

# Intimacy, homicide, and punishment: Examining court outcomes over three decades

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## Abstract

Little is known about changing patterns in official responses to crime over time despite changes in recent decades in how the law treats various types of violent crime. Drawing from data documenting court outcomes in homicides in one Canadian urban jurisdiction from 1974 to 2002, this study examines the role played by intimacy in law during several distinct social and public policy periods in one country. The central hypothesis is that the accused in intimate partner homicides will be subject to ‘less law’ than those in non-intimate partner homicides. However, given social and policy transformations, it is further hypothesized that evidence of differential treatment should be less in recent years and, specifically, post-Bill C-41 which was meant to change the way intimacy was considered at sentencing. In examining multiple decision points, results show that while differential treatment of intimate partner and non-intimate homicide was evident at some stages, it was not always in the direction hypothesized. Further, while patterns in treatment did change over time with ‘more law’ evident in cases involving intimate partners in more recent years, plea resolutions remained more common for intimate partner killers than for those who killed victims with whom they shared more distant relationships.

## Keywords

court, guilty pleas, homicide, intimacy, punishment

## Introduction

The problem of intimate partner violence and how our systems of formal social control respond to this type of violence has been the focus of much national and international debate over the past few decades. This concern has led to an enormous growth in the amount of public and professional attention directed at violence within the family, and in particular, violence against women by their male partners. Various legislative and policy changes have been implemented in the past several decades in an attempt to respond more effectively to this problem. As part of this move, in 1996, the Canadian federal government passed Bill C-41 that includes a statutory statement stipulating that

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an offender who abuses a spouse or child may be subject to harsher penalties.<sup>1</sup> Judges should now consider the existence of a spousal or parental relationship between an offender and their victim as an aggravating factor at sentencing. This is a significant change in Canada given that, at one time, penal laws made no mention of the relationship between a victim and an accused or what that relationship should mean, if anything, in criminal law (Grant et al., 1998).

Various similar changes in criminal justice responses have occurred in other countries in an attempt to correct what many have argued to be different, and often more lenient treatment, of intimate partner violence, particularly against women by men. For example, provocation or partial defences, particularly relevant to intimate partner homicide, have been the focus of international criticism and debate, leading to recent reforms that have seen it abolished in various Australian states (e.g. Tasmania, Victoria, and Western Australia), New Zealand as well as England and Wales (Fitz-Gibbons and Pickering, 2012). To date, though, few studies have examined the impact of these changing responses to this type of violence over a significant period of time.

This paper begins to fill this gap by examining outcomes in homicide cases at various stages of the criminal justice process from 1974 to 2002 in one Canadian urban jurisdiction. Given the lack of data on courts in this country, there is little information on how cases are treated at any stage of the criminal justice system, not just at the sentencing stage. Therefore, the goal of the current study is to compare the overall treatment of defendants who killed intimate partners to the treatment received by defendants who killed victims with whom they shared more distant relationships. The central hypothesis to be tested is that defendants in cases of intimate partner homicide will be subject to 'less law' than defendants in non-intimate partner homicide cases (Black, 1976, 1993), holding constant factors that distinguish these types of killings. Being subject to 'less law' means, for example, that those who killed intimate partners will have been charged and convicted of less serious offences and to have received shorter terms of imprisonment compared to those who killed other types of victims. However, given the social and legal transformations of the past few decades that were meant to change the way intimate violence was treated in society and in law, it is further hypothesized that evidence of differential treatment for these two types of defendants will be less evident in recent years and, in particular, post-Bill C-41 (see Section 718.2 of the *Criminal Code* of Canada).<sup>2</sup> Below, what research has demonstrated about the role of intimacy in law is first summarized.

### *Prior research on victim-defendant relationship and court outcomes*

Using victim-defendant relationship as the best available proxy for intimacy, criminal justice research has shown that the association between intimacy and law varies by the type of analysis conducted as well as the stage of the criminal process which is examined. For instance, bivariate analyses have almost consistently shown that criminal justice officials respond to intimate partner violence with less law than violence that occurs between strangers (Easteal, 1994; Ferraro and Boychuk, 1992; Hickman, 1995; Lundsgaarde, 1977; Palmer, 1999; Rapaport, 1994; Vera Institute of Justice, 1977; but see Auerhahn, 2007). In contrast, the effect of victim-defendant relationships on court outcomes is less clear in more rigorous multivariate analyses that control for the effects

of legal (e.g. prior criminal record, offence seriousness) and other extra-legal (e.g. gender, race, age) factors that have been theoretically and empirically linked to court outcomes. For example, some of this research has demonstrated that defendants who victimize intimate partners are treated differently at some stages of the criminal justice process, but not at all stages (e.g. Adams, 1983; Erez and Tontodonato, 1990; Horney and Spohn, 1996; Miethe, 1987; Simon, 1996a; Spohn and Spears, 1997; Williams, 1976). Other studies found no association between victim–defendant relationship and the allocation of criminal sanctions (e.g. Albonetti, 1991; Simon, 1996b; Myers, 1979a, 1979b).

The above findings, then, have not allowed for any definitive statement regarding the extent to which the relationship between an accused and their victim may affect criminal justice outcomes. However, few of the above studies have focused exclusively on victim–defendant relationship as the key variable of interest; instead, it has been included more often as a control variable in analyses that examine the effect of other variables on court outcomes such as gender, race and age. This represents a significant gap in criminal justice research given that the relationship between defendants and victims has traditionally been perceived as one of the most critical variables in research on violent crime, not only in determining the characteristics of violent incidents, but also in determining the social and legal reactions to such acts (e.g. Gottfredson and Gottfredson, 1988; Vera Institute of Justice 1977). In addition, few studies have compared outcomes for intimate partners specifically to outcomes in cases that involve other types of relationship or examined changes in criminal justice processing over time.

Addressing the above gaps using Canadian homicide data, one study found that intimacy did matter at some, but not all, stages of the criminal justice process by comparing the treatment of five victim–defendant relationship categories (Dawson, 2004). This multivariate analysis showed that defendants who killed intimate partners were less likely to be charged with first-degree murder,<sup>3</sup> less likely to have their cases resolved at trial (and more often through guilty pleas) and received shorter sentences than other types of defendants. Also one of the few studies to examine changes in court outcomes in homicide cases over time, this study also found that evidence of ‘less law’ being applied in cases of intimate partner homicide appeared to diminish over time from 1974 to 1996, paralleling early legislative and policy changes targeting the treatment of intimate partner violence by the courts. However, sentencing amendments contained in Bill C-41 were implemented in 1996 – the last year of this study and, thus, its impact could not be examined.

## **Data and methods**

### *Data source*

Data for this study are drawn from the total population of homicides that were resolved through the courts in Toronto, Ontario, between and including 1974–2002.<sup>4</sup> Using homicide cases as the unit of analysis in criminal justice research offers a number of advantages, primarily because unreported cases of homicide are assumed to be less common than for any other crime such as non-lethal assaults between intimate partners. Thus, problems due to reporting bias by both victims and police are perceived to be minimal. Moreover, because of societal consensus about the gravity of homicide, the majority of

perpetrators will be prosecuted and punished to some degree. In other words, the number of homicide cases that enter the criminal justice system is generally representative of the number of homicides that occur and for which an offender has been identified, excluding those that end in the suicide of the offender.

