

## Questions on Notice – Men’s Rights Agency

### Question 1:

**Mr Perrett asked “are more mothers than biological fathers killing their children?”**

In the first part of our answer we illustrate the research where it has been established that mothers are more likely to kill their children than biological fathers. In the second part of our answer we provide an explanation of why it is important that the relationship of the perpetrator to the child is known. I did write: It is not our intention to deny any violence committed by biological fathers, but sadly as is known, mothers are more likely to neglect, assault and kill their children than biological fathers. The children are also at considerable risk from mother’s boyfriends, defactos, step-fathers, siblings or other relatives. (Pg 14)

Australian Institute of Criminology

### Domestic/family homicide in Australia <sup>1</sup>

Tracy Cussen & Willow Bryant Research in Practice No. 38

Males accounted for the majority of offenders in both domestic/family and non-domestic/ family homicides, **except filicides where females accounted for over half (52%; n=96) of offenders for this category of domestic/family homicide.** (see Table 4).

### National Homicide Monitoring Report 2006 -07<sup>2</sup>

Men's Health Australia challenged information contained in the 2006-07 Annual Report of the Australian Institute of Criminology (AIC) causing them to correct an error in the National Homicide Monitoring Program Section. **“The original report stated that 7 homicides involved a mother and 15 involved male family members.**

*The rectified report now states that:*

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<sup>1</sup> <https://aic.gov.au/file/5718/download?token=s9clM9JI> Table 4, Pg 2

<sup>2</sup> <http://www.menshealthaustralia.net/content/mean-spirited-ideology-or-a-presumption-that-every-child-wan.html>

**11 homicides involved a mother and 11 homicides involved a male family member. When the 'male family member' category was broken down, 5 perpetrators were biological fathers, while another 5 five were de-facto partners of the mother who lived with the child (one father murdered two children). No child victims were killed by a complete stranger in 2006-07.**

**Of the 14 offenders who committed suicide following the 2006-07 homicide incident four (29%) had child victims. In all four cases the offender was the custodial parent (two mothers; two fathers).**

**The usage of male family member and mother is not a useful way of classifying relationship between a child homicide victim and their offender. In future reports we will employ classifications that provide a more detailed classification of the relationship between child victims and offenders" the AIC acknowledged."**

This information was also contained in an article by Yuri Joakamides on page 58 of the MRA Submission.

## Monash Filicide Research Project<sup>3</sup>

The Monash Filicide Research Project investigated filicide deaths that occurred in Victoria between 2000 and 2009 (Brown, Tyson & Fernandez Arias 2014). Fifty-two children were identified as being killed in the state over the 10-year period.

Information on 42 of the 52 children was available from closed case files held by the Victorian Coroner's Office, including witness statements, police records, court transcripts and criminal records for the offender.

In this study 16 children were killed by their mother, 15 by their father, nine by a step-father and one by both parents. Of the 36 filicides in which risk factor information was available, the majority followed parental separation (72%; n=26) and involved an offender with a mental illness (66%; n=24). A history of domestic

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<sup>3</sup> **No. 568 February 2019 AIC Filicide offenders**

Thea Brown, Samantha Bricknell, Willow Bryant, Samantha Lyneham, Danielle Tyson and Paula Fernandez Arias

violence or child abuse characterised a quarter (25%; n=9) and a fifth (22%; n=8) of filicides respectively.

#### Page 12

Most offenders were custodial parents, with the largest number of children killed by a custodial mother.

#### Page 13

At the same time, the study does assist professionals across a variety of services by identifying that offender circumstances and characteristics differ according to the offender's relationship with the victim. The problems associated with each of the offender types (**custodial parents, non-custodial parents and step-parents**) are **likely to require different service responses**. For example, step-fathers with a history of prior offending are likely to be engaged with criminal justice services. Therefore, a range of services that potential offenders may be involved with extends beyond the traditional child welfare services and, in particular, beyond the statutory child protection services. The services with which they are involved may not be focused on offering therapeutic intervention. Nevertheless, it is important that adult service providers remain alert to the potential dangers to children. Thus, mental health services, general health services, family law courts, criminal justice services, post-separation services and domestic violence services should continue to adopt interventions that consider the safety of their clients' children.

#### **Who kills the children and why it is important to know:**

Mr Perritt posed a question during the Inquiry hearing as to why it was important to identify the relationship of the perpetrator to the victim.

As noted above, the latest research from No. 568 February 2019 AIC Filicide offenders in which they write on page 13,

- **The problems associated with each of the offender types custodial parents, non-custodial parents and step-parents are likely to require different service responses.**

We have relied on information from the Domestic Violence Awareness Australia <sup>4</sup> organisation to provide a further edited explanation .

“Often gender-neutral terms, such as ‘parent’ or ‘caregiver’ or ‘male’ or ‘female’ are used in Government/university sponsored research and there is no further discussion as to whether it was a biological father or mother, a step father or step mother, a defacto or casual boyfriend or other relative living in the household who perpetrated the assault or neglect.

“With this problem in mind the decision taken in 1997 by the Australian Institute of Health and Welfare (AIHW; Broadbent & Bentley 1997) not to publish data indicating the gender of child abuse perpetrators must be reversed.

**Table 4: Filicide victim–offender relationship, by victim gender and age, 2000–01 to 2011–12**

	Custodial parent				Non-custodial parent				Step-parent			
	Father		Mother		Father		Mother		Father		Mother	
	n	%	n	%	n	%	n	%	n	%	n	%
<b>Gender<sup>a</sup></b>												
Male	44	54	69	52	17	63	1	100	27	66	0	0
Female	37	46	64	48	10	37	0	0	14	34	0	0
<b>Age</b>												
Under 1 year	30	37	46	35	7	26	0	0	7	17	0	0
1–4 years	21	26	44	33	9	33	1	100	25	61	0	0
5–9 years	11	13	24	18	9	33	0	0	3	15	0	0
10–14 years	9	11	16	12	2	7	0	0	3	24	0	0
15–17 years	3	4	1	1	0	0	0	0	3	24	0	0
18 years and over	8	10	2	2	0	0	0	0	0	0	0	0
<b>Total</b>	<b>82</b>	<b>29</b>	<b>133</b>	<b>46</b>	<b>27</b>	<b>10</b>	<b>1</b>	<b>&lt;1</b>	<b>41</b>	<b>14</b>	<b>0</b>	<b>0</b>

a: Excludes 1 case where victim gender was unknown

“According to the AIC study Filicide Offenders No. 568 Feb 2019 (attached)<sup>6</sup>, I draw your attention to Table 4 - Filicide victim offender relationships.

<sup>4</sup> <http://www.menshealthaustralia.net/content/mean-spirited-ideology-or-a-presumption-that-every-child-wan.html>

<sup>6</sup> <https://www.aic.gov.au/publications/tandi/tandi568> Table 4

If you sum all acts of filicide committed by the biological mother, both custodial and non-custodial, you obtain a number of 134 children murdered by their biological mothers.

If you sum all acts of filicide committed by the biological father, both custodial and non-custodial, you obtain a number of 108 children murdered by their biological fathers.

134 children murdered by biological mothers.

108 children murdered by biological fathers.

“In the context of Family Court, between a warring biological mother and father, a child has a 55.5% chance of being murdered by their biological mother and a 44.5% chance of being murdered by their biological father.

However, what if the biological parents’ re-partner during Family Court proceedings?

According to the same research, 41 children were murdered by a step-father (biological mothers’ new partner) and there were no instances of a step-mother (biological fathers’ new partner) murdering her step children.

When we sum the 134 murders by the biological mothers with the 41 children murdered by the step-fathers (partner of biological mother) you obtain a number of 175 children murdered.

“No step-mothers (biological fathers’ new partner) harmed children.”

So, the number of children murdered by their biological father and his new partner remains at 108.

If we discuss the risks involved including biological parents being re-partnered the numbers change again.

Risk of filicide to child in biological mother’s care (including re-partnered mothers) is 62%  $(134+41) = 175$  total deaths.

Risk of filicide to child in biological father’s care (including re-partnered fathers) is 38%.  $(108 + 0) = 108$  total deaths)

Statistically, children are at the least risk of filicide in the biological fathers care upon separation, whether they are re-partnered or not.”

So, as one can see it is important to identify who commits offences against children because depending on who the perpetrator is depends on the type of response or preventative treatment required; that identification needs to specify the relationship of the person to the child. It has already been established that mothers do kill more children, but even more are killed when the mother introduces another man into the household as a boyfriend, a de-facto or a step-parent.

**Question 2:** Senator Larissa Waters commented that MRA *“suggested s121 of the Family Law Act be amended to allow full public access to all court decisions. Currently, the full case files are available to all parties and all final Family Court judgements are published online, but anonymised. This anonymisation protects children and parties from intimate details of their lives being made public.”*

Senator Waters then asks:

***What is it that you want to change about the current restrictions?***

AS we have written in the MRA submission we believe it is necessary to open up the Family Courts to public and media scrutiny Pg 57. There is already a worrying belief that the public have little confidence in the operation and outcomes of the Family Courts.

The secrecy of the Court and the suppression of information as to ‘what goes on in the court’ just feeds the anxiety the public feel and particularly those facing a hearing in the Court. People suspect the Court personnel; the associated service providers such as family report writers - a particularly protected species whose opinions cannot be qualified; independent children’s lawyers, who are unable to represent the children’s views effectively because they might never speak to the children or only for the shortest time possible and others associated with the Court are biased towards the mother/child doctrine, whilst ignoring the importance of a father in a child’s life.

These specialists and the judiciary are unaccountable. There is no Judicial Commission that can accept complaints of misbehaviour, incompetency and bias unless one is able and can afford to appeal a decision.

Participants are prevented from seeking support from the community and the media. They cannot talk to the media or refer a questionable family report for investigation or a second opinion, despite paying several thousand dollars for the report.

