence against women, such as domestic abuse, sexual assault, or sexual harassment, yet for many reasons it warranted a distinct governmental reaction (Cairns Way, 1994:382). This thesis will demonstrate how the existing sections in the Canadian Criminal Code did not adequately deal with this sort of behaviour, and why a new law was definitely needed to address the entirety of stalking.

On August 1, 1993, only eight months after stalking first appeared on the federal government's political agenda, the new *criminal harassment* legislation (as it is now labelled) was enacted (Cairns Way, 1994:380). In light of this recent, and speedy, legislative reform, there are numerous reflective questions that need to be considered at this point in time. Such questions include, what caused the sudden need for a legislative change regarding stalking,

when it was clearly not a new issue, and why were the existing provisions in the Canadian Criminal Code regarded as insufficient to deal with this type of behaviour? Moreover, what prompted this sudden need for change, and why was it needed at that particular point in time? Was it a genuine response to women's fears and concerns? Was it a response to media hype, or was this piece of legislation simply used as a political tool during a time of the Federal elections? These questions need to be answered in order to adequately grasp the motivation behind this legislative reform. Current research indicates that the response to the stalking issue was a function of all three elements mentioned above, with less emphasis on answering women's concerns and more attention given to media and political issues (Cairns Way, 1994)

Since the criminal harassment law is so new, to date little academic research has been pursued on the impact, validity, or implementation of this new law. The goal of this research, was to create an awareness of the legislation, including its positive aspects, as well as its shortcomings, and to evaluate the effectiveness of this law, based on the findings. The intention here was to gather useful information, in order to make a worthwhile contribution to the academic literature on the Canadian criminal harassment provision.

Keeping the various purposes of the legislation in mind, the research questions pursued for this thesis are as follows: Given that the Criminal Code was amended in 1993 to include an offense of *criminal harassment* directed at addressing stalking behaviour, what were the expectations for such legislation and what were the intended purposes for implementing this law? How can such a regulatory response to a social problem (i.e., its criminalization) be critiqued, and evaluated, in order to assess whether or not it is "working" or "if it makes a

difference"? The desired goal of these questions was to uncover how the police and the courts are applying this law, in order to determine the effectiveness of this legislative change (i.e., is the law meeting its defined objectives). It was important to discover whether, in fact, the criminal harassment provision provided police with an effective tool to respond to the problem of stalking. Is it possible for the criminal harassment provision to successfully address the concerns and criticisms about law enforcement, which have been expressed in the past regarding the prior laws that existed to deal with stalking? In so doing, does this law reach too far, ignoring or encroaching on the civil liberties of accused individuals? These are important questions, especially when determining the criminalization of such behaviour.

It will be argued in this paper that a provision specifically addressing stalking, was needed in the Criminal Code. However, because of the political climate and the haste in which this legislation was passed, it has been perceived as a narrow, band-aid solution, that does not have the capacity to fully address the systemic nature of violence against women. This thesis will demonstrate that at this point in time it is possible to determine the expectations, and the various intended purposes of the criminal harassment provision. However, over two years after this legislation was enacted, it is impossible, due to conflicting viewpoints, lack of any adequate monitoring process, and problems within the criminal justice system, to fully determine how effective this law is, or will be, in helping and protecting victims of stalking.

The first chapter of this thesis will define stalking and the various classifications of stalkers, and will examine the impact of stalking on the lives of victims. This will lead to a discussion of victims being predominantly female, and how the majority of stalking cases

occur within the realm of domestic violence. As well, chapter one will reflect on the process of changing from the use of the word *stalking* to the new terminology *criminal harassment*. Chapter two will focus mainly on the legislative process, addressing public perception about stalking, previous sections in the Criminal Code that dealt with stalking, and reasons why an anti-stalking law was deemed necessary. Chapter three will consider the remaining problems with the criminal harassment provision, utilizing Hinch's application of the Structural Contradictions Theory to illustrate problems that remain even after legal reform has taken place. This chapter will also consider whether or not criminalization was the appropriate response to deal with stalking, keeping in mind the legal rights of both the victims and the offenders. The fourth chapter will evaluate how the criminal harassment provision is "working" and whether or not it "makes a difference" for victims of stalking. This final chapter will summarize existing opinions of various police officers, women who represent women's organizations, Crown Attorney's, and officials from the Department of Justice, concerning the way in which the criminal harassment provision has been used/applied since its implementation in 1993. These individuals have provided important information and insight on the usefulness and effectiveness of the criminal harassment provision.

Much of what is presented in this thesis is based, not only on facts, but on opinions and viewpoints of individuals who were either involved in the legislative enactment, or have had experience in dealings with the criminal harassment provision, or both. This thesis poses a variety of questions concerning this new law, and arrives at a number of answers. However, the main conclusion reached in this thesis, is the realization that much more research needs to

be pursued on the crime of criminal harassment. Only then will it become possible to reach any firm conclusions concerning the usefulness and effectiveness of the criminal harassment provision.

CHAPTER ONE:

WHAT IS "STALKING" AND WHO IS INVOLVED?

In general, stalking can be defined as the wilful, malicious, and repeated following or harassing of another person. It is a subtle form of harassment or intimidation that completely disrupts and affects the lives of victims of such behaviour (Sullivan, 1994:1). Although the media often portrays stalking as occurring to high-profile Hollywood celebrities,¹ stalking more frequently affects ordinary citizens, usually women, rather than public figures (McAnaney et al., 1993:821; Schaum and Parrish, 1995:3). Current research indicates that both men and women can and do become victims of stalking. However, in most cases, women appear to be the primary target of stalking behaviour (McAnaney et al., 1993; Perez, 1993; Faulkner and Hsiao, 1994; Cairns Way, 1994). Many victims of stalking are women who have left obsessive husbands or boyfriends. Sue McCoy, the Metro Toronto Police Co-ordinator

Robert Faulkner and Douglas Hsiao (1994) list several celebrities who have been stalked, including David Letterman, Johnny Carson, Michael J. Fox, Rebecca Schaeffer, Teresa Saldana, Jodie Foster and Olivia Newton-John.

for domestic violence estimated that approximately 90% of stalking cases fall into the area of domestic violence (McCoy, 1995). Similarly, in the United States, experts have estimated that 75-80% of stalking cases emerge from domestic situations (Schaum and Parrish, 1995:3). It has been McCoy's experience that although stalking most frequently occurs to ordinary citizens in domestic situations, the media most often focuses on the more sensational cases, for example the 1995 stalking occurrence of Toronto Blue Jay Roberto Alomar, thus, giving the majority of attention to the minority of cases.

The Canadian Advisory Council on the Status of Women supports the claim that stalking occurs most frequently to women and they further define why they feel that victims of stalking are predominantly female: "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 gender, social, economic, political and racial inequalities experienced daily by Canadian women" (1993:2). Although both sexes can become victims of stalking, this thesis will focus on women being stalked by men, since women are most frequently the victims, and the criminal harassment provision was initiated to address the stalking issue in the wider context of violence against women.²

According to current psychological, psychiatric and forensic research conducted in the United States, the *typical* stalker can belong to one of a few different psychological profiles

Rosemary Cairns Way's article "The Criminalization of Stalking" describes how Justice Minister Pierre Blais initiated the criminal harassment provision as a way of responding to the problem of violence against women.

McAnaney et al (1993), in their research on stalking, have developed four detailed psychological profiles that stalkers may fall into. As well, Zona et al. (1993), in conjunction with the Threat Management Unit in Los Angeles have developed their own typology of three categories of stalkers that are similar in many ways to the profiles suggested by McAnaney et al (1993). Both findings deserve attention here, as they clearly suggest the fact that stalkers exhibit different motivations for stalking, and indicate that the likelihood of a psychological disorder does exist.

According to the research by McAnaney et al (1993), a stalker may suffer from *erotomania*, which is a delusional disorder in which individuals truly believe themselves to be loved by another individual who may not even know of their existence. The erotomaniac individual often fantasizes about the existence of an idyllic romantic or spiritual love with someone who is typically of a higher social status or in a position of authority relative to the erotomaniac individual; this is often the case when celebrities are stalked by obsessed fans. The erotomaniac typically "seeks to establish an intimate, even permanent, relationship with the object of his fantasy" (McAnaney et al., 1993:832-833). Zona et al., also defined this type of a stalker as suffering from erotomania (1993:894-896).

Borderline erotomania is another disorder characteristic of stalkers, in which the stalker develops intense feelings for an individual who they know do not reciprocate their feelings. Borderline erotomanics are different from erotomanics, in that erotomaniacs believe that their feelings are reciprocated. As well, unlike erotomanics, borderline erotomanics usually have "some history of actual emotional engagement with the object of their fantasy," however trivial

(McAnaney et al., 1993:835-836). Zona et al., labelled this type of a stalker as *love obsessional* (1993:896).

Also common, and often more violent, are the *former intimate* stalkers, who are estranged former partners who may have a prior history of abusive conduct. Contrary to general public perception, these types of stalkers can be both men and women, but the majority of cases involve male abusers. Former intimate stalkers usually have an actual history of emotional dependence upon their partner that is severed when the relationship is terminated. They may also be jealous of real, or imagined, infidelities and exhibit a significant need to control their former partner. In many cases, "he is so dependent on her that he would kill her rather than let her go and not be able to live without her" (McAnaney et al., 1993:840). As one American advocate against domestic violence has estimated, "as many as ninety percent of the women killed by (former) husbands or boyfriends were stalked before a murder occurred"³ (McAnaney et al., 1993:838). Zona et al., labelled this type of stalker *simple obsessional* (1993:896).

Lastly, the most deadly type of stalkers are the *sociopathic stalkers*, serial murderers and rapists who stalk their victims, although often not with the intent of making their surveillance known. Sociopathic stalkers do not appear to be seeking to initiate an interpersonal relationship with their victim, but rather, they seek individuals who fit their

³The Canadian study conducted by Maria Crawford and R. Gartner entitled Women Killing: Intimate Femicide in Ontario 1974-1990 (1992), found that over half of the women killed by their ex-partners had first been stalked by the men.

assault criteria - they first formulate the characteristics of the "ideal victim" and then seek an acceptable person to fit the criteria (McAnaney et al., 1993:843). Paul Bernardo is a good example of a recent high profile individual who could fit into this category.

Zona et al.(1993), did not include a category depictive of a sociopathic stalker. Rather, they focused their research on the three main categories they developed. This lack of a sociopathic stalker category, or something similar, may be perceived by some as an omission from their research. Whether one chooses to utilize the four detailed categories suggested by McAnaney et al. (1993), or the three types of stalkers described by Zona et al., (1993) it becomes apparent through both sets of research, that there are various types of stalkers, with differing motives which cause them to engage in such behaviour.

What all of these psychological profiles and labels indicate, is that there is not just one *type* of stalker, but rather that stalker motives and behaviours can be quite different. Likewise, their potential for aggressive behaviour may differ between individuals within categories, which indicates the need for a law to encompass the totality of stalking behaviour. Since stalkers have differing motivations, and possess unique characteristics, including the real possibility of having a psychological disorder, these factors needed to be taken into account by all elements of the criminal justice system.

Despite these various definitions and categorizations of certain types of stalkers, it is impossible to formulate a precise definition which characterizes all types of stalking behaviour. As well, it is important that the term *stalking* not be limited to particular classes of stalkers or victims, because in cases of stalking both victims and stalkers can be from any class or race

of people:

Stalkers can be obsessed fans, divorced or separated spouses, ex-lovers, rejected suitors, neighbours, co-workers, classmates, gang members, former employees, or disgruntled defendants, as well as complete strangers (McAnaney et al., 1993:821-823).

Although there appears to be quite a variation of *stalker* profiles, women's stories do reveal a number of patterns for this type of behaviour. According to victims, stalking includes a multitude of increasingly threatening and potentially harmful behaviours. Such actions include persistently following someone, repeatedly writing notes or letters, making harassing telephone calls to someone and/or their friends, watching someone's house or work, making contact with someone's neighbours or co-workers, repeatedly sending unwanted gifts to someone, verbal or written threats to the victim and/or their friends, vandalism, and leaving dead animals (Department of Justice, 1993:9; Sullivan 1994:2) The following example is a typical scenario of how victims are harassed by stalkers:

The harassment usually begins when a woman leaves her husband or boyfriend, or when she spurns the advances of an acquaintance. Less often, the problem arises when a complete stranger becomes obsessed with a woman who will not reciprocate his "affections." In all cases, however, the resulting conduct is similar. The woman is incessantly watched, followed and often receives countless phone calls a day. Often anyone associated with the woman is subject to similar treatment, and as a result many women lose their jobs, friends, and become increasingly isolated. Often no direct threat is made but the message is made clear; the behaviour will not stop until she becomes his (Cotte, 1993:2).

This scenario illustrates some of the more prevalent actions associated with stalking. These actions should not be viewed as trivial, but rather due to their repetitive and frightening nature,

these actions have the potential to be extremely harmful to the victim. Such actions, whether or not they lead to dangerous or violent behaviour, clearly infringe on the lifestyle and freedoms of any individual who is being stalked.

