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# THE CORONER'S INQUEST AS AN EQUALITY RIGHTS MECHANISM: A Case Study of the May-Iles Coroner's Inquest into Domestic Violence in Ontario

FIONA SAMPSON\*

## RÉSUMÉ

L'article évalue les avantages et les inconvénients d'utiliser la procédure d'enquête du coroner en tant que mécanisme juridique pour faire progresser l'égalité des droits des femmes, particulièrement dans le contexte de la violence familiale. L'enquête du coroner pour la cause Arlene May-Randy Iles sur la violence familiale lui sert d'étude de cas pour analyser le potentiel de la procédure d'enquête du coroner voulant accroître la sécurité et l'égalité des femmes qui sont l'objet de violence familiale. L'article se penche sur les valeurs pratiques et théoriques des recommandations de l'enquête May-Iles aux fins de la réforme. Il évalue les capacités politiques et juridiques de la procédure d'enquête pour réaliser une réforme sociale et juridique, et pour mettre fin à la violence contre les femmes.

## CORONERS' INQUESTS AND EQUALITY RIGHTS

The purpose of a coroner's inquest is to answer a number of questions about a deceased person, such as how, where, when, and by what means the deceased came to his or her death.<sup>1</sup> The goal of a coroner's inquest is to produce recommendations for the prevention of similar deaths in the future.<sup>2</sup> Recently in Ontario, standing at a provincial coroner's inquest has been used by women's equality seeking groups whose goal is to advance the equality rights of women in the antiviolenace context. These groups have advocated that coroners' juries sitting on gendered violence inquests adopt recommendations for reform that would reduce women's risk of experiencing violence and preventable deaths, in compliance with the equality guarantees provided in s. 15 of the *Charter*.<sup>3</sup> From the perspective of equality rights advocates, the attraction of

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1. *Coroner's Act*, R.S.O. 1990, c. 37, ss. 31(1)(a-e).
2. *Ibid.*, s. 31(3).
3. *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11, s. 15.

the inquest process is that it offers an opportunity to examine in detail a wide range of legal and social issues relating to domestic violence as an equality rights issue. Based on this analysis, a coroner's inquest has the potential to result in the adoption of diverse strategies for reform to benefit those vulnerable to preventable deaths, such as that experienced by the deceased.

A party who is "substantially and directly" interested in the inquest, on application, may be designated by the coroner as a party with standing at an inquest.<sup>4</sup> Participation as a party with standing provides a unique opportunity to advocate on behalf of disadvantaged groups that may be particularly susceptible to a preventable death. A party with standing at a coroner's inquest may be represented by counsel or an agent, can call, examine and cross examine witnesses, and present arguments and submissions.<sup>5</sup> Participation in coroners' inquests has provided women's equality rights organizations with the opportunity to advocate for the adoption of recommendations for reforms that would increase personal security for women at risk, in accordance with their constitutionally guaranteed right to equality. Parties with standing at a coroner's inquest can introduce evidence and recommendations for the jury's consideration that are broad and comprehensive, as well as creative and original. The regular restrictions associated with the availability of traditional remedies do not apply. Given the potentially broad subject matter of a coroner's inquest, the forum provides an excellent opportunity to contextualize equality rights arguments to include a consideration of the socio-historic roots of the inequality at issue. The fact that a coroner's inquest operates pursuant to the rules of administrative law means that there is a fair degree of elasticity with respect to the application of the rules of evidence. This allows more flexibility with respect to the determination of relevance and the admission of evidence than would be the case when litigating a similar issue in the criminal or civil law context.

The litigation strategy most commonly employed by feminist equality rights organizations, such as the Women's Legal Education and Action Fund (LEAF) and the National Association of Women and the Law (NAWL), is the intervention in legal actions that involve an issue relevant to gender-based discrimination. The litigation of claims of gender inequality advanced through *Charter* challenges and human rights complaints offer a very specific means of law reform. The advantage of intervening in existing litigation is that it results in enforceable judicial orders, and can establish binding legal precedent. Consider for example the cases associated with production and disclosure of a complainants' personal records in sexual assault trials.<sup>6</sup> In contrast with participating in a coroner's inquest, the disadvantage of intervention based equality rights work is that its focus is very narrow and the intervention is entirely reactive in nature. The issues are already defined by the parties by the time an

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4. *Ibid.*, s. 41(1).

5. *Ibid.*, s. 41(2); For a complete review of the coroner's inquest process see C. Granger, *Canadian Coroner Law* (Toronto: Carswell, 1984).

6. *R. v. Mills* (1997), 56 Alta. L.R. (3d) 277, 205 A.R. 321 (Q.B.), (1997), 56 Alta. L.R. (3d) 301, 207 A.R. 161 (Q.B.), rev'd, [1999] 3 S.C.R. 668, 180 D.L.R. (4<sup>th</sup>) 1.

intervener becomes involved in the action. The record has usually been established, leaving the interveners to work with the case as they find it. Traditional equality rights litigation is a piecemeal process, usually limited to the consideration of a single legal issue. Litigation of women's *Charter* rights is limited as an equality rights strategy because of its narrow focus on the law as the source of the problem of sexual discrimination and violence.<sup>7</sup>

Participation in a coroner's inquest presents an opportunity for potential reform on a broad and systemic basis, with the opportunity to address a wide range of legal and social issues. This is an attractive alternative to the traditional litigation of women's equality rights on a case-by-case basis.<sup>8</sup> With respect to an issue such as domestic violence, which is systemic in nature, a coroner's inquest offers the unique opportunity to apply an expansive analysis that addresses the broad range of intersecting factors that contribute to the experience. While a criminal justice response has been at the forefront of contemporary approaches to domestic violence in Canada,<sup>9</sup> domestic violence is not only a criminal law issue. The criminal justice system is not the only means through which the needs of abused women should be addressed. Indeed, the pigeon holing of domestic violence as strictly a criminal justice issue detracts from the other socio-political and economic factors that contribute to women's inequality and domestic violence. Dianne Martin and Janet Mosher have suggested that the criminalization of domestic violence is problematic in that it lays blame at the level of the individual, pathologizes the behaviours of individual abusers, depoliticizes women's struggles from violence, and isolates each case in terms of individual facts.<sup>10</sup> A coroner's inquest represents an opportunity to consider a comprehensive range of factors that contribute to a systemic experience of inequality such as domestic violence. It also represents an opportunity to consider different approaches that might be adopted to eliminate the inequality that allows for the experience.

Women's equality seeking groups in Ontario recently intervened in the coroners' inquests that studied the murder of Theresa Vince by her manager/employer Russell Davis at Sears in Chatham, Ontario;<sup>11</sup> the murder of Arlene May by her ex-partner Randy Iles in Collingwood, Ontario;<sup>12</sup> and the murder of Gillian Hadley by her

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7. Judy Fudge, "The Effect of Entrenching a Bill of Rights upon Political Discourse: Feminist Demands and Sexual Violence in Canada" (1989) 17 *Int'l J.Soc.L.* 445-463.

8. I use the term 'alternative' to mean supplemental; I do not mean to suggest that participation in coroner's inquests should be considered as an equality rights strategy to replace intervening in the litigation of equality rights cases.

9. Joanne C. Minaker, "Evaluating Criminal Justice Responses to Intimate Abuse through the Lens of Women's Needs" (2001) 13 *C.J.W.L.* 74 at 75.

