Intimate partner violence

The role of risk assessment and information sharing

By Judge Eugene Hyman and Inspector Rob Veale

Since the enactment of the vaunted Domestic Violence Act of 1995, there has been an evolution in the understanding of and the response to intimate partner violence (IPV). Most recently, Justice Minister Amy Adams initiated a comprehensive, multifaceted review of family violence law, with a view to strengthening the legislative response – a reboot if you will, taking into account the plethora of international and national research and experience that is available. To this end, a discussion document was launched seeking input for ideas (*https://consultations.justice.govt.nz/policy/family-violence-law*).

With extensive experience in policing and the judiciary, the authors wish to contribute to the dialogue – first, by discussing the use of risk assessment tools in mitigating the incidence of high risk victims, a current focus of the police, and second, by highlighting the significance of risk information sharing at the judicial level. Although the terms domestic violence, family violence and intimate partner violence (IPV) are interchangeable, this article will use the term IPV.

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Risk assessment

Considering the complex psychological and psychosocial characteristics of IPV, namely, the interplay of power, control, and coercion with physical, emotional and economic abuse, risk assessment is a favourable source of guidance for all players involved with IPV.

Risk assessment is commonly defined as "the formal application of instruments to assess the likelihood that intimate partner violence will be repeated and escalated. The term is synonymous with dangerousness assessment and encompasses lethality assessment, the use of instruments specifically developed to identify potentially lethal situations." (Roehl & Guertin, 2000, p 171)

At the risk of oversimplification, consider the current body of knowledge regarding dangerousness and lethality as having been distilled to a cohesive and perhaps more formalised way of identifying and quantifying risk and if abuse/injury will reoccur. The overarching goal is the reduction of lethality and preventing harm. Risk assessment utilises risk factors or markers developed from a variety of research methods including the systematic analyses of homicides, case studies, longitudinal studies and lethality/death reviews. Since the data flows from multiple lines of evidence, the results are robust.

Under the risk assessment paradigm: IPV is proven to be a **pattern** of behaviour rather than an isolated event or episode. Moreover, IPV typically escalates. This new focus on the dynamic and changing nature of risk demonstrates a marked departure from relying on static risk markers, which are largely based on socioeconomic factors. The risk for dangerous or lethal outcomes is **not static.** This key point cannot be underscored enough.

Risk factors can be viewed as moving along a continuum to the point of dangerousness or, worse, lethality. It is not a linear progression with violence ratcheting up in an orderly manner. Instead, what is clear is that the latest incidence of IPV is different from the last and likely to be different to any future event. Therefore, reliance cannot be placed on the details of past reports to be indicative of what is occurring in the present.

It is imperative that each and every incident of IPV must be viewed de novo by all participants from law enforcement to the Court.

It is evident from the list that the factors coalesce around common themes of history of IPV, disturbing and violent behaviour, personality traits that are obsessive, sadistic, and/or belligerent, threatening posturing and situational factors, access to a gun, etc. Statements made by victims as gathered by police, refuge workers and others on the front lines are the source.

Specifically, does the perpetrator:

- Live with the victim?
- Have children and/or stepchildren in the home?
- Have a history of abuse?
- Have steady employment?

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- Use alcohol or other drugs?
- Have access to a firearm or to other dangerous weapons?
- Threaten homicide or suicide?
- Force sex upon the victim or attempt to strangle or "choke" the victim?
- Control most or all of the victim's daily activities?
- Obsess about following or stalking the victim?
- Have emotional dependence on the victim?
- Demonstrate violence or abuse of pets?

Some other questions to consider are:

- Is the violence escalating in frequency and severity?
- Is the victim afraid of the batterer?
- Does the victim believe that the batterer is capable of killing her and/or her children?
- Has the victim contacted law enforcement?

Consider consulting family/friends as they might have made important observations regarding the above factors.

Not exhaustive

The checklist of lethality factors listed above is not exhaustive. One of these risk factors may be present or all or perhaps none of them are checked. The absence of factors cannot be interpreted as a nullification of imminent danger or serve as a basis to deny court protection. In this event, other sources of information are recommended. Service providers who are familiar with the case may have useful observations.

Also, listening to the victim is crucial. Their perception is their reality and only they have heightened sensitivity to their risk of re-victimisation and are uniquely positioned to provide observations on the personality, mental health and violent behaviour of the perpetrator. Conversely, victim's assessments could be "off" if there is a hesitation, a palpable fear for her safety or a general disinclination to get involved with the criminal justice system. A qualified, experienced assessor may be perceptive to nuance and able to ferret out the truth.

Frequently situational factors can be incendiary to an already precarious situation.

A recent separation, for example, is cause for concern. Many controlling perpetrators who are also emotionally dependent on their partner may become unhinged to the point they utter foreboding statements. This dynamic is reflected in comments such as if "I can't have her" or "I can't bear the thought of living without her". If you add to this distressed state, inebriation and access to a gun, you have a recipe for danger. In these settings, police have the onerous burden to adjudicate and possibly make an arrest.

The benefits of using risk assessment are numerous.

It can assist in the development of more effective victim safety plans. It allows focus on higher-risk offenders – a better deployment of scarce resources. It provides valuable guidance for the amount and type of intervention needed for perpetrator programmes.

As a tool for education, it can promote a deeper understanding for all who interface with IPV: police, prosecution, judges, probation and custody personnel, child custody evaluators, and refuge staff. Risk assessment provides a common language across a wide range of agencies.

