Women Surviving the Criminal Justice System's Response to Domestic Violence

Thunder Bay Women's Court Watch Program

2008

1st Annual Report

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A joint venture of the Northwestern Ontario Women's Centre And Faye Peterson Transition House

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“Going through the criminal court system I discovered that nobody looks out for your interests but you.”

“He’s learnt how to work around the distance requirement set out in his bail conditions. When I called the police about him stalking me they told me that he was further than 100m and actually threatened to charge me with mischief if I called again.”

“Here I am trying to avoid a run in with him when in fact he is supposed to be the one avoiding me. Something is wrong with this picture when the Victim is the one taking the proper action to avoid any trouble.”

“During sentencing the judge said if it were her choice he would have received 18 months as opposed to the 9 months the crown and defence agreed to.”

“I feel as though I am being punished for being caught up in a situation which I have been powerless to overcome.”

Acknowledgements

The Thunder Bay Women's Court Watch Program has been successful largely due to the many volunteers who monitor woman abuse cases in Thunder Bay Provincial Court. Volunteers have been made up of an incredible group of women including retired professionals, students, victims/survivors, as well as interested community members. Thank you for the countless hours you have committed to our program and for your continued dedication to the issue of violence against women.

Thank you to all the women who have provided their personal stories for inclusion in this report. Your courage and strength in sharing your experience is invaluable and will impact the experience of future survivors as they go through the criminal court process.

Sincere gratitude to the Executive Directors of Beendigen and Marjorie House, as well as the Health Policy Analyst at the Ontario Native Women's Association for your contribution to the report. Your expertise provided a critical link necessary in our analysis of the Aboriginal component of the research. Megweetch.

Thank you to the Toronto Court Watch Program for providing some of the groundwork necessary in the development our program, in addition to sharing the more than ten years of experience and knowledge you have acquired through the running of your own program.

Thank you to our research partners at The University of Western Ontario's Centre for Research and Education on Violence against Women and Children, especially Dr. Helene Berman, who authored the methodology piece for this report. Thank you for your expertise, analysis and support throughout the first year of the program. It has been a pleasure working with you and the Centre on this project.

On a personal note, I would like to thank my family for their support and uncompromising love, especially my partner Rich who diligently reminds of the importance of this difficult work. Thank you for reminding me of my strength.

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1. Introductory Information

About the Program

The first Women's Court Watch Program in Ontario was developed by the Woman Abuse Council of Toronto in 1996. The need for such a program stemmed from anecdotal evidence which demonstrated criminal cases relating specifically to woman abuse were not being appropriately addressed by the criminal Justice system. Local and regional women's advocates have observed similar inconsistencies and noted the impact on the safety and well being of women experiencing violence, and it was the expression of their concerns that spurred the development of a local Court Watch program. In addition, similar problems were corroborated in *'Gaps & Traps'*, a 2007 report examining the effectiveness of the Violence against Women service system in Thunder Bay and District (Gollat, 2007). The report included a recommendation to develop a Court Watch program in order to more accurately assess the effectiveness of the criminal Justice response to woman abuse in Thunder Bay.

The Thunder Bay Women's Court Watch Program was initiated in Thunder Bay through a partnership between the Northwestern Ontario Women's Centre and Faye Peterson Transition House. The program has worked closely with our research partner, the Centre for Research and Education on Violence Against Women and Children at the University of Western Ontario. The Research Centre was particularly helpful throughout the development and refinement of the qualitative and quantitative data collection tool, and the implementation of strategies to ensure rigor in all phases of the research process.

Program Goals

The Goals of the Thunder Bay Women's Court Watch Program are fourfold. The first goal is to examine trends in regards to the response to woman abuse by the criminal court system through the collection of qualitative and quantitative data.

Secondly, the program focuses on court proceedings and observation of judges' and other court personnel's responses to offenders and to survivors of woman abuse in order to more fully understand the impact of the criminal court process on women.

Thirdly, the program aims to raise awareness in the City of Thunder Bay about the issue of woman abuse and our criminal court's response to these cases, to provide the community with a comprehensive understanding of how woman abuse is impacting women in Thunder Bay, as well as encouraging community input into how woman abuse cases should be handled by our Justice system.

Finally, the program aims to empower survivors of woman abuse to participate in making changes to the criminal justice system as well as giving voice to their experience while going through their own criminal justice process.

Limitations of the Research

It is important to note that the data collected has limiting factors, the first being a lack of access to the criminal record of the accused, which may influence the disposition of a particular case. Additionally, court watch monitors were not always privy to the reasoning behind decisions, which could provide a clearer understanding in regards to limitations of the court, thereby providing direction for change within the system to more effectively address woman abuse cases. Finally, not all cases were seen through to decision which precludes a definitive analysis of the data, but rather provides trends through which an analysis can be developed.

Methodology

The primary purpose of the Thunder Bay Court Watch project was to gain an in-depth understanding of the varied ways in which the criminal Justice system responds to cases involving violence against women. In essence, the purpose of this initiative was to examine the 'culture of the courthouse', including the subtle and explicit ways in which the concerns of women are heard, respected, and taken seriously – or conversely, the ways in which their concerns may be overlooked and their voices silenced. In order to achieve this purpose, a critical ethnographic study was determined to be the most appropriate methodology.

According to Thomas (1993), critical ethnography has its roots in conventional ethnography, and entails learning from people in order to understand their culture. However, unlike conventional ethnography in the interpretive tradition, critical ethnography is explicitly political. The aim is to understand culture, but not solely for the sake of understanding. Rather, the critical ethnographer seeks understanding for the purpose of bringing about social action and change. While conventional ethnography speaks for the participants by describing "what is," critical ethnography speaks on their behalf by stating "why this is and what can be done about it." As Carspecken (1996) stated, "Critical researchers find contemporary society to be unfair, unequal, and both subtly and overtly oppressive for many people. We do not like it and we want to change it" (p. 7). Critical ethnography challenges the status quo and the dominant powers in society. It articulates the often-unheard plight of those who have been oppressed and marginalized, and confronts prevailing power structures on such grounds as racism, sexism, and classism to enable all to enjoy the fruits of full and unhindered citizenship. The ultimate aim of critical ethnography is to bring about empowerment or change, either at the individual level as in consciousness-raising, or at a broader structural level through political action (Berman, Ford-Gilboe, & Campbell, 1998).

Within the context of this project, the aim was to critically examine and reflect upon the culture of the criminal Justice system, with particular attention to cases

involving woman abuse. This objective was achieved through the use of multiple data-gathering methods, including prolonged participant observation, the collection of women's stories, and the conduct of a focus group comprised of victim/survivors.

Methods

Consistent with the critical ethnographic methodology, data collection methods were used that would facilitate as broad an understanding as possible regarding the culture within the criminal Justice system as it pertains to woman abuse, the interactions among individuals within this setting, the nature of relationships, and the role of power within these relationships. Therefore, data collection occurred in multiple phases and involved multiple methods. The various data gathering strategies resulted in the collection of qualitative and quantitative data. Participant observation was carried out over a period of five months, from November 2007 to march 2008. Prior to the participant observation phase of the research, project volunteers took part in a training program which consisted of a standardized 1.5 day training session, with presentations from the Crown Attorney's office, the Family Law Clinic, Thunder Bay Police, the Director of Faye Peterson Transition House, and the Director of the Northwestern Ontario Women's Centre. The presentations provided volunteers with necessary background information to gain a clear understanding of the issue of woman abuse in our community, as well as how the criminal Justice system currently functions to address the issue. In addition, a training session was held specifically to ensure a uniform understanding of how to use the database survey tool. Standardization of the training was of utmost importance so as to ensure consistency in the collection of data. To date, over 30 volunteers have been trained to monitor woman abuse cases for the program.

