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Bench-Breakers? Women Judges in Prairie Canada 1916 - 1980

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Women Judges in Prairie Canada 1916 – 1980

by

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Abstract

Between 1916 and 1980 a small number of women magistrates and judges adjudicated in courtrooms across the Prairie Provinces of Alberta, Saskatchewan, and Manitoba. Often they worked in "family court," through its historic incarnations including juvenile courts, women's courts, and domestic relations tribunals. The first of these women, practicing between 1916 and 1935, included magistrates Emily Murphy and Alice Jamieson in Alberta, and judge Jean Ethel MacLachlan in Saskatchewan. None of these women held law degrees or membership within the legal profession, but all three had a "motherly outlook." Murphy and Jamieson's expertise was derived from their leading roles in influential women's organizations and connections to the suffrage and dower campaigns. MacLachlan's authority developed from her remunerated work with the Children's Aid Society, and she received significant support from the Regina Local Council of Women. They worked within quasi-judicial courts, associated with volunteer-based social welfare initiatives, appended on to, rather than integrated into, existing established legal institutions.

During the 1930s, these Prairie women magistrates and judges lost their positions in the midst of economic and professional rearrangements. In the meanwhile, a vibrant women's legal culture, assisted by developments in legal education and professionalism, emerged to provide the basis for a rebirth of women judges in the 1950s.

The next cohort of Prairie women judges was appointed to the bench beginning in 1957 with Nellie McNichol Sanders. In common with their early-twentieth century precursors, the media often positioned women judges as "role mothers" by highlighting their maternal, rather than

professional, suitability for the courtroom even though all women judges held law degrees and were members of provincial law societies. Illustrative of continued connections with the volunteer sector, these women judges pursued human rights and advocated the re-dressing of inequitable laws and customs for children, women, and other vulnerable groups including Aboriginal persons. At the same time, women judges' individual perspectives suggest discord with the egalitarian goals of the late 1960s and early 1970s women's movement, and reveal that not all women judges were feminist actors.

In the final analysis, this dissertation uses an unconventional timeline to argue that Prairie women judges were part of a broader movement of change associated with continuities and changes in the women's movement and in legal professionalism. Women judges worked within the prescriptions imposed by their times, contemporary legal codes, and society's expectation of family courts. Their public work in the Prairie Provinces reveals that legal and social change was influenced by local, national, and international influences; change did not move uniformly from Ontario to the West.

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Over the course of this project I have been the fortunate recipient of advice and support from many individuals and organizations. I have received financial support from the Faculty of Graduate Studies, the Department of History, and the Lillian A. Jones/Whyte Museum of the Canadian Rockies. I am extending a warm thank you to the Archives and Special Collections Department at the University of Saskatchewan for scanning the contents of all three Jean Ethel MacLachlan scrapbooks, and making them available, for limited use, online. I am also grateful to numerous archivists at the Glenbow Archives, the Provincial Archives of Alberta, the Saskatchewan Archives (Saskatoon), the University Archives and Special Collections at the University of Manitoba, and the Provincial Archives of Manitoba who unearthed unprocessed and partially processed records for my benefit. Chris Kotecki and Joan Sinclair of the Provincial Archives of Manitoba provided extremely organized and timely responses to my research requests. Brenda McCafferty at the Law Society of Alberta offered research support and encouragement as did lawyer and author Sandra Petersson. This project would not have been possible if not for the support of my supervisor Nancy Janovicek. I also owe many insights to Betsy Jameson. Thanks to my supervisory committee for providing valuable feedback. I am delighted to have been a part of an unreservedly supportive and friendly academic cohort including Amy McKinney, Gretchen Albers, Alexander Herd, and Shannon Murray. Lastly, I would never have completed this project without the love and support of my extended network of friends and my family. I could always count on long-distance advice and support from by sisters Signe and Melissa, and my brother Alexander. My parents Birte and Bent spent countless hours and days providing childcare, as well as physical and moral sustenance. My husband, John Esaiw, patiently encouraged me to persevere and put his own educational plans on hold to enable

me to finish mine. My children Jonah and Teah were, respectively, a toddler and newborn when I began my Ph.D., and have grown into delightfully empathetic and articulate children alongside this dissertation. I appreciate all of these gifts.

This dissertation is dedicated to my husband John and our children Jonah and Teah.

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Introduction: "Judg(ing) Women in the Canadian Prairie West"

"A man with my qualifications would never settle for magistrate's court. He would want a higher court and a higher salary."[1]

Magistrate Mary Carter, Saskatoon

In offering this direct summary of her professional qualifications and judicial status in a 1975 interview, family court magistrate Mary Carter clearly indicated that gendered tensions and hierarchies existed within the Canadian legal profession and judiciary. Carter's statement was also political, in that she realistically assessed the career opportunities available to herself and her contemporaries, including Saskatchewan native Tillie Taylor, Manitoba judges Nellie Sanders, Mary Wawrykow and Myrna Bowman, and Alberta judge Marjorie Bowker, all of whom attained judicial appointments between 1957 and 1971. As did the first female magistrates appointed in Alberta in 1916, Emily Murphy and Alice Jamieson, and Jean Ethel MacLachlan, appointed in juvenile court judge in 1917 Saskatchewan, Carter and her cohort adjudicated primarily, but not exclusively, on family matters relating to women and children.

Carter's 1975 revelation coincided, and was informed in the context of the celebration of International Women's Year by which time many reform-oriented women had spent decades bringing greater visibility to social and legal injustices.[2] By 1980, at which point this study ends, some women's efforts contributed to the first draft of the *Canadian Charter of Rights and Freedoms* which, after several rounds of feminist lobbying and discussion, would grant legal

[1] Gail McConnell, "University Women," *'The Green & White' The University of Saskatchewan Alumni Association Magazine* (Winter 1975), 7.
[2] Judy Rebick, *Ten Thousand Roses: The Making of a Feminist Revolution* (Toronto: Penguin, 2005).

equality to all Canadians, including on the basis of sex.[3] Also, by 1980 most provinces had overhauled outdated matrimonial property legislation which had disadvantaged women across Canada, but as scholars argue, was uniquely contextualized in the Prairie west owing to a shared legal heritage, a vigorous early twentieth century dower campaign, and influential 1970s rural property cases.[4]

This study analyses the public experiences of select women magistrates and judges living in Alberta, Saskatchewan, and Manitoba, a geographic area encompassing the Prairie west, between the years 1916 and 1980. I investigate their appointments and accomplishments within a broader movement of change associated with developments in the women's movement and in legal professionalism. Throughout the period under review, women magistrates and judges worked in courtrooms and in various volunteer capacities often intended to protect and promote the rights of vulnerable persons. In the early part of the twentieth century, women magistrates worked within quasi-judicial juvenile and women's courts promoted by a predominantly maternal

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[3] *Canadian Charter of Rights and Freedoms*, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c.11.

[4] Gerald Friesen indicates that the term "Prairie west," encompassing Alberta, Saskatchewan, and Manitoba, technically includes only the southern tip of the northern plains, but argues that it usefully distinguishes the region from British Columbia, *The Canadian Prairies: A History* (Toronto: University of Toronto Press, 1987, reprint 2000), 3. I refer to this area as the "Prairies" or the "Prairie west." On early twentieth century matrimonial and property reform activism see: Sarah Carter, *The Importance of Being Monogamous: Marriage and Nation Building in Western Canada to 1915* (Edmonton: The University of Alberta Press, 2008), 24; Catherine Cavanaugh, "The Limitations of the Pioneering Partnership: The Alberta Campaign for Homestead Dower, 1909 – 1925," *Canadian Historical Review* 74: 2 (1993), 203; R.E. Hawkins, "Lillian Beynon Thomas, Woman's Suffrage, and the Return of Dower to Manitoba," *Manitoba Law Journal* 27:1 (1999): 45 – 113. 1970s rural property cases include *Murdoch* v. *Murdoch* [1975] 1 S.C.R. 423, 41 D.L.R. (3d) 367, (1974) 1 W.W.R. 361 which originated in 1973 Alberta; *Rathwell* v. *Rathwell* (1978), 83 D.L.R. (3d) 289, [1978] 2 W.W.R. 101 (S.C.C.) which originated in 1974 Saskatchewan, and *Kowalchuk* v. *Kowalchuk* (1974) 45 D.L.R. (3d) 761, 16 R.F.L. 52, decided in Manitoba Queen's Bench 8 April 1974. All of these cases concerned married rural women who sought an interest in their husband's property. For my purposes the most significant of these cases was *Murdoch* because, as Mysty S. Clapton, discusses, this case became a nationwide cause célèbre associated with the 1970s women's movement, "Murdoch v. Murdoch: the Organizing Narrative of Matrimonial Property Law Reform," *Canadian Journal of women and the Law*, 20 (2008), 197 – 230. See also Pernille Jakobsen, "Murdoch v. Murdoch: Feminism, Property, and the Prairie Farm in the 1970s," in *Place and Replace: Essays on Western Canada*, edited by Adele Perry, Esyllt W. Jones, and Leah Morton (Manitoba: University of Manitoba Press, 2013), 40 – 58.

women's movement to protect the interests of children and women. Indicative of the growth of legal professionalism, by the postwar period prairie women judges required legal educations to be qualified for the bench. This later cohort of women judges worked primarily in family courts and, characteristic of a growing international human rights climate, increasingly advocated for minorities and Aboriginal persons. By the 1970s, equal rights claims dominated the women's movement and some Prairie women judges participated in broader efforts to redesign family courts and to improve marital property laws. Investigating their unique contributions and perspectives regarding vulnerable persons and matrimonial property law reform reveals that not all of these women judges were feminists or shared the egalitarian objectives of the feminist movement. Throughout the twentieth century, women magistrates and judges worked within prescriptions regarding women's role, gendered professional expectations imposed by their times, and within social expectations regarding the function of family courts.

An older historiographical division emphasizing discontinuities rather than connections between the first wave and second wave women's movement has long since been set aside.[5] In keeping with current approaches, I agree with scholars who apply transnational insights to argue that the women's movement is best understood by examining connections rather than discontinuities between first wave and second wave feminism.[6] This approach builds on scholarship focused on the role of women's voluntary organizational efforts in advocating for

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[5] Within this scholarship, maternal feminists led "first wave" feminism, by extending their nurturing qualities derived from motherhood into social reform projects. By the 1920s, after the attainment of suffrage, the "first wave" women's movement ended, and the women's movement remained stagnant until the mid-1960s when the women's liberation movement began. See: Linda Kealey, ed. *A Not Unreasonable Claim: Women and Reform in Canada 1880s – 1920* (Toronto: the Women's Press, 1979). For criticisms regarding the race and class bias of first-wave maternalists see: Carol Lee Bacchi, *Liberation Deferred? The Ideas of English-Canadian Suffragists, 1877 – 1918* (Toronto: University of Toronto Press, 1983).

[6] Nancy Forestell advocates re-visiting the contributions of first and second wave feminists with new insights gleaned from international and transnational perspectives in "Mrs. Canada Goes Global: Canadian First Wave Feminism Revised," *Atlantis*, 30:1 (2005), 7, 13.

women's legal and social reforms between the 1920s and the 1960s.[7] I also argue that the women's movement included women's public and private politics, as well as discourses of maternalism and equal rights, but that the meaning and corresponding emphasis of these changed over the course of the twentieth century and reflected different contexts.[8] During the early twentieth century, women magistrates expressed maternal sentiments connected to Anglo-Celtic morals and citizenship values, and often expressed through their connections to women's voluntary organizations, to legitimate their suitability and authority as judges. By the 1920s and 1930s, developments in legal education and professionalism challenged the maternal basis of the first women judges' appointments even as maternalism gained influence in re-energized women's organizations. Throughout the postwar period women's influence expanded, associated with a growing network of women's voluntary organizations and the growth of the welfare state.[9] By the mid-1960s, human rights initiatives encouraged recognition of a broader range of women's issues and equal rights rhetoric gained force, but maternalism, often reflecting international

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[7] Jill Vickers, Pauline Rankin, Christine Appelle, argue that the Canadian women's movement is rooted in longstanding organizations which have given women a more effective political voice than has women's involvement in party politics, *Politics As if Women Mattered: A Political Analysis of the National Action Committee on the Status of Women* (Toronto: University of Toronto Press, 1993), 3. Studies that emphasize continuity between the first and second wave of the women's movement include: Alison Prentice, Paula Bourne, Gail Cuthbert Brandt, Beth Light, Wendy Mitchinson, and Naomi Black, *Canadian Women: A History* (Toronto: Harcourt Brace Jovanovich, 1988), 331 – 337; Linda Kealey and Joan Sangster, eds. *Beyond the Vote: Canadian Women and Politics* (Toronto: University of Toronto Press, 1989), 3 – 15. Gail Campbell investigates Senator Muriel McQueen Fergusson's role as an "institutional" or "liberal" feminist in advancing claims for human rights and women's right in the interwar period, "'Are We Going to do the most important things?' Senator Muriel McQueen Fergusson, Feminist Identities, and the Royal Commission on the Status of Women," *Acadiensis*, XXXVIII, no. 2 (Summer/Autumn 2009), 52 – 77. In the U.S. Dorothy Sue Cobble suggested continuities between the first and second wave of feminism by investigating women within the U.S. labour movement from the late 1930s until the 1960s in *The Other Women's Movement: Workplace Justice and Social Relations in Modern America* (Princeton: Princeton University Press, 2004). Other U.S. works include: Leila J. Rupp and Verta Taylor, *Survival in the Doldrums: The American Women's Rights Movement, 1945 to the 1960s* (New York: Oxford University Press, 1987); Nancy A. Hewitt, *No Permanent Waves: Recasting Histories of U.S. Feminism* (New Brunswick, NJ: Rutgers University Press, 2010); Nancy F. Cott, *The Grounding of Modern Feminism* (New Haven: Yale University Press, 1989).

[8] Veronica Strong-Boag discusses scholars' turn towards personal politics in Prairie Canada in "Pulling in Double Harness or Hauling a Double Load: Women, Work and Feminism on the Canadian Prairie," *Journal of Canadian Studies*, 21: 3 (Fall 1986).

[9] Campbell, "'Are we going to do the most important things,'" 58 – 60.

themes and sometimes clashing with legal professional values, remained a useful tool for some women judges.

Women judges worked within environments influenced by prescriptions of women's role and conventions regarding legal professionalism. As in Central Canada, Prairie women were subjected to historically contingent, and changing, expectations regarding womanly, or prescribed, behavior.[10] Once legal education became a prerequisite for judicial appointment, women balanced prescriptions of feminine behaviour with requirements of legal professionalism, the latter of which scholars have demonstrated was based on a male "norm."[11] As a professional construct, the law sometimes placed women at an uncomfortable crossroad between their historic voluntary-sector derived authority and association with feminine maternal values and a gentlemanly code of conduct.

Professional and court conventions also intersected with women's role in the family courts, and indicated an important historical transformation related to women's status as judges. During the first part of the twentieth century, the quasi-judicial work of juvenile and women's court judges upheld an important social mandate to protect children and youth and to nurture families.[12] Murphy, Jamieson, and MacLachlan held significant social status partly because their

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[10] Valerie Korinek, *Roughing it in the Suburbs: Reading Chatelaine in the Fifties and Sixties* (Toronto: University of Toronto Press, 2000); Joan Sangster, *Transforming Labour: Women and Work in Post-War Canada* (Toronto: University of Toronto Press, 2010), 10, 36; Helen Smith and Pamela Wakewich, "Beauty and the Helldivers: Representing Women's Work and Identities in a Warplant Newspaper," *Labour*, 44 (Fall 1999).

[11] Constance Backhouse, "Gender and Race in the Construction of 'Legal Professionalism': Historical Perspectives" Paper from the First Colloquium on the Legal Profession, October 2003 http://lsuc.on.ca/media/constance_backhouse_gender_and_race.pdf (accessed 25 September 2012); Cecilia Morgan, "An Embarassingly and Severely Masculine Atmosphere: Women, Gender and the Legal Profession at Osgoode Hall, 1920 – 1960s," *Canadian Journal of Law and Society* 11 (1996), 30; Mary Jane Mossman, *The First Women Lawyers: A Comparative Study of Gender, Law and the Legal Profession,* (Oxford: Hart Publishing, 2006), 10.

[12] I describe the juvenile and women's courts, and the judges within, as "quasi-judicial" because these courts were appended onto an existing judicial structure, and employed conventions, sanctions, and actors not part of the established legal system. Over the course of the twentieth century as the juvenile and women's courts transformed into family courts they became part of the mainstream judicial system.

court roles reflected this value. In stark contrast, by the 1960s and 1970s the prestige and status of family court judges, and family law professionals as a whole, plummeted.[13] These later family courts did not attempt to maintain family units, but were designed to deal with rising divorce rates and family breakdown – the negative results of which fell disproportionately on women. Professional status mattered, according to former Supreme Court Justice Bertha Wilson, because status reflected practical realities such as having adequate income and resources to provide quality family legal services.[14] These issues continued well into the 1980s, 1990s, and even today because "family law is not sexy," and the family court continues to struggle with backlogs and funding issues.[15] In 1993, Wilson wrote that the low status of family law disproportionately affected women practitioners and clients, resulting in a "pink ghetto."[16] Questions regarding the evolution and status of the family court thus help to further contextualize women judges' judicial experiences. In the Prairies as elsewhere in Canada, women judges were appointed primarily to lower level family courts. This trend began to shift only in the very last years of this study when court restructuring and professional developments encouraged the appointment of greater numbers of women judges to courts not focused primarily on matters relating to women and children.

This dissertation will emphasize the public presentation of Prairie women judges' work in the context of a broader movement of social change. By utilizing various sources including biographical data, government records, newspapers, as well as personal papers and speeches, this

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[13] Freda Steel, "The Unified Family Court – Ten Years Later," 24 *Manitoba Law Journal* (1996-1997), 388.
[14] The Honourable Bertha Wilson, Patricia Blocksom, Sophie Bourque, Daphne Dumont, John Hagan, Sharon McIvor, Alec Robertson, and Corinne Sparks, *Touchstones for Change: Equality, Diversity and Accountability: The Report on Gender Equality in the Legal Profession* (Ottawa: CBA, 1993), 203.
[15] Karen Kleiss, "Hancock Says Having Single Family Court Could Help Justice System Backlogs," *Edmonton Journal*, 27 May 2014 www.edmontonjournal.com (accessed 29 May 2014).
[16] The Honourable Bertha Wilson et al. *Touchstones for Change*, 204 – 206.

dissertation will trace individual experiences of some Prairie Canadian women judges to examine how their authority and opportunities were created and circumscribed within particular locales. The chapter proceeds by explaining my use of biographical information and methodological considerations. This discussion is followed by an analysis of relevant historiographical approaches. Finally, I present brief chapter outlines.

Biographical Insights and Methodology

This dissertation uncovers the careers and reform experiences of some Prairie Canadian women judges and, in keeping with current scholarly trends, uses biographical information based on individual and local experiences to illuminate connections to regional, national, and international developments.[17] New scholarship reflects some important historiographical shifts, including the prevalence of interdisciplinary methods and continued connections between social historians and scholars of women and gender.[18] Renewed scholarly interest in biography follows years of criticism of biography as traditional and elitist by Canadian and American scholars.[19] Scholars criticized biographies that presented hagiographical and linear "life-as-adventure-or-achievement" stories usually premised on famous men whose accomplishments singularly and

[17] Catherine Carstairs and Nancy Janovicek, "Introduction: Productive Pasts and New Directions," in *Feminist History in Canada* (Vancouver: UBC Press, 2013), 7.
[18] Elizabeth Smyth, Sandra Acker, Paula Bourne, and Alison Prentice, eds., *Challenging Professions: Historical and Contemporary Perspectives on Women's Professional Work* (Toronto: University of Toronto Press, 1999), 3; Susan Ware, "Writing Women's Lives Lives: One Historian's Perspective," *Journal of Interdisciplinary History* 40:3 (Winter 2010), 415.
[19] These criticisms are included in: Joan Sangster, *Through Feminist Eyes: Essays on Canadian Women's History* (Edmonton: Athabasca University Press, 2011), 7; Veronica Strong-Boag, "Taking Stock of Suffragists: Personal Reflections on Feminist Appraisals," *Journal of the Canadian Historical Association,* Vol. 21, 2 (2010), 81; Ware, "Writing Women's Lives," 421.

directly influenced nationalistic events.[20] Some biographers used this model uncritically to feature primarily famous white privileged women.[21] While such biographies successfully met a 1970s revisionist objective to include more women into a historical record dominated by men, they were criticized by social historians interested in uncovering the lives of ordinary persons, and in the influences of class, race, and sex.[22] These approaches expanded throughout the 1980s and 1990s as scholars embraced postmodernist techniques to investigate multiple forms of identity, inclusive of cross-influences of class, race, sex, gender, ethnicity, age, disability, and other indices of difference.[23] Gender scholarship in particular influences my work because of its recognition that gender categories, reflecting "masculine" and "feminine" characteristics are socially constructed and fluid.[24] Combined, all of these criticisms encouraged abandonment of traditional biographical approaches.

Influenced by insights and methodologies from social history and postmodernism, some scholars have produced meaningful studies of women professionals that emphasize notable women in particular contexts. Alison Prentice, in her biographical sketch of three Canadian women physicists, argues that her approach was informed by questions about how the academic practice of physics, as distinct from other professions, created a particular experience for

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[20] This criticism appears in Marilyn Booth and Antoinette Burton, "Editor's Note," *Journal of Women's History* 3 (Fall 2009), 7 and in Elspeth Cameron and Janice Dickin, eds., *Great Dames* (Toronto: University of Toronto Press, 1997), 3-5.

[21] Examples of popular biographies include: Jean Bannerman, *Leading Ladies Canada* (Ontario: Mika Publishing Company, 1977); Christine Mander, *Emily Murphy: Rebel* (Toronto: Simon and Pierre, 1985), Elsie Gregory MacGill, *My Mother the Judge* (Toronto: Ryerson Press, 1955).

[22] Catherine A Cavanaugh and Randi Warne, "Introduction," *Telling Tales: Essays in Western Women's History,* eds. Catherine A. Cavanaugh and Randi R. Warne (Vancouver: UBC Press, 2000), 5.

[23] Cavanaugh and Warne, "Introduction," in *Telling Tales,* 5; Sangster, *Through Feminist Eyes,* 7.

[24] Sheila McManus, "Gendered Tensions in the Work and Politics of Alberta Farm Women, 1905 – 29" in *Telling Tales,* 142, footnote 64; Joan W. Scott, "Gender: A Useful Category of Historical Analysis" *American Historical Review* 91:5 (1986): 1056.

women.[25] Mary Kinnear, in a 1995 study, uses biographical information to highlight some of the first women lawyers in Manitoba and to examine how "professionalism," a concept that will be discussed fully later in this chapter, operated for Manitoba women professionals.[26] In 2004, Kinnear investigates how gender influenced the life of a prominent professional, Mary McGeachy, Secretariat of the League of Nations in the 1930s and later president of the International Council of Women.[27] Kinnear demonstrates that McGeachy's life represented "the clash of ambition and gender," partly because of prescriptions regarding women's behavior, as it existed for professional women during the twentieth century, and argues that McGeachy's experience served to illuminate ingrained attitudes towards women and gender.[28] Ellen Anderson combines a life-as-achievement model with insights from postmodernism and feminism, to create a biography on Justice Bertha Wilson.[29] These examples indicate a renewed turn towards a focus on prominent individuals, motivated by new questions garnered from critical approaches, all of which are useful for examining the particular experiences of women judges as prominent individuals and as members of the legal profession.

Older biographical scholarship focused on single individuals that "allow[ed] us to see how and why things happened or how and why certain choices were made [...] to explain larger trends in history"[30] have become nuanced by critical approaches. Critical biographical methodology allows for greater contextualization, by considering local and regional concerns and

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[25] Alison Prentice, "Three Women in Physics," in *Challenging Professions*, 120.
[26] Mary Kinnear, *In Subordination: Professional Women, 1870 – 1970* (Montreal and Kingston: McGill-Queen's University Press, 1995).
[27] Mary Kinnear, *Woman of the World: Mary McGeachy and International Cooperation* (Toronto: University of Toronto Press, 2004).
[28] Kinnear, *Woman of the World*, 251, 260.
[29] Ellen Anderson, *Judging Bertha Wilson: Law as Large as Life* (Toronto: The Osgoode Society, 2001).
[30] Smyth, Acker, Bourne, and Prentice, eds., *Challenging Professions*, 9.

professional, rather than nationally famous, subjects.[31] More recent approaches from critical feminist biography critique not only the linear life- as-achievement model, but also emphasize that a shortage of archival sources is a concern not only for "ordinary" women, but also for some relatively well-known, or even famous women.[32] Jean Allman suggests an agnotological approach, which "interrogates the construction of ignorance and sanctioned forgetting" to examine how Hannah Kudjoe, an extremely prominent woman nationalist in post-World War II Ghana "got disappeared" from the historical record.[33] Allman urges feminist scholars to look beyond what she characterizes as an assumption that patriarchy causes women to disappear from history, and thus launches feminist scholars into a project of reclaiming and recuperating lost female lives, to interrogate how and why women were lost from the historical record in the first place.[34] In Kudjoe's case, Allman argues that the type of record deemed worthy of archival preservation in Africa, and the types of documents historians typically insist on using to construct biographies, can lead to an erasure of women from the historical record, as happened to Kudjoe.[35]

These recent biographical methods suggest ways of uncovering the experiences of some Prairie Canadian women who adjudicated between 1916 and 1980. Critical feminist biography looks beyond progressive biographical models, by assuming neither that the significance of an individual's life was evident within their earlier development, nor that conventional stories or traditional archival materials necessarily reveal the subject's story.[36] These developments support my approach precisely because Prairie women judges left behind piecemeal or otherwise

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[31] Ibid., 8.
[32] Booth and Burton, "Editor's Note," *Journal of Women's History* 3 (Fall 2009), 7.
[33] Jean Allman, "The Disappearance of Hannah Kudjoe: Nationalism, Feminism and the Tyrannies of History," *Journal of Women's History* 3 (Fall 2009), 15.
[34] Ibid., 16.
[35] Ibid., 30.
[36] Booth and Burton, "Editor's Note," *Journal of Women's History,* 8.

inaccessible records, and because they were professional white, middle-class, and English-speaking women.[37] As a group, these women have "gotten disappeared" in fragmented archival holdings and behind legal barriers that leave their personal court pronouncements and much of their work largely inaccessible.[38]

This thesis gains insight into their personal and professional experiences through the few personal papers available, official speeches, newspaper accounts as well as limited government and court records.[39] Not all of these materials, however, are available for each woman included in this study. Archival holdings, newspaper articles, and court documents indicate that at least twenty-four women sat on Alberta, Saskatchewan, and Manitoba benches between 1916 and 1980.[40] The extensive documentary record for many of these has been lost, or rendered

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[37] With the possible exception of Emily Murphy, relatively little historical scholarship examines Prairie Canadian women judges. Biographical scholarship on Emily Murphy includes Byrne Hope Sanders, *Emily Murphy – Crusader* (Toronto: Macmillan, 1945); Mander, *Emily Murphy*; John McLaren, "Maternal Feminism in Action: Emily Murphy, Police Magistrate," *Windsor Yearbook of Access to Justice* 8 (1988): 234 – 51. Jennifer Henderson applies literary deconstruction to interrogate how "Janey Canuck," Murphy's literary alter-ego, became a judge, *Settler Feminism and Race Making in Canada* (Toronto: University of Toronto Press, 2003).

[38] Many lower court records were simply not kept. Most of the records pertaining to juvenile courts and other matters of a family nature are closed in Prairie archives. For example, in Winnipeg, most records pertaining to the family courts are intermixed across subject matter and decades. In order to obtain an access order granting the archive permission to examine these files and potentially open them to researchers, researchers must first obtain an affirmative court order from every applicable level of court (as family matters changed jurisdiction over the years). This procedure requires hiring Manitoba lawyers, filing applications at each level of court, hoping for judicial assent, and of course, paying for all of the legal and court costs associated with this.

[39] Some of these materials are restricted because of provincial privacy legislation and the rules of bar associations. In Saskatchewan, the law society would not release the names and dates of admission of women students for the years of this study, and were unable, without substantial financial cost to myself, to provide anonymous statistical information regarding dates of bar admission. The Manitoba bar likewise does not release this information; however, there is an alphabetical listing of lawyers available at the Archives of Manitoba and it is possible to view some of these files. I managed to obtain some highly reliable records relating to women admitted to the Alberta bar from an anonymous source. In July 2014 I obtained permission to view some women lawyers' files housed at the Legal Archives of Alberta in response to my official request submitted 6 October 2009.

[40] By province and date of appointment, these women include: Alberta: Alice Jamieson (1915), Annie Elizabeth Langford (1915), Emily Murphy (1916), Mary Ann Harvey (1922), Christine Yarwood (1924), Isobel Stewart (1954), Wallace Kempo (1964), Marjorie Bowker (1966), Elizabeth Ann McFadyen (1976), Mary Margaret McCormick Hetherington (1978). Saskatchewan: Jean Ethel MacLachlan (1917), Margaret Isabella Burgess (1935), Tillie Taylor (1959), Mary Carter (1960), Laura Rushford (assisted on part time basis in Moose Jaw; retired 1967. The Saskatchewan Gazette does not provide a record of her appointment or resignation), Mary Batten (1970 District Court, 1983 Chief Justice of Queen's Bench), Marion Wedge (magistrate 1972, QB Justice from 1987 to 1997),

inaccessible because of privacy legislation, and eleven of these women remain available for the purposes of close analytical study. These women are: Emily Murphy, Alice Jamieson, and Marjorie Bowker from Alberta; Jean Ethel MacLachlan, Margaret Isabella Burgess, Tillie Taylor and Mary Carter from Saskatchewan; and Nellie McNichol Sanders, Mary Wawrykow, and Myrna Bowman from Manitoba.

Because the evidence contained in this dissertation is not easily quantifiable or comparable, selected women's perspectives and experiences cannot be taken as representative of all women judges or women lawyers during the period under review. What can be garnered from their records are some of the ways in which their individual lives and careers reflected and responded to developments within the women's movement, legal professionalism and court system, and ideologies about women's role. This approach complements recent trends in biographical scholarship by utilizing critical perspectives, and also adds an in-depth investigation of select Prairie women judges to existing scholarship largely based on women lawyers and judges in Central and Eastern Ontario.

The Canadian Prairies: Defining Place and Developing Courts for Women and Children

Writing about selected Prairie Canadian women judges situates some relatively unfamiliar persons with current scholarly approaches to contextualizing "place." I am influenced by Backhouse and Swainger, who argue that "Place is about more than a specified locale, it's about

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Anita Ray Andreychuk (1976). Manitoba: Nellie Sanders (1957), Mary Wawrykow (1968), Jane Mauer (1971), Myrna Bowman (1971) Jean Folster, magistrate and Band Chief (1971), Bonnie Helper (1978).

how an individual is situated within a community and in reference to various ideals about law and its meanings."[41] Place is shaped by context and changes over time.

One familiar historiographical theme is that too few scholars examine either male or female judges in the Prairies, and that Ontario-based scholarship dominates our understanding about the Canadian legal system. In 1986, Louis Knafla indicated that Prairie Canada suffered from a paucity of scholarship about judges and the legal profession, and pursued research to rectify this omission during the 1990s.[42] During the mid-1980s, Graham Parker criticized the "Ontariocentric" focus in Canadian legal historiography.[43] Parker argues that scholars tended to extrapolate experiences and developments from the legal past of Ontario to apply to the rest of Canada because of the absence of regionally-based studies.[44] Writing in 2001, Joan Sangster supports Parker's claim that further regional studies were required before scholars could determine the universality of the Ontario legal experience in relation to juvenile justice.[45] Dale Brawn's recent biography of Prairie judges, focused exclusively on Manitoba, contributes to Prairie-oriented scholarship focused on the judiciary, but his time frame ends in 1950, effectively

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[41] Jonathon Swainger and Constance Backhouse, "Introduction," *People and Place: Historical Influences on Legal Culture* (Vancouver: UBC Press, 2003), 2.

[42] Louis Knafla and Richard Klumpenhouwer, *Lords of the Western Bench: A Biographical History of the Supreme and District Courts of Alberta, 1876 – 1990* (Calgary, Alberta: Legal Archives Society of Alberta, 1997), and "From Oral to Written Memory: The Common Law Tradition," in Louis Knafla, ed., *Law and Justice in a New Land* (Toronto: Carwell, 1986), 32.

[43] Graham Parker coined the term "Ontariocentric" in "Canadian Legal Culture," in Knafla, ed., *Law and Justice in a New Land*, 28.

[44] Dorothy Chunn, "Maternal Feminism, Legal Professionalism and Political Pragmatism: The Rise and Fall of Magistrate Margaret Patterson, 1922 – 1934," in *Canadian Perspectives on Law & Society: Issues in Legal History*, eds, W.Wesley Pue and Barry Wright (Ottawa, Canada: Carleton University Press, 1988), 91 – 117; Amanda Glasbeek, *Feminized Justice: The Toronto Women's Court, 1913 – 1934* (Vancouver: UBC Press, 2009).

[45] Joan Sangster, *Regulating Girls and Women: Sexuality, Family, and the Law in Ontario, 1920 – 1960* (Ontario: Oxford University Press 2001), 132, footnote 4.

excluding the earliest Manitoba women judges.[46] My research indicates that Nellie McNichol Sanders was the first woman judge to be appointed in Winnipeg in 1957. This dissertation addresses the omission of Prairie-based scholarship about women judges, and also tests the representativeness of Eastern and Central Canadian legal historical developments by examining how familiar constructs, including laws, juvenile and women's courts, and the legal profession developed within the Prairies.

Using the geographic parameters of Alberta, Saskatchewan, and Manitoba raises questions relating to the applicability, or even existence, of "west as region."[47] For many years, scholars have argued that the idea of the west as a distinct region was a fictional construct, reflecting only "imagined communities."[48] Within recent years, scholars have used multidisciplinary techniques, including insights from the disciplines of urban studies, geography, and sociology to investigate unique persons and events within specific locales to better analyze "place."[49] The newest approaches reflect the Prairie west as both a literal and metaphorical place, and emphasize cultural intersections as well as economic and political factors.[50] Demarcating rigid spatial boundaries has become much less important to gender scholars of the American and

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[46] Dale Brawn *The Court of Queen's Bench of Manitoba 1870 – 1950* (Toronto: The Osgoode Society, 2006). Dennis Gruending, influenced by new developments in Aboriginal law and the Stephen Truscott case, updated his 1985 biography of Emmett Hall in *Emmett Hall: Establishment Radical* (Ontario: Fitzhenry and Whiteside, 2005).

[47] Gerald Friesen argues that the "limited identities" themes of western alienation and the west's democratic egalitarian spirit, provided the west with considerable unity especially between 1867 and 1930, *The Canadian Prairies: A History* (Toronto: University of Toronto Press, 1987). Friesen's work was based on the "limited identities" model which argued that Canadians found their identity within the limited identities of region, ethnicity and class rather than within any superficially cohesive nationalism, was coined by Ramsay Cook and was taken up by Maurice Careless. See: P.A. Buckner, "Limited Identities Revisited: Regionalism and Nationalism in Canadian History," *Acadiensis* 30:1 (Autumn 2000): para 1 – 22.

[48] Gerald Friesen, "The Prairies as Region: The Contemporary Meaning of an Old Idea," in *River Road: Essays on Manitoba and Prairie History* (Winnipeg: University of Manitoba Press, 1996), 165 – 182; Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (London: Verso, 1983), 3 – 7. Also: Alvin Finkel, Sarah Carter and Peter Fortna, *The West and Beyond: New Perspectives on an Imagined "Region* (Seattle: University of Washington Press, 2010).

[49] This theme is explored in numerous essays incorporating multidisciplinary perspectives in Perry, Jones, and Morton, *Place and Replace*.

[50] Buckner, "Limited Identities Revisited," 17; Perry, Jones, and Morton, *Place and Replace*, 3.

Canadian wests who reject even national borders as artificial, by arguing for greater exploration of "what links and separates" women with diverse race, sexual, and social backgrounds across the 49th parallel.[51]

Women's historians, gender, and empire scholars provide useful contexts for demarcating place and investigating international cross-currents. Recent transnational approaches use insights from the field of empire studies to analyze how race, class, and culture intersected with women's authority in relations between colonizers and the colonized.[52] This approach complicates earlier scholarship that argued British cultural ideas were transplanted into the Prairie west by female British settlers who brought ideologies of female respectability with them.[53] Lisa Chilton used a transnational approach to examine the migration experiences of British women emigrators charged with British female emigration between 1860 and 1930 to examine and compare power structures and cultural identities across borders. [54] Chilton concludes that these British women emigrators, through the auspices of middle-class women's societies, developed and maintained their power and authority by deliberately keeping men out of the process.[55] Chilton also establishes that middle-class women's organizations forged strong bonds across vast international

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[51] Elizabeth Jameson and Sheila McManus, eds. "Introduction," *One Step Over the Line: Toward a History of Women in the North American Wests* (Edmonton: University of Alberta Press, 2008), xxv.

[52] Adele Perry, examines British Columbia as a British colony in her investigation of how gender and race intersected in the creation of a colonial society, *On the Edge of Empire: Gender, Race, and the Making of British Columbia, 1849 – 1871* (Toronto: University of Toronto Press, 2001), 4, 7. See also: Lisa Chilton, *Agents of Empire: British Female Migration to Canada and Australia, 1860s – 1930* (Toronto: University of Toronto Press, 2007), 6.

[53] Susan Jackal, ed., argues that "certain beliefs and prejudices took root in the west" because of the influence of British gentlewomen emigrants, *A Flannel Shirt & Liberty: British Emigrant Gentlewomen in the Canadian West, 1880 – 1914* (Vancouver: UBC Press, 1982), xiv. Sheila McManus makes a similar argument about cultural transplantation of feminine behaviour and political ideas in "Gendered Tensions," 123 – 127. Lindsay McMaster explores women's roles as cultural carriers "within the physical and conceptual territories of empire, nation, and home," in *Working Girls in the West: Representations of Wage-Earning Women* (Vancouver: UBC Press, 2008), 32.

[54] Chilton, *Agents of Empire*, 7.

[55] Ibid., 11.

distances, and indicates that Canada was much more receptive to women's voluntary initiatives than was Australia.[56] Chilton's analysis reveals that global ideas circulated within women's organizations, and that these ideas made their way into manifestations of the law and justice in the Prairie west. A key argument in this dissertation is that transnational processes affected the development of Prairie Canadian woman-led courts.

In emphasizing transnational connections, empire studies scholars argue that less emphasis be placed on the exceptional nature of region, and that scholars should investigate the ways in which all of Canada's regions shared a history as members of the British Empire.[57] Jennifer Henderson adopts this approach to explain how the concept of the *zenana*, a woman-only space, associated with the occupation of India by the British Empire, resembled the structure of the Edmonton women's court. In Henderson's interpretation, magistrate Murphy's court-sanctioned interventions into the personal lives of the litigants appearing before her were much less a legalistic exercise designed to carry out justice, than it represented efforts to civilize immigrants into law-abiding British citizens by dispensing moral justice.[58] Feminist scholars have also used international analyses to untangle how class, race, gender, and colour operated to legitimize activism for women and children's rights.[59] Lesley Erickson demonstrates the influences of these transnational approaches in her recent work by arguing that Calgary was a

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[56] Ibid., 150.
[57] For example see Catherine Hall, "Introduction: Thinking the Postcolonial, Thinking the Empire," in *Cultures of Empire: A Reader; Colonizers in Britain and the Empire in the Nineteenth and Twentieth Centuries*, ed., Catherine Hall (New York: Routledge, 2000); Phillip A. Buckner and R. Douglas Francis, eds., Introduction to *Rediscovering the British World* (Calgary: University of Calgary Press, 2005); Jean Barman, "A British Columbian View of Regions," *Acadiensis*, 25:2 (Spring 2006), 144; Gerald Friesen, "Critical History In Western Canada, 1900 – 2000," in *The West and Beyond: New Perspectives on an Imagined Region*, eds. Alvin Finkel, Sarah Carter, and Peter Fontina (Edmonton: Athabasca University Press, 2010), 7 – 8.
[58] Jennifer Henderson, *Settler Feminism and Race Making in Canada* (Toronto: University of Toronto Press, 2003), 186, 198.
[59] Mrinalina Sinha, Donna Guy, and Angela Woollacott, eds., "Introduction: Why Feminisms and Internationalism?" in *Feminisms and Internationalism* (Oxford: Blackwell Publishers, 1999).

"settler society" in common with many other areas with large indigenous populations.[60] These approaches help scholars to re-evaluate traditional assumptions regarding place, including the traditional idea that Canadian legal and court developments moved directly from east to west.

Insights from gender studies, transnationalism and empire studies have encouraged some scholars to include British Columbia as a "western" province based on cultural similarities stemming from an Imperial past.[61] In *Telling Tales,* Catherine Cavanaugh and Randi Warne argue for the inclusion of British Columbia in "western" scholarship because British Columbia entered Confederation around the same time as Alberta and Saskatchewan, Manitoba, and, like Alberta, Saskatchewan, and Manitoba, experienced tremendous growth through immigration.[62] Cavanaugh and Warne further argue that regional approaches are based on male constructions and achievements and have failed to adequately represent women because women's work "tends to straddle the domestic and public."[63] Nevertheless, I am excluding British Columbia from my examination because some legal developments, especially those concerned with land, settlement, and legal status unfolded distinctly in British Columbia.[64] Chris Clarkson demonstrates through

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[60] Lesley Erickson, *Westward Bound: Sex, Violence, the Law, and the Making of a Settler Society* (Vancouver: UBC Press for the Osgoode Society for Canadian Legal History 2011), 17.

[61] Sarah Carter, Lesley Erickson, and Patricia Roome, transcend limits imposed by traditional regional, and even national boundaries by arguing transnational insights and gendered insights can be usefully applied to re-evaluate historical understanding of some familiar early twentieth century women, "Introduction," in *Unsettled Pasts: Reconceiving the West Through Women's History*, eds. Sarah Carter, Lesley Erickson, Patricia Roome, and Char Smith, (Calgary: University of Calgary Press, 2005), 3 – 4. Catherine Cavanaugh and Jeremy Mouat noted this trend towards including British Columbia as a "Western" province in "Western Canadian History: A Selected Bibliography," in *Making Western Canada: Essays on European Colonization and Settlement*, eds, Catherine Cavanaugh and Jeremy Mouat (Toronto: Garamond Press, 1996), 267.

[62] Catherine A Cavanaugh and Randi Warne, "Introduction," *Telling Tales: Essays in Western Women's History,* eds. Catherine A. Cavanaugh and Randi R. Warne (Vancouver: UBC Press, 2000), 7.

[63] Ibid.

[64] Knafla, "From Oral to Written Memory: The Common Law Tradition in Western Canada," 33. Scholars of Aboriginal history often also discuss British Columbia as separate from the Prairies. Cole Harris argues that British Columbia's colonial heritage resulted in a unique system of Indian Reservations in *Making Native Space: Colonialism, Resistance and Reserves in British Columbia* (Vancouver: UBC Press, 2002) ; Sidney Harring also acknowledges British Columbia's unique legal parameters for Aboriginal persons in *White Man's Law: Native People in Nineteenth-Century Canadian Jurisprudence* (Toronto: University of Toronto Press, 1998).

close analytical study that a liberal framework, inclusive of various social reform measures including the perspectives of maternal feminists, unfolded distinctly to condition the creation and enforcement of laws in British Columbia. Thus, even though laws in British Columbia were in many respects the same as laws in other jurisdiction, the reasons for adopting particular laws reveal the unique contours of colonization, nation-building, and state formation.[65]

In setting the geographic parameters for this study, I was influenced by scholarship that investigated the Prairies as a region based on a similar legal, economic, and cultural heritage. Friesen's argument that the west's democratic egalitarian spirit, rooted in the common economic, political, and cultural traditions of western Canadians, gave impetus to the development of a middle-class professional group before World War II influences my findings.[66] Certainly, the earliest Prairie women judges, adjudicating until the mid-1930s, fit within the dominant British-Canadian linguistic and cultural group that Friesen argued unified Alberta, Saskatchewan, and Manitoba in this early period.[67] After World War II, Friesen argues that provincial political, economic and social difference overshadowed regional cohesion.[68] My research supports Friesen's finding because the cultural backgrounds and politics of 1960s and 1970s Prairie women judges reflect provincial differences and the increased influence of internationally-circulating ideas.

Historians have also argued that similar laws, cultural heritage, and settlement patterns created a unique and flexible judicial tradition in the Prairies. Louis Knafla argues that the shared legal heritage of the provinces which would become Manitoba in 1870, and Saskatchewan and

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[65] Chris Clarkson, *Domestic Reforms: Political Visions and Family Regulation in British Columbia, 1862 – 1940* (Vancouver: UBC Press, 2007), 3.
[66] Friesen, *The Canadian Prairies*, xiii.
[67] Friesen, "Defining the Prairies," 18.
[68] Friesen, argues that Alberta emerged as Canada's noisy oil centre while Saskatchewan lost both population and its agricultural focus after WWII, "Defining the Prairies," 14.

Alberta in 1905 emerged from the Dominion Acts of 1870 and 1871, and was supported by the federal government's creation of the North-West Mounted Police (NWMP) in 1873.[69] NWMP officers appointed as Justices of the Peace travelled vast distances, on circuit, throughout the sparsely-populated North-West Territories to hold court and administer justice.[70] These early Justices of the Peace were responsible for upholding Britain's law as of 1870, formally introduced to the North-West Territories through the 1886 North-West Administration of Justice Act.[71] Knafla argues further that the law of the North-West Territories remained flexible as it took into account "local social, cultural and economic conditions [and] disallow[ed] English law where it did not seem either beneficial or appropriate."[72] According to Roderick Martin, by using their own interpretation and discretion towards existing law, judges of the Supreme Court of the North-West Territories "advanced a form of circumscribed judicial activism."[73] W.H. McConnell, in *Prairie Justice* agreed as he suggests that the Saskatchewan legal system, in particular, had to be adaptive and responsive to frontier conditions, and further that this flexible legal tradition continued on into at least the 1950s.[74]

Recently, by positioning First Nations persons at the forefront of her analysis, and by centring her legal historical analysis on the "Aboriginal Plain," Shelley Gavigan provides a

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[69] Knafla, *Lords of the Western Bench*, 10.
[70] Ibid.
[71] Knafla also explains that a few stipendiary magistrates also held court in the North-West Territories, but that their positions were abolished by the 1886 act, "The Common Law Tradition," 41, 51 – 52; see also: Knafla, *Lords of the Western Bench*, 10.
[72] Knafla, "The Common Law Tradition," 43.
[73] Roderick Martin, "The Common Law and Justices of the Supreme Court of the North-West Territories: The First Generation, 1887 – 1907," in Louis A. Knafla and Jonathan Swainger, eds., *Laws and Societies in the Canadian Prairies West, 1670 – 1940* (Vancouver: UBC Press, 2005), 225.
[74] W.H. McConnell, *Prairie Justice* (Calgary: Burroughs and Company, 1980), 18.

transformative analysis of the "place" of the territory that became modern day Saskatchewan.[75] Gavigan uses her innovative perspective about the Prairies as Aboriginal space to assess the effect of the numbered Treaties and the "black letter" criminal law. In the end result, Gavigan argues that the effect of these was to prosecute Plains First Nations as Indians rather than as criminals.[76] All of this scholarship emphasizes the pliability and responsiveness to local conditions of the Prairie legal system as based in a particular place, which I argue encouraged the acceptance and form of early juvenile and women's courts.[77]

Drawing on Catherine Cleverdon's "frontier feminism" thesis, women's historians linked the cultural cohesion and flexible legal traditions of the Prairie west to an active late-nineteenth and early twentieth century reform climate in which women initiated reforms largely associated with the suffrage quest and matrimonial legal reform.[78] Building on Cleverdon's approach, historians have argued that the rural context inspired continued feminist awareness, even into the Great Depression period,[79] and placed a great deal of analytical weight on the legacy of unequal

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[75] Shelley Gavigan, *Hunger, Horses, and Government Men: Criminal Law on the Aboriginal Plains, 1870 – 1905* (Vancouver: Osgoode Society for Canadian Legal History, 2012).

[76] Ibid., 22.

[77] Knafla, "From Oral to Written Memory: The Common Law Tradition in Western Canada," 39. Gerald Friesen discusses the National Policy, the peace-oriented NWMP, and settlement objectives in The Canadian Prairies, 162 – 165. This older literature, however, also over-emphasized themes of peace and non-violence. Many scholars, most recently Leslie Erickson thoroughly discredited the peaceful non-violent Prairies as a "myth," by analyzing the experiences of women in *Westward Bound*, 32. See also: M. Elizabeth Langdon, "Female Crime in Calgary," 1914 – 1941," in *Law and Justice in a New Land*, ed., Knafla, 293 – 312; Strange, Carolyn and Tina Loo, discuss these scholarly themes in *Making Good: Law and Moral Regulation in Canada, 1867 – 1939* (Toronto: University of Toronto Press, 1997), 22.

[78] See: Catherine L. Cleverdon, "frontier feminism" thesis, which argued that "frontier feminism," present in the requirement of physical side-by-side labour, equalized men and women, and supported women's suffrage, in *The Woman Suffrage Movement in Canada*, new ed. (Toronto: University of Toronto Press, 1974), 46 - 47. Ramsay Cook, "Introduction," in *The Woman Suffrage Movement in Canada*, Catherine Cleverdon, xvi.; Carol Bacchi, "Divided Allegiances: The Responses of Farm and Labour Women to Suffrage," in *A Not Unreasonable Claim*, ed. Linda Kealey (Toronto: 1979: The Woman's Press), 89 – 107; Cavanaugh, "The Limitations of the Pioneering Partnership." Katherine McPherson engages the question of whether the west was liberating for women in "Was the 'Frontier' Good for Women?: Historical Approaches to Women and Agricultural Settlement in the Prairie West, 1870 – 1925," *Atlantis*, 25:1 (Fall/Winter 2000), 75 – 86.

[79] Strong-Boag, "Pulling in Double Harness," 35.

marital property laws in encouraging early feminist legal reforms.[80] This body of scholarship was less enthusiastic about Prairie women's ability to obtain matrimonial legal reform in the pre-Depression period, but did argue that a decisive link existed between Prairie women's feminism and the granting of suffrage. Certainly, Prairie women were the first in Canada to obtain the provincial franchise. Manitoba women obtained the provincial franchise in 1916, followed in short succession by Saskatchewan and Alberta.[81] This scholarship also argues that suffrage, and the appointment of the first women magistrates in the British Empire was a reward conferred on Prairie women by male legislators acknowledging the value of women's activism and important productive and reproductive labours.[82]

As was the case in major cities across Canada, Prairie juvenile and women's courts began to appear at the height of the urban reform era, and thus the Prairie context alone does not fully explain how or why juvenile and women's courts came to be.[83] Employing insights cognizant of class, race, and gender difference scholars from the fields of history and sociology demonstrate that across Canada, juvenile and women's courts emerged as quasi-judicial institutions shaped by maternal reformers' often heavy-handed social reform efforts and new legislation directed at simultaneously punishing and protecting youth.[84] Since the 1990s, scholars, often using the lens

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[80] Linda Rasmussen, Lorna Rasmussen, Candace Savage and Anne Wheeler, *A Harvest Yet to Reap: A History of Prairie Women* (Toronto: The Women's Press, 1976), 148; Strong-Boag, "Pulling in Double Harness," 47. Sarah Carter argued that the abolition of dower, as a legacy of the Territories Real Property Act of 1886, helped to spark the feminist activism of the early twentieth century reform movement, *The Importance of Being Monogamous*, 24.

[81] Christine MacDonald, "How Saskatchewan Women Got the Vote," *Saskatchewan History,* 1:3 (October 1948): 1 – 8, 7.

[82] Lesley A. Ericksen, "The Unsettled West: Gender, Crime, and Culture on The Canadian Prairies, 1886 – 1940 (PhD thesis: University of Calgary, 2003), 7.

[83] Helen Boritch, explains the urban reform era, 1871 to 1920, was marked by high visibility of crime, disease and poverty as greater numbers of people moved to the cities, "Gender and Criminal Court Outcomes: An Historical Analysis," *Criminology* 30:3 (1992), 294.

[84] Juvenile courts were federally sanctioned by an 1892 amendment to the Criminal Code of Canada providing for detaining children separately from adults, and by the 1908 *Juvenile Delinquents Act* (JDA). Mariana Valverde, criticizes the class and race biases of middle-class women reformers in *The Age of Light, Soap and Water: Moral*

of the criminal law, have continued to develop themes relating to maternal reformers' efforts towards protecting middle-class morality, and standards of femininity, from moral and cultural incursions wrought by working-class women and non-British "others."[85]

Some scholars, applying insights from regulation studies, further investigate the complicated ways in which class, race, ethnicity, and gender structured women's relationship with the law[86] and family court.[87] Regulation studies were inspired by scholarly disavowal of social control theory and the increasing influence of Foucault's concept of moral regulation during the 1980s.[88] Joan Sangster, a historical materialist, explains that some feminists and post-structuralists used regulation theory to help explain various resistance strategies utilized by persons challenging power structures.[89] Dorothy Chunn utilizes regulation theory in her argument that the Ontario family court reflected "socialized justice"[90] "Socialized justice," in Chunn's analysis required individualized treatment, non-legal expertise, and increased

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Reform in English Canada, 1998 – 1925 (Toronto: McClelland and Stewart, 1991); Amanda Glasbeek also highlighted the class and race biases of the maternal reformers in the Toronto Women's Court, "Maternalism Meets the Criminal Law: The Case of the Toronto Women's Court *Canadian Journal of Women and the Law* 10 (1998), 483

[85] For examples of this approach see: Helen Boritch, "Gender and Criminal court Outcomes: An Historical Analysis," *Criminology* 30:3 (1992), 295; the crime of prostitution or "vagrancy" often appears within these studies, see: Karen Dubinsky, *Improper Advances: Rape and Heterosexual Conflict in Ontario, 1880 – 1920* (Chicago: The University of Chicago Press, 1993); Carolyn Strange and Tina Loo argue that reformers envisioned developing better laws for the protection of girls and women as part of a nation building program that would transform legions of foreign-born, non-British immigrants into proper law-abiding Canadian citizens, and would make Canada a moral nation, in contrast to the perceived immorality of the United States, *Making Good: Law and Moral Regulation in Canada, 1867 – 1939* (Toronto: University of Toronto Press, 1997), 37.

[86] *Sangster, Regulating Girls and Women.*

[87] Dorothy Chunn, *From Punishment to Doing Good: Family Courts and Socialized Justice in Ontario 1880 – 1940* (Toronto: University of Toronto Press, *1992*

[88] Sangster, *Regulating Girls and Women*, 6 – 7.

[89] Sangster recognizes that social control theory embraced many diverse tactics, but argues that social control theory became passé because of its uncritical application, ignoring theoretical difference and resistance, to posit that those in positions of power controlled those less powerful, *Regulating Girls and Women*, 6 - 7.

[90] Dorothy Chunn defined "socialized justice," as requiring the three essential features of individualized treatment, non-legal expertise, and increased bureaucratization. *From Punishment to Doing Good: Family Courts and Socialized Justice in Ontario 1880 – 1940* (Toronto: University of Toronto Press, *1992*), 4.

bureaucratization.[91] Implicit within socialized justice was also the ever-increasing regulation attempts of white middle-class reformers to "assist" the lower classes to improve their lax, according to the middle-class, moral and behavioural standards.[92] Thus, Chunn presents juvenile and family courts as a central means of regulating "deviant" families. Joan Sangster considers the perspectives of those who appeared before the courts and who were subjected to legal regulation, by which she means a combination of state, gendered and bureaucratic control.[93] Sangster puts issues of class and race at the forefront of her analysis, and she shows that poor, ethnic girls were more likely to be regulated by the JDA, than were middle-class girls or those from respectable families.[94] These studies highlight the role of middle-class men and women reformers and magistrates within an expanding and increasingly bureaucratic welfare state in controlling the "inappropriate" behaviours of the working class.

Unlike my study, which places emphasis on the careers of selected women magistrates and judges to describe specific ways in which their perspectives intersect with developments in the women's movement and legal professionalism, regulation studies often emphasize the experiences of the litigants before the courts. Yet, these Ontario-based studies also provide timelines and important insights into the connections between women's organizations, especially Local Councils of Women, and the creation of family courts that serve as a basis of comparison with the timeline and dates of court creation in the Prairies. For example, largely because of the disproportionately damaging impact of the Great Depression in the Prairies, domestic relations tribunals were implemented slightly later than in Ontario. Also, whereas the 1940s were

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[91] Chunn, *From Punishment to Doing Good*, 4.
[92] Ibid., 42 – 43.
[93] Sangster, *Regulating Girls and Women,* 10.
[94] Sangster also argues that the JDA was amended in 1924 to include 'sexual immorality or any similar form of vice' specifically to target girls, *Regulating Girls and Women,* 132, 142.

important years in terms of court restructuring in British Columbia, and witnessed activism by women reformers with the requisite professional skills, education, and political connection,[95] a similar form of court restructuring occurred later in Alberta and Saskatchewan. Sometimes, however, developments in Prairie courts led the nation. The juvenile court in Saskatchewan, under the leadership of Ethel MacLachlan, promoted a professional, social-work led approach, decades before this concept was articulated, in conjunction with the domestic relations tribunal, in British Columbia.[96]

Current scholarly themes about the establishment and function of Canadian family courts emphasize the impact of the North American child-saving movement, the agency of court litigants and legal professionals, and further dissect variables surrounding gender, class, and race. Amanda Glasbeek, in her recent study of the Toronto Women's Court between 1921 and 1934, argues that the women's court served simultaneously as a feminist intervention into the criminal justice system and as an entity that disciplined "poor and marginalized women for a range of disorderly conducts."[97] Tamara Myers explains the origins of the Montreal juvenile courts as being part of internationally circulating child-saving ideas, and strongly linked to the social reform efforts of maternal reformers.[98] By concentrating specifically on the Montreal juvenile court, Myers also points out that "maternal justice," meant something distinct in Quebec. Even though Quebecois maternal reformers included new women professionals and reformers involved with the work of the juvenile court as in other major cities, she shows that the perspectives of

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[95] Dorothy Chunn, "Just Plain Everyday Housekeeping on a Grand Scale': Feminists, Family Courts, and the Welfare State in British Columbia, 1928 – 1945," in *Law, Society and the State: Essays in Modern Legal History,* eds. Louis A. Knafla and Susan W.S. Binnie (Toronto: University of Toronto Press, 1995), 392.
[96] Tamara Myers, *Caught: Montreal's Modern Girls and the Law, 1869 – 1945* (Toronto: University of Toronto Press, 2006), chapter four makes a similar argument for Montreal's juvenile Court.
[97] Glasbeek, *Feminized Justice,* 5.
[98] Myers, *Caught: Montreal's Modern Girls and the Law,* 16.

Montreal maternalists were influenced by Quebec's unique culture.[99] By closely analyzing the Toronto and Montreal courts, Glasbeek and Myers interrogate some of the ways maternal ideologies and the law were shaped by local contexts.

Recent scholarship centres the experiences of marginalized or oppressed persons in their interactions with the law and focuses on "low" rather than "high" justice. Shelley Gavigan explains that the majority of the First Nations individuals included in her study experienced "low law," which in her words "comprises the most common daily manifestation of law: summary proceedings before a magistrate without a jury and without counsel."[100] Glasbeek usefully defines high justice as the expensive well-documented version of official justice emanating from paneled courts, and low justice as the poorly recorded bastion of everyday social ills.[101] Before the 1970s, Prairie women magistrates and judges labored primarily in courts of low justice. Further, matters and records relating to children and family matters were often subject to publication bans and archival restrictions. This means that details concerning their decision-making are often absent from any official record, and further that the type of decision-making they engaged in was disassociated from "real" law. The distinction between high and low judges has also influenced scholars' decisions about which judges to include in scholarly works. In choosing to examine only federally appointed judges of the Supreme and District Courts in Alberta between 1876 and 1990, Louis Knafla, for example, effectively excludes early women judges from his biography.[102]

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[99] Ibid., 98 – 99.
[100] Gavigan, explains that "high law" meant the law of the appellate court, most law professors, and most opinion makers, *Hunger, Horses, and Government Men*, 13.
[101] Glasbeek, *Feminized Justice*, 7.
[102] Knafla does explain that Emily Murphy was appointed Police Magistrate for Edmonton in 1916. He does not explain why he includes only federally appointed judges, but indicates simply that his work "is an inaugural history of the federally-appointed judges of Alberta," *Lords of the Western Bench*, 2, 7.

All of these scholarly approaches emphasize the challenges inherent in demarcating place, and reinforce the importance of analyzing particular contexts. Neither the Prairies nor the family courts remained stagnant between 1916 and 1980. By using scholarly insights from legal history, gender, and transnationalism, I explore changes and continuities associated with the women's movement as well as behavioural and professional prescriptions affecting select Prairie judges within a particular "place" across an unconventional timeline.

Prima Facie Connections: The Women's Movement and Organizational Work

Between 1916 and 1980 meaningful connections existed between women judges, women's organized voluntary work, and feminist ideology. These connections suggest important continuities and shifts in how the women's movement was deployed to establish and maintain women's authority. Before 1930, Alice Jamieson, Emily Murphy, and Ethel MacLachlan received strong support from their respective Local Councils of Women (LCW) in attaining their judicial placements. They received this support because their public personas reinforced dominant cultural and reform perspectives. During the late 1950s and early 1960s, a thorough analysis of the public space of women judges, including their speeches, public announcements, and media reporting indicates that the second generation of women judges also maintained relationships with women's voluntary organizations. Unlike their predecessors, however, their reform involvements often centred on professional interests and connections, which they employed to extend humanitarian, if not always explicitly feminist, ideals.

Connections between the women's movement and women's voluntary organizing functioned to situate Alice Jamieson, Emily Murphy, and Ethel MacLachlan as appropriate

judicial actors. Seth Koven and Sonya Michel's definition of "maternalist" is a fitting descriptor of Jamieson, Murphy, and MacLachlan. Koven and Michel define early twentieth century maternalists as middle-class women who extended women's prescribed mothering capacity to state policies concerned with maternal and child interests.[103] Many scholars argue that maternal feminists led "first wave" feminism, by extending their nurturing qualities derived from motherhood into social reform projects – chief of which was the suffrage campaign.[104] Further, scholars argue that maternal feminists carried out the suffrage campaign and other reform work chiefly in connection with women's club work.[105] Various groups including the National Council of Women, the YWCA, the Women's Christian Temperance Union, and the Canadian Women's Press Club all participated with the suffrage quest.[106] Jamieson and Murphy both participated directly in the Prairie suffrage campaign. Murphy participated as an outspoken advocate and prolific writer, and Jamieson acted as a behind-the-scenes organizer in Calgary through her voluntary work with the Young Women's Christian Association (YWCA) and the Local Council of Women (LCW).[107] MacLachlan's maternalism was reflected through her work in the juvenile court, about which she wrote numerous articles indicating her desire to instruct children in proper

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[103] Seth Koven Koven, Seth and Sonya Michel. "Introduction: 'Mother Worlds," in *Mothers of a New World: Maternalist Politics and the Origins of Welfare States*, eds., Seth Koven and Sonya Michel (New York: Routledge, 1993), 2.

[104] Linda Kealey, "Introduction," in *A Not Unreasonable Claim*, 7 – 8. The essays included in *A Not Unreasonable Claim* explore themes relating to first-wave feminism, including maternalism, suffrage, Christianity, social reform, and professionalism.

[105] Veronica Strong-Boag explains the women's club movement as "encompassing feminine collectivities dealing with education, culture, philanthropy, reform, politics, professions and religion and also provided many examples of the enlargement and formalization of cooperative effort." In *The Parliament of Women: The National Council of Women of Canada 1893 – 1929* (Ottawa: National Museum of Man Mercury Series: History Division Paper No. 18, 1976), 2. Carol Lee Bacchi argues that English Canada's leading suffragists shared similar characteristics including Anglo-Saxon, middle-class, Protestant Christian backgrounds, and aligned the suffrage quest with a broader social reform movement to strengthen rather than challenge existing family norms, *Liberation Deferred?*.

[106] Strong-Boag, *The Parliament of Women*, 2.

[107] "First Woman Juvenile Court Judge Dies Here: Mrs. R.R. Jamieson Widely Acclaimed for Social Services," *The Calgary Herald*, 6 June 1949, 22; "Golden Jubilee for Council of Women," *Calgary Herald Magazine*, 15 September 1962, np. Jamieson clippings file, Glenbow Archives (GA).

citizenship values. Jamieson, Murphy, and MacLachlan were also linked to a broader, internationally circulating maternalist campaign through their respective connections to women's organizations and the European juvenile courts -- a theme that will be developed in subsequent chapters.

All three of these first Prairie women magistrates were also "appropriate" models of femininity because of their Anglo-Celtic backgrounds, training, and demeanour. As transplants from other places, bringing with them extensive knowledge of woman-oriented reform efforts circulating within a wider national and international arena, Jamieson, Murphy, and MacLachlan were exemplars of what Sheila McManus characterizes as respectable middle-class Prairie women.[108] Murphy and MacLachlan came to the Prairies from Ontario and Nova Scotia, respectively, and Alice Jamieson came to the west from the United States. Within the Prairies they found fertile ground for pursuing common political goals and legal reforms, by acting within parameters that maintained ethnic and race privilege.[109]

Beginning with Carol Lee Bacchi, scholars investigating social, ethnic, and religious minorities have scrutinized the politics and activities of maternal feminists and their middle-class organizations.[110] Some scholars emphasize the racism and class bias of late nineteenth and early twentieth century Anglo-Celtic English-Canadian maternalists.[111] Mariana Valverde, for example, highlights the role of various women's charitable organizations in perpetuating unequal

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[108] McManus, "Gendered Tensions," 123 – 127.
[109] Ibid., 135 – 136. Positioning Jamieson, Murphy, and MacLachlan in this manner also complicates Cleverdon's "frontier feminism" thesis by examining a broader intersection of ideas and influences.
[110] See for example, Mariana Valverde, *The Age of Light, Soap and Water*; Bacchi, *Liberation Deferred.*
[111] Mariana Valverde, "'When the Mother of the Race is Free:' Race, Reproduction, and Sexuality in First-Wave Feminism," in *Gender Conflicts: New Essays in Women's History*, ed. Franca Iacovetta and Mariana Valverde (Toronto: University of Toronto Press, 1992), 3 – 26.

class relations between women.[112] Labour historians argue insufficient emphasis was placed on the histories of working women and suggest further that class as well as ethnic differences constrain women's attempts to organize.[113] Rather than casting aside these women judges because of scholarly criticisms about their inherent racism and elitism,[114] or unqualifiedly defending them, revisionist scholars are moving beyond the "entrenched polarities" debate.[115] Janice Fiamengo, for example, finds variations and ambiguities in Nellie McClung's race perspectives.[116] Other scholars explore what maternalism meant within distinct time periods and contexts.[117] Lara Campbell focuses on working-class women during the Depression years to find that they used maternal strategies, reflecting material realities distinct from their middle-class counterparts, to support a male breadwinner wage.[118]

During the Depression years, the first cohort of Prairie women magistrates disappeared from Prairie benches. Murphy died in 1933, Jamieson retained only unremunerated work in the Juvenile court, and MacLachlan retired in 1935 to travel and spend time with family. MacLachlan was briefly succeeded by Margaret Burgess. No women judges were appointed to Prairie Canadian benches until Nellie Sanders was appointed to the Winnipeg family court in

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[112] Valverde, *The Age of Light, Soap and Water*, chapter seven.
[113] Ruth Frager, *Sweatshop Strife: Class, Ethnicity, and Gender in the Jewish Labour Movements of Toronto 1900 – 1939* (Toronto: University of Toronto Press, 1992).
[114] Particularly Emily Murphy who is infamously remembered for her racist thinking and eugenic views.
[115] Veronica Strong-Boag, Mona Gleason, and Adele Perry, eds., *Rethinking Canada: The Promise of Women's History*, 4th ed. (Toronto: Oxford University Press, 2002), 150.
[116] Janice Fiamengo, "A Legacy of Ambivalence: Responses to Nellie McClung," in *Rethinking Canada*, eds. Strong-Boag, Gleason, and Perry, 154.
[117] For example, Erin L. Moss, Henderikus J. Stam and Diane Kattevilder explore how maternal ideology that embraced Anglo-Celtic women as "guardians of the race" connected the women's movement and eugenics movement in early twentieth century Alberta, "From Suffrage to Sterilization: Eugenics and the Women's Movement in 20th Century Alberta," *Canadian Psychology*, 54:2 (2013): 107.
[118] Lara Campbell, "Respectable Citizens of Canada: Gender, Maternalism and the Welfare State in the Great Depression," in *International Studies in Social History, Volume 20: Maternalism Reconsidered: Motherhood, Welfare and Social Policy in the Twentieth Century*, ed., Marian van der Klein, Rebecca Jo Plant, and Nichole Sanders (New York: Berghahn Books, 2012), 99.

