**The Ottawa Specialized Domestic Violence Court:
A Case Study**

By

Catherine C. Graham

A Thesis submitted to the
Faculty of Graduate Studies and Research
through the Department of Law in partial fulfillment of
the requirements for the degree of Master of Arts at
Carleton University

Ottawa, Ontario, Canada

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ISBN: 0-612-98968-2

Our file Notre référence

ISBN: 0-612-98968-2

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Abstract

Through the use of a case study this thesis examines the usefulness of the specialized domestic violence court in Ottawa, Canada. In doing so it establishes that the court fails in its ability to achieve three of the key mandates of the court. Specifically these are the court's ability to expedite the processing of cases, its ability to achieve convictions and its reduced reliance on the victim for the purpose of achieving conviction. It is also suggested however that the court may have positive attributes that can not be measured quantitatively. Possible alternatives to the specialized court are discussed and the need for an approach that includes both criminal justice and social justice initiatives is suggested.

Acknowledgements

There are very few times in life when we are given a platform to formally acknowledge those who have made a difference in our lives. For this reason I have chosen to use this as my platform to thank not only those who have guided me through the process of writing this thesis but to pay homage to those who have helped guide me along the path that is my life as well. I would like to begin by thanking the professors at Carleton University's departments of Law and Sociology. In particular, I would like to thank Professors Jane Dickson-Gilmore, John Cove, Heather Kitchin, Patricia Moise, Walter Dekeseredy, Shahid Alvi, and Alan Hunt. Your wisdom and knowledge are true gifts and I am honoured to have been the recipient of even a small fragment of your offerings.

Many thanks must be given to the staff in the department of Law. Barb, thanks for your kindness and support over the years and Andrew you always give 110% to the students and it means more than you know. A great deal of gratitude, respect, and appreciation must also go to my committee members, Dianne George, Karen Schwartz, Peter Swan, and in particular my supervisor, Jane Dickson-Gilmore. Jane, words can not express the admiration and respect that I have for you. You inspired me to think

critically about the law when I first began at Carleton as a special student eight years ago and you continue to inspire me today not only as a student of law but of life as well. Thank you for your patience, understanding, and support while I completed my thesis. I would never have finished if it were it not for you.

To Florence and Symodel, your guidance and support during one of the most critical turning points in my life can not be overlooked. You kept me from going "home" and in doing so you changed my life and without that change my return to school would have been impossible. Carol thanks for your friendship and support over the years and let's not forget the free childcare. You are a true friend. To Klaudia, thank you for your feedback over the last couple of years. The camaraderie is greatly appreciated.

Finally, I would like to thank my family. Mom and Dad, you have always been there for me even when I didn't realize it. You have supported me over the years and you have had confidence in me even when I didn't have any in myself. I love you and want to thank you for all that you have given to me. Last but not least I would like to thank my son Michael. You are the reason for everything I do. Oh yeah and Mike - I LOVE YOU MORE!!!

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Introduction

The prevalence of domestic violence in Canada is astounding. It is estimated conservatively that on average, three out of ten Canadian women experience violence at the hands of their intimate partners.¹ This is not a new phenomenon however, nor is this a phenomenon that is exclusively Canadian. In fact, violence against women has plagued virtually all societies and cultures since what seems to be the beginning of time.² The one thing that has changed, however, is the way that this violence is dealt with by the criminal justice system.

The most recent addition to what seems to be an ever-growing arsenal in the fight against domestic violence has been the development of the specialized domestic violence court. These courts, which will be discussed in more detail in the upcoming chapters, are primarily intended to address the unique issues that are facing the criminal justice system when dealing with cases of domestic violence. Among these issues are those related to a lack of victim cooperation, high rates of case attrition, and lengthy processing times. Even though these courts are

¹ National Judicial Institute, *Wife/Partner Assault: Fact Sheet* (2000) Ottawa: National Judicial Institute. <http://www.nji.ca/>

² Canadian Center for Justice Statistics, *Family Violence in Canada: a Statistical profile 1999*, (2000) Ottawa: Statistics Canada at 18-19.

becoming increasingly more popular there is still very little literature on the subject. This particularly appears to be the case from a Canadian context. The limited research that does exist appears to have been conducted in large part by government agencies and special interest groups.³ As a result, this research bears the possibility of being conclusion driven.⁴ In addition to this possible lack of objectivity, much of the existing research appears to have been conducted shortly after the courts were opened, and no follow up research has been conducted to determine the court's sustainability.⁵ This potentially flawed research has been used to support the increased use of specialized domestic violence courts in many jurisdictions, including those in the province of Ontario. This is troublesome because without adequate research on the subject we will never truly know if these efforts are actually contributing anything to the fight against domestic violence. It is with this limited

³ Academic research on the subject of domestic violence courts was extremely difficult to find. Most existing research that discussed successes are reports prepared by government agencies or groups such as Court Watch Toronto.

⁴ By using the words conclusion driven I am suggesting that those who prepare these reports may have a personal or political stake in the success of the domestic violence court. In doing so they may report information that is supportive of the domestic violence court and down play findings that point towards its possible shortcomings.

research and its possible consequences in mind that I propose the following research questions:

One, has the implementation of the Ottawa Specialized Domestic Violence Court been successful in improving the way that the criminal justice system deals with cases of domestic violence in the Ottawa area? Two, has it been able to effectively achieve higher rates of conviction, reduced reliance on victim cooperation during the court process, and reduce the processing time of cases so that they are in keeping with the standards originally set out by the province? Three, how do these findings differ from those that have been reported in other research and by other jurisdictions? Four, what alternatives or additions can be made to the current process that might strengthen the way that cases of domestic violence are dealt with by society and the criminal justice system in particular?

In answering these questions this thesis will argue that the Ottawa Specialized Domestic Violence Court has failed in its effort to achieve its basic mandate, and that for any criminal justice initiative to be successful, it must be accompanied by a sufficient social justice component. This thesis will also argue that until a

⁵ This is a problem that will be discussed in more detail during chapter three and four.

uniform model of assessment is in place the level of success that these courts have or have not achieved will not be fully understood. Without this uniformity we run the risk of not contributing to the fight against domestic violence to the best of our ability, because our attention has been falsely drawn away from initiatives that focus on prevention, protection, the needs of the victim, and the elimination of domestic violence.

Chapter Outline:

This thesis will be divided into four chapters. Chapter one seeks to familiarize the reader with the concept of the domestic violence court by providing a brief overview of the existing research on the subject. The discussion begins with an introduction of the theoretical arguments behind the development of domestic violence courts. In doing so the term "therapeutic jurisprudence" will be introduced and discussed insofar as it relates to the development of domestic violence court literature. Chapter one then turns from the theoretical to the actual as it discusses the development and structure of domestic violence courts.

The discussion of these specific domestic violence courts begins within the American context and then shifts

to a Canadian perspective, before moving towards a discussion of the development of specialized domestic violence courts within the province of Ontario. An understanding of the reasons why domestic violence courts were introduced in Ontario will be developed before attention is turned to the specific case of the Ottawa Specialized Domestic Violence Court. Chapter one concludes by discussing the development of the Ottawa court. It also discusses the many changes that the Ottawa Specialized Domestic Violence Court has undergone since it first opened its doors in 1997.

Chapter two picks up where chapter one left off by discussing the limitations of the current research and providing an explanation of why independent research on the subject of domestic violence courts is needed. A working definition for domestic violence, along with an explanation for its use, is also provided in chapter two. With a definition of domestic violence in place this chapter turns its attention to explaining the methodology that was used for the purpose of completing this thesis. Data sources and collection techniques are discussed in detail, as are the variables that are being used in this analysis. Through this discussion limitations of the

chosen methodology, along with the difficulties that arose during the process of collecting and analyzing the data, will be articulated. Chapter two concludes with the explanation of additional methodologies that were used during the completion of the thesis.

Chapter three builds upon the previous chapter but attention is shifted towards the research findings that stemmed from the data that was collected at Ottawa courthouse. In doing so, it examines the court's ability to achieve the three main goals that appear to be paramount to the province of Ontario's argument in support of the use of domestic violence courts. These goals are, one, the ability of the court to process cases in a timely fashion, two, the ability of the court to achieve higher rates of conviction, and three, the courts' ability to achieve these convictions with minimal reliance on victim testimony. Through this examination, it will be determined that the court has fallen short in its ability to achieve these goals and will proceed to offer reasons for this inability. Unfortunately, due to the limited scope of this thesis the question of whether or not these goals are the right goals or not will be addressed in any

great detail in this chapter. This issue will, however be discussed largely in the final chapter of this thesis.

Chapter four is the final chapter of this thesis. It serves as an extension of chapter three with the focus now shifting towards possible solutions. It recaps the findings of chapter three, and discusses the possible options and/or alterations that may be brought to the current process that might enhance the criminal justice system's ability to deal with cases of domestic violence. Possible options and/or alterations that are discussed include decriminalization and social justice approaches. Before this can be accomplished, however, a review of the courts' actual relevance is conducted. It is argued that the Ottawa court and others like it may still be of benefit in the fight against domestic violence even in light of the weak findings that are reported in this study.

Chapter four also serves as the conclusion of the thesis. This conclusion serves as a call to arms, suggesting that first, a uniform system for monitoring these courts must be established, and second that attention to social justice issues is vital to the fight against domestic violence.

Chapter One

In the introduction to this thesis, it was identified that domestic violence has been an ongoing issue since what seems to be the beginning of time. It has permeated our culture to the point that dealing with it has become a daunting task. From a criminal justice perspective, officials, academics, and advocates have worked feverishly over the years to try to develop strategies to better deal with cases of domestic violence.

Some initial attempts have included policies such as mandatory arrest and charging.⁶ These initiatives were developed in an attempt to curb the over use of police discretion. These policies were also seen as a way of preventing alleged victims from choosing not to charge their partners.⁷ However, even with these policies in place the criminal justice system has still experienced several obstacles when trying to deal with cases of domestic

⁶ Acting upon direction from federal parliament the Solicitor General issued a written request that all police officers lay charges in cases of domestic violence where evidence warranted. See: Department of the Solicitor General of Canada, *The Myth of "The Mandatory National Charging Policy"*, (1993) at 14. These policies have faced criticisms as a result of the argument that they among other things often result in charges being laid against the victim. They also do nothing to actually protect the victim from their perpetrator nor do they contribute to the reduction of violence.

⁷ While these policies continue to be the cornerstones of a criminal justice approach to fighting domestic violence they have not been without their criticisms. Unfortunately, an explanation of these issues is far beyond the scope of this thesis.

violence. While the mandatory charging and arrest policies have ensured that cases got to court, the court system as it stood was incapable of adequately dealing with these cases.

To begin, the prosecution of domestic violence has been made difficult in the past by the fact that many people, including those who worked in the criminal justice system, still viewed domestic violence as a private matter. As such, these matters have often not been seen as an issue of public safety, the way other cases were viewed.⁸ Therefore, such cases were often seen as less important and, in an era of limited resources and court backlogs, these cases often did not receive the attention that some thought they deserved. As a result, some prosecutors did not prosecute cases of domestic violence as vigorously as they should have and cases were often thrown out of court. Poor evidentiary techniques and reluctant witnesses often plagued cases that did proceed to prosecution. Furthermore, when cases did result in conviction, the offender may have often received a

⁸ By saying this I am not trying suggest that all who work in the criminal justice system share or shared these beliefs nor am I suggesting that in recent years these beliefs haven't been reduced.

sentence that was far less than someone who had faced similar charges in a non-domestic situation.⁹

In addition to these problems domestic violence cases have been faced with a common problem that has plagued virtually all criminal cases, that of prolonged processing time. These waiting times were and in some courts still are, such that they put huge amounts of strain on the parties involved. Victims were unable to move on with their lives and the treatment of offenders was delayed.