10. Dianne L. Martin & Janet E. Mosher, "Unkept Promises: Experiences of Immigrant Women with the Neo-Criminalization of Wife Abuse" (1995) 8(1) *C.J.W.L.* 3 as cited in Joanne C. Minaker, *ibid.* at 79-80.

11. Theresa Vince-Russell Davis Coroner's Inquest, *Jury Recommendations (December 2, 1997)* (Toronto: Queen's Printer, 1997).

12. Arlene May-Randy Iles Coroner's Inquest, *Jury Recommendations (July 2, 1998)* (Toronto: Queen's Printer, 1998).

ex-husband Ralph Hadley in Pickering, Ontario.<sup>13</sup> The coroner's inquest into the murder-suicide of Arlene May and her abusive partner Randy Iles was arguably the most ambitious of these inquests, as its stated goal was to provide a province-wide inquiry dealing with domestic violence in Ontario. Because of the breadth and scope of the May-Iles inquest, and its potential for reform, this inquest will form the focus of the following analysis. The analysis will examine the value of coroner's inquests as a human rights mechanism, specifically for advancing the equality rights of women in the context of gendered violence.

The purpose of this article is multifold. It includes an assessment of the utility of a coroner's inquest as a tool for social and legal reform from a feminist, equality rights perspective. The article provides a record of the May-Iles coroner's inquest on domestic violence in Ontario and its contribution to the goals of reducing domestic violence and protecting the equality and security rights of women who experience violence. The article will also serve as a record of one experience in the history of women working to achieve social and legal reform designed to end violence against women. The recommendations of inquest juries are not published in any legal reporter series or database. Therefore another goal of this article is to provide access to some of the most significant recommendations of the May-Iles jury, as well as to provide some critical insight into the practical value of the jury's recommendations, both their potential value and their actual value as they have been implemented to date. It is hoped that this article will provide a useful reference to social justice groups interested in participating in future coroner's inquests.

## **THE MAY-ILES CORONER'S INQUEST INTO DOMESTIC VIOLENCE**

### **(a) The May-Iles Murder-Suicide**

Arlene May was a 38 year old single mother of five children who was murdered by Randy Iles, near Collingwood, Ontario, on March 8, 1996. Arlene experienced escalating violence throughout her two-year relationship with Randy. The violence commenced when Arlene became pregnant with Randy's child in July of 1995. Until the time that she was killed, Arlene experienced increasing physical and psychological violence, including repeated death threats. The police were first contacted about Randy's abusive behaviour in November, 1995; three months later Arlene was dead. During the final three months of Arlene's life, Randy appeared in court 11 times and was released on bail four times in two different jurisdictions. The last time that Randy was released from custody, he was released on \$200.00 bail with no surety.

Arlene lived in poverty, occasionally forced to use food banks to feed her family. In the face of threats to her own safety by Randy, Arlene's primary concern seemed to rest with the security and comfort of her children. Her eldest daughter, Pauline, testified at the inquest that her mother was her best friend. Arlene made every effort to cooperate with the justice system in order to protect herself and her children from

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13. Gillian Hadley-Ralph Hadley Coroner's Inquest, *Jury Recommendations* (February 8, 2002) (Toronto: Queen's Printer, 2002).

her abusive partner. Ultimately Arlene recognized that the justice system had failed to protect her equality and security rights. The jury heard evidence that on the day that she was murdered, Arlene rhetorically asked her hairdresser "Isn't my life worth more than \$200.00?" when telling her that Randy had recently been released from custody on \$200.00 bail.

On March 8, 1996 Randy purchased a gun and ammunition from the Canadian Tire store in Oshawa, Ontario using his Fire Arms Certificate, which had never been confiscated despite the fact the terms of his bail release included confiscation. Randy rented a truck and then drove to Collingwood. At approximately 1:00 p.m., Randy took Arlene and three of her children hostage in Arlene's house. Randy barricaded the children in a closet for several hours and then released them. He ordered that they go to the corner store and call the police. The emergency response team and local police, in total comprising a force of approximately 50 officers, surrounded Arlene's house for several hours. They entered the house at 11:40 p.m. and found Randy and Arlene dead in Arlene's bedroom.

### **(b) The Inquest**

In September, 1996 the coroner's office announced that a "super inquest" would be held into the deaths of Arlene May and Randy Iles. It was announced that a broad and systemic inquiry into the issue of domestic violence would be facilitated by the May-Iles inquest.<sup>14</sup> Instead of holding an inquest into each individual intimate femicide in Ontario (of which there are approximately 40-60 per year<sup>15</sup>), the coroner decided to hold a single, representative inquest into the issue of domestic violence. The coroner's office announced that the inquest into Arlene May's death would be representative in nature and would include a systemic inquiry into domestic violence and intimate femicide on a province-wide basis. The coroner stated that the circumstances of Arlene May's death were sufficiently representative of the experience of domestic violence and intimate femicide to justify its use as a case study for a systemic inquiry into these issues.<sup>16</sup>

On January 9, 1998, the following parties were granted standing at the May-Iles coroner's inquest: Pauline May (Arlene's eldest daughter); Debbie Iles (Randy's widow); the Attorney General of Ontario (responsible for the Crown counsel who prosecute domestic violence cases and the administration of the courts which hear the cases); the Solicitor General of Ontario (responsible for the police who investigate domestic violence cases); the Town of Collingwood (responsible for the now defunct Collingwood police force); the Ontario Crown Attorney's Association; Metrac (Metro Action Committee on Violence Against Women and Children); and OAITH (Ontario

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14. "Super Inquest to Probe Growing Family Violence" *Toronto Star* (18 September 1996) A1.

15. Maria Crawford, Rosemary Gartner & Myrna Dawson, *Woman Killing: Intimate Femicide in Ontario 1991-1994 Volume II* (Toronto: The Women We Honour Action Committee, 1997) at iv; Marika Morris, "Violence Against Girls and Women" CRIAW (Canadian Research Institute for the Advancement of Women) Factsheet on Violence Against Women 2000, revised January 2002.

16. "Super Inquest to Probe Growing Family Violence" *Toronto Star* (18 September 1996) A1.

Association of Interval and Transition Houses). The parties had just over a month to prepare for their participation in the inquest that heard evidence over a period of approximately 17 weeks.

Metrac and OAITH were the only two public advocacy organizations granted standing at the May-Iles inquest. The two organizations were granted full, joint standing to be represented by the same counsel. For the purposes of their participation at the inquest, they assumed partnership status. Metrac and OAITH are both feminist, nongovernmental organizations dedicated to the abolition of violence against women. Metrac and OAITH were the only parties at the inquest that applied a feminist, equality rights analysis to the experience of domestic violence. They were also the only parties with standing at the inquest that had no prior involvement with the May-Iles murder-suicide. As the staff lawyer responsible for directing Metrac's participation at the inquest, the following analysis of the May-Iles inquest and its results is informed by that experience.<sup>17</sup>

Metrac and OAITH made the commitment to participate in the May-Iles inquest because of the opportunities it represented. The purpose of any coroner's inquest is twofold: to educate, and to prevent similar deaths in the future. It was felt that a representative inquest into domestic violence in Ontario presented an excellent opportunity to achieve positive change for the benefit of abused women.<sup>18</sup> Both organizations were interested in the opportunity to secure recommendations for legislative and policy changes that would decrease the systemic disadvantages experienced by abused women in the criminal and family law systems. Both organizations were also interested in the public education opportunities associated with any inquest through media coverage and the initiation of public discussion.<sup>19</sup>

The coroner's counsel identified the different phases of the May-Iles inquest as follows: a factual examination of the history, background and cause of the death of each deceased; the roles of the police, Crown attorneys and courts in response to issues of domestic violence; and the broader community and legislative responses to issues of domestic violence.<sup>20</sup> The coroner's counsel entered his case first. The other parties were permitted to cross-examine the coroner's witnesses, and then the parties with standing called their own witnesses. Jury members were permitted to cross examine

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17. Despite the fact that s. 45(1) of the *Coroner's Act* provides that evidence at an inquest "shall" be recorded, the evidence at the May-Iles inquest was not recorded, and no transcripts of the inquest proceedings are available. References to evidence heard at the inquest are based upon my notes of the proceedings made at the time that the evidence was heard.

