



WomenatthecentrE

Transforming our lives and eradicating
violence against women

A photograph of a courtroom with rows of empty wooden benches. In the foreground, a pair of ornate brass scales of justice sits on a dark wooden table. The scales are slightly unbalanced, with the right pan being lower than the left. The background shows a large window with light streaming in, and the overall atmosphere is solemn and formal.

Still Unbalanced

Intimate Partner Violence and the Scales of Justice:

Monitoring the Specialized Domestic Violence
Court Program in Toronto, Ontario

Observations from a Pilot Court Watch Project of WomenatthecentrE

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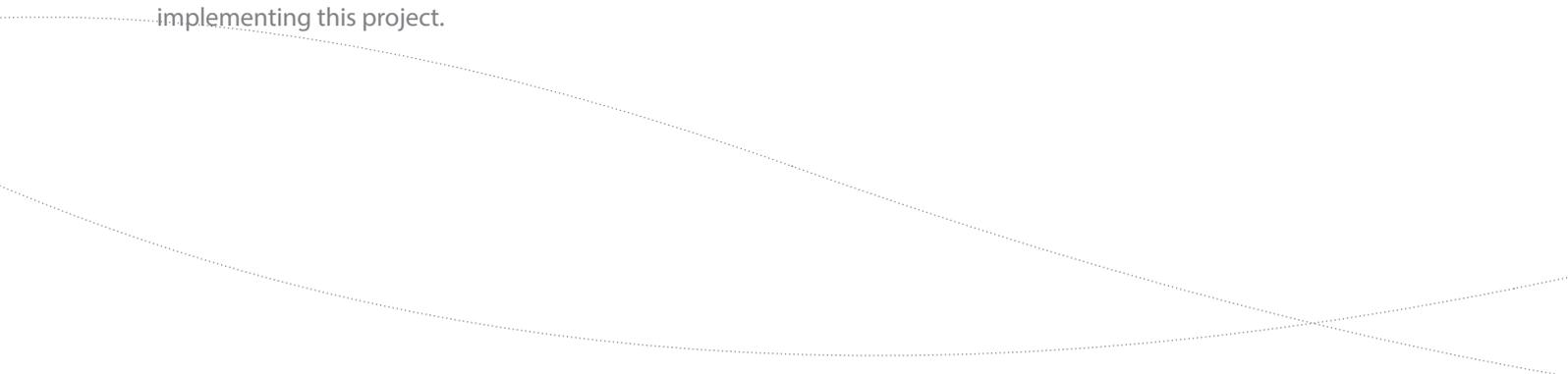


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EXECUTIVE SUMMARY



EXECUTIVE SUMMARY

WomenatthecentrE, a unique not for profit organization developed by and for women survivors of gendered violence, organized a pilot project to observe the Specialized Domestic Violence Criminal Courts (DVCs) during a 12 month period. This Court Watch Pilot Project engaged volunteers, our “Court Watchers”, who attended cases at three of the Specialized Domestic Violence Courts in Toronto, Ontario, between 2013 and 2014, documenting their experiences. This Report provides an overview of key observations, reflections and conclusions of the group and proposes recommendations for further exploration of the effectiveness of these courts.

The overall conclusion of the Court Watchers was that although some court processes proceeded relatively smoothly, to a large extent the courts appeared to be disorganized, under-resourced and lacking in their ability to **consistently** hold perpetrators accountable for their criminal behaviour. We recognize that because of the complex nature of intimate partner violence, the criminal justice system is a ‘blunt instrument’ that is limited in its ability to respond fully to the complexities.

General Conclusions

- There was recognition of the dedication and hard work of many individuals within the criminal justice system. For example, the Court Watchers noted instances where Assistant Crown Attorneys tried valiantly to manage seemingly unreasonable workloads, while trying to bring offenders to justice and offering victims safety and security.

” Our legal system is the first and last line of defense

of what is right and wrong in society and I think a lot of people do not want to contemplate that the legal system may be working improperly or actually creating new problems. While whistle blowing happens to police, politicians, or bureaucrats, public attention is rarely drawn to stories of legal systems designed improperly as this shakes the very foundations of our society. - [Court Watcher – 2013]



- Some of the judicial responses were excellent examples of holding perpetrators accountable for their behaviour. There were cases where the Judge spoke directly to the accused, challenging his behaviour and speaking out about the negative impacts of violent and abusive behaviour.

- Equally, there were examples of cases where the judiciary barely acknowledged the violence; were obviously lenient in their consideration of the assault; provided little or no indication that they understood the power dynamics at play in intimate partner violence relationships. In most cases, Judges did not use their unique position and authority to speak directly to the perpetrator about the negative impacts of their abusive behaviour, and the need to change how they relate to their intimate partners.

There seemed to be little improvement in the effectiveness of the Specialized Domestic Violence Courts in providing women victims with adequate safety and support, from observations of a similar Court Watch initiative conducted in Toronto in 2006, carried out by the Woman Abuse Council of Toronto.

Given our limitations in accessing information in the courts, due to Court Watchers only being able to attend at random intervals and not having the opportunity to follow cases through the entire process, our findings primarily relate to the judiciary – as their role and interventions were most easily visible. With the small sample size that we were able to track, this Court Watch is in fact a ‘snap shot’ of cases in the DVC. However, notwithstanding these limitations, the conclusions reached in this Report are concerning. The concerns are heightened because these Specialized Courts in Toronto are over 15 years old and it was hoped that by now, the Courts would be sending a clear, consistent and powerful message to offenders and the wider community that intimate partner violence will not be tolerated.

The Court Watchers’ experiences generated these key

findings:

- In some cases, the Specialized DVC seemed to operate smoothly and cases were dealt with in an effective and efficient manner.

“I’m glad there is some humanity shown because if it were me going through that, those little gestures would mean a lot.”

- Some Judges demonstrated an understanding of the power dynamics at play in these kinds of cases

“One of the most melancholy things in life is knowing that, at any time, the person we love can reject us, for any reason, or even no reason at all. For most of us, it’s painful, but we get through the rough times. The fact of the matter is, everyone has the fundamental right to reject others, and on that note, they have the right to live life free of penalty for rejecting others. To threaten someone with the release of a sex tape, the most intimate moments a couple can share, and abortion documents, is simply quite vile. I believe the sentence suggested today to be incredibly lenient. With that said, I am under legal obligation to take what the crown and defense counsel have suggested quite seriously, and for that reason, I am accepting their submission, with the minor change of fifty hours of community service as opposed to the thirty they have suggested”.

- However other Judges were sadly lacking in their ability to demonstrate an awareness of the dynamics in abusive relationships, the power and control that abusers have over their victims and the many challenges that women victims face when navigating the criminal justice system.

“In one such case, a young man had breached a restraining order from a prior conviction where he had beaten and strangled his girlfriend. At one point during the hearing, the judge said to the abuser, “Don’t worry son, you’ll get over her.”

- Similar consequences, i.e. conditional discharges and peace bonds, were given to offenders for a wide range of offenses, regardless of the severity of the abuse as well as the physical and emotional impact on the victim.

“[With] a cookie cutter approach with the same outcomes for a whole range of charges and varying degrees of severity...it seems like there is more concern with getting a guilty plea and moving the case out of the court quickly, than holding abusers accountable.”

- Judicial responses seemed widely inconsistent across cases and in some cases the resolution was disconcerting in the Judges’ inability to acknowledge the dynamics of intimate partner violence.

“The whole purpose is for the specialized court to be conducted in a way that’s relevant to the complexities of domestic violence, but what is specialized about it if it isn’t being conducted differently and if judges don’t have any background or training in domestic violence?”

- From the observations we collected, the specialized DVCs seem to primarily rely on the victim’s testimony to prosecute the case. We recognize that the Court Watchers may not have been privy to evidence that may have been collected during the investigative phase of the case, but was not brought forward in the court proceedings. However, among

the cases that were observed, there were a number where Court Watchers believed that the victim could have been better served by the contribution of hard evidence, such as photographs of injuries sustained, etc. This would alleviate any feeling that the burden of proof was solely on her shoulders.

Further confirmation of the need for a comprehensive review of the Specialized Domestic Violence Courts was exemplified by a case where a Judge interpreted a domestic violence case as a simple trespass, which, in his reasoning, justified the use of force by the accused. This case further illustrates the ongoing lack of common understanding of the issues, as the Crown **“pleaded with the judge, and with increasing urgency, that this case ‘cannot be viewed in the context of a trespassing’; her voice audibly breaking, but in this Judge’s strict reading of the legal definition, these pleas fell on deaf ears.”**

Given these findings, the overarching conclusion of this pilot project is that there is a need for a more systemic and comprehensive Court Watch program to be initiated that will provide ongoing feedback to the DVCs. WomenatthecentrE is well placed to carry out such a project and will be seeking funding to conduct a more formalized and ongoing Court Watch in the future.

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EXECUTIVE SUMMARY CONCERNS

- Regardless of the severity of the offence the end result for a majority of cases was a conditional discharge or peace bond.
- Judges do not use their authority and voice to publicly condemn intimate partner violence. In fact, it was found that the issue of intimate partner violence rarely came up in the courtroom and that most proceedings focused on administrative details, such as paperwork and dates.
- In a surprising number of cases, given that the Court Watchers carried out a random and small snapshot of cases, Judges made inappropriate comments that minimized and trivialized the victim's experience of abuse, expressed their personal support for the offender, while ignoring the victim's concerns, were exceptionally lenient in their comments and treatment of violent behaviour and at best were neutral on the issue of intimate partner violence.
- Particular concerns were identified with the operations of the Early Intervention court stream. Although this stream is intended for first-time offenders, where there has been no significant injury to the victim, it appears that the range of cases going through the Early Intervention court seems to have widened to include cases that involved physical injury.
- Court Watchers observed that among the albeit small number of cases they sat in on, heavy reliance was placed on victim testimony alone, with limited or no use of additional and material evidence, such as photographs of her injuries. Although our Court Watchers were not privy to decisions that the prosecution may have made regarding use of evidence, it appeared from what was observed in court that generally, the prosecution relied on the victim alone to prove the case.
- Cases, from first appearance to disposition, go through numerous remands and delays, all of which serve to make the process more stressful and difficult for all concerned and lengthen the time between the assaults and any consequences. In one case, an interpreter could not be located. The safety of the victim, as well as the legal rights of an accused is jeopardized when language is a barrier. In the worst cases, Judges made inappropriate comments that minimized and trivialized the victim's experience of abuse; in others Judges seemed neutral on the issue of intimate partner violence.

