

## DOMESTIC VIOLENCE COURTS IN CANADA: A SPECIAL SOLUTION

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“He pitched her clothes outside. Then, in a drunken rage, he slammed the door on her hand and punched her in the eye with enough force to turn her face purple and swollen”.

This is the opening of a Canadian newspaper report on a recent domestic violence case. When the abused woman went to the emergency room of her local hospital for treatment, staff recognised the case as one of domestic violence and promptly notified the police. The police photographed the injuries and the abuser, a former boyfriend, was charged with assault. The abused woman was not eager to proceed with the case. She did not even show up in court.

But, undoubtedly inspired by the knowledge of the police photographs, the abuser pleaded guilty. He received what the judge called a “lenient” sentence – 18 months probation, an order forbidding him to have any contact with his former girlfriend, a prohibition on possessing any firearm for 5 years, plus an order to participate in a 16-week spousal-abuse counselling programme and an alcohol abuse treatment programme.

This case took place in “K court” in Toronto, one of the specialised domestic violence courts in the province of Ontario, Canada. The court is named after the letter which is marked on the dockets of all domestic violence cases to distinguish them from other forms of violence. There are 16 such courts already in place in Ontario, with more in the planning stages.

There are four key principles behind the specialised court system – early intervention, vigorous prosecution of domestic violence offenders, support and advocacy for the victims of such violence and a coordinated and integrated response between sectors. Victim safety is a high priority, and the overriding goal is send out a consistent message that society will not tolerate domestic violence.

There are two types of specialised courts. One is a plea court which does not handle any criminal trials, but deals only with cases where the offender is prepared to plead guilty to the offence. The other handles domestic violence cases which involve a full criminal trial.

### *Specialised plea courts*

This court is designed to deal with first-time offenders in cases where there was no visible injury and the couple both want to continue the relationship.

An abuser can appear before this court if he is prepared to plead guilty in exchange for referral to a batterer re-education programme. His partner must agree to his participation in this system, since it is her safety which will be at stake. The court will issue an order forbidding contact with the abused partner during the period of the programme, but it is possible for the couple to agree upon a variation which allows him to return home to live with his partner on a trial basis. The partner can contact the police if she feels threatened or afraid at any time, and the bail condition can be changed to get the abuser out of the house.

When a couple appear before this court, the programme is explained to them together. Then, keeping in mind the importance of the victim’s safety, the woman who has experienced the violence must meet privately with a prosecutor to discuss the

case. Victims are also provided with support from a staff member of a victim/witness programme.

The abuser meanwhile meets with an intake officer who helps decide which batterer intervention programme will be most appropriate for him, looking at factors such as location and language.

The abuser is placed on bail during the 16 weeks that he is expected to attend the programme. During that period, his partner will be contacted at least four times by a community agency to check on her safety and to offer her a referral to various support programmes.

If a man assigned to an intervention programme fails to attend it as required, the programme must notify *three* different police officers. The abuser will then be re-arrested and his case will proceed to the other specialised domestic violence court for sentencing. But there is a very low rate of breach during the 16 weeks, because offenders know that the consequences of failure to participate in the programme will be serious.

If the intervention programme is successfully completed, the offender must return to the court to receive his final sentence, which is usually a conditional discharge with one year's probation (meaning that he will have no criminal record and spend no time in gaol, on the condition that he does not commit any similar offences within the next year).

The plea court provides a quick response, in the form of an "early intervention" which can head off future violence.

### *Specialised trial courts*

Toronto's "K Court" is an example of the other type of specialised court, a criminal court dedicated only to domestic violence cases. It is staffed by a specialised team of prosecutors, and judges rotate through the court on a regular basis so that they also gain specialised experience.

An important backdrop to the establishment of the specialised courts was a new police policy adopted in light of the fact that so many cases of domestic violence are withdrawn by the victims. In terms of the new police approach, the responsibility for laying charges rests entirely with the police, who are not even supposed to ask the victim if she wishes to press charges. And the police *must* lay charges in the case whenever there are reasonable grounds for believing that a violence offence has been committed.

In addition, a Specialised Police Reporting Form was developed for domestic violence cases. This form includes more detail than ordinary police reporting forms, and was designed to guide the investigating officer in carefully collecting all available evidence. For example, police are required to produce tape recordings of the telephone call from the victim to the police where possible. They are expected to make a video or audio tape-recording of their interview with the victim immediately after the incident, which could later be used as evidence in the court cases. This evidence is supplemented by medical records, police photographs of the crime scene and the victim's injuries, and statements taken from any witnesses to the crime.

To prevent withdrawal of the case at the prosecution stage, the victim is contacted by a Victim/Witness Assistance Programme and encouraged to come in for an interview where she will be given a friendly orientation to the court and the criminal justice system and referred to appropriate community agencies or services if she wishes. Every effort is made to ensure the victim's co-operation, but broadening

the pool of available evidence means that a conviction will be more likely even without the victim's assistance in the case.

As in the case of the plea court, an offender who is found guilty can be sent to a 16-week batterer intervention programme as one component of the sentence. However, domestic violence is treated as a serious offence in this court. This fact is part of what makes the system work. Offenders must know that a string of domestic violence offences will land them in increasingly serious trouble. In this way, society sends out a message that domestic violence and abuse will simply not be tolerated.

*Do specialised domestic violence courts work in Canada?*

The answer is a resounding "yes". The specialised domestic violence courts in Ontario were monitored in 1997 and 1998, to assess their effectiveness. The evidence points to an improvement in the treatment of domestic violence cases in several senses -- a lower rate of withdrawals and dismissals, a higher rate of guilty verdicts (both guilty pleas and findings of guilt after trial), and a higher number of victims who were present in court and willing to co-operate with prosecutors. Even more importantly, a study which tracked offenders who successfully completed batterer intervention programmes found that few of them committed repeat offences. This is crucial, as it indicates that the combination of early intervention and serious treatment of offenders does help to prevent continued violence.

*Could a similar system work in Namibia?*

Again, the answer is "yes". While it might well be too expensive for Namibia to establish a new system of specialised courts, many of the successful procedures of the Canadian courts could be replicated in Namibia's existing criminal courts. For example, in the area of juvenile justice, screening of offenders and diversion programmes for appropriate cases have already been successfully incorporated into Namibia's criminal justice system. A similar approach could be taken to domestic violence, to provide a workable and realistic response to this widespread problem.