

*Chapter Three*  
*'Her Bruised Heart Bleeds in Secret':*  
*Spousal Violence in Montreal*

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THE DRUNKEN HUSBAND--The common calamities of life may be endured--poverty, sickness, and even death may be met--but there is even that which, while it brings all these with it, is worse than all three together. When the husband and father...by slow degrees becomes the creature of intemperance, there enters into his home the sorrow that rends the spirit--that cannot be alleviated; that will not be comforted....What shall delight [the wife] when she shrinks from the sight of his face, and trembles at the sound of his voice? The heart is indeed dark, that he has made desolate. There, in the dull hour of midnight, her griefs are known only to herself--her bruised heart bleeds in secret.<sup>1</sup>

That newspaper article, appearing in 1834, was a condemnation of the evils of intemperance. Couched in the heavily sentimental language common at the time, it alluded to the “sot’s disgusting brutality” in depicting the specter of violence that often lurked in the alcoholic’s household. Depictions of overt violence against wives rarely appeared in the period press, and that violence was not yet the subject of public crusades or pronounced criticism in the first half of the nineteenth century.<sup>2</sup> As court records make clear, however, it was a common element of family life.<sup>3</sup> Indeed, wife battery was the form of family violence most likely to surface in judicial archives.

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<sup>1</sup> *The Montreal Gazette* (1 May 1834).

<sup>2</sup> For a rare example, see *e.g. The Montreal Gazette* (2 August 1844):

On Saturday last, a man of the name of Larochetiere, living in the Quebec suburb, while in a state of drunkenness, beat his wife so severely that her life was despaired of; but we learn that she has since rallied, and that hopes are entertained that she will recover.

<sup>3</sup> A fact that remains true today. Statistics Canada reported that in the 1993 “Violence Against Women Study,” twenty-nine percent of women who were married or in common law

As that newspaper account noted, in many instances battered wives suffered in silence, then as now, and their stories therefore cannot be reconstituted from judicial proceedings of the period. This chapter analyses the judicial response to spousal battery in Montreal during the years 1825 to 1850. By examining the hundreds of instances in which the judicial process was implicated in violence between spouses, one can arrive at a fuller, more representative, and more contextual understanding of domestic violence during this period.<sup>4</sup> Part I offers an overview of spousal abuse up to the nineteenth century. Part II examines the options available to an abused spouse, including legal remedies. Part III analyzes instances of domestic violence that led to such charges as assault and battery, aggravated assault and attempted murder, while Part IV dissects the causes and dynamics of domestic violence as set out in those complaints.

Scholars have tended to divide the study of domestic violence into spousal (wife) battery and spousal (wife) murder. While such studies remain valuable, that pattern of inquiry had had two unfortunate consequences: first, wives have typically been depicted as victims and stripped of all agency. Violence against wives is not only a story of male brutality, but also involved wives' resistance to male domination.<sup>5</sup> Furthermore, while domestic violence was typically the preserve of men rather than women, the role

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relationships had been assaulted. Statistics Canada, *Women in Canada: A Statistical Report* (Ottawa: Statistics Canada, 1995) 104.

<sup>4</sup> All spouse-like relationships are examined in this study, including relationships in which the two parties had children together or purported to be husband and wife. Some couples who claimed to be married were probably not viewed as such in the eyes of the law.

<sup>5</sup> Compare Peterson del Mar, *supra* note 8 at 45-46. See also Gordon, *supra* note 4.

of wives as aggressors or mutual combatants also deserves examination.<sup>6</sup> Many such studies also fail to view those issues along a ‘violence continuum,’ which allows one to establish the extent to which chronic abusers were likely to accelerate violence.<sup>7</sup>

Combining study of all forms of violence in the family does not mitigate the banefulness of less lethal forms of domestic battery, but it does serve to probe the similarities and differences between their lethal and non-lethal forms.

### I.

Violence has been a factor in family life since time immemorial. There has been considerable scholarship dealing with that issue in the English and American contexts, and the experiences in those countries provide a wealth of information. As scholars have pointed out, domestic violence was common in Victorian England.<sup>8</sup> Francis Power Cobbe, an early crusader against that issue, argued that society sanctioned wife abuse.<sup>9</sup> It has been argued that the law in England, and indeed in Western jurisdictions at large,

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<sup>6</sup> Compare Statistics Canada, *supra* note 534 at 103 (reporting that seventy-two percent of violence against women was committed by relatives and acquaintances). See also Conley, *supra* note 35 at 74. Some modern-day social scientists have controversially argued that wives commit a much higher percentage of spousal batteries than has been traditionally acknowledged, but that is clearly a minority view. Further discussion is beyond the scope of this thesis.

<sup>7</sup> Cobbe argued that wife beating amounted to “wife torture,” which she argued usually ended in “wife-maiming,” “wife-blinding,” or “wife-murder.” See Francis Power Cobbe, “Wife-Torture in England” (1878) 32 *Cont. Rev.* 55 at 72.

<sup>8</sup> See *e.g.* Carol Bauer & Lawrence Ritt, “‘A Husband is a Beating Animal’: Frances Power Cobbe Confronts the Wife Abuse Problem in Victorian England” (1983) 6 *Inter. J. Women’s Stud.* 99 at 100 note 6.

<sup>9</sup> See Cobbe, *supra* note 539 at 62-64. See also *ibid.* at 110.

“mirrored the public acceptance of wife-beating and, in turn, reinforced it.”<sup>10</sup> The extent to which wife beating was publicly sanctioned in Victorian England is open to debate. However, it is unassailable that in earlier centuries a husband exercised dominion over his wife, and that included the right of physical chastisement.

At the common law, wives did not generally have recourse to prosecutions against their husbands for assault and battery. As set out in Sir Seymore’s case of 1613, wives were considered *sub virga viri*, or under their husband’s rod.<sup>11</sup> Moreover, women’s legal status was subsumed into that of their husbands, with women facing a range of legal and social disabilities due to the rule of “marital unity” in which their legal identity was merged into that of their husbands.<sup>12</sup> Victims of domestic violence were confronted by a well-entrenched belief in family immunity.<sup>13</sup> A husband’s right to chastise his wife was not absolute, however, and not all commentators agreed on its legality. Cobbe argued that the long-standing common law rule respecting a husband’s right to chastise his wife, immortalized in an act of Charles II, was only revoked in 1829.<sup>14</sup> As Doggett has observed, however, while some observers may have questioned

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<sup>10</sup> Bauer & Ritt, *supra* note 540 at 102.

<sup>11</sup> See generally Doggett, *supra* note 6 at 5-6.

<sup>12</sup> Those legal disabilities included contractual and testamentary incapacity. For discussion of the law related to marital unity, see generally *ibid.* at 34-99; Reva D. Siegel, “The Rule of Love’: Wife Beating as Prerogative and Privacy” (1996) 105 *Yale L.J.* 2117 at 2122-2123.

<sup>13</sup> See generally Elizabeth Pleck, “Criminal Approaches to Family Violence, 1640-1980” in Lloyd Ohlin & Michael Tonry, eds., *Family Violence, Crime and Justice: A Review of Justice*, vol. 2 (Chicago: University of Chicago, 1989) 19 at 20 [hereinafter *Criminal Approaches*].

<sup>14</sup> See Cobbe, *supra* note 539 at 64.

the legality of wife beating, few denied its legality altogether.<sup>15</sup> Wives in eighteenth century England, for example, could have their husbands bound to the peace, but the ancient premise of a husband's dominion over his wife was still well-entrenched.<sup>16</sup>

That right to correction survived as an accepted social and legal practice well into the nineteenth century, although as the century advanced there was increasingly vocal opposition. Still, husbands were given wide latitude. As Charles Dickens was to observe in 1851, "[t]he fact of a woman being the lawful wife of a man, appears to impress certain preposterous juries with some notion of a kind of right in the man to maltreat her brutally, even when this causes her death."<sup>17</sup> By the last decades of the century, legal commentators had forged a consensus that the husbands' prerogative was an archaic remnant from a less civilized past.<sup>18</sup> Even by the early-Victorian period, English spouses pursued criminal prosecutions of abusive spouses in significant numbers, particularly after Justices of the Peace were accorded the right to try assault cases summarily by virtue of the "Offences Against the Person Act" of 1828.<sup>19</sup> The law provided minor penalties on conviction, however, with a maximum fine of five pounds

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<sup>15</sup> See Doggett, *supra* note 6 at 10; Conley, *supra* note 35 at 74 (noting that there was no legal right to beat one's wife, but that judges generally sympathized with husbands.).

<sup>16</sup> See generally Beattie, *Criminality*, *supra* note 154 at 205.

<sup>17</sup> [Richard J. Horne & Charles Dickens], "Cain in the Fields," *Household Words* (10 May 1851) (cited in Wiener, *supra* note 15 at 478 note 34).

<sup>18</sup> See generally Doggett, *supra* note 6 at 15.

<sup>19</sup> "Offences Against the Person Act" 9 Geo. IV c.31 s.7 (1828) (U.K.). See generally *ibid.* at 30.

and two months' imprisonment in default of payment.<sup>20</sup> There was little other legislative change until the middle of the century, when the English Parliament passed legislation in 1853 designed to address the frequency of serious assaults on women and children.<sup>21</sup> Four years later legislation designed to liberalize the law of divorce was enacted, although the law remained ineffective and far from egalitarian.<sup>22</sup>

While by the first half of the century English courts generally no longer accepted the permissibility of spousal correction, the law did not yet recognize its outright illegality. As Doggett has stated, "[t]he courts may no longer have recognised a husband's right to beat his wife, but they had not advanced so far as to recognise *the wife's right not to be beaten*."<sup>23</sup> Spousal cruelty was an increasingly prominent social issue by the mid-part of the century, and by 1857 the first branch of the Society for the Protection of Women and Children from Aggravated Assaults had been founded.<sup>24</sup>

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<sup>20</sup> See generally Doggett, *ibid.* at 106.

<sup>21</sup> "An Act for the Better Prevention and Punishment of Aggravated Assaults Upon Women and Children, and for Preventing Delay and Expense in the Administration of the Criminal Law," 16 Vict. c. 30 (1853) (U.K.). See generally Bauer & Ritt, *supra* note 540 at 111; Behlmer, *supra* note 326 at 12; Doggett, *ibid.* at 106-107; Hammerton, *supra* note 6 at 59; Conley, *supra* note 35 at 74. That Act provided for six months' incarceration and a ,20 fine, and allowed for third-party prosecutions.

<sup>22</sup> "Matrimonial Causes Act," 20 & 21 Vict. c. 85 (1857) (U.K.). That Act provided for judicial divorce and transferred responsibility for matrimonial matters from Ecclesiastical courts to a formalized Divorce Court. The inequalities remained, however, as husbands could obtain a divorce on the grounds of adultery, while wives were required to make a showing of adultery coupled with incest, bigamy, rape, sodomy, bestiality, cruelty, or desertion. See generally Doggett, *ibid.* at 100. For discussion of legislation passed in late-nineteenth century and early-twentieth century Canada, see generally Lepp, *supra* note 31 at 455-461.

<sup>23</sup> Doggett, *ibid.* at 31 (emphasis in original).

<sup>24</sup> See generally *ibid.* at 111.

The frequency with which households were marred by violence cannot be known, although it must have been a common feature of early-Victorian life. Nancy Tomes has provided a rough estimate of the frequency of domestic violence in London of the 1850s and 1860s, stating that in a working-class neighbourhood of 200 to 400 houses, ten to twenty men would be convicted of assault against women every year.<sup>25</sup> Summary jurisdiction over assault cases, and the development of a police force, as well as liberalizing legal attitudes, all played a part in the increase in prosecutions for that offense.<sup>26</sup> Still, many husbands beat their wives, at least in part, because they felt it was their right to do so and could do so with impunity. Those who were called to task for it remained a minority of abusive husbands.<sup>27</sup>

While there is substantial scholarship on, and evidence of, wife battery in Victorian England, it was not a phenomenon unique to that jurisdiction. As Bauer and Ritt have pointed out, "it could be argued that the traditional patriarchal notions of family life were nowhere better illustrated than in the timeworn idea of the power of the husbands to compel wifely obedience to his authority by kicks, blows, and stomps."<sup>28</sup> Those patriarchal notions of family were common throughout the Western world.

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<sup>25</sup> See Tomes, *supra* note 7 at 330.

<sup>26</sup> See generally Doggett, *supra* note 6 at 114.

<sup>27</sup> Compare Harvey, *supra* note 3 at 137.

<sup>28</sup> Bauer & Ritt, *supra* note 540 at 102.

Indeed, notions of family privacy and male dominion worked against judicial intervention in matters related to domestic violence.<sup>29</sup>

Domestic disharmony and violence were issues from the earliest days of the American colonies. Under the Puritan model of the household, the family hierarchy was well-defined and operated as a “stable system of domestic government,” with the husband as leader, the wife in a subordinate support role, and the children as obedient servants of the parents.<sup>30</sup> The major form of protection afforded to victims of domestic violence was the public scrutiny inherent in Puritan communities.<sup>31</sup> Evidence of domestic disharmony was usually quick to come to the attention of the main arbiter of such matters: the minister. More serious cases came before church courts, which dealt with such disparate offenses as uttering falsehoods, spousal and child abuse, drunkenness, adultery and fornication, and murder.<sup>32</sup>

Complementing the church courts was the ordinary criminal apparatus of the colonies. As Pleck has pointed out, Massachusetts Bay and Plymouth enacted what she characterised as the first laws against spousal violence in the Western world.<sup>33</sup> Pleck has argued, for example, that Puritan communities in Massachusetts Bay “acted against

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<sup>29</sup> See generally Buckley, *supra* note 34 at 179.

<sup>30</sup> Pleck, *supra* note 316 at 19.

<sup>31</sup> See generally *ibid.* at 18.

<sup>32</sup> See generally *ibid.* at 20.

<sup>33</sup> See generally *ibid.* at 21.



family violence in ways without parallel in Western history.”<sup>34</sup> As was discussed in the previous chapter on child abuse, the Massachusetts *Body of Liberties* of 1641 was a remarkably progressive legal code. Besides proscribing child abuse, it outlawed wife battery, stating that “[e]verie married woeman shall be free from bodilie correction or stripes by her husband, unlesse it be in his owne defence upon her assault.”<sup>35</sup> An amendment to the code a few years later outlawed husband battery, as well.<sup>36</sup> Likewise, the Plymouth Bay Colony enacted a law in 1672 that punished wife battery with a fine of five pounds or a public whipping, while husband battery was punished at the court’s discretion.<sup>37</sup>

Despite those statutory prohibitions, the law’s application leaves little doubt that judicial emphasis was placed on preserving the family unit rather than protecting the victims of domestic assault.<sup>38</sup> Separations were not encouraged, and divorces--while more readily available than in England--were few. Matrimonial cruelty was not sufficient to justify divorce, and aggravating circumstances such as adultery or

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<sup>34</sup> Pleck, *ibid.* at 18. However, the intention primarily was to preserve the family unit, not to protect the individual rights of the victim. See generally *ibid.*

<sup>35</sup> *The Body of Liberties* (1641) (cited in Pleck, *Criminal Approaches*, *supra* note 545 at 80). See also Pleck, *supra* note 316 at 21-22; Archer, *supra* note 316 at 426.

<sup>36</sup> Pleck, *supra* note 316 at 22.

<sup>37</sup> *Ibid.*

<sup>38</sup> Compare *ibid.* at 23. (“Although there were humanitarian and religious dimensions to the Puritan legal code, the major purpose of their laws against family violence was to reinforce hierarchy within the family or in society.”)

abandonment were necessary.<sup>39</sup> In seventeenth century Plymouth courts, family violence cases usually involved wife battery. The frequency of such cases decreased from the 1660s until the 1750s. In fact, by 1690 other types of family violence--most notably husband battery, parental assault by children, and incest--were no longer appearing before Plymouth courts. Various societal changes in those communities were no doubt responsible, but so too was the fact that colonial courts came under increasing pressure to conform to English common law.<sup>40</sup>

From the time of the 1672 statute until the middle part of the nineteenth century, no colonial or American legislation was passed that outlawed family violence. Occasional cases reflect the lack of an overall consensus on the issue, as evidenced by an 1824 Mississippi case that held that a husband had the right of "moderate chastisement" over his wife.<sup>41</sup> Such cases, however, were the exception rather than the rule, and the view that a husband had a legal right to discipline his wife was not common currency in American courts of the period.<sup>42</sup> As one legal scholar has posited:

underlying most conversations about the prerogative [of wife correction] was a common assumption, articulated more frequently with the passage of time: that marital chastisement was a vestige of another world, an ancient legal precedent

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<sup>39</sup> See generally *ibid.* at 23.

<sup>40</sup> See generally *ibid.* at 29.

<sup>41</sup> See *ibid.* at 21. For early and mid-nineteenth century American cases recognizing the right, see Siegel, *supra* note 544 at 2125 and note 25.

<sup>42</sup> Compare Myra C. Glenn, *Campaigns Against Corporal Punishment, Prisoners, Sailors, Women, and Children in Antebellum America* (Albany: State University of New York Press, 1984) 67 note 15.

of increasingly uncertain legitimacy. Yet, precisely by reason of its lineage as an ancient prerogative of marriage, chastisement did not die an easy death.<sup>43</sup>

Before a Tennessee statute addressing that issue was promulgated in 1850, little legislative action was discernable.<sup>44</sup> From the early years of the Victorian era to the 1870's, family violence was not viewed as a pressing social issue. However, the criminalization of those acts did happen at the local level, driven by the creation of a variety of general courts in American, English, British North American, and other jurisdictions. Those courts, which included police, alderman and hustings courts, depending on the jurisdiction, allowed for the summary disposition of family violence cases alongside the usual litany of public drunkenness, petty larceny, and other such cases.<sup>45</sup> Those courts presented a geographically and legally accessible venue for the working classes who lived in the teeming tenements and crowded streets of urban centers.<sup>46</sup> Courts such as the Police Court in Montreal presented a venue in which abused spouses could seek legal protection, and forced the law's servants to take cognizance of family violence, even if their response remained anemic.<sup>47</sup>

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<sup>43</sup> Siegel, *supra* note 544 at 2122.

<sup>44</sup> See generally Pleck, *Criminal Approaches*, *supra* note 545 at 29-35.

<sup>45</sup> See generally *ibid.* at 30.

<sup>46</sup> See generally *ibid.* Clark, *supra* note 31 at 198 observed that people “resorted to magistrate’s courts with enthusiasm” and expected those courts to dispense justice on their own terms.

<sup>47</sup> Clark went so far as to say that judges “faced continual pressure from wives who wished to prosecute their husbands for assault whether or not they had a right to do so.” *Ibid.* at 192.

It was the emergence of various social movements that was to provide the genesis for later legislative action. The nineteenth century American social movement against domestic violence was closely tied to the growth of the temperance movement. The first temperance society in the United States was founded in 1808, and within thirty years family violence became one of the focal points of that movement.<sup>48</sup> Eventually temperance crusaders came to view the issue of domestic abuse as inseparable from, and as a logical adjunct to, alcohol abuse. Remove the latter, they reasoned, and the former would disappear in its wake.<sup>49</sup> Activists who later took on the cause of spousal violence typically had been involved in other social movements, among them women's suffrage, anti-child cruelty and social purity movements, the latter dedicated to abolishing the sex trade and related social ills.<sup>50</sup>

For the first half of the nineteenth century, however, public debate over wife beating took a back seat to the issue of corporal punishment of convicts, slaves, sailors and children.<sup>51</sup> Indeed, Societies for the Prevention of Cruelty to Children predated equivalent societies designed to aid women, and the SPCC was even known to act on behalf of battered wives.<sup>52</sup> As discussed in Chapter II, the SPCC was itself predated by

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<sup>48</sup> See Pleck, *supra* note 316 at 51.

<sup>49</sup> See generally *ibid.* at 49. As Pleck has stated, the temperance activists “subsumed the issue of domestic violence under the rubric of the ills caused by intemperance.” *Ibid.*

<sup>50</sup> See generally *ibid.* at 89.

<sup>51</sup> See generally Glenn, *supra* note 573 at 80.

<sup>52</sup> Compare Pleck, *supra* note 316 at 88. For the conjunction between the SPCC and aid to battered women, see generally Gordon, *supra* note 4 at 252-264 & 280-285.

the Society for the Prevention of Cruelty to Animals, which reveals something about the evolution of social thought about those issues.<sup>53</sup> The temperance movement helped spawn the women's rights movement of the mid-and-late nineteenth century, whose supporters called increasingly vociferously for amendments to the laws regulating divorce, child custody and women's property, although lobbying against alcohol consumption was their primary medium. As Linda Gordon has stated:

The attack on male sexual and familial violence was often disguised in temperance rhetoric. American women's historians have recently conducted a reinterpretation of temperance, acknowledging its anti-Catholic, anti-working class content, but also identifying its meanings for women contesting the evils that alcohol created for them and their families: violence, disease, impoverishment, male irresponsibility. Moreover, the feminist anti-violence campaign had significant successes. In the course of the century wife-beating was transformed from an acceptable practice into one which, despite its continued widespread incidence, was illegal and reprehensible, a seamy behaviour which men increasingly denied and tried to hide.<sup>54</sup>

While temperance advocates may never have constituted more than a small percentage of the upper social strata, let alone of the population as a whole, assumptions about the ills brought on by alcoholism among the lower classes became much more pervasive.<sup>55</sup>

Prompted by a convergence of related social movements, the issue of spousal violence itself was to reach its international zenith as a social cause in the period 1870 to

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<sup>53</sup> See Chapter II, *supra* at 130 & 139.

<sup>54</sup> Gordon, *Politics*, *supra* note 360 at 57.

<sup>55</sup> See generally Beattie, *supra* note 154 at 4-5.

1890.<sup>56</sup> That was also the case in Montreal. As Harvey has written in the context of late-Victorian Montreal:

Wife-battering became an issue of public concern in Montreal in the 1870s....The existence of newspaper accounts and court cases treating wife-abuse, attests to a public awareness of it as a social problem. During this period, the voices of the temperance movement and middle-class law and order reformers joined in chorus to alert the public to the evils of alcohol abuse. The link made by the temperance movement between drunkenness and wife-battering focussed the public's attention on a crime that remained unnamed in other periods because it had no public face.<sup>57</sup>

It was not until the early-1880s that a Society for the Protection of Women and Children was founded in Montreal.<sup>58</sup>

As the century advanced and spousal violence was increasingly viewed as a crime that tore at the fabric of society, and not merely a crime against the victim, there was mounting support for the criminalization of that behaviour.<sup>59</sup> As society became

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<sup>56</sup> Pleck, *supra* note 316 at 88-89; Pleck, *Criminal Approaches*, *supra* note 545 at 20.

<sup>57</sup> Kathryn Harvey, "'To Love, Honour and Obey': Wife-Battering in Working-Class Montreal, 1869-1879" (1990) 19 *Urban. Hist. Rev.* 128 at 129-130 [hereinafter *Wife Battering*].

<sup>58</sup> See generally Harvey, *supra* note 3 at 20; Lepp, *supra* note 31 at 455 note 35.

<sup>59</sup> As Beattie, *supra* note 154 at 3 has stated:

If crime proceeded from immorality then it posed a much greater threat to society than the mere taking of property or even the threat to life. It was evidence of a malaise of a much more fundamental character, for it argued that some members of society did not accept or had not been taught to accept the essential principles on which the social order rested, and that the foundations of the society were to that extent threatened.

See also Hammerton, *supra* note 6 at 16 (noting growing intolerance towards violence in the nineteenth century); Peterson del Mar, *supra* note 8 at 13 (violence by husbands deemed less acceptable than in past).

less inclined to defend vigorously the historical entitlements, protections and sanctity afforded to the family, it became more inclined to criminalize family violence.<sup>60</sup>

But social movements and legislative action (or the lack thereof) do not tell the whole story. Assaulting a spouse could still be an offense under the common law, regardless of larger legal and social trends. As Pleck has insightfully noted:

the absence of a specific statutory prohibition [does not] prove that wifebeating was legal. Prior to the passage of the Maryland law of 1882, wifebeaters in that state were arrested for assault and battery. Similarly, although no judicial decisions were issued about the right of chastisement in Pennsylvania and South Carolina and neither state had a statute prohibiting wifebeating, it was nonetheless the case that violent husbands in both states were arrested on charges of assault and battery.<sup>61</sup>

The privately-driven nature of criminal justice during the period allowed individuals to assert their rights and seek redress despite more hegemonic social mores. As Allen Steinberg has noted, that accounts in large part for the frequency with which abusive husbands were prosecuted by their wives, relatives, and other parties.<sup>62</sup> On the other hand, the flexibility of the law to censure family violence, through treating it as it would any other form of violence, must be balanced against a prevalent societal ethos that showed great deference towards patriarchal relationships. As such, it is best to

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<sup>60</sup> Compare Pleck, *Criminal Approaches*, *supra* note 545 at 21.

<sup>61</sup> Elizabeth Pleck, “Wife Beating in Nineteenth-Century America” (1979) 4 *Victimology* 60 at 63 [hereinafter *Wife Beating*]. For discussion of the relationship between wife battery and divorce petitions, see generally Thomas E. Buckley, *The Great Catastrophe of My Life: Divorce in the Old Dominion* (Chapel Hill & London: University of North Carolina Press, 2002) 153-176 (nineteenth century Virginia).

<sup>62</sup> See Steinberg, *supra* note 16 at 46. As Clark has stated, “[w]e must admire the courage of the women who could defy patriarchy, while recognizing the power of the law to frustrate their efforts.” Clark, *supra* note 21 at 205.

characterise early-Victorian legal attitudes towards wife battery as follows: prosecutions for spousal battery should not be equated with the widespread societal repudiation of this crime; conversely, the absence of statutory protections should not be deemed to be proof of its legality.<sup>63</sup> Nineteenth century legal and social mores in the first half of the century were less about governing family conflict than they were governed *by* conflict.

As shall be discussed, that was precisely the situation in Montreal during the years 1825 to 1850. The hundreds of assault and related cases brought against abusive spouses indicates that, even in the absence of specific statutory prohibitions, assault of one spouse by another fell under the purview of the criminal law. At the same time, however, the legal response towards spousal violence was defined neither by consistency nor by severe sentences designed to act as deterrents. Furthermore, the administration of criminal justice remained sporadic, particularly in the early period when fledgling police forces were too small to be effective agents of social control.<sup>64</sup>

## *II.*

A spouse faced with violence had limited options. She could, of course, stay and endure her husband's conduct as best she could, and no doubt many abused spouses did precisely that.<sup>65</sup> Some wives were fortunate to find sanctuary or intervention due to the kindness of family and friends, which in some cases may have acted as a form of

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<sup>63</sup> Compare Pleck, *Wife Beating*, *supra* note 593 at 63 (“A more general claim is that wifebeating, even if a criminal offense, was nonetheless considered appropriate behavior for nineteenth-century American husbands.”)

<sup>64</sup> Compare *ibid.* at 64.

<sup>65</sup> Compare Doggett, *supra* note 6 at 30; Buckley, *supra* note 593 at 157.



informal regulation of marital relations and served to put a stop to the abuse.<sup>66</sup> Divorce in Quebec remained a political procedure, not then having made the transition to a common judicial procedure, let alone the final step to an administrative procedure as it now is in most Western jurisdictions. Securing a divorce necessitated the expensive, lengthy and nearly always fruitless process of obtaining a private bill in Parliament for that purpose.<sup>67</sup> Securing an annulment was a possibility, but was not always easy. More accessible options included obtaining a “separation from bed and board” or a *séparation de corps*, a form of partial dissolution of the marriage,<sup>68</sup> or a request for separate maintenance.<sup>69</sup>

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<sup>66</sup> See generally Doggett, *ibid.* at 30; Pleck, *Wife Beating*, *supra* note 593 at 67-68; Buckley, *supra* note 593 at 180-181.

<sup>67</sup> A unique example of a newspaper advertisement signifying intention on the part of the advertiser to petition for divorce appeared in *The Montreal Gazette* (14 April 1844). Running for more than six months, it read:

NOTICE. FLORA THOMSON, of North Georgetown, in the Seignory of Beauharnois, intends to apply to the Parliament of this Province, at its next Session (or at the Session following the next, if the rule of the Parliament will not sooner admit of the application), for a Bill or Act of Divorce from JOSEPH TOLL, her husband, for cause of adultery.  
FLORA THOMPSON. North Georgetown, 30<sup>th</sup> March, 1844.

For discussions of the law regulating divorce, see Constance Backhouse, “Pure Patriarchy: Nineteenth-Century Canadian Marriage” (1986) 31 *McGill L.J.* 265; Robert L. Griswold, *Family and Divorce in California, 1850-1890: Victorian Illusions and Everyday Realities* (Albany: State University of New York Press, 1982); Kimberley Smith Maynard, “Divorce in Nova Scotia 1750-1890” in Philip Girard & Jim Phillips, eds., *Essays in the History of Canadian Law*, vol. 3 (Toronto: Osgoode Society, 1990) 232; Lawrence Stone, *Road to Divorce: England 1530-1987* (Oxford: Oxford University Press, 1990) 301-367.

<sup>68</sup> Separations are defined as “[a] species of separation not amounting to a dissolution of the marriage.” Black’s Law Dictionary, *supra* note 437 at 951. Legal separations, known as “*séparations de corps*” or “separations as to person and property,” were common in Quebec. While divorces were extremely difficult to obtain in the early-nineteenth century, legal separations in Quebec were much more freely granted. That is one of many examples suggesting

Informal “self divorces” or separations were always an option, in which one or both parties decided to live separately from each other, but these arrangements could pose financial and social disadvantages to women.<sup>70</sup> Self-divorce entailed a voluntary renunciation by both parties of their marital ties, but was without legal effect.<sup>71</sup> In the case of abandonment, moreover, the other spouse could renounce financial responsibility towards the other, at least in respect to debts incurred following the abandonment. For that reason, spouses placed advertisements in local newspapers announcing separation or desertion and refusing to be held responsible for debts incurred in their name. Such advertisements were similar to those used to advertise apprentices and other servants who deserted from service, and likewise served as negative character references, sought information on the deserting party, and were

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that even when the law was rigid (*e.g.* holding that marriage was dissolvable only by the natural death of one of the parties) there was frequently some flexibility within the legal system itself. I was unable to locate documents related to petitions for legal separations in the judicial archives. For discussion of legal separations in England, see generally Stone, *ibid.* at 183-230.

<sup>69</sup> See generally Buckley, *supra* note 34 at 154.