The behaviour associated with stalking can also have a severe mental impact on victims. Victims have repeatedly expressed, especially to women's organizations concerned with violence against women, how much being stalked has affected their lifestyle, their self esteem and their confidence. One victim described how stalking affected her life:

Being harassed, stalked, and intimidated for a period of time disrupted my life, causing mental anguish, stress, fatigue, and created a sense of despair, powerlessness, and lack of control over my home and professional work environment. I had tremendous fear of this man who was intimidating me....(anonymous).

Similarly, another victim of stalking recounted in an interview how stalking had a horrifying impact on her life; which affected her work, her family and her friends. She described how because of the death threats that he had made, her health seriously deteriorated due to the enormous stress and fear that she had to endure (Lupton, 1995).

Based on these descriptions, stalking has been viewed by many as a form of psychological and/or physical terrorism that relies upon the existence of unequal power between men and women (Cairns Way, 1994; McCaffery, 1995). This unequal power manifests itself in male dominance and female subordination. It is Catharine MacKinnon's opinion that, "male dominance is perhaps the most pervasive and tenacious system of power in history" (1983:638). She believes that women's submission and inequality is enforced

through the unequal power distribution that occurs in our society between the sexes. MacKinnon's radical feminist theory is founded in the firm belief that male power and dominance are the primary reasons for women's inequality and subsequent victimization. One significant critique of MacKinnon however, is that she reduces all women to the status of *victim*. This "female as victim" approach has been viewed as problematic by other writers who do not agree fully with such a radical theory of feminism (Cornell, 1991; Roiphe, 1993). Although MacKinnon's theories concerning the relationship between men and women have been the subject of various critiques over the years, her theory does lend itself to the situation of stalking and the issues of power and control as described by victims.

Since stalking has been equated as primarily about control and domination by men over women, it can easily be viewed as a means of gaining and maintaining power over a chosen individual, especially within an intimate relationship. Cathleen Kneen from the Assaulted Women's Helpline supports this viewpoint:

The goal of intimate abuse is power and control. An intimate partner is uniquely vulnerable to being controlled, precisely because of the intimacy of the relationship. This is exacerbated by cultural beliefs that wives are the private property of the husband - cultural attitudes which are still articulated by judges, and others, even today. A woman's resolve to leave an abusive relationship - to reclaim her own person - is the ultimate threat to that control, and is thus the point of greatest danger for her (1993:1).

One victim of stalking, after ending a dating relationship of four months, equates her experience of being stalked with being taken prisoner in a hostage situation; she lost full control of her life due to the obsession of one man (Lupton, 1995). The control that many men

wield over women's lives should not be viewed in isolation, but rather must be looked upon as existing on a continuum of violence (Kelly, 1988, Boyd, 1993). Control through persistent harassment, often labelled as "excessive expressions of love" can, at the very least, poison women's lives on a daily basis by inhibiting their movement and removing any sense of security and control over their own lives (Boyd, 1993:1). At the extreme end of the continuum, such behaviour can lead to violence and even murder.

To reiterate, stalking is neither new behaviour, nor particularly distinct from other aspects of violence against women (Cairns Way, 1994:382). As one police officer indicated, stalking is a new name for an age old behaviour that only now the public is becoming aware of, and is deciding to no longer tolerate (McCaffery, 1995:1). For reasons that will be addressed in the next chapter, stalking suddenly warranted a speedy reaction from the government through the initiative of criminalizing this behaviour.

FROM STALKING TO CRIMINAL HARASSMENT

It is important to acknowledge that during the anti-stalking initiative, there was a change in the language from *stalking* or *anti-stalking*, to the new term *criminal harassment*. Susan Bazilli, who is the legal director of the Metro Action Committee On Public Violence Against Women and Children (METRAC), was the first to write about the *stalking* law terming it *criminal harassment* (Bazilli, 1993b:2). Bazilli's intention was to avoid a term that

further victimized women. Relying on her work experience with victims of such abuse, she felt that the term *stalking* creates a negative image of hunter and hunted, which contributes to the objectification and helplessness of the victim (cited in Cairns Way, 1994:380). As Dale Spender has indicated, "[n]ames are essential for the construction of reality for without a name it is difficult to accept the existence of an object, an event, a feeling" (cited in Kelly, 1988:138). However, the term *stalking* carries with it a powerful negative image of a passive victim: "It constructs the man as the active hunter in stealthy pursuit and the woman as his prey - passive, objectified, vulnerable, terrified and powerless" (Cairns Way, 1994:387). Due to the perception of negative images associated with the popular term *stalking*, it was hoped that women would become more empowered with the new law being termed *criminal harassment*. This terminology, which filled a gap for victims, police officers, and judges, was quickly adapted by our law makers, who felt that criminal harassment was a more appropriate gender neutral term, which would encompass the full range of harassing actions associated with stalking. Thus, making all stalking related behaviours a criminal offense.

However, the use of gender neutral terminology masks the fact that most stalking victims are women, and this is problematic. Accurately naming an issue is an important part of reconstruction, and as Carol Smart suggests, "[h]ow their [women's] experience is turned into something that law can digest and process, is a demonstration of the power of law to disqualify alternative accounts" (Smart, 1989:11). Re-naming an issue is not always in the interests of the victims themselves, as it can often lead to the disqualification and disempowering of women (Smart, 1989:109). Smart believes that laws, and those who

administer them, have the power to deny women their own reality as seen from their perspective. Although women vary in race, culture and class, collectively they often find themselves being caught between the dominant [male] discourse and their own experiences; as diversified as they may be. This type of a dilemma can be more accurately described as, "a conflict between men's power to define and women's truth" (Kelly, 1988:138). Naming involves making visible what was invisible, defining as unacceptable what was previously deemed acceptable, and insisting that what was naturalized is problematic. A vital aspect of feminist work around sexual violence has been to provide names that accurately describe women's experiences, as complex and contrasted as they may be (Kelly, 1988:139). It is questionable however, whether or not such an overtly gender neutral term such as *criminal harassment* justly describes the violence against women that can incontestably be associated with the act of stalking.

Whether using the gender neutral term *criminal harassment* has had any effect on victims of stalking is still too early to determine. However, a comparable example of [male] law makers attempting to name women's experiences was in 1983 when *rape* was redefined as *sexual assault*. Even though a change in the law itself was a response to demands from women's organizations, this change in terminology turned a clearly gender specific crime into a gender neutral one. As a result, this initiative has had various ramifications for survivors of sexual assault¹. Cohen and Backhouse have argued, "[t]o eliminate the word [rape] will not

¹Ronald Hinch's work, on the problems with the Canadian Sexual Assault Law, indicates that the change in the terminology from "rape" to "sexual assault" has had negative implications

eliminate rape itself," and they both believe that the elimination of the word "rape" has trivialized this issue for women (cited in Hinch, 1988:283)

Another problem with the use of the term *criminal harassment* is the fact that nowhere in the Criminal Code are the words *harass* or *harassment* defined. This raises serious concerns that neglecting to define these terms will result in a lack of understanding of the nature and quality of harassment, and the impact that harassment has on the lives of the victims. This may be similar to the problems that have been encountered with the offense of *sexual assault*. Since the word "sexual" is not defined anywhere in the Criminal Code, this has created several problems with the law's interpretation⁵.

Regardless of whether the term *stalking* or *criminal harassment* is presently being used, this act cannot be seen in isolation from issues of individual and systemic violence against women. Whatever term is being employed, the behaviour associated with stalking should not be separated from issues of male violence against women. For the purpose of this thesis, it is important that both the terms *stalking* and *criminal harassment* be used, in order for the reconstruction of the stalking initiative to accurately reflect the process.

for victims of sexual assault, especially since the term "sexual" is not defined anywhere in the Canadian Criminal Code. See Hinch (1988; 1991).

R. v. Chase (1984) is a good case example. The judge in this case ruled that "breasts" were not sexual.

CHAPTER TWO:

PUBLIC PERCEPTIONS ABOUT STALKING

Prior to the 1993 legislative initiative, several victims of stalking and certain women's groups alike were calling for a change in the Criminal Code to specifically include stalking behaviour. An Angus Reid survey conducted in February 1993 found that eighty percent of Canadians held the view that legislation was needed to address the seriousness of this issue (McCormack, 1994:2). This high percentage was likely a result of a combination of factors, including the current American anti-stalking initiatives, the perceived need for a Canadian *anti-stalking* law, as well as the media hype surrounding the recent Canadian stalking related deaths of Maurice and Sherry Paul of St. Eustach Manitoba, Terri-Lyn Babb of Winnipeg Manitoba, and Patricia Allen of Ottawa Ontario (McCormack, 1994; Pilon, 1993).

In response to the stalking and brutal murder of actress Rebecca Schaeffer on July 18, 1989 (McAnaney et al., 1993:821; Faulkner and Hsiao, 1994:1-2), forty-eight states, starting with California in 1990 (Boychuk, 1994:769), enacted specific stalking legislation to deal with

offenses of this nature. Existing provisions in both the United States and Canada were viewed as inadequate to protect victims from stalking, and thus more effective laws were needed (Pilon, 1993; NAWL, 1993; CACSW, 1993). The limitations of the existing provisions will be discussed later in this chapter.

In the three years following the enactment of the California statute, numerous stories about stalking related incidences and murders saturated virtually every form of the media. As a way of responding to this episodic interest, the media took the initiative to define the issue of stalking in a North American context. This initial action taken by the media, began occurring without any consultation or input from national women's organizations.

As a result of the role played by the media in providing the public with information about the stalking issue, it created in society what Stanley Cohen describes as a *moral panic*. Cohen characterizes a period of moral panic in the following ways:

A condition, episode, person or group of persons emerges to become defined as a threat to societal values and interests; its nature is presented in a stylized and stereotypical fashion by the mass media... Sometimes the object of the panic is quite novel and at other times it is something which has been in existence long enough, but suddenly appears in the limelight (1980:9).

Cohen's description of a moral panic that took place in Britain in the 1960's over the emergence of the Mods and Rockers, mirrors rather well the history of our Canadian anti-stalking initiative. Cohen describes how such a moral panic usually receives a "fundamentally inappropriate" response by much of society to certain minor events and conditions (Goode and Ben-Yehuda, 1994:23). He describes how the actions of five segments of society (the press,

the public, agents of social control and law enforcement, law makers and politicians, and action groups) can have long-lasting repercussions that can produce changes in legal and social policy. It can be argued that these five segments of society strongly influenced the Federal government's hasty decision to address the issue of stalking. Whether or not criminalization was an inappropriate response to deal with this *moral panic* however, is a debatable issue, and one that will be focused on further in the next chapter. The government's attempt to calm the moral panic that was occurring, ultimately resulted in the hasty struggle for an *anti-stalking* law. It is questionable whether or not this action by the government was a legitimate response to address women's concerns about stalking, or whether the government was merely playing the role of "moral entrepreneurs" (Becker, 1989). By suddenly stressing the need for the criminal justice system to be more responsive to the dangers of stalking behaviour the government may be regarded as using and expanding the moral panic for their own political advantage.

In January of 1993, stalking began to receive increasing amounts of media attention in Canada. The tragic catalyst for this attention was the occurrence of three high-profile homicides, and one suicide that took place in Manitoba in late January; all which were stalking related murders (McCormack, 1994:2). Maurice and Sherry Paul of St. Eustach, Manitoba were murdered in their own home by Andre Ducharme, a man who was fixated on Sherry Paul, a happily married woman who had continually rejected his advances. Ducharme shot and killed both Maurice and Sherry before turning the gun on himself (Edmonds, 1993:A8). Similarly, only one week earlier, Terri-Lyn Babb of Winnipeg, was shot by her stalker while waiting at

a local bus stop. She too was killed by a man who began stalking her after his repeated offers of romance were rebuffed (Edmonds, 1993:A8). These three murders also brought renewed attention to the 1991 murder of Patricia Allen. Patricia was shot to death in broad daylight with a crossbow, on an Ottawa city street by her estranged husband Colin McGregor. McGregor had been stalking and harassing his former wife for months before the attack (Smith, 1994:A12). It is an unfortunate reality that such fatal events must occur in order for our government to acknowledge issues of violence against women, and in this case, specifically the issue of stalking. The fact that women all over Canada live with some form of violence everyday, is often irrelevant until something on such a large scale occurs (Stanko, 1990; Lupton, 1993). It is a distressing realization that such horrifying circumstances are often needed to arouse public response, and for our government to take any initiative, in responding to women's concerns.

Following the American example, Canadian legislators, in the wake of a Federal election, decided to create a similar anti-stalking law to those already passed in the United States. This created much controversy over the timing of the new law and instilled great debate over what was to be included in the wording of the law itself. The government proclaimed that the desired goal of changes in the legislation was to make the criminal law more responsive to violence against women, and more specifically, to the realities of women's lives in relation to stalking (Department of Justice, 1993). A new law was deemed necessary in order to recognize the seriousness of stalking and the harm it causes to the lives of the victims (Sullivan, 1994:8). The federal government stressed that it was responding to an

increase in concern about violence against women (Cairns Way, 1994:393), but many people were asking themselves, was it a sincere gesture for women, or was it simply an election ploy? (NAC, 1993:8) This is a significant question that will be addressed in greater detail in subsequent chapters of this thesis. It is important to question at this point however, why existing provisions in the Criminal Code were not adequate, and why adherence to a new law would be any different.