1957. In the meantime, the form of maternalism associated with Jamieson, Murphy, and MacLachlan's judicial appointments underwent a transformation. No longer aimed at achieving suffrage, organized middle-class maternal feminists turned their efforts towards seeking reforms for society's unfortunates.[119] My research indicates that women in the Calgary chapter of the YWCA developed employment and housing programs for unemployed working women. In developing these programs, their paths sometimes crossed with newly educated women professionals – including women lawyers.

During the 1920s and 1930s, a divide, abetted by prescriptions for womanly behaviour advanced by the media, emerged between maternal women working as volunteers and professional women. The authors of a *Harvest Yet to Reap* indicate that early twentieth century western Canadian newspapers, especially the *Grain Growers Guide*, deliberately cultivated representations of young and usually unmarried women as professionals as increasing numbers of young women sought wage work. These representations helped to create an image of the new woman "as an autonomous person, with rights and priorities of her own."[120] In the authors' perspective, this image supplanted an older ideal of woman as wife, by forcing readers to recognize that the ideal of woman-as-wife was a socially-constructed, rather than biologically determined, ideal.[121]

The media continued to influence and reflect prescriptions about women well into the 1960s. The media highlighted the mothering qualities and extensive volunteer labour of Tillie Taylor and Mary Carter in Saskatchewan; Nellie Sanders and Mary Wawrykow in Manitoba; and Marjorie Bowker in Alberta. Of course, media representations were conditioned by gender

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[119] Ibid.
[120] Rasmussen, *A Harvest Yet to Reap*, 88.
[121] Ibid.

stereotypes and institutional limitations and should never be confused with reality.[122] Joan Sangster investigates contradictions in media representations of working women in the interwar period. She argues that while media representations did not depict reality, that "the idealized, domesticated femininity promoted in advertising, film, and magazines had an ideological influence, always existing in tension with women's actual working lives."[123]

Maternalist ideology continued to change and adapt to shifting social and cultural ideas between the end of the Depression and the mid-1960s. Tarah Brookfied argues that a pervasive spirit of maternalism existed in women's peace activism during the Cold War, and argues further that Cold War maternalism did not require an "explicit attachment to feminism."[124] In common with Voice of Women (VOW) members who extended their maternalism to embrace other disadvantaged persons living overseas, some Prairie women judges during this latter period advocated for social and legal reforms for Aboriginal people and other marginalized persons. Judith Fingard and Janet Guildford similarly argue that maternalism extending from the first wave continued to be a vital force in women's activism in post-war Halifax. By examining the experiences of women maternalists of diverse ethnic, marital, and class backgrounds in shaping policies and institutions, Fingard and Guildford show that many post-war maternalists did not share the moralistic and middle-class characteristics of their early twentieth century counterparts.[125]

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[122] Barbara M. Freeman, explores how women media workers negotiated gender stereotypes and institutional limitations in creating stories, *Beyond Bylines: Media Workers and Women's Rights in Canada* (Ontario: Wilfred Laurier University Press, 2011).
[123] Sangster, *Transforming Labour*, 9.
[124] Tarah Brookfield, *Cold War Comforts: Canadian Women, Child Safety and Global Insecurity, 1945 – 1975* (Ontario: Wilfred Laurier University Press, 2012), 6.
[125] Judith Fingard and Janet Guildford, eds., *Mothers of the Municipality: Women, Work and Social Policy in Post-1945 Halifax* (Toronto: University of Toronto Press, 2005), 7.

Connections between women's voluntary work and professional careers remained strong in the period after World War II. In her examination of Toronto's Elizabeth Fry Society in the 1950s and 1960s, Joan Sangster argues that "volunteers, applying maternal rhetoric, worked alongside experts, utilizing professional social science techniques, in developing penal reform for women."[126] By doing this, Sangster disagrees with scholars who argue that paid professionals uniformly replaced non-expert workers after World War II.[127] Sangster further argues that there existed significant overlap and cross-over between the volunteers and the professionals. The professionals were praised for their "diagnostic" role, and the volunteers for their "valuable assistance," but both groups utilized maternal rhetoric to advance reform mandates.[128] Moreover, Sangster indicates that unlike their predecessors of the late nineteenth and early twentieth centuries, 1950s women volunteers with the E. Fry Society often had "some connection to the world of work, as women were moving towards more employment."[129] My research supports her findings. In the Prairies, I found that numerous women lawyers used their legal knowledge to bring about greater recognition of legal injustices through their association with local chapters of the Local Council of Women. Judge Tillie Taylor was involved in a variety of women's organizational work, including community kindergarten initiatives, before her 1959 appointment to the bench. On the bench, Taylor utilized her voluntary sector reform knowledge and interests to advance a variety of socio-judicial reforms, including probation and penal reform.

Another theme concerns the differences between equal rights and maternal feminisms, especially as the 1960s women's movement became vocal in its support of equal rights. Equal

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[126] Joan Sangster, "Reforming Women's Reformatories: Elizabeth Fry, Penal Reform, and the State, 1950 – 1970," *Canadian Historical Review* 85: 2 (June 2004), 227 – 229.
[127] Ibid, 230.
[128] Ibid., 231.
[129] Ibid., 230.

rights feminists sought women's legal, political and economic equality with men, and although some scholars acknowledge that equal rights rhetoric influenced some women's legal reforms in the pre-Depression era, many argue that it became more fully expressed by the mid-1960s during feminism's "second wave."[130] The waves theory contained within it the idea that "after gaining the vote in the period from 1916 to 1920, the women's movement simply sputtered."[131] As discussed in the section on transnationalism, recent scholarship finds evidence of women's continued activism in local, national, and international organizations. Carol Miller, for example, argues that domestic feminism disappeared during the Depression only to be supplanted by explicitly feminist activism at the international level.[132] Miller's argument also points to further divisions within feminism as she privileges the equality-based sentiments of middle-class professionals as "feminist" over the "reform" leanings of those seeking protective legislation.[133]

The international arena also facilitated interactions and collaborations between women professionals. Karen Balcom demonstrates that Canadian and United States reformers formed alliances in the "transnational space of the Child Welfare Committee at the League of Nations."[134] Reformers, key among them Charlotte Whitton, built on pre-existing personal and

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[130] Wayne Roberts argues that late-nineteenth-century suffragists expressed equal rights sentiments but that their focus on equal rights was overshadowed as women's status as mothers took precedence over their status as wives, "'Rocking the Cradle for the World': The New Woman and Maternal Feminism, Toronto 1877 – 1917," in *A Not Unreasonable Claim: Women and Reform in Canada, 1880s – 1920s*, ed. Linda Kealey (Toronto: The Women's Press, 1979), 27 – 28. See also: Elise Schneider, "Addressing the Issues: Two Women's Groups in Edmonton, 1905- 16," *Alberta History* 36:3 (1988), 16.

[131] Robert J. Sharpe and Patricia I. McMahon, *The Person's Case: The Origins and Legacy of the Fight for Legal Personhood* (Toronto: University of Toronto Press, 2007), 7.

[132] Carol Miller, "Geneva – the key to equality: inter-war feminists and the League of Nations," *Women's History Review*, 3:2 (1994), 219 – 245.

[133] Ibid, 238.

[134] Karen Balcom, "A Little Offensive and Defensive Alliance: Professional Networks and International Child Welfare Policy," in *Feminist History in Canada*, 70.

professional relationships to push for greater North American involvement at the League of Nations.[135]

Also during this period, equal rights ideology, associated with women's employment opportunities in the 1950s and extending into matrimonial legal reform initiatives in the 1970s, began to gain force and influenced the ways in which women judges articulated their understanding of their lower court status. This development was aptly described by Mary Carter in 1975, who upon reflecting on her early judicial years stated "I didn't experience any discrimination that I know of, but of course we weren't looking for it."[136] As will be explained in chapter five, Carter understood and accepted her professional role as conditioned by her role as mother. Throughout the 1960s and 1970s the evidence suggests some key transitions in how newly educated women lawyers understood their professional and social role. In contrast to the women judges examined in this dissertation who were educated during the 1930s and 1940s, women lawyers educated during the 1960s were more likely to voice opinions of discrimination – perhaps partly because they had not yet found their place within the legal profession. The ideological interplay between maternalism and equal rights feminism complicated the ways in which some women judges understood and articulated their role.

Key continuities and transitions occurred in understandings of maternal and equal rights feminism during the period under review and recent historical approaches reinforce the value of uncovering further the ways in which these ideologies operated. Applying diverse approaches incorporating gender, transnationalism, labour, and social history complicates the waves theory

[135] Balcom, "A Little Offensive and Defensive Alliance," 73 – 74.
[136] McConnell, "University Women," 7.

and suggests some of the ways that maternalism and equal rights rhetoric intersected with women judges' professional careers.

Professionalization, Law Societies and Legal Education

The first Prairie Canadian women magistrates were neither lawyers nor members of professional bar associations. Instead, their judicial appointments were actively promoted by Local Councils of Women in their communities who pressured government authorities for their appointment. Women were often, but not necessarily appointed to women's courts. Glasbeek acknowledges the efforts of the Toronto Local Council of Women in creating a women's court out of a concern that women litigants were prejudiced by their experiences in open and male-dominated courts. Magistrate Colonel Denison ran the Toronto Women's Court for the first eight years of its existence. It was only upon Denison's retirement that Margaret Patterson was appointed to the bench.[137] The circumstances of women's appointment to the court therefore raise questions about the ways in which developing systems of legal education and professionalization came to influence the relationship between women judges, women lawyers, and the legal profession more generally.

Professionalization is an amorphous and fundamentally gendered construct that governs who can practice what type of skill, and in what manner. The editors of *Challenging Professions* argue that more scholarly analysis of regional variations in the experience of women professionals is required because professionalization is gender, region, and time-specific.[138] Mary Kinnear defines "professional" as including postsecondary education and training,

[137] Glasbeek, *Feminized Justice*, 12, 39.
[138] Smyth, Acker, Bourne and Prentice eds., *Challenging Professions*, 8.

certifying exams, some degree of professional regulation, and provision of service to the public.[139] Kinnear also argues that this definition fits even if female members of the same occupation do not enjoy the same privileges or social status as their male peers.[140] Constance Backhouse argues "what I have learned about the history of the Canadian legal profession resonates far more with words such as power, exclusion, and dominance than it does with concepts such as civility, or the extension of community and collegiality."[141] Backhouse adds "the very concept of 'professionalism' has been inextricably linked historically to masculinity, whiteness, class privilege and Protestantism."[142] Further, gender is central to any study of professions, because the earliest professionals were men, who as members of a profession had privileged access to financial and social rewards.[143]

Kinnear's second point relates to what she characterizes as a relationship between feminism and the professions. Kinnear argues that "nineteenth-century feminists wanted women to have access to public life, which they interpreted as politics, property, and the professions."[144] There was a strong connection forged between feminism and the professions by the end of the nineteenth century – thereby crediting nineteenth-century feminists with opening the doors for women in the professions. Kinnear also finds that even though early twentieth century women sought out the professions because they "offered rewards based on apparently gender-blind

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[139] Kinnear, *In Subordination*, 7.
[140] Ibid.
[141] Constance Backhouse, "Gender and Race in the Construction of 'Legal Professionalism': Historical Perspectives" Paper from the First Colloquium on the Legal Profession, October 2003) http://lsuc.on.ca/media/constance_backhouse_gender_and_race.pdf (accessed September 25, 2012), 2.
[142] Backhouse, "Gender and Race in the Construction of 'Legal Professionalism," 3.
[143] Donald Wright, *The Professionalization of History in English Canada* (Toronto: University of Toronto Press, 2005), 4.
[144] Kinnear, *In Subordination*, 3.

standards [but] women who succeeded in entering professional occupations…found that the rewards they had expected failed to materialize."[145]

According to Dorothy Chunn, the advent of legal professionalism provided a disservice to women judges. As educational and professional requirements increased during the 1920s and 1930s, only one Prairie woman, Margaret Burgess – who was educated as a lawyer, was appointed to the bench. In fact, Chunn argues that professionalization served to remove early women judges from the bench. As proponents of legal education and increased professionalism criticized what they perceived to be the lax standards of the magisterial system gained power and influence, women magistrates, who had their traditional basis of support from women's organizations, lost their authority.[146] A key argument of this dissertation is that professionalism came to mean different things as women's voluntary work was taken up by the state.[147]

Scholarship concerning the professionalization of Canadian lawyers reveals a complicated picture of the interdependencies of lingering systems of apprenticeship, the rise of university legal education, and unequal gender relations. During the early decades of the twentieth century, Canadian professions, including law, became tied to developments in post-secondary education and the influence of independent licensing bodies. Prior to this time lawyers, in common with other aspiring professionals, were trained by their masters as apprentices within their craft, legitimately developing their skills and authority through hands-on practice rather than by book-

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[145] Ibid., 9.
[146] Chunn, "Maternal Feminism, Legal Professionalism and Political Pragmatism," 92, 96.
[147] Nancy Christie considers how gender politics came into play by favouring the claims of male wage earners rather than the policies developed by maternal reformers, in developing state-based welfare entitlements between 1900 and 1945, *Engendering the State: Family, Work, and Welfare in Canada* (Toronto: University of Toronto Press, 2000); Shirley Tillotson looks at the continued relationship between voluntary charitable organizations and the development of community chests, *Contributing Citizens: Modern Charitable Fundraising and the Making of the Welfare State, 1920 – 66* (Vancouver: UBC Press, 2008).

learning.[148] Apprenticeship systems were often dependent on the apprentice's ability to pay, as well as the applicant's class and race, and often professional positions were heritable, with successive, familial generations trained in the same craft.[149] Scholars argue that women were almost universally excluded from apprenticeships, with a few exceptions of those whose class and family background could provide them with access to the legal profession as primarily law clerks.[150] The 'hands-on' training mandated by apprenticeship systems continued to be expressed in the legal profession in the process of articling. Prospective law students were required to secure a principal with whom they were bound to serve between three and five years of articles before they were allowed to take preliminary and final qualifying exams with provincial law societies. Even with the advent of university level legal education by the 1920s, in Prairie Canada provincial law societies remained firmly involved in the process of creating lawyers.[151]

Provincial law societies have a long history of regulating membership to the legal profession. In 1877 Manitoba's law society was established by lawyers and judges from various parts of Canada but especially from Quebec.[152] The Law Society of the North-West Territories, governing the territory between Manitoba and British Columbia, was established in 1898, and split into two respective provincial entities two years after Alberta and Saskatchewan became provinces in 1905.[153] Scholars have examined the gendered biases of law societies and

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[148] Bob Gidney, "'Madame How' and 'Lady Why': Learning to Practice in Historical Perspective," in *Learning to Practice: Professional Education in Historical and Contemporary Perspective*, eds. Ruby Heap, Wyn Millar, and Elizabeth Smith (Ottawa: University of Ottawa Press, 2005), 13 – 42.
[149] Ibid., 18.
[150] Ibid., 14, 18.
[151] Gidney adds that in Ontario the law society was so influential that it successfully prevented the establishment of a university law school until the 1950s, Ibid., 32.
[152] Knafla, "The Common Law Tradition," 41.
[153] Iain Mentiplay, *A Century of Integrity: The Law Society of Saskatchewan 1907 to 2007* (Regina: Law Society of Saskatchewan, 2007), 40.

emphasize that women experienced significant opposition to bar society admission across Canada.[154]

Sandra Petersson argues that in stark contrast to women's experiences in other Canadian provinces, the law societies of Alberta, Saskatchewan and Manitoba posed far less formal opposition to women lawyers.[155] Petersson credits Prairie Canada's less oppositional response to women lawyers partly on the flourishing suffrage and temperance campaigns, and partly on the influence of Oliver Mowat Biggar, grandson of Ontario Premier Sir Oliver Mowat who had assisted Clara Brett Martin in her bar admission.[156] Petersson argues that although in Manitoba Melrose Sissons's application was originally denied in 1911, her subsequent efforts to pressure Manitoba's legislature to make the necessary amendments proceeded without the lengthy and vocal degree of opposition experienced by Clara Brett Martin in 1897 Ontario, and subsequently Mabel Penery French in New Brunswick in 1906 and in British Columbia in 1912.[157] Similarly, even though Regina judge Margaret Burgess' application to become a student-at-law under the Saskatchewan *Legal Profession Act* was denied on 7 March 1912, the benchers swiftly recanted.[158] Saskatchewan benchers informed the Attorney-General that they would not object to any amendment admitting women to the practice of law, and on 11 January 1913, Saskatchewan amended its *Legal Profession Act* to admit women students.[159]

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[154] Mabel Penery French applied for admission to the New Brunswick bar and subsequently the British Columbia bar. French succeeded in obtaining legislative amendments in both provinces, New Brunswick in 1907 and British Columbia in 1912 allowing her to gain law society membership. Quebec women, despite the concerted efforts of Annie Langstaff in the 1910s, did not gain admission to the bar, through a legislative amendment, in 1941. See: Mary Jane Mossman, "'The Law as a Profession for Women:' A Century of Progress?" *The Australian Feminist Law Journal* 30 (June 2009), 137 – 138.
[155] Sandra Petersson, "Ruby Clements and Early Women of the Alberta Bar," *Canadian Journal of Women and the Law* 9 (1997), 381.
[156] Ibid., 379.
[157] Ibid., 381.
[158] Mentiplay, *A Century of Integrity*, 40.
[159] Ibid.

Alberta became the only province in Canada to refrain from formally opposing women's bar admission.[160] When confronted with Ruby Clements' petition to begin articles in 1915, Alberta benchers approved her admission "on the assumption that the *Legal Profession Act* and the rules of the Society extend to the admission of women."[161] In making this determination, Petersson argues, Alberta benchers did not examine the requirements of the Alberta *Legal Profession Act*, but instead assumed women's eligibility based on their knowledge of women articling elsewhere in Canada.[162] Clearly, the law society of Alberta did not have the authority to admit women. The fact that Saskatchewan had to remove the barrier for women's admission, in 1913, and that the law societies of Alberta and Saskatchewan stemmed from the same original North-West Territories legal scheme supports this conclusion. Thus, whereas all other Canadian provinces, except Quebec, had amended their legal profession's legislation by 1918 to admit women as lawyers, Alberta never followed suit. Instead, because the law society of Alberta did not initially reject Clements's application, her application did not trigger any need for legislative amendment.[163] Further, women's eligibility to be admitted as lawyers was never tested in Alberta. It was only in 1930, in response to the *Edwards v. Canada* (Persons) case that Alberta passed the Sex Disqualification Removal Act.[164] This act, retroactive to 1 September 1905 officially authorized Albertan women to become lawyers and judges.[165]

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[160] Petersson, "Ruby Clements," 366.
[161] Ibid., 374.
[162] Ibid.
[163] Ibid., 384.
[164] Ibid., 383, 393.
[165] Ibid., 386 – 387.

As apprenticeship systems gave way to university education, professional requirements acquired a gloss of neutrality which slowly opened doors for women and persons of colour.[166] In 1912, the University of Alberta opened its doors to part-time law students, followed by Wetmore College in Regina and the College of Law in Saskatoon in 1913, and by the University of Manitoba law school in 1914.[167] Within the law, however, legal education was only symbolically equal and did not improve in a progressive manner. Backhouse argues that women were denied access to medicine and law on the grounds that their reproductive functions severely limited their intellect and ability to perform well in academic settings.[168] Similarly, Mary Jane Mossman explains that women lawyers were "intruding on the public domain explicitly reserved to men," based on the observation that whereas women's professional expansion into the field of medicine applied women's natural nurturing qualities, no such natural extension existed for women lawyers because of the law's fundamental patriarchal bias.[169]

Once the first women students entered Canadian law schools, beginning with Clara Brett Martin's acceptance to Osgoode Hall in 1893, they were often subjected to a hostile male environment.[170] Cecilia Morgan argues that the law's gentlemanly code remained intact even though it mutated in form between 1920 and 1960.[171] After WWII, women law students were no longer subjected to blatant harassment and practical jokes, but that throughout the 1960s the

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[166] See W.P.J. Millar and R.D. Gidney, "Medettes: Thriving or Just Surviving? Women Students in the Faculty of Medicine, University of Toronto, 1910 – 1950," in *Challenging Professions*, 215 – 233.
[167] Kinnear, *In Subordination*, 83.
[168] Constance Backhouse, *Petticoats and Prejudice: Women and Law in Nineteenth Century Canada* (Toronto: The Osgoode Society, 1991), 297 – 299.
[169] Mossman, *The First Women Lawyers*, 14.
[170] Backhouse, *Petticoats and Prejudice*, 309 – 313.
[171] Morgan, "An Embarassingly and Severly Masculine Atmosphere," 30.

'respectable' and 'gentlemanly' image of the Osgoode male student was replaced by the more sexually expressive playboy.[172]

Mossman, in *The First Women Lawyers*, argues that to fit into the culture of the gentlemanly legal profession women adopted various strategies.[173] For example, Mossman illustrates that early twentieth century women lawyers adopted male conventions of dress, by abandoning feminine clothing in favour of the suit.[174] Mossman also argues that female lawyers in Canada, the United States, and Britain, deliberately minimized their involvement with the early twentieth century feminist movement and other forms of social activism to avoid off-putting clients and to fit into the culture of the gentlemanly legal profession.[175] For all of these reasons, Mossman concludes that although increasing numbers of women became lawyers during the twentieth century, the successful ones did not challenge the male culture of the legal profession.[176] Kinnear adds that women professionals, including lawyers, utilized strategies of separatism, super-performance, innovation, and subordination to be successful in male-dominated professions.[177] Mary Carter and Tillie Taylor in Saskatchewan, and Marjorie Bowker in Alberta utilized combinations of these strategies during their careers, as will be discussed in chapter five.

Mossman's conclusion is consistent with the evidence concerning Prairie women judges. Jamieson, MacLachlan or Murphy were not educated as lawyers and their socialized function in juvenile and family court rarely intruded upon male professional space. Burgess, MacLachan's successor, is an exception here. She articled as a lawyer and was admitted to the bar on 13 April

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[172] Ibid., 39, 51.
[173] Mossman, *The First Woman Lawyers*, 55, 107.
[174] Ibid., 25.
[175] Ibid., 55, 107.
[176] Ibid., 7.
[177] Kinnear, *In Subordination*, 164.

1918.[178] The strength of the established male legal professional code becomes increasingly evident between the 1930s and 1970s and is supported by evidence of the ways in which Prairie women judges articulated their role and experiences.

Chapter Outline

This dissertation positions select Prairie women judges, rather than court litigants, at the centre of the analysis, and interrogates some of the ways in which the dominant theoretical frameworks discussed above influenced the development of Prairie family courts. These women were chosen because they left behind at least some records. They are as representative of Prairie women judges' experiences so far as it is possible to make generalized claims on the basis of such a small group. Every effort has been made to position them within broader trends in professionalism and an evolving social change movement. By concentrating on the individual and the particular I am contributing to historiography about women, and the development of the legal profession and courts within localized Prairie provincial contexts. At the same time I am cognizant that they did not work in isolation. Their public work reveals that they were influenced by internationally-circulating ideas. I indicate some key continuities and differences relating to prescriptions regarding feminine and professional behaviour within the context of a transitioning women's movement.

Chapter two identifies the first Prairie Canadian women judges and explores their connections to the women's movement and an emergent professionalism. A reform oriented climate, newly bolstered by women's suffrage, supported their appointment, and women

[178] W.H. McConnell, notes that the first woman admitted to the Saskatchewan Bar was Mary Cathcart on 18 April 1917. Margaret I. Burgess was next, on 13 April 1918. The first woman to be admitted to Bar with an LL.B. was Elsie Hall on 20 May 1922, *Prairie Justice*, 32.

magistrates navigated the day to day aspects of adjudicating newly instituted child welfare law within separate courts for women and children. These early magistrates and judges, in Alberta and Saskatchewan, worked in courts connected to the voluntary sector and existing on the fringes of established legal institutions. Within these quasi-judicial institutions, women magistrates and judges experienced opposition because of their gender and lack of formal legal training. Shortly, forces of legal professionalism would undercut their judicial authority by severing women's adjudicatory authority from its basis of maternal expertise garnered primarily through their involvement with women's voluntary organizations.

Chapter three explores a period of absence, as between 1939 and 1957 no women magistrates or judges held court in Prairie Canada. The Depression era circumscribed women judges' role by shifting economic and professional arrangements. The volunteer sector continued to provide a space in which women utilized professional skills and developed linkages to women in society and female legal professionals internationally. A vibrant female legal culture continued to develop throughout the 1930s, especially with increased formal legal training at universities that lay the basis for a rebirth of women judges in the 1950s. Chapter four examines the development of Prairie Canadian family courts in the 1950s. Juvenile courts were reconstructed as family courts during this time as increasing stresses upon the family associated with juvenile delinquency and working mothers made child welfare an important goal. Women judges worked alongside male judges in the family court to uphold family values, and to promote harmonious, but not necessarily together, families. The media highlighted the strong familial expectations of women judges.

Chapter five examines some of the human rights initiatives pursued by women judges of the 1960s and early 1970s including their involvement with Aboriginal peoples, prisoners, and

children during an era of heightened social activism. The social and legal context changed as reform ideas, closely associated with international humanitarian endeavors received wider press and publicity. In general terms, women judges' engagement with human rights initiatives provides evidence of their continued involvement with voluntary sector initiatives, as these had evolved by this era to encompass much greater inclusion of vulnerable persons. At the same time that women judges recognized discrimination against others, they adopted a model of professionalism that negated their personal experiences of gender discrimination. This time period is of interest because it indicates not only that Prairie women judges were involved with a broad range of activities focused on improving human rights for some vulnerable persons, but also because it shows how women judges' professionalism affected their interpretation of gender discrimination. Further, these years indicate that some women judges deliberately used maternal language and themes even as equal rights feminism took hold.

The final chapter assesses Marjorie Bowker, Mary Carter, and Myrna Bowman's participation in provincial initiatives to re-structure the family courts [and property laws in Bowman's case] in the context of the *Murdoch* case.[179] *Murdoch* held the attention of women activists across the country, functioned to link urban and rural women's groups, and represented the legal limitations inherent in existing matrimonial laws in an era ardently seeking social and legal change. Although activism for reform of divorce and property law was already underway, *Murdoch* symbolized systemic inequalities and helps to explain how and why these three women judges participated in family court reform.

By examining these select women judges I argue that significant processes of continuity and change relating to developments in the women's movement and in legal professionalism

[179] *Murdoch* v. *Murdoch* [1975] 1 S.C.R. 423.

conditioned their appointments and roles. The first wave of the women's movement produced the first female magistrates and judges, and their involvement in charitable work and the suffrage campaign qualified them for the bench. The second wave of feminism was not directly associated with the appointment of the later cohort of women judges. In the 1950s and 1960s, only women possessing legal professional prerequisites became judges, yet women judges' professional personas were facilitated and circumscribed by prescriptions regarding women's role. Throughout the twentieth century, women magistrates and judges occupied a transitional place between their roles in the volunteer sector and in the professional arena. Many of them demonstrated concern about the rights of vulnerable persons, as this category expanded after World War II facilitated by transnational human rights ideas and, eventually, by egalitarian objectives advanced by the late 1960s' women's movement. This did not mean that all women judges were feminists or that they unilaterally shared the goals of an equality-based women's movement. Instead, their perspectives reveal continued intersections between prescriptions for women's behaviour, professional dictates, and individual outlooks.

Chapter Two: "Setting a Precedent for Women Judges"

"The work is of intense interest and I find that all I ever thought about people, what they are or should be, and living conditions comes in useful… Legal knowledge one needs and must acquire, but many women who have adjudicated for a family or club have as good a training for the bench in some particulars as lawyers."

Emily Murphy 1920[1]

Between 1915 and 1917, Alice Jamieson, Emily Murphy, and Jean Ethel MacLachlan received appointments to juvenile and women's courts in Alberta and Saskatchewan. These quasi-judicial courts, loosely appended to existing legal structures, owed their existence to legislation inspired by a broad reform movement intent on improving legal and social conditions for women and children. Organizations, including Children's Aid Societies and Local Councils of Women, worked within supportive political environments to create juvenile and women's courts, and in Alberta and Saskatchewan, to lobby for the appointment of women to court benches. As Murphy illustrates in the above epigraph, juvenile and women's courts encouraged women judges to decide cases by using a blend of strategies and knowledge derived from their experiences as mothers and volunteers. Both Jamieson and Murphy applied their extensive voluntary-sector training. Murphy especially used her influential social activism to substantiate her courtroom expertise and authority. MacLachlan's expertise complicated the maternal and voluntary model because as juvenile court judge she drew on her professional training as a teacher and social worker. I argue that women magistrates and judges occupied a transitional position between conventions associated with the voluntary sector and conventions associated with established legal institutions and professionalism. Examining the ways in which they engaged conventions of voluntarism and professionalism in the context of their public work

[1] Clipping, *Toronto Star Weekly* 24 December 1920, n. p. Emily Ferguson Murphy Collection, MS-2, File 30, City of Edmonton Archives.

provides an opportunity to examine how they embraced opportunities and handled constraints as threshold actors in a new era marked by social and cultural transformation.

This chapter examines the appointment and judicial involvement of Jamieson, Murphy, and MacLachlan within local courts that were shaped by reform-oriented legislation, an influential woman-centred voluntary sector, and women judges' public reform interests. I make this argument in three parts. The first part of this chapter briefly situates the creation of juvenile and women's courts within a national and international reform context, and places the Winnipeg juvenile court, the first juvenile court established in Canada, within this context. The argument in this first section is that the legal institutional framework in Winnipeg supported legally-trained male judges and provided room for women in supportive roles associated with citizen-making and the special needs of girls and women.[2]

The second part of this chapter situates Jamieson, Murphy, and MacLachlan's personal and professional backgrounds within local reform contexts. I argue that these women's connections to local Councils of Women functioned in distinct ways within Alberta and Saskatchewan juvenile courts, and I show how they deployed predominantly maternal prescriptions to justify and maintain their court roles. Moreover, Alberta and Saskatchewan had different legislative requirements for establishing juvenile courts and appointing judges. These differences, I argue, complicated the ways in which assumptions regarding women's prescribed roles as mothers and volunteers helped to constitute the courts.

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[2] Tamara Myers argues that a similar court model operated in Montreal, where all judges were required to have legal training. She adds that the Montreal juvenile court was led by a fatherly judge in an atmosphere conditioned by maternal justice (by which she means the motherly reform efforts of new women professionals and female reformers involved with juvenile court work), *Caught: Montreal's Modern Girls and the Law, 1869 – 1945* (Toronto: University of Toronto Press, 2006), 91, 98 – 99.

The final section of this chapter examines the tensions and challenges women judges faced with legal professionals and in the courtrooms. I argue that part of this tension resulted from the quasi-judicial structure of the juvenile court, which blurred boundaries between the requirements associated with legal professionalism and women's prescribed behaviour. I also submit that some of these conflicts illustrated the legal profession's reluctance to include women within its ranks. The ways in which women judges worked out these challenges offers insight into how they attempted to develop and maintain their authority within transitional spaces bordered by conventions associated with the voluntary sector and those of legal professionalism.

Creating Courts for Women and Children

As was the case elsewhere in Canada and in the international arena, women reformers, often working through women's organizations, chose to support the establishment of separate courts for women and children and encouraged the placement of female magistrates upon court benches.[3] As Myers argues in her study of the Montreal juvenile courts, these reformers assumed "a moral legitimacy to supervise and regulate family life," influenced by a maternal agenda to care for children, and increasingly, by scientific approaches developed from social work, medicine, and psychiatry.[4] By the early twentieth century, some women's organizations, which functioned as politicized training grounds for women members, exerted influence on local, national, and even international legal and political developments.[5] Within Canada, municipal

[3]Anne Logan argues that in Britain and Wales disparate women's groups came together to support a campaign for women magistrates "In Search of Equal Citizenship: the campaign for women magistrates in England and Wales, 1910 – 1939," *Women's History Review*, 16: 4 (Sept 2007), 507. See also Amanda Glasbeek, *Feminized Justice: The Toronto Women's Court, 1913 – 1934* (Vancouver: UBC Press, 2009), 3, 34.
[4] Myers, *Caught*, 91.
[5] Sharon Anne Cook, *Through Sunshine and Shadows: The Women's Christian Temperance Union, Evangelicalism and Reform in Ontario, 1874 – 1930* (Montreal: McGill-Queen's University Press, 1995), 13.

chapters of Local Councils of Women functioned as umbrella organizations for various women's groups seeking to strengthen their organizations and influence.[6] Historians argue that women's organizations and women judges held religious, gendered, and class-based motivations for their work because they wanted to protect "fallen" women from aberrant males determined to lure women into illegal behavior, and because they wished to instill in delinquent children, especially girls, middle-class behaviour and guidance.[7] To foster rehabilitation women and girls charged with various offences, including theft and vagrancy, had to be kept away from predatory and opportunistic males, and therefore women's interests were best served within sex-segregated courts.[8]

Throughout Canada an emphasis on rehabilitation rather than punishment undergirded the creation of new juvenile courts and was facilitated by pre-existing federal legislation. In 1892, the first legislation for the protection of children in Canada was passed as an amendment to section 550 of the Criminal Code of Canada. The amendment provided that children be tried and detained separately from adults and without publicity.[9] By 1908, as a result of the lobbying efforts of various reformers involved in the child-saving movement, in which Local Councils of Women and Children's Aid Societies played important parts, the Parliament of Canada enacted

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[6] Veronica Strong-Boag, "The Parliament of Women: The National Council of Women of Canada 1893 – 1929" (Ottawa: National Museums of Canada, 1976), chapter six.

[7] Joan Sangster, *Regulating Girls and Women: Sexuality, Family, and the Law in Ontario, 1920 – 1960* (Oxford: Oxford University Press, 2001). Glasbeek, assesses the impact of the court process upon the litigants, *Feminized Justice*. Dorothy Chunn, argues these courts functioned to regulate poor, or deviant, families *From Punishment to Doing Good: Family Courts and Socialized Justice in Ontario 1880 – 1940* (Toronto: University of Toronto Press, *1992*), 4.

[8] Glasbeek, *Feminized Justice*, 3 and 34.

[9] W. W. Creighton, "Introduction," in H.T.G. Andrews, *Family Law in the Family Courts* (Toronto: The Carswell Company, 1973), 1.

the Juvenile Delinquents Act (JDA).[10] The JDA provided for the establishment of provincial juvenile courts and granted the provinces exclusive jurisdiction over all juveniles charged with any offence against the Criminal Code, any provincial statute or any municipal by-law or ordinance.[11] In practice, youth could be charged with an array of misconduct that would not necessarily be considered offence-worthy if perpetrated by adults.[12] The JDA only became applicable in those areas, including provinces, cities, districts, and other municipal areas in which it was proclaimed in force.[13] Towns or cities choosing to implement juvenile courts were required to publish a notice of their intent to do so in the *Canada Gazette*.[14] Across Canada juvenile courts were created unevenly and lacked uniformity. Because there was no legislated requirement that towns, cities or districts were required to create juvenile courts, juveniles outside the jurisdictional limits of juvenile courts remained subject to existing court structures and laws and appeared before local justices of the peace or police magistrates. Provincial age limits of juvenile delinquents also varied. In Ontario and Saskatchewan juveniles were aged sixteen years and under. In Manitoba, British Columbia, and Alberta juveniles were aged eighteen years and under.[15]

Juvenile and women's courts were established in major cities, and were not always led by women. In Montreal, Francois-Xavier Choquet became the first judge of the juvenile court when

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[10] Myers, *Caught*, 108 – 111. 29; Neil Sutherland, *Children in English-Canadian Society: Framing the Twentieth Century Consensus* (Waterloo, Ontario: Wilfred Laurier Press, 2000), 91.
[11] Andrews, *Family Law in the Family Courts*, 2.
[12] Sangster, *Regulating Girls and Women*, 132.
[13] Andrews argues Ontario was the first Canadian province to pass a Juvenile Courts Act in 1910, *Family Law in the Family Courts*, 3.
[14] Andrews, *Family Law in the Family Courts*, 2.
[15] Ibid., 4. "Government Asked to Make Grant for Girls' Home," *The Regina Daily Post*, n.d., Ethel MacLachlan Scrapbooks, Vol. 2, University of Saskatchewan, Special Collections, http://library.usask.ca/spcoll/files/vol.2.pdf (hereafter "MacLachlan Scrapbooks, Vol. 2").

it opened in 1912.[16] The city of Vancouver established a woman's court in January 1914 and three years later appointed Helen Gregory MacGill to the juvenile court.[17] Toronto created its women's court on 5 February 1913, and Colonel George Taylor Denison adjudicated until 1922 when the Local Council of Women succeeded in nominating Margaret Patterson to replace him.[18] Prairie reformers followed these developments and lobbied to institute juvenile and women's courts in their own jurisdictions. In so doing they were influenced by particular local contexts and personalities, and were informed by voluntary-sector influences as well as the requirements of legal professionalism.

Winnipeg: the first Juvenile Court in Canada

The first Canadian juvenile court emerged in Winnipeg. Members of the local Children's Aid Society expressed an active interest in molding proper young citizens by uplifting rather than punishing children who came afoul of the law.[19] Members of the Winnipeg Children's Aid Society, established in 1898, were impressed by Minnesota's creation of a juvenile court in 1905 and the following year advocated for a similar court in Winnipeg to made good future citizens.[20] They agreed with the Minnesota approach in distinguishing between delinquent and dependent, in other words neglected, youngsters, and emphasizing their rehabilitative aim argued that treatment facilities should be available to both types of juvenile delinquent.[21] Winnipeg reformers argued that a children's court was "especially necessary in a new country like this of Western

[16] Myers, *Caught*, 16.
[17] "A Woman's Court," *Calgary Daily Herald*, 7 January 1914, 10; Elsie Gregory MacGill, *My Mother the Judge: A Biography of Judge Helen Gregory MacGill* (Toronto: The Ryerson Press, 1955), 154.
[18] Amanda Glasbeek, "Maternalism Meets the Criminal Law: The Case of the Toronto Women's Court," *Canadian Journal of Women and the Law,*10 (1999), 482.
[19] "Juvenile Courts" *Winnipeg Free Press* 10 December 1906, 4.
[20] Ibid; "New Institution Being Considered," *Winnipeg Free Press*, 20 November 1913, 24.
[21] "Juvenile Courts" *Winnipeg Free Press*, 10 December 1906, 4.

Canada where people of all tongues are endeavoring to make for themselves homes, and in doing so the strenuous nature of the work often leads to the neglect of child training on the part of the parent."[22] They also wished to adopt informal trial proceedings. Children's Aid members suggested holding children's court at a children's detention centre rather than in an established courtroom, and recommended prohibiting adults other than the child's immediate family or guardian from attending.[23] Reformers from the Children's Aid Society associated childhood delinquency with working-class and non-British immigrants, associating the absence of proper home conditions with these groups. They believed that the juvenile court's work was tied to citizen-making. By the late 1920s, MacLachlan challenged this ethnic and class-based understanding of juvenile delinquency by insisting that juvenile delinquency resulted from inadequate homes of any class or ethnicity.[24] In Winnipeg, reformers believed that to teach incorrigible children appropriate behaviour and life skills and to develop respectable citizens, children had to be kept away from hardened adult criminals and needed to be sequestered in training-based detention homes rather than in jails.[25]

Children's Aid members shared child-saving ideas with Colin Campbell, the Conservative Attorney General of Manitoba between 1900 and 1911.[26] Campbell championed influential lawyer and police magistrate Thomas Mayne Daly for juvenile court judge. Daly was well-known and respected for his influential legal and political career, which included legal practice,

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[22] Ibid.
[23] Ibid.
[24] Editorial "Delinquent Parents," June 9, 1927, Ethel MacLachlan Scrapbooks, Vol. 3, University of Saskatchewan, Special Collections, http://library.usask.ca/spcoll/files/vol.3.pdf (hereafter "MacLachlan Scrapbooks, Vol. 3")
[25] Ted McCoy, *Hard Time: Reforming the Penitentiary in Nineteenth Century Canada* (Edmonton: Athabasca University Press, 2012).
[26] Cassandra Woloschuk, "Protecting and Policing Children: The Origins and Nature of Juvenile Justice in Winnipeg," in Esyltt W. Jones and Gerald Friesen, *Prairie Metropolis: New Essays on Winnipeg Social History* (Winnipeg: University of Manitoba Press, 2009), 64.

serving as mayor of Brandon in 1883 and 1884, Minister of the Interior in 1890, and as a bencher of the Manitoba Law Society.[27] Daly also authored several legal manuals about criminal law procedures and practices marking him as an authority in the legal profession.[28] Daly was appointed the first juvenile court judge in Winnipeg and held the first sitting of court at the detention home on 5 February 1909.[29] During the first year of the court's operation, 242 children, including 174 boys and 68 girls came before Magistrate Daly.[30] Thirty of the 68 girls were charged with immorality.[31] The first four cases to appear in his court concerned Polish immigrant girls who were tried for running away and given a suspended sentence.[32] Eight of the boys appearing in Daly's court during its inaugural year received sentences to the Industrial Home at Portage La Prairie.[33] Daly held court twice weekly, on Mondays and Tuesdays, and often emphasized the rehabilitative purpose of the court. Reflecting on his adjudication of 335 children aged between 8 and 16 years from 7 February to 28 December 1910, Daly stated: "I make it a point not to send any boy or girl to the training school until all other efforts of restraint and reform have been exhausted."[34] Of these, Daly indicated that 15 out of a total of 62 girls were charged with immoral delinquencies.[35] Daly believed in the spirit and intent of the JDA,

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[27] "Hon. T.M. Daly Died Suddenly Early Saturday," *Winnipeg Free Press*, 26 July 1911, 35. Daly was a Conservative, see: Woloschuk, "Protecting and Policing Children," 64.
[28] T. Mayne Daly's publications included *Canadian Criminal Procedures and Practice* (Toronto: Carswell, 1911), updated in 1936.
[29] Manitoba, *Report of Department of Attorney General 1910*, Sessional Papers 1910, No. 14, 615, Manitoba Legislative Library.
[30] Ibid.
[31] Ibid.
[32] Woloschuk, "Protecting and Policing Children," 65.
[33] Roy St. George Stubbs, "The First Juvenile Court Judge: The Honourable Thomas Mayne Daly, K.C., MHS Transactions, Series 3, No. 34 (1977 – 78). Accessed online at http://www.mhs.mb.ca/docs/transactions/3/daly.tm.shtml. (4 December 2013).
[34] Manitoba, *Report of the Department of Attorney General, 1910*, Sessional Papers 1910, No. 17, 608, Manitoba Legislative Library.
[35] Ibid.

which was not to determine guilt or innocence but to determine the best interests of the child and to provide the child with necessary life skills.[36]

Daly and members of the Children's Aid Society envisaged a three-pronged approach to juvenile delinquency composed of the juvenile court, probation officers, and detention/treatment facilities. A Detention Home, operated by the Salvation Army, started admitting children on 3 October 1908, and in 1909, the province began construction of the Industrial School for Boys in Portage La Prairie.[37] The Portage La Prairie institution included a farm where "the boys will have ample opportunity of outdoor work and exercise free from the danger of contamination by older and hardened prisoners," and also received juveniles sentenced in the Saskatchewan and Alberta courts.[38] Winnipeg reformers also succeeded in appointing a probation officer for juveniles effective at the time of the court's opening. Felix John Billiarde was appointed probation officer of the juvenile court at the same time he was appointed superintendent of neglected and dependent children for the province of Manitoba under "The Children's Protection Act of Manitoba."[39]

A women's court developed informally within the juvenile court. Based on articles in the *Winnipeg Free Press*, the juvenile court through the 1910s and 1920s often heard cases relating to women, and sometimes men, as well as juveniles.[40] Hugh John Macdonald, appointed magistrate on 18 December 1911, succeeded Daly. Macdonald retained the work of the juvenile

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[36] Roy St. George Stubbs, "The First Juvenile Court Judge," online n.p.
[37] Manitoba, *Report of the Department of Attorney General 1910,* Sessional Papers 1910, No. 14, 614, Manitoba Legislative Library.
[38] Ibid. 615.
[39] Manitoba, *Report of Department of Attorney General 1909*, Sessional Papers 1909, No. 17) 1909, 745, Manitoba Legislative Library.
[40] The Juvenile court was authorized to try adults for contributing to the delinquency of minors, but in addition to this there are articles that suggest women, and sometimes men, were also tried in the juvenile court, "Mabel Has Troubles: Committed bigamy while intoxicated," *Winnipeg Free Press*, 5 March 1910, 6; "New Magistrate at Police Court," *Winnipeg Free Press*, 18 December 1911, 13.

court but the records suggest that over the years his case load came to include an increasing number of women's cases. He insisted in holding these trials *in camera*.[41] The records are unclear as to why Winnipeg women's organizations, in contrast to women's organizations in Ontario, Alberta, and Saskatchewan did not press for a woman juvenile court judge at this time. Dale and Lee Gibson argue that the fact that women's proceedings were accorded privacy partially explains explain why Winnipeggers did not respond to Macdonald's expression of support for establishing a special women's court.[42]

As in Montreal, the Winnipeg juvenile court appointed only qualified legal professionals.[43] News accounts presented Daly not only as a qualified legal professional, but as well-regarded for his "general attitude to advising wayward children in the way an intelligent parent would do, using harsh measures when no other course was available."[44] This language complicates associations of juvenile and women's court justice with maternal ideology and the presence of women judges. Cassandra Woloschuk explains Daly's paternalism as consistent with a reform environment dominated by males, and only supplemented by women after the appointment of female probation officers in 1920.[45] Myers indicates a similar theme in Montreal, in which the juvenile court functioned as a heterosocial arena "made up of male judges whose function was to father, and female probation officers who declared a maternal prerogative over adolescent girls and children."[46]

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[41] Dale and Lee Gibson, *Substantial Justice: Law and Lawyers in Manitoba 1670 – 1970* (Winnipeg: Peguis Publishers, 1972), 206.
[42] Gibson, *Substantial Justice*, 206.
[43] Myers, *Caught*, 91.
[44] "Juvenile Courts" *Winnipeg Free Press*, 10 December 1906, 4.
[45] Woloschuk, "Protecting and Policing Children," page 66 note 21.
[46] Myers, *Caught*, 91.

This background helps explain why, in 1915, members from the Winnipeg Local Council of Women petitioned not for a woman magistrate or a woman's court, but instead for a woman police officer.[47] The women may have understood that restrictions imposed by the legal profession required the appointment of a lawyer as juvenile court judge, and knew that there were no women lawyers with sufficient experience in Winnipeg at this time. This hypothesis is supported by the fact that the first women lawyers, Melrose Sissons and Winnifred Wilton, were admitted to the Manitoba Bar in 1915.[48] At the same time, Council members used a gendered argument, based on the rehabilitative and sex-segregated mandate advanced by a broad women's movement to support their argument that they wanted a woman police officer "to look after women coming up for trial."[49] They argued that if women had someone of their own sex to look after them they might be "more easily redeemed."[50] In speaking to the "overwhelming number of [women] repeaters," council members reasoned that, "perhaps these hardened women might have been saved at the first had there been a woman at hand," and "it stands to reason that a woman police would have more influence for good with a woman offender than any many would have."[51] In making these arguments they were careful to avoid alienating the police or Macdonald, whose cooperation they required to achieve their goal. Mrs. Thomas, the Council's convenor, stated "in no way did the council wish to reflect upon the police force of Winnipeg [and that] no one could be fairer than magistrate Macdonald."[52] By 1916, Elizabeth Proctor, matron of the Children's Home, was acting as a woman police officer in cases affecting young

[47] "Police Commission Chief States Views," *Winnipeg Free Press*, 27 November 1915, 4.
[48] Mary Kinnear, *In Subordination: Professional Women, 1870 – 1970* (Montreal and Kingston: McGill-Queen's University Press, 1995), 21.
[49] "Police Commission Chief States Views," *Winnipeg Free Press*, 27 November 1915, 4.
[50] Ibid.
[51] Ibid.
[52] Ibid.

girls and children. In July 1918, Proctor became the first woman probation officer of the Winnipeg Juvenile Court.[53]

The Winnipeg Juvenile Court emphasizes how processes involved in broader movements of change intersected with the requirements of legal professionalism to influence local outcomes. Significantly, the Winnipeg Juvenile Court became a forum for hearing women's cases as well as juvenile cases, and this function would influence its gradual transformation into the "family" court in later decades. While scholars may never uncover the complete reasons why the Local Council of Women did not object to leadership by male magistrates the evidence supports two key themes. First, that legal institutions and conventions were well-established in Winnipeg by the time the juvenile court movement was underway, and that this structure dictated the appointment of an experienced lawyer as judge. Second, the Winnipeg Council deliberately used internationally circulating language of rehabilitation and sex segregation to obtain one goal associated with expanding woman's sphere – that of appointing a female probation officer. Nellie McNichol Sanders, a law school graduate, member of the Manitoba bar, and widowed mother of two school-aged children, would become the first woman judge appointed to the juvenile and family court in 1957.[54]

Voluntary Organizations and Protection of Women and Children

Similar reform impulses based on protecting children's rights that had shaped the Winnipeg Juvenile Court also influenced juvenile and women's courts in Alberta and Saskatchewan, but with meaningful variations shaped by local contexts and personalities. The

[53] "Woman Probation Officer," *Winnipeg Free Press*, 24 July 1918, 12.
[54] Sanders Clippings File,"First Woman Judge is Named," *Winnipeg Tribune*, 20 April 1957; "First Woman Judge Sworn As Sons Glow With Pride, *Winnipeg Tribune*, 7 August 1957, Archives of Manitoba.

Winnipeg Juvenile Court was developed in 1906 alongside the women's suffrage campaign, and associated rights lobbying. Although the Alberta courts were created on paper in 1909, Jamieson, Murphy, and MacLachlan received court appointments at the height of suffrage activism. These three women benefitted from woman's voluntary sector-led activism partly because the predominantly maternal suffrage campaign helped to make connections between the goals of improving rights for women and children and appointing women to the bench. How this functioned in practice was shaped by their individual personalities and reform goals as well as by the efforts of local Councils of Women and Children's Aid Societies. In Calgary, the first Prairie city to appoint a female juvenile court judge, members from the Local Council of Women supported the appointment of Jamieson, as a means of "affording protection for young women and girls."[55] In Edmonton, well-known author and social activist Emily Murphy participated in the suffrage campaign as only part of her broader reform objective of improving women's property rights. In Regina, when asked by a reporter "Do you think having equal franchise in Saskatchewan made any difference?" MacLachlan replied, "oh yes, I think the women were anxious to have a woman as judge of the juvenile court so used their influence that way."[56] MacLachlan thus connected her judicial appointment to a political climate intent on securing greater rights for women, which implied an equality-based argument.

This section contextualizes the personal and professional backgrounds and the reform mandates of Jamieson, Murphy, and MacLachlan within an influential women's movement dominated by women's organizational work. I argue that the legislation responsible for creating

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[55] Marjorie Norris, *A Leaven of Ladies*: *A History of the Calgary Local Council of Women* (Calgary: Detselig Enterprises Ltd., 1995), 167.

[56] "First Woman Judge of Saskatchewan," October 1917, np, Ethel MacLachlan Scrapbooks, Vol. 1, University of Saskatchewan, Special Collections, http://library.usask.ca/spcoll/files/vol.1.pdf (hereafter "MacLachlan Scrapbooks, Vol. 1").

Alberta and Saskatchewan juvenile courts bore a different relationship to volunteer impulses and that this influenced the workings of the respective juvenile courts. I also argue that these women used prescriptive conventions associated with maternalism and the voluntary sector to obtain and justify their judicial positions. Finally, I explain how their individual reform goals influenced their role in the court.

In Alberta, the juvenile court received legislative support under a Liberal government, but it operated primarily as a volunteer-dependent enterprise, which minimized juvenile court judges' requirement to possess professional legal standing. The juvenile court was a result of the Children's Protection Act of Alberta, passed by the provincial legislature in Edmonton in 1909.[57] The Act required every city with a population of 10,000 or more to establish a shelter for neglected children, encouraged the formation of children's aid societies, and provided for the organization of juvenile courts.[58] In March 1909, Calgary became the first city in Alberta to create a Children's Aid Society ("CAS"). Edmonton established a CAS later that same year. The *Alberta Gazette* makes first mention of Neglected and Dependent Children's Commissioners working in Edmonton as appointed by 1 December 1909.[59] Police Magistrate Thomas Mackie held private juvenile hearings on Saturday mornings at the police court until 1913 when a formal act setting out the functions and duties of juvenile courts was assented to by the Alberta legislature.[60] The Act Respecting Juvenile Courts indicated that any commissioner appointed under section 25 of the Children's Protection Act of Alberta was to be a judge of the juvenile

[57] "Children's Protection Act of Alberta," *Statutes of Alberta*, 1909, cap.12.
[58] Henry Klassen, "In Search of Neglected and Delinquent Children: the Calgary Children's Aid Society, 1909 – 1920" in *Town and City: Aspects of Western Canadian Urban Development*, ed. Alan F.J. Artibise (University of Regina: Canadian Plains Research Center, 1981), 376 – 377.
[59] *Alberta Gazette* 1910 (vol. 6 no. 3), 1.
[60] Klassen, "In Search of Neglected and Delinquent Children," 382; Alberta, "An Act Respecting Juvenile Courts," Chapter 14, 1913, 2nd Session, 1913.

court "of the city, town, village, rural municipality or district to which they [were] appointed."[61] The Act did not require commissioners to possess any legal professional qualifications. Instead, the Act highlighted the connections between the juvenile court and the Children's Aid Society by making every agent of the Children's Aid Society a clerk of the juvenile court, and therefore required to complete full reports of every child appearing in juvenile court, and also made every agent of any local Children's Aid Society a voluntary, unpaid probation officer.[62] This Act built on earlier legal traditions associated with police magistrates who also were not required to be legal professionals. However, this Act went even further because it combined the volunteer underpinnings implicit in child protection legislation and associated goals to nurture children with the office of juvenile court commissioner.

In Calgary, some members of the Local Council of Women and the Children's Aid Society developed an explicit connection between reforms centred on protecting girls and a campaign to institute Jamieson as juvenile court judge. This language was expressed in the 1914 annual report of the Calgary Children's Aid Society. The report emphasized the relationship between the society, which operated a shelter for children who could not return to their own homes because of extreme neglect, violence, or instances of family breakdown, and the juvenile court.[63] The report indicated that during 1913, 475 cases were heard in juvenile court, of which 326 were delinquency cases.[64] The majority of offenders were boys, but 33 girls also appeared before the courts. The report explained that "a large number of young girls," had received care "[and] of those who have been rescued the percentage is very small of those unfortunates who

[61] Alberta, "An Act Respecting Juvenile Courts," Chapter 14, 1913, 2nd Session, Part 4.
[62] Ibid., parts 6 and 10.
[63] Norris, *A Leaven of Ladies*, 163.
[64] "Annual Report of Children's Aid is Interesting One," *Calgary Daily Herald*, 8 January 1914, 10.

have gone astray that have not changed their way of life."[65] The Society's language in describing its rescue work and its emphasis on protecting girls is out of proportion with the total number of juveniles charged, and this, in the context of a maternal women's movement and a local campaign to appoint women juvenile court commissioners, suggests significant concern about protecting girls.

During the first decades of the twentieth century girls remained outnumbered in court, yet reformers and legislators continued to voice their opinion that girls required different protection than boys. The total number of cases dealt with by Calgary juvenile court commissioners in 1916 was 320, which included 204 delinquents, of whom 181 were male and 23 were female, the remaining cases were of neglect.[66] In making reference to protecting girls, reformers from the Children's Aid Society discussed sex crimes against girls, including early sexual activity, prostitution, incest, and assault, by discussing girls "immorality." During this time of social and cultural change, some girls aged 16 and older were involved in consensual sexual activity and were testing the limits imposed by older values.[67] According to reformers, however, girls' sexual activity endangered girls and put at risk their ability to become successful mothers in the future. Definitive statistics regarding sex crimes are difficult to amass because reports do not exist for all years, do not consistently indicate whether boys or girls were charged for specific offences, the use of the deliberately imprecise crime of "vagrancy," and failure to list all offences for which

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[65] Ibid.
[66] A.M. McDonald, "Report of Agent of Children's Aid Society, Calgary" in Annual Report: Dependent and Delinquent Children (Department of Attorney General, 1916), 25. In Edmonton for the same time period there were 201 delinquencies in Edmonton (189 males and 12 females), 28.
[67] Cynthia Comacchio, *The Dominion of Youth: Adolescence and the Making of Modern Canada, 1920 to 1950* (Toronto: Wilfred Laurier University Press, 2006), 26 – 28.

juveniles were charged.[68] Also, the federal JDA did not contain any provision governing "sexual immorality or any similar form of vice" until 1924, after MacLachlan participated in a successful lobby for this inclusion.[69]

Efforts by the Calgary Local Council of Women (CLCW) to highlight the special problems posed by girls also influenced A.M. McDonald, the Superintendent for Neglected Children to appoint women juvenile court commissioners. Beginning in 1914, the CLCW lobbied the Alberta government to name their president, Alice Jamieson, a juvenile court commissioner because they had "heard with pleasure of the intention of the provincial government to appoint women judges in connection with the administration of the juvenile delinquent act," and further that they endorsed "Mrs. R. R. Jamieson, as the first woman in the capacity indicated."[70] Unfortunately, the CLCW's message went unheeded and the year ended before Jamieson reached the bench. On 21 April 1915, the *Alberta Gazette* announced Jamieson's appointment.[71] Annie Burwash Langford, also of Calgary, was appointed juvenile court commissioner to serve alongside Jamieson. The local newspaper explained that Jamieson was to have the same powers as a police magistrate and judge of the district court, but could only try persons under 18 years of

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[68] Norris argues that ninety-eight per cent of the girls who came before the courts in 1913 had experienced some sort of sex crime, but she does not reveal the source of this assertion, *A Leaven of Ladies*, 164. By way of comparison, M. Elizabeth Langdon, uses police record books to conclude that in 1914, out of a total of 122 females charged, 86 per cent were for prostitution charges. Three of the 122 charged were aged between 10 and 19 years ,"Female Crime in Calgary, 1914 – 1941," in *Law and Justice in a New Land: Essays in Western Canadian Legal History*, ed. Louis A. Knafla (Toronto: Carswell, 1986), 302), 302, 312.

[69] Sangster, *Regulating Girls and Women*, 132.

[70] "Women Endorse Appointment of Mrs. Jamieson," The *Calgary News Telegram*, Friday, 8 May 1914, n. p.

[71] "Mrs. R.R. Jamieson is first Woman Judge of Juvenile Court," *Calgary Daily Herald*, 24 January 1914, n. p.; *The Alberta Gazette*, Vol. 11, No. 8, (30 April 1915), 259; apparently Jamieson and Langford were also appointed Justices of the Peace at this time, Memo to Mr. Henwood naming order in council #398/15, 11 June 1935, Justices of the Peace Alpha, 79.105, File 931, PAA.

age.[72] Later, on 27 December 1916 Jamieson was appointed police magistrate for the Province of Alberta, and she held the remunerated office of police magistrate at the same time as she held her volunteer juvenile court position.[73]

In 1915, however, Jamieson and Langford were the only women acting within a large network of volunteer juvenile court "commissioners," (called "judges" in common parlance) in the province.[74] Both of these women initiated an explicit gender-based "experiment… of having women commissioners hear cases in which girls or women [were] involved," although the records suggest Jamieson held a more prominent role than Langford. [75] In 1916, Superintendents of Neglected Children, A.M. Macdonald in Calgary, and Thomas S. Magee in Edmonton, wrote that they were pleased with the work accomplished by the commissioners. They noted that eighty-six "men and women of the very highest type who [were] willing to do the work without any hope of remuneration, save the satisfaction that comes from doing something to help those most in need" heard 1,541 juvenile cases.[76] Jamieson and Langford proved to be competent juvenile court judges, and encouraged the Alberta government to appoint more women. In 1921, Attorney General J.R. Boyle stated "the women magistrates and commissioners in our province have done excellent service. So far from regretting the institution of the woman judge in Alberta, we are likely to create more as the need arises and suitable women appear."[77] On 4 May 1922,

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[72] "Mrs. R. R. Jamieson is First Woman Judge of Juvenile Court," *Calgary Daily Herald*, 24 January 1914, n. p. In Alberta Juvenile Court commissioners were appointed under both the *Federal Juvenile Delinquents Act* of 1908 and the *Alberta Children's Protection Act* of 1909.

[73] Jamieson was appointed police magistrate of Alberta by O.C. #1444/16, Memo to Mr. Henwood, 11 June 1935, Justices of the Peace Alpha, 79.105, File 931, PAA.

[74] The term "commissioner" was in keeping with the quasi-judicial status of the juvenile courts.

[75] Alberta, *Dependent and Delinquent Children, Annual Report for 1916*, (Alberta: Department of Attorney General, 1916), 36.

[76] The number of juvenile court commissioners increased steadily between 1911, when 11 commissioners were named across Alberta, and 1914. Ibid., 36.

[77] "Canada's Women Judges Make Good," *Regina Leader*, 8 January 1921, MacLachlan Scrapbooks, Vol. 2.

Mary Ann Harvey joined Jamieson and Langford as a juvenile court judge in Calgary.[78] Boyle's opinion regarding the suitability of women judges was not necessarily shared by practicing lawyers. John James Saucier reminisced that Jamieson "administered justice to wayward girls and women without mercy and her court was referred to in police court as "the Queen's Bench."[79]

Alice Jamieson was the first woman juvenile court commissioner and had the highest profile. She was chosen because of her motherly characteristics and extensive voluntary sector experience, and especially her role as president of the CLCW. Jamieson arrived in Calgary in 1903 with her prominent husband, Rupert Rueben Jamieson, a CPR Superintendent and Calgary mayor from 1909 until 1911. Jamieson was active in a variety of church and community-related volunteer work in various communities. She was born Alice Jukes in 1861 New York City, and was educated in Chicago.[80] After her 1882 marriage to her Canadian-born husband, R. R. Jamieson, the couple moved to eastern Canada. [81] The Jamiesons lived in Toronto; Smith Falls; Fatham, Quebec; and Cranbrook, BC. Jamieson first became involved with women's club work while living in Cranbrook.[82] In Calgary, Jamieson became a board member of several influential voluntary organizations. She attended the first meeting of the proposed Young Women's Christian Association (YWCA) of Calgary which was held on 2 July 1907 at Knox Church to

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[78] *Alberta Gazette* 1922, 362; On 11 January 1932 Harvey was appointed Juvenile Court Judge under the Child Welfare Act and as Judge of the Juvenile Court under the Juvenile Courts Act "Memo to Mr. Henwood," 2, 11 June 1935, Justices of the Peace Alpha, 79.105, File 931, PAA.

[79] Letter from J.J. Saucier to L.D. Hyndman, 31 July 1931, John James Saucier, Acc. 99-044, Legal Archives Society of Alberta.

[80] Naomi Lang, "Women Who Make News Include Judge, Magistrate," *Calgary Herald*, 14 February 1942, 6.

[81] Alice Jamieson Clippings File, "First Woman Juvenile Court Judge Dies Here: Mrs. R.R. Jamieson Widely Acclaimed for Social Services," *The Calgary Herald*, 6 June 1949, 22; and "Golden Jubilee for Council of Women," *Calgary Herald Magazine*, 15 September 1962), np, GA.

[82] "First Woman Juvenile Court Judge Dies Here: Mrs. R.R. Jamieson Widely Acclaimed for Social Services," *The Calgary Herald*, 6 June 1949, 22.

discuss remedies for the severe deficit of appropriate housing for single young women coming to the city in search of employment.[83] Jamieson soon became a founding member of the Calgary YWCA and the CLCW, an organizer of the Calgary Children's Aid Society, a Red Cross worker, and a member of the Women's Musical Club.[84] By the time she was widowed on 30 May 1911, Jamieson was a well-known and highly-regarded Calgary club woman involved with and aware of pressing social issues and needs.

Jamieson would likely not have been chosen juvenile court commissioner without the support of the CLCW. In 1916, Premier Arthur Sifton led the Alberta Liberal party, and Liberal politics dominated Alberta. Annie Langford, a staunch Liberal supporter, had been initially approached to become the first female juvenile court judge in Calgary.[85] Even though the CLCW endorsed Alice Jamieson as a future juvenile court judge in 1914 January, someone leaked a report to the local press naming Emily Spencer Kerby and Langford as the first women juvenile court judges in Alberta.[86] Kerby, Langford, and the CLCW viewed the leaked document as an unwanted political maneuver, and expressed their support for Jamieson's appointment in the daily newspapers.[87] In the end, Kerby decided she did not want to be involved with the juvenile court as judge, and Langford agreed to act only as an assistant to Jamieson although she was appointed a juvenile court commissioner alongside Jamieson.[88] Clearly, the CLCW believed that

[83] Board Minutes for July 1907, YWCA of Calgary Minutes, Correspondence, Scrapbooks, etc., 1907 – 74,"M1711-1 Box 1, Folder 2, GA.
[84] Alice Jamieson Clippings File,"First Woman Juvenile Court Judge Dies Here: Mrs. R.R. Jamieson Widely Acclaimed for Social Services," *The Calgary Herald*, 6 June 1949, 22; and "Golden Jubilee for Council of Women," *Calgary Herald Magazine*, 15 September 1962, np, GA.
[85] Norris, *A Leaven of Ladies*, 169.
[86] "Women Endorse Appointment of Mrs. Jamieson," The *Calgary News Telegram*, Friday, 8 May 1914, 13.
[87] "Are Public Spirited Women Neglecting Their Homes?" *Calgary Daily Herald*, 8 May 1914, 13.
[88] "Women Endorse Appointment of Mrs. Jamieson," The *Calgary News Telegram*, Friday, 8 May 1914, 13.