<sup>70</sup> Peterson del Mar, *supra* note 8 at 36-37 (noting that they “courted poverty as well as notoriety.”). For discussion of desertion and elopement, see generally Stone, *supra* note 599 at 139-143. For discussion of private separation agreements, see generally *ibid.* at 149-182.

<sup>71</sup> A historical variant was the practice of “wife-selling,” often practised in rural eighteenth century England. Typically it functioned as an informal type of divorce, usually consensual, and often involved the wife’s lover as a prearranged buyer. See E. P. Thompson, *Folklore, Anthropology and Social History, A Studies in Labour Pamphlet* (Brighton: John Noyce, 1979) 9; S. P. Menefee, *Wives for Sale: An Ethnographic Study of British Popular Divorce* (Oxford: Basil Blackwell, 1981); K. O’Donovan, “Wife Sale and Desertion as Alternatives to Judicial Marriage Dissolution” in John M. Eekelaar and Sanford N. Katz, eds., *The Resolution of Family Conflict: Comparative Legal Perspectives*, (Toronto: Butterworths, 1984) 41; Stone, *ibid.* at 143-148.

intended to insulate the advertiser from financial liability.<sup>72</sup> As such, they illuminate the dynamics of marital relations during that period.

Once a separation had occurred, it was often advertised (most often by the husband) to prevent debts from being contracted in the advertising spouse's name.<sup>73</sup>

Occasionally such announcements acted as negative character references:

I hereby caution all persons from crediting my Wife SOPHIA TAYLOR any thing on my account, as I have been compelled by her bad conduct, to banish her from my House, and will not pay any debts of her contracting after this date. Oliver Mitchell.<sup>74</sup>

Regardless of who was the culpable party in the breakdown of a marriage, the sources disclose that husbands had the power to banish their wives from the marital home if they chose to do so. A wife banished by her husband was not immune from his violence, however. Mary Ann Turner lived apart from her husband for several months after he exiled her from their house, but he continued to attack and harass her at her

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<sup>72</sup> One advertisement placed by a husband closely mirrored the language commonly found in desertion advertisements, going so far as to say that not only would he not be responsible for his absconding wife's debts, but also that "any one harbouring her will be prosecuted according to law." *The Montreal Transcript* (31 August 1843). For discussion of similar advertisements as a tool to combat desertion by servants, see generally Pilarczyk, Masters, *supra* note 336.

<sup>73</sup> See *e.g.* *The Montreal Transcript* (11 September 1838) ("Notice--Whereas a separation having taken place between Caroline Valentine, formerly my wife, I hereby give notice to the Public of this city, that the Subscriber will not be accountable for any debts or obligations contracted by her in my name.").

<sup>74</sup> *The Canadian Courant* (2 March 1830). For an anonymous notice advertising a man as a bigamist who had abandoned his wife and children, see *The Canadian Courant* (5 May 1832). For further discussion of such advertisements, see Stone, *supra* note 599 at 330-334.

home and vandalize her possessions in her absence, as well as threatening to “blacken her eyes” when given the opportunity.<sup>75</sup>

In addition, spouses--again usually husbands--often placed advertisements to announce the desertion of their spouse without “just cause.” Occasionally, the impetus appears to have been a desire to obtain information on the whereabouts of an absconding spouse, presumably to secure their return or take legal action against them.<sup>76</sup> Most often, it was merely to foreclose financial liability. In rare instances, the advertisement claimed that the absconding spouse had eloped,<sup>77</sup> or was cohabiting with another.<sup>78</sup> François Corbeille took out an advertisement in local newspapers in 1835 absolving himself from legal responsibility for his wife, who had absented herself from the marital home “with the intention, as it would appear, of abandoning her husband, she having taken with her all the household furniture and other articles in the house.”<sup>79</sup>

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<sup>75</sup> A.N.Q.M., *Queen v. Thomas Day* (12 March 1841) (affidavit of Mary Ann Turner). Day was bound to keep the peace towards his wife for six months in the amount of forty pounds. QS(F), *Domina Regina v. Thomas Day* (13 March 1841) (surety).

<sup>76</sup> See *e.g.* *The Canadian Courant* (5 March 1831):

A LARGE REWARD!! Thomas Lee being married about two months since, has now absconded from his Wife, leaving her nothing but the bare walls of a house, without either food or fuel to sustain her. She now offers 7 2 d. reward to any person who will give information where he may be found. Elizabeth Mullins.

<sup>77</sup> See *The Canadian Courant* (7 January 1832).

<sup>78</sup> See *The Montreal Gazette* (24 January 1831) (“Notice is hereby given, that as my wife, Matilda Knox, had left my bed and board, without any provocation, and is now living with another person, I will pay no debt or debts of her contracting....”).

<sup>79</sup> *The Vindicator* (9 October 1835).

Not surprisingly, estranged spouses did not always agree on what constituted reasonable provocation for desertion, and it was not unheard of for wives to contest their husbands' denials of just cause.<sup>80</sup> Two such instances were found in period newspapers, the first from September 1839, in which Thomas Doyle stated that his wife "having left my Bed and Board, without any just cause, I hereby give Notice that I will not pay any debts she may contract in my name, after this date."<sup>81</sup> This advertisement prompted a poignant response from Doyle's estranged wife, wherein she pointed to his "barbarity" as the impetus for her desertion:

Whereas my husband, Thomas Doyle, of St. Johns, has thought proper to notify, that the undersigned has left his Bed and Board without any just cause, and notifying that he will not pay any debts contracted in his name after the date of his advertisement--this is therefore to notify the public, that I should never have left his Bed and Board if I had been treated as a woman should be; but, on the contrary, he treated me with the greatest barbarity. As to my contracting debts in his name, he might have spared himself that trouble, as he well knows my relations are above being beholden to him for any thing; and that but for their kindness in taking me from him, I might soon be beyond their assistance, on account of his barbarity, as all the neighbours are ready to testify. Mary Amelia Webb. Montreal, September 19, 1839.<sup>82</sup>

A similar rebuttal advertisement was found in *The Montreal Gazette* of 1850, involving a woman named Mary Sixby who had left her husband a short time earlier:

Whereas my husband JABEZ SAFFORD has advertised me as leaving his bed and board without any just provocation, I take this method of informing the public that his "provocations" are of such a nature, and carried on for so long a time, without any hope of amendment, that I can no longer endure them. As to

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<sup>80</sup> As Lepp has noted, there were few details offered to explain most desertions. Lepp, *supra* note 31 at 331.

<sup>81</sup> *The Montreal Transcript* (17 September 1839).

<sup>82</sup> *The Montreal Transcript* (29 September 1839).

any body trusting me on his account, he need not be under any alarm; Long ago he would not have been trusted but for my credit and industry. I hereby warn all persons against harbouring or trusting JABEZ SAFFORD on my account, as I am unwilling any longer to pay his debts or endure his behaviour. MARY SIXBY St. Armand, July 1850.<sup>83</sup>

Advertisements such as those suggest that some wives did not hesitate to flee from abusive husbands, nor were they bashful about publicly alluding to their reasons for doing so. However, wives described in advertisements as having abandoned their marital homes were not found in the judicial archives, strongly suggesting they did not seek legal recourse. Seeking a legal separation or abandoning the marital home were drastic steps, and it has been suggested that violence by itself would not have driven wives to the threshold of tolerance of their abusive husbands, given that violence was a typical part of marriages that were founded on “sexual antagonism.”<sup>84</sup>

However, the sources do disclose that many wives sought temporary asylum at the homes of third parties following an outbreak of violence. Neighbours and nearby family could offer some refuge for a battered spouse, but many wives lived in geographically remote areas and did not have that option. Catherine Martin, married to a pork butcher named Ludwig Bauer, deposed that her husband had beaten her on several occasions and that he “hath since then threatened to beat her again, insomuch as to cause her to take refuge in the neighbouring houses, and that...she fears to return to

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<sup>83</sup> *The Montreal Gazette* (18 July 1850). The original advertisement placed by her husband was not found.

<sup>84</sup> According to that view, threats of murder, child abuse, sexual insults and refusal to provide the necessities of life provided the impetus for wives’ fleeing the marital home. Compare Ellen Ross, “‘Fierce Questions and Taunts’: Married Life in Working-Class London, 1870-1914” (1982) 8 *Fem. Stud.* 575 at 593.

her house, and is forced to seek protection from the laws of the country.”<sup>85</sup> Louise Goyette alleged that she “aurait été maintes et maintes fois assailli, frappé et maltraitée” by her husband, forcing her to take refuge at her father’s house.<sup>86</sup>

Other spouses secreted themselves in unspecified locations, perhaps as a way of ensuring that their places of refuge would remain unknown to their assailants. One wife, who had frequently been brutalized at the hands of her husband for many years charged him in 1837 with misdemeanor for having thrown her and their six-month-old infant out of the house and threatening her life. For the week following the incident she and her child remained “concealed from the fear she entertains of him, wherefore [she] prays for justice in the premises.”<sup>87</sup> Mary Gallagher, whose tavern-keeper husband struck her, seized her by her throat, and threatened to kill her, deposed that she “hath been under the necessity of quitting and abandoning her own dwelling house, considering her life to be in danger and being apprehensive of some further ill-treatments” at her husband’s hands.<sup>88</sup>

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<sup>85</sup> A.N.Q.M., QS(F), *Dominus Rex v. Ludwig Bauer* (25 February 1831) (affidavit of Catherine Martin. Her husband was bound to the peace towards his wife in the amount of twenty pounds for twelve months. QS(F), *Catherine Martin v. Ludwig Bauer* (26 February 1831) (surety).

<sup>86</sup> A.N.Q.M., QS(F), *Dominus Rex v. John Henry Wallingsford* (27 March 1829); *ibid.* (27 March 1829) (surety).

<sup>87</sup> A.N.Q.M., QS(F), *Dominus Rex v. James Cowan* (20 July 1837) (affidavit of Mary Ann Foster). Cowan was bound to the peace for six months. *Dominus Rex v. James Cowan* (26 July 1837) (surety).

<sup>88</sup> A.N.Q.M., QS(F), *Mary Gallagher v. John Norton* (18 June 1831) affidavit of Mary Gallagher).

Similar occurrences were experienced by husbands, although more sporadically. A Montreal bread driver alleged in 1843 that his wife, an alcoholic, frequently threatened to murder him, and that “aware of the extreme violence of his wife [he] has been compelled to sleep away from his home...for the last six nights.” He did not, however, take his four children with him, leaving them “to the mercy of their inebriate mother when [he] is compelled to be away from home.”<sup>89</sup> A labourer who prosecuted his wife for assault in 1835 alleged that after being attacked with an empty blacking bottle by his wife, he absented himself from home for six weeks. He prosecuted his wife only after she once again attacked him with various weapons, including a knife.<sup>90</sup>

Finding alternate accommodations or hiding did not usually offer more than a temporary reprieve from a malevolent spouse. Julie Palosse, a long-suffering wife, left her house to stay with her mother. A month later, her inebriated husband located her at her mother’s house. Striking and kicking her, he threw her to the ground and dumped her clothes outside while threatening to take her life. That overt, public display of marital discord caused “un grand scandale,” in her words, and prompted a large group of people to gather outside the house to gawk.<sup>91</sup> Similarly, a labourer absented himself

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<sup>89</sup> A.N.Q.M., QS(F), *William Gregg v. Catherine Blair* (3 October 1843) (affidavit of William Gregg).

<sup>90</sup> A.N.Q.M., QS(F), *Domina Regina v. Jane Porter* (31 August 1835) (affidavit of Richard Fougherty). Porter was bound to appear before the Court of Quarter Sessions. QS(F), *Domina Regina v. Jane Porter* (31 August 1835) (recognizance).

<sup>91</sup> A.N.Q.M., QS(F), *Dominus Rex v. François Leduc* (1 June 1829) (affidavit of Julie Palosse). Palosse’s husband was bound to the peace for twelve months in the amount of twenty pounds. A.N.Q.M., QS(F), *ibid.* (9 June 1829) (surety).



from the marital home in July 1835 after his wife attacked him with an empty blacking bottle. Six weeks later his wife encountered him in the city and threw a stone at his head, and then brandished a knife with which she threatened to stab him.<sup>92</sup>

As those examples illustrate, leaving the marital home was no guarantee of peace, and in some cases did little more than embroil other parties in the conflict.<sup>93</sup>

As emphasized earlier, the putative victim was the primary actor in the legal system of the period. The common law provided that a marital privilege prevented spouses from testifying against each other, but that privilege was generally held inapplicable in cases wherein a spouse had sustained personal injuries at the other's hands.<sup>94</sup> While third parties could, and occasionally did, prosecute abusive spouses, if the victim chose not to pursue legal sanctions then the matter usually ended there. Prosecutions for wife battery must have been only a fraction of the actual incidences of domestic violence. Prosecution was, after all, only one stage in a complex and highly-discretionary filtering process.<sup>95</sup> Nowhere was that fact more evident than in prosecutions for spousal battery. Then, as now, many (and perhaps most) instances of spousal violence went unreported and unprosecuted.<sup>96</sup> Nineteenth century commentators frequently decried the phenomenon of non-prosecution in this context, as

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<sup>92</sup> *Dominus Rex v. Jane Porter*, *supra* note 622.

<sup>93</sup> Compare Harvey, *supra* note 3 at 134.

<sup>94</sup> Compare Lepp, *supra* note 31 at 346-347 & 450.

<sup>95</sup> See generally Taylor, *supra* note 36 at 14.

<sup>96</sup> See generally Philips, *supra* note 16 at 262.

well as low conviction rates once proceedings were commenced.<sup>97</sup> A host of legal, social, economic, religious, psychological, and political factors militated against abused wives charging husbands with a criminal offense, and continue to do so today.<sup>98</sup> Wives had to contend with power inequities, both within the institution of marriage and the larger society, as well as social mores that accorded husbands considerable discretion over the manner in which they chose to rule their households.<sup>99</sup>

Spouses also had to weigh other considerations, including the dangers of retaliation or other recriminations, the inconvenience and expense of the process itself, and the likely outcome of the proceedings.<sup>100</sup> Fear was perhaps the largest inhibiting factor, as pursuing legal options could be met with a ferocious response from an abusive spouse.<sup>101</sup> The economic costs of a husband's incarceration could also be devastating to a family. That left many abused wives with a Hobson's choice: endure the abuse, or risk penury.<sup>102</sup> Many abused spouses no doubt chose not to pursue legal action. Somewhat

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<sup>97</sup> See generally Taylor, *supra* note 36 at 14; Clark, *supra* note 21 at 199; Harvey, *supra* note 3 at 134.

<sup>98</sup> Lepp, *supra* note 31 at 442.

<sup>99</sup> Harvey, *supra* note 3 at 129; Taylor, *supra* note 36 at 30. For discussion of wives' legal disabilities, see generally *Lori Chambers, Married Women and Property Law in Victorian Ontario* (Toronto: Osgoode Society, 1997).

<sup>100</sup> Compare Taylor, *ibid.* at 109; Philips, *supra* note 16 at 49.

<sup>101</sup> See generally Tomes, *supra* note 7 at 333; Harvey, *supra* note 3 at 137.

<sup>102</sup> As Harvey, *ibid.*, has pointed out, a wife's survival was "both threatened and guaranteed by her place within the family" as she was simultaneously subject to violence at her husband's hands while "being part of a family economy kept her from starvation. To protect herself against one helped undermine the other." Clark, *supra* note 21 at 194 observed that labouring-class women were reluctant to prosecute their husbands, and cited economic pressures

perversely, however, wife battery is perhaps the most accessible form of Victorian family discord to study.<sup>103</sup> Despite all the obstacles that hampered prosecution, including societal indifference, many such suits were brought.<sup>104</sup> Bringing a complaint before a judicial official turned those private acts into communal issues, bringing them out of the shadows of the private sphere into the harsh light of the public sphere.<sup>105</sup>

The usual outcome of a spousal battery prosecution was that the defendant was required to provide surety for his good conduct towards his spouse. Such an outcome was typical not only of spousal battery cases, but also of assault and battery cases at large. It has been suggested that Justices of the Peace sitting singly were not, strictly speaking, empowered to render summary justice in such cases, but that such was the overlap between their administrative and magisterial functions that the distinction was

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as a possible explanation. As she stated, “[e]vidence for this lies in the fact that the number of cases in which women prosecuted unrelated men for minor assaults far outnumbered cases of wifebeating, though it is likely that the amount of wifebeating was actually much greater.”

In the records examined in this study, occasionally the notation “gratis” or the like was written in the Justices’ handwriting on a complaint, suggesting that some complaints were filed for free. That anomaly is worthy of further research, as it would amount to additional evidence of the accessibility of the legal system to members of the working class. See *e.g.* A.N.Q.M., QS(F), *Appoline Sanschagrín wife of J.B. Johannet v. J.B. Johannet* (30 September 1831); QS(F), *Lilly Neill v. William Rainey* (20 September 1831).

<sup>103</sup> Pleck, *Wife Beating*, *supra* note 593 at 21 (“[i]n general, wife abuse has been the type of family violence most likely to appear in court...because battered wives have been the victims of domestic violence most willing to press charges.”).

<sup>104</sup> Compare Lepp, *supra* note 31 at 442-443 (noting that societal views did not translate into lack of lawsuits against abusive husbands).

<sup>105</sup> Compare Buckley, *supra* note 34 at 3.

largely meaningless.<sup>106</sup> For centuries, minor judicial officials in England and elsewhere had authority to bind abusive spouses to keep the peace, and it should be unsurprising that such was also the case in Montreal.<sup>107</sup> Indeed, binding a defendant to the peace became the most common ‘final disposition’ in most cases of family violence.<sup>108</sup> Violation of the terms of such a surety resulted in the forfeiture of a specified sum of money to the Crown, and imprisonment in default thereof. Both the amounts of the surety and the length of time during which the defendant was bound to the peace was the prerogative of the Justice of the Peace.

The amounts of sureties in this study ranged from a low of five pounds to a high of £200, with the usual amount being twenty or forty pounds.<sup>109</sup> Amounts over fifty pounds were uncommon, and appeared to have been reserved for defendants perceived as unusually ferocious and persistent. Jean Baptiste Beauchamp was forced to provide sureties in the amount of seventy-five pounds, even though he was charged with

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<sup>106</sup> See generally Fyson, *supra* note 17 at 35.

<sup>107</sup> Compare Beattie, *Criminality*, *supra* note 154 at 205 (sureties issued against abusive husbands in eighteenth century England); Buckley, *supra* note 593 at 154 (the same in nineteenth century Virginia).

<sup>108</sup> This situation was similar in other jurisdictions. Compare Steinberg, *supra* note 16 at 47; Philips, *supra* note 16 at 262 (defendants required to provide bonds or fined); Judith A. Norton, “The Dark Side of Planter Life: Reported Cases of Domestic Violence” in Margaret Conrad, ed., *Intimate Relations: Family and Community in Planter Nova Scotia, 1759-1800* (Fredericton: Acadiensis Press, 1990) 182-189 (peace bonds in late-eighteenth and early-nineteenth century Nova Scotia).

<sup>109</sup> While little is known about what criteria were applied by Justices in determining those amounts, they likely took into consideration the husband’s resources and the severity and duration of the abuse. Compare Doggett, *supra* note 6 at 12-13.

making threats rather than assault. It is likely that his threat to poison his wife if she would not abandon the marital home was seen by the presiding Justice of the Peace as particularly odious.<sup>110</sup> The largest surety, in the amount of £200, was imposed on an affluent Montreal grocer who systematically beat his wife. Whether it was his affluence or brutality that was the primary impetus behind that large surety remains unknown, although the former appears likely.<sup>111</sup> A carter, accused of misdemeanor against his wife, was bound to the peace in the amount of one hundred pounds, although various other relations (also alleged to have been violent towards his wife) were bound for less. Perhaps the carter, as head of the household, was seen as instigating the family's violence towards his wife.<sup>112</sup> Sureties were usually for six months or a year, although there were sporadic exceptions to that norm.

While being bound to the peace was not the same as a prison term, nor did it accord the right to a legal separation, it was nonetheless a remedy that was easily accessible.<sup>113</sup> Surety documents essentially were primitive forms of restraining orders.

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<sup>110</sup> A.N.Q.M., QS(F), *Queen v. Jean Baptiste Beauchamp* (11 July 1843) (affidavit of Euladie Caron); *Queen v. Jean Baptiste Beauchamp* (14 July 1843) (surety).

<sup>111</sup> A.N.Q.M., QS(F), *Domina Regina v. Charles Smith* (20 June 1843) (surety). For discussion of this case, see *infra* at 338-339.

<sup>112</sup> A.N.Q.M., QS(F), *Dominus Rex v. François Laurin* (18 March 1837) (affidavit of Clarissa Allo); *Dominus Rex v. François Laurin et al* (18 March 1837) (affidavit of Jasper & John Allo); *Dominus Rex v. François Lawrence* (25 March 1837) (surety); *Dominus Rex v. Louis Laurence* (25 March 1837) (surety); *Dominus Rex v. Thérèse Lavoy* (25 March 1837) (surety); *Dominus Rex v. Amable Laurence* (25 March 1837) (surety).

<sup>113</sup> Compare Doggett, *supra* note 6 at 11-12 (noting that many wives in eighteenth century England sought sureties against husbands, and that they were routinely granted by Justices of the Peace).

While they contained no prohibition on physical proximity like modern restraining orders, they nonetheless afforded a measure of protection to plaintiffs by interposing the coercive arm of the state. The state therefore had a tangible pecuniary interest in enforcing sureties, if nothing else, and violation of them resulted in forfeiture of the money in question or imprisonment in lieu of payment.<sup>114</sup> A surety had obvious limitations, insofar as it did not afford the wife any right to live separately from her husband; and if the husband was jailed, or held liable for the amount, she might suffer financially and in other ways.<sup>115</sup> Sureties were one of the two legal dispositions most readily available to battered spouses, the other being outright imprisonment of the offender, although the two were not mutually exclusive. Spouses often specifically requested a surety be granted, or imprisonment in lieu thereof. Typical of such affidavits was Josephte Morin's request that "elle demande qu'il soit confine ou qu'il donne bonne et suffisant caution pour sa bonne conduite future envers tous les sujets de sa majesté et particulièrement envers la deposante."<sup>116</sup> Even when spouses did not make such explicit requests, sureties were a common outcome.

While sureties were designed to afford protection from violent assailants, their utility in many cases could easily be predicted, as they provided little insulation from

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<sup>114</sup> For an example of a typical surety, see Appendix A, *infra* at 453.

<sup>115</sup> Compare Doggett, *supra* note 6 at 14-15.

<sup>116</sup> A.N.Q.M., QS(F), *Josephte Morin v. Joseph Lapointe* (3 June 1834) (affidavit of Josephte Morin). For an example of a case in which a wife requested her husband be required to provide surety of , 25, see QS(F), *Isabella Hawkins v. Michael Rice* (31 August 1832) (affidavit of Isabella Hawkins).

many an abusive spouse, and did little to dissuade the most persistently bellicose spouses. Antoine Legault dit Desloriers, for example, was prosecuted at least thirteen times, and was bound to the peace towards his wife on numerous occasions.<sup>117</sup> Marie Leduc, for example, had lived in constant apprehension of her spouse, a Montreal innkeeper named Vincent Brazeau. On 19 August 1837 she alleged that he had beaten her again the night before and earlier that morning. Given his long history of violence, she reluctantly requested that he be arrested and held to give surety for his good conduct.<sup>118</sup> Being bound to the peace had little inhibiting effect on her husband, as no sooner had he returned home following his release than he again attacked his wife. Leduc sought protection from the legal system, requesting that her husband be arrested and made to provide surety for his good conduct, a request that was granted.<sup>119</sup> Leduc's first surety was for a period of six months, and in the amount of ten pounds. His two co-sureties, both respectable gentlemen, were therefore responsible for ten pounds each in the event that Leduc violated the terms of his surety.<sup>120</sup> His second surety, entered into two days later, was for twice the duration as well as twice the amount, namely twenty

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<sup>117</sup> See *infra* at 278-284.

<sup>118</sup> A.N.Q.M., QS(F), *Marie Leduc v. Vincent Brazeau* (10 August 1837) (affidavit of Marie Leduc).

<sup>119</sup> A.N.Q.M., QS(F), *Marie Leduc v. Vincent Brazeau* (14 August 1837) (affidavit of Marie Leduc).

<sup>120</sup> A.N.Q.M., QS(F), *Queen v. Vincent Brazeau* (12 August 1837) (co-sureties were Edouard Etienne Rodier, Esquire and Denis A. Laberge, Esquire).

pounds and twelve months. Not surprisingly, Leduc's co-sureties were different than on the previous occasion.<sup>121</sup>

While abusive husbands like Leduc were required to provide greater sureties for subsequent offenses, no general pattern is apparent. Examples of courts rendering identical judgments on multiple occasions were common. The case of John McGuire exemplifies that scenario: arrested in 1837, 1839, and 1840 for acts of domestic violence (twice for assault and battery, and once on a charge of breach of the peace brought by a third party), he was bound to the peace for six months on each occasion.<sup>122</sup>

Of greater utility to an abused spouse was the securing of a legal separation, which offered advantages to abused spouses but likewise was no panacea. In addition to limitations (namely that remarriage was not an option), the record reveals that in the nineteenth century, as now, legal separations from an abusive spouse often provided little or no protection from further violence.<sup>123</sup> While references to legal separations were

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<sup>121</sup> A.N.Q.M., QS(F), *Marie Leduc v. Vincent Brazeau* (14 August 1837) (co-sureties were Joseph Nadeau, Yeoman, and a barber named Jean Ethier).

<sup>122</sup> A.N.Q.M., QS(F), *Jane Dervin v. John McGuire* (8 November 1837) (affidavit of Jane Dervin); *ibid.* (9 November 1837) (surety); *Queen v. John McGuire* (23 August 1839) (affidavit of Jane Dervin); *Domina Regina v. John McGuire* (12 December 1839) (affidavit of Mary McLoed); *ibid.* (12 December 1839) (surety); *ibid.* (7 July 1840) (affidavit of Jane Dervin); *ibid.* (8 July 1840) (surety).

<sup>123</sup> In 1995, nineteen percent of women reported that domestic violence continued after their separation. Moreover, violence sometimes began, or escalated, following a legal separation. See Statistics Canada, *supra* note 534 at 105. See also Irene Hanson Frieze & Angela Browne, "Violence in Marriage" in Lloyd Ohlin & Michael Tonry, eds., *Family Violence*, vol. 11 (Chicago: University of Chicago Press, 1989) 163 at 207.



not frequent within surviving affidavits, some abused spouses were repeatedly threatened and assaulted by spouses from whom they were separated.

Elila Menard, who prosecuted her husband, a Montreal saddler, for threats and menaces in 1843, had been separated from her spouse for thirteen years. Since that time he threatened her life whenever she encountered him. On the last occasion he appeared at her house while drunk and disturbed the public peace, also threatening to kill her. Given what she knew about her husband's bad character, she deposed, she had reason to fear for her life and requested he be dealt with under the law. He was arrested and bound to keep the peace towards his wife for six months on penalty of thirty pounds.<sup>124</sup>

Marie Louise Dubois alleged that she had received "un jugement en séparation de corps et de biens d'avec son mari William Thompson" but that he assaulted, maltreated, and threatened to kill her since that time.<sup>125</sup> A Montreal cabinetmaker was charged with assault and battery and threats to murder his wife in 1834; the wife alleged in her affidavit that she was "séparée de Biens d'avec son dit mari par l'contrat de mariage" but that he continuously assaulted her and threatened her life.<sup>126</sup> Another wife alleged that despite a legal separation, her inebriated spouse continued to sleep in an

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<sup>124</sup> A.N.Q.M., QS(F), *Queen v. Jean Baptiste Leduc* (9 January 1843); *Domina Regina v. Jean Baptiste Leduc* (19 January 1843) (surety).

<sup>125</sup> A.N.Q.M., QS(F), *Dominus Rex v. William Thompson* (28 June 1831) (affidavit of Marie Louise Dubois).

<sup>126</sup> A.N.Q.M., QS(F), *Dominus Rex v. Ralph Mellanby* (14 August 1834).

upper story of her house, and had broken the back stairs of her house “with intent to do her bodily injury in case she had occasion to go out that way.”<sup>127</sup>

A surety was a welcome outcome for many wives, but the reality is that the apparatus of the criminal justice system was ill-suited to provide meaningful protection to spouses. Incarceration could provide a temporary respite from a spouse’s violence, but offered little by way of long-term solutions. Given that the penalties for spousal assault were so diverse, it is difficult to provide conclusions about sentencing patterns.<sup>128</sup> Most defendants were bound to the peace, but in the other cases a wide heterogeneity of sentences is apparent. One husband arrested for disturbing the peace and abusing his wife at two in the morning was fined five shillings.<sup>129</sup> Another was fined ten shillings and costs of six shillings threepence, or two months’ imprisonment.<sup>130</sup>

Defendants were routinely imprisoned pending, or in lieu of, providing security for keeping the peace, and some defendants spent long periods of time in jail awaiting further disposition of their case. James Farrell, a tavernkeeper, spent two and a half

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<sup>127</sup> A.N.Q.M., QS(F), *Elizabeth Castleman v. Andrew Summers* (13 August 1828) (affidavit of Elizabeth Castleman).

<sup>128</sup> This mirrors an observation by Pleck, *Wife Beating*, *supra* note 593 at 65 (stating that the “best evidence about penalties comes from a unique study of 211 wifebeaters in Pennsylvania during the 1880s. Those men served an average sentence of three months for assault and battery on their wives.”)

<sup>129</sup> A.N.Q.M., MP(GR), *Domina Regina v. Narcisse Labelle* (11 June 1841).

<sup>130</sup> A.N.Q.M., MG, *Domina Regina v. Daniel Gilchrist* (16 December 1850).

months in prison for assaulting his wife before providing bail.<sup>131</sup> Other defendants were imprisoned outright for their acts of violence against their spouses, and such sentences ranged widely in their duration. One husband was sentenced to forty-eight hours in prison for assaulting his wife,<sup>132</sup> while another received five days. A defendant arrested in Ste. Scholastique for ill-treating his wife and stepmother was sentenced to one month in jail in October of 1840.<sup>133</sup> Records of the Police Court indicate that Guillaume Falere was sentenced to two months' imprisonment in the House of Correction for assault and threats against his wife.<sup>134</sup>

Repeat offender Antoine Legault dit Desloriers was imprisoned on numerous occasions for battering his wife. His experiences suggest that offenses deemed more serious (or serial) were punished by longer prison terms. For example, on 14 July 1828 Desloriers was indicted for assault and battery following his plea of guilty.<sup>135</sup> Five days later he was sentenced to "stand committed to the Common Gaol of this District for three months" and was also required to provide sureties to keep the peace for twelve months "towards Marie Louise St. Aubin his wife and all other [of] His Majesty's

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<sup>131</sup> A.N.Q.M., QS(F), [*Dominus Rex v. James Farrell*] (20 April 1826) (affidavit of Isabella Grant); [*Dominus Rex v. James Farrell*] (6 July 1826) (surety); N.A.C., MP(GC) (James Farrell committed 21 April 1826).

