



WOMEN'S COURT WATCH PROJECT

Court Watch IV 2006



Annual Report

Findings and Recommendations

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INTRODUCTION: DISTURBING TRENDS

The Women's Court Watch of the Woman Abuse Council of Toronto (WACT) is a community research and education project that places volunteers in provincial criminal courts to observe and monitor woman abuse cases.

- WACT began our first women's court watch in 1996 and has completed four separate sessions since that time. These studies enable us to gain a unique insight into recent trends in the criminal justice response to woman abuse by comparing the current court watch data with information collected in previous sessions.
- Between February 2006 to September 2006, volunteers observed almost 100 domestic violence cases in 4 of the 5 domestic violence coordinated prosecution courts in Toronto. Due to the small size and convenience sample, Women's Court Watch provides a snapshot but not a comprehensive scientific study
- **In almost every area tracked, we found that the criminal justice response in 2006 was less vigorous than three years ago. Compared to 2003, the 2006 study found:**
 - **smaller percentages of more serious charges laid**
 - **more charges withdrawn**
 - **less jail time ordered, less time in pre-trial custody, especially for offenders who were failing to comply with existing court orders (breach charges)**
 - **shorter probationary periods**
 - **higher percentages of absolute discharges**
- **The overall message from the information collected is that the domestic violence courts in Toronto are less rigorous and less consistent in providing an effective, meaningful and accountable response to woman abuse compared to 2003.**
- This is particularly disturbing given that over the previous three sessions (1996, 1998 and 2003) Court Watch observed steady improvement through increased use of vigorous prosecution, increasing consequences for re-offenders, and adequate probationary periods.
- The domestic violence courts are 10 years old. Instead of becoming increasingly more effective and meaningful to both victims as well as abusers, our study suggests that the courts are sliding backwards in their effectiveness, relevance and ability to convey the clear message that abuse is not acceptable.

RECOMMENDATIONS

If we as a community are to take woman abuse seriously, we must ensure that the domestic violence courts are successful in meeting their initial objectives and reverse the trend that has been identified in Women's Court Watch IV, 2006 that points to a less rigorous, less effective and less accountable response. We must turn this trend around with leadership, resources and commitment to women's and children's safety.

The Province and Toronto Police Service should immediately undertake actions to ensure that the operations of the domestic violence courts in Toronto are consistent with the objectives for the courts as established by the Ministry of the Attorney General in 2000, including:

1. EARLY INTERVENTION

- **Minimum of 125 days for case processing**

2. VIGOROUS PROSECUTION

- **Increasingly serious consequences for repeat offenders**
- **Minimize reliance on victim testimony through use of enhanced evidence collection**

3. SUPPORT AND ADVOCACY FOR VICTIMS

4. EFFECTIVE COORDINATION AND COLLABORATION BETWEEN STAKEHOLDERS TO INCREASE VICTIM SAFETY

BACKGROUND TO COURT WATCH STUDY

CONTEXT

The Women's Court Watch Project is an initiative of the Woman Abuse Council of Toronto, where women survivors of violence, students, and other community members observe domestic violence trials in the provincial criminal courts in Toronto.

The current study is the fourth Women's Court Watch, following on three other similar studies completed in 1996, 1998 and 2003 respectively.

Purpose Of Women's Court Watch

The purpose of this initiative is to promote understanding, transparency and accountability within the provincial criminal courts with respect to the response to domestic violence cases. The Women's Court Watch provides a window into the functioning of the criminal courts and provides the community with information regarding the ongoing operation and effectiveness of the courts.

Through Women's Court Watch we have a unique ability to observe and track the impact, effectiveness and accountability of the specialized domestic violence courts. With three previous Women's Court Watch studies the Woman Abuse Council of Toronto has the ability to identify trends and themes in comparison to findings of previous years. Throughout this 2006 annual report we have included comparisons where possible, to the 2003 data and findings.

Objectives Of The Ontario Specialized Domestic Violence Criminal Courts

Specialized domestic violence courts were created in 1996. The following are the objectives of the domestic violence courts as identified in materials produced by the Ministry of the Attorney General (Implementing the Specialized Domestic Violence Court Process; May 2000):

- Early intervention in domestic violence cases
- Vigorous and coordinated prosecution of domestic violence cases through efforts such as minimizing reliance on victim testimony.
- Support and advocacy to victims
- Coordination between all players in the criminal justice system including use of specialized teams to investigate and prosecute

METHODOLOGY

Volunteers participating in Women's Court Watch used a survey instrument to collect qualitative and quantitative information on domestic violence cases.

Information about cases were collected on the standardized survey, and information was collected, compiled and analyzed according to the following:

- Range of charges
- Relationship between victim/accused
- Breach charges
- Dispositions
- Comments and responses of the judiciary were also tracked and monitored

A similar survey instrument has been used in each of the four Women's Court Watch sessions. With each new project however, the survey instrument has been updated and adjusted.

More than 30 volunteers were involved in completing the surveys as they observed court appearances from February 2006 to September 2006. 2006 was the most successful court watch to date with more volunteers participating than ever before.

Court Watch participants surveyed 96 cases at four of the five Toronto Specialized Domestic Violence courts. The breakdown of cases by courts is as follows:

Court	Number of Cases Observed
Scarborough	30
College Park	24
Old City Hall	34
North York	08
Total	96

LIMITATIONS OF THE STUDY

Due to the small size and sample selection process, Women's Court Watch provides a snapshot but not a comprehensive scientific study.

The volunteers focused their observations on the domestic violence trial courts within the provincial criminal court system. Volunteers were active in surveying all of the specialized domestic violence courts in Toronto Criminal courts, which take place in designated courtrooms on designated days.

The majority of the volunteers this year were students who came to the project from widely diverse backgrounds. Among the fields of study represented were law, criminology, social work, gerontology, religious studies, women's studies, corrections, math, and project management. Some of the volunteers had personal experience with the issue of woman abuse while many did not.

The volunteers spent on average two days a month in court, often going in pairs. Regular meetings were held with Woman Abuse Council project coordinator, Grace Kayanga, to share their experiences in court, the objectives of the specialized domestic violence criminal courts and talk about the impact of doing this work in the courts. Volunteers also assisted with some of the data input and coding for the final analysis and report.