"Mrs. R.R. Jamieson [was] one of the most thoroughly equipped women in the province for this position," and they strongly supported her appointment.[89]

Jamieson held strong connections to the CLCW and the suffrage campaign, but avoided other forms of political activism. She acted as president of the CLCW for six years, after which she was chair of the citizenship committee, and she had been active in the local suffrage campaign.[90] Motivated to improve legal rights for women and children, Jamieson initiated the Calgary petition for signatures in support of suffrage in 1912.[91] Throughout 1914 Jamieson, through the local newspaper, urged readers to send her completed franchise cards and to contact her personally if they required a petition card in support of women's franchise.[92] After her appointment to the bench, Jamieson was approached by a committee of women voters to run as a citizen's candidate in a Calgary by-election. She refused, stating that her work in juvenile court was important to her and that "I am no politician."[93] Jamieson believed in expanding legal and social rights for girls and women, but did not seek involvement in the political arena.[94] In fact, Jamieson maintained a quiet public demeanour. She rarely gave interviews, was presented as a "homey woman of acute intelligence,"[95] and "small of stature, [and] a decided mother-type of woman [who] has been the means of righting the unhappy life of many a wayward girl."[96] She

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[89] Ibid.
[90] "Calgary Has First Woman Magistrate in the World in Mrs. Alice Jamieson," *Calgary Daily Herald*, 13 March 1920, 16 – 17.
[91] Lillian MacLennan, *The Do-Gooders: A History of the Calgary Local Council of Women 1895 – 1975*, ed. Marjorie Barron Norris (Calgary: Detselig, 2011), 44.
[92] "Franchise Committee of L.C.W. Send Petition Cards Through Mail, *Calgary Daily Herald*, 8 July 1914, 12; "Calgary Women Display Enthusiasm for Suffrage," *Calgary Daily Herald*, 16 July 1914, 11.
[93] Alice Jamieson Information File, Dorothy Bowman Barker, "First Woman Magistrate of Canada: Alice M. Jamieson, Judge of Calgary Juvenile Court, Betters Conditions of Those Who Come Before Her by Getting at the Root of Trouble in Delinquents' Homes," PAA.
[94] "Calgary Has First Woman Magistrate in the World in Mrs. Alice Jamieson," *Calgary Daily Herald*, 13 March 1920, 16 – 17.
[95] "Canada's Women Judges Make Good," *Regina Leader*, 8 January 1921, MacLachlan Scrapbooks, Vol. 2.
[96] Alice Jamieson Information File, Barker, "First Woman Magistrate of Canada," PAA.

acknowledged that she was appointed to the bench because of the "innovation [that] a woman could … better understand women offenders than men could."[97]

On the bench, Jamieson argued her "motherly" instincts authorized her to hear not only cases relating to girls and women but also to hear cases relating to boys and men. She recognized that "women are better qualified to solve the young girl question in juvenile court" was a platitude, but she "she maintain[ed] still further that women are naturally more competent than men to deal with boys, who [were] at present tried before a man judge in the local juvenile court, by reason of her inherent motherly instinct."[98] Jamieson applied her "motherly instinct" to cases before her in juvenile court, emphasizing that she "love[d] boys and wish[ed she] had a dozen sons."[99] Newspaper accounts and court returns from the mid-1920s indicate that she heard cases relating to girls and boys, women, and men. She held court approximately ten days every month, and in her dual role as both juvenile court commissioner and police magistrate she dealt with various infractions including vagrancy, assault, theft, truancy, and even bigamy.[100]

Unlike Jamieson, who was "not the militant [or] the stump-speaking type," Murphy was a vocal proponent of legal reform long before she achieved magisterial office.[101] She was born Emily Ferguson in March of 1868 in Cookstown, Ontario to a prosperous family with strong ties to the Conservative Party.[102] The first Prime Minister of Canada, Sir John A. Macdonald, was

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[97] "Calgary Has First Woman Magistrate in the World in Mrs. Alice Jamieson," *Calgary Daily Herald*, 13 March 1920, 16 – 17.
[98] Ibid.
[99] Alice Jamieson Information File, "Barker, "First Woman Magistrate of Canada," PAA.
[100] "Return by Police Magistrate," 30 June 1924, "Return by Police Magistrate," 28 February 1926, "Return by Police Magistrate," 30 June 1926, "Return by Police Magistrate," 30 September, 1926, Justices of the Peace Alpha, 79.105, File 929, PAA.
[101] "Calgary Has First Woman Magistrate In the World In Mrs. Alice Jamieson," *The Calgary Daily Herald*, 13 March 1920, 16.
[102] Robert J. Sharpe and Patricia McMahon, *The Persons Case: The Origins and Legacy of the Fight for Legal Personhood* (Toronto: University of Toronto Press, 2007), 16.

once a house guest and Murphy's uncle, Thomas Robert Ferguson, was a Member of Parliament for the first five years following Confederation.[103] Three of Murphy's brothers were lawyers, and one of her brothers-in-law was a Toronto area judge. From an early age, Murphy lived in an environment strongly influenced by political and legal ideas, although her politics seemingly attached less to the official party in charge than to her personal ideologies and reform commitments.[104] Thus, Murphy set out to convince Liberal Prime Minister William Lyon Mackenzie King to appoint her to the Senate in the aftermath of the 1929 Persons case.[105]

Murphy's personal experiences and interests shaped her reform goals. In 1887, nineteen-year old Emily Ferguson married thirty-four year old Church of England (Anglican) minister Arthur Murphy. The couple lived for a few years in Ontario and England and had three daughters. The couple returned to Canada in 1901 and lived near Winnipeg. Devastated by the death of their youngest daughter, Doris, they moved further west for a fresh start until they settled in Edmonton in 1907.[106] During her years in Edmonton, Murphy, already a seasoned writer with publications, including *The Impressions of Janey Canuck Abroad* (1902), became a popular speaker and well-known woman activist. Inspired by British suffragist Emmeline Pankhurst, Murphy had, by 1913, joined the Equal Franchise League, a group dedicated to securing women's franchise, and was a vocal suffrage advocate.[107] Murphy's activism was connected directly to her involvement with various women's organizations and other social improvement measures. During the 1910s, Emily Murphy was busy with at least ten women's organizations.[108]

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[103] Donna James, *Emily Murphy* (Toronto: Fitzhenry & Whiteside Ltd, 2001), 35.
[104] Sharpe and McMahon, *The Person's Case*, 14.
[105] Ibid.
[106] Ibid, 17.
[107] Ibid., 18.
[108] "From Who's Who," between 1910 and 1920 Emily Murphy acted as: Literary editor of Winnipeg Telegram (1904 – 1912), President, Canadian Women's Press Club (1913 – 1920); Honorary Secretary for Canada of the

She continued to actively pursue her writing career and worked with the Women's Press Club. She also served as the convenor of the Committee on Law for the Better Protection of Women and Children for the Edmonton Local Council of Women (ELCW).

It was in this latter capacity that on 27 February 1910, Murphy wrote to the Chairman of the Legal Bills Committee at the Alberta Legislature to protest the "Married Woman's Relief Act" Bill.[109] Murphy opposed the Bill because it did not incorporate the ELCW's request that wives and widows be entitled to a one-third share of all property owned by their husbands.[110] Murphy recognized that Alberta property laws were grossly unfair to women, and thus advocated for legal reform in this arena. In 1911, Murphy helped to have a new Dower Act passed which gave wives a life interest in their husbands' estates. The year 1915 witnessed the passage of the Married Woman's Home Protection Act which enabled a married woman to file a caveat to prevent her husband from transferring or encumbering the homestead without her consent.[111] Catherine Cavanaugh argues that this Act was ineffectual because it simply reiterated a wife's traditional claim to file a caveat against the homestead.[112] All of these initiatives recognized the disadvantaged state of married women before the law, and indicate that Murphy participated in the legal arena before her judicial appointment.

Society of Women Journalists of England, (1913 – 1925); first president of the Federated Women's Institutes of Canada, 1919 – 1921), Vice-President of National Council of Women of Canada (1918 – 1926), and Convenor of National Committee of Peace and Arbitration (1914 – 1915). She was also a member of Westward Ho, the first chapter of Imperial Order of Daughters of Empire, established in Alberta; Vice-President of Alberta Association for Prevention of Tuberculosis (1914 – 1916), Member of the Charter Committee of City of Edmonton, (1914), Organizer of Women's Canadian Club of Edmonton and first President (1911 – 1913) and the election of women as school trustees in Alberta. Emily F. Murphy, MS-2, File 32, 1 – 2, City of Edmonton Archives.

[109] Murphy letter to the Chairman of the Legal Bills Committee, 27 February 1910, Emily Ferguson Murphy Collection, MS-2, File 25, City of Edmonton Archives.

[110] Ibid.

[111] Sharpe and McMahon, *The Persons Case*, 20.

[112] Catherine Cavanaugh, "The Limitations of the Pioneering Partnership: The Alberta Campaign for Homestead Dower, 1902 – 25," in *Making Western Canada: Essays on European Colonization and Settlement,* ed. Catherine Cavanaugh and Jeremy Mouat (Toronto: Garamond Press, 1996), 198.

In 1916, unsatisfied with women's treatment before the male-dominated courts, Murphy went to the office of Attorney General Charles W. Cross to establish a women's criminal court presided over by a woman.[113] Sifton's government appointed her the first female police magistrate in the British Empire on 13 June 1916.[114] On the same day Murphy was appointed commissioner under the Children's Protection Act which authorized her to act as judge of the juvenile court in Edmonton.[115] Indicating a transition from an older system, Murphy was appointed police magistrate at this time in direct contravention of the legal professional requirements mandated by the guiding legislation. The Police Magistrates and Justices of the Peace Act stated clearly that "No person shall be appointed a police magistrate unless he has been admitted and has practiced as an advocate, barrister or solicitor in the North-West Territories or in the Province or in one of the Provinces of Canada for a period of not less than three years."[116] The Act made an exception only for persons appointed by the Lieutenant Governor prior to the Act's coming into force in 1906.[117] The Act required all police magistrates, including Murphy, and, by December of the same year, Jamieson, to be lawyers and members of the Alberta bar. Neither Murphy nor Jamieson held these prerequisites. It was not until 1922 that the Magistrates and Judges Act was amended to eliminate the requirement that magistrates have three years of experience at the bar.[118] This 1922 amendment enabled the Alberta government to appoint a large

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[113] Mander, *Emily Murphy: Rebel*, 92.
[114] According to O.C 986 Emily Murphy was appointed a magistrate under Chapter 13 of the Police Magistrates and Justices of the Peace Act.
[115] Murphy's jurisdiction initially was exclusively for the City of Edmonton, but this was extended to include all of the province of Alberta on 30 July 1917. See: letter dated 30 July 1917, Justices of the Peace, 69.201, vol. 1, File 2159, PAA. Incidentally, Murphy's husband was appointed a commissioner under Neglected and Dependent Children's Act on 9 November 1915. This explains why he was able to hold court for her on a few occasions. See: *Alberta Gazette*, 15 January 1915, 765.
[116] "An Act Respecting Police Magistrates and Justices of the Peace," 1906 Chapter 13, section 2. (AB)
[117] Ibid., section 14.
[118] An Act Respecting Police Magistrates and Justices of the Peace, R.S.A. chapter 78 1922, section 2(4).

number of unpaid magistrates in addition to their salaried counterparts.[119] The point here is that the legislative landscape in Alberta was not used to prevent the appointment of women magistrates.

Women magistrates' lack of legal professional requirements sometimes subjected them to challenges by lawyers. In 1917, lawyer John McKinley Cameron in a case arising out of *Rex v. Cyr* challenged Jamieson's authority to adjudicate on the common law basis that women were not competent to hold public office and therefore could not act as magistrates.[120] The Alberta Court of Appeal denied Cameron's claim and established the right of Alberta women to hold public office.

Throughout her judicial career, Murphy continued to write books, speak at public events, and volunteer for a significant number of women's organizations and other social reform initiatives. Near the end of her life, her curriculum vitae listed her membership in over twenty organizations, and she wrote numerous articles representative of her various reform interests.[121] She penned numerous articles and books, often under her pen name Janey Canuck, about her international and Western Canadian travels and experiences.[122] Some of her controversial views, including her recommendations for enforced sterilization were, as Moss, Stam, and Kattevilder argue, connected to a maternal ideology that promoted Anglo-Celtic women as "guardians of the race."[123] Murphy's eugenic views were based on her understanding, shared by some others also influenced by medical and psychological theories that many forms of crime resulted from

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[119] Connors, Richard Travanion and John M. Law, *Forging Alberta's Constitutional Framework* (Edmonton: The University of Alberta Press, 2005), 280.
[120] *Rex v. Cyr* (1917), 12 Alta. L.R. 321, Rex v. Cyr (alias Waters) (1917) 2 W.W.R. 1185 Chambers.
[121] "From Who's Who," Emily F. Murphy (Janey Canuck), Emily Ferguson Murphy Fonds, MS-2, File 32, City of Edmonton Archives.
[122] Ibid.
[123] Erin L. Moss, Henderikus J. Stam and Diane Kattevilder, "From Suffrage to Sterilization: Eugenics and the Women's Movement in 20th Century Alberta," *Canadian Psychology*, 54:2 (2013), 107.

hereditary "feeble-mindedness."[124] Murphy divided the female litigants in her court into two categories, those who were criminal by choice and could be reformed through institutionalization, and those whose criminality derived from their "feeble-mindedness" or "degeneracy."[125] This latter group could not be cured so she recommended their permanent isolation from society to avoid passing on their negative characteristics to offspring.[126] Eugenics was taken up by the United Farmers of Alberta in 1922, and provided the basis of the Alberta 1928 Sexual Sterilization Act. Alberta continued to have a sexual sterilization law, often used to sterilize Aboriginals and other vulnerable persons without consent, until its repeal in 1972.

In 1922 she published *The Black Candle*, an exposé based on her experiences with opium addicts appearing before her in the police magistrate and juvenile courts.[127] In *The Black Candle*, Murphy used racist and maternal language to blame the existence of the opium trade on Chinese immigrants. By blaming the opium trade on Chinese immigrants Murphy advanced a racist argument. According to Constance Backhouse, Murphy's approach stood in contrast to that of her peer Helen Gregory McGill, who "argued that laws should focus on conduct, not race."[128] Murphy's focus connected opium addiction with the denigration of white Canadian women and youth. Women dependent on opium, she wrote, would "on rare occasion bring a half-caste baby to juvenile court for adoption,"[129] and would "go any length to get [opium], even to thievery and

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[124] Janey Canuck, "Birth Control and Its Meaning," *The Vancouver Sun*, 27 August 1932, Emily Ferguson Murphy Fonds, MS-2, File 31, City of Edmonton Archives; Sharpe and McMahon, *The Persons Case*, 34 – 36.
[125] Lesley Erickson, *Westward Bound: Sex, Violence, the Law and the Making of a Settler Society* (Vancouver: UBC Press for the Osgoode Society for Canadian Legal History, 2011), 98.
[126] Emily Murpy, "A Straight Talk on the Courts," Maclean's, 1 October 1920, 27, Emily Ferguson Murphy Collection, , MS-2, photo essay No. 1, 2 – 3, City of Edmonton Archives.
[127] Emily F. Murphy, *The Black Candle* (Toronto: Thomas Allen, 1922).
[128] Constance Backhouse, *Colour-Coded: A Legal History of Racism in Canada, 1900 – 1950* (Toronto: The Osgoode Society for Legal History, 2001), 144.
[129] Ibid., 17.

prostitution."[130] Murphy did make some positive recommendations for countering the opium trade and its effects. She advised establishing treatment facilities for addicts rather than sentencing them to jail. She also advocated the destruction of opium confiscated by the police, as was the practice in England, to take it out of contraband circulation. In making these suggestions, she argued that Canadian magistrates strongly disagreed with her perspectives about what to do with both addicts and confiscated opium. Murphy suggested that her own views on this matter "may be publicly stigmatized as 'domestic,' 'merely feminine,' and quite unbefitting the dignity of a stipendiary magistrate."[131] By making this assessment, Murphy in *The Black Candle* recognized her understanding that at times her sex and personal reform outlook put her at odds with members from well-established legal institutions.

Unlike Alberta magistrates Jamieson and Murphy, Jean Ethel MacLachlan worked, as a salaried employee, with neglected and delinquent children in Saskatchewan in the years preceding her judicial appointment. MacLachlan, born and educated as a school teacher in Lunenburg, Nova Scotia, moved to Regina in 1909, and, beginning in 1910, worked for several years for the local Children's Aid Society.[132] MacLachlan was a colourful, outspoken public figure who competed in tennis matches, and belonged to many organizations including the Women's Canadian Club, the United Church, the Saskatchewan Social Service Club, and the Canadian Association of Child Protection Officers. She wrote many articles and spoke often about childhood delinquency, always emphasizing parental neglect or incompetence as the root

[130] Ibid., 42.
[131] Ibid., 82.
[132] Handwritten note, 18 November 1916, MacLachlan Scrapbooks, Vol. 1; "Judge MacLachlan Retires," 30 April 1935), MacLachlan Scrapbooks, Vol. 3.

cause of delinquency.[133] She kept three scrapbooks containing numerous news clippings, articles, and congratulatory cards about her career, and sometimes included her own handwritten comments in the margins to highlight her personal opinion or interpretation of a matter.

These scrapbooks suggest that MacLachlan was a favourite of the press, who deliberately presented herself as a maternal figure even though she never married and did not have any children, to reinforce her suitability for authoritative positions regarding children. In keeping with the maternal, child-protectionist language utilized by social reformers across Canada, and legislated by the federal JDA, MacLachlan emphasized rehabilitation rather than punishment, and explained the roots of childhood delinquency as rooted firmly in inadequate homes. In keeping with the reform mandate of the time, she believed in guidance rather than punishment, stating:

> The old-time method of merely administering punishment has been long with us and like most things that are deeply rooted, will take some time to uproot and criticisms are bound to follow… our great aim in the courts is to correct – not merely to punish – it is not to break up the homes but to improve and reconstruct them, and to keep the family together.[134]

MacLachlan pointed to home conditions as the primary cause of youthful crime, and indicated that theft accounted for two-thirds of offenders present in her courtroom. She had no tolerance for adults who through either negligence or direct encouragement steered children towards wrongdoing, and took great pleasure in punishing wrongdoing adults.[135] In 1919, she told a

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[133] "Plea by Judge of Juvenile Court For Centre Where all Boys and Girls May Have Fun," *Regina Leader,* 5 February 1918, MacLachlan Scrapbooks, Vol. 2; "Training of Sunday School Teachers Is Convention Subject," *Saskatoon Star-Phoenix*, 21 March 1918, n.p., MacLachlan Scrapbooks, Vol. 2.

[134] "Delinquent Children Are Not Treated as Criminals" *The Regina Leader*, 17 February 1922, MacLachlan Scrapbooks, Vol. 1.

[135] handwritten comment on margins of this article indicates it was based on an address she gave in Saskatoon in November 1916 "Revision of Child Laws are Needed," MacLachlan Scrapbooks, Vol. 2; "Heavy Fines for Contributions to Juvenile Crimes: Juvenile Court Judge Severe With Adults Who Lead Children Astray," *Regina Post*, 17 August 1918, MacLachlan Scrapbooks Vol. 2.

reporter that "the part of my work I enjoy the most …is punishing adults for contributing to the delinquency of a child or neglecting it. No punishment is too great for them, and I deal out heavy fines."[136] MacLachlan moderated her hard stance towards negligent adults with a kind and gentle maternal approach towards children. She expressed her femininity and kindness to one reporter by commenting: "I don't look very severe, do I, or much like a judge, and I am not at all sure I will be able to keep by face straight when in court, but I will make a big attempt anyway."[137] Other reporters indicated she spoke with a "twinkle in her eye," and characterized her address[es] as being "direct" and having "so much of real worth."[138]

MacLachlan often highlighted her personal interest in children's welfare and her lengthy career based on protecting children's rights. In emphasizing her suitability for the judiciary she told reporters that "of course I have been interested in children, more or less all my life,"[139] and that "in all my life I have never been away from child work in one form or another."[140] She was also very careful to emphasize to future readers of her scrapbook that she had not made any overt efforts to obtain the position of judge. MacLachlan received numerous congratulatory letters shortly after her judicial appointment. One letter writer expressed: "I am greatly pleased to learn that you have succeeded in obtaining the position as Judge for the Juvenile Court of Saskatchewan." [141] On the margins of this letter MacLachlan hand-wrote: "I did nothing to

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[136] "Woman Judge Big Traveller," *Toronto Globe,* 30 September 1919, MacLachlan Scrapbooks, Vol. 2.
[137] "First Woman Judge of Saskatchewan," 1 October 1917, MacLachlan Scrapbooks, Vol. 2.
[138] "Miss Ethel McLachlan (sic) Addresses The Grain Growers," *Lunenburg Progress*, March 1918, MacLachlan Scrapbooks, Vol. 2.
[139] *Evening Telegram*, 11October 1917, MacLachlan Scrapbooks, Vol. 2.
[140] "Miss Ethel McLachlan (sic) Addresses The Grain Growers," *Lunenburg Progress*, March 1918, MacLachlan Scrapbooks, Vol. 2.
[141] letter to MacLachlan from "Boy's Detention Home, Welseley," 17 September 1917, MacLachlan Scrapbooks, Vol. 1.

obtain it. Just his [letter writer's] wrong way of expressing it."[142] The implication is that MacLachlan emphasized that the position was conferred upon her because of her professional suitability. She may also have been reinforcing her femininity by not wishing to be perceived as someone in relentless pursuit of career advancement.

Certainly, MacLachlan's career demonstrated her interest in children's well-being. In 1916, after the death of her male supervisor S. Spencer Page, she was promoted to the position of Superintendent of the Children's Aid Society, the first woman in Canada to occupy this position.[143] In receiving this promotion MacLachlan benefitted from the support of the Regina Local Council of Women (RLCW). On 7 November 1916, the RLCW passed a resolution to recommend to the provincial government that MacLachlan be offered the position of Superintendent of Neglected Children.[144] The Council wanted MacLachlan in the Superintendent role because of her many years of experience, which included selecting and inspecting foster homes for children.[145] MacLachlan possessed professional knowledge and expertise garnered from her educational background and years working for the Children's Aid Society. The RLCW was therefore clearly irritated when it learned that the government initially intended to replace Page with a man. They stated:

> How it is proposed to appoint a man to succeed the late Mr. Page as superintendent, who must, of necessity get his information in regard to the working of the department from Miss MacLachlan. The members of the local council cannot see the justice of someone using Miss MacLachlan's knowledge to fit himself for a position the honors and enrolments of which she is denied.[146]

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[142] Ibid.
[143] "Judge MacLachlan Retires," 30 April 1935, MacLachlan Scrapbooks, Vol. 3; "Revision of Child Laws Are Needed," MacLachlan Scrapbooks, Vol. 2. MacLachlan wrote on margins that this article was based on an address she gave at Saskatoon in November of 1916.
[144] "LCW Resolution," 18 November 1916, *Regina Daily Post*, MacLachlan Scrapbooks, Vol. 1.
[145] "Saskatchewan's First Woman Judge," *Grain Grower's Guide*, 24 December 1917, MacLachlan Scrapbooks, Vol. 2.
[146] "A Needed Reform," *Regina Daily Post*, 15 November 1916, MacLachlin Scrapbooks, Vol. 1.

The RLCW recognized and supported MacLachlan's professional qualifications, and it recognized that MacLachlan was being discriminated against on the basis of her gender. The RLCW therefore set out to rectify this injustice by publicly calling for her appointment rather than that of an inexperienced male to replace Page. The RLCW also implicitly expressed an equality-based employment sentiment in this particular instance. In 1916, Regina newspapers commented on the question of equal pay for women in government work by referring to international developments in women's rights. In a discussion of MacLachlan's proposed position as Superintendent of Neglected Children, one article argued that "when women and men stand on an equal footing, politically, and a woman's vote counts for as much as any man's…it is time… that women stood for a system such as prevails in Australia where sheer merit, regardless of sex is made the basis of advancement and men and women are given equal opportunities and remuneration for equal work."[147] The Liberal government of Saskatchewan under Premier Walter Scott abided by the RLCW's recommendation and appointed MacLachlan as the Provincial Superintendent of Neglected, Dependent and Delinquent Children on 18 November 1916.[148]

MacLachlan served as Superintendent of Neglected, Dependent and Delinquent Children for less than a year until she was appointed as judge of the newly created juvenile court of Regina, on 1 September 1917.[149] The Saskatchewan Juvenile Court Act shared some similarities with the Alberta Act Respecting Juvenile Courts, including provisions requiring agents of children's aid societies to act as clerks of the juvenile court.[150] In contrast to her Alberta

[147] Ibid.
[148] Handwritten note and newsclipping, no title, n.d., MacLachlan Scrapbooks, Vol. 1.
[149] In 1917 the Saskatchewan Legislature passed the Juvenile Courts Act.
[150] Alberta, The Juvenile Courts Act, R.S.A. 1920 Chapter 191, parts 10 and 11.

counterparts, MacLachlan was paid for her work in juvenile court. Also unlike Jamieson, Langford, Murphy, and Harvey who functioned as city-based juvenile court commissioners, MacLachlan travelled on circuit and paid particular attention to rural conditions.

Under the Juvenile Court Act, MacLachlan's jurisdiction extended beyond the city limits of Regina, and she travelled about 2,000 miles every month, holding court in almost every Saskatchewan town except Saskatoon and Moose Jaw. MacLachlan's rural court circuit encouraged her to pay special attention to conditions giving rise to juvenile delinquency in rural areas.[151] MacLachlan spoke out against the misconception that "the rural boy or girl seldom get into trouble."[152] She indicated that 75 percent of children apprehended by the Department of Neglected Children came from country and small town districts. She was concerned especially about dangers posed by pool rooms and late night dances. She believed pool rooms lured boys into contact with "all grades and types of men" who taught them inappropriate language and behavior.[153] She criticized late night dances because some country parents allowed their young daughters, aged between 12 and 15 years, to "drive home unescorted in the early hours of the morning with young men, who are only too ready in some instances to take advantage of these young children."[154] MacLachlan indicated that she had met several of these young girls, their lives "being ruined" because they were "about to become mothers." As a woman judge, MacLachlan was likely voicing her dissatisfaction with existing conviction patterns for male farmers and sons charged with sex offences. As Lesley Erickson argues, class bias and sentencing patterns indicate that all male judges were reluctant "to disrupt the operation of a

[151] "Canada's Women Judges Make Good," *Regina Leader*, 5 January 1921, MacLachlan Scrapbooks, Vol. 2; "Juvenile Court Work in 1921 Described," *The Public Service Monthly*, April 1922, MacLachlan scrapbooks, vol. 1.
[152] "Training of Sunday School Teachers is Convention Subject," *Saskatoon Star-Phoenix*, 21 March, 1918, MacLachlan Scrapbooks, Vol. 2.
[153] Ibid.
[154] Ibid.

family farm simply on the word of a woman, particularly if it meant that another man's family would be left unprotected and financially vulnerable."[155] MacLachlan brought attention to these rural problems to demonstrate the need for more paid children's probation officers, especially women officers.

Probation officers were an essential component in juvenile rehabilitation, because they assisted children "to make good after their first offence."[156] Citing statistics for the year 1921, MacLachlan indicated that 280 children appeared in her juvenile court. Eighty-eight of these children were from the city of Regina and 192 were from other parts of the province.[157] MacLachlan associated the higher percentages of rural youth coming before her in juvenile court as attributed to the possibility that "when a child does wrongly in the country or small town, his wrongdoing is discovered more readily and easily than in the city."[158] Within towns, argued MacLachlan, volunteer probation officers, composed mainly of ministers, lawyers, teachers and scout masters, were more likely to intercede and apprehend the youth, than were the "extremely busy men and women" in the city.[159] MacLachlan's proposed solution to this situation was to lobby for the appointment of greater numbers of paid child probation officers in the city.[160] She was clearly dissatisfied with having only one paid, male, probation officer in the city of

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[155] Erickson, *Westward Bound*, 125 – 126.
[156] "Juvenile Court Judge Tells of Her Work Here," *Regina Leader*, 7 February 1920, MacLachlan Scrapbooks, Vol. 2.
[157] "Juvenile Court Work in 1921 Described," *The Public Service Monthly*, April 1922, MacLachlan Scrapbooks, Vol. 1.
[158] "Training of Sunday School Teachers is Convention Subject," *Saskatoon Star-Phoenix*, 21 March 1918, MacLachlan Scrapbooks, Vol. 2.
[159] Janet Gray, "A Western Juvenile Court*," Presbyterian Witness*, 28 April 1921, 13, MacLachlan Scrapbooks, Vol. 1.
[160] "Training of Sunday School Teachers is Convention Subject," *Saskatoon Star-Phoenix*, 21 March 1918, MacLachlan Scrapbooks, Vol. 2.

Regina.[161] In 1919, MacLachlan asked for the appointment of a woman probation officer "for the purpose of watching girls who have been before the juvenile court."[162] In 1922, MacLachlan noted regretfully that "Regina is still without a woman probation officer or social service worker in the juvenile court. We have the unenviable distinction of being almost the exceptional city in this respect in all Canada."[163]

Jamieson, Murphy, and MacLachlan's experiences outline their personal and professional backgrounds and reform involvements, and also illustrate that support from Local Councils of Women in Calgary, Edmonton, and Regina assisted them in securing their judicial appointments. This is important because it reinforces the ties between women's voluntary activity and political agency based on successful provincial suffrage campaigns and broader, at times international, goals of improving women and children's rights that was characteristic of this time period. This examination also argues that different legislative approaches influenced the offices of juvenile court judge. In Alberta, the juvenile court was a legislated voluntary endeavor in which numerous juvenile court commissioners laboured in individual cities and towns without "any hope of remuneration."[164] The juvenile court's volunteer underpinnings legitimated women magistrates' ability to adjudicate on the basis of their gender, and this helps to explain why Jamieson became the first Alberta woman juvenile court commissioner. A similar rationale supported Murphy and Jamieson's appointments as police magistrates in 1916. In Regina, as a result of lobbying by the Local Council of Women, the juvenile court was instituted as a paid office. MacLachlan was appointed to the juvenile court judge on the basis of her professional qualifications, in particular

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[161] Janet Gray, "A Western Juvenile Court*," Presbyterian Witness*, 28 April 1921, 13, MacLachlan Scrapbooks, Vol. 1.
[162] "Judge MacLachlan Asks Appointment of Woman Officer," 26 June 1919, MacLachlan Scrapbooks, Vol. 2.
[163] "Juvenile Court Work in 1921 Described," April 1922, MacLachlan Scrapbooks, Vol. 1.
[164] Alberta, *Annual Report: Dependent and Delinquent Children* (Edmonton: Department of Attorney General, 1916), 36.

her work with the CAS, and maternal qualities. In contrast to Jamieson and Murphy, MacLachlan was not appointed to the Regina juvenile court specifically to hear girls' cases. She was hired, on the basis of her professional characteristics and interest in children's welfare, to hear cases relating to both girls and boys. Her jurisdiction extended beyond city limits and she travelled across the province to ensure rehabilitation for rural youth. As the next section will demonstrate, the appointment of these women judges within the context of a woman's voluntary tradition suggests some of the ways that women's judicial authority was created and constrained by the political power and authority of these organizations as well as by their individual personalities, politics, and reform goals.

Blurred Boundaries: Volunteer legacies meet Legal Professionalism

Once in court, Jamieson, Murphy, and MacLachlan heard a broad variety of cases in spaces apart from established mainstream legal institutions. The quasi-judicial spaces of the juvenile and women's courts provided women judges with opportunities for dispensing reform-oriented justice based on their own reform agendas and influences from a predominantly maternal women's movement, but also subjected them to criticism from legal professionals. The informal physical, legislative, and gender boundaries of the juvenile court invited criticisms as to the courts' effectiveness in alleviating youth crime and handling the "girl problem" as well as criticisms of women judges' role and behaviour. The ways in which women judges worked out these challenges offers insight into how they attempted to develop and maintain their authority as transitional figures within quasi-judicial spaces bordered by conventions associated with the voluntary sector and those of legal professionalism.

Within their courtrooms, women judges used a blend of expertise based on their individual experiences and training, some of which reflected voluntary sector influences, as well as the law to substantiate their authority and ability within the court. Jamieson publicly presented her duties as an ideal melding together of her voluntary training with her willingness to learn some law. Reflecting on her early career, Jamieson stated:

> I had very little knowledge of the law, except that I had looked very carefully into the legal disabilities under which women labour, and had often attended the police court at the trials of women and girls. I have found in my work in court, that while I need some knowledge of the law, and while I have mastered as much of it as I need, there are qualities such as common sense, just dealing and the sympathetic understanding a woman can give women, which are quite as valuable in the work of the courts. Now that my family is grown up, my husband dead and my hands empty, this is work worth doing by any woman. With the able help of Mrs. Langford and Mrs. Bustard as well as the fine women probation officers who assist us, I feel that we are already getting good results.[165]

Jamieson expressed her ability to adjudicate based on her "common sense" and sympathy as a woman as well as her ability to "master as much of [the law]" as she needed to. Jamieson also emphasized that her personal moral views, implicitly substantiated by her class and voluntary sector involvement, were intrinsically linked to her function as police magistrate. Some of Jamieson's perspectives reinforce historians' arguments about the moral and nation-building concerns common to many early twentieth century reformers.[166] For example, in November 1919, Jamieson endorsed a controversial production titled "Auction of Souls." The plot centred on the immorality of selling Armenian Christian women in Turkey. Jamieson assured potential theatregoers that "there is nothing morally wrong or objectionable in this representation" even

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[165] "Canada's Women Judges Make Good," *Regina Leader*, 5 January 1921, MacLachlan Scrapbooks, Vol. 2.
[166] Mariana Valverde, *The Age of Light, Soap and Water: Moral Reform in English Canada, 1998 – 1925* (Toronto: McClelland and Stewart, 1991); Carolyn Strange and Tina Loo, *Making Good: Law and Moral Regulation in Canada, 1867 – 1939* (Toronto: University of Toronto Press, 1997).

though it included "the devilish spirit of murder and rapine" because the goal of the production was to "arouse public sympathy …by a simple portrayal of the facts" in contrast to "many shows where the main attraction is the exploitation of the female form in every conceivable pose and posture."[167] The theatre production was linked to early twentieth century concerns about threats to young women's morals, explicitly tied to non-reproductive sex outside the boundaries of marriage, and the duty of Anglo-Celtic citizens to mitigate these concerns.[168] Jamieson's statement was designed to allay the public's fears about the theatre production; her status as judge provided weight to her opinion, and may have reassured some readers that she exercised appropriate morality in her judicial capacity.

Newspapers provided only limited glimpses of Jamieson and her court. As discussed in the previous section, reporters highlighted and emphasized Jamieson's womanly, maternal, characteristics as legitimating her function in juvenile and women's court. Perhaps because they were subject to a publication ban regarding juvenile court, reporters paid little attention to Jamieson's role in ordinary court cases, but highlighted her role in sensational matters like bigamy trials. In two bigamy cases heard by Jamieson, reporters argued that Jamieson's sentencing was too lenient, by implying that her use of the suspended sentence enabled the women bigamists to return home to care for their children rather than go to jail.[169] In her limited

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[167] "Christian Women Sold For 85c Each," *Lethbridge Herald*, 8 December 1919, 10.
[168] Carolyn Strange, *Toronto's Girl Problem: The Perils and Pleasures of the City, 1880 – 1920* (Toronto: University of Toronto Press, 1995), 143.
[169] "Was Wife to Two and Cared for Children: Lillian Jones is Leniently Treated When Found Guilty of Bigamy," *Calgary Daily Herald*, 24 April 1918, 9; "Bigamist Let Go on Suspended Sentence," *Calgary Daily Herald*, 18 March 1920, 20.

appearances on the *Calgary Herald*'s women's page, references to Jamieson are uniformly positive, emphasizing her positive efforts as volunteer worker and occasional speaker.[170]

Jamieson's authority, however, was subject to limits imposed by legal professionalism. Part of this related to her acceptance by members of the legal profession itself. Jamieson reported feeling ostracized by some male members of the court and police force, who at times would completely ignore her presence or discontinue conversations when she approached them. In 1920, Jamieson stated "Being the first woman magistrate was no position to excite envy, I assure you. I had to fight down a good deal of prejudice on the part of certain members of the legal profession and the police department."[171] She noted that she gradually gained some degree of acceptance by male legal professionals.[172] These struggles reflected her transitional position as magistrate within quasi-judicial courts because she did not have the legal training and worked in a space apart.

Jamieson also encountered some tensions in applying and interpreting the law. By the mid-1920s, Jamieson had many years of court experience, and she applied her experience and knowledge about real life contexts affecting litigants to her sentencing guidelines. She recognized that adults charged on numerous occasions under the *Liquor Act* could not pay the legislated minimum fine of $20.00 and costs. Her court returns indicate that she sometimes levied fines of only $5.00. In July 1924, Charles Browning, the acting Attorney General for

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[170] "Praises Canadian Women and Their War Activities:" Miss McAdams Tells Women's Canadian Club What Their Sisters are Doing Overseas," *Calgary Daily Herald*, 19 April 1918, 10.
[171] "Calgary has First Woman Magistrate in the World, Mrs. Alice Jamieson," *The Calgary Daily Herald*, 13 March 1920, 16.
[172] Ibid.

Alberta reprimanded Jamieson for charging less than the legislated minimum. If later returns are any indication, Jamieson heeded Browning's words and charged the required $20.00 fine.[173]

Jamieson also clearly attempted to understand the laws that impacted litigants appearing in her court, but received little encouragement in clarifying her knowledge. In December 1928, Jamieson wrote to the Alberta Deputy Attorney General to ask for legal guidance on two matters. Jamieson's first question was whether or not lawyers were allowed to appear in juvenile court. Her second question was "when a case of investigation is going on, how far back are we allowed to go to investigate, regardless of the dates mentioned on the information? I have not been able to find in the Children's Protection Act a ruling regarding this."[174] The Deputy Attorney General responded to Jamieson's inquiry in a legalistic manner by directing her to the relevant passages of the Children's Protection Act. Section 31 subsection 5 states that "all persons other than the counsel and witnesses in the case shall be excluded," and by answering her second question with "what was a reasonable time would depend upon the facts and circumstances of any particular case."[175] The Deputy Attorney General's answers were vague and legalistic, offering Jamieson little expert legal interpretation or guidance. It is unclear from the records whether or not Jamieson was satisfied with the Deputy Attorney General's answers, and whether his response was conditioned by Jamieson's lack of legal training, but the fact that she submitted these questions to a legal professional clearly demonstrates that in adjudicating she reached beyond her voluntary training and background to engage in a legalistic exercise based on interpreting and applying relevant legislation.

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[173] Letter to Jamieson from Browning, "Re Returns of Police Magistrates for Month of June," 10 July 1924, Justices of the Peace Alpha, 79.105, File 922, PAA; "Return by Police Magistrate at the City of Calgary, for month ending 30 June 1924," 30 June 1924, Justices of the Peace Alpha, 79.105, File 922, PAA.
[174] Letter from Jamieson to DAG, 1 December 1928, Justices of the Peace Alpha, 79.105, File 931, PAA.
[175] Letter to Alice Jamieson from Charles Becker, 8 December 1928, Justices of the Peace Alpha, 79.015, File 931, PAA.

Murphy shared Jamieson's opinion that a lack of formal legal training did not hinder her in a magisterial role. Murphy stated:

> In taking her place as a magistrate, a woman need not fret unduly about her ignorance of procedure. If she be studious, and have a teachable spirit she will find that the clerk of the court, the crown prosecutors, the Deputy Attorney-General, his solicitors, the librarian at the Law Courts, and nearly all the barristers in the city, ready to help and advise. As a matter of fact, they will probably get to have a kind of paternal interest in her work and, on occasion, will even take abuse from her right in the court-room.[176]

Murphy's comment echoes Jamieson's perspective that women magistrates and judges were competent to learn enough law to adjudicate without possessing formal professional qualifications. Moreover, Murphy suggests the patriarchal nature of the legal system itself by referencing the "paternal interest" of male members of the court. Law, in other words, was a male-gendered construct, which placed boundaries on women judges' application of legal knowledge and role in the court.

These boundaries, representative of tensions between the voluntary sector and legal professionalism, were especially porous within juvenile courts across Canada. Speaking at the first meeting of the Canadian Association of Child Protection Officers held in Winnipeg in October 1921, at which MacLachlan was elected secretary-treasurer and Murphy was elected a vice-president, Judge Shaw of Vancouver's juvenile court spoke about the necessary presence of volunteers within the juvenile courts.[177] Shaw argued that members from local Children's Aid Societies were welcome in juvenile court because these volunteers placed limits on judicial power by being sympathetic to the needs of society in creating reformed, useful, citizens, and the

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[176] Emily Murphy, "The Woman's Court," *Maclean's*, 1919, Emily Ferguson Murphy Collection, , MS-2, photo essay No. 1, 2 – 3, City of Edmonton Archives.
[177] "Juvenile Delinquency Due to Environment," *Winnipeg Free Press*, October 8, 1921, 32; Alison Craig, "Review of Conference of Canadian Association of Child Protection Officers," *Winnipeg Free Press*, 15 October 1921, 41.

role of the court in administering justice. Shaw reported that "the juvenile court is not as other courts. We are not even primarily concerned with the dignity of the judge. We are concerned with the reform of the child and his replacement in society."[178] The juvenile courts welcomed the involvement of professionals as well as volunteers to sustain its rehabilitative mandate.

The juvenile courts also minimized the use of formal court procedures associated with adult criminal courts. In Regina, MacLachlan conscientiously treated children as misguided innocents rather than as criminalized beings, and this approach characterized her court processes. Usually, she did not require children appearing before her to take the oath, and she did not read aloud the charges they faced. She did not ask a child whether or not he or she was guilty or not guilty. Instead, she entered into an informal conversation with the child, and after establishing rapport, simply asked the child whether or not he or she did such and such a thing.[179] MacLachlan's procedures accorded with her strong belief in the use of probation rather than punishment, and on this basis, aligned with the juvenile court's purpose as established by the federal JDA. Her informal approach, however also invited criticism. In the public forum incidents of recidivism became tied to discussions about the juvenile court's success in using probation. In 1919, MacLachlan's preference for using probation served as the basis of a tense debate between herself and police chief Martin Bruton.[180] The chief characterized the juvenile court's approach as "far too sentimental," likely resulting in many children "becoming habitual

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[178] Alison Craig, "Review of Conference of Canadian Association of Child Protection Officers," *Winnipeg Free Press*, 15 October 1921, 41.
[179] "Work of Juvenile Court is Reviewed by Judge MacLachlan," 17 February 1922, MacLachlan Scrapbooks, Vol. 1.
[180] "Juvenile Court Judge Defends Probation Case," *Saskatoon Star-Phoenix*, 9 January 1919; "Repeaters are few in Juvenile Court," *Saskatoon Star-Phoenix*, 7 February 1920, 3, MacLachlan Scrapbooks, Vol. 2.

criminals."[181] Bruton's criticism, in fact, almost equated the existence and what he perceived to be an increase in juvenile crime to an ineffective woman-led juvenile court, and he advocated for the use of harsher punishments rather than probation to stem juvenile delinquency.

MacLachlan responded to Bruton's criticism by submitting "a lengthy article to the *Phoenix*" that differentiated her results as juvenile court judge from the results of other magistrates hearing juvenile crime.[182] She noted that Bruton's criticism was levelled directly at her juvenile court, but she explained that she had not heard the majority of the 168 cases that informed his malcontent. The Regina juvenile court was officially established on 1 September 1917, but MacLachlan did not hear any cases within this court until 18 June 1918. MacLachlan provided statistical evidence to show that she had heard only a total of 51 cases between June and the end of December 1918. From these 51, only 3 "fell down" in their probation. MacLachlan seemed upset by Bruton's criticism, as she kept referring to it even years later.[183] Overall, the incident seemed to reinforce her faith in probation as the best treatment for juvenile delinquency as she wrote numerous articles to this effect during the early 1920s.

MacLachlan advocated the use of probation for delinquent boys and girls, but the "girl problem" posed special difficulties. Echoing sentiments of middle-class Anglo-Celtic moral reformers across Canada, MacLachlan believed that girls aged 14 to 20 years were much "harder to handle than boys."[184] Single young women were moving to Canadian cities in ever-increasing numbers, and as Carolyn Strange argued, threatened patriarchal controls over their leisure and

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[181] "Juvenile Court Judge Defends Probation Case," *Saskatoon Star-Phoenix*, 9 January 1919, MacLachlan Scrapbooks, Vol. 2.
[182] Ibid.
[183] "Juvenile Court Judge Tells of Her Work Here," Regina Leader, 7 February 1920, MacLachlan Scrapbooks, Vol. 2; "Parents Are Culpable For Majority of Cases In the Juvenile Court," *Regina Leader*, 30 January 1925, MacLachlan Scrapbooks, Vol. 3.
[184] "Revision of Child Laws Are Needed," *Saskatoon Star-Phoenix*, 26 May 1917, MacLachlan Scrapbooks, Vol. 2.

bodies.[185] MacLachlan recognized that in the rural areas of Saskatchewan girls were also subject to sexual danger. She received some letters to this effect from concerned citizens. Mrs. George Clark asked MachLachlan to "give some motherly protection to a family who has four girls. Any assistance you could give in regard to moral training would be of great help."[186] The girl problem transcended urban and rural boundaries and this belief partially informed her lobby to amend the federal JDA to include "sexual immorality or any similar form of vice." Joan Sangster argues that MacLachlan wanted this amendment, which was made into law in 1924, to increase her powers, the implication being that this amendment enlarged the sphere of criminal activity she could adjudicate.[187] Enlarging her sphere of influence may have been one of her goals, but MacLachlan made public her views about adults who sexually exploited young girls. She wrote: "If a man ruins a girl under 16 years whose reputation is untarnished, the penalty is two years, but if he steals a sheep or a goat it is fourteen years."[188] She was clearly dissatisfied with punitive guidelines regarding adults' sexual mistreatment of girls before the 1924 amendment.

Emphasis on girls' sexual behaviour reflected not only contemporary morals, but also had associations with nation-building. Jennifer Henderson argues that white girls occupied a source of hope – as regenerators of a threatened British race within Canada during the late nineteenth and early twentieth centuries.[189] This nation-building project, based on racist and class assumptions, also influenced the construction of the juvenile and women's courts, and the placement of women magistrates and judges within.

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[185] Strange, *Toronto's Girl Problem*, 5.
[186] Letter from Mrs. George Clarke to Miss MacLachlan, 15 April 1918, MacLachlan Scrapbooks Vol. 1.
[187] Sangster, *Regulating Girls and Women*, makes this argument in note 7 on page 250.
[188] "Juvenile Court Works With Idea of Making Over Culprit Into Good and Useful Citizen," *Regina Leader*, 1 February 1919, MacLachlan Scrapbooks, Vol. 2.
[189] Jennifer Henderson, *Settler Feminism and Race Making in Canada* (Toronto: University of Toronto Press, 2003), 162.

In Edmonton, the special needs of girls were related to the physical location and layout of Murphy's juvenile court. Murphy explained:

> the [girls'] juvenile court is heard in the court rooms, which room has been set aside for the women and children, and which is entered by a separate doorway from the side street, although in cases where there [are] only two or three persons present, I sometimes hear the case in my private office, or in a private room upstairs. This is also advisable in the case of very young children who will give evidence more readily if seated in a chair beside the magistrate.[190]

The juvenile court and its litigants were thus kept separate from adult courts. Murphy also indicated that it was her general practice to hear juvenile court cases before police court cases assigned to her so that the juvenile court cases "may be cleared away and that they may be heard in camera."[191] Further, litigants in Murphy's courtroom were seated in armchairs across from Murphy's desk, rather than across the dock. Similar to other juvenile and women's courts in Canada, Murphy cultivated an informal and relaxed atmosphere within her courtroom by welcoming volunteers from the Children's Aid Society, who often sat and knitted while proceedings were underway.[192] When attempting to elicit testimony from a young child, it was common practice for Murphy to seat the child beside her on the bench, or hear the child's testimony in her private office. At times, Murphy extended her informal procedures beyond the physical limits of the courtroom walls because of her clear concern about children's well-being. Thus, she took a strong hands-on approach in investigating incidents of abuse sometimes by visiting the children's dwelling, and often by interviewing family members and corresponding

[190] Letter from Murphy to A.G. Browning, 18 September 1922, Emily Ferguson Murphy Collection, MS 2, File 20, 2, City of Edmonton Archives.
[191] Ibid.
[192] Murphy, "The Woman's Court," *MacLean*'s, 19 June 1920.

with other officials.[193] By extending her adjudicative duty beyond the boundaries permitted by traditional law she was engaging in a type of judge-mothering which served to separate her court further from traditional legal institutions.[194]

Murphy's informal courtroom set-up and procedures caused trouble for herself in at least one instance. In January 1923 Mrs. Katie Morris, represented by lawyer J.A. Clarke, attempted to launch a formal investigation against Murphy alleging that Murphy had assaulted or badgered Morris' young daughter Annie into making a false statement.[195] In taking a statement from Annie, Murphy had placed Annie beside her on the bench and had put her arm around her. Katie Morris' charge was that by doing this magistrate Murphy had coerced Annie into providing evidence against her mother. Annie's testimony had been essential to convicting Katie Morris of using her daughter Annie, a girl under 12 years of age, as a prostitute in a brothel operated by Katie Morris. In clearing Murphy of any wrongdoing, the investigating lawyer for the Attorney General's office, Trenholme Dickson, noted the presence of volunteers within Murphy's court. All of the witnesses in court, including officers of the Children's Aid Society and other workers active within children's welfare organizations supported Murphy and denied Katie Morris' charge of undue influence. Dickson concluded that all of the circumstances and evidence cleared

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[193] Murphy letter to Pte. App. Major, 27 April 1918, Emily Ferguson Murphy Collection, MS-2, File 10, City of Edmonton Archives.

[194] Sharpe and McMahon, emphasize that Murphy's activities in this regard were motivated by scientific and therapeutic efforts to rehabilitate offenders, *The Persons Case*, 22 - 23. Henderson, argues that Murphy's efforts in this regard were motivated by her desire to overcome moral deficiencies posed by the 'triple threat' to western Canadian civilization: the woman, the child, and the foreigner, who "constituted the three forms of dangerous vulnerability or unfinished selfhood posing potential threats to racial and political security." Henderson, *Settler Feminism*, 159, 162.

[195] Alberta, *Alberta Journals*, 1923, 5th Legislature, 3rd Session, "Memo for Deputy Attorney General," Tuesday 17 April 1923, 181 – 183.

Murphy of any wrongdoing and therefore he dismissed the necessity of instigating a formal investigation into the matter.[196]

From her earliest days in court, Murphy understood her role as based on an exclusive, and sex-based, right to hear cases pertaining to women and girls. Murphy's experience demonstrates that in Edmonton there was resistance to a court that had exclusive jurisdiction over all women. Murphy arrived at her understanding that she had jurisdiction over women litigants by diligently making "enquiries into the management of other courts," and by comparing her court to Toronto's women's court in which she found that "not only are all male frequenters tried in the women's court, but that no woman on any charge whatsoever is tried in the men's court."[197] This suggests that Murphy understood her court, like the women's court in Toronto, to be organized along the lines of sex. The Alberta Deputy Attorney General A.G. Browning disagreed with Murphy. In September 1916, the Deputy Attorney General wrote to Murphy that:

> with reference to that part of your letter in which you state that the exclusive jurisdiction of all cases of women and girls in the City of Edmonton has been given to the Women's Police Court, I beg to say that such statement is not quite accurate. You have concurrent jurisdiction with Police magistrate Primrose and are as much entitled to try cases of men as he is to try those of women, but it was hoped that when your appointment was made all cases in which women and girls were involved would, so far as possible, be brought before you for trial, and all that can be done by the Department to this end will be done.[198]

Browning suggested that Murphy's status as police magistrate was equal to that of her male colleague magistrate Philip Primrose, but also that "it was hoped that… all cases in which women and girls were involved would… be brought before you." Murphy did not accept Browning's

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[196] Ibid, 183.
[197] Letter from Murphy to Browning, 6 September 1916, Justices of the Peace, 69.210, Vol. 1, file 2159, PAA.
[198] Letter from Deputy Attorney General to Murphy, 25 September 1916, Justices of the Peace, 69.210, Vol. 1, file 2159, PAA.

unclear explanation because she experienced difficulties in keeping women within her court. She had several disputes with other magistrates, especially magistrate Primrose, and therefore kept close tabs on women appearing in the other magistrate's courts. Murphy noted that other magistrates and police officers often failed to bring women litigants to her court. On 19 March 1917, Murphy wrote to A.G. Browning, to enlist his support in properly directing cases pertaining to women to the women's court. Police court Inspector A. E. Schurer had "informed [Murphy] that he had received no instructions in the matter from the Department."[199] Murphy's letter was quickly addressed by the Department of the Attorney General who wrote a memo for Superintendent Albert McDonell" dated 21 March 1917 that stated: "Will you be good enough to instruct your Inspectors at Calgary and Edmonton to have charges against women brought, so far as possible, before the police magistrates appointed for that purpose, namely Mrs. Murphy at Edmonton and Mrs. Jamieson at Calgary."[200]

Part of Murphy's difficulties in maintaining exclusive jurisdiction over women litigants may have related to her courtroom style. On 1 April 1920, lawyer John Cormack wrote to Deputy Attorney General Browning requesting that his case, regarding a woman charged with theft, be heard by magistrate Primrose, instead of by Murphy.[201] Cormack "fel[t] quite certain that [Murphy… was] prejudiced against the accused and all her class and [was] predisposed to

[199] Letter from Murphy to Browning, 19 March 19 1917, Justices of the Peace, 69.210, Vol. 1, file 2159, PAA.
[200] Memo to McDonnell, 21 March 1917, Justices of the Peace, 69.210, Vol. 1, File 2159, PAA.
[201] Letter to A.G. Browning from John Cormack, 1 April 1920, Murphy, Justices of the Peace, 69.210, Vol. 4, PAA.

find against her."[202] Comack had a point. "Gypsy" was a derogatory term, and emphasizes that Murphy used her class and race position to attempt to enculturate others.[203]

By 1921, Murphy's jurisdictional issues were still unresolved. Writing to Attorney General J.R. Boyle on 1 April 1921, Murphy wrote in frustration: "This morning when I asked for my docket for the women's court, the orderly informed me that he had been instructed by magistrate Primrose that I was to have none. I am therefore in ignorance of whether I am seized of cases or not. His authority for assuming this attitude towards a court over which he has no jurisdiction is not stated."[204]

In addition to experiencing difficulties with police officers who seemed to avoid her court by bringing her cases to her male counterparts, Murphy also dealt with annoying details such as Police Chief George Hill's failure to appoint an orderly for the women's court. Even though Browning had authorized the appointment of an orderly for the women's court in August of 1916, one had yet to be appointed by December of 1916.[205] Murphy also experienced inconveniences such as the otherwise seemingly simple matter of having her courtroom furnished. When the Edmonton courtrooms were moved to the Police Station from the Civic Block, Murphy failed to receive any furnishings even though she stated: "I have been repeatedly assured the court room would be properly fitted up. I have had to use the Men's court when they were through with it, leaving the witnesses, lawyers etc. to either wait or go away. On several days no court was held

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[202] Letter to A.G. Browning from John Cormack, in an earlier court transcript regarding the same litigant, Murphy refers to her as a "gypsy." It is unclear whether the litigant's "gypsy" status was the cause of Cormack's conclusion that Murphy "was prejudiced against the accused and all of her class." 2; court transcript: In the Matter of the King vs. Annie Mitchell, 21 March 1920, Murphy, Justices of the Peace, 69.210, Vol. 4, PAA.
[203] Henderson, *Settler Feminism*, 39.
[204] letter to J.R. Boyle from Emily Murphy, 1 April 1921, Murphy, Justices of the Peace, 69.210, Vol. 4, 1, PAA.
[205] Letter to Browning from Murphy, 2 December 1916, Murphy, Justices of the Peace, 69.210, Vol. 1, file 2159, PAA.

at all as no room could be secured."[206] These difficulties suggest that Murphy experienced a form of discrimination, related to her court function, gender, or both, that made it difficult for her to perform her judicial function.

Sometimes Prairie women judges were recipients of explicitly gendered criticisms relating to their court role and competence. In 1924, Saskatoon magistrate F.M. Brown, himself a juvenile court judge, initiated a public debate at an April child welfare conference. He stated: "Can you imagine anyone who had never been a mother, telling mothers how to bring up their children? It is simply ridiculous!"[207] Outraged members of the child welfare community in Saskatchewan interpreted Brown's comment as a thinly veiled attack on MacLachlan and her ability to adjudicate in juvenile court because she was unmarried and childless. F.J. Reynolds, Commissioner of Child Protection for Regina, and other community members quickly defended MacLachlan, and other unmarried child welfare workers, on the basis that "unmarried men and women without family ties to conflict were said to have a detached point of view that proved very valuable in this work."[208] Brown defended himself, by indicating that his words were taken from a document he had drafted some two years earlier and which referenced a specific situation in which two boys had been, wrongfully in his opinion, classified as juvenile delinquents because they had used firearms within city limits while hunting gophers.[209] Upon being rebuked, Brown qualified his earlier statement, adding that he "spoke only to the point of the principle and … no personal attack upon any person whomsoever and, to be specific, not upon Miss MacLachlan…

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[206] Letter to J.R. Boyle from Emily Murphy, 1 April 1921, Murphy, Justices of the Peace, 69.210, Vol. 1, file 2159, PAA.
[207] "Magistrate Assails Classing of Naughty Kids as Delinquent," *Saskatoon Star-Phoenix*, Saturday, 19 April 1924, MacLachlan Scrapbooks, Vol. 2.
[208] "Champions of Woman Judge Are Numerous," *Saskatoon Star-Phoenix*, 23 April 1924, MacLachlan Scrapbooks, Vol. 2.
[209] "Brown Maintains No Spinster Can Wisely Give Mothers Advice," *Regina Post*, 28 April 1924, MacLachlan Scrapbooks, Vol. 2.

was made or intended."[210] Brown also insisted on arguing for a crucial connection between motherhood and judicial function within the juvenile court, because he stated: "no person, other than a good mother, could have the natural insight into the training of children."[211] He added that he extended this philosophy to himself, "although [he was] a father and a juvenile court judge."[212]

Brown's public criticism lingered and encouraged an outpouring of support for MacLachlan and for the appointment of women to magistrate's courts. On behalf of the Regina Local Council of Women, Mrs. F.J. Reynolds in 1925 indicated that:

> recent criticisms leveled at Judge MacLachlan arose largely from the fact of her being an unmarried woman. She added that in the professions were many unmarried men who were not disqualified on that account. 'There are lots of old maids and old women among men,' declared Mrs. F.M. Eddie, and she expressed her regrets that there are not more women magistrates in Canada.[213]

An editorial writer from a Halifax newspaper agreed with Reynolds. She encouraged Nova Scotia to appoint a woman judge within its juvenile court because Nova Scotia "[had provided] one of the best juvenile court judges in Canada (Judge Ethel MacLachlan) (sic)."[214] Brown's criticism clearly irritated MacLachlan. She corresponded with Murphy about the incident, thanking Murphy for her humorous insights, and wrote to her that "juvenile delinquency is not a result of a "woman" being judge, nor yet of an "unmarried" person, but that the whole thing is due to the home." MacLachlan also followed up by writing to Attorney General Cross that "a good home with a good mother and father seldom needed the services of a juvenile court."[215] She

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[210] Ibid.
[211] Ibid.
[212] Ibid.
[213] "Women Judges," *The Western Women's Rural Home*," June 1925, MacLachlan Scrapbooks, Vol. 2.
[214] "Dear Walrus," 1 January 1925, MacLachlan Scrapbooks, Vol. 3.
[215] Letter from MacLachlan to Murphy, 16 November 1924, Emily Ferguson Murphy collection, MS-2, file 27 "personal papers," City of Edmonton Archives.

maintained her belief in the primacy of the home, and any defects within, as being the root cause of juvenile delinquency. Her nurturing judicial style was an attempt to mitigate negative influences on the child, and in her mind was not related to her married status or having any children of her own.

This section highlights some of the tensions and conflicts Jamieson, Murphy, and MacLachlan experienced in their courts by contextualizing strong connections between the voluntary sector and legal professionalism in the development of juvenile courts and women's courts. I show that connections to the women's voluntary sector remained a meaningful source of support for these particular women judges. I also argue that within the courts, gender and class relations informed not only the jurisdiction and location of individual courts, but also that it influenced these women's relationship with the legal profession.

Conclusion

By the end of the 1920s, Alice Jamieson, Emily Murphy, and Ethel MacLachlan had established a precedent for the presence of women adjudicators on Prairie Canadian benches. They worked within quasi-judicial courts that reflected inherent contradictions and mixed meanings relating to the law and the women's movement. Jamieson, Murphy, and MacLachlan were not the only women magistrates or juvenile court judges during this time period, as they had counterparts in Toronto and British Columbia. Their appointment to the bench was closely associated with the reform tradition of Prairie Canada, especially because the suffrage campaign and married women's unequal property laws encouraged women, through the auspices of voluntary organizations, to lobby for further legislative reforms. In Alberta, city chapters of the Local Council of Women actively supported Jamieson and Murphy's judicial appointments based

on their extraordinary voluntary expertise and demonstrated concern about legal and social issues relating to women and children. In Saskatchewan, the RLCW bolstered MacLachlan's professional qualifications and advanced an equal opportunity argument, resting on MacLachlan's extensive knowledge, to secure her position as remunerated juvenile court judge.

Support from the women's voluntary sector and the specific choice of Jamieson, Murphy, and MacLachlan also suggests women's judicial professionalism meant something distinctive during this era. In later decades, women judges, like their male counterparts, would have to possess law degrees and membership within provincial bar societies as prerequisites for judicial appointment. During the 1910s and 1920s, however, women developed their professional expertise in close association with the voluntary sector, and from this expertise claimed their suitability to adjudicate matters involving women and children. While this voluntary tradition underpinned their suitability for, and placement upon, the bench it also served in some ways to undermine their authority. They were not equals admitted to a pre-existing legal court and in that sense did not make inroads into the male dominated bench.

As these women discovered, the same experiences based on service within a predominantly maternal voluntary sector that legitimated their entry into Prairie Canadian courts would shortly undermine their acceptance by the legal profession. By the 1930s, as I argue in chapter three, women magistrates and judges across Canada would uniformly lose their paid positions during the Depression when labour leaders and social reformers conferred entitlement to waged work to married men. The voluntary-sector underpinnings which bolstered women's judicial role during this early period would prove insufficient against increasing forces of legal professionalism to support women magistrates and judges who did not have a legal education.

Chapter 3: "'In Absentia': Fiscal Constraints, Professionalization, and Court Restructuring 1930 – 1950"

They should look on themselves not as lady lawyers, but as lawyers. I tried to do that in my own experience and not expect any favours in any way.

Isabel Hunt, Manitoba[1]

During the Great Depression economic and professional rearrangements contributed to removing the first cohort of Prairie Canadian women judges from their positions of judicial authority. Emily Murphy and Alice Jamieson were compelled to resign as paid magistrates, but continued to work as volunteers without salary in the juvenile court. Ethel MacLachlan voluntarily retired, and her successor, Margaret Burgess, was transferred to a government position with the Debt Adjustment Board on the termination of the office of juvenile court judge. Provincial bureaucrats argued that these employment changes were necessitated by the Great Depression's straitened economic circumstances. At the same time, professional developments associated with scientific and legal approaches encouraged changes to the court system and shifted women's circumscribed role within the magistrates' and juvenile courts. As legal education became a prerequisite for judicial positions in emerging family courts, a widening gap developed between traditional sources of women's authority and an expanding legal system. Women's voluntary sector involvement no longer sufficed to legitimate women's authority as judges, but the voluntary sector continued to provide important spaces in which women utilized professional skills and developed linkages to women in society and female lawyers. Between 1939 and 1957 no women judges held court in Prairie Canada, but a vibrant female legal culture

[1] Isabel Hunt, interview with John Thullner, 1971, C2728, A2014, tape 9, unprocessed record, Legal Judicial History Collection, Archives of Manitoba. (hereafter "Hunt interview with Thullner").

continued to develop in the 1930s, especially as increased formal university legal education provided the basis for a rebirth of women judges in the 1950s.

Depression conditions privileged men's breadwinning status and also challenged the politically motivated maternalism associated with the early twentieth century women's movement which had been used to justify women's position in judicial roles. Yet, between the early 1930s and the end of World War II, maternal strategies did not disappear altogether. Maternalism was evident in women's supportive roles and development of legal policies which, in connection with the juvenile courts, expanded and grew to include greater numbers of workers possessing both professional and voluntary sector skills. Women continued to volunteer, but often chose to do so within new professional groups, such as Quota Clubs, and larger numbers of legally-educated women deliberately used their professional skills in leadership roles and policy development in some chapters of the Local Council of Women. This fostered a growing overlap between the volunteer and professional sectors which would fuel the women's movement between the 1930s and 1960s.

The women judges appointed in the late 1950s and early 1960s, who are the subjects of later chapters, earned their LL.B.s and membership in provincial bar societies during and shortly after the Depression years. By participating in legal education women lawyers were subjected to an entrenched masculine legal culture in which they became legal "gentlemen."[2] The term legal gentlemen, argues Lani Guinier, "signifies the detached, dispassionate advocates law students are trained to become. Such gentlemen have no race and no gender."[3] Some women lawyers, like Isabel Hunt, in the above epigraph therefore negated the gendered biases of legal education and

[2] Lani Guinier, Michelle Fine and Jane Balin, *Becoming Gentlemen: Women, Law School, and Institutional Change* (Boston: Beacon Press, 1997), 85.
[3] Ibid.

professionalism to emphasize the training of not "lady lawyers, but … lawyers."[4] Others refrained from paid legal practice and put their skills to use in women's organizations, thereby furthering women's demands for social and legal policy reforms, and also developing a strong female legal culture. Hence, in this chapter, I show how legal professionalization did not simply replace volunteerism and maternal feminism. Women, in their professional lives, continued to draw on these older values, as they were reconfigured during the Depression years, to both their benefit and their detriment.

Fiscal Restraints and Court Restructuring

Unlike male magistrates and judges, who kept their paid positions, women magistrates and judges across Canada lost their remunerated positions during the Great Depression as economic and social pressures encouraged political and ideological change. Across Canada, women judges lost their paid employment, beginning in 1929, when the Attorney General of British Columbia fired Helen Gregory MacGill, an associate juvenile court judge.[5] Dorothy Chunn argues that political factors influenced MacGill's employment because the Conservatives terminated MacGill in 1929, but that the Liberals reinstated her when they came to power in 1934. MacGill was a member of the Liberal Party.[6] Chunn offers a similar explanation for Doctor Margaret Patterson's experience in Toronto. Successive ruling parties developed pragmatic solutions to appointing and cancelling judicial offices as they attempted to mitigate difficulties associated

[4] Hunt interview with Thullner.
[5] Dorothy E. Chunn, "Maternal Feminism, Legal Professionalism, and Political Pragmatism: The Rise and Fall of Magistrate Margaret Patterson, 1922 – 1934," in *Canadian Perspectives on Law and Society: Issues in Legal History*, ed. W. Wesley Pue and Barry Wright (Ottawa: Carleton University Press, 1988), 91 – 117.
[6] Chunn, "'Just Plain Everyday Housekeeping on a Grand Scale:' Feminists, Family Courts, and the Welfare State in British Columbia, 1928 – 1945," in *Law, Society and the State: Essays in Modern Legal History,* eds. Louis A. Knafla and Susan W. S. Binnie (Toronto: University of Toronto Press, 1995), 398.

with industrialization, urbanization, and professionalism.[7] Thus, the "uplift politics" associated with the United Farmers of Ontario, and supported by middle-class women voters with maternalist interests in child welfare, led to the appointment of Patterson as judge in 1921. In 1929, the Conservative government, supported by lawyers opposed to appointing non-legally educated persons as magistrates, succeeded in establishing the family court and reducing Patterson's jurisdiction. In 1934, Patterson lost her position not only because her male replacement was "avowedly Liberal," but also because the Hepburn Liberals responded to fiscal constraints by significantly reducing the number of practicing magistrates.[8] Chunn argues further that within the Liberal court reordering female magistrates were assessed much more harshly than their male counterparts.[9] I am extending Chunn's insights, which consider the interplay and overlap of fiscal, political, professional, and voluntary sector factors, and how these uniquely impacted women, to my analysis.

The evidence indicates that, similar to their Ontario and British Columbia counterparts, women in Prairie Canada were also dismissed from paid magisterial and judicial roles. The 1931 Canada Census indicates that across Canada five women received wages for their work as judges and magistrates. In 1941, the census indicates that only one woman in Brockville was employed as a judge or magistrate, and that she did not earn a salary for her work.[10] Across Canada, male magistrates and judges continued to hold court during the Depression years. Census records indicate that in 1941 thirty-eight male judges and magistrates worked in Alberta, forty-one

[7] Chunn, "Maternal Feminism," 92.
[8] Ibid., 92, 106 – 107.
[9] Ibid., 106.
[10] *Census of Canada, 1931*, Table 17, 322; *Census of Canada 1941*, Table 9, 254, 260, 272, 248 – 249, 261; Table 12, 398, 410, 422.

worked in Saskatchewan, and thirty-two were employed in Manitoba.[11] All of them were listed as "gainfully employed."[12]

Women's absence as wage-earning magistrates and judges is explained partly by ideological shifts that strengthened men's breadwinning status and contributed to forming the Canadian welfare state.[13] Nancy Christie argues the 1930s were marked by a "decaying maternalist paradigm" in which women lost their status as central familial figures because family stability became premised on economic security rather than moral values and affections.[14] Male breadwinners were obligated to provide for their dependents and thus gained economic and familial status. Within this ideological construct, families led by women wage earners that had been recognized as legitimate entities by social workers before the Depression were rendered invalid by government planners focused on unemployed men. Further, women's unpaid (reproductive) labour in maintaining households and caring for male breadwinners became invisible in unemployment policies. In Christie's analysis, women's authority atrophied in the context of state unemployment plans. This does not mean that maternalism disappeared. Lara Campbell complicates Christie's argument by showing how women adapted maternalism to include arguments for claims to state entitlements and policy development. Campbell argues that during the Depression, women waged demands on the state based on their maternal role in supporting the male breadwinner wage – and hence their material claims to economic and social

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[11] *Census of Canada, 1941*, Table 12, 398, 410, 422.
[12] Ibid.
[13] Chunn, "Maternal Feminism," 92, 97; Lara Campbell, "'Respectable Citizens of Canada:' Gender, Maternalism and the Welfare State in the Great Depression," in *International Studies in Social History, Volume 20: Maternalism Reconsidered: Motherhood, Welfare and Social Policy in the Twentieth Century*, ed., Marian van der Klein, Rebecca Jo Plant, and Nichole Sanders (New York: Berghahn Books, 2012), 100; Nancy Christie, *Engendering the State: Family, Work, and Welfare in Canada* (Toronto: University of Toronto Press, 2000), 13.
[14] Christie, *Engendering the State*, 13.

citizenship.[15] Karen Balcom's work shows that women continued to have influence on policy development in international roles.[16] As will be shown later in this chapter, Christie, Campbell, and Balcom's insights help explain the context within which the first women judges were retired and the ways in which retired judge MacLachlan and several women lawyers used maternal arguments in their organizational work to support policies for women and children.

