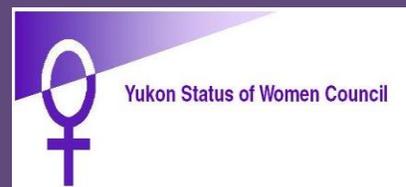


# In Her Best Interest

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Court Watch Yukon Year 1 Report



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## BACKGROUND

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The initial Court Watch Yukon (CWY) project took place from October 2002 to March 2004 as a project of the Victoria Faulkner Women's Centre. The project was a response to high rates of woman abuse and sexualized assault in the Yukon. In the intervening ten years, not much has changed. The Yukon still has the third highest rate of assault against women in Canada. The Crime Severity Index, measuring the seriousness of crime, for the Yukon is higher than in the provinces, especially for violent crimes and this has been the same over the past ten years (Criminal victimization in the territories, Statistics Canada, 2012). This report also indicated that *more than three-quarters (78%) of those who suffered the most severe forms of spousal violence were women.* (ibid, p 12) The Yukon Status of Women Council (YSWC) continued to hear anecdotal indications that the experiences of female victims had not improved significantly in the intervening years. YSWC obtained funding from the Crime Prevention Victim Services Trust Fund, the Yukon Law Foundation, the Community Development Fund, and, with the assistance of the Victoria Faulkner Women's Centre, the Department of Justice Time Limited Operational Funds as well as a contribution from the Yukon Aboriginal Women's Council, to build on the recommendations of the successful pilot project and reinstate the Court Watch program.

The need for a court watch program is underlined by the findings outlined in the Juristat article from Statistics Canada which states that residents of the territories were more critical of the courts than the police, which is opposite to the findings in southern Canada. It also found that 20% of Yukon residents indicated that the courts were doing a good job of helping victims as compared to 37% in Nunavut. Coupled with the finding from all three territories that people who had contact with the courts were more likely to indicate that the court is doing a poor job of providing justice quickly (44%) and helping the victim (33%), than those with no contact with the court system, 23% and 20% respectively (ibid p.19). YSWC believes that Court Watch Yukon can contribute to improving the experience of victims in the court system by providing the legal system with data based on consistent observation to initiate change.

As much as the rates of violence against women have remained the same, circumstances in the Yukon have changed over the past ten years. The Sharing Common Ground, Review of Yukon's Police Force final report was the results of an examination of concerns raised by citizens regarding relationships with the police in the Yukon, especially with women. The report outlined seven recommendations for improvement which resulted in an implementation strategy. Many of these recommendations have seen action and resulted in positive changes. The Yukon Department of Justice developed and implemented the Victim of Crime Strategy 2009-2014, involving community partnerships. The Together for Justice Project of the Liard Aboriginal Women's Society did much to improve relationships with the police. Third party reporting of sexualized assault is now an option for women. The Yukon Women's Coalition has signed the Together for Safety protocol with the RCMP intended to establish cooperative and productive ways of working together to promote women's safety. Both the federal and territorial governments have enacted Victims of Crime legislation and written Victim's Bills of Rights. Some shifts have occurred with police and justice officials beginning to acknowledge women's resistance to violence and their exposure to information on how the effects language used to describe violence towards

women can affect the outcome of legal proceedings. YSWC was interested to see what impact these changes have made to women's experiences with the justice system; how these changes may have affected how victims are treated in the criminal justice system and what remains the same.

The CWY project sought to:

- Improve the experience of female victims in the criminal justice system
- Gather accurate information about women's experiences of the criminal justice system in cases of intimate partner violence and sexualized assault
- Increase public awareness of women's experiences in the justice system;
- Raise awareness of violence against women and positively influence social responses towards women who have experienced violence
- Provide a feminist analysis of the information gathered in court, and the language used in court
- Propose practical solutions to ensure women are treated with respect and equality in the justice system.

Court Watch Yukon began again in 2013 with initial consultation with allied stakeholders, women's organizations, and members of the legal system who provided valuable information on the legal system, court procedures and input into the research questions. Members of the legal system were open to and interested in the project, a positive difference from the first pilot project. YSWC researched other court watch projects in Canada and the United States and consulted with the two Canadian projects we could find, Court Watch Project of WomenattheCentrE in Toronto and the Thunder Bay Women's Court Watch Program. The Toronto project monitors the Specialized Domestic Violence Court program while the Thunder Bay program focuses on observing bail court proceedings. Court Watch Yukon is unique in observing a wider range of court proceedings as outlined below.

## **METHODOLOGY**

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CWY collected quantitative data through direct court observation by staff and trained volunteers. Qualitative data was obtained from interviews with women who had been victims of violence and through the court system. CWY drew on feminist theory for analysis and on the work of Dr. Alan Wade and Dr. Linda Coates in exploring the connection between language usage, legal proceedings, sentencings and victim's experiences. CWY observations also included the court environment and the treatment of victims by the judge, Crown prosecutor and defense lawyers. Data was collected from May 2014 to June 2015. The project was expanded to include Watson Lake and Dawson City in May and December 2014 respectively. However, there was not enough data collected on these two communities to include in this report.

The project differed from the initial pilot project by expanding court observation to include sexual assault trials, sentencings, bail hearings, as well as Domestic Violence Treatment Option Court (DVTO), which was the focus of the pilot project. YSWC acted on the recommendation to use paid staff as well as volunteers for court observation and employed a Volunteer Coordinator. This made a positive impact on consistency and increased the number of court proceedings that were observed. YSWC also

contracted two research advisors, Dr. Margaret Jackson and Dr. Katherine Rossiter, to assist with the methodology and ensure project rigour. They worked with project staff on the project design, the creation of data collection tools, data analysis and participated in several consultations with project stakeholders in Whitehorse. The original observation forms from 2002 were revised and updated initially and through the first six months of the project responding to feedback from staff and volunteers.

## **Strengths**

The multi-method approach provides both qualitative and quantitative information balancing court observations within the context of victims' experiences and providing a forum for victims' voices to be heard. Unique to CWY is the analysis of language used in court, specifically around consent, the dynamics of violence against women, and mutualizing, and minimizing language. Unlike the pilot project, CWY received support from those involved in the legal system. They were open and interested in the project's progress and findings and providing support with volunteer training and information to staff. There was continuous interest in the program from volunteers in spite of high volunteer turnover. Paid staff provided consistency and coordination which contributed to the high number of cases observed and the extension of the program to Watson Lake and Dawson City. CWY also has the ability to draw conclusions about progress by comparison with the 2004 CWY report.

## **Limitations**

There were a variety of limitations that were found to be challenging. The first was volunteer turnover. The average volunteer would be involved with CWY for approximately four months. Volunteers were committed and passionate about the work but often limited by changing schedules and life circumstances. This meant that the Volunteer Coordinator spent more time on recruitment and training of volunteers than anticipated.

Observing consistently was problematic. Court Services sent the docket by fax the day before, which provided information about the proceedings for the following day. However, this was not always reliable and there were several times when we did not receive the docket or it was sent the same day as the proceedings it detailed. The charges listed on the docket determined which proceedings might be of interest, however there was no way of determining whether they would fit the Court Watch mandate of observing spousal violence and/or sexualized assault cases with women victims. This made it difficult for the Volunteer Coordinator to consistently recruit observers on short notice and had an effect on volunteer retention, since volunteers would go to court only to find that the proceedings were not within the mandate of CWY.

Ideally, the Volunteer Coordinator would have been able to attend 'fixed date' court on a regular basis to collect information with respect to upcoming trials. However, since the Volunteer Coordinator's hours were limited, this was not feasible. Emphasis was placed on observing as many proceedings as possible that were directly related to violence against women, spousal assault, or sexualized assault.

Unpredictable changes in the circumstances of the case affected scheduling of trials. There were frequent changes of court dates, last minute postponements, and requests for adjournment. At times, the information did not appear on the docket if the charges were withdrawn or stayed, which was often information to which CWY was not privy.

The part-time hours of the Court Watch Yukon Volunteer Coordinator were a limitation. The amount of training and support required for the new volunteers, the amount of time required for court observation, and inputting the information collected into the database was greater than anticipated.

In the first six months of CWY, training would be scheduled for two days with various community members facilitating one and half hour information sessions. This proved to be too great a time commitment for most volunteers and required a great deal of time to coordinate. Over the year, training evolved into a four to six hour session facilitated by the Volunteer Coordinator. This was due to the difficulty of volunteer availability for two days and the increased knowledge gained by the Volunteer Coordinator through the course of her work enabling her to facilitate the training. For more information on volunteer training, see Appendix A.

The ideal scenario for court observations was two volunteers per proceeding; however this was not always possible because of volunteer availability and times when there were multiple proceedings that were of interest scheduled concurrently at the court house.

Another limitation was that some of the data collected on the forms was inconsistent indicating that improvements need to be made in training volunteers and to the observation forms. Much of the data collected relied on the volunteer's perspective and understanding, which led to some of the variations. For example, one person may have noted that the Crown seemed uninterested while another may have observed that the Crown was alert. Some information that CWY sought was unavailable because many decisions and discussions are made prior to court appearances.

It was not possible to report on all cases to completion due to the length of time many cases take in the court system. We observed that the process from bail hearing or charges laid to trial could take three months to a year. If there were complications with disclosure, availability of the witnesses, applications to be heard, or an attempt to seek out the Domestic Violence Treatment Option the process often took longer. Consequently, CWY was not able to include these cases in this first year report.

Court observation in the communities of Dawson City and Watson Lake was challenging since availability of volunteers was limited. Court Circuit proceedings are conducted every six weeks in Dawson City and Watson Lake. Volunteers in these communities requested more support from the Volunteer Coordinator for the first few circuits for training and debriefing. Unfortunately, the Volunteer Coordinator was only able to make two trips to the community for training and support. Availability of the volunteers was also limited by dynamics in the community ranging from feelings of safety to mourning deaths in the community.

## WHAT WE LEARNED FROM VICTIMS OF VIOLENCE

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As a complement to court observations, researchers agreed it was important to provide an opportunity for women who were victims of violence to talk about their experiences going through the legal system. This would provide context and meaning to what was observed in court. Women spoke with feeling and eloquence about their experiences. Participants were recruited through women-serving agencies such as Yukon Victim's Services, Kaushee's Place and the Victoria Faulkner Women's Centre. Participants were offered a small honorarium for sharing their experiences. It proved more difficult than anticipated to recruit women willing to recount their experiences. The goal was to interview 20 women who fit the criteria of having gone through the court system in the last 5 years as a victim of sexualized assault and/or intimate partner violence. Despite screening potential participants, several women began the interviews before it was discovered that they were not eligible. They were eager to share their experiences with historical court proceedings or the RCMP. After eliminating those participants, 12 interviews with 14 women were conducted resulting in 8 useable interviews. 4 interviews were eliminated due to poor recording quality/equipment malfunction with several of the early interviews. Interviews were digitally recorded and transcribed.

Ten individual and 2 paired interviews were conducted by the YSWC Coordinator. Participants were not open to participating in focus groups. All of the women interviewed had been victims of intimate partner violence often including sexualized assault. The interviews ranged in length from half an hour to an hour and a half. A copy of the interview questions can be found in Appendix A. Responses were compiled and analysed according to commonalities and themes with the following results.

One of the initial long-term goals of Court Watch was to increase the number of victims participating in the court system as witnesses and complainants and to decrease the number of court cases that collapse. Consequently, women were asked why they had decided to participate in the process. All participants reported that fear for their safety and that of their children, as well as the severity of the abuse, were the motivating factors. Statistics bear out the severity of this abuse. A similar finding is found in the General Social Survey on Victimization conducted in the three Territories, where 51% of the self-reporting respondents who were victims of intimate partner violence said they feared for their lives (Statistics Canada, 2012). The Pivot Legal Society also found that for women survivors of violence, the main reason to engage with the justice system is not retribution but safety (Pivot Jane Doe's Advocate Group: 2012).

*I was scared for my safety, very scared; because there was incidents where there was guns involved and household objects... my personal safety and my children's as well.*

### What contributes to better experiences for victims

Several factors emerged that contribute to a better experience for women and assisted them to persevere:

1. **Support and positive social responses:** Participants all agreed that positive, non-judgmental support made a big difference for them, especially those who used the services of Victim

Services, Aboriginal Court Services and Kwanlin Dun Health and Justice Departments. One woman said that the positive social response and encouragement of the Crown Prosecutor was helpful. Many participants found the support of family and friends crucial. Three women were not aware of services available to them, such as Victim Services and recommended more outreach services to victims, for example, in the hospital.

2. **Internal motivation:** Participants were very clear about wanting go through with the charges and to get it over quickly. The fear that motivated them to charge initially also motivated them to stick with it. Several women talked about wanting their abuser to realize what he had done to them and their children.

*...I wanted him to realize what he was doing to me and to his family, how he was hurting me & what he was putting his kids through. I just went straight forward. I wasn't gonna let nobody stop me.*

3. **Feeling safe:** Only 3 women testified in court. The ability not to testify, to have the Crown present the case or an Aboriginal Court Worker contributed to their feelings of safety as did Victim Services. Being well-informed of the proceedings and the whereabouts of their abuser was important as was the knowledge that he was in jail.
4. **The court room:** Women made suggestions to improve the atmosphere in the court room for victims such as a closed court, publication bans, and use of testimonial aids, especially CCTV.

### Barriers to participation in the legal system

1. **Fear:** We also asked if victims testified or considered withdrawing their complaints. Six women did not testify and 3 did. Again, fear of negative social responses was the deciding factor; fear of being re-victimized/re-traumatized and of seeing the accused and his family in court. One woman tried to withdraw her complaint unsuccessfully and one woman found the Crown Prosecutor intimidating, felt like she was on trial, and so did not appear.

*A lot of women are scared and afraid of retaliation by accused and his family. So they're just victimized over & over again.*

2. **Experience with the legal system:** The negative social responses participants had with Crown Prosecutors, some Crown Witness Coordinators, defense lawyers, and multiple adjournments, as well as the feeling that they had no control over the proceedings contributed to their feelings of fear discussed above and discomfort with the legal system. One woman tried unsuccessfully to withdraw her complaint.

*...but when you talk to the Crown... It was like, what? What did I do? It was like... I'm not going to court. That's the reason I didn't show up.*

3. **The court room:** Women did not feel safe in the court room. They did not feel safe testifying. The court room set-up, the presence of the accused and his family, the embarrassment suffered by those who did testify all contributed to their discomfort. Not one participant was offered a testimonial aid, although one Crown Prosecutor suggested the woman look at a cup on the witness stand instead of at the accused and she

*It's so hard to appear in front of those people & there's such a small community & he has such a big family. So to have all those circumstances & you go into court, you feel like you're going to be the victim again... & then you gotta relive everything in the questions that they're gonna be asking you again.*

found that helpful but inadequate. Interestingly, no participants found the language used in court confusing.

