

**A JUDICIAL PERSPECTIVE ON MANITOBA'S
SPECIALIZED FAMILY VIOLENCE COURT**

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MANITOBA COURT OF QUEEN'S BENCH**

INTRODUCTION

I have been asked to provide a judicial perspective on the approach taken by the Manitoba Courts to family violence cases following upon legislative policy and statutory reform in this area of the law. Dr. Ursel has presented the historical overview of how the zero tolerance policy directives came into effect. I propose to briefly outline:

- a) the relevant legislation and proposed amendments to it;

- b) the process which led to the creation of the Front-End Intake Court;

- c) the pilot project respecting the Front-End Intake Court recently instituted by the Provincial Judges Court;
- d) my perspective on the impact of specialized courts.

In doing so, I will touch upon my past experience as a Provincial Court Judge in Family Violence Court and my experience with family violence cases in the Court of Queen's Bench of Manitoba.

Family violence and sexual assault cases involve social context issues which complicate their adjudication. Many child sexual assaults are perpetrated by a member of the family unit, whether biological or step-parent, or someone close to the child's family. Both family violence and child sexual assault within the family unit involve a breach of trust, which often has long-term emotional and psychological effects on the victims. Both types of cases may be subject to stereotyped inferences or conclusions which may not be

factually based. Because these types of cases do not involve stranger accused, the victim may not receive support from family or community. He or she may be pressured to recant or may decide to do so because of the consequences of disclosing, such as removal from home and school and placement with a foster family. A child alleging physical and/or sexual assault against a parent or step-parent will not necessarily be supported by the other parent. Cases of historical sexual assault may involve victims with alcohol and/or drug addictions, and mental health or psychological issues; some of these victims become involved in the sex trade. Their credibility will be a significant issue at trial. For the trial judge, the question of assessing credibility in these circumstances is like attempting to resolve the age-old question: Which came first, the chicken or the egg? Is the victim fabricating her allegations because she has psychological problems or does she have psychological problems because she suffered sexual and/or other abuse as a child?

LEGISLATION IN RESPECT OF FAMILY VIOLENCE

Criminal Code of Canada

In Canada, the *Criminal Code* is the basis for the laying of any criminal charge whether simple assault, assault with a weapon, aggravated assault or sexual assault and sexual related offences in all of the provinces and territories.

The Domestic Violence and Stalking Prevention, Protection and Compensation Act

In Manitoba, civil legislation in the form of *The Domestic Violence and Stalking Prevention, Protection and Compensation Act* was proclaimed in force on September 30th, 1999. A number of amendments have been proposed recently in Bill 17, which is expected to come into effect on proclamation on October 31st, 2005. The *Act* presently permits a person who has been the victim of domestic violence or stalking to apply to a justice of the peace, without notice, seeking an order of protection against the alleged perpetrator, if the applicant

believes the conduct will continue. The onus of proof is on a balance of probabilities. A justice of the peace is available 24 hours a day, 7 days a week. The order is transmitted immediately electronically to the Sheriff's Office and is served forthwith upon the respondent who has 20 days in which to bring a motion to set the order aside if he/she disputes it.

The definition of domestic violence in the *Act* refers to conduct "by a cohabitant" which is defined as "persons who reside or have resided together, in a family, spousal or intimate relationship", or "persons who are the biological or adoptive parents of a child, regardless of their marital status or whether they have lived together at any time".

The *Act* also permits an application to a judge of the Court of Queen's Bench for a Prevention Order, which may include the following provisions:

- not to follow from place to place;

- not to communicate with the applicant or other specified person;
- not to attend at the applicant's place of work, school or where carrying on business;
- removing the respondent from the residence and granting sole occupancy to the applicant, regardless of ownership, until further order of the court;
- granting temporary possession of personal property to either party and directing a peace officer to accompany a party to permit removal of personal property from the residence in an orderly fashion;
- requiring the respondent to deliver up to a peace officer any firearms, weapons, ammunition, explosive substance in his possession until further order, and on failure to do so, permitting a peace

officer to enter and search premises to seize such items;

- authorizing the seizure of respondent's personal property used in furtherance of domestic violence or stalking and on proof of stalking with a vehicle, suspending the respondent's driver's license and/or right to apply for or hold one, until further order of the court;
- recommending counseling or therapy.

