QUEENSLAND COURTS

DOMESTIC VIOLENCE FORUM

Wednesday, 9 May 2007 at 11:00 am

Southport Library

"What would a Specialised Domestic Violence Court mean for the Gold Coast"

Judge Marshall Irwin
Chief Magistrate

It is an undisputed fact that domestic violence in Australia is a major problem.

When Australian women were surveyed in 2004, more than one in four admitted to being subjected to domestic violence by a current or former intimate partner.[1]

An indication of the extent of domestic and family violence in Queensland is the 38.2 percent increase in applications to the Magistrates Court over the past 5 years. This period involved the amendment of the D*omestic and Family Violence Protection Act 1989* in March 2003 to extend the type of relationships for which protection orders can be made to family members, informal carers and dating relationships. In the first full year of operation of the amendments there was a 24 percent increase in applications.

In the court year ending on 30 June 2006 there were 32,375 orders made in Queensland. This total was constituted by 16,032 protection orders, 12,151 temporary protection orders, 3907 variation orders and 285 revocation orders.

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[1] Mouzos, J., and Makkai, T., *Women's experience of male violence:Findings from the Australian Component of the International Violence Against Women Survey (IVAWS), 2004, Australian Institute of Criminology; McMillan, DL., and David, AM., The domestic violence dynamic* (2006) Judicial Officers' Bulletin, Volume 18 No 10.

More than 500 applications were dealt with in each of 18 court centres, with 5 centres dealing with over 1000 applications each. In summary the centres which heard in excess of 1000 applications were:

Southport	2,333
Brisbane	1,636
Beenleigh	1,619
Ipswich	1,108
Townsville	1,077

There were also 258 applications at Coolangatta which is a Southport circuit centre.

Cairns was just below this figure with 967 applications. There was a total of 1234 applications before the Sunshine Coast Courts at Maroochydore (737) Caloundra (296) and Noosa (201).

There can be no doubt that domestic and family violence at this level affects the victims, their children, their family and friends, employers and co-workers. It also has repercussions for the quality of life in a local community. It affects people of all ages, cultures, backgrounds and life experiences. There can be far reaching financial, social, health and psychological consequences. The impact of violence can also have indirect costs including the cost of the community bringing perpetrators to justice through the criminal court or the cost of medical treatment for injured victims.

An American study considered property damage, medical costs, mental health care, police and fire services, victim services and lost worker productivity and estimated the cost of domestic violence to be $65 million per year. These cost estimates have not included the long-term costs associated with perpetuating the cycles of violence and victimisation.[2]

Research also confirms that witnessing domestic violence endangers the emotional wellbeing and development of children.[3] Even when abuse is not happening, there is often an atmosphere

[2] Lilles, H., McPhee, T., and Boyce, S., *The Domestic Violence Treatment Option: A Yukon Experience,* p4

[3] Suderman, M., and Jaffe, P., (1999) A Handbook for Health and Social Service Providers and Educators on Children Exposed to Women Abuse/Family Violence, Health Canada.

of fear, anxiety, anger and tension that pervades the family home. The children learn that violence is a normal family interaction and that it is a valid, method of conflict resolution.[4] This perpetuates the cycle of abuse, because children who witness domestic violence are more likely to become involved in abusive situations as adults; boys as abusive partners and girls as abused women.[5]

Further the risk of actual physical child abuse is significantly higher in homes where domestic violence is reported.[6]

This is why I agree with the approach taken under the new Victorian *Family Violence Act* of providing increased protection of children from family violence by making the hearing or witnessing of violence together with the likelihood to again hear or witness it, a specific ground for an order to be made for a child. The Act allows for orders to be made on the Magistrate's own initiative and introduces a procedure where the court must inquire into the welfare of children when making an order.

New Zealand legislation also recognises the impact that violence by other family members may have on a child by the automatic application of a protection order to a child of the applicant.

While some courts are busier than others in dealing with matters under the domestic and family violence legislation, it is a jurisdiction that magistrates find emotionally demanding regardless of the number of applications brought and heard before each court.