Previous initiatives such as mandatory arrest and charging policies were also limited by the fact that they offered little or no support to the victim. They did little to contribute the victim's overall sense of safety nor did they guarantee that a victim would be a successful, or even compliant witness, during the prosecution. As a result, already poor conviction rates suffered. In an attempt to address these issues and concerns, justice officials in some American jurisdictions have adopted what is known as a "coordinated community approach" to dealing with domestic violence.

The Coordinated Community Approach:

⁹ Duffy, A. & J. Mormirovn, *Family Violence: A Canadian Introduction* (1997) Toronto: James Lorimer & Company, Publishers at 186.

The coordinated community approach seeks to bring stakeholders together in a collaborative fashion that improves the official response to domestic violence. These stakeholders include, but are not limited to, police agencies, prosecutors, the judiciary, probation, and parole services, health care professionals, victims' rights advocates, child protection agencies and service providers such as victim witness services, social welfare agencies and women's shelters.¹⁰

In addition to the benefits of a more open line of communication between stakeholders, the collaborative approach seeks to ensure that evidence is collected in a way that maximizes the potential for successful prosecution.¹¹ This includes the use of enhanced policing procedures that are specific to domestic violence cases. These procedures include those directing police responding to domestic violence calls to ensure that the victim is familiar with the services that are available to her. These include medical care, victim/witness services, and safe houses. The officer is also obligated to ensure that the victim is aware of the potential for future violence.

¹⁰ Joint Committee on Domestic Violence, Working Toward a Seamless Community and Justice Response to Domestic Violence: A Five Year Plan for Ontario (1999) Toronto: Joint Committee on Domestic Violence.

¹¹ Ibid.

In jurisdictions such as San Diego, officers used formulated checklists to facilitate this task.¹²

As with most criminal cases, each case of domestic violence is assigned an investigating officer. It is this officer's job to investigate the allegations and report the findings to the prosecutor's office. In many jurisdictions this officer will be specially trained to deal with domestic violence cases and will see the case through from the time of initial contact through to its conclusion in the criminal court process.¹³ As part of the enhanced evidence gathering procedure, police officers are directed to obtain videotaped statements from the victim whenever possible. The prosecution is able to use these videotapes in lieu of victim testimony if the victim later recants her testimony, or if the prosecutor decides that the victim will not make a convincing witness. In some cases the prosecutor may use the videotaped testimony to help the court understand the perception of danger that the victim experienced at the time of the alleged assault.¹⁴ In addition to the use of videotape, police are

¹² Armstrong, J., Daly, R. & C. Mallan, *Hitting Back in San Diego This southern California city is winning the battle against domestic violence - By using all the evidence available. Prosecutors prefer that Abused not testify*, (1996) Toronto: Toronto Star, March 16, C1

¹³Ibid.

¹⁴Ibid.

directed to take pictures of both the alleged crime scene and of any injuries that the victim may have incurred. An attempt is made to take pictures twice during the investigation. The first photos are taken at the time of first contact and then again in the days immediately following the alleged assault. This ensures that bruising and marks resulting from the assault have had the chance to become fully visible. These special techniques, in conjunction with the use of such resources as 911 tapes, all contribute to a greater likelihood of conviction.¹⁵

While these resources definitely have the potential to increase the likelihood of a conviction, they do little to diminish the limitations that are inherent in the system when it comes to dealing with domestic violence. As with mandatory arrest and charging policies, these policies do not diminish the attitudes of some court officials that domestic violence is a minor offence in comparison to other more mainstream offences due to its "private nature", nor does it reduce the processing time of domestic violence cases. In response to these concerns the specialized domestic violence court was established.¹⁶

¹⁵ *Ibid.*

¹⁶ Buzawa E.S. & C.G. Buzawa, *Domestic Violence: The Criminal Justice Approach* (2003) California: Sage Publications.

Specialized domestic violence courts have as their sole purpose to dealing with the issues that arise out of intimate partner violence. The specialized domestic violence court is the latest in an increasing group of what are known as "problem solving courts." Other courts within this group are drug courts and mental health courts.¹⁷ The origin of the domestic violence court is difficult to accurately trace, but there is evidence that such courts have been in operation throughout various jurisdictions across the United States for quite some time.¹⁸ These courts which will be discussed later, include those in Florida, California, and New York State.

Theoretically the domestic violence court finds its reasoning within the study of therapeutic jurisprudence. Founders Bruce Winick and David Wexler define therapeutic jurisprudence as

the study of law's healing potential. An interdisciplinary approach to legal scholarship that has a law reform agenda, therapeutic jurisprudence seeks to assess the therapeutic and counter-therapeutic consequences of law and how it is applied and to effect legal change designed to increase the former and diminish the latter. It is a mental health approach to law that uses the tools of the behavioral sciences to assess law's therapeutic

¹⁷ Endress Skove, A., *Specialized and Problem-Solving Courts: Trends in 2002; The ethics of Problem Solving* 2003) Virginia: National Center for State Courts www.ncsconline.org/WC/Publications/KIS_SpePro_Trends02Ethics_Pub.pdf

¹⁸ Buzawa E.S. & C.G. Buzawa, *supra* note 16

impact, and when consistent with other important legal values, to reshape law and legal processes in ways that can improve the psychological functioning and emotional well-being of those affected.¹⁹

It argues that courts should be more concerned with the therapeutic needs of the victim and the offender than with the outcome of the trial. In fact, it goes as far as suggesting that even defense lawyers have an obligation to their clients to act in their emotional and psychological best interest even if it means urging them to plead guilty when a finding of guilt might not be imminent. The reasoning behind this is that if the guilty plea will facilitate the healing or treatment of the offender, it is seen as being in the client's best interest.²⁰ While this suggestion bears several different ethical concerns regarding the role of the defense attorney and the rights of the offender, they are beyond the scope of this thesis therefore will not be discussed.

The Goals of the Specialized Domestic Violence Court:

In more tangible terms than those described above the domestic violence court seeks to better meet the needs not only of the, victim and the offender, but of society as well. The separation of domestic violence cases from

¹⁹ Winik, B., *Therapeutic Jurisprudence Defined* (2003)
<http://www.brucewinick.com/Therapeutic%20Jurisprudence.htm>

²⁰ Endress Skove, A., *supra* note 17

mainstream cases is thought to be beneficial in several ways. On the most basic level, it is argued that domestic violence courts contribute to sending a strong message to the general population that domestic violence is a serious offence that will not be tolerated. In addition, it is argued that fewer cases will "fall through the cracks" because cases no longer have to compete with cases that have in the past been seen as "more serious" in nature. As a result, fewer charges will be dismissed and more cases will meet with successful prosecution. This in turn contributes to the denunciation of domestic violence.

The use of specialized domestic violence courts is believed to speed up the processing of cases as there are fewer cases competing for time on the docket. It is thought that this is necessary for several reasons. For example, there are those who argue that when a case takes too long, the "court loses its judicial effect."²¹ This helps to ensure that the lives of those involved can resume relative normalcy in a quicker fashion than is the case in the mainstream court. Furthermore, the offender, if convicted, is able to begin court ordered treatment within a shorter period of time, thus reducing the overall

risk to the current victim and possible future victims. The specialized court is also argued to contribute to the victims' overall wellbeing and individual safety through the provision of victim/witness support services. Not only does this last service allegedly contribute to the overall security of the victim, it is thought to contribute to the potential of a successful prosecution, because the victim becomes a better prepared witness as well.²²

The Domestic Violence Court Structure:

The structures of domestic violence courts vary from jurisdiction to jurisdiction in accordance with the laws of the specific states or provinces where they are located. For example, in many states, domestic violence courts operate in conjunction with family courts and operate within a "one stop-shopping" atmosphere. Here victims are able to obtain orders of protection and custody orders at the same time that they pursue the prosecution of their alleged abuser.²³ In other jurisdictions courts deal with only criminal matters, while in the jurisdictions courts are limited to hearing

²¹ Fritzle, R.B., & L.J.M. Simon, *Creating a Domestic violence Court: Combat in The Trenches* (2000) Court Review
<http://aja.ncsc.dni.us/courtrv/cr37/cr37-1/CR9FritzlerSimon.pdf>

²² Ibid.

either felony or misdemeanor cases, or first time offences.²⁴

While the types of cases that are heard may vary from court to court the fundamental structure and philosophy appear to be common threads throughout. This structure generally includes a courtroom that is specifically assigned to cases of domestic violence. Many have additional security and/or designated waiting areas for the victim.²⁵

In recognition of the attitudes and misperceptions that may be held by some court officials about domestic violence, these courts are usually overseen by specially trained prosecutors and judges whose participation in the court is voluntary. The same prosecutor or judge oversees cases for their entire duration. This is to ensure the best possible outcome, and is said to provide continuity for the victim.²⁶ Finally, in keeping with the philosophies of therapeutic jurisprudence, the judges in many courts are also responsible for overseeing the post conviction progress of the offender.²⁷ To date, the

²³ This is the case in the San Diego Court.

²⁴ For Example the North York court only hears cases involving first time offenders.

²⁵ Fritzle, R.B., supra note 21

²⁶ Ibid.

²⁷ Armstrong, J., Daly, R. & C. Mallan, supra note 12

existing research appears to indicate that with virtually no exception, overall the domestic violence court concept is a success. Unfortunately, as will be discussed later, the definition of success that was used to make these claims has been unclear.

The San Diego Domestic Violence Court:

As mentioned above, specialized domestic violence courts are in operation in several jurisdictions. One such court is located in San Diego, California. Prosecutors in this jurisdiction had experienced problems similar to the ones that have been mentioned above, including low rates of conviction and issues concerning victim cooperation. In response to the problem, justice officials developed a "victimless prosecution" strategy. This strategy was heavily based on the collaborative approach to fighting domestic violence that was described earlier in this chapter²⁸. It includes improved evidence collection techniques, such as mandatory photographing of the victim's injuries, as well as videotaping of victim statements. The police are also required to complete a safety check list with the victim, and put her in contact with victims' services and/or apprise her of the existence

²⁸ Ibid.

of services that can provide her with safe shelter. There are also provisions for financial and emotional assistance to be given to the victim. Officers are also required to attend court proceedings when their specific cases are being heard and they must complete paper work exclusive to the processing of domestic violence cases. Furthermore, they are required to keep in close contact with the prosecutors' office.²⁹

Prosecuting attorneys who work in the San Diego courts are selected based on their desire to participate, and once selected, they are provided with special training on the dynamics of domestic violence. Following their assignment to a case, the prosecutor will be responsible for that case from beginning to end. This is in stark contrast to regular procedures, wherein a case may pass through the hands of several prosecutors before being closed. The prosecutor in each individual case is further required to make contact with the victim as soon as possible after the incident has occurred. They are then required to stay in contact with the victim either personally, or through a victim service liaison, for the duration of the court process. It is thought that, by

²⁹ Ibid.

making contact immediately after the incident has occurred and continuing that contact, the prosecution benefits because their case is better established and the victim is better able to deal with her situation.³⁰

Once the case goes to trial the prosecutor has at their disposal evidence that in the past has not been used. This evidence includes 911 tapes, videotaped victim statements, photographs of the victims' injuries and, when possible, medical records. By using this evidence, the victim is no longer needed to provide testimony. In fact, while the victim provides input into every phase of the process, San Diego prosecutors prefer that victims do not testify at trial because their potential unpredictability can jeopardize the case outcome. Because of this collaborative initiative, the San Diego District Attorneys office reports that the rate of conviction in cases of domestic violence has increased dramatically. Of 2,942 cases heard during one year, they achieved a guilty plea rate of 95% and of the remaining 58 cases 86% were found guilty at trial.³¹

A study conducted by the Institution for the Office of the Assistant Secretary of Planning and Evaluation

³⁰ Ibid.