The Court of Queen's Bench is also authorized to make a compensation order in favor of the victim for:

- loss of income;
- expenses related to moving and obtaining new accommodation;

- costs of counseling and therapy;
- expenses related to medical requirements, including medicine;
- costs of security measures;
- legal fees and costs.

Proposed Amendments to the Domestic Violence Act

The proposed amendments to the *Act* would allow persons to seek relief against a person with whom they have had a family relationship, whether or not they ever lived together. This would permit a grandmother who is being abused by a grandchild with whom she has never lived to apply for a protection order. Another amendment would extend eligibility to seek relief to persons who have been in a dating relationship. Amendments would clarify the criteria for granting orders to situations of imminent or immediate

danger. Unless set aside, orders remain in effect indefinitely. Amendments would establish a 3-year time limit of duration, but provide for an extension if needed. Another amendment would allow certain designated (by the Minister of Justice) persons, other than lawyers and peace officers, to assist subjects in applying for protection orders in person or via telecommunication. This may be particularly helpful in rural areas. Although the current *Act* provides that the magistrate may recommend that the respondent receive counseling, an amendment would permit a magistrate to require it. Of particular note is an amendment which would add the authority to order a publication ban, with related penalty for breach, to protect the safety or well-being of children.

Victim's Bill of Rights

Further, the Manitoba legislature has recently enacted a Victim's Bill of Rights which sets out victims' rights relating to their dealings with the police, prosecutors, courts, and with corrections officials. Through the Victim Services Department,

a full range of services to designated persons is provided throughout the province. These include child and adult domestic violence victims and victims of serious crimes, including sexual assault with a weapon, aggravated sexual assault, corrupting children, computer luring of children, living off the avails of a prostitute under 18 years of age, and procuring a prostitute under 18 years. A Crime Victim Service Worker can guide a victim of crime through the complexities of the criminal justice system and provide service on a priority basis in accordance with the directives of the Minister of Justice. These services include:

- a plain language explanation of the criminal justice process;
- assisting the client to elaborate a safety plan through analysis of risk factors;
- providing short term counseling and community referrals for further support;

- assisting victims in developing plans and setting goals to deal with the experiences and emotions related to their victimization;
- debriefing with victims throughout the court process;
- assisting them to understand legal decisions;
- assessing the victim's abilities/needs relating to the prosecution of the case and making recommendations to the prosecution;
- ensuring that the prosecution has accurate and up-to-date information from the victim;
- providing information and assistance to victims regarding the results of the accused's bail application and any conditions imposed, of a victim's right to

complete a victim impact statement relevant to the sentencing process, or the right to claim compensation from a government program;

- providing court support and accompaniment on a priority basis.

Specialized Domestic Violence Court

Since the implementation of the zero tolerance policy by the Province of Manitoba, the government has publicized it, developing televised family violence scenarios and encouraging the viewer to access the specified counseling service. Pamphlets have been distributed to government and medical offices. The Chief Judge of the Provincial Court was instrumental in supporting and initiating a specialized domestic violence court. Judges were assigned on a volunteer basis only, but eventually rotation through the specialized court became the norm for all of the judges of the Provincial Court. The Judicial Education Committee of the Court

initiated programs related to the cycle of violence, risk assessment and related topics. The Prosecutions Department created a specialized family violence unit.

Media coverage of two public enquiries helped to highlight the issues. Public awareness was substantially increased by a public enquiry which was mandated in 1995 to enquire into the circumstances surrounding the deaths of Roy and Rhonda Lavoie. She was murdered by her estranged husband who committed suicide. He had previously threatened to kill his spouse if he could not be with her and had attempted it by carbon monoxide poisoning using his truck's exhaust system. He had been charged with uttering threats to kill and breaching the conditions of his bail, which prohibited contact with his wife. He was released again, with strict conditions, but was successful in his second attempt. The Lavoie enquiry made a number of recommendations, many of which have since been implemented.