<sup>132</sup> A.N.Q.M., MP(GR), *Domina Regina v. Robert McCload* (29 November 1841).

<sup>133</sup> N.A.C., MP(RR) (Ste. Scholastique) (Louis Briyer sentenced to one month in jail for "illtreating wife and stepmother" on 1 October 1840).

<sup>134</sup> A.N.Q.M., MP p.424, *Domina Regina v. Guillaume Falere* (30 December 1841).

<sup>135</sup> A.N.Q.M., QS(R) p.506, *King v. Antoine Legault dit Deslorier* (14 July 1828).

subjects himself in the sum of fifty pounds and two sureties in twenty-five pounds each.”<sup>136</sup> Charles Heney, charged with attempted murder, was committed on 3 February 1847, and remained in prison until his trial, conviction and sentencing on 23 April; he was sentenced to three months in prison and released on 23 July.<sup>137</sup>

Incarceration could work hardship for families who were dependent on a husband’s wages. Economic necessity, socialization, fear, and feelings of guilt often contributed to a wife’s desire to have her husband released shortly after his arrest, as well as a hope that the husband had been adequately chastened.<sup>138</sup> Indeed, many wives exhibited ambivalence about having their husbands prosecuted at all.<sup>139</sup> Often wives simply sought an end to the violence, not their husband’s incarceration. Wives were known to have used their savings or to have borrowed money to purchase a spouse’s release from prison, as the loss of his salary could be devastating to the family.<sup>140</sup>

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<sup>136</sup> A.N.Q.M., QS(R) p.515, *King v. Antoine Legault dit Deslorier* (19 July 1828); QS(F), *The King v. Antoine Legault dit Deslorier* (20 October 1828) (surety).

<sup>137</sup> A.N.Q.M., MG (Charles Heney committed 23 April 1847 for attempting to kill his wife, sentenced to three months imprisonment, discharged 23 July 1847).

<sup>138</sup> See generally Hammerton, *supra* note 6 at 40 (citing wives’ fear of vengeance, economic concerns, and their frequent wish to stop the violence rather than punish their spouse); Harvey, *supra* note 3 at 137 (stating that “for some women, having their husbands arrested was punishment enough.”); Steinberg, *supra* note 16 at 47 (noting that abused wives often avoided having their husbands imprisoned); King, *supra* note 16 at 45 (noting that committal before trial was often seen as sufficient punishment by prosecutors in cases alleging property offenses).

<sup>139</sup> Compare Harvey, *ibid.* at 129 & 134-135.

<sup>140</sup> Compare Pleck, *Criminal Approaches*, *supra* note 545 at 31.

It is also likely that some spouses wished to appear before a court to air their grievances in an impartial public forum, rather than seeking the law's mediation.<sup>141</sup> A private prosecutor's failure to appear on a court date was an effective, albeit unorthodox, method of halting the process.<sup>142</sup> Anne Byrnes, arrested for being "drunk and beating her husband," was discharged by the Police Magistrate after her husband failed to appear in court to sustain the charges.<sup>143</sup> And many spouses likely would have suffered severe recriminations at their partner's hands for having had them arrested. Ann Green, married to a tailor who refused to help support his family, suffered abuse at his hands even though she was five months' pregnant. During his arrest, her husband made clear his intention to murder her when he regained his liberty.<sup>144</sup>

The judicial archives are also replete with examples of instances in which spouses, usually wives, requested that their spouse be released from prison or the case settled.<sup>145</sup> That has been shown to have been a common occurrence in other nineteenth century jurisdictions, and occurred with some frequency in Montreal as well. Indeed, as one scholar has posited about spousal violence in the United States, "[t]he problems of

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<sup>141</sup> Social anthropologists have commonly noted the importance of courts to wives as a venue to air grievances. Clark, *supra* note 21 at 195.

<sup>142</sup> Tomes cited a figure of ten percent of cases being dropped due to wives' failure to appear. See Tomes, *supra* note 7 at 333.

<sup>143</sup> *The Pilot* (22 January 1850). For discussion of parties' failure to appear in court, see Steinberg, *supra* note 16 at 65-66.

<sup>144</sup> A.N.Q.M., QS(F), *Queen v. James Head* (31 July 1843) (affidavit of Ann Green).

<sup>145</sup> Compare Tomes, *supra* note 7 at 333-334 (twenty-two percent of cases settled out of court).

criminal justice appear, nonetheless, to have rested less with the police than with the victims themselves and the prosecuting attorneys....[for] many abused wives, once they reached the courtroom, pleaded for their husbands' release."<sup>146</sup> That phenomenon was hardly unique to the Victorian era, for it remains a common feature of domestic violence cases today.<sup>147</sup> Private prosecution could be particularly ill-suited to such cases, as in the interim physical evidence often dissipated and thus there was a greater chance that wives could be cajoled, coerced, or shamed into silence.<sup>148</sup>

It is no less true to observe that such actions were also evidence of the pliability of the criminal justice system. The discretionary nature of the system surely worked to many wives' disadvantage, but no less certain is that it reflected, and augmented, the agency of other abused spouses.<sup>149</sup> John McGinnis, charged before a Justice of the Peace outside the city limits with assault and battery on his wife Margaret, was released from jail at his wife's request, although he was required to pay costs of seven shillings and

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<sup>146</sup> Pleck, *Wife Beating*, *supra* note 593 at 67. See also Steinberg, *supra* note 16 at 47.

<sup>147</sup> As Clark, *supra* note 21 at 204, has written:

Accounts of eighteenth- and nineteenth- century battered wives evoke many of the dilemmas we face today: how to empower women by asking what they want from the courts, while facing the fact that many women drop charges and blame themselves.

<sup>148</sup> Compare Doggett, *supra* note 6 at 106.

<sup>149</sup> See Steinberg, *supra* note 16 at 69 ("This was probably the clearest example of the usefulness of the criminal law to the relatively powerless group, and of the extensive ability prosecutors had to determine how much of the law they would use.").

sixpence.<sup>150</sup> Joseph Lapointe's wife charged him with assault and battery in 1833 and again in 1834.<sup>151</sup> On the latter occasion, he was released on 24 June 1834, three weeks after the filing of the initial complaint, "on the application of Josephte Morin his wife, the prosecutrix, without bail or mainprize."<sup>152</sup> While it is unknown when he was actually arrested--although it was often the case that arrest followed shortly after the complaint was filed--in some cases a violent spouse was held in prison for a lengthy period of time before his release was requested.

It is only in rare instances that written requests for a spouse's release have survived in the archives, and they tend to offer little evidence of the underlying reasons. One wife filed a complaint against her husband in the Peace Office situated in the Old Market on 14 July 1832, and he was accordingly arrested and lodged in prison. After more than a month elapsed, she petitioned for his release, citing no reasons for her request.<sup>153</sup> In contrast, however, Margaret Buchanan sought and obtained her husband's arrest after he assaulted her while drunk one Sunday afternoon in 1834. She noted that she had been informed that he went about armed with pistols and that she

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<sup>150</sup> A.N.Q.M., Returns for Justices of the Peace (Grenville) [*hereinafter* JP], *Margaret McInnis v. John McInnis* (8 January 1841) (defendant committed for assault and battery; "afterwards released by request of plaintiff but to pay costs of seven shillings sixpence).

<sup>151</sup> A.N.Q.M., QS(F), *Josephte Morand v. Joseph Lapointe* (20 April 1833); *Josephte Morin v. Joseph Lapointe* (3 June 1834). According to the 1833 affidavit, Lapointe's wife had him arrested on at least one previous occasion, although no other records were found.

<sup>152</sup> *Ibid.*

<sup>153</sup> A.N.Q.M., QS(F), *Mary Kallagan wife of John Kallagan v. John Kallagan* (16 August 1832).

“stands in constant fear for her life.”<sup>154</sup> Contrast that affidavit with another dated three days later, in which Buchanan deposed before the Justice of the Peace that she “no longer entertains any apprehensions for her life from her said husband,” and that accordingly “she is willing and satisfied that he should be liberated from imprisonment to which he has been confined upon her complaint...on the promises to her made by her husband.”<sup>155</sup> He was bound to the peace for twelve months in the amount of fifty pounds.<sup>156</sup> While it is almost too much to hope that her husband’s brief sojourn in prison discouraged him from tormenting her ever again, the admittedly-incomplete records of the period contain no further references to him.

A similar scenario was encountered in the case of Benjamin Baillard. On 23 March 1831 Baillard’s wife summoned a member of the Watch to apprehend him for his abusive behaviour. Having endured his violence during a three-week-long drinking spree, Baillard’s wife began to fear that his violence was escalating to life-threatening levels.<sup>157</sup> A week after his arrest and incarceration, Baillard’s wife requested his release, and set out her reasons in an affidavit that has survived in the records of the Court of Quarter Sessions:

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<sup>154</sup> A.N.Q.M., QS(F), *Margaret Buchanan v. Gilbert McCulloch* (25 August 1834) (affidavit of Margaret Buchanan).

<sup>155</sup> A.N.Q.M., QS(F), *ibid.* (28 August 1834) (affidavit of Margaret Buchanan).

<sup>156</sup> A.N.Q.M., QS(F), *ibid.* (28 August 1834) (surety).

<sup>157</sup> A.N.Q.M., QS(F), *Rosalie Denis v. Benjamin Baillarde* (23 March 1831) (affidavit of Rosalie Denis).



La dite...femme du dit Benjamin Baillard a comparu ce jourd'hui par devant moi et a demandé que...[son] mari maintenant en prison, soit libéré du lieu de son Emprisonnement et mis en liberté, le dit Benjamin Baillard ayant promis à la dite Rosalie Denis de se comporter mieux envers elle à l'avenir, et de ni la battre ni maltraiter en aucune manière: la dite Rosalie Denis sur les promesses que lui aurait faites le dit Benjamin Baillard, déclarant n'avoir Plus aucune raison d'appréhender quelques mauvais traitements de sa part, et ne craignant plus pour sa sureté Personnelle.<sup>158</sup>

It is likely that some spouses sought to humble their partners or hoped they would be 'scared straight' following the intervention of the law. One case, while a prosecution for being "loose, idle and disorderly" and therefore not otherwise relevant to this study, illustrates that summoning legal intervention was sometimes intended to chasten an uncooperative partner. Ellen Lewis, the wife of a Montreal blacksmith named William Lewis, was arrested for that offense in 1840. The arresting constable alleged that she was "of idle and disorderly habits, being a drunkard, and in the habit of shouting, screaming, swearing, disturbing, incommoding and impeding peaceable passengers in the streets," and she was summarily convicted before the Police Court and sentenced to two months' imprisonment and hard labour.<sup>159</sup> Shortly before Christmas 1840, Lewis petitioned the Governor that he might commute her sentence and release Ellen from prison. As he stated in his petition:

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<sup>158</sup> A.N.Q.M., QS(F), [*Dominus Rex v. Benjamin Ballard*] (30 March 1831) (affidavit of Rosalie Denis).

<sup>159</sup> N.A.C., AP vol. 24, p.10901, *Queen v. Ellen Lewis* (3 November 1840). A fellow boarder in the Lewis' house, a private in Her Majesty's Eighty-Fifth Regiment, filed a complaint alleging that she "repeatedly disturbs the public peace and tranquility by shouting, screaming, and swearing and moreover is an habitual drunkard." He also alleged that earlier in the day she had assaulted him while drunk, and that consequently he was afraid for his life. AP vol. 24, p. 10903-10904, *ibid.* (2 November 1840).

That on Sat. evening the thirty-first day of October last a misunderstanding took place between Your petitioner and his wife Ellen Lewis, that with a view of intimidating her and causing obedience he thought by recourse to a police officer, he would attain his object, Your petitioner accordingly went for & Explained his intention to the police officer in that quarter, requesting him merely to come to his House, but not to arrest or remove his wife, a few words ensued between him and Your petitioner's wife, when the police man withdrew and against the will and wish of Your Petitioner returned shortly after made prisoner of his wife and forcibly dragged her to the Station House, from whence she was brought before the police Magistrate by whom she was without any complaint on the part of Your petitioner, Condemned to two months imprisonment and to hard labor since which time she had remained in Gaol, to the great distress of Your petitioner. That Your petitioner and his wife have a family of three Small Children, the youngest of whom a Suckling Baby, now attacked with the Mea[s]les is with her in Gaol, the other two left with Your petitioner whose business as a Blacksmith Compells him to absent himself from his House and Expose his Children by his absence to danger.<sup>160</sup>

The Chief Constable responded to that affidavit by alleging that Ellen had frequently been brought to the authorities' attention, was a habitual drunkard, and had threatened him with an axe.<sup>161</sup> While there is no evidence that Lewis' petition was successful, that case is resonant insofar as he had voluntarily sought out the involvement of the police to humble his wife, with attendant consequences he had not foreseen.

### III.

The majority of available cases during the period involved a spouse appearing before a local Justice of the Peace or Magistrate and swearing out a complaint. To fully understand the legal response to that issue, it is important to catalogue the multiplicity

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<sup>160</sup> N.A.C., AP, vol. 24, p.10897-10900 ("Wm. Lewis Prays release of his Wife from Gaol") (23 Dec 1840).

<sup>161</sup> N.A.C., AP vol. 24, p.10905-10907, *Queen v. Ellen Lewis* (26 December 1840) (affidavit of Chief Constable Hypolite Jeremie).

of charges that could result from a non-lethal domestic altercation.<sup>162</sup> For the period under examination, 571 complaints alleging violence at the hands of a spouse were identified.<sup>163</sup> The fact that so many complaints were found implies that informal types of social control capable of acting as inhibitors of spousal violence were lacking.<sup>164</sup> The majority of such offences were labeled as straightforward assault and battery charges, but there were numerous other legal offenses that involved spousal abuse. Often spouses coupled violence with threats of murder and other forms of mayhem. The multiplicity of charges found in the archives were identified by the following descriptions, among others: aggravated assault; assault with intent to murder; cruel ill-treatment; uttering threats; misdemeanor; and breach of the peace.<sup>165</sup> That fluidity is also illustrated by the filing of complaints under categories more descriptive than constitutive of a legal offense.<sup>166</sup> It is unlikely that this would have made any practical difference in many cases. The act in question could always be more precisely pigeon-

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<sup>162</sup> Homicides, which could be translated into the offenses of murder, manslaughter, and petite treason, were capital felonies and made up a small percentage of domestic violence cases. For discussion, see generally Chapter IV.

<sup>163</sup> Compare Lepp, *supra* note 31 at 623 (623 cases in Ontario between 1830 and 1920).

<sup>164</sup> As Pleck, *Wife Beating*, *supra* note 593 at 67 has stated, “[t]here is much truth in the notion that law is necessary only when other forms of social control are weak.”

<sup>165</sup> Pleck has similarly pointed out that family violence was often prosecuted as assault and battery, disorderly conduct, or breach of the peace. See Pleck, *Criminal Approaches*, *supra* note 545 at 21.

<sup>166</sup> As D’Cruze has observed, “courts’ own categorization of sexual and physical assault (for example into rape, indecent assault, criminal assault, aggravated assault, common assault, etc) did not necessarily accord with the event as described in the the (sic) records.” Shani D’Cruze, *Crimes of Outrage: Sex, Violence, and Victorian Working Women* (De Kalb: Northern Illinois University, 1998) 19.

holed at a later stage if necessary, and many of those acts involved the same degree of criminality. However, in other instances, the discretionary power of prosecutors to categorize the offense--for example, in prosecuting for aggravated assault rather than assault and battery--could have had ramifications for defendants, either by lessening or aggravating the potential penalties the defendant faced.<sup>167</sup>

Because of the inconsistency and fluidity in the descriptions of charges brought against violent spouses, observations about the nature of those charges should be made with caution. In many instances, that labeling of criminality reflected little more than the opinion of an individual justice of the peace, magistrate, or other jurist at an early stage of legal proceedings.<sup>168</sup> As shown in *Figure 6*, the preponderance of complaints were made against husbands. Out of 571 such complaints identified for the period 1825 to 1850, just under fifteen percent concerned violence by wives against husbands. That coincides with the well-established conclusion that women constituted a much smaller class of criminal culprit in general,<sup>169</sup> and that men were much more likely to commit acts of violence than were women.<sup>170</sup> Female criminals tended to commit property

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<sup>167</sup> Compare King, *supra* note 16 at 43.

<sup>168</sup>As Taylor, *supra* note 36 at 30 has stated, the “distinction between various forms of assault is less clear-cut than the legal definitions would suggest. Much depended upon the discretion of the individual prosecutor and/or the police and magistrates involved in the case.”

<sup>169</sup> Compare Emmerichs, *supra* note 149 at 99; Philips, *supra* note 16 at 147. For contemporary comparison, seventeen percent of all adult offenders in Canada were women, according to a 1995 report. Statistics Canada, *supra* note 535 at 101.

<sup>170</sup> See Cobbe, *supra* note 539 at 71 (noting that in 1876 more than five-sixths of violent crime was committed by men); Tomes, *supra* note 7 at 330 (citing ratio of 100 to eighteen in

offenses rather than acts of physical aggression.<sup>171</sup> Related to that observation is the truism that spousal violence was overwhelmingly a crime by husbands against wives, although power was contested by husbands and wives alike.<sup>172</sup>

The most commonly charged offenses for both husbands and wives were assault

*Classification of Primary Charges in Domestic Violence  
Complaints in Montreal, 1825-1850*

Charge	Husbands		%	
	Wives	%	Wives	%
Assault and battery	247	50.7%	27	32.1%
Misdemeanor	79	16.2%	14	16.7%
Assault and battery & threats	45	9.2%	8	9.5%
Breach of the peace	23	4.7%	9	10.7%
Assault with intent to murder/ attempted murder	24	4.9%	2	2.4%
Uttering threats/ threats and menaces	19	3.9%	12	14.3%
Aggravated assault/ assault with intent to do grievous bodily harm/ cruel assault	18	3.7%	2	2.4%

favor of men). According to 1993 figures, women constituted eleven percent of all violent offenders in Canada. Statistics Canada, *ibid.*

<sup>171</sup> See generally Tomes, *ibid.* at 329-330; Philips, *supra* note 16 at 147. Greenwood & Boissery, *supra* note 163 at 18 stated that the “relative lack of violence by women in England, from 1650 to 1850, has been attributed to female socialization, less use of potentially lethal tools, and less alcohol consumption, among other factors.” For discussion of female petty criminals in Canada, see generally Jim Phillips, “Women, Crime and Criminal Justice in Early Halifax, 1750-1800” in Jim Phillips *et al.*, eds., *Essays in the History of Canadian Law*, vol. 5 (Toronto: Osgoode Society, 1994) 174; B. Jane Price, “‘Raised in Rockhead, Died in the Poor House’: Female Petty Criminals in Halifax, 1864-1890” in Philip Girard & Jim Phillips, eds., *Essays in the History of Canadian Law*, vol. 3 (Toronto: University of Toronto, 1990) 200.

<sup>172</sup> Compare Beattie, *Criminality*, *supra* note 154 at 204-205 (husband beating in eighteenth century England).

Assault and battery & miscellaneous	7	1.4%	1	1.2%
Breach of the peace & violent	7	1.4%	-	-
Miscellaneous	6	1.2%	2	2.4%
Drunk & violent/ drunk & assault/ drunk & threats	4	.82%	1	1.2%
Attempted murder & assault and battery	4	.82%	-	-
Quarreling	2	.41%	1	1.2%
Insane/insane & threats/ insane & assault	2	.41%	6	7.1%
Maiming	-	-	1	1.2%
TOTAL n=571	487	85.3%	84	14.7%

*Figure 6.*

and battery (or some variation), and misdemeanour. In respect to the former, assault and battery was often coupled with another offense, most notably uttering threats.<sup>173</sup>

The category of ‘assault and battery and miscellaneous’ contains a small but interesting collection of offenses, including vagrancy,<sup>174</sup> drunkenness,<sup>175</sup> bastardy,<sup>176</sup> and

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<sup>173</sup> In at least one case the threat was not murder but arson. A.N.Q.M., QS(F), *Dominus Rex v. William Johnston* (27 July 1829) (affidavit of Catherine Clarke and Patrick Hannaven).

<sup>174</sup> A.N.Q.M., QS(F), *Domina Regina v. John Taylor* (30 July 1840).

<sup>175</sup> A.N.Q.M., MP(GR) vol. 33 (Hypolite Deauseneau committed 30 December 1840 for being “drunk and beating his wife”).

<sup>176</sup> A.N.Q.M., QS(F), *Dominus Rex v. John Crooks* (2 November 1835) (affidavit of Margaret Farrell).

attempted suicide.<sup>177</sup> Misdemeanor was a catchall that referred to the category of offenses distinct from felonies, generally punishable by fines and short terms of imprisonment.<sup>178</sup> The diversity of charges can be illustrated by a few examples. Pierre Tessier was arrested in St. Cesaire for being “drunk and illtreating his wife” in 1841,<sup>179</sup> while Narcisse Labelle’s arrest during that same year was precipitated by his “disturbing the peace and illtreating his wife [at] 2 a.m.”<sup>180</sup> The charge of “beating his wife” or a related variant appears often in these records,<sup>181</sup> but the sources also contain the more descriptive phrase, “cruel assault and battery.”<sup>182</sup> An attempt to strike a spouse with an implement or weapon could also be incorporated into a charge, as evidenced by the prosecution of frequent-offender Charles Osteront, namely “assault

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<sup>177</sup> A.N.Q.M., QS(F), *James Little v. William Goften* (2 November 1831) (neighbour prosecuted defendant for “attempting to destroy himself,” also alleging that he had illtreated his wife before slitting his throat.) He was bound to the peace towards his wife for six months, presumably as he could not be bound towards himself. QS(F), *Dominus Rex v. William Goften* (4 November 1831) (surety).

<sup>178</sup> The distinction between felonies and misdemeanors is an ancient one in the common law. Historically, felonies were capital crimes, although the distinction between the two categories has become increasingly muddled over the intervening centuries. By the period examined herein, the distinction had become largely arbitrary. As Taylor, *supra* note 36 at 10-11 pointed out in his discussion of the distinction, petty thefts could be categorized as felonies while serious assaults were misdemeanors.

<sup>179</sup> N.A.C., MP(RR) (St. Cesaire) (Pierre Tessier arrested in February 1841, and provided surety for one year). See also MP (Thomas Langhorn arrested 25 November 1840 for being “drunk and fighting with his wife.”).

<sup>180</sup> N.A.C., MP(GR) vol. 34 (Narcisse Labelle fined five shillings on 11 June 1841).

<sup>181</sup> N.A.C., MP(RR) (Grenville) (John McInnis arrested for beating his wife; discharged November 1840).

<sup>182</sup> See *e.g.* A.N.Q.M., QS(F), *The King v. David Robertson* (1 March 1830) (affidavit of Andrew Watt).

with an axe.”<sup>183</sup> Miscellaneous charges included such disparate acts as resisting arrest and assaulting constables when they intervened in cases of domestic violence,<sup>184</sup> breaking windows,<sup>185</sup> and breach of the peace, the latter of which was sometimes coupled with vagrancy or a similar charge.<sup>186</sup> Breach of the peace was a common charge for activity that involved domestic battery, and common recourse was made to that charge when a third party intervened in a domestic dispute. When a police constable was alerted to a violent altercation in Saint Dominique Street in which the defendant was alleged to have been in the act of murdering his wife, the police arrested the defendant after finding his wife was covered in blood, but charged him with disturbing

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<sup>183</sup> A.N.Q.M., KBF), *Domina Regina v. Charles Osteront* (1 August 1840) (affidavit of Marguerite Blais). See *infra* at 278.

<sup>184</sup> See *infra* at 307-309.

<sup>185</sup> See e.g. A.N.Q.M., QS(F), *Domina Regina v. Ellen Maloney* (16 October 1839) (affidavit of Matthew Doyle).

<sup>186</sup> A good example of the conjunction between breach of the peace and spousal violence is reflected in the prosecution of Mathew Doyle. A letter found in his file from a Justice of the Peace read:

To the Officer of the Police.

Mr. Wand (?), You will please receive a man named Mathew Doyle whom I myself saw disturbing the Peace, besides the testimony of all the neighbours and his own wife also who declares that he has often beaten her I therefore commit him for one month as a vagabond and common Brawler unless he can procure good and sufficient security for his good behaviour. D. Arnoldi J.P. Montreal, July 26, 1838.

He was bound to the peace towards his wife for one year. A.N.Q.M., QS(F), *Domina Regina v. Mathew Doyle* (26 July 1838) (surety).



the peace rather than with assault and battery.<sup>187</sup> Often, it appeared that it was the public nature of the act, more than the act itself, that led to condemnation.<sup>188</sup>

Other cases did not implicate physical violence, such as the husband arrested for quarreling with his wife.”<sup>189</sup> Indeed, domestic disputes that fell short of assault and battery were not infrequently brought before courts.<sup>190</sup> Some of those forms of violence were more emotional than physical, as spouses could seek protection of the law for offenses such as ‘threats and menaces.’ Catherine Orleans, for example, had her husband committed for just that offence in 1830.<sup>191</sup>

The frequency with which wives as opposed to husbands were charged with the offense of ‘uttering threats’, ‘threats and menaces’ or the like is one of the striking divergences suggested by Figure 6. Statistically, wives were considerably more likely to be charged with uttering threats, which coincides with the truism that they were less likely to commit acts of violence than were their husbands. That observation is further borne out by the greater likelihood of wives being charged with breach of the peace (which commonly involved drunken carousing, singing, shouting or swearing),

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<sup>187</sup> A.N.Q.M., QS(F), *Domina Regina v. Joseph Hilton* (19 December 1838) (affidavit of Alexis Shiller).

<sup>188</sup> Compare *supra* note 828.

<sup>189</sup> A.N.Q.M., MP, *Domina Regina v. Daniel Salmon* (25 December 1839) (admonished and discharged).

<sup>190</sup> See generally Steinberg, *supra* note 16 at 48.

<sup>191</sup> A.N.Q.M., QS(F), *Catherine Orleans v. Paul Ouimet* (17 December 1830). Lepp, *supra* note 31 at 467, documented seventy-nine cases of Averbial abuse.”

compounded by their absence from records of charges involving breach of the peace coupled with acts of violence. Wives were also less commonly charged with more serious violent offenses, such as aggravated assault, attempted murder or assault with intent to murder, which comports with their lesser visibility in homicides.<sup>192</sup> It is also possible that wives were more likely to be charged with those offenses because the types of behaviour involved were considered particularly unseemly for women and implicated insubordination against the head of the household.

Most interesting is the notable discrepancy between the frequency with which wives versus husbands were charged with insanity. A rare example of a husband alleged to have been insane is the 1825 prosecution of a husband in which his wife alleged that he is “actuellement dangereusement malade de corps, et abolument dérangé dans son esprit et qu’il est même furieux....”<sup>193</sup> Another husband was committed on the charge of “threats towards his family, insane, &tc.,” his wife alleging that he had “threatened to kill her and her children, that he is insane and dangerous, and that if [he] is allowed to go at large, she considers herself and her children in danger of their lives.”<sup>194</sup> Three times as many wives were accused of lunacy, a divergence even more statistically striking when one contemplates that as a percentage of all charges

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<sup>192</sup> Women made up a somewhat-greater proportion of alleged spousal homicide cases, although they were still in the minority. Out of fourteen such cases, wives accounted for three, or 21.4%. See Chapter IV, *infra* at 417.

<sup>193</sup> A.N.Q.M., QS(F), *Dominus Rex v. Joseph Provost* (11 January 1825) (affidavit of Marie Petit).

<sup>194</sup> ANQM, QS(F), *Dominus Rex v. John Timmens* (27 July 1830).

they were roughly *eighteen* times more likely to be accused of that infirmity. While more will be said about those complaints in a later section, that observation begs the question: were violent wives more likely to be violent because they were insane, or, were they more likely to be viewed as insane because they were violent?<sup>195</sup>

If wives defended themselves against their husbands' violent outbursts, on occasion they were also aggressors. As indicated in Figure 6, nearly fifteen percent of all spousal violence complaints involved charges brought against wives by their husbands.<sup>196</sup> Given that acts of domestic violence have always been underreported, and given nineteenth century social mores, it is conceivable that husbands were equally or even more reluctant to prosecute. The prospect of alleging in a public forum that one's wife was violent may have dissuaded many husbands from doing so for, as J.M. Beattie has posited, "this too openly and clearly reversed a husband and wife's expected relationship." Beattie therefore suggested that husbands were loath to bring charges against their spouses as a result.<sup>197</sup>

Moreover, Harvey has pointed to a distinction between those cases, claiming that wives became violent as a response to male aggression, while men used violence as a

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<sup>195</sup> For further discussion of that issue, see *infra* at 333-337.

<sup>196</sup> That figure is generally in accord with that found in Harvey, *Wife Battery*, *supra* note 589 at 139 (citing ten percent of marital violence cases as involving husband battery). Many contemporary studies indicate that approximately five percent of spousal assault victims are men. See Frieze & Browne, *supra* note 655 at 182-183.

<sup>197</sup> Beattie, *Criminality*, *supra* note 154 at 205.

form of communication.<sup>198</sup> While that was probably true in some instances, categorizing wives' violence as responsive, and men's violence as instinctual, is to oversimplify. Husbands' affidavits do not support that assertion, although affidavits are by their nature one-sided judicial documents. Amid the rich diversity of human relationships, there were husbands who were harmed by their wives and not *vice versa*. Observing that wives were sometimes aggressors does not minimize the extent of the suffering endured by women at their partners' hands.<sup>199</sup>

It has been suggested that wives were viewed by society either as violent viragos or passive victims.<sup>200</sup> Women viewed as viragos were more likely to be treated as social deviants than their male counterparts, with a concomitantly higher level of social disapprobation.<sup>201</sup> Indeed, for that reason, many scholars have posited that Victorian wives were caught between a societal double standard. If charged with fighting back, they would often receive stiffer sentences than their spouses, and if they prosecuted their husbands they might be seen as provocateurs.<sup>202</sup> Pleck has provided further

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<sup>198</sup> See Harvey, *Wife Battery*, *supra* note 589 at 139.

