



Australian Domestic & Family Violence Clearinghouse

NEWSLETTER NO. 40 – AUTUMN 2010

Working with the family law sector – exploring domestic violence as a form of ‘coercive controlling violence’

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Introduction

The Australian family law system is currently under review, with reports finalised in late 2009 addressing different areas of family law and their intersection with domestic and family violence (Chisholm 2009; Family Law Council 2009; Kaspiew *et al.* 2009). A shared theme across the various reports has been the assumption that not all forms of intimate partner violence are the same. The Chisholm Report, the Australian Institute of Family Studies Report and the Family Law Council Report, all released in January 2010, noted the challenges faced by victims of family violence in having their experience recognised in family law decisions. These reports recommend that the definitions of ‘forms’ or ‘typologies’ of violence be strengthened and used for guidance by family law professionals when considering the safety of participants and their children.

The domestic violence sector has expressed numerous reservations about using typologies to categorise or pathologise domestic violence (Wangmann 2009). This article will not examine the problems which have been identified when attempting to use a typologies framework in order to distinguish types of violence, as this will be the subject of a lengthier work to soon be published. Rather, the article investigates the possibilities of finding some common ground in engagement with the family law system.

In recent years, the trend towards the application of typologies of violence has grown in momentum within the family law sector. Anecdotal evidence from domestic violence services supporting victims through the family court system suggests that the language of typologies is now increasingly used in many family law decision-making processes, which indicates that mediators, legal practitioners and judicial officers not only accept that the typologies of intimate partner violence ‘exist’ but, also, that they deserve application in family law processes (Family Law Council 2009; Kaspiew *et al.* 2009). Given the inevitability of the use of this framework, and its acceptance in the recent reports to government noted above, it now becomes imperative that the domestic violence sector engage with the family law sector. The challenge is to ensure that the application of typologies theory does not further endanger victims of abuse who must navigate the family law system.

The typologies framework includes a range of categories which ascribe meaning to 'violent' acts. While there are clear difficulties in making distinctions between classes of behaviour which in the experience of many victims all merge into a historical continuum of abuse, one of the 'categories' has some clear parallels with the definition of violence used for decades by domestic violence workers. The category described as 'coercive controlling violence' (CCV) is what we have always labelled 'domestic violence'. In recognising this, can we tease out potentially positive implications for practice given that courts may now be willing to acknowledge the dangers of this particular 'type' of violence?

What are the parallels between CCV and domestic violence?

Sociological researchers have been debating different conceptions of violence for many years. A simplistic description of two of the schools of thinking about intimate partner violence place feminist researchers on one side (where violence is seen as a tool of power and control) and family law practitioners on the other (where violence is the outcome of conflict) (Wangmann 2008). The idea of a range of different kinds of intimate partner violence, or typologies, was proposed by Michael P. Johnson in the mid 1990s. He argued that perhaps both understandings of violence, that is, intimate partner violence as a form of power and control and intimate partner violence as a tactic of conflict, could coexist (Johnson 1995; Kelly & Johnson 2008).

Over the past decade in particular, these ideas have been debated and various 'typologies' proposed, named and renamed. At present, there are a number of commonly accepted typologies of intimate partner violence. These include 'situational couple violence' (one-off acts of violence where power is seen as relatively balanced); 'violent resistance' (violence that occurs in self defence or to protect a child or to pre-empt a partner's violence); 'separation instigated violence' (one or two incidents only, acute reaction to trauma of separation); and 'coercive controlling violence' (CCV) (Kelly & Johnson 2008). It is this last category that may be of value to domestic violence workers searching for means of inserting safety into the family law framework.¹

According to Janet Johnston, who presented at the 2009 Family Relationship Services Conference in Sydney, CCV involves 'a pattern of control and domination by the perpetrator inducing various degrees of fear, intimidation and submission through physical violence, threats to self and loved ones and one or more of the following:

- verbal and emotional abuse
- attacks on self esteem
- insistence on sole-authoritarian multiple domains: social, financial, child rearing etc.
- isolation and restriction of outside contacts
- use of legal disputes to harass and punish
- sexual coercion and rape.' (Johnston 2009)

This description parallels with definitions of domestic violence found on state and territory family violence service web sites from around Australia (see for example the DVRC Victoria web site at www.dvrcv.org.au). The role of misuse of power in maintaining control is a defining feature of both CCV and what the sector has traditionally understood as domestic violence. Joan B.