The legislation needs to be changed to enable the parties to “tell their story” without unacceptable restrictions.

The resultant publicity may create an urgency to improve the standard of service provision in the Court and encourage the judiciary and others working with the court to recognise the damage they are causing to children by removing fathers from their lives without reason.

**The second part of Senator Waters question is: *Do you agree that it could be harmful for a child for those details to be made public?***

Yes, it could be harmful to the children, but no more so than the removal of one of the parents during a separation/divorce! The long-lasting results of denial of contact for a loving parent can be devastating for a child. The effects of the loss may never be overcome and result in ongoing damage to their future as mentioned in the article by Prof. Augusto Zimmermann (see page 59)

- *Compared to their peers living with both of their biological parents, children in single-parent homes have:[12]*
  - *77 per cent greater risk of being physical abused;*
  - *87 per cent greater risk of being harmed by physical neglect;*
  - *165 per cent greater risk of experiencing notable physical neglect;*
  - *74 per cent greater risk of suffering from emotional neglect;*
  - *80 per cent greater risk of suffering serious injury as a result of abuse;*  
*and*
  - *120 per cent greater risk of experiencing some type of maltreatment overall.*

*Above all, decades of research reveal that children who do not live with both their biological parents are at significantly higher risk of being sexually abused, especially by men living in their homes who are not their biological fathers.”*

There is also the question of when or how old a child should be, before being told the reasons of why they are no longer living with both their parents. Who left, who stayed and what was the reason. Children do need to understand what has happened to obviate the outcome of the lies that can be told about the other parent.

Damage can be limited by giving the parents the choice to publish with their names or without and the decision to publish needs to be weighed against the community's right to know with the added benefit that perhaps the court personnel, the judges, the associates, the family report writers and the independent children's lawyers will be more circumspect in their decision making if those decisions are subject to public scrutiny.

Publication of certain cases may well send a message to the parties to be better behaved if they want to stay off the front pages. Any encouragement for parents to consider how their behaviour will affect their children has to be welcomed as they will be the beneficiaries in the long term.

In most cases the media will show little interest in the cases before the Family Courts and will not publish or broadcast the information to the community. However, when a significant case comes to the courts that is of interest in perhaps setting a new precedent; changing a previous precedent or where the behaviour of one or both of the parents is so extreme, the media will wish to publish the details.

In these cases and to limit the damage a child may experience from bullying or teasing due to their parents noteworthy divorce/separation the parties could, as previously suggested, be asked for their approval to use their names, if rejected, the media could use pseudonyms, but the extreme restrictions that prevent the reporting of a person's job etc as per S121 (3) listed below needs to be replaced.

(3) Without limiting the generality of subsection (1), an account of proceedings, or of any part of proceedings, referred to in that subsection shall be taken to identify a person if:

- (a) it contains any particulars of:

(i) **the name, title, pseudonym or alias of the person;**

(ii) the address of any premises at which the person resides or works, or the locality in which any such premises are situated;

(iii) the physical description or the style of dress of the person;

(iv) any employment or occupation engaged in, profession practised or calling pursued, by the person or any official or honorary position held by the person;

(v) the relationship of the person to identified relatives of the person or the association of the person with identified friends or identified business, official or professional acquaintances of the person;

(vi) the recreational interests, or the political, philosophical or religious beliefs or interests, of the person; or

(vii) any real or personal property in which the person has an interest or with which the person is otherwise associated;

being particulars that are sufficient to identify that person to a member of the public, or to a member of the section of the public to which the account is disseminated, as the case requires;

(b) in the case of a written or televised account or an account by other electronic means--it is accompanied by a picture of the person; or

(c) in the case of a broadcast or televised account or an account by other electronic means--it is spoken in whole or in part by the person and the person's voice is sufficient to identify that person to a member of the public, or to a member of the section of the public to which the account is disseminated, as the case requires.

If a case involves allegations of child abuse, the court is closed, as it should be. All parties should be protected as guilt or innocence to the required standard of beyond reasonable doubt cannot be determined in the Family Courts.

We would refer you to a Submission No 530 from the combined Australian media for further information.

**Family Report Writers:** Family Report Writers present an entirely different problem as I have alluded to in the first part of this question. They have become so protected from scrutiny and their opinions are regarded as sacrosanct. One so-called expert's view of a family dynamic may not adequately accept that families come in a range of varieties. Some are calm and appear to function well but perhaps lack the loving component, others may argue strenuously, but provide the love and care the children need. Even when a relationship breaks down there is no requirement to suggest the

mother and children would be better off without the presence of the father who can assist in caring for the children, thereby relieving the mother, especially if she is working, from some of the stresses we all experience in trying to juggle busy working and family lives.

Family Report Writers fail in our opinion to properly assess the circumstances of each household. The interviews are too short and are held in an artificial environment. FRWs never or very rarely visit the home of the mother or the father. A visit should be essential and without prior notice, perhaps on repeat occasions until the FRW fully comprehends the circumstances within each household. Then they may have a better understanding of which household will provide the right environment for the children, if equal shared parenting time is not feasible. If both households provide a suitable loving, caring situation for the children then their recommendations should encompass equal shared parenting time, or as close to this as is possible.

We have discussed family report writers in our submission on pages 53 – 54.

I have printed the section 121 of the Family Law Act for ease of reference to the legislation being discussed.

## **FAMILY LAW ACT 1975 - SECT 121**

### **Restriction on publication of court proceedings**

(1) A person who publishes in a newspaper or periodical publication, by radio broadcast or television or by other electronic means, or otherwise disseminates to the public or to a section of the public by any means, any account of any proceedings, or of any part of any proceedings, under this Act that identifies:

(a) a party to the proceedings;

(b) a person who is related to, or associated with, a party to the proceedings or is, or is alleged to be, in any other way concerned in the matter to which the proceedings relate; or

(c) a witness in the proceedings;

commits an offence punishable, upon conviction by imprisonment for a period not exceeding one year.

(2) A person who, except as permitted by the applicable Rules of Court, publishes in a newspaper or periodical publication, by radio broadcast or television or by other electronic means, or otherwise disseminates to the public or to a section of the public by any means (otherwise than by the display of a notice in the premises of the court), a list of proceedings under this Act, identified by reference to the

names of the parties to the proceedings, that are to be dealt with by a court commits an offence punishable, upon conviction by imprisonment for a period not exceeding one year.

(3) Without limiting the generality of subsection (1), an account of proceedings, or of any part of proceedings, referred to in that subsection shall be taken to identify a person if:

(a) it contains any particulars of:

- (i) the name, title, pseudonym or alias of the person;
- (ii) the address of any premises at which the person resides or works, or the locality in which any such premises are situated;
- (iii) the physical description or the style of dress of the person;
- (iv) any employment or occupation engaged in, profession practised or calling pursued, by the person or any official or honorary position held by the person;
- (v) the relationship of the person to identified relatives of the person or the association of the person with identified friends or identified business, official or professional acquaintances of the person;
- (vi) the recreational interests, or the political, philosophical or religious beliefs or interests, of the person; or
- (vii) any real or personal property in which the person has an interest or with which the person is otherwise associated;

being particulars that are sufficient to identify that person to a member of the public, or to a member of the section of the public to which the account is disseminated, as the case requires;

(b) in the case of a written or televised account or an account by other electronic means--it is accompanied by a picture of the person; or

(c) in the case of a broadcast or televised account or an account by other electronic means--it is spoken in whole or in part by the person and the person's voice is sufficient to identify that person to a member of the public, or to a member of the section of the public to which the account is disseminated, as the case requires.

(4) A reference in subsection (1) or (2) to proceedings shall be construed as including a reference to proceedings commenced before the commencement of section 72 of the *Family Law Amendment Act 1983* .

(5) An offence against this section is an indictable offence.

(8) Proceedings for an offence against this section shall not be commenced except by, or with the written consent of, the Director of Public Prosecutions.

(9) The preceding provisions of this section do not apply to or in relation to:

(a) the communication, to persons concerned in [proceedings](#) in any [court](#), of any pleading, transcript of evidence or other document for use in connection with those [proceedings](#); or

(aa) the communication of any pleading, transcript of evidence or other document to authorities of [States](#) and Territories that have responsibilities relating to the welfare of [children](#) and are prescribed by the regulations for the purposes of this [paragraph](#); or

(b) the communication of any pleading, transcript of evidence or other document to:

(i) a body that is responsible for disciplining [members](#) of the legal profession in a [State](#) or [Territory](#); or

(ii) persons concerned in disciplinary [proceedings](#) against a [member](#) of the legal profession of a [State](#) or [Territory](#), being [proceedings](#) before a body that is responsible for disciplining [members](#) of the legal profession in that [State](#) or [Territory](#); or

(c) the communication, to a body that grants assistance by way of legal aid, of any pleading, transcript of evidence or other document for the purpose of facilitating the making of a decision as to whether assistance by way of legal aid should be granted, continued or provided in a particular case; or

(d) the [publishing](#) of a notice or report in pursuance of the direction of a [court](#); or

(da) the publication by the [court](#) of lists of [proceedings](#) under [this Act](#), identified by reference to the names of the parties, that are to be [dealt with](#) by the [court](#); or

(e) the [publishing](#) of any publication bona fide intended primarily for use by the [members](#) of any profession, being:

(i) a separate volume or part of a series of law reports; or

(ii) any other publication of a technical character; or

(f) the publication or other dissemination of an account of [proceedings](#) or of any part of [proceedings](#):

(i) to a person who is a [member](#) of a profession, in connection with the practice by that person of that profession or in the course of any form of professional training in which that person is involved; or

(ia) to an individual who is a [party](#) to any [proceedings](#) under [this Act](#), in connection with the conduct of those [proceedings](#); or

(ii) to a person who is a student, in connection with the studies of that person; or

(g) publication of accounts of [proceedings](#), where those accounts have been approved by the [court](#).