PREVIOUS SECTIONS IN THE CRIMINAL CODE THAT DEALT WITH STALKING

As previously indicated, there were provisions in the Criminal Code that could cover some aspects of stalking behaviour. However, for several reasons, these provisions were incapable of addressing the totality of stalking. Included in these provisions were s.372, which prohibits repeated phone calls with intention to harass; s.177 which deals with trespassing at night and is designed to prohibit loitering and "peeping Tom" behaviour; s.264 (1) which deals with uttering threats to cause death or serious bodily harm; s.423 which deals with intimidation, requires that the victim must be stopped from doing something that they have a right to do, or be compelled to do something they have a right not to do; s.810 which deals with sureties to keep the peace (also known as "peace bonds"); s.127 (1) concerning breach of an order of the court, for example a restraining order; and s.265 which deals with assault and/or threats to carry out such an assault (McCormack, 1993:3; Pilon, 1993:5-6; Jessop et al.,

1992:6).

These provisions indicate that there were already sections in the Criminal Code that could address many, if not all, aspects of stalking behaviour. However, due to the fact that these sections were mainly summary rather than indictable offenses, it was difficult under these provisions for law enforcement agencies to prove offenses of this nature. It is difficult to prove summary offenses because police have to catch the perpetrator committing the offense in order to make an arrest. This was problematic with regards to stalking because given the nature of these activities, it was extremely difficult to actually find someone in the process of committing the crime (i.e., making a harassing phone call or leaving unwanted notes) (Cotte, 1993:10). According to police, summary offenses involve a lot of paper work and are too time consuming, and as well, police do not have the power of arrest that they do with hybrid or indictable offenses⁶. Also, there are numerous problems with peace bonds and court orders, as they are not always followed by offenders or enforced by the police.

It appears that the methods of keeping away violent partners and ex-partners such as restraining orders and peace bonds, resulted more often in subsequent abuse and death than in adequate protection for women (Black, 1993:2). Due to these various problems associated

⁶ In an interview with Detective Brock Frankland, the Domestic Violence Co-ordinator of 52 Division in Metro Toronto, he described in detail how difficult it was to catch and arrest stalkers under the old provisions. He said there were various steps that had to be taken before an arrest could be made. A mail service summons to appear in court would initially be delivered to the offender. If this was ignored or not received, then a personal summons would be sent. If the offender avoided being served, which is a frequent occurrence, then the police would have to apply for a bench warrant from the Justice of the Peace, and then try to locate and arrest the offender. These steps involved a lot of paperwork and manpower and the police found this process to be ineffective in catching or deterring stalkers.

with summary offenses, the police felt that a new law was needed in order to hold stalkers accountable for their actions.

Although these aforementioned sections of the Criminal Code were narrow in focus and therefore not encompassing of the totality of stalking, it can be said that the problem was not entirely with having insufficient laws in place, but rather it was a combination of inadequate laws as well as the lack of sufficient enforcement of these laws (NAWL, 1993:2). One major complaint by victims has been that police were unable to act until some physical injury had been sustained, and the police, as well as the victims, found this to be extremely problematic (Jessop et al., 1993:6). The fact that many women have been subjected to persistent harassment before they successfully influenced the legal system to offer them even minimal protection, is a frightening realization (Cotte, 1993:2). Often there appears to be a systemic problem with the way women's complaints are dealt with, rather than a problem with the laws themselves. Historically, the police and the judicial system have both ignored or undermined complaints made by women⁷, and sometimes it seems as though little has changed. As Dawn Black, an advocate for this type of legal reform asserted, "[t]hreats made to women are not treated seriously enough in the Criminal Code, and as a result, neither are they taken seriously by the courts and law enforcers" (1993:2).

Therefore, because of the types of laws that were in place, and due to the fact that women's complaints are not taken nearly as seriously as they should be, most often no action

⁷ This has been true in the past with respect to women's claims of rape and other forms of abuse (Backhouse, 1983; 1991).

would be taken by law enforcement agencies until the woman had been assaulted, harmed or killed (Pepino, 1992:2). Even the police themselves felt that this claim held some truth to it, and that with more specific laws in place, they would be able to offer women earlier intervention and protection against stalking.

WHY AN ANTI-STALKING LAW WAS NEEDED IN THE CRIMINAL CODE

Undeniably, there was a need for an adequate law specifically designed to address stalking. Victims of stalking wanted this type of harassment to be criminalized, and the hope of concerned women's organizations who worked with victims of stalking, was that codification of this offense would heighten awareness among law enforcement agencies, as well as the public, about the seriousness of stalking. They anticipated that criminal regulation would, in turn, assist in ensuring that this offense would finally be properly charged and prosecuted. Women's groups felt that there was a need for a provision that, "encompasses the totality of the offense, and also gives an appropriately severe penalty to offer the victims of stalking a sense of both protection and justice" (Cotte, 1993:12). Although the desirability of criminal regulation will be discussed in the following chapter, it is agreed in this thesis that a law specifically addressing stalking was necessary.

The reason that this type of behaviour needed to be addressed by the criminal justice system and not elsewhere (i.e., civil or family law) is because, "terrorizing, stalking and

deliberately provoking fear of death or bodily harm is a matter more appropriate for criminal law" (Black, 1993:2). Stalking needed to be criminalized, because the repetitiveness of the behaviour, and the obsessiveness of the actions, causes victims to be fearful and in need of sufficient protection by the criminal justice system (McCormack, 1994:2). It was the fear of the unexpected, and uncertainty about the extent to which the stalker was prepared to go to, that needed to be addressed by the law. Canadian law needed to acknowledge the fact that, "stalking consists of a series of increasingly serious behaviours" (Sullivan, 1994:2); with death being the ultimate possibility. The examples provided in Chapter One of the women who were killed by their stalkers, illustrates the truth of this claim.

A recent study released by the Women We Honour Action Committee entitled Women Killing: Intimate Femicide in Ontario 1970-1990 indicated that Canada has the second highest rate of femicide in the world, and that women are most often killed by their intimate or formerly intimate partners (Crawford and Gartner, 1992:2). This study, which documents the murders of 551 women killed in Ontario between 1974 and 1990, indicates that many of these women were stalked prior to their murders. However, this information could not be gathered in any systematic way, because the police records and coroner's reports did not consider this information to have been significant enough at the time to have been recorded (Crawford and Gartner, 1992). Since stalking has been repeatedly shown to be a precursor to murder, there is little doubt that this study directly influenced political decision to criminalize this behaviour by creating a new *anti-stalking law*.

THE CRIMINAL HARASSMENT PROVISION

On April 27, 1993 Justice Minister Pierre Blais introduced Bill C-126 to the House of Commons. This was considered an omnibus bill, which set out various amendments to the Criminal Code, including the new *criminal harassment provision*. Interestingly enough, on December 10, 1992, MP George Rideout had introduced a private member's Bill, Bill C-390 which had addressed the issue of stalking. Similarly, in February of 1993, NDP MP Dawn Black tabled a private members bill, Bill C-409, that was much more comprehensive than Bill C-126. Yet, for whatever reasons, there was no interest at that time for an anti-stalking law, and both Rideout's and Black's Bills were disregarded. However, only a few months later, Pierre Blais announced to the House of Commons that a Bill addressing stalking was needed in order to recognize, "the seriousness of violence against women, child abuse and family violence.....because the government has the responsibility to ensure that the Criminal Code is adequate for the protection of the public" (Department of Justice, 1993:1). In a written correspondence from the present Justice Minister Allan Rock (1995), he even stated that the criminal harassment provision was a positive step towards reducing violence against women.

The government clearly emphasized that the intended purpose of this law was to protect women from harassing and potentially harmful behaviour, by creating a lower threshold for police intervention (McCormack, 1995). As one writer on the issue of criminal harassment indicated, "[t]he Canadian criminal harassment law was designed to provide the criminal justice system with a means to control fear inducing behaviour. Its primary purpose is not to

prevent future harm, but rather to punish for harm already done" (Cooper, 1994:24-25). The desirability of having a law designed to "protect" women will be addressed in the following chapter.

The view by the government that the criminal harassment provision was carefully drafted to reflect the concerns of women who are stalked, may in fact, be true (Rock, 1995). However, one significant deficiency with this Bill, was that Blais, in an effort to have this Bill quickly submitted to the House of Commons, did not request any input from victims of stalking, or from Canadian women's organizations who work with such women. It was felt, by women's organizations and others concerned about this issue, that the omission of any meaningful consultation with women was a serious flaw. These individuals felt that a serious consultation with women should have been considered as a critical element in creating this law.

It was not until May 6th, 1993, after Bill C-126 had had its second reading that various organizations were allowed to submit briefs to the Legislative Committee addressing their concerns over the proposed legislation change. Despite the relatively short period of time allowed to prepare a response, nineteen witnesses were given permission to submit briefs and were able to appear before the Legislative Committee on May 25th (Cairns Way, 1994:394). The women's organizations that were finally allowed to participate and voice their opinions, were extremely troubled, and rightly so, by the speed with which this Bill was being pushed through.

The initial draft of the criminal harassment provision read as follows:

Section 264.

(1) No person shall, without lawful authority and with intent to harass another person or recklessly as to whether the other person is harassed, engage in conduct referred to in subsection (2) that causes that other person reasonable 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-house, 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.

(3) Every person who contravenes this section is guilty of

- (a) an indictable offence and is liable to imprisonment for a term not exceeding five years; or
- (b) an offence punishable on summary conviction

The media response to this Bill was supportive and congratulatory, but the two opposing political parties were sceptical about the sincerity behind a governmental initiative introduced so late in its mandate (Cairns Way, 1994:394). Were the intended purposes of the legislation a genuine concern for violence against women, or was it merely an election ploy? Women's groups as well questioned the government's motivations, and were upset due to their

lack of consultation, and because they had been guaranteed that an anti-stalking law would be tabled as a separate piece of legislation, and not as part of an omnibus bill (Bazilli, 1993b). Additionally, the Canadian Police Association, which had also submitted a brief on Bill C-126, was concerned that the Bill was missing any method or process by which orders issued in this regard could be enforced (Jessop 1993:3). It appears quite evident that the stalking initiative had suddenly become a speedy process that was clearly part of a larger political agenda which emphasized public safety and *law and order* solutions, over addressing systemic problems of violence, and crimes against women (Cairns Way, 1994:392).

INITIAL PROBLEMS WITH THE CRIMINAL HARASSMENT PROVISION

Women's organizations had various problems with Bill C-126, which they openly expressed to the Legislative Committee. For example, women felt that the federal government could have written a better law if it had consulted first with the experts: the victims of harassment and the advocates who work with them (Gallivan and Bazilli, 1993:A27). The fact that women themselves had not been consulted during the drafting of this legislation caused much anger and confusion over why women's voices had been ignored on an issue that would affect them the most. This omission was in direct contrast to former Justice Minister Kim Campbell's commitment to consult broadly with women's groups before drafting legislation that affected them (Vienneau, 1993). In creating this new law, women's opinions and concerns should have been voiced, and not silenced, on an initiative that would clearly have an impact

on them. As Kneen stressed in her brief to the Legislative Committee, "[w]hat we need is not piecemeal legislation. What we need is a holistic approach which is based on the reality of Canadian women's lives and which therefore addresses the real issues of violence against women in the context of systemic racism, sexism, and poverty. Nothing less is good enough" (1993:4). However, in this instance, it appears that political haste was deemed more important than listening to the voices of concerned women and women who's lives have been affected by stalking behaviour.

Despite the lack of preparation time, and the diversity of the organizations who were allowed to comment on Bill C-126, there was general consensus on the three main problematic areas within this new law.

First of all, it was generally agreed that there was a need for a gender based preamble, similar to Bill C-49, the new sexual assault section in the Criminal Code. A preamble was deemed necessary in order to "contextualize the reality of women's experience of criminal harassment" (Cairns Way, 1994:395). Susan Bazilli of METRAC, was one of the women who spoke directly to the Committee. In her address she clearly articulated the need for a preamble.

If the Federal government is to address the issue of violence against women - to address the fact that women are murdered in Canada every week by men - most often by their intimate partners - then the intention should be stated and named in a Preamble. It is imperative that this intention be expressly stated to hopefully allow for some consistency in application and interpretation by enforcement officers, prosecutors, and the judiciary (1993b:48).

It was also stressed that the preamble had to be gender based (i.e., include the use of gender specific language) and Charter driven, since "stalking is about violence against women, which

is about inequality of women" (Bazilli, 1993b:49). As the spokesperson for the National Association of Women and the Law suggested, "the purpose of setting out a preamble is to ensure the sections are interpreted in light of the guarantees under sections 7, 11 and 15 of the Canadian Charter of Rights and Freedoms" (1993:5). Women's organizations viewed a preamble as necessary to the stalking provision as a mechanism for making explicit the vulnerability of women in becoming subject to male violence, especially violence by male intimate partners. As Crown Attorneys Gary Trotter and Norman Farrell (1995:20) have since indicated, "[t]he Criminal harassment provision is not just about the prevention of physical harm and/or death, it is just as much about the right to live autonomously, beyond the grasp of past relationships."