During the period 1974–2002, a total of 1,612 homicides were recorded in Toronto. Of these, 288 remain unsolved; that is, no accused has been identified. For the 1,324 solved homicides, 1,416 accused persons were identified and 1,137 were charged for their crimes and processed through the adult criminal court system.<sup>5</sup> Among the group of 1,137 accused persons, 230 (22 per cent) were charged with killing an intimate partner and 813 (78 per cent) were charged with killing victims with whom they shared more distant relationships, including other family members, friends, acquaintances and strangers. By virtue of its definition, the category ‘intimate partner’ is comprised primarily of adults. In this sample, the youngest accused who killed an intimate partner was 18 years of age while the youngest victim killed by an intimate partner was 17 years of age. To ensure that similar types of cases were compared, non-intimate homicides cases were restricted to those defendants and victims who were greater than or equal to these ages.

There were two other advantages to restricting the sample to these age groups. First, under the Young Offender’s Act (now called the Youth Criminal Justice Act) which applied during the years covered in this study, there were maximum sentences that could be imposed on youths aged 12–17 charged with homicide-related offences (unless their cases were tried in adult court) that were lower than the maximum sentences for adults. Second, the restriction also removes cases that involved the homicides of children and adolescents which are arguably cases that attract stronger public reactions and, therefore, may lead to more severe criminal justice responses. In short, because the purpose of this paper is to compare the treatment of intimate partner homicides with non-intimate partner homicides over time, focusing on a primarily adult sample removes some of the dynamics that would make comparisons more difficult and less reliable. The final sample used in the multivariate analysis was 1,043 cases. Below, measures for the dependent and independent variables are discussed.

### *Dependent variables: Criminal justice outcomes*

In response to research that questions the validity of studies that focus on sentence outcomes only (Bernstein et al., 1977a, 1977b, 1979; Hagan, 1974; Miethe and Moore, 1986; Petersilia, 1983; Schur, 1971; Swigert and Farrell, 1977), this study focuses on six different decisions in the criminal justice process: (1) initial prosecution charge; (2) mode of conviction; (3) verdict at trial; (4) overall conviction; (5) severity of conviction; and, finally, (6) length of sentence.<sup>6</sup> Table 1 lists the coding and frequency distributions for each of the dependent variables discussed separately below.

#### **Initial prosecution charge**

This is an important decision point for an accused person because the gravity of the initial charge, under most circumstances, will be an important determinant of the ultimate sentence received (see Brereton and Casper, 1981–82). The majority of initial charges in this sample were for murder.<sup>7</sup> A dichotomous measure captures the severity of the charge laid by the prosecution. If a defendant was charged with first-degree murder,

**Table 1.** Coding and frequency distributions for criminal justice outcomes, total sample, Toronto, Ontario, 1974–2002 (N = 1,043)<sup>a</sup>

Variable	Coding	Frequency	%
Y <sub>1</sub> Initial prosecution charge (N = 1,043)	0 Other charges	659	63
	1 First-degree murder charge	384	37
Y <sub>2</sub> Mode of conviction (N = 1,037)	0 Guilty plea	448	43
	1 Case sent to trial	589	57
Y <sub>3</sub> Verdict at trial (N = 589)	0 Acquitted at trial	230	39
	1 Found guilty at trial	359	61
Y <sub>4</sub> Overall conviction (N = 1,043)	0 Acquitted	240	23
	1 Convicted	803	77
Y <sub>5</sub> Severity of conviction (N = 803)	0 Other conviction	487	61
	1 Murder conviction	316	39
Y <sub>6</sub> Length of Sentence (N = 803)	Interval level	9 years	

<sup>a</sup>As shown in parentheses for each outcome, there is variation in the sample size at various stages of the process because some accused persons are selected out of the process depending on the outcome at the previous stage.

the most serious charge possible in cases of homicide, the case was coded as 1. If a defendant was charged with a less serious offence, including second-degree murder or manslaughter, the case was coded as 0. Table 1 indicates that first-degree murder charges were laid in 37 per cent of the cases in this sample. In the remaining 63 per cent of the cases, 54 per cent of accused persons were charged with second-degree murder and approximately nine per cent were charged with manslaughter.<sup>8</sup> This is consistent with national data that show that the majority of charges laid in homicide cases are for murder. Between 1995 and 2004, 43 per cent of the accused in homicide cases were charged with first-degree murder, 50 per cent with second degree murder and seven per cent with manslaughter (Ogrodnik, 2006: 57).

### Mode of conviction

All accused persons have a constitutionally guaranteed right to trial by judge or jury. However, most criminal charges in Canada are disposed of by a guilty plea rather than at trial (Ruby, 1999). While guilty pleas may not be as frequent in homicide cases as they are for other types of violent or non-violent crime, they do represent a significant proportion of cases that result in convictions and such pleas can influence the conviction as well as the sentence imposed. To capture mode of conviction, a dichotomous measure distinguishes between cases that proceeded to trial and those that were resolved through a guilty plea, either to the original charge or a reduced charge. Table 1 shows that 57 per cent of accused persons in the Toronto sample had their case resolved at trial.<sup>9</sup> The remaining 43 per cent of the cases were resolved through guilty pleas.

### Verdict at trial

Some research has shown that when cases of violent crime are resolved by trial, judges are less likely to convict if the accused allegedly victimized a stranger whereas juries are

more likely to convict if the crime involved strangers (Myers, 1981). Beyond this, research is sparse on how the victim–accused relationship may affect an accused person’s verdict at trial. To examine this outcome, a variable measures whether the accused was found guilty (coded as 1) or acquitted at trial (coded as 0).<sup>10</sup> In this sample, 61 per cent of the cases that were sent to trial resulted in a verdict of ‘guilty’ for the accused.

#### Likelihood of conviction

Regardless of whether a case is resolved at trial or by guilty plea, there may be variation in the overall likelihood of conviction. The fourth dependent variable represents an overall measure that distinguishes between those who were convicted for their crimes (by trial or by guilty plea; coded as 1) and those who were acquitted (including those found not criminally responsible; coded as 0). In the Toronto data, more than three-quarters (77 per cent) of the accused were convicted for their crimes.

