Monitoring Report

For the

Auckland Family Violence Court

The First Three Months

27 March 2007 – 30 June 2007

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Preventing Violence in the Home
Auckland
November 2007

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Introduction

In March 2007, the new Auckland Family Violence Court commenced operating. In planning for the new court's operation, the Executive Judge Northern Region, Judge Jan Doogue, recommended that Preventing Violence in the Home play a role in monitoring the new family violence court. As a result, Preventing Violence in the Home has produced this monitoring report to analyse the first three months of the new court's operation, from 27 March 2007 to the end of June 2007.

A guiding document/protocol for the Auckland Family Violence Court inclusive of all stakeholders has not yet been established, so there is not an agreed-upon framework for this report. However, the First Report of the Government Taskforce for Action on Violence within Families specified a goal of achieving "a responsive justice sector that ensures the safety of victims and enforces sanctions against family violence" (page 20).

On 6 March 2007, the NZ Herald quoted Courts Minister Rick Barker stating: "Through providing rapid resolution of family violence matters, Family Violence Courts reduce the risk of further violence while the case is waiting to be heard." Mr Barker was also reported as saying that "the courts improved safety for victims but also ensured offenders were accountable and could get help to stop being violent."

Ministry of Justice Victim Information Pamphlets (produced in 2007 and later withdrawn) listed in the family violence courts' objectives as:

- Improving the safety of victims
- Making offenders accountable for family violence
- Dealing with family violence cases faster

These three goals have been used as a framework for this monitoring report, as the report discusses how successful the Auckland Family Violence Court has been in terms of achieving these goals.

This is an independent report to be made available to all court stakeholders including the judiciary. This report has not been funded by the Ministry of Justice, nor any government agency, and is the property of Preventing Violence in the Home.

Preventing Violence in the Home would like to thank everyone who was interviewed for this report for their time and generosity. It is a credit to Judge de Jong that stakeholders have been encouraged to participate in the planning stages, share experiences and difficulties along the way, and that they have felt confident to provide comment about their involvement with the court.

Background

On 27 March 2007 the new family violence court was established in Auckland City. The new court was a result of Government/Ministry of Justice directives as well as planning and meetings among key stakeholders from October 2006 until March 2007.

Only two other family violence courts had been previously established in New Zealand before 2007, the first in Waitakere in 2001 and the second in Manukau in 2005.

In early 2006, Preventing Violence in the Home staff met with both Chief District Court Judge Russell Johnson and Northern Region Executive Judge Jan Doogue, both of whom expressed a keen interest to establish a family violence court in Auckland City. For this reason, Deborah Mackenzie from Preventing Violence in the Home prepared a report outlining a proposed design for a specialist domestic violence court in Auckland, largely based on overseas research and experience. This report was provided to the judiciary in October 2006 and is hereinafter referred to as the 2006 court design report.

In July 2006, the First Report of the Government Taskforce for Action on Violence within Families was published. The report's Programme of Action included a section called "Ensuring Safety and Accountability" which specified that, "Between July 2006 and June 2007 The Ministry of Justice will establish three dedicated Family Violence Courts in the Wellington region and one in Auckland." No detail was provided in this plan of action about how new family violence courts would function nor about how stakeholders would or could be involved in the planning and establishment of these new family violence courts at the local level.

The report also identified additional actions to be addressed in 2007 and beyond including "improving the use of security resources available to the courts (Ministry of Justice)" (page 23).

Core stakeholders of the Auckland Family Violence Court were invited to an initial meeting held in October 2006. These stakeholders included:

- Judiciary
- Defence bar

- Duty solicitors
- Family law
- Probation
- Victim advisors
- Preventing Violence in the Home
- Prosecution
- Legal Aid Services
- Court staff

During the initial stakeholders' meeting, Judge Doogue announced that the new Auckland Family Violence Court would be following the "Manukau model" and would be commencing in March 2007. It appeared, although was unclear, that these were Ministry of Justice directives.

Out of the twenty-six stakeholders present at the initial steering group, two represented a victim perspective, with only one representative from the community (Deborah Mackenzie from Preventing Violence in the Home). The group also included four defence counsel. Initial steering group discussions were very much focused on concerns relating to defendants' right to natural justice etc., and not on issues relating to victim safety.

At the second stakeholder meeting, it was announced that Judge Lex de Jong had been appointed as the lead judge for the new Auckland Family Violence Court. From this point, Judge de Jong facilitated stakeholder meetings and played the lead role in establishing the new court. The lead judge has been flexible and creative in his approach to establishing a distinct Auckland version of the Manukau Family Violence Court model. In planning meetings, discussion was invited regarding a range of topics and trouble spots such as security, court rooms, scheduling etc.

Criminal court proceedings are traditionally very much focussed on processing the defendant and very little concerned with the experience of the victim. Therefore, if the new specialist family violence court was to take seriously a goal of promoting victim safety, it would be crucial to have victim specialists present at the stakeholder meetings. In later meetings, more representatives from the victim advisor service attended and less from defence perspective, which did help to provide a more balanced discussion.

No further input from community groups was invited or sought in the early planning stages, nor since. However, relationships were established between some key stakeholders in planning stages that set the foundation for greater collaboration to follow.

One of the strengths of the development of the Auckland Family Violence Court has been the ongoing reflective processes in place since its inception. At the instigation of Judge de Jong, at the close of each family violence court day, stakeholders are invited to meet and discuss any issues that have come up from the day. This initiative has enabled a number of problems to be aired and addressed early on, and for court processes to evolve organically.

The lead judge granted the report writer, Deborah Mackenzie, permission to sit in court each Tuesday to observe and take notes. Deborah, or her colleague Alex Port, spent each Tuesday for the first three months of the court's operation (except 3 April, 10 April and 26 June 2007) in court observing and taking notes on the court processes, decisions and patterns of behaviour observed of defendants, victims and professionals. Data presented in this report is based on the observations of 281 defendant appearances as well as data requested from the Ministry of Justice. Until 8 May 2007, the court was observed until the lunch adjournment. From then until the end of June 2007, the entire list court day was observed.

Strengths of direct observation included:

- The ability to observe stakeholders and the public simultaneously
- The ability to track systems otherwise unrecorded, like security procedures
- The ability to assess the dynamics of the court room
- The ability to form an opinion about how court practices impact on victim safety and offender accountability
- The ability to build relationships with court stakeholders, which assisted in later interviews with stakeholders.

Data was also gathered from the extensive Preventing Violence in the Home client database, in order to gather background information on cases that came before the court during the three month monitoring period. This data was useful for comparison with information put before the court.

A range of key stakeholders of the court were interviewed about their experiences of the court's first three months of life. These perceptions, which reflect individuals' understanding of the effectiveness of the court, have been built into this monitoring report and are discussed more extensively in the section of the report near the end "Key messages from stakeholders. "

Limitations of this monitoring report

Lack of victim perspectives

A more significant evaluation of our court would include perceptions and experiences of victims and defendants. In the United Kingdom, survivor consultations are conducted by Standing Together, a multi agency co-ordinated response partnership based in Fulham, London which works to increase victim safety and offender accountability. These survivor consultations generate effective procedural and institutional change (Standing Together against Domestic Violence, Fulham Metropolitan Police, internet).

In the recent evaluation of the Waitakere Family Violence Court protocols, the researchers state that future planned research is designed to include studies of the experiences of victims of the court process and plan to 'broaden the perspectives from which the court's commitment to taking violence seriously is addressed' (Morgan, Combes, McGray, 2007, pg 70). The Manukau Court evaluation which is being undertaken by Ministry of Justice may include victim and offender perspectives.

As there has not been funding granted for monitoring or evaluation of the new Auckland Family Violence Court, this monitoring report is limited in scope, and it has not been possible to include victim or offender interviews in order to determine how the new court is being 'lived out' in user's real lives. A lot might be gained from this research in future.

Data not easily accessible

Data collection has been predictably difficult for this monitoring report. As suggested in the October 2006 court design report, information collection systems (still) need to be formalised and implemented in order to track data specific to the family violence court. To improve court operation and monitoring, creation of a data collection system that is easily accessed and flexible must be a priority. The court has advised that Police are now flagging domestic violence cases when they are entered into the

court data base (CMS). Since June 2007 CMS has signalled if the matter is domestic violence related.

A good practice example of data collection is cited in the Home Office guide to establishing a specialist court. At the West London Magistrates Court, spread sheets of all cases flagged as domestic violence are created, and Standing Together's data officer collates, analyses and presents reports to the specialist domestic violence court management group (made up of representatives from each participating agency) based on these spreadsheets (2006, pg 36).

The Ministry of Justice Research Unit was contacted for particular information relevant to this analysis of the new court. Some complex work by the research unit was required, as data is not entered and identifiable as domestic violence crimes. Instead matters have had to be tracked by court day; fortunately family violence cases are now clustered into a Tuesday for list matters and then on a Thursday for defended hearings. The Ministry was only able to provide information relating to finalised **charges** for the three month period requested. Even so, Ministry of Justice only provided a very small sample of data: forty seven charges including male assault female, common assault-Domestic Crimes Act 1961, common assault-Domestic Summary of Offences Act 1981 and breach of protection order.

This report, however, also includes data from 281 cases observed in the first three months of the new court's operation. These include cases involving a much wider range of charges than those in the Ministry of Justice data. A very different picture has emerged from data based on these observations than from data provided by the Ministry of Justice.

Lack of formal court structure

As mentioned in the Introduction, there is no clear and transparent framework, i.e. no formal protocols, for the new court, on which an analysis may be based. Some court processes were informally agreed to in early stakeholder meetings but are dependent on stakeholder buy in and consistency. The other two specialist courts in the region, Waitakere and Manukau, both have protocol documents in place which were established at the outset of both of these family violence courts' operation. In the recent Waitakere evaluation, the court protocols were used as the measure in that

stakeholders were interviewed to ascertain ‘how well the court was upholding its protocols’.

Victim safety

> "No matter how severe the abuse in the past has been, survivors who experience the court process where their perpetrator is found guilty feel a huge sense of relief. They feel a pride in themselves and a trust in the criminal justice system not previously felt before."
> (Standing Together, London, 2006)

Domestic violence can be deadly and half of all murders in New Zealand every year are family violence related (52% of 53 murders in 2000) (New Zealand Family Violence Clearinghouse 2005). Domestic violence cases are never straightforward and require specialist responses from the justice system.

> "Cases involving domestic violence are among the most complex and dangerous that courts have to address." (Sack, 2002, pg 4)

Only approximately 12% of domestic violence gets reported to the Police (NZ Police, 2003). In Auckland, of the cases that get reported to Police, generally only up to 25% result in the arrest of an offender and proceed to court (Preventing Violence in the Home database). Most domestic violence goes unreported, and our criminal justice system is only responding to the tip of iceberg. Police are mostly called for serious acts of physical violence and/or when the victim or someone from the community has great fears for her safety. Therefore the matters that result in arrest are likely to be serious.

Victims need to feel safe to call for help and have a right to expect that their safety will be increased as a result of Police and court intervention, and that their safety will not be further jeopardised. Victims need to have confidence that our criminal justice system will be responsive to their needs in order for them to call for help again in the future.

Hearing all domestic violence cases in one particular court does not in itself necessarily increase the safety of domestic violence victims. The strength of a *specialist* domestic violence court is in the different and specialised practices that occur within the court operation, and the specialised knowledge and skills of workers

who operate within the court. The 2006 court design report stated that the court could improve victim safety as an overall aim by having:

1. Victim safety as a fundamental aim of the specialist court
2. Victim safety always considered in issues regarding bail, participation and sentencing
3. Victim services streamlined – on site services available, referral processes formalised for other services such as refuge, advocacy, Work and Income
4. Independent victim advocates, rather than court officials, to promote victim interests
5. Stakeholders advance victim safety as part of agreed protocols, e.g. defence counsel do not contact victims
6. Enhanced court security, for instance by having dedicated security officers
7. Appropriate location of services in the court building, and internal access for victims to court rooms.

New Zealand research shows that one in three New Zealand women will experience sexual and/or physical violence from their partner or ex partner throughout their lifetime (Fanslow 2004). Women are far more likely to be hospitalised, killed, and suffer depression and other mental illness as a result of intimate partner violence than are men.

As observed for the period 27 March – 30 June 2007, of the 281 appearances witnessed, 23 or eight percent of all appearances, were made by women as offenders.

Of the very small number of referrals received by Preventing Violence in the Home with female offenders and male victims (less than 5% of referrals), we have found that a significant proportion of these are cases where the female has historically been the victim of abuse and has been arrested for retaliation. It is important to recognize that 'offenders' who come before the court, particularly female offenders, may in fact historically be the victims of abuse who have been arrested for retaliation. The court response will be far more effective if these dynamics are recognized and responded to accordingly.

The lead judge has stated that victim safety throughout the process is the court's first priority. Observations of the court and interviews with stakeholders have highlighted some processes which are promoting greater victim safety in the new court.

Some practices have also been observed in the new Auckland Family Violence Court which undermine victim safety at court or have the potential to undermine safety beyond the court confines. Some of these processes have been borne out of a lack of initial planning and discussion at the design stage of the court, and others are well worn traditions that have worked their way from the old Status Hearing court into the new Family Violence Court. Ongoing research into victims' experience of court will be of great benefit in order to further our understanding of how the court intervention is lived out in 'real lives'. The lead judge believes that processes must be adaptable and the court must evolve and respond to issues as they are raised. This has been one of the strengths of weekly meetings after court sessions; stakeholders are able to raise issues of concern, which often relate to victim safety and the judge can respond by reviewing processes.

Physical location and operation of the court

Court is potentially a dangerous place for victims of domestic violence. In the 2006 court design report, it was recommended that a specialist trained and dedicated security officer be appointed to stand inside the specialist domestic violence court. At steering group meetings, security was raised as an issue by prosecution, victim advisors and by Preventing Violence in the Home. Initially these stakeholders argued that the proposed court rooms were potentially unsafe for victims due to the isolation of the court room, the location of the room outside the probation office and the lack of safe separate waiting areas for witnesses. After a walk through the court, Judge de Jong became aware of safety issues and the court room was changed to court room 3. This room is located in a very public space, and is opposite the police room which offers a safe place for victims and witnesses to wait if necessary, and provides easier access to security personal if required. The court can also be accessed internally, but this is not as important for list days as it is for defended hearings, as witnesses are not required to attend or give evidence.

Security issues have been observed since the new court's inception. On most court days, including family violence court Tuesdays, the major screening unit has been in

operation in the morning only. This involves three security officers screening each individual coming into the court with a wand and x-raying their hand baggage. Security staff advise that about 300 people are screened each morning with this intensive system and approximately one dozen items are confiscated that could be used as weapons, such as pocket knives, scissors, box cutters and other bladed instruments. Depending on the grading of these instruments they are either returned to their owners when they leave the court, destroyed by security staff, or Police are called to lay a charge of possession of an offensive weapon. This system has only been observed to be in place until the morning adjournment. Following the adjournment there is no screening of people coming into the court building.

Security staff explain that if they are alerted to particular people being a potential threat, then they will keep a close eye on them while they are in court and in the waiting areas. Some of the high risk individuals are already known to the security service because they have posed a security risk in the Family Court on domestic violence hearing days. Security officers report that often times it is the supporters of offenders, such as family members or associates, who become aggressive and threatening and might intimidate victims at court. This means it is even more essential to provide a safe waiting area for victims coming to court. The police room does provide this.

Court staff has advised that security cameras have recently been installed outside court rooms and that footage collected is stored for three months in case it is required for evidential purposes.

Initially at steering group meetings it had been put forward that family violence court days would be capped at thirty-two cases. This would mean that there would be approximately ten minutes per matter, compared to the general lists which allocate three to four minutes per matter. The increase in time reflects an intention of the court to have more in-depth involvement with offenders, but it also acts as safety mechanism in that cases can be managed more easily, long waits are more likely to be avoided, and defendants can be staggered throughout the court day, thereby decreasing the number of people waiting around the court, be they victims or defendants.

As the new family violence court rolled out, it became increasingly apparent that the court lists were getting bigger and more people were at court on Tuesdays. The

large increase in people present in the court created a security risk. This was particularly evident on 1 May 2007 when approximately forty-three cases were heard in the court. On this occasion there was standing room only in the public gallery and the court room did not clear enough for people to sit down until the lunch adjournment. The custody officer (Police person who escorts defendants from cells and into the dock) left the court room during this time for nearly thirty minutes. The prosecutor, as a sworn police officer, was the only 'security type' person in the crowded court and he had his back to the defendants and also to the public gallery. The court room felt unsafe to the report writer. It is therefore vital that court lists are managed and spaced to avoid court room overcrowding.