³¹ Ibid.

reported similar findings in San Diego and other communities in the United States. Furthermore, this study also showed that because of the new initiative in San Diego, the rate of spousal homicide has been reduced and that the number of offenders being charged has doubled.³²

The Winnipeg Family Violence Court:

The increase in the use of domestic violence courts has not been limited to the United States. In fact, Canada has seen the emergence of several of these specialized courts.³³ One such court is the Winnipeg Family Violence Court. The Winnipeg court is set up much in the same way as other domestic violence courts, with the exception that the Winnipeg court oversees elder and child abuse cases in addition to cases where the alleged violence occurred within an intimate relationship. The goals of the court are also similar to other courts in that it seeks to reduce court processing time, to rigorously prosecute the cases that come before it, and to

³² Clark, S.J., Burt, M.R., Schulte, M.M., & K. Maguire, *Coordinated Community Responses to Domestic Violence in Six Communities: Beyond the Justice System*. (1996) Washington, DC: The Urban Institute.

³³ Specialized domestic violence courts also exist in the Yukon territory and most recently a specialized domestic violence court has been established in Calgary Alberta.

hand down more meaningful sentences to those convicted of domestic violence related charges.³⁴

In her analysis of the Winnipeg court Jane Ursel reported that the court has been successful in reaching its goal of reducing case processing time to an average of three months from what had previously been several months.³⁵ In fact, the Winnipeg court has reported that 70% of the cases that come before the court are disposed of within three months of the offence. Of these cases "73% were processed within one month of the accused offender's first appearance." During the research period 80% of the cases required three or less adjournments.³⁶

Ursel also reports that the sentences that are handed out are more meaningful by court standards, meaning that fewer conditional sentences were assigned and more offenders were ordered to participate in court mandated treatment programs. The report, however, suggests that the court has met with only limited success regarding the reduction of "case attrition prior to sentencing." Prior to the development of the specialized court in Winnipeg only 53% of cases proceeded to the sentencing stage.

³⁴ Ursel, E.J., *The Family Violence Court of Winnipeg* (1992) Juristat 14 (12, May) pp. 1-15.

³⁵ Ibid.

³⁶ Ibid.

Ursel reported that this number increased to 60% of all cases in the specialized court.³⁷

The Advent of the Ontario Specialized Domestic Violence Court Initiative:

As is the case in many jurisdictions, the province of Ontario has had difficulty with the successful prosecution of domestic violence cases. This problem was brought to the attention of the public at large in March of 1996 when The Toronto Star newspaper published a series of articles about domestic violence and the criminal justice system's response to it. For the purpose of writing the article the authors followed 133 cases of domestic violence that had come before Toronto courts during the week of Canada Day 1994. What they found was all too familiar to those in the field. The report showed that of the 133 persons charged, 37% ultimately had their charges dismissed or withdrawn because the victim, who was the Crown's main source of evidence, had either recanted her testimony or failed to show up in court.³⁸ Furthermore, the study found

³⁷ It must be kept in mind however that these statistics include those related to elder and child abuse as well. It is possible that these statistics might tell a very different story if elder and child abuse cases were removed from the data set.

³⁸ When charges are withdrawn the Crown Attorney does it. In cases where the Crown withdraws charges it is due to a lack of evidence. When charges are dismissed the judge dismisses them. This is done when the judge rules that there is insufficient evidence to proceed. For example, if the Crown Attorney fails to provide sufficient

that those who were convicted received sentences ranging from conditional sentences, time served, or probation, to two days in jail.³⁹

Some commentators, such as the Woman Abuse Counsel of Toronto have suggested that it was in partial response to the above-mentioned Toronto Star article that, in 1997, the Specialized Domestic Violence Court Pilot Project was launched in Toronto. This project included the development of two specialized courts dedicated exclusively to the prosecution of cases concerning domestic violence.⁴⁰

The first court to be discussed here is located in North York. It is directed towards first-time offenders who have not used weapons or inflicted serious bodily harm to the victim during the commission of the offence. In many cases, the victim and the offender have also expressed a desire to remain together in the relationship. The program offers support for the victim throughout the process and provides contact information about outside

evidence at the pre-trial stage the judge will rule that the case will not proceed and the charges are dismissed.

³⁹ Supra note 37.

⁴⁰ Ministry of Attorney General, *A Protocol for the Specialized Courts: Commitments to a Coordinated Response to Domestic Violence* (1999) Toronto: Ministry of Attorney General.

agencies that can provide help in dealing with the issues surrounding domestic violence.⁴¹

Once the offender pleads guilty, a conditional sentence is often imposed. This means that if the offender abides by the conditions of the sentence (i.e. completion of a batterers program, abstention from alcohol and or drugs etc.), no conviction will be entered into his record. On the other hand, if the offender does not comply with the conditions, he will be returned to court and subject to a stiffer sentence imposed by the judge. If the offender chooses not to plead guilty, his case will then be transferred to the regular court system for full prosecution.⁴²

The second court in the pilot project is called the K-Court and is located at Toronto's Old City Hall. This court is patterned after other domestic violence court initiatives from the United States such as the ones in existence in San Diego, California and in Miami-Dade County, Florida. In fact, during the planning stages of the K-Court, San Diego justice officials were invited to Toronto to give input into the process.⁴³

⁴¹ Green, V., *Domestic Violence Courts Project* (1999) Toronto Found at www.womanabuseprevention.com/html/domestic_violence_courts_proje.html

⁴² *Ibid.*

⁴³ Armstrong, J., Daly, R. & C. Mallan, *supra* note 12

In a detailed study, the Woman Abuse Council of Toronto (WACT) monitored both the specialized courts and standard courts and compared the decisions and effectiveness of the specialized courts relative to the non-specialized courts. These monitoring sessions were carried out in 1997 and 1998, and the results were released in a document entitled "Court Watch" in July of 1999.⁴⁴ This study indicated that, in both specialized courts, evidence was introduced in 50% of cases where guilty pleas were not entered. This is in comparison to the non-specialized College Park and Scarborough courts where evidence was only introduced in 14% and 12% of the cases respectively. The K-Court study also reported that this court was more effective when it came to dealing with cases concerning administrative charges such as breach of release conditions and probation. Furthermore, the specialized courts were more effective than the non-specialized courts in ordering the offender to attend batterers programs, and it was more successful as more victims attended the court proceedings. As a result of this study, the WACT concluded that these specialized courts did make a difference by resolving cases quickly,

and by allowing victims to participate in a process that was seen as less traumatic than the non-specialized courts. In a final statement they recognized that

the specialized courts provide an integrated and more effective response where staff from different sectors can work together with improved communication and coordination.⁴⁵

Since the implementation of these pilot programs, the Ontario Conservative Government of the day stepped up its fight against domestic violence. A major impetus in this focus was the murder/suicide of Arlene May and Randy Iles and the inquest that followed their deaths.⁴⁶ On July 2, 1998 the inquest's jury released its findings and offered 213 recommendations that were "intended to improve the systems" response to the needs of women experiencing domestic violence.⁴⁷ Among these recommendations were those that called for the development of domestic violence courts in more jurisdictions across the province. In a report to the Attorney General of Ontario entitled "Working Toward a Seamless Community and Justice Response

⁴⁴ Woman Abuse Council of Toronto, *Court Watch: Executive Summary* (2000) Toronto: Woman Abuse Council of Toronto.

⁴⁵ Ibid

⁴⁶ This case involved the Toronto area murder/ suicide by Randy Iles of his common law wife Arlene May. The incident was thought to be a prime example of the criminal justice system's inability to protect women who are in violent intimate relationships and the ability to deal with such cases.

⁴⁷ Joint Committee on Domestic Violence, supra note 10.

to Domestic Violence: A Five Year Plan for Ontario", the Joint Committee on Domestic Violence reinforced the inquest's recommendations, including the following

- That each of the 54 court catchments in Ontario has either a specialized court or court process to deal with domestic violence cases.
- That each of the catchment areas has in place specialized child access programs to deal with cases where domestic violence is present.
- That the sentences imposed upon convicted perpetrators of domestic violence who repeat their offences be increased with each additional offence. Furthermore, [That] charges resulting from an accused offender's failure to comply with a court order be dealt with in the domestic violence court, and that they be dealt with in an expedient fashion.
- That cases involving domestic violence be identified quickly and fast tracked through the system.
- That the victim's perspective be included in the bail brief.
- That careful attention is paid to ensure that all bail conditions are enforced and abided by.

- That specialized frameworks be established to address the court needs of communities of different sizes.⁴⁸

These recommendations seemed to have been taken seriously by the Ontario Attorney General's office, as they announced on January 25, 2000 that \$10 million annually would be invested in community safety initiatives.⁴⁹ While it is not known what portion of this money has actually been directed to the development and maintenance of domestic violence initiatives, it was announced that eight new specialized courts would be developed, bringing the total number of such courts up to sixteen, including the court in Ottawa. The official vision of these courts is to be as follows

In Ontario, domestic violence is criminal and will not be viewed as a "private matter."

Charges of domestic violence are prosecuted swiftly, effectively, and consistently, and the safety and needs of the victim are a priority from the initial contact with the police to the conclusion of the case. Specially trained personnel - police, Crown attorneys, Victim/Witness Assistance Program staff, probation service staff, Partner Assault Response program staff and community agencies - work together to deliver coordinated services that are tailored to the needs of victims.⁵⁰

⁴⁸ Ibid

⁴⁹ Ministry of the Attorney General, *Press Release: Harris Government Strengthens Support to Victims by Doubling Domestic Violence Courts* (2000) Toronto: Ministry of the Attorney General.

⁵⁰ Ministry of Attorney General, *Implementing the Specialized Domestic Violence Court: Orientation and Planning Sessions* (2000) Toronto: Ministry of Attorney General.

In other words, these courts are to offer a number of services including referral of first time offenders to counseling specialized evidence collections and investigations. They also provide stricter responses to repeat offenders and offences resulting in serious injuries and finally, offers of support through Victim/Witness Assist Programs.⁵¹ Along with other initiatives, including better police response, it was hoped that the incidence of domestic violence in Ontario would be dramatically reduced.

The goal of this chapter has been to familiarize the reader with the specialized domestic violence court phenomenon. In doing so the alleged success of four courts were discussed. These courts are located in San Diego, California, Winnipeg, Manitoba, and, Toronto, Ontario, and research appears to indicate that each court is a reported success. While these results appear to be similar across the board their consistency must be qualified with some important caveats on their success claims. First, none of the above mentioned courts have reported having a mechanism for monitoring the ongoing

⁵¹ Ministry of Attorney General, supra note 49.

success of their programs. In fact, this mechanism is so lacking that a clear definition of what constitutes a successful domestic violence court can not be found. This is problematic because in the absence of a shared definition of success, it is impossible to compare one court to another and therefore confirm the generalizability of the research. While the report on each court discusses various factors such as case outcomes, issues of processing time and sentencing, none of the reports clearly state that these factors contribute to their definition of a successful domestic violence court. Without a clearly stated definition of what constitutes a successful domestic violence court, how can legitimate claims of success be made?

Equally problematic is the fact that the "success" of the courts appears to be based on preliminary statistics that are often gathered shortly after the court has opened its doors. By not monitoring the court continuously over time there is no way to develop an understanding of the courts sustainability and, in fact, there is a very real concern about the sustainability of the domestic violence court. Jeffery Fagan's article entitled, "The Criminalization of Domestic Violence: Promises and

Limits", argues that specialized domestic violence courts may experience a reduction in processing time during the opening stages of a new domestic violence court. He predict, however, that these reductions are short lived, as the court will also eventually become congested and overloaded because cases that in the past did not reach the prosecution stage will find their way to court. At this time the specialized court is faced with a dilemma. They must either forfeit the hope of disposing of cases expeditiously or resume their use of discretion when choosing which cases should and should not be prosecuted. In the latter case this includes making choices to prosecute only the most serious cases or the cases that have the best chance of successful prosecution. Cases that may be seen as minor in nature due to the lack of substantial injury might find themselves by the wayside in order to make room on the docket for cases where injuries were more severe or apparent. Alternatively, prosecutors might pick cases to prosecute that bear the potential for the best possible outcome, and this might be determined by a victims willingness to cooperate - a direct contradiction of the notion of victimless prosecution.⁵²

⁵² Fagan, J., *The Criminalization of Domestic Violence: Promises and Limits* (1996) Washington D.C: National Institute of Justice.