FINDINGS AND TRENDS

CHARGES

The reality of the lives of victims who are living in an abusive situation is that there are many ways that abusers exercise their controlling behaviours and many ways that they abuse their intimate partners. For this reason, a relatively untouched tool of criminal justice has been the ability to utilize a wide range of charges in domestic violence situations, charges that accurately reflect the accused person's behavior.

In recent years, the breadth of charges that can be used in domestic violence situations was expanded to include forcible confinement, extortion, theft under, and dangerous driving. This range of charges is important to accurately reflect the experience of victims of domestic violence and the many different kinds of abusive behaviour.

In the 2006 Women's Court Watch study observed:

- 183 charges laid in 96 cases
- Assault related charges, including common assault, assault with weapon, and assault causing bodily harm, were laid in 55% of the observed cases. Of these, common assault charges continue to be the most frequent charges laid in domestic violence cases (49%).
- The second most frequent type of charges laid (14%) was related to breaching of court orders. These include failure to comply with the following types of orders: probation orders, bail conditions, restraining orders, peace bonds or refusal to attend court.
- In 45 cases (49%) more than one charge was laid.

Uttering Death or Threatening Bodily Harm

Compared to 2003, the 2006 study found a significant decrease in frequency of charges for uttering death or threaten bodily harm.

Criminal Harassment Charges

Criminal harassment charges were laid in only 6% of the cases observed this year. In contrast, criminal harassment charges were laid in 9% of the cases observed in 2003.

Criminal Harassment can be an important tool for responding to woman abuse because it is the only charge that can address some of the forms of abuse that do not involve physical violence. Criminal harassment can be used in cases of stalking, harassment, emotional and psychological abuse and can be used along with other charges related to physical abuse.

Given the high level of emotional and psychological abuse that women in abusive relationships generally experience, criminal harassment should be a charge that is widely utilized by an active and vigorous criminal justice system.

However, during the 2006 Women's Court Watch it was found that the very small number of criminal harassment charges that were identified this year IS EVEN SMALLER than the number of criminal harassment charges laid during the 2003 court watch.

Females Charged

In 2006, in 10 out of 96 cases the accused was a female, whereas in 2003 none of the cases monitored involved a female accused.

Among the 10 women charged, 4 of the cases were dismissed or withdrawn by the court. The circumstances leading to the charges for the 10 women accused appeared to be of less severity than the circumstances in the male accused cases. For example, among the female accused the incidents leading to charges included:

- pouring a cold coffee on the victim
- throwing an empty water bottle at the victim; and,
- the accused tearing the victim's jacket pocket

In a number of cases, these actions appeared to be in self-defense, in direct contrast the incidents leading to males being charged involved more severe physical violence and apparent intention to harm the victim. In only 4 cases were dual charges laid, the majority of the charges were sole charges against the woman.

Over the last six years we have seen a significant increase in the number of women charged with domestic assault. Questions regarding the implementation of mandatory charging policies and the impact on women must be further explored.

Breaches of Court Orders

An important element of an effective and meaningful criminal justice response is that the system ensures increasingly serious consequences for abusers who continue abusive and harassing behaviours.

One of the most important problems, traditionally, in effective prosecution of domestic violence was that there was no effective follow through on cases and offenders could continue the pattern of their abusive and violent behaviour with no increasing consequences. One such example was the situation which was highlighted in a 2000 Provincial Coroner's Inquest where it was determined that Randy Iles had numerous convictions for breaching court orders related to his ex-partner and yet for each subsequent conviction, he received a more trivial sentence.

A breach occurs when an original charge has been laid and the accused does not comply with the restrictions of the court. The enforcement of breaches of court orders by laying new charges is important to demonstrate to both the victim and offender alike that the criminal justice system takes the issue of domestic violence seriously and will follow through to ensure consequences when offenders disobey the court and continue their abusive behaviour.

Of the total charges in 2006, 24% were breach charges. In 2003, only 15% of the charges were breach charges.

Breach charges was one of the few areas where the 2006 Women's Court Watch study observed an **increase in the vigorousness** compared to 2003.

Pre-Trial Custody

Overall, 13 accused were held in custody before their trials. Pre-trial custody varied between one to 111 days, with the majority of individuals held for less than 5 days.

Only 23% of all breach charges resulted in the accused being held in custody prior to trial. A significant decrease from 2003 when the accused was held in custody before the trial in 42% of all breach cases.

COURT PROCESS

Use of Language Interpreters

The courts fail to consistently provide independent qualified language interpreters when required.

Given the multicultural and multilingual nature of the population of Toronto, the need for readily accessible, trained and competent language interpreters is a major issue for the court system.

According to Ministry of the Attorney General policies (*“Implementing the Specialized Domestic Violence Courts”, 2000*), victims who do not speak English have the right to receive assistance through their own cultural interpreters throughout the court process.

In the 2006 study, interpretation was required in 17 out of 96 cases observed. However:

- In Old City Hall Court, 5 trials required interpreters for the victim, however the court was only able to provide interpreters in two trials – the other three trials were adjourned.
- Victims required interpretation in 4 trials at College Park Court, but the court was able to provide only one interpreter.
- In one trial in Scarborough Court the accused required an interpreter, and the court failed to provide one, so that accused brother-in-law provided interpretation for the accused
- In one case at College Park Court, the interpreter secured for trial was intoxicated. The matter was adjourned to another day, requiring the victim to return to court again in order to testify.
- In 5 trials one interpreter was used for both the victim and the accused.

These results occurred despite the existence of a provincially funded interpreter program specifically for victims of domestic violence through the Ministry of Citizenship.

Victim Safety in Court

An important aspect of victim participation in a criminal trial is the ability of the victim to feel safe in the court. Although Court Watch volunteers attempted to monitor victim safety this can be a difficult issue to follow.

However, there were a number of situations where victim's safety appeared to be compromised in the courtroom. In 5 cases, the accused were observed to be giving victims obvious threatening signals while they testified on the stand. This behavior contravened bail conditions and was intended to intimidate the victims.

Neither the judge nor any other court personnel appeared to be aware of this form of intimidation and no interventions were made by any court personnel in any of these cases to protect the victim.