Security staff has been observed walking in the corridors outside the court and at times they have entered into court room 3 for very short periods of time (less than three minutes). When security is not present in the courtroom, court staff, once aware of a security risk, can activate a button in the court room or dial the court operator and ask her to ring through to the security radios and call for assistance. It is of concern that security staff are most often not actually in the family violence list courtroom, and therefore would have to be paged if there is a security incident. At present there is simply not enough security to ensure the safety of victims at court.

In the first three months of the courts operation, the head of security was not aware of any victims of domestic violence directly calling them for help. However, the victim advisors have alerted security about once every two to three weeks about various individuals of concern. Security staff do not actively check through the court lists prior to court. All alerts have come from external sources or if the individual is already known to security officers. If security officers observe any intimidation or assault they will intervene. They can use their power under the Court Security Officers Act 1999 to detain someone and hold them until Police arrive.

Security staff have appropriately prioritised the family violence court, but the sheer lack of security resources at court severely undermine efforts to help domestic violence victims feel safer at court. The lead judge continues to investigate security measures in place, and explore possibilities for more resources and a review of current security provisions at court.

Victim participation

The judiciary have consistently sought to include victims' views in cases before making decisions on bail and sentencing. The lead judge has asked victim advisors to gather victims' views for each court appearance. This can help the judge to have more comprehensive information about an offender's behaviour, which can help in making decisions that best promote victim safety and offender accountability.

Victim advisors send a letter to domestic violence victims explaining how the family violence court operates which states,

> "You are encouraged to contact your victim advisor and have your views put before the court so an informed decision can be made on any possible outcome."

In many cases, matters have been stood down for victim advisors to attempt to make contact. Having the victim advisor located in court has made this possible as the judge is able to directly check victim status with the victim advisor before proceeding with cases. Victim input can at times challenge questionable input from defendants, thereby enabling the court to make safer decisions.

On occasion, when victims have not submitted a view, cases have been remanded for the victim advisor to attempt contact. In some cases, the prosecutor has been asked to get the officer in charge to contact the victim to clarify some facts before the court that are contested by the defendant.

Currently the Victim Rights Act 2002 Section 25 enables victims' views to be expressed to the court. However, the safety of doing so is undermined by the ability of defence counsel, and indirectly the defendant, to access this input.

Victim advisors always ensure that victims are aware that defence counsel and therefore the defendant are able to access their input. This is a good safety valve as long as 'not saying anything' is respected and no pressure is applied by the court for the victim's view.

It is unnecessary and often unsafe for victims of domestic violence to be physically present at court on list days, and it is certainly not a requirement for case progression for them to be present. Victim participation in the court room has often been promoted as a way to empower victims and improve their experience of the court process. However, victim participation may actually increase the risk of retaliation from the offender. Victims are constrained in what they can safely say in front of their abuser and in a public situation where very personal and intimate details of their lives are being discussed. Many victims are understandably scared and are unwilling to participate. The only reason that some victims do participate is because they see the potential for the court to hold the offender accountable for his behaviour and increase their safety in the long term.

Victims are under no obligation to be involved in the court process until matters reach the defended hearing stage when they are required to give evidence. The nature of domestic violence is that victims are usually unable to keep themselves safe from the offender. The court has a duty to respond to domestic violence perpetrators in a consistent manner that aims to provide safety for victims with or without their input.

Only a small number of victims have been present at court on family violence list days. Victim advisors have reported a decrease in the number of 'walk ins'. Victim advisors are to be commended for the enormous amount of work that they do in pro-actively contacting victims prior to the court appearance, thereby protecting them from having to come face to face with the offender at court in order to present their views on bail or sentencing.

On occasion, the desire for victim input has led judges to signal victims in the court room and request their input on the spot. In some cases, victims were asked in open court about bail variations being considered. For example:

> *"Are you happy for him to live with you?"* (8 May 2007)

For reasons already discussed, this victim would have likely felt very unsafe to express any concern she had about living with the offender with him in the courtroom. Further, when asked a question directly by a judge, most people unfamiliar with the courtroom setting would feel obligated to respond.

Defence counsel submit views of victims

Regularly in the Auckland Family Violence Court, defence counsel present the views of victims in their submissions and sometimes point out victims in the court room to the judge. On one occasion in particular, this happened when the victim had expressed a wish to remain anonymous.

> *"The complainant has no desire for the matter to continue."* (22 May 2007)

> *"The complainant is in court, both have spoken to me, she has declined speaking to the victim advisor because she just wants to deal with … (defendant) today. There is an alcohol problem between them. The incident occurred when they were buying alcohol; it's a matter they both struggle with. I indicated you might want to speak with her."* (22 May 2007)

> *"The complainant is in the court sir, standing at the back by the door (in this case the victim had stated in a memorandum prepared by the VA that she did not want to be identified in court)."* (24 April 2007)

> *"The victim is in court and is pregnant and her due date is today."*
> (15 May 2007, counsel directs the victim to stand up in court to show her pregnant belly))

It has been a credit to the lead judge that he generally advises counsel that he is not interested in their perspective on what the victim wants or how she is related to the progression of the case.

> *"Maybe you should address me on what the defendant says, not the complainant."* (22 May 2007)

Risk assessment

As previously explained, it is extremely difficult for victims of domestic violence to safely provide information to the court. Often information provided by victims is made under duress, e.g. following threats or coercion from the offender. For these

reasons, it is critical for the court to have additional sources of contextual information, particularly to assist with decisions around bail and sentencing. Risk indicator information such as: conviction history; past history of violence; whether the violence is increasing in frequency or severity; whether violence has been used towards the children; use of weapons; use of alcohol or drugs; martial arts and/or military training; and threats to the victim/children/other loved ones; are all important to consider when making an assessment of risk of severe injury or lethality to the victim

Currently the only information permitted to the court relating to risk to the victim comes via the victim advisor memo, the police victim impact statement or opposition to bail, and via a probation pre-sentence report.

The Auckland City Police District have been doing a risk assessment for every family violence incident attended since mid March 2007. Their two page form provides information on 'red flags', which can alert Police that a particular situation may be high risk. This includes, for example, whether the offender is obsessed with the victim, or the victim believes the offender could injure or kill them, incidents of animal abuse, etc. The form also provides information about overall risk and lethality based on the offender's previous behaviour as well as threats, or previous serious assaults on the victim. This information is collected by Police by interviewing victims at the scene and through Police background checks. This information would be useful in improving court decisions with regard to victim safety, but is not being provided routinely to the court.

While contextual information from the victim advisors, Police and probation officers may be very helpful for the court, these sources are unlikely to provide a comprehensive and accurate victim risk assessment based on information from the victim herself. This is primarily because of the difficulty that victim advisors, Police and probation officers have in building rapport over time with victims. Without this rapport, victims are unlikely to trust the worker enough to relay a full and detailed history of violence. While victim safety is certainly a primary consideration for the victim advisors, they are at the same time required by their employer, the Ministry of Justice, to be neutral court officials. Also, victim advisors, Police and probation officers, unlike independent victim advocates, are all fundamentally accountable to their own organisational mandates, and are thus unable to *always* prioritise victim safety as the primary and overriding consideration. When victims know that their

safety is being prioritised, clearly they are generally more forthcoming with sensitive background information.

Independent victim advocates are also likely to have information relating to risk from other sources such as Child Youth and Family Services, schools, Plunket, midwives or family members. By contrast, victim advisors are unable to share information without express consent from their client, and are unable to pass information into the court unless it is provided directly from the victim herself.

In order to compare information presented in court to what was known by Preventing Violence in the Home a sample of family violence cases was checked on the agency database. Many instances were found of Preventing Violence in the Home having pertinent information that could have impacted on the court response.

One case observed on 12th June 2007 involved a defendant charged with male assault female and two charges of breach of community work. Defence counsel submitted the assault was 'on the low scale'. Probation described the offender as remorseful and unlikely to re-offend. The judge did identify the defendant as 'high risk' in his sentencing and sentenced the defendant to nine months supervision.

What the court did not know, that was available via the Preventing Violence in the Home database was that,

- A Preventing Violence in the Home advocate visited the victim's address twice in January 2002 but was unable to make contact with her. The defendant had kicked the victim in her legs because she would not feed him.
- The Police had attended incidents with this couple in February 2007 and June 2007 which did not result in an arrest. The court only knew of Police attendance which resulted in an arrest in March 2007 and May 2007.
- Child Youth and Family referred this family to Preventing Violence in the Home for services in April 2007.
- The victim spoke to a Preventing Violence in the Home advocate and disclosed the following:
    - The victim suffered four years of violence within the relationship.
    - The victim was evicted from her rental home because of the damage caused by the defendant.

- The defendant wrote off her car, which she owed money on and was in her name only.
- The victim was under huge financial stress because of the defendant and often went without food herself so that she could feed her two sons.
- The victim told advocates that the defendant had stomped on her head numerous times in the past and that her children had witnessed that.
- The defendant had previously threatened to kill the victim.
- The abuse was becoming worse and was happening more often.
- Following the court sentencing the victim was 'distraught' that the defendant got off so lightly.
- The victim had fears the defendant would try and contact her following sentencing.

An additional case observed on the 15th May 2007 involved a defendant charged with male assault female. An indication of Section 106 discharge without conviction was given, providing the defendant completed a stopping violence programme and completed a drug and alcohol assessment. Preventing Violence in the Home held pertinent information that might have altered this response:

- In a previous assault (not reported) the defendant allegedly pulled a bread knife on the victim and told her to 'f off' so he could have sex with her friend.
- The defendant had a history of throwing things around the house.
- The victim felt the defendant's violence was getting worse.
- The defendant had hurt a family pet.
- The defendant has prevented the victim from leaving the house on occasion.
- The defendant monitored and stalked the victim and got 'very jealous'.
- On one occasion the defendant had allegedly cut up the victim's undergarments.
- Records of two Police call outs in 2005 to previous victim. The defendant was never arrested on these occasions.

In general, Preventing Violence in the Home information potentially available to the court includes:

- Records of previous Police call outs resulting in both arrest and non-arrest.

- Child Crisis Team reports explaining how the violence has impacted on the children.
- Patterns and types of behaviour demonstrated by the offender previously.
- Offender history with additional or previous victims.
- Stopping violence programme attendance records.
- Child Youth and Family and Auckland Hospitals' victim referrals to Preventing Violence in the Home.
- Risk assessment information.
- Details of fear as described by the victim and her previous attempts to escape.

Children's safety

Witnessing or being exposed to domestic violence has a devastating effect on children and their development. Children are often overlooked as also being primary victims of family violence. It is critical that the court takes into consideration the safety of children in any decisions.

Children are present in approximately 70% of domestic violence incidents (Bowker 1998). Children's safety would be improved if their experience of the violence was routinely taken into consideration by the court, and decisions regarding bail and sentencing reflected this information. However, the major barrier to the court considering the impact on children as victims is that Police do not routinely interview children, unless they themselves are the victims of a physical assault. In these cases children are interviewed by police specialists, rather than at the time police are responding to the incident, meaning that there are delays.

Focus on the impact on children

Judges in the court have been proactive in stating to offenders (and indirectly to all people in the court) that domestic violence has a serious impact on children.

> *"Mr ------ you have pleaded guilty to a charge of assault…The reality for your family is that your two young children were present when the incident occurred. It is not appropriate. It's important to set a model for the children so that they grow up knowing there is a better way to relate."* (1 May 2007)

> *"It is clear that the children witnessed what happened. A terrible thing for them to see you holding down their mother, punching her in the face. They had to run outside to get help from someone and then see you punch her again."* (15 May 2007)

> *"I have no sympathy for the way you behaved on that evening. It was terrifying for her. You assaulted her when she was in bed with her two children. This was terrifying for the children, and you were verbally abusing*

her, calling her a slut and a whore and a bad mother." (29 May 2007, child present with her mother at court)

"Your daughter is not yet five. She is not at school. She needs to understand that you can't relate that way to your wife."
(1 May 2007, child present at court)

Judges explaining to defendants that their behaviour is harmful to their children can make a huge difference to their future behaviour. In the 2006 Families Commission and Ministry of Social Development research into men's attitudes to domestic violence, researchers found that men were motivated to change their violent behaviour in order to improve their relationships with their children and break the cycle of violence (pg 20).

Victim Impact Statements

A recent Family Safety Team study (Jepsen, 2007) analysed eighty-two closed police files from 2005 to 2007 which stated children were present at the time of the offence. These files were analysed in terms of if and how the court considered children in its response, with a focus on Victim Impact Statements. The study found that out of 156 children present, only four young people provided a Victim Impact Statement. Not only were most of these children not given the opportunity to complete a Victim Impact Statement, but the mothers' statements also generally only referred to their child/ren in passing or not at all.

"Children over the age of six, if given the appropriate support and attention, are able and would benefit from making their own Victim Impact Statement.... The need for the impact of family violence on children to be included in Victim Impact Statements is supported by findings in research and victim support programmes. The Office for Victims of Crime Monograph, US Department Of Justice, states that "if the criminal justice system does not take the victimisation of children seriously, it is unrealistic to expect our communities to view crimes against children as a serious problem...."
(OVC Monograph, 1999)" (Jepsen, 2007, p. 2)

Children used by offender/defence counsel

Offenders and defence counsel sometimes use the offender's relationship with his children to request a more lenient court response.

> *"The defendant is worried about the stress on the children."* (15 May 2007)

> *"The defendant is involved in the bringing up of the children and supports them financially".*
> (29 May 2007, counsel seeking shorter remand and using children to lever for this outcome)

On a couple of occasions, children at court have run up to their fathers while they were in the dock (15 May 2007 and 19 June 2007). Surprisingly this contact was not interrupted by any court personnel. On 15 May 2007, a defendant who had been remanded in custody appeared in the court. He signalled, pointed and mouthed words to the victim throughout the court proceeding. He began waving frantically at his children who were outside the court room and looking through the glass window in the door. The children came into court and a small toddler ran through the court room, under the bar and into the dock. The defendant picked him up and hugged him in the dock. The custody officer looked uncomfortable and no one in court said anything during an emotional pause.

This defendant had an extensive history of violence recorded on the Preventing Violence in the Home client database. Advocates had recorded that the offender repeatedly used the children as a weapon of abuse against his partner over a number of years. He regularly 'kidnapped' the children following an assault. His behaviour in court, however, was likely to look to an outsider like a genuine interaction from a loving father toward his child. It was commendable that the judge in this case remanded the defendant back into custody, but certainly information from the Preventing Violence database would have been helpful to the judge to reach this decision.

Children in court

For the first three months of the new family violence court, only a small number of children were actually present at court. These children tended to be pre-schoolers or teenagers. The reduced number of victims coming into the family violence list court, in comparison to the general list courts, would obviously mean an overall reduction in the number of children coming into the new court. Sometimes women coming to court do not have alternative care for their children and are forced to bring their children with them.

For the small number of times that children are actually present in court, it may be beneficial for them to hear the judge state that the offender's use of violence is unacceptable and that there are consequences for this behaviour. Children are fundamentally egocentric and often think that they are somehow to blame for the violence. Hearing someone in authority, i.e. the judge, placed the blame squarely with the offender can help them to dispel this belief.

However, there are concerns that in some instances young children have heard explicit detail relating to the offender's actions during an assault being read out by the judge. As this is potentially a traumatic experience for children, especially younger children, it would be ideal if there were onsite and affordable childcare services provided for these children.

Offender accountability

> "Offenders take the court's inability to effectively intervene as affirmation of their right to impose and enforce rules on victims and to engage in strategies that test the court's resolve."
> (Battered Women's' Health Project, Minnesota, 2005, pg 5)

Rehabilitation Focus

In the Auckland Family Violence Court, much mention is made about the court's expectation that offenders reform.

> *"Society needs you to be violence free, everything is up to you now."*
> (24th April 2007)

> *"You have an appalling list of previous convictions. You have a substance abuse problem. People around you and society has a need to be protected from you. Your case is remanded off until 24 July for sentencing options and to look at your progress. This is your last opportunity to address your problems. There is no excuse for behaving in the way you have, in kicking someone you apparently love. She deserves better treatment from you."*
> (1 May 2007)

> *"This court is willing to support you if you do something for yourself."*
> (15 May 2007)

> *"If you come back with fair reports and a serious change of attitude to those around you, the court is likely to support you in a sympathetic way."*
> (22 May 2007)

Offender reform cannot be guaranteed as it is dependent on offenders' willingness and readiness to change. Further, the court cannot actually know for certain whether he has changed or whether the abuse is still happening. Therefore the court needs to have dual aims of offender accountability and rehabilitation, alongside a goal of victim safety.