(10) Applicable Rules of [Court made](#) for the purposes of [subsection](#) (2) may be of general or specially limited application or may differ according to differences in time, locality, place or circumstance.

Note: Powers to make Rules of [Court](#) are also contained in sections 26B, 37A, 109A and 123.

(11) In this section:

**"court"** includes:

(a) an officer of a [court](#) investigating or dealing with a matter in accordance with [this Act](#), the regulations or the Rules of [Court](#); and

(b) a tribunal established by or under a law of the Commonwealth, of a [State](#) or of a [Territory](#).

**"electronic means"** includes:

(a) in the form of data, text or images by means of guided and/or unguided electromagnetic energy; or

(b) in the form of speech by means of guided and/or unguided electromagnetic energy, where the speech is processed at its destination by an automated voice recognition system.

**Question 3:** Senator Waters asks.. "You've commented that the integrated Magellan process resolves accusations of child abuse faster than the criminal process. However, you've also said that the pressure placed on police and child safety personnel to conduct speedy investigation can lead to the made(sic) bad decisions. In other parts of your submission, you've been critical of time taken to make judgements.

- ***What do you suggest is the best way for police, courts and child safety experts to make rigorous and timely decisions?***

Before answering this question I wish to reiterate my statements contained in the MRA Submission on page 33 to ensure misinterpretations are not allowed to continue.

I wrote:

***The Court claims*** *Magellan case management resolves accusations quicker than the usual criminal process, which is a good thing, but it is worrying just how much pressure can be exerted to get results from the police and child safety services without creating a situation where the need for speed influences the outcome. For example, if a child safety officer is not sure if a child has been abused the pressure of completing a Magellan report on*

*time **may** cause them to jump to an unsustained conclusion. Which could mean a child is left at risk or a person is wrongly designated as an abuser.*

*Perhaps, we would be better off to consider the State court option to determine if a child has been exposed to abuse?*

**Answer:**

Senator Waters first sentence, relating to the statement that the “Magellan process resolves accusations faster” is not my opinion, but is quite clearly stated as being “The Court claims...” I certainly believe that would be a good thing, if it is true, but I do not have any information about that. There are however other issues about the use of the Magellan process that are troubling.

I also wrote *“completing a Magellan report on time **may** cause them to jump to an unsustained conclusion”*, not *“can”* as Senator Waters suggests.

I particularly expressed the worry about how much pressure can be exerted to get quick results that comply with the timeframe set by the Magellan process, fearing this pressure **may** lead to fast-made decisions that cannot be supported by the evidence or lack thereof.

In that same paragraph above, I pose the question that: Perhaps, we would be better off to consider the State court option to determine if a child has been exposed to abuse?

By the Family Court’s own acknowledgement, they have no ability to investigate cases of sexual or physical abuse of children. As I quoted, one of the judges interviewed for the AIFS inquiry into the Magellan process acknowledged that *“We do not have any investigative capacity whatsoever. We rely upon the evidence that is presented to us by others.”*, as do most courts, but this excuse avoids the ability of a judge or barrister to cross-examine the parties to get to the truth.

As that is the situation, should we not follow the usual process of police investigation, child safety support and a hearing in the State Courts which have dealt with these kinds of allegations for many, many years?

Of course, many of the allegations that reach the Family Court in an affidavit, have never been reported or investigated by the police. Unfortunately, an increasing number of parents will throw in an allegation of child abuse into their affidavit in their attempts to prevent the other parent from having contact with the children. Having 100% care of children has its own advantage in child support payments and property settlement.

It is interesting to note that another judge comments in the same report on page 32 of the MRA submission that:

*“I have a sense that **in the overwhelming majority of cases, abuse is not confirmed. And probably in not many cases is there found to be an unacceptable risk.** I don’t have the stats, so it’s probably silly of me to quote stats, but I’m talking of probably upwards of 70 or 80% where the relationship with the father is restored. Which, in itself, is a worry if that is true. Why are so few being confirmed? Is it mum—usually—using it as a weapon to get dad out of the kid’s life? Is it mum misidentifying the signals and then not accepting professional advice as to what it might really mean? Is it that there has been abuse, but the proof is inadequate for there to be the findings?”*

Judge

Taking note of the suggestion from retired Barrister, Mr Tony Smith (see pgs. 24-30 MRA Submission) that it used to be the situation that the first interim hearing in the Family Court was far more rigorous and challenging to those appearing before the judge. He illustrated that accusations of this nature were quickly dealt with, either to be dismissed or referred for further investigation, under the cross examination of the barristers/solicitors and the judge. The Cowling decision to which Mr Smith referred noted that shortage of judges was one possible reason why the practice was discontinued: The reasons stated were: *This Court has finite resources and a limited number of judicial officers coupled with an ever increasing work load. If it was required to embark upon lengthy examinations of interlocutory issues such as interim custody, important though they may be to the parties, this would inevitably lead to an inability to provide hearings of final determinations of issues of custody and property within a reasonable time.*

*C and C [1995] FamCA 156;*

If we are to put the “best interest of the children” to the fore then surely it is essential to put in place a parenting program that enables the child[ren] to maintain contact with both of their parents. To determine the suitability of such a move is going to require a far more rigorous investigation than just reading the affidavits of both parties. The content of those affidavits and their effect on the reader depends entirely on the ability of the writer to persuasively describe the circumstances which may include comments that we will describe here, as a result of having a vivid imagination, rather than straight out lies! To claim that to put in place a regime that thoroughly investigates a family’s circumstances, early in the process, would ultimately delay a final hearing to be held

within a reasonable time, is nonsense! The public are entitled to be absolutely concerned with the judiciary's idea of a reasonable time. Do they think that waiting for 2 years or more is a reasonable time or waiting 44 months for Reasons for a decision to be handed down (that are still unseen) is reasonable or acceptable. I doubt the general public would think so!

[Greg Finlayson DipLaw GDLP\(Merit\)](#) an Australian and International Lawyer at HWMA Law Firm ... [See More](#)

alerts us to the need to take into account the findings of the United Nations Human Rights Committee ('Committee') decision in *Zoltowski v Australia* established in 2016 that a State party is required to allow contact between family members during family law proceedings. A failure to do so can amount to arbitrary interference with the family in violation of articles 17(1), 23(1) and 24(1) of the International Covenant on Civil and Political Rights ('Covenant'). Further, the decision confirmed that a failure to deal expeditiously with a family law matter, without providing some 'provisional access scheme', can amount to a violation of the fair hearing provision in article 14(1) of the Covenant. An exception to these findings is if the failure to adopt such measures is in the best interests of the child.

Polish Dad has sole custody -DFAT Issues Oz Passport to Kids without Polish Dad's consent- Mum Takes Kids to Oz- Dad Sues Oz in UN – Oz ordered to pay \$40,000.

Arkadiusz Zoltowski is a Polish and Australian national. He married a Belarusian national, Nikita Zoltowski. The couple lived in Poland and had a child who is both an Australian and Polish citizen. The family lived in Australia between December 2006 and October 2009, during which time the mother became an Australian citizen. Upon returning to Poland, the mother expressed a desire to return to Australia and threatened to 'take their son away to a place where [his father] would not find him'. As a result of this threat, the father hid the son's passport. In February 2010, the relationship broke down and the father-initiated divorce and child custody proceedings.

In March 2010, the mother filed for an emergency passport with the Australian embassy for the son, citing family violence. The passport was granted without the father's consent and despite the embassy being aware of ongoing divorce and custody proceedings. On 31 March 2010, the mother and son flew to Australia without the father's consent.

In August 2010, the Polish circuit court assigned sole custody of the son to the father. Meanwhile, on 21 April 2010, the Family Court of Western Australia ('Family Court') issued an interim order for the son to live with the mother. On 18 June 2010, the father filed an application for return under the Hague Convention on the Civil Aspects of International Child Abduction. On 4 February 2011, the Family Court ordered that the son be returned to Poland in accordance with the Hague Convention. On 16 February 2011, the mother appealed the decision of the Family Court. On 8 July 2011, the Full Court of the Family Court overturned the lower court's decision and held that the Australian authority should not have accepted the application to return a child who was a permanent resident of Australia. The father's application to appeal to the High Court was denied. In May 2014, the Family Court granted the mother sole custody and granted the father supervised access to his son.

The current decision concerns a communication by the father to the Committee arguing that Australia breached its obligations under articles 14(1), 17, 23 and 24 of the Covenant.

## **Decision**

The Committee considered that Australia had breached articles 14(1), 17, 23 and 24 of the Covenant. The Committee considered that Australia's failure to allow contact between the son and father after the son's removal from Poland amounted to arbitrary interference with the father's family in violation of article 17(1) of the Covenant. In the absence of any explanation by Australia, as to how the failure to provide access to his son was based on the best interests of the child, this was also a breach of article 23(1) and 24(1). Further, Australia's failure to deal expeditiously with the father's access applications, or provide some other 'provisional access scheme', amounted to a violation of the fair hearing provision under article 14(1) of the Covenant.

## Commentary

Family law matters are always emotionally charged but when they occur across jurisdictions there is an added level of complexity, a high likelihood of conflicting court orders (as occurred here) and scope for international bodies to be drawn into the debate. It is not hard to imagine how distressing this case must have been for the parties. The Committee appeared concerned that **Australia's failure to facilitate regular family contact exacerbated the emotional impact of the proceedings. As the Committee stated, Australia "is obligated, inter alia, to ensure regular contact between the father and his son and to provide adequate compensation to the [father]. [Australia] is also under an obligation to prevent similar violations in the future." Australia has a positive obligation to facilitate personal relations and regular contact between family members.**

As a result of this decision Australia should make structural and policy changes to ensure this type of violation does not happen again. That said, it is not clear from the case what such policy changes would entail. The Committee suggested Australia could have implemented a 'provisional access scheme'. However, the Committee does not state what such a scheme would involve. While it appears the Committee made a correct and persuasive finding they provide limited practical guidance. Therefore, it appears up to Australia to determine how to comply with the Committee's orders. Compliance could involve supervised visits during court cases, utilising technology to allow long distance calls or having a fast track system to grant interim contact orders.

