

Fact Sheet #2: The myth of women's false accusations of domestic violence and rape and misuse of protection orders

Prepared by Michael Flood, March 2005. Revised, May 2010.

Summary

Myth:

Women routinely make up allegations of domestic violence and rape, including to gain advantage in family law cases. And women use protection orders to remove men from their homes or deny contact with children.

Fact:

The risk of domestic violence increases at the time of separation.

Most allegations of domestic violence in the context of family law proceedings are made in good faith and with support and evidence for their claims.

Rates of false accusations of rape are very low.

Women living with domestic violence often do not take out protection orders and do so only as a last resort.

Protection orders provide an effective means of reducing women's vulnerability to violence.

The myth

Fathers' rights groups assert that women routinely fabricate allegations of domestic violence to gain advantage in family law cases and use protection orders to remove men from their homes or deny contact with children rather than out of any real experience or fear of violence. In its submission to a review of legislation regarding protection orders, the Lone Fathers' Association (2004, pp. 11, 38) states that protection orders "are employed as a routine separation procedure" by women to force their husbands out of their homes, without any actual violence having occurred, "and/or as a vindictive retaliatory act".

The facts

The risk of domestic violence increases at the time of separation.

There is no doubt that family court proceedings often are accompanied by allegations of domestic violence and the use of protection orders. However, this reflects the fact that domestic violence often escalates at the time of separation. Australian data from a national survey in 1996 show that women are as likely to experience violence by previous partners as by current partners and that it is the time around and after separation which is most dangerous for women (Australian Bureau of Statistics, 1996, p. 8).

Similarly, North American research documents that the risks of nonlethal and lethal violence are highest for women when they are leaving the male partners with whom they have been living in an intimate relationship (DeKeseredy *et al.*, 2004, p. 677). Separated women are at elevated risk of violence by men, whether physical, sexual, or lethal, relative to women in intact unions (Brownridge, 2006), and women are at risk of increasingly severe violence when separating from violent partners (Riggs *et al.*, 2000). The risk of post-separation violence decreases with the passage of time since separation, and is greatest in the first two or three months after the commencement of the separation, at least from

homicide data. Further situational variables influence post-separation violence. Leaving a marital or cohabiting relationship or trying to leave it increases women's chances of being physically or sexually assaulted especially if they are connected to men with patriarchal and/or sexually proprietary attitudes (DeKeseredy *et al.*, 2004). Women are at greater risk of post-separation violence if they are more 'available' for victimisation: if they live in the same city as their former partner, and at riskier times such as court appearances and exchanges of or visits to children (Brownridge, 2006). The presence of a new partner can be either a risk or a protective factor, as can children. For example, joint custody may become an opportunity for conflict and violence, may increase opportunities for violence at visitation and the exchange of children, and children may be used as tools for violence by abusive men (Brownridge, 2006). The relationship between pre- and post-separation violence is shaped by other variables such as the duration of the union and the severity and frequency of pre-separation violence. There is evidence that post-separation violence often is a continuation of violence that occurred during the relationship *and* that a substantial proportion of such violence is a new phenomenon (Brownridge, 2006).

Most allegations of domestic violence in the context of family law proceedings are made in good faith and with support and evidence for their claims.

Existing research finds that most allegations of domestic violence in the context of family law proceedings are made in good faith and with support and evidence for their claims. Two studies have examined rates of substantiated allegations of domestic violence in the context of family law proceedings, and they find that allegations are substantiated in 63 to 74 percent of cases (Shaffer and Bala, 2003; Johnston *et al.*, 2005). The remainder are unsubstantiated – where either there is insufficient information to support substantiation or where there is a determination that the allegation is false.

A Canadian study of family law cases in which written decisions were produced over a three-year period identified 42 recorded cases of spousal abuse alleged against men. Seventy-four percent of these were substantiated. Only two cases of spousal abuse alleged against women were identified, one of which was substantiated (Shaffer and Bala, 2003). However, as the authors note, in the cases where the courts found the allegations to be exaggerated or unfounded, in some instances the courts gave no reasons for this conclusion, and in at least some cases, judges failed to recognise the existence or seriousness of actual abuse (Shaffer and Bala, 2003).

