

“Deserving” Wives and “Drunken” Husbands: Wife Beating, Marital Conduct, and the Law in Ontario, 1850–1910

LORNA McLEAN*

By the 1870s wife beating was no longer only whispered about among family members and neighbours, but had gradually started to become a matter for public discussion. Changing attitudes towards wife abuse had an impact on judicial reform. Legal records and newspapers from the period between 1870 and 1910 provide evidence that helps us to assess the influence of the reform movement, and especially the role of temperance, on social and legal responses to violence by husbands against their wives. Lobbying by temperance advocates, combined with political pressure from feminists, reformers, abused women, and the press, contributed to legislation in 1909 that, for the first time, recognized wife abuse as a crime separate from common assault. As the practice of the courts shows, however, legal sanctions remained largely ineffective despite the rhetoric of the day.

À la fin des années 1870, la brutalité conjugale ne faisait plus l'objet que de simples chuchotements en famille et entre voisins, mais également, petit à petit, de débats publics. Le changement d'attitude face à la violence conjugale s'est répercuté sur la réforme judiciaire. Les documents juridiques et les journaux de 1870 à 1910 nous aident à mesurer l'influence du mouvement réformiste, surtout du rôle de la tempérance, sur les réactions de la société et de l'appareil juridique à la violence faite aux femmes par leurs époux. Le jeu conjugué du lobby des promoteurs de la tempérance et des pressions politiques exercées par les féministes, les réformateurs, les femmes battues et la presse ont mené à l'adoption, en 1909, d'une législation reconnaissant pour la première fois la violence conjugale comme un crime distinct de la voie de fait simple. Mais comme le démontre la pratique des tribunaux, les sanctions légales restaient largement inefficaces malgré la rhétorique de l'époque.

IN 1874 in the city of Toronto, 52-year-old James Fox, a second-hand dealer, struck his wife, Margaret, with a mallet.¹ He had, according to her statement,

* Lorna McLean is assistant professor in the Faculty of Education at the University of Ottawa. The author would like to thank Bettina Bradbury, Michael Piva, Kate McPherson, and the journal's reviewers for their insightful comments on earlier versions of this paper.

¹ Mr. Fox's employment is uncertain. His "statement of the accused" listed his occupation as a second-hand dealer. A subsequent newspaper report of the trial identified him as a labourer. Archives of

been abusing her in the night, calling her names and accusing her of being “worse than a prostitute”. Next morning after breakfast he followed her into the shed and inquired if she was “going to the magistrate”. When she responded yes, he struck her in the face. Pursuing his attack, Mr. Fox picked up an axe, which his daughter then wrestled away from him. Not to be deterred, he took a mallet and unleashed a flurry of blows. Searching for another weapon, he grabbed a chisel, knocked his wife down, and stabbed her. It was not until several neighbours rushed over and “took him off her” that the beating ceased. According to a witness’s testimony, Mrs. Fox was “covered with blood”. At trial, the jury found the husband guilty “with a recommendation for mercy”.

Research on wife abuse indicates that by the 1870s “wife beating” was no longer only whispered about among family members and neighbours, but had gradually shifted from being a private and personal household “family broil” to a matter for public discussion.² Changing attitudes towards wife abuse had an impact on judicial reform. Drawing on a body of evidence, primarily legal records and selected newspapers from the period between 1870 and 1910,³ I attempt to assess the influence of the reform movement, in particular, the role of temperance, on social and legal responses to violence by husbands against their wives. The growing, albeit circumscribed, disapproval of wife beating can be seen as a consequence of the persistent lobbying by temperance advocates combined with the political pressure of feminists, reformers, abused women, and the press. Together, these efforts contributed to legislation in 1909 which, for the first time, recognized wife abuse as a crime separate from common assault.⁴ As the practice of the courts shows, despite legal action, judicial initiatives remained largely ineffective regardless of the rhetoric of the day.

Recent work in Canada has contributed to our understanding of marital breakdown and wives’ resistance to violence in the nineteenth and early twentieth centuries. Within the small, evolving historiography, Judith Fingard delved into the case files of an agency that worked with abused women in her study of the Nova Scotia Society for the Prevention of Cruelty, and James

Ontario (hereafter AO), RG 22, Series 392, no. 7221, York County, *The Queen vs James W. Fox*, 1874; RG 20–55–1, vol. 1, p. 08, Prison Register, Ontario Central Prison; *The Daily Globe* (Toronto), July 28, 1874.

2 In Canada, see Kathryn Harvey, “To Love, Honour and Obey: Wife-battering in Working-Class Montreal, 1869–79”, *Urban History Review*, vol. 19 (1990), p. 129.

3 Unless otherwise specified, this analysis is based on a sampling of Superior Court records, including judges’ bench books, from 10 counties across mid- to southern Ontario between 1850 and 1910. Bench books cover a range of counties, as judges travelled across the province hearing cases in Assize Courts. As well, I examined the limited number of cases that listed wife violence in the computerized Criminal Indictment Files of the Ontario Archives. A second sample of jail registers from Leeds/Grenville, Perth, Grey, and York counties provided another part of the discussion on penal reforms. Archival sources were supplemented with a reading of selected newspapers from the four counties listed above and a survey of published legal cases.

4 *Statutes of Canada*, 8–9 Edward VII, cap. 9, sec. 292 (1909).

Snell interrogated the role of spousal violence in marital dissolutions in the Nova Scotia Divorce Court records. Drawing on a range of judicial and legislative responses to marital breakdown, Constance Backhouse and Annalee Golz scrutinized the shifting economic and legal rights of husbands and wives, while Kathryn Harvey's work on Montreal over a 10-year period is useful for demonstrating how temperance helped make wife abuse into a public issue and shaped people's perceptions of it as a crime.⁵ Inquiries of case files and reform initiatives reveal how, over time and within different regions of Ontario, temperance narratives and changing attitudes to marriage led to an important first step in legal reform.⁶

Public concern over wife beating in the 1870s in Ontario was not unique; it was part of an international trend. Historically, concerns about family violence have been a "weathervane identifying the prevailing winds of anxiety about family life in general"⁷ and the role of wives and husbands in particular. In Canada, a confluence of social, economic, and political forces during the mid- to late nineteenth century thrust domestic violence to the fore. Predominantly rural Ontario was becoming a more urbanized and mobile society as men and women migrated to cities seeking employment in a newly structured and expanding industrial work force. Ever-widening state structures included an evolving judicial system, and, after mid-century, municipal bylaws and enforcement agencies policed this transition. Where some saw only the erosion of traditional social relations in an increasingly anxious Victorian society, others, most notably advocates of reform, saw opportunities for change. According to some observers, society was embarking on a revolution, and women were at the centre of this upheaval.

Beginning in 1859 and culminating in a series of laws between 1872 and 1884, married women were granted limited property rights.⁸ Reactions to

5 Judith Fingard, "The Prevention of Cruelty, Marriage Breakdown and the Rights of Wives in Nova Scotia, 1880–1900", *Acadiensis*, vol. 23 (1993), pp. 84–101; James Snell, "Marital Cruelty: Women and the Nova Scotia Divorce Court, 1900–1939", *Acadiensis*, vol. 18 (1988), pp. 3–32; Constance Backhouse, "'Pure Patriarchy': Nineteenth-Century Canadian Marriage", *McGill Law Journal* (1986), pp. 265–312, and *Petticoats and Prejudice: Women and the Law in Nineteenth-Century Canada* (Toronto: Women's Press, 1991); Annalee Golz, "'If a Man's Wife Does Not Obey Him, What Can He Do?' Marital Breakdown and Wife Abuse in the Late Nineteenth Century and Early Twentieth Century Ontario" in Louis Knafla and Susan W. S. Binnie, eds., *Law, Society, and the State: Essays in Modern Legal History* (Toronto: University of Toronto Press, 1995), pp. 323–350; Harvey, "To Love, Honour and Obey" and "Amazons and Victims: Resisting Wife Abuse in Working-Class Montreal, 1869–1879", *Journal of the Canadian Historical Society*, vol. 2 (1991), pp. 131–148.

6 On new standards of husbands' behaviour, see R. L. Griswold, *Family and Divorce in California, 1850–1890: Victorian Illusions and Everyday Realities* (Albany, 1982). See also Lori Chambers, *Married Women and Property Law in Victorian Ontario* (Toronto, 1997); Snell, "Marital Cruelty", pp. 3–32; Harvey, "Amazons and Victims", pp. 131–147.