During her report on the Winnipeg court, Jane Ursel also cautioned that, over time, these findings might become less positive.⁵³

In addition to the concerns about the premature research conclusion, there are also concerns about the vigorously prosecutors seek prosecution. There is research that suggests that the notion of vigorous prosecution may only be a myth, at least as it is related to the Toronto based domestic violence court. Ronit Dinovitzer and Myrna Dawson argue that, when a victim is perceived as cooperative by court officials, the chances of a particular case being prosecuted are much higher than if a victim is perceived to be unwilling to cooperate. This is the case even though the Toronto K-Court is designed to minimize reliance on victim cooperation through the use of alternative types of evidence.⁵⁴ In addition to the concerns about the pre-maturity of research results there are also concerns about the vigor that prosecutors use when seeking prosecution. Keeping the above information in mind, the remainder of this thesis deals specifically with the Ottawa Specialized

⁵³ Ursel, J., supra note 34

⁵⁴ Dawson, M., & R. Dinovitzer, Victim Cooperation and the Prosecution of Domestic Violence in a Specialized Court. (2001) Justice Quarterly, Vol.18. 3.

Domestic Violence Court. Its structure and operation will be discussed. The ability of the Ottawa court to deal with domestic violence cases prior to the development of the specialized domestic violence court will be discussed. The development and structural evolution of the Ottawa Specialized Domestic Court will also be discussed in an attempt to understand how it has changed over time and how the court compares to other domestic violence courts.

Ottawa's Domestic Violence Court:

The Ottawa Domestic Violence Court first opened its doors to the cheers of government officials, women's groups, and criminal justice officials in 1997. The court was seen at the time as a hybrid of Toronto's K-court and the North York Court. In an Ottawa Citizen article⁵⁵ dated September 10, 1997, then-assistant Crown Attorney Cathy Kehoe reported that the new initiative was welcomed as local prosecutors had also experienced problems with acquittals due to recanting of testimony and failures to attend court by victims. She stated that, of the 985 cases that went through the Ottawa Court in 1995, 39% of

⁵⁵ I realize that the legitimacy of these statistics might be questionable given the source. Unfortunately, these were the only pre- domestic violence courts statistics that were available. Attempts to retrieve more credible data were made by contacting the office of the Crown attorney, but no response was received. However, the data used above was reported in the Citizen article as being

the accused had their charges withdrawn. Furthermore 32% pleaded guilty, and 29% of cases went to trial. Of the 281 defendants who proceeded to trial, 54 were acquitted. Of these 54 cases, only three acquittals were due to the judge's decision; the remaining 51 cases were dismissed because the victim either failed to appear in court or recanted their testimony.⁵⁶ Like other courts of its kind, the new Ottawa court was intended to help rectify its these problems and, in so doing, contribute to the ongoing fight against domestic violence.⁵⁷

In Ottawa, those accused of crimes of domestic violence are remanded to the specialized domestic violence court by the Justice of the Peace who oversees first time appearances in courtroom number five at the Ottawa courthouse. This is usually done at the request of the Crown Prosecutor, but can be done at the direction of the Justice of the Peace as well. It was the original intention of the court that, from this point on, all appearances would take place in the specialized court in the company of specially trained judges and prosecutors a

supplied by the Crown's office and therefor I am confident that it is accurate.

⁵⁶ Dube, F, *Crown Gets Tough on Spouse Abuse: Two Senior Prosecutors to Deal With Domestic Assault* (1997) Ottawa: Ottawa Sun, September 10:

A1.

⁵⁷ Ibid.

practice which was in keeping with the province's vision statement mentioned above.⁵⁸ Originally the court sat everyday in a specially appointed courtroom. Cases appearing before the court for the purpose of obtaining a remand were heard in the morning, and trials were conducted during the afternoon session.⁵⁹

The Ottawa court has actually undergone significant changes to its structure and organization on two separate occasions, largely owing to resource shortages. The first of these changes occurred in 1999 when the court reduced its sitting time. Instead of sitting on a daily basis, the court began sitting only three days a week: Monday, Wednesday, and Friday. Despite these changes the court maintained its operational ability.⁶⁰

Soon after, the court adjusted its physical structure again to what is the present domestic violence court, that is the court further reduced its sitting times to only one-day a week, Friday. In addition to the reduced sitting time the court no longer hears trials and instead acts as a remand court. In fact, duties of the court have

⁵⁸ Dube, F., supra note 56.

⁵⁹ This information was obtained in the fall of 1998 when Cathy Kehoe appeared as a guest lecturer in Carleton University Criminal Law Practice and Politics class for which Patricia Moise was the instructor.

been diminished to the point where there is no longer a Judge or Justice of the Peace residing over the court; instead, a court clerk acts in their place. If the accused appears before the court and has chosen to plead guilty the clerk sends him to appear before a judge in another court. This court, which will oversee the remainder of the process, is not a specialized court. Rather, it is the same court and the same judges that are used in mainstream cases. For those whose cases will advance to the trial stage, their cases are also remanded to a non-specialized court. Essentially what has happened is that the specialized domestic violence court has come full circle, with the exception that defendants now make a brief detour to a specialized courtroom before they and their victims are thrust back into the mainstream system.⁶¹ These important changes will be discussed further in upcoming chapters.

The Ottawa Court has been in operation for more than five years, and it is clear that it has undergone several changes. What remains to be seen however is whether or

⁶⁰ This information was gathered in the course of collecting data at the Ottawa courthouse for the purpose of this case study.

⁶¹ This begs the question as to whether or not the Ottawa court even meets the definition of a domestic violence court. Given the fact that the province of Ontario still recognizes it as such this thesis will do the same.

not the Ottawa Specialized Domestic Violence Court is able to meet the expectations of its mandate.

Chapter Two

Chapter one discussed some of the existing research on the subject of specialized domestic violence courts. In doing so two main avenues of research were identified and both were found to be lacking. The first was research concerning Therapeutic Jurisprudence and its relationship to problem solving and specialized courts such as the domestic violence court. While this existing research points towards the possible psychological advantage of the domestic violence court, it provides only an isolated and theoretical view of the administration of such a court. It fails to identify several issues, including ethical issues, problems with case overload, and issues of limited human and financial resources.

The second avenue of research that has been undertaken on the subject by those studying specialized domestic violence courts is the evaluation of individual courts. This research is also very limited for several reasons. First, and perhaps most importantly, the existing research is tainted by the lack of a universal method of evaluation and a standard definition of success. Without this it is impossible to understand if domestic violence courts are actually doing what they are supposed

to do. Moreover, as it stands, one study cannot be compared to another because each study is conducted in a different way. Furthermore, without a universal definition of success, it is impossible to develop uniformity between programs. This is problematic for two reasons. First, there is no one standard, or group of standard, domestic violence court typologies and second, there are no standard methods of evaluation for these courts. As a result there is no way of establishing whether or not the existing research bears any generalizability. Finally, without a definition of success it is impossible to develop a body of research capable of determining whether these courts are worth the time and resources that are being put into them.

As mentioned previously, the research is also limited in that it has, for the most part, been conducted by either the very government agencies that administer the courts, or the special interest groups whose protests have resulted in the courts' development. This is problematic because it is difficult to establish the motives behind the research. Have the conclusions of this research been the result of well-developed objective research? Alternatively, has the research been designed to garner

results that are supportive of the court and therefore to the continuation of the program?

The present research is significant in that it seeks to address some of the concerns mentioned above. By using the mandate set out by the Ministry of the Attorney General, it more clearly defines, in quantitative terms, what the Ottawa Domestic Violence Court should accomplish in order to be considered successful. It also provides a basis for future monitoring of, and research on, the Ottawa Specialized Domestic Violence Court. In doing so the court's success or lack thereof can be monitored over time. If implemented, this research design could also contribute to the overall understanding of domestic violence courts province wide.

Perhaps the most important contribution that this research makes is that it dares to ask questions about the success of domestic violence courts. It is able to do so because it has as its motive nothing more than a desire to achieve a scholarly understanding of the court. Unlike some of the other research on Ontario domestic violence courts it has not been completed for the purpose of the advancement of a political or agency agenda. By removing the dynamics that agency and political agendas bring to

the table the discourse surrounding the need for a more inclusive social justice approach to the fight against domestic violence may potentially be rejuvenated.

Defining Domestic Violence

The Ministry of the Attorney General defines domestic violence as:

Any use of physical or sexual force, actual or threatened, in an intimate relationship. Intimate relationships include those between the opposite-sex and same-sex partners. These relationships vary in duration and legal formality and include current and former dating, common-law and married couples.

Although women and men can be victims of domestic violence, the overwhelming majority of the violence involves men abusing women.

These crimes are often committed in a context where there is a pattern of assaultive and controlling behaviour. This violence may include physical assault, and emotional, psychological and sexual abuse. It can include threats to harm children, other family members, pets, and property. The violence is used to intimidate, humiliate or frighten victims, or make them powerless. Domestic violence may include a single act of abuse. It may also include a number of acts which may appear minor or trivial when viewed in isolation, but collectively form a pattern that amounts to abuse.

Criminal offences include, but are not limited to homicide, assault, sexual assault, threatening death or bodily harm, forcible confinement, harassment/stalking, abduction, breaches of court orders and property-related offences.⁶²

On occasion throughout this research other terms may be used in lieu of the term domestic violence and these

terms will thus carry the same definition unless otherwise specified. These include, abuse, woman abuse, intimate violence, domestic assault, partner abuse, and conjugal assault, and violence. Furthermore, while the above definition recognizes that women also perpetrate violence this thesis only addresses issues of male on female violence. The reason for this choice is that much of the research that is used in the preparation of this thesis is centered upon men's use of violence against women. It is also important to note that I do understand that many standard definitions of domestic violence also include elder abuse⁶³, child abuse, and same sex partner abuse.⁶⁴ However, as this thesis only deals with heterosexual intimate relationships, these types of violence will not be included in the working definition, but may at times be specifically mentioned. The reason for choosing the above definition is quite simple, it is the definition that has been put fourth by the Ministry of the Attorney General.

⁶² Ministry of the Attorney General, supra note 50.

⁶³ Some domestic violence courts such as the Winnipeg Family Violence Court also deal with elder abuse.

⁶⁴ The limitation of the discussion in this thesis to male on female violence is not suggesting that female to male violence, same sex violence or violence that occurs in transgender relationships is not important or that it does not exist. Rather, not discussing these types of violence is an acknowledgement of the unique dynamics that may be present within these relationships. To try to incorporate these dynamics into the limited scope of this paper might minimize their importance.

As such, it is the one that is utilized for the purpose of the administration of the specialized domestic violence court initiative in Ontario.

The Data

The essence of this thesis is based upon quantitative data that was collected at the Ottawa courthouse during the months of November and December of 2002. This data encompasses all cases that appeared before the specialized domestic violence court during the first week of April during the years of 2000, 2001, and 2002.⁶⁵ The total number of cases by year break down as follows, 2000, 84 cases; 2001, 104 cases; 2002, 108 cases. Due to the fact that this thesis examines only male to female violence the cases involving female offenders (33 in total) were extracted from the sample and discarded leaving a total of 263 cases.⁶⁶

⁶⁵ Data was originally collected for three different years in an attempt to understand whether or not any success that was experienced by the court had been sustainable over time. However as the data collection process progressed and it was realized that the court had changed in structure so a comparison was seen as undoable. It is interesting to note however that there were no real differences in the amount of cases that appeared before the court or the overall results of the court when comparing these three years.

