THE SYSTEM MATTERS BREAKFAST

Tuesday, 14 November 2006 at 7:15am

Speakers Hall, Parliamentary Annex

"The Role of Specialised Domestic Violence Courts."

Judge Marshall Irwin

Chief Magistrate

I speak to you this morning as an ambassador for White Ribbon Day on 25 November 2006.

As you will know, White Ribbon Day is an international day of awareness on which men throughout Australia wear a white ribbon as a public statement that they do not condone violence against women.

I do not consider that doing so gives rise to an apprehension of bias in deciding cases as a judicial officer where it is alleged that a woman is the victim of violence.

The fact is that no right thinking person can condone violence against women. It is a different matter to determine objectively whether such violence has occurred as alleged in circumstances of an individual case. However I respect the opinions of those who may take a different view on this issue.

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

The Australian Institute of Family Studies research in 2000 indicated that 66 percent of separating couples point to violence as a cause of marital breakdown, with one in three describing the violence a serious.

Surveys by the Australian Institute of Criminology in 2004 and the Australian Bureau of Statistics in 1996 show that 57 percent of Australian women will experience an incident of physical or sexual violence by a man in their life time.

An indication of the extent of domestic and family violence in Queensland is the 38.2 percent increase in applications to the Magistrates Court over the past 5 years. This period involved the amendment of the *Domestic and Family Violence Protection Act1989* in March 2003 to extend the type of relationships for which protection orders can be made to family members, informal carers and dating relationships. In the first full year of operation of the amendments there was a 24 percent increase in applications.

In the court year ending on 30 June 2006 there were 24,179 applications for protection orders. There were 12,151 temporary protection orders and 16,032 protection orders granted. There were variations of 3,907 of those orders and 285 orders were revoked. The total number of orders made was 32,375.

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

Southport	2,333
Brisbane	1,636
Beenleigh	1,619

Ipswich	1,108
Townsville	1,077

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

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

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

A Canadian Study in 1991 estimated that the cost to society of violence against women in that country as 4 billion dollars[1]. An American study considered property damage, medical costs, mental health care, police and fire services, victim services and lost worker productivity and estimated the cost of domestic violence to be $65 million per year. These cost estimates have not included the long–term costs associated with perpetuating the cycles of violence and victimisation.[2]

Research also confirms that witnessing domestic violence endangers the emotional wellbeing and development of children.[3] Even when abuse is not happening, there is often an atmosphere of fear, anxiety, anger and tension that pervades the family home. The children learn that violence is a normal family interaction and

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[1] *Selected Estimates of Costs of Violence Against Women*, The Centre for Research on Violence Against Women and Children (1995), cited at www.gov.on.ca/owd/resources.

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

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

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

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

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

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

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

Regrettably eliminating family violence is going to take many years. For any real impression to be made on it, courts alone can not solve the problem. It is so pervasive that a community-wide approach based on integrated strategies is the only way forward.[7]

A long term integrated response to the issue would aim to:

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[4] Lilles,McPhee and Boyce, p3.
[5] Bala, M.M.C. et al, (1988) *Spousal Violence in Custody and Access Disputes: Recommendations for Reform.* Status of Women Canada; Doumas,D., Margolin,G., and John, R.
[6] Lilles, McPhee and Boyce, p4.
[7] Boshier, P (Principal Judge, Family Court of New Zealand), (2006) *Domestic Violence: A Comparative New Zealand Perspective*, p4- Calabro Family Law Residential, 19 August 2006.

- Promote the safety of persons affected by family violence.

- Increase the accountability of people who engage in family violence.

- Encourage behavioural changes; and

- Increase the protection of children exposed to family violence.

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

This is particularly so, when it is recognised that the making of a protection order is often just the initial step in a long on-going saga played out before the courts. Whilst protection orders may place restrictions on a respondent's behaviour, they are often breached. In the 2004-2005 court year, the Queensland Magistrates Court dealt with 7889 breaches of protection orders.

Apart from these criminal charges the court deals constantly with charges of common assault, serious assault, stalking, deprivation of liberty, child abuse, wilful damage- all part of the domestic violence overlay that exists between the parties. Regularly, upon the domestic violence alarm being raised, the court may have to deal with applications for Child Assessment Orders and Child Protection Orders or what will now be Parenting Orders containing the new concepts of "living with" "spending time with", "have communication with" and "parental responsibility", in our family jurisdiction. [8]

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

[8] Section 64B of the *Family Law Act 1975* (FLA)

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

This leads me back to the concept of taking a long term integrated response to family violence.

