

An Evaluation of the Waitakere Family Violence Court Protocols



*** Massey University and WAVES, May 2007**

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Ever present for us are the families within Waitakere communities who inspire the vision of living free from violence.

Kia kaha!

Mandy, Leigh and Sarah





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Introduction

The Report in Context

This preliminary report is the first product of an independent evaluation of Waitakere Family Violence Court (WFVC).

The Waitakere Family Violence Court convenes weekly within the Waitakere District Court. It involves professional, state and community agents in a dynamic process of coordinated response to family violence offences. The unique practices of the Court are regulated by protocols that have evolved since 1992. The aims of the current protocols (2005) are:

1. To overcome systemic delays in Court process
2. To minimise damage to families by delay
3. To concentrate specialist services within the Court Process
4. To protect the victims of family violence consistent with the rights of defendants.
5. To promote a holistic approach in the Court response to family violence
6. To hold offenders accountable for their actions.

To meet these aims the protocol of the Court must be effective from a variety of different vantage points: from the perspectives of the Judiciary and Court administration, and also from the perspectives of community organisations, lawyers, police and community probation. All those who take part in translating the Court's principles into everyday practice are vital to the dynamic process through which the state, the Judiciary and the community collaborate at Waitakere. The goal of the first evaluative study is to assess the extent to which the protocols are effective in achieving the Court's aims as far as these participants are concerned. This report constitutes feedback to the participants, based on preliminary analyses of data and oriented towards providing information that will be useful to Court participants. This preliminary analysis will also form the basis of a discourse analysis conducted by Sarah McGray as negotiated with participants consenting to the study.

In a third study due for completion by June 2007 data held by various agents, including the police and community organisations, will be statistically analysed to identify time lags, rates of referral to service providers, uptake of services, convictions, sentences and repeat appearances before the Court. The data available for these analyses have been collected by various bodies for their own purposes. They do not necessarily use constructs, variables or measures similarly. To assess the usefulness of statistical data being collected for ongoing monitoring of the Court's effectiveness, this project will also include a construct analysis of the available data.

How the protocols of the Court are effective in enhancing safety for victims and facilitating accountability for offenders are questions to be addressed in two further components of the independent evaluation planned for 2007 and beyond. Based on the experiences of victims and offenders within the WFVC processes, these studies aim to identify the diverse ways in which victims and offenders understand how the Court and service providers took account of

the circumstances of the family and the holistic context in which the offences were committed, and the helpfulness of services that were offered for enhancing safety and facilitating accountability.

By developing an evaluation research programme incorporating studies that assess the Court's protocols through multiple vantage points we aim to ensure that the diverse views of all stakeholders in Court processes are taken into account. Our goal is to produce a holistic understanding of how well the WFVC responds to family violence within the Waitakere District. This understanding will form the basis for identifying any improvements that need to be made in the implementation of WFVC protocols through feedback to the Court, to the service providers, and to the community of legal professionals and academics advocating for collaborative approaches to reducing family violence. Like the Court itself, this evaluation may be understood as a dynamic, evolving process, in which this preliminary report represents the first formal outcome.

The Current Study

In designing the study of the protocols' effectiveness as far as participating professional, state and community agents are concerned, we sought research strategies that accommodate diverse understandings, and are capable of analysing dynamic processes from textual (written and spoken) data. This research depends upon the participants' everyday experiences within the Court processes, and aims to honour the integrity of participant understandings.

We chose qualitative methods of gathering evidence for our analysis because they generate rich and thick textual data. Conversations with WFVC participants were collected and systematically analysed using Interpretive Phenomenological Analysis (IPA)¹ (Smith, Jarman, & Osborn, 1999; Smith & Osborn, 2003). IPA was selected as the most appropriate methodology for the present study because it posits that the meanings ascribed by individuals to events should be a central concern for researchers. IPA does not attempt to test any predetermined hypotheses, instead, research questions are broadly framed to provide the researcher with the flexibility to explore areas of interest in detail, guided by the research participants. The central aim of IPA is to discover what a process or event is like from the participant's perspective by collecting their stories, in their own words, about the topic under investigation; in this case the effectiveness of the WFVC protocols. The result of an Interpretive Phenomenological Analysis is a set of super-ordinate and subordinate themes which represent interactions, experiences, points and patterns of meanings. In the present study these themes provide content that addresses a range of questions including:

- How did the Waitakere Family Violence Court evolve?
- Who is involved in the Court and what role do they play?
- What kinds of support do community organisations offer the Court?
- How well do the current protocols of the Court work to meet their aims?
- What issues and challenges currently affect the Court process?

¹ see Appendix A for a full description of the research process.

The thematic outcome of the IPA reads something like a description of the Court's operations, and a list of what works, and what doesn't work in general. It provides a preliminary breakdown and re-categorisation of data that can either be reported as a thematic analysis or be used as the first stage in a process of discursive or narrative analysis.

Since those participating in the operation of the WFVC contribute to the ongoing collaboration in the Court's processes from different institutional and, in some cases, different disciplinary contexts; their daily practices are regulated within organisations that have different goals, structures and interests we needed an analytic strategy that would take account them into account and also provide some evaluative analysis. To provide feedback to the Court participants we chose a second analytic strategy: narrative analysis. Narratives are contextually rich, and also enable the inclusion of different understandings, and points of view. With respect to the participants, this analysis enabled us to represent and contextualise understandings of family violence and personal commitments in relation to reducing intimate violence. Given the significance of this feedback in relation to the development of other Family Violence Courts in Aotearoa/New Zealand, the narrative analysis was conducted by senior researchers with forensic and domestic violence research specialisations.

Narrative theory holds that we all engage in the process of producing and reproducing stories that organise the events and relationships of our lives into meaningful sequences. It is through the narratives available in our cultural and social contexts that we make sense of ourselves and each other (Sarbin, 1986; Rose, 1997). Stories are part of our daily interactions with each other and the narrative form of stories enables us to share our understandings. By using narrative to organise the content of the thematic analysis, and supplementing this with documentary evidence, we were able to identify events and relationships that were significant to the participants in the Court, and organise a sequence that represented a shared story of the evolution and operation of the Court. Narratives also involve evaluations that are performed by storytellers through the way in which the events and relationships of the story are represented (Labov & Waletzky, 1997) The narrative analytic strategy thus also enabled us to evaluate the evolution and processes of the Court through representing the way in which Court participants understand the meaningful operation of the Court: how it works, who is involved, what kinds of events and relationships produce successes or challenges in the everyday practices that are intended to meet the aims of the Court.

This preliminary report begins with a brief introduction to the social context in which the WFVC is currently set. Following the introductory background, we present the story of the Court that has emerged from our two stage analysis of participant data and documentary evidence.

The Social Context of the Court

Family violence is an increasing problem worldwide and has been described as an epidemic in Aotearoa/New Zealand (Hand, 2001). Because family violence takes multiple forms, including psychological, emotional, economic, physical and sexual abuse, and because these forms of abuse are interconnected, the complexity of family violence is difficult to define, explain or measure. The majority of statistical analyses focus on family violence against women by their partner. This is not the only recognised type of family violence; however it is the most researched (New Zealand Family Violence Clearinghouse, 2006).

The seriousness and the gendered specificity of violence within intimate relationships were first brought to attention in the 1970s when the problem was commonly referred to as 'wife battering'. The terms 'domestic violence' and 'intimate partner violence' have also been used to refer to the same phenomena. 'Domestic violence' sometimes includes violence against children within a household, but its most common meaning is specific to heterosexual partner violence.

In the late 1970s, women's refuges were established in Aotearoa/New Zealand (Hann, 2001). The refuge movement emerged from the activities of the women's movement and advocates for victims of rape and domestic violence (Erez, 2002). Social and legal reform has largely been influenced by the advocacy and lobbying of community organisations, like refuge and rape crisis, and community responses to family violence emerged earlier than legislative and state policy responses. Alongside these movements were also political, social and academic movements of Māori protest at Crown treatment of te Tiriti o Waitangi/the Treaty of Waitangi.

The Domestic Protection Act was introduced in 1982 as the first legislative response to domestic violence in Aotearoa/New Zealand (Graham, 1995). It was intended to address the protection of those involved in 'domestic disputes' through a quasi-criminal strategy that enabled the police to arrest without needing to lay charges (Webb et al, 2001). Three years later the National Collective of Women's Refuges' coordinator and a New Zealand police inspector organised a conference on family violence. A partnership emerged between government and non-government organisations called the Family Violence Co-ordinating Committee.

Also by the mid-1980s the Labour Government had began the process of placing Māori concerns "firmly on the policy agenda" (Wilson & Yeatman, 1995, p.xv) and te Tiriti/Treaty became a pivotal document in policy reform (Campbell, 2005). Tino rangatiratanga, "Māori control and Māori management of Māori resources" (Te Puni Kōkiri, 1994), remains a clear goal for Māori communities.

In 1991 the Family Violence Co-ordinating Committee was responsible for introducing the Duluth Abuse Intervention Project from Minnesota, USA. The Duluth project became a model for the establishment of the Hamilton Abuse Intervention Pilot Project (HAIPP) as the first collaborative and coordinated response to domestic violence. Among other projects that emerged after HAIPP was established, (for example, DOVE in Hawkes Bay or The Hutt Family Violence Prevention Network), was the Waitakere Anti Violence Essential Services (WAVES) (Pond, 2003).

By the early 1990s an estimated prevalence rate for domestic violence commonly agreed by service providers in Aotearoa/New Zealand was 14% (Snively, 1994). The New Zealand Safety Survey (Morris, 1997) estimated that 44–53% of New Zealand women had experienced psychological abuse in the previous twelve months. 15-21% of women had experienced physical abuse. The lifetime prevalence rate for physical and/or sexual abuse was estimated at 15-35%. Leibrich, Paulin and Ranson's (1995) study of men's self reports of abusive behaviour towards their partners reported lifetime prevalence rates of 35% for physical abuse and 62% for psychological abuse. More recent evidence from clinical population studies put lifetime prevalence at between 44.3% and 78% (Fanslow, 2005). In 2004 Women's Refuge provided services to 13,837 women and 8,686 children (<http://womensrefuge.org.nz>). Over half the murders in New Zealand are the result of domestic violence (Boshier, 2006).

On the first of July 1996 the Domestic Protection Act (1982) was replaced by the Domestic Violence Act (1995). This Act recognises the changing nature of relationships and takes account of the variety of situations and circumstances where domestic violence can occur (Busch & Robertson, 2000). Multiple forms of domestic violence are also recognised as unacceptable (NZPPD, 2005). The Act provides a legal framework for protective action (Butterworths, 2000) that involves empowering Courts to make orders for protection, enabling access to the Courts in a simple and time effective manner, providing programmes for victims, providing mandatory programmes for perpetrators of violence, and providing sanctions and enforcement mechanisms for breaches of orders.

The term 'family' violence is consistent with the more broad definitions of domestic relationships included in the Domestic Violence Act 1995 (Busch & Robertson, 2000); heterosexual or same sex partners, family or whānau members, household members or people in a close or domestic relationship, such as flatmates. But the use of such generic terms for family violence mask the social context in which the anti-domestic violence movement originated (Stewart, 2004), and represent a gendered social problem as if it were gender neutral. While it is clearly the case that women can be violent to male partners, there are gendered differences between male and female offences. Women's violence is often self-defence, and does not usually result in the same degree of hurt and injury, as does men's violence to women (Ritchie, 2005). Men are more likely to be the perpetrators of intimate partner violence, and women are more severely affected by partner abuse than men (NZ Family Violence Clearinghouse, 2006). Women are more likely to be the perpetrators of physical punishment of children, but men are more likely to perpetrate physical violence that leads to serious or fatal injury of children (NZ Family Violence Clearinghouse, 2006; Ritchie, 2005). Barwick, Gray, and Macky (2000) established that the majority of applicants for protection orders in New Zealand were women (92%) and the majority of respondents were men (92%). Respondents were most frequently (80%) the applicant's current or previous partner and the vast majority of partner relationships were heterosexual. Intimate partner violence against women is strongly linked to violence against children, homicide, suicide, health and mental health morbidity. There is a substantial overlap between the occurrence of child abuse and partner abuse in families, with up to 60% of families who report one type of violence also experiencing the other type of abuse (Fanslow, 2002). Of the families where partner abuse is happening, 30-75% will also have child abuse occurring. "Children who live in a house where their mother is being abused are likely to be abused themselves (Ritchie, 2005). Police attended 46,682 family violence incidents in 2002/3, and around 55,000 children were present at those incidents (New Zealand Family Violence Clearinghouse, 2006). Violence

against women partners significantly affects the well-being of families and thus constitutes the core of family violence².

The term family/whānau violence is sometimes used in reporting family violence prevalence research however we are mindful of the critique offered by the Second Māori Taskforce on Whānau Violence (2004). They remind us that the concept of whānau does not simply translate to the Pākehā concept of family. In relation to whānau violence, they suggest that “the assumption in making whānau violence criminal and therefore punishable is that rehabilitation may only occur after punishment, not as an immediate alternative to whānau violence” (p.17). This assumption is based on dominant Western paradigms and interventions from these perspectives do not necessarily facilitate change for Māori. The Western gender analysis that underscores services and interventions for victims does not necessarily enable the space for Māori concepts of wellness, for Māori women, to be engaged. The Māori Taskforce cites the example of ‘closure’ which “for Pākehā means severing the ties, but that cannot happen for Māori” (p.32). Māori have been seeking the space to develop legitimate models of intervention to eliminate whānau violence (Second Māori Taskforce, 2004). We are concerned that such space is particularly limited in the context of collaboration within the justice system. The Court is a tradition of the Tikanga Pākehā House (Bishop, 1999), and collaboration within this House does not open up the same possibilities as a meeting of partners in te Tiriti House.

Ten years after the introduction of the Domestic Violence Act (1995) and twelve years after the initial collaboration between WAVES and the Waitakere District Court, the Government established the Taskforce for Action on Violence within Families to advise the Family Violence Ministerial Team on strategies for improving responses to family violence. (Ministry of Social Development, 2006) The Taskforce is an alliance of government and community agents, independent Crown entities and the Judiciary to achieve the shared vision of eliminating family violence in Aotearoa/New Zealand. It supports community interventions for preventing family violence through funding and resources and has established a nationwide local case co-ordination scheme to aid collaboration (Ministry of Social Development, 2006). The Taskforce has acknowledged the value of local, community-based interventions that have already been established and has clearly endorsed locally responsive strategies “so that we are developing services that engage particular communities, especially hard to reach families where violence is prevalent (MSD, 2006, p.26).

The story of the Waitakere Family Violence Court begins more than a decade before the Government established the Taskforce, so the collaboration between state, professional and community agents that produces the Court’s unique practices offers one established example of the possibilities of collaboration within the justice system where the goal of eliminating family violence is a priority.

² For the purposes of this report we use the term ‘family violence’ to be consistent with the language used in the protocols relating to the Family Violence Court at the Waitakere District Court. The terms victims, complainants, offenders and defendants have been used in the report to be consistent with the language used in the protocols relating to the Family Violence Court at the Waitakere District Court.

Establishment of Fast Track: 1992

Waitakere Anti Violence Essential Services (WAVES)

What is now known as the Waitakere Family Violence Court (WFVC) has its beginnings 1992 when Judge Coral Shaw, a resident Judge of the then Henderson District Court persuaded the Mayor, the local Police Commander and a prominent Māori citizen to join her as Trustees for a new Community Trust to be known as initially the Waitakere Domestic Violence Project. The project was later renamed Waitakere Anti Violence Essential Services (WAVES). WAVES established a steering committee responsible to the Trust Board to investigate the possibility of implementing a domestic violence programme similar to the Hamilton model, Hamilton Abuse Intervention Pilot Programme (HAIPP) in the Waitakere community. The steering committee included representatives from those agencies compatible with those involved in HAIPP: the Police, Community Corrections, the Family Court, Victim Support, Western Refuge, the then Department of Social Welfare and SAFE/ Men for Non violence. This membership worked in consultation with the Judiciary.

WAVES became a family violence network organisation. The idea of the network collaboration was derived from the model of the Duluth Abuse Intervention Project which promoted a coordinated response to domestic violence, and a fast tracking system as used in the Westminster Municipal Court in Colorado, U.S.A.

[WAVES] draws together and facilitates communication among the providers of services in the family violence field. So there's about (off hand) fifteen or twenty different organisations which form the inter-agency network and WAVES is the umbrella organisation for that. It promotes initiatives (YB, 29).

In its initial stages the collaboration was focused on the needs of victims. In the earlier 1990s the Government had not legislated for the inclusion of victims in Court processes, and those who were involved in family violence victim advocacy were aware of the dynamics through which reconciliation, coercion, or both resulted in offenders being able to avoid responsibility or accountability for their violence. Taking victims into account, and acknowledging the effects of processes of victimisation within intimate violence, was understood by community advocates and the Judiciary at that time, as vital components of addressing both safety and accountability within the justice system.

One of the service provisions that were identified very early was a role for advocacy in Court for victims of family violence (WO, 3).

I found that Coral Shaw was fired up about victims needing to be supported through the court system so they could tell their story and have a solution which was arrived at in Court so criminal justice was done in Court not outside it (PB, 12).

In fact WAVES' main focus for the whole period up until 2001 was around supporting family violence victims through the criminal court process (YB, 40).

In addition, the involvement of community organisations in the evolution of the Court was understood by the participants as essential to the successful implementation of Court practices which would enable victim needs to be taken into account.

But it's very difficult indeed to keep these processes alive and going unless you have a sense of support in the community and the community has to have some enthusiasm for what you are doing (PB, 228).

Establishing WAVES provided a structure and process for co-ordinating local responses to family violence from community organisations, local government, Māori and the Judiciary. WAVES facilitated consultation with the community resulting in an innovative approach through which family violence cases were put into a *fast track* process at the same time that advocacy and support services for victims and special programmes for offenders were provided.

Timeframes

The main focus of the new *fast track* court process was improving timeframes, which involved minimising the time lags between Court appearances so that engaging victims in the processes of the Court became more feasible.

We then decided we needed to reform the summary procedure and we did some reading around some American activity and decided we would create a fast track so that family violence cases in the criminal system would be done faster (PB, 20).

It was the aim of the resident judges and WAVES as representatives of the local community to address the long delays in the criminal system when dealing with family violence. Delays in disposal of a case before Court meant less likelihood of perpetrators facing any legal sanction because as more time passes there is less likelihood of victims giving evidence against their partner/family member.

The institution of the WAVES advocate and getting cases heard promptly back in the mid 90s here at the instigation of Judge Shaw was the genesis of all of this. There was a success rate of family violence prosecutions of around 30% in those days (YB, 313).

Long delays in a court system set up some of the conditions under which victims become alienated and disengaged from Court processes.

You know the real hiccup in the way that the court works is that, lawyers know as well as anyone else, that if you wait long enough a complainant won't come to court to give evidence, if you drag it out long enough (MB, 83).

...and it [delay] works against the interests of good outcomes for everyone (YB, 305.)

Ensuring quick turnaround of cases, reducing the amount of time between plea and defended hearings, gives the Court a greater chance of facilitating the process of defendants taking responsibility for their actions. By *fast-tracking* cases defendants are less likely to have time to influence victims, even if they plead not guilty. Short timeframes encourage more guilty pleas at the beginning of the Court process. It was intended that defended hearings were to be heard no more than 2 months after the case was first called. *Fast-track* had an immediate effect;

pleas of guilty rose from 15% to 65%, and in the order of 80% of victims were able to remain in the process through to the completion of their case (Johnson, 2005). From 1994 till 1999 the conviction rate in family violence matters was maintained at around 75%. This contrasts sharply with the 10% rate of conviction reported before 1994.

Therapeutic Jurisprudence and Problem Solving Courts

Fast track was justified by research on the dynamics of family violence which suggested that violent events are followed by a 'honeymoon phase' in which the relationship is re-established, the victim has renewed faith in her partner's commitment and has less interest in his accountability before the Court. This understanding of the specific circumstances of domestic violence enabled the psycho-social context of the offence to be taken into account. The North American literature on therapeutic jurisprudence and problem solving courts provided a coherent framework, and underlying principles, for the Court because it emerged from a shared understanding that some criminal justice issues needed psycho-social redress.

Therapeutic jurisprudence "*is a perspective that regards the law as a social force that produces behaviours and consequences*" (Wexler, 1999, p.1). Judge Johnson (2005) advocates for the importance of therapeutic responses to incidents of domestic violence because of the psycho-social context of family violence, in particular the likelihood that an offender will return to the domestic situation. Therapeutic responses use a problem solving, instead of adversarial, approach to determine outcomes for the family concerned. Family violence is understood as specific in each particular context and solutions address the needs of the family, as far as possible, within the criminal justice system. Problem-solving courts have emerged from identifying the difficulties that Courts face in addressing the underlying problems of an individual before the Court, the social problems of communities or the structural and operational problems of a fractured justice (Johnson, 2005). With the move towards problem solving courts using therapeutic jurisprudence as the theoretical foundation we find the merging of law, psychology and criminology, to produce law as a therapeutic agent (Arrigo, 2004).

At its outset, then, the WFVC depended on community involvement and a psycho-social understanding of domestic violence that justified a Court process intent on therapeutic problem solving. A key feature of combining community involvement and therapeutic process in the earliest operations of the WFVC was the introduction of a victim advocate alongside the *fast track* process.

WAVES Victim Advocate

WAVES received funding from a variety of sources, including the Health Funding Authority, Lotteries and Children, Young Persons and their Families Agency. ASB Trust provided a grant for the purchase of capital items. WAVES were able to employ a coordinator and a court victim advocate.

The WAVES Trust sought funding from government and other charitable sources and employed over the years several people as a sort of manager-come-educator-come-administrator and also representative in court (PB, 50).

The first WAVES advocate began working in the Waitakere District Court (then Henderson) around 1993, supporting victims through the Court process and providing advocacy for victims in Court (Johnson, 2005). The role was governed by a principle of obligation to safety for women. In 1999 the relationship that existed between WAVES and the Court, and the role of the advocate in the Court, were formalised in a service level agreement.

At that time there was one victim advisor at court and she had been the previous [WAVES] advocate so she was quite clear what her role was as victim advisor. And the agreement was that the WAVES advocate would work with all family violence victims and she [the Court Victim Advisor] would work with all other [non family violence] victims (WO, 10).

The service level agreement detailed the roles and responsibilities of the WAVES advocate, and provided a framework where the specified roles were agreed by both parties. The WAVES advocate assumed responsibility for providing information to and from the Court for victims of family violence offences. The Victim Advisor had the same responsibility for victims of all other offences.

Speaking Rights

Consistent with practice of the Victim Advisor providing information to the Court, it was agreed that a tradition giving victim advocates speaking rights in the District Court would be established.

We began the process of victims having an advocate by deciding we would start a tradition there and then in 1994, either legislation or tradition are the ways in which people can get speaking rights who haven't had them before. So we said, "all right today a tradition starts" (PB, 53).

The tradition of allowing speaking rights to victim advocates meant that there was someone mediating the relationship between the Court and the victim. The tradition makes a double move towards a therapeutic intervention – it recognises the rights of the victim to be involved in the Court process, and it also respects the victim's right to protection and safety. Alienation from Court processes has been a common finding of evaluative studies focused on women and Māori (New Zealand Law Commission, 1999; Morris, 1999). For example, Māori women risk complex processes of alienation by trusting in a Pākehā Court process. Legitimising a victim's right to give an account of their experience - to say how they have been affected by violence and by the services offered through the Court - affirms their status as citizens entitled to protection under the law. Therapeutically, this affirmation has the potential to promote a sense of safety within the Court processes. By providing a mediator from the victim's community, accountability for the victim's safety is shared between the community and the Court, as well as being required of the offender. Whether or not this potential is realised remains a question to ask the victims about their experiences of the Court and their understanding of safety.

Resources

Fifteen years ago, when the *fast track* process was established, it was a local initiative by the resident judges and operated within the then Henderson District Court. It was not a special Court process but a modified process within the authority of the Summary Proceedings Act

1957 (Johnson, 2005). No additional resources were provided to facilitate the implementation of *fast track* or to support the involvement of the WAVES victim advocate.

...it was such a new thing. Looking back in hindsight you can say "oh yeah we really needed that". Looking at it back then they might have thought "yeah, it doesn't really need anything because it's basically just a movement of dates and stuff like that". But, people don't realise how much work is involved (BG, 599).

The lack of resources from the beginning has created various difficulties throughout the Court's history. For example, the WAVES advocate was provided with a small meeting room that had health and safety approval for two people and was equipped with toll barred phone. Toll calls were to be made on their personal phone, and any other facilities needed were to be provided by WAVES. Currently Community Victim Services have no access to staff toilets or tea and coffee facilities. The meeting room is often used by up to four staff from the CVS network at a time. Significantly, too, although the Court relies on services offered by the community, there is no contribution made to the running of these services through the Court system. In effect, the Court has consistently depended on the goodwill of community organisations, and their funding bodies, to be able to modify the proceedings of an ordinary Summary Court, and it continues to do so.

Court participants recognise that ongoing limitations arising from funding and resource inadequacies crucially affects the way in which Court can achieve its objectives. However, these issues are not as significant as the continuing collaboration that makes the Court process possible.

We tend to highlight the issues of it [resources] because it is always the things that stay in the front of your mind when things aren't working well, but generally we are really lucky; I think we are really lucky to have the support of all our stakeholders to actually operate a Family Violence Court (GG, 1133).

Because any one sector can kill it, they can bring it to its knees by non-cooperation. We haven't got laws that enable us to steam roll it through. Because what we are doing is really doing something different with the summary procedure and kind of trying to mould the process into something that we envisaged (PB, 282).

The shared vision of a Court process that involved improving timeframes and the inclusion of victim advocates who had the traditional right to speak on behalf of victims so as to effectively intervene for victim safety and offender accountability continued to hold the community and Court collaboration through years in which changes both within and outside the Court presented opportunities and challenges to the success of the Court's process.