¹ This is not to say that other 'types' of violence should be dismissed as having no implications for safety. Separation, for example, is flagged as a risk factor for domestic homicide.

Kelly and Michael Johnson (2008) argue that because the domestic violence sector has been most likely to engage with victims of CCV and their children, all experiences of interpersonal violence have been collapsed into a common term, domestic violence. They contend this common term does not allow for a nuanced differentiation of violent acts, such as the violence that occurs when a victim is seeking to protect herself or her children (Kelly & Johnson 2008).

Domestic violence workers have been concerned that the typologies framework may not be able to effectively distinguish women who are acting protectively or in self defence, from domestic violence 'perpetrators'. In addition, many of the other categories, in fact, form part of a continuum of violence experienced over time. Thus, there is concern that the misuse or poor application of screening tools for various typologies will result in an assessment that places victims at greater risk of ongoing harm. This is particularly the case in the area of family law, where an inaccurate assessment of the risk of violence can change not only the process required for formal separation (family mediation or not), but also the parenting orders (and assessment of the presumption of shared parental responsibility). Concerns have been raised by many domestic violence workers that the typologies of violence are being used with limited knowledge and, in the context of family mediation, with inadequate time for the relationship's power dynamic to become apparent.

Implications for practice

Without wishing to discount the need for ongoing critical discussion of the typologies theory, it is important to address the fact that workers are now operating in an arena where typologies are assumed to be a given.

It is possible this challenge offers an opening for domestic violence sector workers to better advocate for accountability in family law decision-making and dispute resolution. If CCV is indeed what domestic violence sector workers have named domestic violence, then perhaps such common ground provides the language for challenging family law decisions that do not take into account the context and history of domestic violence. The challenge is to identify ways in which workers can best make use of opportunities that may increase the safety of victims of intimate partner violence and their children who must engage with family law.

1. Become familiar with the language of typologies

If the language of typologies is used by family law professionals, it can be argued that a familiarity with the typologies of violence is necessary in order to appropriately support and advocate for victims of intimate partner violence as they negotiate formal separation processes. Current Australian legislation requires couples using formal separation processes to attend family dispute resolution in order to develop an agreed parenting plan. In addition, an automatic presumption of shared parental responsibility is applied to all families (Chisholm 2009; Kaspiew *et al.* 2009). If the family law practitioners assess there is evidence of family violence, this presumption is rebutted, in the best interests of children, and mediation is no longer mandatory. Unfortunately, the definition of family violence has been contested by different sides of the family law debate. Conflict over its definition has left some victims of intimate partner violence with Family Court decisions based on an assessment that the violence was in fact 'high conflict' rather than 'family violence' and parenting orders have been made that do not prioritise safety (National Council to Reduce Violence Against Women and their Children 2009, pp. 122-123).

An awareness of the language used by proponents of the typologies ideas is part of the tool box for advocates, counsellors and practitioners in services when they are demystifying family court

processes to victims of intimate partner violence, and preparing victims for mediation. A thorough understanding of the typologies used in family law enables the worker to 'translate' some of the questions asked during the screening process, particularly those that may seem to the person being assessed as insensitive, intrusive or irrelevant. Workers may also provide translations back to family law practitioners of the many subtle and everyday ways power and control play out in the lives of victims of violence from current and former partners.