Several women’s cases involved more than one charge. Only 3 out of 7 were satisfied with the sentences. 2 women wondered whether their abuser would have received a stiffer sentence if they had appeared in court. Despite their experiences with the legal system, all participants said that they would do it again and would advise other women to do so and said they would help them through. They hoped that their participation in the interview would benefit other victims of violence.

**Suggestions for increasing victim confidence and participation in the legal system**

Participants had several suggestions for improvement:

1. Support and positive social responses. Women talked about the need for compassion and caring from all professionals, for being treated with dignity, respect, understanding and caring.
2. Publication bans for anonymity and to decrease negative social responses, especially by the accused’s family.
3. Remove the docket from outside the court room for everyone to see.
4. Not having to testify in court, use of CCTV would decrease feelings of re-victimization and trauma, although 2 women wondered if their abuser would have received a harsher sentence if they had appeared.
5. Outreach services to the hospital, to women’s homes and proper notification of all relevant resources.

*It’s just the support and the people. You got a really good worker and somebody you want to talk to, it makes a really big difference.*

**DEMOGRAPHICS**

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**Court proceedings observed**

Volunteers were trained to observe bail hearings, DVTO, trials, and sentencing proceedings that related to spousal violence and sexualized assault from the end of May 2014 to mid-June 2015. It is important to note that all bail proceedings observed were in Whitehorse and that Dawson City does not have the DVTO option. Since we had limited information with respect to the communities of Dawson City and Watson Lake, this report focuses solely on our observations of Whitehorse courts. We will be providing analysed data and a follow up report including those communities in the fall of 2016.

The following chart indicates number of cases observed.

Court Location	Type of Proceeding				Total
	Bail	DVTO	Trial	Sentencing	
Whitehorse	87	108	27	42	264
Dawson City	n/a	n/a	3	2	5

Watson Lake	n/a	6	7	4	17
<b>Number of Cases Observed</b>	87	114	37	48	288

### Accused & Victim

Volunteers were asked to record information with respect to the gender of the accused and victim. The majority of accused being charged with offences involving spousal assault and sexualized assault were male.

Accused Gender	Bail	DVTO	Trial	Sentencing	Total
Female	11	17	0	7	35
Male	68	91	27	36	222

On the other hand, the majority of victims were identified as female. DVTO proceedings focused heavily on interacting with the accused regarding their progress and it was rare that the gender of the victim was made obvious. Many of these proceedings do not identify the gender of the victim or even mention them for that matter, yielding very limited information on the gender of the victim.

Victim Gender	Bail	DVTO	Trial	Sentencing	Total
Female	49	18	23	30	120
Male	4	2		6	12

### Aboriginal Identity

As per the request of our stakeholders, volunteers noted when the identity of the accused and victim were referred to as Aboriginal. It was made clear to the observers that they were to note this information only if the counsel made reference to their identity. This was more difficult to record in a consistent manner with DVTO. The information was brought forward by defence counsel in bail hearings and during trials at the time of sentencing.

### Most Frequent Charges

Most frequent criminal code charges listed in descending order of frequency observed by CWY were the following:

Bail	DVTO	Trials	Sentencing
Section 145: Failure to comply with condition of undertaking or recognizance	Section 266: Assault	Section 145: Failure to comply with condition of undertaking or recognizance	Section 145: Failure to comply with condition of undertaking or recognizance
Section 266: Assault	Section 145: Failure to comply with condition of undertaking or recognizance	Section 266: Assault	Section 266: Assault
Section 733.1: Failure to comply with probation order	Section 264.1: Uttering threats	Section 733.1: Failure to comply with probation order	Section 271: Sexual Assault
Section 271: Sexual Assault	Section 267: Assault with a weapon or causing bodily harm		
Section 267: Assault with a weapon or causing bodily harm	Section 430: Mischief		
Section 151: Sexual interference	Section 733.1: Failure to comply with probation order		
Section 264.1: Uttering threats			

Please refer to Appendix C for criminal code description for each section.

## **COURT ENVIRONMENT**

Given the experience of women interviewed for this report and those interviewed by the Pivot Legal Society (2012), the atmosphere in court contributes greatly to victims' feelings of safety and willingness to proceed. CWY findings indicate that overall most court proceedings, with the exception of DVTO, were not crowded but it was difficult to hear at times. Publication bans were brought up by counsel and the judge reminded the court when publication bans were in place. For the most part, judges were observed to be alert, organized, and respectful to the accused. The Crown was found to be alert, organized, interested, concerned with safety, and respectful to the victim and the accused. The defence was observed to be respectful to the accused but often disorganised, especially in bail hearings. Many times, the duty counsel did not have sufficient time to meet with the accused beforehand for a show cause hearing, which accounts for much of the disorganisation noted by observers. Unfortunately, a number of inappropriate behaviours and comments inside and outside the court room were observed before proceedings began.

Twenty-seven instances of inappropriate comments were observed, 2 in DVTO, 11 in bail proceedings, 10 in trials and 5 in sentencings. Inappropriate behaviours and comments were made by court

personnel, members of the legal community, and support workers. The following types of comments were observed:

- Comments affecting confidentiality, for example, open discussion of information about the accused, the victim or the case.
- Comments affecting safety, for example, RCMP and Sheriffs falling asleep, on phones, and once, losing track of the accused while chatting to others in court.
- Comments and behaviours that were disrespectful, such as eye rolling, smirking, and laughing as well as inappropriate comments about the accused.
- Comments and behaviours that encouraged the adversarial atmosphere in court. Lawyers were observed arguing with each other about matters before the proceedings began or make inappropriate comments about other members of the legal community.
- Forgetting they are in the public domain, for example, conversations about counsels' personal life such as buying new houses, vacations, sports, and frustration with case or the use of CCTV.

These are all behaviours that compromise the safety of the court room, affect the willingness of the victim to participate in the process, and decrease public faith in the legal system.

## **BAIL HEARINGS**

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Bail hearings or show cause hearings are held before a judge or Justice of the Peace (JP) to determine whether a person should be released from custody before a trial. Not all persons charged with offences are taken into custody when they are charged. If the RCMP decides there are grounds to take someone into custody, they have the right to a bail hearing or show cause hearing within 24 hours of being detained. It is the responsibility of the Crown to prove that the accused should not be released from custody before trial. The Crown presents their concerns to the court, summarizes the facts or reads the statement given to RCMP to the court, and presents the grounds on which they seek to detain or release the accused.

The Crown bases their submission for detention or release based on primary, secondary, and tertiary grounds. Primary grounds address whether there is flight risk or risk of the accused not attending court. Secondary grounds refer to the substantial likelihood of the accused reoffending and if there is a danger to the public. The maintenance of public confidence in the administration of justice is the tertiary ground that the Crown may refer to as a concern.

Often the Crown and defense meet to discuss release plans and conditions of release that will satisfy the primary, secondary, and/or tertiary grounds of concern. The Crown is 'consenting to release' if there is an agreement on the release plan. An accused person may choose to remain remanded in custody rather than seek release pre-trial.

If the matter is a spousal matter, it is fast-tracked into the Domestic Violence Treatment Option Court (DVTO). Matters of sexualized assault are scheduled to go to administrative processes (pleading guilty or not guilty, choosing to be tried territorially with a judge, or Supreme Court with judge and jury) before being scheduled for trial.

## Observations

On average, the accused appears in court three times before a release plan is available. Most often the accused did not understand that the presentation of facts, without their input during the bail hearings, does not determine guilt or innocence. CWY found that the time between bail hearing and entering a plea can be a lengthy process, since the accused is waiting for the disclosure (statements and any other information relating to the charge) from RCMP. The time between bail and the judges' court is very dangerous for women experiencing violence (Thunder Bay Women's Court Watch Program Report, 2009). With this in mind, bail should address the immediate safety concerns of the victim and their children. It is critical that conditions are imposed that will protect the victim from further violence or retaliation and that the accused has conditions that would address their behaviour and minimize any more instances of violence (Thunder Bay Women's Court Watch Program Report, 2009).

Our analysis of the data with respect to safety issues and concerns by the Crown, defence, judges, and JPs revealed the following:

Crown	Defence	JP/Judge	Conditions
Secondary Grounds	Surety	No contact	Meet with bail supervisor
No contact with victim	If alcohol issues are involved	Criminal record	No contact with victim
Seriousness of offence	No contact	Violation/seriousness of the crime	Abstain from alcohol and other substances
Criminal history	Criminal record	Alcohol or substance use	Programming and counselling
Suggestions raised by bail supervision report		Surety	

For the Crown, the most frequent concern about releasing an individual pre-trial was secondary grounds. Secondary grounds refer to the risk to the public, the likelihood to re-offend, and/or contacting the victim. Conditions that are suggested by the defence, or agreed upon between counsel, in order to address these concerns tended to be: establishing a surety (a person who is responsible for individuals in the public), curfews, abstaining from alcohol and/or controlled drugs and substances, not attending any premises where the primary purpose is the sale of alcohol, and no contact with the victim or potential witnesses. 'Seriousness of the offence' relates to the description given of the incident or violence. The descriptions of the incident were either read out or summarized from the statement by the RCMP. The past criminal record of the accused was often brought forward once the facts were presented by the Crown. Criminal records have been used to illustrate patterns of the accused's behaviour, especially in order to strengthen the Crown's concerns regarding secondary grounds.

Defence counsel's release plans were largely in response to the Crown concerns. The most frequent condition of release suggested by the defence was a 'surety'. Sureties at times were asked to take the

stand to answer questions with respect to assets, past experiences of being a surety for the individual, their relationship to the individual, availability with respect to their work schedule for supervision, and if they understood their role as a surety. The next frequent condition suggested by defence was abstention from alcohol, followed by a no contact order with the victim.

Judges and JPs tended to focus on variations of no contact orders, criminal record history, and seriousness of the crime. These were followed by abstentions from alcohol and substances. There were instances where judges and JPs would state concerns about abstention clauses if they thought that the conditions would set up the person for failure or further breaches. No contact orders had variations such as: no contact if the accused has been drinking and to leave for a period of 24 hours before returning. Sureties were commonly established in release plans to address the Crown and court's concerns for public safety.

The conditions decided on for granting release most frequently were: meeting with the bail supervisor, no contact with the victim, abstaining from alcohol and substances, and attending assessments and counselling. The most common counselling suggested by the court was alcohol and substance abuse, followed by educational and skills programming. Spousal violence counselling was referred to the least.

Terms of release can have a major impact on victims. Conditions that create more stress for the accused, such as abstention from alcohol or other substances, can increase the risk for further violence. No contact orders may interfere with other orders from family court and increase the risk for victims and of breaches for the accused.

Once the bail process is completed, the accused is required to make a first appearance in court and enter a plea. In order to enter a plea, the accused is entitled to see disclosure (detailed information from the RCMP with respect to the charge) to make an informed decision. The accused has the right to choose to elect territorially or through the Supreme Court and if they would like to be tried before a judge or judge and jury. If the case is a spousal matter, it should be fast tracked to DVTO.

## **DOMESTIC VIOLENCE TREATMENT OPTION COURT**

DVTO is a therapeutic court established in the Yukon in 2001. At the time, it was the first of its kind in Canada. DVTO was developed with RCMP, Offender Supervision Services, the Judiciary, Victim Services, Legal Aid, and the Council of Yukon First Nations. For cases of spousal or partner abuse, DVTO provides the offender and indirectly, the victim, an opportunity to choose a therapeutic alternative to traditional sentencing in criminal court (DVTO Final Evaluation Report, 2005). This alternative involves community treatment agencies coordinating their efforts. In Whitehorse, community agencies working together on this are the Specialized Response Unit of the RCMP, Victim Services, Crown Witness Coordinator, and Offender Supervision Services. Both Yukon Legal Services Society and the Crown's office have assigned specific lawyers and an assigned judge to DVTO. Recidivism is quite low and 87% of charges come through the DVTO process (DVTO Final Evaluation Report, 2005).

The DVTO process begins when the RCMP lay a charge that involves spousal violence. RCMP assess whether the individual should be taken into custody or released with conditions. If released, one of the

main conditions will be to make a first appearance in DVTO court in two weeks. If the accused is taken into custody, they go through the bail process before appearing in the next DVTO proceeding. In comparison, outside of the DVTO process, the charges may not reach the trial stage for a period of one to three months after charges are laid by the RCMP. At the same time, RCMP will conduct specialized investigations and risk assessments. Within 24 hours of incident, the victim is referred to Victim Services to receive support and information about the legal system. The Crown Witness Coordinator's office will open a file and contact the victim to provide supports. The RCMP has implemented special procedures to ensure that disclosure is given to Crown counsel prior to the first court appearance in order that disclosure to the defence is consistent with the protocol of fast tracking these cases.

In order to be screened into this therapeutic court, the accused must plead guilty and complete a suitability assessment that screens for motivation, alcohol and substance use, mental health, and cognitive function. If a guilty plea is entered, Crown counsel and defence counsel usually file an agreed written statement of facts detailing the incident. Treatment recommendations are presented to the court and may be incorporated in an undertaking or in a recognizance, where one is already in existence. DVTO is a process that can take up to a year of involvement, including bi-weekly court appearances. The accused must engage in the programming, and regularly appear in DVTO court before the judge to discuss progress or any upcoming issues. If the accused pleads not guilty, then the case is removed from the DVTO process to set a trial date.

## **Observations**

CWY volunteers found observing DVTO proceedings to be the most challenging. Most of the data collected was during the bi-weekly court appearances. Cases and participants' progress are discussed in a morning meeting to which CWY was not privy. The court appearances were very quick and difficult to follow. There was an enormous emphasis on the accused and it was rare to hear the victim's perspective. One of the most frequent concerns brought up by the accused was abiding by the 'no contact' with their partner condition. The judge would make it very clear that they were "not changing anything today...too close to the incident". The few times the 'no contact' condition was adjusted to allow for contact, it was consistently followed by comments from the judge such as, "make sure you understand the limits of contact, does not mean you can do anything", "what are you doing to keep your partner safe", and "what are your high risk situations?". If the accused stated in court that their relationship at the time of the violence was now over, the judge would remind them that "what you've learned is good for future partners".

An accused may spend anywhere from four to twelve months in DVTO, depending on the assessed risk and past criminal history. This restricted CWY's ability to observe sentencings.

## **TRIALS**

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If an accused person pleads not guilty, their matters are moved to the fixed date court to set a date for trial. At a trial, the Crown and defence present evidence for their case. Evidence presented may consist of the following: witnesses testifying, expert witnesses, photographs, DNA analysis, video or audio recordings, and/or doctor's reports. Before the proceedings begin, witnesses are asked to leave the court room and wait until they are called. Crown calls their witnesses first, starting with the victim if

they are present. When the victim is not present to testify, an arresting RCMP officer may be called to testify instead.