7 Linda Gordon, *Heroes of Their Own Lives: The Politics and History of Family Violence, Boston, 1880–1960* (New York: Penguin, 1989), p. 2.

8 Chambers, *Married Women and Property Law*, pp. 73–75; Constance Backhouse, "Married Women's Property Law in Nineteenth-Century Canada" in Bettina Bradbury, ed., *Canadian Family History*

these laws were mixed. Supporters of women's rights argued that, under existing laws, marriage "deprived [wives] of all civil rights". Placing a wife's property and earnings in her husband's "absolute power" fostered "manifold evils becoming daily more apparent".⁹ Opponents' reactions to the sweeping changes in the 1870s expressed fear of potential social disorder. Goldwin Smith, a widely published and outspoken anti-feminist, stated in an article in 1872 that the object of this Woman's Rights Movement "is to affect sweeping change in all the relations of the sexes — conjugal, political, legal, educational and industrial".¹⁰ Likewise, several years later, a Canadian parliamentarian announced that proposed changes in the criminal law regarding a wife's legal rights at trial had the potential to profoundly "alter social relations between men and women".¹¹ Conflicting notions about the nature of Victorian marriages underpinned much of this debate.

The regulation of domestic relations in the later decades of the nineteenth century received its greatest endorsement from temperance advocates under the newly formed Woman's Christian Temperance Union (WCTU). From mid-century, temperance was a mainstream movement in Canada West.¹² In Ontario, the first local WCTU organized in 1874, followed shortly after by the Provincial Union in 1877 and the Dominion Union in 1883. By 1900 the National Union claimed 10,000 members. According to the Union, women were the innocent victims of an infusion of alcohol into their homes, and, moreover, women bore the agony of the domestic liquor trade. Drinking, the

(Toronto: Copp Clark Pitman, 1992), pp. 320–359. Canadian initiatives were part of a broader nineteenth-century international movement claiming married women's property rights. See, for example, Lee Holcombe, *Wives and Property: Reform of the Married Women's Property Law in Nineteenth-Century England* (Toronto: University of Toronto Press, 1983); Norma Basch, *In the Eyes of the Law: Women, Marriage and Property in Nineteenth-Century New York* (Ithaca: Cornell University Press, 1982); Mary Lyndon Shanley, *Feminism, Marriage, and the Law in Victorian England, 1850–1895* (Princeton, N.J.: Princeton University Press, 1989). Bettina Bradbury's article compares married women's property rights across common law jurisdictions; see Bradbury, "From Civil Death to Separate Property: Changes in the Legal Rights of Married Women in Nineteenth Century", *The New Zealand Journal of History*, vol. 29 (1995), pp. 40–66.

⁹ "Women's Rights Petition", *The Daily Globe* (Toronto), January 9, 1857.

¹⁰ A Bystander [Goldwin Smith], "The Woman's Rights Movement", *The Canadian Monthly and National Review*, vol. 1, no. 3 (1872), pp. 249–264, cited in Ramsay Cook and Wendy Mitchinson, eds., *Their Proper Sphere: Women's Place in Canadian Society* (Toronto: Oxford University Press, 1976), p. 34. On Smith's anti-feminist views, see Veronica Strong-Boag, "Independent Women, Problematic Men: First- and Second-Wave Anti-Feminism in Canada from Goldwin Smith to Betty Steele", *Histoire sociale/ Social History*, vol. 26, no. 51 (1996), pp. 1–22.

¹¹ The Member of Parliament, Mr. Kerr, was replying to a question about the legality of married women appearing as competent witnesses for the defence when their husbands were defendants in common assault cases. Canada, *Debates of the House of Commons*, March 13, 1878, pp. 1094–1095.

¹² Jan Noel, *Canada Dry: Temperance Crusades Before Confederation* (Toronto: University of Toronto Press, 1995), p. 124.

WCTU declared, turned “men into demons” and promoted violence which was often directed towards wives.¹³

Legal sanctions proved central to campaign strategies which addressed social ills;¹⁴ notably, the second wave of temperance reform from the 1870s to the early 1900s responded more directly to the perceived problems of an urban society.¹⁵ WCTU publications which focused on the evils of drunkenness in the home were integral to shaping the public discourse around wife assault. By and large this literature targeted the behaviour of working-class husbands, who, it argued, were “drunkenly striking out against defenseless women and children”. Union campaigns were not limited simply to promoting publications, however. They also organized a “home protection” movement in the 1870s aimed at protecting wives from abusive husbands and offering them the means to preserve the family unit.¹⁶

The most telling indication of the WCTU’s organizational strategy occurred in 1883 when John Wood, the Member of Parliament for Leeds/Grenville and noted supporter of temperance, introduced legislation that called for imprisonment and whipping for convicted wife beaters. The bill received second reading and was referred to a select committee, where it appears to have died.¹⁷ It would take another 25 years before legislation recognized wife assault as a specific crime. The conflation of temperance and women’s rights campaigns during this time served to publicize the unequal economic and legal status and sometimes violent confrontations in marital cohabitations. The combined efforts of reformers ultimately led to legislative change in 1909; major lobbying efforts by the WCTU played a pivotal role in redefining abusive spousal behaviour as criminal.

13 Cited in Wendy Mitchinson, “The WCTU: ‘For God, Home and Native Land’, a Study in Nineteenth-Century Feminism” in Linda Kealey, ed., *A Not Unreasonable Claim: Women and Reform in Canada, 1880s–1920s* (Toronto: Women’s Press, 1979), pp. 154–155. See also Sharon Anne Cook, “*Through Sunshine and Shadow*”: *The Woman’s Christian Temperance Union, Evangelicalism, and Reform in Ontario, 1874–1930* (Montreal and Kingston: McGill-Queen’s University Press, 1995), pp. 84–90.

14 Among the many examples, see *Provincial Statutes of Canada, 27–28 Vic.*, cap. 18 (1864).

15 Cheryl Krasnick Warsh, ed., *Drink in Canada: Historical Essays* (Montreal and Kingston: McGill-Queen’s University Press, 1993), p. 15.

16 Cook, “*Through Sunshine and Shadow*”, pp. 86, 89; Erin Breat, “Educating Women About the Law: Violence Against Wives in Ontario, 1850–1920” (MA thesis, University of Toronto, 1986), p. 25.

17 Canada, *House of Commons Debates*, March 12, 1883, Bill no. 4, “To amend the Criminal Law, and to make special provisions for the punishment of persons convicted for wife beating”. The local newspaper endorsed the legislation. *The Brockville Recorder*, March 22, 1883. Such recommendations were in keeping with trends south of the border, where between 1876 and 1906 a coterie of reformers, feminists, lawyers, and newspaper editors rallied for legislation to lash wife beaters. Elizabeth Pleck, *Domestic Tyranny: The Making of Social Policy Against Family Violence from Colonial Times to the Present* (New York and Oxford, 1987), pp. 108–109. California introduced the first bill (later defeated) to whip wife beaters in 1876. Maryland became the first state to punish brutal wife beating with the whipping post in 1882. W. T. Hardy, a prominent member of the American Bar Association and chair of the judiciary committee, gained the support of the committee to lobby passage of the bill in the Maryland House of Delegates. Success was limited, however. Similar bills were defeated in both American and English legislatures. Pleck, *Domestic Tyranny*, pp. 109–115.

Further evidence suggests that social judgements about a wife's role in the latter nineteenth century reflected temperance ideals. Womanly duties reached beyond domestic skills to upholding domestic morality and, when necessary, mediating "discord" within the household. Such directives emboldened the public message of temperance advocates. A lecture in 1888 before the Alma Ladies College convocation by the superintendent of the Methodist Church captures some of this moral influence. The speaker endorsed the "moulding power" of faithful wives and mothers as "the queen of home, all, all her own".¹⁸ This apparent emphasis on womanly moral authority was not only a feature of middle-class, pro-temperance publications. *The Ontario Workman*, a Toronto working-class newspaper, offered a similar position in its feature "Home Circle", a section which frequently combined pro-temperance and pro-worker sentiments. Articles appearing in the paper advocated that wives in a modern industrializing society should create a sanctuary in the home as a counter to the crassness of the marketplace. A representative piece published in 1872 under the epitaph "A Wife's Power" advised wives to make the home "a place of peace and comfort".¹⁹

The origin of this patriarchal concept of marriage, in which wives were to be passive, forgiving, and restrained, had its roots in earlier legal definitions of marriage.²⁰ Historically, judicial doctrine offered tacit approval for husbands, who held the legal responsibility for their wives' behaviour, to control them physically. Accordingly, as noted British legal authority William Blackstone argued in his eighteenth-century treatise on common law, it was reasonable "to entrust him [the husband] with the power of restraint in domestic chastisement".²¹ By law and by cultural norms of the day, physical chastisement of a wife was viewed not as abuse *per se*, but as the exercise of the legitimate authority of a husband. As noted in an international study, until quite recently throughout Western society, "wife beating in moderate form was permitted, acceptable and even recommended. The limitation lay in the severity, which was not to be excessive, and the motivation, which was to be chastisement, ... the character of approved wife beating was

18 "Influence of Home", from the *New York Tribune*, reprinted in *Woman: Her Character, Culture and Calling*, edited by Reverend Principal Austin of Alma Ladies College (Brantford, 1890), p. 332. See also the sermon delivered by Reverend A. A. Carman at the Alma College Convocation, June 1888, on a wife's domestic role to reform a wayward husband: "It will be very difficult for reform in the bad habits of men to be fully accomplished unless in each case the man is offered the alternative of a happy home" (*Woman: Her Character*, p. 361).