A US study drew on documentary records describing 120 divorced families referred for child custody evaluations and custody counselling, collected over 1989 to 2002 from family courts within San Francisco Bay Area counties. Multiple allegations of child abuse, neglect, and family violence were raised in the majority of cases. Allegations were assessed on the basis of detailed interviews with family members, information from professionals, and analysis of written documentation. This study found that 63 percent of allegations of abuse by one adult of another (including domestic violence and substance misuse) were substantiated (Johnston *et al.*, 2005). Allegations were more likely to be substantiated against men than against women (67 versus 55 percent). In other words, counter to some popular perceptions, men rather than women were more likely to make allegations of domestic violence (and substance abuse) in family law proceedings which were not substantiated. However, this study cannot determine rates of false allegations, as it could not distinguish among 'unsubstantiated' allegations between those which were false and those which could not be determined due to lack of evidence (Johnston *et al.*, 2005).

Rates of false accusations of rape are very low.

The evidence is that rates of intentionally false and/or malicious accusations of rape are very low. For example, the most recent British study determines that only three per cent of rapes reported to the police were either ‘possible’ or ‘probable’ false allegations (Kelly *et al.* 2005). Australian studies are similar. For example, in an analysis of 850 rapes reported to Victoria Police over three years, only 2.1 per cent of reports were identified by police as false (Statewide Steering Committee to Reduce Sexual Assault 2006: 5). Three earlier studies in Australia, based on police data from 1986 to 1990, find rates of false reports of sexual assault of 1.4 per cent, 4.8 per cent, and 7 per cent (VLRC 2004: 112).

Some other studies claim that rates of false allegations of sexual assault are much higher. However, as a recent review notes, there is considerable diversity in definitions of falsity, in how allegations are judged to be false, and in methods for collecting data regarding the extent of false allegations (Rumney 2006: 130-132). For example, some studies which find apparently high rates of false rape allegations take at face value the judgements made by police officers on the basis of stereotypical assumptions regarding rape victims and their responses to victimisation (ibid: 142).

There is no doubt that false allegations of rape and domestic violence sometimes are made. At the same time, there is nothing to suggest that these are common or that women make them more often than men (Davis, 2004). In addition, false allegations of violence and abuse are far less common than false denials of their perpetration (Jaffe *et al.*, 2008).

Women living with domestic violence often do not take out protection orders and do so only as a last resort.

There is further evidence that most allegations of domestic violence express women’s genuine concerns for their and/or their children’s safety. Research in Australia finds that women going through family court proceedings and living with domestic violence do not routinely take out protection orders in response. In a study of 176 files in which children’s matters were contested, while 95 of the files (54 per cent) included evidence of domestic violence Apprehended Violence Orders had not been obtained in over a third of these (Melville & Hunter, 2001, pp. 127-128).

In addition, women often only take out protection orders against domestic violence as a last resort after being subjected to repeated and serious victimization (Melville & Hunter, 2001). Among young women aged 18 to 23, women are more likely to seek legal protection if they have experienced more severe levels of violence (e.g. including being beaten, choked or shot at), have been injured, and have children (Young *et al.*, 2000, p. 3). Earlier research into the use of apprehended domestic violence orders found that the majority of complainants had experienced physical violence on more than one occasion (Trimboli & Bonney, 1997).

Legal authorities themselves reject the view that women routinely fabricate allegations of domestic violence. For example, bodies such as the Criminal Law Review Division of the NSW Attorney-General’s Department reject the view that women use protection orders in family law proceedings to gain a tactical advantage (Simpson, 2000, p. 18). In New Zealand, reviews by the Law Commission and the Ministry of Justice find no evidence to support the claim that women are making strategic use of protection orders, based for example on false allegations of domestic violence, to gain strategic advantage in family law cases (Davis, 2004).

In fact, Australian research finds that most women who have experienced violence in relationships still want their children to have some contact with the other parent, but what

they seek (and often do not receive) is an arrangement which ensures safety for their children and themselves (Kaye *et al.*, 2003).

Protection orders provide an effective means of reducing women's vulnerability to violence.

The Australian evidence is that protection orders provide an effective means of reducing women's vulnerability to violence. An early study in New South Wales found that the vast majority of complainants experienced a reduction in violence and abuse from the defendant in the six months after the order was served on the defendant, and over 90 per cent reported that the order had produced benefits such as reduced contact with the defendant and increased personal safety and comfort (Trimboli & Bonney, 1997). Finally, research among young women aged 18 to 23 and subjected to violence by intimate partners found that "preventive strategies for young women at the early stage of a relationship can eliminate, or at least reduce, physical violence by a partner" (Young *et al.*, 2000, p. 5). The severity of violence was reduced after legal protection, but the benefit was not as marked unless women sought help from the courts as well as the police.

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