#### Severity of conviction

An accused person’s conviction should demonstrate the degree of harm or damage caused by the crime as well as their perceived culpability. The distinction between a murder and a manslaughter conviction is of great significance for an accused in Canada because murder carries a mandatory penalty of life imprisonment whereas manslaughter convictions carry no minimum mandatory sentence (Grant et al., 1998). Generally, murder is distinguished from manslaughter by the existence of a specific intent to cause death or serious bodily harm likely to cause death (s.229 *CCC*) on the part of the accused. Thus, the presence of certain extraneous or mitigating factors such as provocation (see specifically s.232(2) *CCC*), intoxication or diminished responsibility may reduce an offence from murder to manslaughter. To determine whether intimacy affects the severity of conviction, the fifth dependent variable measures whether the accused was convicted of murder (either first- or second-degree) or convicted of less serious charges (primarily manslaughter). Table 1 indicates that 39 per cent of the cases resulted in a conviction of either first- or second-degree murder.<sup>11</sup>

#### Length of sentence

The length of time an offender is sentenced to serve before parole eligibility is based, in part, on materials presented to the court after guilt has been determined (e.g. pre-sentence reports that describe, for example, the criminal history of the accused). Sentencing decisions; however, are also dependent on the type of conviction imposed and, within each offence category, the range of possible sentences that are available. For example, offenders convicted of first-degree murder in Canada receive an automatic life sentence with no chance of parole for 25 years – the longest possible term of imprisonment for a homicide in this country. In contrast, while a second-degree murder conviction also carries a mandatory life sentence, the period of parole ineligibility may range from 10 to 25 years. Finally, there is no minimum mandatory sentence for manslaughter convictions.

This dependent variable is a continuous measure that captures the number of years an offender has been sentenced to serve before parole eligibility with values ranging from zero up to and including 25 years. During the study period, the average term of imprisonment before parole eligibility in the Toronto sample was approximately nine years.

Of those convicted of manslaughter, the average sentence was five and a half years and, of those convicted of second-degree murder for which the minimum mandatory sentence was 10 years, the average sentence was 12.5 years. As noted, all those convicted of first-degree murder were sentenced to 25 years before parole eligibility.

### *Key independent variables: Victim-defendant relationship and time*

As noted above, of all social relationships, there may be none more intense than that of intimate partner relationships because of the presence of sexual intimacy and physical proximity (Silverman and Kennedy, 1993). To capture these elements, a dichotomous measure of victim–defendant relationship compares the legal treatment of cases that involve intimate partners to cases that involve victims and defendants who shared other types of relationship. Specifically, the ‘intimate partner’ category includes current or former legal spouses, common-law partners as well as boyfriends and girlfriends. The ‘other’ category includes other family members, friends, acquaintances and strangers. As noted above, intimate partner relationships comprised just over one fifth (22 per cent) of the cases in the Toronto sample (see Appendix for coding and descriptive information).

To capture the effects of time, three dummy variables (0, 1) distinguish among what are argued in this paper to be distinct social and legal environments created by various changes in legislation and policy related to the role of intimacy in law over a period of three decades. The first time period captures cases that entered the criminal justice system between and including 1974–1983 – the 10-year period prior to and including the introduction of pro-charging and pro-prosecution policies in Canada. The second 13-year time period – 1984–1996 – captures those cases that entered the court during the period that came after the implementation of pro-charging and pro-prosecution policies and up to the implementation of Bill C-41 in 1996. This period represents a significant turning point in how intimate partner violence was to be treated by the courts. The final six-year period – 1997–2002 – captures those cases that came after the introduction of Bill C-41 and the related amendments to the criminal code. In the Toronto sample, 39 per cent of the cases were dealt with during the early period of the study, 51 per cent during the second period and 10 per cent in the most recent period.<sup>12</sup>

### *Control variables*

To isolate the effects of intimacy and time on court outcomes, a number of control variables were included that prior research has demonstrated affect criminal justice decision-making and that may also be associated with the type of homicide (intimate or non-intimate; see Appendix for coding and descriptive information). First, a number of variables traditionally perceived as legally relevant in criminal justice literature were included in the analyses:<sup>13</sup> Prior criminal history of the accused, the number of accused and the number of victims. For example, it is recognized that defendants with a prior criminal record are more likely to receive longer sentences (Gottfredson and Gottfredson, 1988); however, defendants who kill intimate partners may be less likely to have violent records than those who killed others types of victim. As such, it may be the absence of a criminal record rather than the intimate relationship which leads to ‘less law’ in cases of intimate partner homicide and, therefore, it is important to control for

this effect. Initial prosecution charge, the mode of conviction and the severity of conviction are also included as controls. These variables, also dependent variables representing earlier stages in the criminal justice process, are included as controls because the sequential nature of criminal justice decision-making means that later outcomes (e.g. severity of conviction) may be impacted by earlier decisions (e.g. initial charge, mode of conviction).

Second, various other factors, sometimes referred to as extra-legal factors, were included that have been theoretically and empirically linked to both court outcomes and type of homicide: gender, age, race/ethnicity and employment status for both the defendant and the victim.<sup>14</sup> Research has shown that these are important indicators of social status in Western society that may have an impact on punishment outcomes (Steffensmeier et al., 1998). Finally, controls were included for gun use and location of killing. Gun use is often used as a measure of offence seriousness (Hagan et al., 1980; LaFree, 1980; Lizotte, 1978) and has been shown to increase the severity of punishment. In addition, the public nature of some crimes may often be perceived to pose a greater threat to the maintenance of social order (Lundsgaarde, 1977). Variables that capture whether the victims or defendants were intoxicated at the time of the crime were also included, although research findings are mixed with respect to their effect on criminal justice outcomes (Williams, 1976; Grant et al., 1998).

### *Analytic procedures*

Following a description of the bivariate associations between type of victim–defendant relationship and time period for the six criminal justice outcomes, logistic regression analyses was used in the first five models to assess the extent to which victim–defendant relationship and time period independently affected the dichotomous criminal justice outcomes, controlling for relevant legal and extra-legal factors. Logistic regression is a common technique for dichotomous and skewed outcome variables, allowing one to predict the odds that an event will occur (i.e. a murder conviction rather than a conviction for a less serious offence; Demaris, 1992). In the sixth model predicting length of sentence, ordinary least squares regression was used to determine the extent to which victim–defendant relationship and time affect the length of sentence imposed. Finally, separate models were run for each time period to assess the role of intimacy in criminal justice decision-making during each period. For each independent variable with missing data (see Appendix), models included dummy variables that were coded 0 if data were present and 1 if data were missing (Cohen and Cohen, 1975; Orme and Reis, 1991). This strategy allows one to retain the maximum sample size, to increase statistical power, to reduce bias in estimation of regression parameters, and to test the extent to which data are missing randomly (Orme and Reis, 1991). None of the missing dummies were significantly related to the outcome variables and so they are not included in the models shown below.