Use of Enhanced Prosecution Strategies

A key purpose of establishing the domestic violence court was to minimize reliance on the victim by utilizing evidence other than victim testimony.

In less than 50% of cases where accused pled not guilty and went to trial, an additional piece of evidence was used to support prosecution along with victim testimony. In contrast, in 2003 over 70% of the cases with trial had additional pieces of evidence beyond the victim testimony.

Given the complexities, the ongoing relationship and the power dynamics between an abuser and the victim it is difficult, if not impossible, for a victim to confront her accuser in court. It is for this reason that a widespread trend in domestic violence prosecution has been to attempt to minimize reliance on victim testimony and collect as much alternative evidence as possible; i.e., 911 tapes, photographs and victim injuries, witness statements. Some jurisdictions are even moving into victimless prosecution.

Notwithstanding the intent of the domestic violence courts to use enhanced evidence collection, our finding shows that police and prosecutors are increasingly relying on victim testimony. This is not only contrary to the intention of the domestic violence court but reverses the trend identified in the 2003 Court Watch where we observed increasing use of evidence other than the victim compared to the previous 1996 and 1998 studies.

DISPOSITION

A range of disposition or outcome of cases was observed.

Cases withdrawn or dismissed

With the increase in reliance on victim testimony noted above it is not surprising that in 2006 we observed an increase in charges withdrawn and cases dismissed primarily because the victim did not attend court or testify.

In 20 % of the 96 cases monitored in 2006 all charges were withdrawn at court. This contrasts to 2003 when only 10% of cases monitored had all charges withdrawn at court.

Convictions

The domestic violence courts in Toronto are intended to provide a coordinated response to domestic violence with vigorous prosecution of assault charges and although a finding of guilt is not the only success it can be a useful guide.

The portion of cases found guilty increased to 67% in 2006, compared to only 53% in 2003.

Sixty-seven percent (67%) of the accused were found guilty of some or all of the charges. This included 53% of accused who pled guilty and 14% of accused who pled not guilty, but were found guilty.

The increase in guilty pleas and findings in 2006 suggests some movement toward more successful prosecution.

The results suggest a higher use of plea bargaining to resolve cases. The portion of cases (53%) where the accused plead guilty in 2006 increased from 43% in 2003. At the same time, the portion of cases where at least one of the charges was withdrawn when the accused pled guilty also increased to 19% compared to 11% in 2003.

SENTENCING

Once the court has determined the guilt of an accused, there is a wider variation in possible sentencing outcome, ranging from an absolute discharge to prison time.

Discharges

Fifteen percent (15%) of cases found guilty received an **absolute discharge**, which is the lightest possible sentence and which means they will have no record of the conviction. This is an increase from the 4% of accused who received absolute discharges observed in 2003.

Conditional discharge remains the most common sentencing among cases. In 26% of the 2006 cases the accused received a conditional discharge.

Conditional discharge is one of the lightest dispositions that the court can make, second only to an absolute discharge. A conditional discharge is defined by the court as a finding of guilt, with no criminal record (*Ministry of the Attorney General, Glossary of Legal Terms, 2004*).

The 2006 Women's Court Watch found that among the cases resolved by conditional discharge there was a wide range in the severity and quality of the assault and incident.

There appears to be little consistency in application of conditional discharges. For example, the following circumstances were involved in cases that were resolved by conditional discharge:

- throwing cookies and oranges at the victim
- throwing an empty water bottle at the victim

However, the same disposition of conditional discharge was given in cases such as the following where the violence was substantially more severe:

- the accused hitting the victim with a coat hanger and leaving marks
- punches to the face and head that resulted in bruising
- hitting the victim's head on the wall resulting in a skull fracture
- dragging the victim out of bed by her hair
- death threats.

More Serious Outcomes

In 23% of the cases the accused received a criminal record and/or imprisonment, including:

- 13% receiving a suspended sentence
- 5% of the accused were to serve some time in prison.

These observations reflect a significant change from 2003, where just over 50% of those found guilty were sentenced to a prison term or given a suspended sentence.

Overall, the 2006 study indicates that for those found guilty, there was a significantly greater chance of receiving a discharge without a criminal record compared to 2003.

FOLLOW-UP WITH OFFENDERS

Probation

Probation is an important tool to allow for the monitoring of the victim's safety and providing a continuing message to abusers that their behavior is not acceptable.

Less than one half, or 49%, of those found guilty, received a term of probation along with their sentence. This represents a significant decrease from 2003 when 92% of offenders received a term of probation.

The most common length of probation was between 12 - 24 months. About 15% of offenders in 2006 received probation of 6 months or less.

Mandated Intervention or Counseling Programs

An important element of the domestic violence courts was the expectation that offenders would be monitored post-conviction and would be mandated to participate in rehabilitative programs as part of bail conditions or probation. The expectation that post conviction follow-up is crucial to address the on-going nature of women abuse has been a provincial standard since 2000.

Despite the post-conviction monitoring standard, court mandating of counselling programs has declined since 2003 when 80% of those found guilty received probation that including requirements to attend some form of counselling. This compares to 51% found in the 2006 study.

Given the potential risks of on-going abusive behavior, in 2003 the province of Ontario identified standards and guidelines for Partner Abuse Response (PAR) programs. Eleven community-based PAR programs have been accredited to provide programming for court mandated domestic violence offenders in Toronto.

PAR differs from other counselling such as anger management, in that PAR has a specific socio-educational curriculum that is explicitly geared to challenge men on their abusive behaviors within intimate relationships. A key element of PAR is regular contacts by the program with the partner-victims to offer support and monitor their safety. One of the most dangerous aspects of non-accredited programs is that they typically do not have any partner–contact.

Notwithstanding the provincial standard that offenders convicted of domestic violence related offenses should be mandated into a PAR program, 35% of those found guilty were NOT mandated into an accredited PAR program.

It should be noted that although the court may not specifically mandate participation in PAR, Probation Officers have the ability to direct their clients to PAR programs, when the judge has been less specific in his or her orders.

After almost 10 years of PAR programs and provincial standards, our results suggest that:

- the portion of offenders found guilty who receive any form of post-conviction follow up is declining, and
- where post-conviction follow up is a requirement we continue to see courts not recognizing the importance of accredited programs focusing on partner abuse.