19 *The Ontario Workman* (Toronto), August 15, 1872, p. 6.

20 See Backhouse, "Pure Patriarchy", pp. 264–312. For laws governing custody cases, see Constance Backhouse, "Shifting Patterns in Nineteenth-Century Canadian Custody Law" in David H. Flaherty, ed., *Essays in the History of Canadian Law*, vol. 1 (Toronto: University of Toronto Press, 1981), pp. 212–248. For a fuller discussion of how law silences women's experience and protects a patriarchal vision of law, see Carol Smart, "Law's Power, the Sexed Body, and Feminist Discourse", *Journal of Law and Society*, vol. 17 (1990), pp. 194–210.

21 William Blackstone, *The Common Law*, vol. 1 (7th ed. 1775), p. 445, cited in Deborah Rhode, *Justice and Gender* (Cambridge and London, 1989), p. 238.

expressed in the very term ‘moderate correction’.”²² The public discourse about marital relations in the late nineteenth century created a legal and social forum for reformers to challenge traditional patriarchal notions of marriage. Hence, the resolve of the reform movement aimed to restructure spousal rights, cultural perceptions, and legal obligations within marriage.

The gradual introduction of penal reforms in the 1870s to protect women reflected a wider social trend where new meanings of masculinity shored up proper non-violent marital relations.²³ Yet, as we shall see, despite these progressive expectations, many legal authorities were reluctant to punish a husband and father in any meaningful way that could threaten the ongoing viability of the family unit. Late-nineteenth-century judges and juries — and many women — could not even imagine a single mother managing on her own. Still others feared that a husband’s lengthy incarceration could potentially devolve responsibility for the remaining family unit onto the meagre, over-burdened municipal welfare resources of most Ontario counties.

Two stages of legal sanctions for wife assault existed between the mid- to late nineteenth century. Within these epochs came opportunities for wives to pursue legal redress. All the while, however, significant obstacles, combined with sustained pressure and resistance to maintain familial, patriarchal norms, meant that court action remained largely ineffective, no matter what the rhetoric. During the first period, between 1850 (if not before) and 1870, most commonly assault cases were heard at the lowest level of the judicial system where magistrates made rulings either singly or in pairs. Only those rare cases involving aggravated assault or assault with intent to cause bodily harm were heard in higher courts before a judge and jury. Upon receiving a complaint from a wife, the magistrate either held the husband briefly for “safe keeping” or instructed him to search for his sureties. Perth County was one of the few municipalities among a sampling of four jails that identified wife assault as separate from assault on their registers. By examining these records alongside judges’ bench books, case files, and newspaper reports from other counties, we can trace some of the factors that led to spousal abuse becoming recognized as a specific type of common assault in its own right at the beginning of the twentieth century.

By the mid-nineteenth century court appearances often resulted in overnight jail sentences, as in the case against John Gaves of Stratford, a 36-year-old shoemaker and father of seven children, who was charged in 1856 with beating his wife. Perth County authorities held him for “safe keeping, one night” just as they did his neighbour, Joseph McNeil, a year later.²⁴ Similarly,

22 Phillips, *Putting Asunder: A History of Divorce in Western Society* (Cambridge, 1988), pp. 323–344.

23 See, for example, James A. Hammerton, *Cruelty and Companionship: Conflict in Nineteenth-Century Married Life* (London and New York: Routledge, 1992). In Canada, see Chambers, *Married Women and Property Law*, pp. 23–27.

24 AO, RG 20, F–40, Stratford Calendar of Prisoners, John Gaves, August 1856; Joseph McNeil, May 1857.

husbands who threatened to injure their wives or others were ordered to obtain sureties “to keep the peace”. For sureties, individuals had either to secure a sum of money or to retain other persons to act as financial guarantors certifying their good behaviour and guaranteeing their appearance at trial.²⁵ Husbands without sureties were committed to jail and held until trial.²⁶

It is uncertain how effectively sureties curtailed further abuse. Under sureties husbands were free to associate and continue residing at home with their wives. Given the difficulty of physically monitoring husbands’ behaviour, sureties may have represented little more than a symbolic gesture by the courts that forced women to abandon their homes fearing for their safety. Ann Hackett of Westminster village, a woman who had over the years suffered numerous beatings, promptly went to her husband’s sureties to put him back in jail after he had successfully secured bail.²⁷ While requests for sureties remained in force throughout the latter nineteenth century, the 1860s marked the decline of “safe keeping” charges.

Thus by the 1870s a second stage emerged alongside the previously discussed sureties. As an alternative punishment, Police Court magistrates routinely awarded fines, jail time, or both for wife assault.²⁸ This shift in sentencing marked a significant change from protecting women to punishing men. As a consequence, increasingly husbands were subjected to legal surveillance and regulation.

The questionable impact of these penalties in curbing violent behaviour did not go unchallenged, however; public criticism was directed at the weakness in the application of this penalty. Some critics had first-hand knowledge of trials as jurists, state administrators, and reporters. This informal and generally unorganized lobby that decried lenient punishments ran parallel to the public campaign of temperance reformers. William Langmuir, the Chief Inspector of Ontario jails, for example, proposed harsh punishments for recidivist wife beaters. As early as 1869 Langmuir recommended sentences

25 W. C. Keele, *The Provincial Justice, or, Magistrate’s Manual* (Toronto, 1858), pp. 825–827 and 719 under “recognizance”.

26 Ernst Mayshines, a 48-year-old father of three children, for example, found himself committed for “threatening the life” of a woman (possibly his wife) in 1869. The magistrate ordered him to find “sureties for appearance and to keep the peace”. Committed on February 24, 1869, he was detained just under a month before being discharged until trial for obtaining sureties. AO, RG 20, F-40, Stratford Calendar of Prisoners, 1869. Unfortunately, most of the charges for “threats” recorded in the Stratford Jail Calendar did not list the person who was threatened. In a study on non-indictment recognizances or sureties “to keep the peace” in late-seventeenth- to early-eighteenth-century English courts, three-quarters of the defendants appeared and were discharged at trial. Robert Shoemaker, *Prosecutions and Punishment: Petty Crime and the Law in London and Rural Middlesex, c.1660–1725* (Cambridge, 1991), Table 5.1, “Offences and Dispositions of Recognizances: Defendants Not Previously Indicted”, pp. 96–97.