For judges, the Lavoie case highlighted the difficulty of assessing risk when determining whether the defendant should be detained or released on bail. When the complainant does not wish her partner held in custody and simply wants him to seek counseling, the presiding judge may feel some pressure to release the accused, particularly when he is steadily employed, is supporting his family, has no criminal record, and is contrite. In Provincial Judges Court, all of the judges sit in domestic violence courts. Therefore, it was important to give judges an opportunity to focus on the particular social issues relating to family violence. Judicial education is not mandatory, but it is expected by the Chief Judge that all judges, unless assigned in court, will attend judicial education programs offered locally by the Judicial Education Committee of the Court. This Committee is composed of judges of the court only. Judicial education programs in the area of risk assessment, in respect of the cycle of family violence, and on the pressures experienced by family violence victims to reconcile, sometimes pressures exerted by their children, gave us a better insight into the

social context issues that complicate judicial decision-making in these types of cases.

Specialized Prosecution Unit

Of primary importance in providing our family violence courts with relevant and up-to-date information relating to the parties is the specialized Family Violence Prosecution Unit. Counsel are assigned to the Unit on a voluntary basis only. Through education programs and mentoring within the Unit, including coffee table discussions, the less experienced gain the knowledge required. They have the training and aptitude to deal with domestic violence cases. Only these specialized Crown Attorneys are assigned to family violence courts. With the concurrence of the Prosecution Department's Director, only those lawyers approved by the Unit's Director are assigned to that work. New trainees in the Prosecutor's Department will spend a rotation in the Family Violence Unit, which gives the Director and the student the opportunity to decide if he/she has the sensitivity and aptitude for the work.

In evaluating the individual, the Unit's Director looks for a demonstrated interest and positive attitude towards the work, common-sense, personal involvement in the community, the ability to learn on the job, the ability to absorb information quickly and to translate it into effective decision-making, the ability to relate well with people, and to be a team player within the Unit.

In Manitoba the specialized Unit consists of 17 lawyers, including the Director and one part-time counsel. The child exploitation coordinator acts as a liaison with the Child Pornography Police Unit, providing advice to the police during the investigation in an attempt to establish the evidentiary basis to prove the charge. A great deal of work is put into these files early on, including establishing a relationship with the child and his/her family. As well, the Victim's Assistance Office has established a specialized unit.

The Manitoba Department of Justice has established guidelines and policy directives with respect to certain types of

cases. For example, in relation to children exploited through prostitution, child abuse, domestic violence, disclosure by sex offenders of additional victims during therapy or pre-sentence report interviews, notification to victims when a stalker is released or is in breach of a supervision order

The philosophy of the Unit has evolved from an emphasis on obtaining convictions to an emphasis on intervening in the cycle of abuse and on providing resources to the family, including the children, which will promote safety.

The prosecutors work closely with the Victim's Services Office and share file information electronically. The worker is in touch with the victim more regularly than the prosecutor. Relevant recent information is entered into the prosecutor's file for the prosecutor to review. The victim worker avoids discussing the facts of the incident with the victim, to avoid the possibility of being called as a witness. The worker focuses initially on assisting the victim to develop a protection/safety plan.

Prior to the commencement of the Front-End Intake Court, which I will review with you shortly, the Family Violence Prosecution Unit suffered from a high burn-out rate and job dissatisfaction. The lawyers carried huge caseloads and the courts were backlogged.