LENGTH OF TIME TO FINAL DISPOSTION

A timely intervention has been shown to be one of the most important factors in successfully prosecuting domestic violence cases. In 2000, the Ministry of the Attorney General document, *“Implementing the Specialized Domestic Violence Court Process”*, set a guideline of 4 months to complete case processing.

In most cases a short window exists immediately after the incident where the victim is able and willing to acknowledge the abuse and before the abuser, family or community has a chance to intimidate, threaten or guilt her into recanting. We also know that interventions are most effective on the abuser if the consequences are imposed close to the actual incident.

The average length of time between the arrest and final disposition of cases was 12 months. This is in contrast to the four-month guideline established by the Ministry of the Attorney General.

Several cases observed by Women's Court Watch had been in court for more than 2 years and are still ongoing. In one case, the accused and the victim attended court 9 times; the matter was resolved at the 9th court appearance by a peace bond.

Court Watch 2006 was completed over an eight month period. Currently 17 of the cases monitored (18%) are still pending due to adjournments.

Relationship between victim and accused

In 2006, 30% of all cases observed were dating relationships, whereas in 2003 the dating relationship cases were observed in only 12% of cases.

This year saw a significant change with regard to the particular demographic of victims. Among the cases surveyed we observed a significant increase in the number of dating relationships.

The significance of this change is not clear and requires further examination. It could mean that more women in dating relationships are experiencing abuse, or it could mean that women are more aware of abuse situations and are calling the police much earlier.

JUDICIAL DEMEANOR AND COMMENTS

A key aspect of Women's Court Watch has been to observe judicial responses to both the victim and offender along with documenting qualitative information about the court process. Judicial responses captured by the volunteers have been grouped into three categories: positive, neutral and negative responses.

The personal interaction between the judge and the victim is crucial to the preservation of the victim's dignity throughout the court process. Behaving in a respectful manner serves to send a message to victims that their experiences are important and the court takes their safety seriously.

In order to examine judicial responses the court watch volunteers surveyed a number of different aspects of judicial response including demeanor of the judge, the manner in which the judge interacted with the accused, the manner in which the judge interacted with the victim and the actual sentence given. Volunteers used their own subjective opinions to categorize judicial demeanor and comments, however, the survey tools give some guidance.

Based on Volunteer rankings, in:

- 42% of cases, judges were described as displaying a positive demeanor
- 26% of cases, judges were described as displaying a neutral demeanor
- 32% of cases, judges were described as having a negative demeanor

Positive or Neutral Comments

In identifying positive responses, volunteers used words like ‘supportive’, ‘attentive’, and ‘making eye contact’ to describe the demeanor of the judge.

Examples of comments made by judges identified as **positive** during sentencing to the accused:

- “Keep your hands in your pockets”, “get along with your wife” and “understand the consequences of getting involved with violence in this day and age” (to the accused).
- “Hitting a spouse is always wrong”.
- “I hope not to see you on the cover of the Sun (Newspaper)”.
- “I am not trying to be mean, I think you are worth it, you need to decide if you are worth it too. Hopefully you make the right choices, if not, you know how the system works”. (directed towards the victim)
- “Alcohol does not excuse actions; he (the accused) had also been found guilty of assault charges in 1999 with his first wife. His crime was horrific and 9 days jail time suggested by the Crown was not enough with a crime involving a knife”.
- “This is the most serious issue, because the victim and the child should be safe in your company, and you violated that trust. If you pick up newspapers, you will know that violence towards women is a serious problem, and sometimes leads to death. And for the next generation, it leads to bullying at school, and 9 out of 10 kids in youth court come from homes just like the one you have given to your child”. (to the accused)
- “I am satisfied beyond a reasonable doubt that the person Ms. X saw was Mr. X (the accused). The judge gave the definition of assault and commented “there is no requirement that physical injury must occur for the act to qualify as an assault. I find him guilty.”
- “The complainant had to be terrified by you...You cannot be any kind of a father behind bars.” (to the accused)

Examples of the responses from the judiciary identified by volunteers as examples of **neutral** responses including the following:

- One judge was very respectful to the victim (he did not rush the victim)
- One judge asked the victim if she needed any help and indicated that she should not hesitate to let him know if she needed a break, etc.

Negative Comments

Judge's comments at sentencing provide the opportunity for the court to address the severity of the offense and the impact the abuse has on the victim. However, it was observed that in many cases, there was virtually no reference by the judge to the issue of domestic violence and/or the accused seemed to be almost ignored. For example, judges often speak exclusively to the lawyer representing the accused and the communication is largely around the administrative details of the situation (e.g., "make sure he picks up his probation papers, and tell him to return to court on....").

The importance of speaking out about the impact of woman abuse cannot be underscored enough. A judge has the tremendous opportunity to provide a strong statement to the accused regarding how society does not and will not tolerate intimate partner violence.

The study found that judges were identified as displaying a negative demeanour towards the victim in 26% of the cases. The 2006 Court Watch volunteers described judges as 'distracted', 'inattentive', 'disrespectful', and 'not interested in the proceedings,' noting negative facial expressions, and repetitive questions directed at the victim as negative.

The following are examples of negative comments made by judges during sentencing that minimized and trivialized the abuse and the victim's experience:

- "The reverend (Mr. X, the accused) does a lot of community work and works with youth therefore Mr. X has support in the community and should receive an absolute discharge."
- "An assault is an assault, however you showed restraint by throwing (water) and not using something that could have seriously harmed your partner."
- "My position is that, any person in a heated debate would take these threats in a reasonable way and not assume them to actually be threatening" (directed at the victim).
- "This incident is not a domestic relationship, it is a love triangle".
- "There is ambiguity and uncertainty whether or not the alleged assault was intentional. The case is not strong enough and is not going to get stronger. Case dismissed."

- One judge stopped a guilty plea during the reading of the synopsis to inquire whether the accused assaulted his partner because of the rising gas prices, and said, “what is society coming to when gas prices are causing domestic violence?”

Although it is heartening that more than one half of the judges were identified as neutral or positive, it is concerning that a considerable number were seen as negative.

IMPLICATIONS OF THE FINDINGS

The picture offered up by the results of the 2006 Women’s Court Watch leads to many questions and concerns and ultimately to a call for action. Overall, there appears to be a much less serious and rigorous response to domestic violence charges in the courts.