27 AO, RG 22–441–1–9, Criminal Indictment Files (hereafter CIF), *Queen vs John Hackett*, Chatham, 1883.

28 In 1867, for example, a Perth county tinsmith, John Kerrigan, served 10 days in jail at hard labour for “assaulting his wife”. AO, RG 20, F-40, Stratford Jail Register, John Kerrigan, February 1867.

with hard labour for wife abusers over the continuing practice of granting sureties.²⁹ Many male offenders without sureties, Langmuir lamented, languished in jail awaiting trial rather than doing hard labour. Local press, as well, found fault with the courts' leniency in punishments, as seen in the critique delivered by the editors of *The Stratford Beacon*. In a Stratford courthouse in 1866, two husbands were found guilty of beating their wives; each was fined \$1 and costs — amounting to barely \$5 — and, in default of payment, 10 days in jail. “It is a pity”, the editor bemoaned, that the justices of the peace “in similar assault cases” fail to fine “as high as \$20 or commit the assaulters *direct [sic]* to gaol in place of fining”.³⁰ Among jurists and politicians, some favoured corporal punishment to deter abusers. The editors of *The Canadian Law Journal* openly expressed disagreement with a British editor who opposed the lash, and instead endorsed whipping for Canadian “wife beaters” and other “bullies”.³¹

It is perhaps not surprising that the temperance rhetoric of drunkenness and wife beating caught hold in the 1870s. Evidence from an earlier period suggests that public offence charges of drunkenness, which required only the testimony of a constable and not that of a witness, were used to quell domestic violence. In 1857, for example, Constable Armstrong of Galt arrested and charged David Lane, whom he suspected of wife beating, “with being drunk and disorderly” and his wife as “drunk and quarrelling”. Thus some wife beaters shared the same punishment of incarceration as “drunkards” or “bar-room brawlers”.³² As well, we know from Toronto newspaper reports in the 1860s that some husbands were jailed for being “disorderly” and abusing

29 Ontario, *Sessional Papers*, “Second Annual Inspector’s Report”, 1869–1870. A decade later the provincial legislature responded. The new law required any persons in jail for sureties for more than two weeks either to be brought up and discharged or to have other arrangements made. *Statutes of the Province of Ontario (SPO)*, 41 Vic., cap. 19 (1878). On Langmuir’s attitude to punishment generally, see “‘A Terror to Evil Doers’: The Central Prison and the ‘Criminal Class’ in Late Nineteenth-Century Ontario” in Roger Hall *et al.*, eds., *Patterns of the Past: Interpreting Ontario’s History* (Toronto: Dundurn Press, 1988).

30 “BLANSHARD, Assaults on Women”, *The Stratford Beacon*, March 2, 1866. Under *Provincial Statutes of Canada*, 4 & 5 Vic., cap. 27, sec. 27 (1841): “Persons committing any common assault or battery may be compelled by a magistrate to pay fine and costs not exceeding £5.” If fine and costs were not paid, offenders were committed “to the Common Gaol or House of Correction, there to be imprisoned any term not exceeding two calendar months, unless fines and costs be sooner paid”. By 1869 those convicted of common assault or battery could be committed “with or without hard labour, for any term not exceeding two months” or required to pay a fine and costs not exceeding \$20. Failure to pay the fine and costs could also result in jail time not exceeding two months, unless such fine and costs be paid sooner. *Statutes of Canada*, 32–33 Vic., cap. 20 (1869).

31 “Crimes of Violence”, *The Canadian Law Journal*, vol. 11 (January 1875), pp. 137–140.

32 AO, RG 22, Waterloo County Court (Town of Galt), Police Court Minute Books, June 9, 1857. That the wife was also charged suggests that the constable saw her as provoking the fight by her “quarrelling” or, as in another instance, the constable recognized the need for protection and used the jail as a refuge. AO, RG 22, Series 390, App. K, Box 138, File 1, Judge Gwynne, *The Queen vs Robert Shore*, Perth County, 1876.

their wives while drunk.³³ How widespread was the practice of charging abusers with drunkenness or being disorderly is uncertain; we do know, however, that charging husbands with public peace offences persisted until 1876 when a similar case involving Mr. and Mrs. Blakeley was overturned on appeal.³⁴ In this situation Mr. Blakeley's family approached the magistrate directly and requested that their father and husband, who was drunk and "ill-treating them", be taken into custody. Sometime later two constables arrived at the house, arrested Mr. Blakeley for drunkenness, and placed him in the town lock-up. Based on these findings, the implications for readings of charges of drunkenness are revealing not only for their insights into strategies of wives and families, but also for interpretations of drunkenness and disorderly charges.

Thus judicial uncertainties and a paucity of punitive measures left women with few legal options to limit or curtail violence. As a result, the persuasive appeal and general thrust of the temperance campaign offered late-nineteenth-century women a way of framing their stories in court. In fact, such opportunities may have motivated women to lay charges where previously they had seen no reason to pursue judicial measures. In court some women appropriated the discourse of temperance and blamed alcohol for their spouses' violent actions. Mrs. Spinks of Oxford County was one of many who described generally how "when liquor is in the wit is out".³⁵ Yet another equally common argument was recounted by wives who conversely denied that drunkenness excused their husbands' violent behaviour. In advancing this reasoning, women appealed to the emerging public disapproval of wife assault and to the arguments advanced by women's rights advocates. In 1871 Mrs. North, a resident of Elgin County, acknowledged that liquor may have made her husband "quarrelsome", but, in recognizing her right not to be beaten, she testified to his capability of fully knowing "what he was doing".³⁶ In so doing, women like Mrs. North may have been expressing as well an awareness of courtroom practice, where drunkenness could be invoked as a mitigating factor in reducing sentences for assault. In 1876 Judge Patterson

33 *The Daily Globe*, October 1, 1866. See also September 24, 1866.

34 At trial, Mr. Blakely pleaded guilty. Published cases frequently do not identify the town or township where the crime occurred. Here I am making the assumption that the event took place in a rural setting based on the reference to the lock-up. Lock-ups were frequently located in small villages or towns at a distance from the main jail. In overturning the conviction, Judge Galt ruled that a man who was drunk in his own house could not be charged with drunkenness and forcibly removed — even at the request of his own family — unless he was creating a public nuisance. H. O. O'Brien, ed., *Report of Cases Decided in Practice Court, Common Law Chambers, Chancery Chambers, Master's Office*, vol. 6 (Toronto, 1876), *Regina v Blakeley*, p. 244.

35 AO, PG 22-441-1-6, Judge Cameron, *Queen vs Charles Spinks*, Oxford County, 1880.

36 AO, RG 22-390-12, Box 84, Judge John David Hughes for Judge Richards, *Queen vs John North*, Elgin County, 1871. Despite Mrs. North's efforts, the crown abandoned the more serious charges of intent to maim and disfigure and assault with bodily harm for a lesser charge of common assault. Mr. North was sentenced to two weeks in jail with hard labour.

summed up the impact of a defence of drunkenness when he instructed the jury in a wife murder case in Peterborough:

[I]f the prisoner provoked by his wife's refusal to give him liquor, or for any other reason stabbed her, knowing what he did and intending to do it — he is guilty of murder — but the fact of his being intoxicated and doing the act under the influence of intoxication, if such was the fact, may be taken into account to rebut the inference of premeditation and reduce the crime to manslaughter.³⁷

Just as the strong temperance stance created a forum and offered support for advocates who argued in favour of a more respectful, companionate marriage, paradoxically, the same condemnations of drunkenness were, at times, used to justify corrective beatings. For example, in 1882 when James Bibby found his intoxicated wife lazing in bed, he demanded that she prepare his dinner. As Mrs. Bibby attempted to stand up he struck and kicked her in the back after knocking her to the ground.³⁸ Several years later, 12-year-old Elizabeth Onley of York County recounted how her “father was in the habit of beating mother at times when she was drunk”.³⁹ It was doubly degrading for wives, as the bearers of moral authority, to drink. It would have been difficult to mount a defence against a husband who beat his drunken wife, given how late-nineteenth-century perceptions of female morality made a drunken woman a likely target for corrective beating for failing to live up to domestic standards.

A selected reading of a major Toronto newspaper beginning in mid-century reveals how the underlying tone in the coverage of trials in pro-temperance papers favoured restricting, and later prohibiting, the availability and sale of demon rum. Newspapers provided a public venue for conveying the prohibitionist message, and the spectacle of the court as a theatre of human tragedy was transcribed in print by eager pro-temperance journalists. The Liberal-minded *Daily Globe* of Toronto was a prime example of this type of press, and an extensive readership attested to its broad influence.⁴⁰ *Daily*

37 AO, RG 22-479-3-4, Judge Patterson, *Queen vs James Ryan*, Peterborough, August 12, 1876.

38 James Bibby was found not guilty of murder, but guilty of manslaughter, and sentenced to five years in penitentiary. Among the wife murder cases, this was the lightest sentence awarded for a manslaughter conviction. AO, RG 22-392-0-7798, Box 219, *Queen vs James Bibby*, York County, 1882.

39 AO, RG 22-392-8449, Box 250, *Queen vs Thomas Onley*, York County, 1890.

40 *The Globe's* founder, George Brown, later became one of Canada's leading politicians and newspapermen. The newspaper endorsed temperance, singling out drink in 1855 as “the widest spread and most destructive vice with which our land is cursed”, and advocated restrictive laws. *Montreal Witness*, November 7, 1855, cited in Noel, *Canada Dry*, p. 132. Weekly and daily circulation of *The Globe* continued to mount during this period from a readership of 28,000 in 1861 to 45,000 by 1872. Along with its expanded readership, according to a reporter for the Dun Credit Agency, *The Globe* was “the most successful and profitable daily journal in the Dominion”, boasting “immense political influence and a large revenue”. Cited in Paul Rutherford, *A Victorian Authority* (Toronto: University of Toronto Press, 1982), p. 42.