The purpose of this intensive training process was to enhance the likelihood that observations would be consistently recorded, referred to as inter-rater reliability. Upon satisfactory completion of the training program, trained observers attended

court proceedings, observing and recording the interactions, including verbal and non-verbal exchanges, of the prosecuting Crown Attorney, Judge, Court Personnel, and the Accused. A Survey Tool was developed to facilitate this process, to provide a focus to the participant observation process and to ensure that all observers were gathering comparable information.

The focus group was made up of women who have interacted with the criminal Justice system as the result of domestic violence and played a key role in personalizing the data. Unlike traditional interviews, the 'focus group' was carried out in a dialogic manner with opportunities for the women to critically reflect upon their individual experiences, and to contemplate these within the broader social, political, and historical contexts that allow violence to occur. Thus, while we were interested in learning about their individual and subjective 'stories', this research is premised on the idea that knowledge is socially and historically constructed. In other words, violence against women is rooted in deeply entrenched patterns of inequality between men and women that have been perpetuated and sustained throughout history. Through the telling of their stories, women are afforded a 'safe space' in which to critically explore their own experiences and to contemplate the larger circumstances and contradictions that contribute to and sustain violence in their own lives, as well as in the lives of women more broadly.

Data were analyzed using techniques appropriate to each of the research methods. A database system which was developed specifically for the program was used to input data as well as collating for the purpose of this report. In the analysis of the quantitative data from the Survey Tool, the data were tabulated and analyzed through querying the developed database for specific criteria such as case type, the criminal history of accused, and case disposition. The qualitative data obtained from the Survey Tool were subjected to a thematic content analysis. Upon completion of the Survey Tools, the program coordinator reviewed the survey data. A preliminary coding list was developed reflecting the tentative themes that began to emerge. As new themes were identified, the

coding scheme was expanded to incorporate these trends. As commonalities among different categories were revealed, codes were combined into broader categories.

The qualitative data from the women's stories were analyzed using strategies that were appropriate to the analysis of narrative data (Riessman, 1993). The analysis of the stories began at the onset of data collection and continued throughout the duration of the project. Related portions of the women's stories have been included in the report as a means of illustrating the personal experiences of women who have gone through the criminal Justice system due to woman abuse.

Issues of Rigor

Throughout data collection, analysis, and dissemination, Lincoln and Guba's (1985) criteria for establishing authenticity were used. The criteria for authenticity lead the researcher to consider the efficacy of their results. Establishing authenticity involves five concepts: fairness, ontological authenticity, catalytic authenticity, and tactical authenticity. Fairness means that the researcher has adequately shown the diversity of perspectives that participants bring to bear on the topic of study. Ontological authenticity (Lather, 2006) relates to the idea that participants have learned something about themselves through their participation and hearing the results of the study. Again, this criterion for authenticity has been established in collaboration with women who have shared their stories, and with the community partners with whom we have begun to engage in dialogue regarding the project results. Catalytic authenticity refers to the idea that participation in the research has contributed to meaningful change, that the study participants desire to take action based on the findings. In this regard, it is our hope that, through ongoing dialogue, changes will be made that make women's encounters with the criminal Justice system a more empowering experience. This criterion will continue to be evaluated beyond the duration of this initiative. The final criterion for authenticity is tactical authenticity. This criterion is similar to the

previous one of catalytic authenticity, but instead of just desiring to take action, tactical authenticity is achieved when participants actually do take action.

2. Bail Court Findings

Bail court, as an entry point into the criminal court system for the accused, plays a pivotal role in the initial assessment of cases involving woman abuse. Anyone charged with a criminal offence makes their first court appearance within 24 to 48 hours in a Bail Court, where a Justice of the Peace decides whether or not to release the accused, and which if any, restrictions apply to his release. Risk of further harm to the victim or others is assessed at this point, which is intended to influence the decision to release or the severity of conditions placed on the accused if released. The outcome of bail court hearings can directly impact the future safety of a woman and her children.

- 102 Woman Abuse Bail Court hearing were documented with charges including, but not limited to, assault, threats, harassment and breaches. 26 cases involved an Aboriginal accused, 76 involving a non-Aboriginal accused.

- 3 of 102 Bail Court hearings involved an application to change conditions pertaining to an accused; 1 case allowed an accused to reside with the victim, 1 allowed an accused to contact the victim, 1 case denied an accused an alteration to a no consumption of alcohol condition.

Children

The data demonstrated the mention of children and/or their safety was largely absent in the bail hearings. Taking children into consideration at such time is paramount as research has demonstrated that children are often at a higher risk at this point, as is their mother (Berman, Hardesty, & Humphreys, 2003). The 2006 Ontario Domestic Violence Death Review Committee Report (DVDRCR) illustrates the increased risk to children, with 9 domestic homicide victims being children.

● 11 of 102 cases referred to children living with the couple at the time of the incident; 3 Aboriginal, 8 non-Aboriginal.

● 0 of 102 cases referred to children being present at the time of the incident.

● 0 of 102 cases referred to the safety of the children during the bail recommendation process.

When children were mentioned as a factor relating to conditions it was consistently for the purpose of arranging access for the accused.

● 2 cases allowed for third party access to children through bail conditions.

● With permission of the victim,1 accused was allowed to attend the home to see the children, while additionally having conditions which restrict him from attending the home of the victim.

History of Woman Abuse

At the time of the incident leading to the current charge, several of the accused had already had conditions placed on them from prior DV related charges. In many cases the accused was violating the previously imposed conditions at the time the current charges were laid. According to the 2006 DVDRCR, 92% of the domestic homicide cases investigated had a history of domestic violence, thus identifying previous assaults as a strong indicator of risk in cases of woman abuse. Out of 102 cases;

● 25 of the accused had prior ‘domestic violence’ related charges; 3 Aboriginal, 22 non-Aboriginal.

● 1 accused had a history of ‘domestic violence’ but no charges had been previously laid.

● 12 accused were violating previous bail conditions at the time the current charge was laid.

● 7 accused were violating a restraining order at the time the current charge was laid.

● 6 accused were violating probation conditions at the time the current charge was laid.

● 2 accused were violating a peacebond at the time the current charge was laid.

● 3 accused were wanted on a bench warrant at the time the current charge was laid

Remanding into Custody

In 34 of 102 cases in was noted the accused was remanded back into custody at the bail hearing stage. The research did not collect the specific reason this occurred in each case. In many instances it was noted Defence Counsel was not present. A recommendation for future research will include collection of this information in order to clearly demonstrate the number of accused who are remanded back into custody due to the severity of the charges or risk assessment.

● 34 of 102 accused were remanded back into custody at the bail hearing.

Contested Hearings

Conditions placed on the accused are proposed by Crown Counsel, taking into consideration recommendations from the Bail Safety Crown, and are agreed upon by Defence Counsel. In the majority of observed cases, the Justice of the Peace implements conditions as recommended by the Assistant Crown handling the case, although they have the authority to ask for additional information and change conditions. If Crown Counsel and Defence Counsel disagree on recommended conditions they can contest the hearing, meaning that each side presents information to the Justice of the Peace regarding their proposed bail recommendations, following which the Justice of the Peace is given the ultimate authority to decide conditions. There were no contested bail hearings among the 102 bail cases documented.

Charges

Charges are not consistently read in bail court. Often the Justice of the Peace will only ask the accused if they understand the charges, resulting in a lack of information relating to the specific charges laid. A case's relevance to our program was confirmed by court personnel, or through information provided by the victim in order to be included in the data.

