

# THE DOMESTIC VIOLENCE TREATMENT OPTION: A YUKON INITIATIVE

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## **Introduction**

Cases involving domestic violence present a difficult challenge for everyone working in the justice system, especially judges. The following scenario is all too common: The complainant fails to attend for the trial and the accused, often a male partner, smiles at the judge as the charges are dismissed. Police officers who have been waiting all morning to testify are sent away, are feeling frustrated and now are more certain than ever that laying charges in domestic violence cases are a waste of time and that complainants in such cases are not to be taken seriously. Both the Crown and defence counsel have spent a considerable amount of time preparing for a trial that is never going to happen. The Crown, like the police, makes a mental note to give domestic assault charges a lower priority in the future. The defence lawyer, fully aware of the usual course these types of cases take, is reinforced in his practice of advising domestic violence clients to plead 'not guilty.'

Valuable court time has been lost and it is too late to reassign the judge to other trials. Trial time is lost, but more importantly, why did the complainant not show up for the trial? Should the judge accede to the Crown's request for an arrest warrant for the absent complainant? Has she been threatened or harmed?<sup>4</sup> What message has the system delivered to the accused? If she is assaulted in the future, will she even bother calling the police?

These are questions criminal court judges ponder daily. But, should a judge be concerned with these issues? In any event, what, if anything, can a judge do about it? A judge's role is to judge. It is up to others to change the system ... or is it?

## **Why Judges Must Take a Leadership Role**

There are important reasons why judges should be very concerned with the answers to these questions. Domestic violence is much more pervasive

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<sup>4</sup> [As a matter of convenience, we refer to the victim as "she" and the perpetrator as "he", because women are more often victims in domestic assaults and sustain more serious injuries \(1999 General Social Survey\).](#)

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than the court docket suggests and the harmful consequences extend beyond the complainant to include children, extended families and the greater community. The cost to society in financial terms is enormous. As judges, we are part of a system that is not working very well. In fact, we may be making matters worse. In these circumstances there is an emerging view that judges have a responsibility to act within their sphere of influence to correct what is not working. And fortunately there are now examples of court-based initiatives known as Domestic Violence Courts that provide useful models for judges to follow.

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### **Domestic Violence is Different From Other Violence**

Domestic violence is different from most other kinds of violence and therefore deserves special treatment by the justice system. The repetitive nature of domestic violence and the harm it does, not only to the direct victim but also to children in the family demand a different response. Often he has an ongoing relationship with her and their children and he may own property jointly with the victim. The victim may be economically dependant on the offender. The offender may return to live with the victim. These factors increase the possibility of further contact and violence even after the justice system has intervened and where no-contact orders have been put in place. Stranger violence is rarely repeated while a victim of domestic violence will live in constant fear of repeated and possibly lethal abuse. Such fear is amplified by the breach of trust that is implicit with this type of assault. The high risk of repeated and escalating violence demands a faster response, more effective monitoring and justice system responses that will reduce the risk of further violence. At the same time, that response must meet the victim's needs or otherwise she may feel revictimised and be unwilling to access the justice system in the future.

### **The Prevalence of Domestic Violence**

A major Canadian study, the 1999 General Social Survey (GSS) found that approximately 690,000 women (8%) reported experiencing at least one incident of violence<sup>5</sup> during the past five years by their intimate partners. Nearly one-third of American women (31%) report being physically or sexually abused by a husband or boyfriend sometime during their lives. At least four in ten women aged 18 through 64 reports experiencing at least one type of violence in their lifetime. Spousal homicides accounted for 15% of all homicides in Canada during the past two decades and three times as many women were killed by their male partners as men by their female partners.<sup>6</sup>

Women victims of domestic violence are at greatest risk of serious physical injury or death when planning separation, and/or shortly after

<sup>5</sup> Violence was defined as actions that constituted an offence pursuant to the *Criminal Code*.

<sup>6</sup>Canadian Centre for Justice Statistics, 2000, Homicide in Canada-1999, Ministry of Industry: Ottawa.

separation from an abusing partner. Pregnant women are in a very high-risk category. American studies have reported that 30% of all pregnant women are battered. These women are two times more likely to miscarry and four times more likely to have low birth-weight babies. More babies are born with birth defects as a result of the mother being battered than a combination of all diseases and illnesses for which we now immunize pregnant women.<sup>7</sup>

### **Domestic Violence Endangers Children**

Recent research studies have confirmed what has been known intuitively for some time: witnessing domestic violence endangers the emotional well being and development of children.<sup>8</sup> The immediate trauma of witnessing abuse includes self-blame, fear for their parent's safety and ultimately fear for self. The range of resulting problems are varied and include psychosomatic disorders such as stuttering, anxiety, fear, sleep disruption and school problems.<sup>9</sup> Older children have a tendency to identify with the aggressor and lose respect for the victim, usually their mother. As many as 75% of boys who witnessed the abuse of a parent have demonstrable behaviour problems, are much more likely to be arrested by police and to engage in delinquent behaviour. Girls in similar situations tend towards depression and may identify with their mothers and accept abusive behaviour as a norm in their lives. School achievement and social development are frequently impaired.

