

# Judicial treatment of domestic and family violence in Canada

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## Introduction<sup>1 2</sup>

On May 11 and 12, 2015, the Inter-provincial Forum on Judicial Treatment of Domestic Violence (hereinafter the “Forum”) was held in Montréal. Bringing together various specialists of intra-family violence from political circles, research as well as judicial and psychosocial field workers, the general purpose of the Forum was to reflect together on issues relating to judicial treatment of situations involving domestic violence. The event was organized under the scientific direction of Sonia Gauthier, by the Groupe de recherche et d'analyse sur le traitement sociojudiciaire de la violence conjugale (GRATS), whose work is part of the broader framework of the realization of the Trajetvi team. The first day of the Forum focused on judicial mechanisms dealing with domestic and family violence in Canada. On the second day, participants examined certain problems at the intersection of various law courts and protective justice system in situations involving domestic violence. The present document is a summary of the first day.

The goals of the first day of the Forum were specifically to describe various models of judicial processing specializing in domestic and family violence, to take stock of the stakes related to these specialized mechanisms and to identify which mechanisms could be implemented in Québec. To achieve these objectives, speakers from vari-

ous areas of Canada began by identifying the special features of some of the Canadian courts presently dealing specifically with domestic and family violence.<sup>3</sup> Next, the constitutional and political limitations on setting up unified or integrated mechanisms for judicial processing of domestic and family violence in Québec were described. The day finished with a round table and discussion in which everyone was invited to participate.

This summary is divided into three parts. First, we describe the courts that were the subjects of day one of the Forum. Second, the special features of these courts are identified. Third, the possibilities available to Québec with respect to specialized and integrated courts are discussed. These sections are followed by a few questions that were raised during the day. The summary concludes with reflections on what should be done in terms of follow-up to this day.

## 1. Description of the courts

To illustrate the possibilities and diversity in judicial treatment of domestic and family violence (DV and FV), the Forum’s organizing committee invited speakers from selected specialized courts (SC) dealing with DV in Canada (Moncton, Calgary, Winnipeg and Toronto), the specialized DV judicial process in Montréal,<sup>4</sup> and Toronto’s

<sup>1</sup> The authors would like to express their warmest thanks to the members of GRATS for revising this text.

<sup>2</sup> See: <http://trajetvi.ca/recherche/traitement-sociojudiciaire-de-la-violence-conjugale> under the tab “Réalisations” to access presentations used during the day and complementary resources on this theme.

<sup>3</sup> These tribunals are described in the list by Dugal and Gauthier (2015): <http://www.trajetvi.ca/publication/specialized-or-integrated-judicial-treatment-models-of-intimate-partner-and-family-violence-cases-in-canada-2015>

<sup>4</sup> At present, Québec’s *Courts of Justice Act* does not allow a specialized judicial process to be called a “specialized court.” However, in Québec there are indeed specialized DV judicial processes, such as that used in Montréal.

partially integrated court (IC) of the Ontarian provincial court.

First, it has been noticed that the SCs and IC described on the first day of the Forum shared the same purposes: to protect victims, to hold men who use violence accountable,<sup>5</sup> to reduce waiting times with respect to case processing and to promote access to services for people dealing with DV or FV. Moreover, all of these courts handle violations of Canada's *Criminal Code*, and have to meet the same evidentiary requirements as other Canadian courts with jurisdiction over criminal and penal matters. That said, these courts are different from the latter because they use means such as Crown ownership<sup>6</sup> to personalize and humanize the judicial system for those who are struggling with DV and FV situations.

Other points of convergence between the courts presented concern aspects related to their working conditions. For instance, the advantages of and need of collaboration among the diverse practitioners involved<sup>7</sup> were identified. Also, the work overload that these workers have to cope with due to the high number of cases and limited resources was mentioned by all the speakers.

Finally, another similarity among the presentations concerns the importance of assessing the risk of repeat offence early in the prosecution process to distinguish offenders unlikely to place victims' safety at risk from those at high risk of doing so. However, while all agree on the importance of taking the risk of repeat offence into account, the way this variable is dealt with differs depending on the court. At present, the criteria defining the risk and the different treatment given to offenders categorized as high or low risk of recidivism varies from one court to the next.

Regarding the dissimilarities among the courts described at the Forum, it should be noted that the IC in Toronto is the most different from the others because it is the only court in Canada that uses the "one family, one judge" model<sup>8</sup> and it is the only one that was created with the

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<sup>5</sup> It should be noted that although the phenomenon remains marginal, a number of speakers mentioned that the number of women authors of DV is increasing.

<sup>6</sup> Crown ownership consists in a procedure according to which "the same person acts as a substitute for the Attorney General at all stages of the procedure" (Directeur des poursuites criminelles et pénales, 2009:12 [our translation]).

<sup>7</sup> Police officers, prosecutors and judges in courts with criminal jurisdiction, as well as correctional officers.

<sup>8</sup> "There is a spectrum of how broadly "one family – one judge" can be interpreted. It ranges from one judge for a pri-

specific objective of reducing the problems of coordination between criminal and family courts, in addition to pursuing the objectives of protection and of holding perpetrators accountable.

