



FACULTY OF LAW
Te Kauhanganui Tātai Ture

ONE COURT, ONE JUDGE

An Integrated Court System for New Zealand Families
Affected by Violence

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I orea te tuatara ka patu ki waho

A problem is solved by continuing to find solutions

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I would also like to acknowledge everyone who I consulted with during the research: Judges, court staff, counsel and researchers based the United States and Canada, as well as New Zealand based retired Judges and Ministry of Justice staff. Thank you for generously providing your time and input. A full list of people I wish to thank is provided at the end of this discussion paper.

INTRODUCTION

Imagine that you have a serious issue with your health, either an injury or an illness. This issue affects multiple aspects of your life. There is no quick easy fix so you will need to go back to the doctor numerous times over the next year, or potentially years, for treatment.

You're given two options.

Option 1: at every appointment you have to see a different doctor, at different medical clinics, with whom you are unfamiliar. Your medical history will be stored in separate files to which each doctor won't have full access. Based on the limited information each doctor has, he or she will make the best possible decisions about your treatment but some of these may be ill-informed and inconsistent. There is also limited co-ordination in terms of the timing of your treatment. If you relapse, you'll have to see another new doctor who won't be entirely familiar with your medical history.

Option 2: at every appointment you can see the same doctor at your local medical clinic. They will become familiar with you, and you with them. That one doctor will have all your medical information stored in one file. They will have full oversight of your treatment and be able to make more consistent and well informed decisions. They will also co-ordinate the timing of your treatment from start to finish and if you have a relapse, that same doctor will also treat you.

Chances are, given the choice, most of us would choose option two. It is intuitive to want a straightforward process to resolve a serious medical issue as opposed to a complex process which may cause confusion, frustration, stress, or even inadvertently put your health at further risk.

Having a serious medical issue and making repeated visits to a medical clinic is similar in many respects to having a serious legal issue and making repeated visits to court. However, families affected by violence who are currently making repeated visits to court are not given a choice as to how their legal issues are managed. Rather than appear in front of one judge in one court, they often have to appear before multiple judges in multiple courts: the District Court for criminal proceedings and the Family Court for family proceedings. Some families may also have younger family members involved in criminal proceedings in the Youth Court.

The aim of this discussion paper is to start a constructive discussion about whether an integrated approach to managing related court proceedings concerning the same family should be adopted in New Zealand. This approach was pioneered in the state of New York where integrated domestic violence courts have been in operation since 2001.

In general terms, integrated domestic violence courts can hear all criminal and family proceedings relating to the same family where the underlying issue in those proceedings is family violence. One Judge is assigned to the family and will handle as many stages of the initial proceedings as logistically possible, as well as any subsequent proceedings. The judge essentially oversees the family's court involvement which may last several months or even years, depending on the family.

There is no doubt that this type of court system is very different from that which we currently have in New Zealand so both the advantages and disadvantages for families need to be carefully considered. However, we owe it to the considerable number of families effected by violence to have an open mind. New Zealand has the highest reported rate of intimate partner violence in the developed world and the fifth highest reported rate of child abuse. Now's the time to consider other options for our court system. To quote the words of Minister of Justice Amy Adams: "we can, and must, do better for families affected by violence".

OVERVIEW OF THIS DISCUSSION PAPER

This discussion paper is the first of its kind in New Zealand and explores whether integrated domestic violence courts should be implemented in New Zealand. It is divided into four parts.

Part 1 sets the scene by providing an overview of how the court system currently operates in New Zealand.

Part 2 explains how the integrated domestic violence court system currently operates in New York.

Part 3 compares both court systems to determine which is better for families affected by violence.

Part 4 highlights several key considerations for the Ministry of Justice in terms of developing a customised operating model for integrated domestic violence courts in New Zealand.

ABOUT THE RESEARCHER



I hold a Master of Laws and a Bachelor of Political Science from Victoria University of Wellington. Prior to commencing this research I worked for three years as the Research Counsel to the Principal Family Court Judge. In this role I also worked for the Chief District Court Judge and Principal Youth Court Judge on matters involving cross over between the District, Family, and Youth Courts.

A full list of my credentials demonstrating my ability to undertake this research can be found [here](#).

WHAT AM I SEEKING YOUR VIEWS ON?

Your feedback is welcomed on whether you or your organisation supports the implementation of integrated domestic violence courts in New Zealand. General feedback is welcome or you may wish to comment on specific matters in the discussion paper that are relevant to you or your organisation.

This discussion paper and all written feedback received will be published in full on <http://www.zoelawton.com/current-research.html> and provided to the Ministry of Justice. In accordance with the Victoria University Ethics Committee regulations, you may choose whether you or your organisation wish to be identified. Please specify your preference when providing feedback. As previously discussed, it is envisaged that this research will be taken into account as part of the review of New Zealand's legislative response to family violence that was launched in 2015 by Minister of Justice Amy Adams.

Thank you for taking the time to read this discussion paper. If you or your organisation would like to provide feedback, please email this to ocojresearch@gmail.com by Friday 25 August 2017.

If you have any questions, please feel free to contact me at the above email address.

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PART 1

MULTIPLE COURTS / MULTIPLE JUDGES

AN OVERVIEW OF THE COURT SYSTEM IN NEW ZEALAND

INTRODUCTION

1. Part 1 of this discussion paper provides an overview of how New Zealand's current court system operates with respect to proceedings where the underlying issue is family violence. This system is essentially a multiple court / multiple judge system.
2. In order to inform this section of the discussion paper, consultation was undertaken with four recently retired District Court Judges who have considerable experience with family violence related proceedings in the District, Family and Youth Courts. The main purpose of this consultation was to obtain an understanding of the nature of proceedings families affected by violence may be involved in. Operational protocols on information sharing and scheduling were provided by the Ministry of Justice and preliminary consultation was also undertaken on available court data.
3. The overview provided in this section of the discussion paper is not intended to be exhaustive; rather it focusses on four main aspects of the current court system, namely:
 - a) the type of proceedings the various courts currently determine;
 - b) the management of these proceedings both administratively and judicially;
 - c) court procedure; and
 - d) available social services and support.

TYPE OF PROCEEDINGS THE COURTS CURRENTLY DETERMINE

4. At present, there are around 58 District Courts throughout New Zealand, most of which have a Family and Youth Court located in the same building. Various members of a family affected by violence may be involved in proceedings in one, two or possibly all three courts.

District Courts

5. In the District Courts, members of the same family may be involved in a range of criminal proceedings concerning physical, sexual, or psychological violence. The list below reflects the wide range of offending which can be the subject of these proceedings:
 - Common assault
 - Assault on a child, or by a male on a female
 - Breach of a protection order
 - Failure to attend a non-violence programme
 - Willful damage to property
 - Failure to protect a child or vulnerable adult
 - Ill-treatment or neglect of vulnerable child or adult
 - Threatening to kill or do grievous bodily harm
 - Sexual connection or attempted sexual connection with dependent family member
 - Sexual violation
6. Complainants and defendants involved in these types of criminal proceedings may have a range of relationships with each other. The majority are former (or off-and-on) intimate partners who have been in a dating or live-in relationship. Child complainants may also have a range of relationships with defendants in criminal proceedings; for example, the defendant may be their parent, a short or long term partner of one of their parents, an older sibling, or a blood relative in their wider family.

Family Courts

7. In addition to criminal proceedings, there is also a wide range of Family Court proceedings that members of the same family may be involved in. Examples include applications for the following orders under the Domestic Violence Act, Care of Children Act, Children, Young Persons and Their Families Act, Child Support Act and the Property (Relationships) Act:
 - Protection order
 - Parenting/guardianship order
 - Care and protection order
 - Custody order
 - Occupation or tenancy order
 - Child support order
 - Order to redress economic disparity
8. Applicants and respondents in Family Court proceedings can have a range of relationships with each other. Again, the majority are former (or off-and-on) intimate partners, both those who have and have not had children together. Other family members may also be involved in the proceedings as parties, for example, grandparents or aunts and uncles who are assuming care of the child(ren) on an interim or long term basis. Oranga Tamariki will be a party if the agency has initiated proceedings to have the child removed from their current living arrangements.

Youth Courts

9. Young people from violent families may mirror the behaviour of older family members and commit a range of violent offending, or they may act out in other ways, for example, by engaging in shoplifting or drug use. These young people will be involved in proceedings under the Children, Young Persons and Their Families Act.
10. The complainant in the proceedings may be a family member, for example, a younger sibling who has been the victim of sexual violence perpetrated by the young person. Alternatively, the complainant may not be a family member, for example, the owner of a dairy that the young person has assaulted and/or robbed.

Combinations of proceedings in one court

11. There are many different combinations of the above proceedings that members of the same family may be involved in. The proceedings may take place in a single court, for example, when separating from a violent partner, the other partner may apply for a protection order and an occupation order in the Family Court. If the former couple has children, the leaving partner may also apply for a parenting order. For a range of reasons including fear of retaliation or a wish to not get their former partner in trouble, the non-violent partner in these proceedings may not report the violence to Police so there are no concurrent criminal proceedings.
12. Another example is a violent family member may be a defendant in multiple criminal proceedings in the District Court concerning the same complainant, again often a former (or off-and-on) intimate partner. Common offence types include assault by a male on a female as well as the breach of a protection order that was made at sentencing for a previous offence. Some defendants may breach the same protection order multiple times.

Combinations of proceedings in two courts

13. Members of the same family may be involved in proceedings in two courts. For example:
- a couple in a violent relationship may be involved in multiple criminal proceedings and children living with them may be the subject of care and protection proceedings in the Family Court initiated by Oranga Tamariki; or
 - following protection and/or parenting order proceedings in the Family Court, the protection order may be breached by the ex-partner resulting in criminal proceedings in the District Court. Further breaches could then occur resulting in further criminal proceedings; or
 - a young person from a violent home may be the subject of both care and protection proceedings in the Family Court initiated by Oranga Tamariki, and criminal proceedings in the Youth Court if they commit violent or non-violent crime; or
 - a young person may have been abused by a member of their family and be a complainant in criminal proceedings in the District Court and then appear in the Youth Court for committing violent or non-violent crime.

Combinations of proceedings in three courts

14. Involvement in three courts is also possible, particularly where there is inter-generational family violence within the family. For example:
- an adult family member may be violent towards their partner and/or children, resulting in criminal proceedings in the District Court;
 - Oranga Tamariki may be involved with the family and initiate care and protection proceedings in the Family Court to have children removed from their parent's care as well as any subsequent children at birth; and
 - a young person or persons within that family may be violent towards younger siblings or commit other non-violent crime, resulting in Youth Court proceedings.
15. Another example:
- an adult family member may initiate protection order and/or parenting order proceedings in the Family Court against their ex-partner;
 - their ex-partner may be violent towards their partner and/or children, resulting in criminal proceedings in the District Court;
 - a young person may continue to offend and subsequently becomes an adult defendant in the District Court; and
 - finally, a young person may become a parent during their teenage years which can result in a cycle of some of the above proceedings occurring again, or in the very least, involvement from Oranga Tamariki.