The full text of the decision can be found [here](#).

It appears the Australian Government has rejected the United Nations Committee decision and has not paid the compensation ordered.

A speedy decision resulting from a first hearing would alleviate many of the problems associated with denying children contact with both of their parents. Care should be taken to avoid unnecessary supervised access orders, particularly when there is no evidence of harm to the children. To inflict on a child and their parent the necessity of "being watched" whilst they spend time with their child is the ultimate in degradation

and obscenely insulting to most who are made to endure such a procedure. Consideration also needs to be given to the unaffordable cost of supervised access for most parents, thereby preventing the contact with their child[ren].

A sensible solution to the spiralling costs for the participating parties, costs to the taxpayers etc, all of which are exacerbated by the long delays in bringing a matter to trial in the Family courts, may be to restore the first interim hearing to one where unnecessary, insignificant or vexatious complaints are subjected to cross-examination to determine if there is a need for further investigation, as Mr Smith has suggested. When a judge has an opportunity to examine the parties, apart from just reading the affidavits, their experience will allow them to arrive at a sensible parenting program for the parents and their children.

If serious allegations of child abuse have been referred to the police, then this should be heard in the usual State courts and appropriate interim parenting decisions put into place. However, if no police complaint has been made the complainer should have the opportunity to either make an urgent complaint to the police or withdraw their accusation. Our suggestion would be to:

1. restore cross-examination at the first interim hearing
2. Attempt to provide parenting orders at this interim hearing that do not deny a child contact with both parents, providing neither presents any risk to the child
3. Disband the Magellan process
4. Require the complainer of seemingly serious allegations to report them to the State police for investigation, if this has not already been done. If a report has not been made then an opportunity is provided to withdraw the complaint. If the complainant refuses to withdraw, then they would face a possible perjury charge when/if they are unable to find support their complaint.
5. Investigate the willingness of State Governments to take a more proactive role in the investigation and prosecution of child abuse complaints, with the suggestion that the Police Child Investigation departments should be the lead investigators and the police and DPP should be in control of the overall conduct of any child abuse case until resolution.

We are suggesting the lead organisation should be the State police rather than the various State Child Safety departments because serious questions are being asked about the competency of these departments and their staff. For example:

*Recently in Queensland, on the 23 January 2020 information was released in the news that “more than 1500 Queensland children were harmed within a year by welfare workers dismissing alarms over their safety.*

*“A record 1554 children in Queensland suffered abuse or neglect within a year of Child Safety deciding they were safe – despite police, neighbours, doctors or family members blowing the whistle on maltreatment during 2017/18.*

*“Of that number, 555 were harmed within three months of Child Safety investigators having given the all-clear.*

*“196 children were harmed in foster care during 2017/18.*

*See the url below:*

<https://www.couriermail.com.au/news/queensland/queensland-government/dozens-die-1500-hurt-on-qld-child-safety-watch/news-story/fafe9ef2c4f834065976b72f4c50f0cb>

The above information relates to Queensland, but we have received reports over the years of the non-compliance of various departments in each State that are supposed to protect children, especially if the complaints are generated by the father. There is an absolute unwillingness to take the concerns of fathers' seriously. The Child Safety staff seem to be imbued with a belief that mothers' do no wrong and their behaviour should not be questioned. The statistics that show otherwise are clearly being ignored.

- **Would more funding help?**

Yes, more funding would obviously help to cut down the waiting times for hearings, but any additional funding should be provided on the basis that savings can be made with the dismantling of the Magellan project, less use required of family report writers and independent children's lawyers. A quicker service and arrival at sensible decisions will eventually even out over a period

of time and the Australian community will be increasingly satisfied that the courts and judiciary are acting appropriately.

**Question 4: Senator Waters asked:** In your evidence to the Committee, you stated that 1 man is killed by domestic violence every 10 days. The 2019 Australian Institute of Health and Welfare report , Family, domestic and sexual violence in Australia: continuing the national story 2019, reports that 1 woman is killed every 9 days and 1 man every 29 days by a current or ex-partner. Can you provide a reference for the statistics you put to the Committee?

**Answer:** On page 9 of the MRA submission we wrote that:

*We are told one woman is a murdered every 7 days as a result of family domestic violence, yet one man dies every 10 days for the same reason.<sup>7</sup> Should the gap of three days be enough to ignore the death of men who are victims?*

#### **2012–13 to 2013–14 published in 2017:**

The OneinThree.com.au organisation states that **75 males were killed in domestic homicide incidents between 2012-2014 and this equates to one death every 10 days**<sup>8</sup>  
Source: <https://aic.gov.au/publications/sr/sr002> Bryant W & Bricknell S (2017), page 20.

The same research allowed the now extinct White Ribbon Foundation to claim that “On average, one woman a week is murdered by her current or former partner.”  
<https://www.whiteribbon.org.au/understand-domestic-violence/facts-violence-women/domestic-violence-statistics/>

Bryant, W. & Bricknell, S. (2017). *Homicide in Australia 2012-2014: National Homicide Monitoring Program report*. Canberra: Australian Institute of Criminology. Retrieved from <https://aic.gov.au/publications/sr/sr002>

#### **2017**

From Australian Bureau of Statistics (2018). 4510.0 - Recorded Crime - Victims, Australia, 2017<sup>9</sup>

See Table/Data Set No 22

<sup>7</sup> <http://www.oneinthree.com.au/overview/>

<sup>8</sup> Bryant and Bricknell

<sup>9</sup> <https://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4510.02017?OpenDocument#Data>

32 males were murdered as a result of family domestic violence and 43 females.

This now equates to a man losing his life as a result family/domestic violence every 11.4 days and a woman will lose her life for the same reason every 8.5 days. A decrease in family domestic violence homicides!

## 2018

In 2018, an increase occurred, (Table 22)<sup>10</sup> revealing there were 93 homicide victims as a result of family domestic violence.

54 females and 39 males indicating that a female was killed as a result of FDV every 6.75 days and a male every 9.35 days.

As we remarked in our submission, the minor difference of 2 to 3 days should not result in such a significantly different response to the murder of either men or women, as a result of family domestic violence. Men who lose their lives this way deserve the same attention, consideration and concern as afforded to women.

**Question:** Mr Perrett asked a further question which is in Hansard (pg 4) and I undertook to supply a more complete answer:

Mr Perrett asked: “Do you agree that the overwhelming majority of acts of domestic violence are perpetrated by men against women?”

My reply was that I had supplied statistics to the Senate that 41% of DV orders issued in Queensland were for the protection of men and disagreed with the proposition that the “overwhelming majority” of domestic violence was perpetrated by men against women suggesting one would need a figure of 80 or 90 per cent to consider it to be an “overwhelming majority”. In doing so I referred to international research showing domestic violence is virtually a fifty-fifty related issue.

Mr Perrett asked for references to 50:50 statistics for Australia and I noted that they are International figures and that I thought they covered Australia.

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<sup>10</sup> <https://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4510.02018?OpenDocument>

**Question 5:** Mr Perritt asked if I could supply further information about International Studies of Domestic Violence

**Answer:** Domestic and family violence international findings:

### **Straus – University students**

An extensive study of dominance and symmetry in partner violence by male and female university students in 32 nations by Murray Straus (2008) found that, in Australia, 14% of physical violence between dating partners during the previous 12 months was perpetrated by males only, 21% by females only and 64.9% was mutual violence (where both partners used violence against each other).

Straus, M, 2008, Dominance and symmetry in partner violence by male and female university students in 32 nations, Children and Youth Services Review 30, 252–275. <http://pubpages.unh.edu/~mas2/ID41-PR41-Dominance-symmetry-In-Press-07.pdf>

### **It's Time to Tell the Truth About Partner Abuse**

#### **Partner Violence:**

#### **An Equal Opportunity Problem.**

What is the truth about intimate partner aggression? Nearly 200 scientific studies point to this simple conclusion: Women are at least as likely as men to engage in partner aggression. This is what leading researchers say: “Research indicates that women can be just as violent as their partners.”

– Irene Hanson Frieze, Psychology of Women’s Quarterly, 2005 “Differences were observed in the rates of male and female partner violence, with female violence occurring more frequently.”

– Renee McDonald, Journal of Family Psychology, 2006 “A recent meta-analysis found that a woman’s perpetration of violence was the strongest predictor of her being a victim of partner violence.”

– Daniel Whitaker, American Journal of Public Health, 2007 “Several studies, including large and nationally representative sample, have found that the most prevalent pattern is mutual violence.”

– Murray Straus, Prevention of Partner Violence, 2008

<http://www.mediadar.org/docs/RADARflyer-Time-to-Tell-the-Truth.pdf>

#### **What Does the Latest Research Say?**

- **A national survey of married and co-habiting partners** found that 8% of women engaged in severe partner violence, while only 4% of men were involved in severe violence. Renee McDonald, Journal of Family Psychology, March 2006. [www.smu.edu/experts/study-documents/familyviolence-study-may2006.pdf](http://www.smu.edu/experts/study-documents/familyviolence-study-may2006.pdf)

- **An international study of over 13,000 university students** in dating relationships in 32 countries found that 11% of couples had experienced severe violence in the past year. Among those couples, 29% had female-only violence, 16% had male-only violence, and in 55% of couples both persons were violent. Murray Straus, Children and Youth Services Review, 2007

Men are often injured by their wives or girlfriends. According to a 2000 meta-analysis by John Archer, PhD, men suffer 38% of all injuries arising from partner aggression. But men often don't report the incident, so they endure their pain in silence. As a result, the media often presents a one-sided view of domestic violence.