Previously, the files went from one prosecutor to another, depending on the assignment in bail, trial or intake court. There were frequent adjournments for various reasons, but the file was being read each time by a different Crown Attorney. Sometimes, plea agreements or discussions with defense counsel were not noted in the file, so that the next prosecutor was not aware of them. Often, witness statements were not provided expeditiously by the police. Since the inception of the Front-End Intake Court, file information is provided early in the process, the defence is provided with timely disclosure, and the file is assigned to a prosecutor until its completion. Because the prosecutor “owns” the file, there is no frustration with undocumented discussions with defence counsel, and

reading is reduced as the prosecutor is familiar with the case. If the case is not proceeding to trial, there is an earlier resolution by guilty plea or a stay of proceedings. There has apparently been an extreme increase in job satisfaction within the Unit.

The Family Violence Prosecution Unit's Director has held that position since 1994. She opines that since the inception of specialized family violence courts, the judiciary in Manitoba has become sensitized to the issues relating to family violence and stereotypic assumptions are no longer the norm. Judges are no longer asking why the victim did not leave the relationship earlier, or why the victim reconciled with her abuser. Judges are no longer making a contempt finding in respect of a victim who does not want to testify against the defendant. Victims are treated with courtesy and patience.

Process – Consultation Committee

As the community became more and more aware of the zero tolerance policy, the police emergency call centre began

receiving more calls related to family violence and charges have increased in number. In 2003, I am advised by the Director of the Family Violence Prosecution Unit that 16,000 family violence calls were received by the emergency call centre. These resulted in charges in 4,000 of those cases. In 12,000 of these cases, the police attended but were told that the dispute was verbal. Usually alcohol consumption is involved and one of the parties is removed. The other party often refuses to provide information. The consequent demand on prosecutions and the courts resulted in significant delays and backlog and necessitated a review of the judicial system's response to these cases.

Consultation Committee

The Chief Provincial Court Judge decided to establish a Consultation Committee of key players in the system to try to identify methods of dealing with the significant backlog. This Committee consisted of representatives from:

- prosecutions department with support staff;
- sheriff's office;
- court's services administrator(s);
- data entry personnel;
- the Chief Judge of the court;
- a representative(s) of the Judges of the Provincial Court;
- business analysts.

My understanding is that the defence Bar and Legal Aid criminal counsel were part of the Consultation Committee. However, they suggested that their clients benefited from delays in the process, and that they would have little interest

in being involved in the continuing work of the working group committee.

The Director of the Family Violence Prosecution Unit advises that the work of the business analysts was essential to identifying the inefficiencies and efficiencies in the system, including the office of the prosecutor. They came in, charted the office's business process and made suggestions, including assigning aspects of the workload to support staff, court clerks or others, a change in approach which had not been previously considered. They suggested and put in place an electronic file management system which permits access by various parties to some material, while restricting access to the prosecutor's file in consultation with the Committee. Once the plan for the Front-End Intake Court was in place, the Consultation Committee was disbanded, but a Courts Working Group continues to meet regularly to address issues which may arise.

FRONT-END INTAKE COURT

Pre-Trial Coordination

Ultimately, this Committee recommended the creation of a “Front-End Intake Court” which delegates certain administrative tasks to a Pre-Trial Coordinator who is authorized to conduct the pre-plea processing of an accused, within specified time parameters, prior to his/her arraignment before a Judge. The Pre-trial Coordinator is to ensure that the accused has been informed of the right to legal counsel, that defence counsel has received initial disclosure, that bail variation processes have been explained to the defendant, that meaningful discussions between counsel have occurred, that counseling issues have been addressed, that where the defendant is unrepresented, a pre-plea comprehension inquiry has been conducted, and that a Certificate of Trial Readiness has been signed and completed, if applicable. The maximum period for the completion of these pre-trial matters is 12 weeks.

As a result of these timelines, more effort is put in by the Prosecution Department to resolve cases early in the process, if they are to be resolved without trial. When a charge is laid, the police's initial disclosure must be provided to the prosecution's office within 4 weeks of arrest. It is assigned to a particular prosecutor within 4 weeks thereafter. That prosecutor is to be ready to engage in plea discussions with defence counsel when that counsel has been retained and has reviewed the particulars. Support staff open the file and insert the particulars received from the police.