Timing of the proceedings

16. Overall, there are potentially many combinations of proceedings that can occur. There is also variation in terms of the timing of a family's proceedings which may take place over several months or several years. These may take occur concurrently in different courts with substantial overlap if initiated around the same time. Alternatively, these may take place in a more sequential manner, with partial or no overlap if initiated at different times.
17. There is a wide range of factors which may affect the timing of a family's proceedings, including:
- the timing of subsequent violent re-offending;
 - the breakdown and re-establishment of intimate relationships with the same partner;

- the formation of relationships with new partners;
- the birth of further children; and
- the timing of intervention by Oranga Tamariki.

18. Even where proceedings are filed around the same time they may ultimately conclude at different times because of the varying workloads and scheduling practices in the District, Family and Youth Courts.

MANAGEMENT OF THE PROCEEDINGS

Administration

19. Overall, there is no centralised or coordinated management of the administration relating to a family's inter-connected proceedings. This is because the District, Family and Youth Courts largely operate independently of each other. Each court has a separate registry, which handles all the necessary administration relating to the proceedings in that particular court. Information about proceedings in each court are held in separate hard copy files in each registry. Similarly, electronic information about proceedings is stored in separate sections of the Ministry of Justice database specific to each registry.

20. Registries are the main point of contact for the family members involved in the proceedings and their counsel (if any). Where family members are involved in proceedings in multiple courts, they and/or their counsel will need to liaise with multiple registries in terms of filing documents and obtaining court dates and other information.

Scheduling

21. Depending on the type of proceeding, and the process laid out in legislation or court rules, each proceeding may consist of around 1 - 8 separate stages which need to be scheduled. Examples of proceedings that require fewer individual stages include without notice applications for orders filed in the Family Court which are not opposed by the respondent and criminal proceedings where the defendant pleads guilty. In contrast, if the respondent opposes the granting of an order resulting in a defended hearing, or pleads not guilty resulting in a trial, the number of stages will be higher.

22. At present, there is no centralised or coordinated scheduling of the various stages of a family's inter-related proceedings; instead, each stage is scheduled separately by court staff according to different protocols for the District, Family and Youth Courts. Therefore, where a family has concurrent proceedings in multiple courts, members of that family are likely to have to make separate court appearances on different days for each stage that requires an appearance in court.

Judicial case management

23. All District Court Judges have the ability to preside over criminal proceedings including bail hearings and judge alone trials. Judges usually hold one or more additional warrants which enable them to preside over jury trials in the District Court, proceedings in the Family Court, and proceedings in the Youth Court.

24. At present, there is no statutory or rules based case management system in place which provides that the same judge should manage all stages of a family's multiple inter-related proceedings that take place either in the same court, or different courts. The total number of a judges involved in a family's proceedings will depend on their nature and duration, as well as the size of the court where they take place. Based on the current number and location of judges nationwide, this could range anywhere from approximately 1 or 4 judges in rural regions where there are fewer judges rostered to each court, to 1 to 8 in urban regions where there are more judges rostered to each court.
25. However, judicial continuity does occur with respect to one type of proceeding, namely, complex parenting/guardianship order proceedings under the Care of Children Act in the Family Court. If the proceedings are classified as complex by a judge, the same judge must manage every subsequent stage of the proceeding where logistically possible, including judicial conferences and if settlement cannot be reached, the subsequent defended hearing. One of grounds for classifying parenting/guardianship order proceedings as complex is the presence of family violence. This 'one judge one family' case management approach was introduced in March 2014 to coincide with the extensive changes to the Care of Children Act and other Family Court legislation and is [prescribed in the Family Courts Rules](#).

COURT PROCEDURE

Legislation, court rules and rules of evidence

26. Proceedings are adjudicated separately in accordance with the relevant legislation and procedural court rules that apply to proceedings in the particular court. In terms of the rules of evidence, different burdens of proof apply: beyond reasonable doubt for criminal proceedings and the balance of probabilities for family proceedings.

Information sharing

27. Judges are not automatically provided with information about previous or concurrent proceedings in another court concerning members of the same family. Information about other proceedings is held in separate court files in separate registries and judges are only provided with limited information about these proceedings in accordance with statutory rules on information sharing between courts. The process outlined in the Ministry of Justice *Guidelines For Information Sharing Between Jurisdictions* (not available online) sets out the administrative process that registrars should follow. It requires a registrar from one court to request information from a registrar in the other court using the relevant form. The registrar in the other court considers the request and if it is approved, they will provide the information to the registrar in the other court. The guidelines do not always stipulate at what stage of a proceeding a registrar should be requesting information, or timeframes within which the other registrar must consider the request and if approved, provide the information.
28. Counsel may also request information about proceedings in another court from the court registrar. If the application is granted they may then attempt to admit the information about those proceedings as evidence in the proceedings they are representing their client in. Such evidence will only be admissible if permitted under the relevant provisions of the Evidence Act. However, there are several reasons why counsel may not bring information about related proceedings to the attention of the judge: they may be unaware of the related proceedings themselves as their client has not disclosed these, they may assume the judge is already aware of the other proceedings

and not mention these, or they may deliberately not mention these if they could be prejudicial for their client.

Involvement of lawyers

29. In criminal proceedings, a Police or Crown prosecutor will appear on behalf of the prosecution (depending on the type of charge) and a defence lawyer from the public defence service or a private firm will appear for the defendant. In Family Court proceedings, there may be two lawyers involved, one acting for the applicant and one for the respondent although either party may be unrepresented if they do not qualify for legal aid and cannot afford to pay for a lawyer. A lawyer is always appointed to represent the child or young person in proceedings in the Family Court and Youth Court heard under the Children Young Persons and Their Families Act. A lawyer can also be appointed to represent the child or children in respect of other types of Family Court proceedings although this appointment is at the discretion of the presiding judge.
30. Overall, where there are inter-related criminal and family proceedings before the court in respect of the same family, there may be up to 4 different lawyers involved. Different lawyers may also be involved in subsequent criminal and family proceedings.

Involvement of court victim advisors

31. All complainants in criminal proceedings in the District and Youth Court are offered support from a court victim advisor. This is a free service; court victim advisors are employed by the Ministry of Justice and based in District Courts throughout New Zealand. [The role of a court victim advisor is to:](#)
- explain how the court system works and what all the legal jargon means;
 - keep the victim updated on what is happening with their case;
 - make sure the Police and others connected with the case know about any concerns the victims has;
 - provide assistance during the proceedings, such as explaining how the victim can give evidence or helping them with their victim impact statement;
 - provide the victim with information on restorative justice;
 - after the hearing, explain the court's decision and if the offender is sent to prison, help the victim register on the Victim Notification Register so they can be told when the offender has parole hearings or is released; and
 - give the victim information on other services, entitlements and financial assistance from other government and non-government agencies.
32. In the Family Court, applicants who apply for a protection order, parenting order, or any other type of order and disclose family violence in their application are not provided with support from a court victim advisor. Those who are eligible for legal aid or can afford a private lawyer will have their lawyer explain how the Family Court works, how to give evidence in court, and keep them updated on their case. However, those who are not eligible for legal aid and cannot afford a private lawyer will appear unrepresented and have no legal support throughout the court process. Recent changes to legal aid eligibility has meant that there are now more unrepresented litigants.

AVAILABLE SOCIAL SERVICES AND SUPPORT

33. In the District Court, there is an operational protocol (not available online) which provides that judges can refer a defendant to attend a voluntary non-violence programme prior to sentencing if

they plead guilty to a family violence related offence and agree to attend. [When granting a final protection order as part of a sentence in the District Court](#), or [granting an interim protection order in the Family Court](#), judges must direct a respondent to attend a mandatory non-violence programme. The purpose of these programmes is to help violent family members address and ultimately reduce their violent behaviour. They may be individual or group programmes lasting several weeks or months; the appropriate programme is determined by the programme provider following an assessment of the person who has been referred.

34. If the referral to a programme is made by a District Court Judge on a voluntary basis, failure to attend and ultimately complete the programme is not a criminal offence. However, the Judge may take this into account when sentencing the defendant if sentencing has been deferred until the completion of the programme. In contrast, if the referral to a programme is made by a District or Family Court Judge on a mandatory basis, failure to attend and ultimately complete a non-violence programme is a criminal offence and will result in proceedings in the District Court.
35. Providers of non-violence programmes are required to notify the court if the person directed to attend the programme does not attend. Similarly, if the provider has concerns for the safety of the protected person due to the conduct or admissions made by a person during the programme, they must also notify the court. When a person completes the programme, the provider must provide a completion report which can include any concerns the provider has for the safety of the protected person.
36. Updates provided by programme providers will only be provided back to the Family Court (if a mandatory referral was made) or the District Court (if a voluntary referral was made pre-sentencing). The information is not automatically shared between courts even when there are concurrent proceedings. Where a mandatory referral is made as part of a sentence in the District Court, the management of the referral is then transferred to the Family Court and held in a Family Court file. Therefore, if there are subsequent criminal proceedings concerning the same defendant, the District Court Judge will not have access to relevant information such a safety concern notification or completion report which could be highly relevant when considering bail or sentencing.
37. Complainants in criminal proceedings [are offered the strengthening safety service](#) and applicants for protection orders in the Family Court [are offered safety programmes](#). Both the service and programmes provide victim specific support. Safety programmes for children are also available.
38. Finally, if a defendant has pleaded guilty in the District Court, the proceedings are adjourned to ascertain if a restorative justice provider is available in the local area. The restorative justice provider then meets with the victim and defendant to determine whether a restorative justice process is appropriate in the circumstances, taking into account the wishes of the victim. If a conference does go ahead, this can be taken into account at sentencing by the District Court Judge.

SUMMARY

39. Overall, members of a family affected by violence may be involved in a range of different proceedings in one, two, or possibly even three courts. These proceedings may be concurrent, with partial or substantial overlap, or they may take place in a more sequential manner.
40. At present, these inter-related proceedings are:

- administratively managed separately by different court registries;
- scheduled separately to take place on different days in different courts;
- judicially managed separately by different judges, who may have limited knowledge or be unaware of other inter-related proceedings; and
- involve multiple lawyers who may have limited knowledge or be unaware of other inter-related proceedings.

