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Changing Practices: The Specialised Domestic Violence Court Process

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Abstract: Specialised domestic violence courts, initially developed in the United States of America, have been recognised by other jurisdictions including Canada, Australia and the United Kingdom. This article presents a case study of K Court in Toronto, drawing upon documentary evidence, direct observations and interviews with key informants. It is argued that the specialised domestic violence court process includes changing practices of some of the key stakeholders. Learning lessons from abroad can offer jurisdictions insights that can steer implementation of appropriate practices in the field.

Specialised Courts and Problem-oriented Courts

The specialisation of courts in the criminal justice system is well established (Walsh 2001; Freiberg 2002). The American Bar Association (1996) clarifies 'specialization' as:

Traditionally, specialization refers to a specialized subject matter combined with subject matter expertise. With reference to courts, specialization usually signifies that a court has limited and frequently exclusive, jurisdiction in one or more specific fields of the law. Specialized courts are typically defined as tribunals of narrowly focused jurisdiction to which all cases that fall within that jurisdiction are routed.

Problem-oriented courts seek 'to use the authority of the courts to address the underlying problems of individual litigants, the structural problems of the justice system, and the social problems of communities' (American Bar Association 1996). The principles and approaches of problem-oriented courts (or problem-solving courts in the American literature), such as domestic violence courts, drug courts, mental health courts and youth courts are considered to be *therapeutic jurisprudence* (Conference of Chief Justices and Conference of State Court Administrators 2000). Therapeutic jurisprudence was first described in the context of mental health law (Wexler and Winick 1992). In the prosecution of domestic violence cases, therapeutic jurisprudence seeks to increase the therapeutic consequences of law and when consistent with other important values, can reshape law and legal processes in ways to assist the accused and their victims (Winick 2000). Common elements

of the problem-oriented court approach include re-engineering the criminal justice (and societal) response to a social problem, judicial monitoring, interdisciplinary collaboration, non-traditional roles in the courtroom and tangible case outcomes (Berman and Feinblatt 2001; Carney 2000).

Specialised Domestic Violence Courts

Violence against women is established as a global problem that crosscuts class, age, religious and ethnic groups (for example, Smith 1989; Charlesworth and Chinkin 1994; Heise 1996; Johnston 1996; Cook and Bessant 1997; Romkens 1997; Dobash *et al.* 2000). In the 1990s, specialised domestic violence courts were developed in several jurisdictions including the United States of America, Canada, Australia and the United Kingdom.

Specialised domestic violence courts in the USA developed quickly from the first court, Cook County, Illinois in the early 1980s to over 300 courts identified as having some type of specialised process for handling cases involving domestic violence by September 2000. A number of jurisdictions in Canada have implemented specialised courts or court processes to handle cases of domestic violence, including the Winnipeg Family Violence Court established in 1990 (Ursel 1995, 2000), the Domestic Violence Treatment Option of the Yukon Territorial Court established in 2000, the Calgary Domestic Violence Courtroom established in June 2000 (now known as HomeFront) and the subsequent specialised courtroom in Edmonton that started its operation in January 2002. Domestic violence courts in Australia, such as the Joondalup Family Violence Court which opened in December 1999, remain relatively new. In the UK, there are currently two specialised domestic violence courts in England and another in Scotland. The first in the UK, the part-time Domestic Violence Cluster Court at Leeds Magistrates' Court has been in operation since 1999 (Walsh 2001), and in September 2002, a domestic violence cluster court was established at Wolverhampton. The West Midlands 'specialist court' can, in the view of Sue Lindup of the Domestic Violence Forum, 'help to provide a more user friendly environment for cases to be heard' (*BBC News Online*, 22 September 2002).

Like other specialised courts such as drug courts, specialist domestic violence courts have developed out of recognition that traditional adjudicative approaches were not working particularly well and that a more holistic approach could have benefits to tackling the problem. As a problem-oriented court, the main objective of a specialised domestic violence court process is victim safety.

There are challenges to determining the impact of domestic violence courts, as pre-post implementation data are often incomplete in many jurisdictions, making rigorous comparisons difficult. Research suggests that there are four main benefits of domestic violence courts. Compared to the prosecution of domestic violence cases in other courts, a domestic violence court offers greater consistency in sentencing (Clark *et al.* 1996). Secondly, victim assistance/witness support has greater efficiency and benefits to its service users due to the confinement of cases into a specialist

court (Clark *et al.* 1996). Thirdly, there is a potential for a domestic violence court to deal with the complexity of cases and be responsive to civil and criminal cases. Finally, domestic violence courts can offer fast track access to programmes for perpetrators intended to control their violent behaviour and with proven efficacy.