Sharing risk assessments by family and criminal courts

From a judicial perspective, important decisions are often made from limited, incomplete or a stale dossier – with the safety of the victims hanging in the balance.

Improving the quality of the information inputs strengthens the decision-making process. Any information that exists on an inter-court basis must be sought, despite court structures that pose barriers to an open pool of knowledge.

To be clear, family and criminal courts operate with different burdens of proof and confidentially requirements. While these due process protections must be maintained, protocols can nevertheless be established for the safe and appropriate exchange of information while respecting privacy concerns. Striking a balance between safety and privacy concerns is paramount for high-risk cases.

Criminal court jurisdiction

Risk information must permeate, indeed hold sway in, every aspect of criminal justice proceedings. Criminal courts are responsible for setting bail, sentencing, and issuing criminal protective orders. Moreover, they may be first in line to respond to IPV. Details from the Family Court, such as the breach of any court orders including bail, probation conditions and non-completion of intervention programmes, is extremely useful to the criminal court, especially with regard to ramping up actions.

Setting bail

When bail is being set, there are two possible outcomes – detainment or release.

The low-risk options for perpetrators should not be taken if higher-risk requirements are necessary. Those considered to be dangerous must be detained.

If it is decided that release is deemed appropriate, good behavior by the perpetrator cannot be assumed. The perpetrator must be supervised daily by means of reporting, electronic monitoring, curfews, protection orders, non-association provisions or a combination of the above if necessary.

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Sentencing

Risk information is integral to setting conditions of probation including custody considerations and programming conditions (including batterer intervention, substance abuse, mental health, parenting without violence programmes). Substance abuse issues are pernicious in IPV cases.

It is important that those agencies involved with the perpetrator provide frequent written reports to the court regarding programme progress. The victim should be periodically contacted to ascertain any changes in the situation. When deemed necessary by evaluators, victim safety plans will be updated to reflect any change in risk.

Pre-sentencing

Risk information may influence pre-sentencing decisions concerning programmes, interventions including diversion, deferred prosecution, restorative justice and adjournments.

Victims should be required to approve the use of alternative programmes like restorative justice or any programme that requires victim participation. Regardless of the sentencing scheme chosen, perpetrators must be continued to be monitored with regular reviews, preferably before a judge able to amend custody orders if necessary.

Family Court jurisdiction

Unlike criminal court, where actions are brought by law enforcement or prosecutors, the Family Court has jurisdiction when a petition/application for custody or a civil restraining order is filed by one of the parties.

Similarly, the moving party may dismiss the family law matter at any time, unless the matter is concurrently in Youth Court, which supersedes Family Court authority. However in the event that both the family law matter and the Youth Court matter are dismissed, a fresh case may be refiled in both courts. If dire conditions prevail, either the Family Court or Youth Court may act to remove children.

In these circumstances, risk information is typically forwarded to the court by one of the attorneys.

Often, the Family Court will take judicial notice of the criminal court file to determine if the perpetrator has orders pending or is in violation of other criminal protective orders, conditions of parole/probation and non-compliance to mandated programmes. In addition, the Family Court engenders its own stream of risk information arising from the child custody assessment process conducted by professionals together with testimony of lay and expert witnesses.

Determinations in "the best interest" of the child are the linchpin of custody decisions that include the designation of primary parent and the imposition of any conditions of supervision. The extent of the non-primary parent involvement in making health-related or school activity decisions must be carefully examined. An innocent child must never be released into harm's way for want of salient, game-changing information.

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With respect to domestic protection orders, the judge relies on the declarations made by the parties together with the testimony of witnesses at hearings in deciding to grant an order and, if so, what conditions should be added and what should be the duration of the order.

Clearly inter-court sharing adds weight, in a symbiotic manner, to the respective court actions. Better to seal the "gaps" at this stage than at a lethality review that retrospectively seeks to ascertain the gaps that lead to death.

Regardless if the vital risk information comes from collaborative partner (probation officer, intervention programme, police officer, substance abuse counsellor, etc), attorney, or by the taking of judicial notice of the criminal file contents, it is the judge who bears the ultimate responsibility to provide an informed response that achieves safety for victims of IPV and their children. ■

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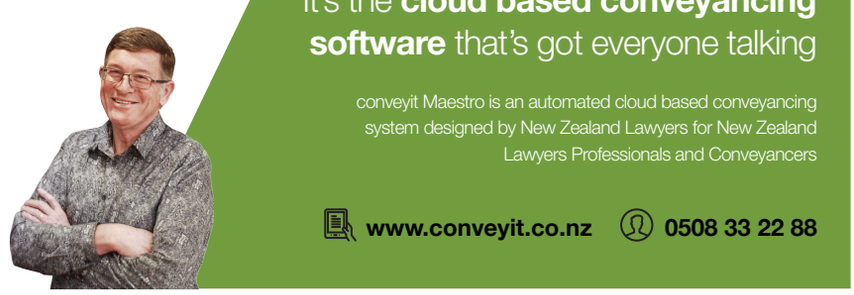
Inspector Rob Veale (retired) is a Member of the New Zealand Order of Merit. When with the New Zealand Police, he participated in development of a number of national and international domestic violence-related initiatives including risk assessment tools, family safety teams and national family violence death reviews. (*www.robveale.com*).