⁶⁶ Interestingly, the overwhelming presence of cases were the male stands as the accused supports the idea that men are most likely to be the perpetrators of violence within intimate relationships. However, some might argue that this only indicates that men are more likely than women to be charged.

The decision to use cases from this time period was based on a series of criteria. For example, the week in question had to be a week where, in all three years, there were no statutory holidays. In addition, a conscious effort was made to ensure that the week chosen did not fall too closely to a major event or holiday. This was to ensure that there was not an overload of cases due to recent court closures or unusual high volumes of cases due to occasions that may contribute to higher than usual incidences of violence.⁶⁷ It is also important to mention that even though these cases all appeared before the specialized domestic violence court during the same week, the date on which the alleged offence occurred varied from case to case. There are two reasons for this scenario.

First, all cases that come before the domestic violence court first appear in front of the intake court. At this point they are either remanded to a future date in that court, or they are referred to the domestic violence court at the request of the Crown Attorney, or the by order of the presiding judge, Justice of the Peace, or court clerk. Second, on any given day, the Ottawa Domestic Violence Court will have heard cases that are at

various stages of completion. Therefore, the cases in this sample were all at various stages of completion. This fact might actually be of benefit to the research design as it adds to the overall randomness of the sample.

When first undertaking this research it was hoped that information regarding the cases in this study would be obtained through the official court files that are maintained by the administrative staff at the Ottawa courthouse. These files are considered public information and, as such, one would assume that the information housed within them would be easily accessible. Unfortunately, this is not the case. The reasons provided for this lack of accessibility include the argument that, the human resources available at the courthouse are not set up to accommodate requests for multiple files.⁶⁸ Furthermore, the court's computer system does not have the capability to query groups of cases based on the date that they appeared in court. In order to retrieve a case from either the computerized or manual filing system a case number is required. Defence lawyers and other court officials use these case numbers to refer to specific cases and keep track of them for their own individual

administrative purposes. For outsiders, the only way to gain access to the case numbers is to get them from the court's docket. Court dockets are huge lists that are created and maintained by the court for the purpose of listing individual cases and charges that are to be heard by a specific court on a given day. These dockets are hung outside of the individual courtrooms daily and are used by the public and court officials to identify which cases are being heard in each specific courtroom on that day. The information that appears on these dockets includes the following: the name of the accused, the case number, birth date of the accused, the name of the arresting police agency, the date that the alleged offence occurred, and the specific charges. The court clerk in each courtroom completes the docket by adding information about future court appearances, court findings including warrants that are issued, and dispositions that are handed down by the judge. Even though these dockets are posted daily for the public to see, they only remain public information for the time that they are actually displayed in public view.

⁶⁸ This is in spite of the fact that there are specific employees whose job description includes retrieving publicly requested files for a fee.

The fact that the court dockets are only publicly accessible on the day in which they hang in the courthouse was problematic given that this research project entailed gathering information on cases that had already been completed. Therefore, the dockets were no longer available to the public. This presented a huge obstacle for the completion of this research because in order to gain access to public information access to private information was first required. Several attempts were made to gain access to this information at the local court level. Following the writing of several letters and communicating with several people at the Attorney General's Office in Toronto between July and October 2002, access to the court dockets was granted. This access was conditional upon providing a written letter assuring anonymity of the accused offenders. I was also required to indicate that I was in fact a student who was completing scholarly research and not a member of the press.

I began attending the courthouse for the purpose of collecting the required information on November 4, 2002 and attended the courthouse during regular operating hours almost daily until December 20, 2002. During this time I

tracked individual cases from their first appearance during the first week of April for the years of 2000, 2001, and 2002 through to the completion of each case. Doing so often entailed following the individual cases through several court appearances in several different courtrooms. There were some difficulties in collecting this information, however, as there were instances where cases seemingly disappeared from the dockets. In these situations the actual court files were used to gather the needed information. It became apparent that when cases disappeared, there were two likely explanations. First, the accused may have been re-arrested and held in custody. In these cases offenders may have chosen to have their cases brought forward and plead guilty to the charges so that they could reduce the amount of dead time that they had to serve.⁶⁹ The other possibility was that the accused was charged with new offences and had chosen to have all charges heard at the same time. In this situation a new case number would have been assigned thus erasing the old one from the record.⁷⁰

⁶⁹ Dead time refers to the time that an accused spends in pretrial custody.

⁷⁰ While some of these charges may be completely unrelated to the original charge and in cases may not even be related to domestic violence some charges are what are known as administrative charges and stem from the original domestic violence related occurrence. These

Upon completion of the data collection, the findings were turned into a quantitative data set using SPSS computer software. Upon completion of the input several variables were created.⁷¹ The first variable to be created was that of gender. As previously mentioned, this thesis only examines the domestic violence court and the way that it deals with male to female domestic violence cases. In keeping with this theme, cases where a female stood as the accused had to be removed from the data set. The easiest way to accomplish this was to create a gender variable (see Appendix One variable 4). While there was no direct indication of gender on the docket or in the files, it was commonly implied by the given names of the accused. Cases were also filtered out where the gender could not be determined from the given name.⁷² Once the gender of the accused was determined, those cases where the accused was deemed female were removed from the data set. In the end 263 usable cases involving male offenders remained.

As mentioned above, one of the key indicators of a successful domestic violence court is its ability to

administrative charges most often include breach of an undertaking; charges include breach of an undertaking and failure to appear in court.

⁷¹ Due to the number not all variables were used for the purpose of this thesis.

expedite cases. To measure this, the date that the alleged offence occurred was determined, along with the date that the case completed the criminal justice process. These dates were then used to determine the length of time that each case took to be processed. Two separate variables were created from this calculation. The first indicates the total amount of days from the date of the alleged offence to case completion, and the second measures this time span by category (see Appendix A variables 6 and 7). These findings were then compared to those of a similar court in Toronto and the mandate set out by the province.

A variable was created to determine the ability of the court to achieve convictions. To accomplish this, information was collected about the specific charges that were laid against each accused and the finding on those charges. In doing so, the types of charges that are laid in cases of domestic violence were identified. Several variables were created from this information (see Appendix A variables 11 through 23). For the sake of simplicity, the individual charges were used to create binary variables that indicated whether or not an accused had

⁷² This was the case when the accused possessed a gender-neutral name, for example, the name Lee.

been charged with a specific offence. A variable noting the most serious offence charged for each accused was also created (see Appendix A variable 8). Variables indicating the court's findings on each of the offences, and on the most serious offence, were also created (see Appendix A variables 41 through 53). When compared to existing information, the findings arising from these variables were useful in determining the court's ability to increase the rate of conviction before and after the advent of the specialized domestic violence court. There was some difficulty with the assessment of this variable. This was because there is no clear indication about how data measuring domestic violence convictions has been collected in the past. As a result it is difficult - if not impossible - to compare the data that was collected for this thesis to any data that has been collected and reported on in the past.⁷³ The original data collected for this thesis was, however, able to indicate the rates of conviction based on (1) the most serious charge and (2) whether or not the accused was convicted of any or all of the charges that he faced. By establishing this, a base was been developed for future research, as these

⁷³ This problem is a clear indicator for the need of unified monitoring of these courts.

definitions and formulas only need to be applied to new data from future time periods. Furthermore, some comparison could be made between the Ottawa court and domestic violence courts similar courts.

Information was also gathered for the purpose of creating other variables.⁷⁴ For example, information regarding the specific sentences that were handed down in each case was collected. This was done (where applicable) by categorizing the sentence received by each convicted offender. There were difficulties with this variable due to the fact that sentences were often lumped together for a number of charges, therefore it was often difficult to determine which charge lead to which sentence. This made it difficult to determine if there was any sentencing disparity among cases that went before the specialized court. It also made it impossible to determine if there was and sentencing disparity between cases that came before the specialized court and those that came before mainstream courts or specialized courts in other jurisdictions. For example, if an offender was convicted of more than one offence and was given 12 months probation, it was impossible to determine which portion of

that 12 months was the result of which conviction. Furthermore, there was no way to account for the possibility that some sentences may have been the result of plea bargains, or whether or not some sentences were the result of an offender's past criminal record or the individual severity of the particular crime or injury. There are just too many unforeseen variables to consider when assessing the suitability of a particular sentence. None the less the findings regarding the sentences that were received by individual offenders will be reported because they do allow the reader to gain an understanding of the types of sentences that are being assigned in the Ottawa Domestic Violence Court. This is import because meaningful sentences are key to the fulfillment of the Ontario domestic violence court vision.

As a result of the way the variables were created, the method of analysis could be kept rather simple. Once the information was inputted into the computer and the variables were created, a univariate analysis was performed. Appropriate measures of central tendency were determined and appropriate comparisons were made to other courts and statistics.

⁷⁴ Many of these variables are not discussed in this thesis at all because their use would not contribute to the issues that are being

One easily identified shortfall in the data that was collected during this case study was an absence of data that clearly indicated the court's ability to reduce the reliability upon victims for the purpose of achieving convictions. To determine this, two methods were used. First, an argument using current research concerning the relationship between victim cooperation and conviction rates was examined. This information, along with the current rate of conviction, was used to create an inference about the cooperation of victims in the domestic violence court.

Additional Methodologies

While the major portion of this thesis is predicated upon the above-mentioned case study, there were two other research methods that were utilized. The first was personal interviews with stakeholders at the Ottawa courthouse. These interviews were brief and in some cases only included two or three questions, but they did help shed light upon the domestic violence court process in Ottawa. These interviews included conversations with the Operations Manager of the courthouse, who was able to supply information regarding the decisions to change the

discussed here. However, they may be the subjects of future research.

structure of the domestic violence court from its original state to its current operational structure. I also had an opportunity to speak to the Operations Manager of the Ottawa courthouse about the changes that have taken place in the court. Finally, I had the opportunity to speak with the Trial Coordinator who was able to provide information about the processing time of cases in the domestic violence courts and how the processing times are officially determined.

During the planning stages of this thesis I had originally hoped to include information about possible implications for those who appeared in front of the specialized domestic violence court. There were concerns regarding the possibility that the onus in such a court might be reversed. Therefore, an accused might be forced to actually prove their innocence instead of the Crown Attorney proving their guilt. There were also concerns about the defence council's ability to provide an adequate defence given the expedited manner in which the court allegedly operated. This concern was particularly troublesome in cases where the client had engaged the assistance of Legal Aid in order to pay for his legal bills.

Of final concern was whether or not Crown Attorneys had used methods to obtain convictions that might be perceived as coercive. For example had the crown ever made promises to alter no contact orders with spouses or children in exchange for a guilty plea? To this end a survey was developed and administered to members of the Defence Counsel Association of Ottawa-Carleton. In total 89 surveys were delivered to the private mailboxes of the association members located at the Ottawa courthouse. Of these 89 surveys, 47 were completed returned. Unfortunately, the limited scope afforded to this thesis prohibits me from including all of these findings within the body of this work. I will however at times refer to the results when they directly pertain to the research question. Other findings will be relegated to any future research that might be suggested in the conclusion of this thesis.

Chapter Three

The Ottawa Domestic violence Court has now been in operation for more than five years. During that time however there has not been a publicly accessible examination of the court's ability to fulfil its mandate of reduced reliance on victims, increased rates of conviction, and reduced processing time. This chapter seeks to remedy this shortcoming by discussing the results of the independent case study.