Many models exist in the different national contexts of jurisdictions. There is no universal specialised domestic violence court model. Rather each 'domestic violence court model' describes a specialised *process* of the investigation, charging and prosecution stages of domestic violence cases in a criminal justice system. To demonstrate how the specialised domestic violence court process contributes to changing practices within the criminal justice system, an in-depth case study can best serve this purpose.

This article presents a case study of the operation of K Court, Old City Hall, Toronto, Canada. The choice of this case study was pragmatic and opportunistic, being based on availability of published material, and accessibility of key actors involved in the process, to the author. Documentary analysis supported fieldwork conducted by the author in October 2002 and November 2003. Fieldwork included eight days of direct observation of the K Court and 16 interviews with staff working for the Victim/Witness Assistance Program (VWAP), K Courtroom representatives including Crown attorney, Judiciary and other associated professionals working in Toronto, Ontario. To ensure anonymity, quotations in the text will be attributed to broad professional designations. Before the case study is presented, it is necessary to embed the K Court in the province-wide Domestic Violence Justice Strategy in Ontario.

Domestic Violence Justice Strategy in Ontario

The objective of the Domestic Violence Justice Strategy (DVJS) is 'to establish a more coordinated and integrated response to domestic violence by the justice system' (Ministry of the Attorney General 2000, p.4–1). The DVJS is led by the Ministry of the Attorney General and the Ministry of the Solicitor General and involves the Ministry of Community Safety and Correctional Services, the Ministry of Citizenship and Immigration and the Ontario Women's Directorate. Ontario introduced this strategy in response to the May-Iles Inquest and the 1999 Joint Committee on Domestic Violence recommendations, the Spring 1999 Throne Speech that made a commitment to prosecute crime and support victims and the Blueprint commitment for action on domestic violence (Ministry of the Attorney General 2000, p.4–1). The objectives of the DVJS are 'to intervene early in domestic violence situations, effectively prosecute domestic violence cases, provide support to victims and hold offenders accountable' (Ministry of the Attorney General 2000, p.4–1). To meet those objectives, the elements of the DVJS include: local justice community co-ordination; enhanced investigation by trained police, co-ordinated prosecution led by trained Crown attorneys (prosecutors), fast tracking of cases, victim support (for example, Victim/Witness Assistance Programme) and Partner Assault Response programmes (PAR programmes).

The province of Ontario Canada has committed to all its 54 court jurisdictions having either a specialised domestic violence court with dedicated staff or a specialised process for handling domestic violence cases. As the *Implementing the Specialised Domestic Violence Court Process* report (Ministry of the Attorney General 2000) states:

The model is a recipe for creating a domestic violence court process. The ingredients are not optional – each ingredient is critical to the quality of the final product. The key to achieving the objective of the Domestic Violence Court process is collaboration and a commitment to make the process work.

The specialised domestic violence court process does not change or impact whatsoever on the rights of the accused – including the right to be presumed innocent until proven guilty beyond a reasonable doubt. It does not alter a Crown attorney's discretion or obligation to assess whether there is a reasonable prospect of conviction nor does it alter the function, powers or impartiality of the judiciary. (p.5–1)

Depending on the size and context of each jurisdiction, an early intervention model and/or a co-ordinated prosecution model will be implemented across Ontario. These two distinct models were piloted in Ontario in early 1997: the early intervention model in North York and the co-ordinated prosecution model in downtown Toronto (K Court, Old City Hall). To date, 20 sites have implemented a specialised domestic violence court process. In general, a combination of both models has been used in larger sites and in medium-sized or small rural sites, with the volume of cases and the size of the jurisdiction steering the approach implemented.

The K Court, Old City Hall, Toronto

The domestic violence court at Old City Hall, known as K Court, began operation in January 1997. The aim of K Court is to provide a vigorous prosecution of domestic violence¹ cases, compared to other courts across Ontario. The court is presided over by judges assigned in rotation for one week each month for a period of three months. The benefits of the rotation of judges include preventing the association of a specific judicial leader in the prosecution of domestic violence cases, engaging the same K Court judge for the length of any one case and ensuring the case is confined to K court, and allowing K Court judges to deal with cases other than domestic violence during each month. Set within the Provincial Court in Ontario, all trials are heard by the judge. The stakeholders of K Court include Crown attorney, Victim/Witness Assistance Programme, Court Services, Police, Partner Assault Response Programmes, Cultural Interpreter Services and Probation and Parole Services. An analysis of how the process of the court has contributed to changing the traditional practices of some of these stakeholders in domestic violence cases will be considered in turn below.