> "In general, specialist domestic violence courts differ from other 'problem-solving' courts in that they are to consider evenly the safety of victims of domestic violence and ways to ensure offender responsibility and accountability; these courts are frequently described in the literature as 'victim centred' with a primary focus on victim protection. This sets them apart from other alternative specialist courts in which offender well being is the focus – sentencing with a focus on rehabilitation rather than on deterrence or retribution." (Stewart J. Australian Clearinghouse, 2005, pg 4)

Increasing offender accountability is a complementary aim to that of increasing victim safety.

Encouraging early guilty pleas

The Auckland Family Violence Court is modelled on the Manukau Family Violence Court model. In the process document for the Manukau model it is stated that 'not guilty' pleas will not be accepted prior to the family violence list court. This allows the defendant to 'cool down', get legal advice and receive a disclosure package. In Auckland a similar process is used.

There is also an emphasis on defendants entering an early guilty plea to reduce court remands and the need for defended hearings, and to promote offender accountability. There is an expectation by counsel that guilty pleas are beneficial for their client in the new court. Defence counsel have been heard advising defendants to plead guilty to get the benefits of the court (for instance, Section 106, discharge without conviction) and also telling each other to get their clients to plead guilty no matter what.

The court acknowledges that credit will be given for early guilty pleas with a Section 106 discharge without conviction, in conjunction with defendants agreeing to attend a stopping violence programme and/or an alcohol or drug assessment/counselling. It was observed that 80, out of 113 defendants pleading guilty, were given an indication of a Section 106 discharge without conviction.

During the first three months of the court's operation, observations were that in 40% of appearances, defendants are pleading guilty at the list court stage. Comparable data is not available for rates of guilty pleas at the list court stage, prior to the family violence court's introduction. It is likely that the high number of early guilty pleas is related to routine indications that a Section 106 discharge without conviction sentence will be offered upon completion of a stopping violence programme.

The judges in the court have been very proactive in encouraging early guilty pleas and acknowledging them in their sentencing.

> *"Your efforts taken to address family problems and the acknowledgement of guilt mean I exercise discretion and grant you a Section 106 discharge without conviction."* (8 May 2007).

> *"It is very significant that you admitted the offence immediately and pleaded guilty today and that you don't take issue with the summary of facts…"*
> (22 May 2007)

It is unusual for a matter to be remanded off from the family violence list court on a Tuesday without a plea being entered. From observations in court, only 15% of offenders were remanded without plea to a future date. The main reason this happened seemed to be administrative delay, such as no disclosure package being received, court files being lost, or on one occasion the judge having concerns for a victim and wanting the opportunity to review the file and speak with victim advisors.

If a not guilty plea is entered, then processes occur in the court that continue to promote offender accountability along the way. When defendants plead not guilty, the lead judge consistently checks with counsel if any facts are admitted in the summary of facts. He notes on the information which facts are admitted, and this can hasten the prosecution case at defended hearing stage. When defendants plead guilty in the family violence court and their matters are remanded off, their guilty plea is always entered/recorded onto the information. Defendants hold the right to vary their plea at a later stage, but the lead judge explained that this record of an intimated guilty plea assists the court in future sentencing.

Sentencing

In overseas specialist domestic violence courts a key component of creating accountability for offenders is consistent sentencing. In the United Kingdom, sentencing guidelines have been established to enable consistent and appropriate sentencing for domestic violence offending. The Sentencing Guidelines Council state that, due to concern that domestic violence offending was being treated less seriously than other crime, they created the guidelines, acknowledging that:

> "Because an offence has been committed in a domestic context, there are likely to be aggravating factors present that make it more serious."
> (2006, pg.i)

Sentencing appropriately can promote offender accountability and also benefit victim safety. The Sentencing Guidelines Council recommend that sentencing take into consideration the act committed, the context within which it occurred and the impact on the victim of that crime and her safety in the future.

Victim advocates and defence counsel know that sentencing has traditionally been extremely variable in practise, and has been largely determined by the judge sitting on the day. Therefore, it has been difficult for advocates and others to provide victims or offenders with indications about the likely sentence. Offenders have been known to use this uncertainty to pressure victims to not give evidence or withdraw charges, by telling her that they will certainly go to prison.

Unfortunately, a sentencing guide has not yet been established for the Auckland Family Violence Court. A judicial bench book, which includes a sentencing guide, would support a consistent approach to sentencing as well as other processes like remands and bail determinations. The drink driving case law is evidence of the useful aspect of a clearly understood, standardised and upheld approach to sentencing.

However, the lead judge sitting for most Tuesdays has meant that a consistent approach to sentencing has largely been maintained. The lead judge has routinely remanded first time offenders (the majority of offenders that appear before the court)

with a recommendation that they attend a stopping violence programme. They are given an indication that completion of such a programme will result in a Section 106 discharge without conviction (this sentencing option and stopping violence programmes are discussed further in a following section). The lead judge has always been observed to convict repeat offenders, with a sentence that varies according to the offender's history and crime being committed, e.g. supervision, or a prison sentence.

Ministry of Justice statistics on only twenty-one charges finalised in the court (information could only be given on finalised charges) show that fines and deferment are the dominant sentences in the first three months of the court's operation.

Role of Probation

In overseas family violence specialist courts, probation plays a key role in providing information about offenders for bail determinations and sentencing, as well as monitoring offenders after sentencing.

In New Zealand, probation also plays a key role in providing information for sentencing through pre-sentence reports. These reports use a 'ROC/ROI' (Risk of Conviction x Risk of Re-imprisonment) assessment, which is focused on factors relating to the offender rather than risk to the victim. Only more 'serious' offending, as assessed by ROC/ROI, then leads to recommended actions for sentences such as supervision which require ongoing monitoring by community probation. It is problematic that much family violence offending is not assessed as 'serious' using ROC/ROI, because for example it may be the offender's first time appearing in court. Most family violence does not come to the attention of the court, and any assessment of risk to the victim needs to take this into account. In many of these cases, the incident precipitating the matter before the court is one in a long history of violence and abuse. This history is not recognized by ROC/ROI unless there is one or more previous convictions. Further, a risk assessment that adequately recognizes risk to a victim of family violence would incorporate key factors such as whether the violence is increasing and in frequency and/or severity according to the victim.

Overseas, family violence courts have acknowledged the seriousness of family violence crime, by routinely imposing a sentence for first time family violence

offenders of supervision which specifically includes attendance at a stopping violence programme. Repeat or more serious offenders generally receive more punitive sentences. The overseas experience has clearly demonstrated the benefits of having probation monitor offenders' attendance at programmes.

It is of huge concern that New Zealand family violence courts have evolved to commonly giving first-time family violence offenders a discharge without conviction, dependent on programme attendance or completion, and that generally offenders are only sentenced to supervision if they are more serious or repeat offenders. This means that offenders are less likely to complete programmes in a timely manner consequently dragging out the court process for victims. It has also meant that 'self-referrals' of men, on bail from the family violence court, to stopping violence programmes have steadily increased, without funding from the justice sector to support the necessary growth in programme capacity. This is detailed further in the following sections.

Discharge without conviction

Discharging family violence matters without conviction is problematic. This sentence gives a clear message to offenders, victims and public that domestic violence crime is not serious. This approach reinforces societal beliefs that domestic violence is a private matter that has less impact on the victim than a stranger assault or home invasion.

> *"A discharge without conviction enables the court to discharge a person who would otherwise be guilty and treat them as innocent if the consequences of a conviction outweigh the seriousness of the offence."* (8 May 2007)

In the Waitakere Court, the use of Section 106 has been increasingly limited in recent times. Researchers Morgan et al found in their evaluation of the court that:

> "Discharge without conviction is only considered when the judge regards the offence as 'truly minor' and the offender has made adequate progress with an appropriate programme." (pg 30-31)

Observations of 281 cases in the first three months of the Auckland Family Violence Court showed that there were 113 guilty pleas. Of these guilty pleas, the judge indicated that Section 106 discharge without conviction would be considered in 80 cases (71%), if the offender undertook certain steps, generally including attending a stopping violence programme. These matters would not have been finalised in the first three month period due to lengthy remands for offenders to attend programmes, so the final outcome is unclear.

In the Auckland Family Violence Court, indications of discharge without conviction have been applied to a wide range of offences and types of offending. The following examples show the scope of offending for which the court indicated a discharge without conviction:

> ***Male Assault Female - Possession of an Offensive Weapon*** *- Assaulted his wife while she was pregnant* (19 June 2007)
>
> ***Male Assault Female*** *- Put arm around victim's throat and put her in a headlock - grazing her neck. He held her firmly by the arm restraining her. She was calling for help and a man came out of a house. Defendant then let her go.* (19 June 2007)
>
> ***Male Assault Female*** *- Offender hit victim with a closed fist in the face and he noticed blood coming from her mouth.* (12 June 2007)
>
> ***Male Assault Female*** *- Male sat next to female on couch and antagonised her. He then slapped her across the face. Next he went to the kitchen and got the pepper shaker and threw it at the victim. Injuries: bruising to left hand and swelling. Possible black eye coming up.* (12 June 2007)
>
> ***Male Assault Female x 2*** *- The offender grabbed the victim around the throat and in doing so pushed her onto the bed. This resulted in the victim receiving an injury to her neck causing difficulty in turning her head. The victim presented at the Onehunga Police Station at about 10am accompanied by the offender. She stated that she was trying to get to the airport to return to Wellington, at which point the offender became agitated and was arrested for disorderly conduct and male assault female.* (29 May 2007)

> ***Male Assault Female and Wilful Damage*** *- Defendant began drinking at a dinner and became obnoxious and aggressive. He became jealous when he saw victim dancing with an elderly male from the conference they were attending. He attempted to step him out and victim intervened and told him to leave. He threw a glass of wine into her face and followed her to the lifts to go upstairs to their room, Once in the lift he threw more wine into her face and began kicking out the lift doors. Once in the room he slapped her several times across the left side of her face causing swelling and redness to her ear and cheek. As a concerned neighbour came to offer help, he opened the door violently causing a beam to break off from the door hinge.* (22 May 2007)

Sentencing that promotes offender accountability and victim safety must take into account not only an early guilty plea and willingness to attend a stopping violence programme, but also the seriousness of the violence, the effect on the victim, the history of violence, and in general the dangerousness of the offender. A Section 106 discharge without conviction can only be safe for victims if used with discretion based on thorough background information. Sometimes victims have stated to victim advisors that they want the case withdrawn. In these cases, it is again important for the court to have additional contextual information in order to decide whether a Section 106 would 'benefit' the victim.

As discussed previously, currently the court does not have sources of contextual information aside from the victim's input through the victim advisers, and therefore it would be very difficult for the court to ascertain whether a discharge without conviction is appropriate.

The offender's criminal record will provide a very limited context for making this decision, as most domestic violence never comes to the attention of Police. Further, offences of a more serious nature such as assault with intent to injure, threatening to kill, or assault with a weapon are not yet coded under the Ministry of Justice codes in a way that can identify them as domestic related offences. This impacts on the historical information available to the judge when considering the appropriateness of Section 106 for future domestic related offences.

The following example illustrates how more contextual and historical information could enhance the court's ability to assess if discharge without conviction is an appropriate sentence. In a case that appeared before the court on 15 May 2007, a

defendant was given the opportunity to undertake a stopping violence programme and Community Alcohol and Drug Services programme, and was told he would be considered for Section 106 if he completed the programmes successfully. This offender had:

> *"Punched the victim several times to the head, kicked her and dragged her along the floor."* (As stated by the judge in court)

A search of the Preventing Violence in the Home database showed that the victim had told advocates that in a prior incident when Police were not called, the offender had a pulled a knife on her, locked her in the house and punched and kicked her when she tried to ring a family member for help. She described the offender's abuse as including slapping, punching, pushing, restraining, kicking and throwing things. She stated that the offender's violence was getting worse more recently; he had abused her kitten, he prevented her from going out and locked the car keys away. The offender had been stalking her and getting very jealous.

This offender had also had a different victim known to the agency two years prior to the recent case. The Police had attended domestic incidents involving the previous victim and the same offender on two occasions, but on both occasions the offender was not arrested. In light of this contextual information, a discharge without conviction does not seem appropriate.

Discharging without conviction also mean that, as convictions are not recorded, there are no accurate criminal records, and in particular there are not records that are consistent between Police and courts. Accurate records are vital information for determining appropriate sentencing decisions for repeat offenders.

Changes introduced as part of the Sentencing Act 2002, mean that sentences of discharge without conviction on any charge do not show up on offender court histories. In some instances, it has been observed that the judge has warned offenders when granting a Section 106 that the court will know they have received this sentence and they will be treated more harshly in future.

> *"The bottom line is that there is now a record of these charges. If I discharge you without conviction and you come back before the court you will be dealt with more severely and possibly sentenced to imprisonment."* (12 June 2007)

Unfortunately this is not necessarily case. Unless Police undertake a full background check of the offender on the police database, the court will not have access to information detailing discharges without conviction. Prosecution have advised that they would alert the court if a full police background check revealed a previous court appearance for a domestic incident. But it is of significance that the court would not routinely have access to this information until sentencing.

Without information about previous discharges without conviction, the court may offer a lesser indication of sentencing at the list court stage. For example, the court might suggest that the offender attend a stopping violence programme and then receive a discharge without conviction, when with historical information provided, the court would not consider this sentence.

Offenders are sometimes advised in court that a Section 106 will mean there will be no record of their offending.

> *"You are remanded to complete a stopping violence programme, if you do it is likely you will be discharged without conviction. If you do there will be no punitive record."* (5 June 2007)

This of course contrasts with the message given to offenders that the charges will be on record and if offenders come back before court, they will be treated more harshly. Judges need to be clear to offenders that Section 106 means no **public** record, but there will be a record with the Police.

Predominant aggressor

In the USA, 'predominant aggressor' policies which direct the police to arrest only the predominant aggressor, when both parties have assaulted each other, are increasingly common. These policies give police a criteria to identify the predominant aggressor in domestic violence situations, looking at factors such as, for example, whether one party is fearful of the other, whether violence used is part of a pattern of control and domination, or whether the violence has been used in retaliation and the defendant has previously been the victim of ongoing abuse. These policies have become more widespread as criminal justice agencies

understand that arresting the partner who is historically the victim, does not increase safety for victims and importantly may also have a hugely detrimental impact on any children involved. Until the NZ Police, or Auckland City District Police implement a primary aggressor policy, it would be helpful for family violence courts to develop a strategy to respond appropriately to historical victims of abuse who have been arrested for retaliation.

Preventing Violence in the Home advocates find that a significant proportion of male 'victims' referred by Police are listed on the agency's client database as previous offenders, and advocates have previously worked with their female partners. These male 'victims' generally show no fear of their partners and do not want assistance from an advocate. Advocates find that victims who have been arrested for retaliation encounter many more obstacles to achieving safety. Perhaps most significantly, many of these victims will be reluctant to call the Police in the future.

The Inner City Women's Group in Auckland City run 'IRATE', which is an anger management programme for women, to which female offenders are referred to by the court. They report finding that most of the women being recommended by the family violence court to attend their programme are historically the victims and have been arrested for retaliation.

Following are several relevant case histories from the Auckland Family Violence Court where it would have been helpful for the court to have a strategy in place to help identify whether the 'victim' was in fact the 'primary aggressor'.
In one case, a male defendant was before the court facing a charge of injury with intent, and the female complainant was hospitalised following the assault. Defence counsel submitted that the defendant called Police because he felt threatened and the fight was mutual. The judge asked the victim advisor to contact the victim and ascertain her view as to whether the punching was mutual.

Another case that appeared in the court on 16 April 2007 involved a female defendant who appeared on a fighting in public charge. Her counsel explained to the court that her abusive ex-partner had been stalking her throughout the day and had tracked her down. He pulled her from a bar and dragged her into a car. She felt that the only safe way to get away from him was to be arrested and she fought in self defence. Both she and her ex-partner were charged. This woman's matter was stood down for the court to ascertain what the response had been to her partner.

Later in the day on her entering a guilty plea her case was discharged ***with*** conviction.