It must also be recognised that the making of a protection order is often just the initial step in the long and on-going saga played out before the courts. Whilst protection orders may place restrictions on a respondent's behaviour, they are often breached. In the 2004-2005 court year, the Queensland Magistrates Court dealt with 7889 breaches of protection orders.
In addition the court deals constantly with charges of common assault, serious assault, deprivation of liberty, child abuse and wilful damage which are all part of the domestic violence overlay that exists between the parties.

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[4] Lilles, McPhee and Boyce, p3.
[5] Bara. M.M.C. et al, (1988) *Spousal Violence in Custody and Access Disputes: Recommendations for Reform.* Status of women Canada; Doumas, D., Margolin, G., and John, R.
[6] Lilles, McPhee and Boyce, p4.

Regularly upon the domestic violence alarm being raised the court may also have to deal with applications for Child Assessment Orders and Child Protection Orders, or Parenting Orders in our family law jurisdiction.

The simple making of a protection order does not address the key issues as to why respondents have chosen or are likely to continue to choose to use violence and breach orders through being violent, not only in the sense of physical abuse but also in the sense of emotional abuse and controlling behaviour.

In these circumstances it is essential to tackle the causes of domestic and family violence rather than to simply deal with the outcomes. Therefore we must look at ways of intervening to prevent such violence from occurring in the first instance, and to thereby break the cycle of violence.

It is for this reason I have previously identified the need to take a long term integrated response to the issue of domestic and family violence, which would aim to:

- Promote the safety of persons affected by family violence;
- Increase the accountability of people who engage in family violence;
- Encourage behavioural changes; and
- Increase the protection of children exposed to family violence.

This requires that the making of protection orders is not considered in isolation from rehabilitative outcomes.

To achieve this I have previously proposed the establishment of a specialist domestic and family violence jurisdiction which will adopt what is often described as a “problem solving” or “therapeutic jurisprudential” approach. This could become a “one stop shop” to deal with all matters arising from domestic and family violence and to access intervention programs where the causes of the violent behaviour can be identified and addressed rather than just dealing with the outcome.

As you would be aware this is not a novel concept. Specialist domestic and family violence courts have been identified both internationally and nationally as a strategy for improving the response to this problem.

They have been developed in Australian Magistrates Courts since 1998 with the establishment of the ACT Family Violence Intervention Program.

Family Violence Court programs have been established in South Australia and Western Australia. Specialist domestic violence courts have been trialled in New South Wales. And in Victoria a Family Violence Division of the Magistrates Court has been established as a pilot.

It is also important to recognise that the Gold Coast Domestic Violence Service has been operating a community-based integrated agency response to domestic violence for over 9 years in association with the Southport Magistrates Court. One of the aims of this project is to make perpetrators of domestic violence accountable for their behaviours by making a 24 week perpetrator program available to the court as a sentencing option under this project for breaches of protection orders.

While this project is a good start I would like to move towards the establishment of a specialist domestic and family violence jurisdiction within the Queensland Magistrates Court.

This brings me to the question posed for this Forum – "What would a specialist Domestic Violence Court mean for the Gold Coast."

It is appropriate that this question be answered during the course of Queensland's Domestic Violence Prevention Month which was launched by the Department of Communities in Mackay on 29 April 2007.

It is also appropriate to answer it in the words of the Minister for Communities, Disability Services, Aboriginal and Torres Strait Islander Partnerships, the Honourable Warren Pitt whose message was one of encouragement to men who use violence or abuse in domestic and family situations to *stop their unacceptable behaviour and seek help."*

This message was directed to men, because while they can also be victims, it is estimated that 98 percent of perpetrators are men.

A specialist domestic violence court can be part of the solution by using its powers to enable offenders to get treatment they might not be able to assess.

If through this means, the court can act as a gateway to motivate and encourage offenders to take responsibility for their violent behaviour early in the justice system process, and to understand and 'unlearn' this behaviour, this should be more successful in breaking the cycle of domestic violence.[7]

It will also be important that at the same time that perpetrators are receiving the benefit of treatment, the victims and family members are also given the opportunity of support and counselling.

The fact is that the evaluation of the specialist court programs to which reference has been made have found positive outcomes overall for victims, including satisfaction with the process and reduced acts of domestic and family violence.

The real issue is how this can be achieved in Queensland.