Across the nation, many women lost their right to work in traditional male domains, including the courts, during the Depression because of gendered ideology centred on who had a right to paid work.[17] This ideology also functioned in Alberta and was reinforced by a political regime that failed to adequately support women. James Struthers argues that single unemployed women constituted a "politically powerless group whose problems were ignored by all levels of government during the 1930s."[18] As Depression conditions worsened, creating mass unemployment, government lay-offs followed. Murphy, Jamieson, and some of their fellow police court magistrates were retired under the Alberta Superannuation Act.[19] In 1922 the Superannuation Act established retirement guidelines for all civil servants, including magistrates. Male employees reaching the age of sixty-five, and female employees reaching the age of sixty, would be automatically retired under the terms of this act, unless other provisions were made that authorized the Lieutenant Governor to continue employment beyond the established age limit.[20]

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[15] Campbell, "Respectable Citizens," 100.
[16] Karen Balcom *The Traffic in Babies: Cross-Border Adoption and Baby-Selling between the United States and Canada, 1930 – 1972* (Toronto: University of Toronto Press, 2011), 22.
[17] Christie argues that "women's claims to the right to work in traditionally male domains were severely delegitimated by the Depression," *Engendering the State*, 222
[18] James Struthers, *No Fault of their Own: Unemployment and the Canadian Welfare State 1914 – 1941* (Toronto: University of Toronto Press, 1983), 106.
[19] Alberta, "An Act respecting Superannuation and Retiring Allowances for Civil Servants," 1922, c. 11, s. 1, s. 9.
[20] In Alberta the Superannuation Act also required employees to contribute a portion of their salary towards an annuity fund which retirees could claim upon their superannuation. The *Superannuation Act* was repealed in 1951, "An Act respecting Superannuation."

Murphy voluntarily retired "under the provisions of the Superannuation Act as and from 31 October 1931," and was appointed as a temporary and unpaid magistrate the next day.[21] In December of 1932, Murphy resigned as women's police magistrate and as judge of the juvenile court for the city of Edmonton, but she retained her provincial appointment as both magistrate and juvenile court judge.[22] A sixty-five year-old diabetic, Murphy continued working on social improvement measures until she died in her sleep on 17 October 1933.[23]

Correspondence with the Attorney General's office indicates that Alice Jamieson was not expecting to lose her paid magisterial role. On 13 January 1932, Jamieson received a letter advising her that "It is with regret that I inform you of the decision of the Government to retire you from the position of police magistrate in Calgary, as at the end of this month."[24] On 25 January 1932, Jamieson politely replied:

> In view of the shortness of notice, may I suggest that you reconsider the date at which I give up my position, as I wish to make arrangements with a view to cutting down my living expenses and in order to complete same, I would ask that I be allowed to hold my position until the first day of March next [this would] enable me to adjust matters in such a way as to obviate much worry on my part.[25]

Follow-up correspondence from the Alberta Lieutenant Governor's office suggests that the Lieutenant Governor granted Jamieson's request for a one month extension. She retired officially as a paid police magistrate under the provisions of the Superannuation Act on 29 February

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[21] "Lieutenant Governor," 5 March 1932, Justices of the Peace Alpha, 79.105, File 931, Provincial Archives of Alberta (hereafter PAA).
[22] "Mrs. Emily Murphy Resigns Post in Edmonton City," *Edmonton Journal*, 23 December 1932, Emily Murphy Collection, MS-2, Scrapbook 4, City of Edmonton Archives.
[23] Robert J. Sharpe and Patricia I. McMahon, *The Persons Case: The Origins and Legacy of the Fight for Legal Personhood* (Toronto: The Osgoode Society, 2007), 193.
[24] Letter to Alice Jamieson from Lymburn, 13 January 1932, Justices of the Peace Alpha, 79.105, File 931, PAA.
[25] Letter to the Attorney General from Jamieson, 25 January 1932, Justices of the Peace Alpha, 79.105, File 931, PAA.

1932.[26] Jamieson's termination entailed a severance of her pay but not her court duties, because under the terms of the same order–in-council retiring her from office, she was "appointed temporarily, under the provisions of the Magistrates and Justices Act, as police magistrate in and for the Province of Alberta, as from 1 March 1932, without salary."[27] Surviving records suggest that Jamieson continued on as a police magistrate in Calgary, and was serving in this capacity until at least November 1938.[28] Clearly, Jamieson was not anticipating being mandatorily retired in 1932. Further, Jamieson's letter reveals that she relied on her salary and was unprepared for her loss of income. Even though Jamieson's expertise derived from the voluntary sector instead of from professional legal training, Jamieson was a widowed breadwinner rather than a dependent. At the same time, Jamieson hesitated in claiming the right to earn wages for her court work, as the records suggest she did not further resist, other than asking for a one-month extension of her contract.

Certainly, the Depression influenced the provincial government's decision to superannuate certain police magistrates. In 1932, Jamieson was seventy-one years old, and thus well beyond the age criteria established in the act.[29] The provincial government could have utilized the Superannuation Act a decade earlier to remove Jamieson from office. In January 1932 the provincial government superannuated Murphy's Edmonton colleague Philip Primrose and Jamieson's Calgary counterpart, Gilbert Sanders.[30] They were, like Murphy and Jamieson,

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[26] "Lieutenant Governor," 5 March 1932, Justices of the Peace Alpha, 79.105, File 931, PAA.
[27] Ibid.
[28] letter from the Deputy Attorney General to Irene Parlby, 21 November 1938, Justices of the Peace Alpha, 79.105, File 931, PAA.
[29] The government of Alberta reported that it had retained the services of 50 pensioners under the terms of the Superannuation Act who would continue to act without pay. "Retain Services of 50 Pensioners," *Edmonton Journal*, 10 February 1932, Alberta, Legislative Assembly, Hansard Scrapbook (1932 Seventh Legislature Second Session 4 February to 6 April), M-475, Glenbow Archives ("GA").
[30] *Alberta Gazette*, 15 February 1932, Part I, vol. 28, No. 3, 74.

swiftly reinstated as temporary police magistrates. Unlike Murphy and Jamieson, however, Primrose, Sanders and two other superannuated police magistrates were reappointed with their monthly salaries intact, until at least 1936.[31] In spite of Jamieson's official request to maintain her salary, she was not chosen as one of the four police court magistrates to continue with their work on a monthly salaried basis.

The continued involvement of Jamieson and Murphy as unpaid juvenile court judges is consistent with the juvenile court's function as a volunteer-led endeavour in Alberta. The volunteer underpinnings of the Alberta juvenile court did not change during the Depression as judges continued to be appointed as unpaid workers. New legislation did not challenge this. In 1935, an Act respecting the Juvenile Court repealed the 1922 Juvenile Courts Act.[32] The most substantive change in the new juvenile court act was that it unified individual juvenile courts, created in towns and cities across the province, into a singular juvenile court for the province of Alberta.[33] This development was in line with efforts in courts across Canada to make court proceedings and sentencing more uniform. The *Alberta Gazette* reveals that across Alberta sixty-one judges of the juvenile court were appointed on 14 March 1932. These appointments included Jamieson, Murphy, and Mary Ann Harvey as the only women judges in Alberta.[34]

Harvey's records indicate she believed she was treated unfairly as a juvenile court judge because she received neither a salary nor significant court costs during her career.[35] To some extent, Harvey's discontent was based on her confusion about the distinctive status, function, and remuneration of police magistrates as compared to juvenile court judges. She believed her

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[31] *Blairmore Enterprise*, 11 February 1932, 4; *Census of Alberta 1936*, Table 3, 910 – 911; Table 4, 918, 926.
[32] *Juvenile Court Act*, R.S.A. 1935, c.20.
[33] Ibid., section 2.
[34] *Alberta Gazette*, 15 April 1932, Part I, Vol. 28, No. 7, 197.
[35] Harvey was appointed Juvenile Court Commissioner in May 1922, W. Shields letter 20 July 1922, 2, Justices of the Peace Alpha, 79.105, File 817, vol. 1, PAA.

appointment mirrored Jamieson's magistrate role, possibly because lawyer James Short recommended Harvey as a suitable replacement for Jamieson based on an unsubstantiated report that Jamieson was to be superannuated from the Calgary women's court in 1923.[36] K.C. McLeod, the Superintendent of Neglected Children, attempted to set Harvey straight regarding her entitlement to a salary.[37] In an inter-office memorandum, K.C. McLeod wrote to R. Andrew Smith, the Deputy Attorney General of Alberta, explaining that Jamieson received a salary only as a magistrate and not as a juvenile court judge.[38] Harvey had asked Smith for remuneration and a fair share of the total case load; in addition, Harvey had compared her situation to that of a male colleague. In November 1926, she wrote that Reverend Richards, "two years ago …received the court costs."[39] Harvey explained, "Mr. Robinson [the Clerk of the Juvenile Court] admitted that I heard the worst case he ever had with satisfaction, and I again told him I was not getting a square deal… Now in almost five years I received two dollars – and I am a widow with large tax to pay and I cannot see the discrimination."[40]

By November of 1935, Harvey was still asking to receive a stipend for her work on the basis of unique challenges she faced within the juvenile court. She wrote to the Alberta Attorney General, John W. Hugill:

> I have not been invited to the Court for some months so I have not any court cases. However I have an office in my own home in which I look after many sad cases…. I have worked for almost fourteen years in Juvenile Court work without any remuneration… In October 1935 I provided clothing for two poor boys and eight girls also vegetables for some families. I am now looking after a woman over eighty whom is receiving old age pension and I am informed that one of her family is using the pension for drink. I am

[36] James Short to J.E. Brownlee, 17 March 1923, Justices of the Peace Alpha, 79.105, File 817, vol. 1, PAA.
[37] "Letter to Attorney General, 12 November 1926, Justices of the Peace Alpha, 79.105, File 817, vol. 1, 2, PAA.
[38] Memo to R. Andrew Smith, 18 November 1926, Justices of the Peace Alpha, 79.105, File 817, vol. 1, PAA.
[39] "Letter to Attorney General, 12 November 1926, 2 Justices of the Peace Alpha, 79.105, File 817, vol. 1, PAA.
[40] Ibid.

> having this investigated. I would like … a small remuneration as I have lived 33 years in Calgary.[41]

The records do not indicate whether or not Harvey eventually succeeded in obtaining any payment for her services. It is unknown whether she applied for or received the small means-tested pension available to some destitute women over the age of seventy in Alberta.[42] She continued to hold her court appointments until she died on 16 November 1937.[43] Harvey's experience is illustrative because it emphasized that she struggled with her unpaid status as a juvenile court judge and indicated her awareness that some male judges were treated differently in claiming court costs. This aligns with Chunn's argument that female magistrates were treated more harshly than their male counterparts. Further, Harvey's, Jamieson's, and Murphy's court and retirement experiences illustrate some of the ways in which they were directly influenced by fiscal restructuring and the privileging of a male breadwinner wage.

Even as women judges lost their authoritative and remunerated roles, volunteer initiatives associated with child welfare expanded. Across Canada juvenile courts continued to exist, and afforded new opportunities for women to work in supportive roles.[44] The Montreal juvenile courts, always under the leadership of a male judge, expanded during the Depression years to add more staff and an additional juvenile court judge by 1939.[45] During the interwar years, the Montreal juvenile court worked with women volunteers from various support agencies, and

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[41] "Return by Justice of the Peace to Attorney General Hugil," 4 November 1935, Justices of the Peace Alpha, 79.105, File 818, vol. 2, PAA.
[42] Alvin Finkel, "The Social Credit Revolution," in *Alberta Formed Alberta Transformed*, ed. Michael Payne, Donald Wetherell, and Catherine Cavanaugh (Edmonton: University of Alberta Press, 2006), 501.
[43] "Dear Mrs. Parlby," 21 November 1938, Justices of the Peace Alpha, 79.105, File 931, PAA.
[44] D. Owen Carrigan traces rates and types of juvenile delinquency from all Canadian provinces to conclude that both the conviction rate and nature of offence, did not change substantially between 1930 and 1940, *Juvenile Delinquency in Canada: A History* (Ontario: Irwin Publishing, 1998), 107, 109 – 110.
[45] Tamara Myers, *Caught: Montreal's Modern Girls and the Law, 1869 – 1945* (Toronto: University of Toronto Press, 2006), 122.

employed two female probation officers.[46] Partly in response to criticisms from legal professionals who objected to non-legally trained magistrates, the Ontario courts had been reconfigured before the Great Depression. The new courts separated juvenile matters from an increasing caseload involving domestic disputes. This meant that by 1929 juvenile cases had already been taken out of the hands of magistrate Margaret Patterson and placed under the direction of a male judge, Hawley S. Mott, within a new Domestic Relations Court.[47]

In addition to a growing lack of support of married women working during the Depression, by the 1930s, scientific and psychological theories encouraged court restructuring and shifted women's roles in relation to the courts. Such expertise often reflected pseudo-scientific theories about middle-class Anglo-Celtic fears about "race suicide" in the wake of non-Anglo-Saxon immigration and reformers' perceptions about the high birth rate of the "unfit" – meaning persons from working-class or non-English backgrounds.[48] These concerns encouraged eugenic sentiments and emphasized regulation of girls' bodies.[49] Reformers, including members from the National Council of Women, blamed "undesirable" immigrants for causing crime and for perpetuating vice by passing on their "feeble-minded" characteristics to their offspring.[50] Individuals and organizations across Canada supported eugenic sentiments, but Alberta in 1928

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[46] Ibid., 122 – 123.
[47] Amanda Glasbeek, F*eminized Justice: The Toronto Women's Court, 1913 – 1934* (Vancouver: UBC Press, 2009), 42; W. W. Creighton, "Introduction," in *Family Law in the Family Courts*, ed. H.T.G. Andrews (Toronto: the Carswell Company, 1973), 1 – 13, 6. Chunn explains the Ontario Juvenile Court was also not discontinued at this time. Instead, in 1929, the jurisdiction of the Ontario Juvenile Courts was extended to hear matters of maintenance of deserted wives and children, and in 1934 the Ontario legislature passed the *Juvenile and Family Courts Act* which made all existing juvenile Courts into juvenile and family courts, "Maternal Feminism," 100.
[48] Angus McLaren, *Our Own Master Race: Master Race: Eugenics in Canada, 1885 – 1945* (Toronto: McClelland and Stewart Inc., 1990), 46.
[49] Joan Sangster, *Regulating Girls and Women: Sexuality, Family, and the Law in Ontario, 1920 – 1960* (Ontario: Oxford University Press 2001), 129.
[50] Ibid., 63; Veronica Strong-Boag, "The Parliament of Women: The National Council of Women of Canada, 1893 – 1929," (Ottawa: National Museums of Canada, 1977), 372.

became the first Canadian province to enact sterilization legislation.[51] Emily Murphy infamously propounded eugenic beliefs by advocating sterilizing mentally unfit and racialized persons, and she received considerable support from the Local Council of Women.[52] Copies of the Calgary Local Council of Women yearbooks published between 1924 and 1932 suggest that at least some members of the LCW during these years came to understand sterilization as a progressive health measure, linked to creating proper citizens.[53]

These pseudo-scientific beliefs influenced processes in the juvenile courts. The Winnipeg juvenile court applied medical and psychological approaches in preventing and treating adolescent crime since 1919, the year Dr. Alvin T. Mathers opened the Psychopathic Department. As evidence of his eugenic beliefs, Mathers subjected children to intelligence testing and girls to invasive gynecological exams.[54] Both of these procedures were designed to show the connections between feeble-mindedness and high birth rates. Girls' sexuality continued to feature prominently throughout the 1920s and 1930s. In the 1928 Royal Commission on Child Welfare, Charlotte Whitton emphasized that "sexual and moral problems" caused 80 percent of delinquencies among girls.[55] In her 1930 study follow-up on delinquent and truant girls, Whitton indicated that the Manitoba legislature had made "an entirely new departure" in making special recommendations for the care of girls aged between 12 and 21 in regard to their education, as

[51] First enacted in 1928, the Alberta Sexual Sterilisation Act was repealed in 1972. Sexual Sterilisation Act, S.A. 1928 c. 37.
[52] Local Council of Women Yearbook, 1924 – 1925, 65, Calgary Local Council of Women fonds, M5841-20, GA.
[53] Local Council of Women Yearbooks, 1924 – 1932, Calgary Local Council of Women fonds, M5841-20, GA.
[54] Cassandra Woloschuk, "Protecting and Policing Children: The Origins and Nature of Juvenile Justice in Winnipeg," in *Prairie Metropolis: New Essays on Winnipeg Social History,* ed. Esyllt W. Jones and Gerald Friesen (Winnipeg: University of Manitoba Press, 2009), 69.
[55] Charlotte Whitton, "Report on Special Provisions for the Care of Delinquent and Pre-Delinquent Girls" (Ottawa, 1930), 32, 34.

well as physical and psychological treatment.[56] Crucially, Whitton recommended appointing women in leadership roles within the proposed Seven Oaks School for girls because of the connections between girls' sexuality, feeblemindedness and criminality.[57]

These new approaches in criminology and psychology became more visible and meaningful to Canadians as 1930s Depression conditions triggered dramatic increases in adult inmate populations.[58] In 1938, the Winnipeg juvenile court once again featured in a Royal Commission. The Commission on penal reform led by Justice Joseph Archambault of the Quebec Superior Court, James Chalmers McRuer, a Toronto criminal lawyer, and former Attorney General, Richard W. Craig, of Winnipeg made several recommendations, including the scientific classification and segregation of prisoners, as well as special treatment of youths, first offenders, habitual offenders, and the insane.[59] They concluded that Canadian use of corporal punishment, long since abolished in the United States and most of Europe, was much too frequent.[60] They also attempted to determine whether or not the British Borstal system operated effectively in Canada.[61] During the 1930s the Borstal system, which emphasized the training and education of young offenders rather than punishment and incarceration, achieved considerable success in Britain.[62]

Some of the commissioners' most important recommendations incorporated international trends based on decades-long initiatives sought by reformers involved specifically with the

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[56] Ibid., 4, 32.
[57] Ibid., 32, 34.
[58] Terry Crowley, *Agnes MacPhail and the Politics of Equality* (Toronto: James Lorimer and Company, 1990), 130.
[59] "Royal Commission Report Strongly Indicts Canada's Prison System," *Ottawa Citizen*, 15 June 1938, 12.
[60] Ibid.
[61] Ibid.
[62] John Warder and Reg Wilson, argue that during the 1930s Borstals rehabilitated 70% of trainees, "The British Borstal Training System," *The Journal of Criminal Law and Criminology*, 64, 1 (1973), 118.

juvenile courts.[63] Echoing language used by Ethel MacLachlan during the 1920s, the commissioners suggested that juvenile courts "should take the form of a social clinic with the presiding officer not termed a judge."[64] On 5 June 1937, they also garnered insights from Frank Hamilton, judge of the Winnipeg juvenile court who shared some of his ideas about using supportive volunteer agencies to prevent youthful crime. Hamilton stated he had maintained a firm grasp on the Winnipeg juvenile court since 1925 partly because of his willingness to apply innovative techniques and recognition of women volunteers.[65] Judge Hamilton pointed to the effective preventive work undertaken by female, rather than male, teachers, and volunteer workers from over fifty boys clubs in the city of Winnipeg, in curtailing youth crime.[66] Many of these agencies were run by women. The Jewish Sisters of Shaaray Zedek took special interest in Jewish boys and girls coming up in the courts, and worked closely with them so that they would become good Jewish citizens.[67] The commissioners' response to judge Hamilton's Winnipeg juvenile court suggests their willingness to extend reform strategies based in the juvenile court to adult institutions. Women's involvement in various roles supportive of the court suggests that women were not absent from the juvenile court even though they did not act as judges. Nellie Sanders, for example, worked as Secretary of the Welfare Supervision Board during the late 1930s and early 1940s and thus gained a great deal of practical experience and insight into juvenile matters.[68]

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[63] "Royal Commission Report Strongly Indicts Canada's Prison System," *Ottawa Citizen*, 15 June 1938, 12; Crowley, *Agnes MacPhail*, 130 – 135.
[64] Ibid.
[65] "Hamilton Boosts China Aid:1,200,000 Pounds of Clothing Donated," *Winnipeg Free Press*, 14 February 1948, 3.
[66] C.C. "Democracy in Action," *Winnipeg Free Press*, 5 June 1937, 19.
[67] "The Sisterhood of Shaarey Zedek of Winnipeg," *The Canadian Jewish Chronicle*, 23 February 1923, 10.
[68] "Welfare Supervision Board," *Department of Health and Public Welfare, Annual Report 1940* (Ottawa, 1940), 201 – 212. Legislative Library of Manitoba.

While juvenile courts continued to function in Alberta, Manitoba, Ontario, and Quebec, the juvenile court collapsed completely in Saskatchewan. Saskatchewan experienced the greatest financial losses and harshest environmental troubles caused by prolonged drought, grasshopper plagues, and low wheat prices. Judge Tillie Taylor, who came of age in Saskatchewan during the Depression, reminisced that "Farmers needed assistance badly and there was poor prospect of jobs for young people."[69] Over 150, 000 more people left the province than entered it during the Depression years.[70] Ethel MacLachlan's voluntary retirement from the Regina juvenile court in May 1935, however, was not explicitly tied to Depression woes. MacLachlan wanted to retire to spend time visiting her native province, Nova Scotia, and to travel overseas.[71] MacLachlan was succeeded by Margaret Isabella Burgess, a lawyer from Regina.[72] Burgess' office began in June 1935 at an annual salary of $1,800.[73] Burgess' judicial appointment resulted primarily from the lobbying efforts of the Saskatchewan Provincial Council of Women who wanted a woman, and preferably a member of the Saskatchewan bar, to fill MacLachlan's post.[74] Burgess was a member of the Regina Local Council of Women and acted as a member of its law committee in 1937.[75] Her connections to the Liberal Party may also have influenced her appointment because

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[69] T. Taylor, "When Anything Was Possible: Saskatchewan Youth Congress Days in 1939 and 1940 were Fraught with Fear and Hope: A Memoir," *Newest Review* (February/March 1991), 15.
[70] Alison Prentice and others, *Canadian Women: A History,* 2nd ed. (Canada: Thomson Nelson, 2004), 246.
[71] "Will Visit Nova Scotia," 1935, MacLachlan Scrapbooks, Vol. 3, University of Saskatchewan, Special Collections, http://library.usask.ca/spcoll/files/vol.3.pdf (hereafter "MacLachlan Scrapbook Vol. 3.")
[72] Hand-written note below "Miss Burgess New Juvenile Court Justice," 25 May 1935, MacLachlan Scrapbooks, Vol. 3.
[73] "Miss Burgess New Juvenile Court Justice," 25 May 1935, MacLachlan Scrapbooks, Vol. 3. MacLachlan's salary translated into $150.00 per month. By way of comparison, in 1931 rural Alberta some male magistrates received between $75 and $100 per month. See: "Tributes Are Showered on Alberta Legal Officers," *Edmonton Journal,* 11 March 1931.
[74] "Miss Burgess New Juvenile Court Justice," 25 May 1935. MacLachlan Scrapbooks, Vol. 3.
[75] "L.C.W. Committees Listed At First Meeting of Year," *The Leader-Post,* 27 January 1937, 4.

she was very active in the Regina Women's Liberal Association between 1924 and 1929, and the Liberals ruled in Saskatchewan until 1928.[76]

Burgess' efforts to become a woman lawyer in Saskatchewan revealed her ambition to become a woman professional. As a single educated woman, Burgess represented a model woman professional at this point in history.[77] She was twenty-six years old when she became the first woman to apply to the Law Society of Saskatchewan for admission as a student-at-law, and her application was denied on 7 March 1912 on the grounds that the Legal Profession Act made no provision for the admission of women.[78] Saskatchewan amended its Legal Profession Act to include women on 11 January 1913 and in June of the same year passed a special resolution allowing Burgess and Mattie S. Boyles to register as students-at-law.[79] On the same day that she registered as a student, she began articles with Leonard Ring of Regina.[80] On 13 April 1918 she was the second Saskatchewan woman to be admitted to the Saskatchewan bar.[81] Burgess practiced with W.J. Jolly of Weyburn until 1924 when she moved to Regina and established her own practice, Westman Chambers.[82]

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[76] Iain A. Mentiplay, *A Century of Integrity: The Law Society of Saskatchewan 1907 to 2007* (Regina: Law Society of Saskatchewan, 2007), 43.

[77] Mary Kinnear argues that before WWII marital status was a key predictor of women lawyer's employment status. All of the women lawyers included in her study who married quit their law jobs before WWII. These patterns shift over time. Kinnear, *In Subordination: Professional Women, 1870 – 1970* (Montreal/Kingston: McGill-Queen's University Press, 1995), 89. I explain in chapter four that women judges were uniformly married and mothers of children and that this maternal basis partly qualified them for their positions within the juvenile and family courts. In other words, there is some suggestion that the model of women judge professionals was unusual from that of the single woman professional in other professions.

[78] Mentiplay, *A Century of Integrity*, 40.

[79] Ibid.

[80] Mentiplay, explains her articles were subsequently transferred to Moore Armstrong Miller and then to Bruce Graham and William Keason, *A Century of Integrity*, 43.

[81] W. H. McConnell notes that the first woman admitted to the Saskatchewan Bar was Mary Cathcart on 18 April 1917. Margaret I. Burgess was next, on 13 April 1918. The first woman to be admitted to Bar with an LL.B. was Elsie Hall on 20 May 1922, *Prairie Justice* (Calgary: Burroughs and Company, 1980), 32.

[82] "Margaret I. Burgess," *The Morning Leader*, 15 August 1925, 19.

Burgess presided as juvenile court judge between 1935 and 1938, during which time she largely refrained from commenting publicly on her role. News coverage of her involvement in the Quota Club, often appearing on the Women's Page, was much more extensive than information regarding her court role. Based on my thorough review of Prairie newspapers between 1934 and 1939, the only published comment she made about juvenile crime was that she believed Depression conditions were responsible for an increase in juvenile crime.[83] She commented that youth "want money for good times, and when their parents are not able to give them any they often get into trouble in their endeavor to get both money and a good time."[84]

Her tenure as a juvenile court judge ended abruptly at the end of 1938, due to budget cuts and opposition to her manner in court. By 1936, Burgess' juvenile court, based on numbers of litigants appearing within her court, seemed to be falling out of use. Although city police investigated 440 complaints involving juveniles, only fifty-seven appeared in Burgess' juvenile court. Police Chief Martin Bruton saw eighty-seven youths in his court, and 206 youths were taken directly home to their parents by police officers.[85] One probation officer serving in her court, John Kerr, did not like Burgess' approach. In 1939, John Kerr wrote to MacLachlan:

> You know the old adage about never missing the water until the well goes dry – well it so happened after you left. The work, "the well of joy and good fellowship dried up" and bit by bit the slipping process started in, until "oh well" it just had to happen, a temporary close up. I hate to talk of my fellow workers disparagingly – preferring rather to take the long and Christian view, but there are times when we must "speak" out irrespective of party and I guess it is hardly necessary for me to state here my views respecting the outgone Judge, beyond saying that her views upon the work were out of harmony with many good and intelligent workers.[86]

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[83] "Judge Fearful of Vocabulary on Highways," *Winnipeg Free Press*, 21 June 1937, 3.
[84] Ibid.
[85] "Parents Warned for Youngsters," *The Leader-Post*, 14 January 1937, 3.
[86] Letter from John Kerr to MacLachlan, 3 March 1939, MacLachlan Scrapbooks, Vol. 3.

It is impossible to determine whether Kerr's disapproval concerned Burgess' style of adjudication, personality, or other factors. Declining numbers of litigants within her court, her failure to engage the public with news and developments about the juvenile court – so very unlike MacLachlan – and Kerr's disapproval all suggest that MacLachlan's personality and courtroom style were sorely missed in Burgess' court.

Attorney General Thomas Clayton Davis failed to offer any public explanation regarding Burgess' retirement until the Saskatchewan Women's Liberal Association demanded "that the public be given the reason for this 'backward step.'"[87] Davis explained vaguely that Burgess' professional skills, as a "duly qualified solicitor," were put to better use by "the local Government board, in connection with municipal adjustments being made by that board."[88] He noted that her juvenile court work was taken up by "the provincial police magistrates, whose numbers have been materially increased since her appointment."[89] What is clear is that upon her sudden judicial retirement, Burgess was transferred to "some other work connected with the Debt Adjustment Board at a considerably reduced salary."[90] She continued to work in various government offices until she retired due to poor health in 1943.[91] Upon Burgess' termination, the Regina office of juvenile court judge was left vacant, and would not re-open until it was assigned to chief probation officer Christopher Buckle in 1951.[92] Fifty outstanding records were

[87] "Women Want Reason," *The Leader Post*, 4 January 1939, 1.
[88] Ibid.
[89] Ibid.
[90] Letter from John Kerr to MacLachlan, 3 March 1939, MacLachlan Scrapbooks, Vol. 3.
[91] Mentiplay, *A Century of Integrity*, 43; Burgess died in Regina on 31 January 1958 at age 72, "Miss Margaret I. Burgess," *Saskatchewan Bar Review*, 23 (1958), 5.
[92] "A Judge for Juveniles," 14 December 1951, MacLachlan Scrapbooks, Vol. 3. By 1950 in Saskatchewan the chief probation officers (one for boys and one for girls) were the ex officio judge of the juvenile court, *Canada Year Book* (Ottawa: Dominion Board of Statistics, 1954), 53.

transferred to the police magistrate's office, and the remaining records were sent to the Bureau of Child Protection.[93]

Organized women in Saskatchewan were much more vocal than their Alberta counterparts regarding strictures placed on juvenile court judges. Upon hearing that the provincial government planned to eradicate the juvenile court in 1938, the Women Voters' League condemned this decision as a backward step for the province of Saskatchewan.[94] The Women Voters' League noted that while the juvenile courts themselves were not abolished, the position of a separate and remunerated juvenile court judge was.[95] In a deliberate nod to the incremental developments in science and professionalism that characterized this era, the Women Voters' League stated that "there should be juvenile courts with trained juvenile court judges, and that such courts should receive the advice of a child welfare clinic composed of a medical officer, a psychiatrist, a psychologist and a social worker."[96] The Women Voters' League recognized the emergence of expert, scientific knowledge, and indicated a need to incorporate this type of knowledge into the juvenile courts.

After the abolishment of the office of juvenile court judge, the Saskatchewan Provincial Council of Women took up the call to re-establish and strengthen the Saskatchewan juvenile courts under the rubric of child welfare. The Regina Local Council of Women advanced three requests. They demanded that administration of the Child Welfare Act be transferred to the Attorney General from the Minister of Highways and Transportation; that two women juvenile court judges be appointed, one in Regina and one in Saskatoon; and lastly, that an industrial

[93] Letter from John Kerr to MacLachlan, 3 March 1939, MacLachlan Scrapbooks, Vol. 3. 53.
[94] "Juvenile Court Change Termed Backward Step," no date, MacLachlan Scrapbooks, Vol. 3.
[95] Ibid.
[96] Ibid.

school for girls in Saskatchewan be established.[97] Their request went unheeded long past the end of the Depression years. It was not until the end of the 1950s, along with a revised model of a family court that women judges invested in family matters would re-appear.

In Alberta, there was very little public reaction or outrage to Murphy and Jamieson's retirements. The *Bench and Bar* publication for the Alberta Law Society reported simply that the abolishment of the office of women's police court magistrate was "necessitated by the Government's economy program, in which every possible source of expenditure" was being carefully considered by the Honourable John F. Lymburn, the Attorney General of Alberta.[98] Louis Knafla's argument – that Alberta police courts "experienced a crisis in legitimation" most evident between 1928 and 1932 that undermined the authority of stipendiary magistrates, also partly explains the public's subdued response to the superannuation of some police magistrates.[99] Knafla argues that the police courts were responding to social shifts regarding which types of crimes warranted prosecution.[100] Depression conditions served to soften public perception of some types of crime: for example, in June 1931 Justice Horace Harvey overturned magistrate Davidson's decision. Davidson had sentenced a youth to six months in jail for stealing three pies.[101] Court returns from Jamieson's court support this shift. In June 1933, Jamieson issued only cautions for non-attendance at school whereas in previous years her court function extended to magisterial duties and included various charges, including criminal offences.[102] At the same

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[97] "Two Women Juvenile Court Judges, Girls Industrial School and Transfer of Child Welfare L.C.W. Requests," February 1939, MacLachlan Scrapbooks, Vol. 3.
[98] Alice Jamieson Clippings File, *Bench and Bar,* 2 January 1932, n. p., GA.
[99] Louis A. Knafla and Jonathon Swainger, eds. *Laws and Societies in the Canadian Prairies West, 1670 – 1940* (Vancouver: UBC Press, 2005), 28.
[100] Knafla and Swainger, eds., *Laws and Societies in the Canadian Prairies West,* 28.
[101] "Local Jottings," *The Strathmore Standard,* 17 June 1931, 1.
[102] Alice Jamieson, "Return by Justice of the Peace to June 30th, 1933," Justices of the Peace Alpha, 79.105, File 931, PAA. Jamieson's court returns for the 1920s are discussed in chapter two.

time, the fact that Jamieson continued to serve in a voluntary judicial basis after her superannuation suggests that the work itself was very important to her.

The Depression years imposed fiscal restraints and court restructuring implicitly reliant upon the entrenchment of a male breadwinner ideology. Women lost their right to earn wages altogether, as was the experience for Emily Murphy, Alice Jamieson, and Mary Ann Harvey in Alberta. In Saskatchewan, Margaret Burgess was retired entirely from her judicial office, and was placed in a government job at a reduced salary. At the same time, scientific and psychological expertise encouraged a shift towards professionalism and opened up new, supportive roles for women in relation to the juvenile court. Even after their retirement from paid labour, however, women continued to volunteer with various organizations, and as increasing numbers of women received university education, some of them chose to share their legal expertise in volunteer organizations.

Volunteer Reformers

Women legal professionals continued to gain knowledge about national and international legal and social reform initiatives by participating in various political, professional, and woman-led organizations. For some women, the voluntary sector provided a space where they could hone their professional skills without intruding on privileged male professional space, or challenging wage-earning norms. This section explores women's volunteer involvement to explain some of the ways professionalism intersected with volunteer endeavours before the 1950s. Women's international activism and lobbying, in particular, represented both a continuation of middle-class women's work within the voluntary sector and the advent of increased professionalism, and

complicates historiography that explains the disappearance of women magistrates and judges as broadly tied to the anticlimax of an aging maternal reform movement.[103]

After her retirement in 1935, MacLachlan was elected as councillor of the International Association of Judges of juvenile courts.[104] This organization was originally founded in Paris in 1928, had its first headquarters in Brussels, and held its founding congress in 1930.[105] The purpose of the organization was to serve as a forum for juvenile court judges and to connect children's magistrates working in different countries to promote juvenile court development, to study child welfare legislation to improve national institutions, and to discuss and develop remedies to prevent juvenile delinquency.[106] MacLachlan's involvement with this organization was representative of women's increased involvement with international and transnational organizations during this era.

International conventions and connections provided women with opportunities to meet women from other countries to compare women's legal rights and to learn about strategies that might promote their own quest for equality at home. A number of well-known Canadian women extended their professional reform pursuits overseas during this era. Mary McGeachy worked as Secretariat of the League of Nations in the 1930s and later became president of the International Council of Women.[107] Charlotte Whitton engaged in a cooperative venture with the Americans in

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[103] Carol Miller argues that domestic feminism disappeared during this era to be supplanted by women's equality seeking feminist activities on the international scene, "Geneva – the key to equality: inter-war feminists and the League of Nations," *Women's History Review*, 3:2, (1994), 219 – 245.
[104] "Regina Lady Honored at Conference," *Regina Leader*, 14 December 1935, MacLachlan Scrapbooks, Vol. 3; this organization seemingly was also called the "International Association of Children's Court Judges, "International Association of Children's Court Judges," *Juvenile and Family Court Journal*, 4,4 (November 1953), 22 – 23.
[105] Ibid., 22.
[106] Ibid.
[107] Mary Kinnear, *Woman of the World: Mary McGeachy and International Cooperation* (Toronto: University of Toronto Press, 2004).

international child welfare work.[108] In Whitton's case, her cross-border collaboration with U. S. women reformers helped to legitimize and define the parameters of professional social work.[109] By the 1930s and 1940s, however, historian Shirley Tillotson argues that women social workers lost authority as the welfare state developed, signaling a transition away from a feminized model of social work towards one of greater professionalization, and thus stronger roles for male practitioners in administration.[110]

Divisions between some women volunteers and their professional counterparts widened during this era, but it is too simple to argue that professional developments replaced maternal voluntary strategies. During the interwar period, according to Catherine Gidney, "a form of professional women's feminism," that utilized the languages of maternalism and expertise, emerged.[111] Gidney argues that professional women's feminism included women's belief in their special natures, their strong sense of social responsibility, and a sense of their own authority as being drawn from their professional training and positions.[112] Gidney's perspective helps to articulate the subtle transformations within feminism that in her view gradually shifted maternalism to liberal feminism between the 1920s and 1960s.[113]

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[108] Karen Balcom, "A Little Offensive and Defensive Alliance: Professional Networks and International Child Welfare Policy," in *Writing Feminist History: Productive Pasts and New Directions*, ed. Catherine Carstairs and Nancy Janovicek (Vancouver: UBC Press, 2013), 83.
[109] Balcom, *The Traffic in Babies*, 11.
[110] Shirley Tillotson, "Democracy, Dollars, and the Children's Aid Society: The Eclipse of Gwendolyn Lantz," in *Mothers of the Municipality: Women, Work, and Social Policy in Post-1945 Halifax*, eds. Judith Fingard and Janet Guildford (Toronto: University of Toronto Press, 2005), 78 – 83.
[111] Catherine Gidney, "Feminist Ideals and Everyday Life: Professional Women's Feminism at Victoria College, University of Toronto," in *Writing Feminist History: Productive Pasts and New Directions*, ed. Catherine Carstairs and Nancy Janovicek (Vancouver: UBC Press, 2013), 118; Joan Sangster makes a similar argument for a slightly later time period by suggesting that the professionals involved in the were praised for their "diagnostic" role, and the volunteers for their "valuable assistance," but both groups utilized maternal rhetoric to advance reform mandates, "Reforming Women's Reformatories: Elizabeth Fry, Penal Reform, and the State, 1950 – 1970," *Canadian Historical Review* 85, 2 (June 2004), 227 – 252, 1 – 3, doi 10.3138.
[112] Gidney, "Feminist Ideals and Everyday Life," 118.
[113] Ibid., 135.

Newly created professional women's clubs helped develop professional women's feminism. One of these was the internationally based Quota Club. The Quota Club International was incorporated in Buffalo New York on 6 February 1919. Its mandate was focused on promoting the continued education of young women.[114] The first Canadian Quota Club was established in Winnipeg in 1925.[115] It was an exclusive professional and business woman's club, as membership was extended by invitation only to women in business, government service, or the professions.[116] The motto of the Quota Club, "we share," pointed to the Club's social service aim to invest within local communities, a goal common to many women's organizations. The club's initiatives were wide-ranging, and changed over time, including promoting ballet to expand women's cultural views, assisting veterans in the 1940s, and raising money for welfare in the 1950s.[117] Its exclusive professional membership base, and drive "to do things that the men's clubs did," however, marked it as very different from older women's organizations such as the Council of Women.[118] The Regina Quota Club originated in 1935, after Mrs. Elizabeth White, general secretary of Quota Club International, visited Regina and many other Prairie cities between 1935 and 1936 with the intent of establishing local Quota Clubs.[119]

Margaret Burgess was a member of the Regina Quota between the 1930s and 1950s, and held various roles within the organization. She acted as director in 1938, secretary in the mid-

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[114] http://www.quotacanada.org/quota/history (accessed 20 June 2014); Amy Von Heyking, "Red Deer Women and the Roots of Feminism," *Alberta History*, 42: 1 (1994), 15.
[115] Jean Bannerman, *Leading Ladies: Canada* (Ontario: Mika Publishing Company 1977), 207.
[116] Heyking, "Red Deer Women," 15.
[117] "Joyce Bond heads club," *The Leader-Post*, 24 April 1945, 6; "Quota Club plans aid for welfare," *The Leader-Post*, 30 April 1953, 6.
[118] Heyking, "Red Deer Women," 15.
[119] "Quota Club Entertains at Banquet to Honor Guest from Washington," *The Leader-Post*, 5 December 1935, 8; "Quota Officer Visits Regina," *The Leader-Post*, 11 March 1936, 5.

1940s and was the acting president in 1949.[120] Burgess' involvement with the Quota Club provides insight into her professional and social views. Clearly, her membership within the club was linked to her status as a prominent professional woman. She had been expressly invited to join, and news articles about Quota Club activities mentioned her title of "judge."[121] She was chosen for many important functions within the club, including attending to international representative Mrs. White during her 1935 Weyburn visit, serving tea at meetings, and acting as a visiting delegate at district conventions.[122] Some of the club's activities suggest its efforts to promote the status of women professionals. Burgess was present at a district convention during which attorney Mrs. Landry of the Baton Rouge bar spoke about women's opportunities, and obligation to serve actively within their communities.[123] She was also an active member when local chapters supported resolutions of Quota Club International, which during the 1930s sought world peace, and in 1944 formed a committee called on Discrimination Against Women to encourage local chapters to protect gains made by women during World War II.[124]

At the same time that professional women were making greater inroads into the professions, some professionally educated women lawyers were choosing to become members of traditional women's voluntary organizations thereby promoting the creation of an engaged women's legal culture. Annie Gale (née Mildred A. Hamon) was one such woman lawyer. She took the first full year and part of second year of law at the University of Alberta between 1924

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[120] "Quota Club Holds Election and Supper Meeting," *The Leader-Post*, 12 January 1938, 4; "Quota Club Birthday," *The Leader-Post*, 11 June 1949, 4; "Joyce Bond Heads Club," *The Leader-Post*, 24 April 1945, 5; Burgess was still a member in 1953 see: "Quota Club plans aid for welfare," *The Leader-Post*, 30 April 1953, 6.
[121] "Judge Fearful of Vocabulary on Highways," *Winnipeg Free Press*, 21 June 1937, 3.
[122] "Quota Club Entertains at Banquet to Honor Guest From Washington," *The Leader-Post*, 5 December 1935, 8; "Quota Officer Visits Regina," *The Leader-Post*, 11 March 1936, 5; "Quotarians Have Southern Visitor," *The Leader-Post*, 14 October 1942, 6.
[123] "Quotarians Have Southern Visitor," *The Leader-Post*, 14 October 1942, 6.
[124] Heyking, "Red Deer Women and the Roots of Feminism," 17 - 18.

and 1926, worked for two years in a Vancouver law office between 1927 and 1929, and took "time off" to raise her two children until she was called to the British Columbia bar in 1956. [125] Between 1929 and 1956, she served two terms on the school board and on the city council in Regina. She also served on the hospital board, was a member of the Victorian Order of Nurses, was convenor of the laws committees for the provinces of Saskatchewan and British Columbia, and served on local, provincial, and national councils of the YWCA. She stated that she found her "legal training very useful" in all of these areas.[126]

In Calgary, University of Alberta law graduate Ruth Peacock Gorman was another professional lawyer who chose to volunteer. Her primary volunteer role was with the Calgary Local Council of Women (CLCW) as the convenor of the laws committee. [127] Gorman graduated from the University of Alberta first with a BA in 1937, followed by an LL.B. in 1939.[128] After she finished articles with her father's law firm, she followed in her mother's footsteps at the CLCW. She held her position with the CLCW, in which she actively reviewed numerous Canadian laws that documented legal inequities especially with regard to women and Aboriginal persons, until 1963. Gorman chose to pursue her legal career primarily as a volunteer rather than as a paid practitioner. Her voluntary capacity with the CLCW enabled her to explain laws to the council's non-legally-trained members, while at the same time her professional qualifications enabled her to leverage her legal connections. In 1942, Gorman wrote to Lucien Maynard, the

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[125] Member Files, "Hamon, Mildred A. Gale," Law Society of Alberta fonds, 05-00-01, File 3867, Legal Archives Society of Alberta; Cameron Harvey, "Women in the Law Research Materials – Questionnaires," 1970, Western Legal Judicial History Collection, Cameron Harvey collection, Q26432, box 31, respondent 241 ("Mrs. Henry Gale"), Archives of Manitoba.
[126] Ibid.
[127] Ruth Gorman, *Behind the Man: John Laurie, Ruth Gorman, and the Indian Vote in Canada.* ed. Frits Pannekoek. (Calgary: University of Calgary Press, 2007), xxiii, xxvi.
[128] Gorman, Ruth Peacock married John C. Gorman, one of her classmates from law school shortly after she began practicing law at her father's firm, *Behind the Man,* 109.

Alberta Minister of Municipal Affairs, recommending changes to the Alberta Dower Act. At issue was the court's narrow interpretation of section three of the Dower Act which required a wife's written consent to any sale of the homestead.[129] According to Gorman, the courts had narrowly interpreted this wording, to make it impossible for a widow to "set aside any agreement for sale which the husband may have made, nor has she a right to possession, or to the rents or profits of the homestead which may have been disposed of without her written consent."[130] Based on Gorman's analysis, the CLCW wanted the statute amended to recognize the broad extent of women's labour in acquiring and maintaining the homestead in the first place, and to avoid the situation whereby a surviving wife lost all interest in the homestead because of some action on the part of her husband.

Gorman's work on dower legislation echoed a decades-long quest advanced by western women involved in the voluntary-sector to secure greater rights in marital property.[131] This key reform objective had not been forgotten during this transitional era. Further, Gorman chose to write to Maynard not because he was the minister responsible for the Dower Act, but because, as she wrote: "I realize that this does not come under your Department, but I felt, being a lawyer, you would understand and be in a very good position to help us in this matter."[132] Gorman drew upon her professional qualifications and her sense of affiliation with a legal peer to advance a reform objective for the CLCW because it bolstered her voluntary efforts to achieve legal reform. Gorman was representative of the transition between the polarities of professional women and

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[129] Letter from Gorman to Lucien Maynard, 26 January 1942, 1, Calgary Local Council of Women fonds, M5841, file 82, GA.
[130] Ibid., 2.
[131] Catherine Cavanaugh, "The Limitations of the Pioneering Partnership: The Alberta Campaign for Homestead Dower, 1909 – 25," *Canadian Historical Review* 74: 2 (1993), 198 - 199.
[132] Letter from Gorman to Lucien Maynard, 26 January 1942, 2. Calgary Local Council of Women fonds, M5841, file 82, GA.

volunteer women.[133] As such she demonstrates how characteristics of both the voluntary and professional sector could overlap and influence women's life choices during this time whether they were engaged in voluntary activities, professional endeavours, or both.

Becoming Professionals: Law School and Beyond

Reminiscing about her law school days and early career, Marjorie Bowker stated that between 1921, when the University of Alberta law school first opened, and the end of World War II there was, on average, one woman law student per year.[134] From this small number, Bowker recollected that "few of the women who took law in those years actually practiced. Why they took law, well that would be for reflection."[135] She explained her personal motivation for entering law school was based on her success at school as she received top grades during all her school years, her love of public speaking, and her supportive parents – especially her mother who had received a postsecondary education in the late-nineteenth century.[136] She insisted that she never experienced any form of gender discrimination as a law student, as an articling student at the prominent firm of Milner Steer, or, even many years later, after her 1966 appointment as judge of the Edmonton juvenile and family court.[137] In common with her 1930s contemporaries, Bowker

[133] Balcom, also discusses the relationship between professional and voluntary women in the context of Charlotte Whitton's involvement in international child welfare work. Balcom argues that professional women social workers, including Whitton and Katherine Lenroot, privileged professionalism over their allegiances to traditional women's reform organizations and thus characterizes these women as transitional women, "A Little Offensive and Defensive Alliance," 83, 82.
[134] Interview transcript with Marjorie Montgomery Bowker by Ken Tingley, 2 June 2000, 9, Edmonton Bench and Bar Oral History Project, 2003 – 004, Legal Archives Society of Alberta. (hereafter "Bowker Interview with Tingley Transcript.")
[135] Ibid.
[136] Ibid.
[137] Bowker was authorized to act as judge under Alberta laws, but it was the convention of the legal profession and courts at this time to name the juvenile and family courts according to the city in which they operated. This is explained further in chapter four.

explained she was a legal professional – the implicit assumption being that women lawyers became acculturated in a legal "brotherhood."

Here I situate Bowker's perception that "few of the women who took law actually practiced," within the context of Depression years, using insights from this chapter's discussions about the privileging of a male breadwinner wage, and shifts in maternalism which encouraged women to develop policies in organizational contexts, but discouraged married women's participation as wage earners. What did what it meant to be a woman law student and legal professional during the Depression and Interwar years when law schools newly ensconced within Prairie universities trained male and female legal "gentlemen?"[138] Using interviews, statistical evidence, and scholarly literature I examine similarities and differences between legal education and practice in each of the Prairie Provinces, and suggest some ways in which the Prairies followed or differed from Eastern Canadian precedents. I argue that women lawyers attempted to fit into, rather than challenge, the law's gentlemanly code, and that their small numbers made them unthreatening to the status quo. Finally, the Prairie women judges discussed in this dissertation nuance historiographical themes about the class and social background of university students during the 1930s.

Creating legal professionals was tied to cultural assumptions about education, gender, race, and class. Law, like other professions including social work, medicine, and the ministry, "relied on the ideal that a 'professional gentleman' possessed cultural and social advantages that

[138] The argument that legal education and professional practice is gendered male, or based on male cultural assumptions and language is well-established in American and Canadian historical, legal, and cultural scholarship spanning a broad time period between the late nineteenth century and the 1990s. See: Lani Guinier, Michelle Fine, and Jane Balin, *Becoming Gentlemen: Women, Law School, and Institutional Change* (Boston: Beacon Press, 1997), 85; Mossman, Mary Jane. *The First Women Lawyers: A Comparative Study of Gender, Law and the Legal Profession* (Oxford: Hart Publishing, 2006), 6; Virginia Drachman, *Sisters in Law: Women Lawyers in Modern American History* (Cambridge: Harvard University Press, 1998), 18; R.D. Gidney and W.P.J. Millar, *Professional Gentlemen: The Professions in Nineteenth-Century Ontario* (Toronto: University of Toronto Press, 1994), 239.

could only be acquired by a 'classical' or 'liberal' education."[139] Sarah Burke argues that professionalization in social work eschewed voluntary sector attributes associated with vocational labour while emphasizing the ephemeral, moral, characteristics associated with higher learning. The former vocational traits were attributed to women, while the latter academic qualities were gendered male.[140] Burke argues that by the 1920s the profession of social work came to be dominated by women even though educational foundations at the University of Toronto favoured men.[141] Further, the goal of university-level education was not only to teach legal principles and create gentlemen, but was also to reinforce visions of Canada as a great imperial nation based on British values, and "excluding most so-called 'ethnic' Canadians as well as British Canadians of lower class origins and probably women."[142] According to legal scholar Dale Drawn, creating lawyers and judges involved formal and informal processes of acculturation. He argues: "the practice of law [was] about socializing minds, a process abetted by a culture of fraternity evident in common membership."[143] Brawn states that before 1920 this sense of fraternity was fostered by shared membership in churches, and that between 1920 and 1950 this sense of belonging was facilitated by common membership in select clubs.[144] Women legal practitioners were also, to an extent, acculturated into the legal profession, but their membership in clubs for women lawyers and in other sex-segregated organizations reveals that their participation within the legal fraternity was limited. Many cities hosted women-only lawyer clubs, including Calgary and

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[139] Sarah Burke, *Seeking the Highest Good: Social Service and Gender at the University of Toronto, 1888 – 1937* (Toronto: University of Toronto Press, 1996), 78.
[140] Ibid., 7, 78.
[141] Ibid.
[142] W. Wesley Pue, "Common Law Legal Education in Canada's Age of Light, Soap and Water," *Manitoba Law Journal* 23 (1995), 682 – 683.
[143] Roland Dale Brawn, "Paths to the Bench: Judicial Appointments in Manitoba, 1872 – 1950" (D. Jurisprudence, York University, 2003), 2.
[144] Brawn, "Paths to the Bench," 65.

Winnipeg. Mary Wawrykow, along with sometime member Nellie Sanders and Isabel Hunt were all members of the Winnipeg Portia Club – which restricted membership to women lawyers.[145]

Women's experience of legal education and professionalism in Alberta, Saskatchewan, and Manitoba reflected local cultural and geographic circumstances as well as national influences. Some Prairie themes parallel Ontario developments, such as the transition from practical training of lawyers based on between three and five years of articling to the development of academic three year LL.B. programs followed by one year articles.[146] Saskatchewan lawyer Elsie Hall recalled:

> Our law lectures were given morning and evening. The morning lecture started half an hour before normal office hours and continued for one hour (ie. half an hour after the offices had opened) and we went straight to our offices. In the afternoon we quit our offices half an hour before normal closing time and went to the evening lecture, which would last for half an hour.[147]

Hall became a lawyer in 1920.

One key difference with Ontario was that Prairie legal education became established later, during the 1910s and 1920s, rather than during the mid-to-late nineteenth century. The 1910s and 1920s marked a critical period during which social reform and morality issues infused higher

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[145] Clipping, "Women Lawyers Choose Mrs. Wawrykow President," March 1955, Wawrykow fonds, MSS 189 Box 1, Folder 1, University of Manitoba Archives and Special Collections.

[146] This is not to imply that this process was either straightforward or progressive. There is considerable dissent among historians and lawyers about this process and the relative merits of practical versus academic training. Bob Gidney emphasizes that those who believed in the merits of an older apprenticeship system contested the development of university legal education " 'Madame How' and 'Lady Why': Learning to Practice in Historical Perspective" in *Learning to Practice: Professional Education in Historical and Contemporary Perspective*, eds. Ruby Heap, Wyn Millar, and Elizabeth Smith (University of Ottawa Press, 2005), 13 – 42. Pue criticizes Whiggish notions of "progress" implied by studies that divorce examination of legal education from larger social and cultural considerations, "Common Law Legal Education," 655.

[147] Letter to Cameron Harvey from Elsie Hall, 3 March 1970, 3, Western Legal Judicial History collection, Cameron Harvey collection, Q-26431, Box 30, File 3, Archives of Manitoba.

learning.[148] Further, during these years lawyers and academics sought to improve and standardize legal education and practice. Before law schools became affiliated with universities in Prairie Canada, the established legal profession was criticized for turning out an excessive number of poorly trained lawyers.[149] Some law practitioners, professors, and even students desired improved education and standardization of provincial qualifying exams. The Prairie university law schools provided reform leadership.

Manitoba played a critical role in reforming legal training and in creating the Canadian Bar Association. Manitoba could date its law school to 1885, and was originally part of the "Osgoode" model of education.[150] In the 1920s, Manitoba became a leading national influence in its establishment of university legal education, owing to the influence of legal professionals, and an innovative curriculum that featured the "Harvard," or case-study approach, rather than singular reliance on lectures.[151] This approach was also adopted by universities in Alberta and Saskatchewan. In 1912, the University of Alberta opened its doors to part-time law students, followed by Wetmore College in Regina and the Saskatoon College of Law in 1913, and by 1914 the University of Manitoba law school.[152] In 1914 Sir James Aiken introduced significant reforms in Canadian common law legal education by establishing the Canadian Bar Association, which would put forward uniform guidelines.[153]

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[148] Pue argues that the 1910 to 1920 time period established new cultural foundations for common law legal education especially in the prairie West where British middle-class traditions combined with social fluidity and American ideas to uniquely shape legal education, "Common Law Legal Education," 661.
[149] See Chunn, "Maternal Feminism," 96; and Peter Sibenik, "Doorkeepers: Legal Education in the Territories and Alberta, 1885 – 1914," *The Dalhousie Law Journal*, 13 (1990), 426.
[150] Sibenik, "Doorkeepers: Legal Education in the Territories and Alberta," 426.
[151] Pue discusses these ideas and developments, "Common Law Legal Education in Canada's Age of Light, Soap and Water," 762.
[152] Kinnear, in 1885 the University of Manitoba set up an optional three-year reading course in law leading to an LL.B. degree, *In Suborbination*, 83,.
[153] Sibenik, "Doorkeepers: Legal Education in the Territories and Alberta, 1885 – 1914," 455, 456; and Pue, "Common Law Legal Education in Canada's Age of Light, Soap and Water," 673, specifically, the CBA

The Prairie Provinces faced challenges in establishing legal education. Hindrances included the large land mass, the inheritance of British, American, and Canadian legal influences, and the practical physical difficulties of legal professionals meeting regularly to discuss legal developments.[154] University legal education was influenced by debates and dissension between proponents of part-time versus full-time education, as well as by conflicts between legal practitioners and academics.[155] Lawyers also disagreed about where legal study should occur. Prominent Calgarians petitioned the legislature for a local university, which resulted in the creation of Calgary College in 1910. Calgary College offered only part-time legal studies and could not confer degrees. By 1920, Calgary College had ceased operations and only full-time legal education was offered at the University of Alberta.[156] A similar situation existed in Saskatchewan. Wetmore Hall opened in Regina on 1 October 1913 with forty-two students in attendance. Because Wetmore Hall turned out lawyers without university degrees it closed in 1922 when university education became mandatory. Legal education continued to be offered at the Saskatoon College of Law.[157]

Even before the provision of university legal education, available records reveal that Prairie women participated in articling arrangements. The first female law student in Alberta was Erella Laurena Leona Alexander of Calgary, who enrolled with the Law Society in 1896.[158] She was articled on 17 January 1896 to George Smith McCarter, was assigned to Hon. J.A. Lougheed

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recommended that: all law students were a minimum of 18 years of age, law students attend law school full time for three years and article afterwards, provincial law schools formally recognize students from other provinces and grant them credit for time already spent in law school, and that there be provincial uniformity in examinations and courses of study.

[154] Pue, "Common Law Legal Education in Canada's Age of Light, Soap and Water," 677.

[155] Peter Sibenik, discusses these ideas in "The Doorkeepers: The Governance of Territorial and Alberta Lawyers, 1885 - 1928," (University of Calgary: MA thesis, 1984), 123, 422.

[156] Sibenik, "Doorkeepers: Legal Education in the Territories and Alberta," 123, 422.

[157] Chris Shirritt, "The Evolution of the Student-at-Law," *Bencher's Digest*, 18, 6 (November 2005), 2.

[158] This was only three years after Clara Brett Martin began her legal studies in Ontario.

on 4 March 1897, was admitted to the Law Society on November 1899, and passed the Intermediate Examination in July of 1900.[159] Alexander did not complete her final examinations, and did not practice as an advocate. A few more women enrolled with the early Alberta Law Society as students, but it was not until 1915, when Lillian Ruby Clements became a member of the Alberta bar, that Alberta finally received its first female lawyer. The first woman admitted to the Saskatchewan bar was Mary Cathcart, in 1917.[160] Even though Manitoba established formal legal education in 1885 when it set up a three-year reading course in law leading to an LL.B. program, the first, unsuccessful, female application for admission did not arrive until 1911.[161] In Manitoba, Melrose Sissons and Winnifred Wilton both applied, and were admitted, to the law school of Manitoba in 1912, and in 1915 both became members of the Manitoba Bar.[162]

Educational and professional developments affected women legal practitioners in complicated, and sometimes contradictory, ways. While the integration of legal learning into universities may have facilitated women's entry into LL.B programs, much in the same way as university studies opened doors for women doctors, powerful law societies could continue to resist women's entry into the legal profession.[163] In Manitoba, the Law Society controlled admission to the legal profession until the early 1960s, by requiring prospective lawyers to secure an articling position before commencing their legal studies.[164] Securing an articling position could be a daunting task for any young person, but especially for women. Because so few

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[159] Sandra Petersson, "Ruby Clements and Early Women of the Alberta Bar," *Canadian Journal of Women and the Law*, 19 (1997), 367.
[160] Petersson, "Ruby Clements and Early Women of the Alberta Bar," 393.
[161] Kinnear, *In Subordination*, 83.
[162] Ibid., 21.
[163] See W.P.J. Millar and R.D. Gidney, "Medettes: Thriving or Just Surviving? Women Students in the Faculty of Medicine, University of Toronto, 1910 – 1950," in *Challenging Professions: Historical and Contemporary Perspectives on Women's Professional Work,* ed. Elizabeth Smyth Sandra Acker, Paula Bourne and Alison Prentice et al. (Toronto: University of Toronto Press, 1999), 216 – 217.
[164] Kinnear, *In Subordination*, 84.

women lawyers practiced, there was no "old girls' network" to facilitate job searching such as existed for young men.[165] Also, firms wanted to hire long-term employees and viewed women as short-term employees who would likely quit upon marriage.[166] Moreover, women already established within law firms likely worked as stenographers rather than as lawyers.

This difficult situation was compounded for married women lawyers during the 1930s. In 1938, Dr. Wallace, principal of Queen's University, argued "that the state cannot be expected to continue educating women in the higher professions only to have them marry and cut themselves off from professional life within a few years."[167] Wallace's criticism was based on his economic assessment that "no student bears more than half the cost of such education, the remainder being contributed by either the state or the university."[168] Thus, the state should not pay to educate women who willingly abandoned the work force. Two Saskatchewan women lawyers, Ruth McGill and Annie Gale, responded to Wallace's criticism. McGill, a single woman, supported her married professional colleagues by arguing that many of them remained connected to their professional pursuits, and "re[paid] their debt to the state with valuable leadership in school and home clubs and social service and welfare organizations."[169] Gale's response emphasized the Depression context and highlighted Wallace's mistaken assumption that married professional women voluntarily gave up their professions. Gale stated:

> at the present time, in Western Canada, it is considered almost criminal for a married woman to be paid a dollar for work done outside her home. Many technically trained women would welcome an opportunity to use their special talents for cash but have not the stamina to face opposition from uneducated people…. We shall be interested to see

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[165] Ibid.
[166] Ibid.
[167] "Criticism of Women Who Drop Their Professions on Marrying Elicits Reverse Side of Matter," *The Leader-Post*, 8 January 1938, 4.
[168] Ibid.
[169] Ibid.

> how many married women Queen's university appoints on its staff in the next 10 years.[170]

Both McGill and Gale objected to Wallace's criticism of educating married women by acknowledging the particular social constraints faced by women professionals, and by indicating that economic motivations were not the sole criteria for university education.

During the 1930s, Canadian university students were of overwhelmingly middle-class, rather than wealthy, origins.[171] Paul Axelrod argues although university records reveal significant statistical variation, in general, university students from "preferred" Anlgo-Celtic backgrounds with professional fathers were overrepresented.[172] Only a small percentage of Canadian youth attended university. Around 3 percent of those between the ages of twenty and twenty-four attended post-secondary schools in Canada during the 1930s. Female students comprised less than one quarter of the student body.[173] An even lower percentage studied law, and fewer still completed all of the requirements set forth by provincial law societies. The Faculty of Law at the University of Alberta had fifty registered students for the 1929-30 school year and sixty-one students for the 1930-31 school year.[174] These numbers included three women, two of whom, Gwendoline Little, LL.B. 1929, and Marion Carnes, LL.B., 1930, earned their LL.B.s during these years, and one other, Mary Robinson, who was called to the bar in September of 1930.[175] In Manitoba, by the end of the 1930s, ten women had obtained their LL.B.s. These included: Lillian Arkin (1931), Nellie Elizabeth McNichol (later Sanders) (1932), Svanhuit Johanneson (1933), Constance St. George Stubbs (1933), Winnifred Anna Yuill

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[170] Ibid.
[171] Paul Axelrod, *Making a Middle Class: Student Life in English Canada During the Thirties* (Montreal: McGill-Queen's University Press, 1990), 24.
[172] Ibid., 25.
[173] Axelrod, *Making a Middle Class*, 21.
[174] "Registration at University is Increasing," *Edmonton Bulletin*, 3 March 1931.
[175] Derived from Edmonton Bar Association Notes provided by Sandra Petersson, author's private file.

(1935), Mary A. Zakus (later Wawrykow) (1934), Margaret E. Watterson (1935), Muriel E. Frith (1936), and Ruth Vogel (1937).[176] In Saskatchewan, Elsie Hall became the first woman to obtain an LL.B., and was admitted to the Law Society on 20 May 1922.[177] Dorothy Elizabeth Greensmith studied law at the University of Saskatchewan and articled with Deputy Attorney General Allan Geddes between 1920 and 1925. She was admitted to the Law Society of Saskatchewan on 25 September 1925.[178] Zella Young signed the Law Society's admission roll on 15 September 1930, and Ruth McGill obtained an LL.B. at the University of Saskatchewan and was admitted to the bar on 12 September 1933.[179]

It is not surprising that there are some discrepancies and inconsistencies between bar admission records, and census records documenting numbers of practicing lawyers because not all women admitted to the bar chose to practice. Records from the Edmonton Bar Association indicate that a total of fourteen women were admitted to the Alberta bar during the 1920s, and nine were admitted during the 1930s. Thirteen new LL.B.s were awarded to the first graduating class of 1924.[180] Census records indicate that in 1921, there were nine women lawyers in Alberta, and four women lawyers in each of Saskatchewan and Manitoba. In 1931, numbers remained unchanged in Saskatchewan and Manitoba while two women lawyers practiced in Alberta. By the end of 1931, only one woman lawyer practiced in Alberta as Mary Robinson was placed on the inactive list on 31 December 1931. Robinson did not undertake legal work again until she acquired law-related work in the Income Tax Department of the federal government

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[176] "Women Barristers, Solicitors and Students of The Law Society of Manitoba," 22 May 1944, 2, Q26431, Box 30, file 3, file 9, Archives of Manitoba.
[177] Mentiplay, *A Century of Integrity*, 42.
[178] Ibid., 43.
[179] Ibid., 42 – 43.
[180] Sibenik states that "by 1926 51 new LL.B.s had been awarded since 1921," "The Doorkeepers," 131.

beginning 12 November 1946.[181] By 1941, eleven women lawyers practiced in Alberta, five in Saskatchewan, and ten in Manitoba.[182]

Across Canada, there were sixty-four women lawyers in 1921, fifty-four in 1931, and 129 in 1941.[183] Male lawyers, by way of contrast numbered 7,209 in 1921, 8,058 in 1931, and 7,920 in 1941.[184] The numbers of women lawyers, in other words, was very small, and their small numbers undoubtedly contributed to their acceptance of the law as a male profession. Yet, some individual's perspectives indicated being female was a disadvantage. At the University of Alberta law school, women students were excluded from the annual law school dinner. Anne Russell recalled that until 1961, women law students attended a separate dinner hosted by Marjorie Bowker.[185] The few women law students who undertook legal studies at any of the three Prairie universities encountered a mixture of receptiveness and hostility to their presence. While some men professed that women were welcome to take up the professions if they "have a mind to," growing numbers of women in universities caused a backlash.[186] Axelrod explains that part of this backlash may be seen in the sudden rise in the number of male-exclusive clubs and societies on campuses upon the admission of greater numbers of women students.[187] Those who discussed their experiences at this time often discounted their feelings of discrimination, but also expressed their understanding of the law as a male prerogative. Elsie Hall, who was the first woman in Saskatchewan to earn an LL.B. in 1920 recollected that "so far as my experience with

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[181] Member files, "Robinson, Mary Ethel," Law Society of Alberta fonds, 05-00-01, File 551, Legal Archives Society of Alberta
[182] *Census of Canada 1921*, vol. 4, table 2; *1931*, vol. 7, table 40; *1941*, vol. 7, table 4.
[183] Kinnear, *In Subordination*, 179.
[184] Ibid.
[185] Anne Russell, "Ladies in Law in the Sixties," n.d., 12, John A.S. McDonald, 2001016, Legal Archives Society of Alberta.
[186] Axelrod, *Making a Middle Class*, 90.
[187] Ibid., 18.

problems pertaining to being the first woman law student at the university is concerned, I don't think I had any that were different from those of the other students. The men accepted me as one of themselves and I reciprocated."[188] Hall seems to have recognized and accepted that the study of law was based on a male professional standard that applied to all of its students. Marjorie Bowker had a similar experience at the University of Alberta. Bowker began her five year Arts and Laws program in 1934. She reminisced that her graduating class of 1939 was very small, only nineteen students, including herself and Ruth Gorman. Bowker insisted that she did not experience any discrimination in law school; rather, the male students "were all like brothers to me."[189]

By the 1920s and 1930s, when women began in earnest to seek admission to provincial law societies and law schools, they encountered a formidable "brotherhood" tradition in legal training. Most of them, however, did not overtly challenge gendered premises; instead, they set out to become lawyers, not women lawyers, whose work would be judged on the basis of their professionalism. Nellie McNichol Sanders was proud to be part of the legal profession, which she called "a very precious brotherhood."[190] Isabel Hunt was relieved that when she was hired by Jules Prudhomme on behalf of the Winnipeg Welfare Department in 1929, "he assured me I was joining as a lawyer, not as a woman lawyer just as a lawyer. I shall always remember him with gratitude."[191] Implicit in Sanders and Hunt's comments is the idea that being a woman lawyer rather than a lawyer might challenge the legal profession's foundations and make it something less worthy. They perceived themselves as legal professionals.