EXECUTIVE SUMMARY RECOMMENDATIONS

- Violent and abusive behaviour should be publicly condemned in the courtroom at every opportunity.
 - Courts should routinely use a combination of hard evidence, ensure proper procedures, offer support and understanding to victims, hold abusers accountable regardless of their social/religious situation, and make appropriate sentencing decisions that recognize the need to give increasing consequences to repeat offenders.
 - The use of material evidence can be very important not only in supporting a successful prosecution, but in allowing the victim to feel supported by the criminal justice system.
 - In addition to using evidence, procedural effectiveness and appropriate sentencing to hold abusers accountable, verbal denunciation of intimate partner violence is an important means of instilling the notion that violence will not be tolerated by society.
 - Breach charges and repeat offenses must be taken seriously, as these demonstrate that the offender is not willing to comply with the justice system. There should be a differential response to more serious assaults, repeat offenders and those charged with breaches of court-imposed sanctions and conditions, such that these offenders are given more serious consequences.
 - A systematic review should be undertaken of the use of peace bonds and conditional discharges in the DVC system.
 - Stakeholders need to identify the structural and systemic factors that limit the effectiveness of the DVC system and identify ways to overcome them.
 - The criminal justice system should carry out a systemic review and make the necessary changes to improve victims' confidence in the ability of the judicial system to protect their safety. This will lead to greater societal awareness of the issues surrounding intimate partner violence.
 - A more comprehensive and systematic Court Watch program needs to be carried out to monitor and track the successes and the challenges in the Specialized DVC.
- In the absence of other watchdog or safeguard functions in the system or community, WomenatthecentrE is committed to continuing Court Watch. Court Watch programs are integral to ensuring that human rights are upheld and that the systems put into place to protect our rights operate in ways that ensure victims are supported and safe, while holding perpetrators accountable.



SECTION I: BACKGROUND & METHODOLOGY



INTRODUCTION

WomenatthecentrE is a non-profit organization with a growing network of women survivors of gendered violence. Although our members are primarily in Ontario, we have members from other jurisdictions, both nationally and globally. We know that violence against women is a pervasive social problem that has damaging consequences, not only for women and their children, but for society as a whole. Our mandate is therefore to ensure that the voices of women with lived experiences of gender based violence inform local, provincial and national policy and program development. WomenatthecentrE offers a range of educational and social action opportunities to our members to hone their skills and knowledge, so that women survivors can actively challenge public perceptions of woman abuse, especially in the context of intimate partner relationships. Our members play active roles in the community on various initiatives to end violence against women.

WomenatthecentrE members were involved in the initial development of the Specialized Domestic Violence Criminal Courts and participated in Court Watch initiatives during the first few years of these courts in Toronto. More than a decade later, a number of our members started talking about the frustrating and demoralizing experiences they had faced when navigating the criminal justice system and in the Specialized Domestic Violence Courts. Survivors continue to speak about how the criminal justice system re-victimized and re-traumatized them.

In response to these negative experiences of our members, WomenatthecentrE was determined to carry out a pilot Court Watch project to observe the criminal courts

and begin to compile information on the current state of the Specialized Domestic Violence Courts. Through a Court Watch project, it is possible to track what is happening to victims and the accused, to observe the roles of various players in the criminal system, from the police through to Crown Attorneys and Judges, and finally, to identify what consequences are imposed on offenders. The overall aim of the DVC observation is to:

- Facilitate transparency and accountability of the criminal justice response to intimate partner violence
- Identify what is working well in the DVC
- Identify what is not working
- Work with stakeholders to bring about change that improves the effectiveness of the criminal courts and respond to new and emerging issues

This Report summarizes the WomenatthecentrE “Court Watch Pilot Project”. The project brought together a group of volunteers to observe criminal cases heard at three of the five DVCs in Toronto, Ontario, from June 2013 through May 2014. The purpose of our Court Watch was to gather information to assist in determining how successful the DVCs are in protecting the safety of victims and holding offenders accountable for their criminal behaviour. Furthermore, this project was also intended to determine whether there is a need for a more systematic, comprehensive and ongoing Court Watch initiative that would be adequately funded and supported.

TERMINOLOGY

This paper includes technical terms that relate to the Ontario criminal justice system and to this project. The following are terms and abbreviations used throughout this document:

- *Specialized Domestic Violence Courts (DVCs)*
- *“Victim” and “Survivor” will be used interchangeably to refer to the person who was victimized by the abusive and criminal behaviour of their intimate partner or past intimate partner*
- *“Court Watch” is the name of this project, wherein volunteers observe and monitor proceedings in the DVC*
- *“Court Watchers” refers to the Placement Students and volunteers at WomenatthecentrE who carried out the Court Watch and sat in court to follow domestic violence criminal proceedings*
- *“Intimate partner violence”, “intimate partner abuse” and “domestic violence” are used interchangeably in the report. “Domestic violence” is the term used by the criminal justice system, whereas we will use “intimate partner violence” or “intimate partner abuse”.*

METHODOLOGY

WomenatthecentrE originally intended to involve our members, all of whom are women survivors of gendered violence, primarily from an intimate partner, in carrying out the Court Watch project. However, due to limited resources, we were unable to offer honoraria, travel, childcare and other supports required to enable our members to participate in such a project.

As we explored ways to carry out the project, we identified an available pool of potential volunteers interested in participating in a project such as this. Through informal connections, we found a group of recent graduates from various undergraduate programs who were looking for ways to become involved in a community project that would enable them to do meaningful work, while also gaining experience to support their future goals. Once we identified a few volunteers, their enthusiasm and excitement about the project brought others in through word of mouth.

This document summarizes the experience of 12 volunteers, comprised of seven recent graduates from a range of university programs, and five social work students completing placements with WomenatthecentrE. The Court Watch volunteers were supported and supervised by staff of WomenatthecentrE.

TRAINING THE COURT WATCHERS

The Court Watchers participated in an initial training delivered by WomenatthecentrE staff. The content included background about the organization, including our mission, mandate and principles. The training also provided basic information about intimate partner abuse, including the dynamics and impact on the victim/survivor and the abuser, the complexities of this form of violence against women and an overview of the criminal justice system as it relates to intimate partner violence. The volunteers were given a description of the DVCs that included the key components as laid out in provincial Ministry of the Attorney General documents. A review of information gleaned from previous Court Watches carried out in Toronto was also shared with the Court Watchers.

More in depth training, specifically on the criminal justice system, was facilitated by a seasoned Crown Attorney who has worked both in the DVCs and had experience working within the Ministry of the Attorney General. This individual generously volunteered her time to provide insights to the volunteers about the general principles of the criminal justice system, as well as information about the unique policies and operations of the DVCs. Through this training, the volunteers were given information about the differences between the 'regular' courts and the DVC process. Finally, the training included discussions about what the volunteers should look for when they were observing court, courtroom etiquette and note-taking while in court.

NUMBER & LOCATIONS OF CASES OBSERVED

The Court Watchers attended domestic violence cases in Old City Hall, College Park and North York provincial criminal courts in the City of Toronto. Some attended court one day a week for a period of time; others attended more sporadically. When they attended court the volunteers tried to spend a full day in court to be able to observe as many cases as possible. Altogether the Court Watchers attended court approximately 50 times. However, this did not result in 50 observations. Unfortunately, one of the ongoing challenges and a source of deep frustration to the Court Watchers was the difficulty in identifying when and where domestic violence cases were being heard. In at least 10 cases, Court Watchers went to a courtroom expecting to see a domestic violence case but the courtroom was either closed – no cases were being heard - or the case being heard was not a domestic violence case.

Approximately 40 domestic violence cases were observed, though few (approximately five) of these involved following a case through to final disposition. The Court Watchers' observations therefore consist of *snapshots* of domestic violence cases at various stages within the criminal court process.

DATA COLLECTION

Initially volunteers were provided with an extensive data collection tool, but most found that it was difficult to fill out the form and simultaneously pay attention to what was going on in the courtroom. Instead, the Court Watchers generally recorded specific information related to aspects of the experience that they found most significant, both positive and negative, as well as noting general themes and messages that the judiciary was giving to both the offender and the victim. The Court Watchers also noted how the experience affected them personally. These observations were compiled in a number of different formats, including as blog posts on the WomenatthecentrE website, (included as Appendices following the Report) and notes that were used in the preparation of this Report. It is important to note that Court Watchers were instructed not to collect names of accused, victims, court staff or Judges.

Aspects of the DV cases that were recorded include:

- The language, attitudes and behaviour of all involved in court proceedings - Judges, Crown Prosecutors, Defence lawyers, complainant, accused, etc.,
- The extent to which the proceedings contributed to the offender being held accountable for his abusive behaviour. This included the actions of court staff as well as the judiciary
- The extent to which they, as observers, saw the needs and safety of victims being taken into consideration by the court process and actions of the court staff
- Procedural related issues that had an impact on the criminal process

In addition, the volunteers noted and reflected upon their subjective reactions to all of the above. Volunteers were encouraged to attend court in pairs, so that they could share their feelings and responses to the experience after completing the Court Watch session.

DE-BRIEFING SESSIONS FOR COURT WATCHERS

Once the volunteers began doing Court Watch, WomenatthecentrE staff organized regular debriefing sessions where they met with the participants and encouraged them to share their experiences, insights, and observations. These sessions also offered important opportunities for discussion about the complexities of intimate partner violence and the wider community response to this important issue. It was largely through these discussions that experiences were analyzed and recommendations were formed.

THE WRITING OF THIS REPORT

The author of this Report also collected additional information from each volunteer. In a series of one-on-one qualitative interviews, participants were asked about their overall experience.

The interviews were semi-structured with a list of questions, while leaving room for the volunteers to talk about what they felt were the most important and meaningful aspects of the experience.

This has been a uniquely valuable aspect of the project, as it has allowed the volunteers to share their personal insights and reflections about the DVC and the entire Court Watch initiative.

BACKGROUND TO THE SPECIALIZED DOMESTIC VIOLENCE COURTS

The criminal courts are an important component of the community response to intimate partner violence¹. Ideally, as in the case of any other crime, the criminal justice system exists to not only hold offenders accountable, but also to influence social norms and perceptions about the law. As early as the 1980s there was recognition on the part of many stakeholders in the criminal justice system and the wider community of serious problems and challenges with its response to intimate partner violence. The recognition of the inadequacy of the courts in successfully prosecuting domestic violence cases came to a peak when the Toronto Star newspaper conducted their own investigation, a version of Court Watch, whereby they found that the vast majority of accused individuals experienced virtually no consequences or sanctions².

In an attempt to create an inter-disciplinary and comprehensive response, the Province of Ontario implemented the DVC program in 2000. This was meant to address the unique complexities of intimate partner violence and rectify some of the challenges of creating an effective criminal justice response. Both the initial model of the DVC program and subsequent developments were shaped by the women activists who were interested in bringing about changes to create a more effective and responsive criminal justice process that would protect and support victims of abuse, while ensuring that abusers would be effectively held accountable for their behaviour.