In one case on 19 June 2007, a female offender was before the court charged with common assault against her husband. A letter from the victim advisor stated that the victim (her husband) wanted her to undertake a stopping violence programme. The defendant stated she would undertake the programme to satisfy her husband. The Preventing Violence in the Home database showed that advocates had been working with this defendant for over 18 months as a victim of domestic violence. In that time the Police had attended on four occasions, but her husband was only arrested on one of these occasions. The victim had reported to advocates that the offender had repeatedly punched her in the face and said he wanted to kill her. She told advocates that when she was arrested, her husband had been arguing with her and he was getting increasingly aggressive with his fists clenched. When she picked up a stool to protect herself, he called the Police and she was arrested. Since her arrest, her husband has frequently used the arrest as a weapon of control by saying, for example *"remember your bail conditions, I will get you arrested if you don't do what I say".*

Reducing and withdrawing charges

The decision to withdraw or reduce charges in the Auckland Family Violence Court is a prosecution decision that is ultimately approved by the judge. Most plea bargaining is undertaken prior to the defendant's appearance in court. Defence counsel contact the prosecutor directly and discuss the possibility of reducing charges in exchange for a guilty plea or withdrawing charges due to lack of evidence. Prosecution uses plea bargaining to obtain guilty pleas as they are perceived to be a good outcome for the court and the victims. Prosecution make assessments about reducing or withdrawing charges by assessing factors such as injuries inflicted as well as the availability of evidence. The difficulty in getting complainants in domestic violence cases to give evidence at defended hearing stage is a major motivator for prosecutions to try and get cases finalised early via a guilty plea.

A recent memorandum for Auckland City Police states that for family violence cases the prosecutor will consider reducing charges in exchange for a guilty plea but "only when appropriate (more than 1x punch, or any kicking will remain male assaults

female, anything less may be common assault).” (New Zealand Police Auckland City District Crime Services, May 2007)

In some observed cases in the court, prosecution have refused to reduce charges and this decision appears to be strongly related to the amount of evidence available on court files. At times, prosecution have requested a remand period to contact the officer in charge of the case to assess how much evidence is likely to be available for the defended hearing.

Prosecutions have stated that they generally do not withdraw or reduce charges based on victims’ wishes alone, but rather make this decision based on available evidence. If this practise was an official policy that was clearly communicated to victims and offenders, victims would be less likely to be held responsible by the offender for the court process, and thus their safety would be enhanced. This would also send a strong message that the court, and not the victim, is responsible for holding offenders accountable.

Charges have been reduced, or withdrawn in 10% of observed cases for the first three months. In comparative data provided by Ministry of Justice (August 2007), the rate of charges withdrawn rose to 43% in the first three months of its operation, up from 17% prior to the introduction of the new court. This data was based on 47 charges of male assault female, common assault, or breach of protection order. There is no clear information that explains the discrepancy between rate of charges withdrawn or reduced based on observations (10%) versus Ministry of Justice data (43%) for the first three months of the new court’s operation. It may be that the Ministry data, based on a small number of charges, is not representative.

For the period 27 March 2007 – 30 June 2007, there were a number of cases when offenders agreed to enter a guilty plea if charges were reduced, say, from male assault female to common assault, and were also given an indication of a Section 106 discharge without conviction, dependent on completion of a stopping violence programme. There is no need for both of these incentives to be offered in order for offenders to plead guilty.

As discussed previously, it is critical that there are accurate records of offenders’ prior appearances and convictions in order to shape an adequate and appropriate response to that offender in future. With regards to charges that are reduced or

withdrawn, it is also vital that records are kept of initial charges. It is also important that record keeping between all agencies involved in the court is consistent to avoid any potential confusion.

Police records are flagged if domestic violence is a factor. This means that if a charge is reduced from male assault female to common assault, the offender will still be identifiable as being convicted on a charge that was domestic. In the Auckland Court however, cases were not flagged as domestic violence in the Court Management System (CMS) until June 2007. So for the period observed, offenders that faced charges that were reduced to common assault will not easily be known to the court if they reappear in future as having previous domestic related matters. This may have implications in terms of appropriate sentencing. With regards to plea bargaining, the lead judge has advised that when police withdraw individual charges from a range of charges the defendant faces, the judge will write on the court record that a particular charge has been withdrawn. The judge might refer to the withdrawn charge, in addressing the offender regarding other charges later down the track.

Stopping violence programmes

Stopping violence programmes aim to challenge and change defendant's attitudes and beliefs about women and violence. Within the Auckland region a number of respondent programmes are offered which have Ministry of Justice programme approval. However, there is variance between programmes in terms of the length of the courses and programme philosophy.

At the initial steering group meetings it was recommended that a list of approved programme providers be made available in the court, for counsel to assist in getting their clients into approved programmes. Unfortunately this list was not produced in the first three months of the court's operation. The court has been reliant on programme providers to actively put their brochures into the court as a way of linking offenders to the programmes. Programme providers are not resourced to be at court each week to ensure there are always brochures available. The court does not provide information about 'approved' programmes. In the first three months of operation, there has always been a risk that offenders will undertake programmes with providers who do not have Ministry of Justice approval. Offenders thereby run

the risk of undertaking a course which at the next remand date is not accepted by the judge as being adequate.

In general there is a danger to victims in relying on stopping violence programmes to 'fix the offender'.

> "Evaluated from a victim's perspective, treatment programmes for batterers are, at best, only moderately successful; at worst, they may be dangerous. Moreover, it appears that when treatment is associated with positive changes, those changes may have less to do with treatment per se and more to do with other factors in the lives of batterers and their partners (e.g. arrest, victim advocacy, effective protection orders). If treatment programmes do have a role to play in improving the lives of battered women, their effectiveness may lie in the extent to which they are integrated with other interventions." (Robertson, 1999, pg 99)

Many overseas studies have been undertaken over the last twenty years to evaluate the efficacy of men's stopping violence programmes (mostly in the United States and United Kingdom). These studies have had varying results and tend to overestimate the effectiveness of the stopping violence programmes (Robertson, 2007, pg 7). Dobash et al (2000) researched programmes in Scotland and found that 30% of men who were placed on a perpetrator programme had been violent within three months after the intervention.

Two highly respected American researchers, Gondolf and Heckert, conducted a large scale, longitudinal research project following the outcomes of 840 offenders who had attended one of four different stopping violence programmes, each based in one of four major U.S. cities (Pittsburgh, Dallas, Houston and Denver). They conducted intake interviews with offenders and victims and then follow up interviews every 3 months, over 15 months. Instead of simply looking at an outcome of re-assault versus no re-assault, they identified a range of outcomes, examined behaviours and offender profiles to build a well rounded analysis. They found that, out of the sample of offenders in the 15 months:

- 22% committed no abusive behaviours
- 26% used controlling behaviour/verbal abuse (victim kept from talking on phone, isolated from friends, stalking, limitations on access to money, including stealing it, swore or screamed, jealous accusations, insults or put

downs, threw, smashed, hit or kicked something, destroyed property, hurt a pet)

- 19% threatened assault without committing a physical assault (to hit, or harm, to kill, to take away children or harm them, to kill or seriously harm other people, to kill or hurt himself)
- 12% committed a one time re-assault
- 21% committed repeated re-assault

(no date, internet publication, see references for link)

Stopping violence programmes do provide potential for rehabilitation of offenders. However, it is dangerous to *assume* that a stopping violence programme will reform offenders and is an adequate response on its own. A realistic expectation of stopping violence programmes is that they offer perpetrators of violence an opportunity to change, and may result in a short to medium term (6 – 18 months) decrease in physical violence. As these programmes do not offer a guarantee of reform, the court should be cautious about using programmes as a substitute for prosecution and conviction.

> "Criminal justice agencies should not use perpetrator programmes as a diversion from traditional responses of arrest, charge, prosecution and conviction. Projects should proactively engage with criminal justice agencies to promote effective sanctions against perpetrators."
> (Respect, United Kingdom association for domestic violence perpetrator programmes, 2004, pg 16)

In using programmes followed by a discharge without conviction, as the routine response to domestic violence, without accompanying measures to promote accountability such as a supervision sentence, the court may send a message to victims that the programme is a 'magic bullet'.

> "One of the main reasons women give for staying in a violent relationship is that their partner has promised to change. When men attend a perpetrator programme (or any other form of intervention such as counselling or anger management) many women will understandably put their trust in the professionals to protect them and their children. Women also tend to be overly optimistic about programme outcomes. Gondolf's multi-site evaluation

> found that 95% of women expected their partners to complete the programme – yet less than two thirds completed three months of programme sessions. The very fact that he is attending a perpetrator programme might lead a woman to have unrealistic expectations and make unsafe choices regarding her relationship that she wouldn't otherwise have made."
> (Respect, 2004, pg 7)

Some overseas research has concluded that the efficacy of stopping violence programmes is largely determined by the amount of monitoring of offenders' attendance. Bocko (et al, 2004) undertook a study of 945 individuals who had been arrested for violating a civil restraining order in Massachusetts, to determine recidivism rates when offenders attended a range of programmes. A key finding of this research was that if offenders had probation supervision, they were twice as likely to complete the stopping violence programme. Furthermore, offenders who completed the programme were much less likely than those who did not complete the programme, to be arrested for further offending in the following six years for a violent offence (33.7% compared to 64.2%).

> "Offenders least likely to recidivate are those closely monitored by their probation officers and who complete a certified defendant intervention program." (Bocko, 2004, pg 9)

For these reasons, the court must ensure there is an adequate system for monitoring offenders' attendance at programmes if there is any reliance on this attendance to achieve accountability or rehabilitation for the offender. As there is no such monitoring system in place currently, the court will generally not know if an offender is not attending a programme until he reappears before the court. Judges are likely to have valuable court time wasted by such cases where men may have to be redirected to attend, or where men may come back, not having completed a programme and vary their plea to not guilty.

By contrast, if an offender is attending a programme as part of a supervision sentence, probation officers generally liaise frequently with programme providers. Probation officers will follow up on non-attendance, and can bring offenders back before the court if these issues are not quickly resolved. This action is possible because the offender is not abiding by his conditions of supervision.

Other courts in the Auckland region have been observed finalising matters after only partial attendance at a programme. Programme providers state that defendants often drop out of the programme as soon as their matters are finalised. Offenders cannot get the full benefit of attending the programme without completion. Programme providers know that the process of change is slow and needs constant reinforcement. By ensuring offenders complete the programme before matters are finalised, the court is maximising the programme's chances of successfully rehabilitating the offender.

In the Auckland Family Violence Court, cases have been routinely remanded for follow up appearances to check on programme attendance. For the most part, cases have been remanded to a date at least several months into the future to allow time for completion, or near completion, of a twenty week programme, which is a common programme length. Offenders are generally advised that at their next court appearance, depending on their progress in the programme, the Judge will consider discharging their case without conviction.

The court's intention in setting lengthy remands has been to allow time for programme completion before the next appearance. However, programme providers have reported that many offenders are not enrolling in the programme until just before their next appearance. The programme enrolment at Preventing Violence in the Home increased steadily throughout the three month period from March. However, in June enrolment increased dramatically as men enrolled who had been remanded off for ten to twelve weeks in March were soon due to reappear. This experience again demonstrates the importance of an ongoing monitoring system to ensure prompt enrolment and consistent attendance.

Currently, programme providers do not have contact with the court regarding attendance, unless an offender is ordered to attend the programme via a protection order or a supervision sentence. Defendants request a letter from the programme provider to confirm their attendance, to present at their next court date. However, a defendant has been observed on a subsequent appearance providing false information to the court about their attendance (as confirmed by Preventing Violence in the Home programme attendance records) and the court accepted this information as being accurate. To avoid this problem, the court needs to routinely require defendants to provide evidence of their programme attendance from the programme provider.

Judges have frequently stated or implied that a Section 106 discharge without conviction is reliant not only on programme attendance but also on a change in attitude.

> *"If you complete and I am satisfied that there is a change to attitude, then a Section 106 discharge without conviction is likely. If not, the court will deal with you very differently."* (19 June 2007)

There are no guarantees that an offender would be truthful to the court about his change in attitude. However by asking relevant questions and challenging any attempts by the offender to minimise, deny, or blame the victim for his violence, the judge is reinforcing the message that the offender is expected to take responsibility for his violence.

Following are some examples when the sitting judge has asked defendants to explain to him/her and the court what they have learned from the programme.

Judge*: "I hope you've learned something. I have confidence that the stopping violence programme focussed on particular issues and I am interested to know what you learnt from the course"*
Defendant*: "The whole problem is based on my wife's anger, I have learned better communication and better ways of dealing with her problems."*
Judge: *"How will you deal with it though if you are tempted to become violent again? You have just talked about your wife, that's irrelevant; I want to know about you?"*
Defendant*: "It won't happen. She's got the help she needs."*
Defence counsel*: "What the judge means is what specific things have you learned from your programme."*
Defendant*: "Oh communication."* (12 June 2007)

Judge*: "It doesn't get much worse than this. So what were the main things you learned from the programme?"*
Defendant: *"I feel better when I go home."*
Judge*: "Have you apologised?"*
Defendant*: "Yes, my partner is here today."*
Judge: *"She may be here but you are in the dock…"* (12 June 2007)

Judge*: "Did you learn anything on the programme? Do you feel more confident to avoid that kind of situation? The chance you are given today is your last. This court will find with leniency – this is a new chance at life, don't spoil it for your partner."*
Defendant not given opportunity to answer (29 May 2007)

Judge*: "Can you tell me anything about the benefit of being on the programme?"*
Defendant*: "I learned about being a man, and ways to deal with anger and trust."*
Judge: *"I hope you genuinely believe what you just told me because you have your whole life ahead of you."* (1 May 2007)

These examples show how limited a twenty week programme (or less) can be in changing attitudes and behaviour. In the United Kingdom, the association for domestic violence perpetrator programmes, Respect, recommends longer programmes of at least seventy five hours over a minimum of thirty weeks (pg 26) in their practice guidelines minimum standards, because behavioural change is a long process. In the United States, programmes are often forty weeks long and some run for two years. California state law requires first time domestic violence offenders to attend a fifty two week programme.

Reading out summary of facts

In many cases, upon sentencing and in the list court following a guilty plea, the judges have referred to the summary of facts when addressing the defendant and the court. This is a practise which greatly promotes offender accountability. The violence is named clearly and the reality for the victim of the crime made clear. Stating the facts of the case out loud encourages the offender to take responsibility for his violence, and openly challenges any minimising of his violence.

> *"You grabbed your partner by the throat, slapped and kicked her…"*
> (19 June 2007)

> *"On the 23 March you were with your ex partner and your child. You slapped her across the face and then punched her. You then got out of the vehicle, dragged her out, threw her on the ground, then smashed her face into the tarmac."* (12 June 2007)

"I read in the summary of facts that you ran towards the complainant and grabbed her, pulled her into the doorway and punched her in the eye, pulled off her ring and necklace, resulting in bruising to her face. You threatened her and continued to punch her twice more. She was terrified." (29 May 2007)

"The victim was terrified that something really bad would happen to her. You drove your car in a way that she thought someone was going to be killed." (22 May 2007)

"On this occasion you were not impressive. On this occasion you punched your partner with a closed fist on the shoulder area, only by luck that you didn't hit her on the head." (22 May 2007)

"You punched her upper body with closed fists and she screamed in pain." (1 May 2007)

"He forcibly punched her in the face, he needs to take responsibility and do something about it." (16 April 2007)

Consistency of judge and tone set by judge

Creating consistency in the court approach by having a lead sitting judge promotes accountability of offenders. When offenders appear before the same judge at each appearance they can have an expectation about what the court response will be. In the recent evaluation of the Waitakere Family Violence Court, Morgan et al (2007) found that,

> "Consistency of approach among the judiciary is very important. If we have visiting judges we do whatever we can to make sure they don't go into the Family Violence Court.' (BB 202, pg 45)

The lead judge in Auckland has a direct and challenging approach toward offenders, calling them to task on their behaviour and challenging them to make positive changes. Offenders know that they will be questioned during their next appearance, and it can make a difference that they are spoken to directly in the court room. For example, on one occasion the judge asked an offender to complete the last three

sessions of his stopping violence programme and report back at his final court appearance about what he had learned from the programme before the case could be finalised. The stopping violence programme that the offender attends advised the report writer that the offender discussed this at his group programme and was planning what he would report back to the court on his final court appearance. The other men in the group were, at the same time, being given a clear expectation of what they can expect if brought before the family violence court.

A specialist judge also provides a consistency of response in more subtle ways that is extremely difficult to achieve if a number of judges share the role. For example, the Auckland lead judge set a formal tone in the court room and ensured that court protocol is observed. Both these measures send a clear and consistent message to domestic violence offenders that the crime is serious.

Generally offenders are directed to stand in the dock when their matter is being heard. The lead judge has been consistent in promoting this practise. However, some of the other judges have not been consistent in requiring this and defendants have been observed standing in the public gallery or beside their lawyers at the bar.