41. Preliminary consultation with Ministry of Justice staff was undertaken to determine whether it is possible to identify the number of families with multiple proceedings and the most common combinations of proceedings. Ministry of Justice staff advised that this would be difficult to accurately determine this due to the way data is currently collected and in particular the lack of cross-referencing between District, Family and Youth Court data in the Ministry of Justice Case Management System. However, a model based on what data is available as well as assumptions could potentially be developed which would estimate the number of families with multiple proceedings and the most common combinations of proceedings. This could be explored further if the Minister of Justice decided that further research into the implementation of integrated courts is warranted.

42. Anecdotally, retired judges consulted with for this discussion paper expressed the view that based on their experience, there is likely to be a significant number of families with members involved in proceedings in two or more courts that are either concurrent or sequential.

PART 2

ONE COURT / ONE JUDGE

AN OVERVIEW OF THE COURT SYSTEM IN NEW YORK

INTRODUCTION

43. New Zealand's current court system, essentially a multiple court / multiple judge system, has many similarities to the court system operating in New York in the 1990s. By this time, members of the New York judiciary had become increasingly concerned about the potential negative consequences for families as a result of having their proceedings heard in separate courts by different judges. Of particular concern was the risk of uninformed and inconsistent decision making by judges which could compromise a victim's safety. In order to reduce this risk, Chief Judge Judith S. Kaye led the implementation of several hybrid criminal and family courts called integrated domestic violence courts (IDV courts). Central to the operation of these courts was a 'One Judge One Family' case management approach whereby one judge manages as many stages of the family's proceedings as logistically possible.
44. Since the 1990s, Integrated Domestic Violence Courts have been implemented in the majority of counties in New York State; 43 of New York's 62 counties have an IDV court and a further 5 are in development. A small number of IDV courts have also been implemented in other states including Vermont, Idaho, Oklahoma, Illinois, Colorado, Connecticut and most recently, California. In 2011, a [pilot IDV court was also established in Toronto, Canada](#). As in New York, the establishment of this pilot court was a judiciary led initiative.
45. Other countries have also taken note of the concept of IDV courts, for example, a pilot IDV court was run in the UK in 2008. However, the [evaluation of court](#) was not able to measure whether the court was a success as insufficient proceedings were diverted into the court to obtain sufficient data and feedback from court stakeholders. Closer to home, the Australian state of Victoria has recently decided to further explore the implementation of IDV courts following the recommendations of the [Royal Commission into Family Violence](#).
46. This part of the discussion paper provides an overview of the standard IDV court operating model that is used in most IDV courts in New York and other parts of the United States. However, it is acknowledged that there is some slight variation between courts as they have been adapted to suit the local community. The pilot court in Toronto is also largely modelled on the New York operating model, although there is one major operational difference: the judge assigned to the family does not preside over a criminal trial or defended family hearing if either or both is required; instead, a different judge is substituted. This operational difference is discussed further in part 4 of this discussion paper.
47. The following overview of the New York operating model is informed by site visits to three IDV courts in New York. These are located in the large metropolitan areas of Manhattan and Brooklyn as well as White Plains, a small town located about one hour by train from Manhattan. I spent a day observing proceedings in these three courts to gain an understanding of how they operate in practice and interviewed one judge who presides in each of these courts. I then met with the State-wide Coordinating Judge for Family Violence Cases who oversees all IDV courts in New York State.
48. While in New York I also attended a training day for judges and court staff in other states who were considering establishing an IVD court in their community. This was run by the [Center for Court Innovation](#) in conjunction with judges, court staff, lawyers and social service programme providers from the Brooklyn IDV Court. At this training day I met with researchers at the Centre for Court Innovation who have evaluated several IDV courts in New York State.

49. In addition to visiting IDV courts in New York State, I also visited a pilot IDV court in Toronto. A day of court observation was undertaken in this court and I consulted both judges who currently preside in it as well as a judge who was involved in the establishment of the court. I then met with a researcher who is leading the evaluation of the court.
50. In order to provide as clear a comparison as possible, this part of the discussion paper is divided into the same sections as part 1, namely:
- the type of proceedings the court currently determines;
 - the management of these proceedings both administratively and judicially;
 - court procedure; and
 - available social services and support.

TYPE OF PROCEEDINGS THE COURT CURRENTLY DETERMINES

51. IDV courts have a joint criminal and family jurisdiction. All proceedings are heard in the same designated courtroom; the layout combines elements of both a criminal and family courtroom.
52. IDV courts determine criminal proceedings where the complainant and defendant are former or off-and-on intimate partners. Some IDV courts only determine criminal proceedings where the offence is at the lower end of the scale in terms of maximum sentence, namely, misdemeanors offences. Other IDV courts determine any type of offence regardless of the maximum sentence with the exception of murder and manslaughter. Usually the threshold of each court is not decided on a principled basis; rather it is determined by the judicial resource allocated to the particular court and therefore the workload the court can manage. However, during the implementation of some IDV courts various stakeholders have objected to IDV courts hearing criminal offences at the higher end of the scale which has resulted in a lower threshold.
53. IDV courts also determine any type of Family Court proceedings where the applicant and respondent are former or off-and-on intimate partners. However, other family members who may also be parties in the proceedings include grandparents or other relatives who have applied interim or long term care of the children, or the New Zealand equivalent of Oranga Tamariki which has initiated care and protection proceedings.
54. Youth Court proceedings concerning young people from violent families are not usually determined in IDV courts. Again, this is not on a principled basis but is due to resourcing restrictions.
55. In order for a family's proceedings to be transferred from the regular courts to an IDV court, two screening criteria must be met. First, there must be a pending criminal proceeding involving a defendant and a complainant who have been in an intimate relationship. After the bail hearing, a search is undertaken in the Family Court database. If there is one or more pending family proceeding(s) involving the same defendant or complainant in the pending criminal proceeding, both proceedings are then transferred to an IDV court and assigned to one judge. Some courts have a strict timeframe. For example, the proceedings must be filed within 60 days of each other in order to be transferred. In other courts, more discretion is exercised as to whether the proceedings are transferred.
56. Following the initial proceedings, any subsequent criminal proceedings concerning the same adult parties are also transferred to the IDV court and are heard by the same Judge who presided over

the initial proceedings. These may include further assaults or breaches of an existing protection order. Any subsequent applications for new orders or variations to existing orders that would usually be heard in the Family Court are also transferred to the IDV court and heard by the same Judge.

57. Subsequent criminal or family proceedings may commence while the initial proceedings are still underway or several months or years after they have concluded; it is not a requirement that they overlap in terms of timing to be determined in the IDV court. Essentially, once the family is assigned to the IDV court all subsequent family violence proceedings relating to that family will be determined in that court by the same judge, as far as is logistically possible.

MANAGEMENT OF THE PROCEEDINGS

Administration

58. Once the family's proceedings have been transferred to an IDV court, a unique identifier is assigned to the family. Each individual proceeding retains the file number from the originating court but is referenced under the family's unique identifier. Information about each individual proceeding is stored in an individual hard copy file but all files relating to the same family are stored in one main hard copy file. Electronic information about the files is linked in an IDV court database.
59. Each IDV court has a designated registry with staff who handle all administration relating to the proceedings. Staff are cross-trained in both criminal and family proceedings. As there is one designated registry, family members and counsel liaise with only one registry.

Scheduling

60. Following the transfer of the proceedings, a judge is assigned to the family and the first court appearance in the IDV court is scheduled. By this time, the defendant will usually have had a bail hearing and a without notice Family Court application has been filed and granted. The first court appearance in the IDV court will include the next stage of both the criminal and family proceedings. Usually the next stage of the criminal proceedings is scheduled to take place first, immediately followed by the next stage of the family proceedings. Based on what occurred in both stages, the judge will then make a decision regarding the next steps for the family. The judge will usually then schedule the next court appearance, in conjunction with the registrar, counsel, and the parties. This enables everyone involved, but most importantly the parties, to leave court knowing when their next court appearance will be.
61. The same scheduling process is followed, where possible, for the following stages of the family's proceedings. However, one set of proceedings may conclude before the other. For example, a defendant may plead guilty to a criminal offence but oppose a family application which then requires a defended hearing so it takes longer to conclude. Alternatively, if scheduling the next stage of the criminal and family proceedings on the same day will result in a significant delay (because there is not a large enough slot of court time available for several months), the judge can simply use his or her discretion and schedule the next stages of the proceedings separately on different days.

62. Judicial monitoring appearances can also be scheduled in addition to and independently of court appearances. At these appearances the judge usually monitors a defendant's attendance and progress made at social service programmes although these can also be used to monitor compliance with a family order or the defendant's sentence. The complainant is notified of these appearances and can choose if they want to attend.
63. The judge assigned to the family determines the frequency of judicial monitoring appearances on a case by case basis, taking into account consideration of the seriousness of the allegations, employment, attendance at school or mandated programmes and other relevant factors. Initially, these may take place once a month. If an offender proves to be reliable and (for example) regularly attends their non-violence programme, the court may direct less frequent appearances. Probation officers and representatives from non-violence programmes or other treatment programmes can also be asked to appear at judicial monitoring appearances.
64. Overall, a common practice is for a judge to make interim family orders and resolve the criminal matter first (in terms of determining guilt either by way of a guilty plea or a trial) before making final family orders and sentencing the defendant. It is also common for a judge to require either or both adult parties to complete a social services programme or programmes before making final family orders and/or sentencing the defendant. This enables the judge to then take into account whether the parties have effectively engaged in the programme(s) and completed these or not.

Judicial case management

65. The general aim is to have the one judge allocated to the family manage as many stages of the proceedings as logistically possible; this 'one judge one family' case management approach is a central feature of IDV courts. Stages of the criminal proceedings will include any applications to vary bail conditions, pre-trial matters, a judge alone or jury trial if the defendant pleads not guilty, judicial monitoring appearances, and sentencing. Stages of the family proceedings will include all pre-hearing judicial conferences and a defended hearing if a settlement is not reached prior.
66. However, for logistical reasons it may not always be possible for the allocated judge to manage every stage of the proceedings. If the allocated judge is on sick leave or annual leave, another judge can be substituted for the next stage or stages of the proceedings if waiting for the allocated judge to return would result in a significant delay for the family. Some IDV courts with low judicial resources (and therefore less available court time) do not hear jury or judge alone trials as these can take up a lot of court time and result in delays for other families. Instead, the trial is heard by a different judge in a regular criminal court.

COURT PROCEDURE

Legislation, court rules and rules of evidence

67. All proceedings are decided in accordance with the relevant legislation that also applies to proceedings in separate criminal and family courts. Similarly, the different rules of evidence for criminal and family proceedings apply and the different burdens of proof apply: beyond reasonable doubt for criminal proceedings and the balance of probabilities for family proceedings. The criminal and family proceedings are not combined or consolidated in any legal or practical sense and are adjudicated separately.