¹ Note that “domestic violence” is the analogous term in the criminal justice system.

² Daly, Rita, and others. (1996, March 9). The Toronto Star. pp. A1+. Spousal Abuse: The Shocking Truth Hitting Home. Retrieved from <http://sks.sirs.bdt.orc.scoolaid.net/cgi-bin/hst-article-display?id=SNY5703-0-6743&artno=0000014135&type=ART&shfilter=U&key=Wife%20abuse&title=Spousal%20Abuse%3A%20The%20Shocking%20Truth&res=Y&ren=N&gov=N&lnk=Y&ic=N>

AN OVERVIEW OF THE SPECIALIZED DOMESTIC VIOLENCE COURT PROCESS - KEY COMPONENTS

The main goals of the DVC, as stated in the Ministry of the Attorney General's report *Implementing the Domestic Violence Court Program (2003)*³, are to:

- Intervene early in the cycle of intimate partner violence
- Improve support to victims
- Swiftly investigate and prosecute intimate partner violence cases

The framework of the DVCs has been built on a principle that firstly recognizes intimate partner violence is a crime. The following are the five key elements that the DVC model is based on⁴:

- Early intervention
- Vigorous and coordinated prosecution of domestic violence cases
- Support to victims
- Meaningful sentences through the use of Partner Assault Response (PAR) programs for abusers - socio-educational programs that help offenders learn to identify and change their abusive behaviour
- Communication and collaboration between all key stakeholders within the system to develop a consistent and coordinated response

To understand the Specialized DVC process, it is useful to briefly outline the way the model works. Although the DVCs have been implemented across Ontario, each jurisdiction has some unique aspects such as size and geography of the court catchment area, as well as levels of staffing.

Generally, there are two streams within the Domestic Violence Court Program/Process:

1. An **Early Intervention Court process** for first-time offenders where there is no significant physical injury to the victim
2. A **coordinated prosecution** stream for offenses involving significant physical injury and for repeat offenders that offers a 'swift and vigorous response'⁵

3 Ministry of the Attorney General. (2003) *Implementing the Domestic Violence Court Program*, Ontario. Retrieved from <http://www.domesticpeace.ca/documents/OntarioDVCImplementationManual2003.pdf>

4 *ibid*

5 *ibid*

OPERATIONAL PLANKS OF THE SPECIALIZED DOMESTIC VIOLENCE COURT PROCESS

As identified by provincial policies of the Ontario Ministry of the Attorney General, an operational DVC program was to include the following components:

- A **Domestic Violence Court Advisory Committee**, composed of representatives from the criminal justice sectors, PAR programs and in some cases, women's services
- **Specially trained** domestic violence police officers, Crown Attorneys, Victim/Witness Assistance Program (V/WAP) staff, probation officers and interpreters
- **Specialized evidence collection and investigation procedures** by police in order to maximize the amount of supporting evidence that can be presented to support the live testimony of victims at trial, including video-taping of victim/witness statements, photographs of injuries, medical reports and witness statements
- **Case management** procedures to coordinate prosecutions and ensure early intervention
- A **Partner Assault Response (PAR) program** that is accredited by the Province of Ontario and that will accept offenders mandated by the DVC, either as a condition of their probation, peace bond, bail etc.
- **Ongoing training and professional development** related to understanding and working in the area of intimate partner violence for police, Crown Prosecutors, V/WAP staff, court staff, Probation and Parole Officers and interpreters.

CONTEXT OF THE CRIMINAL JUSTICE DOMESTIC VIOLENCE COURT PROCESS

It is important to note that the criminal justice system, although a key player in responding to intimate partner violence, has a limited and specific role. The criminal justice system does not attempt to address many of the root causes of intimate partner violence. Among these are:

- Gender inequality
- Women's economic dependence on male partners
- Lack of affordable housing
- Lack of affordable and quality childcare

It is also important to recognize that there are differential impacts of the criminal justice system on various communities. The way women and men experience the criminal courts to a large extent depends on factors such as race, ethno-cultural background, immigrant and refugee status, class, sexual orientation, and level of physical and mental ability. Women experience it differently depending upon variables such as level of education and access to resources. Racialized and marginalized women are adversely impacted on multiple levels and the negative outcomes for many as a result of their abusers not being held adequately accountable imposes an unreasonable toll, adding to the pain and suffering already stemming from the initial violence that brought them before the courts in the first place.

LIMITATIONS OF THE COURT WATCH PROJECT

It must be noted that this Report relied on a snapshot of how the DVCs are functioning over a relatively limited timeframe. As such, Court Watchers did not always have the overall picture and may have missed key pieces of information relating to a particular case. A built-in limitation of this volunteer-staffed project was that Court Watchers were only able to view portions of any given case because it was very difficult to keep track of any one case as it progressed through the system.

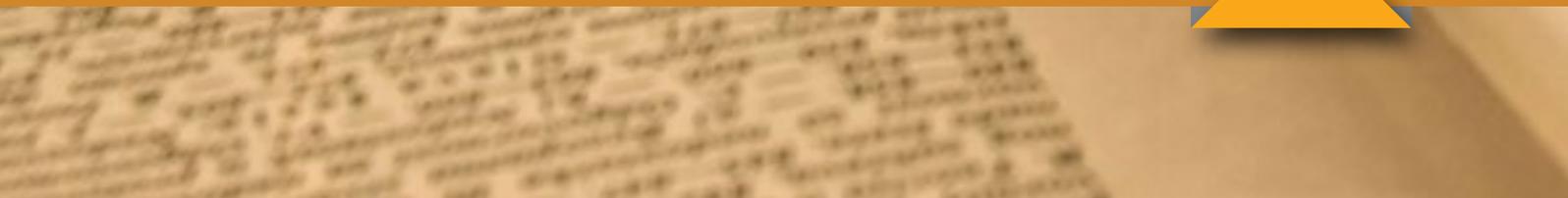
This was particularly a concern related to the issue of use of additional evidence beyond the testimony of the victim. Court Watchers did not have access to information about what evidence was collected during the investigative phase of the case, nor access to decisions of the prosecution about when and where evidence would not be used. Having acknowledged this limitation, it is interesting that in the random sample that the Court Watchers did observe, only two cases were seen to have additional evidence beyond the victim's testimony, i.e. photographs.

Further, as we had observed a small number of DVC cases relative to the huge numbers going through the system, our findings are not to be generalized. It is also important to note that the observations and interpretations of the Court Watchers are largely subjective, deeply personal and therefore unique to each Court Watcher. It is possible that we have interpreted statements or actions differently than they were intended to be understood or even differently than they were experienced by those directly involved in prosecuting the case, or of others present in the courtroom. Given these constraints, some of the problems identified by the volunteers may have seemed magnified, being the result of missing contextual information.

That being said, the information they gathered provides an important, albeit anecdotal, glimpse into the operation of the DVCs.



SECTION II: PERCEPTIONS AND OBSERVATIONS OF THE COURT WATCHERS



THE COURT EXPERIENCE

The Court Watchers noted some positive and encouraging observations as well as a number of observations that led to concerns about the extent to which the DVCs were fulfilling their mandate of holding abusers accountable and protecting the safety of victims.

All Court Watchers expressed exasperation at what they perceived to be a disorganized and sometimes counter-productive court process. One volunteer stated:

“I have not seen an efficient process at all, but rather a series of various, to-be-continued cases”;

referring to frequent adjournments and long intervals between appearances.

Many times cases were adjourned because of what appeared to be avoidable problems. One such incident was a case that could not proceed because an interpreter could not be located and neither the accused nor his wife, who spoke very little English, seemed to understand why they were in court.

Another volunteer witnessed a case that was adjourned because the police had not submitted evidence. In several cases, the Crown requested more time to put their case together.

Court Watchers also reported witnessing cases that were adjourned because key documents were missing. Such experiences attest to the general sense of confusion and chaos described by all the Court Watchers throughout the project.

The need for participants engaged in the criminal justice process to fully understand what was going on was another issue raised by the Court Watchers.

They noted that there were some instances where the Court personnel did take the time and make an effort to use plain language to ensure that the victim and the accused understood what was happening, but equally, there were times when communication was vague, appeared rushed and with uncommon jargon, such that it was difficult for the Court Watchers to understand.

It can easily be inferred that if the situation was difficult for Court Watchers, it would be as difficult or more so for victims to understand, given their trauma and fear of the entire court experience.

One Court Watcher stated:

“You practically have to learn a new language to understand what’s going on”.

Many of the volunteers identified that it was difficult to follow along and process what was being said and done in the courtroom.

Several Court Watchers noted that such a disorganized and confusing process could only exacerbate the emotional stress suffered by victims of intimate partner violence.

One Court Watcher summed up the general sentiment of the other volunteers by saying,;

“This experience has certainly highlighted for me

how incredibly difficult it must be for a survivor who is trying to navigate the criminal justice system while experiencing the trauma of abuse, in order to find out what is happening with a case she is directly involved with”

Another volunteer stated that this is particularly problematic because a survivor’s safety could very much depend on her ability to navigate this complex system.

Another Court Watcher witnessed a case where the Judge had never before presided in a Domestic Violence Court. He kept asking court staff for guidance with the procedures and process, as he was not familiar with the operations of the DVC. This volunteer remarked:

“The whole purpose is for the Specialized Court to be conducted in a way that’s relevant to the complexities of domestic violence, but what is specialized about it if it isn’t being conducted differently and if Judges don’t have any background or training in domestic violence?”

VICTIMS TESTIFYING

In addition to the stress of having to navigate a confusing system, volunteers noted how difficult it might be for victims to have to revisit painful memories through the experience of testifying in court. In the span of just under a year, only two Court Watchers saw the use of other evidence in addition to the victim’s testimony in the courtroom. The general observation was that there was a limited use of other kinds of evidence to **‘support the victim’s testimony’**.

For example, one Court Watcher observed a victim testify about her experience of being held hostage by her ex-boyfriend. He had assaulted her both sexually and physically, including punching her repeatedly in the face until she lost consciousness. The victim explained that she went to the police the next day and had bruises on her body. To the Court Watcher’s surprise, there was no mention of the police taking photographs and no photographic evidence was presented in the trial while she gave her testimony. This would have been a situation where the Court Watcher felt that photographs could have been used to support the victim’s testimony.

