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Senate Finance and Public Administration Committee

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Dear Sir/Madam

Parliamentary Inquiry into the Domestic Violence.

We thank the Senate Finance and Public Administration Committee for allowing us to present our submission to the Inquiry into Domestic Violence. We note that the Committee's terms of reference refer to "*the prevalence and impact of domestic violence as **it affects all Australians***".

Our submission relates to all men, women and children.

Family violence and abuse is a serious and deeply entrenched problem in Australia. It has significant impacts upon the lives of men, women and children. **It knows no boundaries of gender, geography, socio-economic status, age, ability, sexual preference, culture, race or religion.**

Domestic violence between partners, boyfriends and girlfriends (also known as intimate partner violence or IPV); violence between other family members (siblings, parents, children, aunts, uncles, and grandparents); most elder abuse, child abuse and sexual abuse are all different forms of family violence.

Thankfully reducing family violence against women and children has been firmly on the agendas of government for many years. **Now is the time to move to the next, more sophisticated stage of tackling the problem: recognizing men as victims as well.**

Whilst the fact **1 in 3 victims of Family violence is a man**, they are often discriminated by the Government, Police and the Courts.

One in Three is a diverse group of male and female professionals – academics, researchers, social workers, psychologists, counsellors and trainers. The Campaign aims to raise public awareness of the existence and needs of male victims of family violence and abuse; to work with government and non-government services alike to provide assistance to male victims; and **to reduce the incidence and impacts of family violence on Australian men, women and children.**
<http://www.oneinthree.com.au/>

KEY FACTS AND STATS

1. **At least one in three victims of family violence is male**
2. **More than one male per week is a victim of domestic homicide**
3. **Almost one in four young people are aware of their mum/stepmum hitting their dad/stepdad**
4. **Male and female victims of reported domestic assault receive very similar numbers and types of injuries**
5. **Males are almost three times less likely to report being a victim of domestic violence to the police**
6. **Post-separation, similar proportions of men and women report experiencing physical violence including threats by their former spouse**

MALE VICTIMS LACK SUPPORT

While many services have quite rightly been established over the past four decades to support female victims of family violence, **the needs of male victims remain largely unmet.**

Historically government policies have been based on the assumption that the vast majority of perpetrators are male and the vast majority of victims are female, and **the policies of current governments are still based on this erroneous position.**

Indeed, regretfully, the *National Council to Reduce Violence against Women and their Children* did not include male victims in their otherwise laudable March 2009 recommendations which have been enthusiastically supported by the federal government and the Council of Australian Governments.

Now is the time for action by politicians and community leaders to recognise that a comprehensive approach is required to combat the scourge of family violence.

Obtaining protection and restraining orders (ADVO) is significantly more difficult for men and Fathers with children compare to a woman and **gender discrimination is inevitable.**

1. There is **NO Domestic Violence Liaison Officer** available for men and Fathers with children offered by the Police, whilst this service is widely enjoyed and privileged to women only.
2. There is **NO Domestic Violence Liaison Officer/facilities** available for men and Fathers with children at the Courts, whilst this service is widely enjoyed and privileged to women only.
3. There is **NO Domestic Violence Liaison advice line** available for men and Fathers with children offering paramount advice and support in critical situations, whilst this service is widely enjoyed and privileged to women only.
4. There is **NO Domestic Violence information** available for men and Fathers with children at government funded Family Relationship centers, Police stations or Courts, whilst there is ample information for women only, printed on glossy brochures offering step by step instruction of how to obtain an ADVO against their husband/partner.
5. **Men and Fathers with children are often discriminated by the Police**, refusing to apply for an ADVO on their behalf and instead referring them to the Local court to make a private application.
 - a. Men and Fathers with children that is forced to file a private ADVO application in Court due to being discriminated by the Police, is **NOT offered any legal representation and is severely disadvantaged.**
 - b. As a direct result of being without any legal representation, the **ADVO application is often dismissed.**
 - c. As a result of an unsuccessful ADVO application, **cost orders are then sought against the father by the mother who discourages fathers from seeking protection.**
6. Men and Fathers with children seeking protection and restraining orders under the **Crimes (Domestic and Personal Violence) Act 2007** from women are discriminated as the meaning of abuse, harassments and intimidations is significantly diverse;
 - a. **Emotional abuse does NOT apply for men and Fathers with children** at the Courts, whilst this is a widely considered and privileged to women only.
 - b. **Psychological abuse does NOT apply for men and Fathers with children** at the Courts, whilst this is a widely considered and privileged to women only.
 - c. **Economic abuse does NOT apply for men and Fathers with children** at the Courts, whilst this is a widely considered and privileged to women only.