Information sharing

68. The general principle in IDV courts is that information and evidence obtained in the course of criminal proceedings can be used in family proceedings and vice versa. For example, Judges will use information from criminal proceedings to inform decisions they make about interim and final family orders. Judges will also use information from family proceedings to inform requests to vary bail conditions and sentencing decisions in the criminal court. Essentially, there is a free flow of information between the courts with respect to these sorts of decisions.
69. However, the major exception to this general principle is that evidence provided in family proceedings cannot be taken into account by the judge in a criminal trial to determine the defendant's guilt. The judge only decides whether the defendant is guilty based on the evidence presented by counsel solely in the course of that criminal trial. This clear distinction is drawn on the basis that that evidence in the family jurisdiction is determined at a lower threshold (balance of probabilities) than the criminal jurisdiction (beyond reasonable doubt).
70. If a defended hearing is required in respect of a family's proceeding(s), evidence from the criminal proceedings can be more freely used as it has already been tested to a higher standard of proof. The rules of evidence in family proceedings are also less restrictive than in criminal proceedings and the judge has more discretion as to what evidence can be admitted.

Involvement of lawyers

71. The Crown or Police prosecutor, criminal defence counsel, family counsel acting for the applicant and respondent, and a lawyer appointed to represent the child(ren) (if any) may attend any stages of the criminal or family proceedings. It is usual practice for one or more Police prosecutors to be assigned full time to an individual IDV court so that they build up specific family violence expertise. These prosecutors usually attend all relevant stages of the related family proceedings. Some family members appear unrepresented in either the criminal and/or family proceedings.

Involvement of court victim advisors

72. There is variation amongst IDV courts depending on funding, although most employ a court victim advisor who assists the victim in both the criminal and family proceedings by explaining how the court process works to them.

AVAILABLE SOCIAL SERVICES AND SUPPORT

73. Depending on the funding available to the particular IDV court, there are up to four types of programmes that a judge can refer either adult to, namely, a programme to assist them to:
- address and ultimately reduce their violent behaviour;
 - address and ultimately reduce their abuse of alcohol and drugs;
 - increase their safety; and
 - learn sufficient parenting skills.
74. The allocated judge has discretion over when during the proceedings an adult is referred to a programme and whether completion of the programme is voluntary or mandatory (and non-attendance is a criminal offence). The Judge is also provided with updates and completion reports

from the programme providers. Finally, the judge can take information from the programme provider into account in both the family and criminal proceedings.

75. Some court victim advisors have an expanded role and provide information about the court process as well as information about other government funded services that are available. There is usually a victim support office located at the court where court victim advisors meet with victims. Some courts also have staff from other government agencies located in this office, for example, the New Zealand equivalent of Work and Income, Housing New Zealand and Oranga Tamariki.

SUMMARY

76. In contrast to New Zealand's current court system, IDV courts in New York State have a far more centralised court process. Significantly, inter-related proceedings concerning the same family are:
- administratively managed by one designated registry;
 - scheduled back to back on the same day where possible and in the same courtroom;
 - judicially managed by the same judge, who has comprehensive and up to date information about all of the proceedings; and
 - involve multiple lawyers although these lawyers have more knowledge of the other proceedings as they can attend these.

PART 3

WHICH COURT SYSTEM IS BETTER FOR FAMILIES?

A COMPARISON OF BOTH COURT SYSTEMS

INTRODUCTION

77. As demonstrated in parts 1 and 2 of this discussion paper, the court systems operating in New Zealand and New York have some aspects in common but overall are quite different. This part of the discussion paper compares both systems in order to answer the following question: which is ultimately better for families affected by violence?
78. First, an overview of the available evaluations on IDV courts is provided along with an overview of the consultation I undertook with judges in New York and Toronto. Second, both court systems are assessed and compared using six performance measures which reflect the [goals of the IDV courts](#). Quantitative and qualitative evidence is drawn from the evaluations and the consultation I undertook with judges in New York and Toronto to support the findings made.

EVALUATIONS

79. At the time this discussion paper was released, ten written evaluations of IDV courts in New York State and Canada had been published. These are outlined below according to publication date.

Evaluation A: Enhancing Safety and Justice for Victims of Domestic Violence: Voices of Women in The Queens Integrated Domestic Violence Court (2008)

80. In collaboration with the [Center for Court Innovation](#), the [Vera Institute of Justice](#) researched female complainants' experiences of the Queens IDV Court. Feedback was obtained on a range of topics, including:
- judicial procedure;
 - quality of judicial decisions;
 - having their voice heard during the court process; and
 - the behaviour of the defendant during the court process.
81. The Queens IDV Court, located in an urban part of New York city, opened in 2003. The evaluation was conducted over a 22-month period between 2004 and 2006. In total, 25 interviews were conducted with 14 female complainants and each was interviewed between 1 and 3 times. The researchers also conducted 17 formal court observations, obtained and examined each complainant's case files, and spoke informally with court staff and victim advocates.
82. A strength of this evaluation is that researchers used an open-ended interview structure which allowed complainants to share their perspectives on the topics they considered most relevant to their experience. The main limitation was that due to limited resources the researchers were not able to compare the experiences of complainants involved in similar proceedings in a traditional multiple court / multiple judge system. The sample size was also quite small and the evaluation took place in a single court.

Evaluation B: Litigant Perspectives in an Integrated Domestic Violence Court: The Case of Yonkers, New York (2011)

83. Aiming to build on the previous evaluation, researchers from the Center for Court Innovation explored the experience of both complainants and defendants in the Yonkers IDV Court. Feedback was obtained on a range of topics, including:
- the outcomes of criminal and family proceedings;

- litigant interactions with the judge and lawyers; and
- procedural fairness.

84. The Yonkers IDV Court is located on the outer limits of New York City. The court opened in 2004 and the evaluation was conducted over a 12-month period from March 2007 to March 2008. In total 46 litigants agreed to complete a written survey. 52% of the sample was female, the majority of whom identified as victims, and the remaining 48% was male, the majority of whom identified as defendants. At the time of completing the survey litigants estimated they had been in the court for an average of 12 months. Semi structured interviews were also conducted with the dedicated victim advocate and probation officer who work in the Yonkers IDV Court in order to provide context for trends identified by the survey.

85. A strength of this evaluation is that it provides a comparison of the experiences of both complainants and defendants. It also has a larger sample size than the previous evaluation. In terms of limitations, again there was no comparison group of litigants in a traditional multiple court / multiple judge system and the evaluation took place in a single court. Further, in order to ensure the anonymity of respondents, survey results were not linked and compared with the families' court records. It was therefore not possible to compare the experiences of members of the same family.

Evaluation C: Suffolk County Integrated Domestic Violence Court: 2002 – 2005 Cases (2011)

86. In addition to undertaking a survey of litigants' perspectives, the Center for Court Innovation has also undertaken several evaluations which compare data collected about criminal and family proceedings in an integrated one court / one judge system, compared with those processed in a traditional multiple court / multiple judge system. In this evaluation, the Suffolk County IDV Court was used as a case study and proceedings from this court were compared to comparable proceedings in separate criminal and family courts in the same area. Quantitative performance measures were the focus of this evaluation, namely, the:

- total number of court appearances required for each family and criminal proceeding;
- duration of the proceedings from the time these were initiated until the files were closed;
- outcomes of the family proceedings and whether any subsequent family proceedings were filed; and
- outcomes of the criminal proceedings and whether the defendant subsequently re-offended.

87. The Suffolk County IDV Court is located in a suburban area of Long Island, near New York City. The court was one of the first to be established in 2002 along with five other pilot courts in the state of New York. The evaluation used court data collected from October 2002 (when the court opened) to December 2005.

88. One of the strengths of this evaluation is that it provides data about proceedings decided in both the integrated one court / one judge system compared with the traditional multiple court / multiple judge system. The researchers noted that a limitation with the evaluation is that it was conducted using proceedings heard during the first few years the Suffolk County IDV Court was in operation. By the time the evaluation was published in 2011, there had been a number of changes in the technology, operations, training, and other court practices, which may have affected the court's efficiency and the outcomes of the proceedings.

Evaluation D: Erie County Integrated Domestic Violence Court: 2003 – 2005 Cases (2011)

89. This evaluation largely mirrors the previous evaluation undertaken by the Center for Court Innovation although it was undertaken in a different location. Erie County is located on the western border of New York State and includes Buffalo, the second largest city in the state after New York City. Following the establishment and perceived success of the six pilot IDV Courts in 2001 – 2002, the Erie County IDV Court was established in 2003 along with four further IDV Courts. The evaluation was conducted using data from proceedings initiated between December 2003 (when the court opened) through to December 2005.
90. This evaluation has the same strengths and limitations as the previous evaluation on the Suffolk County IDV Court as the methodology used is identical.

Evaluation E: The Impact of Integrated Domestic Violence Courts on Case Outcomes: The Results for Nine New York State Courts: 2006 - 2007 Cases (2011)

91. In addition to undertaking evaluations of single IDV Courts in suburban and urban areas of New York State, researchers from the Centre for Court Innovation also undertook a multi-site evaluation of nine IDV courts in rural areas of New York State. A similar methodology was used to the two previous evaluations including similar quantitative performance measures.
92. The nine IDV Courts included in the evaluation are located in the counties of Broome, Chautauqua, Dutchess, Niagara, Oneida, Orange, Oswego, Rockland, and Steuben which had an average population of around 200,000 people at the time of the evaluation. The evaluation was conducted using data from proceedings initiated between late 2006/early 2007 (when the court opened) through to May 2007. Comparable family and criminal proceedings were drawn from separate criminal and family courts in these counties.
93. The main limitation of the evaluation was the small sample size of proceedings; 4 of the 9 IDV Courts had only recently opened at the time of the evaluation so only a limited quantity of data was available. These courts also had relatively low case volumes due to the fact they are located in rural areas with smaller populations.

Evaluation F: Civil Protective Orders in Integrated Domestic Violence Court: An Empirical Evaluation (2011)

94. This evaluation focused solely on family proceedings concerning applications for the New Zealand equivalent of a protection order and an occupancy order under the Domestic Violence Act. Quantitative performance measures were the focus of this evaluation, namely, the:
- duration of the proceedings from the time these were initiated until the files were closed; and
 - outcomes of the proceedings.
95. [The researcher, based at Harvard University](#), used publically available data from the New York eCourts database to compare these types of proceedings heard in an integrated one court / one judge system compared with a traditional multiple court / multiple judge system. The court data was collected between 2003-2009 from the following counties: New York (Manhattan), Kings, Queens, Bronx, Nassau, Richmond, Suffolk counties.
96. A strength of the evaluation is that the data was collected over a significant timeframe. The main limitation is that the researcher did not factor in the judicial resource available to each court

(which would potentially effect the duration of the proceedings) and select courts with similar judicial resource to ensure the two samples were relatively comparable.