18. A coroner's jury cannot make legal findings of responsibility, however it may "make recommendations directed to the avoidance of death in similar circumstances or respecting any matter arising out of the inquest" (*Coroner's Act*, R.S.O. 1990, c. 37, s. 31(2)(3)).

19. Some guidance relating to an inquest experience of this nature was provided by the Manitoba Coroner's Inquest into the deaths of Rhonda Lavoie and Roy Lavoie, see Honourable Perry W. Schulman, Commissioner, *A Study of Domestic Violence and the Justice System in Manitoba* (Winnipeg, Man.: The Law Courts, 1997).

20. The coroner who presided over the inquest was a medical doctor. The coroner at an inquest is advised and represented by an appointed Crown counsel (*Coroner's Act*, R.S.O. 1990, c. 37, s. 30).

all witnesses. A total of 76 witnesses were called throughout the duration of the May-Iles inquest. Approximately 95% of those witnesses were called by coroner's counsel.

A complete review of the evidence heard at the May-Iles inquest lies beyond the scope of this article. However, upon hearing the totality of the factual evidence at the inquest relating to Randy and Arlene's relationship and the escalation of violence, it became clear that once Arlene was involved with the criminal justice system, she was unable to manage Randy. Prior to having any contact with the criminal justice system, Arlene had managed to contain Randy's behaviour and avoid a dramatic escalation of the violence and threats. But as the police and the courts attempted to deal with the individual incidents of abuse experienced by Arlene (there was no attempt to deal with the experience of abuse as a pattern or a whole), the system failed to ensure Arlene's safety. Randy was repeatedly released from custody on a consent basis with progressively diminishing bail terms, as he continued to manipulate the system to his advantage. Risk indicators including threats of death and suicide accumulated as the system asserted pressure on Randy, but failed to hold him accountable for his behaviour.

On hearing the evidence, it was apparent that the cumulative failures associated with the May-Iles case were systemic in nature. However, it was the actions of a large number of specific individuals that resulted in the failure of the system to meet Arlene's needs and to protect her rights. None of these individuals were held accountable for their actions by the system and none of them received disciplinary action. Endemic problems that compounded the ineffectiveness of individuals in the system were also identified. For example, evidence showed that budgetary restrictions and staff cutbacks resulted in the overextension of many Crowns, limiting preparation time available for bail hearings. This begs the question of how priorities are determined in times of fiscal restraint. The lack of priority often assigned to the issue of domestic abuse by police and Crowns constitutes a serious problem in itself. Metrac and OAITH introduced evidence at the inquest that the Crowns' lack of interest in women's equality rights can be demonstrated by the fact that in a review of approximately 21,000 sexual assault cases, not a single Crown raised a s. 15 *Charter* argument in support of the equality rights of the complainant.<sup>21</sup> This evidence demonstrated the failure of Crowns in the past to effectively represent the equality rights of women in the context of domestic violence.

Metrac and OAITH called a total of four witnesses at the May-Iles inquest. One representative from each organization testified to the mandate and antiviolence work of their respective organizations. Metrac and OAITH also called two expert witnesses to testify to the social dynamics of violent relationships and the criminal justice response to violence against women, and to family law issues relating to woman abuse

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21. The Honourable Judge D. Hackett, "Finding and Following 'The Road Less Traveled' Judicial Neutrality and the Protection and Enforcement of Equality Rights in Criminal Trial Courts" (1998) 10 C.J.W.L. 129.



and the practice of law in general as it relates to domestic violence. Metrac and OAITH would have liked to call additional witnesses to provide evidence relating to the post bail process in domestic violence cases, and more detailed evidence relating to the experience of domestic violence outside of the context of the criminal justice system. However, in addition to the financial restraints experienced by the partners,<sup>22</sup> it was felt that by the time Metrac and OAITH had the opportunity to call evidence, the jury was probably saturated with information, having already heard more than four months of evidence.

## THE RECOMMENDATIONS

### (a) Metrac and OAITH's Recommendations

Metrac and OAITH advanced a total of 200 recommendations for reform for the jury's consideration. These recommendations were drafted jointly by the two organizations based upon consultations held with their respective constituency members. The recommendations that were of paramount importance related to increased justice within the legal system for abused women; increased security and safety for abused women; and increased accountability of the system players. The key recommendation relating to increased justice for abused women was for the introduction of an independent women's advocate program to support abused women, and to provide them with legal representation in the criminal justice system.

Prior to the commencement of the inquest, Metrac and OAITH had agreed on the need for the introduction of an independent women's advocate to represent survivors of domestic violence.<sup>23</sup> It had been apparent for many years that abused women do not receive the support or legal assistance necessary to use the criminal justice system safely. In 1995 the Supreme Court of Canada released its decision in *A.(L.L.) v. Beharriell*.<sup>24</sup> *Beharriell* affirmed that sexual assault complainants are entitled to independent counsel to represent their distinct interests in cases where the defendant seeks access to their personal records. The *Beharriell* decision provided support for the partners' commitment to the right of independent legal representation for abused women. *Beharriell* provided judicial recognition of the fact that the Crown represents the public interest and not the interests of complainants. The fact that a woman's physical safety and security is at issue in trials relating to domestic violence increases the need for women to have access to independent counsel. The right to independent counsel may not be exercised in every case, however it was argued by the partners that pursuant to s. 15 of the *Charter*, women should be able to access independent counsel on an as-needed basis to ensure that their equality rights and security interests are advanced for the court's consideration. Upon hearing the evidence at the May-Iles

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22. All of Metrac and OAITH's witnesses appeared on a *pro bono* basis.

23. The idea of introducing an independent women's advocate into the criminal justice system to represent victims of violence is not a novel one; see J. Temkin, *Rape and the Legal Process* (London: Sweet and Maxwell, 1987) and Carol Smart, *Feminism and the Power of the Law* (New York: Routledge, 1989).

24. (1995), 103 C.C.C. (3d) 92, [1995] 4 S.C.R. 536.

inquest, the partners were further convinced the criminal justice system must be reformed to allow for the participation of an independent women's advocate.<sup>25</sup>

The partners viewed the concept of an independent women's advocate as an idea that extended beyond the provision of lawyers to complainants in domestic violence cases. The concept was understood to include the provision of a full support system for women who have been abused, similar to that provided by court support workers in many shelters at present. The partners adduced evidence that an independent women's advocate would provide services to women even if they chose not to engage the criminal justice system and had no need for legal representation. It was envisioned that services provided by an independent women's advocate office would include educational services relating to domestic abuse; counseling services; court support and legal services; and a broad range of referral services.