Police Duties

The police, at the time of attendance to the incident, provide a pamphlet relating to Victims Services to the victim and advise Victims Services electronically. If the victim does not contact the worker within 24 to 48 hours, the worker will make the contact. If the defendant is charged but released by the police, he is given an Informational Brochure, written in

plain language which provides information respecting the right to counsel, Legal Aid phone numbers, the prosecutor's office phone number to "find out what the police say", etc.

Domestic Violence Bail Court

The prosecutor who has conduct of family violence bail court for the week will receive a package of information daily. It arrives from the police between 7:30 and 8:30 a.m. He or she has one hour to review the 25 files and attend the 9:30 a.m. triage list which deals with new arrests and bail applications, presided by the Pre-Trial Coordinator. Usually, 6 to 10 of these cases will proceed to a bail hearing in another courtroom, before a judge. As the defendants appear by video from the Remand Centre where they are detained, there is usually a 3-4 minute delay which allows the prosecutor to quickly review the case. If more information is needed and cannot be obtained immediately through computer communication in the courtroom, a brief adjournment may be requested by the prosecutor.

Where a defendant is charged with various offences, some of which are not domestic violence related, all of the charges are set into family violence bail court with the specialized prosecutor. Once bail is determined, the charges are separated and scheduled into different courtrooms.

Triage and Trial Courts

The Provincial Court runs a domestic violence triage court four days per week, as well as two family violence trial courts. One day per week, the trial court numbers are increased to three. Four to six trials are scheduled in each trial courtroom. All of these trials are first scheduled in the triage court. Well in excess of 50% of these cases do not proceed due to a guilty plea or a refusal to testify by the complainant. Where a full day is required, as assessed by the prosecutor, or if the case involves a child witness, a courtroom is set aside for that case. Experience has established that 2-3

over-bookings per day are manageable and usually result in the matters being heard.

For first offenders or low-level offences of family violence, the Crown will consider adjourning the case for counseling during the 12-week front-end program. If the defendant successfully completes counseling with an approved counseling service, a stay of proceedings will be entered. A committee of judges, prosecutors, probation and other service providers are presently attempting to set up guidelines or standards for the providing of counseling services within the community. The Crown has an approved list which is provided to the accused. If he chooses to attend a non-approved service, he risks the Crown refusing to stay proceedings. Lack of probation resources is an on-going problem. Although everyone recognizes that placement in counseling at an early stage of the proceedings achieves better results, this does not always happen.

Resolution Court

To allow for early screening of cases which are not likely to proceed if set for trial, the Provincial Court runs a resolution court. Where the complainant has already indicated to the prosecution or to defence counsel that she does not want to testify or she has refuted her statement to the police and it is a one witness case, the matter can go into resolution court. Cases in resolution court are set for trial in that court, but based on a prior agreement between the prosecutor and defence counsel that if the complainant attends and is prepared to testify, the accused will plead guilty, and if she does not attend, or refuses to testify, the Crown will enter a stay of proceedings. It is only in cases where the defence has agreed to this arrangement that the case is scheduled for resolution court. Cases involving serious circumstances or injuries are not set in this court. According to the Director of the Family Violence Prosecution Unit, clearance rates as a result of the Front-End Intake Court initiative are very high.

Criminal Code of Canada Provisions Related to Sexual Assault

We do not have specialized sexual assault courts in Manitoba. There are particular provisions in the *Criminal Code of Canada* in relation to sexual offences. Some may be similar to your legislation. I highlight a few:

- consent is not a defence to certain sexual offences where the complainant is under 14 years of age;
- self-induced intoxication is not a defence to any offence that includes assault or any other interference or threat of interference with the bodily integrity of another; it is not a defence that the accused lacked general intent or, where voluntariness is required as an element of an offence, it is not a defence if the accused departed markedly from the standard of reasonable care recognized in Canadian society;