Evaluation G: The Impact of the Kings County Integrated Domestic Violence Court on Case Processing (2014)

97. The [New York City Criminal Justice Agency](#) focused on criminal proceedings in this evaluation and assessed the outcome of criminal proceedings concerning misdemeanor charges in the Kings County IDV court compared with similar criminal proceedings decided in the multiple court / multiple judge system in Kings County. The evaluation measured the:
- total number of court appearances required;
 - duration of the proceedings from the time these were initiated until the files were closed;
 - outcomes of the criminal proceedings and whether the defendant subsequently re-offended (both family violence and non-family violence related offences); and
 - correlation between witness participation and conviction rates.
98. Kings County is a large urban county in New York city, otherwise known as Brooklyn. The court opened in 2005. The evaluation is based on data relating to defendants arrested in Brooklyn between November 2007 and December 2009.
99. The main strength of this evaluation is that it contains very detailed analysis of the two samples of proceedings. The researchers undertook a detailed screening process using a propensity score in order to match two samples of very similar proceedings; from a sample of 1,400 IDV Court proceedings and 12,488 regular Criminal Court DV proceedings the samples were then narrowed to 191 IDV Court proceedings and 191 regular Criminal Court proceedings. The evaluation is also the first to provide any analysis of the potential link between witness participation and conviction rates.

Evaluation H: Investigating Integrated Domestic Violence Courts - Lessons from New York (2014)

100. While the Toronto pilot court was in the first few years of operation, [a Canadian researcher at the University of Calgary](#) undertook a preliminary evaluation of Manhattan's IDV court. The researcher used a qualitative methodology to "probe issues of court culture and function rather than case outcomes." In particular, the evaluation focused on the needs and interests of victims, offenders, and children, and whether the court promoted access to justice.
101. The Manhattan IDV Court opened in 2007 and is located in a densely populated urban area of New York city; at the time of the evaluation the population was around 8 million. The evaluation took place between November 2011 and January 2012 and involved semi-structured interviews with nine victim, offender, and children's advocates (lawyers and social workers) and four justice sector/institutional representatives (judges and administrators) who worked in the court. Court observations were also undertaken.
102. A strength of the evaluation is that it involves interviews with a range of professionals working in a very busy IDV court. Their various perspectives were also compared to highlight similarities and differences. The main limitation was the researcher did not interview victims and offenders. Prosecutors from the District Attorney's office were also not interviewed (despite a request being made by the researcher).

Evaluation I: Establishing Canada's First Integrated Domestic Violence Court (2014)

103. The first evaluation of the Toronto pilot IDV court was undertaken by a [Canadian researcher from Kings Western University](#) who is the Chair of the Research Advisory Committee established to evaluate the court. The evaluation is qualitative in nature, based on interviews with key court stakeholders and focused on the following five questions:

- What are the challenges and benefits of information sharing between the two systems?
- What are the challenges and benefits of having one judge hear both matters?
- What are the challenges and benefits of having community supports attached to the court?
- Does the court provide effective communication and collaboration between the justice system, victims, accused and community supports?
- Do you have any other comments about the IDV court, especially any improvements?

104. The pilot IDV Court in Toronto opened in June 2011 and is based on the New York operating model with some slight modifications. It also has a slightly narrower criminal and family jurisdiction as it has to operate within existing legislation which determines the jurisdiction of various levels of courts. Semi structured interviews took place in 2013 with a total of 21 participants including 17 key professionals involved with the court, as well as one female offender, one male offender and two female victims. All the professionals interviewed had 10 years or more of experience in their profession, whether as a judge, Crown, a family or criminal lawyer, or as a support worker from a non-government agency.

105. A strength of this study is that it includes professional stakeholders with a range of roles in the pilot IDV court who could provide feedback from different perspectives. As this court is unique in Canada, these stakeholders had no prior experience with an IDV court and therefore perhaps had few pre-existing biases and assumptions about such a process. Also, only a small number of litigants were interviewed for the evaluation so it was not possible to obtain as much feedback from them on the court process compared with previous evaluations of litigants' experiences undertaken in the United States.

Evaluation J: Canada's First Integrated Domestic Violence Court: Examining Family and Criminal Court Outcomes at the Toronto I.D.V.C. (2016)

106. The second evaluation of the Toronto pilot IDV Court (conducted by the same researcher who conducted the first evaluation) was quantitative in nature and compared family and criminal proceedings decided in the IDV court with equivalent proceedings in the local multiple court / multiple judge system. The evaluation measured the:

- bail conditions imposed on defendants and the conditions of protection orders;
- duration of the proceedings from the time these were initiated until the files were closed; and
- outcomes of the family and criminal proceedings.

107. Strength of the evaluation is that the researcher took great care to ensure proceedings selected from both court systems were relatively similar. This enabled the researchers to undertake more accurate and meaningful analysis. The main limitation is that the pilot IDV court currently has a small catchment area; only criminal and family cases from two Toronto sites of the Ontario Courts of Justice are automatically referred to the integrated court. This results in a very small number of cases and therefore a small amount of court data.

Consultation undertaken for this discussion paper

108. As previously discussed in part 2 of this discussion paper, I made site visits to three IDV courts in New York. These are located in the large metropolitan areas of Manhattan and Brooklyn as well as White Plains, a small town located about one hour by train from Manhattan. I spent a day observing proceedings in these three courts to gain an understanding of how they operate in practice and interviewed three judges who preside in each of these courts. I then met with the Chief Judge of Policy and Planning for the New York State Unified Court System who oversees all integrated domestic violence courts in New York State.
109. While in New York I also attended a training day for judges and court staff in other states who were considering establishing an IDV courts in their community. This was run by the Center for Court Innovation in conjunction with court judges, court staff, lawyers and social service programme providers from the Brooklyn IDV Court. At this training day I met with researchers at the Centre for Court Innovation who have evaluated IDV courts in New York State.
110. In addition to visiting IDV courts in New York State, I also visited a pilot integrated court in Toronto, Canada. A day of court observation was undertaken in this court and I consulted both judges who currently preside in it as well as a judge who was involved in the establishment of the pilot court. I then met with a researcher who is leading the evaluation of the pilot court and a Crown prosecutor who prosecutes the majority of criminal offences in this court.
111. A strength of this consultation was that I was able to interview six judges who had substantial experience sitting in both the traditional multiple court / multiple judge system and the integrated one court / one judge system. Therefore, they were able to provide useful insight and comparisons of the two court systems. All New York judges presided in IDV courts which had been open for at least 10 years so the procedures and systems were well established; the Toronto judges had presided in the pilot court for between 18 months to 5 years. The main limitation was that I only had time to interview judges so I was unable to compare their perspectives with other professionals who work in the courts, such as court staff and lawyers. However, I did gain some insight from these professionals at the training day discussed above.

COMPARISON METHODOLOGY

112. As outlined above, IDV courts in New York and Toronto have been evaluated according to a range of qualitative and quantitative performance measures. This discussion paper compares the New Zealand multiple court / multiple judge system with New York's one court / one judge system using six performance measures. Namely, which court system:
- enables more informed judicial decision making for families?
 - enables more consistent judicial decision making for families?
 - results in speedier dispositions for families?
 - reduces the number of court appearances for families?
 - has greater linkages to social services and other resources to comprehensively address the needs of families?
 - instils greater confidence in families about the court process as a whole?
113. These performance measures are based on the five main goals of the IDV courts which collectively aim to increase victim safety and offender accountability, while also focusing on the rehabilitation of the family as a whole. The analysis draws on both quantitative and qualitative findings from the evaluations as well as the consultation I undertook with Judges in New York and

Canada. As previously mentioned all judges consulted with have experience working in a traditional multiple court / multiple judge system (which is very similar to that in New Zealand) and an integrated one court / one judge system.

114. Other performance measures, such as the outcomes of criminal and family proceedings and recidivism rates have been the subject of several of the evaluations. Links to all evaluations discussed above are provided at the end of this discussion paper should readers wish to comment on these or any other performance measures that not discussed in further detail in this discussion paper.

PERFORMANCE MEASURE A

Which court system enables more informed judicial decision-making for families?

Judges' access to information in court files

115. In New Zealand, Judges are not automatically provided with information about previous or concurrent proceedings in another court concerning members of the same family. Information about other proceedings is held in separate court files in separate registries and judges are only provided with very limited information about these proceedings in accordance with statutory rules on information sharing between courts. The process outlined in the Ministry of Justice *Guidelines For Information Sharing Between Jurisdictions* (not available online) sets out the administrative process that registrars should follow.

116. In contrast, judges in an integrated one court/one judge system have full access to information contained in the files for both the criminal and family proceedings. All six New York and Toronto based judges consulted with for this discussion paper expressed the strong view that having access to the court files of both the criminal and family proceedings enabled them to make more informed decisions than only having limited information provided via information sharing guidelines. In particular, the judges said it was very helpful that all the information available to them was up to date; information provided under information sharing guidelines was usually only provided at one stage of the proceedings as it is an administratively burdensome process. This information can then become out of date. The judges also commented that like any administrative burdensome process, the sharing of information between courts is vulnerable to human error; registry staff may not be sufficiently trained to search court files for relevant information or they may be under resourced and may eventually provide the information to the judge too late or not at all if other administrative work has to take priority.

117. Overall, New York and Toronto based judges advised that being more informed in a one court / one judge system enables them to:

- more fully understand the family and the ongoing needs of each member;
- gain greater insight into the personalities and temperaments of each member which may change through the course of the proceedings;
- better assess the credibility of family members when giving evidence;
- more fully evaluate safety concerns and undertake risk assessments;
- monitor the progress (if any) violent family members have to address their behaviour up until the conclusion of the proceedings; and
- provide more holistic and practical bail conditions, sentences and family orders that are more likely to work in practice.

118. The positive sentiment expressed by the judges I consulted with was also highlighted in **Evaluation I** where the researcher observed that:

“The judges were very positive about obtaining more information on both the criminal and family aspects of the cases to assist in their decision-making and also supportive of crowns and other lawyers hearing all the information.”

More informed submissions from counsel

119. In New Zealand Zealand’s multiple court / multiple judge system there are multiple counsel involved in both the criminal and family proceedings. Counsel involved in criminal proceedings do not observe related family proceedings (and vice versa) as a matter of course and may be totally unaware of the related proceedings because their client has not disclosed these. As a result, they will make less informed submissions to the judge. Alternatively, counsel be aware of the related proceedings but may assume the judge is already aware of the other proceedings and not mention these or they may deliberately not mention the proceedings if they could be prejudicial for their client. Either way, the judge receives only partial information about what is going on with the family.