Processing Time:

This thesis has indicated that one of the key features of the specialized domestic violence court is the court's apparent ability to fast-track case processing. During chapter one it was argued that the benefits of this expedited process included include enhanced safety of the victim and more immediate treatment for the offender. It also indicated that the "court losses its judicial affect" when a case takes too long to process.⁷⁵

In addition to these benefits it could be suggested that the speedy processing of cases is beneficial in other ways as well. For example, when a case is dealt with quickly the victim is not left living her life in limbo.

⁷⁵ Fritzle, R.B., & L.J.M, supra note 21.

In the event that she has chosen not to remain in the relationship she is able to initiate other necessary legal proceedings, such as those related to child custody and divorce. Arguably the outcome of the criminal charges does not have to be known for these proceedings to go head, but the finding of guilt or innocence in a criminal trial may effect issues such as custody and visitation. The issue of interim visitation is particularly important to mention because in most cases where charges relating to domestic violence have been laid, the accused is issued a no contact order that may or may not include the children.⁷⁶ The couple might be forced to make arrangements with third parties to facilitate visitation in cases where there is to be no contact with the estranged spouse but contact is allowed with the children.⁷⁷ Furthermore, in cases where access is not an issue, children are still being dragged into a situation that they may not

⁷⁶ The condition of no contact is made as part of the conditions from the promise to appear that is issued by the police or part of the bail conditions that were directed by the court. A knowledge of this process and the issue of no contact was obtained while reviewing case files during the data collection process.

⁷⁷ These third parties may be official or not and might included social service workers (in cases where Children's Aid is involved) court workers, families, or friends.

understand, and prolonging it may negatively effect their emotional wellbeing.⁷⁸

It is with these advantages in mind that jurisdictions such as the Winnipeg Family Violence Court strive to resolve domestic violence cases in as little as 90 days.⁷⁹ The Ontario domestic violence court initiative has made similar attempts to ensure that domestic violence cases are processed in a timely fashion. While no official benchmark has been established in Ontario, the Toronto K-Court, which was the inaugural domestic violence court, set a goal of 90 days as well (from first appearance to completion of the court process) for the processing of cases that came before its court.⁸⁰ Despite findings such as those of Fagan, the K-Court has supported the claim that they have, in most cases, been able to dispose of cases within this timeframe. The question remains, however, as to whether or not the Ottawa Domestic Violence Court has experienced similar success in their attempt to expedite case processing.

⁷⁸ Children are most definitely the unintentional victims of this process and a discussion on the effects of this victimization is warranted. However, due to space constraints this thesis is unable to discuss this in any detail.

⁷⁹ Ursel, E.J., supra note 34.

⁸⁰ Woman Abuse Council of Toronto, supra note 44.

Among the variables that were created during this case study was one that pertained to the length of time taken for cases to be processed. Of the cases examined during this case study the average processing time from the date that the alleged offence occurred to the date of the final ruling or sentencing was found to be 219 days with 50% of the cases taking at least 224 days to process. Furthermore, 61.9% of the cases took more than 180 days to process and 15% of all cases examined took at least one year to make their way through the criminal justice process. The Ottawa Domestic Violence Court was only able to clear 11.7% of its cases within the same 90-day time frame as the Toronto court. In defence of these findings the trial coordinator at the Ottawa courthouse insisted that the processing time was still shorter than that of the mainstream courtrooms within the Ottawa catchment area.

With this said, it is difficult to lay blame solely on the court when examining the reasons for the court's inability to process cases as expeditiously as other jurisdictions. During chapter one it was argued that those who have claimed success in their ability to decrease processing times may have done so prematurely.

As noted earlier, Jeffery Fagan suggests that reductions in processing times are short-lived and the court will eventually become congested and overloaded. The task of choosing between which domestic violence cases should or shouldn't be prosecuted becomes inevitable.⁸¹ Unfortunately, it is difficult to understand why this shortcoming has occurred. Perhaps the Ottawa court may have at one time been successful in achieving the goal of expedited processing, but it may have succumbed to the inherent flaws of the court referred to by Fagan. However, the difficulties in achieving expedient case processing may also be directly related to the structure of the Ottawa court itself. For example, the fact that cases travel between the specialized and mainstream court may limit its ability to dispense of cases within time frames that are similar to other specialized courts. The fact that the Ottawa court only sits one day a week might also contribute to its inability to dispose of cases in a more timely fashion.

Charges and Conviction Rates:

Perhaps the most important of the three mandates of the domestic violence court is the goal of increasing

⁸¹ Fagan, J., supra note 52.

conviction rates. Holding offenders accountable for their crimes has both a specific and a general deterrent effect.⁸² This sentiment is clear in the vision statement of the Ontario Domestic Violence Court. It sends a clear message to the offender and to society that domestic violence is not a private affair to be dealt with in the home.⁸³ Instead, it is a crime against not only the victim herself but the state as well. Unfortunately, for those who support this belief the task of holding offenders accountable for their crimes is easier said than done. As mentioned in chapter one, the domestic violence court has been seen as a solution to this problem.

Upon reviewing the cases in this study it became clear that several types of charges were laid against those who found themselves in front of the Ottawa Domestic Violence Court. These charges ranged in seriousness from assault causing bodily harm and sexual assault to criminal harassment⁸⁴ and various administrative charges.⁸⁵ The number of charges that each accused faced also varied from

⁸² This assumption has been adapted from the principles of sentencing that are laid out in section 718 of the Criminal Code of Canada.

⁸³ Ministry of Attorney General, *supra* note 50.

⁸⁴ While the charge might appear to be relatively benign it can be quite serious. The types of actions that are considered to be criminal harassment vary greatly and range from making harassing phone calls to physical stalking.

one charge to 26 charges, with 82.3% (215) of men facing between one and three charges.⁸⁶ The most common types of offences were assault 54.6% (143) and assault with a weapon or causing bodily harm 17.9% (47). These two offences were the most serious charges listed in 72.5% of all reported cases.⁸⁷

As one of the goals of the court was to increase the rate of conviction, this study examined case outcomes and found several interesting results. To begin, of the 263 cases studied, 43% resulted in no finding of guilt on any charge, with no further action being taken. In 7.3% (16) of the cases the charges were withdrawn, but a protection order was also issued.⁸⁸ Finally, 49.5% (108) of the cases resulted in a finding of guilt.⁸⁹ It should be mentioned that these findings indicate the number of cases where a

⁸⁵ Cases where no finding of guilt was entered included those where all charges had been stayed or dismissed by the judge and cases that had been withdrawn by the Crown.

⁸⁶ Individually this breaks down as follows 40.5% (105) faced one charge, 25.9% (67) faced two charges, and 15.8% (41) faced three charges.

⁸⁷ The use of only the most serious charges in some of the calculations was necessary to simplify the study given the space constraints of this thesis. It will also prove to be an important choice when it comes to discussing conviction rates as many cases noted only an overall decision.

⁸⁸ Providing that the order of protection under section 810 of the criminal code is effective it could be argued that these cases have experienced successful outcomes because the best interest of the victim has been met in that she is safe.

⁸⁹ These findings represent the overall finding of the cases in question. As such these findings include guilty pleas, and findings

finding of guilt occurred on at least one charge, therefore many of the cases resulted in a finding of guilt on some charges, and the dismissal or withdrawal, of others. These findings change somewhat when only the most serious charges are taken into account. For example the offender was found guilty on the most serious charge in 41.9% (90) of the reported cases.

In an attempt to compare the findings of this study to those that were reported in the 1997 Ottawa Citizen article, cases were also examined according to the method that they were dealt with. In the current study it was found that 89% (234) of completed cases were dealt with without going to trial.⁹⁰ In contrast, it was reported in the Citizen that prior to the opening of the Ottawa Domestic violence Court 29% (281) went to trial. The outcomes of these trials also differ. In 1995 it was reported that of the cases going to trial, 28% (81) of these cases resulted in some finding of guilt. In contrast 32.2% of cases that went to trial in this study resulted in some finding of guilt. The remaining cases resulted in charges being withdrawn, dismissed, stayed or,

at trial. Similarly, where no finding of guilt is reported this could be as a result of withdraws dismissals etc.

in one case, an acquittal was handed down.⁹¹ This result could be due to several reasons, including enhanced evidentiary techniques such as the use of 911 audio-tapes, crime scene and victim photos, and medical reports. It is also possible, however, that this finding could be the result of more cases being withdrawn or more cases ending with a guilty plea. Unfortunately, this finding may also suggest that either the Crown is being more selective in the cases that it chooses to proceed with (perhaps due to court backlog) or that more victims are reporting their crimes because they are uncomfortable with the new prosecution process.

Comparisons were also made between the percentage of cases that did not go to trial but resulted in a plea of guilty. In 1995 it was found that 32% of Ottawa's unspecialized cases resulted in a guilty plea whereas 44.55% of cases in the current study resulted in a plea of guilty. This finding appears to be significant, but raise questions about how these guilty pleas are achieved in the domestic violence court. During the methods chapter of

⁹⁰ It appears that in the cases where there was a finding of guilt on the trial date were actually a result of a plea bargain prior to the beginning of the trial.

⁹¹ It should be noted however that these findings may be due to the low base rate and if more cases were involved there might be a totally different result.

this thesis there was discussion of a survey that was initially supposed to be a large portion of this project. The survey was administered to the members of the Defence Counsel of Ottawa. Of the 89 surveys that were hand delivered to the personal mailboxes at the Ottawa courthouse, 47 were completed and returned. One portion of the survey asked the respondents to respond to the following question: in your experience have clients ever pled guilty to charges in the Specialized Domestic Violence Court so that they can expedite proceedings and therefore return to their domestic partners quicker? Of the 47 respondents who completed the survey, 95.74% (45) reported that their clients had done exactly that. In other words, offenders may be pleading guilty not because their case is not winnable or because they are legally guilty, but because they want to go home and see a guilty plea as the quickest way of accomplishing this. This suggests that perhaps at some level coercion by the prosecution may play a role in gaining guilty pleas from offenders. Therefore, this suggests that the success in achieving guilty pleas has less to do with the court structure and more to do with the way that the prosecution is facilitated.

During this study it was found that 42.27% of all current cases that did not proceed to trial involved withdrawal of charges. This is in contrast to 39% of Ottawa cases in 1995.⁹² Again, this increase does not appear to be significant, but it does suggest that the Ottawa court has not been able to accomplish its goal of decreasing the number of cases that are dropped by withdrawal of charges.

Victim Cooperation:

Most crimes involve an individual victim or a group of victims, therefore most cases that come before the criminal court are in some sense a crime against the person. In these cases it is often the victim who is considered to be the most reliable and compelling witness. However, in cases involving domestic violence the victim has not always proven to be the best possible witness. The dynamics that are unique to domestic relationships and the power imbalances that are inherent to the abusive relationship often make the victim an unreliable and unwilling participant in the criminal justice process. This may be partly due to the fact that the woman who calls the police for help may not always have prosecution

as her motive. In fact, it has been suggested that many women call police because they only want the violence to stop and the thought of prosecution is the furthest thing from their mind.⁹³ Within the mainstream court setting the lack of cooperation by the victim is often proven to be the deciding factor when it comes to whether or not a case of domestic violence will be successfully prosecuted. In response to this factor, the domestic violence court seeks to reduce the role of the victim as a witness. As mentioned in chapter one, this practice is often referred to as "victimless prosecution."