<sup>199</sup> That was a point also made by D'Cruze, who went on to say that violence by men that "defended patriarchal privilege intersected with practices of dispute-by-violence, and was positioned within a broader culture of physically aggressive masculinity involving drink, male sociability and predatory heterosexuality." D'Cruze, *supra* note 698 at 21.

<sup>200</sup> See Hammerton, *supra* note 6 at 46-47.

<sup>201</sup> See generally Taylor, *supra* note 36 at 59.

<sup>202</sup> See *e.g.* Conley, *supra* note 35 at 72; Hammerton, *supra* note 6 at 53; Pleck, *Wife Beating*, *supra* note 593 at 60; Harvey, *Wife Battery*, *supra* note 589 at 134; Cobbe, *supra* note 539 at 69.

examples of brawling husbands being fined while wives were jailed, abused wives who fled the home being charged with desertion, and wives being charged with contempt of court for dropping charges against their husbands.<sup>203</sup> Evidence of such occurrences was not found in the Montreal sources, however.

Some husbands clearly lived in fear of their wives. John Cumming lost his sight in 1840 and was dependent on his wife's care, who he maintained was of a "violent and cruel disposition and [was] habitually addicted to the intemperate use of spirituous liquors."<sup>204</sup> Even husbands who were not incapacitated--including those who were agents of the law--were not immune from such acts, as evidenced by the experience of John George Dagen, bailiff, in 1829. Dagen's case also indicates that an informal separation was no guarantee of peaceable coexistence between spouses. As he deposed:

Josephine Raymond, my wife, who has deserted from my Bed and Board and carried away all my moveable property...came in and without the least cause or provocation did assault, beat and other[wise] ill-treat me, in a malicious manner, and I verily believe and fear that she will do me some serious bodily injury-- Wherefore, I pray that she may be arrested and Justice done in the premises.<sup>205</sup>

Nearly half of complaints against wives involved assault and battery, or some variant, with a further sixteen percent filed as misdemeanors. Uttering threats constituted fifteen percent of the total. Those figures, whatever their limitations, indicate that women were proportionately less likely to inflict serious assaults or grievous injury

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<sup>203</sup> See Pleck, *Criminal Approaches*, *supra* note 545 at 30.

<sup>204</sup> A.N.Q.M., QS(F), *Queen v. Ellen Hagan* (4 June 1842) (affidavit of John Cumming). She was bound to the peace for six months. QS(F), *Domina Regina v. Ellen Hagan* (22 June 1842) (surety).

<sup>205</sup> A.N.Q.M., QS(F), *John George Dagen v. Josephine Raymond* (16 February 1829).

that did not result in death. More serious assaults, those rising to aggravated assault, attempted murder or maiming, were only found in five cases. That is likely a result of husbands' greater physical strength, and to women's apparent reluctance to use, or threaten to use, deadly objects. Interestingly, however, there is a slight deviance when those figures are viewed against the backdrop of spousal murder cases. As shown in Chapter IV, fourteen cases of spousal homicide were found; of those, three homicides (or twenty-one percent of the total) were committed by wives.<sup>206</sup> Those facts warrant the following inferences: wives were less likely to commit assaults on their spouses than were husbands. When spousal assaults occurred, wives were less likely to use weapons or commit serious assaults than were their partners. Given the unquantifiable number of undetected and unprosecuted homicides, one must draw conclusions tentatively, but the evidence suggests that wives were proportionately somewhat more likely to kill their spouses in those cases where serious assaults were involved.

Complaints of the period leave little doubt that some domestic altercations were instances of mutual combat. The stereotypical view of Victorian wives as passive casualties in the face of their husbands' violence was not accurate in many cases, as mutual combat between spouses was a common feature in working-class households.<sup>207</sup> Court records in Montreal reveal many cases where both spouses were charged with

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<sup>206</sup> See generally Chapter IV, *infra* at 417.

<sup>207</sup> See generally Ross, *supra* note 616 at 592; Hammerton, *supra* note 6 at 47. Ross, *ibid.* at 577, also noted that the presence of wives as defendants in such cases indicates that "despite their physical, economic, and legal disadvantages, wives were ready to stand their ground." Cobbe referred to such cases as "wife-beating by combat." Cobbe, *supra* note 539 at 68.

brawling, usually at the behest of an exasperated neighbour or that of a policeman called to the scene. For example, one neighbour in 1840 filed suit against the Minnegins for recurrent breaches of the peace, alleging that:

repeatedly heretofore and more particularly this seventeenth of December instant two persons known to Deponent as the Minnegins to be pointed out by Deponent are in the habit of disturbing the public peace and tranquility[,] the said Minnegins being constantly in a state of intoxication swearing screaming and incommoding and impeding peaceable persons in the public streets. That the man and wife are continually fighting and quarrelling together calling one another gross and abusive names and swearing and making such a noise as to be a nuisance to the whole neighbourhood....<sup>208</sup>

Other cases in which both spouses were caught up in the cogs of the criminal justice system involved cross-prosecutions. Examination of the judicial archives leaves the impression that the courtroom was viewed as an extension of the field of battle by some spouses, with cross-prosecutions filed either as a continuation of the conflict or as a way of intimidating a spouse into dropping an initial suit. A defendant's judicious use of cross-prosecution can be seen as evidence of his or her desire to exercise control over the prosecutorial process.<sup>209</sup> By way of example, Ralph Mellanby's spouse, Angelique, charged him in 1834 with assault and battery and uttering murder threats, although the couple was separated.<sup>210</sup> Indeed, several neighbours likewise filed affidavits documenting his violent behaviour, claiming they had witnessed his assaults on his wife

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<sup>208</sup> A.N.Q.M., QS(F), *Domina Regina v. Minnegin et al* (17 December 1840) (affidavit of Maria Quickley).

<sup>209</sup> Compare Steinberg, *supra* note 16 at 46.

<sup>210</sup> A.N.Q.M., QS(F), *Dominus Rex v. Ralph Mellanby* (14 August 1834) (affidavit of Angelique Desmarais).

or had themselves been assaulted by Mellanby.<sup>211</sup> He was bound to appear before the Court of Quarter Sessions in the amount of one hundred pounds.<sup>212</sup> Mellanby alleged, for his part, that his wife and three others assaulted him in his house, prompting him to seek justice in the premises, and they were likewise bound to appear in Court.<sup>213</sup>

Another example involved an affluent carriage maker named Peter Beauchamp and his wife, Mary Kilfinnen. On 6 October 1843 he had his wife arrested for threats, alleging that she was a habitual drunkard and that he had her arrested on several occasions. Beauchamp also averred that she posed a risk to their children and himself.<sup>214</sup> She was bound to keep the peace towards him for one year.<sup>215</sup> The same day that she was bound to the peace, she prosecuted her husband for assault and battery, alleging that he had inflicted a black eye and had assaulted her with a pair of iron tongs.<sup>216</sup> He was likewise bound to the peace three days later for a period of six months.<sup>217</sup> Susanna and David Miller were both bound to the peace after they prosecuted each other for

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<sup>211</sup> A.N.Q.M., QS(F), *Onesime Rousseau v. Raphael Mellanby* (12 August 1834) (affidavit of Onesime Rousseau); *Dominus Rex v. Ralph Mellanby* (14 August 1834) (affidavit of Onesime Rousseau); *ibid.* (affidavit of Regis Coretuerier); *ibid.* (affidavit of Germain Michon).

<sup>212</sup> A.N.Q.M., QS(F), *Dominus Rex v. Ralph Mellanby* (19 August 1834) (recognizance).

<sup>213</sup> A.N.Q.M., QS(F), *Dominus Rex v. Angelique Mellanby* (13 August 1834); *Dominus Rex v. Angelique Mellanby et al* (13 August 1834) (recognizance).

<sup>214</sup> A.N.Q.M., QS(F), *Queen v. Mary Kilfinnen wife of Peter Beauchamp* (6 October 1843) (affidavit of Peter Beauchamp).

<sup>215</sup> A.N.Q.M., QS(F), *Domina Regina v. Mary Beauchamp* (7 October 1843) (surety).

<sup>216</sup> A.N.Q.M., QS(F), *Queen v. Pierre Beauchamp* (7 October 1843) (affidavit of Mary Kilfillan).

<sup>217</sup> A.N.Q.M., QS(F), *Domina Regina v. Pierre Beauchamp* (10 October 1843) (surety).



assault and battery; she alleging that he had beaten, seized and kicked her, while he less convincingly alleged that she had abused and assaulted him with a house cloth.<sup>218</sup>

If, as one suspects, cross-prosecutions were occasionally used as a form of defense against spousal assault charges, such strategies were inefficacious in some instances. Courts would have had little difficulty in ascertaining who was the primary aggressor in most relationships. In January of 1841 Charles Jackson filed suit against his wife, Sarah Moore, on charge of having violently assaulted and threatened him, alleging that she was a habitual drunkard and violent when in such a state. His case was dismissed.<sup>219</sup> Sarah Moore, along with a neighbour, filed a complaint dated two days later in which they described him as a “habitual and abandoned drunkard lost to all sense of propriety,” who had continuously used “the worst epithets” towards her and assaulted her on a regular basis. She further alleged that the week previous he had struck her with a plank of wood. According to that affidavit, Jackson had maimed his wife the year before by blinding her in the left eye, and since that time had threatened to put out her other eye, as well.<sup>220</sup> He was incarcerated for want of bail, and later bound to

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<sup>218</sup> A.N.Q.M., QS(F), *Susanna Miller v. David Miller* (13 February 1829) (affidavit of Susanna Miller); *ibid.* (14 February 1829) (surety); *David Miller v. Susanna Miller* (14 February 1829) (affidavit of David Miller); *ibid.* (14 February 1829) (surety).

<sup>219</sup> A.N.Q.M., QS(F), *Queen v. Sarah Moore* (9 January 1841) (affidavit of Charles Jackson) (noting that “case discharged.”).

<sup>220</sup> A.N.Q.M., QS(F), *Queen v. Charles Jackson* (11 January 1841) (affidavit of Sarah Moore and Ellen Cameron).

the peace for six months.<sup>221</sup> Seven months later she was to prosecute him again, for continuing to threaten her life and for having injured her with a pair of fireplace tongs as a result of his “ungovernable temper.”<sup>222</sup>

Mary McKenzie’s husband prosecuted her twice in 1838, for assault and battery as well as disturbing the peace. On the first occasion, her husband alleged that he was “repeatedly and violently struck and threatened [with] imprisonment” by his wife, who “for some time past has conducted herself in an improper and unbecoming manner and has repeatedly sold articles of furniture” and other items belonging to him.<sup>223</sup> That is one of the very few explicit references to a spouse threatening another with imprisonment as a weapon. The hypothesis that prosecutions could be driven by malice or other motives, or at least could be perceived as such, is given further credence by the number of affidavits in which an abused wife concluded by attesting that she had no ulterior motives for prosecuting her husband. Elizabeth Parker asserted that she “does not make this complaint...through any malice, hatred or ill-will...but merely for the

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<sup>221</sup> N.A.C., MP(GR) vol. 33 (Charles Jackson committed 11 January 1841 for “threatening his wife’s life”); QS(F), *Domina Regina v. Charles Jackson* (27 January 1841) (surety).

<sup>222</sup> A.N.Q.M., QS(F), *Domina Regina v. Charles Jackson* (4 August 1841) (affidavit of Sarah Moore); *ibid.* (4 August 1841) (arrest warrant).

<sup>223</sup> A.N.Q.M., QS(F), *Queen v. Mary McKenzie* (17 July 1838). The second charge, three months later, alleged that she “has been in the habit of disturbing the peace amongst her family and moreover that she very often takes the deponent’s property and sells it without the leave or permission of the said deponent and that she is always more or less in a state of intoxication....” A.N.Q.M., QS(F), *ibid.* (29 October 1838). No information was found on either prosecution.

preservation of her life and also her person from bodily harm.”<sup>224</sup> Similarly, another wife deposed that “she doth not make this complaint against, nor require such sureties from [her husband] from any malice or ill will, but merely for the preservation of her person from injury.”<sup>225</sup> Perhaps those were assertions coaxed by questions raised by the Justice of the Peace filing the complaint, or statements made preemptively by a prosecutrix to allay suspicion. Notably, husbands made no such claims in their affidavits. It was much more common for all prosecutors to allege that they had been assaulted “without any just cause or provocation,” presumably to foreclose a counterclaim of self-defense or the like.<sup>226</sup>

Tidbits of information occasionally surface that hint at coercion on the part of a spouse prosecuted for domestic battery. James O’Callaghan’s wife charged him with misdemeanor on 26 March 1840; she alleged that he was in habit of ill-using her and had viciously beaten her two days before.<sup>227</sup> He was bound to appear in court on 21 April.<sup>228</sup> One of the co-sureties appearing on O’Callaghan’s recognizance was Edward O’Hara, who on 27 March filed a complaint charging O’Callaghan’s wife with suspicion of

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<sup>224</sup> A.N.Q.M., QS(F), *Elizabeth Parker v. Benjamin Robson* (19 January 1837) (affidavit of Elizabeth Parker); QS(F), *ibid.* (23 January 1837) (surety).

<sup>225</sup> A.N.Q.M., QS(F), *Queen v. Thomas Day* (12 March 1841) (affidavit of Mary Ann Turner).

<sup>226</sup> Compare Lepp, *supra* note 31 at 494-496. For wives who conceded culpability in spousal assaults, see *ibid.* at 492-494.

<sup>227</sup> A.N.Q.M., QS(F), *Domina Regina v. James O’Callaghan* (26 March 1840) (affidavit of Mary McGirty).

<sup>228</sup> A.N.Q.M., QS(F), *ibid.* (26 March 1840) (surety).

larceny, alleging that he suspected her of having secreted three planks of wood valued at four shillings.<sup>229</sup> The case against O'Callaghan was settled, and no further sign of the larceny case was found.<sup>230</sup> While it is impossible to tell with certainty, the facts suggest that O'Hara's prosecution was collusive, intended to compel O'Callaghan's wife to drop the charges against her husband.

Many abusive spouses continued their reigns of terror for the duration of the marriage.<sup>231</sup> It is likely that some spouses sought legal recourse after enduring systematic abuse for years, just as some never pressed charges. However, given the number of spousal violence complaints found during the period covered by this thesis, it should be supposed that a number of spouses were prosecuted on multiple occasions. While one cannot compile meaningful statistical data on repeat offenders, given the invisibility of many abusive spouses in the archives as well as the gaps in the sources themselves, analysis can nevertheless provide useful directional information.<sup>232</sup> As shown in *Figure 7*, a preponderance of defendants were identified as having been charged on one occasion. How often a single arrest was sufficient to curtail violent behaviour must be a matter of speculation, but it is likely that some violent spouses

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<sup>229</sup> A.N.Q.M., QS(F), *Domina Regina v. Mary McGirty* (27 March 1840)(affidavit of Edward O'Hara).

<sup>230</sup> *Domina Regina v. James O'Callaghan*, *supra* note 760.

<sup>231</sup> Compare Peterson del Mar, *supra* note 8 at 24 ("Most wives described more sporadic violence, but they also described husbands who used violence without much apparent reluctance."); Lepp, *supra* note 31 at 477-478.

<sup>232</sup> Many affidavits contain references to previous prosecutions, the records of which have not survived, or to numerous acts of barbarism that went unprosecuted.

were curbed in their behaviour by the intercession of the legal system. It is also likely that some abused spouses recognized the futility of further legal proceedings, or were unable to bring those proceedings for financial or other reasons.

Despite the limitations of the sources, it is striking that the percentage of wives as opposed to husbands who appeared once or twice was static. Approximately eighty-seven percent of husbands were charged once, while just over ten percent were charged twice, figures that are in accord with prosecutions against wives. The divergence is noticeable only when dealing with spouses charged on at least three occasions (in which wives were favoured), but no records of a wife prosecuted on four or more occasions were found.<sup>233</sup> The number of serial recidivists, as reflected in the records examined for this thesis, was extremely small. Five husbands were identified who appeared on four to six occasions, and only one was prosecuted ten or more times. One wife who appeared as prosecutor on multiple occasions was Marguerite Blais, who had the misfortune to be married to Charles Osteront, a Montreal joiner. Between 1831 and 1843, notwithstanding missing records, she prosecuted him at least six times. The charges against him included: assault and battery with a masse (probably a sledgehammer, given the context);<sup>234</sup> threats and menaces, in respect of which she reiterated that she had to

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<sup>233</sup> According to 1995 statistics, sixty-three percent of wives were assaulted more than once, with thirty-two percent assaulted eleven or more times, nine percent assaulted between six and ten times, and twenty-two percent between two and five times. Statistics Canada, *supra* note 535 at 105. Women victimized by their male partners today are more likely to be assaulted repeatedly than are men. See Frieze & Browne, *supra* note 655 at 179. Indeed, men are also more likely to be recidivists. *Ibid.* at 184.

<sup>234</sup> A.N.Q.M., QS(F), *Marguerite Blais v. Charles Osteront* (30 May 1831) (affidavit of Marguerite Blais).

prosecute her husband in order to protect her life;<sup>235</sup> and four counts of assault with intent to murder, alleging that he attacked her on those occasions with a knife, hatchet, and with pieces of furniture he had destroyed.<sup>236</sup>

The worst serial recidivist was Antoine Legault *dit* Desloriers, who appeared in at least thirteen cases. The gaps in the records, particularly for the decade of the 1840s, prevent a complete reconstitution of his history. References to other prosecutions in his wife’s affidavits leave no doubt that Legault’s pattern of violence was more systematic

***Frequency of Complaints Against Spouses  
Charged with Domestic Violence***

	1x 6+	2x	3x	4-5x	
Husbands n=487	419	49	13	5	1
Wives n=84	73	7	4	--	--
Total n=571	492	56	17	5	1
Total % Husbands	86.0%	10.1%	2.7%	1.0%	.002%
Total % Wives	86.9%	8.3%	4.8%	--	--

***Figure 7.***

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<sup>235</sup> A.N.Q.M., QS(F), *Queen v. Charles Osteront* (9 August 1843) (affidavit of Marguerite Blais); QS(F), *Domina Regina v. Charles Ostront* (11 August 1843) (surety).

<sup>236</sup> A.N.Q.M., KB(F), *Queen v. Charles Osteront* (1 January 1837) (affidavit of Marguerite Blais); QS(F), *Domina Regina v. Charles Osteront* (26 January 1838) (surety); QS(F), *Domina Regina v. Charles Osterone* (24 August 1839) (affidavit of Marguerite Blais); *Domina Regina v. Charles Osteront*, *supra* note 715.

than even those extensive records suggest. Desloriers was a consistently abusive spouse, and his wife was an unusually persistent prosecutor. Her saga serves to illustrate both that the criminal justice system could not provide a significant deterrent to the most pathologically-violent spouses, and that some victimized spouses continued to repeatedly utilize the mechanisms of the law despite their limitations.

Marie Louise St. Aubin married Antoine Legault dit Desloriers in the parish of Saint Laurent *circa* 1821. From that day on, Marie Louise's life was to be characterized by recurrent acts of dehumanizing brutality, intimidation, and fear. The judicial archives has preserved a description of Legault from the jail records of the late 1820s: five feet seven inches in height, described as having a "dark complexion, grey hair, blue eyes, long visage," and at the time that description was recorded in the register of the Montreal Gaol, he was approximately forty years of age.<sup>237</sup> The jail warden could have recounted Legault's physical characteristics from memory, as over the ensuing twelve years Legault was to spend more time within the prison's walls than without.

The first complaint found for the period filed against Desloriers was on 2 November 1825, in which his wife alleged that over the preceding four years he had continually assaulted her. More specifically, she averred that on 29 October he had beaten her and dragged her across the floor by her hair. Desloriers was in the habit of becoming inebriated virtually every day, had menaced St. Aubin and their children with

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<sup>237</sup> A.N.Q.M., MG. The description is found in the back of the prison register, and was likely recorded *circa* 1828.

a shotgun and an axe, destroyed household furniture, and threatened to burn down the house. Faced with his domestic reign of terror, she desperately pleaded that she might receive “justice in the premises.”<sup>238</sup> Based on that affidavit, Legault was arrested, and before being released from prison was required by the Justice of the Peace to enter into a surety for his good behavior for a period of six months.<sup>239</sup> Most likely due to missing records, Legault did not resurface until July of 1828, when the register of the Court of Quarter Sessions showed him pleading guilty to a charge of assaulting his wife and being sentenced to three months’ imprisonment. He was discharged on 20 October, and required to provide surety in the amount of fifty pounds for one year.<sup>240</sup>

Less than three weeks later Desloriers was again arrested for assault and battery and threatening to murder his wife with an axe. He spent the next four months in prison before being discharged during the second week of March 1829.<sup>241</sup> Imprisonment did little to dissuade Desloriers from his violent outburst, as the day of his release on 10

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<sup>238</sup> A.N.Q.M., QS(F), *Dominus Rex v. Antoine Legault* (2 November 1825) (affidavit of Marie Louise St. Aubin).

<sup>239</sup> A.N.Q.M., QS(F), *ibid.* (5 November 1825) (surety).

<sup>240</sup> A.N.Q.M., QS(F), *The King v. Antoine Legault dit Desloriers* (19 July 1828); *ibid.* (July 1828 convictions); Register for the Court of Quarter Sessions, p.506 & 515 [hereinafter QS(R)] (14 & 19 July 1828) (record of guilty plea, sentence, and bail).

<sup>241</sup> A.N.Q.M., A.N.Q.M., KB(F), *Dominus Rex v. Antoine Legault dit Desloriers* (7 November 1828); MG no.394 (Antoine Legault dit Desloriers, arrested 7 November 1828 and “to stand committed to the common gaol for the space of 3 months and to give security to keep the peace for 12 months;” discharged 10 March 1829).



March 1829 he went home and tried to exact vengeance on his wife, and he was rearrested later the same day and lodged in prison until 31 August 1829.<sup>242</sup>

Due to the vagaries of the sources, Legault then seemingly vanished, only to reappear on November 6, 1834. St. Aubin again asserted that he had cruelly assaulted her, raining kicks and blows on her and threatening to kill her. Fearing that he might make good on his threats, she asked that a warrant be issued for his arrest.<sup>243</sup> Legault was apprehended and spent the following six weeks in prison, being released in January 1835. Less than a month later, the cycle was to repeat itself. Almost as an afterthought St. Aubin added a note to the bottom of her affidavit, stating that three days earlier Legault had staggered home drunk and had fallen over in the kitchen, thereby knocking over the stove and igniting a fire in the house.<sup>244</sup> Legault was apprehended by the Montreal Watch, and occupied a cell in the city jail for the following eight months.<sup>245</sup> Two months did not elapse before he was again arrested; St. Aubin then alleged that his brutality was no longer limited to his bouts of drunkenness, but also occurred during his moments

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<sup>242</sup> A.N.Q.M., MG (commitment of Antoine Legault dit Desloriers on 10 March 1829; discharged 31 August 1829 by Court of Oyer and Terminer). Amable Groux, widow of Louis St. Aubin, filed a complaint two days later alleging Legault had returned home from prison, found his wife lying on a sofa, and had proceeded to attack and threaten her; she summoned her son-in-law to secure him until the Montreal Watch arrived. QS(F), *Dominus Rex v. Antoine Legault* (12 March 1829).

<sup>243</sup> A.N.Q.M., MG no.131 (commitment of Antoine Legault on 6 November 1835); QS(F), *Dominus Rex v. Antoine Legault* (8 November 1834) (affidavit of Marie Louise St. Aubin).

<sup>244</sup> A.N.Q.M., QS(F), *Dominus Rex v. Antoine Legault* (17 February 1835) (affidavit of Marie Louise St. Aubin); MG no.236 (Antoine Legault dit Desloriers committed 15 February 1835 for assault and battery and threats; discharged 30 October by Quarter Sessions).

<sup>245</sup> A.N.Q.M., QS(R) p.332, *Dominus Rex v. Antoine Legault* (30 October 1835).

(however brief) of sobriety. In her affidavit, she emphasized that he was constantly in and out of prison and had provided numerous sureties for his good behavior, but persisted in his violence and threats towards her and her family. Knowing his “black and violent” character, she believed that he would eventually take her life.<sup>246</sup> He was arrested the following day and imprisoned for seven months, until July 1836.<sup>247</sup> He was once again arrested in October, that time for assault with intent to kill.<sup>248</sup> No record of him was found after that date.<sup>249</sup>

The story of Antoine Legault is illustrative of the legal response towards abusive spouses in many ways, but in other ways it is atypical. While repeat offenders were not uncommon, no other offenders who appeared before courts during this period could equal Legault’s chronic abusive behaviour, or his wife’s unflagging use of the judicial system to attempt to insulate herself and her children from his savagery. For more than a decade, he was recurrently bound to the peace and imprisoned. All told, extant court

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<sup>246</sup> A.N.Q.M., QS(F), *Marie Louise St. Aubin v. Antoine Legault* (5 December 1835) (affidavit of Marie Louise St. Aubin).

<sup>247</sup> A.N.Q.M., MG no.636 (commitment of Antoine Legault on 6 December 1835 for assault and battery and threats; discharged 19 July 1836); QS(F), *Dominus Rex v. Antoine Legault dit Deslauriers* (19 January 1836) (affidavit of Marie Louise St. Aubin).

<sup>248</sup> A.N.Q.M., MG no.1073 (Antoine Legault dit Desloriers committed 10 October 1836; discharged 17 March 1837). See also N.A.C., MG(GC) vol.6 (Antoine Legault dit Deslauriers committed 10 October 1836); KB(F), *Dominus Rex v. Antoine Legault dit Deloriers* (29 October 1836) (affidavit of Marie Louise St. Aubin).

<sup>249</sup> There is evidence that an Antoine Legault was fined £10 for assault, but it is unlikely that it was the same individual—although it might have been his son. See *The Montreal Gazette* (1 November 1850); *The Pilot* (1 November 1850); *The Montreal Weekly Pilot* (2 November 1850).

records indicate that he was prosecuted at least thirteen times by his wife between 1825 to 1829, and 1834 to 1837. Out of those seven years (the gaps due to missing records), Legault spent a total of over three and a half years in prison. While the inability of the law to rehabilitate or deter Legault is clear, at least the periods during which he was incarcerated provided his wife with respite from his brutality.

Eleven women were also identified as being recurrent defendants in charges related to domestic violence, and four of those defendants were identified in three separate complaints. Mary Ferris, for example, was charged three times in less than a year. In October of 1831 her husband charged Ferris with uttering threats against his life, and claimed that she was a “person of intemperate habits and when intoxicated is of a violent disposition and does disturb the public Peace and tranquility.”<sup>250</sup> Seven months later he again charged his wife, that time with assault and battery:

Mary Ferris...got drunk and smashed three panes of the glass in one of the windows of his dwelling house...and likewise broke several pieces of his crockery, for the purpose of annoying this deponent, and made such a noise as greatly to incommode his neighbours. And this deponent further saith that his said wife has, during the last two years, been in the habit of getting frequently intoxicated, and by reason of her intemperance and violence, makes him very unhappy and does not permit him quietly to follow his business, and annoys his neighbours, who have threatened to take legal proceedings against him in consequence of the said annoyance....[T]hat he has done all that he has been able to do in order to reclaim her by gentle methods, without success. And...Mary Ferris committed an assault and battery on him this deponent, and that he is not able corporeally to restrain her, as she is superior to him in personal strength, so that he is obliged to supplicate the aid of Public Justice....<sup>251</sup>

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<sup>250</sup> A.N.Q.M., QS(F), *Thomas Grantham v. Mary Ferris* (31 October 1839) (affidavit of James Grantham).

<sup>251</sup> A.N.Q.M., QS(F), *Domina Regina v. Mary Ferris* (27 May 1840) (affidavit of James Grantham).

On 8 August he again sought legal recourse, that time for assault and threats. The wording of the relevant document leaves little doubt that he filed it contemporaneously with the acts in question, as he deposed that she “is now at his house in a drunken state, making a great noise thereby disturbing the public peace and tranquility,” and that she assaulted and threatened to kill him earlier in the day.<sup>252</sup>

Husbands and wives were, of course, not the only victims of domestic violence. A vicious spouse rarely limited his or her rage solely against a partner if children or other relatives also lived in the household.<sup>253</sup> While Chapter II concerned prosecutions brought against parents or guardians specifically on charges of ill-treating children, in the context of spousal violence complaints there are many references to brutality towards children, as well. Given that the administration of criminal justice during that period was largely based on a system of private prosecution, as well as the many obstacles that militated against children’s access to the legal system, it is not surprising that allegations of violence directed towards children became peripheral in cases where spousal violence was also asserted.

A competing explanation may also be offered, as the affidavits suggest that women tolerated higher levels of violence against children than they did against

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<sup>252</sup> A.N.Q.M., QS(F), *Queen v. Mary Ferris* (8 August 1840) (affidavit of James Grantham).

<sup>253</sup> Cobbe noted that children often fell victim to abusive fathers, arguing that giving custody to men who abused their wives was akin to leaving the children “in the care of a wild beast....” Cobbe, *supra* note 539 at 85.

themselves. For example, one wife alleged that her husband was “addicted to liquor and when in a state of intoxication is exceedingly violent and dangerous,” and that he frequently abused her and their five children, as well as threatening to take her life. Her prosecution of her husband for misdemeanor, however, was prompted by his attack on her the previous day, and she requested justice.<sup>254</sup> Sophie St. Sauveur grappled with Joseph Larouche’s near-daily violence towards his family, and claimed that “souvent le dit Larouche arrive chez lui enivré, et frappe ses jeunes enfants.” He was bound to the peace towards his wife alone for having assaulted her.<sup>255</sup>

Another husband, accused of having attempted to scald his children with boiling water and beating his wife, was charged only with disturbing the peace.<sup>256</sup> Ellen Nelson faced not only her husband’s brutality, prompting her to live apart from him, but her children also suffered because when they “come visit she the deponent and...he gets intelligence of it, he invariably beats and illtreats them most unmercifully and inhumanely;” she charged him with assaulting her alone.<sup>257</sup> It might well have been the

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<sup>254</sup> A.N.Q.M., QS(F), *Queen v. John Miller* (5 October 1840) (affidavit of Isabella Torrance).

<sup>255</sup> A.N.Q.M., QS(F), *Queen v. Joseph Larouche* (15 May 1841) (affidavit of Sophie St. Sauveur); QS(F), *Domina Regina v. Joseph Larouche* (17 May 1841) (surety).