120. The New York and Toronto based judges I consulted with expressed the view that counsel made more informed submissions in IDV courts, which in turn enabled judges to make more informed decisions. This was because most counsel in criminal proceedings also observed the family proceedings and vice versa. Submissions were particularly well informed when the counsel acted for their client in both the criminal and family proceedings.

121. This sentiment was also expressed in **Evaluation I** where the researcher observed that:

“The judges were supportive of the Crown prosecutors and other lawyers also hearing all the information. One judge commented on the value of the Crown prosecutor having this information: “[He/she] sits and watches family case too, so I think the Crown gets a picture of what is happening as well with the family and so that may colour what [he/she] is prepared to do because it is a different picture.”

Greater knowledge and understanding of family violence generally

122. Finally, greater knowledge and understanding of family violence generally was noted in **Evaluation H** where researcher observed that:

“Many interviewees felt that IDV court judges, lawyers, and other players displayed greater sensitivity to domestic violence issues than other courts because of their knowledge, expertise, and commitment, and that this resulted in more thoughtful outcomes.”

PERFORMANCE MEASURE B

Which court system enables more consistent judicial decision-making for families?

123. Throughout the New Zealand court process there are several examples of inconsistent decisions judges may inadvertently make due to a lack of information about previous or current proceedings in the other court. For example:

- bail conditions that conflict with protection, occupation or parenting orders; and
- sentences that conflict with protection, occupation or parenting orders.

124. The New York and Toronto based judges advised that inconsistent court orders relating to visitation rights can make contact between a victim and perpetrator more likely and therefore jeopardise victim safety. The existence of conflicting orders can also undermine litigants' confidence in the court system generally.

125. All judges expressed the view that they are able to make more consistent decisions in an integrated one court / one judge system than a multiple court / multiple judge system. This is because they are the sole decision maker and are far less likely to contradict themselves than another judge. They noted a number of benefits as a result of more consistent decision making including:

- enhanced safety for members of the family who are victims of violence;
- family members being unable to argue that breaches were a result of inconsistency; and
- less confusion and clearer expectations for all family members which can also result in increased in compliance with bail conditions, sentences and orders.

126. Increased consistency in judicial decision making was highlighted in **Evaluation A** where the researchers observed that:

“The IDV court’s effort to better coordinate orders of protection with other judicial orders appears to have been effective. Virtually all of the women we spoke to had orders of protection issued against their partners. (In cases where there were cross-complaints, these orders of protection went both ways—that is, both parties were under court orders to keep their distance.) Yet we did not observe an instance in which an order of protection conflicted with other court orders.”

127. Increased consistency was also highlighted in **Evaluation B** where researchers observed that:

“Results from the interview with the dedicated victim advocate shed some light on victims’ perspectives regarding protective orders in the Yonkers IDV court. Specifically, the advocate argued that the judge’s ability to eliminate conflicting orders—e.g., a family court visitation order that allows a defendant to visit his children at home while a concurrent criminal court gives the same defendant an order requiring that he not return home—is one of the IDV court’s most powerful tools. She reported that in her experience, many victims who have dealt with conflicts between multiple court orders in the past are surprised to find that the IDV judge is able to resolve some of these issues: “I often hear from women in the court, ‘I’m so glad there’s one judge here, other judges didn’t get it.”

128. Finally, **Evaluation H** also highlighted increased consistency with the researcher observing that:

“Almost all interviewees [of court professionals] indicated that New York’s IDV courts had achieved their goal of avoiding inconsistent orders, and I saw several examples of the efforts made in this regard during my courtroom observations.”

PERFORMANCE MEASURE C

Which court system results in speedier dispositions for families?

129. Six evaluations have measured the total number of days from the date the family and criminal proceedings were initiated until the conclusion of the proceedings. Overall, the evaluations found that family proceedings took longer in the IDV Courts compared with the separate courts. Criminal proceedings also took longer to resolve in IDV Courts than separate courts. The table below outlines the findings of six evaluations. It is clearly not possible to undertake a direct comparison between the New Zealand court system and the New York integrated court system because the evaluations don’t include New Zealand data, only New York data.

Name of evaluation	No. of days to dispose of family proceedings IDV courts	No. of days to dispose of family proceedings separate courts	No. of days to dispose of criminal proceedings IDV courts	No. of days to dispose of criminal proceedings separate courts
Evaluation C (USA)	104	64	153	146
Evaluation D (USA)	151	148	108	96
Evaluation E (USA)	136	70	256	219
Evaluation F (USA)	139	95	n/a	n/a
Evaluation G (USA)	n/a	n/a	164	150
Evaluation J (Canada)	n/a	n/a	365	295

130. While these findings demonstrate that proceedings in IDV Courts take longer to resolve, they should be interpreted with the following limitation in mind. Namely, the evaluations did not factor in the number of FTE judges rostered to IDV Courts compared with the separate courts. The amount of judicial resource allocated to the court has a direct impact on duration of the proceedings as courts with similar workloads but more judicial resource will likely be able to dispose of proceedings more quickly, compared with courts with less judicial resource. Notably, the Toronto integrated court only sits one day each fortnight (resulting in less court time) which may explain why the length of the proceedings from start to finish is so long. Another factor which may explain the longer timeframe is that the researcher measured the time from the date of the offence until the proceedings were disposed. The other studies measured the time from the date the charge was filed in court until the proceedings were disposed.

131. A further reason why time disposal rates may be slower in IDV courts is that at least one if not both adult members of the family are referred to attend a social services programme or programmes; judges usually hold off sentencing the defendant and/or making final family orders until the programme has been completed and reports are provided from the programme provider. While the family member(s) are attending these programmes, the clock keeps ticking for both the criminal and family proceedings which may distort the total number of days.

132. The New York and Toronto based judges I consulted with expressed the view that while appropriate disposal timeframes are important and the proceedings should not drag on unnecessarily, it is not simply a matter of “the faster the better”. Several judges commented that they could see the family settle more over time and they were able to reach agreement on certain matters that they wouldn’t have been able to had the timeframe of the proceedings been significantly shorter.

PERFORMANCE MEASURE D

Which court system reduces the number of court appearances for families?

133. A key feature of IDV courts is that where possible the next stage of the family’s criminal and family proceedings (which require the family to attend) are scheduled back to back on the same day, as opposed to scheduled separately on different days. **Both studies C and D** found that the use of same-day scheduling of multiple court appearances in the IDV court results in a significant reduction in the number of trips litigant needs to make to court for court appearances. The results of the two studies which evaluated this performance measure are provided in the table below.

Name of evaluation	Average number of court appearances IDV courts	Average number of court appearances separate courts
Evaluation C (USA)	10.4	27.5
Evaluation D (USA)	10.4	18.8

134. The findings in **Evaluations C and D** are also supported **Evaluation H** where the researcher observed:

“There was great care taken around scheduling in my observations of Manhattan's IDV court. For example, matters were sometimes adjourned until later the same morning to avoid multiple trips to court. The perception of interviewees was that litigants generally have to appear in court less often, they receive shorter adjournments between appearances, and they (and their advocates) spend less time making trips to different courts and re-telling their stories. These advantages were seen as enhancing access to justice.

135. There are other advantages for litigants who are required to make less court appearances. **Evaluation A** found that for many female complainants attending the IDV court, finding childcare while they attended court hearings was a serious concern and often caused stress. Therefore, the reduced need to attend the IDV court, and therefore find childcare was a positive benefit for them. Some interviewees also spoke of the stress of having to take time off work to attend court.

136. In **Evaluation B** both complainants and defendants were specifically asked whether having all of their cases in one court made getting to and from court easier and/or enabled them to take fewer days off work. A majority of litigants (73%) reported that having all of their cases in one court made getting to and from court easier, with victims more likely to agree with this statement. Most litigants (77%) also reported that the IDV court meant they had to take fewer days off work, with victims again more likely to agree. Finally, several IDV court stakeholders in **Evaluation H** also expressed the view that a reduced number of trips may facilitate job retention and therefore the payment of child support.

PERFORMANCE MEASURE E

Which court system has greater linkages to social services and other resources to comprehensively address the needs of family members?

137. There is variation amongst New York IDV courts in terms of the range and quality of programmes (which was dependent on the available funding in their particular county) although generally speaking it appeared that there is a wider range of programmes which a New York judge can refer the parties to compared with the New Zealand multiple court / multiple judge system. Notably, New Zealand judges cannot refer parties to alcohol and drug programmes. New York and Toronto based judges commented that alcohol and drug abuse is a major issue for family members who are violent or who are victim's themselves.

138. Again, there is variation amongst IDV courts depending on funding, although most employ a court victim advisor who provides information and support to the victim in respect of both the criminal and family proceedings. In New Zealand, court victim advisors only provide information and support in respect of criminal proceedings.

139. Some court victim advisors in IDV courts have an expanded role and provide information about the court process as well as information about other government funded services that are

available. There is usually a victim support office located at the court where court victim advisors meet with victims. Some courts also have staff from other government agencies located in this office, for example, the New Zealand equivalent of Work and Income, Housing New Zealand and Oranga Tamariki. However, again there is variation between IDV courts depending on funding.

140. IDV courts do not provide defendants with information about other government funded services that are available, which is a potential gap. This is similar to the situation in New Zealand.

PERFORMANCE MEASURE F

Which court system instils greater confidence in families about the court process as a whole?

141. Unfortunately, it is not possible to undertake an accurate comparison between the two court systems using this performance measure as none of the evaluations included a sample of litigants who had been experienced the multiple court / multiple judge system a sample of litigants who had been experienced the one court / one judge system. However, two evaluations did seek feedback from litigants in the latter court system, which provides some insight into what litigants thought of the court process in terms of overall fairness.

142. In **Evaluation A** 11 of the 14 women (all victims) told researchers they regarded the one court / one judge system as generally fair. The researchers commented that:

“These women cited a variety of different reasons for feeling the way they did. Dahlia felt that the judge was considering her side of the story and had a “positive” attitude toward her. She also felt safe because the court kept extending her order of protection. Sandra described her judge as “very professional” and added that “she seemed to ask all the right questions.” Even the women whose cases had not gone as they had hoped often said that the process was fair.”

143. In **Evaluation B**, both victims and perpetrators were asked to rate their level of agreement (on a scale of 1 – 4) with the statement “Overall, this court has treated my case fairly”. The researchers found that 59% of victims and 44% of defendants agreed or strongly agreed that the court had treated their case fairly. Both groups were also asked for the views on the one court / one judge model. Most victims (70%) reported that having a single judge helped them get positive results compared with just under half (47%) of defendants. A large majority (84%) of respondents (victims and defendants) believed that the IDV court judge used what he learned in the family case to make decisions in the criminal case and vice- versa.