If such findings reflected a decrease in the actual rate of domestic violence in our community, these findings could be somewhat positive, indicating that there is less serious abuse taking place across our community. Unfortunately, this is not born out by the number of women killed by their intimate partners, the ongoing and consistently high numbers of domestic violence police calls, etc.

One of the most problematic issues presented by these finding is the trend away from ensuring increasing consequences for repeat offenders within the domestic violence courts. This is demonstrated by the findings related to breach charges and pre-trial custody. An important aspect of a meaningful response to domestic violence is a systemic approach that ensures those who contravene existing court orders receive increasingly serious consequences. Such breaches of court orders must be taken more seriously than the original charge.

In 2003 the findings suggested a significant improvement in this area as 42% of accused were held in custody after they were charged with breaching a court order. During our 2006 court watch, only 23% of those who breached a court order were held in custody. In other words they refused to follow the court ordered conditions but received no substantive consequence and were allowed to ‘walk away’.

A second major concern is the demonstrated decrease in the amount of evidence beyond the victim testimony used in prosecuting domestic violence cases. The intention of using enhanced prosecution techniques was a core component of the specialized courts. A key assumption that underlies the domestic violence courts is that victims of abuse will not readily testify against their abuser and an effective response by the criminal justice system must take this into account and find means other than victim testimony to prosecute the case.

The third most troubling result relates the need for effective intervention, follow-up and monitoring of domestic violence offenders.

Probation is a critical way that domestic violence offenders are monitored regarding their risk to the victim. In addition, probation offers follow-up with both the offender and victim; the victim is offered resources and services. The number of offenders convicted of domestic violence charges and receiving a condition of probation has dropped substantially.

One of the most important elements of the domestic violence courts has been the introduction of batterer's or PAR programs as they are called in Ontario. Unfortunately, we have seen a significant decline of the percentage of convicted offenders who are mandated into these accredited PAR programs – barely one half of those on probation were mandated into PAR programs in the 2003 Women's Court Watch.

Lastly, Women's Court Watch saw continuing examples of negative attitudes by the judiciary towards victims of abuse and implicitly a tolerance for abusive behaviour on the part of some judges. Very troubling were situations where judges did not use the opportunity that they have in the courtroom to make a significant impact on the offender. In numerous cases we saw judges who only spoke to the defense lawyer and who treated the accused as a superfluous character rather than the individual who should be the focus of the court hearing.

Although Women's Court Watch found a few areas within the domestic violence courts where the courts appear to be increasing in their effectiveness; such as an increasing number of offenders found guilty by the court, increasing number of breach charges and slightly increasing range of charges used in domestic violence situations, these changes seem fairly insignificant in relation to the back sliding in many other areas of successful prosecution.

Whereas the previous three court watch projects had seen incremental improvements in achieving the objectives of the domestic violence courts, the current Women's Court Watch demonstrates a reversal of this trend and lack of ability to meet the objectives.

This picture of the criminal courts does not inspire confidence in the criminal justice system, which in turn discourages victims from using this system as they recognize that their safety is not able to be effectively protected.

The system continues to be fragmented with no effective mechanism of ensuring that the intervention at each distinct stage (police, crown attorney, judge, probation) remains focused on accountability of the offender and safety of the victim.

The key message to an abuser remains that he can drag out the matter, he can plead away charges, and he is able to repeatedly breach court conditions and yet have very few if any significant consequences.

We need action to see the courts implemented as they are meant to be so that women and children will be safe and abusers will understand that we as a community will not tolerate abusive behaviours.

DEFINITIONS

WOMAN ABUSE: *The functional definition of woman abuse for this project is: Any verbal threat or physical force used to create fear and control what a woman does.*

DUAL CHARGE: Where police attend a domestic violence call and arrest and/or charge both parties

PROVINCIAL CRIMINAL COURTS: the courts that hear summary convictions where the sentence is generally two years less a day as opposed to superior court, family court, child welfare court. Domestic violence cases are generally heard in provincial courts. There are 5 provincial criminal courts in Toronto (Old City Hall, College Park, North York, Scarborough and Etobicoke).

CONDITIONAL DISCHARGE: Occurs when the accused, after being found guilty, is discharged under certain conditions ordered by the judge. If the accused complies with the conditions, she/he will not have a criminal record.

ABSOLUTE DISCHARGE: The accused, after being found guilty is discharged without a record of conviction.

BREACH: A breaking of a duty or obligation.

DISMISS A CHARGE: When a judge feels that there is insufficient evidence presented in a case to allow for a finding of guilty, he or she may decide that the matter is not worth pursuing any further. That person is then free to go and there will be no conviction registered against him or her.

EVIDENCE: Testimony and exhibits presented to the court to support either Crown or defense arguments.

CHARGE WITHDRAWN: Under certain circumstances a Crown Attorney may feel it is best not to prosecute an accused on a given charge. Done on request of the Crown.

PEACE BOND: A Justice of Peace may order the abuser to appear in court and to promise in writing to keep the peace and be of good behavior. This is also called entering into recognizance. Refusing to comply with the terms may result in a jail term of up to twelve months.

PROBATION: Court order under which a person found guilty is released under supervision of a probation officer and with direction to obey certain conditions.

SUSPENDED SENTENCE: A sentence which is pronounced but the execution of which is postponed. This usually means that it will not be served if the offender commits no further offences during a specified length of time.