As mentioned previously, several children have been observed running to their fathers and cuddling them while they stand in the dock, with no one in the court intervening. This practise undermines the formality of the court.

In another example, some defendants have sought to address the judge directly, despite being represented by counsel. In some cases the judge has interrupted this and directed the defendant to talk to their lawyer.

> Defendant *"Sir can I say something to you?"*
> Judge *"You can to your lawyer if you like."* (29 May 2007)

Variations in tone, approach and outcomes have been observed between the different judges sitting in the court for the first three months. For example, in some cases defendants have been remanded off to attend relationship counselling, which the lead judge has never been seen to direct. This issue is discussed further below.

Issues affecting both offender accountability and victim safety

Bail

When offenders are arrested for domestic violence, they are ordinarily held in police custody (usually overnight) and appear in the criminal general list court the next day. They are generally bailed from there. Ordinarily domestic violence offenders receive bail conditions that prohibit their contact with the complainant (non-association) and include a clause requiring them to reside at a particular address different to that of the victim.

If enforced, these bail conditions can contribute greatly to victim safety. Overseas research has found that the first five weeks following an assault are when 35% of domestic violence victims are likely to be re-assaulted (Lloyd, 1994, pg 3). A period of formalised non-contact can take the pressure off the victim and give time for advocates to work with her on safety planning. This work may include practical steps like going into refuge or applying for a Protection Order. Periods of non-contact are critical for victims to be able to plan for their future and take steps towards long-term safety.

When making decisions regarding bail, all of the judges sitting in the family violence court consistently took into consideration the safety of victims. Views from victims were actively sought by judiciary, and assessments made independently of this information at times, if it was seen to be in the interests of victim safety. This approach shows a good understanding by judges that sometimes victims are unable to publicly state what they really want to happen at court, due to fear of the offender or pressure from him. On some occasions when victims have asked for charges not to proceed, the judges have made decisions based on assessments of safety for the victim. This approach helps remove the responsibility for the court's intervention from the victim, so that she is less likely to be held responsible by the defendant.

> *"I can't be sure the victim will be safe if he is released on bail. Under the Bail Act the court's paramount consideration is safety for the victim…I have weighed carefully how the defence have presented the case and the*

complainant's views and the court's utter abhorrence for the nature of the offending. There are no circumstances that allow the court to release the defendant on bail." (16 April 2007)

"It is not unusual for complainants to want to withdraw charges, we expect that in this court. You have serious convictions. I strongly suspect you have influenced the complainant." (15 May 2007)

"I am not prepared to make a decision about bail without her input. It may be she doesn't want to say anything and that is up to her." (15 May 2007)

One case on 24 April 2006 consisted of a defendant charged with assault with a weapon, wilful damage, threat to kill, failure to answer police bail, male assault female and a threat to kill verbal, plus a breach of protection order charge. The victim had advised the court that she wanted charges dropped. She was in court and continuously stated loudly from the public gallery that she wanted charges withdrawn. Her partner had been remanded in custody. Prosecution indicated that police held fears that the defendant was placing pressure on the victim through intimidation and threats and they had concerns for her safety. The judge stated that he gave consideration to her view but that the court's paramount concern was the safety of the victim and so he would not grant bail and remanded the matter to a defended hearing.

Judges have generally taken the time necessary to clearly explain bail conditions to offenders. This seems to be largely due to the initiative of the lead judge who routinely and explicitly explains bail conditions to offenders. This process goes a long way to increase victim safety for reasons further explained below. One report writer has previously been a court employee for three years and not witnessed this practise before in other courts.

"Not to communicate with the victim in any way, even if she makes contact. Not to respond, not to offer violence, or threaten violence." (1 May 2007)

"Bail is to continue, you are not to communicate with, or contact the complainant." (24 April 2007)

It has also become commonplace in the new court for the judge to explain the consequences of breaching bail to offenders. The lead judge has advised that he routinely records when he warns offenders about breaching bail, so that further down the track there can be no disputes about whether or not the offender was aware of the conditions and consequences of breaching.

> *"Bail to continue, there is a curfew in place from 9pm until 7am, you are not to communicate with the complainant or any other witness. If you breach your bail you may be rearrested and held in custody until your matter is finalised."* (16 April 2007)

> *"Bail conditions continue. Not to offer violence to anyone and no consumption of alcohol. I have issued a warning with this bail. If you breach, you will be held in custody."* (12 June 2007)

> *"If you breach your bail or Protection Order you will be arrested and held in custody."* (1 May 2007)

> *"If you have contact you will be arrested and brought back before this court."* (19 June 2007)

> *"If you breach you will be arrested and brought back and held in custody. That's how serious and important bail conditions are."* (12 June 2007)

Victim advocates know that it is not uncommon for offenders to go straight from their court appearance to the victim's home, even if bail conditions of non-association are imposed. It is rare for police to check on offenders' whereabouts following court appearances and undertake regular bail checks. Furthermore, offenders have been known to telephone their victims from custody when they have been charged and arrested (Police in Auckland are working hard to eliminate this practise).

Victim advisors routinely contact victims following an offender's court appearance and explain the bail conditions to the victim. Advocates often hear victims report that offenders do not obey their bail conditions, as they will often openly disregard their bail conditions, feign ignorance or 'reinterpret their meaning.' It becomes very confusing for a victim to try and decode the mixed messages she might be getting about bail conditions. In the new Auckland Family Violence Court, victim advisors sit

in the court and are able to take down detail of the proceedings, including how the judge explains bail conditions to offenders. Thus, this information can now be directly relayed to victims so they know exactly what the offender has been told.

In the Auckland Family Violence Court, when victims have requested that non-association conditions are lifted, and the judge has complied, the judge has generally attempted to maintain some level of protection for victims by changing the 'non association' bail condition to 'not to offer violence'. This alteration to bail conditions was made in 19% of the appearances observed. When a change is made of this sort sometimes the judges have explained what this means:

> *"If she doesn't want to talk to you, then you have to respect that."*
> (24 April 2007)

> *"If required by the complainant, you must leave the complainant's address."*
> (8 May 2007)

One of the men's stopping violence programme providers stated that men in groups have expressed confusion about this condition as they have discussed what they think it means in the group. This feedback was passed back to the lead judge so that explanations for this particular condition are now routinely given.

In the new court, the judiciary have on occasion ordered defendants to attend a stopping violence programme as a bail condition. This initiative compels defendants to attend programmes, rather than relying on them to attend of their own volition.

Stopping violence programme providers in Auckland agree that any method of compulsion with potential consequences for non-attendance is useful in terms of ensuring consistent attendance. Making attendance a bail condition does mean that the consequence for non-attendance is a breach of bail. However, processes have not been put in place for providers to notify the court about a lack of attendance so that the court can undertake a breach of bail charge. Further, programme providers were only aware that programmes were being made a condition of bail when a report writer advised them. For this condition to be effective, systems will need to be established between Police, programme providers and the court to notify absences or lack of enrolment.

Focus on the offender's violence (victims not held responsible)

With strong leadership shown by the lead judge, the family violence court judiciary have largely kept their focus on the offender's violence, rather than be sidetracked by defendants' excuses and extraneous issues. Judges have consistently challenged offenders to take responsibility for the violence and do something to change their behaviour.

> *"There is no excuse for kicking and punching. It is never justified. Appropriately you are sentenced in a way that recognition is given and you accept responsibility."* (24 April 2007)

> *"You have pleaded guilty to assault. On the face of it, the way you behaved is serious for both you and your partner. You have previous problems with alcohol and that needs to be addressed. Usually the person standing in the dock doesn't think they have a problem and everyone else in court thinks that they do. You have to do it, no one else is going to."* (15 May 2007)

> *"I read in the summary of facts that you ran toward the complainant and grabbed her, pulled her into the doorway and punched her in the eye, pulled off her ring and necklace resulting in bruising to her face. You threatened her and continued to punch her twice more; she was terrified.* – Defendant challenges facts - *"The fact that you are disputing the facts shows that you have a long way to go. You need to do something about your problems and you need to do it now; your behaviour is completely unacceptable."*
> (29 May 2007)

> *"While driving, you had an argument with your partner where you hit her. You then pulled her from the vehicle, punched her again and pulled her to the ground by her hair. You then kept bashing her. Later on at home, if this wasn't enough, you then continued to punch her and pulled by her hair to the ground again…My summary is that you have minimised the Summary of Facts with regards to your own behaviour. You said you can't remember as you were intoxicated. If that is the case, you must front up and believe your wife. What possible reason could she have for making this up?"*
> (12 June 2007)

At times judges have challenged myths about domestic violence in the court room, thereby using the court as an educational forum for the benefit of offenders and the general public. For example, judges have highlighted the seriousness of violence when defence counsel have minimised it in their submissions.

> Defence counsel*: "The defendant claims that leading up to the incident the complainant had been following him and had harassed him. He had sought advice from the officer in charge. There was anger and distress on both sides. He pushed her away around the throat area while she was in the car. He admits that this was wrong. He damaged the car"*
> Judge interrupts *"With a sledge hammer!"* (1 May 2007)
>
> Defence counsel*: "He accepts responsibility and the summary is accepted. He was extremely intoxicated and can't actually remember. At the time he was living with the complainant and she wouldn't let him in the house. He has no previous convictions"*
> Judge: *"The effects on the complainant were profound for her own welfare. You throwing a concrete block through the rear window of her car and you being so intoxicated you can't remember."* (29 May 2007)
>
> Defence counsel*: "He has a letter from the doctor, he has been doing anger management with the doctor weekly. According to the doctor, stress and bipolar are all contributors…He has stopped drinking alcohol, and counselling has benefited the relationship"*
> Judge*: "You have issues in your life you need to deal with. There is never an excuse to assault anyone, especially your partner. Whatever the medical problems, no excuse."* (19 June 2007)
>
> Defence counsel advances that there was no physical violence, only verbal.
> Judge: *"Though you weren't physically violent, you were verbally abusive and you threatened your partner. Your daughter and grandchildren have been exposed. Unless you protect them, I will."* (22 May 2007)

In many instances the judge has stated to offenders that their partners did not deserve to be treated how they were, and encouraged offenders to take responsibility for their violence and do something positive about it.

> *"It depends entirely on what you do, your attitude and your progress. It has nothing to do with the complainant and I don't expect you to turn to her for support in these things."* (1 May 2007)

> *"You slapped her across the face and then punched her. You then got out of the vehicle, dragged her out, threw her on the ground then smashed her face into the tarmac…I hope you realise the effects of your behaviour. She did not deserve, or ask for that treatment. You want to tell the victim that you are sorry. This will not happen in the foreseeable future. It is a good idea to separate from your partner. I will extend to you a chance to change. Stay away from your partner."* (12 June 2007)

The Auckland Family Violence Court judges have clearly sent the message that domestic violence is never okay.

> *"It is not uncommon for the victim to want to withdraw charges. However, the court's perspective is that this is a serious matter that needs a serious response."* (16 April 2007)

> *"Domestic violence is always regarded as serious, so serious this court is a special court to deal with domestic violence cases. It is not uncommon for violence to escalate, and there are a significant amount of murders each year, therefore I am concerned with your charge."* (8 May 2007)

> *"Your behaviour is unacceptable. You cannot go around punching and kicking someone, especially if it involves someone you love. Your behaviour is inexplicable and inexcusable."* (15 May 2007)

> *"You have children learning that what you do to your wife is acceptable. It is not. I have come to the conclusion that your family and community need to be protected from you."* (19 June 2007)

The lead judge has promoted victim safety by taking steps to remove responsibility for the violence from the victims. In some cases defence counsel have argued that the assault has come from a *troubled relationship* and that couple counselling would sort the *difficulties of the couple*. The lead judge has challenged statements like this. He has thus sent a strong message to offenders, victims and the public that

responsibility for violence lies with the abuser. This approach promotes victim safety by allowing her to feel validated in calling the police and frees her from feeling responsible for 'fixing' the problem or trying to prevent the problem in the future.

In a case heard on 1 May 2007, for example, a male defendant charged with injury with intent attempted to have the charge reduced to common assault. This was a serious assault which left the victim hospitalised. Defence counsel submitted that the defendant was happy to do anger management and couple counselling. The judge clearly drew a distinction between causal factors for the violence stating

> *"He doesn't need relationship counselling, he's got alcohol and violence problems.""*

In a small number of cases, couple counselling was built into remands of cases, but this appeared attributable to other judges sitting on those particular days, who were not familiar with the lead judge's views on the place of couple counselling in the family violence court. By making decisions that mandate referrals for victims to counselling, the court is demonstrating that the victim is at least partially accountable for and is contributing to the offender's abuse; a dangerous message to be sending to offenders and the general public.

If other issues are identified by prosecution, counsel or the judge, then the defendants are being remanded off to attend multiple programmes and are required to report back from all programmes attended.

It has been observed that counsel sometimes offer many excuses for the violence in their submissions to the judge. Abuse of alcohol has been suggested by the defendant, or defence counsel, as the reason for violence in 5% of the court appearances.

> *"He has a lengthy history, an unstable past, his big problem is alcohol abuse. The defendant is embarrassed and ashamed."* (1 May 2007)

> *"The defendant has not drunk for two and half years before this occasion in court. He claims alcohol triggered his temper, it was a singular outburst. His rheumatism affects his ability to work…"* (16 April 2007)

> *"A gambling addiction for 12 years has caused loss in his life, otherwise he is a law abiding citizen. He didn't appreciate the significance of the Protection Order."* (5 June 2007)
>
> *"The complainant has a borderline personality; there is some stress in the relationship."* (29 May 2007)

The judges have largely separated violence from other issues in the defendant's life, such as alcohol, gambling and mental health. This has sent the message that there is never an excuse for violence and violence is not an automatic response to stress or substances. Judges have demonstrated an awareness that alcohol and drugs can exacerbate violence, but are not the cause.

Training for stakeholders

In order for family violence specialist courts to most effectively promote victim safety and offender accountability, it is critical that stakeholders involved receive appropriate training. Ideally this training includes understanding the dynamics of family violence as well as specific functions of the other roles of the court stakeholders.

As there was no formal domestic violence training being made available to judges, or other stakeholders prior to the new family violence court commencing, Preventing Violence in the Home offered to provide such training to prosecutions and court probation services. Court probation services accepted this offer, and were very receptive to information presented by Preventing Violence in the Home staff. While domestic violence training was not provided to the police prosecutions team, the prosecutor assigned to the family violence court, Sergeant Bruce Leaning, did spend an entire day at the office of Preventing Violence in the Home, learning in particular about the advocacy service.

As the judge plays such a pivotal role in any courtroom, it is especially critical that judges receive specialised training. There are excellent models from overseas, both in the United States and the United Kingdom, of family violence training for judges. Unfortunately, no such training is yet available for judges in New Zealand. However, all but one of the judges rostered into the new family violence court were Family

Court judges and therefore have experience in and knowledge of family violence cases. In addition, the Family Court bi-annual conference includes various papers on violence and so Family Court judges are able to access some limited training on family violence specific to their role as Family Court judges at relatively regular intervals.

Preventing Violence in the Home offered to coordinate a special briefing for the Auckland Family Violence Court judges in April 2007. It was encouraging that the judges were very receptive to this offer. The briefing covered information about advocacy services, men's stopping violence programmes, issues relating to children, and police response to domestic violence (presented by the District Family Violence Coordinator, Senior Sergeant Lyn Hayward).

Fast tracking family violence cases

Fast tracking of family violence cases was stated as one of three goals for the Family Violence Courts in Ministry of Justice pamphlets which were produced in early 2007 and then withdrawn. This may be an important goal in terms of the courts' administrative efficiency. On its own, this goal is unlikely to achieve greater victim safety or offender accountability. However, fast tracking cases may be useful as part of a larger strategy of specialisation for family violence courts.

A 'family violence fast tracking practice note' was issued by Judge Carruthers in November 2004, which requires that:

- A plea is entered to a domestic violence charge not more than two weeks after the defendants' first appearance.
- If the defendant pleads guilty he or she is to be sentenced, or remanded for sentence in the usual way.
- If the defendant pleads not guilty, and if status hearings are held for domestic violence cases at the court where the charge is to be heard, the following timetable is to apply:
    - The status hearing is to be not more than four weeks after the plea is entered.
    - If the charge is not resolved at the status hearing, the defended hearing is to be not more than six weeks after the status hearing.
    - (Notwithstanding the preceding paragraphs, but subject to paragraph 10), a domestic violence charge is to be heard and determined, with the exception of any sentencing, within 13 weeks (i.e 3 months) after the defendant's first appearance. If such a charge is replaced by another domestic violence charge, that time limit relates to the first appearance.