<sup>256</sup> A.N.Q.M., QS(F), *Domina Regina v. Thomas Henderson* (17 July 1839) (affidavit of Ellen Hume).

<sup>257</sup> A.N.Q.M., QS(F), *Ellen Nelson v. James Thompson* (25 August 1837) (affidavit of Ellen Nelson).

case that, as has been suggested by other researchers, “violence deemed acceptable when directed toward children became unacceptable when directed towards wives.”<sup>258</sup>

Other prosecutions were brought for acts of violence against spouses and children, as was the case with Mary Ann Foster’s prosecution of her husband in 1837 on a charge of misdemeanor against her and her child. As she deposed before a local Justice of the Peace, “for many years past her said husband has been in the habit of illtreating the same deponent to such a degree as to have often placed her in fear for her life.” She further claimed that the previous week her husband seized her and their six-month old child and “put her out of the House” and that she “stands in fear for her life on the part of her said husband.”<sup>259</sup> Foster’s prosecution was unusual in that the complaint listed both she and her child as victims, but the outcome itself was typical insofar as her husband was bound to the peace only against Foster--the infant was not mentioned in the surety.<sup>260</sup> A more atypical example was that of a husband charged with assault and battery against his wife and child in November of 1833, as he was explicitly bound to the peace towards both of them.<sup>261</sup>

It was rarer for wives to be implicated in violence against both a spouse as well as children. Ann Farmer was charged with assault with intent to murder her husband and

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<sup>258</sup> See *e.g.* Peterson del Mar, *supra* note 8 at 57.

<sup>259</sup> A.N.Q.M., QS(F), *Dominus Rex v. James Cowan* (26 July 1837) (affidavit of Mary Ann Foster).

<sup>260</sup> A.N.Q.M., QS(F), *ibid.* (26 July 1837) (surety).

<sup>261</sup> A.N.Q.M., QS(F), *Dominus Rex v. Michel Guertin* (29 November 1833) (surety).

stepchild in 1836. Her husband, a shoemaker in Montreal, posited that his wife assaulted him the previous day “and moreover attempted to take the life of a young child...whom [he] had reared and has under his protection.” According to the husband’s affidavit, Farmer had attempted to strike the child with a sharpened piece of iron and would likely have killed her had he not interceded. In requesting legal intervention, her husband concluded his complaint by saying that his life “is likewise constantly exposed from the violent acts he is exposed to on the part of his wife, wherefore he prays for justice in the premises.”<sup>262</sup> Likewise, Peter Beauchamp, a carriage maker, charged his wife with threats and menaces in his complaint, which read in pertinent part:

several times heretofore deponent has had his wife Mary Kilfinnen arrested and confined in the Common Gaol of this District for being intemperate, and threatening this deponent’s li[f]e and also that of her children. That for the last ten months the said Mary Kilfinnen has been out of Gaol under recognizance; That frequently since that time the said Mary Kilfinnen has again threatened this deponent’s life and that of her children, when in a state of intoxication. That last night about the hour of half-past nine of the clock whilst in a state of intoxication she turned out of her house into the public street her two youngest children, having nothing but their shirts and trowsers. That the said deponent from the intemperate habits of his said wife, he hath reasons to fear for his life and that of his children. That in fact the said Mary Kilfinnen is an habitual drunkard and dangerous to her family and public at large....<sup>263</sup>

Family violence was less likely to fall under the eye of the law than were more public offenses. The middle and upper classes were especially insulated from such

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<sup>262</sup> A.N.Q.M., *Dominus Rex v. Ann Farmer* (26 November 1836) (affidavit of William Lilly).

<sup>263</sup> A.N.Q.M., QS(F), *Queen v. Mary Kilfinnen* (6 October 1843) (affidavit of Peter Beauchamp). She was bound to the peace towards her husband for twelve months in the amount of thirty pounds. QS(F), *ibid.* (7 October 1843) (surety).

scrutiny, as greater resources and social standing brought with them concomitantly less public intrusion. That fact, no doubt, accounts in large part for the relative absence of the upper classes from studies of this kind. While Victorian conceptions of the family may have revolved around the assumption that the upper classes were likely to indulge in more genteel forms of mental abuse than in physical brutality, violence was not limited to the labouring classes. It was the labouring classes, however, that were least able to afford the luxury of privacy. Paper-thin walls, close living quarters, and shared common spaces served to carry the sounds of domestic altercations to neighbours, relatives, and passing policemen. Under such circumstances, both the frictions leading up to the altercation, as well as the violence itself, could not fail to be conspicuous.<sup>264</sup>

While one may reasonably assume that third parties were cognizant of many of the acts of domestic violence occurring around them, the question of how often they intervened in such cases is a separate question. One of the main obstacles hampering successful prosecution of spousal batterers has always been a victimized spouse's fear of vengeance, shame, economic distress or other factors.<sup>265</sup> There is no way of ascertaining how many spouses were too intimidated to press charges, but it must have been a common phenomenon given the power imbalances inherent in those relationships.<sup>266</sup>

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<sup>264</sup> Compare Tomes, *supra* note 7 at 328-329.

<sup>265</sup> Francis Power Cobbe, for example, was acutely aware that wives were reluctant to testify against husbands, and wanted courts to issue protection orders that would have acted as orders of judicial separation. Cobbe, *supra* note 539 at 83.

<sup>266</sup> Seventy-five percent of violent crimes against Canadian women in 1993 went unreported. Statistics Canada, *supra* note 535 at 103. Of these, seventy-two percent were committed by relatives or acquaintances of the victim. *Ibid.* at 102.



Especially in a legal system driven by private prosecutions, many battered spouses must never have been afforded any protection by the law. An abused wife's failure to prosecute her husband, for whatever reason, effectively served to foreclose a legal response to many cases of domestic violence.

Indeed, scholars have pointed to the conclusion that wife battery was treated with complacency among nineteenth century working-class communities.<sup>267</sup> Ross has argued that this demonstrated the "inevitability of violence between spouses, and the 'right' of husbands to beat up wives."<sup>268</sup> While notions of entitlement and inevitability no doubt contributed, non-intervention likely also reflected the deeply-entrenched ethos of family privacy, awareness of the dangers of intervening in family spats, and the human tendency to ignore situations involving strangers in distress, all of which militate against third-party intervention in crises even today. Bystanders were most likely to cast aside their indifference, it has been suggested, when men attacked women who were not their wives or partners.<sup>269</sup> Other exceptions posited by scholars have included aggravating factors, such as the use of deadly weapons, violence that was deemed to exceed 'acceptable' levels, or mitigating factors such as a wife's illness or pregnancy.<sup>270</sup>

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<sup>267</sup> See e.g. Hammerton, *supra* note 6 at 19; Peterson del Mar, *supra* note 8 at 25; Ross, *supra* note 616 at 59.

<sup>268</sup> Ross, *ibid.* at 591-592.

<sup>269</sup> See e.g. *ibid.* at 592. How it would be readily apparent to bystanders that the two protagonists were not a couple is a question she did not address.

<sup>270</sup> See generally *ibid.* (citing the "presence of a really dangerous weapon, the sight of a lot of blood, or sounds of real terror...."); Harvey, *Wife Battery*, *supra* note 589 at 138 (citing excessive violence, wife's illness, use of a weapon, or if the violence spilled out in public areas

Chirivaris and other public shaming rituals were used as an informal type of community policing. While history records instances of “rough music” being used to express a community’s displeasure with a married couple, such actions were only seldom directed towards a wife-beating husband. References to chirivaris that were directed at violent spouses were not located in the court records of the period, or in the popular press.<sup>271</sup>

Acknowledging the limitations of the sources used for this thesis, it can nonetheless be said that third parties did intervene in cases of domestic abuse, but in many instances they failed to do so. Many wives would not have been fortunate enough to have an intermediary willing to press charges on their behalf. Third parties tended to counsel reconciliation over prosecution, and wives often lived in isolated homesteads far away from neighbours, friends, and family.<sup>272</sup> In all likelihood, those third parties were more willing to provide shelter and aid than they were to intervene in a private family matter.<sup>273</sup>

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or there was a likelihood of murder ); Tomes, *supra* note 7 at 336 (citing age or infirmity, use of weapon, or the possibility of murder).

<sup>271</sup> For discussion of those communal shaming rituals and family violence, see generally Bryan Palmer, “Discordant Music: Charivaris and Whitecapping in Nineteenth-Century North America” (1978) 3 *Labour/Le Travail* 46-48; A. James Hammerton, “The Targets of ‘Rough Music’: Respectability and Domestic Violence in Victorian England” (Spring 1991) 3 *Gender & Hist.* 1.

<sup>272</sup> Compare Peterson del Mar, *supra* note 8 at 46; Buckley, *supra* note 34 at 179.

<sup>273</sup> Compare Tomes, *supra* note 7 at 336.

By their nature, complaints are no more than indicators of patterns of intervention in cases of spousal violence, given the frequency with which instances of domestic discord went unreported and unchallenged. If the references to acts of brutality towards spouses found in contemporary sources are any indication, including cases alluded to in period newspapers and judicial sources that were not otherwise identified, then the archives must be said to provide a poor sample indeed. Nonetheless, they do allow for patterns to be detected concerning the relationships between prosecutors and defendants. *Figure 8* sets out the identities of the primary prosecutors in domestic violence cases.<sup>274</sup> The preponderance of those cases were brought by spouses, accounting for just under eighty-seven percent of the complaints made against husbands, and ninety-four percent of the complaints made against wives. Police and members of the Watch were the second most common interveners, accounting for approximately five and half percent of these complaints, followed by neighbours.<sup>275</sup> Third parties played an even smaller role in prosecutions of wives, reflecting greater reluctance on their part to intervene in family matters when the head of the household was the putative victim.

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<sup>274</sup> Only the initial or primary complaint was counted. Multiple affidavits in support of the primary prosecutor's charges were not counted, although those often involved corroborative evidence by neighbours and other family members.

<sup>275</sup> Lepp's figures for complaints against husbands in Ontario during the period 1830 to 1920 are analogous, showing that wives constituted eighty-two percent of complainants; police, twelve percent; neighbours and friends, four percent; and family, two percent. Lepp, *supra* note 31 at 469 & note 53.

Relatives were responsible for a minuscule number of prosecutions, and appeared as primary prosecutors before Montreal courts much less often than did neighbours.<sup>276</sup> Their role as interveners, however, was probably belied by that observation. Relations often filed corroborative affidavits to bolster a wife's case, and interposed themselves between an abusive spouse and his victim. Their very existence no doubt acted to dampen some husbands' malignant tendencies. Elizabeth Ellis, in charging her husband with misdemeanor for having assaulted her, attested that her husband had often stated "he would take her to some place where she would be seen by none of her relations and that then and there would take revenge" against her, reflecting the protective role that relatives could play.<sup>277</sup> Fearing such intervention, some husbands did all they could, in Peterson del Mar's words, "to make their home an island of unmonitored male authority."<sup>278</sup> Other husbands, however, remained under the scrutiny of their wives' relatives. For example, a Montreal furrier averred in his complaint that his sister was frequently abused by her husband. One morning, when sent for by his sister, he discovered that she had been "most brutally and inhumanely beaten and illtreated to...such a degree that she is unable to come out." His sister

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<sup>276</sup> Compare Peterson del Mar, *supra* note 8 at 41 ("[w]ives more often relied on neighbors than family to intervene against violent husbands.").

<sup>277</sup> A.N.Q.M., QS(F), *Domina Regina v. John Dean* (16 June 1840) (affidavit of Elizabeth Ellis); *ibid.* (20 June 1840) (surety). Compare Buckley, *supra* note 34 at 97 (citing intervention by fathers and other relatives).

<sup>278</sup> Peterson del Mar, *supra* note 8 at 31.

“complained bitterly” of her treatment, prompting him to charge her husband with assault and battery in the hopes that he would be arrested and held to bail.<sup>279</sup>

Parents were among those relatives who attempted to protect their adult children from baleful spouses. In June of 1830 a miller named Thomas Maggison went to a local Justice of the Peace to charge Robert Maggison (who, in an interesting bit of consanguinity, was also his nephew) with ill-treating and threatening his daughter Catharine. According to his account, Robert, a whitesmith in the City of Montreal, had been married for just over a year. Thomas was informed that lately he had become abusive towards Catharine, and on the previous day stated in Thomas’ presence that if she dared to lodge a complaint against him for assault he “would take her life as soon as he could be liberated from Jail, even if it was a year afterwards.” Thomas feared that Robert would continue to maltreat her, and further added that she “will not dare to lodge an Information against her husband for fear that he would take her life.”<sup>280</sup> By virtue of that complaint, Robert

Identity of Primary Prosecutors in  
*Domestic Abuse Complaints*

	vs.	Complaints vs.		Complaints
Prosecutor Wives			Husbands	
Wife		n=418	85.8%	

<sup>279</sup> A.N.Q.M., QS(F), *William Mead v. Charles Mudford* (27 January 1835) (affidavit of William Mead). Mudford was bound to the peace for six months in the amount of ten pounds. A.N.Q.M., QS(F), *ibid.* (27 January 1835) (surety).

<sup>280</sup> A.N.Q.M., QS(F), *Thomas Maggason v. Robert Maggason* (3 June 1830) (affidavit of Thomas Maggison).

Husband		n=79	94.1%	
Montreal Watch/police	n=28	5.9%	n=4	4.8%
Neighbour	n=27	5.4%	n=1	1.1%
Adult child	n=3	.6%	--	
Male relative	n=3	.6%	--	
Female relative	n=3	.6%	--	
Bystander	n=3	.6%	--	
TOTAL n=571	n=487		n=84	

*Figure 8.*

was arrested, and then discharged with Thomas' consent, who no doubt was hopeful that Robert's arrest would subdue his savagery.

The following day Thomas once again filed a complaint against Robert, alleging that after his release from prison he threatened to take revenge on him. When Thomas visited the house he owned on Wolf Street, where his daughter and Robert lived rent-free, he found that most of the furniture and household effects had been destroyed and his personal property had been removed. Based on Robert's threats and the nature of the property destroyed, Thomas feared that Robert might attack him or destroy his property. Accordingly, he requested that Robert be required to provide surety for his

good conduct.<sup>281</sup> Whether emboldened by Thomas' pursuit of legal intervention or simply out of fear, Catharine swore out a subsequent complaint:

[Y]esterday my said husband...who was arrested yesterday for ill using me before his arrest, and in consequence of my life being in danger with him by his threats towards me, after his discharge threatened me again and said that I would suffer for swearing as I did and that I would have reason to reflect all my life for what I had sworn at the Police Office--Sunday last the said Robert Maggison beat me with his fist and kicked me and struck me with the handle of a table knife without any provocation on my part, he then said at the same time, "I would stab you for a copper," or words to that effect, having the knife lifted out at me, and the day before yesterday, he said if I had him arrested, and placed in gaol, he would plunge the knife in my body, if the knife was as long as a tea spoon he had in his hand and if he was to be hanged the next day. I believe from the above threats that my life is in danger, if the said Robert Maggison is not arrested; the said Robert Maggison also said in my presence and before William Sire that he would not leave Canada until he had made the house of my father in Montreal and at the grande line...worth nothing, and would have my father brought to the thaw (meaning to beggary) and that our portion would not be worth sixpence.<sup>282</sup>

Robert's threats were more colourful and detailed than those made by many spouses, but it cannot be said that his wife's experiences were otherwise unusual.

A mother likewise sought to protect her adult daughter from her husband in 1839, alleging that "depuis longtemps [il] est dans l'habitude de s'enivrer et alors maltraite son épouse Esther Labadie l'enfant de la dite déposante."<sup>283</sup>

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<sup>281</sup> A.N.Q.M., QS(F), *Thomas Maggison v. Robert Maggison* (4 June 1830) (affidavit of Thomas Maggison).

<sup>282</sup> A.N.Q.M., QS(F), *Catharine Maggison v. Robert Maggison* (4 June 1830) (affidavit of Catharine Maggison).

<sup>283</sup> A.N.Q.M., QS(F), *Queen v. Hyacinthe Sasseville* (28 September 1839) (affidavit of Marie Françoise Desautelle); *Domina Regina v. Hyacinthe Sasseville* (28 September 1839) (surety).

On some occasions, numerous relatives intervened against an abusive spouse, as evidenced by the prosecution of William Morley. On 20 April 1843 William's wife Mary filed suit against him for aggravated assault and battery for having struck her and kicked her on the legs and back the previous day.<sup>284</sup> William's son-in-law attested that his mother-in-law had requested he keep guard outside Mary's door, but that William had burst it open and seized Mary. A scuffle ensued, during which William stabbed his son-in-law in the arm and attempted to stab him in the neck, but was prevented from doing so by the prompt intervention of William's fourteen year-old grandson and another neighbour; he then charged William with stabbing with intent to maim.<sup>285</sup> William's grandson and the neighbour likewise charged him with intent to maim.<sup>286</sup>

Children were among the most common witnesses to relationship conflict, but their role in prosecuting such cases was limited by their age, vulnerability, and lack of ready access to the criminal justice system. Still, even minor-aged children played a role in securing "justice in the premises" by summoning the police or neighbours. For example, John Dwyer was prosecuted twice in two months of 1842. In August of that year his wife charged him with assault and uttering threats, alleging that he struck her repeatedly and threatened to murder her, and that he slept with a large knife under his

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<sup>284</sup> A.N.Q.M., QS(F), *Queen v. William Morley* (20 April 1843) (affidavit of Mary Ryan).

<sup>285</sup> A.N.Q.M., QS(F), *ibid.* (20 April 1843) (affidavit of William Goulder).

<sup>286</sup> A.N.Q.M., QS(F), *ibid.* (20 April 1843) (affidavit of David Goulder); *ibid.* (20 April 1843) (affidavit of John Robillard). No record of a final disposition was found.



pillow; he was bound to the peace towards his wife for twelve months.<sup>287</sup> Two months later he was arrested on a complaint for assault and battery filed by a police constable, whose testimony revealed that Dwyer's young son had beckoned him:

[O]n Saturday evening last a child aged about nine years came to the Hay Market Police Station...and informed deponent that one John Dwyer now a prisoner in the Police Station was...severely beating his wife the mother of the child so informing and was in the act of striking her with an ax whereupon deponent went to the residence of the same John Dwyer where he found the wife of the said John Dwyer on the stairs apparently suffering from illtreatment and the said John Dwyer was at the foot of the stairs with an ax in his hand.<sup>288</sup>

The following morning Constable O'Neil returned to the house to see if Dwyer's wife was able to swear out a complaint, but ascertained that she was too weak from her injuries to do so. Her husband was arrested and lodged in jail.<sup>289</sup>

Adult children, with greater physical and other resources, were better able to interpose themselves in domestic altercations or prosecute an abusive parent.<sup>290</sup>

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<sup>287</sup> A.N.Q.M., QS(F), *Queen v. John Dwyer* (10 August 1842) (affidavit of Ellen Reardon); *ibid.*(17 August 1842) (surety).

<sup>288</sup> A.N.Q.M., QS(F), *ibid.*(17 October 1842) (affidavit of James O'Neil).

<sup>289</sup> A.N.Q.M., QS(F), *ibid.*(17 October 1842) (arrest warrant). The arrest warrant read as follows:

Office of the Peace. Charles Wetherall, Esquire, Police Magistrate, and one of the Justices of our Sovereign Lady the Queen, assigned to keep the Peace in the said District, to the keeper of the common goal of the said district, greeting. Whereas, John Dwyer of the Parish of Montreal in the County of Montreal in the said District, labourer stands charged upon oath with having on Saturday evening last at the said parish violently assaulted and beaten his wife Ellen Reardon and threatening to take her life with an axe, These are therefore to Authorize and Command you, to receive into your custody the said John Dwyer and him safely keep, for want of bail. Given under my Hand and Seal, at Montreal, this 17<sup>th</sup> day of October one thousand eight hundred and forty-two in the sixth year of Her Majesty's Reign.

The fact that children tended to develop a closer relationship with their mothers than their fathers might have been a source of tension between spouses, but it also gave abused wives an ally in many cases.<sup>291</sup> In some instances children intervened physically as well as legally. Charles Lusignan prosecuted his father in 1839, alleging that “depuis longtemps son père Hypolite Lusignan est dans l’habitude de s’enivrer et de violemment battre assailli et frapper sa mère...sans aucune causes ou provocation.” Interposing himself between his parents during one of his father’s drunken binges, Hypolite Lusignan redirected his rage towards his adult son.<sup>292</sup> Similarly, Catherine Cary’s adult daughter saved her mother from serious injury by intervening when her father attacked her with a garden hoe.<sup>293</sup>

Perhaps the most telling aspect of intervention in domestic violence is the extent to which non-relatives became involved. Scholars have commonly pointed to the reluctance of neighbours or other third parties to become embroiled in domestic spats.<sup>294</sup> No doubt the reasons underlying the choice of whether to intervene were as varied as

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<sup>290</sup> Compare Peterson del Mar, *supra* note 8 at 40 (stating that “mature children from previous marriages offered wives particularly strong protection.”).

<sup>291</sup> Compare Hammerton, *supra* note 6 at 45-46 (citing “the much closer alliance of wives with their children, who often defended their mothers physically as they grew older,” as a factor leading to spousal battery).

<sup>292</sup> A.N.Q.M., QS(F), *Queen v. Hypolite Lusignan* (17 August 1839) (affidavit of Charles Lusignan).

<sup>293</sup> A.N.Q.M., QS(F), *Dominus Rex v. Daniel Collins* (12 October 1832) (affidavit of Catherine Cary alias Collins).

<sup>294</sup> See *e.g.* Conley, *supra* note 35 at 76; Peterson del Mar, *supra* note 8 at 43; Tomes, *supra* note 7 at 335-336. *Contra* Lepp, *supra* note 31 at 473 & 475 note 83 (stating that most neighbours intervened).

the people themselves. Of all the categories of non-related interveners, neighbors were the most prominent in Montreal of the period, constituting just over five and a half percent of all prosecutors. Neighbours who filed complaints commonly lived in the same house as the couple in question.<sup>295</sup> As such, their willingness to file suit may sometimes have been more reflective of their desire to preserve the tranquility of their surroundings, or the safety of their property, rather than an indication of disapprobation of the acts of violence.<sup>296</sup>

Domestic violence was often characterized as a form of nuisance in complaints, and that label accounts for the number of prosecutions brought under charges of breach of the peace and the like. Such a scenario is illustrated by the affidavit of James Clark, a lemon-syrup manufacturer, who prosecuted two neighbours and tenants, a cutler/whitesmith named William Beers and his wife, for disturbing the peace:

[T]he said William Beers and his said wife do occasionally quarrel with each other, and during such quarrels, make so much noise, of which noise her screams sometimes form parts, as to disturb the peace of this deponent and of his family and of other tenants....And this deponent further saith that, while he was sitting in that part of another building used by deponent as a shop opposite the house occupied by him, on Saturday last at about five of the clock in the afternoon, he overheard a violent noise and quarrel...between the said William Beer and his said wife, and heard the noise of things seemingly thrown downstairs by him at her, and after she went out into the yard of the said house, this deponent heard the noise of things seemingly thrown by the said Beers out of the window of the said house at her, and overheard her daring her said husband to throw any more things at her....And this deponent further saith that the quarrels of the said Beers and his said wife disturb the peace of this deponent and of his family, and of his

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<sup>295</sup> A similar observation was made by Peterson del Mar, *ibid.* at 41.

<sup>296</sup> A similar observation was made in Lepp, *supra* note 31 at 453-454.

other tenants, notwithstanding his remonstrances of the said Beers. Wherefore he has recourse to the Public Justice.<sup>297</sup>

Also typical was the prosecution of James Finlay and his wife for misdemeanor, brought by exasperated neighbours who alleged that the couple was “continually more or less in a state of intoxication and fighting together.” As frustrating as that must have been, the gravamen of the complaint was that the Finlay’s drunken escapades made them “dangerous characters” and led the prosecutors “verily [to] fear that they may whilst in a state of intoxication set fire to the said house, thereby endangering their lives and that of the neighbours...”<sup>298</sup> Seeking the public justice in such instances often had more to do with suppressing a nuisance than it did with saving an abused neighbour from bodily harm.

In other instances, neighbours intervened to protect the abused spouse. For example, on 28 July 1836 in the Township of Granby, Edward Roberts made an unannounced visit to a neighbour named John Grant. Roberts discovered Grant standing in the barn near the prostrate body of his wife, who was covered in blood and sported a badly bruised face. In response to Robert’s query as to what had happened, Grant admitted that he had pummeled his wife. Roberts berated him, telling him that he should be “taken care of for such conduct,” to which Grant replied that he “would whip

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<sup>297</sup> A.N.Q.M., QS(F), *James Clarke v. William Beers and wife* (29 September 1840); *Domina Regina v. William Beers* (29 September 1840) (surety); *Domina Regina v. Margaret Sheridan* (29 September 1840) (surety).

<sup>298</sup> A.N.Q.M., QS(F), *Queen v. James Finlay et al* (16 May 1843) (affidavit of Mary Kelly); *Queen v. Ellen Hamilton* (17 May 1843) (surety); *Queen v. James Finlay* (surety).

him” just as he did his wife. Grant then fetched a musket with which he threatened to take Roberts’ life, prompting Roberts to prosecute him for uttering murderous threats.<sup>299</sup> Another neighbour filed a supporting affidavit, alleging that she had overheard Grant threatening to “thrash” Roberts for his meddling, and that he would “put his hands or fists in [his wife’s] heart’s blood.”<sup>300</sup>

Other neighbours took action not because of concerns about their own safety, but because abused spouses were too intimidated or injured to press charges themselves. In August of 1842 a labourer in the parish of Longue-Isle filed a complaint against a blacksmith named Baptiste Bienvenue on a charge of assault and battery and uttering threats against his wife Lizette Rasico. According to his complaint, Bienvenue’s wife sent for the prosecutor and informed him that she had been severely beaten with a “long piece of plank” and that her husband “had a large table knife with which he threatened to take her life and which she dreads he would do unless he was bound over to keep the peace.” He added that she had previously prosecuted her husband for attempted murder and that “he this deponent makes this deposition at the instance of the said Lizette Rasico who was afraid herself to come forward in dread of her said husband....”<sup>301</sup>

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<sup>299</sup> A.N.Q.M., QS(F), *Dominus Rex v. John Grant* (3 August 1836) (affidavit of Edward Roberts).

<sup>300</sup> A.N.Q.M., QS(F), *ibid.* (31 July 1836) (affidavit of Mary Neal).

<sup>301</sup> A.N.Q.M., QS(F), *Queen v. Baptiste Bienvenue* (19 August 1842) (affidavit of François Duval). The prior charge of attempted murder was not found within the archives. Bienvenue was bound to the peace for twelve months. A.N.Q.M., QS(F), *Domina Regina v. Jean Baptiste de la Bienvenue* (27 October 1842) (surety).

Occasional examples of complaints were found that appear to have been filed contemporaneously with the acts of violence themselves. In one such instance, the private prosecutor alleged that the defendant, a Montreal confectioner, “is now, in the deponent’s house in the act of beating his wife to a degree alarming to him this deponent, and to the neighbors gathered about the door, and he believes that the said John Cosgrove if not arrested, may be guilty of the Murder of his said Wife.”<sup>302</sup> This affidavit is evocative in its depiction of neighbours crowded outside the door, illustrating that intervention had its limits--there is no indication that the other neighbours made any effort to enter the house or otherwise intercede. Perhaps they were unable to force entrance, or were too cowed to intervene.

Conversely, many neighbours did little more than crowd around an offender, even when they enjoyed numerical superiority over the perpetrator(s). Julie Palosse, who had moved in with her mother to avoid her abusive husband, learned a similar lesson first-hand in June of 1829. Her drunken husband accosted her at her mother’s house, and proceeded to brutalize her and throw her personal effects outside onto the ground. A crowd of people soon gathered to witness that highly public display of violence, but there is no indication that they attempted to intervene or even summon the

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<sup>302</sup> A.N.Q.M., QS(F), *John Nettles v. John Cooper* (10 September 1832) (affidavit of John Nettles). The affidavit identified the defendant as John Cosgrove rather than Cooper, illustrating one of the attendant difficulties in working with those sources.

Watch.<sup>303</sup> Another wife was assaulted in a neighbour's house in full view of her neighbours, but they failed to take action.<sup>304</sup>

Affidavits contain the occasional example of intervention on the part of passers-by. One wife, charging her husband with assault to intent to commit murder, attested that her husband "would have taken the life of this Deponent were it not for two men in the street who prevented him."<sup>305</sup> Another defendant was prosecuted by a blacksmith who happened upon a spousal assault in the street; the blacksmith apprehended the assailant and took him to the Peace Office, where he was arrested and lodged in jail.<sup>306</sup> In one of the most interesting examples, a tinsmith making a social call on a parish priest encountered the wife of a live-in domestic servant lying unconscious on the floor as the result of his violence. He prosecuted the servant for assault with intent to murder, and the physician called to attend to her attached a corroborating letter.<sup>307</sup>

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<sup>303</sup> A.N.Q.M., QS(F), *Dominus Rex v. François Leduc* (1 June 1829) (affidavit of Julie Palosse).

<sup>304</sup> A.N.Q.M., QS(F), *Dominus Rex v. Pierre Deschamps dit Hunault* (10 August 1829) (affidavit of Marie Louise Charbouneau).

<sup>305</sup> A.N.Q.M., QS(F), *Domina Regina v. Thomas Donnavan* (30 August 1837) (affidavit of Ann Campbell); *Domina Regina v. Thomas Dunnavan* (6 September 1837) (surety).

<sup>306</sup> A.N.Q.M., QS(F), *Dominus Rex v. Alexander McGarry* (28 August 1832) (affidavit of Richard Lee).

<sup>307</sup> A.N.Q.M., QS(F), *Queen v. Charles Webb* (17 May 1843) (affidavit of James Campbell). An attached note, signed W. Hall and dated the same day, stated as follows: Dear Sir: Mary Webb, though better than [when] she was sent to the hospital, must still be regarded in a precarious state; the injuries on her person, being I have not the least doubt, the result of personal violence; I conceive (?) that her husband should be arrested, pending at least the issue of the present situation of his wife.