Secondly, women's groups demanded the removal of the *reasonable fear* requirement, because inclusion of this element was deemed as both unnecessary and potentially dangerous to women who are victimized by men. As Bazilli asserted, "[i]mposing a standard of reasonableness continues the tradition of examining a women victim/complainant's character, mental health, stability, as well as her past relationship history" (1993b:52). The brief submitted by the Canadian Advisory Council on the Status of Women illustrates these claims:

The inclusion of this element makes the woman and her perceptions part of the offence. This exposes victims to cross-examination on the nature of their fear and on its objective reasonableness. Experience with sexual assault has demonstrated that courts have great difficulty in both understanding and characterizing women's perceptions. Imposing a standard of reasonableness opens the door to an examination of the victim's character, mental health, and stability. In addition, requiring reasonable fear vests increased discretion in the hands of police and prosecutors who may decide not to proceed based on their own assessment of the victim's perceptions. All of these potential results

are frightening for women, and may in fact discourage their reliance on the criminal justice system (1993:5).

The inclusion of the *reasonable fear* element was also considered problematic by other women who responded to the Bill. As Dianne Lupton from the Victims Action Coalition and Women's Action Coalition demanded, "[w]e want a clear definition of what is meant by reasonable fear. Our fears, as women, are not the same as the fear of a six foot tall, physically fit male" (1993:14). In the past, the standard of reasonableness has generally drawn on the experiences of the *reasonable man* (Gallivan and Bazilli, 1993:A27). However, one must keep in mind that a woman, especially; an abused woman, or a woman who has been subjected to persistent threats, will find some behaviour harassing and frightening that a reasonable man might not. Whether or not this reasonable fear element is necessarily in accordance with the civil liberties of accused individuals will be discussed and debated in the following chapter.

Finally, concern was expressed over the proposed *intent* requirement of the Bill. It has been proven repeatedly that intent is difficult to prove in relation to harassing behaviour (Cairns Way, 1994:396). The *mens rea* requirement, worded as "intent to harass another person, or recklessly as to whether the other person is harassed," established a subjective test of intent. This is problematic as the following statement indicates:

It must be established beyond a reasonable doubt that the accused was consciously aware of the risk of causing the prohibited harm and proceeded nevertheless. Subjectively measured recklessness requires an advertence to the risk and a decision to continue. It does not catch an individual who unreasonably, but honestly, believes that there is no risk in his conduct. In the context of the harassment provision, recklessness would not catch an accused who honestly but unreasonably, believed that his conduct was romantic and who

purports to be unaware of the fact that he was engaged in harassing conduct (Bazilli, 1993b 54)

This statement clearly acknowledges the difference between perceptions held by the perpetrator and those held by the victim. This discrepancy deserves consideration because many people who engage in harassing behaviour believe that their behaviour is harmless, but the person who is receiving the obsessive attention does not usually perceive it as such. As Crown Attorney Hillary McCormack pointed out in her paper on the subject of the criminal harassment provision, "[v]ictims of stalking have made it clear that this conduct was not to be viewed as expression of love or affection, but as a means of exerting control over them by their former partner" (1994 1). It is important to establish the fact that different viewpoints are operating between the stalker and the person being stalked. Similar to the removal of the defence of *honest, but mistaken belief*, in the sexual assault law, women felt that the *intent* requirement needed to be removed from the Bill, because the point should not be whether the stalker intended to cause fear, but that by his actions he is causing fear that is both reasonable and serious

In the brief submitted to the Committee by The Canadian Police Association, it stated that the police were in accordance with many of the issues raised by the women's organizations. Their brief, however concentrated mainly on education and enforcement of the law for police officers and the judicial system. One thing that it felt would be essential to the success of this kind of law, would be a change in the attitudes of the police, judges and Crown prosecutors in dealing with these types of cases. In essence, the police felt that the stalking

issue needed to be given the attention that it deserves, and that education about the new law would be a key factor in assuring its effectiveness. The Canadian Police Association recommended the use of an *Operational Panel* which would be comprised of police officers, Crown prosecutors and judges, whose goal would be to critically assess what kind of response is given now to victims of stalking, in order to develop the very best standards or practises in the hope of developing some form of national protocols (Jessop et al., 1993:4-5). The brief also stressed that such a panel should include stalking victims who have gone to the present system and found it wanting. Such a panel was never implemented.

The Canadian Police Association also felt strongly that the passing of a new law would not be the answer, if done alone without education or guidance for police officers as well as for victims of stalking. "If protection is to result, this law must be enforced and those victims particularly vulnerable must be made aware that the procedure for their protection exists and that police will competently use it" (Jessop et al., 1993:8). This supports the viewpoint set out by the National Action Committee on the Status of Women: "A law that is unenforceable, or poorly enforced, or enforced at the expense of women victims is worse than no law at all" (1993:5). These issues put forth by The Canadian Police Association indicate that education about such a law, and the impact that stalking has on the lives of the victims, would be a crucial aspect of the criminal harassment provision and its effectiveness.

CHANGES MADE TO THE CRIMINAL HARASSMENT PROVISION

Taking heed of the suggestions put forth by the various organizations, some changes were in fact made to Bill C-126. These changes now reflect the way the law, which was enacted in August of 1993, reads today:

Section 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 that other person reasonably, in all the circumstances, to fear for their safety or the safety of anyone known to them.

Sections (2) and (3) have remained the same

Law makers felt that this new provision would be broad enough so that women need not experience injury before a charge of criminal harassment could be laid; thus allowing earlier intervention by the police and subsequently the criminal justice system. Nevertheless, the criminal harassment provision is by no means flawless. The changes made to Bill C-126, and its remaining problems, are issues considered in the next chapter.

CHAPTER THREE:

CONCERNS REGARDING LEGAL REFORM

The fact that certain changes were made to Bill C-126, does not mean that this new law was necessarily deemed acceptable or appropriate by women, especially victims of stalking and those who advocated for change. More importantly, advocates felt that besides the creation of a new law, education and understanding of the impact of stalking was crucial for this type of law to be effective. As Dianne Lupton contended, "[t]his new proposal isn't going to work any better than what we have right now. The police aren't following it, the courts aren't following it, why are they going to follow a new law?" (Mandel 1993:A5) This is an important question that deserves further attention. Even Susan Bazilli felt that a new law would offer women little more protection if the police and the judicial system were not going to take women's concerns and fears seriously. She felt that a *multi-layered approach*^{*} was needed

^{*}Susan Bazilli viewed a multi-layered approach as including legislative reform, judicial, crown, police and legal community mandatory education and accountability, funding for women's transition houses, sexual assault centres, and support networks; co-ordinated response services under the direction of women's groups; funding for women's groups to conduct public

instead of simply putting new legislation into place. This type of approach was requested to respond to the diversity of women's lives. Such an approach was deemed necessary in order for the police and the judicial system to recognize that social, economic, physical and cultural factors must all be considered when determining possible reforms and appropriate legal responses (Bazilli, 1993a).

As well, there was concern raised over the belief that this type of a law would be offering women a false sense of protection and security. As Ontario Attorney General Marion Boyd stated at the time this Bill was being reviewed, "[t]he worst thing for the women of Canada would be to have an illusion of safety under this law that isn't real" (Todd 1993:13). Boyd, who also submitted a Brief to the Legislative Committee on behalf of the Ontario government, stressed that education needed to be a key factor in the implementation of this law.

We live in a society that minimizes and underestimates the adverse effects of varying forms of harassment and control over women and children. In this context, no bill on its own, no matter how skilfully crafted or amended, can be effective. The development of effective legislation must be accompanied by education and raised awareness on the part of those who enforce and interpret the law. In addition, the general public needs to be made aware of the impact of criminal behaviour on the lives of women and children (1993:8).

Without educating the police forces and the judiciary on violence against women, a new law

awareness campaigns; and effective protection and restitution for women who are stalked and for their support networks. This multi-layered approach was written out as part of a statement prepared by all delegates at a national conference on *stalking* held in Victoria, B.C., May 15, 1993.

may be enforced as haphazardly as the previous provisions: "As long as some police officers, Crown attorneys and judges do not take this behaviour seriously, and do not realize the profound impact of it on women's lives, they may continue to dismiss these cases or administer lenient sentences" (Black, 1993:2).

What these concerns indicate is that a new law in itself would not be the answer, without dealing with the issues of education and understanding of the seriousness of stalking and how it affects the lives of the victims. Regrettably, these issues were not directly addressed in the legislative process. Instead, Blais dealt with the concerns and issues raised by the various organizations, specifically regarding the wording of the law itself. Although Blais felt that the amendments reflected the suggestions submitted to the legislative committee, many women and women's organizations still found remaining flaws with the criminal harassment provision. These flaws deserve attention here, as they reflect how problems still remain even after a new law has been created. In order to illustrate how problems and conflicts often remain after the creation of a new law, William Chambliss's analysis of law reform (Chambliss, 1986; Chambliss and Seidman, 1982) will be discussed and applied in relation to the Canadian anti-stalking initiative.

According to Chambliss (1986:30-31), the state is faced with the dilemma of how to offer solutions to conflicts without significantly altering the structural cause of the conflict. In capitalist societies, this means formulating solutions that appear to resolve conflicts between capital and labour, while leaving the basic contradiction between them unresolved. Ultimately this avoids the potential for an economic revolution. Chambliss's theory has since been

interpreted to also mean that in patriarchal societies, the state can offer solutions to conflicts between men and women without significantly altering the structural cause of the conflict; leaving the contradictions of patriarchy unresolved while giving the appearance of reform (Hinch 1991:233-234). According to Chambliss, the state will attempt to make the conflict, not the basic structural contradiction appear to be the problem, and it will make its solutions appear to be the best possible solutions to the problem. However, every time the state resolves a conflict, a new conflict usually emerges, creating the need for another solution. It should be noted that Chambliss and Seidman (1982) take special care to indicate that people create the social systems and the laws, and that it is people who are faced with the task of finding solutions to the ever emerging conflicts. Before applying Chambliss's theory to the criminal harassment initiative, the following example using the sexual assault legislation will demonstrate how problems and conflicts remain even after progressive reforms have been made.

Ronald Hinch, a professor from the University of Guelph, has written extensively on the changes to Canada's sexual assault law (1988; 1991). Using Chambliss's structural contradictions theory, Hinch asserts that there are obvious inconsistencies, contradictions, and conflicts still apparent within the 1983 sexual assault legislation (Hinch, 1991). For example, Hinch argues that the passage of Canada's sexual assault legislation, Bill C-127, was an attempt to resolve conflicts between men and women over the definition and enforcement of the rape law as it existed prior to 1983.

For more than a decade, feminist critics had been alleging that Canadian rape laws were

"anti-women" and needed to be changed. The dilemma for the state however, was to find a way to reform, so that the law would appear to satisfy feminist demands, while at the same time leave the patriarchal and class nature of Canadian society unscathed (Hinch, 1991). The result was that in 1983, the state removed the marital privilege, and gave victims of sexual assault greater protection from character assassination in court. However, women's sexual histories could still be examined in court as a means of challenging the victim's credibility, and the social pressures on women which prevent them from reporting victimization at the hands of their husbands remained problematic. Hinch's analysis maintains that in the end, the reforms set out in Bill C-127, did little to alter the contradictions in the social and economic positions of men and women:

Even though the Canadian state amended its statutes to give the appearance of responding to cries of sexism, it is apparent that little real change has occurred. Specific feature of the law and its enforcement remain as patriarchal today as they were before January 1983 (1991:246-247).

Therefore, while some sources of conflict between men and women were removed, other sources of conflict remained, and new conflicts surfaced. Hinch argues that it is impossible to change the contradictions by simply changing the law. He feels that a much more profound change in the social order would be required. These remaining conflicts and contradictions have led to pressures for further legal reform in the area of sexual assault.

The new anti-stalking law can be critiqued on similar grounds as the sexual assault legislation. The criminal harassment provision has been regarded by many as a *law and order*, *quick-fix* solution that does not attack the systemic nature of violence against women. As

Cairns Way asserted, the criminal harassment provision was, "superficial, and piecemeal rather than comprehensive and equality-driven" (1994:400). In the following statements, Hinch emphasizes and summarizes what legal reform should really involve:

The objective in seeking law reform is not simply to change that specific law...The primary objective is to use the struggle for law reform as part of a larger struggle for reform, or reconstruction, of the entire society. It is not just the law which must be changed, but the entire society, complete with its patriarchal and class distinctions. Only by changing the entire society is it possible to escape the vicious circle of reforms designed to give the appearance without the reality of change (1991:248).

Hinch's point, though somewhat optimistic, has been impossible to achieve through previous legal reforms. New laws such as the criminal harassment provision have only been partial solutions to the much larger problems of inequality that exists between men and women in our society. Is it impossible for any kind of legal reform to address broad/systemic issues? Should society become conditioned to expect nothing more than superficial piecemeal reforms?

Reflecting on these common problems associated with legislative reform, and concentrating more specifically on the issues that have been raised regarding the criminal harassment provision, it is possible to see why the following inherent problems remain with the way that the criminal harassment provision reads in its present form.

REMAINING PROBLEMS WITH THE CRIMINAL HARASSMENT PROVISION

The Legislative Committee quickly dismissed the idea of a preamble and decided to leave the criminal harassment provision as it was. This was disappointing, because for reasons outlined in Chapter two, a preamble was viewed as a critical element of this new law. The spokesperson for the Assaulted Women's Helpline in Toronto felt that, "[w]ithout a preamble it is not clear that this legislation could not be used, for example, [in inappropriate situations] against pickets in a labour dispute or against women attempting to get child support" (Kneen 1993:1). This was viewed as a problematic aspect of the law since the criminal harassment provision was intended to work for women, not against them. However, Nicholas Bala from the Faculty of Law at Queens University, pointed out that since the criminal harassment provision requires a threat to "safety," the concern that it could be used against women who repeatedly contact their former husbands about child support is not well founded, since the only threat would likely be to take legal action (1993:379).