It is relevant that a problem solving approach utilising the principles of therapeutic jurisprudence has been adopted by our court in relation to other issues, for example the Drug Court program, the Queensland Magistrates Early Referral into Treatment Program (QMERIT), the Murri Court, the Homeless Persons Court Diversion Program and the Special Circumstances List.

However until 1 January 2007 the Murri Court was funded from within the court's general budget allocation and resources. The Special Circumstances List is still funded in this way.

It is likely that a specialist domestic and family violence court would initially have to be established within the court's general budget allocation.

If this is so, like the Murri court and the Special Circumstances List it will have to evolve gradually, with possibly one court designated

[7] Lilles, McPhee and Boyce, p8.

for a pilot project. If it proved effective, it is hoped that specific funding and legislative recognition will follow. Any such funding should include support for migrant women and interpreters to assist those who do not communicate in English.

This would mean that it would not be able to start with the Victorian model which can hear:

- Applications for protection orders;
- Breaches of such orders;
- Bail applications and criminal offences involving domestic and family violence;
- Associated criminal compensation applications; and
- Civil damages claims for personal injury arising from domestic and family violence.

Rather it will be necessary to start more modestly.

Another model which I have recently seen at first hand in the Adelaide Magistrates Court and had discussions about at the Elizabeth Magistrates Court in South Australia where it is also conducted, has 4 distinct sessions during the day:

- Criminal charges involving domestic and family violence which are referred from the general list;
- Family violence pre-trial conferences;
- Breaches of domestic violence restraining orders; and
- New applications for restraining orders.

Each defendant or respondent is given the opportunity to participate in a 24 week Central Violence Intervention Program under the supervision of a court worker from the Department of Corrections.

This is a funded program. It is jointly funded by the Attorney-General's Department and the Salvation Army. As a consequence

it is supported by full-time and part-time personnel – including a women's advocate, a men's worker, the Department of Corrections Court Worker, a childrens and young persons advocate, a manager and a clerical worker.

There are magistrates and police officers dedicated to the program.

In addition to the perpetrator's program the women and children who are generally the victims are offered counselling.

The report on participation in the program will be taken into account in determining sentences in the criminal jurisdiction. In some cases it may result in the charges being withdrawn.

However before such a program could be adapted in Queensland there are some issues which would need to be addressed:

- Because the program is only offered in two places participants may have to travel long distances. This can be prohibitive;

- Where a defendant pleads not guilty there are delays in trial listings; and

- Having a specialist list which includes criminal matters may make it appear to the defendant that the matter is not a serious one.

While consideration is being given to whether the South Australian or other interstate models can be adapted to Queensland, the first steps are being taken to develop a specialist domestic and family violence court process in Rockhampton which was also one of the instigators of the fledgling Murri Court.

Courts in regional Queensland may be best placed to conduct such a pilot because they often have the advantage of seeing the same persons in connection with matters across the criminal, domestic violence and child protection jurisdictions. This gives the magistrates more continuity in dealing with these persons and the opportunity to effect positive changes where possible.

The approach taken in Rockhampton has been to list 2-3 dedicated domestic violence days each month with 4 distinct sessions on one day in the same court:

- Application mentions;
- Proceedings for breaches of protections orders;
- Application hearings; and
- Child protection matters.

A dedicated prosecutions team has been created by the Queensland Police Service to support the day.

The vision of this approach is to:

- Reduce the number of unnecessary appearances by parties who may be involved in a number of different proceedings;

- Ensure the maximum access to domestic violence support workers for the aggrieved on mentions, and importantly hearings;

- Provide an opportunity for the aggrieved to attend court for breach proceedings if they wish to;

- Improve the information available to parties to applications at the earliest opportunity, including improved knowledge by the Queensland Police Service of the matters involved and access to the parties to facilitate follow-up before the next court date;

- Improve the knowledge of the Department of Child Safety of issues impacting on the making of orders involving particular parties with which they may be involved in relation to child protection matters; and

- Enhance the opportunity for referral to perpetrator programs or counselling during the bail period prior to sentencing on charges for breaches of protection orders.

However there are a number of factors which are holding back the development of a specialist domestic and family violence court in Rockhampton.