### **Findings**

Table 2 shows that there have been changes over time in the association between victim–defendant relationship and criminal justice outcomes at the bivariate level, primarily at

**Table 2.** Bivariate associations for type of homicide and criminal justice outcomes for three time periods, Toronto, 1974–2002

	Year case entered court					
	1974–1983		1984–1996		1997–2002	
	(N = 402)		(N = 533)		(N = 108)	
	Intimate	Non-intimate	Intimate	Non-intimate	Intimate	Non-intimate
Criminal justice outcome						
First-degree murder charge	26%	35%	40%	50%	50%	36%
Case sent to trial	61%	65%	46%	53%	55%	55%
Found guilty at trial	48%	53%	78%	66%	82%	62%
Likelihood of conviction	68%	69%	90%*	80%	90%*	74%
Convicted of murder	21%**	39%	50%*	38%	67%	45%
Length of sentence	6 years*	8 years	10 years	9 years	12 years	10 years

Note: \* $p < 0.05$ \*\* $p < 0.01$

later stages of the criminal justice process. First, with respect to the overall likelihood of conviction, while there were no differences in the treatment between the two types of accused in the early period, results for the second and third time period show that accused persons who killed intimate partners were significantly more likely to be convicted overall compared to those charged with killing non-intimate partners in more recent years (90 and 80 per cent respectively for 1984–1996; 90 and 74 per cent for 1997–2002). Second, in the early period, accused persons who killed intimate partners were significantly less likely than persons in cases of non-intimate partner homicide to be convicted of the more serious charge of murder (21 compared to 39 per cent respectively). In contrast, between 1984 and 1996, intimate partner killers were significantly more likely to be convicted of murder (50 per cent) than those accused of killing more distant victims (38 per cent). There were no differences in the more recent time period, post Bill C-41; however, this may be the result of the smaller number of cases in the sample for this time period. Finally, with respect to sentence length, while intimate partner killers received shorter sentences (by about two years) in the early period of the study, this was no longer evident in more recent years. As such, at the bivariate level, it appears that differential treatment is less evident for intimate partners in more recent years. Below, the independent effects of victim–defendant relationship and time on court outcomes are isolated by controlling for other factors that have been theoretically and empirically linked to criminal justice decision-making in prior research.

Recall that the central hypothesis of this study was that defendants in intimate partner homicides would be subject to ‘less law’ than defendants in cases of non-intimate partner homicides. Results of the multivariate analysis for each of the six criminal justice decision-making stages are shown in Table 3, demonstrating that while differential treatment of intimate partner and non-intimate partner killers was evident at some stages, it

**Table 3.** Multivariate analysis of examining outcomes for intimate partner and non-intimate partner homicide, Toronto, 1974–2002a

Variables	First Degree		Case sent to trial		Found guilty		Convicted		Murder		Sentence	
	Model 1	Model 2	Model 3	Model 4	Model 5	Model 6	Model 4	Model 5	Model 5	Model 6	Model 6	Model 6
	b	Odds	b	Odds	B	Odds	b	Odds	b	Odds	b	Odds
Intimate partner	-0.43 (0.23)	0.65	-0.73*** (0.22)	0.48	0.84*** (0.31)	2.32	1.12*** (0.26)	3.08	-0.19 (0.33)	0.83	0.22 (0.33)	-0.60 (0.43)
Time: 1984–1996	0.32 (0.17)	1.38	-0.52*** (0.16)	0.59	0.57*** (0.22)	1.76	0.74*** (0.19)	2.09	0.50* (0.24)	1.65	0.79*** (0.30)	0.79*** (0.30)
Time: 1997–2002	0.13 (0.30)	1.13	-.69* (0.28)	0.50	0.68 (0.40)	1.98	0.67* (0.33)	1.95	1.23*** (0.41)	3.43	0.79 (0.53)	0.79 (0.53)
Legal factors												
Non-violent record	-0.08 (0.18)	0.92	-0.29 (0.17)	0.75	0.84*** (0.24)	2.33	0.75*** (0.19)	2.11	0.55* (0.25)	1.74	0.22 (0.33)	0.22 (0.33)
Violent record	0.59* (0.23)	1.81	-0.14 (0.23)	0.87	1.91*** (0.42)	6.77	1.37*** (0.37)	3.94	0.95*** (0.33)	2.58	1.40*** (0.43)	1.40*** (0.43)
Multiple offenders	0.78*** (0.18)	2.18	-0.10 (0.17)	0.91	0.37 (0.24)	1.45	0.36 (0.21)	1.43	-0.18 (0.25)	0.83	1.45*** (0.31)	1.45*** (0.31)
Multiple victims	1.26** (0.37)	3.51	0.71 (0.40)	2.03	0.35 (0.44)	1.41	0.17 (0.41)	1.19	1.12* (0.53)	3.06	2.68*** (0.65)	2.68*** (0.65)
Charge severity	—	—	-0.12 (0.12)	0.89	0.73*** (0.17)	2.07	0.58*** (0.14)	1.78	2.23*** (0.21)	9.28	6.50*** (0.20)	6.50*** (0.20)
Convict severity	—	—	—	—	—	—	—	—	2.03*** (0.22)	7.64	—	—
Case sent to trial	—	—	—	—	—	—	—	—	—	—	—	—
Extra-legal factors												
Accused male	-0.39 (0.28)	0.68	-0.27 (0.26)	0.76	0.89* (0.39)	2.44	0.93** (0.29)	2.54	0.83 (0.47)	2.30	0.39 (0.52)	0.39 (0.52)
Accused white	0.06 (0.19)	1.05	-0.00 (0.17)	0.98	-0.08 (0.25)	0.93	-0.05 (0.21)	0.95	0.27 (0.26)	1.31	0.43 (0.32)	0.43 (0.32)
Age of accused	0.01 (0.008)	1.01	0.00 (0.00)	1.00	-0.02 (0.01)	0.98	-0.01 (0.00)	0.99	-0.04** (0.01)	0.96	-0.00 (0.01)	-0.00 (0.01)
Accused employed	0.15 (0.18)	1.16	0.26 (0.17)	1.29	0.47 (0.24)	1.60	0.11 (0.20)	1.11	-0.26 (0.25)	0.77	-0.52 (0.33)	-0.52 (0.33)
Victim male	-0.69** (0.21)	0.50	-0.67** (0.21)	0.51	0.10 (0.28)	1.10	0.49* (0.23)	1.62	-1.21** (0.31)	0.30	-1.89*** (0.40)	-1.89*** (0.40)
Victim white	-0.18 (0.19)	0.84	-0.21 (0.17)	0.81	0.36 (0.25)	1.44	0.36 (0.21)	1.44	0.27 (0.26)	1.31	0.47 (0.32)	0.47 (0.32)
Age of victim	-0.01* (0.006)	0.99	0.01 (0.00)	1.01	0.00 (0.00)	1.00	-0.00 (0.01)	0.99	0.00 (0.00)	1.00	0.01 (0.01)	0.01 (0.01)
Victim employed	0.79*** (0.17)	2.19	0.03 (0.16)	1.03	0.23 (0.23)	1.26	0.21 (0.20)	1.23	0.47* (0.23)	1.60	0.86** (0.30)	0.86** (0.30)
Gun used	0.95*** (0.17)	2.58	0.59*** (0.17)	1.81	-0.11 (0.23)	0.90	-0.30 (0.20)	0.75	0.37 (0.25)	1.45	0.54 (0.32)	0.54 (0.32)
Public killing	-0.10 (0.17)	0.91	-0.01 (0.16)	0.99	0.24 (0.23)	1.27	0.23 (0.19)	1.25	-0.16 (0.23)	0.85	0.10 (0.30)	0.10 (0.30)
Accused drinking	-0.29 (0.25)	0.75	0.57* (0.23)	0.57	0.75* (0.37)	2.11	0.90** (0.31)	2.46	0.47 (0.34)	1.60	-0.54 (0.44)	-0.54 (0.44)
Victim drinking	-0.49* (0.22)	0.61	-0.18 (0.21)	0.84	-0.10 (0.32)	0.99	0.08 (0.27)	1.08	-0.80 (0.29)	0.45	-0.09 (0.38)	-0.09 (0.38)