The inclusion of a preamble was also deemed necessary as a means of assisting in defending the section against constitutional attacks, for example on the basis that it limits freedom of expression (Boyd, 1993:2). Similar to the reforms made to the sexual assault legislation with Bill C-49, it was felt by women that a preamble was necessary to define criminal harassment in the context of violence against women. A preamble was thought to be necessary in order to address the diversity of women's lives and to facilitate interpretation of the law at all levels. Advocates felt it detrimental that a preamble was not included as part of

the legislation

One of the changes made to the bill however, was that the intent requirement was modified to capture *knowing* or *reckless* harassment rather than solely intentional harassment. This lower threshold of *recklessness* covers the situation where the offender has knowledge of the risk, but proceeds anyway (McCormack, 1994:5). For example, if the offender is aware that his conduct is annoying the victim, but insists that he is doing it out of affection, he will be liable because he is aware of the risk, but proceeds anyway. This mental element also includes the concept of *wilful blindness*, which means that if the offender becomes aware that his conduct may be illegal and that there is a need for some inquiry, and he does not inquire because he wants to remain ignorant, he will still be liable for committing the offense of criminal harassment (McCormack, 1994:5). Although these changes were implemented to strengthen the criminal harassment provision, nevertheless, some women still see problems with the new wording of the intent element in its present form.

Although it is not overtly stated, the amended provision still requires proof of intent at two specific levels (Cairns Way, 1994:399). First, establishment must be made that there was basic intent to engage in the particular conduct; for example repeatedly following, or engaging in threatening conduct. Second, it must be established that the accused knew that the conduct was harassing or was reckless as to its effect (Cairns Way, 1994:399). This amended provision simply changes the nature of the particularized intent requirement, and is no less complex than the original:

The fact that a complex intent requirement with respect to the impact of harassing behaviour was retained suggest that the legislators did not accept the submission that harassing conduct is sufficiently serious in and of itself to warrant criminalization (Cairns Way, 1994:399).

The wording of this mens rea requirement, suggests that intent with respect to criminal harassment may become a problematic aspect of this crime even though it is not explicitly stated.

Although causation of reasonable fear was retained as an essential element of the offence, the phrase "*in all the circumstances*" was added to signal the need to examine the fear from the perspective of the victim. The use of the words, "*that causes that other person, reasonably, in all the circumstances,*" implies a subjective appreciation by the law regarding victims fear for their safety. However realistically, it is more likely that the judicial interpretation of "reasonably" would be mixed both objectively and subjectively, because of the power the judicial system has concerning the interpretation of the law. Although judicial discretion will be operating in the interpretation of the criminal harassment provision, the assessment of *reasonable fear* is supposed to take into account all of the circumstances of the complainant and the offender, including her physical size and relationship to the accused, as well as the actions taken by the offender (McCormack, 1994:7).

Some may argue for the civil liberties of the offender, believing that in the name of protecting women, the perception of a woman's fear should not cause automatic liability of the offender. However, with stalking, this is not usually the case. It is the persistent nature of the harassment, often accompanied by threats of bodily harm and/or death that causes the victims

to be fearful and in need of protection by the law. As Detective Brock Frankland of the Metro Toronto Police stated regarding the civil liberties of men who stalk, "[t]his type of offender is interfering with the life, liberty and health of the victim. This type of behaviour is against our Canadian Charter of Rights and Freedoms, and needed to be against the law" (Frankland, 1995). Arrests, restraining orders, and imprisonment are all seen as serious incursions on individual liberty. However, the effective imprisonment of women inside their homes because they cannot safely venture outside is also a serious infringement on individual freedom (Philipps and Young, 1993:6); stalking needed to be viewed in this context.

However, even with this modification of the legislation, an explanation of what constitutes *reasonable fear* is still unclear. Some still see the real possibility of this inclusion being seen as an open invitation for agents of the criminal justice system to interpret women's perceptions according to social and sexual stereotypes, allowing the potential to remain for revictimization (Cairns Way, 1994:399). The criminal justice system nonetheless, is supposed to assess the complaint, taking all circumstances into consideration. This includes recognizing that different oppressions inform women's experiences and learning to realize that what is "reasonable" to a woman must be looked at in the context of her victimization. Some acts not normally considered life-threatening to an average person, may be terrifying to a woman who has been the victim of repeated abuse. This assessment of what is *reasonable* is largely based on Madam Justice Wilson's decision in R. v. Lavallee (1990). She pointed out that the reasonableness of a victim's fears must be assessed in the context of gender, and that due to their "size, strength, socialization and lack of training" women may reasonably have fears to

their safety in situations where a man might not (cited in McCormack, 1994:7). As long as *reasonableness* is viewed in this context there should be little debate about this issue. However, because of the power of judicial interpretation, what is supposed to occur in theory does not necessarily occur in practice.

Another issue that was raised by the media was the question, what constitutes *repeatedly*? There was concern over the interpretation of the phrases *repeatedly following* and *repeatedly communicating*. "Will the courts interpret that as two times, three times, or more?" (Lewis, 1993 A5). It was felt that the criminal harassment provision needed to explicitly state what was meant by *repeatedly*, so that the law would be interpreted consistently over time, and applied equally by every law enforcement agency in Canada.

Concern was also raised over the focus of the legislation on the threat to physical *safety*, as this could provide a loophole through which offenders may easily slip. "The power of many stalkers lies in their ability to torment their victims and cause emotional distress. Clearly this needs to be addressed" (An Overdue Law Against Stalking, 1993.A18). This issue of psychological safety and emotional distress was not directly addressed, but nevertheless is a critical aspect of stalking that could easily lead to problems in judicial interpretation.

Due to the fact that many flaws remained with the criminal harassment provision, it was difficult for women to foresee whether or not this law would benefit them. Not only were there remaining flaws in the legislation, but there are also flaws in the existing criminal justice system that allows for an uneven judicial interpretation of "gendered" problems. The various organizations who submitted briefs to the Legislative Committee were dismayed at the speed

in which this legislation was put through, and blame the fact that problems still existed on political haste and misguided loyalties. The question, "Will this new *criminal harassment* provision really help women affected by stalking?" will be addressed in greater detail in the following chapter.

SHOULD STALKING HAVE BEEN CRIMINALIZED?

Based on the various problems and issues surrounding the criminalization of stalking, it is imperative to ask whether or not criminalization was an appropriate answer for addressing stalking behaviour. Keeping in mind the limits of legislative reform, this question is an issue that has been the subject of much deliberation and debate. Many women, especially victims of such harassment and abuse, feel that the Canadian justice system has an obligation, "to send a strong message to men who continue to terrorize and violate women that this behaviour will not be tolerated, and will be punished to the full extent of the law" (Pepino, 1994:3). Due to his personal experience in dealing with victims of stalking, Detective Frankland (1995) felt that criminalization was the only practical response: "No one has the right to interfere with someone's ability to enjoy their home, to go to work, to walk the streets, or to do what ever they want, freely and without fear. No one has the right to take another person's freedom away " Frankland (1995) stated that he feels strongly that people who stalk need to be dealt with "solely and swiftly" by the legal system. In recent interviews, Crown Attorney's Hillary

McCormack and James Cornish, as well as all police personnel who were interviewed, and women's rights advocates Dianne Lupton and Susan Bazilli who were involved with the criminal harassment process, felt that criminalization was the only viable solution to deal with stalking. Numerous letters sent by victims to various newspapers and women's organizations clearly indicate their desire to have stalking criminalized.

However, others believe that perhaps criminalization was too harsh a response and that instead there could have been alternatives to criminalization such as therapy and treatment, or that specific treatment provisions could have been set out explicitly in section 264 for people who stalk. A citizen who wrote into The Globe and Mail had the following to say about the criminalization of stalking:

Anti-stalking laws will do nothing to stop obsessed men from getting even with their wives or girlfriends. These men simply cannot handle rejection and don't care what happens to themselves just as long as they can inflict maximum pain on the person that has caused them so much pain. The only way to protect the victims is to prescribe mandatory counselling in secured facilities for anyone served with a restraining order. Only when the assigned mental health worker along with a panel of independent people agree that the patient is no longer a threat to the victim should he be released (Shapiro, 1993:A21).

Whether or not mandatory treatment would have been a viable alternative solution is difficult to determine, since at present it is deemed unconstitutional to force evaluation or treatment (Lupton 1995, McCormack, 1995). Since stalking is about the denial of the most fundamental rights of every person in a free and democratic society (Boyd, 1993:2), it seems only appropriate that the law be used in assuring the protection of these rights.

Clearly, the possibility exists that the stalking law may be a dangerous statute for

offenders and potential offenders, and that in creating such a law, their civil liberties were not taken into consideration. Dr. Peter Collins (1995), a forensic psychologist in Metro Toronto who has had a lot of experience in dealing with stalkers and stalking cases, asserted that it is imperative to be concerned about the rights of the victims in these cases, over the rights of offenders. He believes that there is too much concern for the rights of offenders, when it is in fact the victims who need to be considered, and who need help by our laws and the criminal justice system.

In criminalizing the behaviour of stalking, this provision also has the potential to criminalize males who are simply incompetent in dating relationships, and one must question the benefit of making these kind of men into criminal offenders. Dr. Collins (1995) believes that whether or not someone knows how to function in a dating relationship or the break-up of one, the behaviour of stalking is still victimization: "Uncomfortable, harassing behaviour does not need to be tolerated, and can now be avoided through criminal sanctions." One must keep in mind that there are various elements of the criminal harassment provision that have to be met before such a charge can be laid, and these elements of the offense are serious and deserving of attention by the criminal justice system.

Realistically, the possibility does exist for some people to be charged who perhaps should not be, but according to the police, they are careful only to charge in cases that warrant criminal sanctions (Tanner, 1995). As well, Crown Attornies are guided by a charge screening

process⁹ that applies to all Crown Attornies (Cornish, 1995). The police interviewed gave assurance that they do their best not to charge in unwarranted situations. However, what also needs to be considered with this type of an assertion is the fact that police discretion is always operating in determining what constitutes a "warranted" situation. Referring back to Chapter Two, the police do not always take women's fears and concerns seriously, and this will clearly influence the decision, when and if, to lay charges. However, criminalizing stalking now provides a window of opportunity for police who can now take action in all stalking related situations.

PROBLEMS AND DIFFICULTIES ASSOCIATED WITH CRIMINALIZATION

There are always inherent problems in *criminalizing* certain behaviours, and there will always be both women and men who feel that use of the criminal justice system to curb certain types of behaviour is an inappropriate response. There are also more broad and social critiques, indicating that due to the limits of legislative reform, criminalization is not always desirable. Some feminists have argued that relying on the criminal justice system to promote

⁹The Crown Policy Manual (1994) stipulates that Crown counsel is to vigorously pursue provable charges, while at the same time, protecting individuals from the serious repercussions of a criminal charge where there is no reasonable prospect of conviction. Crowns are instructed to screen for reasonable prospect of a conviction, as well as for public interest to proceed. The purpose of this charge screening process is to prevent the process of the criminal law from being used oppressively.

feminist concerns is practically, theoretically and morally wrong, because the justice system is not a reliable ally for women (Snider, 1991:239). Laureen Snider (1991) feels that criminalizing certain behaviours gives the government too much power and control over women's interest, which results ultimately in too much power and control over women's lives. Whether or not this has occurred with the criminal harassment provision is difficult to determine.

It is also possible to argue that the criminal harassment provision not only causes, but reinforces "the victim" status of women. Should the desired goal of this legislation be "to protect" women? Some may argue that reinforcing female dependence is a step backwards for feminism, instead of forwards, and that this is an undesirable consequence of the criminal harassment provision. Canadian law should be moving away from, and not encouraging, females to adopt the role of "victim." However, it can also be argued that this type of legal reform was necessary to protect women from the real dangers of stalking behaviour. Reflecting back on the various purposes of the legislation, it becomes apparent that this law was put into place for numerous reasons, but most importantly it was implemented as an effective means of empowering women, and allowing women who are being stalked to use the criminal justice system to their own advantage (Lines, 1995).

Legal reforms have, in fact, become an occasion for public discussion and debates, which has the ability to increase cultural and political awareness of certain issues (Currie and MacLean, 1992:252). With the issue of stalking this has clearly been the case. The criminal harassment provision has promoted awareness for professionals and the public about the

impact of stalking, and the need to protect women from this type of potentially dangerous behaviour (Bala, 1993:378). As well, this amendment to the Criminal Code created a public forum in which this type of legislative reform could be debated, in the media, as well as in the House of Commons.

The recognition by the United States to view this type of behaviour as unique, and serious enough to warrant criminalization, was a significant influencing factor as to why Canadian law makers took the same initiative. However, the haste and political climate in which this Canadian law was passed has raised grave concerns that this law may in fact not work in women's favour as was initially hoped. Rosemary Cairns Way believes that "this new offence will make little material difference in women's lives" (1994:1). Cairns Way blames the *moral panic* surrounding this law, as well as the media manipulation and political opportunism as reasons why the enactment of Bill C-126 has resulted in failure to appreciate and acknowledge the systemic nature of violence against women. She, like many others, feels that this law was just a governmental *quick fix* or a *law and order* solution to address concerns about stalking, without addressing the systemic nature of violence against women as a whole.