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[188] Letter to Cameron Harvey, 1970, 3, Western Legal Judicial History, Cameron Harvey Collection, Q26431, Box 30, File 3, Archives of Manitoba.
[189] "Bowker Interview with Tingley Transcript," 8.
[190] "Sanders Recording," 31 August 1971, interview by John Thullner, unprocessed record, Legal Judicial History Collection, C2728, A2104, tape 4, side A, Archives of Manitoba.
[191] "Hunt Recording."

The limited evidence suggests that women legal professionals experienced a conflicted relationship within the university environment. One example is Manitoba judge Nellie McNichol Sanders. Sanders went to university during the Great Depression, a difficult time for Canadian universities and registered students.[192] She was born on 30 July 1906 in Westover, Ontario, and attended public school in Fort Macleod, Alberta.[193] She graduated from the University of Manitoba law school in 1932.[194] Before she became a judge, she practiced law, became a registered social worker, and worked in several government agencies.[195] Sanders revealed that she decided to study law because her father wished her to pursue an education at a time when lawyers, in her words were "a dime a dozen."[196] She explained that professional opportunities for women were limited in those days and because she had no interest in social work during her high school days her choice was between law and medicine. She told her interviewer that she chose law because after residing with her uncle who was a doctor she learned that he kept getting called to duty at all hours of the night. She said, "I later found out that lawyers are up the whole night anyway if you want to be successful."[197]

Throughout her experience in law school, Sanders was very aware of the limited number of women students and how that affected her educational experience. In a 1971 interview, Sanders reminisced about some of her experiences as a female law student. She stated matter-of-factly that "I was the only girl in my class, but there were some girls before and after me."[198] When asked by the interviewer whether she could tell him something about her instructors, she

[192] Axelrod, *Making a Middle Class*, 20.
[193] Clipping, "death," Sanders Clippings file, Manitoba Legislative Library.
[194] "First Woman Judge is Named," *Winnipeg Tribune*, 20 April 1957; and personal photo taken at Robson Hall, University of Manitoba 13 July 2012.
[195] Val Werier, "Mrs. Sanders at the Family Court," *Winnipeg Tribune*, 4 February 1982, no page.
[196] "Sanders Recording."
[197] Ibid.
[198] Ibid.

related a few personal experiences with her instructors, who included Justice Hugh Amos Robson, Fred Read, and magistrate Robert Blackwood Graham. Sanders stated in a very neutral manner that she enjoyed Robson's wide-ranging lectures even though his course was based in tax law. She admitted that dean Tallin was prejudiced against women students but stated without further elaboration that she "took him to task." In later years, she recalled that Tallin assisted her after her husband died, by making representations to the law society that she did not have to pay any fees. She also added, almost as an aside, that she suspected one of her lecturers disliked her throughout law school and expressed her relief when she discovered her assumption on this point to have been false when that lecturer presented her with a small gift upon her graduation.[199]

Another example is Mary Wawrykow. Wawrykow's background nuances Axelrod's argument that during the 1930s, the University of Manitoba saw declining enrolments from rural students, that female students generally came from more affluent families than male students, and that quotas restricted the entry of non-preferred applicants including Jews, Ukrainians, French Canadians, and Icelanders.[200] Wawrykow defied each of these characteristics, and was representative of emergent social and cultural shifts which altered the composition of the student body. She was born to Ukrainian parents who had emigrated from the Ukraine in 1911 to take up homestead farming in Wakaw, a farming community in Saskatchewan.[201] Her family was not wealthy. To finance her university education she provided domestic services for a French-Canadian family, L.A. and Anne Farley, in return for room and board.[202] She lived with the Farleys for ten years during which time she learned French. Wawrykow also supplemented her

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[199] Ibid.
[200] Axelrod, *Making a Middle Class*, 22, 29 – 34.
[201] "Judge Mary A. Wawrykow," 2; "Judge Mary A. Wawrykow, Q. C.," 1, Wawrykow fonds, Box 1, Folder 1, University of Manitoba Archives.
[202] Ibid., 3.

income by typing class notes for a second year law student, Nick Mandziuk, who later served as a Conservative Member of Parliament. It was this experience that sparked her interest in law.[203] After graduating from law school she was employed in the Attorney General's Department from 1936 to 1940. After university she applied her Ukrainian and Catholic background in service to her community while maintaining an active law practice. She was appointed a part time judge of the Winnipeg Juvenile and Family Court in 1968.[204]

By the beginning of World War II, a small number of women had become lawyers in the Prairies. In Alberta, four women, in addition to Marjorie Bowker, graduated from law between 1940 and 1945. In Manitoba, six women graduated between 1940 and 1948.[205] Mary Carter was one of only two women to graduate from the University of Saskatchewan law school in 1947.[206] She was admitted to the Saskatchewan bar in 1948, and set up a practice with her husband Roger Carter the following year. She continued to practice until 1953, the year the first of her six children was born.[207]

The war years opened up some opportunities for women to attend law school and to practice as lawyers. Bowker reminisced:

> My memories go back to WWII. As a young lawyer myself at that time – and while my husband was on active service in the Canadian army – I carried on his law practice until the end of the war, in what was then the largest law firm in Edmonton. While these were strained and anxious times for young wives like myself, for me, professionally, they were years of substantial and unexpected advancement. With so many young men away at war, and the resulting shortage of male lawyers, I was presented with opportunities, which I would never have experienced otherwise, at such an early stage in my career. The experience and

[203] Ibid., 1.
[204] Clipping, "Juvenile, Family Court gets a part-time judge," *Winnipeg Tribune*, 31 August 1968, Wawrykow fonds, MSS-189, Box 1, Folder 1, University of Manitoba Archives and Special Collections.
[205] Robson Hall photos, 13 July 2012 author's private collection.
[206] Clipping, "Balancing Act," *Saskatoon Star Phoenix*, n. d., University of Saskatchewan Archives and Special Collections.
[207] Ibid.

> training, which I gained during the war years, were to provide a valuable foundation later, when I was appointed a Judge of the Family and Juvenile Courts of Alberta.[208]

Carter, reflecting on her education during this time period believed that there may have been some advantages for women law and articling students because of small class sizes, as there were only ten or twelve students, two of whom were women, in her graduating year, and because "a lot of the male competition was away in the services…finding an articling position wasn't too difficult."[209]

In contrast to women's experiences in other vocations, the war years did not bring about a sudden increase in the number of women law students or lawyers. When questioned if she thought that more young women entered the legal profession during the war, Bowker stated "not enough of them anyway, if any."[210] Her comments are supported by statistical evidence. In Alberta and Manitoba, the number of practicing women lawyers in 1951 had dropped to half of 1941 levels. Only in Saskatchewan was there an increase as eight women practiced law as of 1951 compared to five in 1941.[211] But the importance of the period was, as Bowker explained, that it afforded some women with unprecedented opportunities that they would later use as lawyers, judges, or in service to their communities.

Conclusion

Between 1939 and 1957 not a single woman judge held court in Prairie Canada, and yet this era established the ideological and professional context for the next cohort of women judges.

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[208] "Career highlights," October 1995, Marjorie Bowker's Records, PR 2000.101, File 4, PAA.
[209] Gail McConnell, "University Women," *The Green and White: The University of Saskatchewan Alumni Association Magazine* (Winter 1975), 7.
[210] Bowker interview with Tingley transcript, 15.
[211] *Census of Canada 1941,* vol. 7; *1951,* vol. 4.

I argued in this chapter that fiscal constraints associated with the Great Depression, court re-structuring, as well as developments within legal education and professionalism operated to retire women as judges while simultaneously expanding possibilities for legally-educated women as lawyers and volunteers. During this era government fiscal re-structuring privileged the needs of male breadwinners. Terminating women judges and magistrates was representative of the Canadian experience as most women magistrates and judges across Canada lost their paid positions. Only one Prairie Canadian woman judge, Alice Jamieson, left evidence that she had not expected to be terminated, and further that she was unhappy about losing her remunerated status. At the same time, however, Jamieson remained willing to work on an unpaid basis as juvenile court judge. Outside Saskatchewan, juvenile courts evolved, incorporating medical and psychological guidance, and making room for women in supportive roles. The fact that juvenile courts continued to exist, and indeed expanded in other jurisdictions to include family matters, strongly suggests that Canadians were still concerned with juvenile delinquency which continued to offer a role for women in the legal profession.

This period demonstrates the significant overlap between professional and voluntary sector ideologies and involvement as women lawyers found ways to use their skills. Professional developments did not simply usurp maternal actors or ideology. Legal and social reform issues of importance to women and children continued to matter during this era. Traditional women's voluntary organizations benefitted from the membership of professionally trained members who sought policy improvements. The next cohort of Prairie Canadian women judges would be appointed to the bench by the late 1950s and early 1960s. Most of them were educated during and at the end of the Great Depression and beginnings of the Second World War as described in this chapter. They were partly the beneficiaries of court restructuring and a growing emphasis on

family matters, which included juveniles. The next chapter explores how and why they were chosen, as representative role-*mothers* for their adjudicative function. Their personal characteristics, based on their status as mothers in addition to their educational and professional attributes qualified them for their positions. Their maternal inclinations legitimated their task – demonstrating an important carry-over from the voluntary tradition and the continued influence of maternal feminism.

Chapter Four: "Prescribing Family Values during the 1950s and 1960s"

"We are dealing with lives… We're the most important court in the country. It's not only the people before us who are affected, but also those they touch in their relationships."[1]
Nellie Sanders, Juvenile and Family Court, Winnipeg, MB.

In Canada, historians often portray the 1950s as a difficult and tenuous time for the thousands of working married women encouraged to leave the workforce by conservative post-war forces.[2] At the same time that most working mothers, with varying degrees of compliance, were exhorted to embrace full-time homemaking, child-rearing, and volunteering, a new cohort of women judges appeared in newly reconfigured Prairie Canadian lower courts. All of them were working mothers who adjudicated primarily, but not exclusively, in juvenile and family court, "the most important court in the country," according to Nellie Sanders, to protect families from rebellious youth and marital discord.[3] The media only rarely alluded to the difficulties of women judges' work, choosing instead to explain these women judges as competent to adjudicate family matters because of their feminine and maternal characteristics. Yet, unlike their predecessors, they held professional qualifications secured by their achievement of LL.B degrees, membership in provincial bar associations, and practical work experience as lawyers. Public accounts of their experiences reflect the ways in which professional and prescriptive ideologies regarding women judges' roles as workers and as mothers complicated their family court roles, and reinforced the feminized boundaries of the family court.

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[1] Val Werier, "Mrs. Sanders at the Family Court, *Winnipeg Tribune*, 4 February 1982, 6.
[2] This theme is explored in Ruth Roach Pierson, "*They're Still Women After All: The Second World War and Canadian Womanhood* (Toronto: McClelland and Stewart, 1986); Joan Sangster, *Transforming Labour: Women and Work in Post-War Canada* (Toronto: University of Toronto Press, 2010); Jennifer Stephen, *Pick One Intelligent Girl: Employability, Domesticity, and the Gendering of Canada's Welfare State, 1939 – 47* (Toronto: University of Toronto Press, 2007).
[3] Werier,"Mrs. Sanders at the Family Court," 6.

I argue that in the context of family stress and rising divorce rates, factors associated with the increased participation of married women in the workforce, family courts attempted to alleviate the negative consequences of family breakdown. This chapter begins by explaining the establishment of provincial family courts within the context of an increasingly bureaucratic state centred on family welfare concerns. The family courts afforded women judges with professional opportunities, and women judges' blend of professional and maternal attributes reflected the needs and goals of the family courts. This argument is reinforced by my examination of women judges' work within the context of postwar employment patterns and prescriptive ideologies regarding women. I argue that the media presented the legal profession as an expanding vocation for women at the same time that it presented women judges within limits of prescribed feminine characteristics. By the late 1950s, women judges were represented as role-mothers, uniquely suited to family court precisely because of their maternal status during years in which the media often criticized working mothers.

Creating Family Courts

Provincial family courts emerged across Canada between the 1930s and 1960s in response to ideological shifts and bureaucratic influences associated with the welfare state. Provincial family courts were created as outgrowths of Domestic Relations Courts (DRCs) and juvenile courts, which as discussed in previous chapters were predicated on maternal reform and the increasing influence of professional experts, especially in social work and psychology.[4] Family

[4] For background on Domestic Relations Courts (or "Tribunals") see Amanda Glasbeek, *Feminized Justice: The Toronto Women's Court, 1913 – 1934 (Vancouver: UBC Press, 2009);* Dorothy Chunn, *From Punishment to Doing Good: Family Court and Socialized Justice in Ontario, 1880 – 1940* (Toronto: University of Toronto Press, 1992);

courts were first established in Cincinnati during World War I, and the first Canadian family court was established in 1934 Ontario.[5] In1938 a Supreme Court reference established both the legitimacy of provincial family courts and determined that individual provinces possessed the power to appoint provincial court judges and magistrates.[6] Family courts were to apportion the negative results of marriage breakdown through remedies including property division, but soon became entangled with jurisdictional issues governing divorce. Then as now, the federal government maintained exclusive jurisdiction over laws relating to the solemnization of marriage and divorce and the provinces retained jurisdiction over laws relating to property. In the provinces of Alberta, Saskatchewan, and Manitoba the English Matrimonial Causes Act of 1857 governed divorce.[7] The English Act contained an explicit gender bias whereby husbands could divorce wives by citing adultery, but wives could divorce husbands only if they could prove adultery plus some other marital fault including, bigamy, sodomy, incest, rape, or cruelty.[8] This

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Mona Gleason, *Normalizing the Ideal: Psychology, Schooling, and the Family in Postwar Canada* (Toronto: University of Toronto Press, 1999).

[5] Chunn, *From Punishment to Doing Good*, 4. H.A. Allard writes that in 1934 Ontario changed its *Juvenile Courts Act* to *Juvenile and Family Courts Act* (Stat. Ont. 1934, c. 25), in 1943 Vancouver created a Family court (Stat. B.C. 1943, c. 13), and Newfoundland created a family court in 1951 (*The Family Courts Act*, Stat. Nfld., 1951, No. 52, "Family Courts in Canada," in *Studies in Canadian Family Law,* ed. D. Mendes da Costa (Toronto: Butterworths, 1972), 4.

[6] W.L. Scott discusses issues regarding provincial power to appoint magistrates and judges. He points out that the Saskatchewan Court of Appeal in *Kazakewich v. Kazakewich* helped establish the principal that provincial legislatures had the power to appoint judges of its Supreme Court and held also that all judges so appointed had full powers under all relevant legislation, *The Juvenile Court in Law,* 3rd ed. (Ottawa: The Canadian Welfare Council, 1941), 3, 43. Louis Knafla and Richard Klumpenhouwer explain that jurisdictional battles between federal and provincial governments helped to re-shape the courts and to highlight the powers of magistrates and judges, *Lords of the Western Bench: A Biographical History of the Supreme and District Courts of Alberta, 1876 – 1990* (Calgary, Alberta: Legal Archives Society of Alberta, 1997), 6.

[7] D. Mendes Da Costa, "Divorce," in *Studies in Canadian Family Law,* ed. D. Mendes da Costa (Toronto: Butterworths, 1972), 363. In 1919, through a decision of the British Privy Council, Manitoba became the only prairie province in which superior court judges could hear divorce matters. Dale and Lee Gibson, *Substantial Justice: Law and Lawyers in Manitoba 1670 – 1970* (Winnipeg: Peguis Publishers, 1972), 237.

[8] Ibid.

double standard was removed by a 1925 amendment to the federal Marriage and Divorce Act, but Canadians could not access uniform divorce legislation until 1968.[9]

Before World War II, most Canadian women's groups and juvenile court judges did not want to extend the jurisdiction of DRC's to grant divorce although this was the established practice in American courts.[10] Winnipeg judge David B. Harkness, who played a leading role in advocating DRC's, succinctly described the DRC's anti-divorce philosophy in 1924. He stated: "the very power to undo the marriage tie might and probably would, insidiously tend to weaken the all-important emphasis on conservation of family matters."[11] Harkness' philosophy to mediate domestic problems and uphold marriages was adopted by Canadian DRC's.[12] Prominent organizations and women's groups reinforced Harkness' focus on the family. The Canadian Council on Child Welfare (CCCW) and Local Councils of Women wanted to protect parent-child relationships to strengthen families and therefore did not support expanding DRC's to privilege conflicts between husbands and wives.[13] They believed that domestic matters were appropriately handled within existing juvenile and magistrate's courts, and had little interest in creating separate family courts until the 1950s.[14] It was only in 1958 that the Local Council of Women endorsed "the establishment of family courts throughout the whole of Canada."[15]

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[9] Da Costa, "Divorce," 364.
[10] James G. Snell, "Courts of Domestic Relations: A Study of Early Twentieth Century Judicial Reform in Canada," *Windsor Yearbook of Access to Justice* 6 (1986), 46; Chunn, *From Punishment to Doing Good*, 69.
[11] D.B. Harkness, also recognized class issues in his court and argued that DRC's should provide unthreatening environments to women, who would not bring domestic issues to the courts "owing to the extreme dislike which respectable women have to appearing in the same court with vagrants, petty criminals of all classes and prostitutes," quoted in Snell, "Courts of Domestic Relations: A Study of Early Twentieth Century Judicial Reform in Canada," *Windsor Yearbook of Access to Justice* 6 (1986), 43, 46.
[12] Snell argues that unlike American DRCs, Canadian DRCs wanted to keep divorce matters out and focus on maintaining marital unions, "Courts of Domestic Relations," 46.
[13] Chunn, *From Punishment to Doing Good*, 70.
[14] Ibid.
[15] Letter, June 1958, CLCW fonds, M-5841, File 59, Glenbow Archives ("GA").

In spite of social and legislative restrictions on divorce, census data indicates that family breakdown was increasing. Divorce rates rose after World War I, peaked at 8,199 in 1947, and reached a postwar low of 5,270 in 1951.[16] The increase in divorce rates, and other indices of family problems, immediately after World War II reflected some wartime backlog, and difficult family reunions, but also indicated other changes within Canadian society.[17] Franca Iacovetta argues that increasing numbers of immigrants challenged dominant Anglo-Celtic middle-class ideals concerning family structure and child rearing.[18] Using the case study of Montreal, Magda Fahrni argues that citizens and volunteer groups forced an expansion of the welfare state by exposing previously private family matters to the public forum and by demanding increased state services and funding, including family allowances, veterans' benefits, and unemployment insurance, based on a new sense of entitlement.[19] These "pressures from below" helped to shape political and legal administrative responses and also encouraged the growth and restructuring of provincial family courts.

During the 1950s and 1960s, family law came to mean spousal law, as marriage and divorce rates changed. During 1959, 6,222 Canadian couples divorced.[20] By 1959, however, the Canadian marriage rate, at 7.6 percent was at its lowest point in over twenty years.[21] Alberta was an exception, and at 8.4 percent had the highest marriage rate in the country in 1959.[22] These numbers demonstrate that Alberta had the highest number of divorces during the period under

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[16] *Canada Year Book,1961* (Ottawa: Dominion Bureau of Statistics, 1961), 231.
[17] Magda Fahrni, *Household Politics: Montreal Families and Postwar Reconstruction* (Toronto: University of Toronto Press, 2005), 72 – 74.
[18] Franca Iacovetta, *Such Hardworking People: Italian Immigrants in Postwar Toronto* (Montreal and Kingston: McGill-Queen's University Press, 1992), chapter four.
[19] Fahrni, *Household Politics*, 22.
[20] *Canada Year Book, 1961*, 231.
[21] Ibid., 229.
[22] Ibid.

review, even after factoring in differences in the marriage rate and population growth. Alberta had the highest marriage rate and largest population of the three Prairie Provinces by the 1951 census.[23] Alberta also had the strongest population increase, of 127, 248 persons during the 1950s and 1960s. Even with this explanation, the divorce rate in Alberta was much higher than in neighbouring Saskatchewan, and this theme is explored in greater detail in chapter six. The primary point here is that through the 1950s and 1960s, the steadily rising divorce rate was one factor that encouraged provinces to develop family courts.

Table 4.1 below indicates the total number of divorces in each Prairie Province as against the Canadian total in five-year intervals between 1920 and 1955:

Divorce Statistics by Province, 1920 – 1955				
Year	**Manitoba**	**Saskatchewan**	**Alberta**	**Canada**
1920	42	20	112	468
1925	79	43	101	550
1930	114	64	151	875
1935	145	68	225	1431
1940	206	125	274	2369
1950	309	280	534	5373
1955	377	237	627	6053

Table 4.1: **Divorce Statistics by Province, 1920 – 1955.** *Source:* developed from *Canada Year Book, 1961*, 231.

[23] In 1931 the population of Alberta, at 731, 605 for the first time outnumbered that of Manitoba, which was 700,139. It was not until 1951 that Alberta, at 939, 501 had more inhabitants than Saskatchewan, at 831, 728. Between 1951 and 1961 Saskatchewan lost population due to an out-migration of 78, 871 persons and the population of Manitoba decreased by 4,545 persons. *Canada Year Book*, 1967, 184.

The numbers above reveal that across Canada the divorce rate increased sharply after World War II, even as the marriage rate, with the exception of Alberta, decreased. Legislative and court machinery developed during the 1960s to respond to increased demand.

At the same time that divorces were increasing, fears surrounding juvenile delinquency inspired government expansion into the field of social welfare and further enlarged the regulatory regime of family courts. Across Canada, provinces introduced changes to children's welfare, mother's allowances, deserted wives and children's maintenance legislation, and old age pensions, partly in an effort to regulate juvenile delinquency, a dominant negative consequence associated with marital breakdown. Within the Prairies, Saskatchewan stood out for its extensive social welfare planning.[24] Further, table 4.2 below suggests that Saskatchewan had the lowest incidences of juvenile crime in the Prairie Provinces.

[24] The 1940s legislative assembly of Saskatchewan debates discuss these themes repeatedly. See also James M. Pitsula, *Let the Family Flourish: A History of the Family Service Bureau of Regina, 1913 – 1982* (Regina: Family Service Bureau of Regina, 1982), 78.

Delinquency Cases by Province, 1945 to 1959						
Year	**Saskatchewan**		**Alberta**		**Manitoba**	
	Male	*Female*	*Male*	*Female*	*Male*	*Female*
1959	171	11	804	107	556	73
1958	76	9	776	130	686	104
1957	26	-	678	88	605	103
1956	41	3	601	114	524	69
1955	54	3	467	68	307	94
1954	56	3	391	37	287	54
1953	48	1	313	44	297	63
1952	75	6	261	56	319	90
1951	61	3	223	19	280	67
1950	76	-	181	23	344	56
1949	30	3	52	9	155	19
1948	168	3	237	9	360	43
1947	165	4	217	20	319	45
1946	203	9	265	12	373	51
1945	184	11	378	27	273	25

Table 4.2: Delinquency Cases by Province, 1945 to 1959. *Source:* developed from *Statistics Canada*, Series Z227-248, Delinquency Cases by sex and province, 1927 to 1969.

Table 4.2 indicates that, as in previous decades, many more boys than girls appeared in court in all three provinces, and that in Saskatchewan offences peaked immediately after World

War II and declined during the 1950s.[25] In Alberta and Manitoba, however, the numbers suggest that there was little change to the number of juvenile delinquents appearing in court. The high number of delinquencies in Alberta may be partially attributed to the fact that it had the largest population. All of these numbers, however, need to be used with caution because of the problems inherent in tabulating juvenile delinquency. Many informal court appearances were simply not recorded, and recording practices varied by province.[26] Moreover, rates of delinquency alone do not adequately explain the relationship between juvenile crime and family court expansion. Historians have demonstrated that by the postwar period, a well-established regulatory regime, associated with the use of expert medical and psychological approaches tied to the development of the welfare state, attempted to curtail youth behaviour.[27] During the 1940s, this regulatory regime expanded, compounded by misplaced and exaggerated fears surrounding youth crime fostered in part by newspaper headlines emphasizing acts of juvenile boys in stealing, drinking liquor, defying curfews, assaulting and harassing people. As in the pre-Depression era, concerns about juvenile girls centred on their actual or assumed sexual conduct.[28]

Manitoba became the first Prairie province to formally institute a family court. In March 1947, Attorney General James McLenaghen convinced the opposition that a juvenile and family court was needed in Manitoba "to restore marital happiness and to keep the family together, thus preventing juvenile delinquency."[29] The court was officially created through an amendment to

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[25] This chart tabulated juvenile "appearances at court" rather than according to specific crimes.
[26] Statistics Canada. Delinquency cases by sex and province, 1927 to 1969. Series Z227-248. http://www.statcan.gc.ca/pub11-516/sectionz/z227 248 eng.csv [accessed 24 April 2012].
[27] Franca Iacovetta, "Gossip, Contest, and Power, in the Making of Suburban Bad Girls, 1945 – 60," *The Canadian Historical Review*, 80:4 (December 1999), 593; Cynthia Comacchio, *The Dominion of Youth: Adolescence and the Making of Modern Canada, 1920 to 1950* (Ontario: Wilfred Laurier University Press, 2006), 30.
[28] Iacovetta, "Gossip, Contest, and Power," 598.
[29] "Attorney-General Recommends Family Court for Winnipeg Area," *Winnipeg Free Press*, 25 March 1947, 1.

the Child Welfare Act.[30] The court, led by judges Melford S. Watson and Emerson Heaney, opened in the library of the Winnipeg juvenile court in October 1947, and was designed to handle domestic disputes from the Greater Winnipeg area.[31] The court's primary function was to protect families by looking after children, but in 1949 Judge Heaney spoke out about the court's function in regard to families without children. Heaney emphasized that "the family court is equally anxious to assist married couples without children, believing that a happy marriage is a condition of good citizenship."[32] Heaney's words reflected the beginnings of a fundamental shift towards privileging spousal rather than child-oriented family relationships triggered by social changes and the increasing divorce rate. Spousal relations would dominate 1970s family courts, but during the late 1950s and 1960s, judges, including women, were appointed to courts premised on protecting children by strengthening family bonds.

During the 1940s and 1950s, organized women's efforts to place women in influential positions provides evidence of an engaged women's movement. During the 1950s, women lawyers provided crucial support and expertise to members of city-based Local Councils of Women. In 1956, lawyer Mildred McMurray wrote to the Provincial Council of Women of Manitoba (PCWM) urging them to support Nellie Sanders as a judicial candidate for the juvenile and family court. McMurray, Sanders' former boss, argued that both Heaney and Watson were well past their retirement years, and she urged Sanders' appointment as part of a larger women's campaign to place qualified women in senior government positions. McMurray emphasized that she had the support of several (unnamed) women's organizations in recommending Sanders. She

[30] Allard, "Family Courts in Canada," 4.
[31] Gibson, *Substantial Justice*, 292. And Stat. Man. 1947, c. 5; "Watson is Associate Judge of Family Court," *Winnipeg Free Press*, 23 September 1947, 10.
[32] Ibid., this article also explains that in past year (1946) the family court saw 882 cases, but this was increasing at time article was published to roughly 100 cases per month.

indicated that Sanders' "training and experience place[d] her in a preferred position for such an appointment."[33] She contrasted Sanders' extensive child welfare expertise with that of Watson and Heaney, whom she characterized as men from "other branches of the Civil Service, neither one of whom had had the slightest contact with social legislation or Juvenile Court experience."[34] The PCWM followed up on McMurray's suggestion, and voted in favour of supporting Sanders at their executive meeting on 15 March 1956. The PCWM promptly wrote to Attorney General M.N. Hryhorczuk calling for Sanders' appointment.[35] In April 1957, Sanders was appointed judge of the Winnipeg Juvenile and Family court.[36]

Sanders' judicial approach was conditioned by her keen interest and professionalism in matters relating to child welfare. It was her concern for family welfare, rather than political or career ambitions that encouraged her to accept a judicial position. She had been approached by Judge Morton, a prominent figure in the Manitoba Liberal Party, some years before her 1957 appointment to the Winnipeg Juvenile and Family Court. She declined Morton's offer of a magistrate position, stating "I didn't think for a minute that this was anything in the cards for me. Certainly I had no ambitions in that direction."[37] One reason for refusing Morton's magisterial position was based on her perception that the court's legal purpose was too punitive. She stated: "I dislike the punitive aspect of our society towards criminals. It seems to me most of them are the result of deprivation and perhaps if there is more emphasis on rehabilitation… I understand

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[33] Letter to Mrs. O.W. Struthers from Mildred McMurray, 9 March 1956, Manitoba Provincial Council of Women, MG 10, C44, Box 1, Folder 10, File 1, Archives of Manitoba.
[34] Ibid.
[35] Letter to Hon. M.N. Hryhorczuk from Mrs. Stanley Milne, 19 March 1956, Manitoba Provincial Council of Women, MG 10, C44, Box 1, Folder 10, File 1; "Executive Meeting," 15 March 1956 (same file), Archives of Manitoba.
[36] Clippings, "First Woman Judge is Named," *Winnipeg Tribune*, 20 April 1957, and "First Woman Judge Sworn As Sons Glow With Pride, *Winnipeg Tribune*, 7 August 1957, Archives of Manitoba.
[37] "Sanders Recording," interview with John Thullner, 31 August 1971, Legal Judicial History Collection, C2728, A2104, tape 4, side A, unprocessed record, Archives of Manitoba. (hereafter "Sanders Recording.")

they have a more rehabilitative program [today], but I might have accepted I don't know."[38] In an interview conducted in 1971, Sanders explained why she accepted the appointment to the family court in 1956:

> Well sometime later I was asked out of the blue if I would accept appointment and I said I would like to think about it. I phoned a friend of mine and said I'd been offered the position what do I do and I asked him what to do and he said take it. I said, "Isn't it a very lonely place? And he said, "Well isn't everybody?" And then I thought about this background [relating to her experience in child welfare] … because I thought I had something to offer I accepted it the second time around. Not that I had sought it.[39]

Sanders repeatedly emphasized that she did not seek out a judicial job; that it was a responsibility conferred upon her. This suggests a feminine strategy in "dissassocia[ting her] achievement from any personal ambition," a common tactic for women professionals of this era.[40] Sanders also tied her acceptance of a judgeship to the type of work done in that office, in which she could apply her extensive child welfare knowledge. She recognized that her background and knowledge were atypical among her colleagues. In describing her expertise she recalled a conference at which she met a judge from the United States. When she told him about her welfare background, "he practically got down on his knees before me and said 'what other judge has this kind of background?'"[41] Sanders reply to the judge's veneration was a modest chuckle.

In Saskatchewan, child welfare concerns influenced developments in the family court, and arose within a left-inspired political framework that signalled increased state involvement in human welfare. Starting in 1944, Tommy Douglas and the Cooperative Commonwealth

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[38] "Sanders Recording."
[39] Ibid.
[40] Mary Kinnear, *In Subordination: Professional Women, 1870 – 1970* (Montreal and Kingston: McGill-Queen's University Press, 1995), 165.
[41] "Sanders Recording."

Federation (CCF) government introduced many changes in the areas of child welfare, and eventually transferred the jurisdiction of juvenile matters, including care of inmates, away from the Department of Public Works to the Department of Social Welfare.[42] This transfer represented a critical thinking shift, as expressed by John Taylor Douglas (Minister of Highways and Public Works) on 12 February 1947. He said: "I realized …the administration of our jails was possibly in the wrong department. It [was] a mistake that was made by the former administration, and apparently in this line of work as in other lines of work, they placed property rights before the rights of human individuals."[43] Douglas' perspective reflected the humanitarian efforts of the government.

Throughout the 1950s, the Saskatchewan government continued to prioritize some limited social welfare measures emphasizing families and children which were slow to acknowledge new approaches. For example, in re-establishing the dormant juvenile court in 1951, the government appointed probation officers, one each for boys and for girls as professional judges.[44] In contrast, the government of Manitoba continued to appoint established lawyers to the post of juvenile court judge, and the Alberta government also began situating legal professionals in the juvenile courts. In 1957, Woodrow S. Lloyd, the Minister of Education, indicated that Saskatchewan spent 56 percent of its budget on health, social welfare, and education while neighbouring Alberta spent 36 percent and Manitoba spent 44 percent to highlight the Saskatchewan government's concern about child welfare.[45] In spite of the Saskatchewan government's

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[42] Pitsula, *Let the Family Flourish*, 78.
[43] Saskatchewan, Legislative Assembly, *Hansard* (12 February 1947), p. 216 (Hon. J.T. Douglas). http://www.legassembly.sk.ca/legislative-business/meetings.
[44] By 1951 in Saskatchewan the chief probation officers (one for boys and one for girls) were the ex officio judge of the juvenile court, *Canada Year Book* 1954, 53.
[45] Saskatchewan, Legislative Assembly, *Hansard* (21 February 1957), p. 18 (Hon. Woodrow S. Lloyd). http://www.legassembly.sk.ca/legislative-business/meetings.

substantial welfare spending, as compared to neighbouring provinces, in March of 1960 Lawyer and Liberal MP Mary Batten argued that the government had not done enough to protect families. Batten stated that the Department of Social Welfare failed to adequately handle family difficulties, most of which originated in marital discord because it was not equipped to dispense advice. She also reminded the house that for three years she had been requesting the government to "study and set up the machinery for a family court."[46] Batten emphasized that such a court could "not only save thousands of dollars of taxpayers' money, but …could save something far more precious, and that is children and family lives."[47]

In the late 1950s, the Saskatchewan government, under the direction of Attorney General Robert A. (Bob) Walker, appointed eight influential lawyers, including Roger Carter, Mary Carter's husband, to undertake a comprehensive review of Saskatchewan court processes to help bring the system up to date. The report concluded Saskatchewan was outgrowing its rural agricultural justice system, delivered by volunteer non-specialist Justices of the Peace and often poorly-trained magistrates, who undertook around 90 percent of all court work.[48] The completed report made several recommendations that influenced the creation of the family court. One recommendation was to expand the jurisdiction of local magistrates to hear certain interlocutory matters with regard to divorce matters.[49] Another recommendation was to give the department of Social Welfare full responsibility, including providing counsel and taking charge of all prosecutions, for all cases under the Deserted Wives and Children's Maintenance Act. Finally,

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[46] Saskatchewan, Legislative Assembly, *Hansard* (8 March 1960), 27 (Mary Batten, Humboldt). http://www.legassembly.sk.ca/legislative-business/meetings.
[47] Ibid.
[48] Saskatchewan, Legislative Assembly, *Hansard* (21 February 1957), 25 (Hon. R.A. Walker, Attorney General). http://www.legassembly.sk.ca/legislative-business/meetings.
[49] Edward Milton Culliton, "Report of the Committee to Study and Review the Judicial System of Saskatchewan," (Regina, Government of Saskatchewan: October 1957), 13.

the commissioners suggested that "the feasibility of providing a system of Family Courts, as they are termed, be investigated."[50]

The court review included consultations with many members of the legal profession, including Jacob Goldenberg, Q.C., Tillie Taylor's father, and inspired him to conduct a separate study of the Saskatchewan magisterial system.[51] During the late 1950s, Goldenberg had served briefly as a part-time magistrate and had become familiar with the inequities in the Saskatchewan court system.[52] Goldenberg reported the magisterial system was "a conveyor-belt system of administering justice," and wished to review the qualifications, salaries and workload, and job security of all magistrates in the Canadian provinces.[53] In legal terms, magistrates' courts were defined as "inferior" courts, but he opposed this hierarchy arguing that "there is nothing inferior in what they have to do."[54] The inferior status of the magistrate courts resulted in a lax appointment process and lower salary.[55] Finally, Goldenberg stated that when lawyers met, they "invariably put our judges at the head table, but our magistrates are seldom honored." He added, "What we do in our profession with regard to the social status of the magistrates is copied by laymen and the result is that the office of magistrate does not hold the position of importance within the community that the functions he performs would entitle him to."[56]

Goldenberg's report indicated that the role or level of court was a pressing concern for some men and women and would have a significant bearing on the status and influence of the

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[50] Ibid., 16.
[51] Jim Peacock, "Bar Group to Make Study of Magisterial System Suggested by Goldenberg," George and Tillie Taylor collection, A-998, file 574, Saskatchewan Archives (Saskatoon).
[52] "Biographical Information," 1957 – 1995," George and Tillie Taylor collection, A-998, File 504, Saskatchewan Archives (Saskatoon).
[53] Peacock, "Bar Group to Make Study of Magisterial System Suggested by Goldenberg."
[54] Ibid.
[55] Ibid.
[56] Ibid.

judges. Lower courts, including police courts, magistrates' courts, juvenile and family courts, and provincial courts, have traditionally held less prestige and status than higher courts. The family court, in particular, is often seen as a "poor relative of the law," and has been relegated to the lowest rung of the judicial hierarchy.[57] It was also the court to which most Prairie women judges were appointed, and this reinforces my argument that opportunities for Prairie women judges were professionally circumscribed at this time.

Goldenberg's report also encouraged the Saskatchewan government to review magistrate's salaries and status. On 22 February 1960, Attorney General Walker reported to the Legislative Assembly that the magistrate's court had increased "very substantially in both size and prestige in this province in the last three years… a magistrate with five years of service … receives a salary approaching $10,000 which is still barely adequate as we have never had a surplus of the very best qualified people for this job."[58] Walker's statement suggests that the Saskatchewan government was attempting to improve the office of magistrate, but it also reinforces the idea that individuals willing to adjudicate in the lower courts did so, like Sanders in Winnipeg, for reasons beside financial gain or career aspirations.

Batten's request for a family court came less than three weeks before Mary Carter's appointment. On 1 April 1960, Carter was appointed as the magistrate in the first family court in Saskatchewan.[59] The court was empowered to hear cases under the JDA, the Child Welfare Act, and The Deserted Wives and Children's Maintenance Act. Attorney General Walker announced Carter's appointment and explained the court's mandate as follows:

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[57] Freda Steel, "The Unified Family Court – Ten Years Later," 24 *Manitoba Law Journal* (1996-1997), 388 note 18.
[58] Saskatchewan, Legislative Assembly, *Hansard* (22 February 1960), p. 58 (Attorney General Walker). http://www.legassembly.sk.ca/legislative-business/meetings.
[59] "Mrs. Mary Carter Named to First 'Family Court,'" *Star-Phoenix*, 11 March 1960, 3.

> The Family Court will be primarily concerned with the maintenance of good family relationships, the welfare of children and the rehabilitation of juvenile offenders… the magistrate, to preside in the Family Court, must not only have a thorough knowledge of law, but must also have an understanding of human relationships, and an active interest in the welfare of children. I feel that Mrs. Carter is extremely well-qualified to fill this position.[60]

In appointing Carter, Walker highlighted her interest in children's welfare and legal knowledge. He did not mention that he had convinced Carter to take the family court role by knocking on her front door to ask her if she would be interested in adjudicating on a part-time basis. Further, Walker told Carter that the salary attached to the position was so low that no man would take it, but thought that Carter, with her skills and background, would make a very suitable choice.[61] Carter accepted Walker's offer, and worked in family court for many years at such a low salary that she barely broke even after paying expenses associated with child care and household help. Walker also did not mention Carter's political affiliations. Like himself, Carter was a CCF (and later NDP) proponent, although Carter, in common with most other magistrates and judges, was very careful to refrain from voting or commenting on politics because of her intent to uphold the judiciary's professional requirements of impartiality and neutrality.[62]

When Roy Wilson, the assistant regional administrator for the provincial welfare department, announced the creation of the Saskatoon Family court in 1961, he argued that the new family court structure simplified the treatment of juvenile offenders because it was administratively expedient because family court ran on certain set dates, and that "it had the

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[60] Ibid.
[61] Martha Caroline Carter Saskatoon, 26 April 2013. Interview by author. (hereafter "Interview with Martha Carter").
[62] Brett Quiring, "Robert A. Walker," in *Saskatchewan Politicians: Lives Past and Present*, Brett Quiring ed. (Saskatchewan: Canadian Plains Research Centre, 2004), 238. Interview with Martha Carter.

advantage of continuity in that it was all taken care of by the same magistrate."[63] By 1961, Carter was hearing an average of eight to ten juvenile cases every month.[64] The linkage between juvenile delinquency and the preservation of the family unit was made explicit from the inception of the Saskatoon family court.

Alberta also created a family court in the context of an expanding state concerned with protecting families. In 1944, the Alberta government transferred administration of the Child Welfare Act, The Children of Unmarried Parents Act, Part 7 of the Domestic Relations Act, and the Juvenile Court Act from the Department of Public Health to the Department of Public Welfare.[65] The Alberta legislature passed an act creating a family court on 1 November 1952, and appointed Athelstan Bisset as the first Judge of the Family Court of the city of Edmonton.[66] In 1957, the legislature created the Calgary family court, followed in 1959 by family courts in Medicine Hat and Lethbridge.[67] In 1961 the legislature established a Red Deer family court.[68] The *Alberta Gazette* names a total of fifteen judicial appointments, most of which were to the Edmonton family court, between 1952 and 1966.[69] In Edmonton, Marjorie Bowker was appointed the first woman judge of the Alberta Family and Juvenile court on 31 May 1966.[70] The year prior to her appointment, Bowker had served on a provincial committee to investigate

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[63] Ibid.
[64] Ibid.
[65] *Alberta Gazette*, 29 April 1944, (40:8), 341.
[66] *Alberta Gazette*, 15 November 1952 (48:21,) 1577- 1578. Bissett was a university graduate and became a member of the Alberta bar in 1916.
[67] *Alberta Gazette*, 1957 (53), Regulation 578/57; 1959, 31 December, Part 1 (55:24).
[68] *Alberta Gazette*, 30 June 1961 (57:12), 1108.
[69] *Alberta Gazette*, 15 March 1954, Part 1, (50:5), 388; 31 October 1958, (54:20,) 1727; 31 December 1959, Part 1, 2246; 30 June 1960 (56:12), 1024; 30 November 1960 (56:22), 1896; 31 January 1961, Part 1 (57:1),107, 270 ; 30 June 1961 (57:12), 1071; 31 January 1963 (59:2), 135; 14 August 1965 (61:15), 1571; 30 November 1965 (61:22), 2373.
[70] *Alberta Gazette*, 15 June 1966 (62:11), 1075.

issues pertaining to adoption and child welfare.[71] Illustrative of her interest in child welfare matters, Bowker had completed an extensive supplementary report, adding 200 pages of her personal findings to the team's fifty-page document.[72] Like Sanders and Carter, expertise with child welfare matters authorized Bowker's ability to undertake a judicial role in the family court. On appointment, Bowker's jurisdiction included the Family Court Act, the Juvenile Court Act (provincial), the JDA (federal) and the Magistrates and Justices Act, which granted her general powers under the Criminal Code of Canada.[73]

In some respects, Bowker presented a much more conservative persona than either Sanders or Carter – befitting the individualistic and conservative Alberta climate.[74] She emphasized that her decision to accept appointment as an Alberta family court judge was made with the strong support of her family, including her husband, Wilbur Bowker, Dean of Law at the University of Alberta, and their three teenagers. She also stated that she would have been happy to remain working in a volunteer capacity indefinitely had she not actively been sought out by the Alberta government.[75] In September 1966, speaking to the Medical Wives Club at a local Edmonton golf club, Bowker explained that "the ultimate success of any juvenile court depends on how fully the home, church and public share in the overall responsibility concerning children and youth."[76] She stated that "the most rewarding endeavours [sic] open to women is volunteer

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[71] "To Guidance Clinic Staff…on Adoptions," 16 February 1966, 1, Bowker family fonds, 93.435, File 14, Provincial Archives of Alberta ("PAA").
[72] Ibid.
[73] "Extracts from Alberta Gazette," 31 May 1966, Bowker family fonds, 93.435, File 25, PAA.
[74] Lois Harder, argues that Alberta had a strongly conservative and individualistic climate in *State of Struggle: Feminism and Politics in Alberta* (Edmonton: the University of Alberta Press, 2003), chapter two.
[75] "82nd Anniversary Celebration Ewha Women's University Seoul, Korea: the role of women in the next half century," 14 – 15, May 1968, Bowker family fonds, 93.435, File 42, PAA.
[76] Clipping, "Young Offenders Discover a Friend," *Edmonton Journal*, 14 September 1966, 17, Bowker family fonds, 93.435, File 25, PAA.

service," and that "mothers are still the anchor of family life."[77] She believed strongly in the rehabilitative purpose of the juvenile court, and revealed that while over 1,800 juveniles were charged in 1965, only 134 were sent to the Bowden institution for boys and the Alberta Institute for Girls.[78] Bowker's concern for children's welfare continued, but as will be discussed in chapter six, by the 1970s, Bowker's primary concern would, like Sanders and Carters, be overshadowed by spousal matters – a key transition within this court during this time period.

Prior to the official creation of family courts in Manitoba, Saskatchewan, and Alberta, legal issues pertaining to juveniles and spousal disagreements were handled by a combination of local juvenile courts, police courts and magistrate's courts. The primary concern of these courts was to preserve Canadian families, which was echoed by the intent of provincial DRC courts and related legislation.[79] By the late 1950s, as women were appointed to new juvenile and family courts they were promoted as role-mothers suitably qualified to uphold nuclear family values. As such, their individual experiences highlighted some of the ways in which maternal representations coincided with prescriptions and realities of women's work, and in particular, the realities of legal professionalism.

Working Women, the Media, and Professional Experiences

After World War II, women's work transformed even in the midst of public disapproval of working women and ambivalent media representations. Women judges became part of this

[77] Ibid.
[78] Ibid.
[79] In common with most other jurisdictions, Alberta magistrates could use provincial domestic relations legislation to provide some limited remedies to unhappy spouses. Significant remedies included awards to restore conjugal rights, and alimony, available upon a decree of judicial separation, to deserted wives. See: "An Act Relating to Domestic Relations," 1927, Chap. 5 (S.A.) assented to April 2, 1927, Part I.

dialogue, provided strong exceptions to the general prescription, as advanced by the media during the late 1950s and 1960s that married middle-class women with children should not work, and were specifically sought out because of their unique blend of maternal attributes and professional qualifications. My argument is that the media publicized the roles and created the prescriptive norms for this era, and therefore cast women judges as role-mothers uniquely qualified to occupy family courtroom benches, and as exemplars of womanly possibility in an era conceived of as expansive for certain women's rights. Further, women judges understood these prescriptions and the realities of women's work, in the context of the legal profession, which is shown by their personal insights.

Women's work patterns changed dramatically in the postwar period because of wartime employment, changes in immigration patterns, and new economic realities. Jennifer Stephen argues that positive wartime work experiences made women unwilling to return to poor work conditions and meagre pay packets.[80] Wage-earning and professional women across Canada and the United States continued to enter the workforce in spite of government disincentives and public criticism.[81] A key transition from pre-war decades was that more married women, including those with young children, sought employment.[82] Eventually, as Joan Sangster argues, this meant that the "contours of women's work shifted to a grudging acceptance of married women's work for pay, but there was deep concern, even hostility, to mothers' attempts to do two

[80] Stephens, *Pick One Intelligent Girl*, 102.
[81] Pierson, *They're Still Women After All*; Joan Sangster, *Transforming Labour*; Stephen, *Pick One Intelligent Girl*. Alice Kessler-Harris argues that greater disincentives and public criticism occurred in the United States where women's labour force participation was higher during the war than in Canada, and a higher percentage of women were let go after the war, *Out to Work: A History of Wage-Earning Women in the United States* (New York: Oxford University Press, 1985), 277.
[82] Sylvia Ostry develops this theme in *The Female Worker in Canada* (Ottawa: Dominion Bureau of Statistics, 1968), 3.

jobs."[83] Between 1959 and 1964, the labour force participation rate of married women increased from 18 percent to 24.2 percent, and by 1965 married women constituted 57.7 percent of the total female labour force.[84] Many of these women, especially those from working-class and immigrant backgrounds, laboured for wages because of different cultural traditions surrounding women's work and because they required the income to provide for their families.[85] Some married middle-class women also worked as economic conditions increasingly required two incomes to support families. Many women found opportunities within an expanding white-collar workforce. Melanie Buddle, in her study on British Columbia women entrepreneurs, found that by 1931 office skills had become important, and continued to grow so that by 1951, the white-collar workforce, including professionals, managers and clerks, comprised the largest occupational sector in Canada.[86]

Married professional women, including teachers, nurses, doctors, and lawyers, also followed these general employment patterns. In Winnipeg, married woman professionals comprised 4 percent of the total workforce between 1931 and 1941; by 1951, married women professionals comprised 20 percent, and by 1961 41 percent.[87] In assessing numbers of women professionals, Mary Kinnear argues that definitions of who and what constituted a professional

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[83] Joan Sangster, *Earning Respect: The Lives of Working Women in Small Town Ontario, 1920 – 1960* (Toronto: University of Toronto Press, 1995), 232.
[84] *Canada Year Book, 1967,* 743.
[85] Sangster argues that a survey conducted by the Federal Women's Bureau concluded in 1958 that 75 percent of working married women did so for economic reasons, *Earning Respect,* 230. Franca Iacovetta explains that amongst Italian immigrants in postwar Toronto, wives were likely their family's secondary breadwinner, *Such Hardworking People,* 73.
[86] Melanie Buddle, *The Business of Women: Marriage, Family, and Entrepreneurship in British Columbia, 1901 – 51* (Vancouver: UBC Press, 2010), 56.
[87] Kinnear, *In Subordination,* 158.

was not only class-based and gendered, but was also subject to shifts in social perceptions of inherent professional qualities and census categorizations.[88]

Prairie women judges, in common with many other women, worked because of a combination of individual factors including but not limited to financial need and keen interest in their work.[89] Unlike some other professional groups, and especially nurses which group had the lowest participation of married women practitioners, all Prairie women judges, except widows Jamieson, Sanders, and Mary Wawrykow were married mothers.[90] Women judges, and lawyers from which they were chosen, represented a very small, and privileged, group, and the evidence indicates that their choice to pursue *judicial* work was not necessarily linked to financial necessity.[91] As discussed earlier in this chapter, Mary Carter's salary was so low that it barely covered her household expenses. Marjorie Bowker's husband was employed as the Dean of the University of Alberta law school. He earned a salary sufficient to support her and their three children as she worked only in volunteer roles between 1945 and 1966.[92]

Bowker, Carter, Sanders and Wawrykow all worked for several years before their judicial appointments. Sanders graduated from law school in 1932, worked as a lawyer and social worker, and worked as a homemaker for a few years. After the death of her accountant husband in 1949, Sanders took a refresher course in law and by 1953 worked for the Children's Aid

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[88] Ibid., Kinnear shows that nursing was a feminized profession from its inception, and that school teachers insisted they belonged to the professions until the 1970s, 8.
[89] Cameron Harvey found that "keen interest" was indicated a total of 129 times as one of the factors influencing Canadian women to enter the legal profession. Being "inspired by someone" was the next closest motivation and appears 50 times. He evaluated a total of 272 questionnaire responses in, "Women in Law in Canada," *Manitoba Law Journal* 4:1 (1970), 15.
[90] Kathryn McPherson indicates 90 percent of nurses trained between 1920 and 1942 were single or self-supporting, *Bedside Matters: The Transformation of Canadian Nursing, 1900 – 1990* (Toronto: University of Toronto Press, 1996), 116.
[91] Sylvia Ostry, *The Female Worker in Canada* (Ottawa: Dominion Bureau of Statistics, 1968), 28.
[92] Ken Tingley interview transcript with Marjorie Bowker, 15, 21 (2 June 2000), Edmonton Bench and Bar Oral History Project, Accession 2003 – 004, Legal Archives Society of Alberta ("LASA") (hereafter "Tingley interview transcript")

Society.[93] In the year of her husband's death, the Bar Association agreed to waive her annual fee, but the records do not support a correlation between her widowed status and judicial appointment eight years later, although she did resume legal work after his death.[94] Wawrykow combined motherhood with her legal career. One year after her 1940 marriage, she was appointed municipal solicitor for the Rural Municipality of Gimli. When her husband and his partners sold their hotel in Gimli in 1942, the Wawrykows moved to Winnipeg. While her children were young, Wawrykow worked out of her home, and eventually her firm grew to include a partner, a law student, and four secretaries.[95] In 1957 the *Winnipeg Tribune* named her Woman of the Year because of her public service. In 1960 her husband Daniel died unexpectedly.[96] She was appointed a Queen's Counsel in 1965 and judge of the Winnipeg juvenile and family court effective 26 August 1968. Her judicial appointment, as magistrate, was on a part-time basis for relief work at the family court, for which she was remunerated $75.00 per diem.[97]

In common with other women workers, the numbers of women lawyers and judges increased between the 1960s and 1970s. Table 4.3 conveys a sense of this increase as more women graduated from law school and entered practice.[98]

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[93] Werier, "Mrs. Sanders at the Family Court;" "First Woman Judge is Named;" "Mrs. Sanders' Family Experience." Will Help in New Judicial Work," *Winnipeg Tribune*, 22 April 1957, 10.
[94] "Sanders Recording."
[95] "Judge Mary A. Wawrykow, Q.C." Wawrykow fonds, MSS 189, Box 1, Folder 1, University of Manitoba Archives.
[96] "Wawrykow Chronicles," Wawrykow fonds, MSS 189, Box 1, Folder 2, University of Manitoba Archives.
[97] Letter dated 27 August 1968, Wawrkow fonds, MSS 189, Box 1, Folder 13, University of Manitoba Archives.
[98] Kinnear, *In Subordination,* 182 demonstrates that in 1961 Manitoba 13, 520 women worked as professionals, and during the same year 606 male lawyers practiced in Manitoba, 179.

Number of Women Lawyers, Prairie Canada, 1941-1971			
Year	**Manitoba**	**Saskatchewan**	**Alberta**
1941	10	5	11
1951	5	8	5
1961	9	8	16
1971	15	25	50

Table 4.3 Women Lawyers, Prairie Canada 1941 – 1971. *Source: Census of Canada 1941*, vol.7, table 4; *1951*, vol.4, table 4, *1961*, vol. 3.1, table 20; *1971*, vol. 3.2, table 2.

Table 4.3 also suggests a broader correlation with trends within women's work. Yet, as Sylvia Ostry noted in her 1968 report on Canadian women's employment trends, middle-class women with professional backgrounds whose husbands earned above-average salaries were afforded with opportunities for "more interesting, pleasant, and remunerative work."[99] She further argued that educated married women were more likely to feel pulled into the labour market, because "the more educated a woman, particularly if she has a university degree, the less satisfied she is likely to be with housework as a full-time occupation."[100] Tillie Taylor certainly agreed. In one interview she stated, "A woman with a satisfying career makes a better mother than a disgruntled woman who is bored to death, tied to a home with nothing more stimulating to think about than the diapers to be washed."[101] Regardless of where or why they worked, some form of paid employment, either temporary or permanent, increasingly became a reality for the majority of working-class and middle-class women in the years following the end of World War II. This did

[99] Ostry, *The Female Worker in Canada*, 28.
[100] Ibid.
[101] Clipping, Idabelle Melville, "Woman Judge Finds Double Career Fine," *Globe & Mail*, 16 July 1964, University Archives and Special Collections, University of Saskatchewan.

not mean, however, that unequal gender roles disappeared, that women were welcomed in all professions, or that the male breadwinner ideal lost its significance.[102]

Newspaper articles presented women judges within the parameters of women's prescribed role. Newspapers are important because before 1968, the year that television became a more meaningful media source to Canadians, newspapers held a wide readership and circulation base.[103] Scholars examining media depictions of working women have concluded that stereotypes of women as feminine and motherly and properly confined to the domestic realm, or as sex objects threatening male breadwinners at the work site, dominated.[104] Further, these representations implied that women were uniformly middle-class, ignoring broad variations in economic, social, and ethnic status.[105] Women were to embrace full-time motherhood, and the media cast those who chose to refute heterosexual marriage and childbearing as "abnormal and selfish."[106] Women's prescribed characteristics, in short, circumscribed the parameters of appropriate work roles for women, and strongly suggested that women's sexual, maternal or domestic role should take precedence over waged work.[107]

Media reports in this period also functioned to connect women judges' appointments to a broadening social and professional environment that offered expanding opportunities to some women. Newspapers presented women magistrates and judges as the "first" to attain judicial appointment. In Alberta, Judge Marjorie Bowker sent in a correction to the media which had incorrectly cast her, instead of Alice Jamieson and Emily Murphy, as that province's first woman

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[102] Sangster, *Transforming Labour*, 7.
[103] Jose E. Igartua, *The Other Quiet Revolution: National Identities in English Canada, 1945 – 1971* (Vancouver: UBC Press, 2006), 6.
[104] Sangster, *Transforming Labour*, 36.
[105] Sangster, *Earning Respect*, 234.
[106] Ibid.
[107] Sangster, *Transforming Labour*, 36.

judge.[108] Winnipeg newspapers correctly announced Sanders as the province's first woman judge and heralded her appointment as a sign "of achievement in women's new expanding world."[109] In Saskatchewan, no mention was made of earlier Regina juvenile court judges Ethel MacLachlan and Margaret Burgess. Instead, on 25 November 1959, the Saskatoon *Star-Phoenix* announced that "Mrs. Tillie Taylor of Saskatoon today became the first woman ever to occupy the position of a provincial magistrate in Saskatchewan," an only partial truth.[110] Curiously, the media made no overt reference to Taylor's Jewish background, a possibly telling omission in an era that often only grudgingly admitted Jews into the professions.[111] The significance of Taylor's Jewish background to her judicial appointment is complicated by political and demographic factors. Notably, in 1947 Saskatchewan was the first Canadian province to pass a human rights code, and the CCF government advocated many programs and services for people which suggested that Saskatchewan had a more humanitarian orientation than other places in Canada. Further, it is significant that only a small Jewish population, of 2,710 individuals inhabited Saskatchewan, as compared to 19,981 in Manitoba and 6,045 in Alberta.[112]

Across Canada, the media reinforced prescriptions regarding the law as a male-dominated profession by suggesting only certain types of legal practice were suitable for women. As Gail

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[108] Letter to Marilyn Mosa, 27 August 1992, Bowker family fonds, Acc. 93.435, file 7, PAA.
[109] "Manitobans Ride Crest of Achievement in Women's New Expanding World," *Winnipeg Tribune*, 31 December 1957, front page.
[110] "Tillie Taylor First Woman Magistrate," *Saskatoon Star-Phoenix*, 25 November 1959, 3.
[111] J.M. Bumstead argues that anti-semitism, especially before WWII, functioned informally to curtail the numbers of Jewish students by restricting them to article only with Jewish firms, *The University of Manitoba: An Illustrated History* (Manitoba: The University of Manitoba Press, 2001), 87 – 88. The significance of Taylor's Jewish background to her judicial appointment is complicated by a number of factors. Notably, Saskatchewan was the first Canadian province to pass a human rights code (1947), and the CCF government advocated many programs and services for people which suggested that Saskatchewan had a more humanitarian orientation than other places in Canada. Further, it is significant that only a small Jewish population, of 2,710 individuals inhabited Saskatchewan, see *Census of Canada, 1961*, indicates that 2,710 Jews lived in Saskatchewan as compared to 19,981 in Manitoba and 6, 045 in Alberta, vol. 1, table 42.
[112] *Census of Canada, 1961*, vol. 1, table 42.

Campbell argues in the case of New Brunswicker Muriel McQueen Fergusson, probate work, presumably because it involved drafting documents in offices, as opposed to boisterous litigation in open courts, was "lady-like."[113] One reporter, citing Regina lawyer Ruth McGill's involvement in estate work alluded to this stereotype by concluding that McGill's estate work provided her the opportunity to "serve the public [and] be of help to the family during a period of emotional distress."[114] In the same interview, McGill expressed her opinion that various opportunities were available to women lawyers in the provincial and federal civil service. She alluded to discrimination issues by stating: "though they advertise for lawyers, women lawyers would be welcomed."[115] McGill's observation reveals an emergent, sometimes grudging acceptance of women solicitors during this time period.

In August 1961, one writer reporting on the small number of female attendees at a recent Canadian Bar Association meeting interviewed several women lawyers to find out why there were not greater numbers of women in legal careers.[116] The writer's questions were premised on purportedly gender neutral legal professional requirements of impartiality, logic, and neutrality, but the women's responses indicate that gender mattered. They agreed that the law "requires an extremely objective point of view," but disagreed about whether or not women were inherently capable of attaining such neutrality.[117] In citing women's prescribed affinity toward children and family, one woman lawyer stated that "feelings count with her. In law, they must not. It's not a

[113] Gail Campbell, "'Are We Going to do the most important things?' Senator Muriel McQueen Fergusson, Feminist Identities, and the Royal Commission on the Status of Women," Acadiensis, XXXVIII, no. 2 (Summer/Autumn 2009), 57.
[114] Ibid.
[115] Sally Lou Ahern, "Employment opportunities varied in field of law," *Leader-Post,* 17 January 1962, 6.
[116] Clipping, "There's Room At the Top In Law, Why Don't More Women Aim At it?" *The Winnipeg Tribune,* 30 August 1961, Manitoba Legislative Library.
[117] Ibid.

question of acquiring objectivity. You either have it, or you don't."[118] Another interviewee stated, "of course women can work into good positions in the legal field. It depends on the personal temperament. If anyone's inclined to get emotionally involved about things in general, then they might become so in legal cases. But I think a woman lawyer can train herself to be just as detached or impersonal in her work as a man."[119]

Themes surrounding women's fit within the legal profession continued in an interview Tillie Taylor provided for the women's page in February of 1963. Taylor stated that she was the only female law student in her graduating class and commented that "ever since its institution, the College of Law at the University of Saskatchewan has had only a very few women law students, and the numbers do not seem to be increasing despite the fact that in most other professions the number of women entrants is rising steadily… there doesn't seem to be any explanation for this."[120] Taylor observed the law was unwelcoming to women. The language used by Taylor and the women lawyers interviewed underlines the conflicted role and experience of women lawyers and judges. Women's entry into the legal profession was deliberately constructed to emphasize women's achievement during this era, to highlight the position of lawyer, magistrate, and the office of family or juvenile court as a positive and expansive role. But women lawyers' responses also suggest that the law necessitated "male" qualities of neutrality and objectivity, which in the media were presented as clashing with women's prescribed qualities. These media representations also highlighted the uniqueness and singularity of women lawyers and judges. By focusing on individuals, and by often picturing them accompanied by children or other family

[118] Ibid.
[119] Ibid.
[120] Clipping, Dulcie Austin, "Lack of Women Law Graduates Surprises Saskatoon Magistrate," *Saskatoon Star-Phoenix*, 13 February 1963, University Archives and Special Collections, University of Saskatchewan.

members, media representations entrenched assumptions regarding the legal workspace as male territory.[121]

Unlike many other women workers, whom Sangster presents as criticized for pursuing employment after marriage and motherhood, women judges' experiences with marriage and maternity helped legitimate their judicial roles.[122] As in the earlier era, when MacLachlan, Jamieson, and Murphy were chosen to adjudicate because of their personal suitability and maternal attributes, Sanders, Carter, Taylor, Wawrykow, and Bowker were also appointed at least partly because of their maternal inclinations.[123] An article in the *Winnipeg Tribune*, concerning Manitoba judge Sanders, sworn in on 1 August 1957, announced that "First Woman Judge Sworn as Sons Glow with Pride."[124] The paper reported that her sons, ages ten and eight, "looked on in solemn pride … as they watched their mother being sworn in as a magistrate of the juvenile court… [and that] Sanders dabbed at a feminine tear after the five minute swearing in ceremony."[125] Sanders had lost her husband Howard in 1949, and her widowed status legitimated her working outside the home. Sanders' employment status, however, did not lessen her primary duty as mother. To make this point, the media emphasized that Sanders' boys were "able to lead a full life though they have a working lawyer for a mother" through the efforts of

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[121] Helen Smith and Pamela Wakewich argue that focus on individual women workers entrenched assumptions about the workplace as male space in "Beauty and the Helldivers: Representing Women's Work and Identities in a Warplant Newspaper," *Labour*, 44, (Fall 1999), 75.
[122] Sangster, *Earning Respect*, 234
[123] I am not essentializing women judges' experience by arguing either that women possess innate maternal characteristics or that maternal characterisics necessarily transferred directly into their courtroom function. Tamara Myers criticises such an essentializing approach as erasing the differences between sentimental and progressive female reformers in *Caught*: *Montreal's Modern Girls and the law, 1869 – 1945* (Toronto: University of Toronto Press, 2006), 98. In American scholarship specifically about women judges this essentialist critique is based on Carol Gilligan's *In A Different Voice: Psychological Theory and Women's Development* (Harvard University Press: 1993), and has encouraged explorations regarding women judges' femininity natures and how they adjudicate.
[124] "First Woman Judge Sworn As Sons Glow With Pride," *Winnipeg Tribune*, 7 August 1957, 15.
[125] Ibid.

their capable housekeeper, Mrs. McFarlane, a motherly nurturing figure.[126] Like Jamieson and Sanders, Mary Wawrykow was widowed prior to being appointed a judge. Her husband Daniel died in 1960 at the age of fifty-four, leaving her with three children between ten and fourteen years.[127] Prior to her judicial appointment one newspaper commented that her juggling "a ringing telephone, all the clients she can handle and three children make [sic] her day a full one."[128] The article insisted "her family comes first, and there is a minimum of interference from her law career to take her away from home… She confines her law practice to a minimum of court cases. Most work pertains to legal transactions and advisory work."[129]

In the late 1950s and early 1960s, newspapers presented women judges as models of appropriate womanhood by linking their competence to adjudicate to their social class and maternal attributes.[130] Thus, Alberta judge Marjorie Bowker, appointed in 1966, was presented as first and foremost a mother and "Mrs." in spite of her legal accomplishments.[131] Mary Wawrykow, named woman of the year in 1955, was saluted less for her legal service to the Winnipeg Ukrainian community, than for her ability to "run her household without help other than the family's."[132] In March 1960, Saskatchewan newspapers presented Saskatoon magistrate Mary Carter, pictured with three of her four children (she would eventually become a mother of

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[126] "Mrs. Sanders' Family Experience Will Help in New Judicial Work."
[127] "Judge Mary A. Wawrykow, Q.C.," Wawrykow fonds, MSS 189, Box 1, Folder 1, University of Manitoba Archives.
[128] Clipping, Steve Melnyk, "She's Got Three Careers Each a Full-time Concern," Wawrykow fonds, Wawrykow fonds, clipping from the Wawrykow Chronicles, Box 1, Folder 2, University of Manitoba Archives.
[129] Melnyk, "She's Got Three Careers Each a Full-time Concern."
[130] Only a few of these articles, especially those concerning Sanders and featured in the *Winnipeg Tribune* appeared on the women's page. The announcement of Sanders' appointment appeared on the front page of the *Winnipeg Tribune* on 20 April 1957. Articles surrounding Carter's appointment appeared on "the Third Page," a section of the *Star-Phoenix* dedicated to important local news.
[131] Ruth Bowen, "Women's Editor," *Edmonton Journal*, 1 June 1966, Bowker family fonds, 93.435, file 25, PAA.
[132] "Winnipeg Women of the Year," Wawrykow fonds, MSS. 189, Box 1, Folder 2, "The Wawrykow Chronicles," University of Manitoba Archives.

six children), as the "New 'Family Magistrate.'"[133] The media highlighted the connection between Carter's maternal status and her suitability for family court because of the necessity of the magistrate to have "an active interest in the welfare of children."[134] In 1968, one journalist contended that it was Carter's parental status, rather than her sex, that honed her social justice instincts.[135] Newspapers rarely mentioned her outstanding academic and legal aptitude, a characteristic she shared with the other women judges included in this study.[136] Carter's judicial peer, Taylor, was likewise presented as a social justice advocate, not because she was the daughter of Jewish immigrant parents and had been involved with various human rights issues since her early teens, but because she was a mother with two teenage daughters. The journalist quoted Taylor as saying, "'When you've got children … you're part of society. You're related to everyone. You have to be concerned about your community.'"[137]

In discussing the suitability of women as working judges, media portrayals tended to downplay the magnitude and significance of adjudication, while simultaneously feminizing women's judicial appointments. For example, it "seemed incongruous to hear [about Sanders' judicial appointment] and be eating angel cake, drinking tea from heirloom Wedgewood china of coal blue and gold, on a table strewn with congratulatory telegrams."[138] The media also suggested that judicial work was less draining for women than legal practice. One writer

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[133] "Mrs. Mary Carter Named To First Family Court," *Star-Phoenix*, 11 March 1960, 3.
[134] Ibid.
[135] Jeannine Locke, "We're Still Putting People in Jail Because They are Poor," *Ottawa Citizen*, 4 December 1968, George and Tillie Taylor collection, A-998, File 317, Saskatchewan Archives (Saskatoon).
[136] "Mrs. Carter Named To First Family Court;" Gail McConnell notes that Carter "had been a brilliant political science student and [had] a choice of scholarships in her final undergraduate year," "University Women," *The Green and White: The University of Saskatchewan Alumni Association Magazine* (Winter 1975), 7; Marjorie Bowker reminisced that she received all of the medals awarded for academic merit in high school, Tingley interview, 3. Bowker received a grade of 87 percent on her bar exam. Letter to Miss Marjorie Montgomery from E.W.S. Kane 10 June 1940, 1, Law Society of Alberta fonds, member files, Bowker, Marjorie Hope, 05-00-01, Vol, 550, File 3938, LASA.
[137] Locke, "We're Still Putting People in Jail."
[138] Clipping, "Mrs. Sanders' Family Experience Will Help in New Judicial Work."

emphasized Sanders' suggestion that court work would not become inappropriately taxing upon her because "the phone is in the hall… 'But it has a long extension and I can lie on the chesterfield while I talk."[139] Similarly, Taylor was quoted as saying:

> Only very occasionally is the RCMP court really overwhelmed with work … but of course, as with all lawyers, the need to continually read and study is always there. Most of it I am able to do in between times at my office, but sometimes my regular visits to Rosthern make me late getting home, but generally I try to leave the evenings free for my family."[140]

Taylor, like other magistrates, regularly travelled 'on circuit' to hold court in smaller towns. She made visits to Rosthern, Saskatchewan, which is located mid-way between Saskatoon and Prince Albert. On occasion, the media acknowledged the difficulties faced by women judges in their capacity as working professionals. One reporter presented Taylor as challenged by her first few months in criminal court. Taylor said "I won't pretend it wasn't hard… it was also a humbling experience. There's so much to the law. When you are younger you think all problems have a solution; it [was] terrible for me to find that there are human problems which are insoluble."[141]

In spite of media efforts to downplay the demands of judicial work, women judges worked very hard, and understood that their gender impacted their work role in various ways. Bowker reminisced that during her early years in family court she asked for a special buzzer to be installed under her desk so that she might quickly summon help if necessary.[142] Bowker worried for her safety in "some contentious cases, especially involving child protection or custody

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[139] Ibid.
[140] Dulcie Austin, "Lack of Women Graduates Surprises Saskatoon Magistrate," *Star-Phoenix*, 13 February 1963.
[141] Clipping, Idabelle Melville, "Woman Judge Finds Double Career Fine," *Globe & Mail*, 16 July 1964 University Archives and Special Collections, University of Saskatchewan.
[142] "Family and Juvenile Court: some reminiscences," 2, Bowker family fonds, 93.435, File 41, PAA.

disputes."[143] Bowker remembered using the buzzer device three times to summon help, and added that she used it because "of my being a woman."[144]

Although Carter was originally employed as a part-time magistrate to provide her time for family matters, during the course of her career she became employed full-time. Her daughter Martha Caroline Carter remembered that her mother Mary Carter worked at least full time hours by the early 1970s.[145] Martha Carter also remembered that her mother occasionally commented that while some of her male judicial colleagues would take time off during the workday to go to the gym or for an extended lunch for "a couple of hours," her mother never took such time off. Instead, she made effective use of all of her office hours.[146] While Carter enjoyed her judicial work, and did not want to go back into private practice after having children, the "daily grind" of adjudicating highly sensitive family matters eventually took a toll on her health. She had trouble sleeping, and near the end of her career she was "heavier than she should have been and had very little energy."[147]

Mary Carter utilized representational tropes of women's prescribed behaviour during a brief film appearance in 1968. Carter, clad in judicial gowns and seated in a courtroom, appeared in a film produced by the Wawanesa Insurance Company. The film was dedicated "to every care-free little girl in Canada, and the grown-ups in her family who must guide her along the road to maturity, wisdom and the responsibility which are her destiny… Endowed with the worthwhile things which education can provide along the way, she will create a happier future for herself, her

[143]Ibid.
[144]Ibid.
[145] Author's interview with Martha Carter, 26 April 2013.
[146] Ibid.
[147] Author's interview with Martha Carter, 26 April 2013.

family, and her country."[148] The film, featuring clips of smiling youngsters water-skiing and horseback riding against backdrops of spectacular waterfront houses, was clear propaganda designed to support upper-middle-class social values and the goal of "strengthening family bonds."[149] Carter's movie role was to provide a social service warning to those who chose to disregard these values. Her courtroom garb reinforced her professional status and maternal message. She queried: "I wonder if parents have any idea of the kinds of unhappy suffering that turn up in courts of law? A mother of seven has been deserted… a young girl is politely charged with 'vagrancy.'"[150] She also urged greater parental involvement by pointing out that "more privileged girls are not exempt [from court] either. Her parents ought not to be content with providing her clothing." Carter, presented as the pinnacle of women's educational and social achievement, was positioned to advance the film's argument that "much more can be done… to help girls get an education."[151] Carter did not make any comments about why she was chosen to appear in the film, or about the statements she made within it. Yet, the messages she conveyed were consistent with her reform perspectives about the connections between poverty and incarceration, and her demonstrated concern about litigants appearing before her in court which is examined in greater detail in chapter five.