American studies confirm that children who witness domestic violence are dramatically affected. They are more likely to attempt suicide, to abuse drugs and alcohol, to run away from home, to engage in teenage prostitution and other delinquent behaviour, and to commit sexual assault crimes. In one study, 68% of the delinquent youth in treatment programs had witnessed their mother's abuse and/or had been abused themselves.<sup>10</sup>

Even when abuse is not happening, there is often an atmosphere of fear, anxiety, anger and tension that pervades the family home. These children learn that violence is a normal family interaction and that it is a valid method of conflict resolution. This perpetuates the cycle of abuse, because children who witness domestic violence are more likely to become involved in abusive situations as adults: boys as abusive partners and girls as abused women.<sup>11</sup>

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<sup>7</sup>Edwards, L., "Reducing Family Violence: The Role of the Family Violence Council", 43(3) Juv. & Fam. Ct. J. 1 (1992).

<sup>8</sup>Suderman M. & Jaffe P. 1999, A Handbook for Health and Social Service Providers and Educators on Children Exposed to Woman Abuse/Family Violence, Health Canada.

<sup>9</sup>Pilot Draft Teaching Guide *Domestic Violence: What Every Judge Should Know*, Center for Judicial Education and Research, Judicial Council of California.

<sup>10</sup> Edwards, L., "Reducing Family Violence: The Role of the Family Violence Council", 43(3) Juv. & Fam. Ct. J. 1 (1992).

<sup>11</sup> Bala, N. M. C. *et al.*, (1998) *Spousal violence in custody and access disputes: Recommendations for reform*. Status of Women Canada; Doumas, D., Margolin, G., & John, R.

## Domestic Violence is a Risk Factor for Child Abuse

It is important to be aware that the risk of actual physical child abuse is significantly higher in homes where domestic violence is reported. A number of research studies have examined different populations and have surveyed both abusers and victims. These studies indicate that between 25% and 75% of men who physically abuse their partners have also battered their children. The greater the use of violence by a spouse against a partner, the more likely that person will also physically abuse children. The link between child abuse and domestic violence is a strong one. Sixty-six percent of women who were abused as children report experiencing domestic violence, compared with 28% of women who did not experience child abuse.

Abused spouses may be less able to care for their children. A history of physical aggression in the family is strongly associated with diminished parenting: abused spouses are more likely to use physical discipline on their children and often suffer from low self-esteem, depression or alcohol abuse.<sup>12</sup>

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## Domestic Violence Costs Money

Some limited attempts have been made to measure the societal cost of violence against women. In one instance, the financial cost to society of violence against women (excluding violence against men and children) has been estimated to exceed four billion dollars annually in Canada.<sup>13</sup> An American study considered property damage, medical costs, mental health care, police and fire services, victim services and lost worker productivity and estimated the cost of domestic violence to be \$67 billion per year. In these estimates, health care costs are invariably underestimated because many victims are not identified as victims of domestic violence either by themselves or by hospital personnel. These cost estimates have not included the long-term costs associated with perpetuating the cycles of violence and victimization.

Studies have indicated that 25 to 50% of women visiting hospital emergency rooms are there because of abuse by a partner. Victims of partner abuse comprise 14% of internal medicine patients. Up to 23% of pregnant women in prenatal care have been abused by their partners. Alarming, 58% of women over the age of 30 who are raped report being raped by their partners. When pregnant women are battered, their babies need extended

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(1994), The Intergenerational Transmission of Aggression Across Three Generations. Journal of Family Violence, Vol. 9: 157-175).

<sup>12</sup> Pilot Draft Teaching Guide *Domestic Violence: What Every Judge Should Know*, Center for Judicial Education and Research, Judicial Council of California.

<sup>13</sup> *Selected Estimates of the Costs of Violence Against Women*, The Centre for Research on Violence Against Women and Children, 1995, cited at [www.gov.on.ca/owd/resources](http://www.gov.on.ca/owd/resources).

medical attention upon birth and are 40 times more likely to die during their first year of life.<sup>14</sup>

### **Limitations of Conventional Criminal Courts**

The inability of the formal adversarial court process to address family violence effectively is well known to anyone who practices in the criminal courts and is well documented in the literature. The initiatives of the past decade to 'get tough' on men who abuse their spouses have not had a significant impact on reducing the number of women who continue to be affected by domestic violence. This is not a surprising result. The formal justice system is entirely reactive. The court's focus is on laws and those persons who break them. And because it is punishment oriented, the system is adversarial, governed by the *Criminal Code* and the *Charter of Rights and Freedoms*, and is primarily concerned with the rights of the accused person rather than the victim.

Relatively few women call the police for help and endure the violence in silence and often alone. Some have already been through the formal justice system only to find that it did not respond to their needs or that it revictimised them. For others, economic, family, cultural or social considerations act as barriers to accessing the formal justice system. Some want help and treatment for their abuser but know that once they initiate a call for help, they will lose control of the process and have little opportunity to influence the outcome. Some are afraid of retaliation from their partner and do not trust the criminal justice system or believe that it can protect them.