Members of law enforcement, namely the Watch and the Montreal Police Force, also played a part in the suppression and prosecution of domestic violence. The Montreal Watch, a civilian police force in operation from 1832 to 1837, numbered only twenty-eight men at the end of its tenure.<sup>308</sup> While members of the Watch arrested malefactors when summoned to do so or when they happened on a crime in progress, they appeared only sporadically in prosecutions for domestic violence. In 1838 the Montreal Police Force was created, which originally numbered one hundred and two men with four mounted patrols (although subsequent budget cuts would greatly reduce that number), supplemented by a rural police force outside the city limits.<sup>309</sup>

However ineffective it must have been, the police force nevertheless became another visible organ of state control, and it was to play a small but growing role in the suppression of family violence.<sup>310</sup> Indeed, as one scholar has noted, “police inserted themselves into the well-established system of private prosecution, flourishing alongside it for decades.”<sup>311</sup> As an adjunct to the prosecutorial function of the courts, the

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<sup>308</sup> See generally Hereward Senior, *Constabulary: The Rise of Police Institutions in Britain, the Commonwealth and the United States* (Dundurn Press: Toronto, 1997) 64. For further discussion of the rise of the Montreal police force, see generally Allan Greer, “The Birth of the Police in Lower Canada” in Allan Greer & Ian Radforth, eds., *Colonial Leviathan: State Formation in Mid-Nineteenth-Century Canada* (Toronto: Toronto University Press, 1992) 17. For the Montreal Watch, see generally E.-Z. Massicotte, “Le guet à Montréal au XIXe siècle” (1930) 36 *Bulletin des recherches historiques* 68.

<sup>309</sup> See generally Senior, *ibid.* at 67.

<sup>310</sup> Its limited efficiency in the early years could not have been much greater in subsequent decades. In 1875 Montreal possessed only thirty-eight policemen for a city of 160,000. See Harvey, *supra* note 3 at 135.

<sup>311</sup> Steinberg, *supra* note 16 at 25.



police force patrolled the streets and manned Peace Offices in major areas of the city. Playing a multifarious role in the suppression of crime and disorder, they were most visible in the suppression of public acts such as breach of the peace, vagrancy, and public drunkenness.<sup>312</sup> In many instances they also happened upon, or were called to, an altercation in progress and must have proven a much more effective institution of policing than the Montreal Watch had ever been.<sup>313</sup>

Besides being prepared and empowered to intervene in cases of criminality, police officers had an obvious role to play in a system of criminal justice based on private prosecution. That dual-faceted role was to have important repercussions, particularly given the reluctance of bystanders to involve themselves in domestic disputes. The experience of James Millard, a member of the fledgling City Police in 1839, was typical. Millard had responded to the sounds of a public disturbance and found a crowd gathered on the street. Several persons present notified him that they had heard sounds of violence emanating from a nearby house. Entering the building, Millard saw the defendant cruelly beating his son, with his badly-bruised wife lying nearby on a bed. The wife informed Millard that her husband had struck her with a hatchet “thereby

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<sup>312</sup> See generally *ibid.* at 29.

<sup>313</sup> In discussing the utility of the police in suppressing domestic violence in Montreal later in the century, Harvey, *supra* note 3 at 135, stated that the chance of police intervention was remote, particularly during the winter. She further noted that:

Often the law would be summoned by a relative or neighbour, but by the time help arrived the ‘row’ was over....If a husband was also found to be drunk and/or disturbing the peace, he was arrested and charged accordingly, but the original reason for which the police had been summoned went unpunished.

causing a bad wound upon her body.” Millard took the defendant into custody and requested the wife appear at the Police Office and give evidence against her husband, which she assured him she would if she should recover sufficiently.<sup>314</sup>

Intervention was not without attendant risks. Then, as now, responding to a domestic incident was a dangerous undertaking, as a violent husband seldom showed reluctance to use force against a third party. Moreover, despite their violent disagreements, some couples resented intrusions in what they deemed to be personal squabbles. Intervention could prompt spouses to close ranks against police and prosecutors and defend themselves against the law’s incursion. The prospect of becoming a victim oneself presumably dissuaded many neighbours and others from interference, and police officers must have been acutely aware that a badge provided little insulation from further violence.<sup>315</sup> In 1839 Sarah Blessing was prosecuted for aggravated assault and battery against her husband, after police officers responded to a domestic dispute on Wellington Street. When the three police constables arrived at the home of John Flinn, they found neighbours crying “murder” and the front door bolted. Entering through a back door, they found Flinn lying on the floor, incapacitated by a severe blow to the head inflicted by his wife. She immediately directed her rage at the

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<sup>314</sup> A.N.Q.M., QS(F), *Domina Regina v. Barney Seery* (19 November 1839) (affidavit of James Millard).

<sup>315</sup> For examples of violent reactions to domestic abuse interventions, see *e.g.*, Lepp, *supra* note 31 at 475-477.

police officers, who subdued her with some difficulty and took her to the Peace Office.<sup>316</sup>

In most such instances, however, the arresting officer charged the violent spouse with assaulting him, rather than with the original act of spousal violence that triggered the police response. The relative absence of firearms prevented those encounters from having lethal consequences, but the number of prosecutions for assaulting an arresting officer attests to the fact that intercession was hardly risk-free. Constable Charles Labadie encountered Stephen Duffy on St. Joseph Street with his hands wrapped around his wife's neck, while his terrified wife cried out "are you going to murder me?" As Constable Labadie ordered Duffy to release his wife, Duffy knocked him to the ground before the Constable regained the upper hand. Duffy was indicted for "assaulting a constable in the execution of his duty."<sup>317</sup> Another constable, while walking his beat, saw a husband beating his wife inside their house. Entering the dwelling, the constable was attacked by the husband who attempted to knife him.<sup>318</sup>

Not all mutual cooperation was characterized by physical opposition. When a policeman was called to the residence of Peter Brice and Margaret Ferguson on the rue St. Marie by cries of "murder!", he found Ferguson covered in blood and her husband in

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<sup>316</sup> A.N.Q.M., QS(F), *Queen v. Sarah Blessing* (2 March 1839) (affidavit of Jean Baptiste Savoy); *ibid.* (2 March 1839) (affidavit of Pierre Poitras). She was bound to keep the peace towards her husband for six months. QS(F), *ibid.* (2 March 1839) (surety).

<sup>317</sup> A.N.Q.M., QS(F), *Queen v. Stephen Duffy* (26 April 1839) (affidavit of Charles Labadie); *ibid.* (30 April 1839) (indictment).

<sup>318</sup> A.N.Q.M., QS(F), *Queen v. Francis Timmons* (8 October 1838) (affidavit of Constable Abner Lambert).

the other room, undressed and making a row. Following their arrest, Brice acted as one of his wife's co-sureties after both were bound to the peace.<sup>319</sup> Through a variety of means, some spouses resisted the law's intrusion as they believed violence remained an issue best kept within the family premises.

Related to the institution of the Montreal Police Force was the Police Court, presided over by a Police Magistrate. The majority of offenses fell under the jurisdiction of the Court of Quarter Sessions, or of the justices of the Court sitting singly in summary jurisdiction. Justices of the Peace outside the city heard a small number of domestic abuse cases, as well, although many defendants who appeared before them were bound over for trial before the Court of Quarter Sessions in Montreal. While the surviving records possess too many lacunae to allow for a comprehensive analysis of the dispositions of cases heard before those respective courts, the records for the Police Court are much more complete, albeit only for June 1838 to December 1841.<sup>320</sup>

Figure 9 sets out the disposition of cases summarily heard before the Police Court. Those cases, fifty-six in total, represent slightly less than ten percent of all spousal violence complaints found for the period. The most common disposition was that the defendant was "admonished and discharged," occurring in sixty-four percent of the cases before that Court. What is more striking, however, is that this disposition replaced

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<sup>319</sup> A.N.Q.M., QS(F), *Queen v. Peter Brice & Margaret Ferguson* (8 June 1840) (affidavit of Theophile Martineau); *Domina Regina v. Jane Ferguson* (16 June 184) (surety); *Domina Regina v. Peter Brice* (23 June 1840) (surety).

<sup>320</sup> For accounts of nineteenth century Police Courts, see generally Craven, *supra* note 299; Arthur Noyes, *Selections From the Court Reports Originally Published in the Boston Morning Post, From 1834 to 1837* (Boston: Otis Broaders & Company, 1837).

alternative judgments, particularly in 1839 and 1840. Prior to that time, a considerable number of defendants were required to enter into sureties to keep the peace, usually for the period of one year. William Welsh was admonished and discharged for beating his wife on 23 August 1838.<sup>321</sup> When prosecuted a little more than a week later on the same

*Proceedings before The Police Court  
for Spousal Assault and Related Offenses,  
June 1838-December 1841*

Year Comm.	Disc.	Settle Imprisoned	Discharged at Pros.'s Request	Comm . for Lack of Bail	Bound to Peace	Admonish & Discharge	for Trial	
1838 n=15	1	2	2*	6	3	-	-	-
1839 n=12	-	-	-	-	11	-	1	-
1840 n=20	-	-	1	-	18	1	-	-
1841 n=9	-	1	-	1	4	1	1	1 (2 months)
TOTAL n=56	1	3	3	7	36	2	2	1
%	1.8%	5.4%	5.4%	12.5%	64.3%	3.6%	3.6%	1.8%

\* defendant committed but later bound to the peace

*Figure 9.*

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<sup>321</sup> A.N.Q.M., MP p.78, *Queen v. William Welsh* (23 August 1838).

charge, Welsh was “admitted to bail to keep the peace during twelve months.”<sup>322</sup>

Another defendant was likewise bound to the peace for one year after “having admitted the fact” of beating his wife the previous evening when arrested by the Watch.<sup>323</sup>

Nearly five and half percent of those cases before the Police Court resulted in discharge of the abusive spouse at the prosecuting spouse’s request.<sup>324</sup> Imprisonment for spousal violence occurred with considerable regularity although not, apparently, before the Police Court. In 1841 a spouse was arrested on a warrant for having assaulted and threatened his wife and was sentenced to two months in the House of Corrections by the Police Magistrate, but that outcome was the exception in cases heard before that Court.<sup>325</sup> Most commonly, in 5.4% of cases, defendants were committed in lieu of posting bail.<sup>326</sup> In two other instances, they were committed to stand trial at the Court of

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<sup>322</sup> A.N.Q.M., MP p.91, *ibid.* (2 September 1838).

<sup>323</sup> A.N.Q.M., MP p.8, *Queen v. John Flinn* (3 July 1838).

<sup>324</sup> See *e.g.* A.N.Q.M., PC(R) p.78, *Queen v. François Croustière* (22 August 1838) (“The prisoner being Committed on Charge of Assault and Battery discharged at the request of his wife Scholastique Moyer.”).

<sup>325</sup> A.N.Q.M., MP p.424, *Domina Regina v. Guillaume Falere* (30 December 1841).

<sup>326</sup> One defendant was first committed, but bound to the peace four days later after providing surety. A.N.Q.M., MP p. 45, *Queen v. Thomas Ollive* (“A Warrant of Arrest granted...on charge of Threatening to kill his wife with a Knife the prisoner was arrested and Committed for want of Bail.”); MP p. 54, *ibid.* (“The prisoner was discharge[d] from Gaol and admitted to Bail to Keep the Peace.”).

Quarter Sessions. One of those cases involved a charge of assault with intent to murder, while the other was likely an aggravated assault and battery case.<sup>327</sup>

Little effort was apparently made to encourage settlement of cases before Police Magistrates, if the extremely low formal settlement rate is any gauge--although the rate of informal settlements is unknowable. That is not wholly surprising given the benign nature of most of the dispositions, insofar as most defendants were merely admonished. In the absence of a more punitive approach, there was little incentive for parties to settle formally. The sole exception was for a defendant that was “[f]ound intoxicated and illtreating his wife” in 1838.<sup>328</sup> In their discretion to rule summarily on evidence presented before them, Police Magistrates also dismissed three cases for lack of evidence. One husband was arrested in January of 1841 on an affidavit filed by his wife on a charge of assault and battery, but he was discharged soon afterwards.<sup>329</sup> Despite the low level of formal settlements, it is likely that this Court saw its role as one of conciliation. As mentioned, settlements were not necessary if Police Magistrates scolded abusive spouses and then released them. Similar observations about such courts of

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<sup>327</sup> A.N.Q.M., MP p.68, *Domina Regina v. Augustin Boucher* (“A warrant of arrest was granted on the affidavit of Narcisse Boucher on charge of an assault with intent to Murder[;] The Defendant was arrested and Committed for trial.”) (28 February 1840); MP p.424, *Domina Regina v. Peter Kelly* (“warrant for assault and battery upon affidavit of Susan Kelly; bound to Quarter Sessions.”) (30 December 1841).

<sup>328</sup> A.N.Q.M., MP p.60, *Queen v. Joseph Kinslar* (9 August 1838).

<sup>329</sup> A.N.Q.M., MP p.72, *Domina Regina v. Francis M. Lynch* (noting that “after Examination case discharged.”).

summary conviction in other jurisdictions have been made, positing that they tended to act as “marriage menders” in the context of domestic violence.<sup>330</sup>

By the late-1840s the proceedings of the Police Court were covered sporadically in local newspapers, resulting in heightened public visibility of those social issues. Prior to that time, only the very occasional reference, involving a case that resulted in severe injury, found its way into Montreal papers.<sup>331</sup> The following account of Police Court proceedings, which appeared in the *Montreal Transcript* of 1849, is typical:

Police Court 11/17: Edward Griffin, drunk and threatening his wife, was in default of bail committed until Quarter Sessions; warrants were issued to arrest Michael Higgins and Thomas Speer on the complaint of their wives, for aggravated assaults, to be tried summarily. Both parties were arrested during the day, and Speer fined five pounds and costs, or two months in the House of Correction. Higgins’ trial was postponed until Monday.<sup>332</sup>

Those accounts do not appear with sufficient regularity to warrant reconstruction cases before the Police Court for later years. However, as the relevant judicial records have not survived past 1842, newspaper accounts provide valuable insight into the

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<sup>330</sup> Compare Lepp, *supra* note 31 at 514. See also Hammerton, *supra* note 6 at 39:

A scrutiny of the legal process in magistrates’ courts, where most of the convictions took place, gives some pointers to the difficulties involved in undue reliance on their records. Records of convictions, recording a genuine decline in violent assaults, still cannot be taken to reflect the true level of behaviour, for the simple reason that during the period of statistical decline these courts increasingly became courts of conciliation as well as summary conviction....

<sup>331</sup> As reported by Glenn, *supra* note 574 at 64-65, American newspapers of the 1860s “regularly reported violent family quarrels which resulted in the serious injury or death of the wife.”

<sup>332</sup> *The Pilot* (20 November 1849). See also *The Montreal Transcript* (22 November 1849). For another such account in which a husband was fined five pounds or two months’ imprisonment for kicking his wife unconscious, see *The Montreal Gazette* (18 June 1847).



workings of that Court of summary jurisdiction. The most striking distinction is that, in later years, the Court appears to have regularly levied fines for assaults against spouses. By way of further example, in December of 1850 another husband was fined ten shillings and costs of six shillings and threepence for having assaulted his wife and threatened to take her life while in a state of intoxication. Failure to pay the fine and costs rendered him subject to two months' imprisonment in the House of Correction.<sup>333</sup>

As indicated by *Figure 9*, the levying of fines is a disposition that is entirely lacking in the records of the Police Court for the years 1838 to 1842.<sup>334</sup> The reasons underlying that dichotomy are unknown, but it may have reflected a change in prosecutorial philosophy marked by the belief that fines offered greater dissuasion, with the added benefit of augmenting Crown coffers. No evidence was found of an alteration in statutory authority for Police Magistrates during the period that would provide an explanation for that change. It would be too much to say, however, that the Police Court's approach towards domestic violence had evolved from a mediation-orientated approach to a more punitive one over the span of a few decades. Clearly Quebec courts continued to favour reconciliation over punishment for a long time to come.<sup>335</sup>

#### IV.

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<sup>333</sup> *The Montreal Gazette* (16 December 1850).

<sup>334</sup> Harvey has noted that in her study of Montreal between 1869 and 1879, most committed husbands were fined and made to pay court costs. See *Harvey, Wife Battery, supra* note 589 at 137.

<sup>335</sup> Compare *ibid.* at 137-138.

Analysis of the mechanisms by which the law dealt with domestic battery illuminates the nature of the judicial response to it, but does not reveal a great deal about the causes and dynamics of spousal violence. Unlike other studies of later periods that provide comprehensive information of that type, the available sources for the period do not readily offer such information. Most often the prosecuting spouse merely alleged instances of unprovoked violence, and the aggressor spouse's vantage point was not normally recorded. In view of the much smaller numbers of complaints filed by husbands alleging spousal violence, it is even more difficult to ascertain the circumstances underlying attacks by wives. And, as has been noted elsewhere in this thesis, defendants did not testify in their own behalf, further limiting sources of information. There is also a danger in compiling unitary motivations that appear within the sources, as to do so runs the risk of offering facile explanations for the occurrence of violence in what were complex human relationships.

Despite those limitations, the sheer volume of cases allows one to reclaim some useful detail about the factors that precipitated domestic violence. Most striking is the continuity in themes, tensions, and dynamics between those cases and the modern experience.<sup>336</sup> First, the complaints illustrate the ubiquity of alcohol abuse in cases of domestic violence. References to the companionate nature between the two are widespread in the judicial archives, although that connection was only sporadically

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<sup>336</sup> Compare Buckley, *supra* note 593 at 173-174. As Buckley observed, “[n]o doubt the reasons underlying many cases of domestic violence were complex phenomena,” although in many instances the abusive husband “lacked the requisite social, economic, or personal assets” required to maintain control over the household. *Ibid.* at 164.

noted in the popular press. While discourses against the evils of intemperance were common, and emotive accounts of the misery that reigned in the alcoholic's household appeared in newspapers of-the-time, editorials condemning family violence in any form were rare. Indeed, the "drunken husband" article that introduced this chapter skirted the issue of spousal cruelty.<sup>337</sup> While the issue of spousal battery was more visible in the pages of the popular press than was child abuse, for instance, it surfaced infrequently and usually only when death resulted. An unusual episode of spousal cruelty that appeared within *The Canadian Courant* of 1825 offered the following account:

Disgraceful--On Wednesday night...a Gentleman in returning to his lodgings...was surprised on meeting near the National School, a naked woman, with her arms pinioned, and strongly tied behind by a cord, looped, and bound in numerous folds. She begged him to unbind her, and assured him (in answer to some questions) that she was a married woman, the mother of six children, and that she was placed in the disgusting situation he then beheld her by her--husband!--The Gentleman...with much difficulty untied the cord and she conducted him to the place whence she had been driven by her unfeeling and savage husband, who was surprised at her return, and with many imprecations demanded how and by whom she had been released. The humane deliverer of this captive matron did not want for further explanation, as on being satisfied with the correctness of her story, he retired to his quarters.<sup>338</sup>

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<sup>337</sup> No articles were found that explicitly made that connection. Typically, such accounts contain ambiguous references like those found in "The Drunkard's Last Spree," *The Montreal Transcript* (29 October 1839), which noted without further elaboration that the "wretched being before her had neglected, and injured, and reduced her to beggary...."

<sup>338</sup> *The Canadian Courant* (12 November 1825). The account concluded by asking whether that incident was worthy of police attention and that, if so, the paper had "the authority of our informant to state his name, and to say that any information he can afford will be cheerfully given." It is worth noting that this account is as illuminating for the gentleman's reaction as for the incident itself. The woman's deliverer first insisted on posing questions to ascertain her background and the circumstances of her predicament before releasing her.

The air of complacency that surrounded the issues of domestic violence and alcoholism is illustrated by an 1836 issue of a Montreal newspaper that contained the following jest: “[w]hy is an intemperate man like a person in the habit of beating his wife? Because he is given to liquor (lick her).”<sup>339</sup> When viewed in the context of spousal violence, that joke possesses a resonance beyond its original meaning. There is little doubt that during the period such quips were more likely to label the speaker a clever wit than an unfeeling chauvinist. Viewed more presentistically, however, such a quip unintentionally alludes to the well-chronicled historic relationship between domestic abuse and alcohol abuse.<sup>340</sup> Alcohol consumption was probably a factor in a number of cases where it was not explicitly mentioned, and it was not coincidental that incidents of wife battery documented in those affidavits often occurred on weekends, probably following outings to the local pub. Those types of *bon mots* also unconsciously reflect the realities of-the-time: in the mid-nineteenth century, the issue of wife battery “was discussed in tones both jocose and solemn, uneasy and outraged.”<sup>341</sup> As Frances Power Cobbe was to observe:

[discussions of wife assaults are] surrounded by a certain halo of jocosity which inclines people to smile whenever they hear of a case of it (terminating anywhere short of actual murder), and causes the mention of the subject to conduce rather than otherwise to the hilarity of a dinner party.<sup>342</sup>

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<sup>339</sup> *The Montreal Transcript* (13 October 1836).

<sup>340</sup> See generally Harvey, *Wife Battery*, *supra* note 589 at 129; Lepp, *supra* note 31 at 451-454.

<sup>341</sup> Siegel, *supra* note 544 at 2122.

<sup>342</sup> Cobbe, *supra* note 539 at 57.

Indeed, the temperance movement itself did not begin in earnest in Lower Canada until the 1840s, and the movement against domestic violence remained decades away.<sup>343</sup>

Scholars have routinely pointed to the central role of drunkenness in cases of nineteenth century domestic abuse.<sup>344</sup> In fact, 'drunkenness' was often used as a code word for spousal violence, especially later in the century.<sup>345</sup> Alcohol abuse was one of main causes of wife-beating posited by Frances Power Cobbe, the noted women's rights crusader, along with other factors including poverty, disease and overcrowding, coupled with the basic premise that women were subordinate to men.<sup>346</sup>

No doubt "tavern culture" also played a part, in which men shared complaints about their wives and were goaded on by drinking companions to put their wives in their places when they returned home.<sup>347</sup> Many Montreal families were marred by alcoholism, and one cannot help but commiserate with the plight of wives who faced a chronically-drunk and abusive husband. Ann Quickly, charging her husband with

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<sup>343</sup> See generally Jan Noel, "Dry Patriotism: The Chiniquy Crusade" in Cheryl Krasnick Warsh, ed., *Drink in Canada: Historical Essays* (Montreal: McGill-Queen's Press, 1993) 27.

<sup>344</sup> See e.g. Tomes, *supra* note 7 at 332-333; Glenn, *supra* note 574 at 64-65. See also Buckley, *supra* note 593. That remains the case today. See Frieze & Browne, *supra* note 655 at 192-196.

<sup>345</sup> See generally Harvey, *Wife Battery*, *supra* note 589 at 135.

<sup>346</sup> See Cobbe, *supra* note 539 at 61-66.

<sup>347</sup> See generally Pleck, *supra* note 316 at 50; Harvey, *Wife Battery*, *supra* note 589 at 131. For discussion of tavern culture, see Peter DeLottinville, "Joe Beef of Montreal: Working-Class Culture and the Tavern, 1869-1889" (1981-1982) 8/9 *Labour/Le travailleur* 16.

aggravated assault, alleged that her husband had been “under the effect of liquor” for the past nine days and is “of a most violent and ungovernable disposition.”<sup>348</sup> David Pellerin was described by his wife as “un caractère sauvage et mechant...adonné à la boisson, et est capable de se porter à toutes sortes d’excès.”<sup>349</sup> Charles Jackson, whose wife described him as a “habitual and abandoned drunkard lost to all sense of propriety,” has a great deal of company in the judicial archives.<sup>350</sup>

Another feature worthy of note is the frequency with which wives attested to their husbands being mild-mannered except when drunk.<sup>351</sup> That observation would have been of little consolation to wives whose husbands went on frequent binges. Implicit in such observations, however, is the notion that those husbands were not wholly responsible for their actions.<sup>352</sup> These remarks would appear to suggest that many wives believed their spouse to be a good husband except when drunk and abusive, rather than to say that he was not a good husband *because* he was drunk and abusive. It might also have delineated the boundaries of acceptable behaviour in the

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<sup>348</sup> A.N.Q.M., QS(F), *Domina Regina v. Francis Beatty* (17 December 1839) (affidavit of Ann Quickly).

<sup>349</sup> A.N.Q.M., QS(F), *Marie Anne Landrie v. David Pellerin* (21 February 1831) (affidavit of Marie Anne Landrie); QS(F), *ibid.* (22 February 1831) (surety).

<sup>350</sup> A.N.Q.M., QS(F), *Queen v. Charles Jackson* (11 January 1841); *Domina Regina v. Charles Jackson* (27 January 1841) (surety).

<sup>351</sup> Compare Harvey, *Wife Battery*, *supra* note 589 at 132; Hammerton, *supra* note 6 at 45.

<sup>352</sup> Peterson del Mar, *supra* note 8 at 25, noted that husbands often blamed their violence on intoxication or ungovernable tempers.

minds of many wives: deliberate violence inflicted when sober was more abhorrent to wives than violence inflicted when under the influence of drink.<sup>353</sup>

The overuse of intoxicating liquors was a more complex phenomenon in that context than might be readily apparent. The cause-and-effect relationship between violence and alcoholism was not necessarily as clear-cut as contemporary references suggest. Abusive spouses certainly viewed drunkenness as a justification for their violence.<sup>354</sup> There were legal consequences to such attitudes, as well, for drunkenness was often viewed as a mitigating factor in serious domestic assaults by judges and jurors, even in assaults that had lethal consequences. Drunkenness lessened the culpability of a murderous spouse, and drunkenness on the part of the victim could be viewed as a provocation.<sup>355</sup> Wives' drunkenness was much less tolerated than that of husbands, and their transgressions warranted harsher penalties than those meted out to husbands.<sup>356</sup> However, it is likely in many cases that alcohol only served to exacerbate already existing violent impulses, as alcohol decreased inhibitions.<sup>357</sup>

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<sup>353</sup> See Hammerton, *supra* note 6 at 45.

<sup>354</sup> See generally Harvey, *Wife Battery*, *supra* note 589 at 131.

<sup>355</sup> As discussed in Chapter IV, *infra* at 409. That remains true in the context of contemporary domestic violence. See Frieze & Browne, *supra* note 655 at 192.

<sup>356</sup> Compare Cobbe, *supra* note 539 at 63 & 69; Hammerton, *supra* note 6 at 47. Taylor, *supra* note 36 at 59, emphasized that drunken mothers were seen as worse, because they would beget a new generation of inebriates.

<sup>357</sup> Compare Buckley, *supra* note 593 at 175. Frieze & Browne, *supra* note 655 at 195, have noted that alcohol abuse might be more of a disinhibiting factor than a causal one in the context of domestic violence.

Overuse of intoxicating liquor was hardly unique to men, and studies have shown that the *per capita* consumption of hard liquor was staggeringly high during much of the nineteenth century.<sup>358</sup> Women had less ready access to spirits, and probably drank less than men.<sup>359</sup> However, they too became violent during alcoholic binges. One husband, a shoemaker by trade, sought legal redress against his alcoholic wife on at least three occasions. In July of 1835 he alleged that for the previous two months he had been struck by his wife, Ann Farmer, on several occasions while she was in a state of drunkenness, and that three days earlier she had attempted to strike him with a fire shovel while threatening to murder him.<sup>360</sup> He again sought “justice in the premises” against her the following year on a charge of assault with intent to murder, alleging continuing drunken attacks, although the gravamen of his complaint was that she had attempted to kill their foster daughter with a piece of iron.<sup>361</sup>

While no other complaints related to that couple were found, the records of the Montreal Gaol reveal that Farmer was arrested on 19 July 1838 based on her husband’s assertions that she had again threatened his life.<sup>362</sup> Mary Ann Whittiker was charged with attempting to take the life of her husband with a razor; he alleged that she was a

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<sup>358</sup> See *supra* note 879 at 320.

<sup>359</sup> See generally Harvey, *Wife Battery*, *supra* note 589 at 132.

<sup>360</sup> A.N.Q.M., QS(F), *Dominus Rex v. Ann Farmer* (29 July 1835) (affidavit of William Lilly). She was bound to the peace for six months. QS(F), *ibid.* (11 August 1835) (surety).

<sup>361</sup> *Dominus Rex v. Ann Farmer*, *supra* note 438.

<sup>362</sup> A.N.Q.M., MG p.27, *The Queen v. Ann Farmer* (19 July 1838) (record of committal). According to the notation, she was bound to the peace for twelve months.



long-time alcoholic and “when in that state commits all kind of excesses...whereby [he] stands in bodily fear of her.”<sup>363</sup> All in all, roughly one in three complaints against husbands or wives alleged alcohol abuse.<sup>364</sup>

A husband’s unemployment or non-support has often been cited as a causal factor in domestic assaults.<sup>365</sup> Even when not explicit, many of the labourers who appeared in those records had to have struggled with the seasonal character and high unemployment rates endemic to non-skilled labour. Surviving accounts indicate that some wives grappled with abusive, alcoholic husbands who failed to support the family and whose actions must have placed an immense strain--psychological, emotional, physical, and financial--on their spouses.<sup>366</sup> Ann Green had been married to her tailor husband for six months in July 1843, and was already five months pregnant. As she asserted in her complaint charging him with assault and threats:

[He] does not work at his trade and remains idle being supported by the deponent’s industry who peddles goods in the said city....her husband is in the daily habit of beating and maltreating the deponent when she returns home at night without the slightest cause whatsoever on her part. That on Saturday night

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<sup>363</sup> A.N.Q.M., QS(F), *Samuel Millard v. Mary Ann Whittiker* (9 October 1837) (affidavit of Samuel Millard).

<sup>364</sup> References to alcohol abuse were found in 171 out of 571 (or thirty percent) of complaints by wives against husbands; twenty-four out of eighty-four complaints (28.6%) against wives. That figure is likely low, as some affidavits against recidivist defendants specified alcohol abuse, while other affidavits against the same defendants did not. Lepp cited sixty-five percent of complaints as alleging drunkenness in his study. See Lepp, *supra* note 31 at 480.

<sup>365</sup> See *e.g.* Ross, *supra* note 616 at 581 (“A husband’s unemployment thus generated almost intolerable domestic tensions, and seems a factor in a large minority of the Old Bailey assault or murder cases.”). See also Lepp, *ibid.* at 486-487.