The Domestic Violence Act: 1995

When the Domestic Violence Act (1995) was introduced, three years after WAVES established the *fast track* process, the District Court was provided with opportunities that had not existed under the Domestic Protection Act (1982). The two principle goals of the Act; ensuring effective legal protection for victims of domestic violence, and promoting the view that all forms of domestic violence are unacceptable behaviours, neither morally defensible nor excusable, provided legislative authority to the Court's focus on safety and accountability. The specific mechanism of enabling access to the Courts in a simple and time effective manner was already in practice through the *fast track* system at Waitakere. The provision of mandatory programmes for offenders and changes to the sanctions for offences provided the Court with more options for sentencing offenders and State funding support for programmes if offenders were also respondents of protection orders. The Act's provision for programmes for protection order applications placed emphasis on the importance of victim safety and wellbeing, which also served as an endorsement of the Court's approach to victim's safe inclusion in the process.

Protection orders were at the core of the Domestic Violence Act (1995). The orders were designed to prevent the respondent from physically, sexually, or psychologically abusing the protected person or any children covered under the order; threatening abuse or damaging property; encouraging a third party to abuse the protected person or her children. Protection order breaches are criminal not civil acts and they involve increased penalties compared to earlier non-molestation orders.

At the time that the Act was introduced, the Judiciary of the District Court at Waitakere made more extensive use of the potential to collaborate with Family Court. Orders were granted by the Family Court and the District Court ensured breaches were appropriately sanctioned.

I think a long time ago, we used to operate that way with Judge Johnson back then, and there was a much stronger connection between the Family Court and the Criminal Court in relation to programmes. Obviously not sharing information but encouraging them to go through the Family Court to deal with some of the issues that might be able to help and I notice we don't do that now (NG, 420).

After the establishment of the Waitakere Family Violence Court the Judiciary arranged non defended protection orders when they were agreed to by both the victim and the offender. These were authorised and issued by the Family Court. The advantage for the defendant was that under the protection order, the Court funded their access to offender programmes. However these met with concerns from defence counsel who were dissatisfied with their client's entitlement to defence.

...there were some issues, first of all with lawyers who voiced a growing concern that that the process seemed to be slanted more towards victims, and the defendants rights weren't being considered, particularly in cases where there was consideration of making a protection order that wouldn't be defended. It was done by agreement of both parties and [Counsel] said they were not in a position to properly instruct their clients around what the risks were to them and what the responsibilities were if a protection order was made against them in the Criminal Court (WO, 49).

The provision of mandatory programmes for respondents to protection orders, as well as programmes that support victim applicants is an outcome of the rehabilitative focus of the Domestic Violence Act (1995). Despite the concerns raised by Counsel, this focus is consistent with the initial intent of the *fast track* process on therapeutic problem solving and the broader framework of therapeutic jurisprudence.

Court Victim Advisors: 2001

While the Domestic Violence Act (1995) served to give authority to the objectives of the collaboration between the Judiciary and WAVES, and increased options for its intervention strategies, the introduction of the Victim Rights Act (2002) had more complex implications for the functioning of the Court.

In 2000 the District Courts received significant funding from the Ministry of Justice to provide court victim services. This pre-empted the Victim Rights Act (2002) which mandated the provision of assistance and information to victims, making the implementation of the Act more feasible when it was introduced. The Ministry of Justice decided to train in-house their own advisors to provide victim services.

On the surface the Victim Rights Act (2002) provided authority for the Court's emphasis on victim involvement in Court processes, ensuring that victims are provided with information and assistance that responds to their needs. Under this Act a victim is also entitled to provide the Court with information on how the offence has affected them, so that this information can be taken into account by the Judge when sentencing the offender. This information is usually presented in the form of a Victim Impact Statement which can be provided by a Court Victim Advisor, a community advocate, or read to the Court by the victim if they choose. In the implementation of the Act, then, information from the victim is provided to the Court at a particular point in the Court process. However, under the Act the victim may also provide information relevant to an offender's bail conditions at any time that bail is an issue before the Court. In effect, not all information from the victim to the Court is constrained to appear in the Victim Impact Statement.

The Victim Rights Act provides for the victim to provide the input on bail conditions or whether the person should get bail and they are not victim impact statements despite what everybody says. They're just the victim's views on bail. There's another type of report called a victim impact statement that addresses the effect on the offending on the victim, and they are two distinct kinds of reports that should be produced in two distinct situations. Victim impact statements are only there for the purpose of the sentencing (HD 324)

At the time that the Victim Rights Act (2002) was pre-empted by the Ministry of Justice initiatives for victim services, the *fast track* process had involved facilitating information flow between the Court and victims, through the WAVES victim advocate, for some years. In the *fast track* process there were considerably more fluid arrangements for the provision of information to the Court from the victim than were implemented through the mechanism of the Victim Impact Statements as provided through the legislation. In addition, the specific mechanism of collaboration with WAVES to provide victim advocacy services provided a site for community involvement which was not included in the Ministry of Justice programme of in-house training and provision of Court Victim Advisors.

The creation of the Victim Rights Act set up a code of rights which wasn't all together consistent with how we were operating with the victim advocate and that's really where the conflict arose. The Victim Rights Act was a huge advance but it didn't go as far as we had gone with the victim advocate (PB, 86.)

Although there were no apparent problems or issues with the services being provided by the WAVES victim advocate at the time, the local Court Manager made the decision that the Court would take over all victim services from February 2001. However, the 1999 Service Level Agreement could only be disestablished with consent of both parties. WAVES agreed to step out of their advocacy role in February 2001 on the condition that the level of services to victims of family violence did not reduce.

[Court management] felt they couldn't provide that level of service at every Court in the country so for that reason they made the decision they would provide court services and they would train in-house their own advisors to provide that role (WO, 19).

In fact WAVES' main focus for the whole period up until 2001 was around supporting family violence victims through the criminal court process. At that stage the victim advisors in Waitakere, at the insistence of the Ministry of Justice, took over (YB, 39).

Despite the level of coherence between the aims and intentions of the Victim Rights Act (2002) and the established practices of the *fast track* process, the implementation of the Act has continued to produce tensions within the Court around the issue of community involvement in a coordinated response to family violence.

The Family Violence Focus Group (FVFG) - 2001

A month after the WAVES victim advocate stepped out of Court, Resident Judge Johnson called together a meeting of stakeholders including WAVES, local refuges, the Judiciary and Court management, Community Probation, lawyers, police and police prosecutors. Judge Johnson believed that the benefits evident when *fast track* processes and the WAVES victim advocate had been initially introduced were no longer apparent. The *fast track* had become a slow track again, the number of complainants not wishing to give evidence to the Court was unacceptable, and he questioned whether justice was being done. Judge Johnson attributed the failure of the Court process at that time to the level of support available to victims throughout the process, and to delays longer than six weeks which were too long for complainants to stay engaged in the process. He was also aware that the workload for everyone involved had increased over the nine years since the *fast track* processes had been established. Resources had not increased over this time, aside from those provided for implementation of victim services.

Judge Johnson proposed that they abandon the *fast track* system then in practice and replace it with a more focussed and concentrated system. To ensure that all parties were involved in any revisions to the Courts processes, Judge Johnson recommended that a working party be set up to consider the new initiative and it was agreed to form the Family Violence Focus Group (Focus Group) which was to be chaired by the WAVES coordinator. The Focus Group had representation from the Police, Viviana, the Henderson District Court, and defence counsel as well as the WAVES chairperson.

From the evidence of those who were involved in the establishment of the focus group, the process mirrored that used to establish WAVES and develop the initial Court intervention: a resident Judge calls a meeting of local community members, non government organisations, professionals and state agents involved in responding to family violence.

Some time after [WAVES] had stopped providing those services, [a resident Judge] called together a group of stakeholders including WAVES and the refuges, courts and probation, lawyers, and police and prosecutors. He requested that we look at improving services in Court to family violence because the fast track system that had been initiated by himself and Judge Shaw was no longer fast track for various reasons. And since WAVES had stepped out of the role of advocacy there was extreme lack of information coming through from victims. He kind of got the ball rolling (WO, 29).

As with most local initiatives, the Family Violence Focus Group began as an organic process of collaboration towards a common goal. The group met for the first time on the 27th March 2001. The meeting started with each person raising relevant issues about Court processes from their particular vantage points. Over a period of three months and many meetings the protocol for the operations of the Court was developed. In this way, the group's goals were set through a process of negotiation, and its practices established through collaboration, so it retained flexibility at the same time that its structure and function remained somewhat opaque.

Currently Court participants do not have a shared understanding of the process through which the Focus Group was formed or the status of its representatives. In particular, there continue to be serious differences in understanding between Counsel and other participants.

...I think at the Court here we identified the stakeholders and got representatives from all of them...I think all the significant participants were represented (YB, 72).

I still feel that we struggle at time to engage lawyers (WO, 133).

Nobody has ever approached any of the Counsel in this Court, as far as I know, to ask for our consent or even input into how these protocols were developed (HD, 26).

I would imagine there would be a couple of those lawyers haven't even been bothered to read it. They probably just think, "oh, you know that's just a load of rubbish"... which is a shame because they are not really on board with the whole aim of the Court. I think it would be really good if they could be encouraged to at least take a look at it and see. I guess its different motivations (WW, 396).

Because of the various motivations and personal commitments of Counsel working in the Court, and because of their status as independent professionals, it is difficult to involve all Counsel even to evolve a process through which representation on the Focus Group could be satisfactorily decided. At any given time, there are always lawyers who unavailable when opportunities to consult with the Focus Group arise. However, there are also common experiences of Counsel being disinterested in involvement and devaluing the Court's protocols. As a result of divergent points of view of the Focus Group there are continuing tensions around responsibility for, and processes of, reviewing Family Violence Court Protocols.

The Protocol (2001)

The protocol that emerged from the Focus Group's meetings addressed most of the issues that group members had raised at the initial meeting. The central issue of concern had been the slowing of the *fast track* system. This was addressed by changing the Court roster so that family violence cases were allocated to one Court, one day a week, a Wednesday. All other criminal work was excluded from that Court on that day. The usefulness of status hearings was also discussed, and it was decided that not guilty charges should go straight to a defended hearing. Other issues that were raised and resolved were related to the provision of same day reports by Community Probation, standardising bail conditions and clear identification of family violence cases.

It was not possible to attend to all of the issues raised and those which could not be addressed continue to be raised by participants in the Court. Specifically, these take the form of the following questions:

- Is it feasible to have nominated family violence counsel in the Court?
- Who will pay for and evaluate the Court's processes?
- How can delays by counsel be minimised?
- How can issues of police training for working within the protocol be addressed?
- How can police difficulties working within timeframes be addressed?

The 2001 Protocol specified three aims for the operation of the Court:

1. To overcome systemic delays in Court process
2. To minimize damage to families by delay
3. To concentrate specialist services within the Court process

It was decided that a pilot phase of the protocols' operation would commence in June 2001 and run for 5 months. At the end of that time, in November 2001, the protocol was formally recognised by the Waitakere District Court.

Evaluation

At the time that the 2001 protocol was piloted, WAVES wrote to the Department of Courts (now Ministry of Justice) requesting that a formal evaluation be conducted. The Department of Courts replied saying that they believed a "settling in period should be allowed" and that an evaluation was "a little premature". In principle, though, they did agree that an independent evaluation of the protocols would be beneficial at some stage in the future. Around the same time WAVES also informed the Chief District Court Judge that the pilot was underway.

No evaluation was undertaken subsequently and at the time this report was prepared, no funding had been provided by the Ministry of Justice for an evaluation of the Court protocols³. Judge Recordon began negotiating with the independent researchers involved in the current research evaluation programme in July 2005.

Court participants continue to be concerned about the lack of an independent evaluation. In particular they raised questions about the effectiveness of the Court in producing psycho-social change that would improve victim safety and offender accountability.

I don't think we have done enough work to find out what we should do, for instance, what is the future impact of a defendant who doesn't believe the consequence of his conduct was sufficient to make him change his mind at all? Does it mean he becomes emboldened by the fact he thought he got off lightly? Does it mean the victim loses faith in the system being able to do anything for her? (PB, 142).

There are serious ethical issues that emerge for the participants as a result of the lack of evaluation, especially from the perspective of victims and offenders. In this study, Court participants overwhelmingly expressed faith that the protocols are working to achieve their aims.

It's [the WFVC] just a brand new way to get the system much quicker and interventions in there that are actually helpful, while still maintaining the fact it's a criminal offence and that's got to be held up in Court at the same time (SW, 67).

Yes, I do get the sense that it's really working, I clearly get that sense but that's not to say we couldn't do things better.... But I really strongly believe in how effective the court is (RRH, 148).

Even so, some participants have continuing concerns around ethical aspects of the Court's processes.

I am not convinced by any means that the sentencing we do is either well founded in terms of researched consequences or the best kind of results we could achieve with the legal limitations we have got. I have also always worried about the Court doing more damage than would have occurred if the Court had done nothing at all as a result of the crime (PB, 133).

Ethical conduct by participants necessarily implies that at the very least the Court processes themselves will do no further harm to families already damaged by violent offences. Without an evaluation that has the capacity to voice the experiences of victims and offenders who have been involved with the Court, and hear how their families have been affected by the intervention of the Court, those who participate creating and enacting the Court's intervention do not have access to systematic evidence that they are meeting their ethical commitments. They cannot be confident that the WFVC does effectively act to reduce incidence of family violence.

³ The researchers are in the process of negotiating a contract for a small study of the experiences of victims whose family members have been involved in the WFVC process. The terms of the contract had not be finalised at the time this report was completed.

The current study has the potential to identify how well the Court is working from the vantage points of those who participate, and to provide feedback to stakeholders on issues that remain unresolved among participants. We may also be able to account for some of the issues that Court participants have raised about the Court's processes and their evolution, for example, the way in which the Family Violence Focus Group evolves from its local, relatively organic formation. However, the broader questions of the effectiveness of the Court from the vantage point of those whose lives are the target of the Court's intervention still lack any systematic address through research.

Defence Counsel

The 2001 protocol continued to operate in the Court until 2005 when they underwent revision. Over that time, the Focus Group's lack of transparency in structure and function became especially complicated around the question of representation of counsel in the group and issues of consultation with counsel in general.

So once this was sort of thrust upon us, and I know I use that phrase because I haven't had any input, and then we were told we had had input and we never had (HD, 118).

The Focus Group seemed aware of the need to work with defence counsel to ensure a successful pilot of the protocol. They put together a list of lawyers who would possibly be interested in specialising in family violence work. It was decided that the court manager would approach them to see if they were interested in taking part in the pilot. The minutes from this time do not record any outcome of this decision.

I guess, one of the issues that there is a lack of communication from anybody to people whom represent the accused. We just don't have a voice - it seems to me - at all. I think that's wrong (HD, 307).

Focus Group minutes from May 2001 record the receipt of a letter from a member of Counsel raising issues related to the protocol in practice and Judge Johnson's willingness to discuss the process with Counsel. When the Focus Group met in August 2001 to review the Protocol's pilot, the main issue for discussion was defence lawyers' lack of clarity of and challenges to the new protocol, especially with regard to the speaking rights of Community Victim advocates.

Those who were participating in Focus Group discussions at the time the 2001 Protocol was piloted obviously recognised the importance of involving Counsel in the successful operation of the Court. The Court depends on Counsel understanding the protocol as a mechanism for holding offenders accountable and improving victim safety. The most serious consequence of issues related to the representation of, and consultation with, defence counsel in the Focus Group is the potential for Counsel to miss the opportunity for engaging with the problem solving philosophy of the Court.

If you work within it then you actually see the benefits. When you actually see one of your hardened, hard arse guys saying, "You know, I got quite a lot out of that anger management" or they're happily back together again and producing yet another little sprog, then it actually seems to be working. Some violence cases can take over two years to complete. You just think "Oh my gosh, give me strength, when will they learn" and eventually they do learn (RH, 463).

At the same time, Court participants understand that having specialised protocols may create dilemmas for Counsel, or tensions within the Court.

...there is a lot of pressure brought to bear on lawyers, and some lawyers (and you've seen this already) are happy to go along with the protocols and some of them aren't, and there's that constant tension in Court about that issue. I can see it from both lawyers' points of views, some of them think they're doing their job by complying with the protocols and the others think they're doing their jobs by ignoring the protocols (MB, 32).

I think it's hard for them probably, because their role as a defence lawyer is obviously to defend their client, so I appreciate that it's... you know sometimes it might be a little bit cross purposes with what they want for their client. But I think slowly more and more of them are coming on board and I think it's working really well (WW, 158).

In particular, these tensions refer to the potential for different interpretations of what is in the best interests of Counsel's client with regard to the specific philosophy underlying the protocol and the broader philosophy underlying the operations of the justice system. The issue of representation remained unresolved and two questions concerning Counsel had not been addressed in the 2001 protocol: whether it was possible to involve specialist family violence counsel and how delays by Counsel could be minimised.

Training

At the time that the 2001 Protocol was introduced, there was no specific provision made for training for the Court participants in the practice of the protocols. The Focus Group had discussed the need for training everyone who participated in the Court process however this was not incorporated into the implementation phase. Various attempts were made to ensure that defence counsel would be able to discuss the protocols however, for several relatively mundane reasons, such as running out of time at meetings, these opportunities did not eventuate.

The need for training and education on Court protocols in practice continue to be issues for the Court participants. The scope of the identified needs is broad and includes education in relation to the philosophy or kaupapa of the protocols; the way in which this philosophy is linked to specific psycho-social issues relating to family violence, such as the cycle of abuse and reconciliation which so often affects the outcome of defended hearings; and the specific structure and function of roles within the Court system generally.

The Judiciary recognise the need for a shared understanding within their participating group, and the value of specialist education in the field of family violence.

I would also like to have a meeting with an identifiable group of judges in the early part of next year over a couple of days and try hammer out some common perspective and maybe getting some outsiders and have a bit of education to start something there. I do think it's not enough to just have a process, there has to be some quality control and there are people who know more than judges know (PB, 297).

Court participants made specific suggestions about other participants who they believed were not familiar with the protocols or the issues related to family violence. Police “on the street” were one group that were identified as needing further training:

An issue that we need to address is training within Police Section Staff, this is the police that are out on the street. A lot of them are quite young and new and there is a real lack of experience for them and their supervisors. So a lot of them don't quite know exactly what to do about the protocol. (WW, 297).

Court staff and non-government organisations were identified as needing education to ensure that each understood the roles of the other and the philosophy of the Court:

I think before you even enter into getting people into an area is to really educate the community groups on what the Court and Victim Advisors roles are, for one. Likewise really educate Court staff on what their roles are going to be. Because just getting in there and hoping like hell it's going to work is not going to work. (BG, 184).

I have pondered about collective training for the providers as such. Pretty much everyone is flying by the seat of their pants and the training is sort of on the job and so on. For people to come into a field like this, which in itself is so complex, there actually needs to be some education stuff happening around that amongst the providers (MH, 105).

Lack of education and training are particular dimensions of the problems encountered by participants because of resource inadequacies, but

[i]ts an issue we have across the board, every time one little bit of legislation changes or comes in or the family violence protocols come in, or anything like that we absorb it, we absorb it, we absorb it, we absorb it until we are stretched to the hilt (BG, 624).

The identification of specific needs within and among the groups who are involved in the practice of the Court protocols suggests that a more systematic approach to the provision of training and education would have been advantageous to the successful introduction of the protocols. That the Court participants remain concerned about the lack of training and education suggests that it would still be beneficial, at least as a means of ensuring that everyone involved has confidence that the services which are concentrated in the Court are, indeed, specialist services. The question of who would provide such training however, remains: none of the Court participants have access to resources that would enable appropriate education and training to be provided. The training that the Focus Group initially discussed might go part way to addressing the issues that relate to ensuring that all participants are clear about the specific roles they play in the Court and how these roles relate to the philosophy or kaupapa of the protocols and to the roles of other participants. Under the circumstances in which the Focus Group introduced the protocols, and even in the current situation, the resources for training would be difficult to gather.

Victim Rights Act 2002

When WAVES agreed to disestablish the Service Level Agreement with the Court, subsequent to the introduction of Court victim services and in preparation for the Victims Rights Act, it was on condition that services to victims of family violence did not reduce. At the time, there was a sense that the specific focus of WAVES on victim safety and victim services would be incorporated into the new Court processes. Nonetheless, WAVES continued involvement with the Court and their participation in the Focus Group affirmed the Court's commitment to collaboration with the community. WAVES responsibility for working towards victim safety in the community, and therefore also in the Court, was unquestioned in the practice of establishing the 2001 protocol.

In the 2001 protocol the advocacy role previously played by WAVES was taken on by the Tri Parté Community Victims Services Network (CVS). The CVS consisted of Viviana, an Independent Women's Refuge, Tika Maranga, Māori Women's Refuge, and Victim Support.

Community Victim Services work with the victims throughout the interpersonal processes of coping with family violence offences, of which the Court is only a part. Thus, they provide a more holistic service for supporting change than the Court can provide by itself. Within the Court the Community Victim Services providers are advocates for the victim. Their priorities are victim protection and victim safety. For example,

[t]he role of Viviana, as part of the Community Victim Services, is to advocate for the victims by producing memorandum and detailing the sort of history of the relationship, the circumstances that the recent assault happened in, what could be the issues and problems that need to be addressed, how scared the victim is about the situation and whether she intends to continue the relationship or not. So give the judge an overall feeling of what the situation is about. Part of the role is also to be there, well I look on it as protecting victims interests, so if Counsel come up with something or say something which could possibility affect the victims standing, credibility or safety or anything like that, I see it as our role to advocate for her for that as well (SW, 3).

The way in which Community Victim Services are incorporated into the Court processes enables a flexible process of information flow between the victims and the Court.

A large part of our Court process is having our case managers/victim advisors on hand, or roaming the foyer/court to take statements from victims/complainants we have been unable to contact by phone. And being available - if a judge requests a stand-down for a statement to be taken from a victim (GR, 212).

We really don't know what's happening in the family without having some independent voice telling you what's going on apart from the defendants' lawyers saying that everything's fine (MB, 180).

The advantages of the perspective offered by Community Victim Services, and their advocacy for the victims were articulated very clearly by some Court participants:

I like the fact that the Victim Services play an important part in the family violence days and if necessary they can stand up and say something. Because often they've

dealt with the victim a lot more than the police have, so they know these people a lot better and they know what their concerns are and I think that's working pretty well (WW, 128).

It wouldn't really work without them they are an integral part of the system and if you didn't have them you probably wouldn't be able to run the court the way its run (MB, 174).

The role of Community Victim Service advocates has not been evaluated from the point of view of victims involved in Court processes, and to ensure that local experiences are taken into account this is a crucial dimension of future evaluative research for the Court. However, participants views of the value of community advocacy are consistent with international research on the potential for victims to be re-victimised through legal interventions (Koss, 2000), and research which supports practices of community advocacy as beneficial for victim's safety (Allen, Bybee & Sullivan, 2004; Goodman & Epstein, 2005). In the specific case of the WFVC, victim protection and safety is a high priority because of the ongoing safety issues that victims of family violence frequently experience.

When the Victim Rights Act came into force in 2002, in the context of already established Court positions for victim advisors, and the introduction of the 2001 protocol, the potential for tension and misunderstanding around priorities for and provision of victim services was realised among Court participants. Some groups within the Court raised issues in relation to the tensions between Community Victim Services and Court Victim Advisors and these clustered around two central problematics: information flow between the Court and victims and the question of neutrality.

Information flow

Until the introduction of the Victim Rights Act (2002), Community Victim Service advocates, whether from WAVES or CVS, had open access to information from the Court so that it could be provided readily to victims. For example, the CVS could access Court files so that they could let victims know the outcome of an offender's appearance in Court if the advocate had not been in Court on that day. This open information sharing between the Court and the community service providers was restricted by provisions of the Victim Rights Act (2002).

I know that the Victim Rights Act has changed that. We can't give out information to another party unless the original person says so (MG, 120).

At this point, then, the open access to Court information that had been provided to the CVS was closed down, except when they were actually in Court to observe the proceedings.

When the new Victims Rights Act came out and there was this issue that they... could not give information except directly to the victim or someone who is named as their agent on a piece of paper that was signed by the victim (and of course at times that is completely inappropriate to get that kind of red tape done) (WO, 145).

The CVS advocates had less difficulty with the consequences of the new legislation than would have been the case for the earlier WAVES advocate. In the process of resolving the problem of *fast track* becoming a slow track again, the 2001 protocol called for all family violence cases to be scheduled on the same day. This had the benefit of rationalising the scarce resources

that affected all who were involved in the Court. It also meant that when the Victim Rights Act (2002) effectively blocked the flow of information from the Court to the CVS except through their rights as members of the public to be in the Court during proceedings, they were able to compensate by ensuring that advocates attended the family violence Court session to collect and provide information on behalf of the victims.

At the same time, Court Victim Advisors had official responsibility for providing information from the Court to the victims. As a result they felt they had a moral obligation to fulfil their legislative responsibilities and the requirements of their employment to offer their services to victims.

We try not to duplicate but we have to notify them and give them the offer of the service (CD, 81).

...they felt they had a justification because there was a legislative requirement for them to inform victims of what their rights and responsibilities were and to provide information about the progress of their case and so on. It did not specify in the Victim Rights Act any support services that could be passed information instead of passing it directly to the victim. So we reached an impasse where victims were being approached by both the victim advisors and victim services and when it came to presenting information in Court from the victims both victim impact statements were being passed up and memorandums to the judge (WO,73).

So, from the experiences of Court participants it was apparent that information flowing from the victim to the Court also became problematic.

...you'd also find that with the Family Violence Court the victims' views are actually sometimes conflicting and different with the community agencies to what they tell court advisors and therefore, to me, I feel that there's two sorts of views going into Court on the same day (MG, 71).

The memoranda provided by CVS advocates to the Judges during the offender's appearance in Court present the victim's point of view at that point in her relationship with the offender, including the victim's views on their safety and the safety of their children, factors affecting the relationship (such as alcohol and other drug abuse), the history of the relationship and anything relevant to the consideration of the victim's safety. Court Victim Advisors, however, provide a far more restricted range of information because they are constrained to present only the victim's views of the impact of the current offence for Victim Impact Statements at sentencing, and the victim's views on bail or conditions of bail. The noticeable difference between the type of information provided by the VAs to the Court under the Victim Rights Act (2002), and the type of information provided by the CVS advocates under the protocols relates to the history of the relationship, the ongoing nature of the relationship in many cases, and the effects of the dynamics of family violence in relation to the victim's safety at specific points in the Court process.