Note: Standard errors are in parentheses. \* $p < 0.05$ ; \*\* $p < 0.01$ ; \*\*\* $p < 0.001$ ; Dummy variables for missing data were not significant and, thus, not shown here.

was not always in the direction expected. First, supporting the study's central hypothesis, results in Model 2 demonstrated that those who killed intimate partners were less likely to have their cases resolved at trial compared to those who killed other types of victims. In other words, cases that involved the killing of an intimate partner were more often resolved through guilty pleas – representing less law – than cases that involved more distant defendants and victims.

Of those cases that were resolved at trial, however, Model 3 shows that defendants who killed intimate partners were more likely to be found guilty at trial – representing more law – than those who killed other types of victims, contrary to the central hypothesis. Similarly, Model 4 also contradicts the central hypothesis: those who killed intimate partners were more likely to be convicted overall, whether by trial or by guilty plea, thereby subject to more law than defendants in cases of non-intimate partner homicide. One explanation for the increased likelihood of conviction in intimate partner homicides is the greater likelihood that these defendants will plead guilty to their crimes as shown in the previous model. In other words, a guilty plea guarantees a conviction. Thus, the model was rerun with the mode of conviction included as a control variable; however, intimacy remained significantly related to the overall likelihood of conviction. Finally, intimacy did not appear to matter at any other stage of the process; in particular, sentence outcomes did not vary by type of victim–defendant relationship during the study period.<sup>15</sup> Also shown in Table 3, however, the time period in which the case was resolved was significantly related to several criminal justice outcomes. Below, the independent effects of time are examined first followed by its effect on the role played by intimacy in law over time.

While the criminal justice processing of homicide appears to have changed somewhat over the study period, similar to the bivariate results, it is during the middle time period – 1984–1996 – that change appears to be the most evident with significant associations for five of the six outcomes compared to three of the six outcomes for the more recent time period, 1997–2002. Overall, compared to the earlier period, cases were less likely to be resolved at trial (and more often through pleas) in the more recent time periods; however, more law was evident in more recent years at many of the subsequent stages examined. Specifically, compared to the earlier period, accused whose cases were resolved at trial were more likely to be found guilty in the middle period. In addition, they were more likely to be convicted overall and more likely to be convicted of murder in the two recent time periods compared to earlier years. Finally, accused convicted in the middle period received longer sentences than those in the earlier years. While not the focus of this analysis, Table 3 also demonstrates that, as would be expected, legal variables played a significant role in determining criminal court outcomes (e.g. prior record, number of offenders and victims, initial decisions). Fewer extra-legal factors were consistently associated with criminal justice decision-making although it appears that victim characteristics played a greater role than accused characteristics in determining outcomes.

### *Understanding the effects of time on the role of intimacy in law*

Based on the above, it appears that, with respect to homicide at least, criminal justice responses have changed somewhat over the past few decades as society's response to

**Table 4.** Multivariate analysis examining criminal justice outcomes by type of homicide for two time periods, Toronto, Ontario, 1974–2002

	First degree murder charge		Case sent to trial		Found guilty at trial		Overall conviction		Murder conviction		Length of sentence b
	b	Odds	b	Odds	b	Odds	b	Odds	b	Odds	
Time period											
1974–1983											
Intimate partner <sup>a</sup>	–0.74 (0.41)	0.48	–1.12** (0.43)	0.33	0.54 (0.48)	1.72	0.76 (0.39)	2.13	–1.43* (0.65)	0.24	–0.62 (0.85)
1984–2002											
Intimate partner	–0.26 (0.30)	0.78	–0.61* (0.28)	0.55	1.20** (0.47)	3.31	1.52*** (0.40)	4.55	0.39 (0.42)	1.47	–0.78 (0.48)

<sup>a</sup>Non-intimate partner homicide is the reference category for both time periods. \* $p < 0.05$  \*\* $p < 0.01$  \*\*\* $p < 0.001$   
 Note: All control variables contained in previous models are included in the above models. Standard errors in parentheses.

violence has evolved. Many of the legislative and policy changes during this period, including Bill C-41, have specifically targeted the way intimate partner relationships are treated within the criminal justice system. Therefore, it may be that the role of intimacy in criminal law has also changed over time as a result. In this part of the analysis, because the small number of cases in the most recent period ( $N=108$ ) precluded its own analysis, the two most recent time periods were collapsed together (1984–2002). This more recent period is compared to the earlier period of the study – 1974–1983.

Table 4 demonstrates, when other factors were controlled, that the role of intimacy in criminal law has changed over time at some stages, but at one stage, differential treatment has remained consistent. With respect to the latter, in both time periods, results showed that accused persons in cases of intimate partner homicide were less likely to have their cases sent to trial (i.e. cases were more often resolved through guilty pleas) than accused persons in non-intimate partner homicides. However, of those cases sent to trial, accused persons in intimate partner homicides were more likely to be found guilty at trial compared to those who killed non-intimate partners in the more recent period whereas there were no differences in the early period. Similar to the bivariate results in Table 2, accused persons in cases of intimate partner homicide were more likely to be convicted overall than those in non-intimate partner homicides in the more recent period. Finally, with respect to severity of conviction, an examination of the early period shows that cases of intimate partner homicide were less likely to result in murder convictions than cases of non-intimate partner homicide. In the latter period, however, evidence of this differential treatment has diminished. Consistent with the analysis of the entire time period, there were no differences in treatment at the sentencing stage in either the early or more recent periods.

## Discussion

The results presented here have addressed two specific questions. First, are intimate partner homicides treated differently from other types of homicides by the courts? Second, have any documented differences in legal treatment of these defendants changed over time and, in particular, since the introduction of Bill C-41 in 1996 in Canada? With respect to the first question, results demonstrated that defendants who killed intimate partners between 1974 and 2002 were treated differently at some stages of the process, but not always in the expected direction. While their cases were more often resolved through pleas – representing ‘less law’ – they were more likely to be found guilty at trial and more likely to be convicted overall compared to non-intimate partner killers – representing ‘more law’. However, despite what appears to be an increasing use of pleas to resolve cases, ‘more law’ seems to be evident in more recent years for homicides generally. With respect to the second question – the changing role of intimacy in law over time – it appears that the role of the plea process has been consistent for intimate partner killers during the past three decades, remaining significantly more common in these cases than for the accused in non-intimate partner homicides. However, those accused of killing intimate partners have been subject to ‘more law’ at other stages of the process in more recent years with the period 1984–1996 appearing to have been the most crucial period of change. While it was not possible to examine the post-Bill C-41 period in the multivariate analysis due to the small sample size, the later period (1984–2002) also showed that intimacy was subject to more law overall in recent years.

