

## **The What and Why of the Proposed Integrated Domestic Violence Court**

By the Hon. Justice Geraldine Waldman\*

Domestic violence or partner abuse is well recognized as a serious and complex issue. The response of the justice system, both family and criminal, is complicated by the fact that domestic violence often gives rise to myriad inter-related family problems involving safety and family separation. Legal proceedings are further complicated by the fact that the criminal and family cases occur separately. The two courts operate as independent silos with virtually no sharing of information between them and very little ability to communicate. This is particularly true in Toronto where the criminal and family courts are housed in separate buildings with a separate judiciary and little crossover by lawyers. The courts must rely on the litigants to provide necessary information. The family court judge has no independent means of obtaining a copy of a bail or probation order to ensure that the terms of a custody or access order does not conflict with the bail or probation terms. Family and child protection cases are often delayed by the progress of the criminal justice system. Families are in some cases precluded from attending counselling because of no contact terms in bail and probation orders. In some cases, litigants are reluctant to address certain important issues in the family case because of the potential impact on their testimony at the criminal trial.

In other words, the system in its current form is not providing families with a coherent and comprehensive response to their problems when family and domestic violence issues coincide.

To address these concerns, we are working towards opening an Integrated Domestic Violence Court in Toronto in June of 2011. It will bring a more coherent and holistic approach to families involved in both the criminal and family justice systems where the underlying issue is domestic violence. The goal of the court is to promote justice and protect the rights of all litigants, and through its holistic and comprehensive approach to resolution, increase offender accountability and promote victim safety.

The court is modeled on similar courts operating in several states in the United States including New York, Vermont and Idaho. The court is based on a one-family-one-judge concept. Simply put, both the criminal and family case will be dealt with in one court before a single judge. While one judge will case manage both the family and criminal cases, each will be dealt with separately. The cases are not combined but they do appear before the single judge in sequence. The appropriate law, standard of proof, rules of procedure and rules of evidence will apply in each case as they would in any court. All Crown policies will apply to the case as in any domestic violence court. Generally, both cases will be dealt with on the same day, sequentially. The judge will proceed through the process to plea and sentence in the criminal case and through the case management process to resolution in the family case. If a trial is required in either proceeding, it will be heard by a different judge.

The court will have all of the usual resources including, family and criminal duty counsel, Victim Witness Assistance Program services, and the availability of family law information. In addition to the usual resources, the court will also have a community resource coordinator who will assist litigants in accessing appropriate resources and may assist in monitoring the litigant's compliance with referrals.

The court has been developed over the past eighteen months through consultation with a broad based community board. The board includes judges, family lawyers, criminal lawyers, Legal Aid Ontario representatives, Victim Witness Assistance Program personnel, police, probation, domestic violence victim advocates, parenting skills providers, mental health services, shelters, community organizations such as Mothercraft, Elizabeth Fry, and Family Services Association, court services, and representatives from the Ministry of the Attorney General. The Planning/Operations Committee reviewed the literature from the American jurisdictions and consulted with the judges and staff in Buffalo New York, adapting the model to the differences in our justice system and culture.

### ***Goals of the Court:***

1. *Better informed judicial decision making:* The judge will have more comprehensive and current information concerning all of the issues involving the family. This will support the judge in more fully understanding the family, its ongoing needs and the progress each member has made. The judge, for example, will be able to more fully evaluate safety concerns, compliance with orders, and progress in parenting concerns relating to access.
2. *Elimination of conflicting orders:* Conflicting court orders create confusion which can impact on compliance by litigants and enforcement by authorities. The existence of conflicting orders undermines litigant's confidence in the system. Elimination of conflicting orders promotes safety by eliminating confusion, makes the expectations of the court clear to all participants and consequently supports compliance.
3. *Consistent handling of multiple matters relating to a single family by judges who are knowledgeable in the area of domestic violence:* Single judge case management has proven to be an effective tool in resolving family litigation. The judge develops an understanding of the case and the litigants and can support them in moving through the litigation with appropriate orders and expectations. Judges with expertise in both family and criminal law and in the specific issues relating to domestic violence have the ability to better understand the needs of the litigants and to direct the litigation in a manner that is appropriate for the specific concerns of the community.
4. *Connection to social services and other community resources:* The addition of a community resource coordinator will allow the court to develop and maintain a connection to community resources and to connect the families to resources appropriate to its needs. This will allow for a more comprehensive and expeditious response to the issues facing various family members, will allow for monitoring of progress which will support the court in appropriate decision making and will potentially expedite resolution.

5. *Promote efficiencies for both the system and the family by reducing the number of appearances in court and trips to court:* Litigants will only have to attend one court location. The coordination of appearances will reduce the number of attendances. Consolidation of resources and monitoring will also add to efficiencies that will benefit both the family and the justice system.

6. *Develop expertise within the court and create services and resources designed specifically for the unique needs of the client base:* Because this court will be focused on the issues which are a consequence of domestic violence, it can focus its resources and develop specific expertise.

Research and evaluation are an important part of this pilot project. The project has obtained funding and has a research component already in place.

### ***Eligibility for the Court:***

In order to participate in the project, litigants must be involved in concurrent criminal and family litigation with domestic violence as the underlying issue. Any domestic family litigation within the jurisdiction of the Ontario Court of Justice is eligible. Criminal proceedings where the Crown is proceeding by way of summary conviction are eligible. Participation in the court will be voluntary. Both litigants must agree to have the cases transferred to the IDV Court and the Crown must agree that the case is appropriate.

### ***Next Steps:***

The Planning/Operations Committee has worked together to create a model for the court that incorporates the goals of the court, builds on the American experience and adapts the court to the Ontario justice system and culture. We will be meeting with community groups over the next months to explain the project and to address concerns or comments as we work towards the opening of the court.

Ontario has a history of developing innovative courts designed to respond to specific issues including the drug court and mental health court. We see this court as part of this new justice model and we are excited about its development.

(Justice Waldman sits in the Ontario Court of Justice at 47 Sheppard Avenue East in Toronto. Both Justice Waldman and Justice Bovard are very committed to this court because of their experience with cases involving domestic violence while presiding in both criminal court and family court. They, along with the Community Advisory Committee and the Planning/Operations Committee, are committed to finding ways to improve what we do for families where domestic violence is the underlying issue.)