They [memoranda] are not victim impact statements as defined in the Victims Rights Act because that is the responsibility of the police. The police can delegate that and they delegate that sometimes to Victim Support or sometimes to the Victim Advisors but there is some fuzziness around that, and ownership of those documents and use of those documents can be a bit problematic (YB, 266).

As well as this difference in the kind of information that victims can provide through the two different types of victim services, there is also a difference in the perspectives of the victim service providers.

Things changed though quite dramatically in 2002 when the Victims Rights Act came into force and created Court staff who were Victim Advisors who because they were employed by the Courts had to be neutral. Prior to that the victim advocate had the distinct victim slant and was able to put the case for the victim when bail issues and sentencing issues were raised (PB, 57).

By the requirements of their employment, Victim Advisors' perspectives are neutral, and they are not employed in the role of advocates for the victim. They cannot have a "distinct victim slant" because of the institutionalised circumstances of their involvement in the Court.

...the community has parameters way up there...we just don't have those sorts of parameters and they dictate what their parameters are, we don't have that. We are quite strict here because of policy, here because of law and policy. So I am very clear about how that happens (CA, 1288).

Where when you are supporting a person and you are working with them you get a real attachment to that person and there is a lot of emotion that goes back and forth... where we stick to facts more and I think it would be more impartial (MG, 1241).

On the other hand, CVS advocates are engaged in supporting victims throughout the process. They are involved with the Court through the ongoing collaboration between the Judiciary, state and community organisations.

There is a huge need for them [CVS advocates] to be able to work with the other agencies because Victim Advisors don't do that, and that's where I think the community groups have a crucial role because providing protection, whether for the woman or the children, they have to work with all the other agencies, where Victim Advisors do that but not to the degree they do (NG, 1200).

The question of whether the Court is best served by Victim Services organised around a principle of neutrality or those organised around a principle of advocacy was most critically highlighted in 2003, when a visiting Judge at the Court revoked the speaking rights of the CVS advocates. The Judiciary are understood as the most crucial players in the continuing implementation of the WFVC protocols. Speaking rights for CVS advocates depend on the Judges' discretion and are grounded in collaboration, cooperation, trust and respect for the specialisation in the field of family violence.

In January 2003 Community Victim Services withdrew some of their services from WFVC so the issues raised by the judicial revoking of their speaking rights could be addressed. They continued to liaise with police prosecutors, including in the preparation of Victim Impact Statements. They also continued to support victims during the Court process, and provide any support needed to Victim Advisors. They recorded Court outcomes, provided information to victims and continued to accept referrals for any other services required by victims. Their community based advocacy for victims continued.

The withdrawal of CVS was followed by an intense period of negotiation to clarify the roles of Victim Advocates and Community services among WAVES, the Court, Victim Advisors and Police. This period of negotiation continued for more than twelve months, and involved the review and update of the Court protocol and the development of a new protocol for family violence victim services. The new protocol provided clarification of respective roles of Court and Community Services for family violence victims, and how Court staff would work with the community to enable those services to be provided at the Court. Community Victim Advocates returned to Court in October 2005. However, prior to these developments and the protocol revisions that resulted, another legislative Act impacted on the practices of the WFVC: The Sentencing Act (2002).

Sentencing Act 2002

The sentences available to the Judiciary are regulated by legislation and they do not always fit well with the aims of therapeutic jurisprudence.

...they are trying to achieve...early resolution of the criminal prosecution with therapeutic justice overtones so that it is, except in worse cases of violence which you can't avoid punishing, so that it aims for a repair of the family problem if possible (PB, 112)

...does our practice fit into our sentences that are available to us? They don't fit easily (MB, 309).

Under the Sentencing Act (2002), there are five types of sentence used by the Judiciary of the WFVC including, Section 106 discharge; conviction and discharge; conviction and come up for sentencing if called upon; community service; prison sentences. The introduction of the Act restricted the Judiciary's access to one of the sentences that had been available under the *fast track* system; a sentence to community programme.

...prior to the 2002 Sentencing Act, there was a sentence called community programme and we had a standard community programme between corrections and ManAlive. And a person could be sentenced to a six month community programme. They would report to a probation officer at the beginning, once in the middle and once at the end... But the 2002 Sentencing Act removed that sentence. That was one of the changes...that had an affect because it means now the only community based sentence is one of supervision (TB, 300).

A crucial consequence of the removal of community programmes as an available sentence involves the policies and protocols of Community Probation Services around sentences to community service. In the wake of the Sentencing Act (2002) community based sentences involve supervision by Community Probation and policies require them to give priority to high risk offenders. Offenders are regarded as higher risk if they are more likely to re-offend. At the same time, the seriousness of the offence is taken into account so 'high risk' carries a double meaning that includes both the severity of the specific violent act or acts for which the offender is charged, as well as likelihood of the offender repeating those acts.

We try and avoid bringing into the system first offenders or people with low motivation to change or people with very little previous history...So when we are asked to be

involved it's usually for people facing very serious charges of violence, injury with intent and assault with a weapon rather than perhaps common assault or violence against female, perhaps the lower end of violence. We are not so much seeing those people (RA, 82).

As a consequence of the Community Probation's policy of high risk priority, many of those who plead guilty within the WFVC would not be suitable for a sentence of community service under supervision. Although the Judiciary still have the option of imposing this sentence where they deem it appropriate Community Probation Staff remain constrained in terms of the time they may allocate to low risk offenders. Community service thus becomes:

...a top end sentence really because it's so time consuming (MB, 347).

Aside from the restriction in the sentencing possibilities that began to affect the Court in 2002, there are two issues specific to the family violence specialisation of the WFVC that arise as a result of the priority placed on high risk offenders under the supervision policies for Community Probation Services: the question of the appropriateness of risk assessment methods for intimate violence, and the question of the assessment of the seriousness of specific acts of intimate violence.

In relation to risk assessment methods, one of the participants drew attention to the potential inaccuracies of static factor risk assessment tools.

So there is that concern that supervision is supposed to be for the higher risk offender, but some of the people who score low on our rating system are very high risk, so it's all built on static factors. I mean its not always correct (RB, 151).

Predictors based on static factors provide the foundation for actuarial methods of risk assessment. They cover four domains of psycho-social functioning; disposition (e.g. personality); history (e.g. previous criminal activity); contextual (e.g. perceived levels of social support); and clinical (e.g. substance abuse) (Borum, 1996). Most of the static factors included in these domains are not amenable to therapeutic interventions. More importantly, though, actuarial models of risk assessment do not take account of dynamic factors such as employment status or education, and they do not take account of protective factors which may exceed static risk factors in terms of the significance of their contribution to re-offending (Rogers, 2000). Reliance on actuarial models of risk assessment have the additional risk of producing negative expectations of clients among professionals engaged in therapeutic interventions, with the consequence that clients experience stigmatisation that produces poor prognosis (Coombes & Te Hiwi, in press). The employment of these assessment models therefore risks inaccuracy in predicting re-offending as well as interference in the therapeutic outcomes intended by the Court's protocols. In addition to these problems, actuarial risk models do not take account of the specific, dynamic and intimate psycho-social context in which family violence occurs.

The specific context of family violence is also critical in regard to the assessment of particular acts of violence as more or less serious. Where the practices of the broader District Court system include either implicit or explicit reference to the specific charge of male assaults female as one of the less serious charges, it evokes an understanding of family violence as composed of discrete acts that can be individually assessed for the seriousness of their threat to the victim's wellbeing. Common sense provides justifications for this understanding in that a specific act may be obviously or evidentially linked to, say, specific bruising or broken bones,

internal injury or death. However, this common sense understanding does not take account of ongoing patterns of behaviour that are defined as violence within the Domestic Violence Act (1995). In the context of the Act's definition a particular act that could be regarded as 'less serious' in terms of its immediate effect on the victim's physical wellbeing, may contribute significantly to a pattern that compromises the victim's long term emotional and physical wellbeing, such as severe anxiety and depression linked to suicide or disabling arthritis associated with repeated minor physical injuries. While medical and psychological evidence for the severity of the effects of repeated but 'less serious' acts of domestic violence has gathered over the last two decades, common sense has continued to understand these acts as isolated events of relatively little consequence for the victim in the long term. Within this common sense understanding those who are charged as a result of committing such acts are also understood as being of 'lower risk'.

While the Police and CVS share a risk assessment method that is specific to family violence and takes account of specialised knowledge of the dynamic processes involved for offenders and victims, this method is not accessible in the same way to Community Probation Services. Issues related to methods of assessing risk are consequences of the different resources available to those who work within the Court depending on their affiliation with particular professional, state or community organisations.

WFVC Protocols - 2005

In 2005 the protocol developed in 2001 was revised. This came largely from a desire to provide clarity in regard to areas of the operation of the WFVC, specifically the services provided by Community Victim Services and Court Victim Advisors and the provision of information from victims to the Court. The aim of revising the protocols was to enable Community Victim Services to return to Court through a process that was understood by all stakeholders. The Family Violence Focus Group (FG) convened in December 2004 to discuss a new draft protocol developed by WAVES. This draft protocol included a specific Protocol for Family Violence Victim Services at the Waitakere District Court. Including a separate protocol document relating to community victim advocates enabled issues that had emerged after the introduction of the Victim Rights Act (2002) to be addressed. The Court and community were able to reach agreement about continuing to work together to provide the comprehensive victim services that had previously been a feature of the Court.

We wanted to reinstate that high level of service to family violence victims. So there was a willingness on behalf of Courts to do that and certainly we were working towards that outcome. In the end we ended up with two documents and one related to protocols around Community Victim Services in Court, and the other was the original Family Violence Court Protocol (WO,106).

The current working document *Protocols Relating to the Family Violence Court at Waitakere District Court* represents significant agreements within the collaboration between the Court and community and forms the basis for the operation of WFVC. These are specified in two separate but interrelated documents: The Waitakere District Family Violence Court Protocol and the Protocol for Family Violence Victim Services at Waitakere District Court. Attached to the Protocol documents is the Practice Note (1 Dec, 2004) which specifies 2 (plea), 4 (status hearing), 6 (defended hearing) week time frames (see Appendix B).

The protocol that set up the Family Violence Court was the result of a lengthy consultative process and then the protocol was revised last year [2005]...And at the same time the protocol involving the victim services alone was the result of a lengthy negotiated process involving primarily the Court and WAVES on behalf of the Community Victim Services (YB, 63).

The agreement between Court and Community Victim Services clarified the respective roles of Court Victim Advisors (VAs) and Community Victim Services (CVS) for family violence victims. It also specified how Court staff work effectively with the community to enable the services provided at the Court to reflect the principles of the Family Violence Victim Services protocol. In the following section we describe the practices of the Court under these revised protocols, including the roles of various participants in the Court process.

Current Court Practice

The Structure

Each Wednesday one Court of the Waitakere District Court is set aside to deal solely with matters of family violence and this is commonly referred to as 'Family Violence Day'. In effect this means that summonses and remands related to family violence offences are all referred to the Family Violence Day. The only exception is custody arrests where the matter is dealt with as soon as possible. On Family Violence Day pleas, sentence indications, and sentencing are dealt with. Defended hearings are allocated time on Family Violence Day, or on a day now set aside specifically for defended hearings related to family violence (currently, a Friday).

I think [a strength] is concentrating the subject matter into dedicated days so that all the players can be there economically for them and for the Court. Separating it from burglary and thefts and street violence and other things and giving its own treatment I think I like that...the concentration not only provided the economy of everybody being available, only once instead of being dotted around the week but it means you can more effectively utilise any support you can get from the community towards the system (PB, 212).

Waitakere is quite a big catchment area and we are big enough to have one Family Violence Court a week. And it's very clear it works better when there are no other list court matters (BB, 343)

The Process

Prior to a defendant appearing in Court, information about pending charges is provided by the Police to the Community Victim Service Network; Vivianna, Tika Maranga and Victim Services (CVS), under the provisions of a Memorandum of Understanding between the Police and CVS. All family violence cases are recorded by police on Police Family Violence Reports and these reports are subsequently provided to CVS so that they are made aware of all family violence incidents attended by Police and resulting in prosecution. This flow of information is regarded as appropriate if the information contained in the reports is consistent with that which would be disclosed to the public in an open Court.

Both Police and Court staff have responsibility for identifying the case as a family violence matter at the time that the Police file an information sheet with the Court. A red FV stamp is used on the file for this identification process.

When a defendant first appears before the Court they are not required to enter a plea. This practice discourages the use of 'not guilty' pleas so as to give Counsel enough time to take instruction or to obtain disclosure from the Police. 'Not guilty' pleas that are entered for these reasons are regarded as occurring prior to a proper consideration of the charges, and the protocols are designed to ensure that defendants have appropriate opportunities to take responsibility for their actions. Guilty pleas are accepted on first appearance.

To facilitate this first stage in the Court process, the Police make basic disclosure packs available when they are first called for by the prosecutor, if this is feasible. Duty Solicitors act quickly to assign counsel to the case and complete appropriate legal aid applications on the day of the defendant's first appearance.

Since a plea is not required on first appearance the Court Registrar adjourns the case until the following week unless standard bail conditions such as non-association or residential conditions are opposed, in which case the Judge will hear the matter in the usual way. The victim's views on the defendant's bail conditions are taken into account by presenting them to the Court in a Memorandum or a Victim Impact Statement. Both Community Victim Services advocates (CVS) and Court Victim Advisors (VA) are able to prepare and present memoranda to the Court under the 2005 Protocols.

Community Victim Services operate a call-out service for victims that is a function of the services that their non-government organisations offer in the community. When Court Victim Advisors make contact with victims they outline the services that they provide, and they also include information on Community Victim Services. CVSs and VAs are expected to liaise to ensure that their services in the Court are not duplicated. VAs do not offer the community based services that are offered by CVSs.

Police and CVS are expected to liaise over bail conditions. Only CVS advocates are present in the Court on the day of the defendant's appearance however both CVS and VAs are expected to be available if the Police Prosecutor or Judge requires them to attend. If CVS advocates want to speak to the Court, then they advise the Prosecutor, who then informs the Judge.

Between the first and second appearance of the defendant in Court, Counsel are expected to discuss the summary of facts and the plea with the Police prosecuting officer in charge of the case. Police are expected to discuss the victim's views on bail with CVS or VAs. This ensures that victims continue to be informed of the process in which the defendant is involved, and have the opportunity to provide the Court with information on their safety or factors which may be relevant to their safety. The intention of these practices is to ensure that Police and CVS or VAs collaborate to maximise the potential for the victim to establish a trusting relationship with the Court and remain engaged in the Court process, safely.

Defendants appear for a second time no more than two weeks from their first appearance. At this time a plea is entered, although a further period of remand may be appropriate if the defendant has been held in custody. Counsel may seek a sentence indication at this stage, and there may also be a discussion about the available processes that would be in the family's best

interests. Guilty pleas are encouraged because the Court process is designed to prioritise healing for the family. The therapeutic philosophy underlying the Court protocols includes the understanding that the family is further harmed if not guilty pleas proceed as a means of avoiding conviction rather than because the defendant genuinely denies the facts presented by the prosecution.

If the defendant does challenge the facts of the case, or for other reasons chooses to plead 'not guilty', there is no status hearing and the charges are adjourned to the earliest available defended hearing date. On the day of the adjournment, Police and Defence Counsel complete a checklist that records which facts are admitted by the defence, which will be at issue during the hearing, which evidence will be admitted by consent of both parties, and details such as requirements for translators, the number of witness to be called for each party and an estimate of the time required for the hearing. This checklist assists the Court to arrange the hearing as efficiently as possible. Defended hearings are expected to be held within ten weeks of the defendant's first Court appearance. The tight time-frame for defended hearings is intended to maximise the probability of the victim remaining engaged with the Court process, and minimising the risk to victim safety that is posed by coercion or manipulation which are both recognised characteristics of abuse strategies in intimate relationships. Under current practice every attempt is made to ensure that defended hearings are heard by one of the Family Violence Court Judges so that the specialist knowledge brought to the Family Violence Day is also consistently applied to defended hearings.

If the defendant pleads guilty then sentencing options are considered, taking account of the community services available to address the psycho-social problems that are interrelated with the violence, such as anger-management, alcohol and other drug treatment programmes or relationship counselling. Community Probation Services prepare sentencing reports for the Court. The views of victims are provided to the Court again to ensure that they are up-to-date. This practice recognises the ongoing character of the relationships between offender and victim, and the possibility that changing conditions within the family may affect victim safety over the period of time that the offender is involved in the Court process. Victim views are also sought if there is any variation to the charges laid or the facts presented by the prosecution. For such variations to be acceptable, their justifications must be principled, open and clearly recorded. The protocols also include a note which is intended to ensure that Defence Counsel are protected from unwittingly becoming party to a defendant's attempts to manipulate or coerce the victim. The note specifies that the Court objects to counsel and victims having contact except when that contact is mediated by the presence of CVS or VAs.

Sentencing also occurs on the same day that the defendant pleads guilty except in three particular circumstances. If a full pre-sentence report is required by the Judge, the case is stood down while Community Probation prepare the report. If the offender volunteers to undertake a programme that addresses the psycho-social issues implicated in the offence then sentencing is deferred while the Court monitors the offender's progress through the process of intervention. During this monitoring period, the offender is called to appear in Court from time to time and bail conditions are reviewed depending on their progress. The Judge may also choose to receive a report on the offender's progress without the offender appearing on a particular occasion. Victim's views of how the programme is working to facilitate changes that will improve their safety are sought throughout the monitoring period. Monitoring is also used when the Judge is considering a discharge without conviction and needs assurance that the offender has attended a required programme or taken the steps the Court requires them to take to address the psycho-social issues implicated in the violence. Discharge without conviction is

only considered when the Judge regards the offence as 'truly minor' and the offender has made adequate progress within an appropriate programme.

The Protocols in Practice: Successes and Challenges

Late in 2005, Judge Recordon began negotiating with the independent researchers involved in the current research evaluation programme. By March 2006 the design of the programme had been developed and Massey University Human Ethics Committee had approved an ethics protocol for the first study: the current project on the Court's evolution, processes and practices, success and challenges from the vantage point of the professional, state and community agents who took part in the Court's proceedings every week. Data was collected for the study during June and July 2006, so the successes and challenges we have identified are specific to the period in which revised protocols were being newly practiced, even though a number of issues identified by Court participants have their origins much earlier in the Court's evolution.

The *Protocols Relating to the Family Violence Court at Waitakere District Court* provide the framework for identifying success and challenges within the Court's revised structure and process. They consist of a brief introduction followed by four separate documents; The Family Violence Court Protocol (Court protocol); The Protocol for Family Violence Victims Services (CVS protocol); The Practice Note for domestic violence cases issued by the Chief District Court Judge in November 2004; and a Family Violence (Not Guilty) pre-hearing checklist.

The introduction to the Protocols provides a brief statement of the Court's history and the collaborative processes through which it has evolved. While these statements are concise they clearly identify the Waitakere District Court as taking an innovative approach to domestic violence offences through providing community advocacy and support for victims, community programmes for offenders, and attempting to deal with domestic violence matters quickly. The innovation indicated in the introduction provides two key considerations for assessing the Court's successes and challenges; how well the current practices of the Court reflect the collaboration between the Court and the Community as partners in responding to domestic violence within the Waitakere district; and how well the current practices reflect a specialised understanding of the dynamic processes of intimate violence which motivate the need for community, state and professional responses to be efficient and timely. The introduction to the protocols acknowledges the Focus Group's appreciation of the commitment of all who were involved in their development and thus points to the value which the Court and Community Stakeholders place on their collaborative effort to meet the needs of families affected by intimate violence.

The Court protocol document begins with the six aims that the structure and process of the Court is intended to meet:

- 1 To overcome systemic delays in Court process
- 2 To minimise damage to families by delay
- 3 To concentrate specialist services within the Court process
- 4 To protect the victims of family violence consistent with the rights of defendants

- 5 To promote a holistic approach in the Court response to family violence
- 6 To hold offenders accountable for their actions.

The first three aims are common to both the 2001 and 2005 Protocols. Together with the additional aims, they provide a set of discrete criteria for identifying the Court's successes and challenges in as much as they specify an agreed trajectory for responding to family violence within the District Court at Waitakere. This trajectory forms an implicit philosophy underlying the WFVC collaboration where each of the aims is connected to principles which locate the Court's practices within a 'problem solving' or therapeutic jurisprudence approach.

It's [the aims] so the criminal justice system can respond appropriately and with a degree of flexibility to work for the betterment of the people who are the victims of family violence and the perpetrators of family violence, (remembering of course a lot of the perpetrators have been victims of family violence). So it's really looking at the cycle of violence and what we can do to affect real and meaningful change in that area, while still holding offenders accountable but perhaps being creative in terms of the ways we do that so we get some positive outcomes (RRH, 135).

The first two aims take account of the way in which cycles of violence in family relationships involve psychological abuse, coercion and manipulation which act to undermine interventions aimed at healing the damage experienced within the family. Reducing systematic delays in the Court process maximises the opportunity for interventions to be effective before further damage occurs. Aiming to concentrate specialist services in the Court provides the best opportunity for effective intervention by ensuring that those who are involved in the Court's processes have expertise in addressing the problems which affect the offender before the Court and family members who have been victimised, as well as ensuring a consistent approach to problem solving among those participating in the Court. The aim of protecting victims of family violence consistent with the rights of defendants recognises the critical importance victim protection within the context of an ongoing familial relationship with the defendant. The general principles of defendant's rights within the Justice system are not specifically premised on the assumption that victims and defendants will continue to engage with each other in intimate personal relationships. In the case of family violence, however, the obligation of the law to protect citizens from victimisation may not be adequately met if the process of prosecution does not take account of this ongoing relationship and its dynamics. Promoting a holistic approach to family violence responses, recognises the responsibilities of the Court to the wider social context in which individual offenders and victims, their families, and communities are damaged by violence as well as acknowledging the physical, emotional, economic, relational, and spiritual character of the damage that violence perpetuates. The sixth aim of holding offender's accountable for their actions, emphasises the critical importance of accountability in a therapeutic context. If offenders refuse to take responsibility for their actions, or refuse to be accountable to the Court, their communities or their families for the damage that results from their offences, then problem solving interventions are unlikely to produce meaningful psycho-social changes that reduce re-offending. Together then, the six aims interconnect to recognise, acknowledge and address aspects of a criminal justice intervention directed at redressing a specific psycho-social problem.

Following from the opening statement of the Court's aims, the Court protocol specifies the structure and process of the Court, as outlined above, including procedures to be followed on guilty and not guilty pleas, sentencing, bail issues and the involvement of Community Victim Services.

The second protocol document making up the WFVC protocols sets out the principles, resources and procedures for Community Victim Services in relation to the Court. The principles combine a commitment to providing quality services to victims with acknowledgement of their rights as specified in the Victim Rights Act (2002); recognition of the ongoing collaborative partnership between CVS and the Waitakere District Court and the value of engaging the expertise of local CVS; support for the Court protocol; recognition of the statutory obligations of state agents involved in the Court's processes and a pledge to avoid confusion about the services provided to victims; and re-establishing a formal relationship with the Court in the wake of the terminated 1999 Service Level Agreement. These principles summarise CVS' allegiance to the aims of the Court and to continuing collaboration towards reducing family violence offending in the Waitakere district. Alongside the resources and realities facing CVS, they acknowledge that CVS working within the Court are necessarily subject to the statutory regulations which govern the Court and must take account of the way in which those statutory regulations create particular obligations for the state agents who are employed in the Court. The section on resources and realities also includes specific reference to the flow of information between CVS and the Police according to a separate Memorandum of Understanding. In specifying the procedures for CVS involvement the protocol pays attention to clarifying the roles of VAs and CVS, down to the details of the liaison expected to ensure that there is no duplication of services. Procedures for CVS physical access to the Court, including details of seating arrangements within the Court are also stipulated in the protocol.

Attached to the Protocol documents is the Practice Note (1 Dec, 2004) which specifies time frames to be adhered to by all District Courts dealing with all summary domestic violence prosecutions. The Practice Note specifies that pleas should be heard within two weeks of the defendant's first court appearance, status hearings should be held within four weeks of a not guilty plea being made, and a defended hearing should be held within six weeks of the status hearing, so that the whole matter is resolved within 3 months. This time frame for defended hearings is commonly referred to as the 2-4-6 timeframe. A sample checklist to be used to facilitate efficient preparation for defended hearings at WFVC is also attached to the protocol document.

With the Protocols as a framework, the aims specified in the Court protocol as criteria, and discussions with professional, state and community agents as content, the research team set about identifying the Court's successes and challenges.

Timeframes

To overcome systemic delays in Court process and to minimise damage to families by delay

Concern with the effects of delays in Court processes on the families involved has been a priority of those involved in the collaboration between the community and the justice system at Waitakere since the formation of WAVES in the early 1990s. The revision of *fast track* that occurred in 2001 was precipitated by a recognition that the system was slowing down. The Practice Note issued by the Chief District Court Judge in 2004 represented a broader recognition that systematic delays in Court processes were damaging to families affected by domestic violence offences.

Defended hearings

In assessing the successes and challenges facing the Court around the issues of systematic delay and minimising damage to families that is the result of delay, it is crucial to recognise that 'delay' has different meanings in relation to guilty and not guilty pleas. Court participants recognise that the aims of overcoming systematic delays and minimising damage to families are interlinked, and that this is especially crucial in relation to defended hearings resulting from 'not guilty' pleas.

Timing is a big thing. I think if people don't plead guilty then there's every chance that they won't get convicted (MB, 122).

Unless the Waitakere system is slowing down...(but its not), we would be achieving the aim of getting an end to the case and the Court deciding what's to happen rather than giving up in Court because of delay and it being decided back home usually by the dominant partner (PB, 128).

This recognition brings together the understandings that inform the specialist Family Violence Court at Waitakere and the aim of the Chief District Court Judge in introducing the Practice Note for all summary domestic violence offences across every District Court in New Zealand.