<sup>366</sup> See Cobbe, *supra* note 539 at 70.

last...her said husband after returning from market with Deponent, without any reason whatsoever, bolted and closed the door of the House and took a knife with which he threatened the life of deponent. That he then broke open the deponent's chest and took from it a dollar (the deponent's earnings) which the Deponent had put by to pay her rent. That the deponent had to call the aid of the Police who apprehended her said husband. That [her husband] has further threatened the deponent that when he regained his liberty he would kill the deponent. That the deponent is fearful that her said husband may put his threats to execution-- wherefore the deponent prays for justice and that her said husband may be held to keep the peace. <sup>367</sup>

Other husbands abandoned their families for years, surfacing on occasion seemingly for the purpose of terrorizing their wives.<sup>368</sup> Less extreme examples than a husband's failure to provide for his family also involved domestic violence, as tensions over the family purse have been a commonly cited trigger for such pathological acts.<sup>369</sup> Research on other nineteenth century jurisdictions has shown that violence often erupted when a husband returned home after having spent much of his weekly wage, usually on drink.<sup>370</sup> Indeed, the pressures that alcohol consumption put on a family budget would have made issues related to alcoholism and the family economy inseparable.<sup>371</sup> Alcoholic spouses also routinely pawned household items to pay for

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<sup>367</sup> A.N.Q.M., QS(F), *Queen v. James Head* (31 July 1843) (affidavit of Ann Green).

<sup>368</sup> See e.g. A.N.Q.M., QS(F), *Queen v. Joseph Ray* (16 July 1839) (affidavit of Sophia Rowen); *Domina Regina v. Joseph Ray* (19 July 1839) (recognizance).

<sup>369</sup> Compare Tomes, *supra* note 7 at 331-332; Lepp, *supra* note 31 at 481.

<sup>370</sup> Compare Ross, *supra* note 616 at 582; Pleck, *supra* note 316 at 50; Harvey, *Wife Battery*, *supra* note 589 at 129; Hammerton, *supra* note 6 at 45; Cobbe, *supra* note 539 at 69.

<sup>371</sup> See generally Harvey, *ibid.* at 132.

drink,<sup>372</sup> while other spouses resorted to the pawning or selling of property as a survival strategy to prevent the family from starving.<sup>373</sup> Husbands frequently cajoled, extorted, threatened or even stole money from their wives, particularly when separated. Joseph Maçon, gentleman, witnessed the victimization of one wife after her husband accosted her on the street and demanded a half dollar, but was rebuffed.<sup>374</sup>

Husbands also viewed the contesting of their authority, in whatever form, as an egregious provocation.<sup>375</sup> Violence erupted not only because husbands attempted to bolster their authority, but also because wives resisted that authority.<sup>376</sup> William Lee, charged with misdemeanor in 1839, was angered that his wife had hidden his gunpowder.<sup>377</sup> Another husband, likewise charged with misdemeanor, admitted to having beaten his wife but alleged that she had struck him first.<sup>378</sup> A notary brutalized his wife and then threw her out of the house, swearing that she would never enter their house again nor ever see their ten month-old daughter; his sole complaint against his

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<sup>372</sup> Compare Tomes, *supra* note 7 at 331.

<sup>373</sup> Compare Hammerton, *supra* note 6 at 45.

<sup>374</sup> A.N.Q.M., QS(F), *Queen v. Thomas McQuillin* (6 December 1837) (affidavit of Joseph Maçon).

<sup>375</sup> See generally Peterson del Mar, *supra* note 8 at 29; Lepp, *supra* note 31 at 508-509.

<sup>376</sup> Compare Peterson del Mar, *ibid.* at 31.

<sup>377</sup> A.N.Q.M., QS(F), *Queen v. William Lee* (19 September 1839) (affidavit of Esther Baker); *ibid.* (20 September 1839) (surety); MG (William Lee committed 19 September 1839; bailed 24 September 1839).

<sup>378</sup> A.N.Q.M., QS(F), *Domina Regina v. Patrick Lynch* (17 April 1840) (affidavit of Captain William Brown).

wife was that she “was cross and on one occasion had called him a pig.”<sup>379</sup> Failing to secure her husband’s consent before pursuing a desired course of action or activity could also lead to a violent response, as independence was a *de facto* challenge to a husband’s supremacy.<sup>380</sup> Husbands often alleged that they were provoked by aggravating behaviour, such as scolding and criticism.<sup>381</sup>

Failure to fulfill one’s responsibilities was a common source of tension in relationships, and wives’ alleged lapses in their domestic responsibilities were a commonly cited provocation by husbands.<sup>382</sup> The failure of a wife to mend clothing, to do the wash, or supply a satisfactory meal—even if the husband’s spendthrift ways or the wife’s ill health were responsible—were seen as serious lapses to which husbands often reacted violently.<sup>383</sup> The wife of a farmer found that being bedridden due to illness (“c’est à dire de son accouchement”, as was explained in the complaint) neither prevented her husband from demanding she complete her domestic chores, nor

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<sup>379</sup> A.N.Q.M., QS(F), *Dominus Rex v. Joseph H. Jobin* (9 October 1835) (affidavit of William Annesley); *Dominus Rex v. Joseph Jobin* (affidavit of Rachael Charlotte Desautels) (9 October 1835); *ditto* (9 October 1835) (surety).

<sup>380</sup> Compare Tomes, *supra* note 7 at 331; Peterson del Mar, *supra* note 8 at 28.

<sup>381</sup> Compare Ross, *supra* note 616 at 577; Tomes, *ibid.* at 332. See also Cobbe, *supra* note 539 at 67-68 (describing these “harpies”).

<sup>382</sup> Conley, *supra* note 35 at 78; Ross, *ibid.* at 580; Harvey, *Wife Battery*, *supra* note 589 at 132; Lepp, *supra* note 31 at 507-508; Tomes, *ibid.* at 331 (also citing a wife’s request for the performance of errands that interfered with a husband’s desired activities).

<sup>383</sup> Harvey, *ibid.* at 134 (noting that husbands did not always contribute to family finances but felt entitled to their wives’ support).

insulated her from a beating.<sup>384</sup> Eliza MacIntosh sustained a razor-inflicted wound on her back, seven inches in length and an inch in depth, after her husband found fault with the manner in which she mended his stockings.<sup>385</sup>

But violence could also be triggered by a woman's assertion that a man was not living up to his responsibilities.<sup>386</sup> A respected Montreal lawyer named François Bruneau found himself involved in legal proceedings due to his relationship with an unmarried woman named Mary Nowlan. In April of 1834 she charged him with assault and battery, professing that she had been "seduced under promises--false and delusive" and had borne two children. According to her affidavit, Bruneau abandoned her with the second of those children and failed to provide for them. She was forced to go to his house often and entreat him "as a man of honour and principle to aid her by giving her some money to support herself and his child in her care," to which Bruneau would typically react with abuse. She alleged that on 2 April he did "violently strike abuse and illtreat" her and threatened to "knock her brains out."<sup>387</sup> Bruneau was bound to the peace on 4 April, the same day that he filed a complaint against Nowlan for uttering

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<sup>384</sup> A.N.Q.M., QS(F), *Domina Regina v. Julien Desgenait* (23 November 1841) (affidavit of Euphemie (?) Robin dit Lapointe); *ibid.* (23 November 1841) (surety).

<sup>385</sup> A.N.Q.M., QS(F), *Domina Regina v. John Lewis* (22 May 1840) (affidavit of Eliza MacIntosh).

<sup>386</sup> See generally Peterson del Mar, *supra* note 8 at 58.

<sup>387</sup> A.N.Q.M., QS(F), *Dominus Rex v. François P. Bruneau, Esquire* (2 April 1834) (affidavit of Mary Nowlan).

threats and menaces.<sup>388</sup> Another wife was not only saddled with an alcoholic partner who frequented houses of ill-repute and failed to provide for his family's maintenance, but also suffered severe beatings at his hands when she remonstrated with him for those failings.<sup>389</sup> Such scenarios were not unusual, and one can only imagine the sense of hopelessness and despair that marked a relationship in which poverty, drunkenness, and violence were constant companions.

Jealousy was also a precipitating factor, including husbands' resentment or disapproval of wives' friends and social partners.<sup>390</sup> Extramarital dalliances, for example, provided gist for violence within the family, although that behaviour usually involved a husband's attempt to protect his perceived right to such liaisons.<sup>391</sup> One wife, forced out of her home, returned to find her husband in the company of two women of dissolute character who threatened her with bodily harm.<sup>392</sup> Other cases amounted to concubinage. For example, Louise Charbouneau charged her husband, a Montreal merchant, with threats and menaces in 1841. According to her affidavit, her

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<sup>388</sup> A.N.Q.M., QS(F), *Dominus Rex v. François P. Bruneau* (4 April 1834) (surety); *François Pierre Bruneau v. Mary Nowlan* (4 April 1834) (affidavit of François Bruneau).

<sup>389</sup> A.N.Q.M., QS(F), *Domina Regina v. Joseph Gravelle* (14 April 1841) (affidavit of Marie Labelle); *ibid.* (15 April 1841) (recognizance).

<sup>390</sup> See generally Harvey, *Wife Battery*, *supra* note 589 at 129; Hammerton, *supra* note 6 at 45; Lepp, *supra* note 31 at 490-492.

<sup>391</sup> Compare Cobbe, *supra* note 539 at 65, who obliquely mentioned prostitution, referring to it as the other "great sin of cities," inciting cruelty and lust.

<sup>392</sup> A.N.Q.M., QS(F), *Jane Boice v. Thomas Langhorn* (30 May 1831) (affidavit of Jane Boice).

husband had maintained a concubine in the same house, whom she had arrested a few days earlier for disrupting the marital home. Following the arrest, however, her husband assaulted her and the children, and further threatening to kill her and raze the house. He was bound to the peace for twelve months.<sup>393</sup> Another wife filed a complaint against her husband and her husband's mistress, a woman of ill repute, for assault:

Louise Hall épouse de Maxime Champagne....Que depuis quelques tem[p]s son époux le dit Champagne est dans l'habitude de fréquenter une mauvaise maison ou maison de débauche où reside une jeune fille du nom de Elmire Girard....Que la dite Elmire Girard est dans l'habitude d'inciter son dit époux à la battre, ce qu'il accomplit souvent, de plus la dite Elmire Girard reside vis à vis chez la dite deposante, et continuellement elle insulte et invective la dite déposante, de la manière la plus scandaleuse. Aujourd'hui le dit Champagne est sortit de cette mauvaise maison et est venu chez lui et en entrant a violemment assaillit battu et frappé la dite déposante, lorsque la dite Elmire Gerard encourageait la dit Champagne à la battre en disant frapper la, frapper la, et alors le dit Champagne lui donna un autre coup, qui l'étourdit....<sup>394</sup>

Allegations of a wife's sexual license outside of the family home were not common. If domestic assault complaints are any indication, abusive husbands unjustly accused their wives of whorish behaviour often enough, although that typically took the form of uttering degrading comments rather than making specific accusations.<sup>395</sup>

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<sup>393</sup> A.N.Q.M., QS(F), *Queen v. Antoine Labelle* (29 November 1841) (affidavit of Louise Charbouneau); *Domina Regina v. Antoine Labelle* (29 November 1841) (surety).

<sup>394</sup> A.N.Q.M., QS(F), *Queen v. Maxime Champagne et Elmire Girard* (7 August 1840) (affidavit of Louise Hall) (emphasis in original). Similarly, five years earlier a prosecutrix alleged her husband abandoned her two years earlier to cohabit with another woman; she prosecuted her husband for having attacked her and her husband's mistress for threatening her life. QS(F), *Dominus Rex v. John Stetham & Betsey Goodwin* (10 August 1835) (affidavit of Mary Blair).

<sup>395</sup> For discussion of battering husbands' accusations of infidelity, see generally Buckley, *supra* note 593 at 172; Lepp, *supra* note 31 at 503-505.

Indeed, overt accusations of infidelity were virtually non-existence in the records in issue, and given the preoccupation with female modesty and virtue endemic to the early-Victorian era, serious accusations of infidelity were probably not made lightly before judicial officials.<sup>396</sup> In fact, only one complaint was found in which a husband alleged that he discovered his wife *in flagrante delicto*, and that was in the context of a rebuttal affidavit filed by a husband---a defensive manoeuver that, incidentally, proved unavailing. In March of 1830, William Paul was charged with assault with intent to murder for having attempted to attack his wife with an axe.<sup>397</sup> Ten days after his arrest, Paul swore out an affidavit in which he deposed that while sitting in the bar room of his house his servant girl had approached him and wordlessly “looked at him as if she had intended to make him understand that there was something extraordinary happening in the house at that time.” As he went on to state:

The said Deponent having some suspicion of misconduct on the part of his wife, went to his bedroom and then and there found Mary McCooms his wife having carnal communication with a man of the name of James Black as between man and wife. And he the said Deponent further saith that the said Mary McCooms having taken from a box belonging to the said Deponent a sum of money of about fifty pounds and more and having been out of the house the most part of the night following, the said Deponent went in search of the money he had lost and took an ax[,] not with the intention of striking the said Mary McCooms his wife[,] but only to open the said box in which he had deposited the aforesaid sum of money. And the said Deponent saith further that the said Mary McCooms his

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<sup>396</sup> *The Montreal Gazette* (28 August 1826) contains reference to a tragedy precipitated by a husband’s suspicions of his wife’s chastity. His accusations prompted her to leave him. His entreaties for her return were rebuffed, as his wife stated that she had given him no cause to doubt her fidelity, and that if she returned he would repeat his conduct. In despair, he committed suicide.

<sup>397</sup> A.N.Q.M., QS(F), *Dominus Rex v. William Paul* (20 March 1830) (affidavit of Mary Paul)



wife is the mother of two young children, and that her conduct is in and out of the house such with other men and bad women that there is no expectation or hope for him the said Deponent to be able to live with her any longer. And the said Deponent saith further that he never committed assault and battery upon the said Mary McCooms, notwithstanding he would have been justifiable in chastising her after what he had seen of her bad conduct.<sup>398</sup>

Paul's affidavit provides insight into nineteenth century mores related to marriage, most notably the view that a husband would have been justified in using violence against his wife due to her alleged infidelity. Whether the Court disagreed with that view of marital rights, or whether the wife's testimony was seen as more credible (or both) is unknown. What is known is that Paul was sentenced to the local prison for three months.<sup>399</sup> In view of the few abusive husbands who received prison terms of that length, it is tempting to speculate whether his accusations against his wife harmed rather than helped his case.

In other instances, allegations of sexual dissipation were made in conjunction with claims of vagabondage, alcoholism, desertion, and the like. Jean Détouin, in charging his wife with assault and battery in 1831, alleged that she "aurait laissé son lit et sa maison et abandonné ses enfans et serait adonnée á la boisson, vivrait errante et comme une vagabonde et une prostituée." Following her release from prison on a charge of disturbing the peace, she returned home and assaulted and threatened her husband. Fearful that she would set fire to the house or make an attempt on his life, he

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<sup>398</sup> A.N.Q.M., QS(F), *ibid.* (30 March 1830) (affidavit of William Paul).

<sup>399</sup> After his release, Paul was bound to keep the peace for six months towards his wife and all others or forfeit fifty pounds. A.N.Q.M., QS(F), *ibid.* (1 July 1830) (surety to keep the peace).

“requiert justice en consequence.”<sup>400</sup>

As mentioned in the analysis of the various charges under which domestic violence was subsumed during the period, violence against the family was sometimes the result of, or alleged to be the result of, mental illness. There is an intriguing distinction between those complaints alleging insanity and others filed by wives: five percent of complaints alleged insanity, a figure that rises to eight percent if one counts affidavits that alluded to insanity. In contrast, wives rarely made that allegation.

In a time before mental institutions and procedures for civil committal were common, the criminal law remained the primary method for dealing with the insane. In June of 1838 a gentleman living in Hull was entreated to go to the home of a neighbour, being told that the neighbour had lost his senses and that his wife, “confined in child-bed,” was scared for her life. On visiting the house in question, the deponent alleged that he found his neighbour “in a state of mental derangement, and deponent positively swears that the [neighbour] is a dangerous person and is utterly unfit to be left at large,” and furthermore that he “verily believes that if [he] is suffered to go at large he will murder some of his family....” He was charged with being a “dangerous lunatic against wife and family.”<sup>401</sup>

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<sup>400</sup> A.N.Q.M., QS(F), *John Détouin v. Julie Daigneau* (5 May 1831) (affidavit of Jean Détouin).

<sup>401</sup> A.N.Q.M., QS(F), *Queen v. Joseph Darby* (1 June 1838). For general discussion of abusive husbands who were alleged to be insane, see Lepp, *supra* note 31 at 461-462.

In most such cases there is no information on what happened to the defendant.<sup>402</sup> Contemporary accounts leave no doubt that prior to the Montreal Asylum being constructed, lunatics were housed in the city's jail.<sup>403</sup> In July 1831, Frederick Clarke, Armourer to the His Majesty's Fifteenth Regiment, filed an affidavit against his wife:

[Ellen Clarke] was confined in the Gaol of Montreal on the 14<sup>th</sup> May 1831, charged by this Deponent upon oath with having made various attempts to do him personal injury, in one of which she inflicted a deep wound on his hand with a sharp instrument--such conduct on the part of his wife deponent attributed to repeated fits of mental derangement originating in Ireland, and aggravated by habitual intemperance since the arrival of the Regiment in this country. She was released, and returned to his residence on the nineteenth instant, and in a few hours after began to talk incoherently, asking one of his children if she understood witchcraft....[S]he struck him several times, saying "I will finish you at any rate"; deponent was obliged to seek the protection of the Guard, and to have her confined in a separate apartment where she now is, and he humbly prays that she may again be committed to Gaol or to some lunatic asylum, having every reason to believe that his life is in imminent danger from her violence if she is permitted to go at large.<sup>404</sup>

Ellen Clarke was lodged in the city jail for several months, but her imprisonment appears to have had negligible therapeutic value. Shortly after her release, Frederick alleged that she had "made several gross attacks upon this deponent and some of his children with the intent to do them bodily injury," and had "wantonly destroyed several articles of his wearing apparel and household furniture." He further alleged that she

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<sup>402</sup> See e.g. A.N.Q.M., JP (Argenteuil), *Elizabeth Kerr v. Levy Liller* (11 April 1840) (defendant "deranged and tried to kill the prosecutor his wife with a knife and to attempt to burn a mill;" warrant issued).

<sup>403</sup> This phenomenon was also the case elsewhere. Compare James Edmund Jones, *Pioneer Crimes and Punishments in Toronto and the Home District* (Toronto: George N. Morang, 1924) 78-82.

<sup>404</sup> A.N.Q.M., QS(F), *Dominus Rex v. Ellen Clarke* (20 July 1831) (affidavit of Frederick Clarke). The first complaint was not found.

had struck him with a poker and broken a mirror over the head of one of their children, and requested she be rearrested, "it being the opinion of this deponent and of every person acquainted with the woman that she is at the present moment absolutely mad...."<sup>405</sup> Ellen was again imprisoned, and in February her husband filed a terse affidavit, stating that since her release she had behaved in a "most furious and unruly manner, attacking him and his children at uncertain times...." He accordingly requested that she again be committed until the spring, when he would be able to send her to an asylum in England, and she was accordingly arrested again.<sup>406</sup>

Following the construction of the Montreal Lunatic Asylum, prisoners were transferred to that facility following their arrest, as evidenced by the experience of Ann Foster in March of 1841. Foster had been incarcerated in the Montreal Gaol for being "violent towards her family (insane)", and was transferred four months later to the city's mental institution.<sup>407</sup> John Miller, a stonemason, was incarcerated and then institutionalized for insanity in 1841. Miller's wife filed a complaint against him on 18 June, alleging that he assaulted and threatened her and other members of the family, and that he "requires to be strictly guarded to prevent him doing injury and bodily harm to deponent."<sup>408</sup> A fellow boarder in the same house, a corporal in the second

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<sup>405</sup> A.N.Q.M., QS(F), *ibid.* (23 November 1831) (affidavit of Frederick Clarke).

<sup>406</sup> A.N.Q.M., QS(F), *ibid.* (18 February 1832) (affidavit of Frederick Clarke).

<sup>407</sup> A.N.Q.M., MG (19 March 1841) (committal of Ann Foster). No supporting documentation was found.

<sup>408</sup> A.N.Q.M., QS(F), *Queen v. John Miller* (18 June 1841) (affidavit of Margaret Owens).

battalion of the First Royals, deposed that he had observed firsthand Miller's violent and threatening behaviour, and that he could not be "at large without the greatest danger of bod[il]y harm to his said wife, and to the other members of her family."<sup>409</sup> Miller was arrested and lodged in the Montreal Gaol, and then transferred to the Montreal Lunatic Asylum. Three months later, the Superintendent of the Asylum deposed that Miller was deemed to be "sane and capable of taking care of himself."<sup>410</sup>

As was discussed earlier, wives were roughly eighteen times more likely to be accused of insanity than were husbands.<sup>411</sup> That divergence is conspicuous, but the nature of the sources precludes conclusive explanations as to why that was the case. It is eminently possible, however, that violent wives were more likely to be seen as mentally aberrant, since they violated social norms of female behaviour. It is also possible that husbands may have used allegations of insanity to bolster their chances of success, or to minimize their embarrassment about seeking legal protection--an insane wife was less an inversion of the accepted family hierarchy than was a violent and insubordinate one, and such allegations were more likely to produce sympathy than ridicule. Furthermore, given common assumptions that women were more prone to hysteria, mania, and

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<sup>409</sup> A.N.Q.M., QS(F), *ibid.* (18 June 1841) (affidavit of Thomas Miller).

<sup>410</sup> A.N.Q.M., QS(F), *ibid.* (17 September 1841) (affidavit of Edward Worth).

<sup>411</sup> See *supra* at 332-334.

myriad other mental and nervous disorders, claims of insanity were easily made and commonly believed.<sup>412</sup>

In respect to the manner of violence used against spouses, husbands most often brutalized their wives by kicking them, striking them, and choking them; the use or threatened use of weapons or other objects was relatively rare.<sup>413</sup> Husbands were generally capable of inflicting egregious physical harm without weapons. Mary Hale, married to a common labourer, charged her husband with assault and battery after he began to beat her a few weeks earlier. The previous evening, her husband had kicked her in the mouth and broken several of her teeth, then he threw her on the bed and struck her repeatedly before a neighbour intervened.<sup>414</sup> Catherine Rutherford, married to an affluent comb maker in the city, chronicled her husband's frequent abusive conduct, including jumping on her with his feet and thereby causing her to have "vomited shortly after about two quarts of blood."<sup>415</sup> Her domestic servant and a

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<sup>412</sup> Lepp, *supra* note 31 at 531, noted five men and eight women were certified as insane, but further noted that such allegations were rarely questioned when made against wives. For examination of mental illness and the involuntary committal of women in the nineteenth-century, see generally Cheryl Krasnick Warsh, "The First Mrs. Rochester: Wrongful Confinement, Social Redundancy, and Commitment to the Private Asylum, 1883-1923" (1988) *Hist. Papers* 145-167. For Victorian conceptions of women's physiology, see generally Wendy Mitchinson, *The Nature of Their Bodies: Woman and Their Doctors in Victorian Canada* (Toronto: University of Toronto Press, 1991).

<sup>413</sup> Compare Lepp, *ibid.* at 470.

<sup>414</sup> A.N.Q.M., QS(F), *Queen v. Michael Clancey* (20 October 1842) (affidavit of Mary Hale).

<sup>415</sup> A.N.Q.M., QS(F), *The King v. David Robertson* (1 March 1830) (affidavit of Catherine Rutherford).

neighbour corroborated Rutherford's claims.<sup>416</sup> One husband sat with his knees on his wife's back and struck her, and "after tying her with a rope, and taking hold of her neck, afterwards threw her on the bed, and then threw a quilt and pillows on her face and body so that she...became nearly suffocated."<sup>417</sup>

Likewise, Agnes Kirkpatrick, who had the misfortune of being married to an affluent grocer named Charles Smith, was said to have sustained head trauma as a result of her husband's severe beatings. Kirkpatrick prosecuted her spouse for assault and battery, alleging that besides his more recent acts of violence he had inflicted grievous head injuries on her, and that she "yet labors under the effect of [those] wounds."<sup>418</sup> Two domestic servants, both of whom were employed by Smith at different times during the previous year but had left his service after a short period of time, filed corroborating affidavits graphically detailing Smith's brutality towards his wife. Both maintained that Smith falsely accused his wife of drunkenness, saying that she was a teetotaler, and both also asserted that Kirkpatrick had suffered head trauma as a result of those beatings, the one servant saying she was left "disturbed in the head" and the other asserting she was "injured in her mind" in consequence.<sup>419</sup> Other

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<sup>416</sup> A.N.Q.M., QS(F), *ibid.* (1 March 1830) (affidavit of Nancy Corr); *ibid.* (affidavit of Andrew Watt).

<sup>417</sup> A.N.Q.M., QS(F), *King v. James Boyle* (8 June 1833) (affidavit of Ellen Doherty).

<sup>418</sup> A.N.Q.M., QS(F), *Queen v. Charles Smith* (19 June 1843) (affidavit of Agnes Kirkpatrick).

<sup>419</sup> A.N.Q.M., QS(F), *ibid.* (20 June 1843) (affidavit of Ann Coynne); *ibid.* (20 June 1843) (affidavit of Sarah Johnston). Smith was bound to the peace in the amount of £200, the largest single surety for any domestic abuse prosecution. *Ibid.* (20 June 1843) (surety).

husbands seemed to target their wives' sexuality or reproductive capacity, attacking them while pregnant or shortly thereafter.<sup>420</sup> Margaret McDermott was beaten so severely by her husband in 1839 as to cause a miscarriage.<sup>421</sup> Another husband cruelly used his wife as she recuperated from childbirth.<sup>422</sup>

No doubt innumerable acts of mental abuse were also perpetrated on Victorian spouses, but those acts presented little opportunity to sustain a legal charge. Husbands' cruelty towards their wives could take numerous forms other than battering them, as surviving affidavits attest. One wife contended that in addition to repeatedly assaulting her, her husband had taken an iron chain and fastened her to a chest in their bedroom before fellow lodgers in her house freed her.<sup>423</sup> The more "genteel" forms of mental torture to which the respectable classes presumably resorted would not have appeared before the courts, given the invisibility of that social class in prosecutions alleging domestic violence.

A minority of spouses used, or threatened to use, weapons or other objects in assaulting their partners, with less than twelve percent of all complaints making

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<sup>420</sup> Compare Lepp, *supra* note 31 at 470-471; Buckley, *supra* note 592 at 173. Abused wives today are often assaulted by their partners while pregnant. See Frieze & Browne, *supra* note 655 at 181.

<sup>421</sup> A.N.Q.M., QS(F), *Queen v. Thomas McDermott* (21 November 1839) (affidavit of Margaret McDermott); *ibid.* (21 November 1839) (recognizance).

<sup>422</sup> *Domina Regina v. Julien Desgenait*, *supra* note 916.

<sup>423</sup> A.N.Q.M., QS(F), *Dominus Rex v. Paschal Falmont* (12 September 1825) (affidavit of Marie Louise Lariviere).



reference to weapons.<sup>424</sup> Of those, most cases involved husbands as aggressors. Weapons, including household implements that could be used to deadly purpose or lead to the infliction of bodily harm, generally elevated the offense to that of aggravated assault, attempted murder, or the like. One husband opened a large gash in his wife's back with a razor,<sup>425</sup> while another attempted to cleave his wife's neck with an axe but was prevented from doing so by a neighbour's timely intervention.<sup>426</sup> Indeed, axes were common weapons, no doubt reflecting their importance in everyday life.<sup>427</sup> Samuel Cawthers stands out in the legal archives of the period; he attacked his wife in the middle of a city street with a horsewhip.<sup>428</sup>

Given the diversity of weapons used, the only seeming commonality was ease of access to them.<sup>429</sup> Indeed, of all the objects used or brandished by husbands, sticks were the most common, so Robert Gibbons' prosecution for having "cruelly beaten [his wife]

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<sup>424</sup> Weapons were cited in sixty-seven out of 571 complaints, or 11.7%. Men continue to be much more likely to use weapons against their partners than are women. See Frieze & Browne, *supra* note 655 at 181.

<sup>425</sup> A.N.Q.M., QS(F), *Domina Regina v. John Lewis* (22 May 1840) (affidavit of Eliza MacIntosh).

<sup>426</sup> A.N.Q.M., QS(F), *Dominus Rex v. William Paul* (20 March 1830) (affidavit of Mary Paul).

<sup>427</sup> See *e.g.* A.N.Q.M., QS(F), *Margaret Little v. Peter Murphy* (10 July 1825) (husband took up an axe with which to strike wife).

<sup>428</sup> A.N.Q.M., QS(F), *Dominus Rex v. Samuel Cawthers* (11 March 1835) (affidavit of Jane Cubbane).

<sup>429</sup> Compare Lepp, *supra* note 31 at 470.

with a stick” was not unusual.<sup>430</sup> Sarah Moore was wounded in the head by a pair of fireplace tongs,<sup>431</sup> while Jemina Williams was attacked with tongs and a poker.<sup>432</sup> Baptiste Bienvenue used a plank of wood,<sup>433</sup> while another husband was bound to the peace for three months after threatening to kill his wife with a fork while at the dinner table.<sup>434</sup> Husbands also used everyday tools of their trade; as their occupations differed, so too did their weapons of choice. Thus, one farmer attacked his wife with a hoe.<sup>435</sup> George Gibson, a Montreal shoemaker, struck his wife with a shoemaker’s hammer and broke one of her fingers.<sup>436</sup> A butcher seized his wife by the throat and “alors armé d’un couteau aurait menacé d’en frapper la dite déposante et de la tuer, et aurait ajouté, que si la Déposante sa femme ne laissait sa maison, il allait la détruire.”<sup>437</sup>

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<sup>430</sup> A.N.Q.M., QS(F), *Elizabeth Gibbons v. Robert Gibbons* (30 October 1834) (affidavit of Elizabeth Gibbons); *ibid.* (4 November 1834) (surety).

<sup>431</sup> A.N.Q.M., QS(F), *Domina Regina v. Charles Jackson* (4 August 1841) (affidavit of Sarah Moore). See *infra* at 346.

<sup>432</sup> A.N.Q.M., QS(F), *Dominus Rex v. Anthony Metcalf* (23 September 1834) (affidavit of Jemina Williams).

<sup>433</sup> A.N.Q.M., QS(F), *Queen v. Baptiste Bienvenue* (19 August 1842) (affidavit of François Duval); *Domina Regina v. Baptiste Bienvenue* (27 October 1842) (surety).

<sup>434</sup> A.N.Q.M., QS(F), *Dominus Rex v. James Dogherty* (5 September 1825) (affidavit of Mary Flynn); *ibid.* (14 September 1825) (surety).

<sup>435</sup> A.N.Q.M., QS(F), [*Dominus Rex v. Daniel Collins*] (12 October 1832) (affidavit of Catherine Cary); MG no.3032 (Daniel Collins committed 22 October 1832; discharged 23 October 1832).