144. Finally, **Evaluation A** also made some findings about a more specific issue, namely views of victims as to whether defendants are less able to manipulate the court process. The researchers commented that:

“Savvy defendants often try to manipulate the court system in an effort to harass or intimidate victims. By assigning all of a family’s cases to a single judge, IDV courts have sought to minimize these manipulations. Our data do not permit us to determine conclusively whether the “one family, one judge” model has reduced manipulation of the court system. However, our court observations and interviews do suggest that in the IDV court some efforts to manipulate the system are more likely to be noticed and to result in consequences. In particular, we observed several instances in which the judge acted quickly to address stalling tactics or acts of non-cooperation by alleged abusers. Nevertheless, a number of women described instances in which their former partners either dodged the system or violated judicial orders. Three women said their partners were able to do so without facing any consequences. While it does appear that the “one family, one judge” model makes it easier for judges to stay well-informed,

thus helping to identify and reduce instances of manipulation, the persistence of the problem suggests it is not to be solved by consolidating court cases alone.”

RESULTS

Based on the available evidence the results are as follows:

PERFORMANCE MEASURE	WHICH TYPE OF COURT SYSTEM PERFORMS BETTER OVERALL?
PERFORMANCE MEASURE A Which court system enables more informed judicial decision-making for families?	ONE COURT / ONE JUDGE
PERFORMANCE MEASURE B Which court system enables more consistent judicial decision-making for families?	ONE COURT / ONE JUDGE
PERFORMANCE MEASURE C Which court system results in speedier dispositions for families?	MULTIPLE COURT / MULTIPLE JUDGE
PERFORMANCE MEASURE D Which court system reduces the number of court appearances for families?	ONE COURT / ONE JUDGE
PERFORMANCE MEASURE E Which court system has greater linkages to social services and other resources to comprehensively address the needs of families?	ONE COURT / ONE JUDGE
PERFORMANCE MEASURE F Which court system instils greater confidence in families about the court process as a whole?	UNABLE TO DETERMINE

Overall, the results suggest that the New York one court / one judge system outperforms the New Zealand multiple court / multiple judge system on four of the six performance measures. For the reasons already provided, it is not possible to conclusively determine which court system instils greater confidence in families about the court process as a whole.

PART 4

PRACTICAL CONSIDERATIONS

**THE DEVELOPMENT OF A CUSTOMISED OPERATING MODEL FOR
NEW ZEALAND**

INTRODUCTION

145. As outlined in part 2 of this discussion paper, a standard operating model was developed in New York that is currently used in the majority of the 43 IDV courts in the state and other parts of the USA. The pilot IDV court in Toronto also has a very similar operating model with only slight modifications. If IDV courts were implemented in New Zealand, the standard operating model could be adopted from New York or modifications could be made to enhance the model and make it more suitable for the New Zealand context. This part of the discussion paper highlights some of those potential modifications.

WHAT TYPE OF PROCEEDINGS SHOULD THE COURT DETERMINE?

District Court proceedings - adult complainant / adult defendant

146. All IDV courts in New York determine criminal proceedings where the defendant and complainant are former intimate partners. Some IDV courts only hear criminal proceedings involving offences towards the lower end of the scale in terms of maximum sentence, often referred to as misdemeanor offences. Other IDV courts determine any offence, regardless of maximum sentence, other than murder and manslaughter.

147. New York judges interviewed for this discussion paper expressed the view that the integrated one court / one judge model is suitable for a wide range of offending, including offences at the higher end of the scale in terms of maximum sentence. However, factors which influence the scope of the criminal proceedings determined by each individual court include the number of judges assigned to the court which determines the number of available sitting days (and therefore the workload the court can manage). Courts with limited resourcing focus on misdemeanor offences. Another influencing factor is the recommendations made by various court stakeholders during the court's planning stages as to what type of offences are appropriate for an IDV court.

148. In reality, New York judges advised that the majority of offences that end up being determined in IDV courts are the New Zealand equivalent of assault, breach of a protection order and failure to attend a non-violence programme, as these types of criminal proceedings are more likely to have overlapping family court proceedings and therefore meet the eligibility criteria to be transferred. If the violence escalates, subsequent proceedings for more serious offences such as threatening to kill can occur. The judges expressed the view that providing the court with a wide jurisdiction is particularly important so that victims of these sorts of high risk situations do not then have to go back to the traditional court system and have the proceedings heard by a different judge (potentially with limited information about the previous proceedings). Transferring a family back to the traditional court system can also result in delays.

149. The pilot IDV court only hears criminal proceedings involving offences towards the lower end of the scale in terms of maximum sentence. This is not on a principled basis; the court simply has to operate within the existing legislative framework which has inadvertently limited the court's jurisdiction. The Toronto judges expressed a similar view that IDV courts are appropriate for a wide range of offending, other than murder and manslaughter.

150. In New Zealand, consideration would need to be given to whether a New Zealand integrated court operating model IDV courts should determine any family violence offence other than murder and manslaughter (essentially the same jurisdiction that the District Courts and Family Violence

Courts currently have) or whether a threshold should be imposed; for example, the court could be limited to hearing offences with a maximum sentence of 7 years imprisonment.

151. Consideration could also be given to including proceedings concerning other criminal offending that is not family violence related but nonetheless has a negative impact on the defendant's family. For example, drug related offending concerning one or both of the adult parties could be included, particularly if drugs are being used, supplied, or manufactured in the family home with children present.

District Court proceedings - child complainant / adult defendant

152. Criminal proceedings involving family violence between an adult defendant and a child complainant of the same family are not currently included in the baseline New York operating model (or the modified Toronto operating model). Violence perpetrated by an adult towards a child is usually handled in the context of the care and protection proceedings initiated by the New Zealand equivalent of Oranga Tamariki which are included in the baseline operating model in New York and Toronto.

153. New York and Toronto Judges advised that criminal proceedings involving a child complainant and an adult defendant were not excluded from the baseline operating model on a principled basis, rather that the line had to be drawn as there are limits on the workload each court can handle. If IDV courts were provided with more judicial resource and therefore more court time, judges expressed the view that it would be appropriate to include this type of proceeding.

154. Consideration could be given to including these types of proceedings in a New Zealand operating model where the defendant is a parent of the child, a partner of their parent, or a blood relative who is living with or in contact with the child. The outcome of criminal proceedings concerning alleged sexual abuse may be highly relevant to family proceedings where the defendant is seeking care or contact with the same child or children.

Family Court proceedings

155. IDV courts in New York and the pilot court in Toronto can determine any type of proceedings normally heard in a Family Court. This was not regarded by the New York and Toronto judges as a contentious aspect of the model and there appears to be no principled reason to exclude any type of proceedings normally heard in a New Zealand Family Court in a New Zealand IDV court operating model.

Youth Court proceedings

156. Another type of proceeding not currently included in the standard New York operating model (or modified Toronto model) is Youth Court proceedings concerning a young person from a violent family who has committed violent or non-violent offending. Again, New York and Toronto judges advised that there was no principled reason for excluding these types of proceedings, they are just not included for logistical reasons.

157. Consideration could be given to including Youth Court proceedings in a New Zealand IDV Court operating model as consultation with New Zealand judges (discussed in part 1) indicated that there is considerable cross over between the care and protection jurisdiction of the Family Court and the Youth Court. In other words, many young people who are charged with a criminal

offence and appear in the Youth Court often come from a violent household and have previously been, or are currently the subject of, care and protection proceedings in the Family Court. These young people may also be more likely to have parents involved in criminal proceedings. Rather than deal with young person as an individual in the Youth Court, the integrated one court / one judge system would allow their offending and rehabilitation to be managed within context of their whole family which could potentially be more beneficial for the young person.

Eligibility criteria

158. The timing of both the criminal and family proceedings is also an important aspect of the New York and Toronto operating models; the initial criminal and family proceedings must overlap in terms of timing in order to be transferred from the separate originating courts to the integrated court. Some courts have a strict timeframe; for example, the proceedings must be filed within 60 days of each other in order to be transferred. In other courts, more discretion is exercised as to whether the proceedings are transferred.
159. Overall, New York and Toronto Judges expressed the view that one main of the advantages with this eligibility criteria is that it captures a core group of families who significantly benefit from an integrated one court / one judge system, namely, families which include two former intimate partners (with or without children) who are usually going through a separation. Judges commented that during this time, the leaving partner who has been the victim of violence is particularly vulnerable due to the heightened tensions within the family as a result of the separation. Intensive case management during this time provides victims with a safer opportunity to leave a violent relationship and not return. A further advantage is that the specific eligibility criteria is clear and manageable from a logistical perspective; registry staff are able to effectively implement it.
160. One of the downsides with this screening criteria is that it only captures some families affected by family violence. New York judges advised that in some parts of New York State Police are trained to inform criminal complainants of the integrated one court / one judge system and the need to file their family proceedings immediately (or within the next few weeks) so that family is eligible for the integrated system. However, many families still do come within the stipulated timeframe.
161. In New Zealand, the same eligibility criteria in New York and Toronto could be adopted or wider eligibility criteria could be developed. As discussed in part 1 of this report, there are a number of different combinations of proceedings that families may be involved in that have a range of timing. One option could be to assign the family to an IDV court and a specific judge at their first 'entry point' into the court system, whether this be a criminal, family or youth court proceeding. Essentially, they are transferred to the integrated court on the assumption that more proceedings may later be initiated which can then more easily be handled by the same judge.
162. Consideration would also need to be given as to how to define a 'family' in the eligibility criteria and whether proceedings only involving immediate family members should be included or whether wider family members should also be included. To allow flexibility, the eligibility criteria could be discretionary and depend on the nature of the "offending" and/or relationships.

HOW SHOULD THE PROCEEDINGS BE MANAGED?

163. This section focusses on the judicial management of the proceedings and specifically, whether the same judge assigned to the family should manage every stage of the proceedings or whether some stages should be managed by a different judge.

Defended judge alone trials

164. As previously discussed, one of the major benefits with an integrated court system is that the judge is very well informed about the family. However, because the judge is so well informed there is also the risk of judicial bias. This may be actual bias directly affecting the judge's decision making or it could be perceived bias, where the judge is in fact impartial but they are not perceived to be by the litigants (and potentially also their counsel). Litigants who have had adverse findings made against them may be more likely to perceive a judge as biased.

165. In New York, the judge allocated to the family can preside over any stage of the proceedings including a judge alone trial. In contrast, in Toronto the judge allocated to the family cannot do so. Judges in both countries were confident that for the vast majority of trials they could bring an impartial mind, despite presiding over all pre-trial stages where they may have been privy to both admissible and inadmissible evidence. They advised that as judges they are frequently required to put inadmissible evidence out of their mind that is prejudicial to the defendant in the traditional court system and have therefore developed the skills in order to do this. Judges in New York further commented that they are required to provide clear reasons for all decisions made and if a litigant felt that the judge was biased, they always have the option of appealing the judge's decision. The judges also commented that in reality the risk of potential bias when deciding guilt in a criminal trial is not an issue in most cases as the vast majority of defendants plead guilty.