Overall, Court Watchers observed that the DVC process was a challenging one that did not inspire confidence or a sense of security and in some cases, re-victimized the victim. As one volunteer put it, **“It’s not the best managed for such a sensitive topic.”**

HOLDING ABUSERS ACCOUNTABLE

The most common outcome that Court Watchers observed for a wide range of charges was a guilty plea resulting in a conditional discharge or peace bond. Conditional discharges and peace bonds most often included conditions such as no contact with the victim, no possession of weapons, community service and/or participation in a PAR program.

Court Watchers expressed frustration that more severe acts of violence were treated the same as those perceived to be less severe. This frustration was reflected in one Court Watchers' assertion that the DVC mostly seemed to employ "a cookie cutter approach with the same outcomes for a whole range of charges and varying degrees of severity [...] it seems like there is more concern with getting a guilty plea and moving the case out of the court quickly, than holding abusers accountable." The level of intensity and impact of the abuse seemed to have little bearing on the consequences to the abuser.

Some volunteers gave examples of situations where the outcomes of the case did not appear to match the charges or seriousness of the abuse. In one such example, the Judge verbally denounced the perpetrator's behaviour, but the ruling did not seem to match that sentiment. The perpetrator in this case had previous domestic violence charges related to a former partner. The Judge admonished him for being charged with domestic violence related offences for a second time, stating that "repeat actions are a show of character", but then sentenced this second-time

offender to probation with the condition to attend a PAR program. This seemed insufficient and inappropriate, given it was a second offence.

Another Court Watcher observed a trial where the perpetrator had held his ex-girlfriend hostage in her apartment for five hours while assaulting her physically and sexually. He told the Judge that he had "found Jesus" between the assault and the trial and this had caused him to change. After this unsupported declaration, the Court Watcher observed that the Judge expressed strong approval of the change in the offender's allegedly changed life and demonstrated more support to the offender than to the victim.

In this case, Defence counsel also argued that the victim "only had a couple bruises" and that "the accused could have hurt her more if he wanted to, but didn't." The Judge accepted these arguments as apparently showing the abuser in a positive light, and granted a conditional discharge. Considering the severity of the offence, the Court Watcher felt that by accepting the arguments of the Defence, the abuser was not held accountable for his violence, while the victim's safety was severely compromised. The comments by the trial Judge served to support the abuser in his choice of behaviour.

Court Watchers also witnessed several cases where the perpetrator had been charged with breaching a court ordered condition, for example, refusing to attend a PAR program or contacting the victim despite having been

told not to do so. In these instances, the perpetrator had their original court ordered conditions reiterated or extended – for example, more hours of community service or probation were added. One Court Watcher stated “I have never seen a breach [of a court ordered condition] result in any more than an additional 20 hours of community service being added. ... I can understand conditional discharges for first time offenders because people can learn from terrible mistakes and change and grow, but if you breach within a year, your risk factor has tripled for me; this isn't a one-time burst of anger and is clearly you forming a repetitive pattern”.

In some cases, the Judges used their position of authority to give a clear message to the offender that intimate partner violence and abuse will not be tolerated. This is critically important as the judiciary speaks for the cultural values and norms of our communities. A number of Judges, however, did not comment on the behaviour of the offender or verbally condemn intimate partner violence. Some remained neutral or even more disturbing, seemed to go out of their way to support or connect with the offender.

In another case, a young man had hit his ex-girlfriend in the face during an altercation at her university campus. Campus Security was called but she did not press charges. After weeks of criminally harassing her, he stalked her and her new boyfriend at a mall and attacked them, punching her boyfriend. The Defence lawyer argued that a criminal record would harm his client's chances of obtaining Canadian citizenship. After agreeing and granting the young man a conditional

discharge, the Judge proceeded to make pleasant small chat about where the perpetrator was from and wished him all the best in his studies. The Court Watcher observing the case could not help but think that it would have been much more appropriate and productive if the Judge had told the young man that his violent behaviour was unacceptable. The Court Watcher also commented on how this must have felt to the victim, who received no such personal interest or support from the Judge.

Even more unfortunate though, is that Court Watchers witnessed some cases in which Judges seemed to minimize the seriousness of violent and abusive behaviour. In one such case, a young man had breached a restraining order from a prior conviction where he had beaten and strangled his girlfriend. At one point during the hearing, the Judge said to the abuser, “Don't worry son, you'll get over her.” He also stated that since the young man “had issues” he should live with his mother as a condition of his release. The Court Watcher in this instance felt that the seriousness of the abuse and the breaching of the restraining order were trivialized, and that “having issues” was treated as a justification for violent acts.

In a few of the cases, Court Watchers were impressed with the nature of the comments made by Judges and the message they sent to the offender. However, in a few of these situations, the strength of the comments was diluted by subsequent words and actions.

One Court Watcher heard a Judge say to an offender

who had been charged with assaulting the mother of his children, “You have to set a precedent for your children because they’re watching you, but I’m going to be sympathetic because relationships can be complicated”.

Although the Court Watcher was impressed by the clear message that condemned abuse in the first part of the sentence, the second part not only contradicted the first, but also seemed to justify intimate partner violence and abuse. In this case the Judge choosing to sympathize with the perpetrator sent the wrong message by taking sides with the wrongdoer, rather than condemning his behaviour, or acknowledging the impact on the victim. While these sorts of comments were not pervasive, they are deeply concerning.

Our Court Watchers also found that sometimes structural or procedural factors limited a Judge’s ability to hold an abuser accountable. This seemed to be the case in a trial for a breach charge where the perpetrator, who had previously pled guilty to assaulting his ex-girlfriend, breached the conditions of the peace bond by going to her place of work and threatening her with violence and blackmail if she did not talk to him.

At the hearing, the Judge admonished the perpetrator for his unacceptable behaviour, saying, “You do not have the right to harm her, to release personal information, to threaten her or to make her feel unsafe – she has the right to break up with you and not feel her safety is threatened.”

The Court Watcher in attendance was encouraged to

hear a Judge verbally hold an abuser accountable by denouncing their behaviour, but was surprised when the Crown and defence reached a joint recommendation for a conditional discharge that simply reiterated and expanded the conditions of the original peace bond. These conditions were that he should have no contact, do additional community service hours and have his probation extended.

In this case, the Court Watcher could not help but wonder, “If it didn’t stop things from escalating the first time around, how can the same sentence possibly change things the second time around?”

It should be noted that the Judge did state that he felt these conditions were too lenient for a breach but was legally obligated to take joint submissions very seriously. This case seems to be an important demonstration of some of the limitations on the way the criminal justice system operates in relation to the complexities and unique aspects of intimate partner violence situations.

One Court Watcher reported his shock and dismay at a trial he observed which he felt demonstrated the limitations of a strict and perhaps dogmatic application of the law to a complex intimate partner violence case. This case involved a separated couple who before the incident had spent almost every night at one or the other’s apartment, but did not officially live together.

One night the girlfriend arrived at her boyfriend’s after a night out with her friends, intending to stay over. While he was in the shower, she checked his phone and found text messages that she felt were inappropriate. When

she persisted in asking him about the text messages, he demanded that she leave. She refused to leave and he began to push her around, hitting her and ultimately pinning her down on the ground.

She was left with bruises and a mark on her face. Despite the pleading of the Crown to consider this as an act of intimate partner violence, the Judge dismissed the charges, ruling that since the two technically lived at separate addresses, the act of refusing to leave qualified as 'trespassing'.

The Judge further stated that given that the victim was '*trespassing*' then '*reasonable force*' was justified on the part of the accused. The Court Watcher in attendance noted that the victim responded to these comments by the Judge by crying and otherwise appearing very upset.

In this case, the abuser was not held accountable, in the Court Watcher's opinion, because of the Judge's strict legal definition of "trespassing" and lack of understanding of the complexities of intimate partner violence.

The Court Watcher expressed frustration that there was so little accountability in the court system as there seemed to be few avenues to challenge the Judge's interpretation of this case as one of trespass.

One Court Watcher expressed that she got the sense from observing DVC cases that intimate partner violence was still perceived as a private issue to be kept in the home, while other crimes such as robbery

or non-domestic violence-related assaults seemed to be treated as public issues, and therefore less tolerated. Indeed, two Court Watchers sat in on separate drug possession hearings when there were no DVC cases available to watch.

They observed that drug possession and drug use seemed to be much more criminalized than intimate partner violence.

At the end, Court Watchers were left with many questions about the way Judges are trained and educated about intimate partner violence. Further, they wondered whether there was any monitoring or ways to incorporate new knowledge about these issues in their daily decisions.

SAFETY AND NEEDS OF VICTIMS

A central aim specified by the Specialized DVC program is to prioritize the safety and needs of victims. Court Watchers observed instances where Crown Prosecutors demonstrated understanding and compassion towards the victim and the emotional difficulty that results from facing their abusers in court.

Examples include Crowns being patient, asking questions in a sensitive manner, telling women who were struggling to testify to take their time, and stating that they understood that recounting their experiences of abuse is difficult. In at least once instance, a Judge offered a crying victim a box of tissues and some water.

One Court Watcher remarked, *"I'm glad there is some humanity shown because if it were me going through that, those little gestures would mean a lot."*

There were some situations where Court Watchers found that Crown Attorneys and court staff were much less respectful. The Court Watchers speculated that this could largely be because of their heavy caseloads, remarking that, *"Each case becomes writing on paper and dates on calendars...they try their best given their circumstances, which most often means negotiating with the defence. Whether that is in the interest of the parties in the case or the court's interest, I'm not sure."*

Overall, Court Watchers felt that the Crowns were doing the best they could in overburdened circumstances. However, in some situations, the safety and needs of survivors were compromised.

Court Watchers felt that the safety of survivors seemed

especially compromised when they had to testify about their experiences of abuse. For example, women had to testify about horrific experiences of violence while their abusers were shaking their heads, scoffing and muttering throughout their testimony.

On the positive side, in many of these instances the Crown Attorney or the Judge would tell the accused to stop disrupting the court.

However, the words seemed to have no impact and the abusers would often continue with the same intimidating and dismissive behaviours, with no real recriminations or consequences.

Overall, Court Watchers perceived testifying and recounting painful experiences to be potentially re-traumatizing. All who saw a victim testify and be questioned on the stand found the experience to be emotionally difficult to watch.

One Court Watcher noted:

"As I sat there watching this woman hold back tears, the lawyers and Judge questioned her about that fateful night. As she discussed the horrific details, she recounted a nightmarish scenario where she was not only physically, sexually and emotionally abused but was also deathly afraid for her life, as she was repeatedly threatened with a knife throughout the ordeal."

This was all recounted, with the accused sitting directly to her left, making noises and gestures, which could be interpreted as mocking and/or challenging the truth of her statements. As I realized how difficult it was for me

to sit and listen to this women's story, I could not help but imagine how emotionally difficult this was for not only her but for all victims of domestic violence."