Some evidence indicates that women judges understood the prescriptions and realities associated with legal professionalism and the family court. Family court dispensed low justice rather than high justice; it dealt with multitudinous common everyday occurrences, rather than

[148] Film, "The Great Potential," created by Francis J.S. Holmes for the Wawanesa Mutual Insurance Company, 1968, Francis J.S. Holmes fonds, V221, Archives of Manitoba.
[149] Ibid, quoting Mrs. Davie Fulton, representative from the Vanier Institute.
[150] Ibid.
[151] Ibid.

deciding the finer points of law.[152] Commenting on her role in family court, Mary Carter acknowledged that part of the status problem in her court was directly connected to poverty. She pointed out that many family court lawyers were reluctant to take up family court work because the cases were financially unattractive.[153] In this respect, Carter credited the efforts of the department of Social Welfare in attempting partly to rectify this situation by allowing at least $25.00 for legal costs in family court.[154] Carter also suggested that her gender impacted how male legal professionals viewed her work and role. An article to this effect reported her views:

> Mrs. Carter says she is suspect by all the male population of the area. She is sure a story is noised [sic] about places where men gather to the effect that women magistrates are soft when it comes to unmarried mothers; that they are likely to point to almost any man as being the father in such a case. Actually, Mrs. Carter said, she doesn't think she is any more sympathetic than male magistrates would be in similar instances. It is understandable that the woman in the case deserves and receives quite a bit of sympathy.[155]

In arguing that she was sympathetic to unmarried mothers Carter seemed to be challenging a social and legal double standard. Carter recognized that in the era before DNA testing men could even more easily escape the responsibilities of paternity; women, on the other hand, could not escape from maternal demands. At the same time that she vocalized this gendered double-standard, Carter also commented on her professional obligation to adjudicate law in a neutral and objective manner because this is a core requirement of legal professionalism.

Taylor took the concept of judicial neutrality very seriously. When a reporter asked her what she would do if her lawyer husband were to appear before her, Taylor answered: "Maybe

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[152] Glasbeek *Feminized Justice*, 7.
[153] Clipping, *Western Producer*, 19 January 1961, University Archives and Special Collections, University of Saskatchewan.
[154] Ibid.
[155] Ibid.

it's selfish, but I would waive jurisdiction to another magistrate. In such cases the tendency would be to be overly harsh rather than lenient and I feel there is enough involved in deciding a case without that added burden."[156] Three years later, Taylor implemented a personal policy to not hear any cases associated with her husband's law firm after she was accused of improper conduct by Saskatoon lawyer Jeremie Georges Crepeau. According to the media, Crepeau stated that "it was 'common knowledge' amongst members of the legal profession in Saskatoon that Magistrate Tillie Taylor made a practice of consulting with members of her husband's law firm while decisions in cases were still pending."[157] To counteract claims of misconduct and to reinforce her competence, Taylor in following years emphasized the procedural aspects involved in family court.[158] Procedural uniformity highlighted the impact of the court's decision upon families and children, and suggested that all family court magistrates followed similar rules. Emphasising the procedural aspect of adjudicating family law suggests a superficial equality or objectivity among male and women judges as they based their decision making on professional standards.

A handful of suitable middle-class maternal women became acceptable judges. Their professional practice, however, was not, at least in the media's portrayal, to overshadow their domestic or maternal responsibilities. Instead, these women's judicial service was portrayed as a vocation in line with women's prescribed qualities and as a way of maintaining, and even strengthening existing, nuclear-family social structures. This does not mean that working women, including women judges, either completely adopted, or completely disregarded,

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[156] Clipping, "Pleased With Job in Court," *Star-Phoenix*, 26 July 1960, University Archives and Special Collections, University of Saskatchewan.
[157] "Common Knowledge Magistrate Often Consulted Husband's Law Firm While Cases Before court," *Saskatoon Star-Phoenix*, 29 April 1963, 2.
[158] Untitled document, 15 October 1973, George and Tillie Taylor collection, A-998, file 320, Archives of Saskatchewan.

prescribed behavioral standards. Even during the 1950s, conventionally presented as the height of women's domesticity, some challenged prescriptive literature's stance regarding prescribed womanly behaviour.[159] As well, throughout the 1950s and 1960s increasing dissonance grew between prescriptive ideals of womanly behaviour and the reality of women's experience.[160]

Conclusion

This chapter has argued that women judges used, and were influenced by, prescriptive and professional ideologies to present themselves as suitable adjudicators of provincial family courts during the Cold War era. As elsewhere in Canada, family courts were created and constructed as feminized tribunals because of women's status within the legal profession and because of women's and the courts' association with matters relating to women and children. Part of this development reflected an ideological continuity with earlier juvenile courts that, as I have shown in earlier chapters, utilized maternal, sometimes called "familial" values to redeem youthful offenders. This ideological foundation gradually shifted towards privileging spousal over parent-child relationships as the divorce rate increased, a theme investigated in much more detail in chapter six. In earlier eras, juvenile courts and DRC's, assisted by legislative and social developments, expanded to emerge as combined juvenile and family courts by the 1950s and 1960s. Women judges were chosen to adjudicate in these courts not only for their professional competence but because of how they represented and fit into the social and political cultures of their respective provinces.

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[159] Valerie Korinek argues that as early as the 1950s Canadian women engaged in feminist discussions questioning suburban ideals of affluence and women's domesticity *Roughing it in the Suburbs: Reading Chatelaine Magazine in the Fifties and Sixties* (Toronto: University of Toronto Press, 2000).
[160] Sangster, *Transforming Labour*, 273.

During this era, media representations consistently portrayed women judges as suitable adjudicators because of their prescribed womanly characteristics, rather than on the basis of their professional status. To this end, newspapers portrayed women judges as suitably feminine and as prioritizing their maternal duties. As appropriate middle-class role-mothers women judges belonged within the feminized courts to maintain family units. This court evolution reflected Cold War concerns, including middle-class society's heightened fear of juvenile delinquents, new realities of visibly troubled marriages, and the proper place and role of working women within this environment. Within these lower courts women judges and magistrates occupied the lowest rungs of the judicial system as magistrates and as women, and articulated their status based on popular assumptions regarding maternal feminism.

As the human rights impulse of the late 1960s grew, and feminist ideas based on equality principles began to take hold, some Prairie Canadian women judges became involved with seeking social and policy reforms for disadvantaged persons, including Aboriginals and the poor. An internationally based human rights environment provided a context within which women could actively pursue discrimination issues. Chapter five draws on speeches, interviews, and papers written by women judges to explore how ideological shifts within feminism intersected with legal professionalism to create a broader understanding and awareness of inequality, and to explore some of the tensions and contradictions that followed. Chapter five argues that some women judges deliberately utilized a variety of rhetoric highlighting the expansive reform atmosphere of the 1960s. For example, Bowker drew on maternal rights rhetoric, Taylor extended human rights claims, and underlying Wawrykow's political machinations was her recognition of the rights of certain immigrant groups within an expanding multicultural society.

All of them advocated for social reforms for society's less-privileged, even as equal rights ideology became more popular by the late 1960s.

Chapter Five: "Equitable Claims for All? Human Rights, Feminism, and Legal Professionalism"

"I didn't experience any discrimination that I know of, but of course we weren't looking for it."
Mary Carter, 1975[1]

During the 1960s burgeoning social activism expanded human rights and equality claims, and also sparked tentative public discussions regarding women's experiences of gender discrimination in the legal profession. Prairie women judges Mary Wawrykow, Tillie Taylor with her colleague Mary Carter, and Marjorie Bowker participated, to varying extents, in broader political efforts to protect the rights of certain minorities and vulnerable persons, including Aboriginals, prisoners, and children. They used skills and training associated with both the professional and volunteer sectors, and drew upon internationally-circulating human rights ideas to publicly promote rights for some disadvantaged persons.[2] At the same time, these women, with the exception of Tillie Taylor in her role as chair of the Saskatchewan Human Rights Commission, rarely expressed opinions about gender discrimination, particularly as it affected their personal experiences and professional roles. Instead, these women judges, along with Nellie Sanders and Myrna Bowman, mitigated their experiences of gender discrimination through their individual interpretations of legal professionalism as based on a male norm. Like Mary Carter, they explained that they did not experience any gender discrimination, because they "weren't looking for it."[3]

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[1] Gail McConnell, "University Women," *The Green and White: The University of Saskatchewan Alumni Association Magazine* (Winter 1975), 7.
[2] Dominique Clément argues that the 1960s and 1970s witnessed the height of diverse forms of social activism undertaken by many social movement organizations dedicated to particular causes (for example gay men seeking gay rights, women seeking abortion rights, persons concerned about prisoner treatment, etc.) in Canada, *Canada's Rights Revolution: Social Movements and Social Change, 1937 – 82* (Vancouver: UBC Press, 2008), 3, 5, 10.
[3] McConnell, "University Women," 7.

This chapter examines women judges' efforts to provide for more inclusive treatment of disadvantaged persons in these years before the women's liberation movement instigated an explicitly gendered re-evaluation of family courts, laws, and women's role in the legal profession. The first part of this chapter argues that Mary Wawrykow's, Tillie Taylor's, and Marjorie Bowker's local human rights work reflected international themes and their personal politics. Cognizant of an emerging multicultural climate, Wawrykow utilized her religious and cultural associations to pursue political and social reforms for youth, senior citizens, and Ukrainian-Canadians in Manitoba. Taylor, influenced by her experiences as a CCF Jew, turned insights garnered from the holocaust and a national "war on poverty" into reform proposals for Aboriginal persons and the poor through her involvement with penal reform and the John Howard Society. She shared with Mary Carter many insights regarding the connections between disadvantaged status, poverty, and crime. Taylor's insights into human rights violations provided the foundation for her involvement with cases of gender discrimination during the years she chaired the Saskatchewan Human Rights Commission in the 1970s. Bowker connected her Christian and maternal perspectives to her understanding about international events and laws, and in particular the work of the United Nations which she referenced to legitimate her perspectives. At times, Bowker's insights into mental disability and adoption, especially of Aboriginal children, reflected eugenic assumptions and colonial policies that served to entrench existing white middle-class biases.

The second part of this Chapter investigates women judges' expressions of gender discrimination, primarily as these expressions related to their professional status, in the years immediately prior to the women's liberation movement. I examine statements made by Bowker, Nellie Sanders, Mary Carter, and Myrna Bowman to argue that Prairie women judges'

expressions of gender discrimination reflected their understanding that the legal profession was based on a male norm, and also indicates they used coping strategies common to other professional women to make sense of their place.[4] Meanwhile, social and cultural shifts were underway, indicating that greater numbers of newly-educated women lawyers perceived the discrimination of women as endemic within the legal profession.

Pursuing Human Rights at Home and Abroad

Women judges' involvement with various human rights issues and legal professional organizations in the 1960s followed a precedent established by their early twentieth century counterparts, but also illustrated significant expansion of human rights ideas and associated professional and organizational growth. In the 1920s, concerned with nurturing children and protecting relationships between mothers and their children, Ethel MacLachlan and Emily Murphy corresponded and met with like-minded social reformers and members of the US and British/European juvenile courts. They worked within a broad social reform movement, inclusive of both volunteers and professionals, intent on securing improved legal rights for women and children.[5]

In the decades following MacLachlan's and Murphy's activism, women judges' humanitarian interests reflected issues associated with an expansive international climate marked by a profusion of organizations concerned not only about women and children but with displaced persons and world peace. After World War I, humanitarian and peace-seeking initiatives began

[4] Bowman's biographical details appear in chapter six.
[5] Mary Kinnear, *Woman of the World: Mary McGeachy and International Cooperation* (Toronto: University of Toronto Press, 2004); Karen Balcom, "A Little Offensive and Defensive Alliance: Professional Networks and International Child Welfare Policy," in *Writing Feminist History: Productive Pasts and New Directions*, ed. Catherine Carstairs and Nancy Janovicek (Vancouver: UBC Press, 2013): 72.

in earnest, as the short-lived League of Nations sparked a multitude of professional and volunteer organizations which functioned as important precursors to future United Nation's (UN) initiatives, including the International Court of Justice.[6] Following World War II, human rights abuses of not only children and women, but also of refugees and displaced persons from around the globe altered the reform context and gave rise to many more peace-seeking organizations. The legacy of Nazi atrocities and fascist regimes, and the pervasive threat of nuclear war further encouraged the creation of the UN.[7] The UN provided a sound framework for establishing human rights, and also specifically women's rights, during the Cold War era when many peace organizations were suspected of holding communist connections.[8] Wawrykow's and Bowker's membership in these international organizations signified two shifts from Murphy's and MacLachlan's era. First, membership in these international organizations required them to possess professional legal qualifications. Second, these organizations made connections between the law, the preservation of peace, and the protection of a much broader range of human rights than was envisioned by early twentieth century women magistrates and judges.

During the 1960s, Canadian social and legislative reforms sought to uphold peace-keeping and human rights goals associated with the UN. Some of these influences were evident in the federal 1960 Bill of Rights.[9] The Bill provided evidence of legislative support for some

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[6] Ruth Henig, *Makers of the Modern World: League of Nations* (New York: Haus Publishing 2010), 175.
[7] Barbara M. Freeman, explains that the United Nations developed numerous human rights initiatives during this period. The UN's Universal Declaration of Human Rights and the Convention on the Political Rights of Women both originated from the UN's Commission on the Status of Women, established in 1946, *The Satellite Sex: The Media and Women's Issues in English Canada, 1966-1971* (Waterloo, Ontario: Wilfrid Laurier University Press. 2001), 25; T. Brettel Dawson, explains that in 1958, Canada became a member of the United Nations Status of Women Commission, ed., *Relating to Law: A Chronology of Women and Law in Canada,* 2nd ed., (Canada: Captus Press, 1994), 44.
[8] Tarah Brookfield explains that communism was perceived as a serious threat to democracy, associated with Western civilization, during the Cold War era, *Cold War Comforts: Canadian Women, Child Safety, and Global Insecurity* (Waterloo, Ontario: Wilfred Laurier University Press, 2012), 76.
[9] Bill of Rights, S.C. 1960, c. 44.

human rights. The Bill was an important step in safeguarding some human rights because it is only through laws and their enforcement that human rights can be upheld.[10] Yet, the legal limits of the Bill were evident to Taylor. Two years after the Bill passed, a Crown solicitor asked her whether it had been used in any case before her. Taylor responded that the legislation had not been used in her court, that she believed its "effectiveness lies more in the future," and suggested that it might be useful in protecting the rights of some minority groups.[11] Through her involvement with penal reform Taylor recognized that the Bill did not cover all aspects of discrimination, and moreover, that the existing court and social infrastructure could not support effective elimination of all forms of discrimination during the early 1960s. The public involvement of Taylor and her cohort reveals a continuation of women judges' involvement, as volunteers and legal professionals by the 1960s, in the global arena in a new era marked by broader conceptions of human rights.

Manitoba: Mary Wawrykow

Mary Wawrykow used advocacy skills derived from her legal training and knowledge about international affairs in her efforts towards improving cultural and economic conditions for vulnerable minority groups including Ukrainian-Canadians and senior citizens. In 1955, Wawrykow belonged to the women's section of the Canadian Institute of International Affairs (CIIA).[12] The CIIA was founded in 1928 as a non-partisan and non-official organization aimed at broadening public understanding of international affairs based on the widespread belief that

[10] Clement, *The Rights Revolution*, 10.
[11] Letter from Taylor to D.A. Todd, 16 May 1962, 1, George and Tillie Taylor Collection, A-998, File 438, Saskatchewan Archives (Saskatoon).
[12] "Winnipeg Women of the Year," circa 1955, Wawrkow Collection, MSS-189, Box 1, File 1, University of Manitoba Archives and Special Collections.

future wars could be avoided if there existed a broad understanding of international affairs.[13] The CIIA was composed primarily of professionals, and Wawrykow's legal training reinforced her suitability as a member. The CIIA recognized the critical importance of law and functioning democratic systems to promoting international understanding and cooperation and therefore offered fellowships in the field of Public International Law to deserving law students.[14] Wawrykow's involvement with the CIIA reinforced her awareness of international affairs and human rights issues.

Wawrykow also applied her legal knowledge in her service as Chairman of Laws of the Provincial Council of Women of Manitoba during the 1960s. This position required her to advise Council members about legal reforms circulating nationally and abroad and to draft supportive resolutions.[15] Wawrykow demonstrated her religious and cultural affiliations through her committed involvement with the Ukrainian Catholic parish of St. Joseph and the Ukrainian Catholic Women's League which she joined in 1952.[16] In her role as League spokesperson in 1965, she spoke at the final hearings of the Royal Commission on Bilingualism and Biculturalism at which she urged public broadcasting of Ukrainian language programs.[17] She supported the League's maternal argument. Her support for promoting language retention in ethnic groups drew on materialist discourses. She insisted that "where the mother tongue is Ukrainian, for the proper development of the child, the language of communication between the mother and the

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[13] Francine McKenzie, "Canadian Institute of International Affairs," in Gerald Hallowell, ed., *Oxford Companion to Canadian History* (online: Oxford, 2006), 106.
[14] "Fellowships Offered," *Winnipeg Free Press*, 18 November 1954, 10.
[15] "Citation: Citizen of the day," 17 October 1966, Wawrykow Collection, MSS -189, Box 1, File 1; "In Tribute," no date, Wawrykow Collection, MSS-189, Box 1, File 4, University of Manitoba Archives and Special Collections.
[16] "Judge Mary A. Wawrykow, Q.C.," n.d., Wawrykow Collection, PC 193, A. 03-117, File 1, University of Manitoba Archives and Special Collections.
[17] "New Canadian Language Urged," *The Montreal Gazette*, 11 December 1965, 2.

child must be in Ukrainian."[18] This argument assumed the essential role of mothers in preserving minority languages and cultures, and also alluded to social and government responsibility in training youth to become responsible future citizens.[19] Wawrykow's endorsement of the League's maternal message was also consistent with her lifelong concern about protecting and nurturing children and families which, as discussed in chapter four, reinforced her suitability as a family court judge.

Wawrykow's argument in support of Ukrainian language rights also promoted a multicultural, rather than bicultural, view of Canadian society that was gaining increasing influence at this time. She argued that Ukrainian broadcasts would provide Canadians with greater cultural knowledge about Ukrainians – the implication being that this would foster human rights values of belonging, tolerance and understanding. Her advocacy of multiculturalism also reflected the values of the Canadian Council of Christians and Jews (CCCJ), an organization that sought peace, cultural, religious understanding, and promoted Canadian multiculturalism during the mid-1960s.[20] Wawrykow was a member (and sometimes board member) of this organization during the 1960s and 1970s. In 1964, the CCCJ arranged a trip for her to tour the Holy Lands in Israel. This experience was extremely meaningful to her as she deemed "the visit to the Holy land a spiritual experience for which I am truly grateful… Truly it was an example of real Christian living."[21] In 1976, Wawrykow received a human relations award from the CCCJ to

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[18] Ibid.
[19] Cynthia Comacchio, "Lost in Modernity: "Maladjustment" and the "Modern Youth Problem," English Canada, 1920 – 50," in *Lost Kids: Vulnerable Children and Youth in Twentieth Century Canada and the United States*, ed. Mona Gleason, Tamara Myers, Leslie Paris, and Veronica Strong-Boag (Vancouver: UBC Press, 2010), 55.
[20] Paul Yuzyk, "A Multicultural Nation," *Canadian Slavonic Papers/ Revue Canadienne des Slavistes*, 7 (1965), 27.
[21] "Trip to Holy Lands," 1964, Wawrykow Collection, MSS-189, Box 1, File 8, University of Manitoba Archives and Special Collections.

commend her on her active service and involvement.[22] Wawrykow's involvements with the CCCJ, as well as with the Provincial Council of Women of Manitoba and the Catholic Women's League demonstrated that she used her professional training in tandem with her cultural and religious beliefs to promote values of tolerance and multiculturalism, both of which were key elements of human rights.

In the decade preceding her appointment to the North-end family court in Winnipeg, Wawrykow was involved with the Progressive Conservative Party. In common with most members of the judiciary, and with all of the Prairie women judges of this period, Wawrykow refrained from public discussion about her political views during her judicial tenure to uphold the appearance of judicial impartiality and neutrality. She was a member of the Progressive Conservative Party of Canada,[23] became the president of North Winnipeg Conservative Women's Association,[24] and was nominated as candidate for the brand new Inkster constituency in the mid-1950s.[25] She became involved in party politics due to "problems [she had] encountered in the field of social welfare."[26] She accepted the nomination for the 1958 election, the first year that the North-end Inkster constituency was made into an electoral riding, "convinced that Duff Roblin and his team have a well-planned programme with a very positive attitude …as regards old age pensioners, mothers' allowances, minimum wage laws and labour relations legislation."[27]

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[22] Photograph, "Human Relations Award, 1976, Wawrykow Collection, PC 193, A. 03-117, Box 1, File 4, University of Manitoba Archives and Special Collections.
[23] "Citation: Citizen of the Day," 17 October 1966, Wawkrykow Collection, MSS-189, Box 1, File 1, University of Manitoba Archives and Special Collections.
[24] "Mary A. Wawrykow," n.d., 3, Wawrykow Collection, MSS-189, Box 1, File 1, University of Manitoba Archives and Special Collections.
[25] Clipping, "First PC Nominee," March 1954, Wawrykow Collection, MSS-189, Box 1, File 1, University of Manitoba Archives and Special Collections.
[26] Clipping, "Woman is Candidate for PCs" no date, Wawrkow Collection, MSS-189, Box 1, File 1, University of Manitoba Archives and Special Collections.
[27] Letter "dear friends," n.d., Wawrykow Collection, MSS-189, Box 1, File 13.

Wawrykow's personal reform objectives, including support for old age pensions and minority language rights, meshed well with the Progressive-Conservative's platform.[28] Roblin's Progressive-Conservative platform reflected a centrist reform orientation. At the time of his 1954 election Roblin had taken over a party devoid of a clear mandate because of the Conservatives' failure to obtain any significant electoral successes in almost forty years and because of a lengthy preceding coalition government which had limited legislative discussion and reform. [29] Roblin deliberately added "Progressive" to the Conservative party's name to emphasize his shift away from pay as you go fiscal policies as utilized by the incumbent coalition government towards funding public welfare initiatives including education and health care.[30] He adopted many CCF platforms, and believed that public spending would lead to greater economic diversity and resulting prosperity.[31] Roblin's "Red Tory" policies included his interest in minority language rights, including Ukrainians, and a willingness to recruit unknown candidates, including Wawrykow.[32] She lost the 1958 election to CCF candidate Morris A. Gray,[33] and Roblin's centrist government formed a minority government.[34]

During her life, Wawrykow was active in at least fourteen organizations, including the Manitoba and Canadian Councils on Children and Youth, Senior Citizens Day Centre and Age and Opportunity Boards, the Advisory Board of the Holy Family Home, and the Business and

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[28] Newspaper clipping, "First PC Nominee," March 1954, Wawrkow Collection, MSS-189, Box 1, File 1, University of Manitoba Archives and Special Collections.
[29] W.F.W. Neville, "Duff Roblin: 1958 – 1967," in *Manitoba Premiers of the 19th and 20th Centuries*, ed. Barry Ferguson and Robert Wardhaugh (Regina: Great Plains Research Centre: 2010), 240.
[30] Sandra E. Perry and Jessica J. Craig, *The Mantle of Leadership: Premiers of the North-West Territories and Alberta 1897 – 2005* (Alberta: Legislative Assembly of Alberta, 2006), 458.
[31] Paul G. Thomas and Curtis Brown, "Introduction: Manitoba in the Middle," in *Manitoba Politics and Government: Issues, Institutions, Traditions*, ed. Paul G. Thomas and Curtis Brown (Manitoba: University of Manitoba Press, 2010), 4.
[32] Neville, characterizes Roblin's politics as "Red Tory," "Duff Roblin: 1958 – 1967," 247.
[33] David Mutimer, *Canadian Annual Review of Politics and Public Affairs 1996* (Toronto: University of Toronto Press, 2002), 177.
[34] Thomas and Brown, "Introduction: Manitoba in the Middle," 4.

Professional Women's Club of Winnipeg.[35] Her service to these organizations reflected her commitment to Ukrainian culture, children, and the elderly. She also maintained a connection to Duff Roblin, writing to him in 1966 to urge him to consider making greater provisions for retired persons.[36] Her involvement with national and international professional and inter-faith organizations reinforced her interest in advancing human rights.

Saskatchewan: Tillie Taylor

Tillie Taylor was the most outspoken of the Prairie woman judges on topics relating to human rights. Her reform activism was based on her lived experience as a Jew with Leftist political beliefs. During the 1960s, she became involved in reform projects relating to the treatment of prisoners and Aboriginal persons, through the John Howard Society, and in 1972, she was appointed as the first chair of the Saskatchewan Human Rights Commission. Her political beliefs and reform perspective fit well within the political ethos of Saskatchewan because Saskatchewan had more left-centred politics than either Alberta or Manitoba, and was also the first Canadian province, in 1947, to establish a human rights code.[37] The bill reaffirmed freedom of religion, speech, assembly, association, and freedom from arbitrary arrest and detention and legislated against racial prejudice and discrimination in matters of employment and

[35] "Judge Mary A. Wawrykow," 27 September 1976, Wawrykow Collection, MSS-189, box 1, File 1, University of Manitoba Archives and Special Collections.
[36] Wawrykow to Duff Roblin, 18 May 1966, Wawrykow Collection, MSS-189, box 1, File 13, University of Manitoba Archives and Special Collections.
[37] Jim Harding, "The Welfare State as a Therapeutic State: The Saskatchewan Prescription Drug Plan 1974 – 82," in *Social Policy and Social Justice: The NDP Government in Saskatchewan During the Blakeney Years*, ed. Jim Harding (Waterloo: Wilfred Laurier University Press, 1995), 85; Saskatchewan. *Bill of Rights Act*, 1947, S.S. 1947, c. 35, Assented to 1 April 1947. The Alberta Bill of Rights was assented to 27 March 1946, but because this bill included matters subject to federal jurisdiction it was declared invalid on 24 July 1947. The Manitoba Bill of Rights was introduced in the Manitoba legislature in 1947 but was defeated by a vote of 32 to 18. See: www.usask.ca/diefenbaker/galleries/virtual.exhibit/bill_of_rights/provincial.statutes.php (accessed 8 February 2013.)

housing.[38] Originally, it had included sex as a discriminatory ground but this was removed from its final draft because of the goal to preserve protective legislation and a generally paternalistic attitude towards women.[39] The 1947 act was never tested in the courts, but its passage reflected the importance of social reformers, especially Jews and the CCF, in developing human rights legislation in Canada.[40] The CCF saw the bill as a means of ending discrimination in Canada.[41] Jews were heavily involved because anti-Semitism had historically excluded them from better jobs and better neighbourhoods, especially in Ontario and Quebec.[42] Further, they had learned from the international arena about the plight of Jews and Socialists living in Nazi-occupied Europe, or had personally experienced it.[43]

In 1945, Taylor's experience with anti-Semitic Social Credit political philosophies helped to reinforce her politics. In 1945, Taylor lived in Lethbridge, Alberta and attended a political forum led by John Horne Blackmore, a Social Credit MP, held to discuss international postwar peace. She was disappointed about the overall tone of the meeting, in which the speakers, all of whom were members of the Social Credit Party, had "disparage[ed] the work in San Francisco [and] decried the concept of internationalism."[44] During the meeting she spoke in defence of the UN and its promotion of worldwide peace. After the meeting, she became involved in a philosophical battle with a meeting speaker, Mr. A. Brown, which appeared in letters to the editor in the local newspaper, and which provided strong evidence of Taylor's opinions. In Taylor's

[38] Carmela Patrias, "Socialists, Jews, and the 1947 Saskatchewan Bill of Rights," *Canadian Historical Review* 87:2 (June 2006), 265 – 267.
[39] Ibid., 275, 279 – 281.
[40] Ibid., 267.
[41] Ibid., 269.
[42] Ibid., 271.
[43] Ibid., 271; Irving Abella and Howard Troper, *None is Too Many: Canada and the Jews of Europe, 1933 – 1948* (Toronto: Key Porter Books, 2000).
[44] Tillie Taylor, "Lethbridge Days," *Newest Review*, February/March 1992, 11.

estimation, Brown had minimized Nazi atrocities. Taylor argued that Brown had "followed the Nazi line of thought in opposing the Dumbarton Oaks Conference, and assuring us that our society is 'degenerate.' This is Hitler's line, pure and simple – whether Mr. Brown figured it out for himself or read it in *Mein Kampf* does not make any difference."[45] Brown in turn, accused Taylor of basing her charges against him on fallacious reasoning and accused her of being a Communist.[46] Her editorial battle with Brown ended abruptly, but her continued dealings with the Social Credit Party, in her role as a legal stenographer in a Lethbridge law office, confirmed her opinion that the Party was anti-Semitic. In Taylor's recollection, the law office had many dealings with members of the Social Credit Party, and therefore many Social Credit party publications, some of which argued Jews supported the German war, and others which even blamed the Jews for causing World War II, crossed her desk.[47] As a CCF Jew married to a former communist, it is not surprising that Taylor remembered her Lethbridge experiences with Brown and the Social Credit Party even into the 1990s. This experience also provided clear evidence of her awareness of and interest in international human rights issues and helps explain why she became so heavily invested in so many human rights reform initiatives once she became a judge.

During her years as judge, Taylor used her influence in both professional and volunteer roles to obtain human rights reforms for the poor, prisoners, and Aboriginal persons. In common with her colleague Mary Carter, Taylor spoke out against a prison system that penalized persons

[45] Tillie Taylor, "People's Forum: Answers Mr. Brown," *Lethbridge Herald*, 9 April 1945, 4.
[46] A. Brown, "People's Forum: Answers Mrs. Taylor," *Lethbridge Herald*, 1 May 1945, 4.
[47] Taylor, "Lethbridge Days," 12.

"because they are poor."[48] Taylor and Carter pointed out that in Saskatchewan almost 80 percent of women's jail inmates, the majority of whom were Aboriginal and Métis women, were there because they could not afford to pay court-imposed fines. Many of these fines were for alcohol related offences, and Taylor recognized the futility of levying court fines against individuals who could not pay them. Taylor compared the justice system's tendency to incarcerate persons who could not pay their finds with debtors' prisons in Dickens' England.[49] She sharply contrasted the legal system's discrimination against the poor, and an over-representation of incarcerated Aboriginal persons, with Prime Minister Pierre Elliott Trudeau's vision of a "Just Society," based on the 1960 Bill of Rights and criminal code amendments. She recognized that legislative amendments did not suffice to create legal equality, but also understood that in her role as judge her efforts to mitigate discrimination against the poor were limited to following the existing law, within which her only remedy was to provide offenders with additional time to pay their bills.[50]

Outside of court, she participated in many efforts designed to alleviate injustice for the poor and Aboriginal persons within the context of a Canadian "war on poverty."[51] She worked with Roger Carter, Mary Carter's husband and organizer of the Native Law Centre in Saskatoon. The centre was the only one of its kind in Canada, and it was designed to increase opportunities for Aboriginal persons to study and practice law.[52] The centre's establishment reflected demographic and philosophical shifts. By the early 1960s, the Aboriginal population of Prairie Canada numbered some 100,000 individuals and was distributed almost evenly across Alberta,

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[48] Jeannine Locke, "We're Still Putting People in Jail Because they are Poor," *Ottawa Citizen*, 4 December 1968, 2, George and Tillie Taylor Collection, A-998, File 317, Saskatchewan Archives (Saskatoon).
[49] Ibid.
[50] Ibid.
[51] Laurie Meijer Drees, *The Indian Association of Alberta* (Vancouver: UBC Press, 2002), 158.
[52] Chris Ewing-Weisz, "Tillie Taylor was Dedicated to the Cause of Social Justice," *Globe and Mail*, 2 November 2011; Melanie Lautt, "Natives and Justice: A Topic Requiring Research Priority?" in *Explorations in Prairie Justice Research*, edited by Dorothy Hepworth (University of Regina: Canadian Plains Research Center, 1979), 104.

Saskatchewan, and Manitoba.[53] Aboriginal persons were moving to urban centres in unprecedented numbers, with the Saskatchewan Aboriginal population quadrupling and the Manitoba and Alberta Aboriginal populations tripling during the 1960s.[54] The centre also represented government efforts under the administrations of Diefenbaker and Pearson (1957 to 1963 and 1963 to 1968 respectively), to make the provinces responsible for educating Aboriginal persons, and for implementing programs designed to help move Aboriginal persons into mainstream Canadian life.[55] Taylor also helped to rectify some of the unfairness experienced by litigants too impoverished to pay for legal representation by serving on two provincial commissions that recommended the establishment of legal aid in Saskatchewan.[56] The 1974 Community Legal Services (Saskatchewan) Act was based on a report Taylor submitted to Attorney General Roy Romanow.[57] In addition, she also spoke out against incarceration and promoted the increased use of probation to rehabilitate offenders and to stop victimizing the poor. Her efforts in penal reform encouraged one self-identified inmate to write to her and Carter, explaining that both women judges demonstrated "unqualified humanitarian outlook and concern."[58]

Taylor's volunteer involvement with the John Howard Society of Saskatchewan (SJHS) demonstrated her interest to improve rights for the poor, prisoners, and Aboriginal persons. She became involved with the SJHS in the late 1950s, was provincial president of the SJHS for two

[53] Lautt, "Natives and Justice," 58.
[54] Ibid., 64.
[55] Drees, *The Indian Association of Alberta*, 158 – 159.
[56] Paul Jackson, "Judge Possesses Opportunity to Encourage Happy Endings," *Saskatoon Star-Phoenix*, 31 October 1987, 6.
[57] Letter from Roy Romanow to Tillie Taylor, 18 December 1973, George and Tillie Taylor Collection, A-998, File 377, Saskatchewan Archives (Saskatoon).
[58] Letter from Gilbert St. Denis to Carter and Taylor, 12 December 1968, George and Tillie Taylor Collection, A-998, File 383, Saskatchewan Archives (Saskatoon).

years in the late 1960s, and also served on the John Howard Society Board.[59] In her 1967 President's Report for the SJHS, Taylor wrote that the main purpose of the SJHS was to bring about penal reform, legal aid for indigent clients and support for Aboriginal persons.[60] The Society also played an important advocacy role for inmates and those on probation. Taylor attempted to encourage greater co-operation and collaboration between eastern and western JHS societies to improve advocacy. She became frustrated in her efforts, finding that "there is an impressive amount of unwillingness to co-operate among the societies, in particular Alberta and Manitoba are very disinclined to discuss their work, their methods, and even their community resources."[61]

John Howard Societies at this time reflected local contexts and concerns even though they were all part of a larger rehabilitative mandate that used psychological techniques and social work "case work" approaches to address criminality. The John Howard Society originated in Britain. British Columbia, Ontario, and Quebec were the first Canadian provinces to establish John Howard Societies.[62] In the Prairies, Alberta was the first to develop a JHS, in 1948, by establishing a province-wide JHS community with 800 paying members.[63] Marjorie Bowker served on the board of the JHS' sister organization, the Elizabeth Fry Society, an organization devoted to female offenders, during the 1950s and 1960s.[64] John Howard Societies encouraged the use of probation, and encouraged members of the legal profession and judiciary to act as

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[59] Ibid.; "Provincial Court of Saskatchewan Resume," George and Tillie Taylor Collection, A-998, File 515, Saskatchewan Archives (Saskatoon)
[60] "President's Report," 3 February 1967, George and Tillie Taylor Collection, A-998, File 438, Saskatchewan Archives (Saskatoon).
[61] Ibid.
[62] Tim Creery, "Crime Has its Roots in 'Twisted Mentality,'" *Winnipeg Free Press*, 14 May 1952, 34.
[63] Ibid.
[64] "Marjorie Montgomery Bowker: Biography," April 1993, Bowker Fonds, 93.435, File 2, Provincial Archives of Alberta (hereafter "PAA").

board members. The evidence from Manitoba indicates that no 1960s female judges took part in the JHS, as this work was undertaken by judge Frank Hamilton of the family court, but lawyer Isabel Hunt did participate. In Manitoba, the Elizabeth Fry Society became amalgamated with the JHS in December 1957.[65]

In addition to working through the JHS to advocate for prisoners, Taylor attempted to improve prisoners' educational opportunities by encouraging stronger communication between courts and jails. During the 1960s Taylor blamed the slow pace of penal reform partly on the lack of open and accurate communication between the courts and jails. After a visit from a social worker who informed Taylor that "schooling is no longer provided [at the Regina jail] on the same basis as it was previously done," Taylor inquired of the Corrections Officer, J.A. Mather, if it would be possible to send a newsletter to magistrates regarding available educational and psychiatric treatment[66] and explained that this information critically informed her sentencing because she attempted to send inmates to penitentiaries where they could receive appropriate education and psychiatric treatment.[67] When Taylor did not receive a response from Mather, she wrote to magistrate J.J. Flynn, Secretary of the Saskatchewan Magistrate's Association urging follow-up on this matter.[68] Taylor's files do not contain a response from Flynn, and this suggests that this matter was left unresolved. That insufficient communication between the courts and penitentiaries continued to be a problem is indicated by a 1974 letter written by Taylor to Kenneth McKay, a Crown solicitor with the Department of the Attorney General. In responding

[65] It became the Elizabeth Fry Committee of the John Howard-Elizabeth Fry Society of Manitoba; "Elizabeth Fry Society Holds its 'Last' Meeting," *Winnipeg Free Press*, 6 December 1957, 6.
[66] Letter from Taylor to J.A. Mather, 8 February 1963, George and Tillie Taylor Collection, A-998, File 308, Saskatchewan Archives (Saskatoon).
[67] Ibid.
[68] Letter from Taylor to Magistrate J.J. Flynn, 28 February 1963, George and Tillie Taylor Collection, A-998, File 308, Saskatchewan Archives (Saskatoon).

to McKay's suggestions that magistrates needed a great deal of prodding to communicate details about inmates "unusual" behaviour to jails so that they might receive appropriate treatment, Taylor wrote that she was "shocked to realize that this information has not been going to the correctional centres all of these years."[69] Her recommended remedy was to suggest that "consideration ought to be given to possible legislation" to mandate clear and detailed communication between the courts and penitentiaries.[70]

Despite obstacles, Taylor remained undeterred in her reform work, and her commitment to human rights issues was recognized in 1972 when she was appointed the first chair of the Saskatchewan Human Rights Commission. Under the Saskatchewan Human Rights Commission Act, the commissioners could hear matters under the Fair Employment Practices Act, The Fair Accommodations Practices Act, and the Saskatchewan Bill of Rights.[71] Taylor was concerned about gender discrimination, and made this known to the Regina Business and Professional Women's Club in December 1972. She wrote to Nora Rashotte, the correspondence secretary, that "I look forward to receiving a great deal of assistance from the women's organizations in our province in human rights work, in particular as we endeavour to change the climate as far as sex discrimination is concerned."[72] In 1974 Taylor was concerned that even though the most frequent complaints placed under the Saskatchewan Human Rights Commission Act were those concerned in women's marital status or age, voicing two explicit goals associated with women's

[69] Letter from Taylor to Kenneth W. MacKay 25 March 1974, 1, George and Tillie Taylor Collection, A-998, File 377, Saskatchewan Archives (Saskatoon).
[70] Ibid., 2.
[71] Saskatchewan Human Rights Commission: Report and Summary of Activities, 1 April 1975 to 31 March 1977, 5, George and Tillie Taylor Collection, A-998, File 568, Saskatchewan Archives (Saskatoon).
[72] Letter from Taylor to Rashotte, 11 December 1972, George and Tillie Taylor Collection, A-998, File 377, Saskatchewan Archives (Saskatoon).

equality, these women's issues remained outside the scope of the Act.[73] In the same year Taylor submitted a resolution to Saskatchewan Attorney General Roy Romanow requesting that these two areas of discrimination be included within the commission's scope. Romanow replied, "at this stage in the game the government doesn't feel a case has been made for expansion to these areas."[74] Romanow's perspective changed when feminist demands gained influence by the mid-1970s. Between 1972 and 1976, the commission investigated a growing number of discrimination complaints, many of which were brought by women brave enough to challenge traditional workplace discrimination.[75] Complaints based on sex discrimination composed 57.5 percent of all discrimination grounds between 1975 and 1977.[76] In 1977 Taylor, together with Carole Fogel, Director of the Saskatchewan Human Rights Commission, wrote an article for *L'égale: A Journal on Women and the Law*, that specifically addressed the capacity of provincial human rights commissions to counter gender discrimination. They concluded that most provinces, with the exception of Prince Edward Island which did not have a human rights commission, had made some gains in protecting women's rights, especially in employment law, particularly age discrimination.[77] They concluded that in combatting gender discrimination,

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[73] Clipping, "Wider Human Rights Scope Urged," *Saskatoon Star-Phoenix*, 21 February 1974, George and Tillie Taylor Collection, A-998, File 377, Saskatchewan Archives (Saskatoon).
[74] "Wider human rights scope urged," *Saskatchewan Star-Phoenix*, Feb. 21, 1974, George and Tillie Taylor collection, A-998, File 377, Saskatchewan Archives (Saskatoon).
[75] T. Taylor and C. Fogel, "Human Rights Commissions vs. Sex Discrimination," *L'égale: A Journal on Women and the Law* (1976) 22 – 27, 22, George and Tillie Taylor collection, A-998, File 568, Saskatchewan Archives (Saskatoon). Between 1972 and 1973 the Commission heard 306 formal complaints. Between 1974 and 1974 it heard 384 official complaints; Saskatchewan Human Rights Commission: Report and Summary of Activities, 1 April 1975 to 31 March 1977, 7. George and Tillie Taylor Collection, A-998, File 568, Saskatchewan Archives (Saskatoon).
[76] Saskatchewan Human Rights Commission: Report and Summary of Activities, 1 April 1975 to 31 March 1977, 9, George and Tillie Taylor Collection, A-998, File 568, Saskatchewan Archives (Saskatoon).
[77] Taylor and Fogel, "Human Rights Commissions vs. Sex Discrimination," 22.

"legislation alone is not enough; however, legislation vigorously enforced (with steady pressure on Commissions from women) can begin to change the status of women within Canada."[78]

Taylor's activism began long before her 1959 appointment to the bench, and was influenced by her personal experiences. While on the bench, Taylor's human rights focus shifted away from the formal political arena, and into her community politics based on matters pertaining to poverty, parole, and probation which she could address through her involvement with the JHS, through letters to the editor, and in her leading role with the Saskatchewan Human Rights Commission.

Alberta: Marjorie Bowker

In the 1960s and 1970s, Marjorie Bowker demonstrated her faith in international legal standards put forward by the UN and in American innovations pertaining to child welfare matters. She understood UN and American involvements as supportive of democratic processes, which she interpreted, through her middle-class assumptions about the family, as tied to western and Christian traditions. Bowker was unique among the Prairie women judges in the extent to which she researched and applied her knowledge of international affairs and UN initiatives to legitimate her perspectives about specific social welfare matters. In fact, she spent the hours between 9:30 and 11:30 every weekday morning, researching various social problems.[79] Her extensive reading provided her with a broad knowledge about child welfare including juvenile court developments, "mental retardation," and adoption, the latter category in which Aboriginal

[78] Ibid., 23.
[79] "Alberta Woman judge studies in spare time," *The Leader-Post*, 22 August 1966, 6.

children featured prominently.[80] At the same time, however, some of her recommendations associated with mentally handicapped persons and incompetent parents supported eugenicist assumptions and colonial policies.

In the 1970s, Bowker was a member of the International Commission of Jurists (ICJ), and she used her connection to this organization to advocate on behalf of her Korean friend, Dr. Tai-Young Lee, Korea's first woman lawyer, and founder and Director of the Legal Aid Centre in Seoul Korea.[81] By the 1970s, the ICJ was a well-established and respectable organization. It was founded in 1952 Berlin after the Nuremberg Trials and the signing of the Universal Declaration of Human Rights. The Canadian Section was established in 1958 under the leadership of Joseph T. Thorson, an eminent Manitoba jurist.[82] The ICJ believed that justice and the rule of law were the two indispensable pillars for ensuring democracy; thus, its membership required legally-trained practitioners who would uphold these values and voluntarily extend them on the international scene.[83] Through the ICJ Bowker advocated on behalf of Dr. Lee, whom she had first met in 1968 when she was invited to present a speech at Ewha women's Christian university in Seoul, Korea.[84] Lee arranged for Bowker to visit the courts, and acted as Bowker's interpreter when she spoke to judges of the District Court of Korea on the topic of the juvenile court.[85]

On 1 March 1976 Lee and her husband, Yil Hyuong Chyung were part of a group of eighteen persons arrested for reading the Myongdong Declaration, a document that called for

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[80] Ibid.
[81] Letter to Tai-Young Lee, 15 March 1977, Bowker fonds, 93.435, File 9, PAA.
[82] http://www.icjcanada.org.en/home.htm (accessed February 15, 2013).
[83] Ibid.
[84] Marjorie M. Bowker, "Commentary on my Visit to Korea in 1968 and subsequent correspondence," Bowker fonds, 93.435, File 9, PAA.
[85] Ibid.

stronger civil rights in Korea.[86] Lee and Chyung were sentenced to eight years in jail, lost their voting privileges, and were barred from travel abroad. Lee was also permanently disbarred from legal practice.[87] Bowker learned of Lee's predicament at a Montreal family law conference, and immediately began writing letters to Secretary General MacDermot at the ICJ, and to Don Jamieson, Canada's Secretary of State for External Affairs, insisting that Lee and her husband be released.[88] Bowker's intervention helped to draw attention to Lee's plight, and may have been a factor influencing the South Korean government to reduce Lee's and Chyung's prison sentences to a three year period by relying on a South Korean legal provision that disallowed prosecution in certain circumstances, including against the elderly.[89] Lee was allowed to continue her service as the Director of Legal Aid, and wrote a letter expressing her appreciation for Bowker's assistance.[90]

Bowker's personal involvement with Lee was part of her larger interest in international affairs, especially Korea, and also accorded with her personal Christian beliefs. In her personal correspondence with Lee, Bowker emphasized that Lee was in her "thoughts and prayers" during her church's celebration of "World Wide Communion."[91] In her 1968 speech at Ewha university, Bowker indicated that she "felt a particular kinship for the people of Korea" owing to the longstanding presence of Canadian Christian missionaries on Korean soil.[92]

Bowker's Christian beliefs, faith in democratic processes, and maternal perspectives informed her volunteer involvement with Alberta Child Welfare. During the 1960s, federal re-

[86] Letter to Mr. MacDermot, Secretary General, ICJ, 15 May 1978, Bowker fonds, 93.435, File 9, PAA.
[87] Letter to Judge Bowker, 25 April 1978, Bowker fonds, 93.435, File 9, PAA.
[88] Letter to Mr. MacDermot, Bowker fonds, 93.435, File 9, PAA.
[89] Letter to Judge Bowker, 25 April 1978. Bowker fonds, 93.435, File 9, PAA.
[90] Letter to Judge Bowker, 24 March 1978. Bowker fonds, 93.435, File 9, PAA.
[91] Letter to Korean Legal Aid Centre for Family Relations, 2 October 1977, 1 Bowker fonds, 93.435, File 9, PAA.
[92] "82nd Anniversary Celebration Ewha Women's University Seoul, Korea: the role of women in the next half century," 22 May 1968, 2, Bowker fonds, 93.435, File 42, PAA.

structuring transferred the bulk of welfare programs to the provinces, and in 1965 Bowker was appointed as part of a three-person committee including herself, Calgary Judge Henry Stuart Patterson, and lawyer Frank Fleming to broadly investigate issues pertaining to adoption and child welfare.[93] At the end of their investigation, the three person committee submitted an official sixty page report, but Bowker, at her own time and expense, travelled extensively across Alberta to inquire into living conditions for children in institutions, foster homes, and Aboriginal communities. Her efforts yielded a 200 page supplemental report which became the basis of subsequent child welfare legislation and encouraged the government to appoint her judge of the juvenile and family court in Edmonton in 1966.[94] Bowker, motivated by promoting the "best interests of the child" did not focus solely on Aboriginal persons in her report. She visited orphanages, homes for mentally disadvantaged children, a Métis community north-west of Edmonton, and a First Nations community to develop solutions for how best to care for these disadvantaged children.[95]

Bowker envisioned her role in developing Aboriginal adoption policy as part of an overall provincial solution to "the Indian Problem," characterized by rapid population growth, "housing arrangements, size of families, illegitimacy, lack of employment, liquor infractions, school drop-outs and delinquency."[96] She gathered information from personal interviews with Métis and Aboriginal persons from files at regional offices of Métis affairs, and from the Dominion Bureau

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[93] "To Guidance Clinic Staff… on Adoptions," 16 February 1966, 1, Bowker fonds, 93.435, File 14, PAA.
[94] Ken Tingley interview with Marjorie Bowker, 15, 21 (2 June 2000), Edmonton Bench and Bar Oral History Project, Accession 2003 – 004, Legal Archives Society of Alberta (hereafter "Tingley interview with Bowker transcript").
[95] Marjorie Bowker, "Brief on Mental Retardation," December 1965, Bowker fonds, 93.435, File 20, PAA; "Chapter VIII 'The Metis Problem As it Relates to Adoption," 150, Bowker fonds, 93.435, File 19, PAA.
[96] "Chapter IX: The Indian Problem," 163, Bowker fonds, 93.435, File 19, PAA. As a 1960s lawyer, Bowker likely utilized the term "illegitimacy" in its legal context, as a reference to children born outside of legally sanctioned marital relationships, and not as a tool of furthering stigma

of Statistics.[97] Bowker's primary quest was to find adoptive homes for the increasing numbers of Métis children born to unwed mothers in Alberta cities.[98] Bowker differentiated between rural and urban conditions, referring to the former as Métis "colonies" and the latter as Métis "communities."[99] She recognized that even though children born to unwed mothers in Métis colonies were common, and therefore problematic in her view, "the pertinent fact here is that Métis colonies are producing very few of the illegitimate children or neglected children coming into care for adoption."[100] She acknowledged cultural difference by indicating that broader kinship systems and the willingness of family members to care for children meant that very few were surrendered for adoption within non-urban Métis colonies.[101]

Bowker's reports indicate that she was aware that systemic factors, including multi-generational poverty and illiteracy contributed to welfare demand. Bowker argued that while Métis colonies were dwindling, Métis communities were increasing in size and number and were creating "a burden upon welfare resources, and [would] in all likelihood create even greater future problems in …child care."[102] She believed that these communities required significant intervention, not only because of the large number of children born to unwed mothers, but also because of the high number of children engaged in sexual activity including incestuous unions.[103] Bowker's evidence in support of children's sexual (and incestuous) behaviour was gleaned from

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[97] The Dominion Bureau of Statistics became Statistics Canada in 1971.
[98] At this time "illegitimacy" was undergoing review. While the term continued to refer to children born outside of officially sanctioned marital relationships, efforts were underway to grant "legitimacy" to more children. The Alberta 1960 *Legitimacy Act,* conferred "legitimacy" on children who otherwise would have been legally conceived of as illegitimate because of circumstances surrounding their parents' marital status.
[99] She used the term "colony," derived from a 1933 Royal Commission Report on the Métis, to refer to Métis living in places under some form of unspecified government supervision, in a deliberate contrast to Métis "communities" which she portrayed as geographically scattered and unsupervised, "Chapter VIII 'The Métis Problem As it Relates to Adoption," 149, 150, Bowker fonds, 93.435, File 19, PAA.
[100] "Chapter VIII 'The Métis Problem As it Relates to Adoption," 149, 150, Bowker fonds, 93.435, File 19, PAA.
[101] "Chapter VIII 'The Métis Problem As it Relates to Adoption," 150.
[102] Ibid., 151.
[103] Ibid., 157.

her reading of an unspecified number of regional office files concerned with "standards of moral conduct."[104] Bowker's remedy for the Métis communities' problems evinced her humanitarian concern, but she also couched it within middle-class maternal rhetoric. Bowker characterized Métis women as "hopelessly inadequate housekeepers," and she wrote: "Providing jobs is important, but at the same time something needs to be done to upgrade family life, to help Métis women in the simple tasks of homemaking, how to manage an income, prepare proper meals despite inadequate facilities, establish a routine for getting children to bed and to school."[105] The standard Bowker was applying, in other words, was that of a stay-at-home, white middle-class Canadian housewife. Bowker was suggesting that white women could teach Métis women how to better manage their households and children which is premised on a maternal, and racist, argument about white women as civilizers.[106]

Bowker's recommendations, shared by many of her contemporaries, were deeply rooted "in a narrow application of middle-class and Euro-American norms for family life."[107] Proposed child welfare solutions were tied to class, race, and cultural assumptions about families, and held particular implications in the Prairies because of the large Aboriginal population. Laurie Meijer-Drees argues that the federal government's transference of welfare programs was itself a racist

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[104] Ibid.

[105] "Chapter VIII 'The Métis Problem As it Relates to Adoption," 158..

[106] These exists a large body of scholarship on this point, most of which concerns the late nineteenth and early twentieth centuries. Lisa E. Emmerich argues that "Conventional wisdom endowed middle-class Euro-American women with a unique, gender-based capacity for 'civilizing' peoples and cultures sufficient to bridge the distance separating them from Indian women." White women's status as civilizers made them suitable intervenors into the lives of Indian women and their children in the United States as teachers of White norms of behaviour and lifestyle. In "Save the Babies!: American Indian Women, Assimilating Policy, and Scientific Motherhood, 1912 - 1913," in *Writing the Range: Race, Class, and Culture in the Women's West,* ed, Elizabeth Jameson and Susan Armitage, (Norman: University of Oklahoma Press, 1997), 393 – 409, 399. Sarah Carter, *Capturing Women: The Manipulation of Cultural Imagery in Canada's Prairie West* (Kingston: McGill-Queen's University Press, 1997), xiii.

[107] Balcom, *The Traffic in Babies: Cross-Border Adoption and Baby-Selling between the United States and Canada, 1930 – 1972*(Toronto: University of Toronto Press, 2011), 205.

measure because it was designed to reduce Aboriginal persons' reliance on the Indian Act.[108] Bowker's efforts in advocating the adoption of Aboriginal children by whites clearly formed part of the "sixties scoop," an era which legitimated the adoption of thousands of First Nations and other Aboriginal children by white parents.[109] As many scholars have demonstrated, 1960s Aboriginal adoption polices were imbued with broad implications of colonialism, race, class, and even nationhood.[110]

Comments included in Bowker's child welfare briefs regarding "mental retardation" fall short of demonstrating her outright support for sterilisation, but there are indications that she held some eugenic views, supported by the Alberta government through its enforcement of the Sexual Sterilization Act which remained in effect until 1972. She advocated pro-active preventative solutions, including the use of birth control, but also, "avoidance of offspring where there is a history of mental retardation, or where retardation is known to arise from genetic cause."[111] During the course of her adoption inquiry she visited the Red Deer (sterilisation) facility. In a 2000 interview, she reminisced that she was aware "that women [were] being sterilized, and I know that only as something in my legal knowledge that was taking place."[112] She stated that she visited the facility "mainly to see the care that was given to these children who were considered, well they were mentally deficient really."[113] In 2000, she recognized that sterilisation was

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[108] Drees, *The Indian Association of Alberta*, 158.
[109] There exists a broad literature concerning the sixties scoop condemning white adoption of Aboriginal children as a form of cultural genocide. Karen Dubinsky discusses this theme in "A Haven from Racism? Canadians Imagine Interracial Adoption," in *Lost Kids*, 18. Dubinsky attempts to move adoption away from the cultural appropriation versus rescue paradigm in *Babies Without Borders Babies Without Borders: Adoption and Migration Across the Americas* (New York: New York University Press, 2010), 9; Strong-Boag explores the sixties scoop in context of liberal adoption policies, in "Today's Child: Preparing for the 'Just Society' One Family at a Time," *Canadian Historical Review* 86:4 (December 2005), 10.
[110] Ibid., 9, 79.
[111] Marjorie Bowker, "Brief on Mental Retardation," December 1965, 5, Bowker fonds, 93.435, File 20, PAA.
[112] Tingley interview with Bowker transcript, 26.
[113] Ibid.

repugnant to most persons, and commented "In terms of the current knowledge, these were medical doctors, very reputable, involved in the Sterilization Act and now we're blaming them for things that we're so smart about now. And I sometimes wonder 50 years from now, how that generation will pay for what we're doing now."[114] She added further that "At that time when I was visiting these places, I felt that a good job was being done."[115] On the bench, she encountered numerous dysfunctional families marked by poverty, low rates of literacy, and large numbers of children frequently with children of their own by their early teens. She believed that to uphold children's rights this inter-generational cycle had to be broken. She wrote that "the power of procreation is the greatest curse of our society."[116] She advocated for combinations of welfare support including financial and monetary aid. Her remarks indicate that she changed her perspective about sterilisation over time.

Between the 1950s and 1970s, these women judges used their legal training, judicial status, personal beliefs and politics, as well as knowledge of international developments to advance human rights claims for some minorities and vulnerable persons. Further, Bowker's reports indicate that she participated in entrenching existing white middle-class standards. Although Prairie women judges often sought human rights reforms for some disadvantaged persons they refrained, with only the exception of Tillie Taylor in her capacity as chair of the Saskatchewan Human Rights Board, from making public feminist statements concerning gender inequality, or discrimination, even as the women's movement gained influence.

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[114] Ibid.
[115] Ibid.
[116] Marjorie Bowker, "Health and Social Development Seminar: Child Welfare and Community Involvement," 27 November 1974, 16, Bowker fonds, 93.435, File 14, PAA.

Unequal Relations? Gender Roles and Perceptions of Discrimination

By the late 1960s, as equal rights activism gained ground and increasing numbers of women became lawyers, some women judges and lawyers offered comments in speeches, interviews, and ostensibly anonymous questionnaires about women's experiences of gender discrimination in the legal profession. These sources help to contextualize Mary Carter's statement that "I didn't experience any discrimination that I know of, but of course we weren't looking for it."[117] The limited records left behind by Carter, Sanders, Bowman, and Bowker reveal that they were well positioned within their careers by this time. They understood legal professionalism as distinct from prescriptive norms relating to women's role in ways that mitigated their individual perceptions of gender discrimination. Their perspectives sometimes indicated a generational divide as some women lawyers trained or educated after the mid-1950s expressed sentiments about the legal profession's acceptance of women lawyers as women. At the same time, the records reveal that women lawyers and judges, between 1930 and 1960, used coping strategies to fit into the masculine legal profession, and this complicates my assessment of how they represented themselves as women and as professionals. The 1960s were a period of critical change during which greater numbers of women lawyers acknowledged that they had made some gains in the legal profession, but also indicated that they were no longer content to be symbolic gentlemen.

To understand women lawyers' experiences of gender discrimination, University of Manitoba law professor Cameron Harvey sent out a nationwide survey to all women lawyers and

[117] McConnell, "University Women," 7.

judges identifiable through the Canadian Law List during the late 1960s.[118] Harvey conducted the survey because he had witnessed his wife's struggles in the legal profession, and he personally believed that the legal profession was difficult terrain for women. He sent out 649 questionnaires and received 267 responses. Forty-four of these responses were from women lawyers and judges educated in Alberta, Saskatchewan, or Manitoba.[119] I found forty-two of these questionnaires in the Cameron Harvey collection housed at the Archives of Manitoba.[120] Harvey's questions explored respondents' educational background, marital status, motivations for entering legal practice, and type of practice. Only one of his questions asked about gender discrimination by inquiring "do you have any criticism or comment concerning the treatment of women lawyers generally in the legal profession?"[121] In his published article, he refrained from making any conclusions about discrimination in the legal profession, indicating that his intention was "not to draw any conclusions… but rather to recount… the information which [his] research has uncovered."[122] This disappointing conclusion failed to address many women's comments about systemic inequalities that made it impossible for many women to pursue legal careers. Yet, by refusing to take sides Harvey reflected the sensitive nature of inquiring into the existence of gender discrimination in the legal profession, and also emphasized divisions among women who understood professionalism on different terms.

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[118] These questionnaires were intended to be anonymous; however, several women clearly identified themselves by signing their names, or in the case of Mary Carter, by providing detailed information that corroborated all of her public biographical details. With the exception of Mary Carter, I identity by name only those women who attached their names to their questionnaires. Harvey published his results in "Women in Law in Canada," *Manitoba Law Journal* 4: 9 (1970- 1971), 9.
[119] Harvey, "Women in Law in Canada, 10.
[120] Western Legal Judicial History Collection, Cameron Harvey Collection, Q26431, Box 30, Files 6 – 7, Q26432, Box 31, Files 4 – 9, Archives of Manitoba.
[121] "Questionnaire," question 18, Western Legal Judicial History Collection, Cameron Harvey Collection, A 2053, Box 29 – 31, Archives of Manitoba.
[122] Harvey, "Women in Law in Canada," 9.

Regarding their experiences of gender discrimination, twenty-nine out of forty-two Prairie questionnaires provided some form of commentary – largely pertaining to the categories of remuneration, type and opportunity for work, and women's status as legal professionals. Many respondents left blanks in their questionnaires, or provided only "yes" or "no" answers. Marguerite Ritchie's statement of gender discrimination was the most direct. She wrote:

> You may discover that some replies indicate an apparent lack of discrimination; in many cases I have found that women are unwilling to admit discrimination, either because they are trying to conceal the fact from themselves, or because they feel they must play the role of an "Uncle Tom" and that their chances of promotion depend absolutely upon their conformity to and acceptance of the existing patterns."[123]

Written responses in the questionnaires indicate that Ritchie's observation pertained to Prairie women judges Carter, Sanders, Bowker, and Bowman, although they offered different explanations for their "apparent lack of discrimination" based on their interpretation of legal professional norms. In Harvey's Prairie-origin questionnaires, only one woman lawyer vehemently denied experiencing any form of discrimination. Respondent 181 wrote: "I fail to see why any of this is relevant. It strikes me that the female lawyers who consider themselves to be oddities are the only ones who are treated by most of the practitioners as being odd."[124] Respondent 181, however, also revealed that she experienced considerable professional support from her employer. She stated "I was employed as a legal stenographer and was convinced by my employer that it was easier to dictate than be dictated to."[125]

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[123] Marguerite Ritchie, Respondent 35, University of Alberta graduate 1943, Western Legal Judicial History Collection, Cameron Harvey Collection, Q26431, Box 30, File 7, Archives of Manitoba.
[124] Respondent 181, University of Manitoba graduate 1967, Western Legal Judicial History Collection, Cameron Harvey Collection, Q26432, Box 31, File 4, Archives of Manitoba.
[125] Respondent 181, Western Legal Judicial History Collection, Cameron Harvey Collection, Q26432, Box 31, File 4, Archives of Manitoba.