Of those victims that do call the police, most do not follow through with their complaints resulting in stayed or dismissed charges<sup>15</sup>. The reasons for opting out are varied and complex, but the common denominator is that the criminal justice system is not meeting the complainant's needs. Often previous experience with the system has taught victims to mistrust the process. Due to its focus on punishment, its inflexibility, its disregard of the victims' needs and wishes, the conventional justice system disempowers and disillusion many victims. While high collapse rates disrupt court scheduling, it is of greater concern that many of these victims of domestic violence continue in abusive relationships without assistance or support, for themselves or their children.

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<sup>14</sup>Pilot Draft Teaching Guide *Domestic Violence: What Every Judge Should Know*, Center for Judicial Education and Research, Judicial Council of California at Tab 3.

<sup>15</sup> A review of Yukon domestic violence cases prior to the implementation of the Domestic Violence Treatment Option showed that 75% of all domestic violence trials collapsed, either because the complainant did not appear or because the complainant gave exculpatory evidence different from what was told to the police officer.

It is apparent that the justice system only addresses a very small proportion of the domestic violence that occurs in our communities. A significant proportion of offenders who are violent towards their partners are not held accountable for their actions through criminal sanctions. It has also been argued that punishing violent offenders may make them behave more violently or oppressively in the future. Moreover, there is very little evidence to suggest, either generally with respect to criminal behaviour or specifically with respect to domestic violence, that mandatory arrest or increased penalties alone deter many offenders<sup>16</sup>.

The conventional criminal justice system perpetuates the myth that courts can solve the problem of domestic violence by putting offenders in jail. So long as society expects the courts to be punishment-oriented, the criminal justice system will be unable to deal with the underlying causes of domestic violence or to address the needs of the victim. That myth deceives us into thinking we are doing something constructive when in fact we are doing very little. It results in a misallocation of limited financial and human resources that could be used more effectively in other ways.

For many victims, at that point in their lives, the conventional justice system is not an appropriate alternative and no degree of fine-tuning, tinkering, or even modest improvements are going to make a difference. Victims are not a homogenous group and their needs and personal circumstances are varied. One should not be surprised, therefore, that an inflexible justice system with a single entry point is not responsive to the needs of all victims and worse, excludes a significant proportion of them. For that reason it is important to develop and make available a range of alternatives for holding offenders accountable and for providing the assistance victims need. Judges have an important role to play in developing those alternatives.

### **Role of the Judge in Therapeutic Courts**

Victims of domestic violence turn to the justice system for help, often as a last resort. That plea for help can be in the form of a peace bond, a civil protection order or most frequently, in the form of a 9-1-1 call to the police. As a result, judges are uniquely positioned to provide that help, and at the same time help reduce the likelihood of future violence and its impact on children. Effective judicial intervention requires, in addition to awareness, a commitment to change

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<sup>16</sup> A concise summary of this research can be found in "Batterers Treatment Programs", a publication by the John Howard Society of Alberta (2001). See also Spousal Abuse Policies and Legislation, "Final Report of the Ad Hoc Federal-provincial-Territorial Working Group Reviewing Spousal Abuse Policies and Legislation" (2001) found at <http://canada.justice.gc.ca/en/ps/fm/reports/spousal.html#13>

the status quo and to do things differently. The Alberta Court of Appeal made this point a decade ago:

The message, which this court wishes to send out, however, is that domestic violence is a serious problem, and that it will not be tolerated by this court. ***We are prepared to do everything within our power to help society deal with this problem.***<sup>17</sup>(Emphasis added)

The changing role of judges and the definition of judging is reflected in the following joint resolution of the American Conference of Chief Judges and the Conference of Court Administrators dated August 2000. That resolution endorsed the concept of 'problem solving courts' that utilize the principles of therapeutic jurisprudence<sup>18</sup>.

There are principles and methods founded in therapeutic jurisprudence, including integration of treatment services with judicial case processing, ongoing judicial intervention, close monitoring of and immediate response to behavior, multi-disciplinary involvement, and collaboration with community based and government organizations. These principles and methods are now being employed in these newly arising courts and calendars, and they advance the application of other policy initiatives such as the trial court performance standards and the public trust and confidence initiative.

There are now thousands of these problem-solving courts in the United States, and a number have been established in Canada as drug courts, mental health courts, Aboriginal courts and more recently, domestic violence courts.

Judges in these courts do not just sit back and listen to submissions of counsel. They have a new role. No longer umpires of legal disputes, treatment court judges play an active role in the treatment process: monitoring compliance, rewarding progress and sanctioning breaches<sup>19</sup>. In fact, much of what a treatment court judge does goes against traditional legal and judicial training. Treatment court judges do some or all of the following:

- Monitor the performance of the offender through the treatment program;

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<sup>17</sup>R. v. Ollenberger (1994) 29 C.R. (4<sup>th</sup>) 166 (Alta. C.A.).

<sup>18</sup>CCJ Resolution 22 and COSCA Resolution 4, adopted August 3, 2000. The text of the resolution may be found at [www.problemsolvingcourts.com/resolutions.html](http://www.problemsolvingcourts.com/resolutions.html).

<sup>19</sup>Nolan, James 'Reinventing Justice: The American Drug Court Movement', Princeton University Press, 2000, at p.91.