In the majority of cases, more than one charge was laid at the time of the incident. However, several cases did involve a single assault charge. Table 2.1 provides a breakdown of the 117 charges documented.

(Table 2.1 – Bail Court - Charges)

Charge	Aboriginal Accused	Non-Aboriginal Accused	Total
Assault	12	32	44
Breach	9	15	24
Mischief	2	9	11
Sexual Assault	1	5	6
Theft	0	5	5
Threats	1	4	5
Forcible Confinement	1	3	4
Harassment	1	3	4
Aggravated Assault	2	2	4
Assault with a weapon	1	1	2
Failure to Appear	1	1	2
Resisting Arrest	1	1	2
Fraud	0	1	1
Threats with a weapon	0	1	1
Break and Enter	0	1	1
Outstanding Bench Warrant	0	1	1

Bail Safety Risk Assessment Recommendations

The Bail Safety Project was initiated by the Provincial Government, largely based on the recommendations from the Hadley Inquest, to assess the risk to the victim in order to make appropriate bail recommendations (Hadley, 2002). Despite the in-depth risk assessment (Bail Safety Program Interview) completed by the Bail Safety Officer and reviewed by the Bail Safety Crown before the bail hearing, our observations suggest the Justice of the Peace is not always provided with the entirety of the assessment, as the Bail Safety process was only mentioned in 3 of 102 occasions. In addition, Justices of the Peace are not making independent inquiries with respect to the victim's safety. Without this vital information, Justices of the Peace are not able to make fully informed decisions regarding the risk an accused might pose, possibly resulting in an inappropriate or inconsistent response to woman abuse cases. The need for reliable and credible information regarding risk is of utmost importance at the bail stage as women are at higher risk of violence and even death in response to the initiation of criminal charges. According to the 2006 DVDRVR, actual or pending separation was identified as a risk indicator in 85% of the domestic homicides investigated.

- The Bail Safety Program was mentioned on 3 occasions regarding bail recommendations

Conditions

Bail Conditions placed on the accused are largely dictated by the Criminal Code which in essence requires an accused be released from custody with no conditions unless proven to pose a risk of re-offending. In the case of woman abuse, the very nature of the crime indicates a high propensity for re-offending, as women abuse is, by its nature, a cyclical rather than an isolated incident. As stated earlier, the priority for the safety of the victim and her children is crucial at the bail stage as her risk may be significantly increased, requiring a particularly attentive and appropriate response by the criminal Justice system to ensure their safety (2007, DVDRCR). Table 2.2 illustrates documented bail conditions.

(Table 2.2 – Bail Court - Conditions)

Conditions	Aboriginal Accused	Non-Aboriginal Accused	Total
Total Cases Documented	26	76	102
No Alcohol/Drugs	6	18	24
No Weapons	6	16	22
No Contact	6	14	20
Do Not Attend (specific address)	4	15	19
Reside at (specific address)	2	13	15
Released with Surety	1	9	10
Remain x metres from victim	1	8	9
Curfew	2	7	9
Released without deposit	3	4	7
Keep the Peace	0	7	7
John Howard Supervision Program	2	3	6
Be of Good Behaviour	0	5	6
Reporting Required	2	3	6
Reside at John Howard Society	1	3	4
Remain in Thunder Bay	3	1	4
3rd Party Access to Children	1	2	3
Psychological Evaluation Ordered	0	1	1
Not to come to Thunder Bay	1	0	1
No Conditions	0	1	1

There is no consistency of conditions being used for releasing perpetrators of woman abuse in Bail Court.

3. Judge's Court Findings

Fifty cases were documented in judge's court, meaning a criminal court appearance other than a bail hearing. Because of limited access to court dockets, we were unable to clearly delineate each court appearance as being a second appearance, set a date for trial, etc. The 50 judges court cases are broken down as follows;

- 21 Guilty pleas
- 5 Trials
- 1 Pre-Trial
- 1 Peacebond
- 22 other court appearances

Children

As in bail hearings, consideration regarding children was largely absent from $judge's court proceedings.

- 12 of 50 cases referred to children living with the couple at the time of the incident.
- 0 of 50 cases referred to children being present at the time of the incident.

● 0 of 50 cases referred to the safety of the children during the sentencing process.

Only one case in judge's court mentioned children as a consideration in the case. Research has demonstrated that access to children can be used to manipulate and further abuse women, allowing the accused to continue to intimidate and harass the family. (see section titled 'children') .

● 1 case allowed the accused 3rd party access to children through the sentencing decision.

History of Woman Abuse

Similar to bail court, many of the accused appearing in judge's court had a history of woman abuse and/or woman abuse related charges.

● 10 accused had prior DV related charges.

● 2 accused had a history of woman abuse but had never been previously charged.

● 3 accused had violated previous bail conditions at the time the current charge was laid.

● 1 accused had violated a restraining order at the time the current charge was laid

● 1 accused had violated probation conditions at the time the current charge was laid.

● 1 accused had violated a peacebond at the time the current charge was laid.

● 1 accused had violated a no trespass order at the time the current charge was laid.

● 3 accused were wanted on a bench warrant at the time the current charge was laid.

Charges

Similar to gaps faced in bail proceedings, exact charges were not accessible for every case monitored. Therefore data regarding charges reflect only the cases where charge specifics were available. Table 3.1 provides a breakdown of the 42 cases where charges were available.

(Table 3.1 – Judge's Court - Charges)

Charges	Aboriginal Accused	Non-Aboriginal Accused	Total
Assault	10	19	29
Breach	19	6	25
Mischief	2	3	5
Failure to Appear	4	1	5
Threats	0	4	4
Harassment	0	2	2
Assault causing bodily harm	0	2	2
Break and Enter	0	2	2
Sexual Assault	1	0	1
Assault with a weapon	1	0	1
Theft	0	1	1
Resisting Arrest	1	0	1
Threats with a weapon	1	0	1
Outstanding Bench Warrant	1	0	1
Trespassing	0	1	1
2nd degree Murder	1	0	1

Dismissed/Withdrawn charges

The data reflected in this section are representative of the 42 judges' court cases where information specific to charges was available.

- 3 cases were dismissed in their entirety
- 6 charges were withdrawn

Reasons for withdrawal of charges was not always available, however in one case the following justification was supplied.

- Crown Counsel couldn't proceed because the victim was too drunk at the time of the incident and therefore could not remember the assault.

Decisions

Of the 50 judges' court cases documented, 56% represented cases in their final stages of the criminal court process. Although the sampling number is proportionally low compared to bail court data collected, it may be indicative of a low number of cases being seen through to their entirety in the criminal court system.

- 21 cases involved a guilty plea by the accused.
- 3 trials resulted in a guilty verdict
- 2 Trials resulted in a not guilty verdict.
- 1 Case was withdrawn by Crown Counsel.
- 1 Case resulted in a peacebond.

Sentencing

The Crown Counsel has a significant influence during the sentencing process. The presiding Justice generally accepts the recommendations made by the crown unless deemed unreasonable. For example;

- One case involved a woman who was sexually assaulted by her partner. Despite the accused having a violent history, the crown asked for a sentence at the lowest end of the sentencing guidelines. The sentencing recommendations made by the crown were surprising even to the presiding Justice, who questioned the crown in open court about their decision to ask for a seemingly disproportionate sentence. Nothing could be done however to increase the sentence.