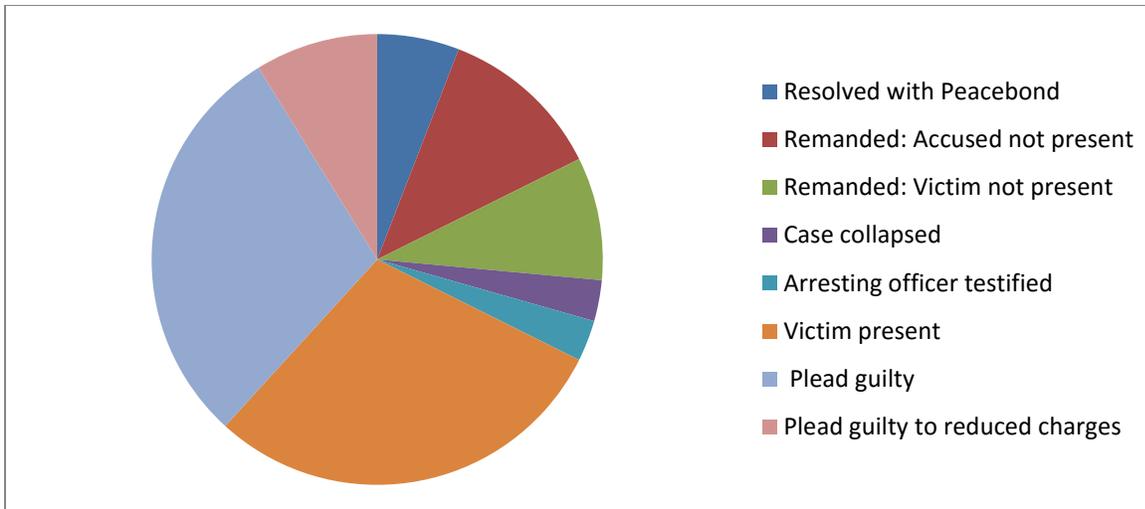
The Crown asks a series of questions to paint a picture of the incident. When the Crown is finished with their line of questioning, the defence has the opportunity to cross-examine the witness. Once the defence completes their cross-examination, the Crown has the opportunity to clarify any information from the witness. This process repeats for however many witnesses are called. The witnesses that are called to testify during a trial range from friends, family, and/or neighbors to arresting officers. If the accused chooses to self-represent, they are appointed a defence counsel to cross-examine the witness. Once all the witnesses have been called by the Crown, the defence has the opportunity to call their witnesses. The accused may testify, if they choose. The accused is questioned by the defence counsel and re-examined by the Crown. The defence has the opportunity to clarify any information with the accused once the Crown has finished re-examining the accused.

Once all the witnesses have testified, the Crown and defence offer their closing statements about the incident, including their perspective, aggravating and mitigating factors, past criminal convictions, and examples of case law for suggested sentencing outcomes.

The presiding judge may ask questions or intervene throughout the process of questioning the witnesses and the summary offered by either counsel. Once the witnesses and all other evidence have been submitted, the judge will summarize the information brought before them. At this time, the judge may comment on what they observed and offer their perspective. Depending on the complexity of the case and legal arguments presented, judges may choose to take some time to reflect before providing a decision. If that is the case, they will schedule another court date for sentencing. They may require more information, such as a pre-sentence report (PSR) to outline the results of risk assessments for public safety and suggestions for conditions of probation. This would require scheduling another time and date. Preparing PSRs requires probation officers to interview offenders, family members, employers and teachers (Public Safety Canada, 2014). Probation officers also review police and correctional files to assist the courts regarding the character of the offender and his/her willingness to change. Pre-sentence reports tend to require six weeks to prepare.

## **Observations**

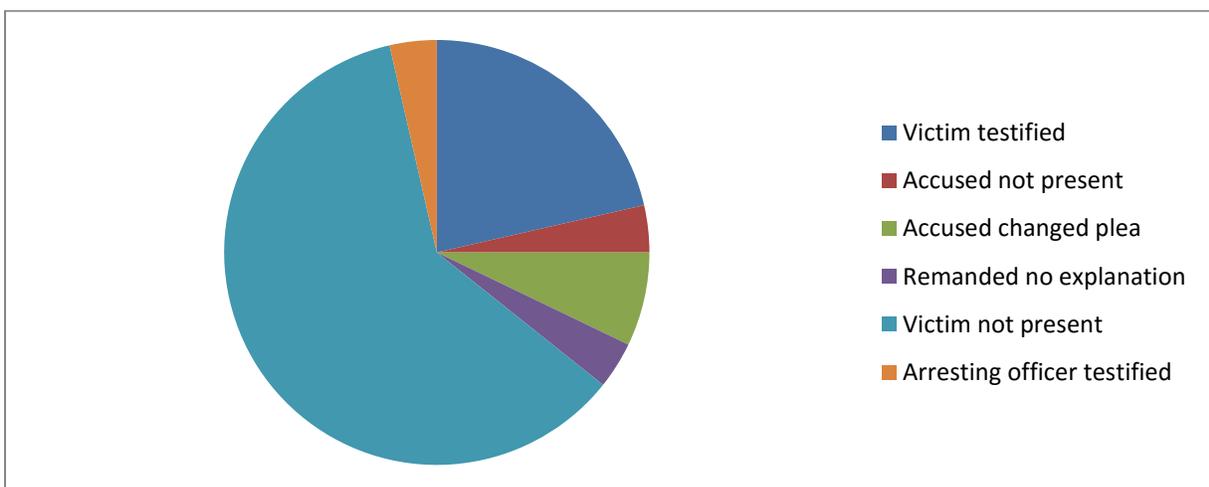
The following pie-chart illustrates the experiences of CWY observers in the twenty seven trials observed.



As stated above, 27 trials were observed with only one case collapsing. Six trials involved sexualized assault; the remaining were varying degrees of assault and uttering threats against a spouse.

The majority of the time, the accused would withdraw their not guilty plea to enter a guilty plea, or plead guilty to a lesser charge on the scheduled day of the trial. At times proceedings would be delayed up to forty-five minutes while counsel would discuss possible resolution to the case. If there was a resolution that was agreed on, matters would be adjourned to another date for a sentencing. When there was a resolution, joint submissions by the Crown and defence counsel consisting of an agreed statement of facts and suggested sentencing, would be presented to the court. Two trials were resolved using a peace bond, which is an order “designed to provide a measure of preventative protection to someone who is at risk of harassment or violence from another person” (Pivot, 2012). It requires a person to abide by specific conditions that include keeping the peace and being of good behavior and other relevant conditions such as no contact with the complainant/victim.

Of eleven of the trials observed, the following was noted regarding the victims’ presence:



The victim was present to testify at ten of the twenty-seven trial proceedings. Of these ten trials, six proceeded with victims testifying and four were not able to testify because the trial was remanded to another day. The accused testified at three of the trials that proceeded as scheduled. These four remands were the result of the accused changing their plea to guilty or not being present. Five of the twenty-seven accused were in custody until their trial date.

A total of seven trials were remanded to another day. Three of these were the result of the accused not being present and in the other four, the victim was not present. In one of the cases of sexualized assault, the arresting officer testified rather than the victim. The victim was not able recall the events of that evening.

Four of the twenty-seven trials had publication bans in place to either protect the identity of the victim, accused, and/or the information provided during proceedings. Pre-sentence reports were ordered at three of the trials to assist with sentencing.

In one trial, the accused self-represented with a designated lawyer to cross examine the victim. CWY noted that the accused's behavior was highly inappropriate in the court room and was not addressed.

CWY observed two full sexualized assault trials. The accused did not change their pleas to guilty, victims testified, and sentencing was observed. Observers noted that the dynamics of violence against women, consent, and safety issues were addressed. The sexualized assault trials were similar in that the accused had no previous criminal record, the details of the sexualized assaults, and that the accused and victim were friends. However, the sentences received by the two accused were very different. One received a significantly longer custodial sentence. The only significant difference noted between the two was the remorse expressed by one of the accused at the trial.

Six trials involved spousal assault. Unlike DVTO, the dynamics of violence against women were not consistently addressed in trials. Of the six spousal assault trials observed, only two mentioned the dynamics of violence against women. Before the judge made a decision, the accused was consistently offered the opportunity to address the court but this opportunity was rarely taken. However when this occurred, the accused often acknowledged that they had an issue with alcohol.

CWY observed several Crown counsels appearing in the same case. This creates a lack of continuity and confusion for the victims. It also seems detrimental to the case since, in the case observed, there seemed to be a lack of communication between the various Crown counsels which weakens their arguments. When the judge corrects information presented, CWY volunteers felt a lack of confidence in the justice system.

When there is a finding of guilt, Victim Impact Statements should be read and taken into consideration for sentencing and assessing the severity of the offence. Victim Impact Statements were requested in less than sixteen percent of sentencings. Although no statements were observed being read out loud in court, at times, sections of the statements were mentioned. In one instance, CWY observed a Crown Witness Coordinator (CWC) attempting to get the attention of the Crown to inform them of 'no contact' order concerns of the victim. The CWC was ignored by the Crown even though numerous individuals in

the court tried to get their attention. In order to have the victim's safety concerns heard, the CWC took it upon herself to address the court which was unusual. It is the Crown's responsibility to present all victim safety concerns. In this instance, the Crown did not present this initially and then ignored the CWC who was trying to ensure the safety concerns were heard.

## **SENTENCING**

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During sentencing procedures, aggravating factors are presented by the Crown and mitigating factors by the defence. These are taken into consideration by the judge and affect sentencing outcomes. The most common **aggravating factors** observed were:

- the seriousness of the offence: planning involved, potential for danger, breach of trust, victim sleeping, transmission of Sexually Transmitted Infection
- spousal nature of assault
- children witnessing/experiencing violence
- offender not taking responsibility, not admitting guilt, victim blaming
- offender's past criminal record

CWY is pleased to see the inclusion of the spousal nature of the assault as an aggravating factor, reflecting the change in social norms over the past ten years and direction by the . However, inclusion of the victim's resistance and a decrease in the use of minimizing and mutualizing language needs to be included in an assessment of the seriousness of the case to paint a clearer picture of the crime.

The most common **mitigating factors** observed were:

- no criminal record/stale criminal record of offender
- accepting responsibility and expressing remorse
- a guilty plea
- Gladue factors (no reports submitted but factors mentioned)
- "good behaviour": regarding substance use, employment, not hostile to women in general, complied with bail terms, participated in programming
- nature of the offence: low end, not violent, no physical injury, stopped when victim said to
- low risk to re-offend
- "fortunate that this is a case where it could have gone further"

Mitigating factors are focused on the accused and presented by the defence. No mention of the effect of the crime on the victim was observed. Judges must take into consideration sentencing principle 718.2(e) which states that all options other than imprisonment should be considered for all offenders, especially aboriginal offenders. A Gladue Report may be requested if the accused identifies as First Nations, Metis, or Inuit, to assist judges with this principle. This report takes six weeks to prepare and includes information about the Aboriginal person's background including: history regarding residential schools, child welfare removal, physical and/or sexualized abuse, underlying developmental or health issues such as FASD, anxiety, or substance use (Gladue Primer, 2011). There are capacity issues in the Yukon with respect to the preparation of a Gladue report; it is an intensive process and requires

community input. If a Gladue report is not available, the defence may state that there are ‘Gladue-like-factors’ and present the relevant information as a mitigating factor.

No Gladue reports were noted. CWY noticed Gladue-like factors mentioned in several cases, such as residential school, child welfare removal, history of abuse, substance use, FASD etc. This is a positive step in looking at the social context of the case. However, for a complete picture of the social context and the harm done by the offender, a Gladue type report should be done with the victim. At the very least, Gladue-like factors could be included in Victim Impact Statements. The last comment in the above list was made by the Crown. CWY believes this is more of an aggravating factor than mitigating and is unsure how this would advance the case of the Crown.

During sentencing proceedings for both DVTO and trials, observers noted the kinds of concerns regarding victim safety that were brought forward, the conditions of the sentence and whether a victim surcharge was ordered by the judge. The following table summarizes the findings.

Crown	Defence	Judge	Conditions
No contact and/or victim safety	Safety	Victim safety	Abstain from alcohol
Publication bans	No contact orders	Issue of consent	No contact orders
Criminal record of accused		Severity of crime	Counselling & assessment
Victim’s fear and/or input		Severity of impact on victim	Curfew
			No weapons
			DNA sample required (sexualized assaults)
			Community service

Since it is the job of the defence to advocate for the offender, the defence downplays the issue of victim safety. It is the job of the Crown counsel and judge to incorporate issues of victim safety into sentencing considerations and conditions. The above considerations were most frequently observed. However, Victim Impact Statements were asked for less than 16% during sentencing hearings which has an effect on sentencing outcomes. For example, in a few cases, judges commented that because they did not have a VIS, they could not assess the harm done to the victim and have that reflected in the sentence or add a condition the Crown requested.

The Criminal Code clearly states that a victim surcharge should be applied in cases where the offender receives a conditional or absolute discharge (Sect. 737). Victim surcharges were levied inconsistently: 80% of the time in DVTO, 30% in trials and 48% in sentencing hearings. This may reflect the discretion of the judge in cases where the imposition of the surcharge would cause undue hardship for the offender.

The condition to abstain from alcohol was the most frequent condition observed. This raises the question whether this is a realistic condition given the nature of addiction and whether this contributes to frequent breaches by the offender and a lengthier time spend in the justice system. It also raises the question whether this puts the emphasis on alcohol rather than the dynamics of violence. CWY observed that in sentencings for DVTO, an analysis of the dynamics of violence and control was included. However, in sentencings of similar offenses for trials, an analysis of the dynamics of violence was not apparent in the summary of the case.

## **VICTIM’S EXPERIENCE IN COURT**

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The primary goal of CWY is to improve the experiences of victims going through the legal system. Consequently, court observations included how the Crown, defence and judge behaved towards the victim as well as their attitudes. As the interviews with victims revealed, these can have a powerful effect on victims and on their willingness to proceed. The table below summarizes observations regarding attitudes and behaviours towards the victims in descending order of frequency.

Crown	Defence	Judge
Respectful	Undermining	Simple terms
Alert	Irrelevant questions	Patient
Concerned with victim’s safety	Accusing, intimidating	Other: repeat questions, positive comments, abrupt, etc.
Other: distant, abrupt, etc.	Other: alert, hostile, etc.	

These observations are a great improvement from what was reported in the CWY 2005 report. However, observations regarding the defence were unchanged. Since the job of the defence is to cast doubt on the Crown’s case, this is not surprising. The use of badgering by the defence, questions regarding sexual history and about victims’ substance use were observed. This information may, at times, be relevant to the case, but not with the frequency observed. It is our belief that the defence could confront and question the facts of the case without creating fear in the victim by treating them with respect and dignity.