Respondent 181's comment reinforces Ritchie's perspective regarding conformity as indicated above, but many more women lawyers indicated that they had experienced gender discrimination. Fifty percent of respondents from Manitoba, 33 percent from Saskatchewan, and 60 percent from Alberta indicated that they had negative experiences of the legal profession because of their gender.[126] A 1955 graduate of the University of Manitoba law school wrote that "generally, women are made to feel they do not belong in the legal profession, and are not actually as competent as their male contemporaries. In order to build a successful practice a woman lawyer must …prove herself to be more competent than male lawyers."[127] A 1961 University of Alberta graduate indicated that she tended to "'play down' the fact of being a woman in law in order that I may pursue a career in a more serious and honest vein."[128] Mary Lynne Griswold indicated that she had become very "anti-male Canadian lawyers" because they as a group could not accept women lawyers who were "feminine, ambitious, competitive, and married to someone who works in a profession equal in status to that of hers."[129]

Many women lawyers' perceptions of inequality stemmed from perceived or actual lower remuneration than their male colleagues.[130] Marjorie Bowker wrote that she believed she had received the same salary during articling but during her remaining five years in private practice

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[126] Harvey, "Women in Law," 11.
[127] Respondent 179. 1955 University of Manitoba graduate, Western Legal Judicial History Collection, Cameron Harvey Collection, Q26432, Box 31, File 4.
[128] Respondent 208, 1961 University of Alberta graduate, Western Legal Judicial History Collection, Cameron Harvey Collection, Q26431, Box 30, file 5.
[129] Mary Lynne Griswold, Respondent 209, University of Alberta graduate 1965, Western Legal Judicial History Collection, Cameron Harvey Collection, Q26432, Box 31, File 6.
[130] Unequal remuneration is mentioned by Respondents 180 (SK law graduate 1945), Western Legal Judicial History Collection, Cameron Harvey Collection, Q26432, Box 31, File 4. Respondent 209, University of Alberta graduate 1965, and Respondent 217, University of Alberta graduate 1961, Q26432, Box 31, File 6. Respondent 214, University of Saskatchewan graduate 1927, Western Legal Judicial History Collection, Cameron Harvey Collection, Q26432, Box 31, File 6. Respondent 65, University of Saskatchewan graduate 1953, wrote that she always received less salary than her male colleagues and was "advised that the fact my husband is a lawyer and also earning is consistently raised when my salary is being considered." Western Legal Judicial History Collection, Cameron Harvey Collection, Q26431, Box 30, File 7.

her salary advances were "probably less rapid."[131] One respondent revealed that she did not know whether or not her salary was equivalent to her contemporaries.[132] Another, recognizing general negative economic conditions, had to quit law because there "was not much business for lawyers in Saskatchewan during the thirties."[133] Others, including Mary Carter, indicated their salaries were on par with their male colleagues.[134] In Carter's case, her observation of salary parity is unclear because other evidence establishes that she was paid less than her male counterparts, at least during her early years on the bench.[135] Possibly, Carter was referencing her salary during the years she worked in a law partnership with her husband, or she was comparing her salary to her female colleagues.

Other comments about discrimination concerned the type of work women lawyers could and should practice, and often indicated that it was difficult for women to find legal work.[136]

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[131] Marjorie Bowker, University of Alberta graduate 1939, Western Legal Judicial History Collection, Cameron Harvey Collection, Q26432, Box 31, File 6.

[132] Respondent 201, University of Alberta graduate 1943, Western Legal Judicial History Collection, Cameron Harvey Collection, Q26432, Box 31, File 5.

[133] Respondent 214, University of Saskatchewan graduate 1927, Western Legal Judicial History Collection, Cameron Harvey Collection, Q26432, Box 31, File 6.

[134] Respondent 91, University of Alberta graduate 1964, Western Legal Judicial History Collection, Cameron Harvey Collection, Q26431, Box 30, File 7, Archives of Manitoba. Respondent 212, University of Manitoba graduate 1961, Western Legal Judicial History Collection, Cameron Harvey Collection, Q26432, Box 31, File 6. Respondent 215, University of Alberta graduate 1963, Western Legal Judicial History Collection, Cameron Harvey Collection, Q26432, Box 31, file 6. Respondent 192, University of Saskatchewan graduate 1957, Western Legal Judicial History Collection, Cameron Harvey, Q26432, Box 31, File 5. Respondent 194, University of Saskatchewan graduate 1957, Respondent 195, University of Saskatchewan graduate 1943, and Mary Carter also indicated her salary was on par with that of her contemporaries, Respondent 193, University of Saskatchewan graduate 1947, all files in Western Legal Judicial History Collection, Cameron Harvey Collection Q26432, Box 31, File 5. Similarly, Helen Steeves, University of Alberta graduate 1924, and Respondent 208, University of Alberta graduate 1961, indicated their salaries were on par with their contemporaries, Western Legal Judicial History Collection, Cameron Harvey Collection, Q26432, Box 31, File 6. Also, Carole Smallwood, Respondent 205, University of Alberta graduate 1967, Western Legal Judicial History Collection, Cameron Harvey Collection, Q26432, Box 31, File 5.

[135] Author's interview with Martha Carter, 26 April 2013.

[136] Respondent 33, Q26431, Box 30, File 7. Respondent 91 also indicated it was hard for women lawyers to find work. Others chose to work in other fields, including government work, Respondent 94, University of Manitoba graduate 1957, Western Legal Judicial History Collection, Cameron Harvey Collection, Q26431, Box 30, File 7. Respondent 217, University of Alberta graduate 1961, indicated that it was very difficult for women to find articling positions in Edmonton, Western Legal Judicial History Collection, Cameron Harvey Collection, Q26432, Box 31, File 6.

Winnifred Whitley, a 1935 University of Manitoba Law School graduate, wrote that she had not experienced gender discrimination in her line of work, which was "chiefly titles and estates, income taxes and a bit of general advising."[137] Whitley's perspective revealed another common theme – that women lawyers either chose or were directed into general practice work, involving wills, estates, and property matters, instead of higher status and better remunerated corporate or litigation work.[138] Respondent 215 revealed that she found it almost impossible to find an articling position because at the time of her 1963 graduation from the University of Alberta she was already married and the mother of one child.[139]

The responses reveal that certain systemic inequalities relating to lower pay, less rewarding work opportunities, and problems balancing motherhood with legal work existed throughout the 1930 to 1960 time period. Respondent 180, graduate of the University of Saskatchewan law school in 1943, wrote that she had "just the usual complaints – that in my time (1943 – 1947) in government (federal) departments, the women's salary for equal work was much lower than the men's." She also indicated that her husband supported women's legal training because it made women "fit" for active participation in the community. She revealed that she used her legal training in unnamed organizations by acting as a "parliamentarian" in one organization and as a "resolution chairman" of another. Had adequate daycare, with "properly

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[137] Winifred A. Whitley (Respondent 183), Western Legal Judicial History Collection, Cameron Harvey Collection, Q26432, Box 31, File 4, Archives of Manitoba.

[138] Respondent E. Mackay, University of Saskatchewan graduate 1963 wrote that she worked in general practice, including estates, wills, and family relations, Western Legal Judicial History Collection, Cameron Harvey Collection Q26432, Box 31, File 5. Respondent 200, University of Saskatchewan graduate 1963 indicated she worked in general practice. Marion Grayson (Respondent 60), University of Saskatchewan graduate 1940, spent 90 percent of her day practicing property law before she enlisted with the armed forces, Western Legal Judicial History Collection, Cameron Harvey Collection, Q26431, Box 30, File 7. Respondent 261, University of Alberta graduate 1927 (called to bar 1946) worked primarily as a taxation and estates lawyer, and pursued her legal training out of a desire to help her husband, Western Legal Judicial History Collection, Cameron Harvey Collection, Q26432, Box 31 File 9.

[139] Respondent 215, Western Legal Judicial History Collection, Cameron Harvey Collection, Q26432, Box 31, File 6.

trained helpers" existed, she insisted she would have kept practicing law.[140] Annie Gale wrote (in stark contrast to her media published views of discrimination in the Depression era context described in chapter three) that "I have never experienced any discrimination either from my fellow solicitors or the Bench, nor [sic] in my clientele. Looking back, I might point out that after I was called in 1956 I was a mature woman, the public were more accustomed to accepting women in professions and I may not have fared so well had I continued to practice in the interval between 1929 and 1956. However, I certainly feel that women are definitely accepted in the profession now."[141] At the same time, respondents from all decades cited mothering responsibilities as a primary reason for discontinuing, or postponing, legal practice. One respondent wrote that she intended to return to practice as soon as her three small children reached school age.[142] Concerns about motherhood reflected not only the lack of available daycare, but also expectations of the legal profession because it did not make concessions for reduced hours or flexibility for parents.

To some extent, the responses reveal a "generational divide" in that women respondents graduating after 1955 made more comments about the legal profession's receptivity to women lawyers as women than those who graduated earlier. Further, women law graduates of the 1930s and 1940s, unlike their 1950s and 1960s counterparts, more often emphasized the importance of their legal training to community work.

In expressing their opinions about gender discrimination, or women's equality issues, women judges used common coping mechanisms and representational strategies to describe their

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[140] Respondent 180, Western Legal Judicial History Collection, Cameron Harvey Collection, Q26432, Box 31, File 4.

[141] Annie Gale (Respondent 241), attended the University of Alberta law school between 1924 and 1925 but did not graduate, Western Legal Judicial History Collection, Cameron Harvey Collection, Q26432, Box 31, File 8.

[142] Respondent 215, University of Alberta graduate 1963, Western Legal Judicial History Collection, Cameron Harvey Collection, Q26432, Box 31, File 6.

experiences and opinions. Some of these strategies were also used by women in other professions. Ruby Heaps argued that Canadian women engineers, as outsiders in a male-dominated profession, often "act[ed] like one of the boys" to fit into the engineering profession.[143] In reference to women's oral reminiscences, Joan Sangster argued that women strike participants could have vastly different, and even contradictory or outright mistaken, reminiscences of their strike participation, but that all of them were much more likely than men to negate, understate, or minimize experiences of adversity or personal success.[144] Further, Sangster demonstrated that examining constructions of individual women's stories and recollections was useful for providing meaningful insight into women's work and family experiences as well as existing power structures, social relations, and women's resistance.[145] Heaps's and Sangster's insights inform my analysis of women judge's expressions of gender discrimination. Heaps puts women judges into a broader narrative about women professionals and shared coping mechanisms. Sangster suggests that individual women's stories can offer insights into the social and professional contexts in which they lived and worked. Individual Prairie women judges' expressions of discrimination inform this larger context.

Bowker consistently denied gender discrimination as a limiting factor for herself or other women professionals. She disassociated herself from the existence or effects of gender discrimination by using maternal language and prescriptions of women's role, and by blaming women for their individual failure to obtain professional training or opportunities. Bowker's perspective parallels her criticism of Métis women considered in the first section of this chapter

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[143] Ruby Heaps, "Writing Them Into History: Canadian Women in Science and Engineering Since the 1980s," in *Out of the Ivory Tower: Feminist Research for Social Change*, ed. Andrea Martinez and Meryn Stuart (Toronto: Sumach Press, 2003), 61.
[144] Joan Sangster, "Telling Our Stories: Feminist Debates and the Use of Oral History," *Women's History Review* 1994 3(1), 7.
[145] Ibid., 23.

because she operated from a position of privilege which helped to entrench power relations and inequalities while at the same time making advances for others. The following examples illustrate how Bowker attributed women's decisions to pursue professional vocations or motherhood as a personal choice because she believed that women's equality had already been achieved because of the legal conventions established by the UN and that it was the responsibility of each individual woman to do as she wished with the opportunities available to her.

In August 1966, Laura Sabia, president of the Canadian Federation of University Women congratulated Bowker on her recent court appointment. Sabia wrote: "Dear Judge Bowker: On behalf of our Federation I am most happy to send to you our sincere congratulations on your appointment as Judge of the Juvenile Court in Edmonton. I feel very keenly that there is a definite discrimination practiced against women in the professional and business field."[146] Bowker responded that "I hope you will not think it ungracious of me to say that my experience has not shown a discrimination against women in the professional and business field in this province… the problem is really too few women qualified and willing to accept positions of responsibility."[147] Bowker was unwilling to acknowledge the more subtle, systemic, forms of employment discrimination alluded to by Sabia. Sabia was arguing that gender segregation and unequal opportunities characterized the Canadian job market during this era, even though greater numbers of women were being professionally educated and trained.[148] Bowker's reply to Sabia substantiated her own perspective and experience. Bowker possessed the requisite qualifications

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[146] "Canadian Federation of University Women, 22 August 1966, Bowker fonds, 93.435, File 32, PAA. Meg Luxton argues that Sabia was a middle-class university-educated political lobbyist who encouraged greater co-operation between English-speaking women's organizations to more effectively lobby the federal government for women's legal reforms, "Feminism as a class act: Working-class feminism and the women's movement in Canada," *Labour/Le Travail* 48 (October 2001), 85.

[147] Letter to Mrs. M.J. Sabia, 12 September 1966, 1, Bowker fonds, 93.435, File 32, PAA.

[148] Luxton, "Feminism as a class act," 72 – 73.

and was willing to undertake the responsibilities attached to judicial office, and therefore, she did not believe herself to be discriminated against.

Bowker explained Canadian women's failure to participate fully in the professions by comparing the cultural values and hence available professional opportunities of Western, by which she meant British, Canadian and American women, against Eastern, particularly communist Russian women. In her 1968 speech at Ewha University, she commended Russian women for achieving positions of leadership in a variety of professional careers, and attributed their success not only to "differences in ideology, political systems, religion and philosophical beliefs," but also to "the emulation by Russian women of the masculine role [and] the prestige attached to work."[149] She believed that unequal gender relations in the West resulted from "vestiges of a cultural barrier – a certain resistance to women with drive and ambition, who place business before home and family or who exhibit a competitiveness frequently associated with professional achievement."[150] Bowker further argued that some Eastern women were beneficiaries of the success of the West's early twentieth century women's suffrage movement. She argued that women in developing Eastern countries did not have to fight for suffrage because this victory had already been achieved by Western women, and characterized the feminist role as "static" and "even receding" in the West.[151] Moreover, she cited the UN Declaration of Human Rights and the 1967 Convention on the Elimination of Discrimination Against Women as

[149] "82nd Anniversary Celebration Ewha Women's University Seoul, Korea: the role of women in the next half century," 22 May 1968, 8, 9, Bowker fonds, 93.435, File 42, PAA.
[150] Ibid., 9.
[151] Ibid, 10.

concrete evidence that women's equality had been secured and was incorporated into the post-World War II constitutions of some Eastern countries, including Korea.[152]

The ways in which other Prairie Canadian women judges discussed in this dissertation explained or justified their professional judicial roles reveals that they often disassociated their gender from the requirements of legal professionalism. Nellie Sanders seemed a bit hesitant, and somewhat contradictory, when questioned about her experiences, on the basis of being a woman, in the legal profession. When asked about her participation in the Manitoba Bar Association, Sanders indicated that she rarely participated in Bar Meetings. She stated "I remember I had some hesitation about going to bar meetings and I thought perhaps it might be easier not to go than have somebody wish I hadn't gone."[153] She implied by this that she did not necessarily feel welcome within this environment. Sanders was not alone in feeling unwelcome at Bar Association meetings. Alberta lawyer Marguerite Ritchie, frequently unabashed in expressing her opinions about gender discrimination, wrote "Bar Associations bring together interesting individuals, but the associations themselves are largely institutionalized masculinist [sic] bodies which can hardly be taken seriously."[154] Likewise, while conceding that she was a one-time member of the Portia Club, a Winnipeg-based group of women lawyers, she said that the women changed the name of the group because "there were some innuendos in the term Portia that some

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[152] Ibid., 11 – 12.
[153] "Sanders "Recording"
[154] Respondent 35," April 1969, Western Legal Judicial History Collection, Cameron Harvey, Q26431, Box 30, File 7, Archives of Manitoba. Marguerite Ritchie was a 1943 University of Alberta LL.B graduate, and she worked for many years with the Department of Justice in Ottawa. In 1963 she argued that the West's failure to use women's brainpower (as professional workers) might cause "the Western world to lose the battle with communism," Clipping, "Women's Brainpower Wasted, Says Edmonton-Born Lawyer," 24 December 1963, Legal Archives Society of Alberta. In 1975 she criticized legislation that merely assumed "women" were included within pre-existing legal categories titled "men," by arguing that women were owed the human dignity of possessing clear inclusion as "women," Ritchie, "Alice Through the Statutes," *McGill Law Journal* 21 (1975), 685 – 686.

of the women didn't like and they changed it, I think, to the Women Lawyers' Association."[155] Elsewhere in the interview, when asked to speak about persons who stood out in her mind, she recalled that a male lawyer "called me Portia and of course he could be very cutting in his remarks upon occasion and I felt the sharp edge as well as anybody else."[156] Yet, Sanders made light of this lawyer's treatment of her and straightforwardly told her interviewer that "I wasn't accustomed to being called Portia except by him."[157]

The significance of being called Portia relates to women's status and authority within a male-dominated vocation. The female character Portia, in Shakespeare's *Merchant of Venice* was disguised as a man in order to act as a lawyer or judge – the distinction was not clearly made in the play. The image reinforces the law as a masculine practice because as a woman Portia did not belong in the legal arena. Portia had to adopt male clothing, gestures, and knowledge to legitimate her presence in the legal arena. Thus, the term "Portia Club," and the male lawyer who called Sanders "Portia," strongly implied that women's gender excluded them from full belonging to the legal profession. Sanders chose to downplay her personal experiences of discrimination. She brushed aside the lawyer's remarks, and also stated, "I think there is discrimination whether you are male or female if you look for it. I haven't looked for it and I haven't found it."[158] Sanders' qualification here reflects a coping strategy demonstrated by other women lawyers and shown in the Harvey questionnaires. She understood the legal profession

[155] Ibid.
[156] Ibid.
[157] Ibid.
[158] "Sanders Recording."

was male territory, and she accepted the idea that the women who chose to practice within it became symbolic gentlemen.[159]

Sanders' disavowal of discrimination, however, also reinforced her confidence in her knowledge and ability as a lawyer and judge. When questioned about legal work she had undertaken for the Children's Aid Society and in court, Sanders expressed faith in her expertise. When discussing her professional roles, which she implicitly separated from her gender, she provided clear opinions as to what she perceived as her personal strengths and the strengths of the Manitoba family court system. She believed that one of the core strengths of the Manitoba justice system was in the field of welfare law, in which she had considerable expertise. She was also outspoken as to her capabilities as a Manitoba family court judge. She used the following example to demonstrate her abilities and faith in juvenile delinquency laws:

> I have been called from one end of the country to the other about a juvenile case where a boy was charged with manslaughter and I refused to transfer him to the ordinary courts…word got around the country about it...seems to me that if the Parliament had felt the Family Court Judges were incapable of dealing with a murder or manslaughter or rape charge they could have very easily exempted these from the jurisdiction of the Juvenile Delinquents Act. They haven't done so. They have had plenty of time to do so.[160]

Sanders was referring to a 1963 case in which a fifteen year old boy was charged with manslaughter in connection with the death of another youth at a Drive-In Theatre.[161] There was little press coverage of this case owing to publication bans regarding juvenile offenders. The point here is that in describing how she handled the case she used clear, concise language and included

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[159] Mossman, Mary Jane. *The First Women Lawyers: A Comparative Study of Gender, Law and the Legal Profession* (Oxford: Hart Publishing, 2006), 6.
[160] "Sanders Recording."
[161] "Juvenile Refused Transfer," *Winnipeg Free Press*, 27 September 1963, 3.

herself in the category of capable family court judges. Scholars have identified this tactic, of reinforcing one's perspective by reference to group belonging, as one used by many women to reinforce their experience or competence.[162]

Mary Carter's response indicated that she acknowledged discrimination, but she presented this discrimination as a logical outcome of her personal choice to become a mother. Carter wrote:

> Most women wish to marry and have a family. The nature of child bearing and rearing is such that such a woman cannot plan a career exactly as a man can. If I were a man I would not be content to be a Judge of the Magistrate's court, because an ambitious and bright lawyer does not find it challenging enough or sufficiently well paid. But as the mother of not-yet grown-up children, it suits me very well. I dare say this same attitude exists in many women lawyers who take 9 to 5 jobs in government service or other less-demanding positions so they can be with their families a good deal of the time. It is a self-imposed discrimination.[163]

Carter used this argument often. It appears here in her response to the Harvey questionnaire, but she also presented it in the university newspaper.[164] Carter's consistent message indicated that she was aware that she was "ambitious and bright" enough to pursue more challenging work. Her conclusion that she laboured under a "self-imposed discrimination" suggests that career-oriented professional women lawyers had the choice of whether to be professionals, like men, and therefore remain childless, or to be mothers and accept that this option limited career options. The concept of legal professionalism, in Carter's view, did not include women choosing to act according to behavioural prescriptions.

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[162] Heaps, "Writing Them Into History," 58; Sangster "Telling Our Stories," 7; Mary Kinnear, *In Subordination: Professional Women, 1870 – 1970* (Montreal and Kingston: McGill-Queen's University Press, 1995), 165.
[163] I deduced that this questionnaire was completed by Mary Carter based on the identifying information within it, including place and year of Law school graduation, work history, and stated reason for entering law school (which centred on a choice of scholarships and which information Carter presented in a published interview), Respondent 193, Western Legal Judicial History Collection, Cameron Harvey, Q26432, Box 31, File 5, Archives of Manitoba.
[164] McConnell, "University Women," 7

Myrna Bowman's questionnaire provided insight into her close relationship with her husband as well as her attitude towards women lawyers and issues of professionalism. Bowman was appointed a part-time Judge of the Manitoba Provincial Court (Criminal Division) in 1971, and she served in this capacity until 1976.[165] Bowman indicated that she chose to study law because it "combined intellectual challenges with the opportunity to work with people."[166] Bowman accepted that the legal profession was based on a male standard. She wrote that her first boss praised her with "the ultimate accolade that – 'I think like a man!'"[167] Her emphasis on this point suggests that she was aware of the irony of this statement, but also that she understood legal professionalism to be "male." This was reinforced by Bowman's response to Harvey's question regarding the treatment of women in the legal profession. Bowman wrote: "I think it is difficult for women to get started in law – to get into an office which will give her a chance to show what she can do in various respects of practice. If she once has the opportunity and is taken seriously then her opportunities become less unequal. Younger girls suffer most from this problem."[168] Bowman indicated her belief that the law operated unequally as a profession for women in her comment:

> In addition to initial difficulty in establishing oneself, I do think that women are not considered seriously and on an equal footing with men for positions on the Benchers, nor for appointments as QC's, or to the Bench. Insofar as women themselves are concerned, I think that they must learn, as do women in other professions, that in their professional life they must think and act as professionals primarily, not as 'lady lawyers.' They need not ask, expect, or even accept any special consideration or treatment by reason of sex. If they can't stand the heat, they should get out of the kitchen. I think this attitude is more difficult for younger girls to develop, due to the pressures of marriage and man-pleasing in our society. I do not mean by this that a

[165] Appointments to the Court of Queen's Bench." Myrna Bowman, P1216, Manitoba Archives, "member files," Bowman was appointed to the Court of Queen's Bench new family division on October 12, 1983.
[166] Respondent 184,, Western Legal Judicial History Collection, Cameron Harvey Collection, Q26432, Box 31, File 4, Archives of Manitoba.
[167] Ibid.
[168] Ibid.

> female lawyer need be brassy or hostile – merely that she must not be preoccupied or very conscious of her own femininity in her professional life. She must be a lawyer on her client's time – and a lady on her own time."[169]

Bowman, like Sanders, implied that it was somehow possible to separate one's gender from the construct of legal professional. Again this reinforces the idea that these Prairie women judges understood legal professionalism as based on a male norm. Judge Bowker did not comment on any discrimination towards women in the legal profession. Unsurprisingly, considering her own experiences and opinions stated in other documents, her questionnaire offered no criticism of the treatment of women lawyers in the profession.

Prairie women judges offered qualified statements about their personal experiences of gender discrimination that reinforced prescriptions about women's role and legal professionalism. Like other women professionals, they used strategies of negating, understating, or minimizing their experiences of discrimination as well as their personal successes. Their comments also indicate that they were comfortably positioned within their careers, unlike many of the women respondents in the Harvey questionnaires. Bowker renounced discrimination because of her belief that legal equality was already in place, and that it was every woman's individual responsibility to choose to pursue a professional career. In the end, making sense of Carter's statement that she didn't experience gender discrimination because "we weren't looking for it," has a dual meaning. First, because at least Carter, Sanders, and Bowman chose not to perceive themselves as discriminated against because they understood themselves to be competent legal professionals, and secondly, because at this time the women's movement had not yet forced a recognition of systemic gender inequality.

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[169] Ibid, 8.

Conclusion

During the 1960s and 1970s, the Prairie women judges discussed in this chapter actively pursued human rights reforms for some vulnerable persons within the context of an internationally-influenced reform movement. Their pursuits indicate the ways in which they acted, and sometimes participated in entrenching power relations and inequalities, to make advancements for others. The case studies of Wawrykow, Taylor, and Bowker demonstrated that their reform activism was strongly influenced by international themes as well as by their personal beliefs and experiences. Wawrykow's pursuit of increased human rights for Ukrainian Canadians reflected her background and interests and the growing importance of multiculturalism in Canada. Bowker legitimated her involvement in Aborginal adoption work by referencing international developments and by highlighting maternal themes. Taylor demonstrated her strong humanitarian concerns by attempting to improve rights for Aboriginal persons, prisoners, and the poor. They pursued human rights activism prior to, and sometimes in tandem with, their judicial roles indicating that volunteer and professional functions continued to overlap in the work of women judges during the 1960s. For even the most vocal of them, Taylor, judicial status required curtailing personal opinion. Writing to a reporter who wished to publish her views about "archaic" Canadian laws, including the criminalization of abortion and homosexuality – but silent as to matters of women's equality, Taylor explained: "I am sure that a person in my position is naturally quite apprehensive about publishing a number of forthright views such as in this article but I am happy to do this as long as I can be sure that I will not be misquoted."[170]

[170] Letter from Taylor to William Trent, 10 December 1973, 1, George and Tillie Taylor Collection, A-998, File 377, Saskatchewan Archives (Saskatoon).

Women judges' expressions of gender discrimination were even more circumspect. In their limited discussions about gender discrimination, women judges adhered to representational and coping strategies used by other women professionals. I used approaches garnered from scholarship based in oral history and professionalism to avoid narrowly presenting women judges' limited expressions as self-evident. Many women judges indicated that gender discrimination did not apply to their experience. This was a common theme not just among Prairie women judges, but also pertained to Bertha Wilson, the first woman to be sworn to the Supreme Court of Canada in 1982. Wilson's biographer, Ellen Anderson argued that throughout her career Wilson was reluctant to acknowledge experiences of gender discrimination.[171] According to Anderson, Wilson said, "I really didn't see it that way. I didn't recognize discrimination even when I met it, probably."[172] Women judges understood that prescriptions relating to women's role and professionalism, during these years before the height of the women's movement, circumscribed their roles. Examination of the Cameron Harvey Prairie-based questionnaires indicates that more women lawyers were beginning to articulate experiences of gender discrimination within the legal profession during the 1960s. Analysis of this time period is crucial because it provides the backdrop to the mid-1970s when women judges would translate feminist knowledge and vocabulary into numerous legal challenges that would give precedence to social obligations and clearly recognize systemic inequities in family law.

[171] Ellen Anderson, *Bertha Wilson: Postmodern Judge in a Postmodern Time*, vol. 2 (S.J.D. Thesis, University of Toronto Graduate Department in Law, 2000), 399, note 118.
[172] Ibid.

Chapter Six: "Reconciled to Family Court": 1970s Matrimonial Reform"

"Family Courts are a rather recent development in our judicial system, and they have evolved out of a recognition that family problems require something more than the purely legalistic approach."

Judge Marjorie Bowker, 1970.[1]

During the 1970s, family laws and courts in Alberta, Manitoba, and Saskatchewan underwent significant transformations strongly inspired by an equality-focused women's movement and facilitated by the 1968 federal divorce act.[2] As separation and divorce became more common local women's groups, including chapters of the Local Council of Women, the Women of Unifarm, the YWCA, and the Provincial Council of Women of Manitoba, voiced their concerns about unpaid maintenance and unfair settlements to provincial law reform commissions and committees. These women's groups often made reference to the nationally infamous *Murdoch* case to argue that wives were partners with their husbands and therefore deserved to

[1] "Purpose and Function of Family Court," 16 November 1970, 1, Bowker fonds, 93.435, File 42, Provincial Archives of Alberta ("PAA").

[2] This era's reforms were very broad, and included federal and national developments, including Justice Minister Pierre Elliott Trudeau's Bill C-150, instituted as the *Criminal Law Amendment Act*, which not only relaxed divorce laws, but also decriminalized homosexuality, allowed therapeutic abortion in accredited hospitals and the dissemination of contraception, and encompassed many other reforms. See *Criminal Law Amendment Act*, 1968 – 69, S.C. 1968 69, c.38; Julien D. Payne, "Family Law Reform and the Law Reform Commission of Canada," *Canadian Journal of Family Law* 4 (1983 – 1985): 355 – 367, 355. The Director of Canada's Family Law Project argues the federal divorce law was also introduced because of a political stand-off initiated by NDP members who "blocked passage of several hundred private Divorce Bills respecting Quebec domiciliaries." See also Lorraine Coops, "'One Flag, One Throne, One Empire': The IODE, the Great Flag Debate, and the End of Empire," in Phillip Buckner, ed. *Canada and the End of Empire* (Vancouver: UBC Press, 2005), 251 – 271 at 251 – 252; John T. Saywell, *The Lawmakers: Judicial Power and the Shaping of Canadian Federalism* (Toronto: The Osgoode Society, 2002); James G. Snell and Frederick Vaughn, *The Supreme Court of Canada: History of the Institution* (Toronto: The Osgoode Society, 1985), argue that the 1960s witnessed nationalistic sentiments as evidenced by the flag debate and the efforts of Canada's Supreme Court to shake off the vestiges of colonial power. Christine Davies, *Family Law in Canada* (4th ed.) (Toronto: Carswell Legal Publications, 1984): 325, 328, argues that another innovation was the Special Joint Committee of the Senate and House of Commons established in 1966 to investigate divorce in Canada.

share equally in marital property.[3] In the Prairies, some women judges, including Marjorie Bowker, Myrna Bowman, and Mary Carter participated in efforts to re-shape provincial family laws and family courts in light of family distress and unequal marital property divisions symbolized by *Murdoch*. Their different approaches to reforming family courts reflected values of legal professionalism, some personal biases, and caused occasional conflict with feminists demanding equality rights.

This chapter explores Bowker, Carter, and Bowman's contributions to family law reform. None of them worked in isolation, and they were not individually responsible for achieving family law reform. Their methods, however, reveal that they acted as legal professionals cognizant of developments in a vocal women's liberation movement, and also reinforce provincial differences relating to political and feminist influences. Marjorie Bowker emphasized conciliation processes because of her strong opinion that "family problems require something more than the purely legalistic approach."[4] Mary Carter participated in team-based efforts, supported by the Saskatchewan NDP government, to restructure the form and function of the family court itself. Myrna Bowman demonstrated her faith in formal legal processes and belief in women's full equality, by participating in drafting progressive family laws. I argue that the family law reform process unfolded in distinct ways in each Prairie province because of the influence of unique activist and political climates reflected in part by the contributions of Bowker, Bowman and Carter. Women judges often shared feminist demands for women's equality, but at the same time, their individual perspectives and the requirements of legal professionalism circumscribed how they translated reform goals into family law reform.

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[3] *Murdoch* v. *Murdoch*, [1975] 1 S.C.R. 423, 13 R.F.L. 185, [1974] 1 W.W.R. 361, 41 D.L.R. (3d) 367. ("Murdoch case").

[4] "Purpose and Function of Family Court," 16 November 1970, 1, Bowker fonds, 93.435, File 42, PAA.

Feminist Criticism of Divorce Law

In the 1960s, marriage and divorce were subjects of significant legislative and feminist debate across Canada. The 1968 Divorce Act provided much-needed uniformity and streamlined legal procedures.[5] Prior to the 1968 Act, divorce laws in Canada were an amalgamation of British-made laws and laws passed in provincial legislatures.[6] This meant that divorce regulations and procedures varied widely by province. There were, for example, no provincial provisions for divorce at all in Newfoundland and Quebec. In Nova Scotia cruelty was the only ground for divorce.[7] A national act was required because section 91(26) of the British North America Act (BNA Act) conferred on the Canadian federal government exclusive jurisdiction over marriage and divorce.[8] The 1968 Divorce Act introduced the concept of permanent marriage breakdown and allowed petitioners to file for divorce on this ground in certain circumstances. Before the 1968 reforms, divorce in Alberta, Saskatchewan, and Manitoba was granted only on the ground of adultery.[9]

The 1968 Divorce Act attempted to address shifting conceptions of marriage and family, but feminists and some legal and political representatives thought the Act was already outdated because it retained the concepts of marital fault, reconciliation, and lengthy separation periods.[10] The concept of spousal fault not only necessitated costly adversarial proceedings and caused long

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[5] Davies explains that the 1968 Act enabled either spouse to file his or her intention to divorce by completing a "notice of intention to seek dissolution" instead of the former, cumbersome process of applying for divorce by way of Petition. *Family Law in Canada*, 326. See also "Report of Social Service Committee," 6, 20 August 1976, Marjorie Bowker's Records, PR 2000.0101, PAA.
[6] Davies, *Family Law in Canada*, 325.
[7] Ibid., 328.
[8] *British North America Act*, s. 91(26).
[9] The indicia of marriage breakdown included the grounds that the couple is "living separate and apart," "imprisonment," "gross addiction to alcohol or narcotics," "whereabouts of a respondent unknown," and "non-consummation." Davies, *Family Law in Canada*, 383 – 396. Davies also argues that other grounds existed for divorce but were rarely used. Davies explains that wives, but not husbands, could petition on the grounds of the husband's rape, sodomy or bestiality, *Family Law in Canada*, 328 note 15.
[10] Davies, *Family Law in Canada*, 329.

court proceedings, but also failed to acknowledge the reality that greater numbers of couples were divorcing in the absence of any spousal wrongdoing or misconduct.[11] In Manitoba, Janet Paxton, recording secretary for the Manitoba Provincial Council of Women (MPCW), discussed the irrelevancy of fault in determining maintenance awards. Paxton stated "I don't think fault should come in. It will not change the amount of maintenance so why go into it? The real principle of maintenance is to survive and how much money does the woman need to raise the children, or the man, and whether or not it's his fault or whether he beat her up…that's not the principle."[12] Feminists across Canada argued that the concept of spousal conduct, enshrined in the divorce act, should have no place in provincial legislation.

Some people opposed the Act because long waiting periods and emphasis on reconciliation threatened their understanding of the family. The Act required spouses to be separated for three years prior to filing for divorce for most grounds save desertion, in which a five-year separation period was mandated.[13] This long separation period caused legal problems for second families during an era in which many for moral and religious reasons did not accept common law relationships.[14] Delegates from Alberta Women of Unifarm, for example, wrote to Prime Minister Pierre Elliott Trudeau that while they recognized and strongly supported marriage breakdown as a grounds of divorce, they believed that these long waiting periods were

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[11] Undoubtedly, spousal and child abuse continues to feature in divorce and separation matters. Christina Burr indicates that many women sought divorce or separation because of violent husbands during the years before the 1968 Divorce Act came into effect, "'Letters to Mike:' Personal Narrative and Divorce Reform in Canada in the 1960s," in *Family Matters: Papers in Post-Confederation Canadian Family History*, ed. Lori Chambers and Edgar-Andre Montigny (Toronto: Canadian Scholar's Press, 1998), 401.

[12] Manitoba, "Legislative Assembly of Manitoba: Hearing of the Standing Committee on Statutory Regulations and Orders," (June 3,1977), 450, Western Legal Judicial History, A2305, Archives of Manitoba.

[13] Davies, *Family Law in Canada*, 383 – 387.

[14] Burr discusses Canadians' moral and religious reasons for objecting to common law unions and divorce in the 1960s. "Letters to Mike," 402 - 406.

inappropriate because they gave rise to large numbers of children born out of wedlock.[15] Others criticized the act because it required judges to inquire into the possibility of reconciliation – a dated concept even though its meaning had shifted over the course of the twentieth century. In the late nineteenth-century reconciliation reflected social constructions of divorce as a moral failure and was linked to religious explanations for preserving marriage.[16] Emily Murphy relied on this variant of reconciliation in her police court when she urged acrimonious couples to stay together.[17] By the 1970s, reconciliation had lost its association with moral failure, but as demonstrated by Saskatchewan legislative debates urging the establishment of a Unified Family Court (UFC), it remained conceptually associated with efforts to maintain intact family units to prevent social problems including juvenile delinquency.

Although it streamlined divorce procedures across Canada, the 1968 Divorce Act reinforced jurisdictional divisions between the federal and provincial governments, and this in turn, created serious complications and disagreements in attempts to create provincial UFCs. Section 91(26) of the BNA Act gave the federal government the power to make laws in relation to marriage and divorce, but section 92(12) gave the provinces the right to appoint provincial judges to solemnize marriages and decide property rights.[18] These jurisdictional limitations meant that all matters pertaining to marriage and divorce could not be provided simply and cost-

[15] "Submission to the Prime Minister of Canada and Members of the Cabinet on The Royal Commission on the Status of Women by Women of Unifarm," 10 March 1972, Women of Unifarm, M8365, File 104, Glenbow Archives ("GA").
[16] Burr, "Letters to Mike," 411 footnote 18.
[17] Murphy letter to Pte. App. Major, 27 April 1918, Emily Ferguson Murphy Collection, MS-2, File 10 City of Edmonton Archives.
[18] Freda Steel, "The UFC – Ten Years Later," *Manitoba Law Journal* 24 (1996 – 1997): 381 – 406, 383; "Law Problems – Working Paper #1," Law Reform Commission of Saskatchewan (1974) http://www.lawreformcommission.sk.ca/Matrimonial_Property_Law.Problems (accessed October 10, 2013).

effectively within any existing lower provincial courts, and that provinces had to negotiate jurisdictional limitations in court restructuring schemes.

The 1968 Divorce Act was supposed to be equally available to both men and women, but women recognized that the disadvantages wrought by marriage breakdown would be borne disproportionately by them and their dependent children. Most separated or divorced women who had experienced the difficulty in obtaining sufficient maintenance, likely would not have agreed with Judge Bowker's assessment that "the myth of the 'absconding husband' [was] as popular as the myth of the 'welfare cheater'" had they read her report to the Social Services Committee.[19] Instead, women across Canada complained about inadequate maintenance awards and lack of judicial uniformity in allocating awards.[20] Just because divorce became easier to obtain did not mean that consistent provincial legal remedies for distributing marital assets or awarding child custody would necessarily follow.

Separating and divorcing urban and rural women across Canada experienced many difficulties in obtaining marital remedies including support payments or property division, but rural farm and ranch wives experienced particular hardships. Lori Chambers explains this difficulty as stemming from late-nineteenth century property law reforms that gave women a right to maintain their own separate property, usually wages earned through employment outside the home, but also reflected the belief that wives owed their labour to their husbands.[21] On farms and ranches entrenched legal and historical understandings privileged men as farmers and

[19] "Report of Social Services Committee," 20 August 1976, 38, Marjorie Bowker's records, PR 2000.0101, PAA.
[20] Letter from Berenice Sisler to Gerald W.J. Mercier, 31 March 1978, 2. WLJH collection, A2053, box 42, Province of Manitoba Family Law Review Committee: miscellaneous submissions 1977, Archives of Manitoba.
[21] Lori Chambers, "Women's Labour, Relationship Breakdown and the Ownership of the Family Farm," 25 *Canadian Journal of Law and Society*, 75:1 (2010), 78.

therefore the legitimate owners of farm property, and farmers' wives as helpmates.[22] Women challenged this unjust regime throughout the twentieth century by arguing that either a resulting or constructive trust arose from their labour, but judges across Canada refused to give any wife any proprietary interest unless she had made a direct financial contribution to acquiring the asset.[23]

In Alberta, rural farm and ranch wives had sought unsuccessfully since the dower campaigns of the early twentieth century to update property laws to enable women to assert claims to meaningful shares of farm property.[24] Members of Women of Unifarm were particularly active in promoting matrimonial legal reform and had advocated a partnership interest since the early twentieth century.[25] Representatives from Women of Unifarm believed that strengthening wives' financial position upon divorce would serve to bolster marriage by giving each partner significant financial incentive to preserve the union.[26] When the *Murdoch* case made national headlines, Women of Unifarm seized upon it because it originated in their own backyard and exemplified the decades-long failure of Alberta politicians to establish matrimonial property laws with partnership principles. The *Murdoch* case brought national attention to rural farm women's partnership quest.

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[22] Ibid., 76.
[23] Chambers references *Thompson v. Thompson*, [1961] S.C.R. 3 at para 31; *Klutz v. Klutz*, [1968] S.J. No. 146 at para 2 in support of women's efforts to use trust doctrine, "Women's Labour," 79.
[24] Catherine Cavanaugh, "The Limitations of the Pioneering Partnership: The Alberta Campaign for Homestead Dower, 1909 – 25," *Canadian Historical Review* 74, 2 (1993): 198 – 225.
[25] Carrol Jaques, *Unifarm: A Story of Conflict and Change* (Calgary: The University of Calgary Press, 2001), 160 – 162, explains that these predecessor groups included the United Farm Women of Alberta (to 1949) and the Farm Women's Union of Alberta (to 1970); see also: Bradford Rennie, *The Rise of Agrarian Democracy: The United Farmers and Farm Women of Alberta, 1909 – 1921* (Toronto: University of Toronto Press, 2000); Cavanaugh, "The Limitations of the Pioneering Partnership," 198 - 225.
[26] "The *Murdoch* Case," Audio-recording, n. d., Women of Unifarm, PR 2003.0305, File 0239, PAA; "Submission to the Prime Minister of Canada and Members of the Cabinet on The Royal Commission on the Status of Women by Women of Unifarm," 10 March 1972, 5, Women of Unifarm, M8365, File 104, GA.

In *Murdoch* v. *Murdoch*, the Supreme Court of Canada refused to recognize Irene Murdoch's labour contributions as establishing a claim to ranch property owned in her husband's name.[27] The facts of the case are well-known but warrant summary to explain specifically how the case became used as a symbol for a partnership view of matrimonial law. In the late 1960s Irene Murdoch, a Nanton ranch wife, separated from her husband after enduring a violent beating. She did not seek a divorce. Instead, she believed that her labour inside the home and on the ranch amounted to a partnership interest, and she argued that she was entitled to a one-half share of the property owned in her husband's name. The Alberta courts denied her partnership claim, granted her monthly alimony (available at that time as an independent remedy not contingent on divorce), and awarded custody of her son to her estranged husband. The majority of the Supreme Court of Canada likewise rejected her partnership claim, but the minority, Judge Laskin, wrote in his dissent that he was prepared to find that Murdoch's extraordinary labour and housekeeping might constitute a different form of constructive trust than was currently known to the law.[28] In making this finding, Laskin opened the door for future modification to Canadian trust law and also encouraged feminist discussion.

Feminists rallied behind Irene Murdoch because her case exemplified the negative results for women upon marriage breakdown.[29] In Alberta, rural women emphasized that divorce would not grant Murdoch a predictable or fair share of the marital property because of the historically restrictive dower law. By the mid-1970s, women's groups across Canada, including the Calgary

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[27] The Supreme Court of Canada heard the *Murdoch* case on October 2, 1973.
[28] Bruce Ziff, *Principles of Property Law* (2nd ed) (Toronto: Carswell, 1996), 198.
[29] For details on the case, see Mysty S. Clapton, "*Murdoch* v. *Murdoch*: the Organizing Narrative of Matrimonial Property Law Reform," *Canadian Journal of women and the Law*, 20 (2008): 197 – 230 makes a similar argument. Pernille Jakobsen, "Murdoch v. Murdoch: Feminism, Property, and the Prairie Farm in the 1970s," in Adele Perry, Esyllt W. Jones, and Leah Morton, *Place and Replace: Essays on Western Canada* (Manitoba: University of Manitoba Press, 2013), 40 – 58.

Local Council of Women, and the Alberta Women of Unifarm, spoke out in support of Irene Murdoch. Many politicians, lawyers, and Prairie women judges Bowker and Bowman specifically referenced the *Murdoch* case as shorthand for the legal challenges divorcing women faced, and as representative of a claim for a "partnership" view of marriage and marital property. *Murdoch* is used in a similar manner in this chapter because of its high visibility and profile during the 1970s.

Three years before the Supreme Court of Canada heard the *Murdoch* case, the Royal Commission on the Status of Women had already endorsed the partnership perspective.[30] Based on the submissions from women's organizations and individual testimonies, the RCSW in 1970 recommended that Canadian provinces:

> amend their law in order to recognize the concept of equal partnership in marriage so that the contribution of each spouse to the marriage partnership may be acknowledged and that, upon the dissolution of the marriage, each will have a right to an equal share in the assets accumulated during marriage otherwise than by gift or inheritance."[31]

The RCSW provided a public forum in which ordinary Canadian women could air their views about equality.[32] At consultations across the country, women encouraged the creation of localized women's commissions and committees that presented their views about marital property reform to provincial legislatures and law reform commissions. Provincial Status of Women Commissions resulted. Thousands of women, including Mary Carter, in her judicial capacity, made submissions to the RCSW in the late 1960s.

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[30] *Report of the Royal Commission on the Status of Women in Canada* (Ottawa: September 28, 1970), 246.
[31] Ibid., 246.
[32] Barbara Freeman, *The Satellite Sex: The Media and Women's Issues in English Canada, 1966-1971* (Waterloo, Ontario: Wilfrid Laurier University Press, 2001), 20.

Carter's submission emphasized the inadequacy of the Saskatchewan Married Women's Property Act (MWPA), and similar provincial legislation, for its failure to provide adequate remedies to women leaving long-term marriages. Carter pointed out that while the MWPA purported to treat men and women equally, by allowing women to keep property acquired before, or earned during, marriage in their own names, the effect of this legislation was decidedly unequal. Carter wrote that most married women did not participate in the paid workforce for many years following marriage, and indicated that many husbands neglected or refused to put property in joint names. Carter expressed "there have been women in my court who have worked and saved for 30 years on a farm, putting up with brutality and drunkenness and complete indifference so that the children might be raised," only to find that their husbands held the bulk of matrimonial property in their own names.[33] Unless her name appeared as either a sole or joint property owner, a married woman's only remedy was to file a caveat on the couple's homestead, and hope that her husband had not gifted away assets to his new paramour. Carter therefore recommended the enactment of "a simple provision that assets acquired after marriage are the common property of husband and wife."[34]

In Manitoba women created the Manitoba Volunteer Committee on the Status of Women (MVCSW) in 1967; its purpose was to set up a 'mini Royal Commission' to report to the RCSW.[35] From its inception, the MVCSW noted the high level of interest in family law matters amongst its affiliates.[36] The MVCSW espoused marriage partnership in which unpaid labour

[33] Mary Y. Carter, "Brief on Status of Women," 1968, 2, Royal Commission on the Status of Women in Canada [Briefs], no. 10, Library and Archives Canada.
[34] Mary Y. Carter, "Brief on Status of Women," 1968, 2, Royal Commission on the Status of Women in Canada [Briefs], no. 10, Library and Archives Canada.
[35] Sisler, *A Partnership of Equals: The Struggle for the Reform of Family Law in Manitoba* (Manitoba Arts Council and The Canada Council: Watson and Dwyer Publishing Ltd., 1995) 19.
[36] Ibid., 21.

performed in the home would be valued equally with paid labour in the workforce.[37] In Alberta, delegates, including Elizabeth (Betty) Pedersen from Unifarm Women of Alberta petitioned for a partnership interest based on the inadequacy of dower rights that entitled a married woman to only ¼ acre of land on which she resided.[38]

The stage had been set. The federal Divorce Act provided the foundation for a new era of divorce law and encouraged debates about property division across the country. The *Murdoch* case established the benchmark for discussions about marital partnership in the context of family breakdown and feminist activism. The participation of judges Bowker, Carter, and Bowman within this setting helps to highlight key political and feminist debates in local settings, and indicates tensions between feminist values, the law and legal professionalism, and the individual perspectives of especially Bowker and Bowman.

Keeping Families Together: Judge Marjorie Bowker and Reconciliation in Alberta

During the late 1960s and early 1970s, Marjorie Bowker, judge of the Edmonton Juvenile and Family Court, adjudicated a growing caseload on property division and support payments as divorce proceedings became more common.[39] By the early 1970s, the Canadian divorce rate was around 20 per cent, and Edmonton, which issued roughly 260 monthly divorces decrees, held the distinction of having the highest divorce rate in Canada.[40] These numbers included residents of

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[37] Ibid., 25.
[38] "Submission to the Prime Minister of Canada and Members of the Cabinet on The Royal Commission on the Status of Women by Women of Unifarm," 10 March 1972, Women of Unifarm, M8365, File 104, GA.
[39] Family courts are provincial courts, but in 1970 Alberta there existed five urban (Edmonton, Calgary, Red Deer, Lethbridge, and Medicine Hat) combined Juvenile and Family Courts, and judges and politicians referred to each of them by the city name to which they were attached. Mrs. W.F. Bowker, "Edmonton Family Service Association Brief on Juvenile Court Services," 30 November 1965, 2, Bowker fonds, 93.435, File 14, PAA.
[40] Paul Friggens, "The Court that Cares," *Reader's Digest*, (September 1975), 153, based on Friggens' interview with Marjorie Bowker.

Edmonton as well as persons living in surrounding rural districts who chose to use the Edmonton court.

Divorce Statistics by Province, 1968 – 1975				
Year	**Manitoba**	**Saskatchewan**	**Alberta**	**Canada**
1968	465	384	1,916	11, 343
1969	1,334	882	3,446	26,093
1970	1,234	871	3,771	29,775
1971	1,383	815	3,656	29,672
1972	1,413	826	3,767	32,364
1973	1,620	887	4,435	36,704
1974	1,796	1,039	4,947	45,019
1975	1,984	1,131	5,475	50,611

Table 6.1: **Divorce Statistics by Province, 1968 – 1975.** *Source:* developed from *Statistics Canada, Vital Statistics, Volume II: Marriages and Divorces 1975*, 28.

Table 6.1 demonstrates that the number of divorces increased after the introduction of the Federal Divorce Act in 1968, stabilized in the Prairie Provinces between 1970 and 1972, and increased again between 1973 and 1975. Many women's groups, cognizant of rising divorce rates and incensed at the result in *Murdoch*, lobbied provincial legislatures for changes to matrimonial property law. Lois Harder argues that "Virtually every women's group in the province submitted briefs on the issue and all of them, from the most conservative to the most radical, advocated implementation of legislation based on the principle of deferred sharing – that property acquired over the course of a marriage should be divided evenly between the marriage partners upon the dissolution of the marriage."[41]

[41] Lois Harder, *State of Struggle: Feminism and Politics in Alberta* (Edmonton: the University of Alberta Press, 2003), 33.

Bowker shared some of these sentiments and developed a strong personal and professional interest in divorce matters. She acknowledged the financial, social, and emotional toll of family breakdown, and became a leading advocate for court-based conciliation procedures. Her conciliation work was extremely meaningful to her. Writing retrospectively, Bowker commented, "If I were to be remembered at all for my years in the judiciary, I would wish it to be for initiating and developing the Edmonton Family Court Conciliation Project which became the short-term mediation component in divorce litigation."[42] Bowker's interest in conciliation revealed her commitment to reconciliation and her desire to help divorcing couples sort out their grievances so as to lessen the pain of divorce.

In part, Bowker's pursuit of the reconciliation model was evidence of her desire to protect the institution of the family. Bowker was concerned for the litigants appearing in her courtroom whose lives were often damaged by separation and divorce. In keeping with her volunteer child welfare background, she wrote that her goal was to "conciliate differences arising from separation or divorce, especially in issues relating to children."[43] Echoing language similar to that used by the first generation of women judges, and interwar psychologists, Bowker believed that broken marriages caused "many social disorders, including crimes of violence, suicides, juvenile delinquency, and child neglect."[44] Bowker's perspective aligns with Mona Gleason's argument that "the 'moral orientation' of earlier reformers and the 'normative requirements' of postwar psychologists shared both connections and differences."[45] After World War II, the rising divorce rate signalled declining family strength and supported the use of expertise advice –

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[42] "Career Highlights," October 1995, 4, Bowker fonds, PR 2000.101, File 4, PAA.
[43] "The Telegraph," December 1995, Bowker fonds, PR 2000.101, File 4, PAA.
[44] "United Nations Conference on 'Criminal Justice and Treatment of the Offender," September 1975, Bowker fonds, 93.435, File 42, PAA.
[45] Mona Gleason, *Normalizing the Ideal: Psychology, Schooling, and the Family in Postwar Canada* (Toronto: University of Toronto Press, 1999) 18.

including psychologists.[46] Bowker also acknowledged contemporary realities of the enormous financial costs of failed marriages, in terms of maintenance payments and property divisions. These costs, in Bowker's view, would eventually fall upon the state. For all of these reasons, Bowker stated "this is why it is so important to heal broken marriages and prevent unnecessary divorce."[47] Based on her experience as a Juvenile and Family Court Judge, she "became increasingly aware of the inadequacies of legal remedies alone as a solution to many marital problems. Though I could make an order which met all the legal requirements, the parties could leave my courtroom with their personal problems unsolved."[48]

In May 1969, Bowker was the only woman speaker invited to the American Association of Conciliation Courts, held in Los Angeles, California. The Los Angeles conciliation court encouraged couples in troubled marriages to apply for short-term, court-sponsored counselling provided by professional marriage counsellors attached to the court.[49] Bowker emphasized that couples in crisis were not compelled to seek counselling, and explained that this type of court-sponsored counselling did not compete with similar services offered in the community, because it was only available on a very limited basis and was organized through the courts. At the time, she did not believe that Canada was ready for such a court-conciliation model because of the jurisdictional issues in the Canadian legal framework and an absence of much-needed funding and political and financial support for the initiative.[50] Nevertheless, Bowker pursued the conciliation idea. In October 1969, she invited Franklin C. Bailey, a retired senior counsellor of the Los Angeles Conciliation Court to Edmonton to meet with Alberta judges, court staff, and

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[46] Ibid., 83.
[47] "Report of Social Services Committee," 20 August 1976, 41, Marjorie Bowker's records, PR 2000.0101, PAA.
[48] "Career Highlights October 1995," 3, Bowker fonds, PR 2000.101, File 4, PAA.
[49] Clipping, "Early conciliation salvages marriage," May 1969, Bowker fonds, 93.435, File 25, PAA.
[50] Ibid.

social workers "to discuss the possibility of establishing a marriage counselling service in the courts."[51] By drawing on her studies and observations in the international arena, an approach used by other members in the Canadian legal community during the 1960s, she convinced the legal community to support her initiative to establish in Edmonton, a court-centred, court-administered Marriage Conciliation Project in 1972.[52] Bowker received permission from the provincial government to try conciliation as an experiment within her family court "as long as it didn't cost them anything."[53]

Bowker's conciliation model aimed to provide court-sponsored professional counsellors to help divorcing couples reconcile their differences, and fit partly within the 1968 Divorce Act's requirement that judges must inquire into the possibility of a couple's reconciliation prior to decreeing divorce.[54] Bowker's conciliation project, initially designed as a three-year experimental project, was funded by a federal grant.[55] From 1975 and onwards, Bowker's conciliation service operated with provincial funding.[56] Between 1975 and 1976, 411 referrals were made to Bowker's conciliation service. Of these, 108 marriages were "restored," 154 benefitted from "divorce counselling," twenty-two "showed no benefit from counselling," 102 cases were "referred out for alcoholic or psychological counselling," and twenty-five cases were "still in

[51] "U.S. Court officer outlines system for marriage counselling*," Edmonton Journal,* 21 October 1969, Bowker fonds, 93.435, File 25, PAA.
[52] "Career Highlights October 1995," 3, Bowker fonds, PR 2000.101, File 4, PAA.
[53] Ken Tingley interview with Marjorie Bowker, (2 June 2000), 32, Edmonton Bench and Bar Oral History Project, Accession 2003 – 004, LASA (hereafter "Tingley interview with Bowker transcript").
[54] Friggens, "The Court That Cares," 153.
[55] "Report of Social Services Committee," 20 August 1976, 28, Marjorie Bowker's records, PR 2000.0101, PAA.
[56] The records do not indicate when the provincially funded conciliation project ended. The evidence suggests that conciliation efforts continued, transforming into contemporary family mediation services. This is supported by Bowker's comments in her interview with Ken Tingley. See: Tingley interview with Bowker transcript, 32.

process."[57] Bowker acted as Judicial Supervisor of the conciliation service because she believed that:

> the most successful such courts in the United States (and on which this project is modelled) are those under the supervision of an interested and concerned judge. A judge in this capacity in no way becomes involved in the counselling process, but serves solely as a link with lawyers and the courts in order to insure that the needs of the legal community are being adequately met.[58]

Emphasising the judge's role as a "link" between services, rather than as a counsellor, Bowker addressed the legal profession's growing concern about the impact of implementing social science techniques and using non-legal experts in the family courts. Bowker's advocacy of using non-legal experts had a lengthy historical precedent in that non-expert, voluntary-sector-derived professionalism acted as a precondition for the judicial involvement of the first generation of women judges. In the interwar period, as Dorothy Chunn discusses, social service expertise frequently made its way into the courts and influenced social and legal understandings of criminality.[59] By referring spouses to court counselling, as in conciliation proceedings, she believed that judges did not become counsellors, and that their judicial independence was not threatened. Instead, Bowker viewed the role of judges as a "bridge between" the court and counselling services.[60] Her visibility and status as judge during the same period appeared to be bolstered precisely because she applied these non-judicial methods to her court.

Bowker sought to place conciliation proceedings at the core of a completely re-designed family and juvenile court. In November 1965, Bowker presented a brief to the John Howard

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[57] "Report of Social Services Committee," 31, 20 August 1976, Marjorie Bowker's records, PR 2000.0101, PAA.
[58] Edmonton Family Court, "Marriage Conciliation Service: 5 Year Summary of Operations 1972 – 1975," (Edmonton: Communications Public Affairs Alberta Attorney General, 1978), 20.
[59] Dorothy Chunn, *From Punishment to Doing Good: Family Court and Socialized Justice in Ontario, 1880 – 1940* (Toronto: University of Toronto Press, 1992), 39 - 45.
[60] "Report of Social Services Committee," 27, 20 August 1976, Marjorie Bowker's records, PR 2000.0101, PAA.

Society that advocated consolidation of all Alberta family laws into one Family Court Act, and establishing a singular court to deal with all matters affecting families including juveniles, assisted by social services and counsellors. Bowker noted in her report that this type of court was established in Toronto in 1963, and that it had a lengthy international history in Britain, the United States, and Japan.[61] In Alberta, Bowker was an early advocate of "UFCs," as this type of comprehensive family court, complete with social service functions, would be called by the mid-1970s.[62]

On 20 August 1976, Bowker submitted a proposal for a UFC to the Director of the Alberta Institute of Law Research and Reform.[63] Bowker wrote that she was basing her observations on ten years of experience as a juvenile and family court judge in Alberta. The report reflected Bowker's awareness that over the course of the 1970s, her conciliation model became used less frequently to reconcile divorcing couples and instead was used to help couples sort out divorce-related difficulties concerning financial arrangements and child custody.[64] She expressed mixed feelings about this. She did not want couples to be forced to reconcile, but at the same time, noting that Alberta had the highest divorce rate in Canada, she queried, "were all of these divorces necessary? Were some cases propelled along by the very nature of the system ending with a divorce which they may never have wanted? Was there help readily available?"[65]

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[61] "Comment on Edmonton family Service Association Brief on Juvenile Court Services," 30 November 1965, 3, Bowker fonds, 93.435, File 14, PAA; "Family Law in Canada, 9, Bowker fonds, 93.435, File 13, PAA; "Family Law in Canada," 8, Great Britain instituted conciliation proceedings in 1938 through its National Marriage Guidance Council.

[62] Mrs. W.F. Bowker, "Comments on Edmonton Family Service Association Brief on Juvenile Court Services," 30 November 1965, Bowker fonds, 93.435, File 14, PAA.

[63] "Report of Social Services Committee," 20 August 1976, 1 – 54, 20 August 1976, Marjorie Bowker's records, PR 2000.0101, PAA.

[64] *Final Report on Edmonton Family Court Conciliation Project:* a Demonstration project (Canada: Department of National Health and Welfare, September 1972 – August 1975), Vol. 1, 33.

[65] Judge Marjorie M. Bowker, "UFC: Report of the Social Services Committee," n.d., 2, Bowker fonds, PR 2000.0101, PAA.

To solve some of these issues, Bowker wanted the UFC to be able to handle divorce matters and all of the issues related to divorce, including property settlement, maintenance, custody, access and restraining orders.[66] Further, to alleviate family stress Bowker believed the court should have jurisdiction over some matters relating to children who were then dealt with in District Court, including child neglect, adoption and affiliation proceedings (maintenance claims against putative fathers for support of illegitimate children).[67] She withheld further opinions about the juvenile court, noting that the Kirby Report was underway. [68] She believed the UFC should also handle disputes relating to separated spouses, including applications for maintenance, custody, and access – all of which were handled by family court. In addition, she wanted family assaults and enforcement of maintenance orders added to this list.

Bowker briefly discussed family assaults in a 1970 speech she had prepared for a public meeting in Wetaskiwin at which she introduced herself as the new circuit juvenile and family court judge. She revealed that "you would be surprised at the number of these – where a husband assaults a wife – or vice versa," and indicated that the court treated assaults as criminal charges.[69] She understood assault as an indication of serious marital conflict and as often related to alcoholism. At the same time, however, Bowker indicated that the court often refrained from sending alcoholic husbands charged with assault to jail if they would promise to "go for counselling to an appropriate agency, perhaps to AA." She concluded that "Oftentimes such a threat from the court (I prefer to call it 'the wise use of judicial authority') can effect [sic] the kind of change which a wife has been trying to accomplish for years; and spouses have been

[66] Ibid., 6.
[67] Ibid., 5.
[68] Ibid., 6.
[69] Judge Marjorie M. Bowker, "Purpose and Function of Family Court," 16 November 1970, 5, Bowker Fonds, 93.435, File 14, PAA.

known to return to court on the adjournment date, holding hands."[70] Her perspective re-iterates her belief in the effectiveness of conciliatory services, but it also reinforces that feminist, political, and legal recognition of spousal abuse was only in its formative stages.[71]

By the latter half of the 1970s, Bowker's recommendations regarding maintenance payments emphasized the rights of fathers, without factoring in the continuing needs of first wives and children. She wrote; "Because most divorced husbands remarry (as they have a right to do), it is inevitable that they acquire new financial responsibilities. Enforcement of a maintenance order (many of which are unrealistic to begin with) can destroy the second family; the first family has already been destroyed; do we solve the problem by destroying the second?"[72] Instead of punishing a man for his inability to pay all of his maintenance obligations by introducing court-based garnishment procedures, Bowker emphasized that the only relevant question was "how much a husband can reasonably pay in the light of his total obligations and family circumstances?"[73] Bowker's perspective realistically acknowledged the father's difficulties in paying court-mandated support, and emphasized his duties to provide for all of his families, past and present, and supported a political climate intent on minimizing social welfare costs.

Bowker's perspective, however, likely did little to advance the partnership model of marital property reform advanced by the Alberta Women of Unifarm. After the *Murdoch* case, they approached the legislature and the Alberta Law Reform Commission to speak about divorce issues. They met with Wilbur Bowker, Marjorie Bowker's husband, who served as the first

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[70] Ibid., 5.
[71] Nancy Janovicek, *No Place To Go: Local Histories of the Battered Women's Shelter* (Vancouver: UBC Press, 2007), 4, 10.
[72] "Report of Social Services Committee," 20 August 1976, 39, Marjorie Bowker's records, PR 2000.0101, PAA.
[73] Ibid., 40.

director of the Institute of Law Research and Reform between 1968 and 1975, and described their "most frustrating afternoon with judge Bowker." They became quite upset when Wilbur Bowker informed them that the law absolutely forbids placing a wife's name on a land title unless she could demonstrate she had helped pay for the land.[74] They were well aware that Irene Murdoch, and many other separated and divorced wives with dependent children, became destitute after divorce or separation. Betty Pedersen summed up their concerns by saying "if it can be done to Mrs. Murdoch it can be done to each and every one of us. That's what we have to look at."[75] Women's groups explained that men could freely contract successive marriages and dependents while first wives and children often lived in poverty upon divorce.[76] They recognized that systemic barriers rendered women unequal.

Determining what was fair depended on divergent perspectives concerning deferred or immediate property sharing, and reflected patriarchal ideas about equality. Many Alberta women's groups, including the YWCA, the CLWC, Unifarm Women of Alberta, and the Alberta Status of Women Action Committee, advocated a system of deferred sharing. Deferred sharing meant that each partner would share equally in assets acquired during the marriage, exempting gifts and inheritances on marriage breakdown.[77] Women of Unifarm believed in the principle of equality and that women, as well as men, should be financially responsible for themselves and their dependents. Thus, they argued that if a system of deferred sharing was adopted, alimony or

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[74] "The *Murdoch* Case," Audio-recording, n.d., Women of Unifarm, PR 2003.0305, File 0239, PAA.
[75] Ibid.
[76] Berenice Sisler argues that women in Manitoba clearly voiced their frustration about first wives' impoverishment on separation or divorce. *A Partnership of Equals*, 9, 16.
[77] "Women of Unifarm Submission to The Institute of Law Research and Reform in regard to the Working Paper on Matrimonial Support," 2, Women of Unifarm, M8365, File 104, GA.

maintenance payments might be abolished – assuming of course, that judicial discretion remained in place to protect the needs of minor children.[78]

Women's groups wanted legislative and court change to institute equality within marriage. This was difficult to achieve within the particular economic and political climate of Alberta. The oil-dominated economy supported a political climate focused on individual economic prosperity over social justice initiatives during the 1970s.[79] Peter Lougheed's Conservative government defeated the Social Credit government in 1971, and proudly proclaimed its first legislative act as the passage of the first human rights code in Alberta, the Individual Rights Protection Act, to be administered by the Alberta Human Rights Commission.[80] Human rights in Alberta, however, largely meant individual human rights as Lougheed's government resisted using state infrastructure to support the poor or otherwise marginalized.[81] For Alberta feminists, focused on attaining matrimonial property reform, equal pay, and maternity leave, the 1970s were a decade of struggle and resistance against the Conservative provincial government.[82]

In spite of Bowker's on-going positive efforts to establish a UFC in Alberta it was never achieved. In 1978, the Provincial Court of Alberta was established, amalgamating the criminal, civil, family, and youth branches into one court.[83] In spite of the actions and recommendations from Alberta women's groups and the recommendations of the Alberta Institute of Law Research and Reform, family law reforms did not include any clear provisions for marital partnerships.

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[78] Ibid.
[79] Harder, *State of Struggle*, chapter two.
[80] Ibid., 19 – 37. See also: Dominique Clément, "Alberta's Rights Revolution," *British Journal of Canadian Studies*, 26:1 (2013), 66.
[81] Ibid., 20.
[82] Ibid.
[83] Marjorie Bowker clippings file, "History of Alberta Women in Judicial Positions," *The Edmonton Bar Association*, n.d., 7.

Instead, the Matrimonial Property Act, which came into effect on 1 January 1979, adopted the principles of deferred sharing and judicial discretion.[84] The relevant sections simply state that the court may make a distribution of property, and in so doing the court will consider a variety of factors including each spouse's contribution to the marriage.[85] In 1992, Bowker wrote: "Alberta still does not have a UFC – though I have long been an advocate of it (as exists, for example, in Australia and even in Manitoba)."[86] Bowker perceived that in failing to establish a UFC, Alberta fell behind developments in other provinces and countries.