### **What's Wrong with Making False Claims?**

Domestic violence industry advocates often make claims such as "men are overwhelmingly the perpetrators of partner violence" and "95% of DV victims are women." These false statements only make the problem worse because:

- Service providers refuse to help male victims.
- False allegations of abuse escalate partner conflict and sever parent-child bonds.
- Abusive women can't get the help they need.
- Domestic violence laws promote overly aggressive and harmful prosecution efforts.

Warren Moon was the first Black quarterback to be elected to the Pro Football Hall of Fame. One evening Warren Moon got into a fight with his wife. The police were called and Mr. Moon was arrested. Against Mrs. Moon's wishes, the case went to trial.

Placed on the witness stand, Mrs. Moon admitted that she was the one who had started the fight by throwing a candlestick, and that her husband had only acted in self-defense. Warren Moon was acquitted.

Domestic violence is not a gender-specific problem.

<http://www.mediaradar.org/docs/RADARflyer-Time-to-Tell-the-Truth.pdf>

### **Fact and Statistics on Domestic Violence at-a-glance**

*Sponsored by the peer-reviewed journal "Partner Abuse"*

*<https://www.springerpub.com/partner-abuse.html> and the Association of Domestic Violence Intervention Providers <https://domesticviolenceintervention.net/>*

### **Facts and Statistics on Prevalence of Partner Abuse -Victimization**

- Overall, 22% of individuals assaulted by a partner at least once in their lifetime (23% for females and 19.3% for males)
- Higher overall rates among dating students
- Higher victimization for male than female high school students
- Lifetime rates higher among women than men
- Past year rates somewhat higher among men
- Higher rates of intimate partner violence (IPV) among younger, dating populations "highlights the need for school-based IPV prevention and intervention efforts"

### *Perpetration*

- Overall, 25.3% of individuals have perpetrated IPV
- Rates of female-perpetrated violence higher than male-perpetrated (28.3% vs. 21.6%)
- Wide range in perpetration rates: 1.0% to 61.6% for males; 2.4% to 68.9% for women,
- Range of findings due to variety of samples and operational definitions of PV

### *Emotional Abuse and Control*

- 80% of individuals have perpetrated emotional abuse
- Emotional abuse categorized as either expressive (in response to a provocation) or coercive (intended to monitor, control and/or threaten)
- Across studies, 40% of women and 32% of men reported expressive abuse; 41% of women and 43% of men reported coercive abuse

<https://domesticviolenceresearch.org/domestic-violence-facts-and-statistics-at-a-glance/>

## **Violence Against Men in Intimate Relationships**

Lien M.I., Lorentzen J. (2019) Violence Against Men in Intimate Relationships. In: Men's Experiences of Violence in Intimate Relationships. Palgrave Studies in Victims and Victimology. Palgrave Macmillan, Cham

### ABSTRACT

It is a common assumption that men are only exposed to violence in the public space, while women are exposed to violence in intimate relationships. We regularly read about “mindless” or “gratuitous” violence, in which men are both the victims and the perpetrators. Such violence generally takes place in public spaces. In the last few decades we have become increasingly aware of the violence inflicted on women and children behind closed doors, in our homes. It is the violence that takes place within intimate relationships which has been the main subject of research in Norway and internationally—which in a host of countries has, in part, prompted the provision of help and intervention.

Recent research in Norway, based on various quantitative studies in which both women and men have been asked the same questions, has led to an increasing focus on violence in families and other intimate relationships which also affects a large number of men (Pape and Stefansen 2004; Haaland et al. 2005; Sogn and Hjemdal 2009; Thoresen and Hjemdal 2014). Despite this, violence towards men in intimate relationships is a relatively unexplored field in the Nordic context. In particular, research is severely lacking on the experiences of men who are the victims of violence in intimate relationships, and the help they might need. This book aims, in some small way, to fill this gap in our knowledge. In international research there are few narrative studies on male victims of partner violence (Allen-Collinson 2009a, b; Corbally 2015).

[Men's Experiences of Violence in Intimate Relationships](#) pp 1-12

## Men: The Overlooked Victims of Domestic Violence

MAY 16, 2012 BY RUTH S. [6 COMMENTS](#)

Domestic violence is considered one of the most pressing issues in American society. Everyone quotes the statistics given by the National Coalition Against Domestic Violence: 1 in 4 women will be victims of domestic violence at some point in their lives, 1.3 million women are assaulted by their partner every year, 85% of domestic violence reported is against women. However, in a conflicting survey taken by the CDC in 2010, it was found that 40% of the victims of severe, physical domestic violence are men.

Despite many findings that show almost equal amounts of abuse perpetrated against men and women, the media and government focus the most attention on the female victims of domestic violence. Men are largely silent on the issue because of the perception that men are physically stronger and should be able to subdue a female attacker easily. Those men who do report physical violence are more likely to be ridiculed—both by law enforcement and by the public—than women are. More money is spent on women's programs, and more crusades are launched on behalf of women who are victims of domestic violence despite the fact that men are almost equally or in some cases more likely to be victims of both physical and psychological abuse.

<https://domesticviolencestatistics.org/men-the-overlooked-victims-of-domestic-violence/>

### More than 40% of domestic violence victims are male, report reveals

**Campaign group Parity claims assaults by wives and girlfriends are often ignored by police and media**

**[Denis Campbell](#)**

Sun 5 Sep 2010 09.07 AEST First published on Sun 5 Sep 2010 09.07 AEST

### Assaults on men represent more than 40% of domestic violence in the UK.

About two in five of all victims of domestic violence are men, contradicting the widespread impression that it is almost always women who are left battered and bruised, a new report claims.

Men assaulted by their partners are often ignored by police, see their attacker go free and have far fewer refuges to flee to than women, says a study by the [men's rights campaign group Parity](#).

The charity's analysis of statistics on domestic violence shows the number of men attacked by wives or girlfriends is much higher than thought. Its report, *Domestic Violence: The Male Perspective*, states: "Domestic violence is often seen as a female victim/male perpetrator problem, but the evidence demonstrates that this is a false picture."

Data from Home Office statistical bulletins and the British Crime Survey show that men made up about 40% of domestic violence victims each year between 2004-05 and 2008-09, the last year for

which figures are available. In 2006-07 men made up 43.4% of all those who had suffered partner abuse in the previous year, which rose to 45.5% in 2007-08 but fell to 37.7% in 2008-09.

Similar or slightly larger numbers of men were subjected to severe force in an incident with their partner, according to the same documents. The figure stood at 48.6% in 2006-07, 48.3% the next year and 37.5% in 2008-09, Home Office statistics show

'Male victims are almost invisible to the authorities,' says John Mays of Parity. Photograph: Guardian

Mark Brooks of the [Mankind Initiative](#), a helpline for victims, said: "It's a scandal that in 2010 all domestic violence victims are still not being treated equally. We reject the gendered analysis that so many in the domestic violence establishment still pursue, that the primary focus should be female victims. Each victim should be seen as an individual and helped accordingly."

<https://www.theguardian.com/society/2010/sep/05/men-victims-domestic-violence>

## **Domestic Violence Against Men: No Laughing Matter**

Posted Nov 19, 2019

**Psychology Today** Rob Whitley, Ph.D. - Talking About Men

New research indicates high-rates of domestic abuse against men.

Today is international men's day. This is an opportunity to shed light on issues faced by men that typically lie in the shadows of society. One of these issues is Intimate Partner Violence (IPV) against men.

The popular image of IPV is based on the familiar gender stereotype of a male villain and a female victim. But that stereotype paints an incomplete picture, with new research indicating a high number of male victims of domestic abuse.

### **Research on Domestic Violence |**

A recent UK government survey indicated that 9% of males had experienced some form of partner abuse, which amounts to around 1.4 million men. This includes stalking, physical violence and sexual assault. Indeed, a seminal US study found that male IPV victims are often slapped, kicked, punched, grabbed or choked by their partners.

Interestingly, a growing body of international research indicates that men and women experience IPV in similar proportions. For example, a recent survey from Canada's national statistical agency concluded that "equal proportions of men and women reported being victims of spousal violence during the preceding 5 years (4% respectively)."

The aforementioned surveys indicate that small proportions of men (less than 20% of victims) will tell the police or a health professional about their victimization. This may be due to well-grounded fears that they will be scorned, ridiculed, or disbelieved by these authorities.

Indeed, a recent research paper by Dr. Elizabeth Bates from the University of Cumbria found that the overarching experience of male IPV victims was that "no one would ever believe me." One victim noted "I told friends, they laughed while another stated ... the police, they laughed."

.....Likewise, Dr. Nicola Graham-Kevan from the University of Central Lancashire reported her latest research indicating that male IPV victims are often pathologized, and sometimes regarded with suspicion by the very agencies that should be helping them.

Nevertheless, there was a palpable air of optimism pervading the event. The conference was attended by a variety of senior figures including police officers, health care providers, lawyers, community workers, military representatives, and local government employees. This indicates a growing awareness of the seriousness of the issue among key stakeholders.

### **About the Author**

Rob Whitley, Ph.D., is an assistant professor in the department of psychiatry at McGill University and a research scientist at the Douglas Hospital Research Centre.

Online: <http://douglas.research.mcgill.ca/rob-whitley>

## **Women More Likely to Commit Domestic Violence, Studies Show**

Written by [Selwyn Duke](#)

Women are committing violence against men and boys on a daily basis .... International research suggests that as much as half of domestic violence is committed against men, .....

The study ... is based on an analysis of 34,000 men and women by a British academic. Women lash out more frequently than their husbands or boyfriends, concludes John Archer, professor of psychology at the University of Central Lancashire and president of the International Society for Research on Aggression.

... Professor Archer analysed data from 82 US and UK studies on relationship violence, dating back to 1972. He also looked at 17 studies based on victim reports from 1,140 men and women .... [H]e said that female aggression was greater in westernised women because they were "economically emancipated" and therefore not afraid of ending a relationship.