The independence of a women's advocate program is essential to its success. The evidence heard at the inquest confirmed the belief that Crown attorneys are often unable to effectively represent victims of domestic violence. Women need the support of an assistant to successfully negotiate the maze of the criminal justice system – a system which is so Byzantine and uncoordinated that tragedies such as Arlene May's are increasingly familiar to the shelter workers involved with the system on a regular basis. An accused charged with a domestic violence related offence is immediately entitled to legal representation pursuant to his guaranteed *Charter* rights. Abused women should be afforded similar treatment, especially in light of the fact that their life and liberty interests are at issue in a domestic violence situation. The partners adduced evidence that pursuant to ss. 7 and 15 of the Charter, complainants in domestic violence cases should be guaranteed the right to an advocate to represent their interests in a process that directly affects their liberty and security.

While the other parties at the inquest led evidence that the Victim Witness Assistance Program (VWAP) offers support services for victims of domestic violence, these services do not fulfill the needs of abused women. Victim Witness Assistance workers provide services to all victims of crime and do not focus exclusively on the provision of gender specific services to abused women. The VWAP staff are employees of the Attorney General and are not independent from the Crown. In fact, VWAP staff are not permitted to discuss the facts of a case with witnesses and are obliged to disclose any evidence a witness may share with them to the Crown – making them unable to provide independent advocacy services. It was envisioned by Metrac and OAITH that the independent women's advocate service would be a state funded service offered independent of any government ministry, to ensure the autonomy of the service providers.

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25. An independent advocate could have made a difference in Arlene May's case in the following ways: provided representation at bail hearings to advocate for consistency of bail terms, ensured Arlene received a copy of all bail orders and understood them, ensured that at hearings for variation of no-contact orders Arlene was fully informed of her rights and testified before the court, opposed consent releases, and provided evidence to the court at Randy's bail hearings that the Crown and defence failed to provide.

Metrac and OAITH's commitment to reforms to increase security and safety for women in the context of domestic violence informed each of the recommendations advanced for the jury's consideration. The theme of women's safety was also the focus of the final submissions advanced by the partners in conjunction with their recommendations. Some specific examples of recommendations that the partners felt would increase women's safety included: the increased involvement of antiviolence advocates in the training and monitoring of the police, Crowns and judiciary; increased funding of services for abused women and their children; the introduction of safety planning tools and risk assessment tools, designed with the assistance of antiviolence community representatives; and the expansion of the special domestic violence court system, following a full review of the pilot project based in Toronto.

A third priority for Metrac and OAITH in its recommendations was to provide for increased accountability of the system personnel responsible for providing services to abused women. It was clear from the evidence at the inquest that the individuals responsible for the system's failure to protect Arlene May were not held accountable for their specific contributions to the system's breakdown. To the same end, the one police officer who made an outstanding effort to assist Arlene received no recognition for that exceptional performance. Throughout the inquest reference was repeatedly made to the systemic nature of the problems that defined the criminal justice system response to domestic violence. Indeed, in almost any analysis of the injustices and inequality experienced by Canadian women, reference is made to systemic discrimination. However, as the evidence disclosed at the May-Iles inquest, the system is made up of individuals, and systemic failures are the result of the cumulative actions of those individuals. It became an important priority for Metrac and OAITH to address the systemic problems associated with the criminal justice system through the introduction of increased accountability of the system personnel.

Metrac and OAITH recommended the introduction of accountability mechanisms for the police and Crowns dealing with domestic violence cases. For police monitoring, it was recommended that minimum performance assessment standards be introduced on a province-wide basis, irrespective of the different policies and protocols of the different police forces. With respect to Crown monitoring, it was recommended that formal, comprehensive performance evaluations be completed annually. It was recommended that for both police and Crowns progressive disciplinary measures be introduced and enforced to remedy performance deficiencies relating to domestic violence. It was also recommended that personnel be rewarded for exceptional performance in domestic violence situations by some form of recognition, including promotions and other career rewards. The goal of introducing increased accountability of system personnel was to provide for improved service delivery and increased safety for women.

#### **(b) The Jury's Recommendations**

On July 2, 1998, after 10 days of deliberation, the four members of the jury (two men and two women, one female juror having been excused mid-hearing for health reasons) returned from their deliberations with a set of recommendations for reform. The jury's

recommendations adopted and endorsed the most important recommendations advanced by the partners for the jury's consideration. The May-Iles jury released 213 recommendations designed to prevent intimate femicides in the future. The vast majority of the jury's recommendations for reform were directed at the provincial government. The jury clearly understood the evidence which confirmed that, despite Arlene May's efforts to assist the criminal justice system in its efforts to hold Randy Iles accountable for his abusive behaviour, the system ultimately failed Arlene. The jury's recommendations are holistic in nature. The recommendations represent a comprehensive attempt to reform the systemic inadequacies that define the current response to domestic violence. The jury was exceptionally specific with its recommendations. However each single recommendation represents an essential part of the whole, as recognized by the jury in its explicit decision not to prioritize its recommendations.<sup>26</sup> The jury's recommendations are not revolutionary or radical in nature; they are a collection of commonsensical and rational ideas to reform a system that currently operates to the disadvantage of abused women.

Several of the jury's recommendations are of particular significance in that they recognize key systemic weaknesses. The jury recommended the standardization of provincial domestic violence policies and services for police and Crowns.<sup>27</sup> This would provide for increased coordination and consistency between service providers and jurisdictions. Service providers would work effectively together as a team, rather than at odds with one another as is often the case. The jury identified the need for a coordinated and seamless response to domestic violence to be delivered cooperatively by all service providers.<sup>28</sup> This recommendation is important because the current fractured nature of responses by service providers to domestic violence allows perpetrators to fall through administrative cracks, as was the case with Randy Iles. An uncoordinated delivery system is inefficient in terms of communication and costs. Without coordination, the delivery system can be manipulated and abused. An uncoordinated service delivery system can increase the risk factors experienced by victims of violence. Women may inaccurately assume that the system is providing security, when in fact it is not. An uncoordinated system can operate to the serious disadvantage of women whose safety is sacrificed to the system's incompetence.

As part of the establishment of a coordinated justice delivery system, the jury recommended the province-wide extension of the specialized domestic violence court system.<sup>29</sup> This system had been introduced on a trial basis in Toronto prior to the May-Iles inquest. In specialized domestic violence courts, teams of specially trained Crown attorneys, police and court support staff such as VWAP personnel work together to prosecute domestic violence cases. The system offers two different models: the early intervention model and the domestic violence trial court (referred to as the

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26. May-Iles Jury, *Verdict and Recommendations – Opening Statement* (Toronto: Queen's Printer, 1998).

27. *Ibid.*, recommendation H 1-5.

28. *Ibid.* at 2 A.

29. *Ibid.*, recommendation N 1-9.