Bowker's deep involvement with conciliation proceedings became an important foundation for developing UFCs elsewhere in Canada. The Law Reform Commission of Canada argued that Bowker's conciliation model was the standard to follow. Conciliation, in the Commission's opinion, might help to reduce the adversarial nature of family law because the adversarial approach "promotes a ritualistic and unrealistic response to family problems."[87] Before mandating the creation of UFCs the federal government first established a series of pilot programs to examine their functionality. The first three of these experimental UFCs were located in Hamilton, Ontario (1977), Saskatoon, Saskatchewan (1978), and St. John's, Newfoundland (1979).[88] Similar experimental courts were later founded in the Richmond, Surrey, and Delta districts of British Columbia, and in Fredericton, New Brunswick.[89] In order to be selected as an experimental UFC, and thus obtain federal funding, the area in question had to have specialist family judges and a separate physical location in which to house the court; otherwise the

[84] The *Matrimonial Property Act*, S.A., 1978, c. 22.
[85] The *Matrimonial Property Act*, R.S.A.. chapter M-9, 1980, sections 7 and 8.
[86] Marjorie Bowker to Marilyn Mosa, 27 August 27 1992, Bowker fonds, 93.435, File 7, PAA.
[87] Law Reform Commission of Canada, Working Paper No. 1, *The Family Court* (Ottawa: Information Canada, January 1979), 11.
[88] Paul Havemann and Lorne Salutin, *Team Work: Saskatoon's Unified Family Court Project 1978 – 1981* (Saskatchewan, Canada: Prairie Justice Research Consortium, School of Human Justice), 11.
[89] Payne, "Family Law Reform and the Law Reform Commission of Canada," 357.

selection criteria varied.[90] Saskatoon, Saskatchewan was chosen because Justice Emmett Hall had completed a similar study in 1974, but with much more budgetary analysis than the federal Commission report, and because of an accommodating NDP government that supported Mary Carter's community-based approach in the Saskatoon Family Court.[91]

Magistrate Mary Carter and the Saskatchewan UFC

Saskatchewan became the first Prairie province to successfully implement a UFC, and in many ways proved a unique case in matrimonial law and court reform. Whereas most Canadian legislatures, except Quebec, provided little or no guidance regarding the resolution of matrimonial property disputes, Saskatchewan in 1974 – 1975 amended The Married Women's Property Act of Saskatchewan.[92] Section 22 of the act gave Court of Queen's Bench judges wide and discretionary power to make any order the judge deemed fair and equitable in the circumstances.[93] The act considered all spousal property, and judges under subsection four had to consider not only each spouse's financial contribution, but "the respective contributions of the husband and wife whether in the form of money, services, prudent management, caring for the home and family in any form whatsoever."[94] More significantly, the wife's labour did not need to be 'above and beyond' as *Murdoch* argued, but instead, the test was that the wife should work

[90] Havemann and Salutin, *Team Work*, 11 – 12.
[91] Emmett E. Hall, *A Unified Family Court for Saskatchewan: A Program for a Pilot Project* (Hall Commission), (November 1974).
[92] *Rathwell* v. *Rathwell* [1978] 2 S.C.R. 436 at 443 citing The Married Women's Property Act of Saskatchewan, R.S.S. 1965, c. 340 (came into force on 1 May 1975).
[93] Ron W. Hewitt, "Section 22: The Married Women's Property Act," *Saskatchewan Law Review* 42 (1977 – 1978), 260.
[94] Ibid., 266.

to the best of her ability.[95] The act was spearheaded in the midst of significant legislative debate about the status of the family in an era of family crisis, marked by rising divorce rates. Further, the act was a significant step towards acknowledging marriage as a partnership founded on principles in addition to economic factors.[96] In the 1970s, the act functioned as one part of ongoing property law revisions including a proposed UFC.

In 1973, Attorney General Roy Romanow, concerned about confusion within existing family law, requested recently-retired Chief Justice Emmett Hall to investigate the possibility of UFCs in Saskatchewan. Hall submitted his report to Romanow in 1973.[97] Hall's report recommended choosing Saskatoon as the ideal location for a pilot project because it already had an established family court that could accommodate increased jurisdiction in family matters. Hall argued that the UFC should operate as an informal magistrate's court, rather than as an adversarial superior court, to carry out its function of mitigating damage to divorced spouses, especially those with children.[98] Hall also envisaged a family court that consisted of judges specifically chosen for their interest and competence in family law.[99]

After lengthy government negotiations and legislative debate, beginning with "vague promises in the 1971 [election] campaign," for a new family court[100] Saskatchewan successfully implemented a UFC project between 1978 and 1981.[101] The

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[95] Ibid., 267.
[96] Ibid., 260; Saskatchewan Legislative Assembly Debates (November 16, 1977), 7 http://www.legassembly.sk.ca/legislative-business/meetings.pdf.
[97] Saskatchewan, Legislative Assembly Debates (December 1, 1977), 510 http://www.legassembly.sk.ca/legislative-business/meetings.pdf.
[98] "Unified Family Court supported," *Accent on Campus (Star*), 17 January 1975; Saskatchewan, Legislative Assembly Debates (December 1, 1977), 510, http://www.legassembly.sk.ca/legislative-business/meetings.pdf.
[99] "Unified Family Court supported," *Accent on Campus (Star*), 17 January 1975; Saskatchewan, Legislative Assembly Debates (December 1, 1977), 513, http://www.legassembly.sk.ca/legislative-business/meetings.pdf.
[100] Saskatchewan, Legislative Assembly Debates (March 29, 1977), 1464, http://www.legassembly.sk.ca/legislative-business/meetings.pdf.
[101] Havemann and Salutin, *Team Work.*

pilot court, located in Saskatoon, was influenced by the court unification project as advocated by the Law Reform Commission of Canada, a commissioned report on family courts by Saskatchewan Judge Emmett Hall, unified court experiments in British Columbia, Ontario, and limited district court experiments in Winnipeg. In the 1970s, the Manitoba government proposed a unified family court (UFC) in which all district courts would be responsible for family matters. This stood in sharp contrast to the Saskatchewan recommendation to appoint family law experts at the magistrate level. Legislative debates indicate that the Saskatchewan government wanted to create a UFC that could deal meaningfully with all matters relevant to family law regardless of issues of federal or provincial jurisdiction.

Speaking before the Saskatchewan Legislative Assembly in December 1977, Romanow agreed with many of Hall's recommendations. Romanov emphasized that, unlike elsewhere in Canada, the Saskatchewan UFC should operate at the magisterial level. He argued that:

> The Saskatchewan situation is unlike that which exists elsewhere in other parts of the country. It is unlike the situation that exists on the lower main land [sic] of British Columbia, or in the Winnipeg metropolitan area or in the so-called Golden Triangle of Ontario. Saskatchewan has a peculiar and particular geographic and demographic situation with relatively few people scattered over a relatively large area. I think that requires a court system with a different approach.[102]

Romanow clearly distinguished the proposed UFC from the UFC already established in British Columbia. The British Columbia UFC consisted of a physical rather than substantive unification of all three levels of court. In other words, the British

[102] Saskatchewan, Legislative Assembly Debates (December 1, 1977), 511. http://www.legassembly.sk.ca/legislative-business/meetings.pdf.

Columbia UFC brought together court functions and accompanying social support services in one building. This was unacceptable to Romanow because he wished to challenge and re-establish existing constitutional jurisdictional limitations regarding marriage and divorce (federal matters), and property division (provincial jurisdiction) to honor the geographical realities and rural character of Saskatchewan.[103]

Romanow's goal to fundamentally re-shape the family court at the magisterial level was not be realized as negotiations with the federal government failed to create necessary jurisdictional concessions. On 1 December 1977 Romanow moved for the second reading of Bill no. 23, "An Act to Establish a UFC for Saskatchewan."[104] Romanow explained to the legislative assembly that he had hoped to introduce legislation based on Hall's proposal since the 1974-1975 session, but had failed in his efforts to obtain the federal government's agreement to appoint judges jointly with the provincial government so that one judge could hear all family matters.[105] Cognizant that Ontario had attempted a similar unsuccessful strategy, by 1977 Romanow agreed with the federal authorities to a jointly funded project in Saskatoon of a UFC at the district court level.[106] The court was enabled to hear a broad array of family matters including juvenile delinquency, child welfare cases, adoptions, custody, division of matrimonial property, judicial separation and divorce.[107] In recommending a UFC, Romanov indicated that many women's

[103] Ibid, 512.
[104] Saskatchewan, Legislative Assembly Debates (December 1, 1977), 509. http://www.legassembly.sk.ca/legislative-business/meetings.pdf.
[105] Ibid., 512.
[106] Ibid., 513.
[107] Ibid.

organizations, including the Saskatchewan Action Committee, the Status of Women, the Local Council of Women, and Business and Professional Women, supported the court.[108]

Within the Saskatchewan legislature some members supported the conciliation and counselling aspects of the UFC as a means of alleviating family distress and reducing juvenile delinquency. Anthony Merchant, Liberal member from Regina Wascana, argued that there was a strong correlation between divorce and family breakdown and instances of juvenile crime, including "problems like vandalism and … needless violence.,"[109] Merchant wanted the UFC to be able to deal with juvenile matters as well as "child abuse, deserted wives, [and] difficulties over divorce."[110] Merchant's connection of juvenile delinquency to family breakdown, and his recommendation that juvenile matters should be included within the UFC supports the idea that he, and other Saskatchewan politicians, perceived juvenile delinquency as a social, rather than criminal matter. Merchant's views were common during the postwar era because as Franca Iacovetta argues, the meaning of family returned to an earlier (if fictitious) conservative ideal based on middle-class and heterosexual values.[111] Strengthening and protecting the family by upholding prescriptive gender roles and maintaining intact family units was presented as a panacea to many problems, including that of delinquent youth. Merchant's comments also help explain why juvenile courts expanded to family courts – a key theme in this dissertation.

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[108] Ibid., 510.
[109] *Saskatchewan, Legislative Assembly Debates* (March 29, 1977), 1465. http://www.legassembly.sk.ca/legislative-business/meetings.pdf.
[110] Ibid., 1465.
[111] Franca Iacovetta, "Gossip, Contest, and Power in the Making of Suburban Bad Girls: Toronto, 1945 – 60," *The Canadian Historical Review*, 80:4 (December 1999), 597.

The Saskatoon UFC was to function as an informal, community-oriented space to assist struggling families. Romanow therefore emphasized that Carter's and Marion Wedge's[112] community connections, within the informal trappings of magistrate's courtrooms, substantiated their legal expertise in family matters:

> Judges Mary Carter and Marion Wedge have already proven that family matters within the jurisdiction of the Magistrate's Court as they have it, can be dealt with humanely, sensitively and correctly to law and I think it shows that the judges of the Magistrate's Court would have been particularly suited to have been the court of the UFC. They are judges who are part of the community in a more real way and judges who are familiar with the help that various communities and social organizations of the community can provide for a family in distress.[113]

By linking Carter and Wedge's community knowledge with their legal expertise, Romanow reinforced the idea that these women's judicial suitability was derived from intersections between community involvement and professional expertise.

Aside from Romanow's recommendation of Carter as an appropriate judge for the UFC, there is some limited evidence that shows Carter's involvement with marital property reform. Like Bowker and Bowman, Carter also spoke with women's groups about the necessity of implementing changes in family law. Speaking at the Farm and Home Week seminar held at the University of Saskatchewan in January 1975, Carter told the audience that the Saskatoon system involved four different courts all dealing with family problems. She said:

> the husband or wife must chase around to Queen's Bench for custody of the children. District Court for property settlement, and magistrate's court for separation matters. This is time consuming, more expensive and promotes the adversary nature of the judicial system whereby husband and wife try, as much as possible, to discredit each other in attempt to gain more legal grounding.[114]

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[112] Marion Wedge was Emmett Hall's daughter. She was appointed to the bench in 1972. Clipping "Wedge Makes Impact as Judge," *Star Phoenix*, 21 July 1998, n.p., University of Saskatchewan Archives and Special Collections.
[113] Ibid. 1466.
[114] "Unified Family Court supported," *Accent on Campus (Star*), 17 January 1975.

Carter's perspective was pragmatic and thoroughly grounded in her expertise as a family law magistrate.

Mary Carter also utilized legislated provisions of the Married Women's Property Act within her court. Her attempts to apply the act to overturn existing legal precedents, which had, as in *Murdoch*, dispossessed wives of property, created backlash. For example, during one divorce property settlement case in which a prosperous rural farmer strongly objected to his ex-wife's receiving *any* property, Carter was maliciously shoved at a shop by the farmer's brother when he recognized her as the magistrate presiding over his brother's case.[115] The judicial precedent to deny rural wives fair property settlements was well-entrenched in the Prairie Provinces. As a woman magistrate ruling against this practice, the farmer's brother may have perceived Carter as applying her judicial discretion unfairly to deviate from gendered legal and social norms. Unfortunately it is not possible to tabulate how many cases Carter adjudicated under the Act. Between 1 May 1975 and 6 October 1977, fifty reported cases dealt with issues under the Act. As most cases were unreported, it is not surprising that none of Carter's cases were included in this tabulation.[116]

Carter also became involved with the UFC project.[117] After the project ended, a published report detailed the findings of the UFC experiment. The report indicated that in 1979, Carter heard an average of 73.9 actions every month, including originating notices, juvenile delinquency matters, criminal code matters, and family service actions.[118] These numbers

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[115] Martha Caroline Carter Saskatoon, 26 April 2013. Telephone interview by author. (hereafter "Interview with Martha Carter").
[116] Hewitt, "Section 22," 273.
[117] Havemann and Salutin, *Team Work*, 38.
[118] Ibid., 69.

increased to 82.5 monthly actions by 1980, indicating that Carter was severely overworked.[119] The report writer, Paul Havemann, presented Carter as drawing extensively on her many years of experience in family law reform, and as an involved team member.[120] Havemann stated that "in no way did [Carter] see herself or allow others to place her in a central role or managerial position" in spite of her judicial standing and extensive experience.[121] This representation of Carter and her influence and attitude was supported by Attorney General Romanow, and was in keeping with his expressions regarding the informal and community-based approach of the UFC.

In 1978, the government of Saskatchewan made a parliamentary amendment that enabled District Court judges to also hold jurisdiction over Queen's Bench matters.[122] Mary Carter and Frank Dickson sat as judges in the court, which opened on 11 December 1978. The inclusion of juvenile matters within family court was short-lived. In 1981, the Saskatchewan District Court merged with the Court of Queen's Bench, and this removed juvenile delinquency cases from the UFC's jurisdiction.[123] Young offenders were no longer under the rubric of family-based child welfare initiatives because of changes in federal legislation. In 1984, childhood offenders were included in the federal Young Offenders Act, and discussions about how to include juvenile delinquents within a broader familial model ceased.[124] The severance of juvenile issues from the family courts by the end of the 1970s marks another important social and legal transition within this era.

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[119] Ibid., 70.
[120] Ibid.
[121] Ibid.
[122] Larry Johnsrude, "Two Judges Sworn in at Family Court," *Saskatoon Star-Phoenix*, 12 December 1978, np.
[123] Havemann and Salutin, *Team Work*, xix.
[124] The records from the Manitoba Provincial Council of Women, the Calgary Local Council of Women, and the Alberta Women of Unifarm all suggest that women's groups across the Prairies were so strongly concerned with family law legislative reforms pertaining to spousal awards and property division that they lost sight of how juvenile delinquents fit within reform objectives.

Judge Myrna Bowman and Matrimonial Legislation in Manitoba

Manitoba Judge Myrna Bowman played a pivotal role in the transformation of matrimonial property law in Manitoba. Bowman (née Carrothers), was born in Winnipeg in 1932 and married fellow Young Liberal David Bowman a few weeks after his 1955 law school graduation.[125] She spent her early married years working as a secretary to help put her husband through law school.[126] She began her university studies in 1958. She recalled that as a married mother with one child she was a "freak" because at the time because "There were almost no women in law. To be a married woman with a child and going to school was unheard of."[127] In law school, she was a strong student and received numerous awards, including third-year honours, before she was called to the Manitoba bar in 1966.[128] She articled with James L. Crawford for ten months longer than anyone else in her class except for the only other woman, Heather Henderson, because it was difficult to find a principal willing to take on a woman student. Bowman wrote in seeking an articling position "I wanted an office with a general practice but with an emphasis on litigation and was unable to find such an office until January, when an opening occurred with my present principal. I might say that I did try earlier to find an office but the only suitable one which was available did not wish to employ a female student."[129] When she completed her articles, she practiced with the firm Munson and Crawford, a firm

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[125] "Madam Justice Claudia Myrna Bowman, May 18, 1932 – March 25, 2004," *Winnipeg Free Press*, 27 March 2004, 28.
[126] I am providing personal details about Bowman in this chapter because I have not previously introduced her. Biographical information pertaining to Carter and Bowker begins in chapter three.
[127] "Rule Out Marriage as a Solution," *Winnipeg Sun*, 14 November 1982, A23.
[128] "Law Society Announces Award Winners, Results," *Winnipeg Free Press*, 14 May 1964, 26; "Claudia Myrna Bowman, Q.C., LLB/65," undated clipping, Law Society Members Files, Myrna Bowman , P1216, Archives of Manitoba.
[129] Bowman to The Secretary, The Law Society of Manitoba, 12 November 1965, 1, Law Society Members File, Myrna Bowman, P1216, Archives of Manitoba.

handling civil and criminal litigation.[130] In 1969, she established a law firm with her husband.[131] In 1971 she was appointed a part-time Judge of the Manitoba Provincial Court (Criminal Division), and she served in this capacity until 1976.[132] Throughout her career, she was involved with many professional and volunteer organizations including the Canadian and Manitoba Bar Associations, the YWCA Advisory Board and the Social Planning Council of Winnipeg.[133]

Throughout the mid-1970s, Bowman's connection to family law was facilitated by the Provincial Council of Women of Manitoba (PCWM). In January 1977, the PCWM wrote to the Ottawa Minister of Justice, Ron Basford, suggesting that as Justice R.R. Solomon of the Court of Queen's Bench was retiring, "we feel that it would be most appropriate that the appointee to succeed Judge Solomon be a woman."[134] The PCWM argued that "in the area of Court of Queen's Bench, the argument is certainly cogent: it is there that such matters as rape and divorce, of vital concern to women, are heard. It would seem obviously desirable to have a woman judge presiding in these cases."[135] To substantiate their position, the Council attached to the letter two curricula vitaes, one each of Manitoba lawyer Caroline Cramer and Myrna Bowman. The Council's recommendation was met with Basford's assertion he "agree[d] wholeheartedly that women are greatly under-represented on the Bench, and [he had] been making every effort, personally to change the situation."[136] Cramer, however, did not receive a judicial appointment,

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[130] Ibid.
[131] "Myrna Bowman," unidentified clipping, Law Society Members Files, Myrna Bowman, P1216, Archives of Manitoba.
[132] Appointments to the Court of Queen's Bench." Law Society Members Files, Myrna Bowman, P1216, Archives of Manitoba.
[133] Madam Justice Claudia Myrna Bowman, May 18, 1932 – March 25, 2004," *Winnipeg Free Press*, 27 March 2004, 28. Myrna and David Bowman had three daughters.
[134] Untitled document, n. d., PCWM fonds, MG 10, C44, 1977 – 1978 correspondence, 2; Letter to Ron Basford, 19 January 1977 PCWM fonds, MG 10 C44, Box 3, 1976 – 1977, Archives of Manitoba.
[135] Letter to Ron Basford, 19 January 1977 PCWM fonds, MG 10 C44, Box 3, 1976 – 1977, Archives of Manitoba.
[136] Letter to Miss Jean E. Carson, 23 February 1977, PCWM fonds, MG 10, C44, Box 3, 1976 – 1977 Correspondence, Archives of Manitoba.

but was appointed as the first chairman of the Manitoba Human Rights Commission in March 1977. Bowman was appointed to the Court of Queen's Bench only after its new family division was established on 12 October 1983.[137]

Bowman did not seek out a career specifically in family law, but over the course of her career she became increasingly involved with family law matters "because of the 'inequities' she saw" in property settlements and custody awards.[138] Cognizant of the financial devastation faced by many divorced women, she believed that a "law should be passed that forces every woman to have the qualifications to earn a living before she can marry."[139] She was an outspoken feminist who called existing matrimonial laws "feudal." She believed that married women should share equally with their husbands in the marriage partnership and advocated education and career training for women.[140]

In framing her approach to creating new family laws for Manitoba, Bowman applied her logical mind and legal professional training as she strove to develop clear concise legislation that upheld her notions of justice and fairness.[141] It was in her capacity as Chairman [sic] of the Family Law Section of the Manitoba Bar Association that Bowman presented her group's recommendations at matrimonial property hearings at the Manitoba legislature in June 1977.[142]

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[137] "Chief, Magistrate and Trader: Manitoba Women Chaulk up 'Firsts,'" *Winnipeg Free Press*, 1 January 1977, 19.
[138] Howard Burshtein, "Family Law Experiment Excites Bowman," undated clipping, Law Society Member Files, Myrna Bowman, P1216, Archives of Manitoba.
[139] "Rule out Marriage as a Solution," *Winnipeg Sun*, 14 November 1982, 23A.
[140] "Bowman Says Laws 'Feudal'," *Winnipeg Free Press*, 13 June 1975, 15.
[141] Her obituary describes her as "Possessed of an incisive and perceptive mind she was well known for getting straight to the point and not suffering fools gladly, or at all." "Madam Justice Myrna Bowman: May 18, 1932 – March 25, 2004," *Winnipeg Free Press*, 27 March 2004, 28.
[142] The Family Law Section of the Manitoba Bar Association consisted of between twenty-five and thirty practicing lawyers. Manitoba, Legislative Assembly Hearings, (June 2, 1977), 393, P1463, File A2053, Archives of Manitoba. Berenice Sisler, an active feminist, reminisced that the June meetings were held in the smallest, stuffiest room available at the Legislature, and were scheduled late into the evening and into the weekend hours as a means of discouraging interested citizens, and especially women with child-care obligations from attending. Sisler, *A Partnership of Equals*, 158.

Speaking to the proposed legislation, Bills 60 and Bill 61, the Maintenance Bill and Property Bill respectively, Bowman stated, "There is no other legislation that has come before the Legislature, I think in my lifetime at least, of the magnitude of this legislation."[143] The proposed bills were based on feminist demands to institute equal sharing of assets within and after marriage by instituting instantaneous rather than deferred property sharing, eradicating the concept of spousal fault in determining awards, and eliminating, or at minimum severely circumscribing, judicial discretion to avoid unpredictable results.[144]

The bills had also received a great deal of input from many women's groups that participated in a series of well-attended public hearings held by the Manitoba Law Reform Commission between November 1976 and March 1977. The women's groups included the Provincial Council of Women of Manitoba (PCWM), the Manitoba Association of Women and the Law Inc. (MAWL), and the NDP Status of Women Committee.[145] The key demand of women's groups was that an instantaneous community of property system replace a deferred community property regime. In the instantaneous community property system both spouses would know from the beginning of their marriage that they would share their property in equal shares. Women's groups argued that psychological benefits would accrue to women homemakers from the legislated recognition of the equal value of their marital contribution recognized by an instantaneous property system. They also believed that an instantaneous property system would reduce court applications for property sharing. They argued that within a system of deferred property ownership property stayed in the legal hands of the wage earning

[143] Manitoba, Legislative Assembly Hearings, (June 2, 1977), 393, Western Legal Judicial History Collection P1463, File A2053, Archives of Manitoba.
[144] Untitled document, n. d., 1, PCWM fonds, MG 10, C44, 1977 – 1978 correspondence, Archives of Manitoba.
[145] http://www.mccarthy-brown.com/MAWL/PDF_files/MAWL_changingfamily_2003.pdf (accessed 9 August 2012), 157.

spouse, usually the husband, and the non-earning spouse, usually the wife, would have to make a court application for a share in the property upon marriage breakdown.[146] Attorney General Howard Pawley fully supported the proposed bills.

Bowman supported the ideal of marital equality, but did not agree with the women's groups' recommendations regarding instituting instantaneous property, eradicating spousal fault, or eliminating judicial discretion because of her adherence to legal professionalism and feminist perspective. She believed that equality required both spouses to work outside the home, and thus foresaw "a minimalization of litigation as fewer women choose to be housewives for long periods of time."[147] Speaking about the Property Bill on behalf of the Family Law Section of the Bar Association, Bowman made several recommendations that were contrary to the recommendations made by PCWM, MAWL, and the NDP Status of Women Committee. Bowman stated that the Family Law Section supported "deferred equal sharing of the value of all assets acquired during marital cohabitation" because she believed this would be clearer in legal drafting and easier to administrate.[148] The only property that should be instantaneously shared equally was the family home because it should be jointly owned immediately upon either purchase in contemplation of the marriage or afterwards.[149] Bowman also supported the use of judicial discretion, subject to certain limitations, and recommended that Manitoba should adopt the recommendations of the Law Reform Commission. It advocated that the aggrieved spouse should apply to the court at the termination of the marriage to receive a share in the marital assets, and that the court should exercise its discretion, by examining that spouse's contribution to the marriage, in awarding

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[146] Ibid., 159.
[147] Burshtein, "Family Law Experiment."
[148] Manitoba, Legislative Assembly Hearings, (June 2, 1977), 393, Western Legal Judicial History Collection P1463, File A2053, Archives of Manitoba.
[149] Ibid.

property shares.[150] In evaluating spousal contribution, Bowman believed she was avoiding the unfair situation in the *Murdoch* case because by contribution she meant: "And contribution to the marriage – not to the acquisition of the assets, you know – would include any of the following: physical contribution, financial contribution, or the common intention of the parties as evidenced by their conduct and acts."[151]

Bowman was extremely concerned about the bill's retroactive features because of the negative and unintended consequences that could be suffered by couples who had purposely made other arrangements for the division of their assets prior to the new legislation.[152] Bowman believed that spouses were capable of contracting meaningfully with one another, and was opposed to an all-inclusive property bill in which every asset would be divided equally regardless of the couple's intention. Thus, she recommended that an "opting out" provision be included in the legislation, which would enable the party opting out to apply for judicial discretion to determine the split of marital property. In advocating the need for flexibility in the proposed matrimonial legislation to respond to individual needs she stated:

> That necessarily means that there is a certain amount of discretion, but I think you need not concern yourself that the kind of discretion that is recommended in our submission is going to result in any further *Murdoch* cases. The court there, I think, is maligned, in part unjustly, because they were restricted by the law and the law in trust as it was then applied by that particular judge was applied to that case. The application of a discretion in the manner that we have recommended is a much broader discretion to consider the property in light of the contribution to the marriage as a whole of two spouses, and that is a much different situation than the court was dealing with in the *Murdoch* case, not that I would want to make any excuse for the *Murdoch* case."[153]

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[150] Ibid.
[151] Ibid., 433.
[152] Manitoba, Legislative Assembly Hearings (June 3, 1977), 432, Western Legal Judicial History Collection P1463, File A2053, Archives of Manitoba.
[153] Manitoba, Legislative Assembly Hearings, (June 2, 1977), 397, Western Legal Judicial History Collection P1463, File A2053, Archives of Manitoba.

Bowman was confident that in most cases judges could be counted on to exercise judicial discretion wisely and effectively.

Bowman also disagreed with feminists about the role of marital fault in deciding property awards because she believed that a spouse's conduct was relevant to determining maintenance awards. She argued "in many cases marriage breakdown was due to one spouse's irresponsibility or misconduct."[154] Further, she believed that unrestricted no-fault maintenance was neither good nor just.[155] Women's groups, on the other hand, believed that "maintenance, whether short or long term, should be based on the need of one spouse and the ability of the other to pay. Moral judgements are just not relevant."[156] Bowman bluntly rejected feminist arguments that addressed systemic gender inequities in the law because she thought that "if you want to be equal you can't be dependent." This became apparent in her proposals to limit maintenance awards to terms of one year, except in cases in which the dependent spouse was gaining education or training that would increase that spouse's employability and expedite the goal of economic self-sufficiency.[157] Citing statistics garnered from a local "lunch and learn" group associated with the YWCA, Janet Paxton argued that Bowman's goal of achieving economic self-sufficiency was simply not

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[154] Myrna Bowman, Rudy Anderson, and Ken Houston, "Report of Family Law Review Committee," 16 February 1978, 4, Western Legal Judicial History Collection, A2053, Box 42, Province of Manitoba Family Law Review Committee: miscellaneous submissions 1977, Archives of Manitoba.

[155] Ibid.

[156] Letter from Berenice Sisler to Gerald W.J. Mercier, 31 March 1978, 2. Western Legal Judicial History Collection A2053, Box 42, Province of Manitoba Family Law Review Committee: miscellaneous submissions 1977. Sisler also objected to Bowman's suggestion that some of the provisions of the Wives and Children's Maintenance be retained. Feminists believed that the Act was unworkable in that it contained provisions for requiring deserting spouses (usually the husband) to pay maintenance, but no mechanism to enforce this provision. Further, feminists indicated that the old laws were gender-biased in that husbands could commit numerous instances of adultery without affecting marital awards, but if the wife committed a single act of adultery she would be penalized in the apportionment of award.

[157] Myrna Bowman, Rudy Anderson, and Ken Houston, "Report of Family Law Review Committee," 1.

realistic because more than 75 per cent of maintenance awards were uncollected.[158] Paxton also criticized Bowman because Paxton's own experience suggested that most women did not possess the financial resources or professional stature suggested by Judge Bowman in her discussions about marital property or business assets.[159]

The NDP government accepted and prepared to implement a partial instantaneous community property system, and proposals were approved in the Manitoba legislature. These changes were not proclaimed before the October 1977 election.[160] The Conservatives replaced the NDP in this election and they refused to proclaim the property law. Public furor ensued, especially when Attorney General Gerry Mercier announced hiring family law litigators Ken Houston and Rudy Anderson to undertake a follow-up review to determine if dramatic changes to the family laws of Manitoba were warranted. Bowman and women's groups distrusted Houston because of his comments that legislative overhaul of existing family law was completely unnecessary.[161] Mercier responded by acceding to suggestions from the PCWM to add Bowman to the Committee.[162] The PCWM, still disagreed with some of Bowman's recommendations, but had altered its position regarding instantaneous property and agreed with her that the principle of deferred sharing made for more enforceable legislation.[163]

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[158] Manitoba, Legislative Assembly Hearings, (June 3, 1977), 445, Western Legal Judicial History Collection, A2053, Archives of Manitoba; Law Reform Commission of Canada, found that 75% of court orders relating to maintenance resulted in default. Working Paper 1, *The Family Court* (Ottawa: Information Canada, January 1979), 50 – 51.

[159] Manitoba, Legislative Assembly Hearings, (June 3, 1977), 442, Western Legal Judicial History Collection P1463, File A2053, Archives of Manitoba.

[160] http://www.mccarthy-brown.com/MAWL/PDF_files/MAWL_changingfamily_2003.pdf (accessed 9 August 2012), 156.

[161] "Changes For The Better?" *Winnipeg Free Press*, 15 November 1977, 31; "Mercier Appoints Bowman to Family Law Review Group," unidentified newspaper clipping, 10 November 1977, 3, Bowman, P1216, "member files," Archives of Manitoba.

[162] "Claudia Myrna Bowman," "Appointments to the Court of Queen's Bench," and "Myrna Bowman," Law Society Member Files, Myrna Bowman, P1216, Archives of Manitoba.

[163] Untitled document, n. d., PCWM fonds, MG 10, C44, 1977 – 1978 correspondence, 2, Archives of Manitoba.

The Committee's report was presented in February 1978. Bowman's perspective remained substantially unchanged from the original recommendations that she had made in her capacity as Chair of the Family Law Section of the Manitoba Bar Association. In 1978, the Conservatives passed a new Marital Property Act that presumed equal division of both family and commercial assets, chose deferred over instantaneous property, and granted judges greater discretion in varying the equal sharing of commercial property.[164]

In Manitoba, feminist and politicians' efforts were concentrated on re-drafting family property laws, and, as the above discussion demonstrates, political discussion of legislation took centre stage. Yet, in the years immediately preceding the new property laws, there were also some discussions relating to establishing a form of UFC in Manitoba. The PCWM discussed the federal government's proposed UFC pilot project with interest in 1974.[165] In 1974 they discussed developments within Manitoba, led by Frank Muldoon acting on behalf of the Law Reform Commission. In contrast to proposals in Alberta and Saskatchewan, where legal professionals and feminists wanted to appoint only specialized family court judges, Muldoon advocated a different approach for Manitoba. The PCWM noted that:

> Mr. Muldoon and his colleagues suggest that the judge who enjoys the widest kind of 'smorgasbord' jurisdiction is the one whose morale is best, whose knowledge of the world is best, and who doesn't convey the feeling that he has heard it all before, because he has a broad jurisdiction and isn't limited to only the one field of cases. So they are suggesting that a pilot project on the Integrated Family Court not be exclusively family court."[166]

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[164] "Legal Experts Advocate Specialized Family Law Court," *Winnipeg Free Press*, 23 March 1981, 1, 4. In 1979 Saskatchewan passed *The Matrimonial Property Act*, S.S. 1979, c. M-6.1. In 1978 Alberta passed *The Matrimonial Property Act*, S.A. 1978.

[165] "Resumé MPCW," 7 December 1974, 6, PCWM fonds, MG 10 C44, Box 3, "1974 Correspondence," Archives of Manitoba.

[166] Ibid., 2.

The proposed UFC in Manitoba would be an integrated court making use of a broad spectrum of judges qualified in diverse areas of law rather than employing specialists in family law. Also, this proposed court, unlike the proposed UFC in Saskatchewan, would operate at a superior court level. Among the Prairie Provinces, Manitoba remained unique in its determination to retain federal jurisdiction over divorce, although rationales in this regard shifted over time. By 1980, retaining federal control over divorce was linked to enforcing matrimonial awards. Women's groups, strongly supported by Bowman, argued that the federal government was in a better position than individual provinces to enforce matrimonial awards by casting a legislative net across Canada, designed to catch payment-evading ex-spouses.[167] Manitoba re-structured its court system in the early 1980s and Bowman was appointed to the Court of Queen's Bench new family division on 12 October 1983.[168] It was not until 1984, however, that the government of Manitoba established a UFC in Winnipeg.[169] While this family court handled all family matters, no Justices were designated as exclusively responsible for family matters in this court.

Conclusion

By the 1970s, social pressures forced a new evaluation of the form and function of family courts, ushered in a new era of streamlined federal procedures, and eventually encouraged the provinces to update family law. In the Prairies, judges Bowker, Carter, and Bowman actively participated in these debates. They did not function in isolation; rather, their involvements were shaped by the social and political atmospheres of their respective provinces, in which women's

[167] "Changes hit: Women fight plan to give control to provinces," *Winnipeg Free Press*, 22 March 1980, 2.
[168] Claudia Myrna Bowman," "Appointments to the Court of Queen's Bench," and "Myrna Bowman," Law Society Member Files, Myrna Bowman, P1216, Archives of Manitoba.
[169] Steel, "The Unified Family Court – Ten Years Later," 384.

groups and politicians attempted to reform family courts and legislation. Reformers in all three Prairie Provinces referenced the *Murdoch* case. *Murdoch* functioned to link urban and rural reformers, and to represent legal limitations inherent in existing matrimonial laws in an era ardently seeking social and legal change. *Murdoch* also established a useful context for this chapter because although reformers in all three provinces referenced the *Murdoch* case, local endeavours in family law reform reveal key differences. Manitoba feminists were the most radical as they demanded complete, instantaneous property laws. Saskatchewan legislators reflected their community-oriented and collaborative approaches in their efforts to retain family law at the magistrate level to be led exclusively by family law experts. Alberta feminists' demands, neither as radical nor as community-focused as their Prairie counterparts, were somewhat limited by an adverse political and social climate intent on minimizing costs and protecting individual rights.

Bowker, Carter, and Bowman operated within these climates to create family law reform, and in so doing they were cognizant of reforms sought by various women's organizations locally and across Canada, and also the requirements of legal professionalism. Bowker's professionalism welcomed the addition of non-legal experts into the family court. From this perspective, her approach was reminiscent of that of the earlier generation of women judges, who drew upon their extensive voluntary sector connections and expertise to legitimize their judicial function. Bowker's conciliation project demonstrated her professional intent to include non-legal expertise in the family court and her social concern to promote and protect intact family units. Unlike her early twentieth counterparts, however, Bowker's professionalism was informed by formal legal training and she worked within the boundaries of a family court that had lost its quasi-judicial associations. Over the course of the 1970s she realized that conciliation was used more

frequently to sort out grievances among separating spouses than to encourage couples to stay together. She noted that divorce and family breakdown were strongly associated with rising juvenile delinquency, and wished to minimize negative results for children. Her maternal and conservative perspective therefore functioned to uphold the institution of the family in light of these new challenges. This helps explain her comments that in making judicial awards her focus remained on the husband's ability to make maintenance payments, rather than the enduring needs of first wives and children from previous marriages. Throughout her career she advanced court-sponsored conciliation procedures and the development of a UFC.[170] Defending international influences, Bowker wrote: "we would be remiss if we were not to look far afield – even beyond Canada – to observe what is taking place in other countries, which have, for much longer than ourselves, wrestled with the problems of mounting divorce."[171] Bowker noted that she was applying observations garnered from her visits to family courts in other Canadian cities including St. John's, Newfoundland, Toronto, Victoria, and Winnipeg, as well as courts in England, Japan, New Zealand, Australia, the United States, and Mexico.[172] She did not invent the UFC or conciliation processes, but she worked very hard to institute both concepts in Edmonton.

Saskatchewan was the only Prairie province successfully to institute a UFC before 1980. The political climate in Saskatchewan, supported by an NDP government cognizant of unique demographic and geographic realities, provided a favourable environment for family court reform. This is supported by the provincial government's willingness to utilize the detailed

[170] Mrs. W.F. Bowker, "Comments on Edmonton Family Service Association Brief on Juvenile Court Services," 30 November 1965, Bowker fonds, 93.435, File 14, PAA.
[171] Ibid., 3.
[172] Ibid., 4.

findings of the Hall Commission to implement reform, and for its persistent efforts to keep family legal matters at the magistrate level ably led by Judge Carter.

Manitoba, under an NDP government, was on the verge of creating novel matrimonial legislation fully premised on the concept of full marital equality by recognizing an instantaneous property system, but electoral change and Bowman's pragmatic approach to the limits of legal drafting impeded this objective. Bowman drafted significant portions of new family laws in Manitoba, and maintained her faith, at least to some extent, in the exercise of judicial discretion in providing for fair property outcomes.

By the end of the 1970s, the Prairie family courts were associated with provincial Courts of Queen Bench. Family matters were no longer relegated to lower courts, including magistrate and provincial courts. Myrna Bowman was promoted to the Manitoba Court of Queen's Bench, family division, on 12 October 1983. Mary Carter became a judge of the Saskatchewan Court of Queen's Bench when the District Court and UFC were amalgamated in 1981. On 30 June 1979, the District Court of Alberta was terminated and the Court of Queen's Bench was created. In Alberta, legal issues relating to family matters continue to be divided between the provincial court and the Court of Queen's Bench. In some ways, this elevation reflected a new-found respect for family law and its legal practitioners, and indeed, emerged from an activist feminist climate intent on recognizing family matters as subjects of serious legal concern. In other ways, however, this process of family law transformation encouraged the feminization of poverty, and also lost sight of a core component of families as social institutions. Juvenile delinquents disappeared from the family courts as the court's jurisdiction and emphasis on spousal matters increased. The post-1980s provincial family courts would provide services and remedies for couples and their children.

Chapter Seven: "'Bench-Breakers?' The Legacy of Voluntarism and Women's Judicial Place"

"Maybe my appointment as the first woman in a judicial position helped to open that up for women. Although, after at times having as many as five women in the provincial courts, it is now back again to one – the first time in twenty-six years. My contribution I think has been mostly in working with bodies which have had significant effect on the judicial system."

Judge Tillie Taylor, Saskatchewan 1989[1]

Two years into retirement, Tillie Taylor remained unsure about whether or not she had opened doors for future women judges. Her qualified response indicated that the presence of five women judges on the provincial bench was, as of 1989, a short-lived phenomenon. Her response also revealed that her work with extra-judicial bodies – often volunteer-based, was one of her core contributions. Taylor, motivated by her Left politics and Jewish background, sought to redress systemic inequities within the legal system. She spoke out in favour of international human rights initiatives after World War II. Her appointment as RCMP court judge and exposure to the connections between poverty and incarceration encouraged her to become involved in the John Howard Society. Her commitment to equality issues and cognizance of 1960s feminist and human rights issues related directly to her appointment as Chair of the Saskatchewan Human Rights Commission.[2] Taylor clearly perceived that her extra-judicial activism formed a vital component of her judicial career, and she volunteered her time to influence legal and social change. Her efforts reflected internationally-circulating human rights and feminist ideas as they

[1] Sheila Cameron, "Contribution to judicial system in Saskatchewan," April 1989, George and Tillie Taylor collection, A-998, File 515, Archives of Saskatchewan (Saskatoon).
[2] Tillie Taylor, "Resumé," n.d., George and Tillie Taylor collection, A-998, File 515, Archives of Saskatchewan (Saskatoon).

unfolded in the early 1970s Liberal political atmosphere of Saskatchewan, and marked her participation in a complex initiative to deliver a "Just Society."[3]

The concept of a "Just Society" usefully encapsulates the spirit of 1960s and 1970s social activists and their commitment to equality and human rights. The phrase is indelibly associated with Pierre Elliott Trudeau and his Liberal platform to create not only equitable economic conditions, but also legal justice for minority groups and Aboriginal persons. Trudeau's vision of a "Just Society," however, was incomplete and sometimes at odds with feminist goals. For example, until feminist lawyers and women's groups affiliated with the National Action Committee on the Status of Women (NAC) insisted on including substantive equality in the repatriated Constitution, the role and status of women was-- at best-- unclear.[4] Yet, the concept of a "Just Society" encapsulates the idea of reforming the law and legal institutions to better reflect human rights and feminist goals as these are understood within a particular time and place. The women magistrates and judges considered in this dissertation participated in the changing legal and social transformation of their times, and Trudeau's own policies to revise the law in a Just Society. Through their varied efforts off the bench and involved with various groups, they often participated or advocated the re-dressing of inequitable laws and customs for children, women, and other vulnerable groups including Aboriginal persons. In a variety of extra-legal and commission contributions, women judges participated in efforts to bring the law and legal institutions into closer alignment with changing social values. How they did so in the 1960s

[3] Jay Walz indicates that the phrase "Just Society" comes from Pierre Elliott Trudeau's 7 April 1968 speech on taking over leadership of the Liberal Party, *New York Times*, 8 April 1968, 9.
[4] Claire L'Heureux-Dubé, "It Takes a Vision: The Constitutionalization of Equality in Canada" *Yale Journal of Law and Feminism,* 14 (2002), 364.

indicates significant continuities and changes in their connections to the voluntary sector and the legal profession, and the relationship of these to the women's movement, beginning in 1916.

Older scholarship often discussed the women's movement as divided into the first and second waves associated respectively with maternalism and equal rights, and divided by a long period of women's political absence between the 1920s and 1960s. More recent approaches emphasize women's volunteer and paid work involvement in the years in between, and endeavour to find bridges between disparate eras and ideologies. Christopher Manfredi argued that the link between the suffrage-oriented reform strategies of early twentieth century Canadian women, employing primarily maternal ideology, and equal rights focus of the post-Charter era, was the goal of achieving women's social, political, and economic equality.[5] Joan Sangster studied the Elizabeth Fry Society to understand the interactions of volunteers and professionals and to argue that both groups used maternal strategies even as women became more numerous in the workforce.[6] Nancy Forestell and Maureen Moynagh argued that after World War II "human rights arguably came to displace women's rights for a time in international spheres of organizing."[7] These approaches have encouraged me to use an unconventional timeline, to bridge the gaps between the first wave and the second wave, and to consider not only ideologies of maternalism and equal rights, but also to consider the ways in which human rights developments intersected with the work and proclivities of Prairie women judges.

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[5] Christopher P. Manfredi, develops this synthesis of the twentieth century women 's movement as focused on the goals of women's social, political, and economic equality in *Feminist Activism in the Supreme Court: Legal Mobilization and the Women's Legal Education and Action Fund*. (Vancouver: UBC Press, 2004), xii.
[6] Joan Sangster, "Reforming Women's Reformatories: Elizabeth Fry, Penal Reform, and the State, 1950 – 1970," *Canadian Historical Review* 85: 2 (June 2004), 1 – 4.
[7] Nancy M. Forestell and Maureen Moynagh, *Documenting First Wave Feminisms Volume II: Canada -- National and Transnational Contexts* (Toronto: University of Toronto Press, 2014), xix.

In the final analysis, evidence from the Prairie women judges included in this dissertation shows that they were part of a broader movement of change associated with the women's movement and legal professionalism. Women judges worked within the prescriptions imposed by their times, contemporary legal codes, and society's expectations of the purpose of family courts. The public presentation of their work indicates that they were active participants in volunteer pursuits and shows, over time, how ideologies relating to volunteerism and those relating to professionalism conditioned their roles. These women judges' experiences also provide insight into how the family court developed in Prairie contexts, throughout its historic incarnations including juvenile courts, women's courts, and domestic relations tribunals. In the early twentieth century, women's volunteer-based and child-centred legal work was strongly associated with leading women's organizations, particularly Local Councils of Women, and was connected to the appointment and authority of women judges and magistrates in quasi-judicial courts. During the 1930s, legal education and professional forces contributed to developing a vibrant female legal culture that maintained connections to women's organizational work, but also shifted volunteer and professional contexts. By the 1960s, legal education and professional skills formally qualified select women for judicial positions, but many still used their judicial status to pursue volunteer-based activities to foster their interpretations of a "Just Society."

Prairie women magistrates and judges worked primarily in the family court as this institution developed between 1916 and 1980. Across Canada, juvenile courts, soon including women litigants, developed into domestic relations tribunals as family breakdown increased. Domestic relations tribunals transitioned into provincial family courts between the 1940s and 1960s. At the same time, the rise of youth culture, and, often misplaced, fears about increased juvenile delinquency, contributed to re-evaluating laws and courts. Gradually, laws and courts

separated juvenile criminality from other family issues, and family courts adjudicated matters "incidental to marital breakdown," including child custody and maintenance. By the late 1970s and early 1980s, feminist-led discussions concerning married women's unequal property rights on separation or divorce were vocally symbolized across Canada by the *Murdoch* case.[8] Politicians, feminists, and lawyers encouraged federal and provincial political discussions about how to reform matrimonial property law. Judges Bowker, Carter, and Bowman participated in various ways in these efforts, but did not uniformly advance feminist objectives.

These women worked within courts fractured by constitutional limitations and provincial politics. The Canadian constitution gave the federal government responsibility for marriage and divorce, and granted the provinces the power to distribute property. Significant provincial variations ensued as the provinces developed strategies to update processes and courts associated with divorce and marital breakdown. In some Canadian provinces, including Alberta, newly restructured Courts of Queen's Bench, with federally-appointed judges, adjudicated over marriage and divorce, while provincial courts, with provincially-appointed judges, handled matrimonial property matters. By the early 1980s, six Canadian provinces, including Ontario, Saskatchewan, Newfoundland, New Brunswick, Prince Edward Island and British Columbia developed versions of unified family courts (UFCs) – designed to streamline courts and processes related to marital breakdown and property division.[9] Saskatchewan created a UFC in 1978 and Manitoba developed a UFC in 1984. Alberta, as of August 2014, still does not have a UFC.

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[8] *Murdoch* v. *Murdoch*, [1975] 1 S.C.R. 423, 13 R.F.L. 185, [1974] 1 W.W.R. 361, 41 D.L.R. (3d), 367. The Honourable Bertha Wilson, Patricia Blocksom, Sophie Bourque, Daphne Dumont, John Hagan, Sharon McIvor, Alec Robertson, and Corinne Sparks, *Touchstones for Change: Equality, Diversity and Accountability: The Report on Gender Equality in the Legal Profession* (Ottawa: CBA, 1993), 203.

[9] Canadian Centre for Justice Statistics, *Family Courts in Canada* (Ottawa: Minister of Supply and Services Canada, 1984), 140 - 141.

Court restructuring also held implications for the gendering of the family court and the status of its practitioners. In an earlier context, Dorothy Chunn argued that the family court involved gendered processes because of the family court's association with social reform, and by implication, women.[10] Likewise, Tamara Myers characterized the Montreal juvenile court as a dispenser of "maternal rule" even though it was presided over by a male judge.[11] These arguments indicate that maternalism helped to shape the early courts, but also created a presumptive association of women with family court matters. This relates to arguments concerning the status of the women judges' work in the family court. In the early period, Emily Murphy, Alice Jamieson, and Ethel MacLachlan enjoyed considerable social status because their work coincided with a social mandate to nurture and uphold families. By the 1960s, the status associated with family court [now having changing responsibilities and soon losing its work with juveniles so important for female judges earlier] had fallen dramatically because family court work underpaid both lawyers and judges – the latter of whom were usually relegated to magistrate status -- and because of its associations with women and poverty.[12]

By the 1980s, the historical legacy of non-legal and often volunteer-based initiatives that informed the structure and function of provincial family courts had become decidedly contentious. As legal professionalism took hold and family courts evolved into modern formats, some judges questioned the value and function of non-legal expertise. Reliance on mediation, the descendant of conciliation, and the use of experts was controversial because it related to the status and power of judges. Writing in the early 1980s, Claire L'Heureux-Dubé characterized the

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[10] Dorothy Chunn, *From Punishment to Doing Good: Family Courts and Socialized Justice in Ontario 1880 – 1940* (Toronto: University of Toronto Press, 1992), 4.
[11] Tamara Myers, *Caught: Montreal's Modern Girls and the Law, 1869 – 1945* (Toronto: University of Toronto Press, 2006), 16.
[12] Freda Steel, "The Unified Family Court – Ten Years Later," 24 *Manitoba Law Journal* (1996-1997), 388.

creation of family courts and their use of social sciences experts as a dilution of the court's power which negatively impacted judicial adjudication.[13] L'Heureux-Dubé argued that conciliation processes and the move away from adversarial proceedings in favour of mediation by counsellors and mediators "impli[ed] a less active role on the part of the judge."[14] Her concern indicated tension within the legal profession between those who wanted to incorporate non-legal remedies and those who believed that these techniques would threaten judicial independence. She also mirrored a transition in how women judges and lawyers perceived themselves and their role. By 1980, select newly legally-educated women saw themselves as primarily legal professionals working within a family court firmly attached to the mainstream legal establishment. They had come of age at a time when human rights and equality claims circulated broadly and encouraged the creation of some new equity-based laws; thus, they often supported legalistic solutions to achieve marital property reform. These characteristics made them very unlike the earlier cohort of voluntary-sector inspired woman judges labouring in quasi-judicial courts.

The entrenchment of legal professionalism and court restructuring, however, did not fundamentally alter respective numbers of men and women judges. As Taylor pointed out in this chapter's epigraph, the number of women judges remained low in 1989. The implicit suggestion in her comment was that there was something about the judiciary, and by extension the legal profession, as distinct perhaps from other professions, that remained stubbornly resistant to women. Scholars and statisticians support this idea. Peter McCormick and Ian Greene reveal that by 1990 only 7.5 percent of Canadian Superior Court judges and 6 percent of provincially

[13] Claire L'Heureux-Dubé, "Family Law in Transition: An Overview," in *Family Law dimensions of Justice*, ed. Rosalie S. Abella and Claire L'Heureux-Dubé (Toronto: Butterworths, 1983), 304, 308.
[14] Ibid., 308.

appointed judges were women.[15] In 2000/2001, males accounted for 79 percent of all judges in Canadian courts.[16]

Throughout this dissertation, I have limited my investigation to women judges in the Prairie Provinces of Alberta, Saskatchewan, and Manitoba. Alberta and Saskatchewan shared legal origins with Manitoba as part of the North-West Territories since 1870.[17] In 1905 Alberta and Saskatchewan became provinces, and they continued to share a common court and bar society and until 1907.[18] In terms of legal and institutional development, therefore, these younger provinces provide both continuity with and a counterpart to the older and more established bar and legal institutions of Manitoba. Also, these three Prairie Provinces have been historically linked to crucial developments in women's rights and became the first to attain suffrage. I have argued that this institutional and woman-oriented reform background, combined with the presence of key women personalities in the Prairies, partly explains why Alberta and Saskatchewan appointed women judges before Manitoba. Examining select women judges and their associated courts in Alberta, Saskatchewan, and Manitoba also facilitates comparison of their experiences to one another. Prairie women, in common with women magistrates across Canada, lost their positions during the years of the Great Depression, suggesting key transitions brought on by fiscal constraints and changes to magistrate's courts. During the 1970s, rural court cases from across Canada challenged existing marital property laws, but it was the rural Alberta *Murdoch* case that united rural and urban women's groups and commanded the attention of the

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[15] Peter McCormick and Ian Greene, *Judges and Judging* (Toronto: James Lorimer and Company, 1990), 62.
[16] "Courts Personnel and Expenditures 2000/1," *Canadian Centre for Justice Statistics* (Ottawa: Minister of Industry, 2002), 7.
[17] Louis Knafla and Richard Klumpenhouwer, *Lords of the Western Bench: A Biographical History of the Supreme and District Courts of Alberta, 1876 – 1990* (Alberta: The Legal Archives Society of Alberta, 1997), 7.
[18] Iain A. Mentiplay, *A Century of Integrity: The Law Society of Saskatchewan 1907 to 2007* (Regina: Law Society of Saskatchewan, 2007), 24.

second wave women's movement. It brought visibility to the Prairie Canadian reform tradition to investigate how it dovetails with changes to legal institutions and the introduction of women judges to the courts. By limiting my study to these three provinces, I have found commonalities in reform goals and timelines, and educational and professional processes. Further, by considering local and international developments, I have nuanced historiographical approaches that suggest Canadian legal and professional reforms moved directly from East to West.

Women's court appointments and work occurred in the context of an internationally influenced women's movement. Forestell and Moynagh argued that the first wave English-speaking Canadian women's movement was distinctly linked to women's international organizational involvement which expanded significantly after 1920.[19] Prairie Canadian women judges MacLachlan and Murphy were aware of internationally-circulating ideas concerning juvenile delinquency, rehabilitation, and developing overseas juvenile courts, and utilized this knowledge within their own courts. In chapter two, I explained how this early women's movement provided context for the ways in which the ideology of maternalism related to developments in the juvenile and women's courts. At this time maternalism was based on a Protestant morality that presented middle-class Anglo-Celtic women as mothers of all children. Maternalism thus legitimated women's volunteer efforts to combat the ills of urbanization and immigration, and its associations with encouraging juvenile delinquency.[20]

Maternalism was also strongly associated with women's organizational involvement. In the early twentieth century, Local Councils of Women (LCW) across Canada keenly supported early women judges and magistrates and the development of juvenile and women's courts. In

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[19] Forestell and Moynagh, *Documenting First Wave Feminisms*, xix.
[20] Nancy Christie, *Engendering The State: Family, Work, and Welfare in Canada* (Toronto: University of Toronto Press, 2000), 28.

Calgary the LCW utilized maternal rhetoric to argue for the establishment of special, separate, women's police and juvenile courts headed by women to protect vulnerable women and children. Jamieson's promotion to the Calgary juvenile court was premised on the understanding that as a respectable and highly involved society matron she possessed the skills requisite for protecting victimized girls.

Moreover, maternalism during this early period reflected particular race and class biases. One of Murphy's chief concerns was to exercise her maternal expertise to protect young white women from opium addiction, a drug-trade Murphy blamed directly on Asian influence. Murphy's maternalism included a protective and relational feature demonstrated by her personal interest in and visits to court litigants, and her desire to protect the 'nation and race.' Murphy understood criminality as rooted in biology and thus supported sexual sterilisation of the "feeble-minded."[21]

To some extent, then, early women magistrates were associated with the maternalism of the first-wave women's movement; however, the evidence also reveals that equality-based arguments at times supplanted or contradicted maternalist aims. In Regina, the LCW clearly supported MacLachlan's right to adjudicate, as a paid professional with many years of experience working as a children's advocate, within a newly established juvenile court. It did so specifically by arguing it would be unfair to appoint an inexperienced man to supervise the highly knowledgeable and experienced MacLachlan, and also suggested she should receive a salary equal to what a man in her position would receive. Through the media, MacLachlan acknowledged the importance of women's suffrage, which she presented as a step towards

[21] Emily Murphy, *The Black Candle: Canada's first book on Drug Abuse 1922*, reprint by Robert Solomon (Coles Publishing Company, Toronto, 1973), 42, 59; Angus McLaren, *Our Own Master Race: Eugenics in Canada, 1885 – 1945* (Toronto: McClelland and Stewart Inc., 1990).

equality, but she often used maternal language to present her work in the juvenile court. Within the court, MacLachlan emphasized her gentle manner and ability to develop an informal rapport with young litigants. Further, when critics later attacked MacLachlan's decision-making ability during the 1920s because she was not a mother, members of the Saskatchewan LCW rallied behind her and attributed to her the strongest "motherly" instincts which rendered her competent in juvenile court.

Equality-based arguments associated with rural married women's property rights preoccupied some women's organizations and women judges between the dower debates of the early twentieth century and the introduction of revised Prairie matrimonial property laws by 1980. Murphy's involvement in dower law reform was based on an understanding that rural wives were partners with their husbands and as such were entitled to an equal share of the matrimonial property.[22] Murphy objected to the Alberta government's conception of dower rights, which granted wives an interest in their husbands' property subject to legislated limits and the vagaries of judicial discretion, because dower failed to promote equality in marriage.[23] As Catherine Cavanagh argues, the early twentieth century bid for married women's equal property rights signified organized women's objection to the doctrine of coverture inherited from English law. Women protested against the idea that women were entitled to share in property because they were wives and not because they had earned it.[24] In 1925, rural women involved in the United Farm Women of Alberta attempted to institute a community of property regime based on

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[22] Catherine Cavanaugh, "The Limitations of the Pioneering Partnership: The Alberta Campaign for Homestead Dower, 1902 – 25," in *Making Western Canada: Essays on European Colonization and Settlement*, ed. Catherine Cavanaugh and Jeremy Mouat (Toronto: Garamond Press, 1996), 207; Robert J. Sharpe and Patricia I. McMahon, *The Persons Case: The Origins and Legacy of the Fight for Legal Personhood* (Toronto: The Osgoode Society for Canadian Legal History, 2007), 20.
[23] Cavanaugh, "The Limitations of the Pioneering Partnership," 207.
[24] Ibid., 207.

equality principles in the Alberta legislature. This bill was promptly defeated. The partnership goal persisted and echoed liberal conceptions of property rights advocated by women working in other Western nations before erupting as a major women's reform objective in 1970s Alberta in association with the *Murdoch* case.[25]

In chapter three, I argued that the role of women magistrates and judges was circumscribed by economic and professional rearrangements occurring in the juvenile and women's courts in the 1930s. There were fewer women judges during the Great Depression, and the magistrate's courts in which they worked fell into disuse. In Alberta, Murphy died in 1933, and Jamieson continued to work only in the juvenile court on a volunteer basis. In Saskatchewan, MacLachlan retired in 1935, and was briefly succeeded by Isabella Burgess. Burgess' position, however, was terminated because of budgetary constraints in 1938. Between 1939 and 1957 no women judges were appointed to courts in Prairie Canada. In the meanwhile, developments in legal education created opportunities and constraints for women lawyers, demonstrated by their engagement with women's volunteer organizations and the legal profession. These developments meant that the legal profession would require the second generation of women judges, those appointed during the late 1950s and into the 1960s, to possess law degrees and be member of provincial law societies.

In chapter four I argued that women judges found opportunities in courts dealing with family relations during years that witnessed significant transitions in family composition. In the post-war era, women judges formed part of a growing female workforce, and balanced competing discourses about womanhood. All of the women appointed to Prairie benches at this time were

[25] Mysty S. Clapton, discusses how this case became a nationwide cause célèbre associated with the 1970s women's movement, "Murdoch v. Murdoch: the Organizing Narrative of Matrimonial Property Law Reform," *Canadian Journal of women and the Law,* 20 (2008), 197 – 230.

married or widowed mothers, and they were chosen at least partly based on their suitability as role-mothers. Media reports highlighted the maternal capabilities of Nellie Sanders and Mary Wawrykow in Manitoba, Mary Carter and Tillie Taylor in Saskatchewan, and Marjorie Bowker in Alberta to justify their appointment to the court. On the bench, some of these women continued to use maternal rhetoric to legitimize their role and lend credence to their reform objectives. At least within media representations, it was their persona of concerned mothers, rather than as expert judges, that qualified Taylor and Carter to advocate for reducing poverty and penal reform.

Chapter five investigated the ways in which women judges of the 1950s and 1960s drew on the international arena and its connections to human rights advocacy to promote rights for children, women, Aboriginal persons, and select minority groups before women's liberation found expression. Their choice of reform projects, and the language they used to describe them, marks them as active participants in a broader movement of social change. At the same time, the ways in which they presented their views of gender discrimination indicates that they did not necessarily extend human rights sentiments to themselves as legal professionals. Maternalism continued to be a useful tool in the hands of some women judges even during this time period.

By the early 1970s, the time frame of chapter six, divorce affected women and families adversely in the contemporary legal structure and court system. Women's demands for marital property law reform were already underway, inspired by women's unfair legal treatment and rising rates of marital breakdown, but the failure by the Supreme Court of Canada to find a partnership interest for Irene Murdoch fueled the campaign. The *Murdoch* case became a rallying point for women activists across Canada, and functioned as a symbol of systemic inequity. Prairie women judges Bowker, Carter, and Bowman each participated in efforts to

reform the family court [and property laws in Bowman's case] in this activist climate. In Alberta, Bowker instituted conciliation procedures aimed at lessening the impact of divorce on families, and also advocated for the creation of a Unified Family Court. Bowker noted in her report that this type of court was established in Toronto in 1963, and that it had a lengthy international history in Britain, the United States, and Japan.[26] The unwillingness of the Alberta government to "import" a UFC from Ontario, or elsewhere, substantiates the argument that legal reform processes did not simply move from East to West; that local conditions shaped receptivity to laws and legal institutions. In Saskatchewan, the NDP government provided a community-centred model of family court reform. The rural context influenced the government to adopt marital property legislative reforms, and to institute a UFC, preceding both Manitoba and Alberta. Carter participated in instituting the UFC, and was chosen as judge of the newly restructured family court based on her extensive expertise in family matters. In Manitoba, Myrna Bowman was the only Prairie woman judge to directly reference the *Murdoch* case, but the way in which she did so highlighted one clash between feminist values and the restrictions of legal drafting. Myrna Bowman illustrated her belief in the ability of judges like herself to render fair judicial verdicts, even as women's groups like MAWL insisted on the development of predictable legislative outcomes to avoid the vagaries of judicial discretion. During this later period, women judges increasingly utilized their legal professional qualifications even though some of their strategies for reconciling the family court to a rapidly shifting population incorporated collaborative strategies suggestive of earlier voluntary sector experience.

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[26] "Comment on Edmonton family Service Association Brief on Juvenile Court Services," 30 November 1965, 3, Bowker fonds, 93.435, File 14, PAA; "Family Law in Canada, 9, Bowker fonds, 93.435, File 13, PAA; "Family Law in Canada," 8, Great Britain instituted conciliation proceedings in 1938 through its National Marriage Guidance Council.

Throughout the 1970s many Canadians participated in diverse groups and organizations aimed at countering discrimination and marginalization. The Royal Commission on the Status of Women (RCSW) published its findings in 1971, gathered from briefs submitted across Canada, and made many recommendations, including increasing the number of women in public life.[27] Feminists involved in the RCSW had formed the National Action Committee on the Status of Women (NAC) in 1971 to oversee the implementation of the RCSW's recommendations.[28] Numerous women's organizations and other special interest groups developed during the 1970s to respond to demands by marginalized persons including, homosexuals, Aboriginals, and ethnic minorities.[29]

Reformers specifically targeted court and legislative developments. Although the 1960 Canadian Bill of Rights had provided, at least theoretically, a foundation upon which women could seek greater equality, it proved insufficient because it was only a federal law rather than a constitutional document. As such 1970s courts interpreted the Bill of Rights' equality guarantees formally and very narrowly.[30] 1970s cases encouraged feminists to seek substantive equality, concerned "with actual differences in the social and political condition of specified groups rather than with the neutral application of formal rules to similarly situated individuals."[31] Feminists demanded "equality under the law," rather than equality before the law, and this required both constitutional change and the Supreme Court's recognition that formal equal treatment for all members of a similarly situated group could result in significant discrimination.[32]

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[27] Judy Rebick, *Ten Thousand Roses Roses* 20.
[28] Dominique Clément, *Canada's Rights Revolution: Social Movements and Social Change, 1937 – 82* (Vancouver: UBC Press, 2008), 30.
[29] Ibid, 30 – 32.
[30] L'Heureux-Dubé, "It Takes a Vision," 364.
[31] Manfredi, *Feminist Activism in the Supreme Court*, 35.
[32] L'Heureux-Dubé, "It Takes a Vision," 366.

By 1980, feminists made use of Trudeau's national goal of repatriating the Canadian constitution by insisting that substantive equality provisions for women be included within Canada's Charter of Rights and Freedoms.[33] Feminist lawyers had been alarmed by Section 1 of the first draft of the Charter which proposed rights and freedoms "subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."[34] Various women's groups, under the umbrella of NAC influenced Trudeau's government to base its Charter framework on that set out in the Universal Declaration of Human Rights.[35] By pointing to important developments in international human rights, NAC was carrying on a strategic tactic long since utilized by organized Canadian women seeking legal and social reform. Demanding substantive equal rights language reflected lessons that Canadian women had learned from American women's 1970s struggles with the ill-fated Equal Rights Amendment. They recognized the need to establish an organization to monitor Charter proceedings.[36] In 1985, feminist lawyers and judges incorporated the Women's Legal Education and Action Fund (LEAF).[37] LEAF intervened in multiple cases and helped establish landmark victories on issues relating to sex discrimination, reproductive rights, and employment.[38] Because human rights was the basis of the Charter, rather than the American civil liberties model, organized Canadian women helped to establish a novel approach to equality rights.[39]

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[33] *Canadian Charter of Rights and Freedoms*, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c.11.
[34] Rebick, *Ten Thousand Roses*,143.
[35] L'Heureux-Dubé, "It Takes a Vision," 365. Jill Vickers, Pauline Rankin, and Christine Appelle indicate that the women's movement, and particularly the NAC, reflected English-speaking, rather than French-speaking and First Nations Canadian women in *Politics As if Women Mattered: A Political Analysis of the National Action Committee on the Status of Women* (Toronto: University of Toronto Press, 1993), 7.
[36] Manfredi, *Feminist Activism in the Supreme Court*, xiii.
[37] L'Heureux-Dubé, "It Takes a Vision," 367.
[38] Rebick, *Ten Thousand Roses*, 127 – 128.
[39] L'Heureux-Dubé, "It Takes a Vision," 366; Manfredi, notes that Title VII of the 1964 Civil Rights Act, which prohibited discrimination on the basis of sex, incorporated the principle of gender equality, *Feminist Activism*, 38.

These professional and centralized legal reform efforts shifted emphasis away from Prairie provincial developments towards a national framework. Whereas earlier reform efforts often highlighted uniquely provincial concerns and politics, such as the 1917 woman-headed juvenile court in Saskatchewan, or the 1970s *Murdoch* case in Alberta, by the 1980s, women's national reform efforts eclipsed provincial and regional concerns. A new national constitution and women's reform mandate overshadowed the previously localized relationship between women judges, reform mandates, and the courts.

At this time, organized women also insisted on direct initiatives in appointing greater numbers of women to the upper levels of Canada's judiciary. At her swearing in ceremony on 30 March 1982 Bertha Wilson became the first woman called to the Supreme Court of Canada.[40] Wilson's judgments pushed the court toward a progressive interpretation of equality rights.[41] Since then, scholars have argued that placing women on the Canadian Supreme Court encouraged the beginnings of more direct vocalization of gender inequities within the judiciary and legal profession.[42]

In conclusion, this study has situated Prairie Canadian women judges within a broader historiography focused on the role of women judges as change actors in the family courts as these courts transformed from juvenile courts, women's courts, and Domestic Relations' Tribunals into modern era family courts. Between 1916 and 1980 women judges contributed to promoting the rights of vulnerable persons as volunteers and as professionals. I have argued that the women

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[40] Ellen Anderson, *Judging Bertha Wilson: Law as Large as Life* (Toronto: The Osgoode Society for Canadian Legal History, 2001), 128. Saskatoon's Mary Carter was also considered for appointment to the Supreme Court of Canada, Author's interview with Martha Carter, 26 April 2013.
[41] Rebick, *Ten Thousand Roses*, 128.
[42] See for example, Manfredi, *Feminist Activism in the Supreme Court*; Constance Backhouse, "The Chilly Climate for Women Judges: Reflections on the Backlash from the Ewanchuk Case," *Canadian Journal of Women and the Law* 15 (2003), 167 – 193; and Madame Justice Bertha Wilson, "Will Women Judges Really Make a Difference?" *Osgoode Hall Law Journal* 28 (1990), 507 – 522.

judges considered in this dissertation were influenced by "place," women's activism associated with the women's movement, prescriptions relating to women's behaviour, and legal professionalism. I have shown that the early twentieth century women's movement facilitated the appointment of the first wave of women judges, whereas the second cohort received judicial appointments because of their professional attributes. In so doing, I have argued that women judges did not "break" entrenched professional and legal strictures governing the bench and law during this time period; rather, they legitimated their judicial roles and activism by using conventions associated with the voluntary sector and legal professionalism to legitimate their function and promote social and legal change.

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