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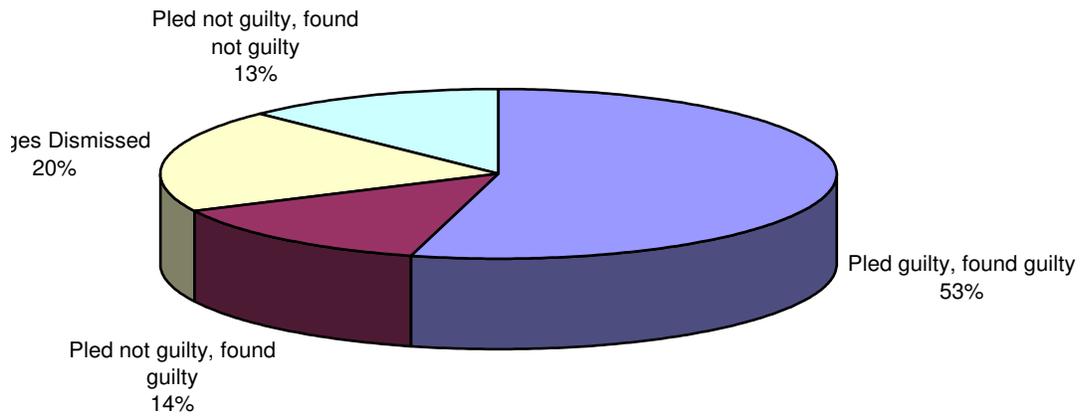
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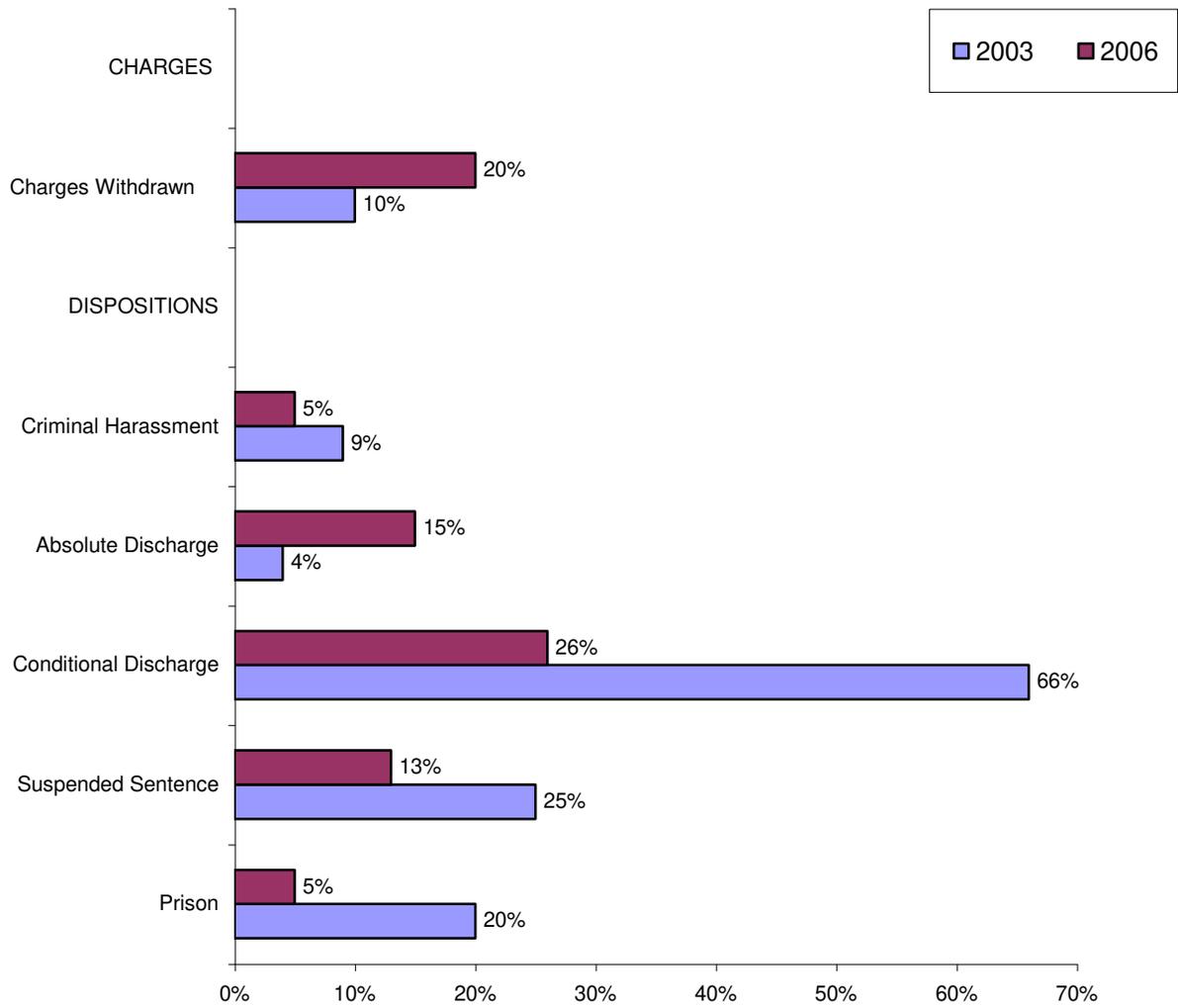
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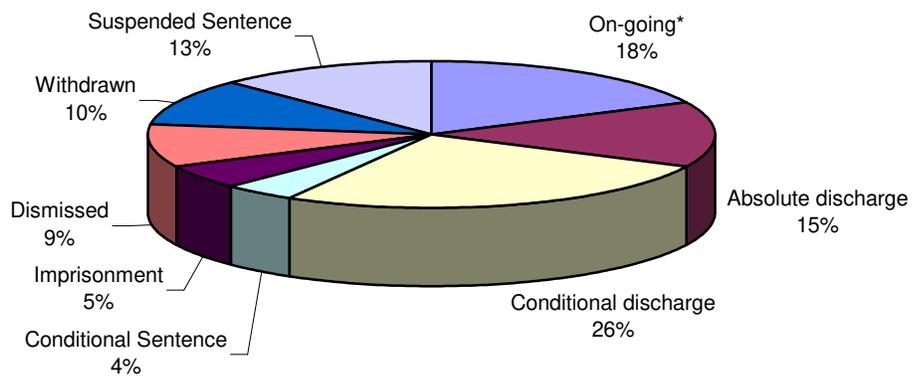
**Case Resolution in Coordinated Prosecution Cases at
Toronto Provincial Court Total=96 cases**



Comparative Analysis of Selected Findings in Court Watch III(2003) and IV(2006)