Globe news stories frequently focused on the debauched living, drinking, and brutality inherent in domestic crimes. While press narratives generally foregrounded the offender's drunkenness, at the same time they conveyed powerful notions of class-based immorality.⁴¹ From the 1850s *The Daily Globe* reports on Police Court cases briefly outlined a range of misdemeanours including drunkenness, disorderliness, assault, and petty larceny. Ten years later the paper featured lengthier and more frequent listings of charges involving alcohol and marital violence. Over one week in 1866, for example, the paper detailed two cases involving husbands who were jailed for being disorderly and abusing their wives while drunk.⁴²

A number of cases can be cited to illustrate how deeply imbricated notions of violence and class were to attitudes towards drunkenness as recounted in the press in the later decades of the nineteenth and the beginning of the twentieth century. For instance, there is the horrific case of Mrs. Kane of Toronto, who was murdered in 1890 by her "drunken" husband. The coroner's investigation and trial unfolded over several days, and the newspaper chronicled the "fiendish" brutality of the "blood stained" murderous "brute", Mr. Kane, who "smashed" his wife's head and hands "to a Jelly". This tragic temperance tale blamed the "fatal whiskey bottle" for the "drunken orgy" that made Mr. Kane "a murderer". Kane had repeatedly kicked, beaten, and stabbed his wife until she bled to death. In keeping with the temperance message, an editorial recounted the story under the headline "WHAT DRINK DID" with a second heading listing the "Brutal Man's Crime". Kane, as with others, defended his actions by arguing lack of intent, when he muttered how "this was what drink would fetch a man to".⁴³ This scripted vignette served to reinforce the identity of the abuser as drunk and immoral with underlying class-based images. Thus, publicity proved to be a double-edged sword; it focused attention on spousal abuse as practised by a beastly wife-beater. Kane was not a common man, nor was he a common husband who shared patriarchal assumptions of control and power with other men. The overriding inferences of this and other similar cases were less a critique of violence in marriage than they were a warning about drunken brutes — men who were capable of inhumane acts — men who failed to act as good men should.

The significance of the extensive and detailed portrayal of Kane should not be discounted; assessments of a husband's character were based on widely

41 *The Globe* was not noted for its support of the working man. See, for example, the report in *The Ontario Workman* criticizing *The Globe's* portrayal of the excessive drinking habits of workers, July 17, 1873.

42 *The Daily Globe*, October 1, 1866. See also September 24, 1866.

43 In this instance the next-door neighbour, Annie Sterling, urged her husband to go for the police, and he refused. AO, RG 22, Series 392-0-3433, Box 249, CIF, *Queen vs Thomas Kane*, York County, 1890. Rutherford describes this "story-telling" approach to news reporting as an attempt to "reach the reader's 'heart' as well as their 'mind'", indeed to involve the reader in whatever joyful or tragic item the newspaper was serving up" (*A Victorian Authority*, p. 142). The newspaper clippings were inserted into the indictment file. Kane was found guilty of murder "with recommendation to mercy".

held cultural assumptions. A wife murder case in a small village in Brant County in 1896 underscores this point. During cross-examination a defence lawyer challenged a witness's testimony by suggesting that the dead woman's husband did not bear any likeness to "a man that would ill-treat his wife".⁴⁴ Displacing the problem of male violence onto a "lower" class engendered silence on broader issues of masculinity, patriarchy, and marital inequality. In a similar vein, Pamela Haag's observation of wife beating in New York could apply in Ontario: "The same society that broadly condemned the wife beater as 'unmanly', however, also created circumstances and notions of rights that encouraged and often authorized his actions."⁴⁵ Hence, new standards of masculinity did not translate into a critique of all male violent behaviour; rather, late-nineteenth-century ideals of women's equality made it less acceptable for husbands to justify violence as a legitimate tool for coercing wives' obedience.

So, although the legal system did not live up to the expectations of many who entered the courts seeking enforcement of new standards of marital behaviour, women continued to use the law in the later nineteenth and early twentieth century seeking protection and asserting their claim for a companionate marriage. At first glance, then, a wife's appeal to law appears to offer at best an opportunity for protection or retribution and at worst a futile waste of money and effort, with the threat of further violence. If wives' actions appear at times contradictory — laying then dropping charges or bringing complaints and later pleading for a dismissal — they serve to remind us of the limitations of the criminal law in dealing with domestic affairs. Yet women's efforts in resorting to law should not be dismissed. Their ongoing and sustained actions reveal the ways in which women opposed the legal and social notion of a private realm where husbands' rights, including their authority to exercise "the power of restraint in domestic chastisement", might otherwise have gone unchallenged. Three particular situations in which women sought the law's help illustrate how women utilized the judicial system in their local community to pursue redress for spousal abuse, as well as the consequences of their actions.

First, although wives faced the burden of laying charges, doing so meant that they, rather than the judicial system, determined whether or not the case proceeded to court. Overall, wives' reasons for pressing charges varied. Our understanding of their motives is further complicated because we have no

44 AO, RG 22, Series 392, 321, CIF, *Queen vs Robert Carpenter*, Brant County, 1896. Despite the neighbours' account of witnessing the abuse, the husband was found guilty of manslaughter and sentenced to seven years.

45 Pamela Haag, "The 'Ill-Use of a Wife': Patterns of Working-Class Violence in Domestic and Public New York City, 1860–1880", *Journal of Social History*, vol. 26 (1992), p. 449. See also Anna Clark, "Humanity or Justice? Wife Beating and the Law in the Eighteenth and Nineteenth Centuries" in Carol Smart, ed., *Regulating Womanhood: Historical Essays on Marriage, Motherhood and Sexuality* (London, 1992), p. 201.

way of knowing how many women were turned away or had their cases dismissed.⁴⁶ Court transcripts and judges' notes only outline the actions of those women who laid charges that proceeded successfully to trial. Such records hint at why others refused to go to the magistrate: fear of retaliation, love of husbands, loss of respectability, or a perceived inability to manage on their own.

Cases could have been derailed even after prosecutors had laid charges if wives subsequently refused to testify. Challenging a husband's authority could trigger beatings, as we saw in the earlier case of Mrs. Fox of Toronto. In 1876 Mrs. O'Donnell, who had recently suffered a "heavy blow with some weapon" which knocked her down and caused serious injuries, later refused "to give evidence against her husband".⁴⁷ Fear of retaliation could prompt a change of heart and a decision to withdraw the charge. Historian Kathryn Harvey suggests other reasons why some late-nineteenth-century wives abandoned complaints after their husbands' arrest. Such actions, she argues, "punished men by depriving them of their freedom for a short time without risking the consequences that a complete separation would entail" and relieved women of additional administrative costs of approximately \$5 if they lost the case.⁴⁸

The legal requirement for a wife to testify against her husband was one of several impediments to laying charges and securing convictions. A review of cases highlights the impact of this and other limitations of the criminal legal system in punishing offences of a "private" or "personal" nature. Rarely did abused women have the much-needed witnesses to support their testimony. Spousal violence generally occurred in homes at times when no one else, with the possible exception of children, was present.⁴⁹ The significance of an eye-witness at the trial is underscored in an unusual occurrence in a Toronto courtroom in 1881. Sarah Wallace pleaded not guilty to battering her husband with an iron and claimed that her husband had hit her first; Sarah had no witnesses to match her husband's single spectator. She was fined \$3 in costs or 30 days in jail.⁵⁰

Equally troubling is that women may have encountered gender-based dis-

46 It is difficult to determine how frequently battered women did not press charges. American historian Peterson del Mar reports in his study of Portland, Oregon, that only a small number of wife beaters faced the police. Out of nearly 500 divorce cases describing wife abuse, only 34 (15%) referred to any police intervention. David Peterson del Mar, *What Trouble I Have Seen: A History of Violence Against Wives* (Cambridge, Mass.: Harvard University Press, 1996), p. 88.

47 "Wife Assault", *The Daily Globe*, April 17, 1876.

48 Kathryn Harvey estimates the cost of filing complaints in the late nineteenth century as roughly \$5. In 1871 a labourer earned an estimated \$1 a day. Harvey, "Amazons and Victims", p. 142.