We were given by the Judiciary, by the Chief Judge, timeframes of 2,4,6, which was how we should be dealing with family violence matters, so throughout the country there is a consensus that they have to be moved through quickly otherwise as the statistics show something like...where the defendants plead not guilty, 85% of them walk free because the victim won't come up to brief or doesn't turn up or bruises heal (BB, 132).

The Practice Note is clear that the specified timeframe applies to defended hearings, and that where status hearings are not held for domestic violence cases the defended hearing is to be held within six weeks of the plea being entered. The Court protocol at Waitakere specifies that status hearings are not held for domestic violence cases, which means that the timeframe which applies at Waitakere is 2 (for plea) and 6 (for defended hearing), reducing the overall timeframe from three months to two months.

While there seems a clear consensus among Court participants on the importance of timely defended hearings, there is less agreement on whether or not the Court is achieving the specified timeframes.

I think that if we're not within the protocol we're pretty close to it. I know we are giving good early dates for family violence... as family violence has taken priority. So if there's an early date it's going to this Court, which is the way it should be (MB, 113).

Another concern I have relates to the time delays in waiting for defended hearing dates for our family violence cases. We need to have the hearings much sooner than we currently are. This is an area we need to continue to work on (RRH, 497).

To address the issue of timely defended hearings, as well as attempting to ensure consistency in the Judicial approach to family violence matters, WFVC currently sets aside specific Fridays for hearing defended matters.

But we do get disposals... We changed the way we structured the days so we could allow an easier cap on listings...So we made it a bit easier to try and increase disposals, increase the effectiveness of the Court and then gave five out of every six Friday's a family violence defended hearing day as well (BG, 301).

This practice recognises the priority given to timeframes in family violence hearings however, even with additional dedicated days, this priority needs to be balanced in relation to the resources required for other matters before the District Court.

There's always this constant tension between trying to adopt a therapeutic approach in Court and trying to deal with sheer volume of people coming through the Court (MB, 10).

At times there are simply not enough resources within the Court to meet the timeframe requirements.

As far as things we are not doing that well; timeframes are too far out. We are not dealing with matters as quickly as we should. Defended hearings, which we have on Fridays, for family violence matters, are far too far down the track....If we got another day for family violence something else would have to go and the Court can't just do that...Our Friday defended family violence day is helping - we sit in Court until well after 5pm on Friday to ensure as many cases as possible are finalised (BB, 218).

I guess part of the family violence day is family violence defended hearings, that we are setting down on Fridays now....that falls into the whole family violence Court protocol. It's not part of the every Wednesday session, but if someone pleads not guilty then they go off to a defended fixture and the protocol says we should be setting that within two months. But that is another problem where there is not a lot Court dates so the dates are going further out and that's a really issue for witnesses, trying to remember stuff and their lives change quite a bit over that time and that's a problem (WW, 335).

The timeframe objectives for defended hearings also impact on the resources available to the Police to proceed with prosecutions or Counsel to prepare adequately for the defence.

When we bring defended hearings closer in and we load more into a date that is close by, which is what's been happening, we might have 12 defended hearings set for a Friday. That is twelve cases and that's virtually impossible to know one from the other then...you don't have a chance to come up with a strategy or look at any potential defences or holes, you don't have time to do it justice really. So they have to be careful not to schedule too many in, and I know that was done in an effort to bring the cases forward a bit more (PA, 437).

Delays that result from inadequate resourcing of the Court, the Police or Counsel impact on both victim safety and offender accountability. Even if the Court process remains within the total of 13 weeks specified within the Practice Note as the maximum time in which any domestic violence charge should be heard and determined ("with the exception of any sentencing"), it still may not be quick enough to enable the victim's continuing engagement in the Court process of ensuring the offender is accountable for their violence.

...a date has been given. It's still like 3 months down the track. So those old things still come up, because 3 months down the track, she's gone from hating him now back to living with him maybe. Or she has kind of moved on and doesn't want to have anything to do with him, and just doesn't even want to remember it happened (SW, 217).

While there are continuing issues of resourcing the timeframe objectives in relation to defended hearings, the WFVC participants demonstrate their commitment overcoming systematic delays in the specific case of family violence offences by mobilising the resources that they have available to redress such delays. Though from their points of view while the timeframe objectives may not yet be achieved, the strategies that they have been able to put into place represent significant progress towards addressing systematic delays in conducting defended hearings.

Sentencing and Monitoring

On a plea of guilty, sentencing may be deferred while the Court monitors the offender's progress through programmes provided by community agencies such as ManAlive or Community Alcohol and other Drug Services (CADS). The time lag between guilty plea and disposal of the case can be as long as 18 months if monitoring is undertaken by the Court.

First offenders or people with low motivation to change...are often referred by the Court to self-fund at ManAlive and the Court monitors that process. And I have noticed that is something that has been happening more in particular over the last six months than perhaps in the last twelve months. It's been a development that the local judges have taken on board I think (TB, 84).

...monitoring does seem to be an internationally accepted way of follow-up and in American and other examples, monitoring occurs whereby the judge participates in observing what's going on. One of the failures in the system can be that sentences ordered aren't actually carried out, particularly sentences that require a programme to be done. And if there is no clear way of making sure they are done then maybe the whole thing has a more dangerous outcome than it ought to. So I think I would have to accept that monitoring is good practice (PB, 192).

Since the philosophy underlying the WFVC protocols and collaboration fits a therapeutic jurisprudence framework, monitoring is consistent with the Court taking a role that intrudes into the private lives of victims, offenders and their children and coerces treatment. Through the monitoring process, the Judiciary oversee progress of offender treatment and victim safety through receiving ongoing reports on their circumstances and the offender's behaviour from Community Victim Services while they are still involved in the Court process. If the responsibility for overseeing the offender's progress through programmes is diverted from the Court it is more likely that programmes will not be completed, and less likely that meaningful change can result.

Court participants understood that monitoring by the Court works as a means of coercing treatment. The offender has the opportunity to undertake recommended programmes before being sentenced so that any psycho-social changes which improve the safety of the family can be taken into account when sentencing. In these circumstances sentence indications encourage the offender to engage in treatment programmes by clearly giving the message that progress in the programmes will result in a more lenient sentence and refusing to co-operate with the Court's recommendations for treatment will result in a more severe sentence.

They're there to 'til they finish. It means they do it. And they know if they don't do it that they're going to get whacked pretty much. It's one or the other (MB, 434).

I also think that the monitoring of people is good because it keeps the pressure on (RRH, 442).

...and I think that we might have actually stumbled onto the system that works. The fact that the [sentencing] system at the moment is geared up towards a supervision sentence doesn't mean that it's right. I mean that's where, I reckon, there must be some research about the effectiveness of supervision sentences as opposed to this system [monitoring] (MB, 423).

Some Court participants raised the issue of whether or not a sentence involving supervision would be preferable to the monitoring system as a method of coercing treatment.

Is it more effective than sentencing someone to supervision?...if I knew that it's just as effective to sentence them to supervision and send them on their merry way to do counselling under the monitoring and supervision of the probation officer, then fine (MB, 315).

Supervision - it is a great idea for them to use that and [yet] we have seen with our statistics that supervision has just dropped away (BG, 386).

At present there is no available New Zealand research comparing outcomes of the two processes but more immediately challenging is that Community Probation Services current policy of prioritising high risk offenders does not offer the same opportunity for sentences with supervision for first offenders or those whose motivation suggests that Court monitoring of their progress would be more effective than supervision.

..the outcome would be a supervision order with conditions...and let Probation monitor that. However they are stuck, because I know from a Judiciary point of view, some of them have said supervision isn't an option with Probation for the reason of their priorities (GG, 365).

While a sentence with supervision would redistribute the workload of monitoring from the Court to Community Probation Services it also risks disrupting the therapeutic process of an offender's involvement with the Court. Several participants recognised that the active involvement of the Judiciary in monitoring had unique effects in relation to an offender's progress through programmes.

I think they are treated like people as well, and individuals, and I think the way that the judges talk to them is more inspiring. And they get acknowledged for the good that they have done...I think that kind of attitude that surrounds the place makes a difference (SW, 182).

The way the judges engage with the defendants, the way they encourage, the way they do the carrot and stick thing... (DM, 34).

Aside from the question of whether monitoring is preferable to sentencing under supervision, two other challenges related to monitoring face the Court: the 'fit' of the monitoring process with timeframes required for determination of family violence charges, and its implications for resourcing.

Fit between monitoring and time frame objectives

Some Court employees drew attention to a tension between the monitoring process and the timeframe objectives that are set for all summary domestic violence matters in District Courts. Since Court employees deal with all summary matters in the District Court the institutional requirements of their employer do not necessarily take account of the local practices regulated by the WFVC protocols.

The [District] Court process doesn't allow for the flexibility that Judiciary want, in terms of outcome, result, disposal of a case, so if they rely on a community programme to operate...before they make a decision in terms of sentencing, then they will use a Court process to monitor it... I just question the usefulness and effectiveness that we are talking about. I guess what we are trying to achieve is [reducing] the delay, but bringing them back for monitoring how an individual is doing will achieve maybe the outcome for the individual, to attend a programme. I am just not sure whether it achieves our objective which is to reduce the delay. It might have other outcomes, I am sure it is all positive but...our dates are not getting pulled back (CA, 338).

Then we have on top of that things like...men's groups programmes and stuff which need time to go through and we have that strict 2,4,6 timeframes as you know and then they might need 8 weeks...20 weeks (CB, 353).

In the situation where the WFVC protocols allow for referring a defendant to a community based programme between guilty plea and sentencing, or between a not guilty plea and a defended hearing, there is a potential for conflict between the aims of reducing systematic delays and minimising damage to families. This potential is realised where there is a "strict" interpretation of the 2,4,6 timeframe in the context of their employer's regulation of their performance.

Court employees are acutely aware of the differences between the Family Violence Court practices and the procedures involved for other matters before the District Court, including the intention to engage offenders and victims in processes that have therapeutic outcomes for the whole family.

Family violence matters take up a considerable amount of our time because we have a reasonable number of them and because their process is more lengthened. They have more remands than the normal process that takes place, there's probably more involvement with them because of the fact that the defendants are monitored. The victims of family violence tend to take a fairly active participation in it. Obviously because of the fact of where they're wanting to continue their family as a whole, they want to make sure that their futures are the way that they want them to be and to participate in that Court process (CC, 55).

Despite their appreciation of the therapeutic intention of the Court processes, including monitoring, the more limited aims that regulate their performance as employees leave them vulnerable to criticism.

So [monitoring throughout a 20 week programme] that's something they encourage, yet at the end of the day we get bollocked for it. And it's completely beyond our control (CB, 358).

Monitoring becomes problematic for Court employees because the time lag between guilty plea and sentencing is not understood by their employers as an outcome of a therapeutic Court process. At present it appears that all time lags are assumed to indicate damaging systematic delays in summary Court processes. Court employees are constrained by the institutional requirements that regulate all District Courts and which do not accommodate the practices of the specialist WFVC.

You see the system at the moment I think is geared up for people to plead guilty and be sentenced pretty much straight away. That's how the system is designed. What we're doing here is quite at odds with the way the system is designed (MB, 359).

The conflict between the more generalised system regulating District Courts and the specialised system of the WFVC protocols could be resolved if the time-lags associated with monitoring were accommodated by the Ministry of Justice as a specific exception which represents the WFVC's commitment to engaging offenders in therapeutic processes intended to reduce re-offending.

Monitoring and Court resources

Monitoring fits within the Court protocol as an exception to same day sentencing where a defendant pleads guilty. The exception occurs if the offender volunteers to undertake a programme and voluntary compliance may be more likely where sentence indications provide a clear incentive for the offender to undertake treatment. It may also occur when a discharge without conviction is being considered and the Court wishes to ensure that issues within the family have been addressed satisfactorily before discharging the offender. In both these cases, the exception to same day sentencing operates within a therapeutic framework as coercion of treatment so that problems associated with the offender's violence can be addressed.

Court participants were clear that despite their understanding of monitoring as successful in terms of coercing treatment, it was a demanding and resource intensive process that the Court was attempting to manage without additional resources.

The practice is not same day sentencing and one of the reasons that it's not is we've got into this routine of monitoring attendance at anger management and CADS and any other counselling that people are doing....This is the tension between resources and effective therapeutic approach. The resource that we have to use in monitoring these cases, people going through their courses are huge. They take up a large amount of time in any list, just the monitoring phase (MB, 294).

...what we need if we are going to monitor it (and if we are going to monitor it, good on us)...we are going to do it properly. None of us like to do things inefficiently here, but we are pushed into being inefficient because we do not have the resources to deal with it (BG, 563).

Lack of resources for managing the Court's specific practices and intentions as a problem solving Court have been an issue since *fast-track* was first established in the early 1990s. Court employees who aim for efficiency in the services they offer are hampered by ongoing problems created by inadequate resources. Because of their first-hand understanding of the increasing pressures on their capacity for efficient case management some participants questioned the Court's responsibility for monitoring.

Because the stretches we have in the Courts already it's probably not the best area to use as a monitoring tool. Because of the huge backlogs of work that come through - huge numbers of work that every Court gets - and it's increasing all the time. And unfortunately our capacities are not increasing along with it (CB, 379).

I guess the issue is who is responsible for monitoring it? Is it the individual families and the individual himself or herself in some cases? Is it a community responsibility to do the monitoring?... Is it the Court's responsibility to do that? (CA, 398).

While monitoring is resource intensive its success in terms of coercing treatment is consistent with the goals of a therapeutic Court. If the problem of inadequate resourcing is addressed by deferring responsibility for monitoring to other change agents, whether community based or state organisations, then defendants are not given the same clear message that the Judiciary have a vested interest in the offender's accountability, concern for the families' ongoing safety, and a responsible role in facilitating change. This is a crucial message in the psycho-social context of the Court. Through the Domestic Violence Act (1995), through both Te Rito Family Violence policy and the Ministerial Family Violence Taskforce initiatives the Government has undertaken a commitment to ensure that citizens of Aotearoa/New Zealand understand that family violence is unacceptable and that offenders are held accountable for violent offences. Community agencies are actively involved in campaigns to increase victim safety and demythologise family violence. Throughout Aotearoa/New Zealand, community, state and professional agents are actively involved in interventions to change the ways in which family violence is socially sustained. Monitoring enables the Judiciary of the WFVC to contribute to this broader movement by being directly involved in holding offenders accountable for their compliance with recommended treatments. As far as possible, they are able to participate responsibly in addressing the needs of the family within the criminal justice system. Deferring responsibility elsewhere risks sending a message that the Court is the domain of procedural justice and has no specific interest in or responsibility for psycho-social change that reduces offending.

Some practices introduced into the Court have partially, and inadvertently, addressed the resource implications of monitoring without compromising the therapeutic intent of monitoring. One of the most frequently used community-based treatment referrals is to ManAlive's anger management programme. Prior to 2006, ManAlive did not have a representative in Court and some offenders appeared for monitoring on multiple occasions before engaging with the programme.

...so what would happen is the guy would say "Yeah, I'll go along to anger management and stuff". It would be put off for maybe six/eight weeks for a monitor date to just check that they have engaged. And then quite often we would go back that six to eight weeks after and he still hadn't engaged. He still hadn't and it was a delay (SW, 153).

During 2006, ManAlive did have a representative in Court and the difference in time lag between the recommendation of the programme and the offender's engagement in the programmes was noticeable in some cases.

Since [a representative] has been there from ManAlive [the delay] has actually stopped because he is getting an opportunity to talk to these guys, get their resistance down straight away and get appointments quickly organised. So by now, the monitoring date for all of those who are really going to go has been sorted... So that's kind of like made huge difference in process (SW, 159).

In addition to reducing the time-lag associated with offenders' engagement in treatment programmes by having a ManAlive representative available on the day, the Court has introduced a policy aimed at reducing the number of times that an offender who is making good progress with a treatment programme needs to appear in Court.

We have now adopted this policy that if they are working and the lawyer can prove that they are still on board with their courses, then we will excuse their attendance. And also if they are really motivated then we will put it off for longer and have less monitoring. We tend to monitor more frequently when we have doubts about their follow through (RRH, 452).

This policy enables the Court to avoid standardising the monitoring process and allows for each offender's monitoring needs to be taken into account. As such it is consistent with the understanding of family violence underlying the Court protocols where the specific context of the individual's offence and the needs of their family are prioritised. This policy may also provide some relief for the overburdened resources of the Court, though that is not its central intent and it does not provide adequate redress of resourcing problems.

Even though the attendance might be excused, it's still a lot of paper work that you've shuffled and you still read the file because you have to be careful about what you are doing (MB, 308).

To maintain the integrity of the Court's therapeutic approach within the broader psycho-social context the solution to resource inadequacies needs to be directly addressed so that Court employees are able to efficiently and effectively support the Judiciary's problem solving approach.

Sentencing indications and safety concerns

Where defendants pleading guilty volunteer to undertake community treatment programmes before being sentenced, it is common practice for a sentence indication to be sought so that the defendant and their counsel are aware of the incentive that is being offered for compliance with treatment. Since the Court protocols recommend same day sentencing, sentence indications are expected at the time that the guilty plea is entered so as to ensure the most time efficient resolution of the matter. While this may facilitate speedy compliance with recommended treatment, some participants raised concerns about the emphasis on acting quickly in the specific case of an indication that the offender may be discharged without conviction (106 discharge).

We know that very often by the time the police come, or are called in, there's been a history of violence and this is the first time she's been persuaded or has decided to go through with the prosecution...if the outcome of that is a discharge without conviction, because he's jumped through the hoops without authentically engaging or really wanting to change, then she's at even more risk of further violence, and he's going to continue looking like a first offender if he gets a discharge without conviction. So I can't say that right across the board there should be no discharges without convictions but I believe that judges need to do that with an incredible amount of detail and understanding of what's going on (WO, 382).

... we had a problem where the judge was just sort of giving that indication [106 discharge] without having a chance to look at the person's background and their family situation, and if there've been police call outs to the address before. And the

police were being forced on the spot to stand up and say whether [they'd] agree to a 106 or not on the day. That's improving [they're] not in that position as much anymore but every now and then it does happen. And that's not ideal (WW, 109)

Providing the Judiciary the background information that they need to make sentence indications which takes seriously an account of the victim's ongoing safety does not always fit well with the imperative to act quickly. While the Community Victim Advocates are often able to provide memos with relevant information, the Prosecution also needs to have appropriate background information available to ensure that they can either agree with or object to the sentence indication appropriately.

"[Prosecutors] need time, and by time I mean more than just standing it down until later in the day, it would have to go off for perhaps another week or... a week would be a good time frame. That would give enough time to do the checks and talk to the officer in charge and stuff like that (WW, 118).

Ensuring the safety of victims who are in ongoing relationships with offenders is not always easily compatible with mechanisms used to meet the aim of overcoming systematic delays in Court processes. The first two aims of the Court protocol - to overcome such delays and to minimise damage to families caused by such delay - need to be understood in the context of the dynamics of family violence to ensure that harm prevention is prioritised. If victims are put at risk of harm as a consequence of attempting to reduce delay for its own sake then the overall intent of these two aims will not be met.

Family Violence Specialisation

To concentrate specialist services within the Court process and promote a holistic approach in the Court response to family violence.

The third and fifth aims of the Court protocol provide interlinked goals which recognise that there are unique factors in domestic violence cases that require an understanding of the circumstances of an alleged offence and a problem solving approach that does not treat the offence in isolation from its psycho-social context. Specialisation and a holistic approach are linked in the Court's focus on healing families.

There's a real aim towards healing families and getting them back together so it is quite different from the normal court prosecution (WW, 11).

Essentially this whole Court is based on the philosophy of healing the family (MB, 25).

I mean the whole role is the philosophy of healing the families and you know that's more, that's quite an altruistic you know, for me its about the acknowledgement that a lot of these women want to stay with their relationships, and the fact the previous way of dealing with it by sending these guys off with a fine or something like that just wasn't helping anyone in particular. And so therefore the idea of actually putting some therapeutic interventions was really going to serve much greater purpose (SW, 53).

The adversarial system that underlies the practice of Jurisprudence in the District Court more generally is orientated towards ensuring that defendants' rights are protected, and that the facts before the Court pertain only to the alleged offence. Victims are accorded a voice in the District Court through Victim Impact Statements. While appropriate for offences which occur when there is no ongoing relationship between defendants and victims, or no underlying psycho-social problems which the Court aims to address, the isolation of the alleged offence from the context in which it is committed and the assumption that the Court is dealing only with a criminal justice matter stand in contrast to the assumptions underlying therapeutic jurisprudence. In the case of the WFVC the aim of promoting a holistic approach is consistent with the Court's problem-solving orientation to the extent that holism refers to an understanding of the offence as embedded within a relational and social context.

Its trying to minimise family violence to prevent re-offending in the current clients and prevent offending in future clients by ensuring that families become more peaceful and non violent so that the cycle isn't repeated. Strengthening women or strengthening victims: they can be women or men. Strengthen victims to do the right thing, whether it be continue with the relationship or not, but to have the strength and the knowledge and the information so that they can make an informed choice about that (RH, 208).

A holistic approach commits the Court to taking account of the way in which domestic violence offences involve ongoing relationships and costly damage to families and communities.

At any event, and I understand this philosophy, it's recognised by the people who have developed these protocols in the Waitakere Court, that domestic violence presents its own special problems. It often involves continuing relationships, it may often involve as interested parties if nothing else - children. It involves the ongoing close proximity, usually or very often, between the people and it's recognised that whatever issues there are in the relationship that have devolved into some kind of violence they really need to be resolved rather smartly so that people can get on, rather than can often be the case in the criminal justice they can drag out. So part of the reason for protocols...is to see if there's a mechanism so that the issues, a bit more broadly than criminal issues, get addressed within the domestic relationship and resolved as much as the Court (HD, 6).

Since promoting a holistic approach involves understanding the issues of family violence as more broad than criminal justice issues, it becomes pivotal to concentrate specialisation of knowledge and competencies in family violence intervention and in therapeutic jurisprudence within the Court.

The aim of concentrating specialist services within the WFVC is also consistent with the Te Rito Family Violence Prevention Strategy (MSD, 2002) that recognises the need for specialised knowledge and competencies so that responses to family violence are effective. Te Rito acknowledges that there are shortfalls in the availability of specialised human resources for appropriate intervention and that:

[e]nsuring appropriate and specialised training programmes, workforce development and support are available is key to enhancing the quality of family violence prevention/intervention services and the ability of key personnel working with children and families/ whānau to identify and respond to situations of family violence (p.35).

The shortfalls recognised by Te Rito have an impact on the delivery of effective family violence intervention by the WFVC and, at the same time, the Court participants continue to work towards resolving challenges to concentrating specialist services. For the Court to meet its aims, everyone involved needs to have commitment, knowledge and competencies appropriate to their role in the Court.

Each of the main players has got to be committed in principle and in practice to the philosophy of a family violence court. The police have obviously a very important role; they have to bring charges when appropriate and pursue them. Not reduce charges or withdraw them without good reason. They have to be alert to all the risk issues around bail. The lawyers have to take a responsible approach and see that it's in the interest of their clients as well as the complainants' and victims' for the clients to accept responsibility for their behaviour. We need good support for the victims and that's one of the primary features of this Court and we think we've got a pretty strong victim support structure - both the victim advisors who have a more neutral role, and the Community Victim Services who have the more active advocacy and support role for victims. So that's important because the record of dealing with a family violence crime without adequate support for victims is that sooner or later they resile from their allegations, particularly if there are delays (YB, 145).

Issues around specialisation affect the roles played by the Judiciary, Counsel, VAs and Community Probation differently to the way it affects the roles played by community service providers since the latter's involvement with the Court is dependent on their community standing as specialists in particular areas of advocacy or intervention.

Specialisation: The Judiciary, Counsel, VAs and Community Probation

The Judiciary are crucial to the effective implementation of the WFVC protocols. Their role in ensuring that the Court takes a holistic, therapeutic approach to Family Violence cases is well recognised by participants. They provide necessary leadership and direction in the philosophy and practice of the Court.

Whereas I think the judges... it's really good how they make an effort to talk to the lawyers and ensure that they've passed all the information over to their clients and explained what the Court's there to achieve. So that would be good if that could be passed onto other Courts. That would depend on the judges really feeling like that was a good thing; that it was working and believing in the process. I think it wouldn't work if there was a judge that was sort of cynical about what we were trying to achieve (WW, 205).

I think it starts from the top, I think it starts from the judges and the fact we have been really lucky that we have had the sort of judges that, that's right from the beginning apart from Judge [visiting], we have basically had judges who have really grasped the whole concept; who have put themselves out to gain an understanding of family violence dynamics and things like that; who have been open to suggestion, to being prepared to step out of the box and do things a bit differently. And who, just kind of support the principles and being prepared to kind of fight for the principles of it. (SW,105).

Leadership is a crucial dimension of effective family violence specialisations because of the complexities within the field itself. Throughout the 1990s there were published analyses that

demonstrated conflicts, tensions and competitiveness among academic experts engaged in specialised research (Brograd, 1992; O'Neill, 1998). Similar tensions in the field of interventions were also recognised by participants advocating for strong leadership of Family Violence Courts.

The other thing you need to be aware of is the territorial games that are played in the domestic violence arena and a considerable amount of leadership and or diplomacy is required to get everyone going in the same direction (PB, 249).

As is evident in the history of the WFVC the Judiciary do not necessarily have specialised knowledge and competencies in family violence intervention and are not necessarily supportive of therapeutic jurisprudence. The Judges presiding over the WFVC at the time this research was conducted had made personal commitments to the aims of the Court protocol and participants were aware that the Court depended on this commitment for its success.

I think by in large the judges that are present in our Court and on family violence Court day are hugely supportive of the whole process, particularly our resident judges. That is Judge Tremewan, Judge Taumaunu, Judge Recordon and Judge Mather, at times, and I think they have been absolutely solid in terms of their support for this process (WO, 133).

Just running it is a major thing, when you think about it that means that all of your Court staff, judges, lawyers, victim advocates are all on board with the protocols...if you stand back and think about it that's a huge thing. That means you've got judges who are particularly willing to adopt a therapeutic approach and you'll find that not all judges are willing to do that (MB, 195).

Support and commitment are not sufficient alone, however. Court participants were also aware that consistency was of critical importance to the effectiveness of specialised intervention.

