

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

Prepared by Michael Flood, March 2005

Summary

Myth:

Women routinely make up 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.

Fact:

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

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 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).

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

Australian support for the notion that misuse of protection orders is widespread comes from a 1999 survey of magistrates in New South Wales. Ninety per cent agreed that orders were used by applicants (often on the basis of advice from a solicitor) as a tactic in family court proceedings to aid their case and to deprive their partner of access to their children (Judicial Commission of New South Wales, 1999). A more recent survey found that some family law solicitors share this perception, stating that many women are 'access bitches' who vindictively deny contact between their ex-partners and their children (Melville & Hunter,

2001, p. 127). One-third of magistrates commented that this tactic was not used often in their court and that the problem was exaggerated.

However, examination of family court files and victims' experience finds that the fathers' rights claim is unsubstantiated if not false. 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). This suggests that women going through family court proceedings and living with domestic violence do not routinely take out protection orders in response.

Other Australian studies further document that women are reluctant to take out orders and often only do so as a last resort after being subjected to repeated and serious victimisation (Melville & Hunter, p. 128). 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). Other bodies such as the Criminal Law Review Division of the NSW Attorney-General's Department also reject the view that women use protection orders in family law proceedings to gain a tactical advantage (Simpson, 2000, p. 18).

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). Nearly all magistrates in the survey described earlier agreed that domestic violence orders were effective in dealing with domestic violence (Judicial Commission of New South Wales, 1999). 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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