49 In the case against Timothy Murphy, who was later convicted of murdering his wife, Murphy's two sons Patrick (possibly 13 or 14 years old) and Michael (aged 10) testified that they had seen their father kick in the door and "stamp" on their mother's head several times while she lay on the floor. AO, RG 22, Series 452-1-8, Judge Galt, *The Queen vs Timothy Murphy*, Toronto, 1873.

50 *The Daily Globe*, July 5, 1881.

crimination as credible witnesses when they did testify in court. Indeed, according to one legal “advice manual”, children were at times believed to be more credible witnesses than women. An article on examining witnesses first published in 1844 and later reprinted in a Canadian legal journal in 1877 concluded that children were good witnesses “because they speak *without* premeditation”, in contrast to women who “are not good witnesses, except on topics coming peculiarly within their own sphere of observation; for they do not live and act under the same habitual responsibility for the truth of their statements”. Moreover, as another unidentified legal pundit claimed in the same publication, “Of all witnesses in an honest cause, a woman is the worst.”⁵¹ The fact that the wife and husband were frequently the only witnesses to instances of abuse made a woman’s credibility a central concern.

The following case demonstrates how a wife’s credibility and lack of witnesses, when combined with a dereliction in her wifely duties,⁵² could undermine her case and serve to justify physical force as a corrective tool. As Mr. Haffy’s assault trial unfolded in Leeds/Grenville in 1877, it became clear that Mrs. Haffy’s character, rather than that of her husband, was in question.⁵³ Defence counsel attacked her credibility, listing various omissions in her duties as wife and mother, and focused on her lack of industry.⁵⁴ Instead of working as the exigencies of a rural family economy demanded, Mr. Haffy’s lawyers argued, she had undermined her husband’s authority by exchanging or selling household goods for provisions after he had told her “not to do so”. Moreover, the defence accused Mrs. Haffy of refusing to work as a good wife should and of failing to uphold her part of the marriage bargain by not performing her domestic duties. Worse still, Mrs. Haffy admitted to having abandoned her family on occasion and remaining absent for a week. If, as historian Laurel Ulrich observes for the colonial period in northern New England, “having the ‘character’ of a good wife was as valuable as having a good lawyer might be today”,⁵⁵ then Mrs. Haffy’s case was lost long before the jury rendered its verdict.

51 The author later qualified his statement, noting the attributes of a “very pretty and engaging” female witness, “for she will answer the purpose, whatever it be, most successfully”. “Hints as to the Examination of Witnesses”, *The Upper Canadian Jurist*, vol. 1 (2nd ed. 1877), p. 457. First published in 1844, the article was reprinted in 1877.

52 See, for example, Sara L. Zeigler, “Wifely Duties: Marriage, Labor and the Common Law in Nineteenth-Century America”, *Social Science History* (1996), pp. 74, 79.

53 AO, RG 22, Leeds/Grenville, General Sessions and County Court Judge’s Criminal Court, Judge’s Notebook (Judge Macdonald), *The Queen vs Thomas Haffy*, 1877, pp. 144–157.

54 Ellen Ross noted a similar theme among serious assault trials involving London’s working-class families in “‘Fierce Questions and Taunts’: Married Life in Working-Class London, 1870–1914”, *Feminist Studies*, vol. 3 (1982), p. 580. In her study of colonial society in Northern New England, historian Laurel Thatcher Ulrich asserts that living up to the “rule of industry” was paramount to a wife’s respect. Laurel Thatcher Ulrich, *Good Wives: Image and Reality in the Lives of Women in Northern New England, 1650–1750* (New York, 1991), p. 61.

55 Ulrich, *Good Wives*, pp. 60–61.

The significance of the defence's strategy to defame the wife's character and credibility cannot be overstated.⁵⁶ As William Blackstone had declared a century before, the "excellence" of a juried trial "is that the jury are triers of the credit of the witnesses, as well as of the truth of the facts".⁵⁷ In the absence of eye-witnesses the case hinged largely on circumstantial evidence, and credibility — unfortunately for Mrs. Haffy — counted for everything. Thus, despite a medical report that confirmed the extent of Mrs. Haffy's deep wounds "almost to the bone" and her daughter's testimony, which recalled seeing her father walk away from her bloodied mother, the all-male jury returned a verdict of not guilty. Based on trial accounts it appears that the defence's argument struck a chord when, in his final summation, he charged the jury "to weigh carefully the circumstances connected with the alleged assault".⁵⁸ While no one may have doubted that Mr. Haffy had inflicted these wounds, the jurors may have viewed the beating as little more than a lazy, disobedient wife deserved.

Mrs. Haffy, like other women who lived with the threat of violence, had few options to escape or avoid beatings. Clearly, using the courts to check abuse was probably not a woman's first choice, but rather one of an array of limited strategies that varied according to specific circumstances. Running away was one alternative to threats of violence, but, for many women without nearby relatives or friends, refuge at a nearby home was not possible. Recently settled or transient women were thus at a particular disadvantage over more permanent residents. In Perth County, for example, among the small number of men identified as charged with wife abuse, all were immigrants. A careful reading of the court records reveals how many wives adopted a series of home-centred strategies. By careful scrutiny wives could often anticipate escalating levels of violence and respond with a series of avoidance practices, escape, or both. Some ran and hid. The topography of the countryside and surrounding outbuildings which offered farm women an immediate place to hide may have been the rural equivalent of the city or town female network where urban sisters escaped to nearby neighbours' homes.⁵⁹ Thus in 1876, when Savannah Arch of Haldimand County detected the warning signs of her husband's drinking binge, she fled with her five children and "lay in the straw in her neighbour's barn". As she recounted later, her husband was "behaving badly"; "he was drunk and misusing his family — I left for Safety."⁶⁰ While children could impede or delay a wife's depar-

56 This defence strategy was not unique, but, as we have seen, more commonly negative character assessments focused on a wife's failure to perform her duties because of drunkenness.

57 Blackstone, *Commentaries*, vol. 4, p. 214, cited in John Beattie, *Crime and the Courts in England, 1660–1800* (Princeton, N.J.: Princeton University Press, 1986), p. 126.

58 *The Brockville Recorder*, December 20, 1877.

59 See Kathryn Harvey's insightful discussion on how mutual aid among women in an urban neighbourhood aided abused women in "Amazons and Victims", pp. 144–146.

60 AO, RG 22, Series 390, Judge Harrison, *Queen vs George Arch*, Haldimand County, 1876.

ture, they could also provide critical aid. Another rural dweller, Mrs. O’Neil of Ancaster Township, two years previously had slept outside overnight with her children in a “hollow” and waited until morning to send a child for help.⁶¹ To be sure, escape plans did not guarantee safety, nor did they provide long-term solutions — instead they offered a critical “cooling off” or sobering up time to pass without further injury.

Mrs. Arch was not alone in linking her husband’s abusive behaviour to his excessive drinking. Making connections between alcohol and wife beating was crucial to criminalizing a husband’s violent acts. Temperance thus played a pivotal role in advancing the public disapproval of abusive behaviour. To put it simply, if the evil alcohol caused the wife’s beating, then a “drunken” husband’s use of force could no longer be justified as seemingly corrective behaviour.

Alongside the rising trends to more companionate marriages there existed an implied expectation that women remain in violent marriages — a reflection of what British historian James Hammerton has identified as the tendency “to romanticize this seemingly dogged commitment to violent husbands”.⁶² Men, as one newspaper article affirmed, needed wives “to stand by and sympathize ... all through life — through storm and through sunshine, conflict ... man needs a woman’s love.” Although conflict could, at times, result in abusive behaviour, another essay advised “silence” to quell domestic strife.⁶³ As “angels in the house”,⁶⁴ women faced intense social pressures towards the late nineteenth century to conform to the community standards of a “good wife”. Hence, the marital norm of the epoch ironically required women to maintain “peace” in the household while resisting violence directed at them.

If some wives silently suffered abuse in the home, others persisted to “have their day in court”. No doubt some women felt a certain satisfaction in laying complaints against their husbands. By naming both the abuse and the abuser, their statements offered a personal testimony to public claims against wife assault. In 1871 Mrs. North signalled the legitimacy of her actions when she declared at her husband’s trial, “I had him put in gaol on the 26th Dec. ... He has kicked and abused me many times.”⁶⁵ The power of naming, however, provided only opportunities for action and did not guarantee protection.

61 “John O’Neil”, *The Daily Globe*, February 8, 1876.