FALSE ALLEGATIONS OF ABUSE

It all starts with women making false allegations of abuse in an attempt to obtain an ADVO!

There is a direct and significant link between an application for a family violence order (ADVO, protection order, restraining order or intervention order) and the contact and residence arrangements later made for children of separated families.

An easily-made family violence allegation will give one parent, normally the mother, a significant advantage against the father. **This is a widely used and well recognized tactic by many women.**

This is both in terms of custody and also financial benefits.

Sole custody then brings with it significant financial gains. These financial gains include increased social security payments, child support payments and property settlements.

Isn't it time Politicians and Police noted the elephant in the room of feminist family law solicitors and police members and Government service providers are running false allegations against men on taxpayers resources causing an immense waste of precious treasury money servicing false reports of violence against innocent men and Fathers with children.

Paying for and enforcing feminist ideology with taxpayer's resources to 'stereotype' and 'stigmatize' innocent men and fathers with children **is deemed DISCRIMINATION.**

It is far beyond time that women making false reports to police and committing perjury in courts and being granted baseless 'restraining orders' are prosecuted under the legislation for persons falsely reporting to police and perjury in courts.

- Providing False witness statements to the Police and Courts is a criminal offence; **CRIMES ACT 1900 - SECT 334**
- Committing Perjury in Court is a criminal offence; **CRIMES ACT 1958 - SECT 314**

To discourage anyone from making false allegations and depleting government resources, Section 99 Costs of the Crimes (Domestic and Personal Violence) Act 2007 ought to apply to any person (women and men) seeking an ADVO through the assistance of either the Police or privately through the Local Court that is based on false allegations.

Referring to the attached research by ***Professor Patrick Parkinson University of Sydney on false reports and baseless ADVO ORDERS*** there is now a very widespread view in the community that some family violence orders are sought for tactical or collateral reasons to do with family law disputes.

A national survey conducted in 2009, with over 12,500 respondents, found that 49% of respondents agreed with the proposition that 'women going through custody battles often make up or exaggerate claims of domestic violence in order to improve their case', and only 28% disagreed.

The view that some family violence order applications are unjustified appears to be shared by state magistrates in New South Wales and Queensland. Hickey and Cumines in a **survey of 68 NSW magistrates concerning apprehended violence orders (AVOs) found that 90% agreed that some AVOs were sought as a tactic to aid their case in order to deprive a former partner of contact with the children.**

A similar survey of 38 Queensland magistrates found that 74% agreed with the proposition that protection orders are used in Family Court proceedings as a tactic to aid a parent's case and to deprive their partner of contact with their children.

90% of surveyed NSW Magistrates agreed that AVOs were sometimes or often sought as a tactic in order to deprive a former partner of contact with the children.

In research recently published on the views of 40 family lawyers in NSW, **almost all solicitors thought that tactical applications for AVOs occurred**, with the majority considering it happened often.

In another study based upon interviews with 181 parents who have been involved in family law disputes, we found a strong perception from respondents to family violence orders (both women and men) that their former partners sought a family violence order **in order to help win their family law case.**

The belief that family violence orders are a weapon in the war between parents is fuelled by the fact that judges are required under the Family Law Act to consider such family violence orders in determining the best interests of the child.

The removal of the cost provision 117AB Family Law Act has further **encouraged mothers to make false allegations of domestic violence and sexual abuse against the fathers** as a weapon and tactic in order to aid their cases.

According to the attached news article published in Sydney Morning Herald 6 July 2013, by Harriet Alexander, Justice Collier says; **"False abuse claims are the new court weapon"**

"Allegations of child sexual abuse are being increasingly invented by mothers to stop fathers from seeing their children, says a retiring Family Court judge.

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.

"When you have heard the evidence, you realise that this is a person who's so determined to win that he or she will say anything. I'm satisfied that a number of people who have appeared before me have known that it is one of the ways of completely shutting husbands out of the child's life.

"It's a horrible weapon."

Such cases are fraught for Family Court judges. Once an allegation has been made it is impossible to ignore. The court must deem whether there is an "unacceptable risk" of abuse occurring in the father's care.