The legal treatment of violence between intimate partners has been a controversial social issue internationally, particularly since the early 1970s when feminist and grass-root organizations highlighted the prevalence of intimate partner violence against women and what was argued to be lighter treatment of the accused in these cases. However, this study shows that, while sentencing is the final and ultimate outcome of the criminal justice process, other earlier and distinct stages appear to be equally, if not more, important in understanding the role played by intimacy in criminal justice decision-making. In particular, the role of plea bargaining appears to be much more commonly used to respond to cases of intimate partner homicide than in other types of killings. Below, this and various issues highlighted by the results of this study are discussed.

### *Intimacy and the plea process*

While the subject of plea-bargaining is not new, little research exists on the subject in Canada (DOJ, 2003). Existing research describes a number of possible explanations as to why pleas may be negotiated in particular cases that may be relevant for understanding the greater likelihood of pleas for intimate partner killers. For instance, guilty pleas may occur because of the high risks often associated with trials for both the defence and the prosecution (Mather, 1979). Defence lawyers may try to reduce risk by negotiating a plea to a reduced charge. Alternatively, the prosecution may perceive a guilty plea to be a viable option if there are mitigating circumstances surrounding the killing or it is difficult to prove the element of premeditation and/or intent required for a murder conviction (Mather, 1979). Moreover, it may be that when the initial charge was laid, the

investigation was not complete and, thus, as more information became available, the prosecution realized that a murder charge was not appropriate nor would it be successful and, consequently, entered into a plea resolution to secure a conviction (DOJ, 2003).

Because of the private nature of plea negotiations, however, it is difficult to know exactly what has taken place or why it was deemed appropriate to accept a guilty plea in a particular case. One of the recommendations outlined in a report by Department of Justice Canada (DOJ) (2003) was that more research be undertaken on the subject of plea-resolutions in homicide cases. While it was hoped that information documenting the reasons for guilty pleas would be possible in this study, such information was not systematically documented in case files and, to date, case files have been the primary source of information for criminal justice researchers. This situation is not unique to Canada and the type of information available in such records is unlikely to change given that the compilation of documents related to the criminal processing of homicide cases (and all criminal cases) does not occur for the purposes of criminal justice research. As a result, researchers need to incorporate more innovative data collection techniques that can capture the detail required for understanding the plea resolution process. As part of this, increased collaboration between criminal justice agencies and researchers is needed. Until then, the reasons behind such decisions will remain speculative, including why pleas are more common for intimate partner killers. One possible explanation, however, highlights the potential role played by mitigating and aggravating factors that may lead to particular criminal justice outcomes for these offenders, an issue discussed next.

### *Assessing the role of stereotypes and interpersonal violence*

Criminal law recognizes that there are different degrees of culpable homicide and there is variation in the degree of harm or accused culpability. Determining how to assess whether homicides (and other types of violence) are similar in both a social and a legal context as well as what factors may be important when making such comparisons remains an issue. While this study was able to consider a variety of factors that may determine harm or culpability, sufficient detail was not available on three important legal variables – provocation, premeditation and intoxication. Traditionally, data on these legal variables has been largely absent from empirical criminal justice research despite their integral role in law. Two related reasons for this may be that, first, there is little guidance about how we should measure these variables (i.e. should social science indicators adhere to legal notions of what is meant by these factors and, if not, what are some valid indicators that can be used by researchers) and, second, the number of obstacles faced when attempting to collect this information including the time required. Regardless, criminal justice researchers need to begin to search for more systematic ways to collect these data, not only because of the legal relevance of these factors for case outcomes, but also because of the way these concepts have become associated with common stereotypes about specific types of interpersonal violence.

### **Provocation**

Research has shown that crimes between intimate partners are more often perceived to involve some degree of victim responsibility than crimes that occur between non-intimates (Rapaport, 1991; Riedel, 1987; Wolfgang, 1957). At one end of the continuum

of victim responsibility is the legal notion of provocation that can act to mitigate the culpability of an accused, leading to lighter punishments (Cote, 1991; Miethe, 1987; Morgan, 1997; Williams, 1976). If intimate partner violence is more often perceived to be victim provoked, then such cases may be more likely to benefit from this defence, but is this the case, or is this a common stereotype that exists both in society and within the criminal justice system that has yet to be supported by research? To answer this question, one first needs to decide what constitutes victim provocation and, then, to develop measures both recognized in law and social science that allow for consistent data collection.

Despite the move to abolish provocation as a defence or partial defence in some jurisdictions, the role it plays in the plea process as well as at sentencing will likely remain significant (Stewart and Freiberg, 2008) as will be the stereotypes that appear to be related to the concept which is particularly troublesome if there is little or no empirical support for such beliefs. For example, in Canada, while the success rate of the provocation defence was found to be low in recent years, Grant (2010) has argued that the perceived presence of provocation may lead the Crown to negotiate a plea to manslaughter rather than have it introduced as a defence at a trial. Further, in Australia, the Victoria Law Reform Commission has found that 'provocation was most often raised by men in the context of a relationship of sexual intimacy in circumstances involving jealousy or an apparent desire to retain control'. The commission argued that the continued existence or availability of provocation in these circumstances may therefore be seen as sending an unacceptable message – 'that men's anger and use of violence against women is legitimate and excusable'. In 2005, Victoria abolished the partial defence of provocation with the passage of the *Crimes (Homicide) Act 2005 (Vic)*, following Tasmania where it was abolished in 2003 and Western Australia did so in 2008. Canada still has this defence as do various other states in Australia and elsewhere.

#### Premeditation/intent

Related to the above, two of the most critical distinctions in the law on homicide are, first, the difference between murder and manslaughter and, second, the difference between first- and second-degree murder. It is generally the presence or absence of the specific intent to kill that distinguishes between murder and manslaughter (hence, the importance of the provocation defence). Similarly, it is often the presence or absence of premeditation that determines whether an accused will be charged with first- or second-degree murder.<sup>16</sup> With respect to the latter, a premeditated homicide is seen as the worst kind of killing in criminal law. The rationale for this distinction is that there is an added 'moral culpability to a murder that is planned and deliberate that justifies a harsher sentence . . . by virtue of planning and deliberation with relation to the taking of a human life' (Grant et al., 1998: 7–8; s.214(2), s.231(2) CCC). Why are intent and premeditation important in understanding how intimate partner and non-intimate partner homicides are treated in criminal law?