The Crown was observed objecting to the defence in the following circumstances: badgering the witness, asking leading questions, blaming alcohol and drugs, questions regarding the victim’s sexuality, irrelevant information, speculation of evidence, spousal context, and the application of the de minimus principle (a legal doctrine by which a court refuses to consider trifling matters). This is also an improvement over observations in the 2005 CWY report.

The most frequent supports present for victims were the Crown Witness Coordinator, the victim’s partner, Victim Services, and family members. Despite the support, victims appeared nervous, uncomfortable, annoyed, upset (crying, face reddening) and sometimes neutral (tired, leaning on box, chin in hand) while they were in court and in the witness box. In several cases, victims were noted as being “reluctant or hostile”. Although the use of testimonial aids is available upon application by the Crown, none were used in the trials CWY observed. This would afford victims some protection and perhaps contribute to fewer incidences of “hostile” witnesses. Given the new Victims Bills of Rights passed by Canada and the Yukon, it will be interesting to see whether this changes in the coming year.

Four trials had publication bans in place and in four cases, the judge asked for Victim Impact Statements (VIS). In another case, the judge commented that he could not truly assess the impact on the victim because there was no VIS, despite the victim's testimony and obvious distress, and this had an effect on sentencing. It is worth noting that there may not be time for a VIS to be written in some cases and that victims may not want to be involved in this process, since the accused can read it and this might create an increased safety risk for them.

Judges were observed intervening during the court proceedings under the following circumstances: asking clarifying questions and explaining the process to the victim, and asking clarifying questions to the Crown and defence regarding the relevancy of the facts presented. This could serve to help the victim understand what was occurring and create a more positive experience for her.

## VICTIM'S SAFETY

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Victim's safety is directly affected by the court environment, language used, social responses and the outcome and conditions of the proceedings. This section presents a discussion of each of these factors.

Safety concerns were presented in 67% of trials and 81% of the sentencings observed. In all sentencing for DVTO, safety concerns were raised.

### DVTO:

In DVTO court, the judge emphasized the accused's compliance with no contact order and whether they were following their undertakings/bail conditions. The focus was mainly on the offenders' circumstances with not much direct reference to the victim. Since most of the proceedings observed were check-ins for the accused, the judge was interested in their progress since the last report.

*...for women survivors of violence, the major reason for engaging with the criminal justice system is not retribution, it is to keep themselves and their children safe. If the act of attending court undermines their safety strategies women rely on, they are not likely to feel confident in the ability of the courts to keep them safe outside the courtroom....*  
(Pivot Jane Doe's Advocacy Group, 2012, p.30)

### Trials:

The Crown brought up the following safety concerns in about half of the trials observed:

- felt that there were safety concerns,
- substantial criminal record of accused,
- noted breach of trust
- concerns about incidental contact,
- asked the victim to talk about safety,

- noted the aggressive manner of accused,
- noted the victim's fear,
- no contact orders to address safety concerns,
- asked what would make the victim feel safe,
- provided a letter to the court from the victim rather than having her testify
- stating that there was no victim impact statement since she didn't feel safe

The Crown was also observed considering victim safety during a proceeding with a publication ban. Instead of reading out the list of prohibited contacts, the Crown handed the list of names to the court clerk ensuring that the victim's safety would not be compromised. In other cases, the Crown stated that the breach of trust in the case warranted more conditions; the judge noted that victim initiated some of the contact and the Crown stated that it is not the victim's job to adhere to the court order; it is the accused's job to do this. No contact order details, such as place of residence, when under the influence of drugs and/or alcohol, provide some measure of safety and the Crown was observed asking for weapons prohibitions to increase victim safety in several cases. However, no contact orders can be problematic when coupled with custody and contact agreements regarding access to children.

Judges brought up the following safety concerns in about half of the trials observed:

- the court should not expect routine reactions from victims of sexualized assault,
- time was needed to meet with the victim to figure out next steps,
- asked if the Crown had checked with the victim regarding no contact,
- noted fear and concern for the victim since the accused lived in the same apartment building,
- the fact that she did not consent was not brought up in testimony,
- the accused's extensive record of assault,
- publication bans were in place in four trials,
- asked if the accused was keeping to his conditions

Sentencing principles of deterrence and denunciation were clearly articulated by both the Crown and judges. The impact of the crime on victims, the threat of force, and related convictions were important to judges. One judge stated that if there is a threat of force, that age, size, gender, and the history of interaction must be considered in sentencing. Justices could demonstrate responsiveness to victim's needs. In one case, a victim expressed her feelings and desire for less strict conditions and greater contact. The JP reassured her that there would be chances to change the conditions over time.

Overall, this is an improvement over the findings from the 2004 CWY report, especially for sentencings and in DVTO. Of concern is the discrepancy between instances of safety concerns being raised in DVTO, sentencings and trials. This warrants further examination and insight into current practices. Victim safety must be a prime concern for its own sake for all involved in the court system and to encourage more victims to stay involved with court proceedings. Since victims are motivated by their fear and the escalating violence, it is imperative to address these issues to overcome their reluctance to testify.

## LANGUAGE

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The way language is used in court has a great effect on women's safety and the outcome of the case. "Language has a particularly important role in the legal system...the language in which events are described becomes the official version of those events in the courtroom and beyond." (Bevavales and Coates, 2001 quoted in Final Report of Court Watch Yukon Project, 2004). Language can conceal violence, diminish the perpetrator's responsibility, conceal the victim's resistance and imply their blame. The way language is used affects the victim and her perception of her safety during court proceedings. CWY undertook to examine the way language is used in the proceedings observed. Volunteers were trained to observe the language used to describe violence, particularly noting the use of mutualizing and minimizing language. Analysis of the data collected with respect to comments made and language used revealed four themes: dynamics of violence against women, consent, minimizing, and mutualizing.

*The 'degree of responsibility' apportioned to any offender depends only in part upon his or her actions. It hinges also on how both the offender's and the victim's actions are represented linguistically in police reports, legal arguments, testimony, related judgments, and more broadly in professional and public discourse.*  
Coates & Wade, 2004, p.4

### **Dynamics of violence against women**

Patterns of coercion and control were brought forward in the majority of sexualized violence cases and DVTO demonstrating an understanding of violence against women in those circumstances. However, the dynamics of violence against women were not referenced as often in spousal violence cases going through the trial process. Of the six spousal assault trials that were observed, only two of them had references to the dynamics of violence against women. These comments about dynamics were made by the Crown counsel and judges. A few examples are: "sexual assault happens too frequently", "[prosecuting] domestic violence is in societal interest", and "Supreme court cautions judges not to expect routine reactions from victims of sexual assault, that is old thinking that victims of sexual assault are expected to raise a hue or cry". This is a considerable improvement since the previous CWY program.

Unfortunately, examples of victim blaming in sexualized assault trials were observed. These included comments and inquiries regarding how the victim was dressed and questions about why she did not leave the scene. Some examples were: "she should have walked away", "did you bring your bathing suit?", "is it possible you took off your clothes and did not ask", "how were you dressed when you got into bed", and questions with respect to "size and tightness of clothing". These comments were made by the defence with the purpose of trying to discredit the victim witness and reflect old mythologies and attitudes towards sexualized assault. CWY would like to see the defence treat the victim with respect and dignity and formulate questions about the events rather than the victim's judgment or clothing.

### **Consent**

The concept of consent is pivotal in cases of sexualized assault and was addressed most frequently by Crown counsel and judges. In spousal violence trials, consent was discussed in terms of the use of force on the victim, for example, "she did not consent to the use of force". Judges and Crown counsel

emphasized that consent must be consciously given at every stage of the encounter; they made clear statements in the court room to that effect. The following comments were made about consent: “consent has to be given not implied”, “agreement to share a bed not a sexual invitation”, “consent needs to be contemporaneous, cannot be implied, guessed, or assumed based on the course of an evening, cannot be hoped for”, “she did not have any memory of what happened, did not know him, did not consent”, and “inappropriate saying that a child is a willing participant and lead offender on...should never be uttered again”. Judges and Crown counsel were giving clear messages to the accused and court which is a decided improvement since the last CWY.

### **Mutualizing Language**

CWY was specifically interested in observing whether language was used to minimize or mutualize violence in court. Mutualizing language, “...implies that the victim is at least partly to blame and inevitably conceals the fact that violent behaviour is unilateral and solely responsible of the offender” (Coates and Wade, 2004). For example, ‘wife or spousal assault’ becomes an ‘argument’ or ‘altercation’. This has a direct effect on the victim and may have an effect on sentencing outcomes.

Examples of mutualizing language from the judges, Crown, and defence were observed mostly during trials and sentencing proceedings. There were certainly more instances of mutualizing language with respect to violence than minimizing. When counsel described the sexualized assault, statements were heard such as “she woke up to him having sex without her consent” and “sexual intercourse”, rather than using more accurate and descriptive language such as “she woke up with him on top of her and his penis inside her”.

In another instance, the judge summarized the facts presented in a sexualized assault case stating that the victim “succumbed to his advances”, when what had been stated earlier was that “she had stopped kicking, screaming, and crying” after a long period of time during the assault. This statement implies mutuality, that she gave in to his ardour rather than exhaustion from physical resistance. She stopped resisting in this way; however she may have been resisting in another way. Any mental or behavioural action that a person uses to expose, withstand, repel, stop, prevent, impede, or oppose any form of violence or oppression (including any form of disrespect) can be taken as forms of resistance (Wade, 1997). Where there is resistance, it is not a mutual act.

There were numerous times when spousal assaults were described as arguments, wrestling, and/or altercations. When summarizing one of these incidents one of the judges said “in the course of all this conversation the accused threatened to kill her”.

In a few instances, the relationship between the accused and victim was described as being “toxic” or “very violent on both sides”. This language implies that both parties are responsible for the violence that took place. It removes the responsibility from the accused and places blame partially on the victim for the incident. As indicated above, these kinds of comments indicate that an analysis of control and power with respect to the dynamics of violence against women is not being applied.

## Minimizing Language

Minimizing language differs from mutualizing language in that it conceals violence. Crown counsel, defence lawyers, and judges all used minimizing language to describe violence. In one of the proceedings observed, a woman expressed that she was afraid in her own home because of the comments made by the accused. The defence asked her if she felt it was “annoying” to hear the accused’s comments. The defence was reducing the victim’s expression of fear to one of annoyance. There were many observations regarding the role and responsibility of alcohol when describing acts of violence. One example of this was when a judge stated in their summation that the “accused has a long standing issue with alcohol and does not make the smartest decisions when intoxicated”. This had the effect of minimizing the accused role in the assault. In a sexualized assault case, one of the arresting officers testified that he saw the accused thrusting on top of the unconscious woman. The defence counsel argued that when the arresting officers arrived at the scene, they “saw what they had expected to see” because they had been notified of a sexualized assault in progress. When the information was later summarized by the judge, the judge said that the accused was “laying” on top of the unconscious woman minimizing the assault

In one spousal assault case, the defence counsel stated that the accused “accepts that he threw her around” rather than “admits that he threw her around”. In another case, the comment “there was a blip on the contact with the victim” was recorded which removes the intentionality of the accused’s behaviour and minimizes violence to a mistake.

## REFLECTION

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There have been many improvements for victims within the legal system since the 2004 CWY report. The social context in the Yukon has changed. There is an increased understanding of the dynamics and prevalence of violence against women and to a more cooperative and coordinated response by those in the justice system and stakeholders, including women’s organizations. Victims of Crime legislation has been passed and a Victim’s Bill of Rights, in the Yukon and by the federal government. There is an increasing recognition and acknowledgment of women’s resistance to violence, rather than the view of women as passive victims.

Progress was also observed in cases of sexualized assault. CWY observed an increase in understanding of the dynamics of violence and control in intimate partner violence and sexualized assault by judges and the Crown. Judges routinely made clear statements of denunciation when sentencing which was not evident in 2004. One judge made very clear pronouncements that in cases of sexualized assault “consent must be contemporaneous” as well as citing Supreme Court directives that myths about victims’ responses to sexual assault should be ignored; that all victims do not react the same way and judges must look at each case individually. The case of R vs Rosenthal, which CWY observed, is also being used as relevant case law. In this case, the judge demonstrated an understanding of consent and the power dynamics involved in sexualized assault and is an example of progress in the Yukon regarding convictions for sexualized assault.

Also encouraging is the judgement in the case of R vs LeBlanc. The judge in this trial stated clearly that he did not believe the testimony of the accused, as well as emphasizing the Supreme Court caution against 'old thinking that victims of sexual assault are expected to raise a hue or cry'. Together these cases accentuate the importance of using the correct definitions of consent and challenge the myth that there are appropriate victim responses. This can be reassuring for victims in the future to come forward and persist with the legal process.

Although these decisions by judges are positive for future victims, the process leading to these decisions was notably difficult for victims. As previously stated, women have established safety strategies. If the court room is likely to compromise those strategies, women will be less likely to participate. In both of these sexualized assault trials, questions asked by defence in order to challenge victim's credibility, revealed sexist ideas and victim blaming. Victims were notably uncomfortable in the courtroom. It was not clear to CWY if the Crown had been in regular contact with the victim or if they had been prepared for what to expect from the defence. Judges in these trials would explain the process to the victim, and intervene when the victim was becoming increasingly agitated by defence counsel's questions and comments, rather than intervene directly with counsel. It was made clear to CWY, that judges must be careful of the interventions they make during trials because of their duty to be unbiased. Opportunities for Crown to object to these inappropriate questions and suggestions by defence were not always taken. Efforts made by Crown to address inappropriate comments would be as meaningful to victims as when judges make clear comments of denunciation for the violence victims have experienced from the accused.

Services to victims have improved with an increase in the number of Victim Services workers and Crown Witness Coordinators. DVTO now has a dedicated judge and the collapse rate of domestic assault cases where the victim failed to show, wanted to withdraw from the case or changed their view of what happened, has decreased. Observers did not note the use of health and psychiatric records or myths about woman abuse to discredit victims. There was an improvement in the number of observations of crown prosecutors objecting to badgering of witnesses by the defence.

Unfortunately, some findings have remained the same. There continue to be lengthy and repeated delays of proceedings which can jeopardize a woman's safety. Victims still fear retaliation from community members for reporting crimes committed by family members and for appearing as witnesses. There continue to be stays of proceedings which victims do not understand and serve to silence women's voices and prevent a full understanding of the impact of the assault on the victim. Although some use of descriptive language was observed, minimizing and mutualizing language continues to be used during court proceedings by all members of the legal system which masks the unilateral nature of violence and alters the portrayal of the nature of the assault. In cases of sexualized assault, sexualized violence is not clearly described which limits the extent to which the victim's perspective is understood as well as the nature and violence of the crime.