Although Crown Counsel has the authority to recommend appropriate sentencing for an accused, the Justice ultimately decides sentencing. Nine accused out of 28 cases were incarcerated. Only 14 accused out of 28 cases received an order for probation; 11 accused were court ordered to counseling. A clear understanding of the nature of violence against women is of utmost importance during this process, but was not consistently demonstrated in sentencing. For example;

- In the above mentioned sexual assault case, although the presiding Justice challenged the crowns proposed sentencing recommendation, the Justice went on to state that the accused did not have to register as a sex offender because “the sexual assault occurred within the confines of an intimate relationship.”

- A repeat offender assaulted his partner causing bodily harm sentenced to 4 months probation.

● A young man, charged with assaulting his partner, stated during the proceedings that he was an avid hunter and gun owner. No weapons restrictions were ordered.

● An accused who consistently breaches 'no contact' and 'do not attend' conditions regularly, was found guilty of several similar breaches again, however the consequences or conditions placed on him did not increase. He was released on the previous conditions that he was just charged with breaching.

Table 3.2 illustrates sentencing decisions observed;

(Table 3.2 – Judge's Court - Sentencing)

Sentencing Condition	**Aboriginal Accused**	**Non-Aboriginal Accused**	**Total**
Probation	8	6	14
- average length of probation	1.15 yrs	1.44 yrs	
Counseling/Anger Management/Rehab	5	6	11
Incarceration	4	5	9
No Contact	2	4	6
Keep the Peace	2	3	5
DNA order	1	3	4
Firearms Restriction	2	2	4
No Alcohol/Drugs	2	1	3
PAR referral	3	0	3
Stay away from victim	1	1	2
3rd party access to children	1	1	2
Curfew	1	0	1
Monetary Fine	0	1	1
Be of Good Behaviour	0	1	1

*Recorded sentences roughly correspond to the 24 recorded convictions, however due to the separation of verdict and sentencing, some sentencing conditions may not be included.

The impact sentencing has on victim/survivors has been identified by them as a crucial to their safety or sense of security;

“I walked to go get milk the other day and it was the first time I had been out walking since the court case. I was so scared, I felt like he was watching me.”

“Something inside me died, belief in the judicial system, belief in myself. What did I miss to make them understand the severity of it all? A $100 fine and probation for all the scars from the memories and lies and threats and disappointments that these children and I will carry for a lifetime. I feel humiliated, as if I had just been branded a liar, and have to wear that brand anytime I go out, while all he’s gotten for all he’s done is the proverbial slap on the hand, until he does it to the next victim. I am so depressed I feel I am no good, just the way Jerry used to make me feel, so the abuse from him just carries on. I feel so stupid to have been abused by a con artist, hurting me and the children emotionally, financially and physically. He’s a sly one, and now walks footloose and fancy free while the children and I carry the burden. And they call this Justice?”

“Somebody has to do something to stop him now…. I don’t want to end up maimed, injured or dead. And I don’t want my son to have to go through this. I done everything that they have asked me to do yet nothing happens to him…. I just wish he would hit me with his car so it can just be over instead of him continually abusing me year after year.”

4. Ethnicity and Woman Abuse

Due to the large Aboriginal population in Northwestern Ontario, in addition to anecdotal evidence which suggested an inconsistent criminal Justice system response, collecting data regarding the ethnicity of victims and perpetrators was of particular interest to the program. Data has indicated a differential pattern in prosecution between Aboriginal and non-Aboriginal accused. Observations show Aboriginal perpetrators are more likely to be made accountable for their actions than are non-Aboriginal perpetrators. This is not to say Aboriginal perpetrators are more or less violent, but to indicate non-Aboriginal perpetrators are not receiving similar consequences. The data does not provide a historical context through which it can be interpreted, but rather simply provides data necessary for advocates to see a clear reflection of how ethnicity and prosecution of woman abuse cases intersect.

Identifying Ethnicity

In attempting to collect data regarding ethnicity, several barriers presented themselves. It was the program's intention to identify the ethnicity of the victim and accused through information from the Crown Attorney, or alternatively through VWAP. However, the information was not made available by the Crown's office, and the VWAP manager has stated that they do not collect information in regards to ethnicity. Therefore, the Centre for Research and Education on Violence against Women and Children , a decision was made to identify individuals as Aboriginal only if they were explicitly identified as such throughout the proceedings. Although these guidelines potentially limit the scope of the Aboriginal specific component of the research, it allows us to look at the aboriginal cases clearly.

Prosecution

The differential pattern in prosecution between ethnicities is reflected in the following statistic;

- A finding of guilt was documented in 91% of the cases involving a Aboriginal accused, whereas non-Aboriginal accused were found guilty in 70% of the cases.

The data have also indicated that Aboriginal perpetrators are more likely to have prior woman abuse related charges, perhaps reflection the differential rates of prosecution;

- Aboriginal accused had prior woman abuse related charges in 19% of all cases documented, while non-Aboriginal accused has woman abuse related charges in 12%.

Aboriginal accused were also more commonly charged with breaching prior conditions;

- Aboriginal accused were charged with breaches in 65% of all cases documented; non-Aboriginal accused were charged with breaches in 19%.

Community Consultation

In reviewing the data, trends regarding the prosecution of Aboriginal men emerged. Aboriginal women's advocates were consulted to additionally review data results. In addition to providing analysis of the data, they also shared their professional perspectives regarding the issue of woman abuse within Aboriginal communities and potential culturally appropriate solutions to addressing the issue (see Appendix I).

5. Discussion

Systemic Response to Woman Abuse

Through the course of the data collection process, a common trend began to appear; that at each step through the criminal Justice process abuse was minimized. From police, to crowns, to Justices, integral pieces relevant to woman abuse cases were falling through the cracks.

According to Thunder Bay Police, 1524 domestic violence related 911 calls were received in 2006, 639 (42%) charges were laid, despite a mandatory charging policy set by the Ministry of the Attorney General. Of this significantly reduced amount, our data suggests the proportion of charges to actually reach trial is even lower, with very few resulting in a guilty verdict.

The diligent collection of evidence is also a critical factor which can determine the outcome of potential proceedings. Without appropriate training, the police investigation is insufficient to obtain a conviction. Video statements are rarely taken by Thunder Bay Police services. No video statements from victims were admitted as evidence in any of the observed cases.

An appropriate systemic response to woman abuse, including charging, prosecution and sentencing of abusers, requires a comprehensive understanding of the issue. Complexities such as why women stay in abusive relationships, , the barriers they encounter when they attempt to leave, why they often refuse to testify, the insidious nature of abuse, and the impact of woman abuse on children needs to be clearly understood. Although police, crowns and Justices are confined to set guidelines and regulations, the application of those guidelines is

subjective, which is why in-depth knowledge is necessary to effectively handle woman abuse cases.

The prosecuting Crown has a similarly fundamental impact on the case, which can be influenced by their level of understanding regarding the issue. The Hadley Inquest includes recommendations specifically aimed at educating crown attorneys on issues related to domestic violence and the importance of bail hearings in woman abuse cases. It is at this initial stage that risk should be carefully determined and appropriate bail recommendations made, however victim/survivors have suggested that this is not always occurring;

> "After questioning me the police took me to the emergency for a sexual assault examination. I also had apologetic answering machine messages from my ex that I gave to the police to record for evidence. My ex was then detained by the police five days after the incident. He was then released on bail with a court order to stay away from me and the kids"

> "No alcohol or curfew conditions are useless. He breached twice a week."