- no corroboration is required;
- prior common-law rules relating to recent complaint abrogated;
- evidence that the complainant has engaged in sexual activity, whether with the accused or with any other person, is not admissible to support an inference that by reason of the sexual nature of that activity, the complainant:
 - (a) is more likely to have consented to the sexual activity which forms the subject-matter of the charge, or
 - (b) is less worthy of belief.
- an application may be made to a Judge for an admissibility hearing in which the public and the jury are excluded and publication of the application and

the evidence is prohibited. The complainant is not compellable in respect of this hearing;

- a person convicted of a sexual offence may by order be prohibited from attending a public park or public swimming area where persons under 14 years are, or can reasonably be expected to be present, or daycare centres, or school grounds, playgrounds or community centres;
- a person convicted of a sexual offence may by order be prohibited from seeking employment or volunteering in a position of trust or authority in respect of persons under 14 years, or from using a computer system for the purpose of communicating with a person under the age of 14, for life or for a period specified by the court;
- belief in consent to the activity is not a defence to a charge of sexual assault, sexual assault with a weapon

or aggravated sexual assault where the accused's belief arose from self-induced intoxication, from recklessness or willful blindness or where the accused did not take reasonable steps, in the circumstances known to the accused at the time, to ascertain that the complainant was consenting;

- evidence of sexual reputation, whether general or specific, is not admissible for the purpose of challenging or supporting the credibility of the complainant;
- the identity of a witness or complainant or any information that could disclose his/her identity shall not be published or broadcast; the Judge is required to advise the witness/complainant of this provision at the earliest opportunity in the proceedings;

- court may order that the person under 18 years testify behind a screen or outside the courtroom by closed-circuit TV;
- the accused may not personally cross-examine a witness who is under 18 years of age and the court shall appoint counsel for the purpose if the accused is unrepresented.

Fears of the Child Witness

It became apparent with experience that the set-up of the courtroom had an impact on the child and/or the vulnerable adult witness. Victim's Services has developed a list of a child witness's fears. They include:

- seeing the accused at court;
- crying in court;
- being in the witness box by themselves;
- being hurt by the accused in the courtroom;

- being hurt by the accused outside the courtroom;
- not understanding the question;
- forgetting exactly what happened;
- the accused being sent to jail;
- the accused giving them hateful looks;
- being called a liar in court;
- family members being mad at them for telling what happened;
- having to tell what happened in front of strangers;
- not being believed by the Judge;
- becoming sick, throwing up or fainting in the courtroom;
- their name and what happened to them will be in the news.

The Child-Friendly Courtroom

In Manitoba, a child friendly courtroom has been developed. It is primarily used in Provincial Judges Court.

There is no seating for a jury in the room. The witness box has been raised, so that the witness is at eye level with the judge. The witness box is open so that the witness will not feel confined or trapped. The placement of it allows the witness to avoid making eye contact with the accused. The witness is brought into the courtroom through a special door not accessible by the general public or counsel. On arrival at the courthouse, the witness is taken to a witness waiting-room, decorated in a comfortable style, much like a den or family room. Children are provided with coloring books, and play materials and toys. At the time of the investigation of the charge, the child witness's interview by the police is sometimes video-taped. The prosecution relies on the video-taped recording as constituting the child witness's evidence in chief, once adopted by him or her. The child is then subject to cross-examination. Most of the public gallery seats are removed from the courtroom. The prosecutor sometimes asks that the child victim worker be permitted to sit beside the child during the giving of his/her testimony. If permission is granted, the worker is cautioned not to provide answers, enter

into any discussion or attempt to prompt an answer from the child.

Victim's Assistance Office: Child Abuse Unit

These workers provide assistance to child witnesses, including teenagers, where charges have been laid respecting family violence and/or sexual offending. They are immediately advised by the police when a complaint is made, and they contact the child's family or guardian. They offer services for the children. They prepare children for court, but without discussing the allegations. They take the child to the courtroom for a visit and explain the role of the justice participants and where everyone sits. They explain the oath-taking procedure and the enquiry by the Judge. They provide the parent or guardian with information relating to counseling services for the child. They assist the child to complete a Victim Impact Statement for sentencing purposes.