<https://www.thenewamerican.com/usnews/crime/item/19133-women-more-likely-to-commit-domestic-violence-studies-show>

## **Intimate Partner Abuse Against Men**

<sup>^</sup>Lupri, Eugene; Grandin, Elaine (2004). "*Intimate partner abuse against men*" (PDF). *National Clearinghouse on Family Violence*. Archived from [the original](#) (PDF) on January 4, 2009. Retrieved June 21, 2014.

Statistics Canada first collected data on intimate partner abuse of both men and women through its 1999 General Social Survey (GSS). Respondents were asked 10 questions concerning abuse by their current and/or previous spouses and common-law partners during the 12-month and 5-year periods preceding the telephone interview.<sup>1</sup> According to their responses, almost equal proportions of men and women (7% and 8% respectively) had been the victims of intimate partner physical and psychological abuse (18% and 19% respectively). These findings were consistent with several earlier studies which reported equal rates of abuse by women and men in intimate relationships.<sup>2-16</sup>

[https://web.archive.org/web/20090104074211/http://www.phac-aspc.gc.ca/ncfv-cnivf/familyviolence/pdfs/Intimate\\_Partner.pdf](https://web.archive.org/web/20090104074211/http://www.phac-aspc.gc.ca/ncfv-cnivf/familyviolence/pdfs/Intimate_Partner.pdf)

## The gender paradigm in domestic violence research and theory: Part 1 — The conflict of theory and data"

Dutton, Donald G.; Nicholls, Tonia L. (September 2005). "The gender paradigm in domestic violence research and theory: Part 1 — The conflict of theory and data". *Aggression and Violent Behavior*. **10** (6): 680–714. [doi:10.1016/j.avb.2005.02.001](https://doi.org/10.1016/j.avb.2005.02.001).

Feminist theory of intimate violence is critically reviewed in the light of data from numerous incidence studies reporting levels of violence by female perpetrators higher than those reported for males, particularly in younger age samples. A critical analysis of the methodology of these studies is made with particular reference to the Conflict Tactics Scale developed and utilised by Straus and his colleagues. Results show that the gender [disparity](#) in injuries from domestic violence is less than originally portrayed by feminist theory. Studies are also reviewed indicating high levels of unilateral intimate violence by females to both males and females. Males appear to report their own victimization less than females do and to not view female violence against them as a crime. Hence, they differentially under-report being victimized by partners on crime victim surveys. It is concluded that feminist theory is contradicted by these findings and that the call for "qualitative" studies by feminists is really a means of avoiding this conclusion. A case is made for a paradigm having developed amongst family violence activists and researchers that precludes the notion of female violence, trivializes injuries to males and maintains a monolithic view of a complex social problem.

<https://www.sciencedirect.com/science/article/abs/pii/S1359178905000042?via%3Dihub>

## Thirty Years of Denying the Evidence on Gender Symmetry in Partner Violence: Implications for Prevention and Treatment

Straus, Murray A. (June 2010)(PDF). *Partner Abuse*. **1** (3): 332–362. [CiteSeerX 10.1.1.372.5578](https://doi.org/10.1.1.372.5578). [doi:10.1891/1946-6560.1.3.332](https://doi.org/10.1891/1946-6560.1.3.332). Retrieved June 28, 2014.

The first part of this article summarizes results from more than 200 studies that have found gender symmetry in perpetration and in risk factors and motives for physical violence in marital and dating relationships. It also summarizes research that has found that most partner violence is mutual and that self-defense explains only a small percentage of partner violence by either men or women. The second part of the article documents seven methods that have been used to deny, conceal, and distort the evidence on gender symmetry. The third part of the article suggests explanations for the denial of an overwhelming body of evidence by reputable scholars. The concluding section argues that ignoring the overwhelming evidence of gender symmetry has crippled prevention and treatment programs. It suggests ways in which prevention and treatment efforts might be improved by changing ideologically based programs to programs based on the evidence from the past 30 years of research.

<https://connect.springerpub.com/content/sgrpa/1/3/332>

## Abused Men: The Hidden Side of Domestic Violence

[Cook, Phillip W.](#) (1997).

When most people think of domestic violence, images of battered women or abused children come to mind. But there is another side to this issue that is not as familiar – abused men.....While statistics

show that 1.8 million American women are severely assaulted by their mates each year, few people know that the same source indicated that 2 million men are also assaulted at home.

<https://en.wikipedia.org/wiki/Special:BookSources/9780313356711>

## Government Statistics on Domestic Violence

^ "[Government Statistics on Domestic Violence](#)" (PDF). Dewar Research. February 2014. Retrieved July 4, 2014.

The results of the last ten detailed studies show consistently a substantial level of female abuse and violence in intimate (partner) relationships, with a corresponding level of male victimisation, although there are small fluctuations. Over the full 13-year period, for any form of partner abuse or violence (including sexual and stalking), proportions of male victims (of total victims) have ranged between about 35% (year 2009/10) to 46% (year 2007/08) and between about 33% (year 1996) to 49% (year 2006/07) for the category of 'severe force'.

<http://www.dewar4research.org/DOCS/websiteGovtStatsonDV1995-2013.pdf>

## From the Personal to the Political *Women or Men: Who Are the Victims?*

[Pizzey, Erin](#) (2000 Retrieved June 28, 2014. )

Erin Pizzey became famous in the 1970s as the founder of a refuge for women escaping from their violent male partners. Initially she was embraced by the ultra-feminists of that time, but when she pointed out in a public lecture **that 62 of the first 100 women who came into the refuge were as violent as the men they had left**, she was denounced. Erin Pizzey had taken her stand against violence and in favour of justice for all, but she found that the ultra-feminists did not aspire to equal justice. Her essay is a powerful, autobiographical tale of how a movement which initially sought fair treatment for all was captured by extremists who wanted preferments for the few. The strategy of ultra-feminists was to define women as a victim group oppressed by men. But for the strategy to succeed, no exceptions could be admitted and, consequently, any evidence which called into question the victim status of women had to be suppressed. Erin Pizzey's account shows, not only how evidence of female violence was disregarded, but also how the prevalence of female child abuse has been neglected. Ultra-feminists sought victim status because it is a politically useful means of gaining preferential treatment and, perhaps, cash compensation.

<http://www.civitas.org.uk/pdf/cs09.pdf>

## Differences in Frequency of Violence and Reported Injury Between Relationships With Reciprocal and Nonreciprocal Intimate Partner Violence

*Whitaker, Daniel (May 2007).*

*Objectives.* We sought to examine the prevalence of reciprocal (i.e., perpetrated by both partners) and nonreciprocal intimate partner violence and to determine whether reciprocity is related to violence frequency and injury.

*Methods.* We analyzed data on young US adults aged 18 to 28 years from the 2001 National Longitudinal Study of Adolescent Health, which contained information about partner violence and injury reported by 11 370 respondents on 18761 heterosexual relationships.

*Results.* Almost 24% of all relationships had some violence, and half (49.7%) of those were reciprocally violent. In nonreciprocally violent relationships, women were the perpetrators in more than 70% of the cases. Reciprocity was associated with more frequent violence among women (adjusted odds ratio [AOR]=2.3; 95% confidence interval [CI]=1.9, 2.8), but not men (AOR=1.26; 95% CI=0.9, 1.7). Regarding injury, men were more likely to inflict injury than were women (AOR=1.3; 95% CI=1.1, 1.5), and reciprocal intimate partner violence was associated with greater injury than was nonreciprocal intimate partner violence regardless of the gender of the perpetrator (AOR=4.4; 95% CI=3.6, 5.5).

*Conclusions.* The context of the violence (reciprocal vs nonreciprocal) is a strong predictor of reported injury. Prevention approaches that address the escalation of partner violence may be needed to address reciprocal violence.

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1854883/>

## Partner Abuse State of Knowledge Project Findings At-a-Glance

Sponsored by the Journal Partner Abuse, John Hamel, LCSW, Editor-in-Chief, November 2012

Editor's Note: This is an abridged version of the Overview of Findings by the Authors document, which summarizes the results of the Partner Abuse State of Knowledge Project, a comprehensive, 2,657- page review of the domestic violence research literature. To access the 17 manuscripts and/or the free online summary tables, go to [www.springerpub.com/pa](http://www.springerpub.com/pa). Under "Online Resources" click on: The Partner Abuse State of Knowledge Project Free Online Data Base.

### Prevalence of Partner Abuse

Victimization Overall, 24% of individuals assaulted by a partner at least once in their lifetime (23% for females and 19.3% for males) Higher overall rates among dating students Higher victimization for male than female high school students Lifetime rates higher among women than men Past year rates somewhat higher among men Higher rates of intimate partner violence (IPV) among younger, dating populations "highlights the need for school-based IPV prevention and intervention efforts"

Perpetration Overall, 25.3% of individuals have perpetrated IPV Rates of female-perpetrated violence higher than male-perpetrated (28.3% vs. 21.6%) Wide range in perpetration rates: 1.0% to 61.6% for males; 2.4% to 68.9% for women, Range of findings due to variety of samples and operational definitions of PV

Emotional Abuse and Control 80% of individuals have perpetrated emotional abuse Emotional abuse categorized as either expressive (in response to a provocation) or coercive (intended to monitor, control and/or threaten) Across studies, 40% of women and 32% of men reported expressive abuse; 41% of women and 43% of men reported coercive abuse According to national samples, 0.2% of men and 4.5% of women have been forced to have sexual intercourse by a partner  
[www.springerpub.com/pa](http://www.springerpub.com/pa)

## Invisible touch. Aggression and Violent Behavior

*George, Malcolm J. (2003).* (subscription required)

The controversy surrounding violence by female partners to intimate males has been reviewed from a diverse range of literature and disciplines. Historical and case evidence is presented against a background of the controversy surrounding the findings of studies, using the Conflict Tactics Scale (CTS), which show ample evidence of assaults by women on male partners. This evidence is discussed and interpreted against the background of social representations and stereotypical images of male and female to show that the “battered husband syndrome” is a reality and is comparable to the battered wife scenario. Implications for the discussion of intimate violence within academia and elsewhere are drawn and the reasons for the suppression of data and the existence of a controversy on this topic made evident. It is concluded that academic controversy is unnecessary and counter-productive.