Particularly important is the prosecuting Crowns' understanding of why women recant. On a few occasions it was documented that victims were actually threatened with a mischief charge in open court if they were to recant their original statement, which is likely to result in the victim becoming fearful of engaging the criminal Justice system. Although unfortunate and frustrating when victims are unwilling to testify, it is important to consider the intricate manipulation that is involved in woman abuse cases. She may be unable to see him as a risk to her safety, may still believe she loves him, is financially and/or emotionally dependant on him, or may be receiving threats from him regarding her testimony, while simultaneously being pressured by the Crown Attorney. Although likely not the intended impact, this is often the resulting effect nonetheless. She may be

literally forced to choose between her own prosecution and her safety. Given this fact, collection of evidence by police, VWAP support of the victim, and the submission of alternative evidence, become vital.

A sufficient understanding of the complexity of woman abuse could also impact the prosecution of woman abuse cases involving alcohol or drugs. It was documented that cases which involved an intoxicated victim were often dropped due to a lack of credible evidence. This is problematic as research has demonstrated that in the majority of cases, victims use substances (drugs and alcohol) as a strategy to cope with the violence they experience and that women drank more after a violent incident. Evidence exists to show that perpetrators may often introduce their partner to drug use as a form of control and force their partner to use substances. (Stella Project) Women with substance use issues are often considered poor witnesses and the Crown Attorney is reluctant to use their testimony. Documentation of injuries, along with a thorough police report can be used as alternative evidence to accompany any recollection of events.

Justices, also require a comprehensive understanding of the manifestation of woman abuse. Comments such as the following;

> "there was no serious injury to (victim)"

> "It's B & E no matter how insignificant."

Demonstrate the need for further training on woman abuse. These attitudes can create an atmosphere of re-victimization in a venue which is supposed to protect assaulted women.

Children

Although the women's court watch program did not follow custody and access cases involving woman abuse in family court, collection of data in the criminal courts identified that the criminal Justice system response to woman abuse largely neglects to consider children as a mitigating factor during criminal court proceedings. In the few cases where children were mentioned during proceedings, access arrangements for the perpetrator were the focus. Problematic to the issue of addressing woman abuse effectively within the criminal court is the lack of recognition that children are impacted by woman abuse, whether witnessing the violence or experiencing its impact indirectly through the mother.

By giving the perpetrator access to the children either directly or through a 3rd party, abuse is able to continue. Research has demonstrated that joint custody or visitation arrangements with an abuser can enable the continuation of abuse. Physical and emotional abuse is allowed to persist, as well as threats. The children can be used as a weapon by not returning them on time from visitation, dragging on litigation, and as undermining the authority of the mother, perpetuating a continued imbalance of power between the abuser and victim. In addition, the victim's continued fear of the abuser can result in the relinquishment of her parental rights in an attempt to free herself from the abuse (Kernic et al., 2005).

The impact of abuse on children has been examined in various bodies of research which indicates that the mental health of children is compromised regardless of whether they have physically witnessed the violence. In addition to witnessing, parental well-being has been identified as an indicator which can impact a child's sense of emotional security, thus negative effects can be felt by the children via the impact of the abuse on the mother (Cummings, 1996). Further to this point, abused mothers have reported being considerably less

emotionally available to their children than non-abuse mothers, which consequently negatively impacts children (Holden et al., 1998).

Children who have been impacted by domestic violence have demonstrated greater behavioural problems than non-impacted children. These problems have been shown to manifest in varies forms, including depression, anxiety, aggression, and impulsivity (Rossman et al., 2000). It has also been reported that between 20 and 50 percent of children exposed to violence in the home are diagnosable with Posttraumatic Stress Disorder (Rossman and Ho, 2000).

Domestic violence and child maltreatment have been found to be inextricably linked. Whether direct or indirect, the impact of woman abuse is felt by children, and can result in a significant negative impact on children's mental health, in addition to their physical safety. Moreover, abusers make poor role models for children, thus allowing them access to children may serve to perpetuate the cycle of violence (Jaffe, 2005). These findings further highlight the importance of reconsidering the current Justice system approach to custody and access in woman abuse cases.

One focus group participant shared her frustration with a system that largely puts the onus on the victim in regard to keeping her children safe, yet undermines her judgment simultaneous by allowing the abuser access to the children;

> "CAS says you can't live with him or they will take the kids away, but they give him access to the children. I considered going back to the abuse so I can at least protect my children by monitoring his access."

Amending Conditions

In a few of the cases documented, bail or other such conditions were amended, usually to allow for contact between the accused and victim. In general, these requests where either made or supported by the victim, however the justification for such changes is questionable. In some cases, bail conditions were amended, while nothing had changed the facts of the case between bail court and the request. If conditions set at the bail stage included a no contact order due to the nature of the crime, it is debatable what circumstances are valid to change conditions set out by the bail safety crown, whose purpose is to assess the risk of the victim and make appropriate bail recommendations. The Ministry of the Attorney General (MAG) recognizes that bail is a time of high risk for victims, and states that "the Bail Safety Project helps identify high-risk situations, allowing Crown prosecutors to make better recommendations at bail hearings to help stop the cycle of violence (MAG website)." Changing conditions can serve to undermine the effectiveness of the Bail Safety Program, in addition to putting the victim and the successful prosecution of the case at risk.

A request made by the victim does not justify the changes in conditions. Despite being requested by the victim, it is the state that is responsible to assess her risk at this point. Victims are often unable to determine their safety, especially at the point of lethality, where she may be unaware of the warning signs leading up to a particularly dangerous incident. In addition, victims often receive a tremendous amount of pressure from their abuser to have conditions changed. The risk this situation can pose to a victim can be high; she has called police, he is charged, he pressures her to recant or request conditions be changed, and is subsequently granted access to her again through the court system. Further disturbing were documented cases where victims' were unaware that there was a request to change conditions, and later discovered that he is allowed access to her again.

Allowing the accused access to the victim through court sanctioned conditions has the potential to undermine the viability of the case. He often maneuvers his way back into her life and continues abusive behaviour. Given that cases take many months and sometimes years to be disposed of, the likelihood that she will be willing to testify at that time is small. Additionally, allowing him access to his victim for further abuse while awaiting court, undermines the authority of initial charge.

Although a common practice in criminal court, changing conditions may not be applicable for woman abuse cases due to the nature of charge. Research demonstrates that woman abuse is not an isolated incident, but rather an ongoing cycle, thus treating woman abuse cases as if they are the result of a single incident is not only a mislead practice, but potentially lethal to woman and their children (DVDRCR, 2006).

Conditions for Re-offending

Identified through the data were several cases which involved an accused with a prior criminal history of 'domestic violence' (DV), being breached on conditions relating back to the original DV charge. According to the *Hadley Inquest*, re-offending or breaching previous charges should result in stricter conditions put on the accused. However, the data collected demonstrated that this may not always be the case. One case involved an accused who had previous conditions, including a no contact order, an order to reside at an address approved by the court, as well as a surety with a $1000 deposit. Upon breaching the no contact order and residency order he was given new conditions which allowed him to live at the address where he living in violation of the previous order, provided a new surety, and was released on a $300 deposit.

Remands

Granted requests for remands can be legitimate, in cases of woman abuse, they should be rare, and even rarer on the part of the prosecuting crown. Anecdotal evidence from women's advocates suggest that the longer criminal court proceedings continue in woman abuse cases, the less likely the victim will participate in the prosecution. This is problematic as the victim is the only witness and/or evidence presented in the vast majority of cases, thus without her testimony the case is virtually void.

Victim Attendance

It was rare to see the victim present and even more uncommon to see them in the company of support workers, family, etc,. Victim Witness Assistance Program (VWAP) was not observed as present with any of the victim's during court proceedings. The VWAP mandate includes the provision of support services, and that "services are provided on a priority basis to the most vulnerable victims and witnesses of violent crime, such as domestic violence (MAG website)."