- Vary bail conditions including “no-contact orders” to reflect changes in risk factors, public safety concerns and the concerns of the complainant;
- Accept the advice of the treatment team with respect to changes in bail and probation conditions even when that advice does not fit easily with the judge’s normal judicial practice.
- Impose sanctions for breaches and on sentencing;
- Recognize that what the judge says and does in the courtroom may have a positive therapeutic effect or a negative impact on the goals of the treatment program;
- Utilize frequent review hearings as part of bail orders, conditional sentences and probation to monitor offender compliance in order to recognize and validate positive performance and to sanction negative behaviour;
- Expand the traditional judicial role to include development and maintenance of working relationships with other community agencies. This can be done by the judge participating in regular ‘partner meetings’ and if needed, special meetings to address more urgent problems.
- Make a commitment to learn more about domestic violence, its dynamics, risk factors, and treatment options.

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### **A Therapeutic Alternative**

The Yukon Domestic Violence Treatment Court (DVTO) was created as a response to local needs and issues. These included high rates of domestic violence, a significant First Nations population that felt victimized by the formal justice system whose culture and values were inconsistent with their own, and a perception that relatively few victims actually reported domestic assaults to the police. When domestic assaults were reported, more than one-half of the cases were stayed or withdrawn because the complainant was unwilling to testify or if she did, she changed her evidence in order to exculpate the accused.

There was a developing consensus that the formal justice system, being adversarial, punitive and offender focused, was not reducing the incidence of violence in Yukon homes. A therapeutic alternative that helped motivate offenders to take responsibility for the violent behaviour early in the justice system process, and to understand and ‘unlearn’ this behaviour should be more successful in reducing domestic violence. This approach also shifts the burden of responsibility for the prosecution of the offence from the victim to the offender. There was also an increasing realization that disclosures of domestic



violence and paying more attention to the needs of victims could only enhance retention of victims within the justice system.

The Yukon DVTO is premised on the belief that many more victims would be prepared to participate in a criminal court-based process that offers a therapeutic treatment alternative to offenders or that requires the offender to acknowledge responsibility by entering an early guilty plea. To be effective, this alternative must, at the same time, hold the offender accountable in a meaningful way and must not compromise the safety of the complainant.

The Yukon DVTO is an alternative to conventional court but does not divert offenders away from criminal court. To the contrary, its objective is to bring more offenders in to the justice system. It offers an alternative based on principles of therapeutic jurisprudence, to encourage offenders to accept responsibility for their actions at a very early stage of the proceedings. Knowing that their partners can opt for counseling and programming under court supervision, and thus, be eligible for a community based sentence, should encourage more victims to disclose their victimization.

What is therapeutic jurisprudence and how does it differ from our conventional justice system? Conventional law is primarily concerned with identifying the law that was broken and relying on statutes and precedents in order to identify and apply the appropriate punitive response. Therapeutic jurisprudence, on the other hand, suggests that the justice system should use the theories, philosophies, and findings of various disciplines to evaluate, challenge and influence the development of law and its processes and the assumptions on which they are based.

Therapeutic jurisprudence requires judges, and practitioners to question whether the legal process supports or undermines the public policy reasons behind the law. It encourages judges to develop new processes that are more likely to achieve the desired result, processes based on empirical studies and not on uninformed hunches. Therapeutic jurisprudence has led to the recent development of treatment courts (TCs) within our criminal justice system, notably to deal with mental health and drug issues, and more recently as a response to domestic violence. The emergence of these new courts reflects the growing recognition on the part of judges, prosecutors, and defense counsel that the traditional criminal justice methods of incarceration, probation, or parole have not had the desired result of reducing crime or recidivism. Criminal justice practitioners (and politicians) have recently come to realize that incarceration alone does little to break the cycle of crime and that prison is an expensive resource, best used for individuals who pose a continuing threat to public safety.

Domestic violence courts fall into two categories. Using the drug court analogy, it is convenient to categorize them as “expedited case management courts” (ECMCs) and treatment courts (TCs). Although both types of courts

share similarities, they are fundamentally different in that they confront the problem of domestic violence, delays and low retention rates with different methods and distinct, and sometimes opposing, goals.

ECMCs try to process domestic violence cases more efficiently by consolidating all cases in a particular court at a set time and place. This enables all those individuals with relevant information and expertise to attend, reducing delay. ECMCs still utilize traditional methods for adjudicating offenses, including the adversarial relationship between the prosecuting and defence lawyers, the judge as detached referee, and incarceration and supervision as the consequence of an offence. ECMCs do not necessarily emphasize programming for the offender, or try to identify and resolve the causes of offending behaviour.

Unlike the philosophy of ECMCs, the TC concept focuses not only on bringing the experts together in one court in order to expedite matters, it also attempts to identify and treat the causes of the offending behaviour. The TC process uses a collaborative effort among criminal justice system participants, who traditionally see each other as adversaries, in a process mediated by the judge. TCs shift the paradigm of the court system, meaning that everyone involved, including judges, prosecutors, defence counsel, the police, treatment personnel, victim services workers and probation officers, must change their outlook and conduct if TCs are to function effectively. In short, it requires a team approach.