When conducting the present case study, an attempt was made to gather information that would indicate if this "victimless prosecution" was a reality in the Ottawa court. Unfortunately, as stated in chapter two, there was no information that indicated whether or not this was the case. However an inference can be made concerning this goal by assessing the way in which the cases that came before the Ottawa specialized court were disposed of. To begin, the responsibility to withdraw a criminal charge

⁹³ For many women the goal of contacting authorities is to get the violence to stop not to prosecute the abuser. See Snider, L., *Feminism, Punishment and the Potential for Empowerment*, in M. Valverde, L. MacLeod & K. Johnson, (Eds.), *Wife Assault and the Canadian Criminal Justice System* (1996) Toronto: Center of Criminology, pp. 236-260.

lies solely with the prosecution. It has been established previously that one of the main reasons for withdrawing a charge is that there is insufficient evidence to proceed.⁹⁴ Based on this, and the already established fact that that the main reason why charges are withdrawn in most cases of domestic violence victim is reluctance, one might infer that cases before the domestic violence court that resulted in charges being withdrawn were likely withdrawn as a result of a lack of victim cooperation. This inference is supported by Myrna Dawson and Ronit Dinovitzer's argument about the prosecution's efforts in relation to victim cooperation.⁹⁵ When considering this information collectively, along with the rates of withdrawal discussed above, it seems likely that the Ottawa court still relies heavily upon the cooperation of victims to achieve convictions.

Sentences:

Although it is not listed in this thesis as one of the key objectives of the domestic violence court, courts also strive to ensure that more meaningful sentences are handed down to those who are found guilty of domestic

⁹⁴ The other reason is that a plea bargain has been entered into where the crown agrees to withdraw a charge or charges in exchange for a guilty plea.

⁹⁵ Dawson, M., & R. Dinovitzer Supra note at 54

violence related offences.⁹⁶ An attempt to gather information about the individual sentences that were handed down in the Ottawa Domestic Violence Court was made difficult by the fact that many case files and dockets failed to breakdown the sentences by charge. Instead, sentences were often lumped together and applied to all of the charges inclusively.⁹⁷

It was also difficult to draw any real conclusions about the sentences because the court dockets and files at hand did not contain the subjective information that often influences a judge's decision about sentencing. This information includes victim impact statements, pre-sentence reports, and knowledge of previous convictions. Without this information it would be impossible to make any fair assumptions about the sentencing practices of the court. None the less this case study provided ample information about the sentencing practices that are used during the domestic violence process. For example, sentencing ranged from minimal fines and conditional discharges to prison terms. Interestingly enough, those who were sentenced to jail time were often already in

⁹⁶ Ministry of Attorney General, *supra* note 50.

⁹⁷ For the cases where I was given access to the actual court file I was able to decipher which sentence related to which charge but I was

custody. With the exception of a case where the offender had time added to his already existing federal penitentiary sentence,⁹⁸ most prison sentences were relatively minor, ranging from a few days to 30 and 60 days. In many cases where the offender was not already in custody, and was sentenced to jail time, he was awarded an intermittent sentence. It should be reiterated, however, that cases involving jail sentences were the exception rather than the rule.

Other interesting aspects about the sentences that were handed down in the cases that were studied included orders by the court to collect DNA samples from the offender. Interestingly enough judges thought the offenders were dangerous enough to warrant DNA collection and storage, yet they did not see fit to hand down a sentence that may have been comparable to that of a person who had assaulted a stranger. In fact, it appears that the majority of sentences were relatively lenient when compared to what might be handed down in a case involving stranger violence.⁹⁹ It is also interesting to note that

not able view all files therefore I was not able to develop an accurate variable to reflect this.

⁹⁸ This offender was convicted of sexual assault and assault with a weapon.

⁹⁹ Again it is impossible to make a legitimate assumption about sentencing disparity without knowing the facts of the case or the

many offenders received suspended sentences and conditional sentences, and those who had probation often received between six and eighteen months. Finally, it is also worth noting that many of those convicted had firearms restrictions imposed upon them even when such weapons were not used during the commission of the offence leading to conviction.

When considering all of the above findings, along with what is known about the domestic violence court, it appears that admirable efforts have been made to increase the likelihood of achieving a conviction in cases of domestic violence. The Crown works in conjunction with other criminal justice officials to ensure that the evidence that is collected is top notch. Judges and Crown Attorneys alike have received special training to ensure that they possess the skills and the proper attitude to deal with issues of domestic violence. Unfortunately, it appears that these efforts may have been in vain, as the research shows no significant improvement in the court's ability to achieve convictions. Additionally the court appears not to have been successful in reaching processing benchmarks or achieving convictions without victim

facts regarding sentencing trends in cases of stranger on stranger violence.

cooperation. The question remains however, whether or not these lackluster findings have been the result of the general concept of the domestic violence court, the structure of the Ottawa court, or to factors that exist outside of the realm of the criminal justice system. This will be the subject of the final chapter of this thesis.

Chapter Four

The purpose of this thesis has been to examine the Ottawa Domestic violence Court to determine its ability to achieve three central goals. These goals are, the reduction of case processing time, the reduced reliance on victim cooperation, and increased rates of conviction. In order to facilitate this examination a case study was performed. While completing this case study however, several obstacles arose, including a lack of existing research and difficulties in data gathering. As hard as these obstacles were to overcome, three others jeopardized the research even more.

The first of these remaining obstacles was the lack of a universal definition of success. This obstacle was a burden not only to the study at hand but it called into question the generalizability of all of the studies that have come before this one.

To remedy this problem to at least some extent this thesis created its own definition of success based upon measurable common threads that appeared through out other existing research. This information was used in conjunction with the vision that had been established for the purpose of Ontario's domestic violence court

initiative to identify three indicators of success. Again these indicators are the ability of the court to reduce its dependency on victim cooperation, an increase in the rate of conviction and a reduction in the processing time of cases.

The second obstacle that was encountered in the preparation of thesis relates to the fact that the Ottawa court had undergone significant structural changes since it first opened its doors in 1997. These changes cut so deeply into the core of the court that they begged the question about whether or not the Ottawa court could even continue to be called a domestic violence court. After all, the court no longer had at its disposal an independent space where all phases of the case could be addressed. What is now defined as the Ottawa domestic violence court is nothing more than a remand court that is overseen not by a judge nor a Justice of the Peace, but instead a court clerk. Given the previous emphasis on the importance of specially trained judges and prosecutors it is difficult to understand why this would be seen as acceptable. However, the court is still officially recognized as a specialized domestic court, and thus vulnerable to scrutiny for its success as such.

The final obstacle identified had to do with the availability of existing research to which the current findings could be compared. There were no publicly available statistics about the ability of Ottawa's mainstream court to achieve the three goals mentioned above. Without prior research it would be impossible to determine whether the specialized court was more successful than the mainstream court. To accommodate this need, statistics were used that had been introduced in an Ottawa citizen report at the time that the Ottawa Domestic Violence Court was first opened. The credibility of these statistics were originally questioned but necessity and the fact that they were derived from an interview with a member of the Ottawa Crown Attorney's office rationalized their use and the research continued.

By comparing these statistics this case study determined that the Ottawa Domestic Violence Court had experienced no notable difference in the amount of cases that resulted in conviction, but there was a difference in the way that cases were disposed of. Furthermore, when comparing the findings to that of the Toronto K-court, the Ottawa court was found to be lacking. The statistics provided in the Ottawa Citizen article were also limited

however, in that they failed to provide previous statistic about the processing time of cases. The existing research on other jurisdictions has also failed to provide tangible statistics about this latter issue.

The issue of assessing processing time was dealt with by comparing the processing time of the Ottawa court to that of the Toronto K-court. This did not identify whether or not the Ottawa court had improved its own processing time relative to the processing times of cases that had appeared before the unspecialized court. It did, however identify that the Ottawa specialized court had failed to achieve the benchmark that had been set by the K-court.

Of final concern was the fact that the Ottawa Citizen article did not contain any information about the rate of victim cooperation prior to specialization nor did any other existing research. To remedy this, an inference based upon the percentage of withdrawn cases was made. This inference was based on the likelihood that the Crown withdrew cases because he or she lacked the evidence to proceed with the case. In the past this lack of evidence had disproportionately been due to a lack of victim cooperation. Based on this, and the research showing that

prosecutors were less vigilant in the prosecution of cases involving uncooperative victims, it was inferred that the withdrawn cases in the current study were more likely than not the result of a lack of victim cooperation. As a result of this inference, it was determined that the rate of victim cooperation was still likely to be relatively low.

These results, along with the existing research, led to the following two issues. First, should the Ottawa court remain open in light of the findings that indicate less than stellar performance? And second, to answer the first question we must revisit the vision that the province describes in its domestic violence court implementation policy manual. Along with the goal of processing cases "quickly, swiftly and consistently", was the suggestion that the "Safety and needs of the victim are a priority."¹⁰⁰ While it is apparent that the court has not resulted in an increased ability to achieve a hard law and order approach to domestic violence perhaps it has been successful in ways that are not necessarily quantitatively measurable. For example, what are the therapeutic effects of the court on the victim? Are the

¹⁰⁰ Ministry of Attorney General, supra note 50.

victim's needs better met through the use of this court? Does the court result in a reduced rate of recidivism? Finally, does the very existence of the domestic violence court send a message of deterrence to the general population? Moreover, is this denunciation strong enough to reduce the overall prevalence of domestic violence? It is not until questions like these are asked and answered that the impact of the Ottawa domestic violence court and domestic violence courts in general will be fully understood. Unfortunately, these questions are difficult to answer in any generalizable way because it could be argued that the Ottawa Domestic Violence Court is now nothing more than a remand court.

The second issue that remains as a result of this case study asks queries what this research suggests about the future in relation to domestic violence? While this question is independent from the one asked above, its answer does bring up many of the same issues. We must move toward a true understanding of the court's current abilities, before any concrete determination about its usefulness can be made. A universal definition of success and a universal research evaluation strategy are required to gain this understanding. Without it we have

no way of determining whether or not the findings of the research conducted on individual courts can be used to understand the success of other similar courts. Without research generalizability there is no way to know if individual research findings are the result of true success or an anomaly that is specific to that single court.

In this sense this thesis has provided a valuable service even if it has done so on a completely local level. It has opened a dialogue on the subject of Ottawa's specialized domestic violence court and it has developed a quantitative foundation for future research on the court. The research methodology is simplistic enough that it can be repeated. Furthermore it has developed a basis of analysis for two of the key goals that have been set out by the court. This development is a significant contribution because, without research such as this, it is impossible to know whether or not resources are being utilized in the best possible way. Even with this said, we still need to understand how domestic violence courts fit into the overall strategy for eliminating this violence. Are they capable of accomplishing this on their own? Quite simply, no, and to think otherwise would be to

ignore the dynamics of domestic violence and the role that it plays within our culture and society. This inability is not exclusive to the use of specialized courts either. Instead, it questions the ability of the criminal justice system to deal with this violence at all. The criminalization of domestic violence may be problematic in itself.

Some argue that by dealing with domestic violence within the criminal justice system we are negating the causes of domestic violence. These proponents often point towards the inherent power imbalances that exist between men and women and that the way we are socialized contributes to the perpetuation of these power imbalances. Particular emphasis is placed upon the hegemonic masculinities that are entrenched within our culture. It is suggested that until these issues can be overcome we will continue to live in a society that is charged with violence against women. These changes require a complete overhaul of our social structure and such a task is not accomplished over night. Even with this said, the truth is that domestic violence needs to be criminalized. If it is not we run the risk of not only re-privatizing the violence, but of legitimizing it as well. It has taken

centuries of struggle to bring the issue of violence against women to the forefront and to remove it from the realm of the criminal justice system would undo all the good that has been done. It should be recognized however, that dealing with domestic violence only after the victim has been removed from the violent context, and the case has been put before the sterile environment of the criminal justice system, is not the best case scenario either. It is not in the best interest of the victim or society as a whole. Unfortunately, from a criminal justice standpoint, it appears to be the only current option that we have available.

For the above reason, we must look outside of the criminal justice system for solutions to domestic violence as well. We must develop strategies that allow the criminal justice system and the social justice systems to work in conjunction with each other to reduce the violence. The philosophy of the coordinated approach that was discussed at the outset of this thesis recognized this need. However, this recognition was still heavily rooted in a criminal justice-oriented approach. Perhaps what needs to be done is that the criminal justice system needs to take a backseat to a social justice approach.