- The victim was present in 5 cases.
- The victim was with a Faye Peterson Transition House worker in 1 case.
- The victim was with the mother of the accused in 1 case.
- The victim was alone in 3 cases.

Reliance on Victim Testimony

Sole reliance on a victim's testimony is a significant barrier to successful prosecution. As demonstrated earlier, in only 5% of cases was evidence, other than the victim's testimony, submitted by the crown.

Even in a case where a police video statement of the victim is available, the victim's live testimony is still required to corroborate the initial statement barring extenuating circumstances. Problematic in woman abuse case is the well documented cycle of violence essentially involving a tension building phase, the precipitating event, the battering event, the immediate aftermath, and the honeymoon phase as described to advocates by many women. It has been well suggested by women's advocates and researchers that it is in the immediate aftermath that victim's are most likely to seek police assistance and are further willing to take action in regards to the abuse, underlining the necessity for sworn police video statements to be taken immediately or shortly after the incident. As time passes, the victim moves into the 'honeymoon' phase during which the victim not only forgives her abuser, but becomes somewhat protective of him as she experiences his remorse, in addition to falling back into the pattern of the abuse. Ironically, it is during this phase that victim's are usually asked to testify against their abusers by the criminal court system.

In addition to the cycle of violence, many women are unwilling to testify against their abusers due to fear, lack of resources both emotional and financial, children, mental health issues, addictions, and more often simply not wanting to be personally responsible for her abusers prosecution. It is for these reasons that victim testimony should not be the piece of evidence necessary to prove the guilt of an accused. Alternative, yet equally compelling evidence include, police reports, which also includes a statement from the victim, and 911 tapes which often demonstrate that violence was occurring at the time the call for help was made.

Victims are also seen as poor witnesses if they have reconciled with their abusive partner, or have had intermittent contact with him. In addition to the fact that reconciliation does not negate criminal charges, this is problematic in that women often attempt to leave, subsequently returning to abusive relationships

several times before ending the relationship. One woman described her experience of being discredited because she interacted with her abuser regarding their children;

> "They don't take into consideration that there are times when women are afraid and time when they are able to mitigate fear and danger. They think that if she is not fearful all the time, she must not be afraid."

Evidence

The introduction of evidence was minimal in the vast majority of cases documented.

- No evidence was presented by Crown Counsel in 3 cases.
- An account of the incident was submitted by Crown Counsel in 10 cases.
- "Eye in the Sky" video was submitted as evidence in 1 case.
- Witnesses for the crown appeared in 1 case.
- Expert witnesses were used in 1 case by Crown Counsel.
- The victim's statement was submitted in 7 cases.
- A Partner Assault Response (PAR) program report was submitted in 1 case.
- 'Similar act' or 'similar fact' evidence was submitted in 4 cases.
- A 911 tape was submitted in 1 case.

- Photos of the victim were submitted in 2 cases.

- A police report was submitted in 1 case.

Pre-Trial

Although minimal data has been collected regarding pre-trials during the course of the court watch program, it would be an error not to address the issues that pre-trials present in woman abuse cases.

Pre-trials are particularly challenging for data collectors as they provide little reasoning for the resulting decision, as all case particulars are discussed off the record, behind closed doors with only the Defence Counsel, crown and presiding Justice present. This pretrial process, loses its transparency, as well as potentially its credibility, and reasonability.

Only a few years ago pre-trials were never utilized for woman abuse cases. With the integration of this federal court practice in provincial courts, pre-trial conferences have been used to expedite cases, in part to address a backlog of pending criminal court cases. However, in cases as sensitive as woman abuse, it would be more appropriate that woman abuse cases be handled out in the open and on the record. Although ideally bias and personal judgments would not factor into court decisions, the truth remains that bias and personal judgment abound in regard to violence against women, which in essence is why it able to exist (Sinclair, 2004).

A pre-trial requires that both the crown and the defence present a joint submission to the Justice for approval, necessitating both the crown and defence to be sufficiently agreeable on the outcome. Pre-trials require that joint submissions are approved by the presiding Justice as presented. Their hands

are largely tied, in terms of altering the recommendations unless the submission is entirely outrageous. Therefore, a judge has minimal input into the sentencing process, once again underlining the importance of the crown's interpretation and understanding of the case.

Lost in the process of a pre-trial is the victim. Although the crown should present the proposed joint submission to the victim prior to the pre-trial, this does not necessarily take place, and furthermore opposing viewpoints between the victim and the crown do not necessarily result in a more satisfactory result for the victim. The crown has the option not to proceed with the pre-trail, giving the victim time to reconsider their position, then setting the matter for trial if no agreement can be made. Alternatively, the crown can proceed without the support of the victim, dependant on their own interpretation of the strength of the case. In this regard, several victims have contacted the Thunder Bay Women's Court Watch Program to share their experience while going through the system, illustrating that the crown did not take their recommendations and safety concerns into consideration, resulting in cases where no contact orders were reversed, or further, cases where the crown did not contact them to discuss what was in the joint submission.

Even in the "best case scenario" where the crown does consult with the victim in regards to the joint submission, the onus continues to be placed on the victim to ensure an appropriate outcome either through supporting the submission or pushing for trial. This is problematic due to the very nature of woman abuse, whereby women often simply want the violence to end, not for their abusive partners to be punished for their behaviour. Thus, relying on the victim to determine the severity of the case and therefore the corresponding punishment undermines the responsibility of the state to pursue the prosecution of woman abuse cases to the fullest extent of the law.

It has also been noted that if a submission is not agreed upon by both the Crown Counsel and Defence Counsel during a pretrial, once set for trial, a new Justice would hear the case. The impact of this will be examined more closely in next year's research.

Women Charged With Domestic Violence

The scope of this research does not include cases where women were charged with domestic violence related charges. However several such cases were identified through victims accessing services through Faye Peterson Transition House, as well as focus group participants. Common among these cases, was a lack of understanding on the part of police responding to the call for help;

"His face turned red, his fists were clenched down at his sides and his body was tense and he came at me. This is when I wanted the phone. I was so shocked I backed into the kitchen. I was so scared all I could think of was that I needed space, right away. I was cornered and the knife set was right there on the wall to my left. I reached over and grabbed the first one and held it out in front of me to get him to back up and give me space. I was thinking that if he backed up far enough I could get out the front door. Our eyes locked onto each other. At this point I had a feeling that he knew I wouldn't use the knife to do him any harm. As I moved forward and he moved back a little he reached around me and grabbed my hair and began pulling. He spun me around and I went to my knees. I was on the floor in a kneeling hunched forward position being strangled from behind by two hands around my throat. The only way I managed to grab the phone was to send the knife I had which was in between my legs lying on the kitchen floor, sliding out across the floor. As he watched the knife slide across the floor it gave me enough time to grab the phone and make the call (to police) while he was still strangling me and I was feeling very faint. He pried the phone from my hand and hung up. Contact was made to the house (not sure if the phone was still on from the original call or if the police had called back). After they talked to my husband he was instructed to give me the phone and I told them that at this time I was freed and leaving the house. I was told to stand at the end of the driveway…. After interviewing both of us the police were not sure what to do so they called their supervisor who came a short time later. They collected the knife and told me I have two choices; either I go to the police station or the hospital. I chose the hospital. I wanted to feel safe and get help. At the hospital pictures were taken of my injuries plus statements were taken. When I went to the mental health ward (after being attended to) the constable came in and told me I was being charged. I then spent two days on the mental health ward where I received

counseling. When I was released I went to Faye Peterson Transition House. While his life has carried on I have been to physiotherapy to have my injured neck (from my husband's hands) fixed, I have been to court, am on probation and have suffered intense emotional pain and continue to suffer this emotional pain every time he comes home intoxicated."