62 Hammerton, *Cruelty and Companionship*, p. 43.

63 *The Ontario Workman*, August 6 and June 1873. As a counterpoint to this perspective, the paper also published articles preaching the virtues of male attributes of a companionate relationship. See, for example, “Love Your Wives”, *The Ontario Workman*, May 1, 1873. The overriding message of self-control for working-class men framed the context under which these articles appeared. See “Strong Men”, *The Ontario Workman*, April 24, 1873.

64 Carol Christ, “Victorian Masculinity and the Angel in the House” in Martha Vicinus, ed., *A Widening Sphere: Changing Roles of Victorian Women* (Bloomington: University of Indiana Press, 1977), pp. 146–162.

65 AO, RG 22–390–12, Box 84, Judge David Hughes for Judge Richards, *Queen vs John North*, Elgin Assizes, 1871.

Those who lost their cases probably also lost faith in the system. Still others retained the hope that the practical knowledge they had gained in earlier trials could be applied successfully in more favourable circumstances.⁶⁶ Thus in 1881 Mrs. McGuire, a 30-year resident of Leslie Village in York County, delayed pressing assault charges against her husband while she awaited the return of the local magistrate whom she knew from previous trials. Based on prior events, Mrs. McGuire had come to believe that “she would obtain justice no where else” than in his courtroom.⁶⁷ The experiences of Mrs. McGuire, as with others, provided women with a sense of the legal rights and wrongs in marriage. Equally important, their actions challenged the late Victorian ideal of wifely obedience and notions of passivity in marital relations.

In asserting their rights, however, wives could not escape the gender-based division of labour that ensured economic dependency on husbands. Despite initially charging their spouses, later in court several wives opposed their husbands’ incarceration. One married woman appeared in Toronto court in 1871 to testify against her husband and later “pleaded energetically” for his discharge. This apparent change of heart was probably influenced by her forced dependency on her husband as breadwinner. As it turned out, she had recently given birth.⁶⁸ Perhaps for similar economic reasons, in another case five years later both the defendant’s wife and his brother-in-law presented a petition on behalf of the defendant, a father of four children.⁶⁹ While a family might have been able to manage a temporary loss of income, it may well have proved more damaging if incarceration resulted in loss of a job. Moreover, in rural areas, jail time for a farmer meant that his wife faced the double burden of handling her chores and his.

Although few wives spoke of it at trial, some no doubt wanted to remain with their husbands whom they loved. The creation of new standards of behaviour for husbands in the late nineteenth century encouraged married men to treat their wives with dignity and reverence rather than corrective force. An editorial from the Toronto *Daily Mail* in the 1870s espoused such a view: “Coarseness, rudeness and tyranny are so many forms of brute power, of what it is man’s particular glory not to be. The obligations of gentleness and kindness are extensive to the claim of manliness. These three qualities must go together.”⁷⁰ Although such attributes did not challenge the fundamental right of husbands to conduct domestic affairs as the “head of the household”, for many married women these sentiments held out the spectre of a marital relationship in which the means by which a husband could legitimately enforce his authority were increasingly restricted.

66 Sally Engle Merry, *Getting Justice and Getting Even: Legal Consciousness Among Working Class Americans* (Chicago, 1990), pp. 131–145.

67 AO, RG 22–392, Box 218, no. 7773, CIF, *Queen vs John McGuire*, York County, 1881.

68 *The Daily Globe*, February 25, 1871.

69 AO, RG 22, Series 390, Judge Harrison, *Queen vs Thomas O’Neil*, St. Catharines, 1876.

70 Cited in Chambers, *Married Women*, p. 24.

Laying charges was thus one way that women sought the law's help. Secondly, some married women were able to take advantage of the judicial influence of local police magistrates, with their multiple judicial capacities, to counter their husbands' authority and to provide protection. Evidence suggests that this may have been an option more readily available to women who resided in the small towns and villages in rural Ontario than to those dwelling in cities. In 1876 Mrs. Shore of Stratford, for example, visited the nearby magistrate at his home and made the unusual plea of requesting that she be placed in jail for protection from her husband.⁷¹ Several years later, another woman called upon the local village magistrate to bolster her credibility as a "good wife" and to support her case against her "brutal" husband in court.⁷² As a witness for the prosecution, the magistrate attested to her character "as a hard working woman" and confirmed how she "has often been abused by her husband". The magistrate based his assessment on more than previous charges of abuse; he also drew on the local knowledge of the community of which he was a part.⁷³ The husband, he asserted, "is a dangerous man, so the neighbours tell me,.... I know the character he [Mr. McGuire] has given to his name is very vengeful and dangerous."⁷⁴

While country magistrates mingled with neighbours and were privy to local gossip, urban magistrates probably relied more on information provided in their courtrooms. Yet, in wielding discretionary powers, city magistrates could mediate alternative settlements and attempt to influence a husband's marital conduct. Toronto resident Thomas Newall, charged in 1871 with assaulting his wife, received a discharge after he "promised to behave himself". The ruling included a caution that, if the defendant appeared in court again on a similar charge, "he would be sent down for a month". The magistrate recalled the contemporary ideals of a respectful marriage in reminding the husband of his responsibility to curb his violent behaviour and to act as a good husband should.⁷⁵

Another important legal remedy available to wives dates back to legislation passed in the 1850s in response to a widely based temperance and feminist initiative.⁷⁶ As of 1859 all Ontario married women whose circumstances conformed to the legislative criteria had access to a civil remedy under the *Married Women's Property Act* (1859). Under this act, magistrates could

71 AO, RG 22, Series 390, App. K, Box 138, File 1, Judge Gwynne, *The Queen vs Robert Shore*, Perth County, 1876.

72 AO, RG 22–392, Box 218, no. 773, CIF, *Queen vs John McGuire*, York County, 1881.

73 On the alliance between magistrates and the community, see Carolyn Conley, *The Unwritten Law: Criminal Justice in Victorian Kent* (New York and Oxford, 1991), p. 35.

74 AO, RG 22–441–1–6, Judge Cameron, *Queen vs John McGuire*, York County, 1881.

75 *The Daily Globe*, February 25, 1871. Historian Greg Marquis has concluded that the magistrate's role as mediator and public authority was based on a response to community needs. Greg Marquis, "A Machine of Oppression Under the Guise of the Law" in Tina Loo and Lorna McLean, eds., *Historical Perspectives on Law and Society in Canada* (Toronto, 1994), p. 214.

76 Chambers, *Married Women*, p. 70.

grant Orders of Protection to married women who had left their husbands for reasons of abuse, drunkenness, desertion or non-support, lunacy, or imprisonment, giving them authority to retain their earnings and those of their children.⁷⁷ Until the recent, significant discovery of 105 Orders of Protection in Hamilton filed between 1860 and 1895, the extent to which married women actually benefited from this statute remained unknown.⁷⁸ The following quantitative analysis is based on data from this collection of documents.

Legislation of 1859 offered abused women an effective alternative to criminal courts; more importantly, it gave them a legal mechanism to escape violent marriages when all else failed. That these women had already left their husbands when they filed the orders suggests that this act functioned as a working-class alternative to other limited and more costly forms of legal separation available to middle-class women.⁷⁹ As these Protection Orders demonstrate, wives' experience of, and their challenge to, patriarchal relations clearly turned on the issue of violence: not only was abuse the single most common reason women left their husbands, but, notably, among all the reasons given, abuse was a factor in two out of three cases.⁸⁰ Surprisingly, few women listed "refusing to support" as a contributing factor on their orders. The notable absence of claims of support may be explained because wives seeking this option could charge their husbands with neglect in criminal court.⁸¹

77 *Provincial Statutes of Canada*, 22 Vic., cap. 34, 1859.

78 I am indebted to researcher Michael Costello, who first located the Orders of Protection, and to Fawn Stratford-Devai, both members of the Association for the Preservation of Ontario Land Registry Office Documents, who assisted me in locating the documents in the Hamilton Land Registry Office. Thanks also to Bruce Elliott for informing me of the existence of the Orders. The extent to which the experience of Hamilton wives was atypical or representative of trends across Ontario remains unknown. Local factors may have contributed to a high incidence of successful orders. Throughout the period of study, with only a single exception, one magistrate, James Cahill, granted all the protection orders. Unfortunately, little is known about Hamilton Magistrate Cahill. He studied law from 1835 to 1839, was admitted to the bar in 1840, became a magistrate in 1863, and died in office 30 years later. John Weaver, *Crimes, Constables and Courts: Order and Transgression in a Canadian City* (Montreal and Kingston: McGill-Queen's University Press, 1995), p. 69.