“vigorous prosecution approach” by the May-Iles jury). The early intervention model is available to an offender charged with spousal abuse for the first time (a first charge does not of course mean that this is the first incidence of abuse in the relationship), in a situation in which no weapons were used, and in which the victim did not suffer a significant injury. The accused is given the option to plead guilty, and is released on extended bail to enter an intervention program for batterers. Upon completing the program, the offender reappears before the court for sentencing. If the reports from the intervention program and the offender’s spouse are positive, the final disposition may be a conditional discharge with probation. If an offender does not qualify for the early intervention model, his case will be referred to the specialized domestic violence court, where the case will be prosecuted by experts in domestic violence. The May-Iles jury recommended the expansion of the specialized domestic violence courts across the province, conditional upon an evaluation of the early intervention model.<sup>30</sup> The jury also recommended the establishment of Domestic Assault Review Teams (DART) in jurisdictions without domestic violence courts, to monitor the effectiveness of violence related policies and procedures in those jurisdictions.<sup>31</sup>

Perhaps one the most significant recommendations of the May-Iles jury was the recommendation that the Ontario government consult with women’s equality seeking advocacy groups before the introduction of any initiative or policy relating to domestic violence.<sup>32</sup> This recommendation is significant because it represents an acknowledgment of the expertise held by women’s antiviolence advocacy groups. Many women’s antiviolence equality seeking groups in Ontario have more than 25 years experience in dealing with domestic violence. These groups have acquired an expertise on issues relating to violence against women that governmental service providers could rely on to improve the quality of their services. The expertise of women’s antiviolence organizations should inform every government initiative that effects women at risk of domestic violence to ensure that the initiative will protect and not threaten the equality and security rights of such women, and to ensure that government initiatives are relevant and effective. Meaningful consultation with feminist antiviolence advocates preceding the introduction of project or legislative domestic violence initiatives would improve the quality of the initiatives. It would also be an efficient use of the advocates’ expertise and energy. Rather than being treated as opponents of the state, antiviolence advocates could be treated by governments as allies with whom it is possible to work cooperatively to protect the equality and security rights of women and children.

One of the other significant recommendations advanced by the jury was the introduction of an independent women’s advocate to provide support and advocacy assistance to victims of domestic violence.<sup>33</sup> Through this recommendation the jury

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30. *Ibid.*, recommendations N 1, 6.

31. *Ibid.*, recommendation N 9.

32. *Ibid.*, recommendation B. 4.

33. *Ibid.*, recommendation Q 1-4.

endorsed the need for women to have their own voice in the system, so that they can ensure that their needs and rights are addressed. Metrac and OAITH envisioned an independent women's advocate as follows:

The independent Women's Advocate Program (would) advise female victims of domestic violence about issues related to the experience of domestic violence, represent a central contact person, independent of the control of the justice system, accompany women to appointments with police and Crown Attorneys/Assistant Crown Attorneys, represent women in legal proceedings, where applicable, and assist in the education of the justice system with respect to issues of domestic violence.<sup>34</sup>

The jury in its recommendation for a women's advocate did not describe the function of that advocate in any detail. However, it is suggested that were the recommendation to be implemented in consultation with antiviolence workers as recommended by the jury, the service model supported by Metrac and OAITH would represent an invaluable improvement to the services currently available to women who experience domestic violence. At present, victims of domestic violence must negotiate the complexities of the criminal and family law systems alone, without any guaranteed access to an advocate who will ensure that their needs and rights are protected. The introduction of an independent women's advocate could help women to safely discontinue abusive relationships by providing education about domestic violence including, the control mechanisms used by abusers, women's legal rights, and by assisting women in their engagement with the justice system.

Other jury recommendations of particular significance include the following:

- increased community based services for women and children who are victims of domestic violence, to be based out of front line service agencies such as shelters;<sup>35</sup>
- the introduction into the criminal justice system of monitoring and accountability procedures for police and Crowns;<sup>36</sup>
- the introduction of risk assessments and safety planning for use by all police officers<sup>37</sup> and the introduction of risk assessments for use by all Crowns in their submissions;<sup>38</sup>
- mandatory training for all police, Crowns and members of the judiciary in domestic violence issues.<sup>39</sup>

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34. Metrac and OAITH's Recommendations to the May-Iles Jury, recommendation 141.

35. Jury recommendation X 4.

36. *Ibid.*, recommendations V 7, I 2.

37. *Ibid.*, recommendation C 1-8.

38. *Ibid.*, recommendation P 23.

39. *Ibid.*, recommendations G 1-5; N 5; O 7; P 2, 27; W 1-7.

If implemented in good faith, the May-Iles jury recommendations would provide for services and supports that could reduce the preventable deaths of women like Arlene May who experience domestic violence.<sup>40</sup> The implementation of the jury's recommendations would require an applied effort on the part of the government to ensure comprehensive and effective implementation. The jury recognized the challenges associated with the task of implementation and recommended the establishment of a committee to coordinate the implementation process.<sup>41</sup> Unfortunately, the successful coordination and implementation of the recommendations to achieve a seamless and coordinated justice delivery system for abused women has yet to be achieved.

### IMPLEMENTATION OF THE RECOMMENDATIONS

Immediately following the release of the jury's recommendations, the Ministry of the Attorney General announced that 95% of the recommendations relating to the criminal justice system were already being introduced.<sup>42</sup> The jury had recommended establishing a committee comprised of equal numbers of government and community based members to oversee the implementation and coordination of the recommendations.<sup>43</sup> However, it was four months after the Attorney General announced that it was already working on 95% of the recommendations, and only after applied pressure from women's antiviolence groups and the opposition parties, that the government established a "Joint Domestic Violence Committee".<sup>44</sup> The committee was comprised of a small group of individual experts selected by the Attorney General to advise the Minister on the implementation of the recommendations. There was no representation on the committee of women's advocacy groups with first hand experience relating to the evidence and submissions heard by the May-Iles jury.

In September, 1999, the coroner's office released its annual report on the May-Iles recommendations.<sup>45</sup> Much of the government's reporting to the coroner's office on the implementation of the May-Iles recommendations focused on initiatives that were implemented by previous governments, or by the current government prior to the release of the recommendations.<sup>46</sup> For example, the funding of 98 women's shelters

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40. OAITH, *Falling Through The Gender Gap: How Ontario Government Policy Continues to Fail Abused Women and Children* (Toronto: OAITH, 1998).

41. *Op. cit.*, recommendation B 1.

42. "Province to Review Funding for Shelters" *Toronto Star* (4 July 1998).

43. Jury Recommendation B 1.

44. In the fall of 1998 Metrac, OAITH and other women's advocacy groups lobbied the government in support of the jury's recommendations in general and for the immediate establishment of an implementation committee. On October 5, 6, 7, 22 and again on November 2, 1998 the Opposition parties pressured the government in Question Period to account for its failure to establish a representative and inclusive implementation committee. On November 16, the government announced that a committee had been established to advise the government with respect to implementation. Neither Metrac nor OAITH were invited to sit on the committee.