"The argument started regarding my family members he did not want our children associating with. I told him he had no right to say my father my mother and my sister weren't allowed to come to my apartment. He then demanded my bus pass, my MP3 player and the remaining money which my mother provided me with to take my son out with that afternoon. I grabbed for it and that's when he grabbed my wrists (I have photographs) and threw me down to the living room floor and I managed to grab the cordless phone to call my mother, at which point she heard everything, the threats and the fact that I was choking . She is the one that called 911 for me. Then he turned me over and started choking me with his winter coat. The only damage I know I caused to his coat was a rip in the inside pocket from trying to get him off of me. He then hung up the phone and went into the kitchen. I laid on the coughing and trying to catch my breath. Then I went into the kitchen and saw him in the corner and as I went closer I realized he was cutting his jacket with the scissors. I tried to grab the scissors away from him and we were both struggling over the scissors. I fell backwards and I got back up and I was standing on the rug in the kitchen and he bent over. I thought he was going to tie up his show laces but he pulled the rug out from underneath me and I fell on my back elbows and head (I have photographs of bruising). He then went over me and grabbed me by the shoulders and said "now I'm really mad" as he was shaking me up and down. While I was on the floor before he rushed out the door he said "You better not say anything because you know I could probably have the kids taken away." When I saw him cutting his jacket I didn't understand why until later when the police came and caught him outside and he told them I stabbed him with the scissors. I was in the apartment when they informed me that I was going to be arrested. I didn't know what was happening. That's when my mother came to the apartment to calm the children and talk to the police and write her statement. I have been presented with two charges which I will be answering to. I realize that in the aftermath of the incident that it was only Shawn and I in that incident, and it is his words alone that caused my incarceration. … In the past four years during each of my pregnancies he has pushed me down a flight of stairs. I know I deserve to be treated better by a man and I want to have a good life. I want to live. I want to be happy again. It's been a long time since I felt happy."

Identified through research focusing on the charging of victims post introduction of mandatory charging policy, is the need for police to accurately identify the dominant aggressor in a relationship. This includes an investigation into the

history of abuse within a relationship, as well as the motivation for women's use of force (Pollack et al., 2005). "The criminal Justice system and the judiciary must develop an understanding that women's use of force is not the same as men's. Women's use of force in domestic violence situations must be gendered in that it is often a response to a sustained pattern of abuse by male partners (Pollack et al., 2005).

It is the intention of the women's court watch program to collect data regarding the prosecuting of women with domestic abuse related charges in the next year of data collection.

Partner Assault Response Program

In a 2006 discussion paper titled 'Key Issues Facing the City of and District of Thunder Bay Violence Against Women Service System', the importance of holding men accountable for abusive behaviour was highlighted as one of the six key issues challenging the violence against women service system. This paper states that "perpetrator accountability, the holding of men accountable through both the criminal Justice system and the treatment system, is integral to the elimination of violence against women." Additionally, it has been stated by the Ministry of the Attorney General that the Partner Assault Response Program (PAR) plays an integral role in holding offenders accountable (MAG, 2000.) In some jurisdictions, London specifically, PAR referrals are mandatory for all perpetrators of woman abuse.

The Thunder Bay Domestic Court Advisory Committee has also agreed that PAR referrals were crucial to working with abusive men. However, of the 28 cases seen through to decision in this report, only 2 referrals to the (PAR) program were made. Alternatively, referrals to counseling, rehabilitation or anger management outnumbered PAR referrals by more than 5 to 1.

According to the 2003 PAR program standards, “woman abuse is not an anger management issue”. Appropriate educational programming directed at addressing woman abuse is specialized, designed by experts in the field of violence against women to address the underlying belief systems which perpetuate this behaviour. Anger management, counseling or rehabilitation may need to be addressed in woman abuse cases, however they are separate issues which should be addressed concurrently with PAR, not in lieu of. “The coexistence of two behaviours or conditions is different from one behaviour or condition being the cause of another. If one behaviour is stopped, the other does not automatically stop as well. This is the case with drug and alcohol use and violence against women and children in relationships. They may coexist and they may have an impact on each other, but they are not the cause of one another (Meredith, 1996).”

One woman shared her experience in regards to mandated programming for her abuser;

> “My partner was not mandated to go to the PAR program. He was mandated to go to anger management but it was changed by his probation officer who decided he did not have to attend.”

Victim Surcharge

In 1996, the Ministry of the Attorney General enacted a bill titled ‘*The Victims’ Bill of Rights’*. The bill was deemed “an important step in acknowledging and responding to the needs of victims of crime (MAG, Victim Fine Surcharge)”. In addition to ensuring appropriate treatment of victims of crime, the act also included a surcharge which would be applied to provincial and federal fines, and funnelled into a fund to assist victims of crime called *‘The Victim Justice Fund’*. According to the MAG website, the money from this fund goes into programs and services such as SupportLink, Victim Support Line, Victim Crisis Assistance and Referral Services and Victim/Witness Assistance Programs (VWAP).

Data collected during the program indicated that the victim surcharge is not necessarily regularly instituted;

- Only 1 fine was specifically determined in the 28 decisions documented.

- In 3 cases it was specified that the victim surcharge was waived.

According to court personnel and women's advocates, there has been a decrease in the attendance of VWAP workers in court to support clients.

Given the stated objectives of the Ministry of the Attorney General (Implementing the Specialized Domestic Violence Court Process; May 2000) are:

1. Early Intervention
   - minimum of 125 days for case processing

2. Vigorous Prosecution
   - Increasingly serious consequences for repeat offenders
   - Minimize reliance on victim testimony through use of enhanced evidence collection

3. Support and Advocacy for Victims

4. Effective coordination and collaboration between stakeholders to increase victim safety.

Recommendations

Most of the Thunder Bay Women's Court Watch Recommendations are corroborated by the Ontario Domestic Violence Death Review Committee (DVDRC) Reports (2003 – 2006). Thunder Bay Women's Court Watch concurs with their call for increased and ongoing education of criminal justice system professionals.

1. Thunder Bay Criminal Justice System should adhere to provincial and local guidelines previously established for the Domestic Violence Court Process; Partner Assault Response and Victim Witness Assistance Program.

2. Risk Assessments and the Bail Safety Process

   a) Justices of the Peace should be fully apprised by the Crown, at the bail hearing, of all serious risk factors in the Bail Safety risk assessment and should consider the information gathered from this tool as trustworthy and credible. Accused with any history of domestic violence (toward current or past partners) should automatically be considered higher risk and assigned more stringent conditions or held until trial.

   b) Where there is any question of security of the victim with respect to conditions recommended by the Crown Attorney, Justices of the Peace should themselves routinely ask for additional information regarding the victim's safety, rather than accept the Crown's recommendation.

   c) Conditions of release should be applied in a more consistent and standardized way in woman abuse cases. For example, there should

always be a no contact order requested unless there is good reason not to issue it. Ongoing risk management through continued assessment and monitoring of perpetrators through an agency accountable to women's advocates should occur throughout the criminal justice process.

d) Where there is any evidence of ownership or access to firearms, that access should be restricted automatically. DVDRC reports that restriction of access to firearms during separation or imminent separation is key to effective intervention and risk management.

e) Conditions of release should not be contradictory or create potential opportunities for future harassment and violence by accused (for example, issuing a no contact order and child access in the same set of conditions).

f) Children's safety and well being should be considered in both the risk assessment and imposition of conditions. Access to children should not be facilitated when there is an assessment of risk.

g) Our results corroborate recommendations from the DVDRC that any person proposed as a surety for an accused should be 1) properly investigated as to their suitability to act as surety; 2) fully informed about their responsibilities both in writing and in the court record; and 3) be warned in writing and on record as to their potential liability should they breach their duty.