The practice note is not being adhered to in the court, because the process of remanding cases off for extended periods of time, in order for offenders to complete stopping violence programs, makes the interpretation of what is known as the "2, 4, 6 rule" impossible. The court registrar was unaware of whether the practice note was being considered at all in the new court.

It is getting harder to get an early date for appearances as cases are being remanded further and further off for programme attendance and filling up the list for new matters.

Initially, solely domestic violence defended hearings were going to be heard on a Thursday, beginning in May 2007. The court initially put the domestic violence matters in with general defended hearings but judges prioritised domestic violence matters on the day. In June 2007, a court was made available to hear only domestic violence defended hearings which was an improvement, but it seems one day is not enough for the number of cases now remanded off for defended hearings. As at August 2007, time was not available for defended hearings in the family violence court until November 2007. Hence, it is now faster to have a matter appear for a defended hearing in the general courts than in the family violence court.

It is still inconclusive whether the Auckland Family Violence Court is achieving greater efficiency and a decrease in time delays. A comparison in disposal time between the three months prior to the family violence court operating and the three months of its operation show that disposal time has increased dramatically, as shown in the chart below. However, court observations show that of the 281 offenders observed in the court in the first three months only, 30 offenders or 11% had their matters finalised. Therefore, we can only assume that the chart below lists matters as being disposed when a guilty plea is entered, rather than at the time of sentencing. This is of concern as there is potential for offenders to not complete a stopping violence programme, and to then vary their plea and prolong their case.

Statistical data for the 3 months 1 July 2007 to 30 September 2007 may also show a different picture.

Table 4: Number of prosecuted family violence charges, by disposal time

	Auckland Family Violence court 27 March 2007 to 30 June 2007		Auckland District court 27 December 2006 to 26 March 2007	
	Number of charges	%	Number of charges	%
within one day	8	17	4	2
next day - 2 weeks	13	28	2	1
>2-4 weeks	12	26	3	2
>4-6 weeks	3	6	4	2
>6-8 weeks	3	6	7	4
>8-10 weeks	4	9	10	6
>10-12 weeks	3	6	6	4
>12-14 weeks	1	2	6	4
>14-16 weeks	0	0	16	10
>16-18 weeks	0	0	13	8
>18-20 weeks	0	0	17	10
>20-22 weeks	0	0	10	6
>22-24 weeks	0	0	9	5
>24-26 weeks	0	0	6	4
more than 26 weeks	0	0	53	32
Total	47	100	166	100

Notes:

1. **Source: Ministry of Justice.**
2. **Figures are provisional.**

Victim safety is often undermined by lengthy court delays, as the longer matters drag on, the more pressure is usually brought to bear on her by the offender. This may mean that it is ultimately harder for her to give evidence at defended hearing stage. There is also the potential for offenders, given an indication of section 106 after pleading guilty, to not engage with a stopping violence programme as recommended, return to court and vary their plea to not guilty, thus prolonging the court process.

Recommendations:

Following are a list of recommendations for modifications to the Auckland Family Violence Court, based on findings in this report. It would be beneficial to establish working groups to undertake development work on each of these recommendations to enable more participation of stakeholders in court development and speed up the change process.

Court Process/Protocol

- Create court protocols that standardise court practise and include agreed ways for agencies to share information with the court that promote victim safety. Protocols should clearly state goals of victim safety, offender accountability, and reduction in re-victimisation (not re-offending, as most domestic violence does not come before the court). Protocols should also include a primary outcome of increasing victim satisfaction with the family violence court, to be measured in the evaluation.
- Ensure a workable system for routine information sharing between the Auckland Family Court and the Family Violence Court.
- Continue to refer to the summary of facts in all cases at every possible opportunity.
- Continue to promote consistent messages that domestic violence is abhorrent, it is not the fault of the victim, and children are always adversely affected.
- Do not ask victims in court to provide feedback on defendants' behaviour.
- Routinely require that defendants adhere to court protocol and stand in the dock, do not address the judge unless requested, do not gesture or speak with victims in the public gallery, do not pass notes to custody officer to pass on to victims, or to their lawyer to pass to victims.
- Intervene if children approach the defendant while he is in the dock.
- Focus on the offender's responsibility for his own violence and challenge defendants' excuses for their violence.
- Use the opportunity when Family Court judges are sitting in the family violence court to promote consensual Protection Orders being made by standing down matters. This allows time for victims to apply for Protection Orders, with the summary of facts attached as an affidavit and consent by the offender for a final order to be made that day.

- Create a predominant aggressor policy and procedures to enable the court to identify when defendants have historically been victims of domestic violence, so that sentencing can take this into account.
- Include risk assessment material from Police and Preventing Violence in the Home, and where applicable from Child Youth and Family, routinely into court considerations, i.e bail and sentencing.
- Use expert witnesses in defended hearings, especially when there are indications that the victim may retract her statement.

Court Stakeholders

- Specialise all positions in the court, including the court registrar, so that positions are not only given to dedicated staff, but more specifically to staff with in-depth family violence training. Specialist staff need time allotted for ongoing training in their specialist role, as well as more time to carry out a specialised set of duties.
- Extend the court registrar position to include case management of the family violence court.
- Do not use the family violence court as a training court for court takers.
- Establish a role for independent victim advocates in the court with speaking rights. These advocates need to be drawn from the local community.
- Provide specialist training on dynamics of domestic violence for all court stakeholders.
- Have a specialist judge sit in the court and avoid rostering of judges into this court.
- Have probation staff routinely liaise with Preventing Violence in the Home advocates to incorporate victim information into pre sentence reports. For offenders on supervision, liaise with advocates and stopping violence programme providers, and recall offenders to court if necessary based on information provided.

Monitoring and Evaluation

- Create and implement an information and data collection plan to assist with the ongoing monitoring and evaluation.
- Form a working group to create a schedule for the type of information that would be useful to collect with regard to the court and its processing.

- Ensure all domestic violence matters are easily identifiable once entered into data systems.
- Support Preventing Violence in the Home to undertake regular evaluations of the family violence court, including continued observations in the court and gathering feedback from victims.

Court Roster and Venue

- Establish another defended hearing day each week to shorten time delays.
- Cap the Tuesday Lists at 32 to avoid overcrowding the court room and enable time to stagger cases throughout the day.
- Commit court room 3 as the family violence court on all occasions.

Information for Victims and Offenders

- Prepare a court-approved list of stopping programme providers for defence counsel and defendants at court.
- Install a pamphlet stand outside the court with information from Auckland community groups about services they offer for offenders and victims of domestic violence.
- Produce family violence court brochures that do not pressure victims to participate in the family violence list court.

Security

- Employ additional security staff at the Auckland District Court to ensure that a dedicated and trained security person could be available to the family violence court all day Tuesday and on days when defended hearings are held.
- Keep a high risk security register with security staff based on referrals coming from community groups such as men's programme providers, advocacy services, refuge, victim advisors, other court staff and probation.

Support and Safety for Victims

- Allow victims a support person of their choice at defended hearings.
- Prohibit contact from defence counsel with victims at court or outside of court.
- Prohibit counsel from presenting victims' views in their submissions.
- Facilitate the use of alternative ways for victims to give evidence in defended hearings, as allowed in the amendments of the Sentencing Act.

- Review the Victim Rights Act 2002 to enable victim's information to be put to the judge without defence having access to it.
- Provide a basic childcare service for small children that come to court on Tuesdays; perhaps with the involvement of an appropriate community agency such as Barnardos.

Bail and Sentencing

- Create a judicial bench book with bail and sentencing guidelines to promote consistency that creates accountability for offenders, particularly those who re-offend.
- Routinely impose bail conditions that prohibit contact between offenders and victims (including children) regardless of victims' views, for the first five weeks following the arrest. This would include an 'exclusion zone' for the offender around the victim's home and work address.
- Impose curfews, that allow Police to carry out random checks to ensure compliance.
- Never remand domestic violence matters off for relationship counselling.
- Build at least one routine monitoring appearance into court remands, when offenders attend a stopping violence programme while on bail, to ensure they enrol early in the remand.
- Require offenders show certificates of attendance and completion from an approved stopping violence programme provider, before determining further remands, or finalisation of matters.
- Do not withdraw or reduce the most serious charge in order to get guilty pleas on lesser charges.
- Set a higher 'bar' for what sentence offenders can expect with an early not guilty plea, e.g. no charge reductions and a minimum of conviction with a suspended sentence.
- Use a range of sentencing responses, particularly relying on supervision sentences, as the standard regular option. A sentence of supervision means that monitoring of programme attendance can be undertaken by probation officers and funding accessed for the programme providers.
- Have probation make enquiries with advocates/victims to find out whether non-contact conditions to supervision sentences are necessary.
- Never give the benefit of a Section 106 discharge without conviction, if an offender has already secured a reduced charge and vice versa.

- Consider sentences that leave behind a record of offending (i.e. not discharge without conviction) that is easily traced and will help create a pattern for the future and clearly holds the offender accountable.
- A discharge without conviction should not be considered, or used, without checking information from Police, Preventing Violence in the Home, or others to check whether the incident before the court is part of a pattern of violent behaviour, or really an isolated ‘first offence’.

Conclusion

The Auckland Family Violence Court has been required to follow the "Manukau model," which appears to mean that most offenders are directed to stopping violence programmes, with an indication of a Section 106 discharge without conviction. It is intended that all family violence matters are heard on a Tuesday at the family violence list court in court room three, and that family violence defended hearings are to be heard on Thursdays in courtroom five. Overall, the new family violence court operates very similarly to the general criminal list court, with the significant differences being that:

- all family violence matters are heard on one day of the week in the same location,
- there is some level of consistency in stakeholders present in the courtroom (e.g. judge, prosecutor, probation officer, victim adviser, defence counsel, etc.),
- victim advisors and probation officers are present in the courtroom during the entire list day
- initially, there was provision for longer hearing time for each matter (10 minutes as opposed to 3 minutes)
- no 'not guilty' pleas are accepted at the first appearance

It is of concern that the family violence court has put so much reliance on stopping violence programs as research has found that these are no guarantee of success. It is also very difficult to monitor further offending as it is clear that most family violence happens under the radar of the criminal justice system. Finally, the widespread use of Section 106 discharge without conviction is of concern because it provides very little in the way of offender accountability. In addition it does not leave an accurate record of offending, which is needed in order to make appropriate decisions about future offending.

At the same time, while there is extensive information available in the community from, for example, the Preventing Violence in the Home client database and Police family violence risk assessments, the family violence court is accessing very limited information to assist in making decisions about sentencing and bail. This has the obvious potential to severely undermine the safety of victims and the accountability of offenders. In addition, it is a serious risk management issue for the courts as domestic violence cases are regularly in the media, as a consequence of murders or

serious injuries. Exposure to negative media reporting often follows, when judicial decisions have not prioritised safety concerns.

Many aspects of the Auckland Family Violence Court are working well. The lead judge has always been very proactive at inviting feedback and communicating with stakeholders. In the establishment of the new family violence court, attention was paid to details such as venue, rostering, and appropriate training for some stakeholders. While there are still problems in some of these areas, the lead judge has worked hard to address them.

The lead judge has also set an excellent example for other judges sitting in the court by setting a consistently high standard in the gravity and tone he uses within the courtroom. This means that offenders appearing in court are consistently hearing messages from judges that offenders must take responsibility for their abusive behaviour, and that crimes of violence towards family members are unacceptable.

It does appear that many of the most significant barriers to achieving a truly specialised family violence court, that achieves significant improvement in victim safety and offender accountability, must be addressed at a national level. This would include, for example, standards for sentencing in family violence cases, funding and guidelines for independent victim advocates, and provision of, or access to, ongoing family violence training for all court stakeholders. However, it may be that the Auckland District Court is able to develop some creative local solutions that lead the way for the rest of the country in addressing these barriers.

References

Bocko S. Cicchetti A. Lempicki L. Powell A. *Restraining Order Violators, Corrective Programming and Recidivism,* Massachusetts Trial court. Office of the Commissioner of Probation. Boston, November 2004

Bowker H, Michelle Arbitell, and J Richard McFerron, in *Feminist Perspectives on Wife Abuse*, Kersti Yllo and Michelle Bograd, eds, pg. 158, 162. 1998.

Carruthers DJ, Chief District Court Judge, *Practice Note – Domestic Violence Cases* November 2004 cited in Protocols relating to Family Violence Court at Waitakere District court, June 2005.

Chief District Court Judge Russell Johnson. The *Evolution of Family Violence Criminal Courts in New Zealand*, Police Executive conference, Nelson, New Zealand, November 2005

Dobash R. E., Dobash R. P., Cavanagh K and Lewis R. *Changing Violent Men.* London. 2000

Families Commission and Ministry of Social Development. *Reducing Family Violence. Social Marketing Campaign*. Formative research. Gravitas Research and Statistics Ltd and Partners. New Zealand. September 2006

Families Commission. *Campaign for Action on Violence Within Families*. Family Violence. It's not OK. Taskforce for Action on Violence Within Families. New Zealand. 2007.

Fanslow J. L., & Robinson, E. M. Violence Against Women in New Zealand: Prevalence and Health Consequences. The New Zealand Medical Journal, 117(1206), 1173. New Zealand, 2004

Gondolf and Heckert. *Predicting levels of Abuse and Re assault Among Batterer Program Participants.* Internet publication. National Institute of justice, U.S Department of Justice. *http://www.iup.edu/maati/publications/NIJPredictionStudySummary.shtm*

Helling Julie A. *Specialised Criminal Domestic Violence Courts*, no publication date available. Violence Against Women online resources. www.vaw.umn.edu/documents/helling/helling.html

Jepsen H. *Children Included in Victim Impact Statements, File review*. Family Safety Team. Auckland. 2007

Kivel Paul. Men's Stopping Violence Programmes. Do They Work? In *Te Kupenga Panui* from National Network Stopping Violence. Issue No. 1, New Zealand. 2007

Lloyd S. Farrell G. Pease K. *Preventing Repeated Domestic Violence: A Demonstration Project on Merseyside.* for Police Research Group Crime Prevention Unit. Paper no. 49. London Home Office. 1994

Mackenzie Deborah, *Auckland Specialist Domestic Violence Court*, A Specialist Domestic Violence court design to be implemented in the Auckland District court in 2007, Auckland, 2006

Ministry of Justice, *Victim Information*, The Family Violence court s, withdrawn pamphlet 2007.

Ministry of Justice. *Provisional figures for 47 finalised charges in the Auckland Family Violence court 27 March 2007 to 30 June 2007*. New Zealand, August 2007

Ministry of Social Development. *Taskforce For Action on Violence Within Families.* Wellington. July 2006

Morgan M, Coombes L, McGray S. *An Evaluation of the Waitakere Family Violence Court Protocols*. Massey university and WAVES Palmerston, North New Zealand, May 2007

New Zealand Family Violence Clearinghouse. *Overview of Family Violence Fact Sheet*. Christchurch. December 2005

NZ Herald. Saturday October 28 2006

NZ Herald. Tuesday March 6 2007.

NZ Police National Family Violence Co-ordinator, Internal Report, (2003)

New Zealand Police Auckland City District Crime Services, *Memorandum,* Auckland, May 2007

Preventing Violence in the Home Database. Records of victims and offenders.