<https://www.sciencedirect.com/science/article/abs/pii/S1359178901000489?via%3Dihub>

## Disabusing the definition of domestic abuse: how women batter men and the role of the feminist state

*Kelly, Linda (Summer 2003).* [\*Florida State University Law Review\*](#)

Domestic abuse. The term immediately conjures up images nationally spread through such highly publicized events as the murder trial of O.J. Simpson and the saga of John and Lorena Bobbit, hit tunes like Tracy Chapman’s Behind the Wall,<sup>1</sup> and movies like Julia Robert’s Sleeping with the Enemy<sup>2</sup> or Farrah Fawcett’s The Burning Bed.<sup>3</sup> Everyone can also tell a more local story about domestic violence, be it one carried in a hometown newspaper or known about the neighbors. After a long history of hiding domestic violence behind closed bedroom doors, everyone now knows all about the existence and prevalence of domestic violence.<sup>4</sup> Or do we? The images we associate with domestic violence depict the male as batterer and the female as victim. Yet, despite the critical importance of first acknowledging and then eradicating the male abuse of women, an equally important but untold story remains.<sup>5</sup> Women can be batterers. Men can be victims. Over the last twenty-five years, leading sociologists have repeatedly found that men and women commit violence at similar rates.

<https://heinonline.org/HOL/LandingPage?handle=hein.journals/flsulr30&div=43>

## Disabusing the Definition of Domestic Abuse: How Women Batter Men and the Role of the Feminist State

*Kelly, Linda (Summer 2003).* [\*Florida State University Law Review\*](#). **30** (4): 806. Retrieved June 23, 2014.

**Domestic violence against men** deals with [domestic violence](#) experienced by [men](#) in a domestic setting, such as in [marriage](#) or [cohabitation](#). As with [domestic violence against women](#), violence against men may constitute a [crime](#), but laws vary between jurisdictions.

Men who report domestic violence can face [social stigma](#) regarding their perceived lack of [machismo](#) and other denigrations of their [masculinity](#).<sup>[1]:6[2]</sup> Additionally, [intimate partner violence](#) (IPV) against men is generally less recognized by society than IPV against women, which can act as a further block to men reporting their situation.<sup>[1]:1[3]</sup>

The relative prevalence of IPV against men to that of women is highly disputed between different studies, with some countries having no data at all. Some researchers believe the actual number of male victims may be greater than law enforcement statistics suggest due to the number of men who

do not report their abuse.<sup>[4]</sup> However, for both men and women, domestic violence is among the most underreported crimes worldwide.<sup>[5][6]</sup>

IPV against men is a controversial area of research, with terms such as *gender symmetry*, *battered husband syndrome* and *bidirectional IPV* provoking a great deal of debate. The lines of the debate tend to fall between two basic **polemics**. The first of these argues that scholars who focus on female-perpetrated IPV are part of an **anti-feminist** backlash, and are attempting to undermine the problem of male-perpetrated abuse by championing the cause of the man, over the much more serious cause of the abused woman.<sup>[7][8]</sup> The second polemic argues that IPV against men is a significant problem and underreported, that domestic violence researchers and **feminist** academics have ignored this in order to protect the fundamental gains of the battered women's movement, specifically the view that intimate partner abuse is an extension of **patriarchal dominance**, and that concealing violence perpetrated by women puts the abuser herself at risk of future escalation of IPV.<sup>[9][10][11]</sup> One of the tools used to generate statistics concerning IPV perpetration, the **conflict tactics scale**, is especially contentious.<sup>[11]</sup>

[https://en.wikipedia.org/wiki/Domestic\\_violence\\_against\\_men](https://en.wikipedia.org/wiki/Domestic_violence_against_men)

### Aggression in British Heterosexual Relationships: A Descriptive Analysis

*Carrado, Michelle; George, Malcolm J.; Loxam, Elizabeth; Jones, L.; Templar, Dale (June 1996). Retrieved June 21, 2014.*

A 12-item scale, derived from the Conflict Tactics Scale, was administered to a representative sample of 1,978 heterosexual men and women in Great Britain in mid November 1994. Men and women were asked to identify conflict tactics sustained or inflicted in all past and present relationships and those sustained in current relationships. This paper reports results for physical victimization and also reports on two further questions asked to discern context and meaning ascribed to such sustained or inflicted victimization. Both sexes reported having experienced physical victimization with a higher percentage of men sustaining victimization, mainly as a result of minor acts of assault. Almost equal percentages of men and women reported inflicting victimization against partners. Additionally, incidence of physical victimization is presented according to relationship status, age, socioeconomic category, and by regional distribution. Both sexes reported a range of reasons or contexts ascribed to their sustained or inflicted victimization. © 1996 Wiley-Liss, Inc.

[https://onlinelibrary.wiley.com/doi/abs/10.1002/\(SICI\)1098-2337\(1996\)22:6%3C401::AID-AB1%3E3.0.CO;2-K](https://onlinelibrary.wiley.com/doi/abs/10.1002/(SICI)1098-2337(1996)22:6%3C401::AID-AB1%3E3.0.CO;2-K)

### Women who initiate assaults: The reasons offered for such behavior

*Fiebert, Martin S.; Gonzalez, Denise M. (1997) Psychological Reports. 80 (2): 583–590.*

Studies of spousal and dating violence indicate that women are as likely as men to assault their partners physically. This investigation examined the issue of the initiation of physical assaults by women on their male partners and the reasons offered for such behavior. Responses from 978 female college women indicate that, within a 5-yr. period, 29% ( $n = 285$ ) admitted to physical aggression against their male partners. Younger women in their 20's were significantly more likely to aggress physically than women who were 30 yr. and above. Women stated that they expressed aggression toward their male partners in part because they wished to engage their partner's attention, particularly emotionally. Also, assaultive women did not believe that their male victims would be seriously injured or would retaliate.

[doi:10.2466/pr0.1997.80.2.583](https://doi.org/10.2466/pr0.1997.80.2.583). [PMID 9129375](https://pubmed.ncbi.nlm.nih.gov/9129375/).

Gender symmetry and mutuality in perpetration of clinical-level partner violence: Empirical evidence and implications for prevention and treatment

Straus, Murray A (2011). *Aggression and Violent Behavior*. **16** (4): 279–288.  
[doi:10.1016/j.avb.2011.04.010](https://doi.org/10.1016/j.avb.2011.04.010).

This paper addresses the contradiction between the conceptualization of partner violence as almost exclusively perpetrated by men and over 200 studies with data on both men and women which found “gender symmetry,” i.e., that about the same percentage of women as men physically assault a partner. Both Straus (1990) and Johnson (1995) suggested that the contradiction can be resolved by taking a “dual population” approach. Straus argued that “ordinary” violence, such as slapping, shoving, and throwing things at a partner, is prevalent in the general population and is symmetrical; whereas “severe” violence such as choking, punching, and attacks with objects are rare in the general population but common in clinical populations and are male-predominant. Similarly, Johnson (1995) argued that “situational violence” is prevalent in the general population and symmetrical, whereas “intimate terrorism” is rare and is perpetrated almost exclusively by men. However, a review of 91 empirical comparisons found that symmetry and mutual violence perpetration is typical of relationships involving severe and injurious assaults and agency intervention, and of “intimate terrorists” as measured by Johnson's criteria. The discussion of these results suggests that much of the controversy arises because those who assert gender symmetry do so on the basis of *perpetration* rates, whereas those who deny gender symmetry do so on the basis of the *effects* of victimization, i.e. the greater harm experienced by women. Thus, the “different population” explanations of the controversy need to be replaced by a “perpetration versus effects” explanation. When prevention of perpetration is the focus, the predominance of symmetry and mutuality suggests that prevention could be enhanced by addressing programs to girls and women as well as boys and men. When offender treatment is the focus, the results suggest that effectiveness could be enhanced by changing treatment programs to address assaults by both partners when applicable.

Research Highlights

About as many of the women as men are “intimate terrorists”. Similar percent of men and women perpetrate clinical-level violence and it is rarely self-defense. Denial of symmetry in perpetration is based differences in *effects*, not perpetration. Theories must include female initiation and recognize the dyadic nature of partner violence. Prevention and treatment must include women and recognize that most partner violence is bidirectional.

<https://www.sciencedirect.com/science/article/abs/pii/S1359178911000620?via%3Dihub>

### Testing predictions from the male control theory of men's partner violence

Bates, Elizabeth A.; Graham-Kevan, Nicholas; Archer, John (January 2014). *Aggressive Behavior*. **40** (1): 46–50

The aim of this study was to test predictions from the male control theory of intimate partner violence (IPV) and Johnson's [Johnson, M. P. (1995). *Journal of Marriage and the Family*, 57, 282–294] typology. A student sample (N = 1,104) reported on their use of physical aggression and controlling behavior, to partners and to same-sex non-intimates. Contrary to the male control theory, women were found to be more physically aggressive to their partners than men were, and the reverse pattern was found for aggression to same-sex non-intimates. Furthermore, there were no substantial sex differences in controlling behavior, which significantly predicted physical aggression in both sexes. IPV was found to be associated with physical aggression to same-sex non-intimates, thereby demonstrating a link with aggression outside the family. Using Johnson's typology, women were more likely than men to be classed as “intimate terrorists,” which was counter to earlier findings. Overall, these results do not support the male control theory of IPV. Instead, they fit the view that IPV does not have a special etiology, and is better studied within the

context of other forms of aggression. *Aggr. Behav.* 40:42–55, 2014. © 2013 Wiley Periodicals, Inc  
<http://dx.doi.org/10.1002/ab.21499>

### Invisible touch. Aggression and Violent Behavior

*George, Malcolm J. (2003). "Invisible touch". Aggression and Violent Behavior. 8: 46.*

The controversy surrounding violence by female partners to intimate males has been reviewed from a diverse range of literature and disciplines. Historical and case evidence is presented against a background of the controversy surrounding the findings of studies, using the Conflict Tactics Scale (CTS), which show ample evidence of assaults by women on male partners. This evidence is discussed and interpreted against the background of social representations and stereotypical images of male and female to show that the “battered husband syndrome” is a reality and is comparable to the battered wife scenario. Implications for the discussion of intimate violence within academia and elsewhere are drawn and the reasons for the suppression of data and the existence of a controversy on this topic made evident. It is concluded that academic controversy is unnecessary and counter-productive.