Particularly upsetting to Court Watchers was witnessing a victim being cross-examined by Defence Counsel. When asked if they had observed any incidences of victim-blaming in DVC cases, a few Court Watchers stated that a common tactic of the Defence was to argue that the victim's behaviour had provoked or justified the violence.

A Court Watcher who observed one such case stated that the cross-examination was "brutal", and continued, "Witnessing the cross-examination of the victim, it became abundantly clear why anyone would be terrified from the onset, to go to the police, and [go] through the criminal court system. I couldn't help but cringe during the accusatory and harsh words used by the defence lawyer."

Some Court Watchers noted that it is the job of a Defence lawyer to use these tactics. However, the outcome of this reality is that women who experienced abuse end up being given the message from the Defence that the abuse is ultimately their fault.

There were questions raised by the Court Watchers about whether the Defence lawyers should also be acting differently in Domestic Violence Court situations. Given the vulnerabilities of the victim and the complexity of intimate partner violence, Court Watchers noted that one point of having the DVC system was to respond to these differences: "Otherwise, what is the point of

having a specialized court?" one Court Watcher asked.

Another Court Watcher noted, "The way the court system is structured is you hear both good and bad things about the accused but only bad things about the complainant."

This is in part because the victim has no independent legal advice or representation in the criminal process. While the Victim/Witness Assistance Program is in place to provide support to victims of crime⁶, including emotional support and referrals to community-based agencies, the Victim/Witness Assistance Program staff are not there as advocates for victims.

6 Ministry of the Attorney General. The Victim/Witness Assistance Program Brochure. Retrieved from <http://www.Attorneygeneral.jus.gov.on.ca/english/ovss/VWAP-English.pdf>



SECTION III: ANALYSIS AND RECOMMENDATIONS





While it is important to acknowledge the limitations of this Court Watch pilot and the anecdotal nature of the comments of the Court Watchers, the strength of the project is that the comments of the Court Watchers represent the perceptions of everyday people. The observations demonstrate how other members of the public might feel if they watched DVC cases unfold and imagined themselves in the victim's shoes. The insights that are offered are substantially different from information gleaned from quantitative data.

SUCCESSSES

We were encouraged to witness instances where Judges reprimanded the accused, saying that their behaviour was unacceptable.

Some Judges used their position to make an impact on the accused and strongly urge the offender to examine his choice to use abusive behaviour.

Some Judges made comments that indicated their knowledge and awareness of the negative impact that intimate partner violence and abuse has on children who witness and are exposed to it.

Crown Attorneys by and large were seen by the Court Watchers as doing the best they could under very difficult situations. More than one Court Watcher witnessed a crown Attorney 'pleading' with a Judge to recognize intimate partner violence and to take the charges seriously.

Crown Attorneys were also seen at times as one of the only players in the court process who acted in a humane and sensitive manner toward victims - by offering both physical (i.e. a glass of water, tissues etc.,) and emotional supports. However, the words seemed to have no impact and the abusers would often continue with the same intimidating and dismissive behaviours, with no real recriminations or consequences.

CONCERNS

The majority of Court Watchers had the impression that the end result for a majority of cases, regardless of the severity of the offence, was a conditional discharge or peace bond. This included individuals who were coming back to court as repeat offenders.

Our Court Watchers identified that in most cases, Judges do not use their authority and voice to publicly condemn

intimate partner violence. In fact, it was found that the issue of intimate partner violence rarely came up in the court room and that most proceedings focused on administrative details such as paperwork and dates.

There are particular concerns with the operations of the Early Intervention Court stream. Although as stated in the beginning of this Report, this stream is intended for first time offenders where there has been no significant injury, it appears that the range of cases going through the Early Intervention Court appears to have widened, with cases that involved physical injury now being heard.

Court Watchers observed that among the albeit small number of cases they sat in on, heavy reliance was placed on victim testimony alone, or with limited use of additional forensic and material evidence, such as photographs of her injuries or of the crime scene. This is problematic because it means that successful prosecution of these particularly complex cases is not dependant on for example, evidence gathered by the police, but on the victim 'doing the job the State is supposed to do'. Furthermore, relying so heavily on her to challenge her abuser has the potential to place her at greater risk of future violence.

Another important challenge in the system is the length of time that the court process takes from first appearance to conclusion. Court Watchers expressed frustration at the frequency of adjournments and speculated on how these delays would impede the defendant's right to a speedy trial, while holding women back from moving on with their lives.

Equally, there was serious concern about the case where an interpreter could not be located. The safety of the victim and legal rights of the accused are jeopardized when language is a barrier. While these challenges may all be related to issues of caseloads and funding, they are not acceptable because people's lives hang in the balance. More observation and consultation with court staff is needed to determine the cause of these procedural shortfalls. This would hopefully be followed by effective action to address the gaps in the DVC process.

In addition to using evidence, procedural effectiveness and appropriate sentencing to hold abusers accountable, verbal denunciation of intimate partner violence is an important means of instilling in the minds of abusers the idea that violence is not tolerated by society. In the worst cases, Judges made inappropriate comments that minimized and trivialized the victim's experience of abuse; in others they seemed neutral on the issue of intimate partner abuse.

This suggests that steps need to be taken to increase the rigorous collection of relevant evidence in intimate partner violence cases, as well as instituting comprehensive training of first responders (i.e. police and paramedics), the Crown, Defence Counsel and members of the judiciary.

RECOMMENDATIONS

The observations of this pilot Court Watch project shows that there are small and achievable changes that could make the criminal justice process significantly more effective in challenging intimate partner violence and abuse and in ensuring a more sensitive and responsive experience for victims. Some examples are:

- Condemning violent and abusive behaviour publicly in the courtroom
- Focusing on bringing in material evidence to support the victim's testimony in court
- The treatment of breaches deserves considerable attention because it is the most obvious example of the extent to which an individual shows their respect for the law and societal constraints. Using a differential response so that more serious assaults, repeat offenders and those charged with breaches of court imposed sanctions and conditions are treated more seriously
- The province should conduct a systematic review of how peace bonds and conditional discharges are being used in the DVC system
- Overall, there appears to be structural and systemic factors that limit the effectiveness of the DVC system in its ability to respond to the complexities of intimate partner violence and to adequately meet the safety needs of women survivors of abuse
- There appears to have been very few internal evaluations of the courts and there is still much to learn about the impact of the Domestic Violence Courts, the successes that could be built upon, and changes that should be implemented. We view our Court Watch project as an essential activity that enabled civic engagement in our criminal justice process to observe, collect and analyze data, so that findings - both the good and the not so good - can be shared with the public and the institutions. This information is a critically important tool to increasing both awareness of intimate partner violence and improving the experience of women survivors and increasing their safety.
- Court Watchers expressed their strong hope that the criminal justice system would be able to carry out ongoing reviews and share the findings with the community. As one Court Watcher noted: "Though there is no perfect solution, nor is there perhaps even an all-encompassing one, it is important to have more of an open dialogue about violence against women and children who are victimized."

- More comprehensive and systematic Court Watch programs need to be carried out to monitor and track the successes and the challenges in the Specialized Domestic Violence Courts.

WomenatthecentrE aims to move beyond the pilot phase of our Court Watch initiative by seeking funding in order to expand this project. Public awareness and system accountability are essential steps towards social change and we hope our Court Watch will facilitate public dialogue about the Specialized DVC program in Ontario.

CONCLUSION

The DVCs were created to improve the effectiveness and safety of the criminal justice system as it responds to cases of intimate partner violence. These courts were a new and innovative approach when they were first created in Ontario over 15 years ago and our anecdotal experiences through this Court Watch pilot indicates that the courts still require ongoing attention and improvement. One of the principles of the DVCs is to promote and ensure coordination in the criminal justice response. It is our hope that the DVCs will continue to gather input, work collaboratively with all key stakeholders to strengthen the effectiveness of the courts and respond to new changes in our society.

WomenatthecentrE's mandate is to ensure that women survivors of gendered violence have a role and a voice in the development of policies and programs. It is interesting that while women victims of intimate partner violence are the primary targeted beneficiaries of the Specialized Domestic Violence Courts, they have not had meaningful opportunities to provide input into public policy discussions about the effectiveness of the DVC program⁷.

This first Court Watch Report by WomenatthecentrE has provided some unique insights into the current operation of the DVCs. We are aware of gaps and limitations in this 'snapshot' of the courts; however, we sincerely hope these and any future observations can be used to advocate for continuing improvements within the specialized DVC program in Ontario. In many ways it feels as though intimate partner violence has once again become invisible to our communities, to policy makers and in the media. The attention that was given to this issue a number of years ago has waned. Sadly, the incidence of intimate partner violence shows no signs of abating. It is our hope that this WomenatthecentrE Court Watch pilot brings public attention back to this critical issue and highlights the urgent need for a more systemic and comprehensive Court Watch initiative to be funded.

7 Johnson, H. & Fraser, J. (2011). Specialized Domestic Violence Courts: Do They Make Women Safer? Community Report Phase 1. Retrieved from <http://endvaw.ca/sites/default/files/dvc-do-theymake-women-safer.pdf>



APPENDICES
COURTWATCH BLOG POSTS





Courtwatch 2013's FIRST EVER BLOG POST!

By Adam Helfand-Green

Posted September 11, 2013 - [Direct Link Here](#)

I walked into the courtroom just as I had on many other mornings this summer, expecting to hear a charge read and then, probably, a long and complicated explanation for why this particular case would NOT be heard today. Deliberations put off for another month so the prosecution could get their case better together, or perhaps the wrong person had got stuck in traffic on their way, or simply that a necessary letter had gotten lost on its way to the defense.

Before I keep going, an introduction is probably in order. My name is Adam, and I and a group of like-minded individuals have been trying to implement a project we call *Courtwatch*. This project was originally implemented in Toronto by the Women Abuse Council of Toronto and involved taking a critical look at how Domestic Violence trials are prosecuted in Ontario criminal courts. After the creation of case-specific, Domestic Violence Courts, *Courtwatch* monitored DV trials to see if the Courts were running as planned and actually upholding their *major three intended purposes*;

1. *Charges of domestic violence are prosecuted swiftly, effectively and consistently*
2. *Safety and needs of victims are a priority from the initial contact with police to the conclusion of the case.*
3. *Specially trained personnel (Crown Attorneys, Victim/Witness Protection Staff, probation services, Partner Assault Response staff, and community services) work together to deliver coordinated services, tailored to the needs of victims.*

"Implementing the Domestic Violence Court Program" Ministry of Attorney General (May 2000), Pg. 3

<http://www.domesticpeace.ca/documents/OntarioDVImplementationManual2003.pdf>

Our Courtwatch, however, little resembles those of the past. Without funding, we are a small group (comprised mostly of friends I was able to get excited about the program), with less organized and coordinated activities. Our group of intrepid volunteers received some training on the complexities of domestic violence as an issue, the DV court process, and what Courtwatch is looking for and how it works, through WomenatthecentrE, and then we began our pilot project; to observe and note how the court system is working.