If the problem is a direct result of the hegemonic masculinities that plague our social structure and the belief systems that contribute to, and accompany, them we have to do something to counter them. As stated previously, it will only be when we are able to re-socialize the members of our society that we will truly move towards a society that will be free of domestic violence. This paradigm shift has to occur on all levels of society. It must occur on the public and the private level as well as on religious and cultural levels. It must also occur across gender lines.

Not only do men have to shift their way of thinking, women must do so also. For women, however, this change means more than a shift in worldviews and personal attitudes. It requires support on multiple levels. It requires women to be empowered not only by those around them, but by themselves as well. After all, if we want women to be empowered we have to empower them in their everyday lives, not just in front of the courts. Where this support needs to begin is a difficult question to answer, as it is a paradoxical one. It none the less has to be asked; the process of answering it has been a long time in the making, as the women's movement has been

fighting for this for decades. Unfortunately, it is a slow process-particularly when met by opposition. When a woman finds herself in a position of equal power to that of her male partner, will the power of that partner be reduced to a point where it plays less of a role in the relationship? Yes, there will always be issues of physical power, and that is something that cannot be overcome, and for that reason there may always be a need for equalization through the criminal justice system. How do we create an equal society where women are able to reduce their imposed reliance upon the male gender? The answer to this is social justice. We must create a social and economic atmosphere that allows women to be self-sufficient.

To begin we need a society where women do not feel coerced by social or economic forces¹⁰¹ to stay in abusive

¹⁰¹ Given that social assistance payments are such that it is difficult for many women to make ends meet it must be asked if women are reluctant to leave violent spouses for fear that they won't be able to get by financially. Consider for a moment the fact that a woman with one child under the age of 12 receives a maximum of 957 dollars a month from the Ontario works program. From this money she is expected to pay all of her expenses including those of her child. In addition to this she may or may not receive a Child Tax Benefit check from the Government of Canada. The amount of this check varies depending on the families income during the last tax year. But many of these checks amount to somewhere in the region of 200 dollars if the family was also in receipt of the national child Supplement which is a federal program aimed at reducing child poverty. The amount of this portion is 112 dollars. This portion however is deducted from the 957 dollars that the recipient receives in Ontario works benefits. This means that in total a woman with one child will receive a little more than

relationships. We must create a society where a woman can gain access to equal pay for equal work or even decent pay for traditional woman's work, including work performed at home. There need to be divorce laws that don't allow men to use stall tactics that result in a woman giving up her fight for property, or have her share eaten up by legal fees, by the time she gets a settlement. A woman shouldn't have to choose between feeding her child and paying her lawyer while her estranged husband experiences an often-increased quality of economic lifestyle.¹⁰²

Perhaps we need to do something about the media's depiction of women and the exploitation of women through pornography. We need to ensure that a woman who leaves an abusive partner can be guaranteed safety through more than the issuance of a peace bond. Maybe we could ensure that

1000 dollars a month to live off of. This amount remains the same even if there is an order of support made by the court circling the spouse to pay child or spousal support because this amount is deducted dollar for dollar from the recipient's check. When considering this in relation to the fact that many two bedroom apartments in Ottawa cost more than 800 dollars a month it is difficult to understand how a woman and child would be able to survive.

¹⁰² This is not to say that all women experience problems with making ends meet during the divorce process but it is reasonable to assume that men are more able to financially navigate their way through the divorce process because they are generally in a better financial position to do so. Women who divorce often face poverty. According to Finnie a woman's income in the first year after divorce decreases by about 40% where as a man's income will actually increase. After a woman has been divorced for three years her income still remains far below that of her husbands and below the family income that existed before the divorced. See Finnie, R. (1993). Women, men, and the

a woman who leaves her spouse doesn't have to beg for welfare payments that barely pay the rent, then be subjected to the criticisms of the state and from society at large by being stigmatized as a single mother living off of welfare.

It appears that the only way to effect change would be to achieve true equality for women. Unfortunately, this is a rather tall order. This isn't to say that we shouldn't at least try, or that we shouldn't continue to make little differences. Rather, it is to say that perhaps patriarchy is such a part of Canadian society that it will be virtually impossible to erase its effects. Perhaps women will only ever be effective in creating change and will never achieve equality. To achieve the latter would entail supporters of patriarchy to relinquish at least some of their power, and in a capitalist state such as ours, it will likely be an uphill battle that will not see any real results for many years to come. However, does that mean that we shouldn't continue the battle? Perhaps if the specialized domestic violence court is all that we have to tide us over until the next stage of this inevitable revolution begins it is not such a bad idea.

economic consequences of divorce: Evidence from Canadian longitudinal data. *Canadian Review of Sociology and Anthropology*, 30, 205-241.

We must remember, however, that in the end we must settle for nothing less than the complete elimination of violence against women. Now that would spell success!

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Appendix

Code Book

Case Source: Specialized Domestic Violence Court files from Ottawa Courthouse.

Number of Cases: 296

Dates of Collection: Data collected between November 8, 2002 and December 20, 2003.

Total number of variables: 64

Tool of Analysis: SPSS

1. Year
year
1 - 2000
2 - 2001
3 - 2002
2. Actual Age of Accused
age
Actual age
3. Age at Time of Offence by Category
agescale
1 - 18-24
2 - 25-31
3 - 32-38
4 - 39-45
5 - 46-52
6 - 53-59
7 - <59
4. Gender of Accused
gender
1 - male
2 - female
5. Time Lapse Between Date of Earliest Offence and Completion of Court Process
timelpse
1 - >60days
2 - 60-120 days

- 3 - 121-180 days
 - 3 - 181-240 days
 - 4 - 241-300 days
 - 5 - 301-360 days
 - 6 - 361-420 days
 - 7 - <421 days
6. Time Lapse Between Date of Earliest Offence and Completion of Court Process
timelpse
Actual time lapse
7. Most Serious Offence Charged with Offence
- 1 - Possession of a Weapon
 - 2 - Escape/ Be at large
 - 3 - Criminal Harassment
 - 4 - Assault
 - 5 - Assault Weapon/cause Bodily Harm
 - 6 - Aggravated Assault
 - 7 - Sexual Assault
 - 8 - Threat Death/ Bodily Harm
 - 9 - Harassing Phone calls
 - 10 - Kidnapping/ Forcible Confinement
 - 11 - Mischief
 - 12 - Fail to Comply
 - 13 - Other Offence
 - 14 - Peace Bond Application
8. Court Finding on Most Serious Offence
sercon
- 1 - Plead Guilty
 - 2 - Withdrawn
 - 3 - Found Guilty at Trial
 - 4 - Charge Dismissed
 - 5 - Charge Stayed
 - 6 - Charge Struck
 - 7 - Unknown
 - 8 - Not Applicable
 - 9 - Guilty of a Lesser Charge
9. Guilty or Not Guilty of Most Serious Offence
serconyn
- 1 - Guilty
 - 2 - Not Guilty
 - 3 - Other

10. Number of Counts of Possession of Weapon Charged With
posweap
Actual Number
11. Number of Counts of Escape/or Be Unlawfully at Large
Charged With
escalrg
Actual Number
12. Number of Counts of Criminal Harassment Charged With
crimhar
Actual Number
13. Number of Counts of Assault Charged With
Assault
Actual Number
14. Number of Counts of Assault with Weapon or Assault
Causing Bodily Harm Charged With
aweabh
Actual Number
15. Number of Counts of Aggravated Assault Charged With
aggass
Actual Number
16. Number of Counts of Sexual Assault Charged With
sexass
Actual Number
17. Number of Counts of Threatening Death or Bodily Harm
Charged With
thrtdbh
Actual Number
18. Number of Counts of Making Harassing Phone Calls
Charges With
harpcls
Actual Number
20. Number of Counts of Kidnapping/ or Forcible
Confinement Charged With
knpfrcn
Actual Number

21. Number of Counts of Mischief Charged With
mischeif
Actual Number
22. Number of Count of Failure to Comply Charged With
ftc
Actual Number
23. Number of Counts of Other Offences Charged With
othoff
Actual Number
24. Total Number of Charges
ttnchrsg
Actual Number
25. Application for Peace Bond Made
pbapp
1 - Yes
2 - No
26. Guilty of at Least One Count of Possession of Weapon
posswepg
1 - Yes
2 - No
27. Guilty of at Least One Count of Unlawfully at Large
esclarg
1 - Yes
2 - No
28. Guilty of at Least One Count of Criminal Harassment
crimharg
1 - Yes
2 - No
29. Guilty of at Least One Count of Assault
assaultg
1 - Yes
2 - No
30. Guilty of at Least One Count of Assault Weapon
asswepbh
1 - Yes
2 - No

31. Guilty of at Least One Count of Aggravated Assault
aggassg
1 - Yes
2 - No
32. Guilty of at Least One Count of Sexual Assault
sexassg
1 - Yes
2 - No
33. Guilty of at Least One Count of Threat Death / Bodily
Harm
thrdbhg
1 - Yes
2 - No
34. Guilty of at Least One Count of Harassing Phone Calls
harpcg
1 - Yes
2 - No
35. Guilty of at Least One Count of Kidnapping / Forcible
Confinement
kidforcg
1 - Yes
2 - No
36. Guilty of at Least One Count of Mischief
michiefg
1 - Yes
2 - No
37. Guilty of at Least One Count of Failure to Comply
ftcg
1 - Yes
2 - No
38. Guilty of at Least One Count of an Other Offence
otherg
1 - Yes
2 - No

- 39. Total Number of Charges Found Guilty of
totalg
Actual Number
- 40. Total Number of Peace Bond Application Made
totpbg
Actual Number
- 41. Total Number of Possession of Weapon Charges Guilty
of
powtg
Actual Number
- 42. Total Number of Count of Unlawfully at Large Charges
Guilty of
unltg
Actual Number
- 42. Total Number of Count of Criminal Harassment Charges
Guilty of
crmhartg
Actual Number
- 43. Total Number of Assault Charges Guilty of
asstg
Actual Number
- 44. Total Number of Assault Weapon Charges Guilty of
aswtg
Actual Number
- 45. Total Number of Aggravated Assault Charges Guilty of
aastg
Actual Number
- 46. Total Number of Sexual Assault Charges Guilty of
sasstg
Actual Number
- 47. Total Number of Threat Death / Bodily Harm Charges
Guilty of
thrtg
Actual Number
- 48. Total Number of Harassing Phone Calls Charges Guilty
of

49. hphtg
Actual Number
50. Total Number of Kidnapping / Forcible Confinement
Charges Guilty of
kfcontg
Actual Number
51. Total Number of Mischief Charges Guilty of
mistg
Actual Number
52. Total Number of Failure to Comply Charges Guilty of
ftctg
Actual Number
53. Total Number of Other Offences Charges Guilty of
othtg
Actual Number
54. Type of Sentence Issued
sentype
1 - probation
2 - conditional sentence
3 - suspended sentence
4 - conditional discharge
5 - jail term
6 - fine
7 - other
55. Weapon prohibition
weppro
1 - Yes
2 - No
56. Conditional Sentence
consen
1 - Yes
2 - No
57. Jail Term
jterm
1 - Yes
2 - No
58. Conditional Discharge

- condis
1 - Yes
2 - No
59. Fine
fine
1 - Yes
2 - No
60. Suspended Sentence
sussen
1 - Yes
2 - No
61. Other Sentence
otsen
1 - Yes
2 - No
62. Sentence Concurrent or Consecutive
cnsvcnc
1 - Consecutive
2 - Concurrent
63. Length of Sentence
lensen
Actual Number
64. Length of Sentence Scale
lesenscl
1 - >3mths
2 - 3- >6mths
3 - 6mths->9mths
4 - 9mths->12mths
5 - 12mths->18mths
6 - 18mths-> 24mths
7 - <24mths
8 - Not Applicable