<https://www.sciencedirect.com/science/article/abs/pii/S1359178901000489?via%3Dihub>

### False Allegations of Domestic violence or child abuse

*Justice David Collier, retiring from Parramatta Family Court at the end of the month after 14 years on the bench, sees unprecedented hostility infiltrating the Family Court, and a willingness by parents to use their children to damage one another.*

*"If a husband and wife really get down to it in this day and age, dirt flies," Justice Collier said. The worst are those mothers who direct false allegations of abuse against former partners.*

<https://www.smh.com.au/national/false-abuse-claims-are-the-new-court-weapon-retiring-judge-says-20130705-2phao.html>

*In 2014, a British judge scolded social workers for believing the mother, who was manipulating the social workers and children with false allegations of domestic violence. Residence was awarded to the father.*

<https://familylawhelp.info/judge-scolds-social-workers-false-domestic-violence/>

Mr Perrett suggested DV Connect Men’s Line may be of assistance to men who are victims of partner abuse.

A review of the program at DV Connect <http://www.dvconnect.org/mensline/help-for-you/> seems to only suggest assistance to “change one’s behaviour” as if the DV is the male victim’s fault; also a suggestion “as alternatives to choosing to use violence”.

I could not recommend this program to any male victim of violence because the operators seem to be more focused on changing the male victims behaviour than focusing on changing the female perpetrator’s behaviour.

Reports from the men we have contact with are highly critical of DV connect and Mensline.

From the DV Connect website:

### What we **can** do for you

- **We can** provide free telephone crisis counselling and support from 9am to midnight, 7 days a week
- **We can** provide information about support services available
- **We can** provide information about Court processes and refer you **to Men’s Behavioural Change Programs**
- **We can** inform you about the impact of domestic and family violence on the family unit
- **We can** make active plans around healthy strategies to employ **as alternatives to choosing to use violence**
- **We can** arrange for free interpreter services if English is not your first language
- **We can** assist with developing a safety plan for you

### What we **cannot** do for you

- **We cannot** provide you with legal advice
- **We cannot** support you financially with costs associated with relocating your property
- **We cannot** provide you with ongoing face to face therapeutic counselling
- **We cannot** assist with the removal and storage of property

### **Best Interest of the Child**

Mention was made by Mr Perrett on Hansard page 3 and Senator Waters on Hansard Page 8 of the “best interests of the child”.

This is really important question that deserves a fuller answer than I was able to give.

I would like to refer you to Men’s Rights Agency submission to the Standing Committee on Family and Community Affairs – Child Custody Arrangements and CSA 2003-2006<sup>11</sup>

### **Taken from pages 18-21**

#### **The best interest of the child**

Although this inquiry has specified the provision that the “paramount consideration should be the best interests of the child” it is necessary to qualify how this terminology can, in our opinion, be misinterpreted and misused which will create a negative effect on the child rather than a positive one.

There is also the risk in using the ‘best interest’ as the “paramount” concern. It allows a court, such as the Family Court of Australia to presume itself to be the sole arbiter in matters concerning children and their family, overriding any rights that exist for parents or the child.

Professor of Philosophy Donald Hubin questioned what the best interest of the child really means.<sup>12</sup>

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<sup>11</sup> <https://mensrights.com.au/uncategorized/child-custody-and-child-support-govenment-inquiry/>

Pg 17- 21

<sup>12</sup> Donald C Hubin Dept of Philosophy, Ohio State University email correspondence.19 Jul 1999

*The best interest of the child should always be the ultimate objective. However, the best interest of the children serves poorly as a practical criterion for courts to employ directly. This is true for several reasons. First, the best interest of the child is an "essentially contested" concept. Parents who disagree about who should have exclusive custody (or about custodial arrangements in general) disagree about what custodial arrangements are in the best interest of the children. That is, no parent goes to court with the position that the children would suffer under his/her plan, but that plan should be adopted by the courts anyway. And, parents who disagree about what is in the best interest of the children, typically disagree about what counts as being in the children's best interest. Like the Thomistic injunction to "Do good and avoid evil", the objective of promoting the best interest of the child is rejected by no one. The dispute is over \*what\* is in the best interest of the children. Given this, the state's commitment to promote the best interest of the children is, in practice, no commitment at all. It is empty rhetoric."*

Warren Farrell, author of *Father and Child Reunion* also asks the question is the "best interests of the child theory in the best interests of the child?"<sup>13</sup>

He suggests that because divorce makes everyone feel guilty about the best interests of the child we take it to the extreme. He introduces "the paradox of the best interests of the child" – that the real best interests of a child do not come from focusing on only its interests, but that a child's best interests are served only when everyone's interests are considered."

Farrell maintains that:

To raise a child with only its own best interests in mind creates an adult who keeps only its own interests in mind. It is healthier to raise a child who understands that its own interests are best served when everyone else's interests are carefully and consistently considered.<sup>14</sup>

Hubin comes to the same conclusion that the "best interest" should include others and asks, "..... what sort of guideline presumption can be expected to promote the best interest of the child (and, I'll say because I think it matters, too, the parents)".<sup>15</sup>

He explains that :

"Before the industrial revolution, divorce was much less common, of course, and custody was almost always awarded to the father. This was at least partly due to the thought that this was in the best interest of the children ..... With the advent of the "tender years" doctrine, custody of young children (0-7 years old) typically went to the mother. Custody of older children typically went to the father. This standard was based on a conscious attempt to promote the best interest of the children.

With the rejection of \*de jure\* sex discrimination in the law, the maternal standard gave way to either no standard or the "primary caretaker standard". The primary caretaker standard was conceived in sin and has not repented of its original sin. I mean by this that the primary caretaker standard was explicitly endorsed by those who wanted to continue maternal preference and saw this as a legal way to continue to do what was illegal.

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<sup>13</sup> Father and Child Reunion Finch Publishing page 111-112

<sup>14</sup> (59) Ibid pg 111-112

<sup>15</sup> (58) Ibid

Typical descriptions of what counts toward being a "primary caretaker" include doing the laundry, washing the dishes, cleaning the house. None of these essentially involve time with the children and many of them are "hired out" in wealthier households. Absent from these lists are, fixing things around the house, mowing the lawn and maintaining the car.

But, for our purposes now, the point is the primary caretaker standard was never defended as a replacement of the best interests of the child objective. It was defended as a presumption to help us attain that goal.

Sophy Bordow made mention of the existence of the maternal preference doctrine in her 1992 study about the outcomes of defended custody cases in Australian Family Court Registries. She said:

"While the current legal statutes instruct the courts to award custody in the best interest of the child, many litigants and social observers believe that the maternal preference presumption continues to have an influence even though it is no longer explicitly mentioned in judgments. Furthermore, the primary caretaker concept which took precedent over parental gender, continues to be seen by many as merely being the old maternal preference in gender neutral terms."<sup>16</sup>

Australia faced its own problems when equal opportunity and discrimination laws<sup>17</sup> came into being, and particularly after the signing of the UN Convention on the Rights of the Child.<sup>18</sup> The Australian Family Court was faced with the difficulty of appearing to be gender neutral yet maintain their preference to place children with the mother, whilst ensuring the best interest dictum contained in the UN CROC was initiated.

The "best interest of the child" principle also drew criticism from the Director General of the Swedish Justice Department, Goran Lambertz who discussed with a small audience at an International Family Law Conference in Brisbane, the changing face of the concept "in the best interests of the child". He raised the prospect that strict adherence to the principle ignored other stakeholders such as the parents, who also have a right to enjoy 'family life'.

He counselled caution to ensure undesirable behaviours are not ignored in deference to the best interest's principle. For example, he believes it sometimes wrongfully leads to a result where a parent who has kidnapped or retained a child is given sole custody on the basis that a child requires continuity. This is in sharp contrast to the other parent's interest in family life.

He reminded the forum that the European Court of Human Rights had just decided with a 13 to 4 majority that denying a father access to his child is against human rights (basic family rights).<sup>19</sup>

The court awarded him costs and compensation to the total of about US\$40,000.

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<sup>16</sup> S. Bordow 1992, Australian Journal of Family Law 1994

<sup>17</sup> HR&EO Commission Act 1986

<sup>18</sup> Australia ratified the UNCROC in 1990

<sup>19</sup> Elsholz v Germany, European Court of Human Rights, 13/7/00 Strasbourg

Since then more cases have been determined by the European Court producing a similar outcome.<sup>20</sup>

Susan M Price BSocSc  
Men's Rights Agency  
P.O. Box 28, Waterford  
Queensland 4133  
E: [admin@mensrights.com.au](mailto:admin@mensrights.com.au)

Ph: 07 3806 5611  
Web: [www.mensrights.com.au](http://www.mensrights.com.au)

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<sup>20</sup> Strasbourg European Court Oct 11 2001 The judges decided that such inferior treatment of non-married fathers (in 3 cases) violates the prohibition against discrimination expressed in Article 14 of the European Human Rights Convention. All-in-all, Germany has to pay the claimants DM143,000 (US\$66,500) in damages and costs.