79 Abused women who could afford the relatively high cost of civil procedures and whose husbands had substantial incomes had the option of filing for alimony. See Chambers, *Married Women and Property Law*; Backhouse, "Pure Patriarchy". On Civil Code provisions in Quebec, for separation as to bed and board, see Bettina Bradbury, *Working Families: Age, Gender, and Daily Survival in Industrializing Montreal* (Toronto: McClelland & Stewart, 1993), pp. 188–191.

80 A woman's preference for a civil remedy over criminal action is explained, in part, by the different legal requirements of the two courts. Civil litigation was a somewhat more predictable and, in some people's minds, a more respectable process than a public appearance in the rowdy police courts. To file a complaint, a person appeared singly before the magistrate, swore to a statement, paid a fee of \$1.40, and filed a claim for protection. As well, for those with court experience, civil law remedies would have appeal over the restrictive procedural directives of a criminal court and incarceration.

81 Under the 1869 *Canada Act*, a husband who wilfully refused to provide his wife and children with necessities of "food, clothing, and lodging" without "lawful excuse" and exposed them to bodily harm or life endangerment could be sentenced to prison for a maximum of three years. *Statutes of Canada*, 32 & 33 Vic., cap. 20, sec. 25 (1869). Bradbury located 35 cases in Montreal between 1873 and 1879. Recorded instances in the 1860s and later 1880s were rare. Bradbury, *Working Families*, pp. 191–195.

The work of another historian may help explain, as well, why many working-class women, in particular, left abusive relationships and filed for Protection Orders to retain their wages. Judith Fingard has concluded in her study of marital cruelty in Nova Scotia that a husband's "interference" with a wife's hard-earned wages was frequently the catalyst that sent her fleeing from an abusive marriage.⁸² Unlike middle-class wives, working-class wives and their children frequently supplemented a husband's meagre wages, while at other times they utilized a myriad of strategies as sole support during periods of unemployment. Should working-class wives' limited earnings have been threatened or taken and spent by violent husbands, such actions may have precipitated the wives' departure. A similar pattern is suggested by the Hamilton data, in which a third of the abusive husbands were unemployed (36.4 per cent). Low-skilled (25.8 per cent) and trade workers (24.2 per cent) represent another half of the cases. Furthermore, if we single out cases in which abuse was listed as the sole reason that a woman left her husband, the percentage of unemployed husbands remains high (37.5 per cent), while the percentage of semi-skilled, seasonally employed, mostly labourers jumps almost 10 percentage points (34.4 per cent). This pattern is further underscored by the high percentage of women who left unemployed, abusive husbands (37.5 per cent). Systemic pressure by women and supportive men forced a reconsideration of women's common law rights and the responsibilities of husbands. Thus wives whose husbands failed to meet the standard of a good provider could increasingly be seen as worthy of judicial aid.⁸³

Notably few middle-class women left husbands earning high incomes. A low 13.6 per cent of middle-class wives left husbands for reasons which included assault. Fewer still (6.3 per cent) left when abuse was the only factor. Notably, women with financial means had the alternative option of petitioning for alimony or divorce; this legal route out of an abusive marriage was available only to those who could afford lawyers' fees and whose husbands earned substantial incomes.⁸⁴ Thus, although Protection Orders provided a limited opportunity for wives to leave abusive husbands, determining how to survive was fundamental in the decision to do so.

That women continued to apply for Protection Orders in greater numbers, even after the act of 1872 no longer required them to do so to keep their earnings,⁸⁵ raises additional questions.⁸⁶ While the requirement for Protection Orders for married women to retain their wages was discontinued after

⁸² Fingard, "The Prevention of Cruelty", pp. 88–90.

⁸³ Chambers, *Married Women and Property Law*, p. 25.

⁸⁴ Chambers notes in her study of alimony cases that all husbands had achieved at least moderate economic success. Moreover, only 10 of the 300 wives who petitioned for alimony between 1837 and 1900 mentioned their employment. Chambers, *Married Women and Property Law*, p. 31.

⁸⁵ *Statutes of the Province of Ontario*, 35 Vic., cap. 16, sec. 2 (1872).

⁸⁶ It was not until 1884 that married women could retain their children's wages without filing for a Protection Order. *Statutes of the Province of Ontario*, 47 Vic., cap. 19, sec. 2 (1884).

1872, the new act made no mention of married women receiving their minor children's wages, as stated previously in the Protection Orders. As well, Protection Orders were not without financial cost; payment was a considerable sum at \$1.40. Taken together, it appears that these women continued to apply for Protection Orders to ensure that their young children's earnings belonged to them alone. Living without a male breadwinner meant that children's wages were critical to surviving as a single mother.⁸⁷ Equally important, wives may also have used this provision to gain custody of their minor children upon separation in response to a recent change in legislation. Prior to 1855, in the event of a separation, husbands assumed the legal custodial rights of their children. Following passage of the act of 1855, under certain circumstances such as abuse, wives could petition the courts for maintenance and custody of minor children.⁸⁸ This legislation — as with alimony orders — served only those wives who could afford lawyers and whose husbands could provide maintenance. Thus, in securing a Protection Order, women without financial means achieved three possible objectives: keeping minor children and their wages and fleeing violent marriages.⁸⁹

Between 1850 and 1910 a married woman had a narrow scope of fragmented legal options to restrict or escape her husband's abusive behaviour. After 1859 some women sought a form of "economic separation" in civil court; others used the criminal courts to claim their rights as wives to be treated with respect and dignity. However, even after 1870, when new norms of proper behaviour were gaining wider acceptance and the means by which a husband could enforce his legitimate authority within a companionate marital ideal were becoming increasingly circumscribed, abusive husbands were not averse to laying claim to their authority to chastise wives for neglecting domestic duties or for inappropriate behaviour. As a counterpoint to these notions of male power, temperance campaigners, alongside other reformers, offered a systemic and resilient challenge to the ideology of male supremacy. Images of beaten wives and masculine brutality in temperance publications and local presses advanced prohibition aims and the reconfiguring of marital relations. Although activists favoured wider reforms, enforcement was painfully restrictive. Change came slowly, as there remained abiding views among some juries, judges, and magistrates, as well as society, that wife beating was a private affair, or at least one that only required intervention under certain circumstances.

Hence, the resolve of women like Mrs. Fox probably did little to alter radically the lives of many women who faced brutal marriages. Yet their actions exposed an ambiguous range of possible alternatives. Daily these women

87 On the contribution of children's earnings to household incomes, see Bradbury, *Working Families*.

88 Chambers, *Married Women and Property Law*, pp. 48–49. See also Backhouse, "Shifting Patterns", pp. 212–248.

89 In 1897 Ontario amended the deserted wives act of 1888 and added cruelty and separation as grounds for applying for maintenance. *Statutes of the Province of Ontario*, 51 Vic., cap. 23.

gathered in courtrooms across the province to speak of their abuse and to affirm their right not to be beaten. Like the reformers and temperance advocates whose work is well documented, battered women contributed to the lengthy project of bringing public attention to wife violence and to the gradual dismantling of the economic and legal barriers that placed restrictions on wives well into the twentieth century.⁹⁰

90 See, for example, Rosanna Langer, “Male Domestic Abuse: The Continuing Contrast Between Women’s Experiences and Judicial Responses”, *Canadian Journal of Law and Society*, vol. 10 (1995), pp. 65–89; Patricia Hughes, “How Many Times a Victim? L. (A.) v. Saskatchewan (Crimes Compensation Board) and Pigeau v. Crowell, P.C.J.”, *Canadian Journal of Women and the Law*, vol. 6 (1993), pp. 502–512; N. Zoe Hilton, “One in Ten: The Struggle and Disempowerment of the Battered Women’s Movement”, *Canadian Journal of Family Law*, vol. 7 (1989), pp. 313–335; Anne McGillivray, “‘Battered Women’: Definition, Models and Prosecutorial Policy”, *Canadian Journal of Family Law*, vol. 6 (1988), pp. 15–45; Diana Ginn, “Wife Assault, the Justice System and Professional Responsibility”, *Alberta Law Review*, vol. 33 (1995), pp. 908–919; Dawn H. Currie and Brian D. MacLean, “Women, Men, and Police: Losing the Fight Against Wife Battery in Canada” in Dawn H. Currie and Brian D. MacLean, eds., *Re-thinking the Administration of Justice* (Halifax, 1992), pp. 251–275. For a comprehensive coverage and bibliography on recent issues and policies, see Mariana Valverde, Linda McLeod, and Kirsten Johnson, eds., *Wife Assault and the Canadian Criminal Justice System* (Toronto, 1995).