Police Practices in Domestic Violence Cases

The co-ordinated prosecution stream, as in the K Court model, emphasises 'the gathering of solid evidence to support a vigorous prosecution' (Brown

2000, p.42). Compared to the practices associated with domestic violence cases in other criminal courts, key actors felt that the police response, with practices relating to the collection of corroborating evidence, was vital in 'front end loading' towards a 'successful' prosecution:

K Court is the aggressive prosecution model, where the police are specially trained to go beyond what they were doing previously in these matters. (Police representative)

Early evaluation of the Domestic Violence Courts (DVC) programme did not report evidence, as expected, to support that changed practices in police investigations lead to a greater number of offenders being referred to intervention programmes (Moyer and Associates 2000).

In Canada, the minority of victims of spousal/partner assault contact the police for assistance (Hotton 2001, p.5). Given that only three of the 19 police divisions in Toronto (52, 14 and 11 Division) participate in the specialised project (Alderson-Gill Associates with Dawson and Dinovitzer 1998; Dawson and Dinovitzer 2001), only a small fraction of all domestic violence incidences are assigned to K Court, although it is notable that even so, the sheer number of cases explained delays to the initially proposed three months to a trial date.

The mandatory charging of an offender was believed to play an important role in the entry of cases into the specialised court:

If the police are called, they [the victim and the perpetrator] don't have a choice now. Not having to make that decision and coming to court and being told this has to proceed and there is only two ways that it can end: he can plead guilty or have a trial and let the judge decide. I have actually seen women say that they can't go through with it. When you explain that [mandatory charging] to them and actually seeing the whole body language change. (VWAP representative)

Police satisfaction with pro-charging policy has been mixed (Brown 2000). A police officer must have evidence and reasonable grounds to believe an offence has been committed to lay a charge. Once a charge is laid only a Crown attorney – not a police officer – can withdraw the charge and only in limited circumstances. It has been suggested that non-legal factors contribute to the police decision-making process about laying charges (Hannah-Moffat 1995). These include attitude of the offender and victim towards the policies and the presence of alcohol and drugs. Generally, patrol officers chose the existence of corroborating evidence as the primary factor, with the willingness of the victim to co-operate, and seriousness of injuries as secondary factors (Jaffe *et al.* 1991).

In the cases where the police are called and there is a charge laid, the Detective Sergeant will act as a liaison officer for K Court and lead the investigation unit. The patrol officers' practices on being called to an incident represent a radical departure from their traditional approach. Practices include a detailed description of the crime scene to help corroborate statements and documentation of any details seen as aggravators (for example, broken furniture), seizures of evidence (for example, broken beer bottle); photographs at the scene and of the victim's

and perpetrator's injuries; identification of any witnesses and videoing a complainant statement as soon as possible after the incident. Subsequent interviews with the victim about the relationship with the complainant would be also be videotaped. The police would check for prior charges and conviction history of the accused. These practices can be intensive on labour and consumables. The evaluation of K Court suggested that such practices are 'significant departures from previous practice and officers may not be comfortable or skilled enough to implement them effectively' (Alderson-Gill Associates with Dawson and Dinovitzer 1998, p.8).

In Toronto, the specialised domestic violence court process demanded changing police practices, and these changes have been made. Across Ontario, it has been suggested that compared to a pre-project period, more evidence has been gathered by police, the quality of police investigations has improved and the case processing times have decreased significantly (Moyer and Associates 2000).

Prosecutor Practices in Domestic Violence Cases

Prior to the specialised court process, domestic violence cases 'were considered low-profile, messy cases with poor prospects for conviction and were therefore not considered rewarding cases for Crowns to take on' (Brown 2000, p.10). The frustration of Crown counsel with recanting or unco-operative victim-witnesses (Ursel and Brickey 1996) and their perceived insensitivity to domestic violence victim needs (for example, Martin 1998; Landau 2000) have been recognised. In K Court, four full-time Crown attorneys are assigned at any one time and this small group makes case screening decisions for the court. Compared to the traditional roles of Crown attorneys in other courts, the practices of the Crown attorneys in K Court were felt to be different:

The Crowns are all specifically trained in the issue of domestic violence. They are all Crowns who choose to do this work. (Prosecutor representative)

In other bail courts, hard-pressed Crown attorneys may engage in 'risky' work practices. As Alderson-Gill Associates with Dawson and Dinovitzer (1998) suggest: 'the likelihood of releasing accused who present a danger to the complainant is increased by the extremely high case load for Crown and by the fact that that they have barely enough time to read the files quickly before the cases are heard' (p.27).