I recently graduated from the University of Guelph with a political science degree, and like many in similar circumstances, I have little clue what I want to do next, and do not look to the future with...complete optimism shall we say? I grew up in a household where Domestic Violence was often a topic of conversation because of my

mom's important role in working with domestic violence in the city of Toronto. Returning from school with no real job and no concrete plans of what to do next I threw myself headfirst into trying to help organize and participate in WomenatthecentrE's Courtwatch. I will admit that my involvement at the start was primarily due to having too much time on my hands, and a hope that a finished Courtwatch project would help my chances of getting into graduate school. However, my ongoing involvement and research for this project have made me a steadfast supporter of the initiative. I read the published Courtwatch Reports beginning in 1995, the latest of which was published in 2006, read government press releases, and some research papers on the DV courts of Ontario. Finally, I participated in a webinar on DV court research in the US which was a fascinating experience. While many (I included...) think of Canada as a much more progressive society than our southern neighbours, the level of advocacy and research in the US on this subject makes Canadian efforts look rather pathetic and this experience really affirmed my belief in the necessity of a Courtwatch program.

Sorry about that bit of background, I'll return to my story...

...To my astonishment today would be very different from most of my prior experiences at court. I had made it to court late, and had walked in during the prosecution's questioning of the victim. Everything we had been looking to observe in the trial process was finally happening and right before my eyes! Photo evidence of injuries, the accused and victim together in the same room, cross-examinations – so often I had come here, to see trials delayed and held over for some far off, later date.

As more details from the case were revealed through the remainder of the prosecution's questioning, and the brutal cross-examination by the defense, I quickly forgot about the details I was looking for as part of *Courtwatch*, and found myself thoroughly engrossed in the story unraveling before me and in fact, imagining myself in the same situation as this young couple, it was hard not to put myself in this situation...

The events in brief were as follows, this young couple did not live together officially, however like my girlfriend and I or many friends in relationships I know of, did spend almost every night together sleeping at each others' respective homes. The particular Saturday evening in question, the victim, let's call her "Laura", had left her car at the accused ("Tom's") house and gone out with some friends. Tom worked early the next morning and opened a Dojo (Karate school) where he taught. Laura came back drunk, and while Tom was using the washroom, checked his phone and saw something she thought was inappropriate. She demanded that they talk about it- but – he responded that he had to work in the morning and needed to go to sleep, and ultimately demanded she leave. After a short time (there was argument between prosecution and defense about just how much time...), the verbal argument turned physical, with him forcing her to leave as she continued to refuse, wishing to talk about the texts. This really resounded with me, the issue of a significant other looking at my phone is something that I have dealt with directly before and the results were...disastrous. In telling this story to friends, I know I am not alone in my empathy for this situation. I completely sympathize with the feelings of frustration and helplessness in this situation. I can imagine any number

of my friends, male or female, becoming involved in this situation and not knowing the right way to act. That being said, despite the frustration and intense anger that I or my friends felt in the heat of the moment, we could **never imagine a verbal argument like this getting to the point of physical violence...** just what happened in this case...

Somehow this altercation ended with Laura being pinned on her back, Tom holding her arms and legs down – the fight leaving visible bruises on Laura’s body, and a mark on her face. Finally, it took Laura some days and some convincing by friends for her to turn to the Police about what happened, the time during she and Tom had exchanged a few text messages, and Laura saying she was expecting an apology.

The ease with which I was able to relate to this case really struck me and the story has really stuck with me. I can imagine the frustration of a drunk girlfriend demanding to have a completely unwanted conversation, late at night knowing that I have work early the next morning. Situations similar to this have happened to me, but never did I act in a physically violent way.

Witnessing the cross-examination of the victim, it became abundantly clear why anyone would be terrified from the onset to go to the police, and through the criminal court system. I couldn’t help but cringe during the accusatory and harsh words used by the Defense lawyer. While an accused person has a lawyer to protect them in court, the victim of a domestic violence case (or indeed any criminal case) has no legal representation – the prosecutor is there to uphold the laws of our society, not protect the interests of the victim. It would be difficult to not feel helpless on the stand. Furthermore, victims in DV trials are often the only witness and while dealing with all the fears, and complexities of a relationship with someone that has abused them, they must be the proof behind any conviction.

I know this is quite a long post so I will get on to the **conclusion of the case...**

The Judge’s conclusions in this case were perhaps the most striking, as to me, this particular judge seemed to have a severe lack of understanding of the complexities of intimate partner relationships. He ruled that since the two did indeed, technically, live at separate addresses, the act of Laura refusing to leave qualified her as a “trespasser” and that Tom was justified in using “reasonable force” to make her leave as soon as she refused. The judge then used the photo evidence of Laura’s injuries to prove that she resisted leaving, and this therefore further justified Tom to use an increased level of force to get Laura to leave. Furthermore, the Defense pointed out that the accused, a Karate instructor, “...could have hurt you more...” and the fact that he did not showed the accused demonstrated restraint.

The Crown Attorney pleaded with the judge, and with increasing urgency, that this case “cannot be viewed in the context of a trespassing”, her voice audibly breaking, but in this Judge’s strict reading of the legal definition, these pleas fell on deaf ears. The charges were thrown out, the victim left crying and embarrassed, and most importantly, left with the undeniable feeling that the court system had failed her. If such an event were to happen again and worse, would this woman ever call the police again...I seriously doubt it....

This case really illustrated to me why I feel the issue of DV and DV courts is so important and why we need projects like Courtwatch. By no means do I think that the judge's ruling in this case is 'illegal' and I understood why he made the decision that he did – it does not contravene the law, in the strictest sense of the word. He followed all the legal tests available to him in order to come to his decision. However, it does speak to the lack of understanding that our legal system has to the complexity of domestic violence and how difficult it is to establish a legal system that works properly and effectively in cases of domestic violence. **I would love to hear any comments that anyone may have on the ruling in this case!**

In my discussions with friends and family about the Courtwatch project, many are shocked by even the idea of a "Courtwatch", which speaks to a further discovery I feel I have made about our legal system. Most Canadians do not want to think critically about our judiciary system, and can they really be blamed if they don't? Our legal system is the first and last line of defense of what is right and wrong in society and I think a lot of people do not want to contemplate that the legal system may be working improperly or actually creating new problems. While whistle blowing happens to police, politicians, or bureaucrats, public attention is rarely drawn to stories of legal systems designed improperly as this shakes the very foundations of our society. The DV courts were created with great intentions but whether they are living up to their design remains to be seen... **This is the role of Courtwatch.**

This blog is the start of our first foray into sharing information from our 2013 Courtwatch. Thanks so much for bearing with this long first post, late ones will hopefully be shorter, and from our other volunteers so readers can get different perspectives from our time in Court. Feel free to contact us at WomenatthecentrE- which is a provincial network of women's survivors with a mandate to do advocacy and policy development to improve the community response to woman abuse and to make the system more sensitive, respectful and accountable to women.

Hopefully you'll check back to hear about some further experiences that we have at the DV courts and if you would like to get involved, again please contact us.

Finally I wanted to share a major source of optimism both for Courtwatch, as a program, and Domestic Violence in Canada as an issue overall. Our newly-appointed Federal Health Minister, Rona Ambrose, has made Domestic Violence one of her major priorities (http://www.thestar.com/news/canada/2013/09/09/rona_ambrose_makes_family_violence_a_priority_in_health_portfolio.html), and maybe with a new important advocate, more media attention, funding and policies will occur, aimed at improving the issue of Domestic Violence in Canada.

Thanks so much for your time reading! Please Check back soon!



Please Mind the Gap

By Sana Haddad

Posted October 2, 2013 - [Direct Link Here](#)

Just like my fellow volunteer Ariel, I was also convinced by my friend Adam into joining WomenatthecentrE's Courtwatch initiative. It didn't take much coaxing, however, for me to realize how great of an opportunity this was to help out in the community, particularly at the grassroots level. I am a recent graduate from the University of Miami with a psychology degree, also having minored in sociology. Although I do not have much background with the issue of domestic violence, I felt compelled to participate due to the extremely unfortunate reality that this matter is so prevalent in our society but lacks much mainstream attention. This was a chance for me to learn first-hand how the Ontario Criminal Justice system works and to observe how efficiently it resolves domestic violence cases. Unfortunately, however, I have come to witness that often the opposite seems true – I have not seen an efficient process at all, but rather a series of various "to be continued..." cases.

I would like to focus on a particular example of one of those cases that I sat in on...

Court was running about 30-45 minutes late. I believe it was due to the fact that the victim was still recording her video statement. Video statements, sometimes called "KGB" statements (from the Supreme Court Decision – R vs. B (K.G.)) are taken by police as soon as possible after a victim reports a crime. These can be invaluable in Domestic Violence trials; as in domestic situations, feelings of fear, dependency, cultural/family pressure, love, etc. may quickly change over time, as well as how a victim may tell the events of a crime. Recording videotaped statements soon after the crime has taken place is designed so that there is a record of the most accurate statements possible.

Before the victim entered the room, the accused was brought in handcuffed, and seated off to the side. Afterwards, as the victim entered the courtroom and proceeded towards the stand, I noticed that she looked particularly distraught, clearly avoiding any eye contact with the accused. A description of the case was announced – it was a continuing matter, one of sexual assault, where the accused held a knife to the victim.

The victim's story goes like this (let's call her Sophie)...

The two had met in 2007 at Cocaine Anonymous. The accused (let's call him Joe) apparently tried hitting on her from the get-go, but for about a year Sophie said she kept denying his advances, mainly because she did not want to be in any sort of relationship at the time. However, on one Sunday afternoon, after church, she agreed to go out to lunch with Joe – marking the beginning of a tumultuous 2-year relationship between the two.

Apparently, throughout those 2 years, Sophie said that Joe was an extremely jealous and controlling boyfriend. He only ever “allowed” her to have female sponsors and always wanted to know what Sophie was doing whenever he wasn’t around, constantly calling/texting her. Sophie finally ended the relationship in 2009 and claimed to only have reached out to Joe a few times afterwards to make sure he hadn’t relapsed. However, Joe didn’t seem to take the breakup too seriously – Sophie said that he kept on contacting her, even after she told him to stop, repeatedly. She moved apartments a total of 5 times in order to lose touch with him.