Regarding more general differences, it was pointed out that the types of cases heard also differ from a court to another. While some deal exclusively with cases of DV (Moncton), others have a broader mandate and hear cases of both DV and FV (e.g., child and elder abuse in Winnipeg). Likewise, the IC in Toronto deals exclusively with summary offences, while the others see to prosecution of all criminal offences occurring in domestic contexts.

Another distinction between the courts concerns coordination of resources, which is taken care of by a designated person in the court in Moncton, but by committees in other courts (e.g., Calgary). Next, as mentioned above, differences in terms of management of the risk of repeat offence were found. While some SCs provide for a mechanism that shifts the accused who are considered at low risk of re-offending towards treatment programs (e.g., Winnipeg), many others do not have such mechanisms. Lastly, another distinction concerns ministerial directives regarding victims who do not want to testify. While in some provinces, the prosecution cannot force a victim to testify against his or her will (e.g., Québec), doing so is possible in other provinces (e.g., Ontario).

When the outcomes of these courts are examined, we find several advantages, which will be discussed in the second part of this summary. Generally, it should be noted that specialized legal procedures tend to help psychosocial and penal practitioners involved acquiring and increase specific competencies because they, unlike their generalist colleagues, deal with DV or FV situations every day.

Despite the positive outcomes of these courts, persistent problems were nonetheless pointed out: the fact that a number of victims recant their testimony and do not want to testify, long waiting times for judicial processing of criminal cases (even though delays have been reduced), difficulties in taking into account the complexity of DV and FV in an adversarial system with relatively rigid rules and practices, and, finally, the number of proceedings that are abandoned, which remains high.

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vate family law case, to one judge for all related civil cases, to one judge for all related civil and criminal cases" (Justice Canada, 2013). In the case of the IC in Toronto, this means that a single judge deals with all related civil and criminal matters.

## **2. The courts' special features**

### **2.1 The scope and advantages of specialization**

In all of the courts that were described through the day, the prosecutors are specialized and specific victim support services are available. However, there seem to be some differences between the courts and districts with respect to the extent of the specialization of police officers, defence lawyers and probation officers.

As identified during the day, the advantages of specialized judicial treatment of DV and FV result mainly from practitioners' deeper understanding of these phenomena. Certainty, specialization makes it possible, on the one hand, to better assess and understand situations to be managed, and therefore to respond more appropriately, and, on the other hand, to reduce practitioners' feelings of powerlessness and discouragement since they have a more thorough understanding of the behaviour of the people with whom they deal. Among other things, a more open attitude to the problem has been identified since, in specialized courts, practitioners "choose" the problem as an area of practice, rather than having it imposed upon them.

With respect to the people dealing with DV, participants said that specialized court treatment of DV makes it possible to reach, inform and raise the awareness of victims more efficiently. Concerning victim protection, it has been found that the specialization of those working in SCs, such as police officers, results in them gathering more evidence when investigating events that they are more sensitive to what victims are experiencing when they meet them, and that they are better able to work in partnership with other professionals. All these improvements together ensure that cases are more likely to proceed, which in the end, increases victims' safety. This said, it was also mentioned by some stakeholders that it is sometimes safer to drop a case in which the victim does not want to testify than to proceed against his or her will. Indeed, the fact of respecting victims' wishes and reminding them that services are available to them if needed could favour the process of requests for help in case of repeat offence, which is frequent in DV situations.

Lastly, it was noted that one of the advantages of specialization is that fewer offenders leave without being given consequences for their actions. With respect of holding perpetrators accountable, there seems to be a relative consensus among the speakers, according to whom many cases end with peace bond order and probation, but less often with more severe measures, such as incar-

ceration. In the framework of such orders and probation, offenders will often be directed to treatment programs intended to change violent behaviours and to promote equality between partners.

### **2.2 Assessment**

On this day of the Forum, the spotlight was placed on the importance of the assessment phase in the specialized intervention process for DV and FV situations. In this setting, the assessment takes place mainly during front-line intervention, and are most often done by police officers and victim services caseworkers. Generally, their purpose is to gain a better understanding of the contexts in which the violence has occurred, to measure the risk that it will be repeated and to determine whether the safety and development of children are compromised. It has been noted that assessment designed to gain a better understanding of the context of violence shows the advantages of considering the control issues involved in DV and FV situations. Thus, practitioners have a deeper understanding of the impact of violent actions that may seem minor at first sight. According to several speakers, such assessment is essential and facilitates appropriate treatment of situations brought before the court.

There was also discussion concerning the SCs and IC scientific evaluation processes. Generally, it was pointed out that this type of study involves its own challenges. However, all who engaged in this discussion mentioned the importance of establishing an evaluation protocol from the beginning when instituting such courts, especially to identify the degree to which the objectives of setting up SCs are met.