The role of alcohol continues to be over-emphasized as a cause or contributing factor to violence. Substance abuse continues to be a substantial problem in the Yukon as is violence against women. However, alcohol does not cause violence. Violence is used as a deliberate strategy usually by a man to

control a woman (Wade, 2015). Treating a violent offender for his addiction may have little effect on his use of violence. And, as noted in 2004 “Addictions treatment alone does not address a woman’s need for safety.” (p. 9). Abstention as a condition of release or part of a conditional sentence is still routinely seen, as are recommendations for treatment. CWY questions the utility of requiring abstention from alcohol by an addicted offender which often leads to frequent breaches and does not improve women’s safety.

Although progress has been made, the legal system still operates in a paternalistic way. “...as the access to justice problems we face today are deeply rooted in the way women’s roles and nature have been viewed and the ways laws and policies reflect those views.” (Martinson, 2012, p.2) The process is disempowering for victims. Women interviewed for this study reported that they felt the loss of control over the process acutely. The report by the Pivot Legal Society notes this as a concern as did the Report of Proceedings from the Fourth Justice Summit in British Columbia, 2014. Once the ball is rolling after a victim reports a crime, she loses any sense of control in the process. The accused has the right to counsel of his choosing, to be informed of and challenge evidence, while the victim has not had these same rights.

Reports from such diverse sources as the United Nations (2005), the two other Canadian court watch programs, the Report of Proceedings from the Fourth Justice Summit in British Columbia (2014) and the Pivot Legal Society (2012) all indicate that victims should have the right to actively participate in all stages of the legal process. When the victim was prepared to testify and the accused withdraws a not guilty plea, entering a plea of guilty, the opportunity for her voice to be heard is gone. CWY did not observe many instances of the Crown requesting time to prepare VIS, losing the ideal opportunity for the victim’s voice to be heard.

The DVTO report (2005) recommended better treatment in court of victims, access to a lawyer, better Crown preparation and Crown contact (p.xiii). The Yukon Victims of Crime Act states that “victims have the right to have their views, concerns, and representations considered at any stage to the criminal justice process” (p.5). The United Nations report goes further in stating that victims should have a role in deciding what police actions are required to properly deal with their matters, and when women are considering withdrawing a complaint and not testifying, there should be procedures to explore her reasons and give her additional protections if needed (p.16). These provisions would go far in creating a better sense of dignity, control and according respect to victims of violence.

CWY did not observe any use of testimonial aids in Whitehorse. Victims interviewed by CWY and the Pivot Legal Society indicated that victims fear seeing the accused and his family in court. The use of testimonial aids, particularly CCTV, would provide more protection for victims, decrease their fear and increase their comfort level, which in turn, would lead to fewer reluctant or hostile witnesses. The Yukon, and recently Canada, has enacted Victims Bills of Rights which aim to balance the rights of the accused with those of victims. Since our system of jurisprudence is based

*Within court processes, the use of designated Crown counsel in cases of domestic violence, the use of testimonial accommodation to support victims to testify in court, and consideration of a designation for sexual violence cases (similar to “K” files) to promote consistent handling by the criminal justice system.*  
Report of Proceedings, Fourth Justice Summit, 2014, p.22

on the rights of the accused to face their accuser in open court, among other rights, it will be interesting to see how the courts weigh these conflicting rights over time, especially in the context of the Charter of Rights and Freedoms. Examples of good practice in this regard exist. Finland, Sweden and Switzerland have enacted “victim support laws” that aim to counteract the weak position of victims resulting from victimization and the justice system’s prioritization of the defendant’s rights. Victims are entitled to free legal advice and representation (UN Division for the Advancement of Women, p.18). Practices such as this would go far to ensure that victims bills of rights and the Victims of Crime Act provisions are fulfilled. Legal representation would also address the issues of victims feeling disempowered and disrespected when on the stand, especially with defence counsel, feeling unsafe in the court house and would increase the number of victims participating in the justice system.

## **RECOMMENDATIONS**

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1. Increased focus on victim’s safety and minimize re-victimization.
2. More use of Victim Impact Statements.
3. More accessible information about supports for victims.
4. Increased use of testimonial aids, especially CCTV.
5. Crown counsel must meet with women early on to share information and solicit meaningful input, discuss her goals and needs, and address her challenges and concerns.
6. Crown counsel needs to improve communication with victims on how charges are approved and evidence is introduced, as well as prepare victims thoroughly for defence questions.
7. The same Crown counsel appears consistently for all proceedings relevant to a single case.
8. Conditions of release should not be contradictory or create potential opportunities for future harassment and violence by accused (for example issuing a no contact order and child access in the same conditions).
9. Observations of women’s safety concerns being voiced needs to increase from 67% in trials.
10. Gladue Reports for victims and increased Gladue Reports for accused.
11. Judges identify themselves audibly in court proceedings.
12. Increase use of analysis of dynamics of violence against women in trials and sentencings with respect to spousal assaults.
13. Use more accurate descriptions of violence, including victim responses, for a better picture of the incident, making it more difficult to say that the accused was confused and shows that violence is deliberate.
14. Include victims’ resistance in VIS, police investigations and reports.
15. Victims need to have positive social responses from all members of the legal system which would result in increased cooperation with authorities, reporting, and recovering more quickly.
16. Victims should have access to legal advice and advocacy to enable them to make informed decisions to have someone speak on their behalf to law enforcement officials.
17. When pleas change from not guilty to guilty, need time for VIS.
18. Consider use of microphones and increase volume of speakers to ensure proceedings are audible.

## WHAT'S NEXT

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CWY resumed observing proceedings in September 2015. The volunteer Coordinator has trained ten new volunteers and actively observing bail hearings, trial, and sentencings. Observations of DVTO have finished since there has been significant scrutiny and regular evaluations of this therapeutic court. Instead, CWY will observe more proceedings that involve women charged with spousal assault. CWY will continue to focus on spousal violence and sexualized assault cases scheduled for bail hearings, trial and sentencing. It will be interesting to observe and analyse court dynamics in the cases of women criminalized in their responses to violence at the hands of their partners.

Goals for this year's CWY are, but not limited to, the following:

1. Strengthen the programs and presence in Dawson City and Watson Lake, as well as explore the possibility of expanding into other communities in the Yukon.
2. Continuing to improve our working relationship with the legal system.
3. Continue to share our findings and recommendations with the judiciary, the Yukon Department of Justice, Public Prosecution Service of Canada, the RCMP, Victim Services, the Yukon Women's Coalition, Yukon aboriginal women's organizations, the Council of Yukon First Nations, other interested stakeholders and the public.

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## **APPENDIX A: TRAINING**

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The training for CWY volunteers included the following:

- Background information on the CWY program
  - Rates of violence against women in Yukon
  - Role of CWY
  - Goals of CWY
- Roles of those in the court room
  - Crown counsel
  - Crown Witness Coordinator
  - Victim Services
  - Aboriginal Court Workers
  - Defence counsel and duty counsel
  - Judge
  - Justice of the Peace
- Brief discussion of the process of charges through the criminal justice system
  - Bail and show cause hearings
  - Domestic Violence Treatment Option Court (DVTO)
  - Community Wellness Court (CWC)
  - Trials
  - How to read dockets
- Gladue Reports
  - What is a Gladue Report
  - Why is it used
- Mutualizing and minimizing language
  - Definitions and examples
- Court etiquette
  - Bowing
  - Hats and toques off, no food, phones off or silent
- Forms
  - Discuss options and tips for note taking in proceedings
  - Highlight information that is of interest to CWY

Once training was complete, the CWY Volunteer Coordinator attended court proceedings with new volunteers, assisted with filling out forms, and answered questions or concerns. The average volunteer would require two sessions of training in the court room and in filling out forms, approximately another 4 to 6 hours of training.

**APPENDIX B: CWY FORMS**

**COURT WATCH YUKON: BAIL HEARING OBSERVATION FORM**

Completed by: \_\_\_\_\_ Date: \_\_\_\_\_  
YYYY-MM-DD

Court location/number:  Whitehorse  Other: \_\_\_\_\_

Judge/JP: \_\_\_\_\_  Male  Female

Crown Counsel: \_\_\_\_\_  Male  Female Start time: \_\_\_\_\_ AM/PM

Defence Counsel: \_\_\_\_\_  Male  Female End Time: \_\_\_\_\_ AM/PM

**BACKGROUND INFORMATION (ONE PER ACCUSED)**

File Number(s): \_\_\_\_\_ Next Court Date: \_\_\_\_\_  
Offence(s): \_\_\_\_\_ YYYY-MM-DD

Name of Accused: \_\_\_\_\_  Male  Female Age: \_\_\_\_\_ years

Was any reference made to Aboriginal or First Nations identity of accused?  Yes  No

Specify: \_\_\_\_\_

Community:  Whitehorse  Other: \_\_\_\_\_

Name of Victim: \_\_\_\_\_  Male  Female Age: \_\_\_\_\_ years

Was any reference made to Aboriginal or First Nations identity of victim?  Yes  No

Specify: \_\_\_\_\_

Community:  Whitehorse  Other: \_\_\_\_\_

1. What was the relationship between the accused and victim at the time of the incident?  
 Married/Common Law  Same sex relationship –  Male  Female  
 Previously married/common law but separated at the time of the incident  
 Divorced/Ex-partners  
 Intimate partners living apart  
 Dating relationship (boyfriend/girlfriend)  
 Other: \_\_\_\_\_  
 Unknown
2. Was a bail hearing observed?  Yes  No  Bail set at: \$ \_\_\_\_\_  
What orders (conditions) were made for bail release?  
 Promise to appear in Court (recognizance)  Follow a curfew  
 Meet with Bail Supervisor  No alcohol use possession

- No contact with the victim
- Not attending location of alleged offence
- Other \_\_\_\_\_

- No drug use/possession
- No possession of weapon

3. Was a preliminary hearing observed?  Yes  No

4. Charges laid:

Sentencing for each charge:

- |          |                                                       |          |                                    |
|----------|-------------------------------------------------------|----------|------------------------------------|
| a. _____ | <input type="checkbox"/> S <input type="checkbox"/> I | a. _____ | <input type="checkbox"/> Withdrawn |
| b. _____ | <input type="checkbox"/> S <input type="checkbox"/> I | b. _____ | <input type="checkbox"/> Withdrawn |
| c. _____ | <input type="checkbox"/> S <input type="checkbox"/> I | c. _____ | <input type="checkbox"/> Withdrawn |
| d. _____ | <input type="checkbox"/> S <input type="checkbox"/> I | d. _____ | <input type="checkbox"/> Withdrawn |
| e. _____ | <input type="checkbox"/> S <input type="checkbox"/> I | e. _____ | <input type="checkbox"/> Withdrawn |
| f. _____ | <input type="checkbox"/> S <input type="checkbox"/> I | f. _____ | <input type="checkbox"/> Withdrawn |
| g. _____ | <input type="checkbox"/> S <input type="checkbox"/> I | g. _____ | <input type="checkbox"/> Withdrawn |
| h. _____ | <input type="checkbox"/> S <input type="checkbox"/> I | h. _____ | <input type="checkbox"/> Withdrawn |

S = Summary; I = Indictable

5. Plea(s) of accused (*may be more than one*):

- Guilty to all charges laid
- Peace bond/restraining order
- Guilty to reduced charges: \_\_\_\_\_

- Not guilty to all charges laid
- No plea

Not guilty to some charges: \_\_\_\_\_

6. Was the victim charged with an offense in relation to the same event?  Yes  No

If yes, specify charges: \_\_\_\_\_  S  I

If woman accused, was there a history of DV with her as a victim?  Yes  No

Were past records requested?  Yes  No

7. Were any other parties co-accused with any offense?  Yes  No

If yes, specify party: \_\_\_\_\_

If yes, specify charges: \_\_\_\_\_  S  I

8. Bans:

Was there a publication ban (or other ban) in place?  Yes  No Specify ban: \_\_\_\_\_

Did the judge have to remind anyone about the publication ban?  Yes  No Specify who: \_\_\_\_\_

## COURT ROOM ENVIRONMENT

\* Please record both positive and negative observations in this section (e.g., supportive/antagonizing).

9. Please describe the overall courtroom environment. Was it:

- |                                      |           |       |
|--------------------------------------|-----------|-------|
| <input type="checkbox"/> Crowded     | Describe: | _____ |
| <input type="checkbox"/> Quiet       | Describe: | _____ |
| <input type="checkbox"/> Noisy       | Describe: | _____ |
| <input type="checkbox"/> Distracting | Describe: | _____ |
| <input type="checkbox"/> Other       | Describe: | _____ |

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

10. How did the Crown appear during the proceedings: *(check all that apply)*

- |                                                                         |           |       |
|-------------------------------------------------------------------------|-----------|-------|
| <input type="checkbox"/> Alert                                          | Describe: | _____ |
| <input type="checkbox"/> Organized                                      | Describe: | _____ |
| <input type="checkbox"/> Interested in proceedings                      | Describe: | _____ |
| <input type="checkbox"/> Disinterested in proceedings                   | Describe: | _____ |
| <input type="checkbox"/> Sensitive to victim/victim's situation         | Describe: | _____ |
| <input type="checkbox"/> Disrespectful to the victim/victim's situation | Describe: | _____ |
| <input type="checkbox"/> Respectful towards accused                     | Describe: | _____ |
| <input type="checkbox"/> Disrespectful towards the accused              | Describe: | _____ |
| <input type="checkbox"/> Distracted                                     | Describe: | _____ |
| <input type="checkbox"/> Disorganized                                   | Describe: | _____ |

11. Describe any safety issues addressed by Crown: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

12. Please record any comments made by the Crown during the proceedings that you think are important:

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13. How did Defence Counsel appear during the proceedings: *(check all that apply)*

- |                                                                         |           |       |
|-------------------------------------------------------------------------|-----------|-------|
| <input type="checkbox"/> Alert                                          | Describe: | _____ |
| <input type="checkbox"/> Organized                                      | Describe: | _____ |
| <input type="checkbox"/> Interested in proceedings                      | Describe: | _____ |
| <input type="checkbox"/> Disinterested in proceedings                   | Describe: | _____ |
| <input type="checkbox"/> Sensitive to victim/victim's situation         | Describe: | _____ |
| <input type="checkbox"/> Disrespectful to the victim/victim's situation | Describe: | _____ |
| <input type="checkbox"/> Respectful towards accused                     | Describe: | _____ |
| <input type="checkbox"/> Disrespectful towards the accused              | Describe: | _____ |
| <input type="checkbox"/> Distracted                                     | Describe: | _____ |
| <input type="checkbox"/> Disorganized                                   | Describe: | _____ |

14. Describe any safety issues addressed by Defence:

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15. Please record any comments made by the Defence during the proceedings that you think are important:

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16. How did the Judge appear during the proceedings: *(check all that apply)*

- |                                                    |           |       |
|----------------------------------------------------|-----------|-------|
| <input type="checkbox"/> Alert                     | Describe: | _____ |
| <input type="checkbox"/> Organized                 | Describe: | _____ |
| <input type="checkbox"/> Interested in proceedings | Describe: | _____ |