The Yukon Domestic Violence Treatment Option falls into the category of a Treatment Court. Its underlying principles and practices are very similar to those of Drug Treatment Courts (DTCs) and the experience and learning gained in DTCs will inform and assist their growth and development. Indeed, there is every reason for domestic violence and drug treatment courts to operate in a similar fashion, as the co-occurrence of substance abuse and domestic violence is high.

### **Premises of the Domestic Violence Treatment Option**

The Domestic Violence Treatment Option recognizes that family violence is a serious criminal act, and that a more innovative response from the criminal justice system is required. The primary goals of the Domestic Violence Treatment Option are to reduce the amount of domestic violence in the community and to reduce the negative impact on victims and children. Although court based and post-charge, it provides an alternative to conventional court and is based on premises that:

- Victim safety is paramount and that initial and ongoing support must be offered to the victim and their family
- Domestic violence is learned behavior that can be changed

- Domestic violence usually occurs as a repeating and escalating behavior
- Early intervention by a multi-disciplinary team is essential
- Government and non-governmental agencies must work together to coordinate delivery of programs and support for offenders and victims of domestic violence
- Offenders need to take responsibility for their actions, while being supported with counseling; and
- An offender must be held accountable, and any deterioration in the offender's behaviour will be reported to the Court immediately

### **Essential Elements of the Domestic Violence Treatment Option**

The following components are essential elements of the Yukon Domestic Violence Treatment Option strategy:

1. The DVTO is court centered and is not diversion. The degree of court intervention and participation by the judge and probation services will depend on the circumstances of the offence, the continuous evaluation of the offenders risk factors and the performance of the offender in programming.
2. Interagency collaboration occurs through a DVTO Steering Committee, similar to a board of directors, comprised of representatives from government agencies, non-governmental organizations and the community who deal with domestic violence offenders and victims on a regular basis.
3. A Working Group consisting of those individuals who work in the front lines with offenders and victims meet on a regular basis.
4. Enhanced police investigations, management and reporting procedures support this initiative. The approach taken by officers when attending a complaint will have a significant impact on the disclosure made by the victim and her willingness to follow through with a formal complaint. The evidence collected, including transcribed 9-1-1 calls, photographs, audio and video statements from the victim, statements from independent witnesses and medical records will encourage early guilty pleas. Additional training for officers will usually be required.
5. Effective victim advocacy is provided by specially trained Victim Assistance Program staff who take a proactive approach to supporting victims, identifying their needs, making appropriate referrals and providing helpful information.

6. Specialized judges who have made a commitment to the principles of therapeutic jurisprudence are essential to the DVTO.
7. Designated Crown prosecutors are specially trained to prosecute cases in the DVTO Court and they provide consistency and continuity in dealing with offenders and victims.
8. Designated experienced defence counsel are fully informed of the Domestic Violence Treatment Option, other available treatment programs and can advise clients objectively about the advantages and disadvantages of the available alternatives.
9. Prosecution and defence lawyers must adopt a non-adversarial, collaborative approach consistent with public safety and the offenders' legal rights.
10. There must be multi-agency participation to improve case management and assist with victim support and protection of children.
11. Offenders are required to attend, participate in and successfully complete a specialized and effective counseling and treatment program.
12. By way of referral, offenders and victims have access to other resources such as alcohol and drug counseling, parenting programs and other rehabilitative services.
13. Specially trained probation officers will provide risk assessments, community-based supervision of offenders and liaise effectively with others involved in the DVTO program.
14. A defined fast-track process is essential for effective intervention.
15. A multidisciplinary team will closely monitor offenders, through regular court reviews. Sharing of information among service providers occurs before and after sentencing. This helps ensure victim safety.
16. Written protocols are developed by all participating agencies to ensure that procedures are followed and interagency collaboration is ongoing.
17. An ongoing evaluation identifies operating problems and provides an independent assessment of the DVTO program.

## DVTO Court Structure and Components

Partner agencies each have representatives who form the DVTO Steering Committee. The DVTO Working Group and Court Management Team advise the Steering Committee, and it then sets policy and priorities for the DVTO court. Each of the DVTO Court's components is briefly described below.

### Steering Committee

The DVTO Steering Committee is comprised of representatives from government agencies, non-governmental organizations and the community who deal with domestic violence offenders and victims on a regular basis. The Steering Committee provides guidance, initially with respect to the implementation of and the subsequent operation of the DVTO. The Steering Committee provides a forum for information sharing and problem solving with specific emphasis on the effective operation of the treatment option, and promotes a more efficient allocation of community resources directed to domestic violence. Additionally, the Steering Committee functions to build a mutual understanding of, and a coordinated response to, domestic violence in the community. This includes providing public education to increase awareness of the problems and effects of domestic violence. Public education will incorporate the issues of victimization, offending, and safety.

### Working Group

The Working Group consists of individuals who work on the front lines with offenders and victims. The Working Group currently includes the following representatives: DVTO court coordinator<sup>20</sup>, Crown prosecutor, defense counsel, probation officer, RCMP officer, treatment-program representative, and victim services counselor and a Family and Children services worker. The Working Group is responsible for meeting on a regular basis for the purpose of identifying and resolving operating issues, which arise on a day-to-day basis. Policy issues will be identified by the Working Group and forwarded to the Court Management Team with any relevant documentation and recommendations.