### **2.3 The roles of the different actors involved in specialized courts**

The psychosocial and penal practitioners who are mainly involved in SCs and the IC are: police officers, victim services caseworkers (and family services caseworkers in the case of the IC), prosecutors, judges, perpetrator services caseworkers, defence lawyers (especially legal aid) and probation officers. Mental health and substance abuse treatment practitioners, court coordination workers, and practitioners from the youth protection services are also involved, although not in every court described during the day. As has already been pointed out, the need to work in partnership was raised several times during the talks, especially since the practitioners, like the courts, are overloaded owing to the high number of cases to be dealt with. It was also mentioned that, ideally, practitioners should have a shared vision of DV and FV issues and offer interventions that are consistent from

beginning to end, which requires constant coordination. Because of these needs, some speakers argued that it is preferable for one person to be mandated explicitly to take care of coordination within such courts. However, as noticed, we must keep in mind that such a person can manage only a limited number of cases per day, given the workload involved, and that therefore, while it is very attractive, this solution is not a panacea.

It should also be noted that these courts are partly founded on the desire to place victims and their needs at the centre of judicial proceedings. However, it has been found that this goal comes into tension with the victim's role as witness, which does not give him or her any power over how the proceedings unfold. Regarding the perpetrators of violence, they are expected to take responsibility for their actions and commit to a treatment program targeting behaviours change. Those who refuse to meet those expectations or who have committed serious criminal acts are generally prosecuted vigorously.

At the end of the first day of the Forum, there was clear unanimity among the speakers and participants on the importance of the availability of community resources for the establishment and success of judicial mechanisms specializing in DV and FV. There also seemed to be a consensus on the need to develop mechanisms that are specific and adapted to regional contexts since, in the end, the degree of success of SCs and ICs rests on the strength of communities and on the shoulders of the local psychosocial and penal practitioners. It was also highlighted that government commitment is essential to the success of such courts. Referring specifically to the IC, it was mentioned that this type of mechanism requires an enormous investment on the part of all those involved, and that it is indispensable to ensure that a large enough number of situations will be able to be treated by that type of court before considering such a model since it involves enormous challenges with respect to functioning. It should be taken into consideration that the problem of coordination among courts, which is one of the issues at the foundation of the creation of the IC, can be solved or attenuated by other means, as discussed during the second day of the Forum.

### **3. What could and could not be implemented in Québec?**

In Québec, certain mechanisms for judicial treatment of DV and FV, such as completely integrated models, are unlikely to be adopted owing to the way the courts are organized, the division of competencies and the relationship between the governments of Québec and Canada. In fact, despite many reports and recommendations by

important stakeholders in Québec, including the Ferland Report (Government of Québec, 2001) and the La Sablonnière Report (Court of Québec, 2005), which suggested the creation of partially unified courts, this avenue has not yet been taken because neither the provincial government nor the federal government seems ready to agree to transfer some of their competencies to the other level of government. It follows that the IC model developed in Toronto cannot be reproduced in Québec unless there are changes to the Constitution of Canada or in the political relations between the federal and provincial governments. It is thus useful to examine in depth the various forms of SC, if that approach is taken in different judicial districts in Québec, and to reflect on other possibilities for improving the judicial treatment of DV and FV situations.

### **4. Questions**

After the presentations on the SCs and IC, the speakers were invited to answer questions from the audience. Specifically, it was asked why the models presented were good avenues for preventing repeat offences and, ultimately, for helping people caught in DV or FV situations to find a way out.

Some speakers said that there was a decrease in charges related to recidivism in cases of offenders who had been dealt with in certain SCs (e.g., Calgary). However, they emphasized the importance of asking what was meant by the notion of recidivism. For instance, it is primordial to ask whether the absence of repeat offence is limited to the commission of acts of violence that contravene the *Criminal Code of Canada* and whether other types of non-criminalized violence, such as psychological violence, persist.

As for whether an SC makes a difference for people trying to escape from DV situations, most of the speakers answered in the affirmative because, according to them, the specialization inherent to such courts produce better understanding and better treatment of the problem. In fact, the victims who go through a court specializing in violence are better informed, which allows them to make more enlightened choices. Moreover, some of the courts try to deal with the behaviour of perpetrators through better adapted control measures, by better assessing the risk of repeat offence and by offering adapted treatment. Despite these successes, all the speakers pointed out the fact that major difficulties and challenges remain with respect to judicial treatment of DV and FV situations. These difficulties and challenges must be considered, and work remains to be done to overcome these issues and provide a better response to these situations.

## Conclusion

Although the advantages of specialization were demonstrated in the day's presentations, at this stage it remains difficult to assess which of the models could – or should – be used in different cities in Québec if SC plans become concrete. This is because, ultimately, there is no perfect model. It was shown that models should be adapted to social and geographical realities as well as community resources. However, it is important to note that many resources and alliances among the actors involved in dealing with DV situations are already established in different regions in Québec. This was seen for instance when the specialized DV judicial process in Montréal courts and the victims' service Côté Cour were presented. Lastly, we should also consider the fact that no matter which model is chosen, government investment, coordination, specialization, and alliances among practitioners are essential and can make the difference between the success or failure of such an undertaking.

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