In general, cases are handled from start to finish by the same prosecutor who is assigned to the case early in the process and offers the victim greater continuity:

They don't do any other cases so they have the time to properly prepare. They all do the assessment. They can't meet with all the victim witnesses ahead of time and one Crown has carriage of the file so if there's disclosure problems, then they've identified matters for discussing with defence ahead of time and what the outstanding issues are going to be at trial. (K courtroom representative)

Bringing this continuity to the prosecution process forms part of K Court's objectives including 'to increase the quality of the prosecutions, to increase the likelihood that a victim will cooperate with the prosecution and to improve service to the victims' (Dawson and Dinovitzer 2001, p.603).

There was a suggestion that Crown training had contributed to changing the 'Crown culture' towards domestic violence cases:

Before, access to domestic violence training was difficult and Crowns were in a position where they didn't want to meet with women but now we have this protocol in place [in K court], we are doing very well. (VWAP representative)

There is some support for the claim that specialist courts are able to re-engineer how Crown attorneys deal with domestic violence cases from the Family Violence Court in Winnipeg, Manitoba (Ursel and Brickey 1996; Ursel 1998) to achieve prosecution 'success' and manage a sensitivity to victims and witnesses within the mandatory prosecution of domestic violence cases. Confined within specialist courts, domestic violence cases are seen as higher status, top priority cases requiring skilled lawyers (Ursel and Brickey 1996; Ursel 1998). Crown attorneys expressed that they were strategic in how they secured prosecution, using, for example, 'testimony bargaining'. Ursel (1998) has noted that such practices contribute to managing high conviction rates and recanting and unco-operative witnesses in domestic violence cases.

Victim/Witness Assistance Programme

The VWAP at Old City Hall is funded to provide support to victims of crime, whether they are willing to testify or not, by the Ministry of the Attorney General, Ontario and is separate and independent of the prosecutors' office. As one worker at the Victim/Witness Assistance Programme (VWAP) expressed: 'as far as we are concerned we are crisis intervention around the court process'. Research suggests that victims are most receptive to guidance about risk management immediately or soon after the crime (Friedman and Tucker 1997).

There is a myriad of barriers that victims of domestic violence face once involved in the criminal prosecution of a violent partner. Five major factors, identified by Bennett Goodman and Dutton (1999), that detract from victims' co-operation are: (i) confusion about the process and the consequences of prosecution for her and the accused, resulting from insufficient provision of information; (ii) the length of the criminal process, including numerous journeys to the court; lack of contact with the court during this lengthy period serves to exacerbate victim frustration; (iii) fear of the offender during the time leading up to the trial; (iv) conflict over the possibility of imprisonment of the abusive partner; this is particularly so where victims need child support from the abusive partner or are otherwise economically dependant on the partner, and (v) victims may wish to exit the system after it has served their needs to help manage the violence through an immediate intervention.

To a great extent, the work of the VWAP addresses the barriers identified by Bennett, Goodman and Dutton (1999) to victim co-operation, by providing basic factual information, making the specialised court process transparent, including the typically four to five months wait before a trial date, advocating safety planning, accessing counselling regarding the social and economic consequences of prosecution, and making the process of trial appearance as comfortable as possible. Victim/witness workers attempt to contact the victims in all K Court cases, by telephone or by letter, soon after the bail hearing (unless a guilty plea is entered) or detention order:

We contact our clients whom we know are going to be testifying and try and get a hold of them really early . . . and connect up with them and talk to them about what kind of ongoing needs are going to be in order to kind of go through this system . . . basically it's giving general information. We also do safety planning with women, draw up safety plans for them and we assess what their immediate needs are, if they need counselling, if they need their own lawyer if they have family court issues that they are worried about – custody and access, their property rights, we will certainly give them a referral, we also write letters on their behalf to housing so that they can get a priority move into a safe place, help them out with social assistance if they need that. (VWAP representative)

Women involved in domestic violence cases in other criminal courts have reported that they need information about the court process, trial dates, release dates for the accused and court outcomes (Landau 2000). In K Court, practices concentrated on building a strong relationship with the victim. As two VWAP representatives expressed:

We will talk to her about some of the general rules of court . . . where she can weigh up who she can bring with her .. whether there is a way we can reduce some of her anxiety, we will take her into the courtroom when it is empty and we will make sure that she understands what the rules of the other court staff are and provide her with accompaniments . . .