Child Victim Worker's Wish List

Based on her experience in dealing with child witnesses, one worker's wish list included the following:

- timely prosecution without protracted proceedings;
- an alternative to preliminary hearings;
- specialized courtroom for children in the superior court;
- same prosecutor throughout all proceedings;
- same child worker throughout;
- reducing size of public gallery when child testifies;
- experienced, well-trained police officers who are comfortable with children to do video-taped interviews;
- video-tape interviews with teens also where allegations of physical and/or sexual abuse;
- non-publication, non-identification orders should be requested by the prosecutors in every case involving children;
- presence of a sheriff's officer in the courtroom.

Child Victim Worker's Experience

The child victim assistance worker stated that in her experience, children will react differently depending on their level of development and on their particular experience. 85% of children, including teenagers, with whom she has dealt, want the accused to be out of their line of vision. But some young children, up to 6 or 7 years of age, sometimes want to see the accused, particularly if he is their father and they have not seen him for some time. Teenagers are adamant that the accused will not see them cry, so will appear stone-faced and unemotional during the giving of their evidence. She also noted that the presence of a uniformed sheriff's officer in the courtroom when they arrive and during the giving of their evidence was very reassuring for children.

One very important change which she noted, is a recent *Criminal Code* amendment which does not permit a self-represented accused in a sexual assault case to cross-examine

the complainant. Legal counsel is required to be appointed for that purpose. This worker noted that when a jury arrives at a verdict in Canada, no reasons are given, nor can the jurors reveal the nature of their deliberations and this leaves a complainant guessing as to the reasons for the verdict. She commented that child witnesses have difficulty understanding the concept of prosecutorial onus of proof beyond a reasonable doubt.

From the child's perspective, the worker indicated that he/she will try to forget an unpleasant experience. Younger children want to agree with a person in authority. When they tire, they will agree so they can leave. Children are afraid to admit that they do not understand the question and will say yes, rather than admit. Children need to have questions phrased in plain language.

Judicial Perspective

Domestic violence charges presently make up 35-40% of the Manitoba Provincial Court's caseload. Early intervention

by the police, the courts, and in providing counseling services has proved effective in reducing the rate of recidivism. When I first began sitting in Domestic Violence Court, the prosecutors were loathe to adjourn a matter for counseling, even in the case of an isolated minor assault. The Front-End Intake Court procedures permit these types of “therapeutic adjournments”, which can lead to a stay of proceedings, if the defendant successfully participates in and completes appropriate counseling. For many complainants, this is the result that they are seeking when they call the police. For the prosecution, it is a better result than a dismissal when the complainant is unwilling to testify. Also, clearing minor offences early in the process allows the prosecution to concentrate its efforts on more serious charges. The defendant benefits from a stay of proceedings, rather than a criminal conviction.

The Court of Queen’s Bench in Manitoba is a superior trial court which hears indictable offences where the defendant has elected to proceed by judge alone or with a jury.

Although this court hears fewer domestic violence criminal cases, the circumstances or injuries are usually more serious. We do not have a specialized court to deal with these types of charges.

The Family Division of the Court of Queen's Bench has the jurisdiction to grant protection and/or prevention orders pursuant to the *Domestic Violence Act*. In civil matters the court hears applications to set aside protection orders granted by the magistrates of the Provincial Court. Where the party who obtained the order attends court with the party seeking to set it aside and wishes to consent, the court requires that he/she seek advice from the Victim's Assistance Office. If that party returns with a letter confirming that he/she has received advice and counseling, and still wants to have the order set aside, it is granted. Where the application is contested, the court may decide the matter based on the transcript of prior proceedings and any additional affidavit material filed by the parties, or may set the matter for *viva voce* hearing.

Specialized courts in Manitoba have led to more options in dealing with domestic violence charges, for the victim and for the abuser. When recidivism rates are reduced, not only the family, but the community benefits.

I hope that my remarks have been of some interest.
Thank you for your attention.