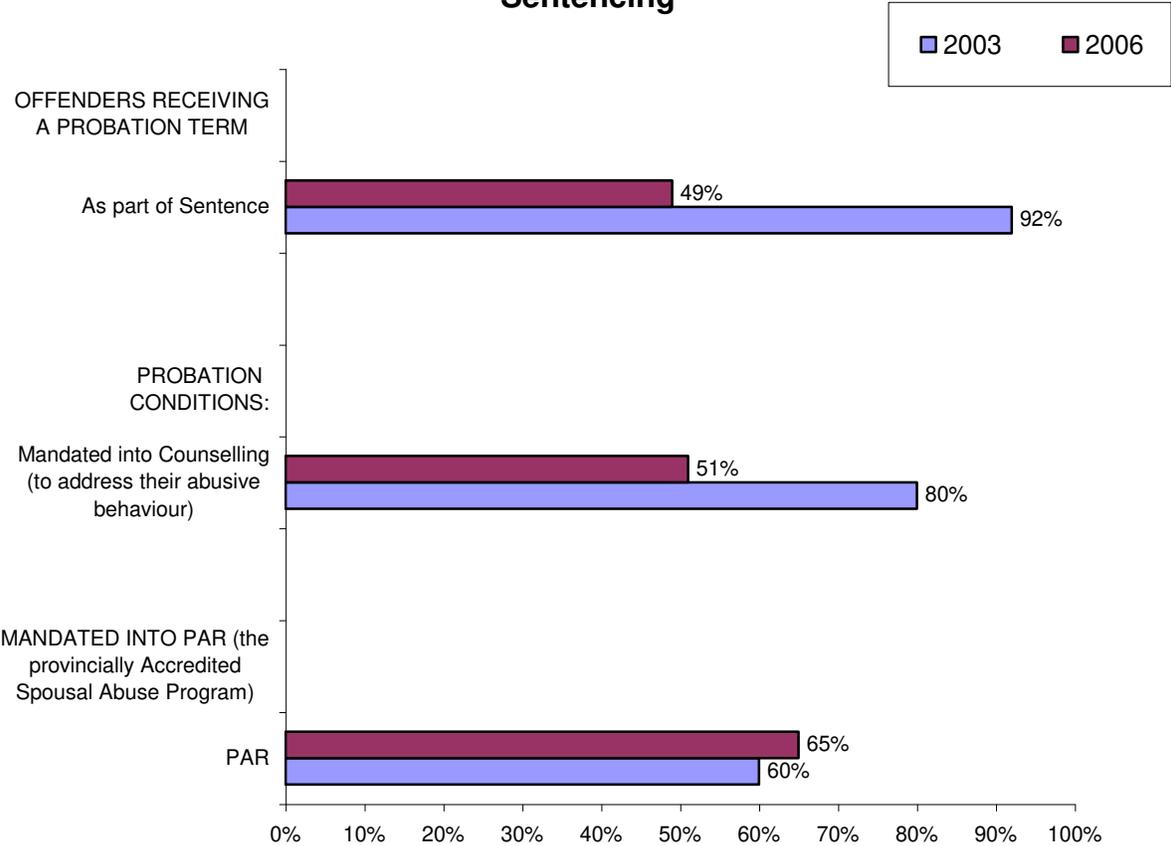


Sentences

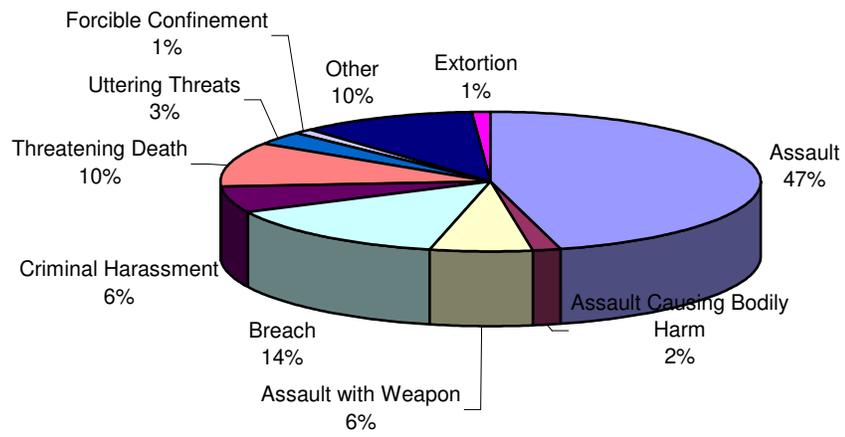


* On-going: These cases are pending or on going court matters due to re-assaults or adjourned trials.