Problems with *law and order* solutions have become apparent in recent years, and a good example of this is the wife battery issue, and the problems associated with the new mandatory arrest policy (Currie and MacLean, 1992). This policy has been viewed as inadequate because it does not have the ability to challenge the fundamental processes that perpetuate domestic violence. It will be interesting to see if the criminal harassment provision will be met with the same kind of animosity that has been expressed to law and order solutions

of the past

Although problems still remain with the criminal harassment provision, this new law was a much needed step to deal with individuals who engage in stalking. So far, reasons have been presented concerning why our present laws were inadequate in addressing the totality of stalking, as well as reasons why such behaviour was subsequently criminalized. However, the fact remains that governmental motives were misplaced, or perhaps carefully placed, in the passage of this legislation. More time and consideration should have been spent on the larger issue of violence against women, and women's opinions and concerns should have been voiced, and not silenced, on an initiative that was clearly going to effect them. It is important to maintain however, that although a controversial issue, the criminalization of stalking was a viable solution in dealing with this type of behaviour. "Women have a fundamental right to live free from fear; and the violation of this right must be considered a crime and punishable by law" (Pepino, 1992:3).

The main goals and objectives of this legislation were to expand the scope of the law enough to capture this type of threatening and fear inducing behaviour, to promote earlier police intervention, security of the person and equality of women, without compromising those rights guaranteed by the Canadian Charter of Rights and Freedoms (Pilon, 1993:10). But questions remain as to whether or not the new criminal harassment provision is unconstitutionally vague or overly broad (Boychuk, 1994). In addition, questions have been raised regarding whether this new law will operate not only in theory, but in practice as well. These are issues that will be considered in the next chapter, accompanied by an analysis of how

law enforcement agencies and the court system are dealing with charges laid under the criminal harassment provision.

CHAPTER FOUR:

THE LACK OF CURRENT INFORMATION ON THE CRIMINAL HARASSMENT PROVISION

During the process of gathering research for this thesis, it was possible to collect a vast array of information that became available during the time this law was being implemented: information such as briefs, newspaper and journal articles, and unpublished essays based on the stalking issue. Such information is what the first three chapters were largely based on. However, attempting to learn and understand how this new law is being used/applied in Canada, and trying to determine its effectiveness, has been a much more difficult task. Information readily available on how the criminal harassment law is being used, and how it is working to protect victims of stalking per se, is sparse. Hardly any information has surfaced on the impact, validity, or the implementation of this new law. It was only through the process of much digging, discussions, and personal interviews with various individuals who have had experience with the criminal harassment provision, that it became possible to uncover answers to the original research question. Such individuals include personnel from law enforcement agencies, women's organizations, Crown offices, the Department of Justice, and the Canadian

Centre for Justice Statistics. The opinions and viewpoints of individuals from these different organizations are what this chapter is based on.

At this point in time is it impossible to make any sound generalizations, or definitive statements, about the effectiveness of the criminal harassment provision. Moreover, it has been difficult to obtain any information regarding current charging and sentencing rates. The Canadian Centre for Justice Statistics claims that the law is still too new, and because of this, it is too early to gather and publish any statistical data on the number of charges laid in Canada, the number of convictions, or the types of sentences that have been handed down.

Some statistics are available concerning the number of charges that have been laid in the province of Ontario, however, the numbers vary widely and there is no definitive evidence to support these statistics. For example, The Globe and Mail reported in February 1994, that between August 1st and November 30th, there were 240 charges of criminal harassment laid in Ontario. This data was reported to be based on a computer search by the Attorney General's Ministry, that was cross-checked with court records (Breckenridge, 1994:A4). However, at the police training seminar held in August 1995, at the Ontario Provincial Police Headquarters, the Detective Inspector in charge of the seminar stated that the Crown's office in Ottawa had told her that 1,600 charges of criminal harassment had been laid in Ontario in the first four months after the law was enacted (Lines 1995); indicating a difference of 1360 charges. As well, earlier this year in a personal interview, Crown Attorney Hillary McCormack (1995) from the Crown's office in Ottawa, stated that over 2,000 charges have been laid in Ontario up until the time the interview was conducted in July.

What these differing numbers indicate is that officials know that charges are being laid, but they are unclear as to the actual numbers, even at the provincial level. At this point in time it is possible, through contact with individual police departments, to gain a sense of what is occurring at the regional level with regards to charges and sentencing. Apparently however, it is too soon to obtain any accurate data at the provincial or national level. Without this information, it is very difficult to gain a full understanding of how charges of criminal harassment are being dealt with nationwide by our criminal justice system. Presently, the only public information available from the Canadian Centre for Justice Statistics are the statistics that came out in the recent Juristat Service Bulletin Vol. 15 #12 - Canadian Crime Statistics, 1994. These statistics, gathered by the incident based Uniform Crime Reporting survey (UCR), indicate that in 1994 there were 3200 incident records of criminal harassment in Canada. This means that a report was filed on an incident of criminal harassment; this does not mean that a charge was laid. Most of the information provided by the Juristat focused on the sex of the victim and the relationship to the offender.

The results of this survey were that in 1994, three out of four victims of criminal harassment were female, and that female victims tended to be slightly younger than male victims. For female victims, the greatest threat was posed by casual acquaintances (28%) and ex-spouses (27%), followed by close friends, including intimate and ex-intimate relationships (18%), strangers (10%), spouses (8%), other family members (5%) and business acquaintances (4%). These results support the claim that the majority of stalking victims are women and that the stalker is someone whom they have known intimately.

For male victims of criminal harassment, the pattern was quite different: 44% of accused were casual acquaintances, followed by strangers (20%), business acquaintances (12%), other family members (10%), ex-spouses (8%), close friends (5%), and spouses (2%). These numbers indicate that men are much more likely to be stalked by someone who is interested in them, but where no previous relationship existed. This data did not indicate whether these men were stalked by men or by women.

The survey also found that approximately one-quarter of criminal harassment incidents involved other crimes. Of the related offences, 29% were assaults, 25% were uttering threats, 8% were harassing phone calls, 6% were mischief, 6% were breaking and entering, and the remaining 26% involved some other crimes that were not broken down in this report (Hendrick, 1995:16-17).

These results, although useful for seeing a breakdown of the types of victims and types of offenders, are difficult to utilize as a reliable piece of statistical data for a number of reasons. First, these statistics are problematic because they represent only the recorded number of incidents of criminal harassment in 1994. There is no inclusion of incidents recorded in 1993, the first year this law was in place, and the results for 1995 have yet to be completed. This makes it impossible to draw any kind of a comparison, and as well, there is no indication whether there could have been an overlap of reporting by certain victims within that year.

Secondly, it is impossible to predict with these statistics alone, how many of the 3200 incident reports resulted in actual charges, or to know how many cases of criminal harassment were not reported. Walter DeKeseredy and Ronald Hinch observed in their work on rape and

sexual assault that not all rapes and sexual assaults are reported to the police (DeKeseredy and Hinch, 1991:67). The reasons for this vary, but some women distrust the criminal justice system and fear the potential for revictimization. Furthermore DeKeseredy and Hinch indicated that police often dismiss some cases as unfounded when they may in fact be founded. They illustrate how research has shown that police have the power to judge when an event is, or is not, a criminal event. They feel that this decision often depends as much on police assessments of the victim's reputation as it does on judgement of the legal merits of the case (1991:66). It is possible to infer, due to the nature of the crime and likelihood of female victimization, that what has occurred in the past with the reporting of sexual assaults may also be true for the crime of criminal harassment.

Thirdly, it is impossible to know whether 3200 incidents of criminal harassment is an increase or decrease of stalking incidents, or whether there is simply an increase in police response because they are aware of the new law. This is problematic because there are no other statistics available by which to draw a comparison of incidents of criminal harassment.

One must keep these kinds of issues in mind when reading statistics, and remember that statistics are not always a clear indication of what is actually occurring. Statistical results may cause more questions to be raised, than answers are provided, for any given phenomenon. How many charges of criminal harassment have there been in Canada, and how many of these cases have resulted in convictions, are questions that remain unanswerable at the present time.

It seems inconceivable, more than two years after the criminal harassment provision was implemented, that the Department of Justice has no idea about the number of charges or

convictions that have resulted from this new law. This calls into question why the government would implement a new law and then over two years after its implementation still have no idea to what extent the law is working. In a written correspondence sent by Justice Minister Allan Rock, he indicated that even he does not know to what extent this law is being used. In his own words he stated the following:

I do not have the statistics available that would allow me to arrive at a conclusion with respect to the number of charges laid or average length of a sentence...It takes some time for cases to move through the system and additional time to gather sufficient information to draw meaningful conclusions about whether the provision is effective or not (1995:4).

Given the information, or the lack thereof, it appears that at this stage, there is no way of accurately knowing how this law is being used or whether it is effective. On the other hand, individuals having personal experience with the criminal harassment provision have provided their own opinions as to whether this law is working and the extent of its effectiveness. Although such information is purely based on opinions, and cannot be taken as facts, these individual viewpoints have nonetheless been invaluable in providing information to assist answering the research questions pursued in this thesis.

MONITORING THE CRIMINAL HARASSMENT PROVISION

In order to determine whether or not this legislation is serving its intended purpose to protect women from unwanted and potentially harmful behaviour, it is important to consider what kind of a monitoring process, if any, is being employed to evaluate the legislation. Since there were certain expectations of the legislation, it is necessary to question if and how the criminal harassment provision is being evaluated, especially by the people involved in the laws enactment.

During the time Bill C-126 was being debated in the House of Commons, women's organizations were calling for monitoring to be included as part of the legislation. It was requested as part of a built-in review system, to monitor such things as how legislative reform affects violence against women, and more specifically to evaluate the law's potential to assist women who are stalked. This type of monitoring process was not granted. When asked about this request, Hillary McCormack said that such a request is unusual, but nevertheless, Susan Bazilli and Dianne Lupton were disappointed that a monitoring process was not granted, since they felt that a consistent monitoring of the criminal harassment provision would be a necessary and important aspect of the legislation. One would think that a request for a review mechanism would be the norm, rather than the exception.

When told of the concerns expressed by Bazilli and Lupton, McCormack responded by clarifying that although it was not explicitly laid out as part of the legislation, the Department of Justice is presently conducting a review/assessment of the criminal harassment provision.

Allan Rock (1995) claims that the Research and Statistics section of the Department of Justice is currently reviewing charging practices under this new provision, in order to determine if the provision is an effective tool for women who feel they are in danger as a result of harassing behaviour directed at them. As well, he claims that he is interested in learning how the provision is being applied across the country in order to determine if there are any problems with the law in its present form.

Therefore, although monitoring was not accepted as part of the legislative process, it would appear that the Department of Justice is attempting to monitor this provision nevertheless. As Allan Rock stated, "[r]arely, when a law is enacted, a provision requiring a review of the legislation after a specified period of time is included. This was not a requirement when section 264 was enacted, but as noted, I am having my department do research into the effectiveness of the section nonetheless" (1995:3). When this research was initiated and when it will be completed was not disclosed. It would be interesting to know how they are going to go about conducting this research, in order to foresee how meaningful and reliable the results will be.

In September 1994, The Vancouver Sun reported that "No one has been tracking cases to monitor the new anti-stalking law's effectiveness, but the anecdotal evidence isn't encouraging. It suggests police are often reluctant to lay charges, prosecutors are staying charges or accepting plea bargains, and judges are either unwilling to convict or are imposing inappropriately light sentences" (Haysom, 1994:A16). Allan Rock would likely disagree "Although we do not have exhaustive data from every jurisdiction, we do know that charges

are being laid under section 264 and convictions are being obtained" (1995:6). The remainder of this chapter will be devoted to weighing the truth of these claims.

CURRENT OPINIONS ABOUT THE CRIMINAL HARASSMENT PROVISION

In speaking with Lupton and Bazilli, two women who represent Toronto area women's organizations, it was easy to see that they are sceptical about the way the police and the courts are handling criminal harassment cases. It is likely that they would concur with the above statement from The Vancouver Sun.

In an interview with Bazilli (1995) she indicated that because there are no actual statistics available on police charging rates, she cannot adequately determine if police are taking this new law seriously, but her gut instinct tells her that they are not. She further went on to question that if the police were not using the old provisions, why would they use the new ones? Police interviewed gave assurance that the new law is being used because it provides them with a more appropriate tool. With the criminal harassment provision, police now have the power of arrest and the ability to protect victims; something they were not always able to do in the past (Tanner, 1995, Frankland, 1995). Bazilli also implied that to her knowledge there have been few actual convictions of criminal harassment. Police and Crown attorneys interviewed stated that this is clearly not the case. Although even at the local level there are no specific numbers to indicate the number of charges or the types of sentences that have been

handed down, according to the police and the Crown's, their individual experiences with the criminal harassment provision signifies that, in fact, the law is being used and convictions are being obtained (Frankland, 1995; Turner, 1995; Cornish, 1995; McCormack, 1995).