Respect. *Statement of Principles and Minimum Standards of Practice for Domestic Violence Perpetrator Programmes and Associated Women's Services*. UK Association for Domestic Violence Perpetrator Programmes, UK, 2004

Robertson N. *Reforming Institutional Responses to Violence Against Women*. PHD Thesis, University of Waikato. New Zealand. 1999

Robertson N. in *Te Kupenga Panui* from National Network Stopping Violence. Issue No. 1, New Zealand. 2007

Sack E. *Creating a Domestic Violence Court*. Guidelines and best practices, on behalf of Family Violence Prevention Fund. San Francisco. May 2002

Sentencing Guidelines Council. *Overarching Principles: Domestic Violence and Breach of Protection Orders.* Response to Consultation. London. 2006

Standing Together Against Domestic Violence. *Speaking Up. Survivors experience of policing as part of a coordinated response to domestic violence*. London. 2006

Standing Together Against Domestic Violence. *Protocol between Standing Together Against Domestic Violence and Hammersmith and Fulham Metropolitan Police*. Available at www.standingtogether.org.uk/partnership.html

Stewart Julie. Specialist *Domestic/Family Violence Courts within the Australian context* in Australian Domestic and Family Violence Clearinghouse. Issues paper 10. Australia. 2005

Ursel E.J. *The Possibilities of Criminal justice Intervention in Domestic Violence*. A Canadian Case Study 1997, cited in Stewart J, Australian Family Violence Clearinghouse. Australia. 2005

Appendix A: Key messages from stakeholders

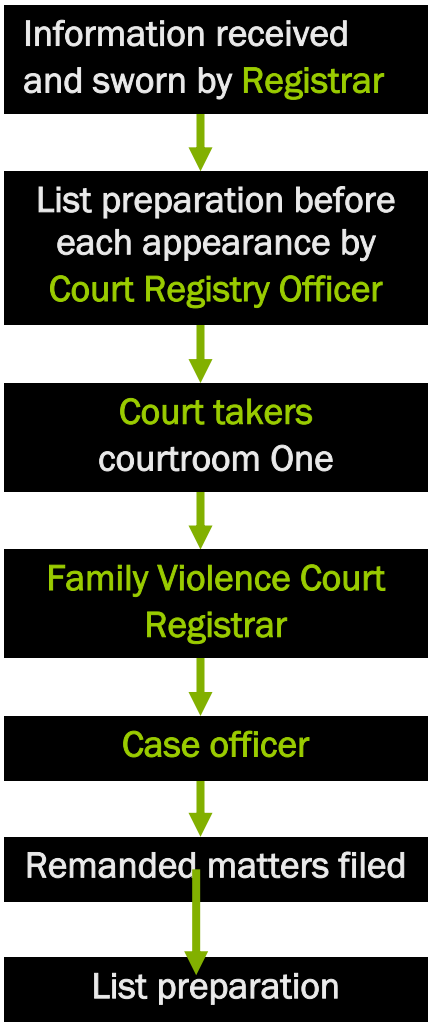
In this section of the report, the role of key stakeholders in the new court, and any differences to their role from the way the court operated previously, are outlined. Feedback from stakeholder interviews about their perceptions of the new court is also presented.

Court registrar

In the 2006 court design report, it was recommended that a specialist court registrar be trained in the dynamics of domestic violence and be involved in the development of the court. Overseas research has found that the success of the court processes depends to some degree on the registrar's attitudes and level of service to clients who use the court (Stewart, 2005, pg 17).

A dedicated registrar was selected for the family violence court in Auckland who had sound court knowledge. The lead judge had expressed a wish to use a registrar with significant experience in court taking. The dedicated registrar was offered some brief awareness training prior to the court's establishment (35 minutes), which was an overview of domestic violence, delivered by one of the Auckland court's case officers and a victim advisor.

Domestic violence matters are processed by numerous hands both prior to and following court appearances. So although the dedicated court registrar is the visible 'face' of court administration for the public, much behind the scenes work happens with every file.



The family violence court registrar does the same job as registrars in the other criminal courts in terms of administrative processing. Although there was discussion prior to the court commencing about this role being specialised, thereby including all case management, case preparation and follow up for domestic violence files, this has not eventuated.

The registrar was not involved in stakeholders' meetings prior to the commencement of the court. However, he has been involved in the meetings at the close of each Tuesday list court and has had the opportunity to feed into discussion about how the court is going. One report writer was told that the court is using the family violence court as a 'training court' for new staff who are learning the role of court registrar, which unfortunately undermines the idea of using a more experienced and specialised registrar. So, from time to time other registrars have appeared in the court.

The court registrar's role is to 'take court'. The registrar produces bail orders on the spot in the court to be signed off in another part of the court when cases are concluded. The registrar is also responsible for handing up relevant documents to the judge that are put before the court relating to each file. The family violence court registrar takes court in the criminal jurisdiction every other day of the week, and is also usually allocated as the registrar on defended hearing Thursdays. The registrar is responsible for entering all of the information from the court at the end of each domestic violence day (complete the data entry, pleas entered, outcomes and remands), but he is not responsible for file management. The case manager is and will be the person who court users liaise with and who is responsible for the progression of the case. The case manager is responsible for checking the file before court and chasing up reports such as pre-sentence reports prior to the next court date.

The dedicated court registrar enjoys taking court in the family violence court. It is an interesting court which is not as 'pressurised' as other courts. This is because of the longer session times allocated for each case in the family violence court in comparison to other criminal courts. The court registrar explained that his awareness of domestic violence has increased as a result of being present in the court on nearly each Tuesday since its inception.

> *"It's a positive court; you can see the difference it makes."*

The strength of being largely dedicated to the court means that the registrar often remembers the files, which has benefits in the specialist court setting that requires a greater attention to detail than some of the other courts.

In the recent Waitakere Specialist Family Violence Court evaluation Morgan (et al, 2007) found that court staff was under pressure to meet case finalisation deadlines. It was pointed out that this expectation was incongruent with the running of the specialist court, which often included a series of lengthy remands for defendants to undertake stopping violence programmes etc.

> *"So [monitoring throughout a 20 week programme] that's something they encourage, yet at the end of the day we get bollocked for it. And it's completely beyond our control"* (CB, 358, in Morgan et al, 2007, pg 38)

There is no evidence that court staff in Auckland Family Violence Court are under a similar pressure. It was uncertain to court staff how the practice note relating to domestic violence timeframes (see section on dealing with family violence cases faster, in this report) translated into the new family violence court in Auckland. The imperative of the court staff is to advance matters to the next available date in every circumstance and balance availability of judges and counsel and court resources in this endeavour.

Some processes in the new court have created administrative difficulty for the court taker. The new longer remand periods (used to track programme attendance) are not easily fitted into the court Case Management System (computer scheduling). The computer system does not make dates available for as long as the remand periods currently require. The court taker is able to manually enter data, but for cases coming into the Auckland court from other courts in Auckland and also outside the Auckland area, there could be trouble with overloading lists or inability to enter new future dates.

Victim advisors

The court based victim services in Auckland District Court were involved in the development and implementation of the new court from the first steering group meeting in October 2006. Victim advisors have been working with victims of domestic violence at court since 1996. Their role has always been to inform victims of the court process, provide the view of victims to the court if requested and to refer victims on to other services if required. The implementation of the Auckland Family Violence Court has not changed the role of the victim advisors in Auckland, but it has impacted on the amount of work that they do. An information sheet has been created for domestic violence victims, explaining a little about the new court, and is attached as Appendix B.

Prior to the new court's commencement, all victims were sent a letter explaining the victim service to them and inviting them to participate in the court process. Victims were telephoned every time there was an appearance by the defendant, to let them know of the outcome of the case. Since the family violence court has been operating, victims are now pro-actively contacted prior to the defendant's appearance and asked for their views regarding bail and sentencing. Contact is made with

victims by way of telephone, as this is viewed as being safer and much easier for victims than them having to physically come into the court house, so they can still participate indirectly if they wish.

This information is then typed up into a memorandum which is read back to victims over the phone and then provided to the judge, prosecution and defence counsel. The judge expects input from the victim advisor on each case, even if that input is that is that the victim does not want involvement in the court case. So the victim advisors are now writing more memoranda for a concentrated one day of domestic violence. In addition they are writing more memoranda for the same victims, as defendants are remanded off for future dates to complete programmes or assessments etc. Although less people are visiting the victim advisor office (walk-ins) and face-to-face interviews have decreased, overall contact with victims has increased due to the new routine of making phone contact prior to defendant's court appearances.

There is a limit to the type of information that victim advisors can include in a memorandum. This is due to both safety concerns and the constraints of their role. For safety reasons it is often difficult for victims to clearly state what they want to happen because the defendant has access to the memorandum. Victims use the victim advisors to relay messages to the judge about wanting changes to court proceedings or orders. But often victims are coerced or intimidated into asking for bail to be amended, or charges withdrawn by their abusive partners. Even if victim advisors suspect a victim is under pressure from her partner they are not able to formally make an assessment to the court as 'experts'. Victim advisors are limited in the scope of their role in that they are to be 'advisers' to, and not 'advocates' for, victims at court. Victim advisors do their best to alert the court in a way that may not be directly evident to a defendant reading the memorandum, if they have safety concerns for a victim. But of course, whether this information is understood is very reliant on the judge having sensitivity to the way information is being communicated and being able to read between the lines.

Limitations on the victim advisor role have also meant that sometimes what victims want to say cannot be put in a victim advisor memorandum. Recently, victim advisors were informed by the Ministry of Justice that they could no longer state in memoranda that victims wanted charges withdrawn. They now have to advise the victim that she will have to write a letter herself if she wants that particular information

to be put to the court. However, this may be positive because it will be made clear that prosecution are responsible for the case progression and not the victim. This approach has the potential to lessen risk to the victim while still holding the offender accountable.

The victim advisors have a positive attitude to the pressure placed on them to put victim's views before the court, because the lead judge has been so consistent in framing victim safety as the underlying reason for requests for this information. The victim advisors understand that ensuring the court has victims' views before it means that some of the claims made by defence counsel can be challenged and that more information is made available for the judge to make safe decisions.

Since the outset of the court commencing, the victim advisors have had a staff member based in the court room all day each week. This is new development for victim advisors who in the past only rarely sat in court and did so only for particular cases. Previously results from the day's hearings were gathered by an administrative person from the criminal section data. Having a dedicated victim advisor in court has improved the amount of information available to victim advisors which can then be passed onto victims. The context and intent behind decision making is now available rather than the decision alone. Victims appreciate the quality information resulting from direct observation of court appearances. It can help them have greater confidence in the court system when they hear that the judge has made strong statements that domestic violence is unacceptable and will not be tolerated.

Victim advisors attempt to facilitate information sharing in the work they do in order to promote safety for women and children. Information exchange between the Family Court and Criminal Court does happen but is inconsistent and often delayed; requests for information tend to come only from the victim advisors to the Family Court rather than from the Family Court to the victim advisors. Victim advisors actively refer clients to other community agencies for follow up work. Victim advisors at court have a good relationship with advocates at Preventing Violence in the Home, and Preventing Violence in the Home email the list of arrests to victim advisors each morning to ensure that all domestic violence matters are identified by the victim advisor service.

Victim advisors are extremely limited in the information that they can provide to Preventing Violence in the Home due to confidentiality constraints of their role. Without express consent from their clients they will not share information with advocates. Sometimes the inability to share information, like results from court appearances, can severely compromise advocate and victim safety. For example, if an advocate is working with a victim to place her in refuge while the offender is in custody, it is of critical importance to the advocate to know when the defendant is dealt with by the court and when he is bailed from the court. Sometimes it is not practical for victims to give express consent to victim advisors to release information on every occasion. However, information sharing with external agencies is not a formal process and continuity could be assured if protocols for information sharing were developed for the courts which clearly state the parameters for this exchange. The Waitakere protocols include a valuable section on information sharing and could be a useful guideline for the Auckland Family Violence Court.

Victim advisors have been told by a number of victims that the new family violence court has made a positive impact on their lives. A number of victims have reported that the consistent and challenging way that the judge has addressed their partners has made a difference to his behaviour, and some have said that it is the first time that their partner has taken notice of a court intervention.

Greater victim participation does have some downfalls, and unfortunately victim advisors have also reported that some victims are taking on responsibility for getting their partners into stopping violence programmes. Victims are asking victim advisors what programmes are available in the community, or offenders are coming to the advisors' office asking for information about offender programmes, or victims are asking about programmes for women saying that the offender has said the court requires them to go to a programme too. Offenders need to be provided with more programme information in court, or by their lawyers, so they do not pressure the victims into finding a suitable programme for them. Victims should not be taking responsibility for ensuring that court recommendations for offenders are taken up and followed through.

Victim advisors are not in a position to make risk assessments for victims prior to them coming to court, as information received by victim advisors is much more limited than that of community victim advocates. Victim advisors collect information on their own data base which may collate historical information, but the Police

summary of facts is the primary source of their information relating to a case, in addition to what a woman chooses to tell them. Advocates at Preventing Violence in the Home have a range of information from other community agencies, as discussed earlier in this report. Unfortunately, at present this information is not permitted in the new Auckland Family Violence Court. The development of information exchange protocols would greatly assist the work victim services could achieve in terms of promoting safety for victims of domestic violence.

Judiciary

Strong judicial leadership has the potential to increase the court's ability to send a clear message that domestic violence is unacceptable. Strong judicial leadership can also help promote and strengthen a coordinated response to domestic violence.

> "Judges can use their authority to show that the court takes domestic violence seriously. When a judge demonstrated his or her commitment to a coordinated community approach to domestic violence prevention and response, buy in from other court and community members is facilitated" (Sack, 2002, pg 7)

A lead judge was appointed to project manage the implementation of the court. The lead judge was at this time newly appointed to the Auckland judiciary. He was initially challenged in trying to establish the court as he was unfamiliar with the environment and with the court's stakeholders. As a newly appointed judge he was also new to 'the system' and so the appointment positioned him on an abrupt and steep learning curve.

The court has been extremely fortunate to have a lead judge who is approachable, flexible and creative in his approach to the development of the court. Although it seems that the Ministry of Justice placed very strict parameters around the design of the Auckland Family Violence Court, the lead judge proved to be open to feedback from stakeholders and the community about concerns and issues that came up as discussions about the court progressed. A continual stumbling block was the Ministry's lack of flexibility in the overall framework of the court, as well as the Ministry's imposed timeline, when it was clear from stakeholders that more development time would have benefited the implementation of this court. The lead

judge reports that he felt it best to get the new court started and then review it as part of a continual evolution. The judge met with stakeholders individually, acknowledging that it was difficult for some to 'speak out' with other stakeholders present. Many stakeholders have reported that they have never experienced interaction of this kind with a judge before.

Initially, there was discussion about how the rostering of the court would work and if indeed it would be possible to have a dedicated judge sitting consistently in the court. A cluster of six Auckland judges, all but one being Family Court judges, were selected to be part of the family violence court roster. The lead judge requested that he be rostered into the specialist list court for the initial six weeks. This was approved and extended to allow him to be the 'regular' judge in this court. From 27 March 2007 until the end of June 2007, he sat in the family violence court on all but three occasions. The lead judge believes it is crucial to the success of the court to have a specialist judge sitting. He also sees the benefit of having all roles 'specialised' in this court.

All stakeholders have reported that they respect the new and inventive approach that the lead judge has taken with the new court, and that this approach is making a difference. The lead judge's specialist knowledge of domestic violence dynamics does make a positive difference in the court, particularly in his ability to separate violence out from other issues presented to the court. The judge had practised in family law for twenty five years before his appointment in Auckland court and during this time spent many years working for Refuge clients seeking Protection Orders.

Overall the lead judge is positive about the new court and its ability to be more flexible and creative than the general court. He understands that the strengths of the new court lie in its ability to gather many more guilty pleas. He is also happy that more offenders are attending stopping violence programmes. He is really heartened to hear from victims, via the victim advisors, that it is the first time a judge has talked to their partner in a meaningful way and the partner is actually 'doing something'.

It has been apparent when other judges have sat in the court, that the good things established under a specialist approach can sometimes be undermined. For example, some judges have been observed remanding matters off for couple counselling. This was unfortunate as it had been previously established in the court,

that couple counselling would not be recommended by the court, nor accepted as a successful programme for the purposes of 'credit' in the court.

In the 2006 court design report it was recommended that a judicial bench book be created. This could provide helpful information and resources, such as sentencing guidelines and recognised programmes, to assist judges in upholding a consistent approach and response to domestic violence. The Auckland lead judge has prepared material for other judges coming into the family violence court to try and ensure a consistent approach is undertaken. He hopes that when protocols are developed further down the line, this process information will be built into them. However, judges are independent and differ in their views about the best approach to domestic violence and do not currently all agree on the best way to respond.

Police prosecutors

From the outset of the court's development it was decided that a dedicated prosecutor would be selected for the new court. This was an excellent decision as overseas experience tells us that a key component of a successful domestic violence court is a specialist approach to prosecution (Ursel, 1997, pgs, 271 - 274). However, the prosecutor has advised he prefers the variety of working across a range of courts rather being dedicated to the family violence court. Since June, a replacement prosecutor has been sitting in the court while the original prosecutor was on leave and then returned to work in the general courts.

In her guidelines for a development of a specialist court in the United States, Helling (no date available, pg 14) recommends that specialist prosecutors be rostered into the court for two years. This period of time offers the best use of personal specialisation but is not so long as to induce burn out. There are no set time frames for the prosecutor in the Auckland Family Violence Court in terms of length of service. The prosecutor initially had no control in his appointment into the new role in the specialist court. No specific training was offered to him via the court or police, but he was invited to attend Preventing Violence in the Home for one day in March 2007 to learn more about services for victims, men's programmes and dynamics of domestic violence. This was a great opportunity for relationship and knowledge building.