The court is operating without funding, not only for magistrates who have to balance this work with the constrains imposed by their general lists but also for other personnel and agencies which are necessary to support the court.

For example there is no funding for case co-ordinators such as now support the Murri Court and provide a bridge between the court and perpetrator programs. The Queensland Police Service is supporting the program although it is not specifically funded to do so. Importantly there is no funding for the assessment of respondents and defendants for suitability to enter perpetrator programs.

Experience in implementing other specialist court programs has demonstrated that for the programs to operate effectively it is essential that there be funding for all personnel who support the court for this purpose.

There is also no legislative support for bail based perpetrator programs such as now exists in relation to QMERIT for defendants with illicit drug use programs, or the Homeless Persons Court Diversion Program.

Pursuant to section 29(2)(c) of the *Bail Act 1980* the defendant does not commit any offence and under section 30(b) bail cannot be revoked due solely to failure to comply with a condition that he/she participate in the program, but the court may vary the defendant's bail, including by rescinding this condition.

In the absence of a similar legislative support for bail-based perpetrator programs, any defendants admitted to bail on the condition they participate in such a program are liable to charges for breach of bail irrespective of the reason for their failure to participate as required, for example because they ultimately prove unsuitable for the program. This is likely to deter defendants charged with breaches of domestic violence from agreeing to bail conditions of this nature.

It is also difficult for the court to operate the dedicated domestic violence day within its current time restraints. This situation has been ameliorated for the Murri Court since 1 January 2007 by funding for relieving magistrates to compensate for the time that magistrates are required to devote to the effective operation of the Murri Court. Similar funding would be necessary for a specialist domestic and family violence court to operate effectively.

It is for this reason that it has not been possible for the Southport Magistrates Court to operate a specialist domestic and family violence list whether in the form being trialled in Rockhampton or in any other form. Notwithstanding the recent appointment of an additional magistrate to this court, it remains one of Queensland's busiest across the range of jurisdictions for which it is responsible.

Other issues which have been identified in the Rockhampton trial include:

- Difficulties with service providers being able to service referrals of perpetrators to participate in bail-based programs;

- Difficulties with changes to programs due to funding periods, staff changes, difficulty in establishing a system of advising the court of availability of programs on an on-going basis, variance in the length and admission criteria for the available programs, and confidentiality issues that constrain reporting back to court.

- Changes in the method of providing and lack of availability of Indigenous focused post sentence programs available through the Department of Corrective Services for the purpose of probation and parole orders for indigenous offenders.

Notwithstanding these challenges the efforts of the Queensland Magistrates Court in Rockhampton and elsewhere will continue with a view to identifying a practical model for the purposes of operating a specialist family and domestic violence court.

It must also be appreciated that there is generally "no one size fits all" solution, and the model is likely to require variations to adapt to uniquely local issues.

CONCLUSION

Domestic Violence is a major problem in Australia with wide ranging detrimental effects to the victims, their children, their family and friends, employers, co-workers and the community as a whole.

Courts alone cannot solve the problem. It is so pervasive that a community-wide approach based on integrated strategies is the only way forward.

It is essential to tackle the causes of domestic violence and family violence rather than simply deal with its outcomes so as to break the cycle of violence.

To achieve this I would like to move towards the establishment of a specialist domestic and family violence jurisdiction within the Queensland Magistrates Courts. This is not a novel concept. Many examples of this type of court exist internationally and in Australia.

However because there is no current funding to support a move in this direction, this will have to be achieved incrementally, possibly with one court designated as a pilot project.

Therefore it may be necessary to make a modest start of the type that has recently been implemented on a trial basis in Rockhampton.

The Rockhampton model designates a particular day to deal with civil applications for protection orders, criminal proceedings for breaches of protection orders, and child protection proceedings.

There is much to be said for adopting this double-barrelled approach to stopping violence – the short tem approach of protection orders and the long term aim of stopping further violent behaviour by having the option of requiring respondents/defendants to participate in a perpetrator program.

This is a work in progress which will continue to be closely monitored.

If a specialist domestic and family violence jurisdiction can be established there is reason to be optimistic that it will mean that the perpetrators of violence will stop their unacceptable behaviour with positive outcomes for victims and the community as a whole.