<sup>436</sup> A.N.Q.M., QS(F), *Dominus Rex v. George Gibson* (15 November 1836) (affidavit of Ann Taylor).

<sup>437</sup> A.N.Q.M., QS(F), *Dominus Rex v. Joseph Maranda* (31 August 1829) (affidavit of Amable Blondin); *ibid.* (1 September 1827) (surety).

However, some spouses who had access to more conventional weapons were not loath to use (or threaten to use) them. John Brown, a soldier in the 85<sup>th</sup> Regiment of Foot, assaulted his wife with a bayonet; he was arrested and sent to the barracks to appear before a court martial.<sup>438</sup> Robert Moore was charged with aggravated assault and battery for having threatened his wife with a sword in 1838.<sup>439</sup> Firearms are absent from all cases that resulted in death, as will be discussed in the following chapter, and are conspicuous in their near absence from spousal battery complaints, as well.<sup>440</sup> A rare exception is the case of Robert Alexander, who was apprehended on a charge of “threats, etc.” by Serjeant Daniel Farrell and three other policeman in March of 1839 for having “loaded his musket and threatened to shoot [his wife] and any other person who would attempt to approach him.” The Serjeant examined the musket following Alexander’s arrest and attested that it was loaded “to the best of the opinion of this deponent with a leaden ball.”<sup>441</sup> Likewise, when confronted by a neighbour about his ill-usage of his wife, John Grant fetched a firearm from the house and made violent

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<sup>438</sup> N.A.C., MP(GR) vol.34 (John Brown committed 28 June 1841).

<sup>439</sup> A.N.Q.M., QS(F), *Queen v. Robert Moore* (23 October 1838) (affidavit of Flavie Denaige).

<sup>440</sup> For further discussion, see Chapter IV, *infra* at 383. See also Philips, *supra* note 16 at 265.

<sup>441</sup> A.N.Q.M., QS(F), *Queen v. Robert Alexander* (11 March 1839) (affidavit of Serjeant Daniel Farrell). He was bound to the peace for six months in the amount of twenty pounds. QS(F), *ibid.* (11 March 1839) (surety).

threats but did not discharge the weapon.<sup>442</sup> Another husband “presented” a loaded pistol to his wife and threatened to kill her; he was held to bail.<sup>443</sup>

The relative unavailability of firearms, coupled with the seeming reluctance of defendants to use them, kept the mortality rate lower than it might otherwise have been. Similarly, most affidavits in which weapons were mentioned indicate that husbands typically assaulted their wives with fists and feet, but wielded knives, swords, guns, or axes as a means of elevating the threat and further terrorizing their wives. Many more instances of wife murder and maiming would likely have come before the courts if a few more of those husbands had put their threats into execution. Such behaviour suggests that most husbands wanted to dominate and intimidate their wives, not kill them.

While the sample size of wives charged with family violence was much smaller, they were statistically less likely to use implements of any sort. Ann Farmer, prosecuted by her husband on two other occasions, was charged in 1835 with attempting to strike her husband with a fire shovel.<sup>444</sup> One wife was prosecuted for aggravated assault and battery after having attacked her husband with a knife,<sup>445</sup> while another threatened to

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<sup>442</sup> *Dominus Rex v. John Grant*, *supra* note 831.

<sup>443</sup> *Jane Dervin v. John McGuire*, *supra* note 654.

<sup>444</sup> A.N.Q.M., QS(F), *Dominus Rex v. Ann Farmer* (29 July 1835) (affidavit of William Lilly); *ibid.* (11 August 1835) (surety).

<sup>445</sup> A.N.Q.M., QS(F), *Domina Regina v. Ann Lentry* (19 March 1841) (affidavit of George Leslie); *ibid.* (19 March 1841) (recognizance).

run her husband through with her fork and knife.<sup>446</sup> One wife attacked her hapless husband with a knife, an empty blacking bottle, and a stone.<sup>447</sup> Threats to poison were occasionally made by wives, but virtually never by husbands.<sup>448</sup> Such threats may have reflected, or helped shape, the historical stereotype of wives as poisoners, but also likely reflected the domestic nature of women's work.<sup>449</sup> Assaults could also border on the laughable: Susanna Miller was bound to the peace for six months after a charge of assault and battery was brought against her by her husband in 1829. Her assault, however, was unlikely to do more than bruise her husband's ego, as her weapon of choice was a house cloth.<sup>450</sup> Given the strength differentials in many marriages, one might expect that wives would have been relatively more likely to use weapons. However, wives seem to have been more restrained in their use of violence towards their spouses, even in self-defense. A rare exception was a case involving the wife of Joseph Gregoire who cut her husband with a knife as he attempted to strangle her; he

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<sup>446</sup> A.N.Q.M., QS(F), *William Newth v. Ann Queen his wife* (20 September 1825) (affidavit of William Newth).

<sup>447</sup> A.N.Q.M., QS(F), *Dominus Rex v. Jane Porter* (31 August 1835) (affidavit of Richard Fougherty); *ibid.* (31 August 1835) (recognizance).

<sup>448</sup> See e.g. A.N.Q.M., QS(F), [*Dominus Rex v. Josephte McFarlane*] (24 March 1829) (affidavit of Jean Barbier); *Domina Regina v. Mary Pillon* (19 May 1839) (affidavit of André Marquis); *ibid.* (20 May 1839) (surety).

<sup>449</sup> For discussion of wives' use of poison to murder their husbands, see Chapter IV, *infra* at 442-444.

<sup>450</sup> A.N.Q.M., QS(F), *David Miller v. Susanna Miller* (14 February 1829) (affidavit of David Miller); *ibid.* (14 February 1829) (surety).

was charged with assault with intent to murder while she was not charged.<sup>451</sup> Accounts of repeated and systematic abuse by wives--as was common at the hands of husbands--was decidedly rare, if surviving judicial records are any indication.

A partner's use of indecorous language seems to have injured some spouses almost as severely as acts of physical brutality. Sarah Moore, routinely assaulted by her husband and blinded by him in her left eye, filed suit against him for assaulting her with a pair of fireplace tongs. Alongside her claim that he routinely threatened her life was the assertion that he also continuously used "gross and unbecoming language to her such as prejudice her character by calling her whore and other names."<sup>452</sup> Another partner emphasized that her drunken husband engaged in scandalous as well as abusive conduct, including uttering "les blasphèmes les plus terribles, ce tout en présence de ses enfans et de sa famille."<sup>453</sup> Even more striking is the prosecution by Charles Grant, Esquire, of his wife for assault and battery and threats, in which he began his complaint by emphasizing that during their eight years of married life his wife had "always been exceedingly disrespectful to the deponent as a husband by using the most insulting, vulgar and abusive language to him and this in the presence of his children

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<sup>451</sup> A.N.Q.M., QS(F), *Queen v. Joseph Grégoire* (18 January 1840) (affidavit of Flavie Grégoire); *ibid.* (18 January 1840) (affidavit of Marie Hurot). Contemporary experiences likewise reflect that men are more likely to use severe violence against partners than are women. See Frieze & Browne, *supra* note 655 at 181.

<sup>452</sup> *Domina Regina v. Charles Jackson*, *supra* note 963.

<sup>453</sup> A.N.Q.M., QS(F), *Mary Ann Landreville v. Vincent Labelle* (18 July 1837) (affidavit of Mary Ann Landreville).

and other members of his household.”<sup>454</sup> It is striking that Grant began his complaint not with allegations of violence, but rather with assertions of fractious conduct and foul language. A husband’s harsh language may have been seen as ungallant and deeply hurtful, but a wife’s sharp tongue implied insubordination and flew in the face of a husband’s accepted role as head of the household.<sup>455</sup> The behaviour of Grant’s wife in threatening to “dance on his grave,” hurling a knife at him, and destroying furniture, was merely incidental to her general defiance towards him.

The law, then as now, allowed for charges to reflect the relative gravity of the transgression. However, the distinction between cases in which a charge of assault and battery was levied, and those leading to a charge of aggravated assault or the like, is not readily discernible.<sup>456</sup> More of a pattern is evident in complaints of assault with intent to murder or attempted murder, but even then the distinctions often appear to have been at best discretionary, and at worst arbitrary. As a percentage of complaints those charges were uncommon. Cases of aggravated assault, assault with intent to do grievous bodily harm, or cruel assault constituted 3.7% of complaints against husbands and 2.5%

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<sup>454</sup> A.N.Q.M., QS(F), *Charles Grant Esquire v. Amelia Williams* (8 November 1839) (affidavit of Charles Grant, Esquire).

<sup>455</sup> Compare Tomes, *supra* note 7 at 332; Harvey, *Wife Battery*, *supra* note 589 at 134.

<sup>456</sup> In regard to the mid-to-late nineteenth century English context, Nancy Tomes has cited the contemporary definition of aggravated assault as an act of violence “attended with circumstances of peculiar outrage or atrocity,” in which a deadly weapon was used or serious physical injury resulted. Tomes, *supra* note 7 at 330. See also Philips, *supra* note 16 at 263.

of complaints against wives.<sup>457</sup> The corresponding figures for the charges of assault with intent to murder or attempted murder were 4.9% and 2.5% of complaints against husbands and wives, respectively.<sup>458</sup>

By definition, the charge of assault with intent to murder or that of attempted murder was a serious one. Whether Samuel Cawthers' act of assaulting his wife in the street with a horsewhip, for example, led to a charge of assault with intent to murder less because of the potentially lethal character of the act, and more because of its shocking and public nature, is unknown but remains a possibility.<sup>459</sup> In other cases, the prosecution was triggered by an assault with a deadly weapon, even if contact was not made. One wife was charged with attempting to take the life of her husband with a razor. In her affidavit her husband attested that she had brandished a razor and threatened him, "whereby the Deponent stands in bodily fear of her."<sup>460</sup> Several husbands charged with serious assaults were repeat offenders. Antoine Legault *dit* Desloriers, that incorrigible offender who appeared in the archives year after year, was charged with assault with intent to murder in 1836.<sup>461</sup>

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<sup>457</sup> See Figure 6, *supra* at 261. *But see* Tomes, *supra* note 7 at 330 (noting that "when a woman was beaten, she was more likely to be beaten severely," leading to a greater incidence of aggravated assaults than charges of assault and battery).

<sup>458</sup> See Figure 6, *ibid.*

<sup>459</sup> *Dominus Rex v. Samuel Cawthers*, *supra* note 960.

<sup>460</sup> A.N.Q.M., QS(F), *Samuel Millard v. Mary Ann Whittiker* (9 October 1837) (affidavit of Samuel Millard).

<sup>461</sup> *Dominus Rex v. Antoine Legault dit Desloriers*, *supra* note 780.



Not only were the abstract legal distinctions leading to those kinds of charges often illusory, but in practice such cases did not merit stiffer sentences than ones that did not involve weapons. Indeed, except that a small minority of them resulted in prison sentences of several months' duration, the dispositions in those cases appear similar to those in routine assault cases. Since the final disposition in many of those cases is unknown, it is not possible to provide an accurate breakdown of conviction rates for various offenses, but cases for which dispositions are known indicate that many defendants were bound to the peace. By way of example, George Wurtele, gentleman, prosecuted his wife for aggravated assault in 1832. He alleged that "without any cause or provocation" she assaulted him with a four-pound weight in her hand, while using menacing language towards him. As a result, he claimed to have "just cause to be apprehensive for his life and verily believes that his said wife meditates him some bodily harm...." As he explained:

she has often threatened to take the life of the deponent, that a large sharp pointed knife was discovered hid under her Bed, and a razor was found in one of her drawers, that she roams about the house during the night time, sleeps apart from the deponent against whom she entertains a rancorous hatred, she appears wholly regardless of his interests and wantonly upon many occasions has destroyed his property and effects that this deponent provided her with means to live apart from him and her family, that she left his House with that intent but that against the will of him the Deponent she has returned, with feelings increased in hostility towards him, that unless the said Elizabeth Ratters is apprehended and secured this deponent is afraid that his life will be endangered, as he cannot with safety allow her any longer to occupy the same House with himself and his family.<sup>462</sup>

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<sup>462</sup> A.N.Q.M., QS(F), *George Wurtele v. Elizabeth Ratters* (23 February 1832) (affidavit of George Wurtele).

Despite this “rancorous hatred” and assault, Ratters was required only to provide surety in the amount of twenty pounds for six months.<sup>463</sup>

In two instances, charges of assault with intent to murder or attempted murder made against husbands resulted in a prison term. In 1840 Augustin Boucher, a resident of the Parish of Berthier, was arrested based on his wife’s affidavit and committed for trial.<sup>464</sup> A true bill was found against him before the Court of Oyer and Terminer in November of the same year;<sup>465</sup> and he was tried and convicted.<sup>466</sup> The Court imposed a sentence of three months.<sup>467</sup> The other defendant was likewise given the identical sentence in 1847 for “attempting to kill his wife.”<sup>468</sup>

One wife was also sentenced to prison for a related offense, and hers was to be the harshest penalty levied against a spouse for an assault that did not result in a homicide. Fanny Burnside, the wife of a trader in the Township of Grenville, was charged with ‘maiming’ in 1835. Her husband’s complaint alleged that:

Fanny Burnside...did with a sharp instrument put out his left eye with intent to murder and did also swear on the prayer book, that she would either take a life or lose a life that night, and at many other times threw such deadly instruments at him as many times endanger’d his life, at one particular time split the ear on

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<sup>463</sup> A.N.Q.M., QS(F), *ibid.* (25 February 1832) (surety).

<sup>464</sup> A.N.Q.M., MP p.68, *Domina Regina v. Augustin Boucher* (28 Feb 1840).

<sup>465</sup> *The Montreal Gazette* (10 November 1840).

<sup>466</sup> *Ibid.* (26 November 1840); *L’Aurore* (4 December 1840).

<sup>467</sup> *The Montreal Gazette* (8 December 1840); *L’Aurore* (7 December 1840).

<sup>468</sup> A.N.Q.M., MG (Charles Heney committed 3 February 1847, sentenced to three months from 23 April 1847; discharged 23 July 1847).

his head, and on Tuesday the 3 February inst. repeated her usual violence by giving him the deponent several blows, and threatening to take out his other eye, which put him in great fear, and caused the deponent to abandon his house, and take refuge with his neighbours, and this deponent craveth Justice in the premises, and further saith not.<sup>469</sup>

The Justices issued an arrest warrant,<sup>470</sup> and required her husband to enter into a recognizance in the amount of fifty pounds to appear before the Court of King's Bench on 24 February 1835.<sup>471</sup> His wife was "placed at the bar" on 7 March, with her husband as the sole prosecution witness. While his wife had benefit of counsel, no witnesses were called on her behalf, and she was convicted.<sup>472</sup> On 10 March she was sentenced to provide surety for her good behaviour for six months in the amount of fifty pounds, and was sentenced to six months' imprisonment.<sup>473</sup> The charge of 'maiming,' and Fanny Burnside's sentence, reflected the fact that her repeated attacks had resulted in permanent physical injury and as such a distinction may be made between that case and other instances of grievous assaults.

The information provided in those complaints also provides background on the socio-economic backgrounds of the families involved. The majority of parties to those

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<sup>469</sup> A.N.Q.M., KB(F), *Dominus Rex v. Fanny Burnside wife of Benjamin Patterson* (4 February 1835).

<sup>470</sup> A.N.Q.M., KB(F), *Dominus Rex v. Fanny Burnside* (4 February 1835) (arrest warrant).

<sup>471</sup> A.N.Q.M., KB(F), *ibid.* (5 February 1835) (recognizance for Benjamin Patterson).

<sup>472</sup> *The Montreal Gazette* (12 March 1835). See also N.A.C., James Reid Papers, Criminal Cases [hereinafter Reid], M-8562, *Dominus Rex v. Fanny Burnside* (7 March 1835).

<sup>473</sup> *The Montreal Gazette* (10 March 1835). Curiously, the sentence for that offense appeared in the paper two days earlier than did the trial synopsis.

suits for most of the period under examination were French Canadians, but by the mid-1830s a greater number of Irish surnames began to appear, presumably reflecting immigration patterns. Mixed marriages between English and French-speaking individuals appear to have been rare in the complaints in issue, although it must be acknowledged that the maiden names of wives were not always specified.<sup>474</sup>

More can be said about the issue of social class. Many scholars have focused on the working-class in their studies of nineteenth century family violence, while making the observation that one should not assume violence was only a working-class phenomenon.<sup>475</sup> Victorian commentators themselves superciliously (and naively) concluded that domestic violence was limited to the labouring classes.<sup>476</sup> Even Frances Power Cobbe, while maintaining that it was more prevalent in the upper and middle classes than generally recognized, qualified her observation by noting that “it rarely extends to anything beyond an occasional blow or two of a not dangerous kind.”<sup>477</sup> In her view, the “dangerous wife beater” was found almost exclusively in the “artisan and

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<sup>474</sup> While wives retained their maiden names under the civil law, court records during the time were not consistent when identifying the names of the parties to judicial proceedings. Thus, in many instances, wives’ maiden names were not given in the complaints. Furthermore, one must be careful when drawing general conclusions from a limited cross-section of marriages.

<sup>475</sup> See *e.g.* Harvey, *Wife Battery*, *supra* note 589 at 139.

<sup>476</sup> See *e.g.* Hammerton, *supra* note 6 at 3 (“Most Victorian commentators... associated the stigma of domestic assault almost exclusively with the degraded lives of the very poor, assuming smugly that the middle classes subjected each other mostly to more genteel forms of mental torture.”). See also Doggett, *supra* note 6 at 119-120.

<sup>477</sup> Cobbe, *supra* note 539 at 58.

laboring classes.”<sup>478</sup> Wife battery was clearly among the most visible forms of conflict among the lower classes, and the one most likely to survive in the historical record.<sup>479</sup>

The affidavits found in this study were sworn by members of a wide cross-section of social strata, as shown in Figure 10, with the exception that the most affluent city Brahmins never appeared in those records. Indeed, skilled and unskilled craftsmen are nearly equally represented within the sources. By a small margin, the largest social class represented belongs to artisans and tradesmen, constituting approximately forty-three percent of all complaints.<sup>480</sup> Listing those occupations would serve little purpose other than to illustrate their heterogeneity. Indeed, virtually every conceivable occupation was found, including ones as diverse as lastmaker and boottray maker (a variant of cobbler), hairdresser, whitesmith, dance master, musician, and varnisher. Unskilled labourers--identified as labourers, farmers, ditch diggers, domestic servants,

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<sup>478</sup> *Ibid.*

<sup>479</sup> Compare Hammerton, *supra* note 6 at 14. Hammerton made the interesting, albeit debatable, claim that respectable working class women were more vulnerable than their poorer, as well as wealthier, peers. *Ibid.* at 51.

<sup>480</sup> See Hammerton, *ibid.* at 35-36:

We should not be surprised to find butchers, and similar men well removed from the ranks of the labouring poor, charged with wife-assault. Poor, unskilled men, certainly, were most often vilified for abuse of their wives, but skilled workers, shopkeepers and men with a variety of occupations from the lower middle class appeared no less frequently in the Preston police court on wife-assault charges.

See also King, *supra* note 16 at 37 (reporting that two-fifths of assault defendants were tradesmen or artisans; one-quarter laborers; one-fifth farmers; ten percent gentry or professionals); Philips, *supra* note 16 at 167 (seventy-five percent were unskilled laborers, and twenty to twenty-five percent were skilled labourers).

and the like--are close behind at thirty-eight percent. The occupations of nearly fifteen percent of the husbands in those affidavits were not specified.

The issue of middle-class visibility in records of this type also merits special mention. While members of the 'respectable classes' appeared only sporadically, they nevertheless did appear.<sup>481</sup> The occupations found in that group include notaries, advocates, inn owners and men identified with the title "esquire" or "yeoman," all men who were propertied and therefore can be distinguished from non-skilled or skilled laborers.<sup>482</sup> Joseph H. Jobin, a prominent notary, was charged with assault and battery and threats to kill by his wife in 1835, and bound to the peace in the amount of fifty pounds.<sup>483</sup> Other defendants' social status can be better gleaned from the company they kept, in concert with their occupation. Vincent Brazeau, a Montreal innkeeper, was prosecuted by his wife twice in August of 1837; his sureties on those two occasions included two gentleman identified as an "esquire" and a "yeoman."<sup>484</sup> The wife of a

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<sup>481</sup> *Contra* Steinberg, *supra* note 16 at 128 (noting that respectable classes' infractions could be overlooked as "the larger problem of public disorder was a problem of the lower classes."); Philips, *ibid.* (noting the near-invisibility of middle and upper class); Lepp, *supra* note 31 at 464-465 (reporting the comparative absence of middle-class women as prosecutors). For discussion of violence in middle-class marriages, see generally Hammerton, *supra* note 6 at 73-133.

<sup>482</sup> But see King, *supra* note 16 at 37 (noting problems with titles such as "gentleman" and "esquire" because of people's tendency to self-aggrandize). He further noted that there are problems distinguishing social class among occupations--whether an individual was semi-skilled, a master, poor, or highly-capitalized, etc. See *ibid.*

<sup>483</sup> *Dominus Rex v. Joseph H. Jobin*, *supra* note 911.

<sup>484</sup> A.N.Q.M., QS(F), *Marie Leduc v. Vincent Brazeau* (10 August 1837) (affidavit of Marie F. Leduc); *ibid.* (12 August 1837) (surety); *Marie F. Leduc v. Vincent Brazeau* (14 August 1837) (affidavit of Marie F. Leduc); *Marie Leduc v. Vincent Brazeau* (14 August 1837) (surety).

carriage maker, charged with uttering threats, provided two co-sureties for her good conduct, one of whom was a bailiff, the other an advocate.<sup>485</sup> A cooper named David Robertson, accused of a “cruel assault and battery,” was affluent enough to have a domestic servant, who incidentally corroborated her mistresses’ claims of abuse at Robertson’s hands.<sup>486</sup> Charles Smith, a grocer, also employed several domestic servants and provided bail of two hundred pounds for his good conduct.<sup>487</sup> It is impossible to know the relative social standing of many of those skilled craftsmen and farmers, so the known figure of middle class defendants is artificially low.

Some of those middle class defendants appeared in the judicial archives because of altercations that grew out of non-conjugal relationships. Numerous examples of unmarried women claiming to have been seduced by respectable men were found, and those women’s claims of filial responsibility often triggered violent repercussions. Mary Nowlan, who had two illegitimate children with a Montreal lawyer named François Bruneau, claimed that her supplications for assistance caused him to assault her and

*Occupations of Male Defendants in  
Spousal Violence Complaints*

Occupational Class	Number
and % of Total	

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<sup>485</sup> A.N.Q.M., QS(F), *Queen v. Mary Kilfinnen* (6 October 1843) (affidavit of Peter Beauchamp); *Domina Regina v. Mary Beauchamp* (7 October 1843) (surety).

<sup>486</sup> A.N.Q.M., QS(F), *The King v. David Robertson* (1 March 1830) (affidavit of Andrew Watt); *ibid.* (1 March 1830) (affidavit of Catherine Rutherford); *ibid.* (1 March 1830) (affidavit of Nancy Corr).

<sup>487</sup> See *supra* note 951 at 335.

Artisans and tradesmen	n=211 43.3%
Unskilled labourers (farmers, labourers, servants, etc.)	n=187 38.4%
Propertied (gentlemen, yeomen, innkeepers, etc.)/ Professional (notaries, lawyers, etc.)	n=18 3.7%
Unknown	n=71 14.5%
TOTAL	n=487

*Figure 10.*

threaten her life.<sup>488</sup> Margaret Doherty bore a daughter out of wedlock with Edward Kegan, a Montreal innkeeper. She took the child to Kegan, who put the child under the care of the Grey Nuns. On 23 August 1843 Doherty went to visit her daughter at the nunnery, and was informed that she had died. Accosting Kegan as he sat on his brother-in-law's stoop, she informed him of their child's death. According to her account, that conversation triggered a violent reaction by Kegan, who called her a "damned infernal bitch of a whore" and attacked her with a stick. She grabbed the stick and gave Kegan a spirited kick, which prompted his brother-in-law to seize and shake her violently.<sup>489</sup>

Cases of non-conjugal relationships were a minority, however. More typical is the prosecution brought by Charles Grant, Esquire, for assault and threats in 1839. In an

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<sup>488</sup> *Dominus Rex v. François P. Bruneau, Esquire, supra* note 919.

<sup>489</sup> A.N.Q.M., QS(F), *Queen v. Edward Kegan & Francis Hughes* (24 August 1843) (affidavit of Margaret Doherty); *Dominus Rex v. Edward Kegan* (25 August 1843) (recognizance); *Dominus Rex v. Francis William Hughes* (25 August 1843) (recognizance).



elegantly-worded complaint, Grant alleged that he and his wife had several children during the course of their eight-year marriage, and that she was repeatedly violent:

[S]he has frequently threatened violence to the deponent and has of late become so violent and furious as to put her threats in execution by casting and throwing at his person any article of furniture she happened to lay her hands upon. That she behaves in the same manner, without any shadow of cause to the Deponent's children and thereby endangers their lives. That she yesterday without any justifiable cause whatsoever cast and threw at the deponent a most deadly weapon thereby placing his life in the most imminent danger. That she has frequently threatened that she would take the life of the deponent and dance upon his grave. That the Deponent knowing the bad and violent disposition of the said Amelia Williams is in a state of perpetual fear both for his own life and that of his children. That the Deponent has long forbore but now sees himself compelled to seek the protection of the laws of the Country which he now craves praying that justice may be done in the premises.<sup>490</sup>

As wives were rarely identified as having an occupation, an equivalent study of their backgrounds cannot be made. Angelique Desmarais, legally separated from her husband Ralph Mellanby, a Montreal cabinetmaker, was an exception in that she ran a store. She alleged that she and her shop clerks were subject to her estranged husband's ferocity:

qu[e] la dite Déposante est séparée de Biens d'avec son dit mari par l'contrat de mariage; qu'elle tient un magasin en son nom en la cité de Montréal depuis plusieurs années; que pour faire ce commerce elle employe plusieurs commis, que depuis longtemps le dit Ralph Mellanby la bat et la maltraite et qu'il a souvent mis sa vie en danger, que le dit [Mellanby] la souvent menace se la tuer elle et ses commis....que la dite déposante croit sincèrement que si le dit [Mellanby] continue d'avoir sa liberté qui la vie de la dite déposante ainsi que celles de ses commises dans un grand danger--Que ses commis même ne veulent

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<sup>490</sup> A.N.Q.M., QS(F), *Charles Grant Esquire v. Amelia Williams* (8 November 1839) (affidavit of Charles Grant).

plus rester dans le magasin, si le dit [Mellanby] n'est pas appréhéné. Pourquoi elle demande qu'il soit appréhéné et traité suivant la loi.<sup>491</sup>

For comparison, the occupations of men who charged their partners with violence have also been compiled in *Figure 11*. Again, skilled labourers made up a majority, although by a slightly larger margin than unskilled labourers. Among the defendants were those responsible for enforcing the laws and security of the city's inhabitants. One wife, married to a member of the Montreal Watch, alleged that he was "dans l'habitude constante de la battre et maltraiter et aurait hier sans aucune cause quelconque assailli et battu la déposante et aurait troublé la paix et la tranquillité."<sup>492</sup>

The number of defendants found within the solidly middle class, however, was considerably larger, comprising nearly sixteen percent of the total. That might merely be statistical anomaly, although it could also reflect the fact that middle class men were more likely to prosecute their spouses for brutish deportment than were their wives. Perhaps abused middle-class wives felt they would receive less sympathy than their working-class counterparts, or were reluctant to involve public officials (some of whom were lower on the social scale) in their family affairs.

### *Occupations of Male Prosecutors in Spousal Violence Complaints*

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<sup>491</sup> A.N.Q.M., QS(F), *Dominus Rex v. Ralph Mellanby* (14 August 1834) (affidavit of Angelique Desmarais); *ibid.* (14 August 1834) (affidavit of Germain Michon); *ibid.* (14 August 1834) (affidavit of Regis Coretuerier); *ibid.* (14 August 1834) (affidavit of Ouisine Rousseau); *ibid.* (19 August 1834) (recognizance).

<sup>492</sup> A.N.Q.M., QS(F), *Dominus Rex v. Louis Desjardins* (23 July 1835) (affidavit of Angelique Lefort); *ibid.* (4 August 1835) (surety).

Occupational Class % of Total	Number and
Artisans and tradesmen	n=35 41.7%
Unskilled labourers (farmers, labourers, servants, etc.)	n=25 29.8%
Propertied (gentlemen, yeomen, innkeepers, etc.)/ Professional (notaries, lawyers, etc.)	n=13 15.5%
Unknown	n=11 13.1%
TOTAL	n=84

*Figure 11.*

All of those cases, brought by husbands and wives alike, indicate that in Montreal during the years 1825 to 1850 abused spouses frequently sought legal protection, sometimes repeatedly. Under a system driven by private prosecution, it was an abused spouse who retained primary responsibility for instigating legal action, although records indicate relatives, neighbours, and the police also stepped in to prosecute malefactors. Despite the importance of the sanctity of the private sphere, many abused spouses and others were not adverse to inviting public scrutiny of their households by bringing those prosecutions in the highly-public fora of the Montreal courts.<sup>493</sup>

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<sup>493</sup> As Fyson, *supra* note 17 at *iii* observed, the “willingness of people to bring their most intimate conflicts before the justices with little delay” is one factor that militated against the marginality of the criminal justice system.

Jurists hearing those cases made relatively benign dispositions like requiring bail, although prison sentences were also a common outcome, either in lieu of bail or as punishment. While providing a surety was an imperfect solution--and in all probability was far less effectual than it might have been in cases involving two non-related parties --it nevertheless offered some measure of protection by offering the possibility of further coercive action by the state if an abusive spouse transgressed its terms.

In a time before the formation of societies for the protection of women and widespread cognizance of the evils of spousal abuse, a significant number of the personal violence cases that appeared before Montreal courts involved spousal assaults. Society, and courts by extension, may not then have recognized a spouse's right not to be beaten. However, by attempting to mediate and even punish such acts, they were reflecting and solidifying the premise that there was no right of marital chastisement. The private prosecutors who brought such suits – whether they were spouses, relatives, neighbours, bystanders, or policemen--were signaling by their actions that they believed such acts to fall under the purview of the criminal courts, and that those acts were cognizable by the courts. With only rudimentary and haphazard institutions of law enforcement in place, and in a period before issues of domestic violence had penetrated public consciousness, some abused spouses in early-to-mid-Victorian Montreal were nevertheless able to achieve a measure of “justice in the premises.”

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