Disinterested in proceedings

Describe:

---

---

Sensitive to victim/victim's situation

Describe:

---

---

Disrespectful to the victim/victim's situation

Describe:

---

---

Respectful towards accused

Describe:

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---

Disrespectful towards the accused

Describe:

---

---

Distracted

Describe:

---

---

Disorganized

Describe:

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---

17. Describe any safety issues addressed by Judge:

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18. Please record any comments made by the Judge during the proceedings that you think are important:

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19. Please record any other comments or observations you have regarding the court proceedings and or the environment (e.g., conversations overheard/behaviours observed in/outside the courtroom):

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# COURT WATCH YUKON: DVTO COURT OBSERVATION FORM

Completed by: \_\_\_\_\_ Date: \_\_\_\_\_  
YYYY-MM-DD

Court location/number:  Whitehorse  Other: \_\_\_\_\_

Judge/JP: \_\_\_\_\_  Male  Female

Crown Counsel: \_\_\_\_\_  Male  Female Start time: \_\_\_\_\_ AM/PM

Defence Counsel: \_\_\_\_\_  Male  Female End Time: \_\_\_\_\_ AM/PM

## BACKGROUND INFORMATION (ONE PER ACCUSED)

File Number(s): \_\_\_\_\_ Next Court Date: \_\_\_\_\_  
Offence(s): \_\_\_\_\_ YYYY-MM-DD

Name of Accused: \_\_\_\_\_  Male  Female Age: \_\_\_\_\_ years

Was any reference made to Aboriginal or First Nations identity of accused?  Yes  No

Specify: \_\_\_\_\_

Community:  Whitehorse  Other: \_\_\_\_\_

Name of Victim: \_\_\_\_\_  Male  Female Age: \_\_\_\_\_ years

Was any reference made to Aboriginal or First Nations identity of victim?  Yes  No

Specify: \_\_\_\_\_

Community:  Whitehorse  Other: \_\_\_\_\_

Type of hearing:  Check-in  
 Sentencing

1. What was the relationship between the accused and victim at the time of the incident?

Married/Common Law  Same sex relationship –  Male  Female

Previously married/common law but separated at the time of the incident

Divorced/Ex-partners

Intimate partners living apart

Dating relationship (boyfriend/girlfriend)

Other: \_\_\_\_\_

Unknown

2. Do they have children who live with one or both parent(s)?

Yes  No  Unknown

At the time of the incident, where were the children living?  
\_\_\_\_\_

3. Is legal counsel present?  
\_\_\_\_\_



Ask for a Victim Impact Statement (VIS)?  Yes  No  
 If yes, who read the VIS aloud in court?  Victim  
 Not read aloud  
 Read by \_\_\_\_\_

Refer the accused to Community Wellness Court?  Yes  No  
 Refer the accused to circle sentencing?  Yes  No  
 Impose a victim surcharge on the accused?  Yes  No  
 If yes, was the victim surcharge waived?  Yes  No  
 If yes, who requested the victim surcharge be waived? \_\_\_\_\_

Explain the sentence?  Yes  No  
 Ensure a relapse prevention plan was put in place to ensure victim safety?  Yes  No  
 Comments: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

10. Was a pre-sentence report submitted?  Yes  No

11. Was a Gladue report (pre-sentencing and bail hearing report under s. 718.2(e)) raised by counsel?  Yes  No

If yes: what information was provided concerning s. 718.2?

- Aggravating factors Specify: \_\_\_\_\_
- Mitigating circumstances Specify: \_\_\_\_\_
- Similar to other offences/offenders
- Other: \_\_\_\_\_

12. Were aggravating or mitigating factors referenced during sentencing?

- Aggravating factors Specify: \_\_\_\_\_
- Mitigating circumstances Specify: \_\_\_\_\_

13. Was the victim present in court?  Yes  No  Unknown

If yes, was anyone present with the victim? (check all that apply)

- Another lawyer in addition to the Crown  Family
- Crown Witness Coordinator  Friend
- Victim Advocate  Aboriginal Court Worker
- Victim Services, FVPU  Other: \_\_\_\_\_

If yes, did the victim speak?  Yes  No

Nature of comments: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

14. Did other parties speak to this matter in court?

- Family and Children Services

First Nations' Agencies                      Specify: \_\_\_\_\_

Victims Services/ Women's Program

Spousal Abuse Program                      Family Violence Prevention Unit –  Yes  No

Probation/Bail Supervisor

Someone on behalf of the victim

Someone on behalf of the accused

Other: \_\_\_\_\_

Nature of comments: \_\_\_\_\_

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15. Did the judge address the victim?             Yes     No

16. How did the Judge address the victim verbally?

Repeating questions/comments            Describe: \_\_\_\_\_

Negative comments                            Describe: \_\_\_\_\_

In simple terms                                 Describe: \_\_\_\_\_

Intimidation                                     Describe: \_\_\_\_\_

Positive comments                             Describe: \_\_\_\_\_

Other                                               Describe: \_\_\_\_\_

Comments: \_\_\_\_\_

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17. How did the Judge address the victim non-verbally?

Used eye contact                                 Used inappropriate body language

Was attentive                                     Other \_\_\_\_\_

Comments: \_\_\_\_\_

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18. Did the judge address the accused?             Yes     No

19. How did the Judge address the accused verbally?

<input type="checkbox"/> Repeating questions/comments	Describe: _____
<input type="checkbox"/> Negative comments	Describe: _____
<input type="checkbox"/> In simple terms	Describe: _____
<input type="checkbox"/> Intimidation	Describe: _____
<input type="checkbox"/> Positive comments	Describe: _____
<input type="checkbox"/> Other	Describe: _____

Comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

20. How did the Judge address the accused non-verbally?

<input type="checkbox"/> Used eye contact	<input type="checkbox"/> Used inappropriate body language
<input type="checkbox"/> Was attentive	<input type="checkbox"/> Other _____

Comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

21. If the accused is sentenced, what is the outcome?

<input type="checkbox"/> Absolute discharge	
<input type="checkbox"/> Conditional discharge	Probation length: _____
<input type="checkbox"/> Fine	Amount: \$ _____
<input type="checkbox"/> Restitution	Amount: \$ _____
<input type="checkbox"/> Suspended sentence	
<input type="checkbox"/> Imprisonment/Time Served	Length: _____
<input type="checkbox"/> Probation	Length: _____

Terms of probation:

<input type="checkbox"/> Counseling	<input type="checkbox"/> Alcohol abstention
<input type="checkbox"/> Residency	<input type="checkbox"/> Curfew
<input type="checkbox"/> Family contract	<input type="checkbox"/> Other: _____

\_\_\_\_\_

\_\_\_\_\_

22. Please describe any comments made by the judge during sentencing (e.g., references to the character of the accused/victim, need for accused to take responsibility for behaviour, chances for rehabilitation, impact on the victim and/or children):

\_\_\_\_\_

23. Did the Judge use mutualizing language?  Yes  No

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## COURT ROOM ENVIRONMENT

\* Please record both positive and negative observations in this section (e.g., supportive/antagonizing).

24. Please describe the overall courtroom environment. Was it:

- Crowded Describe: \_\_\_\_\_
- Quiet Describe: \_\_\_\_\_
- Noisy Describe: \_\_\_\_\_
- Distracting Describe: \_\_\_\_\_
- Other Describe: \_\_\_\_\_

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

25. How did Crown Counsel appear during the proceedings: *(check all that apply)*

- Alert Describe: \_\_\_\_\_
- Organized Describe: \_\_\_\_\_
- Interested in proceedings Describe: \_\_\_\_\_
- Disinterested in proceedings Describe: \_\_\_\_\_
- Sensitive to victim/victim's situation Describe: \_\_\_\_\_
- Disrespectful to the victim/victim's situation Describe: \_\_\_\_\_
- Respectful towards accused Describe: \_\_\_\_\_
- Disrespectful towards the accused Describe: \_\_\_\_\_
- Distracted Describe: \_\_\_\_\_
- Disorganized Describe: \_\_\_\_\_

26. Describe any safety issues addressed by Crown: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

27. Please record any comments made by the Crown during the proceedings that you think are important: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

28. How did Defence Counsel appear during the proceedings: *(check all that apply)*

- |                                                                         |                          |
|-------------------------------------------------------------------------|--------------------------|
| <input type="checkbox"/> Alert                                          | Describe: _____<br>_____ |
| <input type="checkbox"/> Organized                                      | Describe: _____<br>_____ |
| <input type="checkbox"/> Interested in proceedings                      | Describe: _____<br>_____ |
| <input type="checkbox"/> Disinterested in proceedings                   | Describe: _____<br>_____ |
| <input type="checkbox"/> Sensitive to victim/victim's situation         | Describe: _____<br>_____ |
| <input type="checkbox"/> Disrespectful to the victim/victim's situation | Describe: _____<br>_____ |
| <input type="checkbox"/> Respectful towards accused                     | Describe: _____<br>_____ |
| <input type="checkbox"/> Disrespectful towards the accused              | Describe: _____<br>_____ |
| <input type="checkbox"/> Distracted                                     | Describe: _____<br>_____ |
| <input type="checkbox"/> Disorganized                                   | Describe: _____<br>_____ |

29. Describe any safety issues addressed by Defence: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

30. Please record any comments made by the Defence during the proceedings that you think are important: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

31. How did the Judge/JP appear during the proceedings: *(check all that apply)*

- |                                |                 |
|--------------------------------|-----------------|
| <input type="checkbox"/> Alert | Describe: _____ |
|--------------------------------|-----------------|

Organized

Describe:

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Interested in proceedings

Describe:

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Disinterested in proceedings

Describe:

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Sensitive to victim/victim's situation

Describe:

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Disrespectful to the victim/victim's situation

Describe:

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Respectful towards accused

Describe:

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Disrespectful towards the accused

Describe:

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Distracted

Describe:

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Disorganized

Describe:

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32. Describe any safety issues addressed by Judge/JP:

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33. Please record any other comments made by the Judge/JP during the proceedings that you think are important:

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34. Please record any other comments or observations you have regarding the court proceedings and or the environment (e.g., conversations overheard/behaviors observed in/or outside the courtroom):

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## GLOSSARY & LEGAL REFERENCES

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### Mutualizing Language

“Language that mutualizes violent behavior implies that the victim is at least partly to blame and inevitably conceals the fact that violent behavior is unilateral and solely the responsibility of the offender.” (Coates & Wade, 2004)

- Examples:
- Forced vaginal penetration described as ‘sex’ or ‘intercourse’
  - Violating physical contact described as ‘fondling’
  - Sexual assault described as ‘erotic’, ‘romantic’, or ‘affectionate’
  - Wife assault described as ‘abusive relationships’
  - Beating, attack, assault described as ‘fight’, ‘conflict’, or ‘argument’

### Gladue sentencing principle – *Criminal Code of Canada*

718.2 A court that imposes a sentence shall also take into consideration the following principles: (e) all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders.

# COURT WATCH YUKON: TRIAL COURT OBSERVATION FORM

Completed by: \_\_\_\_\_ Date: \_\_\_\_\_  
YYYY-MM-DD

Court location/number:  Whitehorse  Other: \_\_\_\_\_

Judge/JP: \_\_\_\_\_  Male  Female

Crown Counsel: \_\_\_\_\_  Male  Female Start time: \_\_\_\_\_ AM/PM

Defence Counsel: \_\_\_\_\_  Male  Female End Time: \_\_\_\_\_ AM/PM

## BACKGROUND INFORMATION (ONE PER ACCUSED)

File Number(s): \_\_\_\_\_ Next Court Date: \_\_\_\_\_  
Offence(s): \_\_\_\_\_ YYYY-MM-DD

Name of Accused: \_\_\_\_\_  Male  Female Age: \_\_\_\_\_ years

Was any reference made to Aboriginal or First Nations identity of accused?  Yes  No

Specify: \_\_\_\_\_

Community:  Whitehorse  Other: \_\_\_\_\_

Name of Victim: \_\_\_\_\_  Male  Female Age: \_\_\_\_\_ years

Was any reference made to Aboriginal or First Nations identity of victim?  Yes  No

Specify: \_\_\_\_\_

Community:  Whitehorse  Other: \_\_\_\_\_

1. What was the relationship between the accused and victim at the time of the incident?
- Married/Common Law  Same sex relationship –  Male  Female
- Previously married/common law but separated at the time of the incident
- Divorced/Ex-partners
- Intimate partners living apart
- Dating relationship (boyfriend/girlfriend)
- Other: \_\_\_\_\_
- Unknown

2. Do they have children who live with one or both parent(s)?
- Yes  No  Unknown

At the time of the incident, where were the children living?

\_\_\_\_\_

3. Was a bail hearing observed?  Yes  No  Bail set at: \$ \_\_\_\_\_

What orders (conditions) were made for bail release?