I think you need to have judges who are committed to the Court sitting in the Court, that's really important. I also think you need to try and have a similarity in approach between the judges to some extent. So they are not only keen on the work but also basically follow the same way of approaching the work. (RPH, 233).

There is some recognition that, at the WFVC, consistency of approach among the Judiciary has been achieved and this makes a substantial contribution to the effectiveness of the Court.

I think we achieve consistency and that's been useful, consistency of approach, cause we are only using the three judges (plus David Mather now and then). If we have visiting judges we do what ever we can to make sure they don't go into the Family Violence Court (BB, 202).

Consistency in decisions is also valued highly. Court participants understand that the Judiciary work under stressful circumstances and carry heavy workloads, and that maintaining consistency in approach and decision making is challenging on a personal level.

One of the things I really appreciate about these judges is that they actually maintain their energy level right through the day, or they are not getting shitty, they don't go through moods or, they are very balanced and the same through the day. So that's one of the things I really appreciate about these three judges. You are not getting

stupid decisions because they are having a bad afternoon... they are really consistent (SW, 407).

..it [the WFVC] will work as long as its not seen as a soft option...enabling and colluding with the abusers to carry on doing it because they walk away saying "that was easy" and there is no encouragement for them to change their behaviour...it rests hugely on the shoulders of judges to continue to be vigilant and to convey to those offenders the seriousness of the situation (WO, 274).

However, the achievement of consistency among the Judiciary at WFVC is clearly dependent on the particular individuals who are currently presiding over the Court. A more systematic approach to specialisation among the Judiciary would not leave the Court so vulnerable to changes in leadership. If specialisation was also required for Counsel, Police prosecutors, and Community Probation as well as community services, it would provide a better fit with the planned actions of the Ministerial Task Force for Action on Violence within Families (MSD, 2006).

Well I would like judges be more professional in their knowledge and their applications of the laws and sentencing provisos. I would like to see these Courts sufficiently resourced so they can continue to happen in a timely fashion. I would like to see some sort of research base that practitioners in the field can draw on to devise ways and means. And I would like to see some level of specialisation in terms of both Judiciary and lawyers and prosecutors, because I think that we don't get the results we would like to unless you have people with knowledge and commitment involved. And I would also like to see beyond the courthouse some way of picking up the people so we don't pick them up at the bottom of the cliff and shove them out to the top of another cliff. To direct the traffic towards other community resources that can assist them. Actually all this stuff is stuff the Family Violence Ministerial Task Force has been talking about (PB, 162).

The issue of specialised Counsel was raised as a particular concern by participants. Currently there is no specialisation or commitment required of defence Counsel representing defendants in the WFVC. Some participants drew attention to tensions and problems that emerge from the role counsellors can play in the Court. For example, in relation to the previous discussion of timeframes, some lawyers were seen to be using delays in anticipation that charges would be withdrawn and on the presumption that this will be in their client's best interest.

You know the real hiccup in the way that the Court works is that lawyers know as well as anyone else that if you wait long enough a complainant won't come to Court to give evidence, if you drag it out long enough (MB, 83).

It's still like three months down the track. So those old things still come up, because three months down the track, she's gone from hating him now back to living with him maybe. Or she has kind of moved on and doesn't want to have anything to do with him, and just doesn't even want to remember it happened (SW, 217).

Participants understood that, in the context of the WFVC, questions about which outcomes are in the defendant's best interests are not straightforward and different lawyers will interpret 'best interests' in particular ways. There is a noticeable difference between those lawyers, who see that their client's best interests are served by avoiding conviction and sentencing if possible, and those who see that best interests are served when their client takes responsibility for

offences and acts to resolve interpersonal and social conflicts and restore harmony in their relationships.

Some lawyers are happy to go along with the protocols and some of them aren't, and there's that constant tension in Court about that issue. I can see it from both lawyers' points of views, some of them think they're doing their job by complying with the protocols and the others think they're doing their jobs by ignoring the protocols (MB, 32).

I think it's hard for them, probably because their role as a defence lawyer is obviously to defend their client, so I appreciate that it's... you know sometimes it might be a little bit cross purposes with what they want for their client (WW, 158).

Defence counsellors do not necessarily see any inherent conflict or tension in their role in the Family Violence Court, though they acknowledge the possibility that the Court's practices can create dilemmas for them.

In terms of my role within it (the Family Violence Court), I don't see it being any different to any other offence. Basically, my role is to do the best for my client and if they have a defence I should put that forward, if they are clearly guilty, or the evidence against them is strong, I would point that out to them (LA, 9).

I am a Barrister of the High Court of New Zealand. I have sworn oath to act in my client's best interests... So I find myself in a bit of a bind, personally, because I take my oath rather seriously and if I have a client who is instructing me in one way and there is also pressure on me from the Court to put pressure on them to perhaps act in another way... (LB, 24).

Whether understood as a personal bind or a broader tension in the interpretation of a defendant's best interests, there is central unresolved issue that coheres around how the alleged offence is conceptualised; in relation to the principles of procedural justice, which emphasise the relationship between fairness to the defendant and judgement of the facts of a specific offence, and the definition of family violence under the Domestic Violence Act (1995). There are a number of offences under the Crimes Act (1961) which are applicable to family violence including offences related to murder, kidnapping, assaults and injuries to a person, sexual violation, threatening violence (Butterworths, 1999; France & Pike, 1997) and some offences related to property such as intentional damage. Where these offences are identified as family violence by Police and Court staff at Waitakere they are heard within the WFVC. Under the Domestic Violence Act (1995) it is understood that such offences may be part of an overall pattern of behaviour. To establish whether or not a particular offence is part of an overall pattern it is necessary for the Judiciary to have access to information which would not normally be presented in a District Court; specifically information about the defendant's behaviour in the family relationship historically, and factors that may be associated with the offence and contribute to problems within the family (such as alcohol or other substance abuse). For some Counsel, the presentation of this information to the Court potentially breaches principles of fairness and is incorrect in relation to procedural justice.

...what we often find is this enormous narrative about the whole history of the relationship of the offending, peoples gambling, drinking, drug problem, this, that and the other. Canvassing perhaps a whole history of violence, legally incorrect and often enough, at least in the past, un-necessarily rabid and if others read that they would

be influenced by it, without the Counsel knowing. That could possibly work in unfairness, at least in perception (LB, p 334).

While specialisation of knowledge and competencies would not, in itself, address the issues that arise as matters of legal interpretation in relation to procedural justice and family violence offences, it would assist in a broader understanding of how the protocols of the WFVC are linked to knowledge of the specific psycho-social context of family violence offences.

Other problems that participants raised in relation to defence Counsel included the perception that some lawyers are overly focused on money, disinterested in family violence cases or prejudiced against women victims in particular.

...if they are the type of person who want to make money, or whatever they are motivated by, they could miss the point [that the Court protocols benefit defendants] completely. Which I think is a great disservice to their clients for a start (WW, 407).

...a lot of the lawyers just can't see [the benefits of the Court]. They see it as too much trouble, too much work. They hate having to come back for the monitoring days and frequently they won't....They shouldn't do family violence but for them it's just another rotational assignment, it's just another legal aid case. "Oh, it's a Male Assault Female, oh good it won't be a guilty plea." And frankly some lawyers are misogynists and don't believe a word that women say: "It's all exaggerated" (RH, 179).

These perceptions are supported by the findings of a study of women's experiences of legal interventions into domestic violence (Pond & Morgan, 2006). The study reports women's experiences with lawyers who seemed only motivated by money, did not believe the women's accounts of victimisation, or were more oriented to legal procedure than to protection of the victim. Some of the women's lawyers demonstrated poor interpersonal skills and a limited understanding of the dynamics of domestic violence or its effects on children's wellbeing and safety. Previous research on women's access to justice in situations of domestic violence also raised these issues (Nash & Read, 1992; New Zealand Law Commission, 1997). However, this previous research also suggests that where counsel are well informed in relation to the dynamics of family violence and treat threats to women's and children's safety seriously, women are more trusting of the legal intervention and more satisfied with the services they receive. Specialised knowledge of family violence is thus proposed as a means to provide a more satisfactory legal intervention from the point of view of victims.

Concentrating specialised Counsel in the Court was proposed by some participants as a means to resolve problems seen to be associated with lawyer's lack of knowledge, competencies and commitments in the area of family violence.

...if we had a specialist Bar for that, it would improve things out of sight. It would actually speed things up because there wouldn't be as much need for defended hearings. The lawyers would more readily prep. the clients as to what the purpose of the Court was. Judges wouldn't have to spend hours enquiring into the merits of the case, as to whether it's a valid defence before allowing it to go forward to a defended hearing. And there'd be a better rapport between all team members, not just the Judiciary, Bar, the Police; the Police on the street would eventually get to know the lawyers. The Prosecutors certainly and the Court staff to a lesser degree, because everyone would trust everyone else's judgement (RH, 346).

I think if you had specialised Counsel, very much like the Youth Court, then you'd probably do away with problems that we are talking about. It would be far more effective... that would be the ideal (MB, 147).

I would like to see accredited lawyers working in the Family Violence Court, who have a commitment to what we are trying to achieve. I would say one of the hardest challenges working in that Court, if I had to name one challenge it would be sitting in there where you have got a lawyer who comes in who is clearly against the protocols; is openly challenging what we are trying to do. That's really difficult to deal with (RRH, 215).

Some participants disagreed with the need for specialised knowledge of family violence in the Court, and emphasised the importance of trial jurisdiction for all lawyers practicing in the District Court. Others could see that there were serious difficulties, including resource shortages, which stood in the way of introducing specialisation of Counsel into the Court. In view of these concerns, concentrating specialist Counsel in the Court does not seem to be a viable possibility in the near future.

No, you have got to have somebody who is experienced and trained in the criminal justice system overall because you have to remember that in almost every case, for example, at least the theoretical possibility of trial jurisdiction being elected. You have to know what you are doing, what to say in terms of any objections, unfairness that have legal consequences. So it has to be Barristers and Solicitors of the High Court of New Zealand who are dealing with the accused anyway, who know or ought to know about criminal procedure (HD, 414).

I don't know how easy that would be to implement. Very difficult I would say. But who knows, maybe. Maybe it requires a panel like the Youth Court, which appoints lawyers to enable them to act in the Youth Court. That's all about funding though. Of course you can't stop any lawyers from acting in the Youth Court, it's just that the funding is all organised through the Court. And maybe that's the answer for the Family Violence Court but I can't see that getting off the ground without a huge change (MB, 149).

Nonetheless it was also clear that many of the individuals practicing as defence Counsel within the WFVC were familiar with the aims of the Court, clearly understood the intention of the protocols in relation to specialist knowledge of the dynamics of family violence and also recognised the benefits that the Court offered to their clients.

...those of us who come out regularly are probably, in any event, now specially skilled and trained in the Court anyway (LA, 414).

...what actually shows itself out is that the lawyers who have a personal value, belief in the system, that's it's maybe not all about money or all about winning at all costs, or whatever [see the benefits] (SW, 122).

But gradually over time and certainly with the arrival of Lisa Tremewan and Hemi Taumaunu we have changed the whole thing around so that there is consistency of judges, consistency of Counsel, consistency of Police (BB, 48).

At present the WFVC is dependent on the knowledge and commitment of individual Judges and Counsel to meet their goal for concentration of specialist services in these two vital areas of the Court. There is no specific provision to resource specialist training. To provide such training for all judges and Counsel would require motivation and resources well beyond the scope that the WFVC could provide. However, if some additional resources were available, it may be possible for WAVES or the Family Violence Focus Group to provide training on the rationale for the practices required by the protocols. This kind of 'in-house' training would also be beneficial for ensuring that all those who were involved with the Court processes clearly understood the rationale for the Protocol for Family Violence Victim Services and the roles of the different providers of Victim Services within the Court.

Victim Advisors, who are employees of the District Court, are not required to have specialised knowledge or competencies in family violence and are specifically regulated by their employer's policies to adhere to a principle of neutrality.

Victim advisors will produce something in writing and because they are able to speak to both sides - take a neutral position - and I don't think that quite gives us what we need in these kind of cases (PB, 75).

As an adjunct to the principle of neutrality, Court employees are clear that VAs are restricted in the information they can provide for victims, and they are not empowered to advocate on behalf of victims:

...but for victims...we can only provide the actual thing that happened and that is where I am very clear about how I see it. So it's a date of hearing and that is all you can provide through the system (CA, 823).

...it's not in our role to advocate because that is very clear in our manual, but I don't see us as being in Court and doing that as advocating (CC, 812).

We are quite strict here because of policy, here because of law and policy (CA, 1287).

Court Victim Advisors are therefore institutionally constrained to provide only limited and general advice to all victims of the District Court. They are not able to provide specialised victim services to the WFVC. Since the Protocol for Family Violence Victim Services clearly delineates the role of victim advisors in relation to the WFVC, the lack of specialisation within this group does not pose specific problems for concentrating specialist services as it specifies that this responsibility rests with the community. Where the neutral role of VAs is most likely to be problematic in relation to the Court is in the situation where they are asked to provide a Victim Impact Statement and are unable to investigate the possibility of coercion, or provide any advocacy on behalf of a victim who is being intimidated in the context of an ongoing relationship.

...if you have got someone coming in to see the victim advisor and saying "I have come to ... oh my partner told me I had to come in ... my partner told me I had to come in today so he can get his bail varied and the Court said they have stood the matter down while I came to talk to you and I am here to tell that I want the bail varied and I want him home". There is no explanation of how she has arrived at that point, has she done of her own free will, has she been coerced into it, has she been persuaded, has she been threatened with an outcome if she doesn't do it? Has his

lawyer put her under pressure, and what are the circumstances around that? ...if a [Court] victim advisor is doing the role they are supposed to do those questions won't be put to her. They will simply say "well if that's what you want we will inform the Court". The role is really clear, they convey information to and from the Court, they don't engage in any other way or do any kind of social work or counselling or advocacy work, they are not there to advocate on behalf of that victim. I think that can work very well in all other areas of the Court but I think when you come to family violence victims it does create some real issues around the safety of the victims. They do simply transmit what she wants to say to the Court (WO, 222).

While the Protocol for Family Violence Victim Services specifies a clear procedure (#8) for referring victims to Community Victim Services this procedure will not address the potential for problems in every situation. It is obviously the case that Victim Advisors must be enabled to fulfil their duties as required under the implementation of the Victim Rights Act (2002). However, the lack of specialisation and constraint on advocacy that is associated with their duties needs to be taken into account by both the Judiciary and defence Counsel when they provide information to the Court on behalf of family violence victims.

Lack of specialisation and policy related constraints sometimes also affect the role of Community Probation Services within the Court. Community Probation Services strive to achieve consistency through ensuring that the officers providing information to the Judiciary of the WFVC are consistent and that they are familiar with the protocols of the Court. However, consistency and familiarity of individual staff do not mitigate some of the problems that can arise.

And when the area manager changes it has an influence. The protocols of the Family Violence Court would like us to be able to recommend intervention by way of supervision on a same day basis. And that is totally against all Corrections business rules (RA, 51).

Our protocols don't let us do interventions, we have criminogenic programmes we refer people to but we don't refer domestic violence to our criminogenic programmes. That has to be a specialist [intervention]. That's why ManAlive (RA, 157).

With regard to those professional and state agents employed in the WFVC, specialisation is dependent on the personal commitment and consistency of particular individuals and this often creates tension between the more generalist principles, policies and practices that regulate their profession or employment in other domains of the District Court. Specialisation is less problematically concentrated in the provision of community and professional services to the Court. However, through the WFVC, community and professional services are available for victims, families and offenders.

Specialisation: Community and professional services for victims, families and offenders

The therapeutic orientation of the WFVC promotes an understanding of family violence offences as embedded in psycho-social problems involving specific patterns of behaviour within ongoing relationships. The holistic approach of the Court that aims to heal families affected by violent offending requires that the Court's intervention go beyond a punitive, procedural and

adversarial approach towards collaboration with organisations that provide specialist services within the local community.

I think we all take time to talk to people in the Court and make them realise that they, we, are all part of the same system and the Court system is really only part of what is geared towards trying help the offender and the offender's family (BB, 234).

The needs of different offenders, victims and families are taken into account in the Court's collaboration with the community. Organisations providing three types of services are currently associated with the Court: social services such as welfare providers (WINZ; Salvation Army); psychological services such as relationship counselling or alcohol and other drug treatment, and specialist psycho-social services such as women's refuges and anger management programmes.

For people who are unable to speak English, Pacific Islanders (there is a big Pacific Island population in West Auckland); places like Friendship House are often used. There are other organisations, which offer assistance, but they are the main one, and mostly people who are required to do anger management, alcohol and relationship (interventions). It can be all three; it can be one of the three; it can be two of the three. And the need is usually identified by Community Victim Services in talking to the victim. That is the generic term for Viviana, the women's refuge, WAVES, Victim Support and Victim Advisors for Courts. So it's a generic overview. It's what I mean by Community Victim Services. We have [name] from the Salvation Army who will do an alcohol assessment on the day at Court. And we have [name] from ManAlive who will talk to people about attending ManAlive on the day at Court. Viviana and the other Māori women's refuge, Tika Maranga, also have representatives at Court (TB, 130).

To take a holistic approach it is also necessary for these organisations to collaborate with each other. Members of WAVES are specifically committed to developing best practice interventions to prevent family violence. Their collaboration was a central feature of the concentrated specialisation in the Court, and often praised by Court participants.

I guess one of the other things that make this day so effective is the way all the agencies work together. Really crucial as to what happens out there. We're really lucky that we have the victim agencies that we do such as Tika Maranga, Viviana (the western women's refuge and also victim support). I don't know any other area that those agencies would work so closely with an agency [providing intervention programmes for men] (DM, 157).

And as far as I can see its working well, families are getting healed and put back together rather than torn apart, and also because violence, domestic violence, is a way of life for a number of, a lot of families, not only in this area (TB, 147).

Community Victim Services, especially Viviana who provides services to the victims in the majority of cases before the Court, play a pivotal role in the community collaboration with the Court. They provide specialised services to the victim, to the Court, and also collaborate in relation to offender programmes.

Also I suppose we are sort of a watchdog for victim's rights...We obviously also prepare victim impact statements and things as well, and its probably not so apparent

but I think it's kind of happening - collaborative work - with ManAlive, for instance, to try and achieve the best results (SW, 14) .

And that one of the things Community Victim Services do - they have a list of approved programmes. If somebody comes up with a different programme the judge will ask; "is this an approved programme?" (TB, 322).

A large part of our Court process is having our case managers/victim advisors on hand, or roaming the foyer/court to take statements from victims/complainants we have been unable to contact by phone. And being available if a judge requests a stand-down for a statement to be taken from a victim (GR, 212).

Members of the Tri Parté Community Victim Support Network provide their services to the Court, victims and other community organisations voluntarily and the cost is borne by the NGOs' funding bodies and volunteer workers. The strain of providing these services voluntarily was recognised in relation to work Viviana could do if more resources were available.

It costs them money to have people here every Wednesday, and costs them people-time to get files ready and talk to victims and essentially coordinate the whole Court process from one week to the next (BB, 56).

I think Viviana is doing good work...They obviously need more resources and more time to really help; to do a completely thorough job (RH, 144).

The pivotal position of Community Victim Services is warranted by the importance of victim advocacy in the specific context of family violence. The need for victim advocacy was clearly prioritised in the formation of WAVES and the initial responses of the Henderson District Court to domestic violence in 1992. Victim advocacy is still recognised as a crucial source of information for the Court.

This is a point that needs to be well made which is we rely on Viviana to give us information about historical matters, in other words not just the number of times a person has appeared before the Court and been convicted, but the number of times that a person has telephoned the police, or where the police has been involved or even where there has been no police involved. So what we are interested in is, is this the first time there has been any violence of any sort, maybe a slap or a push or is this just the latest in a long long long history of offending, none of which has come to Court for a variety of reasons (BB, 354).

Advocates are able to provide a safe environment in which victims are able to talk about their experiences of victimisation, their relationships, and the effects of violence on their wellbeing. Victims are also provided with opportunities to learn about the dynamics of family violence, and the characteristics of abuse so that they can recognise whether or not their relationship experiences fit that pattern.

The greatest success that I feel that we can achieve is that women come out of the process feeling well supported; better educated about the dynamics of family violence and about what their role is; and wanting to continue to call the police when they're assaulted (WO, 641).

I think the ability for the victim to have a voice has made a huge difference; the ability to look a little bit deeper not just what's on the caption summary...So they are not only reliant on that, 'cause they have got Community Victim Services in Court, to fill in the gaps that are quite often missed out (SW, 128.)

Specialised victim services and victim advocacy serve a protective function in the sense that victims are represented in Court without having to appear in person. By having a community advocate in Court victims are not put at risk of intimidation or threat. Specialist victim services recognise the way in which intimidation or coercion may be used during the Court process and how they may be associated with a victim's day-to-day responses to violence in an intimate relationship.

There is no explanation of how she has arrived at that point, has she done of her own free will, has she been coerced into it, has she been persuaded, has she been threatened with an outcome if she doesn't do it? Has his lawyer put her under pressure, what are the circumstances around that? (WO 219)⁴

...we have a relationship with these women, we have a history here, a woman can go up to a victim advisor and say this is the first time he has hit me. And the victim advisor has got to believe it. If she comes to me and says this is the first time he hits me, and I go (look up files on the computer, I can say) "but you have had four previous police attendances", so I can challenge some of that stuff that is going on. The judges are getting more honest stuff, not just what the victim is feeling on that day (SW, 491).

To ensure that victims are protected from intimidation and coercion, and are able to have a voice in Court with respect to the effect of the pattern of domestic violence on their safety and wellbeing, it is necessary for them to have advocates who will understand the dynamic of their responses to violence, support them and provide them with education and opportunities to make informed choices about their responses. Advocates also understand that victims are often not seeking retribution or wanting to end their relationship with the offender, so they can work with victims to identify their needs and the needs of the family for therapeutic intervention.

[Victims] have seen the Court kind of address their needs and protect them - they have got that out of the Court. A lot of them, they didn't want it to be a punishment situation and while it still is in real terms, because of the therapeutic interventions that were put into place they feel really supported by the system (SW, 73).

The Tri Parté Victim Services Network provide specialised advocacy that serves both a protective function for victims and provides specialised information to the Court. Despite the early and persistent recognition of the importance of victim advocacy and community collaboration in the processes and protocols of the WFVC, some participants questioned the involvement of victim advocates in the Court or drew attention to the tensions that their role creates.

You have the tri parté victim support network, Viviana, Tika Maranga and Victim Support and then you have the Victim Advisors who are Court employed. Which

⁴ For example, Pond & Morgan (2006) report a particular case in which a Protection Order respondent's lawyer engaged in intimidation at the Court.

seems an absolutely crazy arrangement, it should be simple, just one victim advisor, obviously several people but within the same organisation (DJ, 200).

The difficulty with one organisation having responsibility for all victim services is that the diversity of victims' and families' needs could not be met, and responses to the specific circumstances of a particular offence would be restricted. By involving multiple organisations and a co-ordinated network across the community a variety of resources are available for problem-solving and therapeutic interventions which promote collaboration among services for victims and offenders.

The lawyers were always very wary about the victim advocate and from time to time there would be outbreaks of anger about them being given time of day by the judges (PB, 67).

If victim advocates are not incorporated into processes of a Family Violence Court there is a risk of exposing victims to ongoing harm and alienating them from justice system responses that have serious consequences for them and their families.

Some participants also noted that victim advocates and community services need to have professional credibility when they are working in collaboration with the criminal justice system, and it is especially important that their specialist standing and trustworthiness are recognised by the Judiciary.

The judges need to have confidence that the people preparing and submitting these reports are professional and have some level of training and are experienced to be able to put reliable material in front of us. And the lawyers know that as well. The material provided that comes from one of the recognised agencies is going to be accepted and they need to think very carefully before they challenge it. So yes, if you are looking at setting up a Family Violence Court and getting input on behalf of victims, establishing the credentials of the victim's services is a very important part of that process (YB, 291).

I don't know whether they've got any educational or other qualifications or experience they've got. I don't know if they belong to any professional association, whether they have any rules of conduct, what sanctions are applied if they get things wrong, we're certainly not informed...I've just got no idea of what professional or other qualifications or protocols are applicable to any of these community groups (HD, 357).

In the current research, the WVFC Judiciary were very clear that Community Victim Advocates providing information to the Court on behalf of the victims and services to the victims in the community were held in high regard. Their reports were praised as balanced and trustworthy and the information and services provided to victims were regarded as critical to the operation of the Court.

I think that our community support services in the Court work well, and I think they work well behind the scenes. We have good reports from Viviana and from the other support groups (BB, 238).

I think its good to have them work through Viviana, and I must say Viviana, all credit to them, their reports are extremely balanced. I think they are very careful in the way

they word things and that's really appreciated by me because I think, its such an inflammatory area, it wouldn't take much for things to set off again, so I think its good if we all work very carefully to try to use language that is not inflammatory and be a little bit careful about what we talk about. It's probably useful for the judges at the end of all this, and certainly in terms of the new Courts that get set up to have these issues raised, so we can think them through and talk about them (RRH, 429).

The flow on effect of having the Community Victim Services in the Court, I think is that the victims are going to be much more aware of what the Court's actually doing and that's important. If we're sending people off to do courses then it's not just going to be a void of information for the victims. Because who else is going to tell them? If there's no one advocating their position, and if there's no one in Court (if there's no victim in Court) how are they going to find out what's going on? I think it would smooth the process a lot for them. It helps us in what we're doing too I think because a lot of what we are doing needs to be explained to everyone involved while we're doing it. And they won't necessarily pick up from us what it is we're doing and the rationale or justification for it. So it helps to have that explained by other people not just us (MB, 219).

There is a degree of informal trust around these documents that is observed nearly all the time but every now and again it breaks down (YB, 278).

The respect accorded to Community Victim Advocates by the Judiciary was also recognised among other participants, including victim advocates who are critically aware of their dependence on the Judiciary's initiative, support and acceptance of their specialist knowledge and competencies.

Well the judges have enabled it...they have made it a lot more accessible for community groups to come into the Court to provide support, or even to work as reference people (BR, 201).