We will try and develop a strong rapport with her . . . asking her how things have been for her since the charges were laid and what she wants to see happen . . . does she want this resolved or is she off on a new life.

Key informants believed that the VWAP made a significant contribution to changing the established practices of victims of domestic violence courts of recanting and increasing non-co-operation as the case progresses towards prosecution. This is consistent with the evaluation findings for 1997/1998: 'The VWAP can also contribute to the successful prosecution of cases by providing complainants with sufficient support that they may be prepared to testify at trial, where they might not otherwise have been' (Alderson-Gill Associates with Dawson and Dinovitzer 1998, p.9).

Probation and Parole Services

The Ministry of Community Safety and Correctional Services probation services has a pivotal role in referring offenders from probation orders to

domestic violence intervention programmes and in the monitoring and supervision of offenders in complying with the conditions of the order.

While the specialised court process did not explicitly change the practices of probation officers, it was believed by the key informants interviewed to have 'toughened' probation orders as a tool for changing the behaviour of offenders. Before the confinement of cases to a specialist court: 'it was common for offenders to have to wait for six months or a year for a treatment placement to become available, with shorter probation periods, this usually meant that they did not attend treatment. Even if they did, it was so long after the offence had taken place that its usefulness was viewed as seriously diminished' (Alderson-Gill Associates with Dawson and Dinovitzer 1998, pp.29–30). The specialised domestic court process, like other problem-oriented courts such as drug treatment courts (for example, Bentley 2000) have dedicated places in treatment so that offenders could 'fast track' almost immediately upon being convicted and sentenced. Within a year of operation, K Court had increased the number of offenders being sent to treatment programmes (Alderson-Gill Associates with Dawson and Dinovitzer 1998, p.91) and while research is awaited that tracks the impact of the court-mandated treatment on offenders and reoffending, the specialised court process offers, at least, fast tracking entry into behavioural change interventions. For some of the key actors in the Canadian criminal justice system, the specialised domestic violence court process was not enough to address the global problem:

I think what is happening is only a band-aid solution – this is only something at the very end. There must be a better way to address this. (K Courtroom representative)

Conclusion

Specialist courts do confine certain offences or certain offenders into an 'expert' court. The three primary benefits of specialisation of courts have been identified as:

- (1) Fostering improved decision-making by having experts decide complex cases;
- (2) Reducing pending case backlogs in generalist courts by shifting select categories of factually or legally complex cases to specialised courts more capable of dealing with them, thus generating fewer appeals, and
- (3) Decreasing the number of judge hours required to process complex cases by having legal and subject matter experts adjudicate the cases.

(American Bar Association 1996)

Specialised domestic violence courts, initially developed in the United States of America, have been recognised by other jurisdictions including Canada, Australia and the United Kingdom. From the present case study of a 'specialised court', K Court in Toronto, I argue that in the context of domestic violence cases, the court is not primarily focused on the expediency of case processing, judicial leadership and management of court time, although these factors are of importance. Rather the specialised domestic violence court *process* is about managing people from justice and non-justice agencies, offenders, victims and service providers.

A specialised court requires an ordinary courtroom with extraordinary practices for the key actors. If existing and future courts in the United Kingdom aim to be 'a more user-friendly environment', the agency of the key players in the specialised court process needs to be closely considered. The key ingredient in their success (in terms of an increased chance of rehabilitation and a decrease in recidivism) is the collaboration and co-ordination of *people*. Through bespoke training, personnel involved in the process need to be able to reflect upon their concrete experiences, as an occupational group, towards these 'specialist' cases in the past and seek to enhance their practices and partnership working. Establishing the specialised court process as a collaborative and co-ordinated response to a specific social problem will include changing practices of key actors in the process, as recognised by Canadian policy makers: 'each ingredient is critical to the quality of the final product' (Ministry of the Attorney General 2000, p.5-1). Learning lessons from abroad (Rose 2001) can offer jurisdictions insights that can steer implementation of appropriate practices in the field.²

Notes

- 1 Where domestic violence is defined as: 'violence between intimate partners'. 'Violence' may take the form of assaults, sexual assaults, threats and/or harassment. 'Intimate partners' includes legally married spouses, common-law partners, or non-cohabiting couples, whether current or estranged, including persons in same sex partnerships.
- 2 *Acknowledgement*: The author would like to thank Ronit Dinovitzer, Susan Physick and Cathy Murray. The author takes sole responsibility for the views expressed.

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