Sometimes the allegations are obviously fabricated, other times they are probably true.

"It's that grey area in the middle that you lose sleep over at night, and you do lose sleep," Justice Collier said.

"They're difficult to disprove. The allegation lingers there."

Barrister Esther Lawson, who sits on the family law committee at the NSW Bar Association, said anecdotally there appeared to be an increase in allegations of sexual abuse coming before the court, but the reasons were unclear.

She also warned that the consequence of false allegations could return to haunt the accuser, including the loss of time with their children.

"Clearly there are cases where there is reliable evidence that sexual abuse has taken place and these matters need to be properly ventilated," Ms Lawson said.

"But if the court finds that allegations have been maliciously motivated then there may be potential consequences, including a change in the child's primary residence."

The real reasons for domestic violence are often disguised behind more significant problems in our overall system although many women's organizations such as *Women's domestic violence and legal service for women* are continuing to fuel their gender war against men and fathers with children.

As widely use by women and mothers to gain sole parental responsibility of children and financial benefits the following steps recommended by government funded prejudice women's organizations outlines the rationale;

1. An application for an ADVO is made in the local court in NSW (or in the magistrate's court in the other states and territories) or at the local police station in most cases based on false or misleading allegations.
2. The police with their limited resources will usually not investigate the false allegations. As a result, the false allegations will usually remain unproved during later court proceedings.
3. When the matter comes to court, the police prosecutor will then pressure the alleged offender, in most cases an innocent father to accept a family violence order "without admission". **This is a trap.**
4. Once an order for a family violence order has been made, the initiating parent in most cases the mother will then make an application for residence and contact orders in the Family Court/Federal Circuit Court.
5. Under section 60CC of the *Family Law Act 1975*, any issues of family violence will be sufficient reason to restrict or, in some cases, prevent all contact between the child and the innocent Father by the Family Court/Federal Circuit Court.
6. This establishes effective sole custody of the children for the custodial parent, in most cases the mother. This then goes "hand in hand" with increased child support payments and larger property settlement payouts.

Recommendations

1. Implement the rebuttable ***presumption of equal time shared parenting*** into the Family Law legislation.
2. Implement ***Section 117AB of the Family Law Act*** which provides that if a party knowingly made a false statement or allegation in the proceedings, the court must make an order against that party.
3. Arrange for the state health departments to have fathers being asked about domestic violence – similar to women.
4. Implement a ***Domestic Violence Liaison Officer*** within the Police force and at the Courts for men and Fathers with children.
5. Implement a ***Domestic Violence advice and support system*** for men and Fathers with children.
6. Have the Family Court/Federal Circuit Court and the Child Support Programme (formerly known as the Child Support Agency) recognise, as psychological violence, withholding access to children from their fathers.
7. Remove ***Section 99 (4)*** *A court is not to award costs against a police officer who makes an application unless satisfied that the police officer made the application knowing it contained matter that was false or misleading in a material particular* of the Crimes (Domestic and Personal Violence) Act 2007.

This will ensure that the Police officer investigate each application on its merits and evidence and NOT based on FALSE ALLEGATIONS.

7. Implement a ***Discrimination Liaison Officer*** at the Police and the Courts to ensure that the meaning of abuse, harassments, and intimidations according to the **Crimes (Domestic and Personal Violence) Act 2007** interprets the same for women and men, mothers and fathers, with or without children.

We trust this submission will assist in implementing a proactive and realistic approach in reducing the incidence and impacts of family violence on **all Australian men, women and children** and to rectifying the system of being abused for parental and personal benefits.

Yours faithfully,

Hans Ekblad

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ONE IN THREE VICTIMS OF FAMILY VIOLENCE IS MALE



Fact Sheet No.1

Overview of recent family violence research findings

Contrary to common beliefs, up to **One in Three** victims of sexual assault and at least **One in Three** victims of family violence is male (perhaps as many as one in two). *When reading the following quantitative statistics it should be remembered that family violence is extremely complex and doesn't just boil down to 'who does what to whom and how badly'. The context of the violence and abuse is extremely important. Abuse can occur without the use or threat of physical violence. Please refer to oneinthree.com.au/faqs for a more detailed and nuanced analysis of family violence and abuse.*

The Australian Bureau of Statistics Personal Safety Survey (2006)¹ is the largest and most recent survey of violence in Australia. It found that:

- 29.8% (almost one in three) victims of current partner violence since the age of 15 were male
- 24.4% (almost one in four) victims of previous partner violence since the age of 15 were male

"She would kick me in the genital area, she'd bite me on the shoulders and scratch my face and neck. She'd threaten to kill herself if I didn't give her the gambling money. Then she'd threaten to kill our son. In the middle of her screaming fits she would tell me and my son that I wasn't his father, even though we both knew he was. She also threatened to have someone bash me up."