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

This is not a novel concept. Specialist domestic and family violence courts have been identified both internationally and nationally as a strategy for improving the response to domestic and family violence. Many of these courts exist in the United States, and they have developed in Australian Magistrates Courts since 1998 with the establishment of the ACT Family Violence Intervention Program.

In 1999 Family Violence Court programs were established in South Australia and in Joondalup in Western Australia. Specialist domestic violence courts have been trialled at Wagga Wagga and Campbelltown in New South Wales since 2005. And in Victoria a Family Violence Division of the Magistrates Court has been established to operate at Heidelberg and Ballarat as a pilot for 2005-2007.

Evaluation of these programs have found positive outcomes overall for victims, including satisfaction with the process and reduced future acts of domestic and family violence.

In Queensland, the Gold Coast Domestic Violence Service has been operating a community-based integrated interagency response to domestic violence for over 9 years in association with the Southport Magistrates Court. Funding has been received for one court worker. The aims of this project are:

- Enhancement of safety of women and children who have experienced domestic violence;
- Holding perpetrators of domestic violence accountable for their behaviours; and
- Provision of multi-agency responses to domestic violence on the Gold Coast.

Mandated attendance at a 24-week perpetrator program is a sentencing option under this project for breaches of protection orders.

However it has been said in relation to this that:

> "The majority of current sentences imposed for a breach of domestic violence order are primarily that of a fine. The preferred sentencing practice would be a combination of court-directed risk management reviews and intensive probation and participation in a 24 sessions domestic violence education program paid for by the defendant and a jail sentence (if applicable). The court can order the defendant to pay restitution to the victim."

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

I have previously supported the establishment of such a court along the lines of the Victorian model which could hear:

- Applications for protection orders;
- Breaches of such orders;

- Bail applications and criminal offences involving domestic and family violence;
- Associated criminal compensation applications; and
- Civil damages claims for personal injury arising from domestic and family violence.

And it would be able to access intervention programs where the causes of the violent behaviour can be identified and addressed rather then just dealing with the outcome. For example the Victorian Court can order respondents/ defendants to attend counselling to address their violent behaviour.

In assessing whether the introduction of a specialist domestic and family violence jurisdiction in the Queensland Magistrates Court is a realistic prospect in future it is relevant that a problem solving approach utilising the principles of therapeutic jurisprudence has been adopted by the court in relation to other issues, for example the Drug Court program, the Queensland Magistrates Early Referral into Treatment Program, the Murri Court, the Homeless Persons Court Diversion Program and the Special Circumstances List.

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

It is likely a specialist domestic and family violence court would initially have to be established within the court's general budget allocation, unless this is seen to be a priority by the government.

If this is so, like the Murri Court and the Special Circumstances list it will have to evolve gradually, with possibly one court designated for a pilot project. If it is proved to be effective, it is hoped that specific funding and legislative recognition will follow. Any such funding should include support for migrant women and interpreters to assist those who do not communicate in English.

It would also mean that it will not be possible to start with the "Rolls Royce" Victorian model, but rather the start more modestly by building on the Gold Coast Integrated Response Project, or perhaps the Western Australian model. That model at the Joondalup Family Violence Court deals with both civil applications for violence and misconduct restraining orders and all criminal matters relating to family violence.

In my view there is much to be said for adopting this double barrelled approach to stopping violence- the short term approach of protection orders and the long term aim of stopping further violent behaviour by having the option of requiring respondents/defendants to participate in a perpetrator program. I note that attendance at a stopping violence program is required in New Zealand unless there is a good reason to excuse perpetrator from this.[9]

Conclusion

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

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

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

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

[9] Boshier,P.,pp5-6

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

Therefore it may be necessary to make a modest start by building on the Gold Coast Integrated Response Project, or perhaps the Western Australian model.

The Western Australian model deals with both civil applications for violence and misconduct restraining orders and all criminal matters relating to family violence.

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

This is something to aim for in the future.

References

Information paper, Mistrials Advisory Council for Domestic Violence ad Family Violence, Family Violence Courts, Violence Protection Unit, June 2006.