3. Increasing Consequences for Repeat Offenders

Subsequent charges related to domestic violence and breaches of such charges should always result in increased consequences and conditions, including jail time. Offenders who receive similar, or even fewer consequences after a breach or repeat offence are provided with no deterrent, or worse, encouraged to breach again. Women reporting breaches should be taken seriously, and risk re-assessed whether or not police feel conditions have been broken. DVDRC recommends that police identify, monitor and manage high risk cases, and vigorously enforce bail conditions.

4. Enhanced Prosecution Techniques – Minimize Reliance on Victim Testimony

Police and Crowns should focus on evidence other than victim testimony, in order to remove the onus (and any potential violent retribution) for prosecution of an abuser from women (for example video statements). Under no circumstances should a woman who recants or is unwilling to testify against her abuser be charged with (or threatened with charges of) mischief or contempt of court.

5. Pre-Trial Process

The pre-trial process occurs in judges chambers between the crown, defence counsels and the judge. While it may expedite the prosecution process, decisions negotiated behind closed doors may also compound omissions of information and context that put women at risk. Women experiencing the process complain they have no say, and nothing is entered in the court record. In addition, the process gives the defence attorney the opportunity to present before a new judge.

6. Dispositions

We recommend a standardization of sentencing conditions for domestic violence cases according to existing guidelines. As well, terms of probation should be consistently applied to all convictions. Repeat offenders should receive increased penalties.

7. Partner Assault Program referrals

Court orders to Partner Assault Response programs are not being routinely requested or ordered in DV cases – our results show they are almost the exception, not the rule. All players, Justice of the Peace, Crown Attorney, Judges and Probation Officers should be responsible for ensuring that treatment appropriate to the crime is consistently ordered and attended. The DVDRC also recommends stricter adherence to the provincial policy that requires that the Crown seeks and order for PAR program for those convicted of a domestic violence offence.

8. Probation and Parole

Conditions of probation should be standardized for woman abuse cases. Probation officers should follow probation order conditions, and never diminish them. The probation officer should also report any breaches, at which point accused should be arrested and charged.

See Fourth Annual Report of the Domestic Violence Death Review Committee (2006) for more general recommendations.

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Appendix I
Consultation with Local Aboriginal Women's Advocates

It should be noted that the analysis and recommendations in the appendix are reflective of the perspectives the Aboriginal women's advocates consulted.

Consultation with the Directors of Beendigen and Marjorie House, as well as the Health Policy Analyst from the Ontario Native Women's Association on the findings of our first annual report, several themes emerged. The first theme being that the criminal Justice system continues to fail in effectively addressing the issue of woman abuse within the First Nations community.

Woman abuse in First Nations communities may be at an all time high, with some northern communities reporting that between 75% and 90% of Aboriginal women have experienced woman abuse (A Strategic Framework to End Violence Against Aboriginal Women, 2007). It is at this tipping point that we must consider that the current criminal Justice response to the issue of woman abuse for Aboriginal communities is simply not effective.

Identified through community consultation was the possibility that even with a potentially stringent response to woman abuse through the current criminal court system, Aboriginal communities may remain largely unaffected. This is due to a culturally inappropriate response through a non-Aboriginal Justice system. In fact the word 'Justice' is foreign to Native language. To further demonstrate this point, in November of 1992, there were round-table talks held in Ottawa on Aboriginal Justice issues between a number of lawyers, academics and Native leaders. An analogy that emerged from the talks involved the words 'Justice' and 'hippopotamus'. A Cree group from Saskatchewan recounted a lively discussion on trying to come up with a Cree word for hippopotamus. The animal had never

been named because it was foreign to Canada. After a long while contemplating possible Cree translations the group was able to come up with a translation for 'hippopotamus' which translates as "from the land of the black people comes a heavy-footed, wide-bodied, wide-assed, under-water pig". They were unable to come up with a translation for the word 'Justice' (shared by Gloria Harris, E.D. Marjorie House). The point being that non-Aboriginal Justice simply does not translate. Furthermore, the existing colonized approach to 'Justice' has yet to be proven affective in the non-Aboriginal community.

As discussed by consultants, a restorative Justice approach may be an alternative to the current criminal court system response to woman abuse within Aboriginal communities. Although much consideration in regards to the safety of women and children, as well as to the development and implementation of such a response the possibility remains that an entirely new approach to addressing the issue may be necessary. In essence, a restorative Justice approach would involve four parties being involved in the process. The victim would describe the impact of the crime, as well as what is necessary for healing. The offender would accept responsibility for their actions and take necessary action to address the impact on the victim and the community. The community ensures the safety and healing of the victim, while supporting the offender through rehabilitation. The government provides safety by maintaining order (NWAC, 2007). The diagram below demonstrates process's philosophical underpinnings (Health & Social Services Alaska website).

Particularly problematic in the criminal Justice system response to woman abuse within Aboriginal communities is the lack of a culturally appropriate holistic approach to substantively addressing the issue of woman abuse. Aboriginal education programming relating to women abuse which both identifies its root cause as well as its affect on women, children and the community is severely lacking. The Thunder Bay Domestic Violence Court Process has yet to identify an approved culturally appropriate education options for Aboriginal men, on and off reserve, which would be comparable to the Partner Assault Response (PAR) program currently offered through the Catholic Family Development Centre.

Identified through community consultation as a particularly valuable program for abusive men, was 'Kizhaay Anishinaabe Nin' or 'I am a kind man'. This program was designed from a culturally appropriate perspective to not only address the issue of women abuse from a culturally appropriate perspective, but to facilitate a more extensive understanding of the underlying causes, alternatives to the participant's abusive behaviour and further, how they can encourage their community to participate in addressing the issue. Not intended to replace the PAR program, 'I am a kind man' is a program to which Aboriginal perpetrators

can be referred in addition to, not in lieu of. Although not currently in existence in Thunder Bay, 'I am a kind man' once initiated, will act as a vital element necessary in addressing this pervasive problem, and may be particularly useful through the Thunder Bay Domestic Violence Court Process Early Intervention Program.

Integral to the effectiveness of such programs as PAR or 'I am a kind man', is its facilitators. It is imperative that experts in the field of Violence Against Women have the lead in the education of perpetrators, as it is ineffective to provide cultural relevant programming for woman abuse if the organization has little or no direct knowledge about the issue. In this regards, the delivery of such programs should come from Beendigen alongside Aboriginal elders who would provide the traditional healing piece not available through mainstream programming. This is also applicable in regard to probation requirements. It was also suggested that check-ins with Aboriginal Elders should be mandatory.

The statistics gathered for this report coincide with other bodies of research which have also identified the differential prosecution of Aboriginal men.

Conclusions drawn from the Aboriginal specific data collected through this program centred around several issues continue to be challenging when addressing woman abuse within Aboriginal communities through a non-Aboriginal criminal Justice system response. First, that a non-Aboriginal approach to 'Justice' does not serve to substantively address the issue of woman abuse within Aboriginal communities. Secondly, Aboriginal perpetrators continue to be disproportionately represented in court, as well as more harshly sentenced. And lastly, the Ministry of the Attorney General has not implemented culturally appropriate education options for use during the early intervention process and/or sentencing.