45. Office of the Chief Coroner of Ontario, *Report on the Inquest into the Deaths of Arlene May and*

and 100 community counseling programs, which had been established over the past 25 years, was included as part of the government's response to the inquest.<sup>47</sup>

The coroner's office announced that 73% of the May-Iles recommendations "have been, or will be, implemented", 6% have had an alternate implementation and 18% are "under consideration".<sup>48</sup> The coroner's office reached this conclusion without investigating the accuracy of the responses received from the various government agencies and without considering assessments by parties not directly charged with implementation.<sup>49</sup> Outstanding concerns with the recommendations include, but are not limited to, the failure to implement recommendations relating to province-wide community support services for abused women, and the minimization of the establishment of an independent women's advocate – the jury's recommendation for an independent advocate for abused women has been "implemented" through the introduction of a single, short-term pilot project in Toronto. The pilot project consists of funding to hire two additional lawyers at an established clinic that specializes in providing services to women who experience violence. The specialized domestic violence court system has been expanded following the May-Iles inquest, however not all court sites in the province have a program yet.<sup>50</sup>

The coroner's office claimed that recommendations relating to community based support needs would be addressed in the report of the Office for Victims of Crime. The May-Iles jury clearly appreciated the gender based nature of domestic violence and stated that "Domestic violence cases are different than other criminal cases".<sup>51</sup> An understanding that the gender specific issues associated with domestic violence can be resolved through a generic, non-gender specific approach such as a "victims of crime" analysis is problematic. The application of such an analysis demonstrates a failure to appreciate the origins of domestic violence that are grounded in systemic sex discrimination. After the release of the jury's recommendations, Ontario Solicitor General David Tsubouchi stated that domestic violence is a "crime like any other crime".<sup>52</sup> It is disturbing that those with responsibility for the implementation of the May-Iles recommendations apparently have so little appreciation of the evidence heard at the inquest and the unique nature of domestic violence.

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46. Ontario Association of Interval and Transition Houses, *Ten Years from Montreal Still Working for Change* (Toronto: OAITH, 1999) at 16-17.

47. *Ibid.* at 17.

48. Office of the Chief Coroner of Ontario, *Report on the Inquest into the Deaths of Arlene May and Randy Iles* (Toronto: Office of the Chief Coroner of Ontario, 1999) at Section 1: Introduction and Overview Summary of Responses.

49. *Op. cit.* at 18.

50. As of September, 2001 there were 24 domestic violence court programs in operation across Ontario. The provincial government has committed to the establishment of a total of 55 domestic violence courts by 2004 (Fact Sheet – Province of Ontario, September 14, 2001, available at: <http://www.newswire.ca/government/ontario/english/releases/September2001/14/c7594.html>).

51. Jury Recommendations, Opening Statement.

52. "Ontario Today" *CBC Radio* (27 October 1999).



The Joint Domestic Violence Committee released its report in August, 1999. The committee provided 173 recommendations on how to implement the 213 May-Iles jury recommendations. The committee provided a timeline for completion of certain of the jury's recommendations. It also made recommendations relating to restraining orders and family law reform, issues not addressed by the May-Iles jury. The committee's report seems to have carried little influence in terms of providing for the implementation of the May-Iles recommendations. On July 7, 2000, Madame Justice Lesley Baldwin, chair of the committee, wrote to James Flaherty, then the Attorney General for Ontario, on behalf of the committee. Madame Justice Baldwin wrote that she had not noticed any change in how cases of domestic violence were being approached by lawyers in court.<sup>53</sup> The Ontario government has not yet responded to the recommendations advanced by the joint committee in its report.

### ACCOMPLISHMENTS AND FUTURE CHALLENGES

Statistics Canada figures for the period since the release of the May-Iles inquest recommendations, specifically 2000-2001, show that the number of women murdered by their spouses in Ontario has increased.<sup>54</sup> Reports from shelters serving abused women indicate that little or no impact has been felt directly by women and children as a result of the initiatives undertaken by the government thus far relating to the May-Iles inquest.<sup>55</sup> The government appears content to focus primarily on the criminal justice system as a singular response to the epidemic problem of domestic violence. Even within this narrow focus, there is little indication that the government is making a concerted effort to move beyond the piecemeal, gender neutral approach to domestic violence that has characterized its traditional response to this issue. There appears to be little political will to work cooperatively with community based service providers to design and provide services to abused women on a seamless, province-wide basis, as recommended by the May-Iles jury. The government has made no significant effort to increase community based support for abused women and their children so as to increase their safety and security.<sup>56</sup>

It is acknowledged that it will take time for changes in the criminal justice system to translate into meaningful practice. However, even with the introduction of meaningful changes, the criminal justice system represents only one path in the maze of bureaucracy traveled by abused women. Government cutbacks to shelters and transition houses, to direct services such as social assistance and subsidized housing, to legal aid, health care and education, have all had a negative impact on the ability of women to successfully leave abusive relationships. Antiviolence advocacy organizations have repeatedly informed the government of the negative impact of its policies on abused women, to no avail. Evidence of the direct and indirect impact of

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53. Tracey Tyler, "Complaint Against Judge Dismissed" *Toronto Star* (15 May 2002) A 27.

54. StatsCanada, *The Daily*, September 25, 2002 available at [www.statcan.ca/Daily/English/020925/d020925b.htm](http://www.statcan.ca/Daily/English/020925/d020925b.htm).

55. *Ten Years from Montreal Still Working for Change*, *supra* note 47 at 22.

56. *Ibid.* at 19-22.

government policies on abused women was introduced at the inquest by Metrac and OAITH. The jury recognized the expertise of community based, antiviolence organizations in this respect and recommended that the government consult with women's advocacy groups before the introduction of any initiatives or policies related to domestic violence. Unfortunately the government has not adopted this recommendation as part of its ongoing practice, either with respect to criminal justice reform or other reforms or initiatives that affect abused women.

The implementation process associated with the recommendations has developed into a frustrating experience for women's advocacy groups, and many of the original expectations associated with the May-Iles inquest process remain unfulfilled. However, the May-Iles coroner's inquest, and Metrac and OAITH's participation in the inquest, can be understood to represent a useful contribution to the process of social change and law reform in the context of domestic violence. The jury's recommendations provide a useful political tool for advocacy groups seeking to lobby the government to increase support for abused women and children, and to advance the equality rights of women who experience domestic violence. While monitoring the government's response to the inquest recommendations is a formidable task, it does represent a valuable method of tracking the government's action, or inaction, on the issue of domestic violence. The May-Iles inquest experience also represented a useful public education tool on the issue of domestic violence, and a touchstone for future media references on the issue.

The May-Iles jury's recommendations could also represent a useful legal tool with respect to accountability. The recommendations could be used to establish the government's liability for damages resulting from future experiences of domestic violence and intimate femicides. Justice McFarland considered the relevance of the recommendations of the Task Force on Public Violence Against Women and Children in her decision in *Doe v. Metropolitan Toronto (Municipality) Commissioners of Police*,<sup>57</sup> dealing with the 1986 rape of Jane Doe in Toronto. McFarland J. found that a government's failure to implement task force recommendations designed to improve the safety and security of women contributed to the violation of Jane Doe's s. 15 *Charter* rights to equality, resulting in legal liability for damages suffered.