### Court Management Team

The Court Management Team (CMT) operates as a problem solving team in support of the front line workers. Issues and problems that arise are often resolved by the cooperation of the Working Group and the CMT who then report to the Steering Committee. The CMT is comprised of the DVTO Court Coordinator, the Designated Territorial Court Judge, the Director of Legal Aid, the Director of the Department of Justice and the Manager of the Family Violence Prevention Unit who, by virtue of their positions, can commit their offices to adopting change when required.

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<sup>20</sup> This part-time position is funded by the Policy Center for Victims of Crime, Department of Justice (Canada).

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### RCMP

Enhanced police investigations, management and reporting procedures are essential for the DVTO initiative. A risk assessment tool has been developed and is being used by police officers when answering and attending to any domestic violence call for service. The approach taken by officers when attending a complaint will have a significant impact on the disclosure made by the victim and her willingness to follow through with a formal complaint. The evidence collected, including transcribed 9-1-1 calls, photographs, audio and video statements from the victim, statements from independent witnesses and medical records will encourage early guilty pleas. Additional training for officers may be required.

### Crown

Designated Crown prosecutors are specially trained to prosecute cases in the DVTO Court. They provide consistency and continuity in dealing with offenders and victims. Crown prosecutors, like defence lawyers, must be prepared to play new and defined roles, including affirming and supporting the recommendations of the treatment team in open court. The public interest is redefined in terms of successful completion of the Spousal Abuse Program (SAP) by the offender and the reduction in his risk factors. The public interest is also served by engaging and educating victims.

### Defence

The DVTO is dependent upon a core group of lawyers who are prepared to practise therapeutic jurisprudence. Designated defence counsel who are fully informed about the DVTO and associated treatment programs are specially assigned to the DVTO. As in the case of designated Crown prosecutors, this provides for consistency and continuity in dealing with both offenders and victims. The primary role of defence counsel is to advise clients objectively about the advantages and disadvantages of the DVTO and other available alternatives including formal court. Practising therapeutic jurisprudence requires lawyers to take a broader view of the client's interests, such as explaining the potential of treatment to impact positively on his relationship with his partner and children. It also requires the defence lawyer to communicate closely with the treatment team.

### Judiciary/Court

A special sitting of the Territorial Court has been established to hear all first appearances for domestic violence cases and to oversee all those offenders until they elect to proceed outside the DVTO. The Territorial Judges are specifically assigned to this court and, consistent with the principles of therapeutic jurisprudence, defer to the recommendations of the treatment team.

### Probation

Specially trained probation officers act as case managers by being designated Bail Supervisors on each case. They assist with risk assessments,

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provide community-based supervision of offenders, prepare reports for the court, and liaise effectively with others involved in the DVTO program.

### Spousal Abuse Program (SAP)

The core of the DVTO Court is a specialized and effective counseling and treatment program for offenders. Individual and group treatment is provided to both male and female offenders. The SAP provides treatment that has been proven in research to be the most effective approach with spousal abusers. Safety, accountability and collaboration with other workers are all paramount to the success of working with this population.

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### Victim Services

Specially trained victim service counselors are available to take a proactive approach to supporting victims, identifying their needs, making appropriate referrals, and providing useful information. The victim is offered support and counseling throughout the process and afterwards with a focus on safety and building a relationship with the unit and other supports in the community.

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### Family and Children's Services

A specially trained child protection worker is informed of any domestic violence incident where children reside. The mandate of this worker is to support the primary caregiver, not to remove the child from the home.

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### **Processing of DVTO Cases**

When dealing with domestic violence complaints, the RCMP conduct detailed investigations and refer the alleged victim of a domestic violence dispute to Victim Services. After the RCMP has laid a charge that involves allegations of domestic violence, and/or related charges, a court date will be issued for the accused to attend at the next DVTO court sitting. The RCMP have also implemented special procedures to ensure that disclosure is given to Crown counsel prior to the first court appearance consistent with the protocol for **fast tracking** these cases.

Prior to the commencement of court, a **pre-court meeting** is held where all front-line workers attend to review and discuss cases that are on the court docket for the day. Information is shared about the accused, victim, and the offence. Counsel, treatment personnel and Victims Services workers use this time to discuss and resolve outstanding case issues, substantially reducing the adversarial nature of the court proceedings.

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Both Legal Aid and the Crown's office have agreed to assign specific lawyers to the DVTO sitting of the court. This assignment allows for the development of expertise and provides continuity, allowing the same counsel to take a case to its completion.

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Prior to the first appearance, if possible, defence counsel will review the case with the accused and **explain the DVTO Court process** to them. **The matter is then adjourned for two weeks** in order for the accused to obtain and review disclosure, assess eligibility for legal aid and attend an intake appointment with a member of the treatment team. **If the accused chooses to proceed through the DVTO process, before leaving court he** will be given an appointment to attend the FVPU where an Intake Assessment will be done to determine if the accused is eligible for treatment through the SAP.

If the defendant chooses to plead not guilty, his case is referred to the formal court process.