The meetings the judges hold with the community, the way they ask - "How are we doing? Anything we could be doing better? Got any ideas?" - it's unheard of from my experience. The judges haven't even considered seeking some advice. So I have a lot of faith in the judges...they bring a human face to it but they also hold the authority really well. They engage with the community, they ask for advice. One of the judges sits on the WAVES committee, so very committed to the family violence stuff (DM, 40).

Lately, we have had great feedback from the resident judges that say our memorandums/victim impact statements are great, and make their decision making easier (GR, 209).

With few exceptions, the professional and state agents who are involved in the WFVC understand, respect and value the Tri Parté Victim Support Network, and the pivotal role of Viviana in concentrating specialist victim services in the Court. There is also widespread appreciation for the role of specialist services available to offenders through the system of pre-sentence monitoring.

I think urging people to do things that may help them, anger management courses, alcohol abuse counselling is a help prior to sentence so that people have quite a long period between pleading guilty and actual sentencing, that's helpful (DJ, 45).

I think it is the approach that we take which is not a punitive one but one where we are trying to, once someone has recognised that they have a problem, or at least pleaded guilty and said, "well I am prepared to consider I have a problem" then the way of putting [sentencing] off to allow them to complete anger management courses and address their alcohol and drug issues, I think that is probably the best thing from the Court (BB, 210).

Feedback on the services provided to offenders through ManAlive programmes was highlighted as particularly valuable because of its long term benefits for both offenders and their families.

Definitely, the feedback I get back from the guys, it's not uncommon to hear stuff like its maybe the best thing that's ever happened to me. It's a huge change from the attitude they had when they started. I guess, too, having a dedicated family violence day it really drives home to the guys that this issue is being taken seriously by the system. All research says that the systems involved in a non-punitive way the guys are more likely to gain benefits from that. So there's very strong messages there around that this is not acceptable which is very important (DM, 26).

I see the guys, guys I have seen stand there and be really resistant, and they have come back and they have been quite changed. I think one the main good things is that, because we are talking about issues within the family and...the guys wouldn't normally ever think about dealing with those issues themselves or talking about it, they are directed into anger management as well as maybe one on one counselling and all of that stuff. I have seen lots of really good results from the guys (SW, 82).

While specialist services for victims are provided to the Court voluntarily some of the offender services require self-funding by the offenders. The ManAlive programmes, for example, voluntarily provide a staff member who is currently in attendance at Court on Family Violence day to facilitate offenders' engagement with the programme however the programmes themselves are not provided as a free service. While there are good reasons for such programmes to be self-funded in relation to offenders being accountable for their violence and taking responsibility for their offences, the resources needed to ensure attendance at a programme are not always readily available to the family. Financial support can be accessed through Work and Income New Zealand for some offenders. A few participants were cautious about the effects that financial strain might have on families, or the difficulties that some offenders experienced with obtaining WINZ support, and advocated for increased resourcing for offender interventions.

So people are told to go away and do anger management classes. Now they can get funding from WINZ, but I think it's difficult, it's not made easy for people (DJ, 103).

[We could do better] with getting people into anger management quickly...making it more financially available for people or available for people who just can't afford it either way: either making it more reasonably priced for people who have got some money, or making a similar option for those who have none at all. So that it's readily available for all, which one would like to think it is at the moment, but realistically it isn't (RH, 277).

ManAlive provide programmes for self-funded Court referred clients at around half the cost of providing the programme, thus incurring considerable loss to the organisation for the service provision. This loss is carried by reducing other services that could be provided to the Community. As the demand for Court referred services increase, the financial burden on the Community organisation also increases. When clients are referred to ManAlive through the Family Court the organisation receives adequate funding to support the programme fully. This discrepancy in funding available through the different Court processes does create financial strain for the organisation.

As well as additional resources for the specialist victim and offender services provided to the Court, participants recognised the need to extend service provision, particularly in relation to the culturally diverse population of the WFVC catchment area.

And usually the judge will require the person to attend [a programme or treatment intervention] unless it's a person with real cultural differences. [There are] a lot of Asian immigrants in this area, and a lot of Pacific Islanders in this area, and a lot of East Africans, Somalians, where there are big cultural changes. We could probably do with people able to counsel in those cultures perhaps ([although] I know in the Somalian culture there is no history of counselling, it's not something that exists) (TB, 329).

More culturally appropriate programs so that people with limited English are getting a better service. There are very few programs for them. Making it more widespread I suppose (RH, 287).

The support of participants for community service involvement with both victims and offenders was evidenced throughout this study not only in praise for the services offered to the Court by community organisations, and appreciation of the value of community collaboration, but also by these proposals to extend the specialist services further, and to improve resources for community organisations.

Specialist knowledge in the field of family violence involves understanding that the facts of a particular offence with which the defendant has been charged are part of a pattern of offences which define family violence under the Domestic Violence Act (1995). This pattern is an ongoing characteristic of the relationship. Any particular offence occurs within this context. Criminal justice interventions also occur within the context of an ongoing relationship. Concentrating specialist community services within the Court is clearly consistent with the aim of taking a holistic, therapeutic approach to Family Violence offending. It is also consistent with the focus on "improving how Government and non-Government agencies can work together to effectively meet the needs of individuals and families affected by violence" that the Ministerial Task Force for Action on Family Violence (2006, p.21) advocates for improvements in Justice Sector responses to Family Violence.

Although the WFVC is dependent on service provision from community organisations the concentration of specialist services from the community seems to be more readily available than specialist concentration of professional and state agents working in the Court. The WFVC relies heavily on the commitment of individual Judges, Counsel, and other employees in the Justice sector. The successful concentration of specialist community services is likewise dependent on these individuals. As a minimum, the resources needed to enable the Court to provide 'in house' training on the rationale and practices of the WFVC protocols for

professionals and Justice sector employees would ensure that some consistency in specialisation was available beyond this dependence on individual commitment.

Safety and Accountability

To protect the victims of family violence consistent with the rights of defendants and to hold offenders accountable for their actions

Unlike the other aims specified in the Court protocol these two aims do not address the processes and practices of the Court (such as timeframe goals or specialisation) but refer more directly to the outcomes of victim safety and offender accountability. It must be clear at the outset that evaluating the aims of the WFVC Protocols in relation to protecting victims and holding offenders accountable for their actions cannot be undertaken meaningfully if the experiences of victims and offenders who have been involved with the WFVC processes are excluded from the research process. The current study is severely limited in providing evaluative analysis of these two aims because it considers only the perspectives of the professional, state and community agents who participate in translating the Court's protocols into everyday practice. Subsequent research is planned to ensure that the voices of victims and offenders contribute to a more complete evaluation in relation to these aims.

In view of the severity of the limitations imposed by the exclusion of victims and defendants from this study, this section focuses attention on how those who participate in the Court understand the issues that are raised by attempting to balance protection of victims, rights of defendants, and accountability of offenders within the context of a holistic, therapeutic approach to intimate violence within ongoing family relationships. This importance of the need for balance is underlined by participants understanding that a holistic approach means that everyone's needs must be taken into account.

It is set out pretty well in the protocols the fact we are really a family orientated system and we are looking at not just the offender but also the victim and the victim's family and anyone else in involved (BB, 162).

This holistic approach is directed towards a rehabilitative rather than a punitive, retributive or procedural focus on justice.

The Court is trying to achieve an end to recidivist offending; effectively that's the ultimate goal. And that goal is effectively achieved by healing the problems within the family so that's what it's about (MB, 45).

Some participants acknowledge that one of the successes of the Court protocol in practice is the achievement of balance in relation to victims' rights to protection and defendants' rights within the criminal justice system.

[The Court does well at] bringing domestic violence out into the open, sending a message very loudly and clearly to the West Auckland community that not, that it shouldn't be tolerated and that it won't be tolerated. And if women do complain they will be heard and listened to, and that it shouldn't be hidden. To balance that, the Court is not being as punitive as they may otherwise...if people are not prepared to take responsibility. It's getting people to, I suppose, to own up and look at changing the way they behave (TB, 168).

I think what makes it work is they seem to strike a really good balance. They seem to me, from what the guys kind of experience [to] get that message that this is a criminal offence and it's unacceptable. I think they are treated like people, as well, and as individuals. And I think the way that the judges talk to them is more inspiring, and they get acknowledged for the good that they have done. So...I think that the kind of attitude that surrounds the place makes a difference (SW, 178).

Others raised issues related to balance, primarily around two interrelated problems: how to ensure that the rights of defendants are not violated by *encouraging* offender accountability or by the *speaking rights* of victim advocates whose primary focus is the protection of victims; and how to ensure that offender accountability is *encouraged* without putting victims at risk of further harm.

In relation to the risk of violating defendants' rights, a number of issues about the fairness of the protocols in relation to the balance between protection of victims and rights of defendants were raised by participants in the current study. These issues cohered around a notion that a presumption of guilt was associated with an historical, political agenda that the WFVC Protocols serve and the perspective that the legal rights of defendants were at risk through the admission of memoranda prepared by victim advocates.

Because these protocols are developed because of what I'm going to call political type pressure (although that's probably not quite the right word). I can understand how many years ago people were concerned that domestic or family violence wasn't taken seriously, and that was wrong and I agree with that. But on the other hand now there is a real presumption of guilt, which can work a great unfairness on some people (HD, 129).

And that's, I guess, one of the issues that there is a lack of communication from anybody to people who represent the accused. We just don't have a voice it seems to me, at all. I think that's wrong... I have gotten my nose out of joint when the judge has reports that he's read on their file, but I just had no idea they were there (HD, 310).

One of the things, and you have probably heard this, the victim advisors seem to have an inordinate amount of, not power, influence and I guess they are looking at it from one side, the complainant comes to them and says X and they believe it hook line and sinker... So you will get a lot of statements coming from complainants alleging this and that which aren't backed up with any facts, sometimes that are, I've had cases where complainants have said look I didn't say that, this has been exaggerated or blown out of all proportion. The victim advisors certainly do tend to put a certain slant on things, which I think is both improper and quite unfair (DJ, 76).

The perspective that unfairness is a consequence of the WFVC Protocols serving a political agenda that was historically relevant when family violence wasn't taken seriously rests on two assumptions: that family violence is now taken seriously, and therefore the historical relevance of this agenda is no longer of any consequence, and that there is a contemporary presumption of guilt associated with family violence matters.

It would be reasonable to argue that the establishment of organisations like Women's Refuges, HAIPP, WAVES, the introduction of the Domestic Violence Act (1995) and the Victim Rights Act (2002), the publication of the Te Rito Family Violence policy and the plans of the Ministerial

Taskforce for Action on Family Violence and the Protocols of the WFVC constitute community and Government initiatives to address the acceptability of family violence in Aotearoa/New Zealand and provide for the protection of victims under the Law, and are, therefore serving a political agenda. However, the Ministerial Taskforce for Action on Family Violence (MSD, 2006) and the current incidence and prevalence rates of family violence provide evidence that the acceptability of family violence and the protection of victims continue to be significant social and legal problems: They are not historical issues that have been resolved.

Specialist knowledge within the area of family violence recognises that the majority of incidents remain unreported to police (Dobash & Dobash 2000; Koss, 2000; Morris 1997).

Because we might get so many POL 400s created in this city but of those POL 400s that are written up, it might only be a quarter of them that result in arrest. And out of those that are arrested the percentage that get a successful conviction is even smaller, so it's a bit like rape cases in a way. You only see the very tip of the iceberg when you sit in on family violence Court day; you're seeing the very tip of the iceberg in terms of family violence in this city (WO, 426).

Such incidents are also recognised as components of a pattern of behaviour, not as isolated events. Thus what appears as a presumption of guilt from one perspective is understood by other participants as an opportunity to encourage defendants to break a pattern of behaviour that, more likely than not, has a prior, unreported, history in the relationship, is ongoing, and will escalate the risk of damage to the victim and the family if there is not effective intervention.

In family violence I see myself as trying to encourage men - predominantly because statistically it is mainly men (although of course as we know not exclusively) - encouraging them to acknowledge something, if there is something to acknowledge, and to get credit for doing that; and get credit for doing something meaningful in terms of courses and so on; to encourage them to see the benefits for themselves in doing that, encouraging people not to see the Court as a boxing ring where they can continue to play out hostilities they might have at home against the people they supposedly love or have loved the most. Encouraging people not to see the Court as some sort of game where they can, for example, come along and do a knee jerk 'not guilty' plea and just hope and expect that the compliant isn't going to front up. That the process will be impotent and I think we have been impotent in the past. I think we have almost been a party to making the Court process meaningless in many cases possibly even worse than that, possibly even exposing victims to risk by not engaging in the real issues (RRH, 49).

In practice, encouraging offenders to acknowledge and take responsibility ("if there is something to acknowledge") involves providing clear incentives for pleading guilty. For the most part, participants understood that "credit" for pleading guilty was beneficial to the defendants and did not constitute a presumption of guilt.

The longer they maintain their denial and fight the system, the more serious the consequence for them. And we keep reminding them of that. They get credit for early guilty pleas (YB, 229).

The Court tries to give credit to those who put their hand up and accept responsibility. And with that in mind [Judiciary] will stand matters down to allow further discussion if [they] think it's going to resolve, [they] will work hard to resolve an issue rather than

just accept a not guilty on face value, but as I say it's the calibre of the Judiciary and their support that is making it a success (TB, 246).

The perspective that unfairness is a consequence of defence Counsel not having a voice in relation to victim advocates' memoranda, or that the memoranda present a bias (one-sidedness/an agenda), involve exaggeration, or allegations that are not supported by facts also rests on particular assumptions, especially the notion that the memoranda are enough like evidence to be regulated by the same criteria, and therefore they should be factual, unbiased, accurate and available to Counsel for response.

Despite the presence of victim advocates in Court, the victim services protocol is clear that their speaking rights are restricted. They have a different status and standing from both prosecution and defence Counsel. They are not permitted to present evidence to the Court, and the memoranda they provide are treated as information from the community member representing the victim.

So we receive these documents in the same way that lawyers on behalf of their clients hand out references from employers and family and all sorts of people and we take those into account and we do the same on behalf of victims (YB, 282).

In this way the Judiciary understand the memoranda as balancing the rights of defendants and victims. Defence Counsel continue to have a voice in relation to representing the defendant and are able to present evidence to the Court. The status of the memoranda understood as more like references than evidence might also resolve concerns around privacy rights of the defendant.

One of the issues that [the visiting judge] was concerned about [was] privacy issues. There probably are concerns... I can see an argument: The information Viviana have through being involved the victim and being involved with the family - for them to share that with a judge in a public forum might seem to be a breach of privacy, in that the information wasn't collected for that purpose (BB,401).

If memoranda have a similar status to defendants' employer references, then it is reasonable to regard their contents as similarly confidential. Although for the most part, defendants provide references and therefore have access to their contents, the referee is still entitled to mark the reference "confidential" and deny the defendant access to its contents. Likewise, the defendant could know that the memoranda have been presented without necessarily being entitled to know their contents. It is also the case that memoranda are not shared openly in a public forum, but read silently by the Judge.

Since the Community Victim Advocates have specific responsibility for information related to the victim's perspective on the history of the relationship and the effect of the violence, then it is recognised as representing one particular point of view: that of the victim. What is seen as bias from one perspective is understood by others as providing a balance that is absent when victims have no advocates for them in Court. Advocates are also involved in other service provision to victims, including education on the dynamics of family violence. They have broader, community based relationships with the victim, access to historical information about the family, the opportunity to interview the victim at a safe location, the competencies to assess risk and develop safety plans, as well as knowledge of the psychological effects of intimidation, coercion, responsibility for protecting the family, love, fear and shame on the day-to-day response of victims to violence. From this perspective their memoranda representing the

victim's perspective on the alleged offence, and its impact on her wellbeing, will often put the relevant safety issues in this broader and more specialised context. Such contextually rich and specific information assists the Court to balance the rights of the defendant with the duty to protect the victim. To the extent that this information is not regarded as 'fact', neither is it treated as evidence. The information is valuable in that it enables the Judiciary to encourage guilty pleas, and provide sentence indications that effectively coerce treatment while taking account of the victim's needs for protection.

[there is a criticism that] anything goes and it's hearsay and there is no established basis {to the memoranda}. Viviana says to us that we know this guy, and victims say to us, or our records shows, that there has been seven or eight pervious calls out, or the victim says she has called the police six or seven times before, and most of the time no one worries about that because they realise we are going to be dealing with them fairly. I think if we were getting that information and donging them the attitude would be very different. The fact is that we are not donging them. If they are completing courses - if they are doing what is agreed early on - then the indication that is given... is usually a community based sentence or conviction and discharge or come up for sentencing if called upon or in some isolated cases 106 discharges. Then they realise we are doing our part of the bargain and their part of it really is to let us have all the information, everything that is relevant to their offending currently and in the past so we can do what's best for everyone (BB, 434).

The balance between defendants' rights to fair process and victims' rights to protection seems poised at the intersection of different interpretations of memoranda from victim advocates and incentives for defendants to demonstrate their accountability by pleading guilty and undertaking recommended treatment interventions. If too precariously balanced, though, victims' safety and their confidence in the justice system could be put at further risk through sentencing indications and outcomes that are intended to coerce treatment.

And it's possible that sentencing outcomes can be damaging too and I don't think we have done enough work to find out what we should do. For instance, what is the impact on the future, impact of a defendant who doesn't believe the consequence of his conduct was sufficient to make him change his mind at all? Does it mean he becomes embolden by the fact he thought he got off lightly? Does it mean the victim loses faith in the system being able to do anything for her? - Usually (PB, 141).

... if the outcome [of coercing treatment] is a discharge without conviction, because he's jumped through the hoops without authentically engaging or really wanting to change, then she's at even more risk of further violence and he's going to continue looking like a first offender if he gets a discharge without conviction (WO, 389).

The judges participating in this study understood that the use of "discharge without conviction" (106 Discharge) risked sending defendants the wrong message about the seriousness of family violence. They were also aware that concerns had been raised about the use of "discharge without conviction" and victims' safety so they emphasised their caution in relation to this sentence. The use of a sentence to "come up if called upon" also provided an incentive for treatment and it was seen to involve more protection for the victim.

There are some reasonably strict guidelines on when you should give a 106 discharge, in fact what we do in Court, we don't have too many 106 discharges (BB, 248).

I think and the lawyers are getting the message that unless they finish the course, they're not going to be... they're not getting early discharges if you know what I mean. They're there to 'til they're finished. It means they do it. And they know if they don't do it that they're going to get whacked pretty much. It's one or the other (MB, 436).

For myself I believe really strongly that we should take real care before we give a complete discharge on a matter of family violence because I think it can be perceived that, it's like the offending never happened and whereas it did happen. Of course defendants deserve credit for all those steps they have taken and all the changes they have made and that's reflected in the fact that they are not going to prison or doing community work for example. So an outcome of 'come up if called upon' gives credit, credit for steps taken. I also like the fact that it's almost like a good behaviour bond in that they know it's still there and if they commit a similar offence during the next, say, twelve months then they can come back and be re-sentenced. So I think it's a bit of a safety net. Often people who were asking for a S106 discharge have got convictions anyway so if we discharge them on a family violence matter we are arguably saying it is less serious than say the car theft they got a conviction for. I think we need to take real care with the messages we give in terms of those issues (RRH, 302).

Court participants do recognise a fine line between protecting victims and holding offenders accountable for their actions. Issues related to victims' safety and defendants' rights are able to be raised and openly discussed with the Judiciary, and in the Family Violence Focus Group. The balance is not always reached through consensus, and different perspectives on the practices of the Court produce tensions that surface from time to time, as may be expected and reasonable in a collaboration across broadly divergent professional and community interests. Nonetheless, the Court's successes in relation to victim safety and offender accountability were regarded as most evident when information from victims and incentives for defendants led to healing the family or problem solving.

Also we're probably helping the Court to move towards a resolution about what is best for the defendant and what is best for the family and its more to heal the family than tearing it apart... Courts are reluctant to throw the defendant in jail; they are more likely to send him off to get help or give him – him or her, it's her too, it's getting more her, - a chance to fix the problems (GR, 12).

It does provide for a forum where triggers to violence, alcohol, drug abuse, isolation, financial troubles and those sorts of things... can be aired and people either take themselves off to appropriate places to seek assistance and it's very, very good, quickly, which is good too in terms of family domestic situation. It's a start to have those problems addressed; I think it does that very well. And that's good to see (HD, 193).

So it's really looking at the cycle of violence and what we can do to affect real and meaningful change in that area, while still holding offenders accountable but perhaps being creative in terms of the ways we do that so we get some positive outcomes (RRH, 141).

However well the Court protocols balance the rights of victims and offenders, and Court participants manage the fine line between interests that seem to conflict from different

perspectives, the successes of the Court in relation to protecting victims and holding offenders accountable can only be established with reference to the experiences of victims, offenders and their families. Although this is beyond the scope of the current research our continuing research collaboration with WFVC stakeholders includes plans for projects which will address these questions.

Where to now?

In this final section we draw together how we now understand the successes and challenges of the WFVC protocols from the point of view of the professional, state and community agents who are involved in its dynamic process. We discuss the participants' identified needs for future research and our progress in planning and conducting research to meet those needs.

Collaboration

The principles of *Te Rito New Zealand Family Violence Prevention Strategy* (MSD, 2002, p.14) advocate for "broad and holistic" perspectives on family violence prevention and taking "multi-faceted approach" to addressing the needs of the family as a whole (p.12). Perpetrators of violence are to be held accountable and communities have "both the right and the responsibility to be involved in preventing violence in families/whānau" (p.13). An integrated, co-ordinated and collaborative response is regarded as essential to preventing intimate violence.

In this context, the evolution of fifteen years of community collaboration with the District Court into the current practices of the WFVC demonstrates the clearest success of the Court. This collaboration has a long tradition of working with models that are still being used internationally as best practice in family violence responses (e.g. Specialist Domestic Violence Court, West London). It was well after this collaboration began that the Government recognised the value of collaborative responses in policy and planned action. Over the course of its evolution the WFVC has adapted its practices to various changes in legislation and policy, demonstrating the flexibility of responses that are available when there is individual commitment to the dynamic processes of collaboration. This flexibility also allows the WFVC to be continually responding as specifically as possible so as to protect victims and heal families.

The processes of consultation and adapting practices have not always been easy and there are still points of contention around some of the practices of the Court's protocols. Some participants were concerned about the role of the Community Victim Services in providing information to the Court and advocacy for victims. Yet this too, is one of the successes of the Court. In principle, information sharing is essential to victims' safety and defendants' rights, so that safety and justice are both taken into account. The special character of family violence offences means that considerations of safety and justice need to include information on the dynamic psycho-social implications of ongoing relationships between victims and offenders and the consequences of violence within an intimate relationship. In dealing with family violence offences the Court needs to make careful assessments of the risk of further harm to victims and families.

After three years of reviewing the operations of the Specialist Domestic Violence Court in West London, STADV reported that the inclusion of information from community services and victim

advocates was critically important to their success. In describing importance of information sharing and trust among the participants, the SDVC Bench Book for the Court says:

It's like a spider web where each strand supports the others, and the integrity of the specialist court is made up of all these strands. This inter-relationship of partner agencies, which arises from a shared understanding and commitment, together with information flows can help ensure that the best information will be available to the district judges and magistrates (Lesser, 2006, p.11)

Like the WFVC, the SDVC is based on the Duluth model of coordinated community responses to family violence and involves Community Victim Services working within the Court. This model is justified by understanding domestic violence as “no ordinary crime” and that

[m]any agencies hold parts of the information and part of the expertise that is essential to the safe and fair prosecution of a domestic violence case. The nature of the relationship between victim and defendant and defendants' access to victims require that information before the court is current, focused on risk, and accurate. Within an SDVC, this information can be shared and expertise about domestic violence applied in a systematic, well regulated and timely way (STADV, 2006, p.1).

The value and legitimacy of the role played by Community Victims Services in providing information to the WFVC is affirmed by current Government policy and international best practice models and the Judiciary are clear that they regard the information as trustworthy. The question of the precise legal status of the information provided by CVS has also been raised, as has the legal status of the Protocols themselves.

...there doesn't appear to be any legal or legislative basis for much of these protocols. I'd like to see some addressing of that by parliament in an appropriate way. I'd also like to see, with respect again to the lower level matters that there'd be some other avenue other than criminal Court for these to be addressed in (HD, 235).

As far as this research suggests, the Judiciary do not share the view that legislative change is necessary to sanction the Protocols of the Court. From the way in which the judges were regarded by other participants in the Court it was their individual commitment to specialisation in family violence that enabled the Court to work successfully. This specialisation enables the Judiciary to interpret the legal practice of the Court with regard for the special character of family violence.

A mutual understanding of family violence is critically important to ensure that all participants in the community/Court collaboration are working towards the same goals. The preliminary findings of this analysis provide evidence that there is a widely shared understanding of the character of family violence among Court participants. Participants talked of problems with intimidation or coercion of victims, or Counsel who did not share the philosophy underlying the Court. To see these issues as problematic requires a perspective that includes understanding family violence offences as, more likely than not, part of a pattern of abusive behaviour. This is consistent with the definition of domestic violence provided by the Domestic Violence Act (1995) which involves recognition that there is an ongoing relationship between the victim and offender and that a specific violent act may be connected to a pattern of abusive behaviour towards the victim.

The heart of the Domestic Violence Act (1995) is the protection order, granted by the Family Court. The priority that the WFVC gives to protecting victims is consistent with the Act, and justifies using specialised victim advocates within the Court, and providing information to the Court about the victim's vulnerability to further harm. A recent review of the SDVC included the following example of the way in which specialists there also valued collaboration:

...if we know enough then we can make good [risk] assessments. It's not about the tool, it's about who gives you the information, that's what I value about [violence services network organisation] (STADV, 2006, p.7).