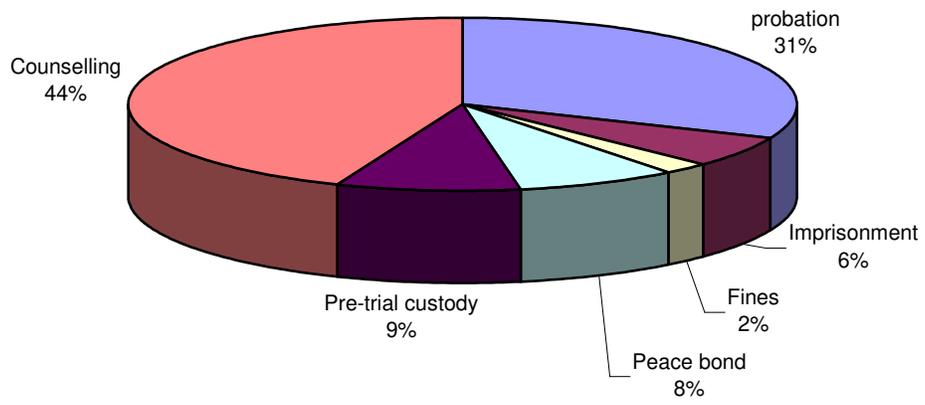
Sentencing



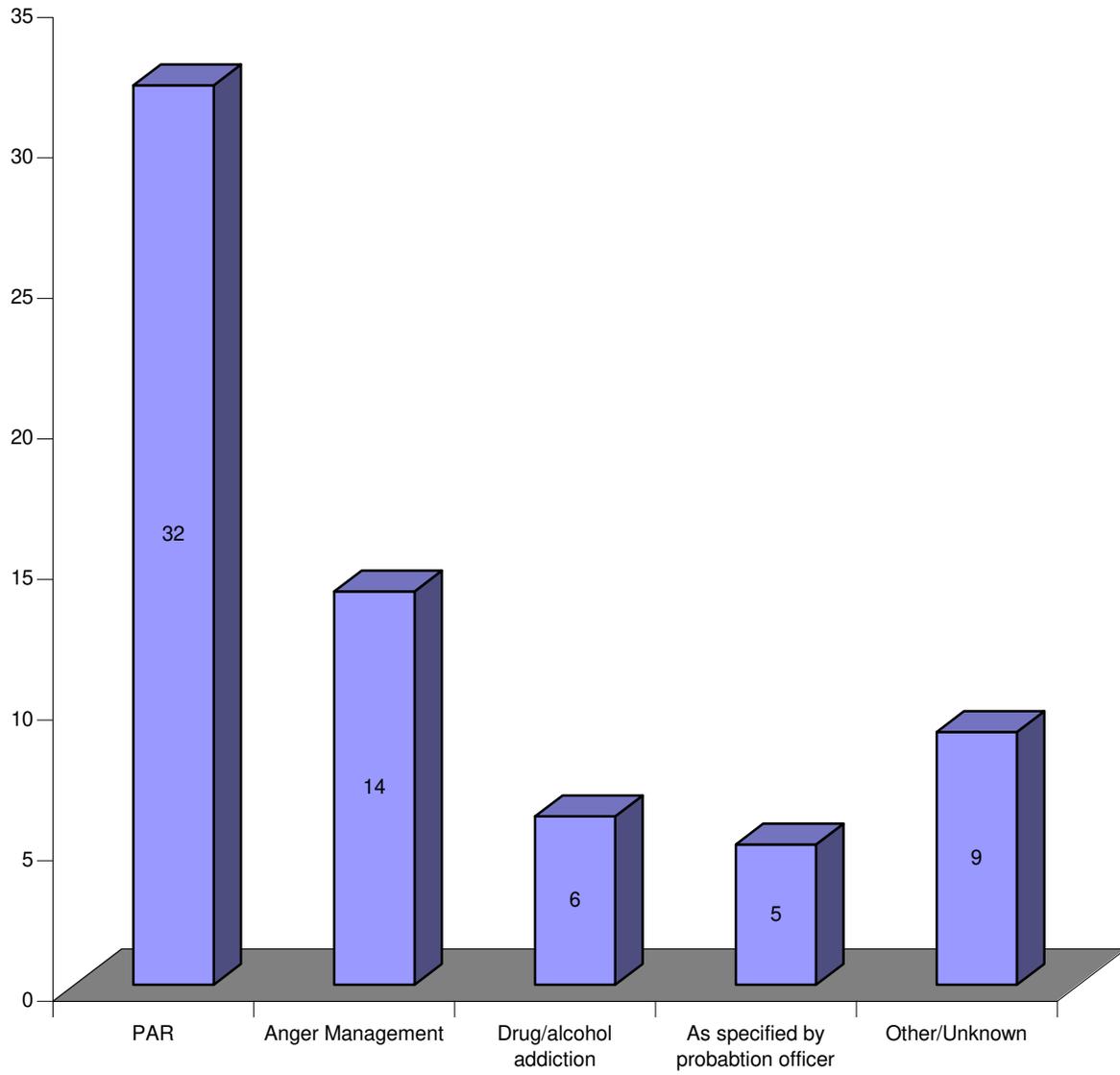
Charges Most Frequently Laid in 96 Cases Observed



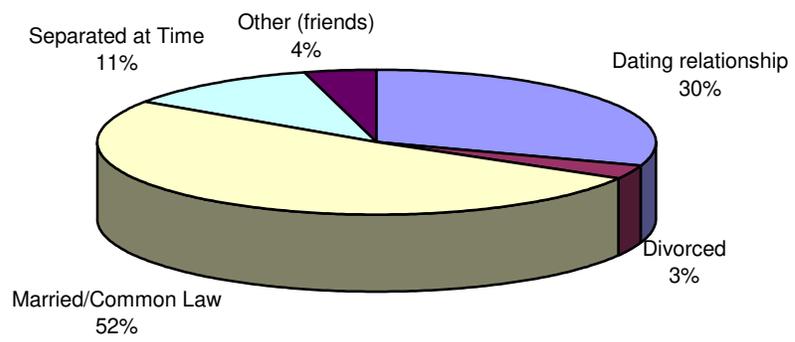
Total Disposition



Breakdown of Counselling Programs Mandated in 49 Cases



Relationship of Parties (96 cases observed)



Judges Comments

“Keep your hands in your pockets”, “get along with your wife” and “understand the consequences of getting involved with violence in this day and age”.

“Hitting a spouse is always wrong”.

“I hope not to see you on the cover of the Sun (Newspaper)”.

“Hopefully you make the right choices, if not, you know how the system works”.

“Alcohol does not excuse actions”. “He (the accused) had also been found guilty of assault charges in 1999 with his first wife. His crime was horrific and 9 days jail time recommended by crown was not good enough for a crime involving a knife”.

“The reverend (Mr. X, the accused) does a lot of community work and works with youth; therefore Mr. X has support in the community and should receive an absolute discharge”.

“An assault is an assault, however you should restraint by throwing (water) and not using something that could have seriously harmed your partner”.

“This is the most serious issue, because the complainant and the child should be safe in your company, and you violated that trust. If you pick up newspapers, you will know that violence towards women is a serious problem, and sometimes leads to death. And for the next generation, it leads to bullying at school, and 9 out of 10 kids in youth court come from homes just like the one you have given to your child”.

One judge stopped a guilty plea during the reading of the synopsis to inquire whether the accused assaulted his partner because of the rising gas prices, and said, “what is society coming to when gas prices are causing domestic violence”.

“I am not trying to be mean, I think you are worth it, you need to decide if you are worth it too. Hopefully you make the right choices, if not, you know how the system works”.

“The complainant had to be terrified by you”. “You cannot be any kind of father behind Bars”.

“We are in the middle of war right now”, “we know who he is, we don’t need you to point him out or make him stand up”.

“My position is that any person in a heated debate would take these threats in a reasonable way and not assume them to actually be threatening”.

“This incident is not a domestic relationship, it is a love triangle”.

“There is ambiguity and uncertainty whether or not the alleged assault was intentional. “The case is not strong enough and is not going to get stronger”. Case dismissed.