166. In Toronto it was decided that it would be best to err on the side of caution and bar the judge allocated to the family from presiding over judge alone trials. These are still heard in the IDV court but by a different judge; currently there are two who preside in the court who essentially step in for each other when needed. The rationale for this was to reduce the risk of the parties (but in particularly the defendant and their counsel) perceiving the judge as biased. During the planning stages of the court, stakeholders considered it important for all litigants to have as much confidence and "buy in" to the court process as possible.

167. In order to decide which approach should be taken in New Zealand, consideration could be given to New Zealand's stance on judicial recusal. Currently there is well established precedent that a judge who has previously presided over proceedings involving the same litigant(s) is presumed to be capable of bringing an impartial mind to any subsequent proceedings involving the same litigants. Similarly, a judge who has made adverse findings against a litigant(s) is presumed to also be capable of bringing an impartial mind. Therefore, a judge does not automatically have to recuse themselves following a request from a litigant simply because the judge is familiar with them and may have also previously made adverse findings against them. This matter was discussed in the Court of Appeal decision of [Muir v Commissioner of Inland Revenue \[2007\] NZCA 334](#) in the following terms:

[98] It has to be accepted that there are occasions when a judge's prior rulings might lead a reasonable person to question whether he would remain impartial in any subsequent proceedings. That said, this could be relevant to the question of judicial bias only in the rarest of circumstances.

[99] The reasons for this are straightforward. It is common sense that people generally hate to lose, and their perception of a judge's perceived tendency to rule against him or her is inevitably suspect. As Kenneth Davis has said, "Almost any intelligent person will initially assert that he wants objectivity, but by that he means biases that coincide with his own biases" (Administrative Law Treatise (2 ed Vol 3 1978) at 378). Every judicial ruling on an arguable point necessarily disfavours someone – judges upset at least half of the people all of the time – and every ruling issued during a proceeding may thus give rise to an appearance of partiality in a broad sense to whoever is disfavoured by the ruling. But it is elementary that the judge's fundamental task is to judge. Indeed the very essence of the judicial process is that the evidence will instil a judicial "bias" in favour of one party and against the other – that is how a court commonly expresses itself as having been persuaded.

[100] The general approach that judicial disqualification is not warranted on the basis of adverse rulings or decisions is also justified by appropriate concerns about proper judicial administration. There is huge potential for abuse if recusal applications were permitted to be predicated on a party's subjective perceptions regarding a judge's ruling.

168. This sentiment has been reiterated and confirmed in a number of decisions of the higher courts, including the 2015 Supreme Court decision of [N v M \[2015\] NZSC 185](#) where the court dismissed the applicant's recusal application on the basis that:

"The fact that a judge of this Court has been involved in an applicant's previous unsuccessful applications for leave to appeal does not constitute bias or raise an appearance of bias."

169. Therefore, an integrated court where a single judge determines all stages of the proceedings including defended trials would not, on the face of it, be inconsistent with New Zealand's existing approach to judicial recusal. Further, an aggrieved party would still be able to request that a judge recuse themselves and if the "fair-minded lay observer" test in the leading decision of [Saxmere Company Ltd v Wool Board Disestablishment Company Ltd \[2009\] NZSC 72](#) is met, the judge will need to recuse themselves. The test provides that a judge should disqualify him or herself from hearing a case "if a fair-minded lay observer might reasonably apprehend that the judge might not bring an impartial mind to the resolution of the question the judge is required to decide". The fair minded lay observer is presumed to view matters objectively and be reasonably informed about the legal system and the issues in the case. The observer must be also taken to understand that a judge is expected to be independent in decision-making and has taken the judicial oath and that judges are expected to sit on cases allocated to them unless grounds for disqualification exist.

Defended family hearings

170. The same difference in approach with respect to criminal trials in New York and Toronto also applies to defended family hearings. Again, consideration could be given to substituting in a different judge for this particular stage in a New Zealand IDV Court operating model. Alternatively, the same judge could preside over the defended hearing. It is of note (as discussed in part 1) that there is already a 'one judge one family' case management system in place in New Zealand in respect of Family Court proceedings involving an application for a parenting or guardianship order where there are allegations of violence. In other words, the same judge who handled all pre-hearing matters and judicial conferences can also preside over the subsequent defended hearing. This process is [prescribed in the Family Courts Rules](#).

Criminal jury trials

171. In New York, the same judge assigned to a family may preside over a jury trial if the defendant elects a jury trial instead of a judge alone trial. However, where the judge is already case managing a large number of families and presiding over jury trials would result in significant delays for other families, these trials are transferred out to the regular criminal court and a

different judge will preside over the trial. Jury trials are not included in Toronto model as these fall outside the court's jurisdiction; the court currently only determines criminal proceedings at the lower end of the scale in terms of sentence and the defendant does not have the ability to elect a jury trial.

172. A potential consequence of excluding jury trials from a New Zealand IDV Court operating model is that there could be an increase in the number of defendants who elect a jury trial if they think they will be more likely to be found not guilty by a jury, as opposed to a judge who is very familiar with their court history. Jury trials can use up a significant amount of judicial resource and often take longer to resolve than judge alone trials. To avoid the risk of a spike in jury trials, consideration could be given to raising the threshold for electing a jury trial for family violence related offences. At present a defendant has the right to elect a jury trial under section 24(e) of the NZBORA 1990 when the penalty for the offence is or includes imprisonment for 2 years or more. The vast majority of family violence related offending is punishable by 2 years or more including the more common offences of male assaults female and breach of protection order, which are punishable by up to 2 years and up to 3 years respectively. Raising it to exclude offences punishable by up to, for example, 3 years, would ensure that at least all male assaults female and breach of protection order proceedings are included in a New Zealand integrated court system.

Any stage of the proceedings

173. There may be logistical limits on having the same judge preside over all or the majority of the stages of the proceedings in circuit courts where different judges rotate in and out. In the absence of changing how judges are rostered to circuit courts, there could be increased use of audio visual links (AVL) to enable the assigned judge to manage stages of the proceedings while out of town and at another court. The impact of sick and annual leave would also need to be considered.

WHAT SHOULD THE COURT PROCEDURE BE?

Culturally appropriate court procedure

174. In New Zealand, consideration should be given to ensuring that the court is culturally appropriate in light of the fact that New Zealand has a diverse population. One option could be to adopt elements of the [Rangatahi and Pasifika court process](#) and incorporate these in a New Zealand IDV Court operating model. For example, some stages of the court process could be held on marae and a Pasifika church or community center. Another option could be to enable Maori and Pasifika elders who currently speak directly with the young person in conjunction with the presiding judge at Rangatahi and Pasifika Courts to do so in a New Zealand IDV Court operating model. It is also of note that these courts have gained considerable recognition in recent years; in July 2016 The Rangatahi Court received the [2015 Australasian Institute of Judicial Administration Award \(AIJA\) for Excellence in Judicial Administration](#).

Privacy

175. IDV courts in New York and Toronto have a public gallery, enabling people who known to the litigants to attend the proceedings as well as other litigants whose proceedings are scheduled to take place next. Observation in these courts highlighted the potential for significant disruption and a lack of privacy for litigants. The court was often very busy with a large number of people sitting

in the gallery who would get up, leave, then re-enter creating commotion. Some of the people in the gallery known to the litigants (for example, friends of one litigant) would make comments which appeared to be aimed at intimidating the other litigant. Some defendants would verbally abuse their ex-partner in the public gallery and I witnessed two instances where defendants became violent and had to be physically removed by court security. While the judges were mindful of this and at times asked people to leave, the general atmosphere did not correlate with the aim of the court to be more therapeutic and sensitive to litigants' circumstances.

176. Consideration could be given to having no public gallery in a New Zealand IDV Court operating model. This would provide all litigants with a safe private space to talk openly about personal and sensitive matters without fear of intimidation or embarrassment. At present the Family and Youth Court is not open to the public whereas the District Court is so this tension would need to be reconciled in a New Zealand IDV Court operating model. The court would still be open and transparent as judgments on the court would be published online and media would still be able to attend and report cases (although the identity of the litigants would need to be suppressed).

WHAT SOCIAL SERVICES AND SUPPORT SHOULD BE AVAILABLE?

177. Judges in New York and Toronto expressed the view that the wider range and higher quality of social services and support the better, as this will more comprehensively address the needs of families. Consideration could be given to making drug and alcohol programmes available in New Zealand as this is one gap in the types of programmes currently provided.

178. Finally, IDV courts in New York and Toronto do not provide defendants with information about other government funded services that are available, which is a potential gap. The provision of this information could be included in a New Zealand IDV Court operating model.

IMPLEMENTATION

179. The focus of this discussion paper has been to determine whether a one court / one judge system would be better for New Zealand families affected by violence than a multiple court / multiple judge system. An analysis of whether a one court / one judge system *could* be implemented in New Zealand is outside the scope of this discussion paper. Ultimately, it is up to the Ministry of Justice to determine whether it has the necessary funding and resources.

180. However, it is of note that New Zealand court system already has several of the key 'building blocks' of an integrated court system which could greatly assist with implementation. First, New Zealand has a significant number of judges who have the ability to determine proceedings in the three main courts: District, Family and Youth Courts. Second, the management and rostering of these judges is centralised and determined by the Chief District Court Judge in conjunction with the Principal Family Court Judge and Principal Youth Court Judge. Third, court rooms, registry offices and judge's chambers are already co-located in the same building. Neither New York or Toronto had these key 'building blocks' prior to implementing IDV courts.

181. Should the Ministry of Justice decide to further explore the implementation of a one court / one judge system, the next stage could be to form a reference group comprised of Ministry of

Justice staff and key court stakeholders who could provide input into a customized operating model for a pilot court or courts.

EVALUATIONS REFERRED TO IN THIS DISCUSSION PAPER

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Vera Institute of Justice
Not available online but a copy is available on request.
- 2011 Litigant Perspectives in an Integrated Domestic Violence Court: The Case of Yonkers, New York**
Center for Court Innovation
[Link to evaluation](#)
- 2011 Suffolk County Integrated Domestic Violence Court: 2002 – 2005 cases**
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Rachel Birnbaum, King's Western University
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Rachel Birnbaum, King's Western University
[Link to evaluation \(subscription to the Canadian Journal of Family Violence required to access evaluation\)](#)

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- Justice Joseph Bovard, Pilot Integrated Violence Court Toronto
- Rachel Birnbaum, Researcher and lead evaluator of Pilot Integrated Violence Court Toronto, King's College University
- Cidalia Faria, Assistant Crown Attorney, Ministry of the Attorney-General