The WFVC protocols facilitate information sharing between CVS and the Court. They provide for specialised victim advocacy as well as information on victim safety at particular points in time. While the consistency between the Court's attention to victim safety and the intent of the Domestic Violence Act (1995) is clear, the interpretations that sanction the WFVC protocols remain dependent on individual commitments to specialised knowledge in relation to family violence. This leaves the Court's collaborative response to family violence vulnerable to changes in individual personnel. One of the successful outcomes of systematic training at the SDVC in West London is that they have a number of trained judges (and magistrates) who can preside over the Court, and are therefore less vulnerable personnel changes (STADV, 2006). The Court in West London also shares with Waitakere one of the most stubborn challenges to a successful family violence intervention within a criminal justice system: the involvement of non-specialised personnel in the development and implementation of best practice protocols (STADV, 2006). Collaborating participants in both Courts have identified particular difficulties around including non-specialised defence counsel.

In this research, training was consistently highlighted as a need within the WFVC. Training in both the dynamics of family violence, and the operations of the WFVC could produce significant advantages in terms of efficiency and consistency. Several of the collaborating groups of the WFVC are provided with specialist family violence training by their employers. While resourcing the WFVC remains an unresolved issue the provision of systematic training for all personnel involved in the Court remains an unmet need. Nonetheless, participants in this research were largely well informed about roles and responsibilities within the Court. Systematic approaches to redressing contradictions between specialised and non-specialised understandings of family violence remains difficult while resources are scarce. Future discussions among participants could consider developing some form of Bench Book, such as that used in the SDVC, to make specialised knowledge and practical guidance for decision-making available to all Judges and legal advisors (STADV, 2006) as well as a coordinated approach to securing resources.

Evaluation of the Court was also highlighted as a need. In a recent design for a Specialist Domestic Violence Court in Auckland a specific role was designated within the proposed Courts structure for a Monitoring and Evaluation Coordinator. Personnel in this role would be responsible for six monthly or annual reviews of the protocols (McKenzie, 2006). One of the reasons that we are able to consider the way in which the SDVC implements its collaboration in response to domestic violence is because they have resources and processes for ensuring an annual review. This review is an integral part of their collaboration and based on "high quality data monitoring, tracking and analysis [...and] a process of triangulating qualitative data" (STADV, 2006, p.3) to ensure that perspectives of all partner agencies are taken into account during reviews. The WFVC Focus Group works well to address issues and review concerns about the operation of the Court in the absences of resources for a more rigorous approach to

research. Without the resources for evaluation research the WFVC participants do not have the information and analysis they need to have confidence in meeting their goals.

... anecdotally I think there has been a drop in serious domestic violence in this area, and a drop in domestic murder in this area over the last few years. But I haven't got figures. It would be very interesting to know - for the people who have been through that Court - if their violence decreases or increases. That would tell you whether it was successful or not (TB, 367).

So what I am particularly interested in is how effective, in terms of recidivism, the approach is and I'd be pleasantly surprised if it makes a huge difference in terms of recidivism but I wonder whether relapse is in fact part of the process (MB, 39).

[I would like to see] follow up for women and see how they're satisfied with the process. (I am just using women in the usual sense rather than saying only women) (RH, 243).

The research team collaborating on this project will continue working with stakeholders in the Court to develop research proposals and secure funding for projects that involve statistical analysis of available data sets and qualitative analyses of the perspectives of victims and offenders on the effectiveness of the Court. The difficulties of securing funding for independent family violence evaluations will mean that the research may take longer to complete – and the successful community collaboration which is the foundation of the Court has already waited more than six years without the information resources they need to ensure that they continue adapting flexibly to meet the needs of local families affected by violence.

Taking family violence seriously

The first goal of the *Te Rito New Zealand Family Violence Prevention Strategy* (MSD, 2002, p.14) is “to bring about attitudinal change by encouraging intolerance to violence in families/whānau and by ensuring members of society understand its dimensions, manifestations, and play their part in preventing it”. This goal is predicated on the recognition that nationally we have a long history of ignoring family violence as a serious social issue, minimising its damaging effects on the wellbeing of individuals, families and communities, and tolerating it by treating it as a ‘private matter’.

Along with collaboration, another clear success of the WFVC Court emerging from this research is the multiple ways in which the Court's participants take family violence seriously and work towards encouraging its intolerance. In the first instance the establishment of the Court itself sends a clear message that family violence is a serious problem. Various participants raised the possibility that, if it is seen to be lenient with offenders, it could also be seen as a “soft option”, and as a way of minimising the seriousness of the offence. The judiciary were crucial to ensuring that the message which the Court sends to the community is that family violence offences are serious and that the Court will hold the offender accountable. At the same time the needs of the whole family in each specific case would be prioritised. Several participants commented on how consistently the Judiciary convey the message of seriousness to defendants. The possibility that readily or routinely giving Section 106 Discharge indications might undermine the message was acknowledged by the judges, who have become more cautious in their use recently. Similar caution in sentencing is regarded as a successful practice of the SDVC in London where the Bench Book considers it:

...unlikely that a bench would be thinking of any sentence less than a Community Order (Lesser, 2006, p.45).

Lenience is regarded by the Court as an incentive for the offender to engage in treatment and severity is a consequence of not co-operating with the Court's recommendations for intervention. Thus offenders are encouraged to be accountable for their actions and this encouragement is also intended to convey the message that the Court is serious about addressing the problem of family violence. Encouraging accountability also serves the purpose of coercing treatment and meeting the needs of the family holistically.

As far as the participants were concerned taking family violence seriously also meant having adequate information about whether or not the Court was effective in reducing offending and increasing victim safety. The future research which participants identified as necessary includes studies of offender recidivism and of the experiences of women victims involved in Court processes. These two issues intertwine at the heart of the WFVC's purpose: to reduce family violence in a psycho-social context where offenders are far more likely to be men and women are more likely to be victims⁵. The assumption that guides the interlinking of these issues is simply that reducing recidivism will correspondingly improve victim's safety.

Information on recidivism is very difficult to provide reliably. Underreporting of offences and alienation from the criminal justice system experienced by some women, Māori and members of cultural minority groups confound measures of success of the Court if the measures are based only on reductions in the appearances of particular offenders, or reductions in overall charges or convictions for family violence offences. In principle, lower charge and conviction rates might be related to local acceptance of family violence, victims' mistrust of the Court or offenders' ability to control a victim's access to legal protection. In considering the success of the 2005 Protocols, it would be preferable to base initial success criteria on increasing numbers of cases coming before the Court, increasing conviction rates and an increase in early guilty pleas. These increases are not likely to be indicative of increases in rates of offending, but of improvements in legal and Court processes that are evidenced by successfully holding offenders accountable for their offending. Criteria for considering whether offending has reduced is needed to take account of victims' experience lessening harm, risk of harm and/or fear of harm than by the number of times an defendant appears in Court, or is convicted.. If holding offenders accountable for their actions and coercing treatment is effective in reducing violence and improving the wellbeing of families then it is victims' experience that will provide best evidence of success.

Future planned research includes studies of victims' experiences of the Court process and the provision of services for themselves and their families. In another study that is currently in progress, community based data sets are being statistically analysed to answer questions about the volume of cases dealt with through the Court, types of offences, rates of conviction, sentencing outcomes and so on.

The statistical analysis will also consider questions related to the successful implementation of expedient timeframes for dealing with a case before the Court. It is always a principle of the criminal justice system that justice be expedient. In matters of family violence, timeframe goals are set to take account of the effects of lengthy Court processes on victims' safety. WFVC participants were concerned to meet timeframe goals and in many cases recognised why tight

⁵ Participants' understandings of the gender asymmetry of family violence offences will be analysed in the discursive phase of this research programme due to be completed by Sarah McGray in December 2007.

timeframes were necessary where there was an ongoing intimate relationship between the defendant and the victim. In assessing how well these goals are being met, the statistical evidence available on time lapses between appearances and disposal of cases is inadequate to assess whether the underlying goal of tight timeframes, victim safety, is being met.

Measuring a decrease in the mean number of hearings per completed case, or a decrease in the mean number of days between charge and completion takes account of the efficiency of the Court in terms of procedure and delay. To take account of safety it is also necessary to consider the reasons for delay, and impact of the delay on safety. For example, whether a time lapse represents a delay so that the judge can obtain information relevant to renewing bail conditions, or a delay in which a guilty plea is negotiated may make a difference to victim's risk. What the delay means in terms of victim safety relies on specialist assessments of risk, and the meaning of the delay for the victim. Victims' experiences of safety during and after their involvement with the Court process need to inform assessments of the efficiency of the Court.

Measures of time-lapse are currently being analysed to identify any systematic patterns in delay among the variables available, including the lapse between first appearance and disposal in relation to charge, plea or sentence type. Participants are already concerned that monitoring by the Court produces long delays before disposal. Statistical analyses will identify patterns of appearances within the monitoring process and provide some evidence in relation to their concerns. However, these analyses will not provide information on whether or not monitoring serves a therapeutic function in coercing treatment that reduces a victim's risk of further harm. How monitoring affects victim's experiences of safety needs to inform assessment of the Court's overall success at meeting timeframe goals.

Monitoring is already successful from the point of view of participants who saw it as sending a strong message of the Court's interest in rehabilitation and victims' safety. Its success in relation to coercing rehabilitation and improving victim's safety is intimately connected with the experiences of defendants who co-operate with treatment and experiences of safety within their families. Future studies are currently being negotiated with Viviana and ManAlive to evaluate their services from the perspective of victim safety and offender rehabilitation. These projects plan to broaden the perspectives from which the Court's commitment to taking violence seriously is assessed. This research should also meet participants' identified need for information on the provision and success of intervention programmes for members of minority cultural groups.

Whether or not the Court meets the needs of local whānau, iwi and hapu for safety, how Māori protocols could be integrated into the Court's practices, and whether that would be appropriate from the point of view of local whānau, iwi and hapu remain crucial questions for the Court.

I think one issue we haven't really addressed perhaps is how, in terms of Māori protocol, how we might usefully bring that into the Court a little bit more. I am not necessarily saying we should do more than we are; we already have Tika Maranga and we have got the Māori program at ManAlive but that is something I have given some thought to. I know that there were some cases where lawyers were suggesting that we should adopt the Marae-based approach, we should involve Te Whānau Awhina who are a diversion programme we use for low end criminal offending. There maybe some scope for this if it was properly set up (RRH, 470).

To some extent these questions open up possible futures for the Court. At present the WFVC Protocols are consistent with principles of therapeutic justice. Future research may identify whether or not therapeutic jurisprudence is an effective intervention to reduce family violence. It could also identify the family circumstances for which it is most effective, and the kinds of needs for safety that it meets as a criminal justice intervention. The Court is taking account of Te Tiriti o Waitangi in relation some of the community services that provide victim and whānau support and offender interventions. The Court's potential for broadening its scope to include other models of jurisprudence, such as those based on principles of social harmony or communitarian justice is still to be realised. Such potential may serve to increase the scope of its partnership with the community and create a more inclusive collaboration towards preventing family violence within Waitakere communities.



References

- Allen, N.E., Bybee, D.I. & Sullivan, C.M. (2004). Battered women's multitude of needs - Evidence supporting the need for comprehensive advocacy. *Violence Against Women*, 10, 1015-1035.
- Arrigo, B. A. (2004). The ethics of therapeutic jurisprudence: A critical and theoretical enquiry of law, psychology and crime. *Psychiatry, Psychology and Law*, 11, 23-43.
- Barwick, H., Gray, A., & Macky, R. (2000). *Domestic Violence Act 1995 process evaluation*. Wellington, N.Z.: New Zealand Ministry of Justice and the New Zealand Department for Courts.
- Bishop, R. (1999). Kaupapa Māori research: An indigenous approach to creating knowledge. In L. W. Nikora & N. Robertson (Eds.), *Māori and psychology: Research and practice* (pp. 1-6). *Proceedings of a Symposium Sponsored by the Māori and Psychology Research Unit*. Hamilton: Department of Psychology, Waikato University.
- Bograd, M. (1992). Values in conflict: Challenges to family therapists' thinking. *Journal of Marital & Family Therapy*, 18, 245-256.
- Boshier, P. (2006). *Domestic violence in New Zealand - Better outcomes for our families*. Tairāwhiti Abuse Intervention Hui, Gisborne, NZ. Retrieved 15th April 2006, from www.justice.govt.nz/family/media
- Borum, R. (1996). Improving the clinical practice of violence risk assessment. *American Psychologist*, 51, 945-956.
- Busch, R. & Robertson, N. (2000). Innovative approaches to child custody and domestic violence in New Zealand: The effects of law reform on the discourses of battering. In R.A. Geffner, P.G. Jaffe, & M. Sudermann (Eds.), *Children exposed to domestic violence: Current issues in research, intervention, prevention and policy development*. (pp. 269-300). New York: Haworth Press.
- Butterworths. (1999). *Butterworths Crimes Act 1961* (5th ed.). Wellington, N.Z.: Butterworths.
- Butterworths. (2000). *Butterworths family law statutes* (9th ed.). Wellington, N.Z.: LexisNexis Butterworths.
- Campbell, B. (2005). *Negotiating biculturalism: Deconstructing pākehā subjectivity*. Unpublished Doctoral Thesis, Massey University, New Zealand.
- Carruthers, D. (2004). *Practice Note: Domestic Violence Prosecutions*. District Court Judicial Officers. New Zealand.
- Coombes, L. & Te Hiwi, E. (in press). Social justice, community change. In I. Evans, M. O'Driscoll & J. Rucklidge (Eds.), *Professional practice of psychology in Aotearoa New Zealand*. New Zealand Psychological Society.

- Dobash, R.E. & Dobash, R.P. (2000). Evaluating Criminal Justice Interventions for Domestic Violence. *Crime & Delinquency*, 46, 252-270.
- Erez, E. (2002). Domestic violence and the criminal justice system: An overview. *Journal of Issues in Nursing*, 7, (1), manuscript 3. Retrieved June, 2006, from http://www.nursingworld.org/ojin/topic17/tpc17_3.htm
- Fanslow, J. L. (2002). *Family Violence Intervention Guidelines*. Wellington: Ministry of Health.
- Fanslow, J. L. (2005). *Beyond Zero Tolerance: key issues and future directions for family violence work in New Zealand*. New Zealand: Families Commission.
- France, S., & Pike, J. (1997). Criminal law. In R. Cooke, T. M. Gault, P. J. Downey, H. Papadopoulos, S. Lazarus, & D. Bennet (Eds.), *The laws of New Zealand: Volume 9 (1992-2002)*. Wellington, N.Z.: Butterworths.
- Goodman, L. & Epstein, D. (2005). Refocusing on women – A new direction for policy and research on intimate partner violence. *Journal of Interpersonal Violence*, 20, 479-487.
- Graham, D. (1995). Opening address to the family violence conference. In *Family violence: Presumption in practice: Working with the new Domestic Violence Act: An interdisciplinary conference to ensure that the professionals who are required to implement this legislation honour its intent*. Conference, 30 June – 1 July 1995, Wellington (pp.A1-A5). Wellington, N.Z.: New Zealand Psychological Society.
- Guba, E.G. & Lincoln, Y.S. (1989). *Fourth generation evaluation*. Newbury Park, Calif.: Sage Publications.
- Guest, G., Bunce, A. & Johnson, L. (2006). How many interviews are enough? An experiment with data saturation and variability. *Field Methods*, 18, 59-82.
- Johnson, R. (2005). *The evolution of family violence criminal courts in New Zealand*. Police Executive Conference, Nelson. Retrieved 16 January, 2006, from www.police.govt.nz/events/2005
- Hand, J. (2001). *Free from abuse*. New Zealand: Auckland District Health Board.
- Hann, S. (2001). *Palmerston North Women's Refuge herstory*. PNWR: Palmerston North.
- Koss, M.P. (2000). Blame, shame, and community: Justice responses to violence against women. *American Psychologist*, 55, 1332-1343.
- Labov, W., & Waletzky, J. (1997). Narrative analysis: Oral versions of personal experience. *Journal of Narrative & Life History*, 7, 3-38.
- Leibrich, J., Paulin, J., & Ransom, R. (1995). *Hitting home: Men speak about abuse of women partners*. Wellington: Department of Justice.
- Lesser, J. (2006). *Bench book and good practice guide*. London: Standing Together Against Domestic Violence.

- McKenzie, D. (2006). *A specialist domestic violence court design to be implemented in the Auckland District Court in 2007*. Auckland: Preventing Violence in the Home.
- Ministry of Social Development. (2002). *Te Rito: New Zealand family violence prevention strategy*. Wellington: Ministry of Social Development.
- Ministry of Social Development. (2006). *Taskforce for action on violence within families: The first report*. Wellington: Ministry of Social Development.
- Morris, A. (1997). *Women's safety survey 1996*. Wellington: Victimization Survey Committee.
- Nash, M., & Read, L. (1992). How women consumers experience legal processes of family separation: Part 1. *Family Law Bulletin*, 3, 58-60.
- New Zealand Law Commission. (2004). *Delivering justice for all*. New Zealand: NZLC R85
- New Zealand Parliamentarians' Group on Population and Development (NZPPD). (2005). *Creating a culture of non-violence*. Wellington: NZPPD.
- New Zealand Family Violence Clearinghouse. (2006). *An agenda for family violence research*. Canterbury, N.Z: New Zealand Family Violence Clearinghouse, University of Canterbury.
- New Zealand Law Commission. (1997). *Women's access to justice: Women's access to civil legal aid*. Law Commission miscellaneous paper 8. Wellington, N.Z.: Law Commission.
- O'Neill, D. (1998). A post-structuralist review of the theoretical literature surrounding wife abuse. *Violence Against Women*, 4, 457-490.
- Polkinghorne, D. E. (1988). *Narrative knowing and the human sciences*. Albany, NY: State University of New York Press.
- Polkinghorne, D. E. (1995). Narrative configuration in qualitative analysis. *International Journal of Qualitative studies in Education*, 8, 12-28.
- Pond, R. (2003). *The legal response to men's violence against women (ex-)partners: Narrative representation of women's experiences and discourse analysis of lawyers' talk*. Unpublished Doctoral Thesis, Massey University, New Zealand.
- Pond, R. & Morgan, M. (2005). Women's experiences of using lawyers for domestic violence in New Zealand: Criticisms and Commendations. *Women's Studies Journal*, 19, (2), 79-106.
- Recordon, P. (2005). *The family violence specialist court*. Towards a Restorative Society Symposium, VUW Wellington, October 2005.
- Ritchie, J. (2005) Commentary: Women's violence to children. *Women's Studies Journal*, 19, (2) 131-136.
- Riessman, C. K. (1993). *Narrative analysis*. Newbury Park, CA: Sage Publications.

- Rose, N. (1997). Assembling the modern self. In Potter, P. (Ed.), *Rewriting the self: Histories from renaissance to the present* (pp.224-248). London & New York.: Routledge
- Rogers, R. (2000). The uncritical acceptance of risk assessment in forensic practice. *Law and Human Behaviour*, 25, 595-605.
- Sarbin, T. (1986). The narrative as a root metaphor for psychology. In T.R. Sarbin (Ed.). *Narrative Psychology: The storied nature of human conduct* (pp. 3-19). New York: Praeger.
- Second Māori Taskforce on Domestic Violence (2004). *Transforming whānau violence – A conceptual framework*. Wellington: Te Puni Kōkiri.
- Smith, J. A., Jarman, M., & Osborn, M. (1999). Doing interpretative phenomenological analysis. In M. Murray & K. Chamberlain (Eds.), *Qualitative health psychology* (pp. 218-240). London: Sage.
- Smith, J. A., & Osborn, M. (2003). Interpretative phenomenological analysis. In J. A. Smith (Ed.), *Qualitative Psychology* (pp. 51-80). London: Sage.
- Standing Together Against Domestic Violence (2006). *Lessons learnt, 2006: A three year overview of the Specialist Domestic Violence Court*. West London: Standing Together Against Domestic Violence.
- Stewart, J. (2004). *Specialist domestic/family violence courts within the Australian context*. Australian Domestic & Family Violence Clearinghouse. Issues Paper 10.
- Snively, S. (1994). *The New Zealand economic cost of family violence*. Family Violence Unit, Wellington: Department of Social Welfare.
- Te Puni Kōkiri. (1994). *1993: The international year of the world's indigenous people*. Wellington: Te Puni Kōkiri.
- Webb, D., Atkin, B., Caldwell, J., Adams, J., Henaghan, M., Clarkson, D., & Treadwell, P. (2001). *Family law in New Zealand* (10th ed.). Wellington, N.Z.: Butterworths.
- Wexler, D. (1999). *Therapeutic jurisprudence: An Overview* (Adapted from a lecture given at the Thomas Cooley Law School). Retrieved 16th June, 2006, from <http://www.law.arizona.edu/depts/upr-intj/>
- Wilson, M. & Yeatman, A. (Eds.). (1995). *Justice and identity: Antipodean practices*. Wellington: Bridget Williams Books.

Appendix A: Methodology

Methodological Rationale

Language and other methods of meaning-making systems are of particular interest to this research. This research understands language as active, constructive, evaluative and performative. The way language is used constitutes interpretations of particular experiences, understandings of specific phenomena, and forms of social action (Gergen, 1985). For example the categorisation of high risk and low risk offenders developed through criminology and forensic psychology enable and constrain the interventions available to individual offenders. The way in which family violence is understood, as perhaps a private matter or a social problem, is related to the way in which interventions are advocated and practiced and the kinds of responses that are regarded as competent or inappropriate.

Given the importance of language, and the diversity of meanings ascribed to events and relationships from perspectives that are contextually embedded in social, cultural and historical conditions, this study has been conducted within an interpretivist epistemological framework and engaged data generation and analysis strategies that are consistent with interpretivism: Interpretive Phenomenological Analysis (Smith, Jarman & Osborne, 1999; Smith & Osborn, 2003) and Narrative Analysis (Riessman, 1993; Polkinghorne, 1988, 1995).

Ethical Issues

The ethical principles that underlie the Massey University Code of Ethics inform the ethical conduct of this independent evaluation. The guidelines of *Massey University Code of Ethics* necessitate that care be given to ensure informed consent, confidentiality, avoidance of harm and deception, social and cultural sensitivity, and understanding that the rights of participants supersede those of the researchers. These ethical considerations were addressed through various strategies involving recruitment, data collection, analysis and collaboration and outlined in the following sections. An ethical protocol for the conduct of this evaluation was approved by the Massey University Human Ethics Committee (Southern B Application 06/04).

Following the principles outlined in Fourth Generation Evaluation Research (Guba & Lincoln, 1989) and the collaborative approach advocated in the Government's Te Rito Policy (MSD, 2002) the researchers of this project are committed to a collaborative approach to the research process. The research was undertaken after an invitation from Judge Phil Recordon, a resident Judge at Waitakere to negotiate an evaluation the WFVC. The researchers spent five months prior to undertaking this project meeting with the key stakeholders including the Judiciary, Viviana and WAVES. During this time we also identified the different dimensions of the Court's sphere of influence, and developed research proposals for four separate but interrelated studies to provide evaluative evidence of the Court's effectiveness in responding to family violence.

Participants Recruited

Guidelines in qualitative research suggest that optimum sample sizes for complex, unstructured data is around 15–20 participants. A larger sample size is unlikely to provide any advantage because of a phenomenon known as saturation. Saturation refers to the point at which collecting new data does not add new information to the analysis and it is generally agreed that this occurs once a sample size exceeds fifteen (Guest, Bunce, & Johnson, 2006).

30 people representing all the key stakeholders; Waitakere Judiciary, Waitakere Anti Violence Services (WAVES), the Community Victim Support Network, (Viviana, Tika Maranga, Victim Support), Police, Community Probation, ManAlive, Court staff, including Victim Advisors and defence Counsel were invited to participate in the research. The list of potential participants was compiled with the assistance of Judge Phil Recordon, Helen Jones (WAVES coordinator) and Glenda Ryan (Viviana, Chief Executive Officer).

Each potential participant was sent a letter, from the researcher, Sarah McGray, providing information on the purpose of the research and their rights if they decided to participate. The researcher only initiated additional contact with participants if they indicated an interest to take part in the research or contacted the researcher with additional questions. All participants were required to be over the age of 18 and did not include persons whose capacity to give informed consent may be compromised. All participants were proficient in English. Consent to participate was given to the researcher in writing.

Of the 30 people initially contacted the researcher received replies from 26 people indicating a willingness to participate. This was representative of a response rate of over 85% which exceeds acceptable response rate standards by a considerable percentage (60% would be regarded as excellent, and 30% as acceptable). Therefore the sample size was more than sufficient for the purpose of the qualitative research that was been undertaken. Of the 26 people who initially responded, 23 people took part in the study and there were at least two participants from every professional, state or community group contacted. Two people who responded did not complete interviews due to work commitments; appointments were arranged but were cancelled by the participants on the day. One person did not respond to requests to arrange an interview time. The researcher was also passed a business card at Court while the research was in progress, and was told that the person had expressed an interest to participate. The researcher emailed the person with a copy of the research information sheet but no response was received.

Data Generation

Two types of qualitative data collection strategies were used with Court participants: individual one-to-one interviews and focus groups. Both interviews and focus groups have the potential for generating complex accounts and stories of experiences. Interviews are conducted more privately in that the participant meets only with an interviewer. Focus groups enable participants to meet together with the interviewer. Collecting data through both interviews and focus groups enables us to be flexible with regards to the needs of particular participants. It also provides two different, socially salient data collection modes: a conversation between two people, and a group discussion which increases the potential for collecting rich and complex

data. The interviews and focus groups took place over a two-month period between June 2006 and July 2006. All participants had the option to participate in interviews and/or focus groups.

Interviews and focus groups were organised around open-end questions intended to explore the participant's experience of working with the protocols of the WFVC and how they understand the difference between the WFVC and the normal running of the Waitakere District Court. The interviews and focus groups used conversational style interviewing to maximise the potential for participants to respond to questions from their own point of view, and include as much detail as they are willing to provide. In total three focus groups were held and 16 interviews. 11 people participated in only a one-on-one interview; seven people only took part in focus groups with five participants taking the opportunity to do both.

Interviews were conducted privately in a place that was convenient and safe for the participant and researcher. Focus groups were conducted with four to five participants, who had agreed to keep the conversation confidential, and in a setting that was convenient and safe for the participant and researcher. To avoid any discomfort (physical, psychological, social), incapacity or other risk of harm to individual participants as a result of participation in focus groups facilitation strategies were put in place so that every person involved was ensured a fair hearing and was not intimidated or dominated.

