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# FAMILY VIOLENCE: A FRESH APPROACH TO JUDICIAL ROLES IN FAMILY AND CRIMINAL CASES

by Donna Martinson & Margaret Jackson

## Background

Martinson's and Jackson's interest in the topic of taking a fresh approach to judicial roles and responsibilities in family law cases arose as a result of their own research in British Columbia on family violence and the coming into force of B.C.'s *Family Law Act*<sup>1</sup> (the FLA) in 2013, within the context of their analyses of many reports and articles. In their view, the FLA provides judges with a number of important legal responsibilities that focus on the best interests of children and that require the judge, by the use of the word "must," to examine the particular circumstances of the child or children at issue, using a specific legal framework.<sup>2</sup> That expanded framework includes numerous factors designed to determine whether family violence, broadly defined, is an issue, and if it is, what its impact might be. It requires parents who are guardians to also consider all of the best interest factors when making an agreement, with the result that those

<sup>1</sup> SBC 2011, c 25 [FLA].

<sup>2</sup> *Ibid.* Section 37(1) states that "the parties and the court **must** consider the best interests of the child only, and s. 37(2) states that to determine the best interests of the child, all the child's needs and circum.7n(a)574826111(370)1607.01(m3c(a)2488 93134Tj(370)005(T)010060Tc 0.668 2.19B 026d v(3.737 0(Td)Tj4-(c,5-2LA)))H(w

\*Some judges may not be receiving the relevant information they need about family violence and its impact;

\*They may not have the specialized knowledge and skill needed to determine



rates among Aboriginal offenders. 20 years following the 1996 sentencing reforms, this study documents recent trends in the use of conditional sentences among Aboriginal and non-Aboriginal offenders.

**Method**

In order for the conditional sentence to become available as a sentencing option, a judicial decision for a custodial sentence of less than two years must first be made. Recognizing this unique decision point, this study introduced the Conditional Sentence Utilization (CSU) percent:

The CSU reports the percent conditional sentences of total imprisonment sanctions. Employing data from the Adult Correctional Services Survey and calculating CSUs for Aboriginal and non-Aboriginal offenders,

the study found that for Aboriginal offenders, the CSU was 11.5% (1.15/10) and for non-Aboriginal offenders, the CSU was 21.4% (2.14/10). The difference between the two groups is 10 percentage points (21.4% - 11.5% = 9.9%).

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