As it goes with many controlling relationships, it didn’t seem as though Sophie could completely cut all ties with Joe. When her mother died a horrible death, ironically also a victim of domestic violence, Sophie sought Joe for help – she asked him if she could store some of her mother’s belongings at his house. The day that the crime took place, Sophie went to Joe’s house alone to drop off some things. When he let her in, he began questioning her about her whereabouts – “my friends told me they saw you with ‘who-knows-who’ having coffee, etc. etc.” – making Sophie extremely uncomfortable. After she expressed this to him, she attempted to leave through the front door, but Joe allegedly blocked her way. She then headed to the back door, but he beat her to it, not allowing her to leave until she explained why she was out having coffee with “who-knows-who”. Sophie then reached for her cellphone but Joe immediately grabbed it and smashed it on the floor. When the argument got even more heated, Sophie said that Joe forced her to the ground and got on top of her. To try to defend herself, Sophie grabbed the nearest chair and tried to hit him with it, but to no avail. Joe then held a knife to her neck, calling her various provocative names and threatening her life, and proceeded to punch her in the head several times until she was temporarily knocked unconscious.

After she came to, Joe then forced Sophie into his bedroom, forced himself on her and sexually assaulted her.

Now, at this point into the hearing, you can only imagine how tense the courtroom was. It seemed like the trial had reached its climax. It was clearly a very emotional experience for the victim, and even for myself as a listener. Then the judge decided that it was time for a quick break, so everyone had to leave the courtroom for a little while. Remember how I said earlier that these cases seem to all be series of various “to be continued...” events? Well, once we went back into the courtroom after break, it was the same judge residing over an entirely new case. Where had the victim and the accused gone? When would this case be continued/completed? How was it possible for questioning to become so intense and then come to an abrupt halt? This led me to think most importantly, what could the victim be feeling right now? I can’t imagine what it must feel like to come to this point in the trial and then leaving to go home, without any sort of closure...

There are a few observations that I made throughout this hearing that I would like to point out. Everyone involved in the hearing, except for the accused, was female, including the judge. Throughout the victim’s testimony, the accused was being quite disruptive – he kept shaking his head and making loud “tsk tsk” noises, clearly frustrated with what the victim was saying. It became so overwhelming that at one point, the Crown stopped questioning the victim and

turned to him and asked him if he could calm down and wait for his turn. The judge, recognizing the disruption, offered the accused a piece of paper to “express his concerns.” Albeit a little quieter, he was still obviously disgruntled by the victim’s accusations. Even for an objective observer, this was disruptive and distracting behavior, so I can only imagine what it felt like for the victim trying to testify.

The victim managed to hold herself together even in the face of all this harassment. We cannot forget this is a woman whose mother had been murdered by her intimate partner, which I imagine would make her that much more vulnerable. Of course, she broke down in tears when she was discussing her mother’s death.

This case, among many others, is a clear example as to why the criminal justice system is flawed – taking into account the extreme emotional toll that domestic violence has on victims, it seems very counter-productive to allow these cases to have such abrupt gaps and large intervals between hearings. Anything can happen within the time that the victim tells their story to when the verdict is made. Feelings change, situations change. The goal of the Courtwatch program is to ultimately help ensure the ongoing safety of those who find themselves in threatening and abusive relationships. We are hopeful that by continuing to observe and understand how the system is being carried out, we can help victims regain a sense of control over their lives and redeem faith and trust in a confusing, and often scary, judicial system.



The Court System Through the Lens of a Courtwatch Volunteer

By Ariel Weber

Posted September 20, 2013 - [Direct Link Here](#)

When my friend and fellow volunteer Adam began discussing the Courtwatch program with me, I became instantly engrossed and wanted to know how I could become involved. My interest was particularly keen because, as someone who has always felt that it was important to help out and become involved within our community, I believed this initiative was a way in which I could do my part.

The value I place on volunteering all began while living in Vancouver, working towards my undergraduate degree in political science. During the five years I lived there, I spent a year and a half becoming actively involved in a community known as the Downtown Eastside. Deemed one of the poorest area codes in Canada, it is also notoriously known for its rampant drug abuse, prostitution and other seldom acknowledged issues, which could be witnessed throughout its streets and alleyways.

Initially, I began working at the community centre in the area notwithstanding some reservations based on what many Vancouverites and visitors alike heard and thought about the neighborhood. As I progressively became a weekly visitor of the community it made me understand that this stigma that was created was not entirely true. Just as many stereotypes, there were some residents of the community who did fit the bill. However, there were also many other wonderful and diverse individuals and families who shared a deep care and compassion for one another. Furthermore, I would soon come to realize that these individuals who were dealing with a myriad of issues including substance abuse and mental health issues, were nevertheless human beings who deserved the same respect, equality and rights that any other citizen were afforded with. In a similar light, Courtwatch's purpose is to ensure equality and protection of those who are party to domestic violence. It is an issue that carries with it its own misperceptions and biases, which has unfortunately seemed to be embedded within the judicial system along with the larger community.

Another reason I felt compelled to participate was because I wanted to better understand the general court proceedings while also acquainting myself with its inner intricacies. Aside from what the pages of my university textbooks had taught me, I had limited knowledge as to how the judicial system played out in practice.

Now that a few months has passed since I became a fellow Courtwatch volunteer, there is much that I have been able to take away as well as much more that I still have yet to learn. I may not be able to personally understand what many of these women and men involved in domestic violence cases go through, as I have not walked in their shoes. However, as a caring human being and someone who has been a part of various relationships, either familial

or intimate, I can, at the minimum, sympathize with these individuals rotating through the court system and begin to understand the complexities of the situation.

After my first few days sitting in on court proceedings I found out that the system was much less straightforward, more time consuming and at times more counter-productive than I had expected and hoped. Here I was thinking that the judicial system was made to protect and deliver justice. Yet there were seemingly more headaches and obstacles occurring inside the courtroom than productive outcomes. Time and time again my frustration would continue to grow, as judges would adjourn the case for another day, sometimes months down the line. The reasons were many; from witnesses being unable to attend because they were stuck in traffic to the court waiting on important and critical evidence for the case to proceed. As someone who has primarily learnt about the judicial system within the confines of classrooms, logically I understood that the court was required to take certain and specific steps in order to stay legitimate and ensure equal justice under law. However, now that I had the opportunity to see it play out right in front of me I was able to evaluate its impact on victims and its effectiveness in getting closure on a crime.

The reality of court made me realize that the term legitimate carried with it several connotations. While the judicial system emphasizes and properly upholds the critical importance of maintaining its legitimacy, including ensuring that the ruling was based on concrete facts; the court seems to fall short in creating lasting solutions. I felt that the way the criminal courts operate there is little to encourage respect for the court system and faith that reinforces the positive influence of the court. From my experience to date, I found that this discrepancy is the result of insufficient time and resources that can be invested into improving the system. This is where Courtwatch steps in.

Out of all the cases I sat through, there was one particular case that has been most memorable and has stayed with me. Due to both its severity and it being the first time I had witnessed a plaintiff be questioned on stand, this particular case was one that had continued to resonate with me long after the court was adjourned for the day. The case consisted of a woman who was held against her will for a period of twelve hours inside the home of her ex-boyfriend and former sponsor. As I sat there watching this woman hold back tears, the lawyers and judge questioned her about that fateful night. As she discussed the horrific details, she recounted a nightmarish scenario where she was not only physically, sexually and emotionally abused but was also deadly afraid for her life, as she would be threatened with a knife throughout the ordeal. This was all recounted, with the accused sitting directly to her left, making noises and gestures, which could be interpreted as mocking and/or challenging the truth of her statements.

As I realized how difficult it was for me to sit and listen to this woman's story, I could not help but imagine how emotionally difficult this was for not only her but for all victims of domestic violence. What was especially disconcerting about this case was that a few months prior to the incident the victim's mother was murdered as a result of a domestic violence dispute. It was absolutely heartbreaking watching a woman who not only had to face her own troubles of domestic abuse but was simultaneously facing the reality that her own mother's life was taken due to an incident that

was very similar to her own.

This case highlighted several important issues with domestic violence criminal cases. A very important one being that domestic violence is very cyclical nature- how both abuse and victimization can seem to be linked from one generation to the next. Secondly, I recognized how much more common woman abuse is than is generally acknowledged by our society. There are several things in this world that fall into a grey area, where the moral understanding of right and wrong is questioned and becomes hazy. However, in the majority of domestic violence cases, it became quite clear that there is a definitive line to be drawn veering towards wrong. This line demonstrates that any physical and emotional abuse of individuals is never the right way to treat another human being nor ever a way to solve conflict. After every case I would watch, I would begin to question what it would take to help alleviate these issues as well as finding myself questioning the root of domestic violence. Were these learnt behaviours or did it stem from other variables?

Though each circumstance is different, authoritative bodies such as the judiciary and the education system holds ultimate responsibility for educating our society on these moral dilemmas. We may be taught tolerance and acceptance in our classrooms but the curriculum does not seem to go far enough to teach a fundamental respect for each other's rights- particularly between the genders.

Early intervention in education is one of the ways to deter those who may believe that using the force of their fist or the lashing of their tongue is the solution to problem solving. Though there is no perfect solution, nor is there perhaps even an all-encompassing one, it is important to have more of an open dialogue about violence against women and children who are victimized. Courtwatch is a unique program that is integral to ensuring that human rights are upheld and that the systems put into place to protect our rights, operate in a way that makes victims feel supported and safe. Domestic violence is not an easy topic to discuss nor is it always pleasant. Just like many other grim aspects of our society, many of us prefer to brush it under the rug and pretend it's not there. However, it is time that we lift the veil from our eyes and begin grappling with the intricacies and complexities of our society, some of which may not always be pretty. Courtwatch is a grass roots initiative where a small community of like-minded individuals attempts to have a meaningful presence in the judicial system in order to keep a balanced bias within an extremely bureaucratic organization. By continuing to observe and understand the inefficiencies of the system, there is hope that we can help its productivity and legitimacy by recommending useful changes. Narrowing down the true issues and demonstrating its shortcomings is necessary to find effective solutions. At the end of the day, our goal here is to help further protect those who have been dealt a difficult hand and to ensure their ongoing safety and protection long after the court proceedings have ended.



The Trials of Observing Trials

By K.C.

Posted January 6, 2014 - [Direct Link Here](#)

Similar to the other volunteers here on the blog, I became involved in the Courtwatch project thanks to Adam. I recently completed a master's degree in Gender, Feminist and Women's Studies at York University and while my thesis focused on the issue of how to make high school curriculum more inclusive, the lack of formal teaching and discussion of healthy relationships in schools is one I have always found troubling. I attended an all-girls high school in Toronto and the subject of healthy relationships between partners was never brought up in our health class or in any other classes (current, up-to-date sex education is wholly lacking in Ontario, but that is another matter). Courtwatch was an opportunity for me to learn more about the issue of domestic violence and to witness our justice system's response to both offenders and victims.