Clearly there are large differences between Bazilli's views and those held by the police and the Crown Attorney's. Who holds more credibility and who is to be believed? In determining the more accurate view, it is crucial to understand the different viewpoints that are operating, in coming to your own conclusion based on the information provided in the remainder of this chapter.

Similar to those of Bazilli's, Lupton's (1995) views of the criminal harassment provision are also very pessimistic. Although she feels that there has been a better response by the police, she sees difficulties remaining with the way in which the courts are handling such cases. Lupton feels that bail provisions are too easy to meet, which again puts the victims at risk. She is also of the opinion that sentences for criminal harassment are not matching the seriousness of the offense. Until more is known about the way in which the courts are treating cases of criminal harassment and the types of sentences that are being handed down, the accuracy of this assumption will be difficult to determine.

As a victim of stalking herself, Lupton feels that the system is not sensitized to the stress and emotional impact that stalking has on the life of a victim, nor does the system give victims the security or safety they deserve. Because it takes so long for cases to go to court, Lupton indicated that it is very stressful and frightening for victims, especially if their stalker has been released on bail. As well, Lupton emphasised the need for harsher sentences for

repeat offenders, something that is not set out in the criminal harassment provision. Detective Frankland feels that the courts themselves will increase the penalty for recidivism in cases where there has been a record of repeated incidents, but the question is, will this really happen? Until more cases go through the courts where repeat offenders are involved, this will also be difficult to determine.

In her interview, McCormack (1995) indicated that the likelihood of recidivism is high for stalkers, because it has been her experience over the years in prosecuting individuals who stalk, that these types of individuals are not easily deterred by police actions or court orders. Given the nature of the behaviour associated with stalking, Crown Attorney James Cornish (1995) estimated that recidivism is measurably higher for offenders of criminal harassment than other types of crime. This is one problematic aspect of the law, especially when determining the length of a sentence and parole conditions. Sentences for criminal harassment seem to have varied in length and severity. According to Dr. Peter Collins (1995), it has been his experience that for a lot of stalkers, this is their first offence, therefore it is difficult for the courts to hand down lengthy sentences. Although severity in sentencing does not always deter, one must question the usefulness of the law, if in fact, the sentences are short and the rate of recidivism is high; how likely is it that victims will be protected?

In a paper written by Steve Sullivan for the Victims of Violence organization, he cited the average sentence as approximately ninety days for convictions under the criminal harassment provision (1994:4). Given that some offenders can apply for parole after 1/3 of their sentence has been served, and after 2/3's mandatory supervision is usually granted, the

incarceration time does not seem very long, given the nature of the crime, and the fact that in the Criminal Code it allows for a jail sentence of up to five years. McCormack (1995) commented that Sullivan's statistic of ninety days is likely too high, because she has seen a number of cases in which suspended sentences were given, meaning that no jail time will be served. Although suspended sentences are not necessarily "light" sentences, the fact that convicted offenders will be immediately released may turn out to be problematic for the victims. Cornish (1995), on the other hand, estimated that the average jail sentence is sixty to one hundred days for a first offence of criminal harassment. However, he gave assurance that parole conditions are usually very strict (i.e., offender has to meet a number of conditions, including that he stays away from the victim), and are strongly enforced. Opinions cited here regarding sentencing, although somewhat contradictory in nature, further prove that no one, including the police or the Crown¹ has a clear informed knowledge base of the types of sentences that have been handed down for the crime of criminal harassment

Although the length of the sentences described above appear to be short, this is not always the case. Detective Tanner (1995) shared the details of a recent case (R. v. Kelly) in which the offender, who pleaded guilty to stalking a Burlington woman for three years, received a sentence of fifteen months on top of the four months he had already served. After he is released, Kelly will also have to serve a three year probation term, which will include him staying out of Halton region and away from his victim (Legall, 1995:T3). Tanner indicated that it has been his experience with cases of criminal harassment, that there have been a lot of guilty pleas. He attributes this to that fact that the evidence against the accused is usually so

overwhelming, and because victims of stalking make excellent eye-witnesses.

The fact that short sentences appear to be the norm, rather than the exception for the crime of criminal harassment, is a serious concern, especially since criminal sanctions are an unlikely deterrent for this type of behaviour. Cornish (1995), and Warr (1995), both indicated that many offenders usually just wait to get out of jail so that they can carry out their plans of harassment; they view this as a problematic aspect of the judicial system and its (in)ability to rehabilitate. They feel that sitting in jail gives offenders a lot of time to pent up their anger and aggression toward the person who put them there, and they know that victims are aware of this. Justice Minister Allan Rock suggested that if the threat of incarceration is not enough to deter someone from engaging in criminal harassment, then "imprisonment will prevent them from engaging in the prohibited behaviour" (1995:4). However, if the jail sentences being handed down are not very long, this outcome may prove to be unrealistic.

Dr. Collins (1995), indicated that sometimes a short, swift, sentence will be enough of a deterrent, but his experience with criminal harassment cases has been that more often than not, this is not the case. He also claims that rehabilitation is difficult because of the various classifications of stalkers, and because often mental illness is involved. Treatment for stalkers must depend on their individual diagnosis, and although medical treatment cannot be imposed, the courts do have the power to impose counselling as part of probation and parole conditions (Tanner, 1995). How effective counselling will be, clearly depends on the individual and how willing they are to participate in their own rehabilitation. Generally speaking, there is no specific therapy or treatment that works for all offenders of this nature (Collins 1995).

Undeniably, this law is not without its remaining problems. If the police and Crown's are doing their jobs and gaining appropriate convictions of criminal harassment, it will not mean very much in the end, if the courts are too lenient, and rehabilitation is ineffective. It is also important to question whether or not longer jail time or more severe punishments will produce any changes in criminal harassment offenders. According to McCormack (1995) however, the criminal harassment provision is working: "It doesn't deter, it doesn't prevent, but it does protect women and that is what it was designed to do." Obviously, until more cases go through the courts and more research is conducted into the effectiveness of this law, the use and application of this piece of legislation must remain under close scrutiny.

EXISTING JUDICIAL DIFFICULTIES

Presently, there is not a lot of case law existing on the criminal harassment provision. There are many trial level decisions and a few summary appeals, but as of yet there is a limited base of judicial knowledge concerning the criminal harassment provision (Cornish, 1995). Due to the fact that the law is just over two years old, it takes a lot of time for cases to go through the court system and for precedents to be set (McCoy, 1995). Currently, judges can rely on the benefit of the few existing judgements, but in doing so may follow the mistakes of others. At this point in time, the criminal harassment provision is still going through a trial and error process, as indicated by the fact that interpretation of the law has varied somewhat from

court to court (Cooper, 1994:5) As of yet, no guidance has been provided by the appellate courts as to how this section ought to be interpreted. Until the courts have the benefit of appellate scrutiny, judges at the trial level will have to continue interpreting the law themselves and applying it appropriately, keeping in mind the historical and social context from which this piece of legislation emerged (Trotter and Farrell, 1995).

According to Cornish (1995), the courts are already finding two main problematic areas concerning the interpretation of the criminal harassment provision. Apparently, Crown's are finding that the *reasonable fear* aspect of the charge is sometimes difficult to prove because of its objective nature. As well, it appears that, as predicted, the courts are having difficulty determining what is meant by *repeatedly*.

For judges, it has become difficult to determine what is to be encompassed by the notion of "safety" in the context of the criminal harassment provision. Is it restricted to fear of physical safety, or does it extend beyond this and embrace psychological harm as well? In the earliest judgement to be found in Quick Law dealing with the crime of criminal harassment, Provincial Court Judge Greco in R. v. Lafraniere (1994) asserted his interpretation of "safety." He felt that "safety" should not be limited to actual bodily harm, but rather that it must also be taken to include freedom from harm or anticipated harm which is psychological in nature. Judge Zuraw, in a later case R. v. Gowing (1994), concurred with Greco and followed this recommendation. However, Judge Downie in his judgement in R. v. Basczunski (1994) disagreed with Greco, because he felt that in this particular case the victim's fears were not reasonable because the accused was merely making repeated phone calls and unwanted

visits in an attempt to win back his ex-girlfriend. The victim claimed that he caused her to be fearful, but this psychological harm was not considered by Downie as constituting *reasonable fear*.

Connected with this issue of safety, how is the Crown supposed to demonstrate the *reasonableness* of the victim's fear for his/her "safety"? Is the court restricted to relying on the strict *actus reus* aspects of the accused's conduct, or can the court consider background events, such as the nature of the previous relationship and the victim's knowledge of the accused's propensity for violence? (Trotter and Farrell, 1995:16) Cornish indicated that he has been able to use pre-charge behaviour as evidence in successfully gaining convictions, because he has been able to illustrate how this information is relevant to the victim's perception of fear. However, the inclusion of such evidence is a contentious one, and subject to individual judicial discretion. According to Cornish (1995) such evidence has not been accepted in every case of criminal harassment

One of the most common problems that has emerged in criminal harassment cases is the (mis)interpretation of the word *repeatedly*. The question has become, "how many times does it take before it can be said that the communication can be characterized as 'repeated'?" (Trotter and Farrell, 1995:12). In the case of R. v. Lafraniere, Judge Greco stated that, "repeatedly obviously means more than once" (1994:4). However, he interpreted *repeatedly* to be judged on a case by case basis, using "common sense and judicial expertise". In a later case, R. v. Honeyman (1994), Judge Allen interpreted repeatedly to mean two or more times, however, in the case of R. v. MacLean (1994), Judge Bentley referred to repeatedly as meaning

conduct that is repeated "many times over." Clearly the courts are far from uniform in their approach to this issue and are offering various definitions of what is meant by *repeatedly*. This becomes problematic in applying this law equally and consistently across Canada. It is important to consider the appropriateness of judging *repeatedly* on a case by case basis, or whether if, in fact, the provision needs to explicitly state how *repeatedly* ought to be interpreted in order to avoid differing judicial interpretations.

Problems with the interpretations of a new law are only to be expected. As judge Gregoire pointed out in the case of R. v. Vrabie (1995), because the criminal harassment law has yet to have the benefit of appellate scrutiny problems such as the two mentioned above still need time to be worked out. Judicial interpretation of the law is clearly a key aspect of the effectiveness and usefulness of such a law. As Trotter and Farrell pointed out, "If this legislation is to be effective in addressing one important part of the problem of violence against women, it must be interpreted in a manner which is faithful to its roots" (1995:22). Conceivably, as more cases go through the judicial system, and problems such as the ones discussed here are worked out, it will be possible to more adequately determine the effectiveness of the criminal harassment provision.

EDUCATION AND TRAINING FOR POLICE OFFICERS

In determining the effectiveness of any new law, the police are also an important factor, worthy of consideration. As two professors researching police response to stalking pointed out, "Bill C-126 will do nothing to help women unless it is accompanied by changes in police training and enforcement practices" (Philips and Young, 1993:1). Clearly, for any kind of laws to be effective, education about the new law must be employed. As Detective Inspector Kate Lines stated, "laws alone do not promote change" (1995). She stressed how education is a key factor in teaching the police, as well as individuals connected with the judicial system, about the impact of stalking and the role they can play in assisting the victim. When the criminal harassment provision became effective in August of 1993, concern was raised not only about educating police and the criminal justice system about the new legislation, but it was emphasised that these same individuals needed to learn about the impact that stalking has on victims lives, and to understand that their fears and concerns need to be taken seriously.

Prior to the enactment of Bill C-126, a number of policing failures were identified regarding previous police responses to stalking. These failures included non-reaction or negative reaction to complaints, failure to lay charges, failure to enforce restraining orders, failure to co-ordinate with victim services, and lack of education and appropriate training for dealing with stalking and other forms of violence against women.¹⁰ It was requested that these

¹⁰ For a more detailed description of these policing failures see, Philipps and Young (1993). "Police Responses to Stalking. The Criminal Harassment of Women" (unpublished

issues and problems he dealt with and rectified, with the emergence of the new legislation.

During the research for this thesis, police were asked questions about educational initiatives concerning the criminal harassment law. The police officers who were interviewed gave assurance that there are definitely training programs, and on-going educational programs, in place for officers concerning violence against women, and more specifically, the crime of stalking. In Toronto, for example, training bulletins were circulated throughout local police departments once the law was in place, outlining the wording of the provision and detailing the elements of the offense. These types of bulletins are used to make police officers aware of new laws and to guide them on how to handle such charges. As well, in Metro and Halton regions, Crown attorney's also spoke to various police departments, emphasising the importance of the criminal harassment provision and teaching officers that reports about stalking need to be addressed seriously. During various interviews with police officers who are involved in setting up training for their own departments, it became clear that they take, or at least they indicated in their interviews, that they take education about the new criminal harassment provision very seriously (Lines, 1995; Tanner, 1995; Frankland, 1995).

Another example of educating the police about the criminal harassment provision occurred at a training seminar on stalking that was held in September 1995 at the Ontario Provincial Police Headquarters. This seminar, conducted by Detective Inspector Kate Lines, gave valuable hands-on insight concerning how the police are to deal with, and handle, the

report)

crime of stalking. Officers were taught the importance of team work, and they were instructed to work together with the victim, in order to obtain an arrest. Empowering the victim was a key aspect of the training. This seminar also focused a lot on threat management, and provided officers with ways in which to watch for, and assess, different kinds of threats. As well, officers were instructed on ways to help victims manage the threats.¹¹ In order to teach the officers about criminal harassment specifically, Lines described the types of stalkers as characterized by Zona et al. (1993), and included a video presentation illustrating how seriously stalking affects the lives of victims. This seminar was concluded with Lines stressing the need for education, not only for police, but for Crowns, and the courts on how to work together to protect victims of criminal harassment and to obtain convictions.