2. Work with victims to identify and name key areas of the history of violence in their relationship

Working with victims to identify and name past incidents of violence is vital in order to diminish possibilities of CCV being incorrectly assessed as separation instigated violence or situational couple violence.

Domestic violence workers are experienced at supporting victims of violence to uncover the links between power and violence. We are also aware of the time required for a nuanced and meaningful exploration of domination, intimidation and fear. Counselling victims, developing safety plans and providing crisis support all require particular and significant skills in supporting the victim to make sense of the abuse they have experienced. Unfortunately, many victims of domestic violence attend family law services without any contact with domestic violence services. Victims who have not had the opportunity to reflect on their experience in a safe, skilled environment may be unprepared for the questions asked by a practitioner from the family law system, the family relationship centres, the family law solicitor and/or the family report writer. Given that assessment tools for the typologies of violence are still under development, the risks are that an incorrect assessment is made and safety for the victim and their children is compromised.

Jane Wangmann (2008, p. 144) identifies that allegations of family violence presented to the Family Court are 'frequently lacking in detail' and are backed by 'little supporting evidence'. Without detail or, indeed, the appropriate detail, it is difficult to assess whether violence is a one-off event or a result of ongoing, coercive controlling behaviours. Domestic violence workers have developed particular competence in supporting victims of violence through the application of domestic violence protection orders in magistrate courts in most states and territories. Although the private nature of intimate partner violence can limit the availability of supporting evidence, workers have found ways to help victims find information that supports their fears and experiences. Such skills can and should be transferred wherever possible to family law processes, from screening in family relationship centres to hearings in the Federal Magistrates or Family Courts of Australia.

3. Consider how knowledge from the domestic violence sector can be used to enhance any training for screening tools of 'typologies of violence'

The tools for screening effectively for the various typologies are still in their infancy. There is a place for the domestic violence sector to be actively engaged in sharing skills and contributing to the development of tools for an appropriate and sensitive assessment. The training of family law professionals in screening and assessment tools should ideally be from those who are drawing on years of practice in identifying the more 'mundane' and less visible forms of intimidation and manipulation. There are risks, for example that screening questions focus on concrete acts, rather than on the interaction of violence, abuse and fear and their combined effect on a relationship (Wangmann 2008).

4. Use the language of CCV as a tool for safer outcomes for victims of violence and their children

If the domestic violence sector can promote an understanding that the families we are working with fit the typology of CCV, it is possible the family law sector can address some of the concerns raised by victim advocates. Michael Johnson (2008) noted that safety must be the priority of all assessment processes and recommended assuming all violence is intimate terrorism (now known as CCV) unless proven otherwise. Janet Johnston (2009) has argued that where an assessment identifies CCV, any children in the relationship should have only supervised contact or no contact at all with the offending parent. These recommendations contrast with family court practice: recent research has identified that allegations of family violence in the Federal Magistrates and Family Courts, proven or otherwise, had little bearing on the outcome of parenting orders (Moloney *et al.* 2007). Perhaps a new and common language will enable advocates to increase judicial accountability in relation to family violence.

5. Ensure theory is informed by practice

Finally, it is important to consider the role practitioners can play in continuing a thoughtful and nuanced critique of the theories of typologies of violence and their application in family law processes. Workers can offer valuable information about how the typologies of violence are being used and their relationship to the safety of victims of intimate partner violence. It is only by informing theory by practice and vice versa that such notions can be rigorously examined, and both theory and practice be informed and strengthened. In this sense, long term monitoring and evaluation of the use of typologies is essential, and case outcomes will be important.

Conclusion

The typologies of intimate partner violence offer both challenges and opportunities for the domestic violence sector, particularly those working with, or advocating for, victims of violence who are accessing family law processes. Notwithstanding the need for an ongoing exploration of the ideas behind the typologies and for immediate concerns regarding how they are applied to be addressed, it is possible that the category of CCV or coercive controlling violence could open up, at last, a shared understanding between family law practitioners and the domestic violence sector.

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