Once the accused has **pled guilty**, the SAP treatment team conducts a **lengthy clinical assessment, which** forms part of the ongoing treatment plan. The matter will then be adjourned for an extended period, during which time the offender is required to participate in a **counseling** program which will include **one-to-one sessions, group counseling sessions, case conferences** and follow up which includes a **relapse prevention program**.

During the adjournment period, the offender will be required to attend court and report on his/her progress through the program. These court appearances known as **“check-ins”** will be required monthly or as often as agreed upon by the parties at a **pre-court meeting**. The offender may appear on these dates with or without legal counsel, but treatment staff, **victim service workers** and bail supervisors will be present to assist with any information that may be required by the court.

One of the most common issues that **arise** at the court “check-ins” is **application** to remove or **amend “no-contact” orders**. The DVTO Working Group has developed a process that each offender is required to adhere to in order to have such applications considered. Firstly, once the offender indicates to the court and treatment team that he wants to make such an application, the matter will **usually** be adjourned for two weeks until the next DVTO court sitting. During that time the onus is on the offender to meet with a treatment team member and devise a **“relapse prevention plan”** which will be presented to the court. The relapse prevention plan requires the offender to recognize **risk factors, which might result in safety**, concerns for his partner and to determine how those risk factors can be managed to keep his family safe. Also during this period of time, Victim Services will determine the victim’s wishes regarding contact with the offender. If the court does consider amendments to the no-contact order, contact will likely be permitted on a **graduated** basis and will be wholly dependent on the reduction of risk by the offender. By way of example, the court **may initially permit** telephone contact only, or contact only during certain hours or only in certain public places, or only at the request of the victim. **Contact will be increased with the agreement of the victim as the** offender

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progresses through the program, taking account of the reduction in his risk factors.

Upon completion of the SAP program, the treatment counselors will provide a **Treatment Report to the court** outlining the participation and treatment progress of the offender as well as any recommendations to address any future treatment and safety issues.

During the course of the treatment a decision will be made by the lawyers and the treatment team regarding the necessity of a **Pre Sentence Report (PSR)**. A PSR will normally be ordered. A **Sentencing Hearing** will be scheduled on a date approximately one month after the completion of the SAP Group Program. The sentence will give credit for the early guilty plea and reflect the participation and progress of the offender through the treatment process as well as the *Criminal Code* sentencing principles. Sentences will almost always include a lengthy period of **Probation, which** may require the offender to continue or repeat components of **SAP**. Probation may also require the offender to attend other treatment programs to address ongoing issues such as alcohol addiction or parenting skills.

Sentencing usually occurs within four to six months after the first court appearance. **If the offender successfully completes the programming and abides by the other conditions imposed by the court, the disposition will reflect the reduction in his risk factors and be less than what the offender would have received had he not voluntarily entered a guilty plea and taken the programming. Absolute and conditional discharges, suspended sentences with probation and conditional sentences of imprisonment are most often utilized. After sentencing,** the offender will continue under the supervision of the court for between 12 and 24 months and can expect to attend court regularly for the purpose of reviewing his/her progress.

Every effort is made throughout this process to address the **victim's needs and concerns**. Safety considerations are given the highest priority. Victim Services will assist the victim and provide information about available services. The victim will be invited to participate in the offender's assessment process. Victims are also invited to attend group sessions designed to provide information about domestic violence, provide support and help them to develop necessary skills. The court encourages victims to be heard at all stages of this process, **either directly or through the victim worker. To ensure that the victim is aware of the progress (or lack thereof) made by the offender, the court may direct that copies of reports and assessments be given to her,**

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## Description of Spousal Abuse Program (SAP)

The Spousal Abuse Program (SAP) is a core component of the Domestic Violence Treatment Option. The role of this program is to offer assessment, early intervention, and therapeutic programming to offenders who accept responsibility for their behaviour and elect to proceed by way of the DVTO Court process.<sup>21</sup>

The SAP philosophy assumes that abuse is a continuum of behaviours both physical and psychological, with the prime motive being centered on issues of power and control. Treatment encompasses the broader definition of abuse, which includes a wide array of behaviour that may be controlling or hurtful in nature.

The safety of the women and children is always of paramount concern and this is taken into consideration before any intervention with men occurs. For those offenders who accept the therapeutic component of the DVTO, the aim of the SAP is to provide treatment to assist men in changing their abusive attitudes and behaviours. The treatment program includes a ten-week group component, which is held twice a week for two hours followed by a relapse prevention component, which is tailored to the needs of the individual offender. The treatment helps men examine the purpose of their abusive actions and to look at the underlying belief systems from which they operate. The men are also taught new skills for managing stresses, emotions and behaviours. The objective is to assist men in stopping abuse and violence in their intimate relationships.

Over the past several years, the courts have seen an increased number of women who were being charged with domestic assaults. It became more and more apparent that there was a need for a treatment program to address women's violence. In March of 2002, the Spousal Abuse Program expanded its treatment to include female offenders.

If treatment is to be successful, treatment for women needs to be different than the treatment for men. One of the big differences between male and female offenders is that many of the females have also been victims of domestic abuse as well as perpetrators (if not in their present relationship, then in previous ones). Unlike abusive men, women tend to use acts of violence and various forms of abuse not just as a means of controlling their victim's actions, thoughts and feelings, but for other reasons as well, such as retaliation and self-protection. The treatment provided in the Spousal Abuse Program assists women in examining the intents of their abusive actions and to utilize new skills for managing stresses, emotions and behaviours.