According to the police interviewed, training for police officers and seminars about the criminal harassment provision, such as the one at the one held at Ontario Police Headquarters, are being conducted on an ongoing basis. Police indicated that in Ontario, preliminary training about the stalking law occurs at Aylmer Police Training College, and continues for officers at both the Divisional and Provincial level. Detective Frankland from 52 Division in downtown Toronto described how he holds an annual training sessions on criminal harassment for

¹¹ Police were taught to watch for threat assessment red flags, such as history of violence, type of threats made (threats that range from general to specific indicate an escalation of threat and a potential for violence), destruction of property, personal contact, psychiatric disorders, and stress factors. Three ways in assisting the victim to manage the threat were also discussed. These were educational (i.e., teaching victims that it is not their fault and providing victims with the tools necessary to use and preserve evidence); behavioural (i.e., teaching victims to make themselves unavailable to their stalker as much as possible), and therapeutic (i.e., showing support for victims and making them aware of available social services and support groups).

officers within his division. His division, being one of the busiest in Toronto, deals a lot with incidents of stalking and domestic abuse. As a result of this, Frankland combines the training on criminal harassment with training offered about domestic violence, since it has been his experience that many criminal harassment cases stem from domestic violence incidents. He provides his officers with written as well as oral information, and an important part of the training stresses victim sensitivity and understanding. Police officers are instructed by Frankland to take victim's fears and concerns very seriously when proceeding with an investigation of criminal harassment.

Although it is apparent that educational programs and training is provided concerning how to handle incidents of criminal harassment, it is impossible to determine to what extent police will actually follow the information and guidance provided. This is a separate issue altogether, one which is beyond the scope of this paper. For the purpose of this thesis, it was important to discover what, if any, educational programs are being offered for police officers on how they are to handle cases of criminal harassment. The police officers and Crown's who were interviewed all emphasised that attempts at educational reform are being made at all levels.

Currently, there are two major projects in the works for police and their dealings with reports of criminal harassment. Lisa Sabourin (1995), a standards development officer for the Ministry of Solicitor General, is presently working on a Police Standards Manual on Criminal

Harassment¹² Currently, this Manual is in a draft stage, but it is hoped to be completed by the end of 1995. Upon viewing this draft manual, it became clear that the police are to view criminal harassment as a very serious social problem. It outlines how, in addressing criminal harassment, police should take into account the existence of different types of offender motivations and behaviours, and that police must acknowledge the strong link between criminal harassment and domestic violence. This manual stresses the need for a multidisciplinary approach in assessing criminal harassment incidents. It describes this strategy as including actions such as protecting and providing services for victims, apprehending and prosecuting offenders, as well as promoting public awareness and understanding of criminal harassment. This manual provides guidelines detailing how the police are to respond in investigative procedures, victim assistance, charging procedure, and post charge/arrest procedures. This manual is being created in order to ensure that all personnel responsible for the investigation of criminal harassment incidents have the appropriate skills and knowledge in all areas relating to the offense. The goal of this effort is to promote uniformity and sensitivity in the way the police respond to reports of criminal harassment.

The second project that is in the works is being initiated by Detective Sergeant Tony Warr from Metro Police Headquarters. Detective Warr is currently researching and assessing the need for an *anti-stalking threat management unit* in Metro, similar to the Threat

¹² It is likely that this manual on criminal harassment will be similar in style to the already existing Model Protocol on Police Response to Wife Assault

Management Unit (TMU) that is currently being directed by Lieutenant John Lane in Los Angeles (Zona et al., 1993). An *anti-stalking threat management unit* would involve starting up a central sub-unit of an already existing squad in Metro, to assess the degree of seriousness of various stalking cases. Detective Warr feels that there is a need for more organization with respect to the way cases of criminal harassment are being dealt with, and he especially sees a need for continuity with respect to the reporting of harassment incidents (i.e., he thinks that criminal harassment incidents need to be reported by victims to the same officer, in order for officers to adequately assess the threat). He feels that there is a need for such a unit to assess which cases should be primarily worked on, based on the degree of seriousness of the situation. According to Warr, Metro and the surrounding areas are being challenged with a lot of criminal harassment cases, and he feels that there are just too many cases to deal with adequately, given the number of officers and recent cutbacks. Therefore, he perceives that this new unit would work well together with divisional officers to assess when, and what type of intervention, is needed in each individual criminal harassment situation. This *anti-stalking threat management unit* would be the first of its kind to operate in Canada, and although it is still in the preliminary research stages, detective Warr is confident that it will be in place early next year.

As previously suggested, education is a key factor influencing the effectiveness of any new law. The examples provided here, outlining educational training and new programs, indicate that the crime of criminal harassment is being dealt with, with the seriousness that it deserves. And although it is still too early to establish any kind of real effectiveness of this

law, everyone interviewed connected with law enforcement feels the criminal harassment provision has been, and continues to be, an effective tool in protecting women from stalkers, definitely more effective than the old laws that were in place. Cornish (1995) attributes a large part of the effectiveness of the law on the relationship between the victims, the police/investigators and the prosecutors. He claims that in Halton region there is a good relationship between the police and the prosecutors, and he feels this has played a large role in obtaining their high number of successful convictions. It is likely that he is correct.

Nevertheless, it was quite clear during the course of researching this thesis, that the views expressed by the Crown Attorney's and police were much more optimistic than those held by the two women who represent women's organizations. This is an interesting, though not surprising, discovery. Perhaps, this result sums up a theme that has been present throughout this thesis. Due to the political haste in which this law was passed, and the already existing scepticism about police interaction with female victims of violence, especially females affected by stalking behaviour, it is not surprising that women are unsure of the effects of this new legislation and the impact that it may have on victims of stalking. The police and the Crowns interviewed anticipate that, with continued education on the crime of stalking and how it affects the lives of victims, women will come to realize that with the help of this new law, the police and the judicial system, that they can all work together toward protecting and assisting victims of criminal harassment.

CONCLUSIONS

This thesis has illustrated the behaviours associated with stalking, as well as the many aspects of reform associated with the creation of the Canadian anti-stalking law. In concluding the research for this thesis it was possible to determine the expectations and intended purposes of the legislation. However, because of the newness of the law, and the unavailability of any current research or monitoring of the criminal harassment provision, it was impossible to thoroughly evaluate the usefulness and effectiveness of this law, in protecting victims of stalking. The opinions and viewpoints offered throughout this thesis, by two women who represent women's organizations, police officers, Crown attorneys, and officials from the Department of Justice, were an invaluable contribution to the research. However, to date there is still no conclusive data available on the criminal harassment provision to fully answer the questions "is it working" and "does it make a difference?"

It has been argued here, that a specific provision was needed in the Criminal Code to fully address the issue of stalking, preferably within the larger context of violence against women. It has also been argued that criminalization was the best possible regulatory response to deal with the social, and more frequently domestic, problem of stalking. However, because

of the political climate and haste in which this legislation was passed, it has been perceived as a *law and order*, band-aid solution, that encompasses the totality of stalking, but like many other laws, does not have the ability to address the systemic nature of violence against women (Cairns Way, 1994). The police and the Crowns who were interviewed believe that the criminal harassment provision has been able to help women who are harassed by stalking, because this law provides police with an early intervention tool, and it provides women in this situation with a sense of legal recourse. However, because this law cannot address the systemic nature of male violence against women, it is unlikely that it will have much influence in stopping such violence, because this law does not have the capacity to address the broader social forces that motivate men to stalk.

Hinch (1991) affirms, in his application of structural contradictions, that it is impossible to change the contradictions and conflicts between men and women, by merely changing the law. He believes that law reform should be used as part of a wider, much larger struggle for real change within society, to end patriarchal and class distinctions between men and women. It is unlikely, due to the aforementioned political haste, that the criminal harassment provision will have this type of an impact or the ability to promote real reform, in addressing the nature of male violence that is continually perpetuated against women. Whether any law reform has this capability is questionable.

Smart (1989) substantiates in her book Feminism and the Power of Law, that legal reform is not always a mechanism for social change, nor is it a means of promoting feminist concerns about women and women's safety. Therefore, use of the law to protect women and

promote feminist concerns is not always a wise choice, and does not always provide a desirable outcome for the feminist movement and what it is trying to achieve. Laureen Snider, in her article "The Potential of the Criminal Justice System to Promote Feminist Concerns" supports the position that women must be cautious of the criminal justice system: "Unfortunately, we know very little about whether law, specifically criminal law, is the most efficient or effective vehicle to change social attitudes" (1991:254). However, Goode and Ben-Yehuda might disagree as they have the following to say about reform and the benefits of *moral panics*, "[m]oral panics are not like fads, trivial in nature and inconsequential in their impact..., moral panics are a crucial element of the fabric of social change" (1994:229). Whether one believes that the movement towards an anti-stalking law was, in fact, a *moral panic*, and if so, whether such actions taken as a result of this moral panic will in fact be beneficial to the feminist movement, are crucial factors in debating the advantages of this type of legal reform. One must always keep these various perspectives in mind and be critical of the law, and what it claims to be capable of achieving.

Due to the fact that the criminal harassment law is so new, and that problematic aspects of the law continue to be discovered, it is difficult to gain a general consensus on the issue as a whole. Women's organizations were dismayed at the speed in which this legislation was put through, and blame the fact that problems still exist on political opportunism and misguided loyalties. Susan Bazilli and Dianne Lupton's feeling about the criminal harassment provision are still very pessimistic, and are unlikely to change until they see some conclusive evidence supporting the criminal harassment provision and its ability to protect women. Perhaps if a

consistent, adequate monitoring process of the criminal harassment provision had been initiated from the beginning, such evidence would now be available. Nevertheless, the police and others associated with the criminal justice system who have had experience in dealing with cases of criminal harassment believe that this law is, in fact, effective and does work to protect victims of stalking.

Clearly, education and training for law enforcement agents and other individuals associated with the criminal justice system, concerning the behaviours associated with stalking and the impact that it has on the lives of victims, were set out as key factors that would largely influence the effectiveness of the criminal harassment provision. As Steve Sullivan stated in his essay on stalking, "[o]ne thing that is essential to the success of this kind of a law is the attitude of the police, judges and Crown Attorneys" (1994:6). Sullivan recommended a mandatory course to educate these individuals on the reality of the danger that stalkers present to their victims. From the research conducted for this thesis it became evident that the police, and the Crown's who were interviewed, feel that the education and training that they are providing on an on going basis, fills this need for education and understanding about the stalking issue. This viewpoint concerning the need for education, was substantiated in the Ontario Provincial Police training session on criminal harassment, when Detective Inspector Kate Lines (1995) asserted the following:

A change in the law can play a critical role in the process of real reform, but that is not necessarily the effect. Statutory amendment cannot on its own increase the level of protection to society. It is only if the new laws are implemented with knowledge, sensitivity, and sufficient resources that protection, real protection, can be effective.

It is hoped that this type of education will reduce the possibility of a gap existing between the "law in theory" and the "law in practice."

In interviewing Susan Bazilli, she stressed that it is important to raise the issue why it is difficult, if not almost impossible, to obtain any information from the government regarding the effectiveness of the criminal harassment provision. In an article from The Toronto Star, Bazilli was quoted as saying, "[w]ithout the data it's impossible to make any kind of an assessment regarding whether or not this law makes a difference" the article further went on to state that there was no information available to show to what extent criminal harassment charges are being laid or the nature of any convictions (Turner, 1994:C1); over a year later, little has changed. Back in January of 1995, Justice Minister Allan Rock proposed amendments¹³ to the criminal harassment provision, in order to improve this law (Bindman, 1995:B5). This proposal seems strange and untimely, since according to Allan Rock (1995), he does not yet know how this law is being used or if it is working. In the same Toronto Star article, Rock was quoted as saying, "[w]e're still monitoring how the law is working and keeping close track of how it's being used and the success with which it's being used." This information, though still not available, makes one question why the government would want to change a law when, at present, they have no clear understanding about its effectiveness.

After researching and completing this thesis, the writer was left with the realization that

Rock recommended such ideas as a stiffer penalty for stalkers who violate a protective court order while stalking their victim, and that people charged or convicted of stalking will be required to surrender all their firearms and licences.

more questions need to be asked and more research needs to be undertaken in the near future in order to thoroughly answer the research questions posed at the beginning of this thesis. The research done here was merely a preliminary quest for current information on the criminal harassment provision and is a step in the right direction for future research on this important issue. Perhaps, as more cases of criminal harassment go through the criminal justice system, and the government establishes a monitoring systems of these cases, it will become possible to fully determine how criminal harassment cases are being dealt with by law enforcement agencies and courts across the country. Thus allowing for conclusions to be made regarding the laws usefulness and effectiveness. The challenge for the government in creating this law was to draft a statute broad enough to encompass all stalking conduct, but not be so broad that it punishes the innocent or prohibits constitutionally protected behaviour (Lytwyn,1994:5) Until more research is pursued, it will be impossible to know if they have succeeded

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