Killing out of anger or strong emotion can often mitigate an accused person's culpability because their emotion is assumed to undermine their rational capacity for planning and deliberation (Rapaport, 1994). Because hot-blooded crimes or 'crimes of passion' are often seen to be synonymous with killings that occur between intimate partners, these cases may be treated differently as a result. The important question,

then, is whether intimate partner homicides are *actually* more 'hot-blooded' than other types of homicide and, second, whether there is less evidence of premeditation in such cases (Wallace, 1986). To date, beyond a small exploratory analysis (Dawson, 2006), there have been few systematic examinations of these issues although feminist theorists and researchers have long challenged the stereotype of intimate partner violence against women as acts that arise solely out of passion or anger. For example, one Australian study showed that 'the majority of men who kill their wives have given careful thought to the murder they are going to perform . . . Many husbands who kill their wives know exactly what they are doing, and if anything express a sense of relief once the goal, the wife's death, has been attained' (Polk, 1994: 193). Therefore, an important consideration for future research is how the legal notion of intent or, at the very least premeditation, might explain the differential treatment of or distinguish between intimate and non-intimate partner homicide.

### Intoxication

Finally, if criminal justice researchers hope to better understand the criminal justice process, questions related to intoxication and how it is perceived both legally and culturally are also important. In this study, whether the victim or defendant was drinking at the time of the killing was included as a control variable and, thus, this was not the focus of the present analysis. However, results showed that if a victim had been drinking, a first-degree murder charge was significantly less likely (see Table 3), but if the defendant was drinking, the case was more likely to be sent to trial, the defendant was more likely to be found guilty, and there was a greater likelihood of conviction overall. According to Grant et al. (1998), 'the criminal law has traditionally had a rather mixed reaction to the presence of alcohol or drugs' (pp. 6–28) with self-induced intoxication generally not appearing to be a mitigating factor (DOJ, 2003). In a more recent study examining trends over the past 18 years for men who killed intimate partners, Grant (2010) found that, while a large number of cases in her sample involved the intoxication of the accused and/or the victim, the defence of intoxication rarely reduced murder to manslaughter. While Grant's sample included legally reported cases only, it does shed some light on the role played by intoxication. Further research is needed, however, to examine what it means to be 'intoxicated' or 'too intoxicated' in criminal law? What threshold of intoxication is required to preclude one's ability to form intent? How do researchers measure the level of intoxication of the accused? Where do researchers get this information? Are there cultural expectations about what types of behavior might be 'excused' by intoxication and how might those expectations play out in the criminal justice system based on victim–accused relationship?

The difficulty in doing research that examines the above issues again stems from the absence of such information in the types of official documents that researchers generally have access to when collecting data. In addition, variation in information systematically noted in official documents means that different types of information will be available for some cases, but not for others. As a result, systematic and reliable comparisons are not always possible due to missing data and inconsistent measures across studies. New data collection techniques or methodologies need to be incorporated to examine the criminal processing of cases that involve increased collaboration between criminal justice actors and researchers.

## Conclusion

This study demonstrates that changes have occurred in the way intimacy is treated by the courts and these changes appear to parallel, to some extent, the increasing concern about and awareness of intimate partner violence as a serious social issue. To date, however, criminal justice policies have evolved largely independent of research in Canada and elsewhere (Roberts, 1999; Doob, 2011). As such, there is still much work to be done in assessing the impact of legislative and policy initiatives both on changing attitudes toward intimate partner violence and on reducing and preventing violence more generally. At first glance, the results presented here suggest that those who may have been sceptical of the impact of legislative and policy changes on the criminal justice processing of violent crime may have been too pessimistic. However, it was not the goal of this study nor can it be concluded based on its findings that there is a direct link between the implementation of new laws and/or policies that target the treatment of intimate partner violence in criminal law and the patterns identified here. It does suggest, though, that such an association is possible and warrants further investigation over a longer period of time and for a broader range of crimes. However, to do so, as argued above, better criminal justice data is required than are currently available, requiring more innovative data collection techniques and collaborative efforts.

Until then, there remains no Canadian national data source available that is able to link information on victim, accused, and offence characteristics to criminal justice outcomes in criminal cases. The absence of such data is not unique to Canada, however, as other countries also lack systematic and detailed information about court processes. As such, much of what we know about determinants of criminal justice decision-making is based on single jurisdiction studies that focus on a limited period of time. Further, even in single jurisdiction studies, sufficient case detail is often not available to understand why particular court outcomes occur as the examples above have shown. While this study demonstrated that plea resolutions were more common in cases of intimate partner homicide, sufficient information was not available to document *why* this was the case – data that captures the factors that were pertinent to decisions by Crown Attorneys, for example. Similarly, there was no information on the judicial reasoning practices that may underlie sentence outcomes because Crown Attorney files do not often contain judicial reasons for sentences and, even if other sources were drawn upon, sentencing transcripts may not be consistently available for all cases. The lack of information on the reasoning practices underlying criminal justice decisions has been identified as one of the major shortcomings of studies on criminal justice outcomes generally (Daly, 1994; Steffensmeier et al., 1993), a shortcoming that is long recognized, but still relatively unaddressed in most countries.

While the current study too focused on only one jurisdiction and cannot be generalized to other jurisdictions, it offers three advantages compared to prior research. First, the data used here provide unique information about the criminal justice process that is not readily available in Canada. For example, multiple decision points in the criminal justice system were examined from the initial charging stage to sentencing – the latter of which has been the focus of the majority of criminal justice research in this country and elsewhere. Second, because detailed information on the accused, the victim and the homicide incident was available for each case, it was possible to link important legal

and extra-legal variables to criminal justice outcomes and to control for their effects. Finally, patterns in criminal justice decision-making have been examined here for a period of close to three decades, providing the opportunity to compare court outcomes in distinct social and legal environments. Given that parallel changes have occurred across Canada and in other developed countries in response to intimate partner violence, it is possible that similar patterns or trends will be found in other jurisdictions, but further investigation is required before such conclusions can be drawn.

## Notes

1. Bill C-41, introduced as a response to reports by the Canadian Sentencing Commission and the Daubney Committee, includes a statutory statement of the purpose and principles of sentencing that can be found in Section 718 of the *Criminal Code of Canada*. The goal of this section is to provide judges with some guidelines about the primary purpose of sentencing and a list of some of the principles that should be used to decide on the punishment imposed.
2. Section 718.2 stipulates that a court that imposes a sentence shall take into consideration the following principles: (a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing, . . . (ii) evidence that the offender, in committing the offence, abused the offender's spouse or common-law partner or child, . . . shall be deemed to be aggravating circumstances; . . .
3. First-degree murder involves one or more of the following components: (1) It is planned and deliberate; (2) It involves the death of a police officer(s), a custodian(s), or prison personnel while on duty; or (3) It is committed during the commission of certain other criminal acts (e.g. hijacking, kidnapping, forcible confinement, criminal harassment, or sexual assault). Homicides that do not meet these requirements are classified as second-degree murder.
4. Justice Canada funded the collection of data from 1997 to 2002 as part of a study on criminal justice outcomes in intimate and non-intimate partner homicide cases from which this analysis is derived (Dawson, 2005). Data from 1974 to 1996 were collected by the author as part of an earlier project and some of the data were collected by Rosemary Gartner and Bill McCarthy in a four-city study of homicide (Toronto, Vancouver, Seattle and Buffalo). Crown Attorney files were the primary source of information for all cases.
5. In the remaining 279 cases, the accused commit suicide immediately after the homicide, the case was cleared otherwise (e.g. accused died or was killed before the case was resolved), arrest warrants were still outstanding or the case was still before the court. In a small number (3 per cent), no outcome could be identified.
6. One important stage that is not examined here, however, because of data limitations is whether the accused was detained or released on bail. Because of the seriousness of the charges examined here, it is expected that most accused persons were in custody and, where information was available, that proved to be the case. However, this information was not consistently available in the earlier data and so could not be included in the analysis. Previous research has shown that bail decisions may also affect later court outcomes and, thus, future research should include this decision-making stage.
7. First- or second-degree murder charges were initially laid in 91 percent of the cases.
8. Culpable homicide that is not murder may be manslaughter (s.234 CCC). Manslaughter is 'culpable homicide that would otherwise be murder' except that 'the person who committed it did so in the heat of passion caused by sudden provocation' (s. 232(1) CCC). A wrongful act or insult that is of such a nature as to be sufficient to deprive an ordinary person of the power of self-control is sufficient provocation to reduce a charge to manslaughter if the accused acted on it 'on the sudden and before there was time for his passion to cool' (s. 232(2) CCC).