McFarland J. found in *Doe* that the Metropolitan Toronto Police Force was aware of problems relating to its investigation of sexual assaults. The police force was aware of these problems in part as a result of the findings of the Task Force on Public Violence Against Women and Children, which released its final report and recommendations for reform in 1984. McFarland J. noted that following the release of the task force report, the police force made public statements that it would take immediate steps to remedy the shortcomings associated with its sexual assault investigations. McFarland J. concluded:

It seemed in that period that the public and persons who had brought their concerns in these areas to the attention of police were being publicly assured the problems

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57. (1998), 39 O.R. (3d) 487, 160 D.L.R. (4<sup>th</sup>) 697.

would be eliminated, yet within the force the status quo remained pretty much as it had always been. ... Every police officer who testified agreed that sexual assault is a serious crime, second only to homicide. Yet, I cannot help but ask rhetorically – do they really believe that especially when one reviews their record in this area? It seems to me it was, as the plaintiff suggests, largely an effort in impression management rather than an indication of any genuine commitment for change. ... The problems continued and because among adults, women are overwhelmingly the victims of sexual assault, they are and were disproportionately impacted by the resulting poor quality of investigation. The result is that women are discriminated against and their right to equal protection and benefit of the law is thereby compromised as the result.<sup>58</sup>

The same legal analysis as relied upon by McFarland J. in *Doe* can be applied to the domestic violence context in Ontario. It could be argued that the provincial government's failure to correct the shortcomings in the management of domestic violence related offences as recommended by the May-Iles jury can justify a finding of sex discrimination in violation of s. 15(1) of the *Charter*. Unless the provincial government provides a full and meaningful implementation of the May-Iles recommendations, it is possible that the recommendations might be used as a legal, rather than only a political, tool of accountability. As meaningful implementation has not yet been realized, the provincial government's response to the May-Iles recommendations thus far could be characterized as "impression management". The government's failure to implement the May-Iles jury recommendations, and its failure to protect the security and equality rights of women who experience domestic violence, can be seen as a violation of the rights of women to the equal protection and benefit of the law, as it is women who are disproportionately effected by the government's practices and policies relating to domestic violence. The potential legal relevance of the May-Iles jury recommendations following the *Doe* decision adds to the value of the recommendations.

Metrac and OAITH's participation in the May-Iles inquest resulted in a variety of different successes. The jury's incorporation of so many of the partners' recommendations represented one form of success. The generation of an increased level of public interest in the issue of domestic violence through the application of effective media relations represented another success. The successful application of feminist principles and working practices by the partners represented another form of achievement. The inquest experience was demanding and exhausting for the individuals that worked on the project. Despite the challenges of working with a skeletal staff on a minimal budget, the partners brought an invaluable perspective to the May-Iles inquest that contributed to the high quality of the recommendations advanced by the jury, in the opinion of this author. The jury's recommendations, if implemented, have the potential to improve the situation of women who experience domestic violence in Ontario, and to advance the equality rights of women in a meaningful way. However, the final assessment of the political and legal utility of the

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58. *Ibid.* at 35.

May-Iles inquest remains to be seen. Much will of course depend upon the effectiveness of political lobby efforts and the government's will to implement meaningful reform.

The Ontario government, thus far, has failed to implement the recommendations of the May-Iles jury for the introduction of a holistic, systemic response to domestic violence. The government appears primarily committed to its own initiatives that are consistent with their law and order agenda – a gender neutral agenda devoid of an equality rights analysis such as that which informed the May-Iles recommendations. As the recommendations of the May-Iles jury remain unfulfilled, the value of the May-Iles coroner's inquest appears to lie predominantly in its use as a political lobby tool for antiviolence advocates attempting to enforce systemic accountability.<sup>59</sup>

### **A FINAL ASSESSMENT – THE MERITS OF THE CORONER'S INQUEST AS AN EQUALITY RIGHTS MECHANISM**

As an equality rights mechanism, coroners' inquests such as the May-Iles inquest do not have the same dramatic legal impact as some other human rights mechanisms. A more dramatic legal impact is attached to litigation resulting in a judicial declaration that a piece of legislation violates s. 15 of the *Charter* and is unconstitutional. A s. 15 equality rights *Charter* challenge to a discriminatory law will result in a tangible end product, with a judicial finding as to the constitutionality of the subject legislation or practice.<sup>60</sup> Such a judicial finding is usually reported in at least one source, is legally

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59. See for example, "After a Summer of Grief We Need Practical Government Action: A Call for All Party Co-operation in the Ontario Legislature in Support of Emergency Measures for Women and Children", September 10, 2000, a statement addressed to the New Democrat, Liberal and Progressive Conservative parties of Ontario endorsed by more than 40 equality rights organizations advocating the implementation of the May-Iles jury recommendations.

60. Some equality rights theorists, for example, Judy Fudge and Harry Glasbeek, question the value of rights discourse and litigation to challenge race- and gender-based inequities resulting from the re-emphasis on individualism and hierarchy associated with economic restructuring in the post-fordist age. In Fudge and Glasbeek's assessment, the political response to economic restructuring and the inequities associated with it have been incoherent. In their opinion, rights discourse and litigation represent as insufficient means to challenge these inequities. Fudge and Glasbeek conclude that the law is insufficiently radical to provide for a meaningful transformation of conditions of inequality. Fudge and Glasbeek's concern that the hegemonic power of law and legalized politics deradicalizes the politics of rights is of significance because it calls into question the value of the very essence of equality-rights law. However, for persons whose life experience is such that they cannot afford the luxury of dismissing the potential value associated with human rights protections, rights discourse and litigation cannot be entirely abandoned. Fudge and Glasbeek do make the point that they do not object to "rights" *per se*, but they argue that rights are not an end in themselves because of their lack of transformative value. While concerns that equality rights discourse and litigation may not be the panacea of social injustice may be legitimate, it seems imperative to maintain a commitment to equality rights discourse and litigation as at least one means to achieve the goal of social justice reform. Such a commitment ensures that that issues of oppression and inequality receive a place on the political agenda, enabling the advancement of political strategies for reform that may reinforce and build on the ideas developed through equality rights discourse and litigation (Judy Fudge & Harry Glasbeek, "The Politics of Rights: A Politics with Little Class" (1992) 1 *Social and Legal Studies* 45).

enforceable, and will act as a precedent, for better or worse, with respect to future litigation. It is arguably easier to measure the degree of success associated with the traditional litigation of equality rights claims than it is to measure the gains associated with the results of a coroner's inquest. This is because the court will issue an order following the hearing of an equality rights claim either allowing or dismissing the claim. Litigation-based successes may not always be categorical since judges may come to the right conclusion for the wrong reasons, and it is the reasons that are significant in terms of the precedential value of the decision.<sup>61</sup> However, the results of *Charter*-based litigation are more legally definitive than those of a coroner's inquest. Coroners' inquests, because the juries' recommendations are not legally enforceable, may not appear on the surface to be a terribly effective mechanism for substantive reform. The primary utility of a coroner's inquest with respect to its potential as a human rights mechanism lies in its educational and political value. Although the importance of the potential educational and political value associated with a coroner's inquest should not be underestimated.

The inquest process provides a valuable way to raise equality rights issues in a contextualized framework. The specificities of these rights can be analyzed in a more comprehensive fashion than is possible in the traditional litigation of equality rights issues, such as a *Charter* challenge to the constitutionality of a piece of discriminatory legislation. An inquiry into an issue such as domestic violence, which is systemic in nature, represents an excellent opportunity to analyze a broad range of factors that contribute to the experience. The issues under consideration at a coroner's inquest are not necessarily limited to legal issues, but may also include social issues, as was the case at the May-Iles inquest. The opportunity to explore the complexities of the relations between legal and social arrangements as potential sources of oppression is huge, especially given the tendency in law to separate legal and social problems.<sup>62</sup> The opportunity to explore these issues at a coroner's inquest is fairly open ended as there is no procedural limit on the duration of a coroner's inquest, nor is there any limit on the duration of the parties' final submissions to the jury.<sup>63</sup> There is no limit on the length of the parties' written submissions to the jury, nor is there any limit on the degree of specificity involved in the recommendations advanced for the jury's consideration at a coroner's inquest.