- Promise to appear in Court (recognizance)
- Meet with Bail Supervisor
- No contact with the victim
- Not attending location of alleged offence
- Other \_\_\_\_\_
- Follow a curfew
- No alcohol use possession
- No drug use/possession
- No possession of weapon

4. Was a preliminary hearing observed?  Yes  No

5. Trier(s) of fact:

- Trial by Judge
- Trial by Jury Describe selection process: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

6. Charges laid:

Sentencing for each charge:

- |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>a. _____ <input type="checkbox"/> S <input type="checkbox"/> I</li> <li>b. _____ <input type="checkbox"/> S <input type="checkbox"/> I</li> <li>c. _____ <input type="checkbox"/> S <input type="checkbox"/> I</li> <li>d. _____ <input type="checkbox"/> S <input type="checkbox"/> I</li> <li>e. _____ <input type="checkbox"/> S <input type="checkbox"/> I</li> <li>f. _____ <input type="checkbox"/> S <input type="checkbox"/> I</li> <li>g. _____ <input type="checkbox"/> S <input type="checkbox"/> I</li> <li>h. _____ <input type="checkbox"/> S <input type="checkbox"/> I</li> </ul> | <ul style="list-style-type: none"> <li>a. _____ <input type="checkbox"/> Withdrawn</li> <li>b. _____ <input type="checkbox"/> Withdrawn</li> <li>c. _____ <input type="checkbox"/> Withdrawn</li> <li>d. _____ <input type="checkbox"/> Withdrawn</li> <li>e. _____ <input type="checkbox"/> Withdrawn</li> <li>f. _____ <input type="checkbox"/> Withdrawn</li> <li>g. _____ <input type="checkbox"/> Withdrawn</li> <li>h. _____ <input type="checkbox"/> Withdrawn</li> </ul> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

S = Summary; I = Indictable

7. Plea(s) of accused (may be more than one):

- Guilty to all charges laid  Not guilty to all charges laid
- Peace bond/restraining order  No plea
- Guilty to reduced charges: \_\_\_\_\_  
 \_\_\_\_\_
- Not guilty to some charges: \_\_\_\_\_  
 \_\_\_\_\_

8. Was the victim charged with an offense in relation to the same event?  Yes  No

If yes, specify charges: \_\_\_\_\_  S  I

If woman accused, was there a history of domestic violence with her as a victim?  Yes  No

Were past records requested?  Yes  No

9. Were any other parties co-accused with an offense?  Yes  No

If yes, specify party: \_\_\_\_\_  
If yes, specify charges: \_\_\_\_\_  S  I

10. Was the trial remanded to another day?  Yes  No

If yes, why? \_\_\_\_\_  
\_\_\_\_\_

New trial date: \_\_\_\_\_  
YYYY-MM-DD

11. What was the outcome of the trial?

- Stay of proceedings      Specify reasons given: \_\_\_\_\_
- Withdraw of proceedings      Specify reasons given: \_\_\_\_\_
- Proceed to sentencing
- Acquitted
- Found Guilty

12. Bans:

- Was there a publication ban (or other ban) in place?  Yes  No      Specify ban: \_\_\_\_\_
- Did the judge have to remind anyone about the publication ban?  Yes  No      Specify who: \_\_\_\_\_

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## CROWN'S CASE

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13. Was the victim present in court?  Yes  No  Unknown

If yes, was anyone present with the victim? *(check all that apply)*

- Another lawyer in addition to the Crown  Family
- Crown Witness Coordinator  Friend
- Victim Advocate  Aboriginal Court Worker
- Victim Services, FVPU  Other: \_\_\_\_\_

14. Was the accused present in court?  Yes  No  Unknown

If yes, was anyone present with the accused? *(check all that apply)*

- Lawyer  Family  Friend
- No one  Other \_\_\_\_\_

15. Did the victim testify in court?  Yes  No

If yes, was this testimony presented via testimonial aid (e.g., screen, CCTV)?  Yes  No      Specify: \_\_\_\_\_  
\_\_\_\_\_

If yes, was “similar fact” evidence introduced (i.e., that the accused had abused him/her in the past in similar ways)?  Yes  No

If yes, did the judge allow the Crown to question the victim about the differences in the evidence she/he provided (i.e., did the Crown apply section 9(2) of the *Canada Evidence Act*)?  Yes  No

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If yes, how did the victim appear:

Confident Describe: \_\_\_\_\_

Nervous Describe: \_\_\_\_\_

Neutral Describe: \_\_\_\_\_

Other Describe: \_\_\_\_\_

16. How did the Crown address the victim?

Respectful Describe: \_\_\_\_\_

Abrupt Describe: \_\_\_\_\_

Alert Describe: \_\_\_\_\_

Distant Describe: \_\_\_\_\_

Other: \_\_\_\_\_

Comments: \_\_\_\_\_

17. Did the Crown use mutualizing language?  Yes  No

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

18. Did the Judge address the victim?  Yes  No

19. How did the Judge address the victim verbally?

Repeating questions/comments Describe: \_\_\_\_\_

Negative comments Describe: \_\_\_\_\_

Intimidation Describe: \_\_\_\_\_

Positive comments Describe: \_\_\_\_\_

Other Describe: \_\_\_\_\_

Comments: \_\_\_\_\_

20. How did the Judge address the victim non-verbally?

Used eye contact  Used inappropriate body language

Was attentive  Other \_\_\_\_\_

Comments: \_\_\_\_\_

21. Was the investigating officer(s) or police witness(es) present at the trial?  Yes  No

If yes, was the officer/detective?  Male  Female

If yes, did the investigating officer(s) or police witness(es) testify?  Yes Describe testimony: \_\_\_\_\_

No \_\_\_\_\_

22. Did the Crown present any of the following evidence? (*check all that apply*)

Doctor's reports  Photographs

Videotapes  Audiotapes

Blood  911 tapes

None of the above  DNA

Other: \_\_\_\_\_

23. Did the Crown call any witnesses besides the victim and police officer(s)?  Yes Specify: \_\_\_\_\_

No \_\_\_\_\_

24. Did the Crown meet with the victim prior to court?  Yes  No  Unknown

25. Did the Crown address safety issues of the victim?  Yes Describe: \_\_\_\_\_

No \_\_\_\_\_

26. Did the Crown use any other techniques to support the victim (e.g., requesting a closed courtroom)?  Yes Describe: \_\_\_\_\_

No \_\_\_\_\_

27. Please describe the type and severity of abuse suffered by the woman (e.g., how was she injured, how often was she abused, how did this affect her):

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28. Were any objections raised?  Yes Describe: \_\_\_\_\_  
 No \_\_\_\_\_

### DEFENCE CROSS-EXAMINATION

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29. What was Defence counsel's behaviour towards the victim?

- Respectful Describe: \_\_\_\_\_
- Undermining victim's credibility Describe: \_\_\_\_\_
- Alert Describe: \_\_\_\_\_
- Hostile Describe: \_\_\_\_\_
- Accusing Describe: \_\_\_\_\_
- Irrelevant information Describe: \_\_\_\_\_
- Other Describe: \_\_\_\_\_

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

30. Did the Defence use mutualizing language?  Yes  No  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

31. Did the judge intervene during the Defence cross-examination?  Yes Describe: \_\_\_\_\_  
 No \_\_\_\_\_

32. Were questions asked about victim's past sexual history?  Yes  No \_\_\_\_\_

33. Was there any badgering of the victim/witness?  Yes  No  
If yes, was it objected to?  Yes  No  
If yes, was the objection:  Sustained  Overturned

34. Were any comments made about the victim consuming alcohol/drugs during the incident?  Yes Describe: \_\_\_\_\_  
 No \_\_\_\_\_  
If yes, were any direct questions asked about alcohol/drug use at the time of the incident?  Yes  No  
If yes, did this impact the victim's ability to recall/testify (e.g., body language, voice)?  Yes  No

35. Were any comments made about the accused consuming alcohol/drugs during the incident?  Yes Describe: \_\_\_\_\_  
 No \_\_\_\_\_

36. Were any objections raised?  Yes Describe: \_\_\_\_\_  
 No \_\_\_\_\_

## CROWN CROSS-EXAMINATION

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37. Did the Crown clarify any information with the victim during re-examination? (e.g., put  Yes  No her back on the witness stand or ask questions)

If yes, please describe the judge's reaction: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

38. Were any objections raised?  Yes Describe: \_\_\_\_\_  
 No \_\_\_\_\_

## DEFENCE'S CASE

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39. Was the accused present in court?  Yes  No  Unknown  
If yes, was anyone present with the accused? (check all that apply)

Lawyer  Family  Friend  
 No one  Other \_\_\_\_\_

40. Did the accused testify in court?  Yes  No

41. Did the judge address the accused?  Yes  No

42. How did the Judge address the accused verbally?

Repeating questions/comments Describe: \_\_\_\_\_

Negative comments Describe: \_\_\_\_\_

In simple terms Describe: \_\_\_\_\_

Intimidation Describe: \_\_\_\_\_

Positive comments Describe: \_\_\_\_\_

Other Describe: \_\_\_\_\_

Comments: \_\_\_\_\_

43. How did the Judge address the accused non-verbally?

Used eye contact  Used inappropriate body language

Was attentive  Other \_\_\_\_\_

Comments: \_\_\_\_\_

44. Were questions asked about victim's past sexual history?  Yes  No

45. Was there any badgering of the victim/witness?  Yes  No

If yes, was it objected to?  Yes  No

If yes, was the objection:  Sustained  Overturned

46. Did the Defence have any other witnesses aside from the accused?  Yes Describe: \_\_\_\_\_

No \_\_\_\_\_

47. Were any comments made about the victim consuming alcohol/drugs during the incident?  Yes Describe: \_\_\_\_\_

No \_\_\_\_\_

If yes, were any direct questions asked about alcohol/drug use at the time of the incident?  Yes  No

If yes, did this impact the victim's ability to recall/testify (e.g., body language, voice)?  Yes  No

48. Were any comments made about the accused consuming alcohol/drugs during the incident?  Yes Describe: \_\_\_\_\_  
 No \_\_\_\_\_  
If yes, were any direct questions asked about alcohol/drug use at the time of the incident?  Yes  No

49. Were any objections raised?  Yes Describe: \_\_\_\_\_  
 No \_\_\_\_\_

## CROWN RE-EXAMINATION

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50. What was Crown counsel's behaviour towards the accused?  
 Respectful Describe: \_\_\_\_\_  
 Undermining victim's credibility Describe: \_\_\_\_\_  
 Alert Describe: \_\_\_\_\_  
 Hostile Describe: \_\_\_\_\_  
 Accusing Describe: \_\_\_\_\_  
 Irrelevant information Describe: \_\_\_\_\_  
 Other Describe: \_\_\_\_\_  
Comments: \_\_\_\_\_

51. Did the judge intervene during the Crown cross-examination?  Yes Describe: \_\_\_\_\_  
 No \_\_\_\_\_

52. Did the judge have any questions about the Crown's closing statements/summation?  Yes Describe: \_\_\_\_\_  
 No \_\_\_\_\_

53. Were any objections raised?  Yes Describe: \_\_\_\_\_  
 No \_\_\_\_\_

## DEFENCE RE-EXAMINATION

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54. Did the Defence clarify any information during re-examination?

Yes  No

If yes, please describe the judge's reaction: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

55. Were any objections raised?

Yes

Describe:

No

\_\_\_\_\_  
\_\_\_\_\_

## CLOSING STATEMENTS

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56. Did the judge have any questions about the Crown's closing statements/summation?

Yes

Describe:

No

\_\_\_\_\_  
\_\_\_\_\_

57. Did the Judge have any questions about the Defence's closing statements/summation?

Yes

Describe:

No

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

58. Were any objections raised?

Yes

Describe:

No

\_\_\_\_\_  
\_\_\_\_\_

## DECISION

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59. What was the Judge's decision:

Guilty

Specify charge(s):

Not guilty

Specify charge(s):

Dismissed/Withdrawn

Specify charge(s):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

60. Please describe the comments made by the Judge during the decision: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

61. Please describe the instructions given by the Judge and the language used during instructions:

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62. Please describe the language used by the Judge during the summation? (How did the Judge sum up the case? What did the Judge say about the accused and what they had done?)

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63. Did the Judge use mutualizing language?  Yes  No

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64. Were bail/release plans communicated to the victim before conviction?  Yes  No  N/A Describe: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

65. Was the accused detained or held in custody?  Yes  No Describe length/time: \_\_\_\_\_  
\_\_\_\_\_

## SENTENCING

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66. When did sentencing occur?

Same day

Other sentencing date was set

New sentencing date: \_\_\_\_\_

YYYY-MM-DD

67. During sentencing, did the judge:

Ask for a Victim Impact Statement (VIS)?

Yes  No

If yes, who read the VIS aloud in court?

Victim

Not read aloud

Read by \_\_\_\_\_

Refer the accused to Community Wellness Court?

Yes  No

Refer the accused to circle sentencing?

Yes  No

Impose a victim surcharge on the accused?

Yes  No

If yes, was the victim surcharge waived?

Yes  No

If yes, who requested the victim surcharge be waived? \_\_\_\_\_

Explain the sentence?  Yes  No  
Ensure a relapse prevention plan was put in place to ensure victim safety?  Yes  No  
Comments: \_\_\_\_\_  
\_\_\_\_\_

68. Was past history or criminal record of the accused introduced for sentencing?  Yes Describe: \_\_\_\_\_  
 No \_\_\_\_\_

69. Was a pre-sentence report submitted?  Yes  No

70. Was a Gladue report (pre-sentencing and bail hearing report under s. 718.2(e)) raised by counsel?  Yes  No

If yes: what information was provided concerning s. 718.2?

- Aggravating factors Specify: \_\_\_\_\_
- Mitigating circumstances Specify: \_\_\_\_\_
- Similar to other offences/offenders
- Other: \_\_\_\_\_

71. Were aggravating or mitigating factors referenced during sentencing?

- Aggravating factors Specify: \_\_\_\_\_
- Mitigating circumstances Specify: \_\_\_\_\_

72. If the accused is sentenced, what is the outcome?

- Absolute discharge
- Conditional discharge Probation length: \_\_\_\_\_
- Fine Amount: \$ \_\_\_\_\_
- Restitution Amount: \$ \_\_\_\_\_
- Suspended sentence
- Imprisonment/Time Served Length: \_\_\_\_\_
- Probation Length: \_\_\_\_\_  
Terms of probation:
  - Counseling  Alcohol abstention
  - Residency  Curfew
  - Family contract  Other: \_\_\_\_\_

73. Please describe any comments made by the judge during sentencing (e.g., references to the character of the accused/victim, need for accused to take responsibility for behaviour, chances for rehabilitation, impact on the victim and/or children):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## COURT ROOM ENVIRONMENT

\* Please record both positive and negative observations in this section (e.g., supportive/antagonizing).