The first meeting I attended, back in May of 2013, laid out the plan for the summer: the volunteers were to observe as many domestic violence court cases in Toronto as we could and to use a survey form to record our findings. Eager as I was, I was also in the midst of writing my master's thesis, and so I did not begin attending court until August. Though by that time there was a slightly larger number of us involved in the project, there were ongoing problems in actually finding when and where domestic violence cases were being held so the data collected was somewhat slow in coming in. As Adam mentioned in his first blog post, this year's project is not funded yet (though continued efforts are being taken to change this), and therefore there are less resources available to the project which has made it a bit more challenging. It is this issue that I would like to make the topic of my blog post.

As a small team of volunteers lacking a full-time overseer to collect and organize information regarding the scheduling of domestic violence trials, finding out the exact dates and times is sometimes a gamble: information we collect concerning scheduling is not always accurate and is subject to change that we are not notified about. Due to the sensitive nature and laws of confidentiality that guard domestic violence trials, information regarding the scheduling of trials is also not offered liberally. This combined with the near-impenetrable bureaucracy of the court system and lack of internal assistance, finding out the correct dates and times of trials has been extremely frustrating. I say this having visited court several times at either Old City Hall or College Park when domestic violence trials were said to be happening, waiting for court to begin, only to too late learn that there were not domestic violence cases being held that day but another case instead.



In nearly all the times that I have found myself sitting in a court room that was not dealing with a domestic violence case, a fellow volunteer and I would attempt to locate and speak to someone who could provide us information or re-direct us. Sometimes a tentative schedule for the next week would be provided to us, other times we would be sent in a goose hunt to another person or office, and still other times we were given no answer at all.

The first few times I entered a courtroom as part of Courtwatch, I felt like an intruder despite my reason for being there. It is an uncomfortable feeling to sit in on a domestic violence court case, to play the role of audience taking notes as a horrible experience is being relived and retold with required detail and within the confines of stiff legal language. For this reason, I would simply sit and wait (trials rarely begin on time) and hope that that day's schedule was correct and a domestic violence trial would be beginning. Now, having attended too many trials that for one reason or another were not the expected domestic violence trials, I have learned that shyness is not the way to get through the system. For example, I now ask the Crown or lawyers present before court begins if the trial is for a domestic violence case, rather than waiting and losing time in the wrong court.

Although I understand that the goal and mandate of the criminal court is not to make it easy for students and/or observers to see trials, this experience has certainly highlighted for me how incredibly difficult it must be for a victim who is trying to navigate the criminal justice system in order to find out what is happening with a case she is directly involved with. One hopes that our criminal justice system should be accessible to all people – both those trying to understand how the system works, as well as and even more importantly, those directly involved with the system. My experience to date is that the criminal justice system has a far ways to go to be accessible to all people.

My experiences have also shown me the ceaseless effort that past Courtwatch projects have taken and the continual effort we must take in order to see the goal of this year's initiative reached despite the obstacles we face along the way. Headway continues to be made as we navigate through the quagmire that is the organization of domestic violence trials and thanks to the continued work of the volunteers and growing support from those on the inside, we are becoming better at figuring out the exact dates and times of trials. Despite all, Courtwatch trucks on.



The Court System from a Social Worker Perspective

By Linda Johnson

Posted January 8, 2014 - [Direct Link Here](#)

My name is Linda, and I'm a fourth year Bachelor of Social Work student at York University. I am currently completing my practicum experience at WomenatthecentrE, an organization devoted to transforming lives and eradicating violence against women. Everything about the organization appealed to me, but I became particularly interested when I was introduced to the Court Watch program.

As mentioned in previous blogs, Court Watch is currently a volunteer based initiative that involves observing domestic violence related court cases in order to document how court systems work. I was fascinated to gain a stronger understanding of the justice system as a whole, and how it functions effectively, or ineffectively, in cases involving domestic violence issues.

Two months in, I've quickly learned that the court system is much more difficult to understand and much more complex than what you may see on your favourite weekly television shows. As someone new to the court system it can definitely be a challenge to follow what's happening right before your eyes due to all the court jargon; sometimes it feels as if the court system involves learning an entire new language.

As you may have already read elsewhere on our blog, it's often difficult to find the location of a domestic violence court case: some days I'd go to what I was expecting to be a domestic violence case, only to discover a murder trial, or a disorderly conduct case; other days I'd show up to a domestic violence case only to have it adjourned, or postponed, until another day. Other times, I'd attend court and the trial I'd be observing would have started weeks ago, making it difficult to fully follow what was happening as I'd be missing vital information. I was learning that this initiative was going to take a lot of patience and perseverance.

One morning, I had been sent to a specific courthouse, to a specific room, where I was told a domestic violence case was being heard. The docket read that four cases were being heard that day: one individual was being accused of not appearing to a previous court date, two separate individuals were accused of breaching their probation conditions, and one individual was being accused of assault with a weapon. At some courthouses, cases are not clearly marked as "domestic violence," and this was one of those courthouses. As all four cases were being heard in the same room, I entered the room prepared to sit through all four cases. Within ten minutes, one case had been moved to another courtroom, another had been postponed for twenty minutes while the accused sought additional legal advice, and

the remaining two were waiting for individuals pertaining to the case to appear in court, and therefore court was in recess.

My reason for coming to court is basically to learn and the more I have reflected on this frustrating experiences the more I have realized that that for a woman victim of an abusive partner, the confusion and challenges of figuring out where to go and when to be there have much more serious consequences. Similarly, for me, the realization that to understand the criminal justice system almost requires learning a whole new language is an interesting and troubling phenomenon. For a victim trying to make her way through this system, the need to learn a new language on which her safety depends upon, could be understood and experienced as an overwhelming challenge and debilitating obstacle. I was completely lost; I had no idea whether I should follow the case that had moved to another courtroom, or wait and see what would happen after the recess. I was worried the cases would be adjourned because we were still waiting for certain individuals to arrive. I sent a text to my fellow court watch volunteer Adam who advised me to wait in the courtroom I was in and see what happened. Luckily for me, this turned out to be the right decision.

The second case heard by the court involved a man, we shall refer to as "Lucas," who was present in the courtroom, his ex-girlfriend "Samantha," not present in the courtroom, and Samantha's sister "Katie," who was also not present in the courtroom. As the case unfolded, I learned that approximately a year previously, Lucas physically assaulted his then girlfriend Samantha, and was charged with assault. He was put on probation, with the conditions that he was to complete thirty hours of community service and stay away from anywhere Samantha lived, worked, or was reasonably expected to be. Despite these conditions, one afternoon Lucas suddenly appeared at Samantha's place of employment, begging her to talk to him. Lucas persisted, despite Samantha asking her to leave. Lucas became angry, and demanded Samantha speak to him; if she didn't, he threatened to release documents proving that she had had an abortion, along with a sex tape, to her father. At this point, Samantha's sister, Katie, who was employed at the same location, stepped in and told him to leave. At this point, Lucas threatened to f*** them both up, and left, threatening that he would be back when the shop was closing. Samantha and Katie called the police, who did arrest Lucas when he returned around closing hour.

On the day I was in court, Lucas was being charged with violating his probation conditions, as well as threatening harm on another. Katie was ill, and unable to be present in court, and Samantha simply didn't want anything to do with Lucas, and therefore wasn't present. Police evidence undeniably proved the events of the day beyond a reasonable doubt, and Lucas pled guilty. The defence counsel spoke about Lucas's strong family support system, proven by the presence of his sisters in court; his goal to return to school the following year, and how in the meantime he financially assisted his family; how sorry he was for his actions, and how by pleading guilty he had really done Samantha a huge favour by avoiding the stress she would have faced having to come back to court. Both the crown and the defence council had put forth a joint submission for sentencing: an additional twelve months of probation, an additional thirty hours of community service, and in addition to conditions of no contact between Samantha and

Lucas, Lucas was also supposed to stay away from Samantha's immediate family, their places of work, anywhere they were reasonably expected to be, and was banned completely from the mall Samantha worked in.

As I awaited the judge's decision, two thoughts ran through my mind: first, how could they possibly think the accused was doing the victim any "favours" by pleading guilty? Surely the more important issues to discuss were, had he not been violent in the first place... and then continued to breach his probation? These actions would have avoided this situation in the first place. Secondly, the joint submission for sentencing suggested, essentially, the identical sentence the accused received during his initial altercation with Samantha. If it didn't stop things from escalating then, how could the same sentence possibly change things the second time around? These questions were running through my mind...and then the judge spoke:

(This verdict may not be word for word, but from my memory and my notes, I know it's pretty close...) "One of the most melancholy things in life is knowing that, at any time, the person we love can reject us, for any reason, or even no reason at all. For most of us, it's painful, but we get through the rough times. The fact of the matter is, everyone has the fundamental right to reject others, and on that note, they have the right to live life free of penalty for rejecting others. To threaten someone with the release of a sex tape, the most intimate moments a couple can share, and abortion documents, is simply quite vile. I believe the sentence suggested today to be incredibly lenient. With that said, I am under legal obligation to take what the crown and defense counsel have suggested quite seriously, and for that reason, I am accepting their submission, with the minor change of fifty hours of community service as opposed to the thirty they have suggested."

A battle of emotions ran through me; here was a judge who clearly understood the issues, understood the leniency of this sentence, understood the vile nature of the acts themselves, and yet accepted the submission. This case taught me that nothing is ever black and white in the court system.

A recent training that I attended as part of Court Watch helped me understand that it is quite difficult for a judge NOT to accept a joint submission. Joint submissions occur when the Defence and Crown lawyers get together out of Court and agree on a sentence. Judges typically accept these sentence submissions through the "rule of jurisprudence."

I have learned that there are some very complex aspects of the criminal justice system. I do understand that dynamics and challenges such as this within our judicial system stem from different perspectives and stakeholders involved, and from historical traditions. However, has this decision ensured and prioritized victim's safety? Has this system ensured Lucas is punished and discouraged for continuing to ignore his intimate partner's rights? Throughout this, I still feel as if Lucas didn't learn a thing, and wouldn't be surprised if I see him in court again during my observations and it seems that I am not alone in my concerns; the Judge's comments seemed to echo my own thoughts.

At this point, after observing this case, I feel that the justice system is far from a truly 'just' institution...how far? I've still yet to decide and I look forward to spending more time in court finding out this answer for myself.

STILL UNBALANCED

Intimate Partner Violence and the Scales of Justice:

Monitoring the Specialized Domestic Violence Court Program in Toronto, Ontario

Observations from a Pilot Court Watch Project of WomenatthecentrE

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