The specialist prosecutor has been able to help shape the new court in some ways that protect victims of domestic violence. This was evident in the planning phases of the court and in discussions regarding the location of the new court. The prosecutor provided a valuable assessment when stating that the court's original choice of court room was an unsafe location for victims/witnesses. Similarly, in the running of the court, the prosecutor has mostly put the safety of the victim at the forefront basing decision making on evidence and the context of the offending. He has been considerate about seeking leave to withdraw, or reduce charges at counsel's request. From the prosecution perspective, a guilty plea is a good outcome for the court, in that it removes the compulsion for victims to give evidence, which is always difficult. Prosecution consider the new court to be running well and have found the consistency of the lead judge has improved the general court response to offenders.

Overall the prosecutor experiences the family violence court in a similar way to the general court. The dedicated prosecutor has been given preparation time on Mondays and Wednesday for the domestic violence cases. The specialist court work is similar to that involved in the general court, but there is a little more preparation time and often he has more contact with defence counsel than in other matters. With regard to defended hearings, the process for the prosecutor is no different for domestic violence crime than any other crime.

There has been some difficulty in the file preparation for cases at court. File preparation is now more hurried due to the shorter time frame between initial arrest and appearance in the family violence court, which is equivalent to the old 'status hearing court'. Prior to the introduction of the court, offenders would appear in the registrar's list following their arrest and their cases would be remanded off to a Status Hearing date approximately two weeks into the future.

With the introduction of the new court, offenders now appear in a judge court following arrest for their initial hearing. Offenders are then bailed directly into the family violence list court and this can be within the two week time frame. Files are returned to the officer in charge following the first appearance, for evidential material (including unavailable dates, notebook entries, witness statements, victim impact statements and full disclosure) to be prepared for the next appearance.

The reduction of time between appearances has impacted on the amount of material able to be prepared by police and therefore available to the prosecutor at family

violence list court on Tuesdays. Obviously, a lack of brief of evidence limits the decisions that can be made about continuing with matters, reducing matters, or bail oppositions. Auckland City Police are working to improve the ways front line officers are collecting information and evidence at the scene to ensure that witnesses (victims) are not the only source of evidence and the success of prosecution does not rely wholly on them. This is excellent and proactive policing which is being tried and tested in other countries such as the United Kingdom and the United States.

Preventing Violence in the Home

Preventing Violence in the Home received Police referrals (POL 400s) for 95% of defendants who came before the court in the first three months of its operation. The agency worked intensively with 28.5% of those victims. Directly following notification of an arrest in Auckland City (24 hours per day, 7 days per week), Preventing Violence in the Home advocates visit the victim at her home. Preventing Violence in the Home advocates are likely to have made contact with most victims immediately following an incident/arrest and have valuable risk assessment information which could be available for the court. In addition, Preventing Violence in the Home runs a stopping violence programme for male offenders.

Offender programme providers

Stopping violence programmes has been discussed throughout this report. From the outset of the development of the family violence court in Auckland, stopping violence programme providers knew that the new court would impact heavily on the community sector and in particular agencies providing stopping violence programmes for offenders. Friendship House, a stopping violence programme provider in Manukau, had reported that their programme was in jeopardy due to the enormous increase in 'volunteers' to their programme following the implementation of the Manukau Family Violence Court. These volunteers all had matters in the Manukau Family Violence Court and were being 'encouraged' to attend the programme before having their matter finalised.

> "New Zealand's biggest provider of counselling programmes for violent men, Manukau's Friendship House, are struggling financially because judges are sending men to it informally without any funding attached.

> The multi-church agency in Manukau City Centre says the number of men coming as self-referrals without any formal documentation from the courts has rocketed from less than 20 per cent of its total clientele to 69 per cent last month. "
> (NZ Herald, Saturday October 28, 2006)

In the first three months of the operation of the Auckland Family Violence Court some providers in Auckland City experienced a similar explosion in numbers. As predicted, the new court has had a major impact on already stretched services. Stopping violence programmes are run by community agencies and generally require fundraising by those agencies to operate. In the past, many referrals for programmes have come via the Family Court or Probation and have therefore been paid for by these government agencies. For instance, if respondents are sent to programmes as part of a Protection Order condition, then the Family Court will pay for the programme for that individual. Similarly, if an offender is sentenced to a supervision sentence and is referred to a stopping violence programme as part of conditions of that sentence, then the Corrections Department will pay for attendance in the programme. However, since the introduction of specialist domestic violence courts in the Auckland region, respondents are being *recommended* (rather than *referred)* to attend programmes, so do not bring with them any funding.

For many men, the cost of attending the programme is an obstacle. Most programmes charge at least $20.00 per session, which is at times out of range for men who are unemployed, or supporting large families. For the agencies running these programmes, the cost is high. At Preventing Violence in the Home men are never turned away if they can not afford to pay the nominal fee; a sliding scale is applied in some cases. However, they will not graduate successfully until agreed upon payment is received.

In other agencies outside the Auckland area, men will not be seen without making some financial contribution and in some cases, applications for a disability allowance through Work and Income are made to cover the cost of the programmes. The concern remains that without funding from some source for 'volunteers', the agency ends up having to use money that could be used to support victim services, to keep running the programme. The Inner City Women's Group (ICWG) run a respondent programme for women and they have reported a 50% increase in 'volunteer' women coming to their programme since the start of the Auckland Family Violence Court. ICWG do not charge women to attend any of their programmes but do accept

donations. Obviously, a steady increase in women joining their 'IRATE" programme has had serious implications for this small non government agency.

At Preventing Violence in the Home and Inner City Group for Men, an increase in numbers coming via the family violence court has been observed. Man Alive in West Auckland have not reported an increase in clients from the Auckland court. Te Whare Ruruhau O Meri occupies an interesting position as it is based in Otahuhu, thereby straddling the Auckland and Manukau borders. They have observed an increase in 'volunteers' in their programmes also but would not turn men away who could not pay for the programme.

By the end of June 2007, Preventing Violence in the Home programmes were full to bursting with eighteen to twenty men in each of the three groups run each week. Over half of these men were 'volunteers' who were facing matters in the Auckland Family Violence Court. Subsequently, waiting lists comprised two thirds men from the family violence court. A fourth group has since been started up on Saturday mornings to accommodate this overflow.

Overseas research in programme design recommends groups do not contain more than twelve to fourteen men in each group (Respect, 2004, pg 26). Larger groups become less safe for facilitators and less effective in terms of individual men's engagement levels. Funding remains a serious issue for providers in Auckland City for the time being. Ministry of Justice have said they are aware of the problem and last year committed to addressing it, but no increase in funding was forthcoming in the new court budget.

In the planning phase of the court, the SAFTINET coordinator (Safer Auckland Families Through Intervention Network) requested that suitable lists be compiled which detail stopping violence programme providers in Auckland. This list was primarily to be for the use of counsel as they usually take responsibility for passing on programme information to their clients in the court. The programme list was to be created based on court-approved programmes already contracted by Ministry of Justice. This list is still not available in court six months after its inception. However, pamphlets for programmes have been sourced and put on the court takers bench. The judge has also advised counsel to speak with the Preventing Violence in the Home representative about programme availability when she has been present in

court undertaking observation. Given the court's reliance on these programmes, information about quality programmes should be easily accessible.

Probation

Probation are often asked to do pre-sentence reports to assist judges' decision making on sentencing. Pre-sentence reports usually take five to seven hours to complete and cases have generally been remanded for six to eight weeks for them to be written. Judges may also request same-day reports.

Since the court's inception, a probation officer has been based in the court on Tuesdays. The court probation service has identified an increased workload resulting from the court. The increase is in the amount of pre sentence reports to be completed within one day. Court based probation services report that they undertook three same-day stand down reports in the first three months of the court's operation. These reports all resulted in short terms of supervision.

Ordinarily pre-sentence reports are distributed to the community probation office where the offender lives. If the offender is in custody, then the reports are undertaken by the Mt Eden Probation Office. Same day or stand down reports are undertaken by court based staff.

Staff shortages have impacted on the probation team at court. The demands of having a probation officer in the court all day on the Tuesday have created more pressure for the team in the office. Cases are sometimes stood down in court for an interview between the probation officer and the offender to take place. When this happens another probation officer from the court based team needs to undertake the interview. There is always a requirement for one probation officer to be in court throughout the day and available for other cases that come up. Sometimes lack of people on the ground can translate into a very demanding day for the court based officers. On the 29 May 2007 family violence court day, the court based probation officer had to undertake three stand down reports in one day as there were no other staff to assist that day due to shortages.

In addition, some technical difficulties were experienced by Probation initially with the wiring up of the lap top and links to databases. Accessing case notes was not

possible while computer glitches were experienced, which did limit the amount of background knowledge available to the officer. The probation officer was forced to refer only to copies of probation records, print outs of prior conviction history and any current charges the defendant might be facing.

Probation understands that offenders are given the opportunity of assistance and support a lot earlier in the new court than in our previous system. Prior to the introduction of the family violence court, offenders might first see probation four months after an event whereas now contact is more likely to occur within two to three months of the violent incident.

In the 2006 court design report it was recommended that a specialist probation team be part of the Auckland Family Violence Court and that they be trained in the dynamics of domestic violence. Recommendations were also made calling for the development of protocols to facilitate information sharing practices between probation and other key stakeholder groups, such as victim advocacy services in order to promote victim safety and offender accountability.

Court based probation services were very enthusiastic about meeting with Preventing Violence in the Home to discuss the development of domestic violence training for court based staff and to think more about the development of information sharing protocols. On 19 March 2007, Preventing Violence in the Home trainers delivered a three hour training to probation officers which was well received, and provided a great opportunity for learning more about domestic violence and establishing relationships between the two organisations. Discussion about information sharing is currently constrained by national level policy requirements.

Information sharing would enhance the service that probation can provide for the court and offenders. The current probation service risk assessment ROC/ROI is a risk assessment based on likelihood of re-offending and likelihood of re-imprisonment. This system is not geared to identify safety risks for victims. Its indicators of risk are largely based on offence history. It does not take into account victim's perceptions about future behaviour of the offender, or information on patterns of historical behaviour, regardless of whether or not convictions for that behaviour have resulted.

A probation officer's capacity to monitor offender compliance and behaviour is extremely valuable as discussed previously in this report. Probation are limited in their ability to be involved in all cases as they have no jurisdiction to intervene until a guilty plea is entered at court and if subsequently the judge requests a pre-sentence report.

Defence counsel

Defence counsel play an important role in the Auckland Family Violence Court. Representation on the initial steering group was strong from the outset of the court. However, this representation did not translate into awareness of the court and its introduction by defence counsel as a whole. Counsel heard about the new court largely by word of mouth.

The information in this section was gathered from a duty solicitor who has undertaken a large percentage of the work in the Auckland Family Violence Court since its inception. The new court has impacted on the amount of work defence counsel take on in representing clients. Although only one duty solicitor is required to represent clients in court and one other required to undertake background interviewing, the processes of the new court have meant more work for lawyers down the track. Counsel are often required to also make multiple appearances over a number of weeks particularly with the practise of remanding cases for monitoring appearances to check programme attendance. This has implications in terms of legal aid funding which has not historically recognised these additional appearances as legal costs and reimbursed counsel accordingly. Sometimes counsel appear five or six times for sentencing updates in the court and are only paid for one appearance. This means that more and more lawyers are reluctant to take on domestic violence cases.

Defence counsel do not receive formal domestic violence training. The lawyer interviewed stated that he considered that training is not essential to undertake domestic violence work. This was because a lawyer's role is about their duty to the court and their duty to their client in terms of the client being innocent until proven guilty. From his perspective, an analysis of the dynamics of domestic violence does not fit into this approach to the work. He definitely thinks that defence counsel have a sense of social responsibility and that domestic violence is unacceptable behaviour, but this understanding does not directly shape the duty solicitor role.

Much of the training is 'on the job learning' and he had worked in the Waitakere Family Violence Court for six years so had a good understanding of the specialist court processes. He believes that lawyers would benefit from some training in the expected processes of the Auckland Family Violence Court, which would reduce the impact of lawyers making recommendations to the defendant that do not reflect the processes of the family violence court. Such recommendations may result in changes in court responses to offenders down the track when other counsel pick matters up.

The duty solicitor described ways in which the new court is different from the general list court. The difference is evident in the effort of the court to 'resolve' matters via plea bargaining. He believes that the pressure to move cases through the system more quickly than normal and a focus on offenders accepting guilt and getting into programmes has benefited defendants. The new approach is seen as less punitive and more inclined to be helpful to defendants in the longer term. However the duty solicitor wondered if a twenty week programme is necessary for all defendants, stating,

"I question whether all defendants need 20 weeks of counselling, and on the odd occasion sometimes both partners are as bad as each other and they really just need to get out of the relationship."

Generally, duty solicitors talk only briefly with defendants about stopping violence programmes. They generally do explain that there is a likelihood of a discharge without conviction if there are no previous convictions for violent offending, and the summary of facts indicates no serious acts of violence occurred in the matter before the court. The duty solicitor spoken to for this report feels that 'resolution' of cases (finding middle ground to solve the matter via plea bargaining or discharge without conviction) makes a positive difference to ensure offenders do not reappear in the court in the future. The new court no longer 'hangs offenders out to dry' and the fear of going to prison that many defendants report to lawyers is lessened by the knowledge that 'resolution' of matters is possible and is inclined to encourage early guilty pleas.

Concern was raised by the duty solicitor that in the new court there is a perception that judges believe the victim in the matter no matter what, even when evidence is lacking in support of prosecution cases. Some lawyers feel that the defended hearing process does not give defendants a true opportunity to be considered

innocent until proven guilty. According to the duty solicitor, many senior counsel are recommending their clients elect trial by jury knowing that a jury is less likely to find a defendant guilty than a judge alone.

The duty solicitor argued that there is a need for judicial consistency in the new court to ensure that a fair and predictable response is given to all defendants who come before the family violence court. Judicial consistency would alleviate concerns that in the general criminal court some counsel will go 'judge shopping' to try and get a light sentence for their client.

In considering safety issues for victims, the duty solicitor reported that if he had a serious concern for a victim resulting from their contact with an offender he would pass that concern onto the victim advisors at court. In addition, he stated that he would not make contact with victims and that protocols regarding this are well established.

Security

Security issues at court are discussed in the victim safety section of this report. The coordinator of security at the court ensures that the domestic violence court is a top priority for his security staff at the court. However, in reality there is a serious security staff shortage at the court and security responsibilities at court are overwhelming. There are five security staff, but due to sickness or other leave requirements, usually only four staff on duty each day. These four security officers cover six levels of the district court building, monitoring and responding to need in thirty five hearing and court rooms each day. It is understandable then that the full screening of all people coming into court becomes problematic when that system requires three staff to run, thereby leaving one to two officers to respond to other security issues throughout the day.

It has been noted anecdotally by security staff that defendants' behaviour in domestic violence defended hearings has worsened since the family violence court began. The security coordinator said that this could be a result of increasing levels of frustration of offenders who initially appear in the list court, are remanded off to attend a stopping violence programme, do not undertake a programme, and then have their matters remanded off for a defended hearing.

It is possible, if not likely, that security needs of the court may increase rather than remain constant. Domestic violence continues to be endemic in our city. The new Ministry of Social Development advertising campaign that seeks to set the tone that domestic violence is never ok, launched in September 2007, could well impact on reporting of domestic violence crime. Increased family violence training for frontline Auckland City Police will also continue to increase arrests and thereby court workload.

Appendix B

AUCKLAND DISTRICT COURT
FAMILY VIOLENCE COURT

The Auckland District Court now has a Family Violence Court in courtroom 3 each Tuesday.

- The defendant in the *case* which involves you, will appear there on _____ at _____ and will be expected to enter a plea to the charge(s)

- You are encouraged to contact your Victim Advisor and have your views put before the court so an informed decision can be made on any possible outcome.

- A Victim Advisor will be available to explain what is involved and to help you, if you decide to be present.

- If the defendant pleads guilty the court will look at solutions to see if the case can be resolved.

- Support programmes and counselling may be available to you.

- A protection order may be put in place to assist you and your family in the future.

- If the defendant pleads not guilty, the case will be adjourned to the Family Violence Defended Court 4 weeks away and you could be asked to attend as a police witness.

- If you intend to attend the hearing in the Family Violence court, please contact me prior to the hearing date

- If you require more information please don't hesitate to contact me on (09) 916 ---- or email,

Signed: (Victim Advisor Name)