By contrast, the narrow focus of equality rights litigation restricts the scope of evidence that may be introduced in support of an equality rights claim, and restricts the nature of the remedy sought. Sherene Razack has argued: "[The judicial process often narrows] the issue under consideration and limit[s] the transformative potential so critical to a feminist approach."<sup>64</sup> The very formalized and restrictive rules of

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61. Sherene Razack, *Canadian Feminism and the Law: The Women's Legal Education and Action Fund and the Pursuit of Equality* (Toronto: Second Story Press, 1991) at 127-128.

62. Mary Jane Mossman, "Feminism and the Law: Challenges and Choices" (1998) 10 C.J.W.L. 1 at 13.

63. There is however a limit available on the funds an organization can realistically raise to finance its participation in a coroner's inquest. It is also important strategically to consider the limits on a jury's

procedure that govern the litigation of criminal and civil law matters contribute to the narrow focus of cases heard in these contexts. An intervener before the Supreme Court of Canada is usually limited to 20 pages of written arguments in its factum, and 15 minutes of oral argument before the Court. The open ended process associated with a coroner's inquest allowed Metrac and OAITH, following five months of hearing, to deliver a detailed closing argument, and to advance comprehensive recommendations to the May-Iles jury – a strategy that worked well as the jury endorsed many of the recommendations advanced by the two organizations.

While some academics question the transformative value of equality rights discourse and litigation,<sup>65</sup> it is difficult to deny the affirmative value of a judicial declaration that a piece of discriminatory legislation is unconstitutional, or that a discriminatory practice in a private context violates a piece of human rights legislation. Such a declaration results in enforceable legal remedies, either pursuant to s. 52 of the Constitution, or pursuant to the remedial provisions of provincial and federal human rights legislation. Despite the affirmative and perhaps symbolic value of legal victories achieved pursuant to the equality rights litigation, the substantive value of these victories may be questioned. For example, despite the achievement of important legal and political victories relating to sexual assault law, women continue to experience re-victimization within the criminal justice system, and the reality of women's vulnerability to sexual assault remains the same as it was prior to these victories.<sup>66</sup> However, the enforceability of a legal result achieved through a victory in an equality rights action represents a powerful tool in comparison to the legal unenforceability of the recommendations of a coroner's jury. Women's equality rights and antiviolence organizations have invested a huge amount of time and effort in attempting to persuade the Ontario government to implement the recommendations of the May-Iles jury. Because the recommendations are of no legal force, it makes the challenge of achieving implementation very difficult.

The inaccessibility of the proceedings from a coroner's inquest constitutes a significant disadvantage with the process as a potential equality rights mechanism. The proceedings of a coroner's inquest are not necessarily transcribed, and the jury's recommendations are not reported or distributed in a published format.<sup>67</sup> Therefore there is no formal public record of the inquest and its results. The lack of accessibility to the record limits the potential value of coroner's inquests as evidentiary bases for other, more traditional equality rights litigation.<sup>68</sup> Were the recommendations of

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64. Sherene Razack, *Canadian Feminism and the Law: The Women's Legal Education and Action Fund and the Pursuit of Equality* (Toronto: Second Story Press, 1991) at 23 as cited in Mary Jane Mossman, "Feminism and the Law: Challenges and Choices" *supra* note 63 at 5.

65. See *supra* note 61.

66. Shelagh McIntyre, Christine Boyle, Lee Lakeman & Elizabeth Sheehy, "Tracking and Resisting Backlash Against Equality Gains in Sexual Offense Law" (2000) 20:1 *Canadian Women's Studies*.

67. The May-Iles jury recommendations are available at the Ontario Women's Justice Network website: [www.owjn.org/archive/arlene2.htm](http://www.owjn.org/archive/arlene2.htm).

68. For example, the public record in the *Marshall Inquiry (Royal Commission of the Donald Marshall*,

coroner's inquests to be published in legal reporting services and databases, it would increase the value of the process as an educational, political and legal equality rights mechanism. With the publication of inquest recommendations, the visibility of the recommendations would be increased, as would the feasibility of relying on inquest findings in future litigation. This would ensure that the resources invested in the inquest process would be available beyond the life span of the actual inquest hearing. Through the publication of inquest findings and recommendations, the value of a coroner's inquest as a human rights mechanism might be expanded upon in the future.

Based on the lack of concrete, substantive changes directly resulting from the May-Iles coroner's inquest, it may seem difficult to qualify a coroner's inquest as an effective equality rights mechanism. However, equality rights victories cannot always be measured in terms of immediate and tangible results. As Mary Jane Mossman has suggested, "... an assessment of feminism and law must take a longer and broader view than the 'win/lose' result of a single case."<sup>69</sup> There were several significant victories for women's equality rights resulting from the May-Iles inquest. As a result of the participation of Metrac and OAITH in the May-Iles coroner's inquest, the profile of spousal violence in Ontario was increased, at least temporarily. The adoption by the jury of many of Metrac and OAITH's most important recommendations has provided antiviolence advocates with a valuable tool to influence future public policy relating to spousal violence. The recommendations of inquest juries that incorporate equality rights perspectives, such as those of the May-Iles jury, may also prove useful with respect to the litigation of future equality rights issues. For example, such recommendations may be relied upon to demonstrate that a public authority should be held legally accountable for discriminatory practices leading to the negligent performance of a duty of care relating to a preventable intimate femicide. As a mechanism through which to identify and name the discrimination that defines the experience of gender based violence, the process of a coroner's inquest provides an excellent opportunity to examine systemic inequalities and to challenge the legitimacy of the status quo. The adoption by an inquest jury of recommendations that are

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Jr., Prosecution (Halifax, N.S.: The Commission, 1989 (*Marshall Inquiry Report*), concerning institutional racism and recommendations for changes to the criminal justice system in Nova Scotia, proved to be an important resource to the equality rights interveners and the Court in the S.C.C. hearing of *R. v. R.D.S.*, [1997] 3 S.C.R. 484, 151 D.L.R. (4<sup>th</sup>) 193. At issue in *R.D.S.* was whether the trial judge's comments in her reasons relating to social context as relevant in determining an issue of credibility, gave rise to a reasonable apprehension of racial bias. The interveners who advocated in support of the need to ensure that s. 15 *Charter* analysis informs the doctrine of judicial bias, and that a consideration of this doctrine includes relevant social and historical facts, relied upon the findings of the *Marshall Inquiry* in support of their arguments (Factum of the Women's Legal Education and Action Fund and National Organization of Immigrant and Visible Minority Women of Canada, S.C.C. Hearing of *R. v. R.D.S.*, February 12, 1997, at paras. 10, 11, 12, 31). The majority of the S.C.C. also relied upon the findings of the *Marshall Inquiry* in reaching its decision that the requirement for judicial neutrality does not require judges to discount their life experiences, and that the use of references to social context was appropriate in the circumstances of this case (*R. v. R.D.S.*, *supra* at paras. 47, 149).

69. Mary Jane Mossman, "Feminism and the Law: Challenges and Choices" *supra* note 63 at 13.

grounded in an equality rights analysis, such as those adopted by the May-Iles jury, validates the reality of the inequalities that were identified during the inquest process. In terms of victories, this represents a huge achievement. As a result of even this achievement, it can be understood that a coroner's inquest can be used as an effective equality rights mechanism.