9. It is possible that during a trial, the accused will change his/her plea from 'not guilty' to 'guilty.' These cases have been coded as cases resolved through guilty pleas because no verdict resulted from the trial. Seven cases in which the charges were dismissed prior to the accused person's plea were not included at this stage of the analysis. Six cases were dismissed after charges were laid, leaving the sample at 1,037 cases.
10. The acquittal category includes cases in which the charges were dismissed or stayed as well as those accused persons who were found not criminally responsible by reason of mental disorder because, from a legal perspective, this is a type of acquittal. Information was not consistently available as to the type of trial so it was not possible to distinguish between jury and non-jury trials.
11. Nine per cent were convicted of first-degree murder and 30 per cent were convicted of second-degree murder. Of the remaining 61 per cent of those who were convicted, 54 per cent were convicted of manslaughter. Therefore, the primary comparison here is between those convicted of murder (including both first- and second-degree) and those convicted of manslaughter.
12. Various factors contribute to the lower number of cases in the third period beyond the fact that it represents a shorter span of time. For instance, the rate of homicide has decreased in recent years while the number of unsolved cases has risen (Dauvergne and Li, 2006). Both of these trends may contribute to reductions in the number of cases that are dealt with by the courts.
13. Information was not consistently available for a number of other relevant legal variables including evidence of premeditation and/or victim provocation. The implications of this are discussed in the discussion/conclusion section, including possible directions for future research and potential research initiatives that may address such gaps. In addition, two other legal factors found to be important in previous research were not included here: Type of legal representation (e.g. self-representation, court-appointed counsel, or private counsel) and the judge that presided over sentencing. With respect to the former, it was not possible to determine type of legal representation from the files. With respect to the latter, data were collected on the judge who presided in each case, however, during the study period, more than 100 judges handed down sentences and, therefore, no meaningful breakdown was possible with the exception of the gender of the judge. However, the distribution of gender was too skewed for meaningful interpretation (i.e. only five per cent of the judges were female).
14. Previous research on criminal justice decision-making has often considered characteristics of the defendants only. However, the social structure of a case depends on the identity of both victim and defendant as well as the characteristics of each in relation to the other. Thus, considering the characteristics of only one of the parties may produce misleading results.
15. Analyses were conducted both with and without the correction procedure for sample selection bias for Models 3 through 6. Because the results did not differ, the latter was used for ease of interpretation. Results not shown here are available from the author. Because earlier decisions are expected to affect later outcomes, unmeasured variables that affect one stage of the process may be correlated with unmeasured variables that affect a later outcome, producing a correlation between error terms on the two dependent variables. As a result, without including information on how cases are screened into each decision-making stage (i.e. only those convicted will receive a sentence), estimates of the effect of variables included in each equation may be biased (Berk, 1983; Berk and Ray, 1982; Klepper et al., 1983). To correct for this in the model predicting sentence length, a two-equation estimation procedure was used to control for incidental selection bias in the coefficients of the variables affecting various decision points (Berk 1983; Berk and Ray 1982; Heckman 1976, 1979; Klepper et al. 1983).
16. Certain types of killings regardless of whether they were premeditated can also result in first-degree murder charges including the death of a police officer, or prison personnel while on

duty and homicides that occur in the commission of some other criminal act(s) such as kidnapping or sexual assault (see s.222(4) CCC).

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## Appendix

Description of independent and control variables for homicide cases, Toronto, Ontario, 1974–2002, total sample ( $N=1,043$  cases)

Variable	Description/Coding	% (N)
<i>Key independent variables</i>		
Victim–accused relationship	Intimate partner = 1	22 (230)
	Non-intimate partner = 0	78 (813)
Year case entered court	Time period: 1974-1983 (1, 0; reference)	39 (402)
	Time period: 1984-1996 (1, 0)	51 (533)
	Time period: 1997- 2002 (1, 0)	10 (108)
<i>Control variables</i>		
<i>Legal variables</i>		
Criminal history of accused	No prior record (0, 1; reference)	30 (314)
	Accused had non-violent record (0, 1)	44 (459)
	Accused had violent record (0, 1)	14 (142)
	Missing information on criminal history (0,1)	12 (128)
Multiple accused	Multiple accused (0, 1)	28 (291)
Number of victims	Multiple victims (0, 1)	4 (43)
Charge seriousness	Interval (Least to most serious, 1 through 3)	2.28 (mean)
Mode of conviction	Case resolved at trial (0, 1)	57 (589)
Conviction seriousness	Interval (Least to most serious, 1 through 3)	2.09 (mean)
<i>Accused characteristics</i>		
Gender of defendant	Male defendant (0, 1)	91(949)
Race/ethnicity of accused	White defendant (0, 1)	51 (530)
	Missing race/ethnicity information (0, 1)	10 (107)
	Age of accused	Interval
Accused employment status	Employed (0, 1)	26 (274)
	Missing information on employment (0, 1)	15 (159)
<i>Victim characteristics</i>		
Gender of victim	Male victim (0, 1)	72 (749)
Victim's race/ethnicity	White (0, 1)	52 (547)
	Missing race/ethnicity information	10 (106)
Victim's age	Interval	37 (mean)
Victim's employment status	Employed (0, 1)	36 (373)
	Missing information on employment (0,1)	17 (181)
<i>Other case characteristics</i>		
Weapon use	Gun used (0, 1)	25 (263)
Location of killing	Public killing (0, 1)	37 (387)
Accused drinking/using drugs	Alcohol/drugs (0, 1)	31 (326)
	Missing information o. substance use (0, 1)	46 (479)
Victim drinking/using drugs	Alcohol/drugs (0, 1)	34 (359)
	Missing information on v. substance use (0, 1)	26 (269)