74. Please describe the overall courtroom environment. Was it:

- |                                      |           |       |
|--------------------------------------|-----------|-------|
| <input type="checkbox"/> Crowded     | Describe: | _____ |
| <input type="checkbox"/> Quiet       | Describe: | _____ |
| <input type="checkbox"/> Noisy       | Describe: | _____ |
| <input type="checkbox"/> Distracting | Describe: | _____ |
| <input type="checkbox"/> Other       | Describe: | _____ |

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

75. How did the Crown appear during the proceedings: *(check all that apply)*

- |                                                                         |           |       |
|-------------------------------------------------------------------------|-----------|-------|
| <input type="checkbox"/> Alert                                          | Describe: | _____ |
| <input type="checkbox"/> Organized                                      | Describe: | _____ |
| <input type="checkbox"/> Interested in proceedings                      | Describe: | _____ |
| <input type="checkbox"/> Disinterested in proceedings                   | Describe: | _____ |
| <input type="checkbox"/> Sensitive to victim/victim's situation         | Describe: | _____ |
| <input type="checkbox"/> Disrespectful to the victim/victim's situation | Describe: | _____ |
| <input type="checkbox"/> Respectful towards accused                     | Describe: | _____ |
| <input type="checkbox"/> Disrespectful towards the accused              | Describe: | _____ |
| <input type="checkbox"/> Distracted                                     | Describe: | _____ |
| <input type="checkbox"/> Disorganized                                   | Describe: | _____ |

76. Describe any safety issues addressed by Crown: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

77. Please record any comments made by the Crown during the proceedings that you think are important:

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78. How did Defence Counsel appear during the proceedings: *(check all that apply)*

- |                                                                         |           |       |
|-------------------------------------------------------------------------|-----------|-------|
| <input type="checkbox"/> Alert                                          | Describe: | _____ |
| <input type="checkbox"/> Organized                                      | Describe: | _____ |
| <input type="checkbox"/> Interested in proceedings                      | Describe: | _____ |
| <input type="checkbox"/> Disinterested in proceedings                   | Describe: | _____ |
| <input type="checkbox"/> Sensitive to victim/victim's situation         | Describe: | _____ |
| <input type="checkbox"/> Disrespectful to the victim/victim's situation | Describe: | _____ |
| <input type="checkbox"/> Respectful towards accused                     | Describe: | _____ |
| <input type="checkbox"/> Disrespectful towards the accused              | Describe: | _____ |
| <input type="checkbox"/> Distracted                                     | Describe: | _____ |
| <input type="checkbox"/> Disorganized                                   | Describe: | _____ |

79. Describe any safety issues addressed by Defence:

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80. Please record any comments made by the Defence during the proceedings that you think are important:

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81. How did the Judge appear during the proceedings: *(check all that apply)*

- |                                                    |           |       |
|----------------------------------------------------|-----------|-------|
| <input type="checkbox"/> Alert                     | Describe: | _____ |
| <input type="checkbox"/> Organized                 | Describe: | _____ |
| <input type="checkbox"/> Interested in proceedings | Describe: | _____ |

Disinterested in proceedings

Describe:

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Sensitive to victim/victim's situation

Describe:

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Disrespectful to the victim/victim's situation

Describe:

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Respectful towards accused

Describe:

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Disrespectful towards the accused

Describe:

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Distracted

Describe:

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Disorganized

Describe:

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82. Describe any safety issues addressed by Judge:

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83. Please record any comments made by the Judge during the proceedings that you think are important:

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84. Please record any other comments or observations you have regarding the court proceedings and or the environment (e.g., conversations overheard/behaviours observed in/outside the courtroom):

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## GLOSSARY & LEGAL REFERENCES

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### **Badgering the Witness**

When instead of questioning, a lawyer is unnecessarily hostile to a witness, harasses a witness, or asks questions that assume facts not presented in evidence. Badgering the witness is a tactic used to make the witness argue with the lawyer asking questions and lose composure.

- Examples:
- “Do you really expect the jury to believe that?”
  - “Where were you on the night of the assault? WHERE? HUH?”
  - “With all the evidence presented, how can you deny this happened?”

### **Mutualizing Language**

“Language that mutualizes violent behavior implies that the victim is at least partly to blame and inevitably conceals the fact that violent behavior is unilateral and solely the responsibility of the offender.” (Coates & Wade, 2004)

- Examples:
- Forced vaginal penetration described as ‘sex’ or ‘intercourse’
  - Violating physical contact described as ‘fondling’
  - Sexual assault described as ‘erotic’, ‘romantic’, or ‘affectionate’
  - Wife assault described as ‘abusive relationships’
  - Beating, attack, assault described as ‘fight’, ‘conflict’, or ‘argument’

# COURT WATCH YUKON: SENTENCING OBSERVATION FORM

Completed by: \_\_\_\_\_ Date: \_\_\_\_\_  
YYYY-MM-DD

Court location/number:  Whitehorse  Other: \_\_\_\_\_

Judge/JP: \_\_\_\_\_  Male  Female

Crown Counsel: \_\_\_\_\_  Male  Female Start time: \_\_\_\_\_ AM/PM

Defence Counsel: \_\_\_\_\_  Male  Female End Time: \_\_\_\_\_ AM/PM

## BACKGROUND INFORMATION (ONE PER ACCUSED)

File Number(s): \_\_\_\_\_ Next Court Date: \_\_\_\_\_  
Offence(s): \_\_\_\_\_ YYYY-MM-DD

Name of Accused: \_\_\_\_\_  Male  Female Age: \_\_\_\_\_ years  
Was any reference made to Aboriginal or First Nations identity of accused?  Yes  No  
Specify: \_\_\_\_\_  
Community:  Whitehorse  Other: \_\_\_\_\_

Name of Victim: \_\_\_\_\_  Male  Female Age: \_\_\_\_\_ years  
Was any reference made to Aboriginal or First Nations identity of victim?  Yes  No  
Specify: \_\_\_\_\_  
Community:  Whitehorse  Other: \_\_\_\_\_

1. What was the relationship between the accused and victim at the time of the incident?

- Married/Common Law  Same sex relationship –  Male  Female
- Previously married/common law but separated at the time of the incident
- Divorced/Ex-partners
- Intimate partners living apart
- Dating relationship (boyfriend/girlfriend)
- Other: \_\_\_\_\_
- Unknown

2. Was a bail hearing observed?  Yes  No  Bail set at: \$ \_\_\_\_\_

What orders (conditions) were made for bail release?

- Promise to appear in Court (recognizance)  Follow a curfew
- Meet with Bail Supervisor  No alcohol use/possession
- No contact with the victim  No drug use/possession
- Not attending location of alleged offence  No possession of weapon

Other \_\_\_\_\_

3. Was a preliminary hearing observed?  Yes  No

4. Charges laid:		Sentencing for each charge:	
a.	_____ <input type="checkbox"/> S <input type="checkbox"/> I	a.	_____ <input type="checkbox"/> Withdrawn
b.	_____ <input type="checkbox"/> S <input type="checkbox"/> I	b.	_____ <input type="checkbox"/> Withdrawn
c.	_____ <input type="checkbox"/> S <input type="checkbox"/> I	c.	_____ <input type="checkbox"/> Withdrawn
d.	_____ <input type="checkbox"/> S <input type="checkbox"/> I	d.	_____ <input type="checkbox"/> Withdrawn
e.	_____ <input type="checkbox"/> S <input type="checkbox"/> I	e.	_____ <input type="checkbox"/> Withdrawn
f.	_____ <input type="checkbox"/> S <input type="checkbox"/> I	f.	_____ <input type="checkbox"/> Withdrawn
g.	_____ <input type="checkbox"/> S <input type="checkbox"/> I	g.	_____ <input type="checkbox"/> Withdrawn
h.	_____ <input type="checkbox"/> S <input type="checkbox"/> I	h.	_____ <input type="checkbox"/> Withdrawn

S = Summary; I = Indictable

5. Plea(s) of accused (*may be more than one*):

Guilty to all charges laid  Not guilty to all charges laid

Peace bond/restraining order  No plea

Guilty to reduced charges: \_\_\_\_\_

Not guilty to some charges: \_\_\_\_\_

6. Was the victim charged with an offense in relation to the same event?  Yes  No

If yes, specify charges: \_\_\_\_\_  S  I

If woman accused, was there a history of domestic violence with her as a victim?  Yes  No

Were past records requested?  Yes  No

7. Were any other parties co-accused with an offense?  Yes  No

If yes, specify party: \_\_\_\_\_

If yes, specify charges: \_\_\_\_\_  S  I

8. Bans:

Was there a publication ban (or other ban) in place?  Yes  No Specify ban: \_\_\_\_\_

Did the judge have to remind anyone about the publication ban?  Yes  No Specify who: \_\_\_\_\_

## SENTENCING

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9. When did sentencing occur?

Same day

Other sentencing date was set

New sentencing date: \_\_\_\_\_

YYYY-MM-DD

10. During sentencing, did the judge:

Ask for a Victim Impact Statement (VIS)?

Yes  No

If yes, who read the VIS aloud in court?

Victim

Not read aloud

Read by \_\_\_\_\_

Refer the accused to Community Wellness Court?

Yes  No

Refer the accused to circle sentencing?

Yes  No

Impose a victim surcharge on the accused?

Yes  No

If yes, was the victim surcharge waived?

Yes  No

If yes, who requested the victim surcharge be waived? \_\_\_\_\_

Explain the sentence?

Yes  No

Ensure a relapse prevention plan was put in place to ensure victim safety?

Yes  No

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

11. Was past history or criminal record of the accused introduced for sentencing?

Yes

Describe: \_\_\_\_\_

No

12. Was a pre-sentence report submitted?

Yes  No

13. Was a Gladue report (pre-sentencing and bail hearing report under s. 718.2(e)) raised by counsel?

Yes  No

If yes: what information was provided concerning s. 718.2?

Aggravating factors

Specify: \_\_\_\_\_

Mitigating circumstances

Specify: \_\_\_\_\_

Similar to other offences/offenders

Other: \_\_\_\_\_

14. Were aggravating or mitigating factors referenced during sentencing?

Aggravating factors

Specify: \_\_\_\_\_

Mitigating circumstances

Specify: \_\_\_\_\_

15. If the accused is sentenced, what is the outcome?

- Absolute discharge
- Conditional discharge      Probation length: \_\_\_\_\_
- Fine      Amount: \$ \_\_\_\_\_
- Restitution      Amount: \$ \_\_\_\_\_
- Suspended sentence
- Imprisonment/Time Served      Length: \_\_\_\_\_
- Probation      Length: \_\_\_\_\_
- Terms of probation:
- Counseling       Alcohol abstention
- Residency       Curfew
- Family contract       Other: \_\_\_\_\_

16. Please describe any comments made by the judge during sentencing (e.g., references to the character of the accused/victim, need for accused to take responsibility for behaviour, chances for rehabilitation, impact on the victim and/or children):

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## COURT ROOM ENVIRONMENT

*\* Please record both positive and negative observations in this section (e.g., supportive/antagonizing).*

17. Please describe the overall courtroom environment. Was it:

- Crowded      Describe: \_\_\_\_\_
- Quiet      Describe: \_\_\_\_\_
- Noisy      Describe: \_\_\_\_\_
- Distracting      Describe: \_\_\_\_\_
- Other      Describe: \_\_\_\_\_

Comments: \_\_\_\_\_

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18. How did the Crown appear during the proceedings: *(check all that apply)*

- Alert      Describe: \_\_\_\_\_
- Organized      Describe: \_\_\_\_\_
- Interested in proceedings      Describe: \_\_\_\_\_

- Disinterested in proceedings Describe: \_\_\_\_\_
- Sensitive to victim/victim's situation Describe: \_\_\_\_\_
- Disrespectful to the victim/victim's situation Describe: \_\_\_\_\_
- Respectful towards accused Describe: \_\_\_\_\_
- Disrespectful towards the accused Describe: \_\_\_\_\_
- Distracted Describe: \_\_\_\_\_
- Disorganized Describe: \_\_\_\_\_

19. Describe any safety issues addressed by Crown: \_\_\_\_\_

\_\_\_\_\_

20. Please record any comments made by the Crown during the proceedings that you think are important: \_\_\_\_\_

\_\_\_\_\_

21. How did Defence Counsel appear during the proceedings: *(check all that apply)*

- Alert Describe: \_\_\_\_\_
- Organized Describe: \_\_\_\_\_
- Interested in proceedings Describe: \_\_\_\_\_
- Disinterested in proceedings Describe: \_\_\_\_\_
- Sensitive to victim/victim's situation Describe: \_\_\_\_\_
- Disrespectful to the victim/victim's situation Describe: \_\_\_\_\_
- Respectful towards accused Describe: \_\_\_\_\_
- Disrespectful towards the accused Describe: \_\_\_\_\_
- Distracted Describe: \_\_\_\_\_
- Disorganized Describe: \_\_\_\_\_

22. Describe any safety issues addressed by Defence: \_\_\_\_\_

23. Please record any comments made by the Defence during the proceedings that you think are important:

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24. How did the Judge appear during the proceedings: *(check all that apply)*

- |                                                                         |           |       |
|-------------------------------------------------------------------------|-----------|-------|
| <input type="checkbox"/> Alert                                          | Describe: | _____ |
| <input type="checkbox"/> Organized                                      | Describe: | _____ |
| <input type="checkbox"/> Interested in proceedings                      | Describe: | _____ |
| <input type="checkbox"/> Disinterested in proceedings                   | Describe: | _____ |
| <input type="checkbox"/> Sensitive to victim/victim's situation         | Describe: | _____ |
| <input type="checkbox"/> Disrespectful to the victim/victim's situation | Describe: | _____ |
| <input type="checkbox"/> Respectful towards accused                     | Describe: | _____ |
| <input type="checkbox"/> Disrespectful towards the accused              | Describe: | _____ |
| <input type="checkbox"/> Distracted                                     | Describe: | _____ |
| <input type="checkbox"/> Disorganized                                   | Describe: | _____ |

25. Describe any safety issues addressed by Judge:

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26. Please record any comments made by the Judge during the proceedings that you think are important:

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27. Please record any other comments or observations you have regarding the court proceedings and or the environment (e.g., conversations overheard/behaviours observed in/outside the courtroom):

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## GLOSSARY & LEGAL REFERENCES

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### Mutualizing Language

“Language that mutualizes violent behavior implies that the victim is at least partly to blame and inevitably conceals the fact that violent behavior is unilateral and solely the responsibility of the offender.” (Coates & Wade, 2004)

Examples:

- Forced vaginal penetration described as ‘sex’ or ‘intercourse’
- Violating physical contact described as ‘fondling’
- Sexual assault described as ‘erotic’, ‘romantic’, or ‘affectionate’
- Wife assault described as ‘abusive relationships’
- Beating, attack, assault described as ‘fight’, ‘conflict’, or ‘argument’

## **APPENDIX C: CRIMINAL CODE CHARGES**

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**C88 Section 145:** Failure to comply with condition of undertaking or recognizance

**C88 Section 266:** Assault: “a person commits an assault when

- a) without the consent of another person, he applies force intentionally to that other person, directly or indirectly;
- b) he attempts or threatens, by an act or gesture, to apply force to another person, if he has, or causes that other person to believe upon reasonable grounds that he has present ability to effect his purpose; or
- c) while openly wearing or carrying a weapon or imitation thereof, he accosts or impedes another person or begs.”

**C88 Section 733.1:** Failure to comply with probation order

**C88 Section 271:** Sexual Assault

“Sexual assault is an assault, within any of the definitions of that concept, which is committed in circumstances of a sexual nature such that the sexual integrity of the victim is violated”

**C88 Section 267:** Assault with a weapon or causing bodily harm

“...a person who commits an assault while using or carrying a weapon or an imitation weapon, or who causes any hurt or injury that is not transient or trifling in nature interferes with the complainant’s health or comfort...”

**C88 Section 151:** Sexual interference

“...every person who, for a sexual purpose, touches, directly or indirectly, with a part of the body or with an object, any part of a person under the age of 16 years...”

**C88 Section 264.1:** Uttering threats

“every one commits an offence who, in any manner, knowingly utters, conveys or causes any person to receive a threat

- a) to cause death or bodily harm to any person;
- b) to burn, destroy or damage real or personal property; or
- c) to kill, poison or injure an animal or bird that is the property of any person...”

**C88 Section 430:** Mischief

“...every one commits mischief who willfully

- a) destroys or damages property;
- b) renders property dangerous, useless, inoperative or ineffective;
- c) obstructs, interrupts or interferes with the lawful use, enjoyment or operation of property; or
- d) obstructs, interrupts or interferes with any person in the lawful use, enjoyment or operation of property...”