<sup>21</sup> Offenders who choose not to proceed through the DVTO but are subsequently found guilty in criminal court, will normally be required to complete the SAP program during a period of probation.

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Throughout the treatment program there is a continual flow of information between the program facilitators, Victim Services, adult probation, counsel and the court. The program facilitators give regular updates on the offender's general progress throughout the treatment sessions. This allows probation officers to make accurate case management plans and recommendations to the court. Counsel is not taken by surprise and normally is in full support of the proposed disposition. This process allows the court to accept the recommendations presented by the treatment professionals and probation services. By being a party to the flow of information, Victim Services are able to assist a victim with planning for safety and other programming.

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## **DVTO: Is It Working?**

The DVTO Court is undergoing an independent evaluation, which has just been extended for one further year in order to add to the data and enable a more thorough analysis of the court.<sup>22</sup> Although the quantitative data from that evaluation is not yet available for publication, we can report the following observations:

- ✓ First Nations individuals and communities are supporting the DVTO and are making referrals to the programs. The emphasis on “healing” in this therapeutic court is consistent with First Nations’ culture;
- ✓ We have gone from a 75% collapse rate with domestic violence cases to a system where approximately 90% of the offenders charged with a domestic violence offence are entering guilty pleas and receiving treatment. This is a dramatic change in the experience for the victims of these offences;
- ✓ There is a very high rate of retention in the SAP program with almost 100% of offenders completing the treatment program. The success of the programming is a result of fast tracking into a responsive and engaging treatment program, the fact that the treatment is post-charge but pre-sentence and court monitoring and supervision throughout the process;
- ✓ The Steering Committee has brought together all community and government agencies that are involved with domestic violence, resulting in increased interaction, better relationships, better communication and a forum for problem solving;

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<sup>22</sup> A multi-year independent evaluation of the DVTO program is being conducted by the Canadian Research Institute for Law and the Family, University of Calgary and is funded by the Department of Justice (Canada) and the National Crime Prevention Council.

- ✓ Initially the DVTO Court program was implemented by reallocation of staff and workloads, without any additional financial resources. As the volume of work has increased, additional resources have been added to the program.
- ✓ All participants in the DVTO Court process are now better educated about the issues and challenges associated with domestic violence. For example, the RCMP, Crown and Defence Counsel have all altered their practices to contribute to this process.
- ✓ The evolution of the Court has helped us identify the need for specialized programming. The DVTO process now includes: substance abuse assessment and counseling, forensic psychological assessments, increased supports for victims, individual programming for FASD clients, spousal abuse programming for female offenders, parenting programs, and relapse prevention groups.

### Continuing Operational Challenges

1. Defence lawyers have not been uniformly supportive of domestic violence treatment courts. Concerns that have been expressed include the appropriateness of a specialized docket, giving the treatment team significant control over case outcomes with a commensurate loss of control by counsel, and the emphasis placed on treatment and prevention.

2. The treatment court model requires that a responsive and appropriate treatment program be available for offenders and as a result may require more intensive treatment resources and expanded victim services. In part, this is a result of a larger proportion of offenders pleading guilty and accepting responsibility. Also, the retention rate in court-supervised treatment is high. The program appears to generate more disclosures from victims because it is more responsive to their needs and the court is more involved in addressing victim's issues. The knowledge that the offender will not automatically be facing a jail sentence as the only option encourages more victims to report violent offences.

3. In the Yukon, for reasons unknown, the DVTO has resulted in a substantial increase in the number of female offenders coming before the court. Unfortunately, much less is known about the dynamics of female domestic violence and the kinds of treatment programs that are effective.

4. Cognitive group therapy, an essential element of the treatment program, requires experienced facilitators and a critical number of clients for the group sessions in order to be effective. This limits the ability to provide this service in small, isolated rural communities.

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## Conclusion

Significant changes to policy and practices are prerequisites to implementing a domestic violence treatment court. This can only be achieved through a broad-based dialogue among justice system professionals and others who deal with domestic violence. The purpose of this dialogue is to develop a consensus: first, with respect to the limitations of the conventional justice system, and secondly, with respect to what can be done to reduce recidivism and improve the safety of victims. Open and honest dialogue can break down the barriers that currently separate various government and non-government agencies that currently deliver programs and support to offenders, victims and their families. Interagency cooperation can generate collaborative service models, remove practice barriers, identify gaps in service, eliminate duplication, enhance access to services and improve both efficiency and effectiveness. By working together rather than against each other, we can make our families healthier and our communities' safer places for everyone.

The DVTO process does not presume that any component on its own will be effective in treating domestic violence offenders. Rather, all the components together, from initial police intervention, continuous risk assessment, early victim contact, fast-tracking of cases into the court system, early guilty pleas, immediate contact with counselors, effective treatment programs and court based supervision both pretrial and post-sentencing comprise a system that can make a difference.

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FIGURE 2.1

Organizational Structure of the Domestic Violence Treatment Option Program