Interview Schedules

Interviews and focus groups were run as a conversation around the how the WFVC works in terms of the experiences of people who are involved in a professional capacity. The following prompts were used when required, but participants were also encouraged to pursue matters of their own interest.

1. What is your role with the WFVC?
2. What do you think is the purpose of the WFVC?
3. Is the WFVC working based on your understanding of its purpose?
4. What do you see as the benefits the WFVC, i.e. what is the WFVC doing well?
5. What are the problems with the way the WFVC is currently working, i.e. what could the WFVC be doing better?

All interviews were audio-taped and focus groups audio-taped and videotaped. Tapes were transcribed so as to include the content of all contributions to the conversation, including those of the interviewer. Guided by the understanding that the rights of participants supersede those of the researchers, all transcripts from the interviews were returned to participants make corrections to their contributions, delete any parts they did not want included and to make any additional comments. Participants returned the transcripts with signed release forms authorising their use in the analysis stage.

As well as the research method detailed above this research ensured the confidentiality and privacy of the participants and minimised any risk of potential harm to participants and researcher through incorporating the following elements. No information that could identify participants has been given to any person outside the research team. Participants were given a unique identifier and the participants' identities have not and will not be disclosed in reports of the research. As an additional precaution, where quotes from participants' transcripts

identify their role in the Court and are used in the report, a second unique identifier has been assigned to ensure that these excerpts cannot be 'matched' to any other quotes used from their transcripts. We note that the identity of Judges of the Court is available as public information and have not removed their names when participants have referred to them. Tapes and transcripts are in a locked draw in the researchers' work place. Computer files holding any identifiable data are stored on a computer with a password only known the researcher. All backups are stored in the locked draw at one of the researchers' homes. Consent Forms are stored separately in a locked filing cabinet in another office in the School of Psychology, Massey University, Palmerston North.

In addition to transcript data, we also collected archival data on the evolution of the Court provided by WAVES, and correspondence provided by various participants. Archival data was used alongside participants' accounts as evidence of the process of the Court's evolution. It also provided a set of documentary accounts that served to verify participants' points of view. A full list of documents made available to the researchers appears in Appendix C.

In keeping with the principle of collaboration that informs this research, a draft preliminary report was made available to three representatives of key stakeholders for feedback before its release to the Waitakere Family Violence Court Focus Group.

Analytic Strategies

Given that the research aims for an understanding based on the viewpoints of those who work in the Court and are involved in its practices, the overall methodology needed to be developed within an methodological framework that emphasises knowledge as understanding, is able to take account of the specificity of diverse experiences; provides strategies for analysing everyday understandings; and honours the integrity of experience from the point of view of research participants. Interpretive phenomenology and narrative psychology both provide frameworks that can meet these needs and are consistent with each other.

Interpretive phenomenological analysis (IPA) was selected as the most appropriate methodology for the preliminary analysis of the present study because the central aim of IPA is to discover what an object or event is like from the participant's perspective by inviting them to tell the stories of their own experience, in their own words. The meanings that individuals ascribe to events are the central concern for researchers using IPA. IPA does not attempt to test any predetermined hypotheses. Instead, questions are broadly framed to provide the researcher with the flexibility to explore areas of interest in detail.

IPA uses thematic textual analysis as its primary analytic strategy. This involves coding transcriptions of the interviews and focus groups alongside any salient reflections of the interviewer related to interpreting transcripts. Coding following the IPA framework allowed for the emergence of interactions, experiences, points, and patterns of complex stakeholder issues, which aided the analysis and evaluation process.

IPA: Coding and Themes

IPA involves intense analysis of each transcript in an attempt to understand the complex meanings of the respondents' stories and accounts. In order to organise and represent the meanings that were interpreted, the researcher engaged in the following process:

Initial notes were made as transcripts were analysed individually, line by line. The left-hand margin was used to note anything that was significant or interesting, including poignant

background information, descriptive labels, similarities and differences, and preliminary interpretations.

The right-hand margin was used to note emerging themes by making connections among the codes. In essence, the initial notes in the right-hand margin became succinct phrases representing the interpretation the text, and using the participants' own words as far as possible. As the connections between codes became more systematic, the emerging themes were recorded. Quotes from transcripts were then organised thematically. Each quote identified the participant by a two letter initial, and provided the line number of the beginning of the quote from the relevant transcript. Wherever quotes are included in the report, they are presented in this format.

The content of the emergent themes were organised into groups by identifying relationships and making connections that resulted in clusters of themes. These clusters were checked against the transcripts for validity, and a set of quotes were identified as providing evidence of the theme. Finally, a master table of themes for the clusters was compiled, giving each cluster of themes a name that represented the overarching or superordinate theme, and listing the relevant subordinate themes beneath them. The thematic structure of the results is shown in Table 1 on the following pages.

Table 1 Master table of themes

Superordinate A:	Development of the Court
Subordinate	The Victims Rights Act 2002
	Legality of the Process
	Fairness (Natural Justice)
	Victim Statements from CVA's
	Set up of the day
	Monitoring
	Funding/Resources
	Training
	Stakeholder (community and government) Collaboration
	Information Sharing
	Police and CVA
	VAs and CVAs
	The Family Violence Focus Group
	Developing the protocols

Table 1 Master table of themes

Superordinate B:	Roles within the WFVC
Subordinate	Police
	Police Prosecutors
	The Judiciary
	Community Victims Advocates (CVS)
	Accountability of CVA
	Court Victim Advisors (VA)
	Service Providers
	Salvation Army
	CADS
	ManAlive
	Defence Lawyers
	Defence Lawyers and the Protocol
	Community Probation
	Defendants/Offenders
	Complainants/Victims

Table 1 Master table of themes

Superordinate C:	Relationships between the different Roles
Subordinate	Police and Defence Lawyers
	Defence Lawyers and CVA
	Extravagating
	Template
	Differing views
	Judges and Defendants
	Coercion/Pressure
	Encouraging
	Therapeutic
	Role as parents
	Repair/healing
	More damage
	Judges and Victims/Families
	Victims and CVA and VA
	Neutrality
	Advocacy
	Judges and CVA
	Speaking rights

Table 1 Master table of themes

Superordinate D:	Aims of the Court
Subordinate	To overcome systemic delays in Court process and to minimise damage to families by delay
	Efficiency
	Speed
	Tension with a therapeutic approach
	Timeframes – 2,4,6
	To concentrate specialist services within the Court process
	Specialisation of Judges, Defence Lawyers and Police Prosecution
	Community Services in Court
	To protect the victims of family violence consistent with the rights of defendants
	Safety of Victims
	Sharing information
	Rights of offenders
	To promote a holistic approach in the Court response to family violence
	Therapeutic Jurisprudence and Problem Solving Courts
	To hold offenders accountable for their actions
	Accountability to the Courts – conviction and punishment
	Getting off easy
	106's and Current Sentencing Options
	Accountability to the victims – the violence stops
	Accountability and Change
	Presumption of guilt

Table 1 Master table of themes

Superordinate E:	Understandings of Family Violence
Subordinate	Alcohol
	Cycle of Abuse
	Gendered
	Low end versus high End
	Minimisation /Exaggeration/ Underreporting
	One Offs
	Poor/ Maori/ Lower Socio Economic
	She asked for it?
	Criminal or Private Matter
	Possibility of Change

Narrative Analysis: Sequences and Stories

The aim of the second stage of the analysis was to represent the participants' perspectives on events and relationships that were significant to their understanding of how well the protocols of the Court were meeting their aims. These perspectives were contextualised through identifying current Government responses to family violence in legislation and policy, and the research literature that informs contemporary knowledge and competencies related to family violence.

As a first step in the narrative analysis, the contents of superordinate themes A – C were reorganised into temporal sequences representing the evolution of the Court. Key events, such as the meeting of initial stakeholders interested in a collaborative response to family violence in Waitakere, or the introduction of the Sentencing Act (2002), were identified, and connected with participants' interpretations of the impact of such events on roles, relationships and practices within the Court. In representing the evolution of the Court through temporal sequencing, evaluations were incorporated through linking significant events and relationships with reference the context of Government responses and specialist research.

In the second step of the narrative analysis, the contents of superordinate themes A – D were reorganised around three sets of aims set out in the WFVC Protocols: those related to timeframes, those related to specialisation, and those related to safety and accountability. These sets of aims provided organising principles based on evaluative criteria: they specified the outcomes that the WFVC Protocols were designed to achieve. Within each of these sets of criteria participants' perspectives on successes and challenges were linked to particular events, roles and relationships as well as the context of Government responses and specialist research. In representing the successes and challenges of the Court in relation to specific intended outcomes evaluations were also able to be incorporated through linking significant events and relationships with reference to the context of Government responses and specialist research.

These two phases of narrative analysis produced two distinct but interrelated narrative representations: The story of the evolution of the WFVC and the story of its Protocols in practice.

The contents of superordinate theme E were not included in the narrative analysis and form the basis of a specific dimension of a subsequent discourse analysis due to be completed by Sarah McGray in December 2007.



Appendix B: Protocols Relating to Family Violence Court at Waitakere District Court

CONTENTS

1. Introduction
2. Family Violence Court Protocol
3. Protocol for Family Violence Victim Services
4. Practice Note – Domestic Violence Cases – Chief District Judge
5. Family Violence (NG) Pre-Hearing Checklist

INTRODUCTION

Waitakere District Court has a history of providing an innovative approach to dealing with family violence cases since the early 1990's when the first fast track cases were heard along with the provision of advocacy and support services for victims and special programmes for offenders.

Over the following decade a number of factors combined to derail the fast track process. Court rosters, the availability of judges, the changes in services to victims all impacted on the level of services to family violence victims.

In March 2001 the Resident Judge, Judge Johnson called together a meeting of stakeholders to consider some ideas he had for addressing the problems associated with the delays in Court. The outcome of this meeting was the forming of a Family Violence Focus group, made up of involved stakeholders, and chaired by the WAVES coordinator at Judge Johnson's request.

This group undertook the work of putting together the Family Violence Court Protocol, and then piloted the protocol for a period of six months in 2001.

At the end of that time the protocol was formally established by the Waitakere District Court, and Family Violence Court days were, and continue to be held every Wednesday.

Over time some issues were identified and discussions with all parties have enabled issues to be resolved and agreement reached as to how the Court and community will continue to work together to provide the high level of service that has always been a feature of this Court.

This document brings together the significant agreement and protocol that forms the basis for how Family Violence court operates.

The agreement between Court and Community Victim Services clarifies the respective roles of Court staff and community services for family violence victims, and how Court staff will work with the community to enable those services to be provided at the Court.

We would like to acknowledge the high level of commitment shown by all parties to the agreement and the protocol, to working together to find solutions to any problems, and the willingness of all parties to find solutions that meet the needs of those most affected by violence: the families.

This is by no means a definitive solution to dealing with family violence cases in the criminal justice systems but these documents are a starting point and we will continue to review the protocols at regular intervals.

June 2005

**Waitakere District Court
Family Violence Court Protocol
June 2005**

AIMS

1. To overcome systemic delays in Court process
2. To minimise damage to families by delay
3. To concentrate specialist services within the Court Process
4. To protect the victims of family violence consistent with the rights of defendants.
5. To promote a holistic approach in the Court response to family violence.
6. To hold offenders accountable for their actions.

STRUCTURE

Each week, on Wednesdays, a “Family Violence Court” (FVC) will be held, to the exclusion of any other criminal work, to deal with all charges where family violence is involved. Apart from custody arrests, all summonses and remands will be to a Wednesday. The FVC will deal with pleas, sentence indications, sentencing, and (where time allows) defended hearings. Other defended hearings will be allocated early trial dates on ordinary defended days, or hearing days rostered for the purpose.

As far as possible, sentencing process will be conducted on a same day basis.

PROCESS

A. On first appearance

1. Except when a defendant indicates an intention to plead guilty at first call, the Registrar will adjourn the matter on standard bail conditions to a FVC in the following week; or by consent in custody to the nearest FVC. Where bail is sought and opposed, the matter will go before a Judge in the usual way.
2. Duty Solicitors are to facilitate legal aid applications, and assignments are, where possible, to be made that day.
3. Pleas of guilty at first appearance are encouraged, and attract the maximum sentencing credit. Not guilty pleas will not be entered (to discourage the belief that not guilty pleas are necessary to get discovery or time to take instructions).

4. Police basic disclosure packs are to be available promptly for all defendants, wherever possible at first call from the prosecutor.
5. The complainant's views about bail are to be conveyed to the Court either by a Victim Impact Statement, or by memorandum from Community Victim Services or the Victim Advisers (Victims Rights Act s30). For the rules as to access by defendants and counsel to Victim Impact Statements, and their use and return, see Victims Rights Act ss21-27.

B. Between first appearance and next FVC

1. Counsel and the officer in charge of the case are expected to discuss caption summary and plea.
2. Police to obtain the views of the victim (from Community Victim Services or the Victim Advisers) before the next FVC.
3. A plea is expected at the second appearance, although a further remand for in-custody offenders may be appropriate.
4. Any adjournments for plea beyond FVC only with Court approval.

Note: In this Court objection will be taken to contact between complainants and counsel, whether by counsel approaching complainants or vice versa, except through and in the presence of Community Victim Services or the Victim Advisor, who must be given reasonable notice of such intentions.

C. Family Violence Court day (FVC)

1. Sentence indications may be sought, and discussion about best process to follow for the family concerned may be entered into where appropriate. Not guilty pleas before disclosure, or before proper consideration of the charges, will be resisted. Defendants may be asked to confirm not guilty pleas entered through counsel.

On guilty plea

2. Stand-down reports to consider sentencing options, including the defendant undertaking an anger management, drug/alcohol or other programme, may be sought, to assist with same day sentencing.
3. The up to date views of the victim must be put to the Court, by way of Victim Impact Statement or through Community Victim Services or the Victim Advisers.
4. Same day sentencing unless :

- (i) further remand for full pre-sentence report
 - (ii) the defendant is to voluntarily undertake a programme before sentence is passed
 - (iii) the Court is considering a discharge without conviction after steps have been taken to address appropriately the family issues
5. Any variation to the charges laid, or amendments to police caption sheet, will be accepted only for principled reasons which are openly canvassed and recorded. Wherever possible victim input will be required, particularly where significant changes to the caption sheet are proposed.
6. Discharges without conviction will be limited to the rare circumstances envisaged by ss.106 &107 of the Sentencing Act.

On a not guilty plea

7. There will be no status hearing. The charge(s) will be adjourned to the earliest available date for hearing, having particular regard to the situation of a defendant in custody.
8. If a defendant wishes to change his/her plea before the hearing date, the defendant or counsel should arrange for the case to be called in the next FVC. This is consistent with the desirability of helping families to repair as soon as possible and to earn any sentencing concession in line with national sentencing policy for pleas of guilty.
9. Changes of plea on the defended hearing date, while more favourable for a defendant than conviction following defended hearing, will not earn the same sentencing credits given for early plea.
10. Counsel and prosecutors are expected to communicate in good time before defended hearings to resolve any issue which might upset the matter proceeding on that day.
11. Police and defence counsel are to complete the Family Violence Not Guilty Checklist (copy attached) on the day a not guilty plea is entered (that is at FVC).

D. Available sentences

Parties should be aware that all the available sentences in the Sentencing Act may of course be applied but special consideration will be given under this pilot to the following outcomes, singularly or in combination, depending on the fact situation established, rather than necessarily the particular charge laid:

- (a) Imprisonment

- (b) Imprisonment with special release conditions to undertake a programme, extending if appropriate beyond sentence expiry date.
- (c) Community work and supervision
- (d) Community work
- (e) Supervision with special conditions involving anger management and/or drug/alcohol programmes
- (f) Section 112 Sentencing Act non-association order.
- (g) Conviction and discharge
- (h) Convicted and ordered to come up for sentence if called upon.
- (i) Section 106 discharge without conviction, in truly minor cases particularly where voluntary anger management is completed
- (j) In appropriate cases resolution may include the making of a protection order under the Domestic Violence Act, and if necessary final disposition delayed pending completion of the attendant programmes.

E. Bail issues

Standard conditions of bail will be imposed unless other conditions are agreed following input from the police and/or Community Victim Services or Victim Advisers. Likewise conditions of any bail variation should involve input on behalf of victims.

F. Involvement of Community Victim Services

Community Victim Services is a term incorporating the various community organisations involved in victim support in family violence cases in Waitakere. Their involvement in the Family Violence Court is in accordance with the Protocol for Family Violence Victim Services at Waitakere District Court that was developed for this purpose. Their wish to speak should, when necessary, be made known to the presiding Judge by the prosecutor.

This practice proceeds on the expectation that there will be common agreement between all interested groups, including counsel for defendants, with the philosophy that healing of the family is a paramount consideration and that it is damaging to proceed on a not guilty basis except in cases where there is a clear denial.

June 2005

**Protocol for
Family Violence Victim Services
at Waitakere District Court
October 2004**

Principles

1. To provide the best possible level of service to victims of family violence, in accordance with the Victims Rights Act 2002.
2. To recognise the long-standing partnership between the Waitakere Court and Community Victim Services.
3. To recognise the statutory obligations of Court staff and the Police under the Victims Rights Act.
4. To avoid confusion among victims in relation to the available support and advisory services.
5. To harness the experience and commitment of Community Victim Services in Waitakere.
6. To reinstate the high level of co-operation and mutual recognition among all victim services at Waitakere.
7. To support the effective operation of the Waitakere Family Violence Court in accordance with its protocol.
8. To re-establish formal understandings, following the termination of the 1999 Service Level Agreement between the Court and WAVES.

Resources and Realities

1. The Court must operate within the parameters of the Victims Rights Act 2002.
2. Procedures should reflect the reality of information about cases routinely being disclosed to the public in open Court.
3. The POL 400 Family Violence forms completed by the Police in every family violence case are made available routinely to the three main Community Victim Services namely Victim Support, Viviana and Tika Maranga (collectively referred to hereafter as CVS), in accordance with the Memoranda of Understanding between the Police and CVS.
4. As a result of their receiving the POL 400 forms CVS will be aware of all family violence cases and victims which result in a Court prosecution.

Procedures

1. CVS will continue their call-out service to victims.
2. The first letter sent out to victims by the Victim Advisor (VA) will outline the services available through the VA, and include a leaflet outlining the services available through CVS
3. In their first contact with victims CVS will outline their services as well as the services available through the VA.
4. All CVS groups, and the VAs, will follow up contact from victims, either by telephone or in person, as requested by victims.
5. Offenders bailed by the Deputy Registrar at first appearance will receive standard bail conditions i.e. non-association with complainant and residential condition, except at the express request of the victim conveyed through the VA or CVS.
6. A VA will not be present in the Family Violence Court (FVC), but will be available to the Court on other days. CVS will be present throughout FVC days. Both VAs and CVS will be available to appear in Court if or when a Police Prosecutor or Judge requires attendance.
7. The VAs and CVS will liaise to try and ensure there is no unnecessary duplication. A memoranda will be provided as early as possible to the Judge, Police, Defence Counsel and victims.
8. If a victim contacts a VA saying they need support the VA will refer the victim to CVS for support. The VAs will continue to provide information and advice to victims at Court when requested or approached.
9. The Police and CVS will liaise over appropriate and relevant bail conditions for Police bail hearings and first Court appearances. Where appropriate memoranda will be submitted to the Court.
10. At the time of filing an information sheet Police and Court staff will identify Family Violence cases by using a red "FV" stamp.
11. On all Court days all files stamped "FV" will be placed in a tray by the Court taker after the case is heard, to be accessed by CVS in Court during adjournments.
12. A copy of the Court list will be made available to CVS on request at the Criminal Court counter when they sign for security cards etc.
13. All VAs and CVS staff will wear identifying name badges at Court.
14. Court files are not to be removed from Court unless Criminal Manager gives permission.

15. Court files removed from the courtroom must be returned promptly to ensure data entry and security of the court record is maintained.
16. In the layout of the FVC courtroom there will a place for CVS to be positioned in the area designated for Community Groups/Probation/Collections/Media. When necessary CVS can be seated beside the prosecutor to ensure the victims views are conveyed to the Court.
17. A lockable room in the Court building will be equipped with a desk and chair and be made available for CVS during business hours. CVS will, together with the VAs, also have the use of the victim suite.
18. A phone will be provided for CVS, together with a logbook for recording cellphone usage on a monthly basis. The phone will be used for victim related matters stemming from a Court appearance. The Court administration will monitor the logbook on a monthly basis to ensure costs to the business are relative.
19. Access to photocopying facilities will be made available in the Criminal Office to CVS for court business related matters only, provided that CVS nominate two designated staff and submit the names to the Criminal Caseflow Manager. In the interest of security and safety of Court staff, the Criminal team should be familiar with CVS designated staff.
20. CVS may attend Court on non-FVC days, to support family violence victims when appropriate. On those days the same arrangements as set out above will apply.
21. CVS will make their services available to all family violence victims, and the VAs will encourage victims to make use of those services during and after the Court process.
22. All those present in Court must observe standard Court protocols and procedures, and minimise movement around the body of the Court while the Court is sitting.
23. This protocol will commence in August 2005 and be reviewed in December 2005.

DOMESTIC VIOLENCE: CHIEF DISTRICT COURT JUDGE'S PRACTICE NOTE

Introduction

On 23 November 2004 the Chief District Court Judge, David Carruthers, issued a draft practice note to all District Courts requiring that priority be given to domestic violence cases within specific timeframes.

Court Timeframes

The practice note comes into effect on 1 December 2004. These timeframes include:

- A plea to be entered no more than two weeks from first appearance
- A status hearing is to be held within four weeks of a not guilty plea
- A defended hearing is to be held within six weeks of the status hearing if the matter has not been resolved.

It is appreciated that this is already occurring in some areas. The Chief Judge's note aims to have best practice applied nationally.

Graham Thomas
Superintendent
National Prosecution Manager

PRACTICE NOTE- DOMESTIC VIOLENCE CASES

1. This practice note applies to all summary domestic violence prosecutions in the District Court.
2. The purpose of this practice note is to introduce a standard procedure for the management of domestic violence prosecutions, so that such cases are given priority and are heard and finalised with the least possible delay that is consistent with the rights and interests of all parties, including defendants and complainants.
3. In this practice note "domestic violence charge" includes any charge which alleges conduct of a nature within the definition of "domestic violence" in section 3 of the Domestic Violence Act 1995.
4. Subject to compliance by the Police with disclosure obligations, a plea to a domestic violence charge is to be entered not more than two weeks after the defendant's first appearance
5. If the defendant pleads guilty, he or she is to be sentenced or remanded for sentence in the usual way.
6. If the defendant pleads not guilty, and if status hearings are held for domestic violence cases at the court where the charge is to be heard, the following timetable is to apply:
 - a. The status hearing is to be not more than four weeks after the plea is entered.
 - b. If the charge is not resolved at the status hearing, the defended hearing is to be not more than six weeks after the status hearing (if practicable, the date for the defended hearing should be allocated, on an "if required" basis, when the status hearing date is allocated).
7. If the defendant pleads not guilty, and if status hearings are not held for domestic violence cases at the court where the charge is to be heard, the defended hearing is to be not more than six weeks after the plea is entered.
8. The time limits prescribed in this practice note may be extended to the minimum extent necessary in circuit courts that sit less frequently than fortnightly. However, consideration should then be given as to whether a case should be transferred to the nearest court where sittings are more frequent.
9. Notwithstanding the preceding paragraphs, but subject to paragraph 11, any domestic violence charge is to be heard and determined, with the exception of any sentencing, within 13 weeks (ie, three months) after the defendant's first appearance. If such a charge is replaced by another domestic violence charge, that time limit relates to the first appearance on the original charge.
10. The time limits prescribed in this practice note may be extended by not more than a total of four weeks if the defendant's first appearance is between 10 November and 10 January, both inclusive.
11. This practice note takes effect on 1 December 2004. In respect of any case that was commenced before that date, it is to apply to all steps in the proceeding which occur on or after 1 December 2004.

D J Carruthers
Chief District Court Judge
November 2004

FAMILY VIOLENCE PRE-HEARING CERTIFICATE

DISTRICT COURT
WAITAKERE

CRNs: _____

POLICE V. _____
(Defendant)

COUNSEL: _____

CHARGE(S): _____

1. The following facts are admitted by the defence, and proof thereof will not be required: _____

2. The following matters will be in issue at the hearing:

3. The evidence of the following witnesses and/or the following exhibits will be admitted by consent:

- | | |
|---|---------------|
| 4. Defendant in custody only on current charge(s) | Yes/No |
| 5. Video interview with defendant | Yes/No |
| 6. If "Yes" duration of interview? | minutes/hours |
| 7. Interpreters required? (If so, what language) | _____ |
| 8. Number of witnesses for prosecution: | _____ |
| 9. Number of potential witnesses for defence | _____ |
| 10. Estimated hearing time | _____ hour/s |
| 11. Any other matters | |

Prosecutor/Officer in Charge

(Counsel for) Defendant

Hearing Date: _____

Endorsed by the Court:

Appendix C: Archival Document List

Department of Courts (Personal communication to Judge Mather, 4th July 2001)

Johnson, R. (Personal communication to Court Manager, 21st February 2001)

Service Level Agreement (1999) Between: Court Manager and Staff of Waitakere District Court and WAVES.

Viviana (Personal communication, January 2006)

Waitakere Family Violence Focus Group. (2001). Family Violence Court Pilot.

Waitakere Family Violence Focus Group. (2005). Protocols Relating to Family Violence Court at Waitakere District Court.

Waitakere Domestic Violence Project. (1993). *Waitakere violence programme newsletter*.

WAVES. (1999). *An interagency approach to family violence in West Auckland*. Waitakere.

WAVES minutes 2001 – 2006

- 23 March 2001
- 27 March 2001
- 11 April 2001
- 26 April 2001
- 10 May 2001
- 18 May 2001
- 30 May 2001
- 21 August 2001
- 12 November 2001
- 16 January 2003
- 23 January 2003
- 17 December 2004
- 4 February 2005
- 28 March 2006

WAVES letter 3rd December 2004. RE: Family Violence Focus Group

WAVES Victim Advocate Job Description

WAVES Victim Advocate Information Sheet