Raymond⁹

- 29.4% (almost one in three) victims of sexual assault during the last 12 months were male
- 26.1% (more than one in four) victims of sexual abuse before the age of 15 were male

The SA Interpersonal Violence and Abuse Survey (1999)³ found that:

- 32.3% (almost one in three) victims of reported domestic violence by a current or ex-partner (including both physical and emotional violence and abuse) were male
- 19.3% (almost one in five) victims of attempted or actual forced sexual activity since they turned 18 years of age were male (excluding activity from partners or ex-partners).

Both this survey and the Personal Safety Survey excluded the male prison population where over one quarter of young inmates experience sexual assault⁷.

The Crime Prevention Survey (2001)¹⁰ surveyed young people aged 12 to 20 and found that:

- while 23% of young people were aware of domestic violence against their mothers or step-mothers by their

fathers or step-fathers, an almost identical proportion (22%) of young people were aware of domestic violence against their fathers or step-fathers by their mothers or step-mothers

"I thought of my options. Lock her out of the house as she did to me? The cops would come and take me away. Complain of domestic violence? She was too pretty and dainty for that to work. Leave? I could not abandon my kids. I would rather have died, and thought of it. Fight back? Somehow I couldn't see myself doing it. I don't know if it was cowardice, chivalry or intellect saying 'lay a finger on her even once and all hell will break loose'."

Alan⁹

- an almost identical proportion of young females (16%) and young males (15%) answered "yes" to the statement "I've experienced domestic violence"
- an almost identical proportion of young females (6%) and young males (5%) answered "yes" to the statement "my boyfriend/girlfriend physically forced me to have sex".

The NSW Bureau of Crime Statistics and Research (2005)¹¹ found that 28.9% (almost one in three) victims of domestic assault were male.

The Queensland Crime and Misconduct Commission (2005)² found that 32.6% (almost one in three) victims of family violence reported to police were male.

The Australian Institute of Criminology (2008)⁴ found that 48.7% (almost one in two) adult victims of family homicide and 35.4% (over one in three) victims of intimate partner homicide in 2006-07 were male.

"The next thing I knew there were two police officers at the door. They saw the lump on my head, the black eye, and the bleeding and I told them what had happened. They said my wife had made a complaint that I had assaulted her, so they handcuffed me and put me in a paddywagon. At the station the police said there was 'a high degree of probability' that I would assault my wife again!"

Michael⁹

The Victorian Victims Support Agency (2008)¹⁶ found that 31% (almost one in three) persons admitted to Victorian Public Hospitals for family violence injuries were male.

The Australian Institute of Family Studies (1999)¹⁷ observed that, post-separation, fairly similar proportions of men (55 per cent) and women (62 per cent) reported experiencing physical violence including threats by their former spouse. Emotional abuse was reported by 84 per cent of women and 75 per cent of men.



ONE IN THREE VICTIMS OF FAMILY VIOLENCE IS MALE



A University of Melbourne / La Trobe University study (1999)⁶ found that men were just as likely to report being physically assaulted by their partners as women. Further, women and men were about equally likely to admit being violent themselves. Men and women also reported experiencing about the same levels of pain and need for medical attention resulting from domestic violence.

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

Fergusson & Mullen (1999)⁵, in *Childhood sexual abuse: an evidence based perspective*, found that one in three victims of childhood sexual abuse were male.

The Queensland Government Department of Communities (2009)¹² reported that 40% of domestic and family violence protection orders issued by the Magistrate Court were issued to protect males.

A study of risk factors for recent domestic physical assault in patients presenting to the emergency department of Adelaide hospitals (2004)¹⁵ found that 7% of male patients and 10% of female patients had experienced domestic physical assault. This finding shows that over one in three victims were male (39.7%).

The Australian Institute of Family Studies' evaluation of the 2006 family law reforms (2009)⁸ found that 39% (more than one in three) victims of physical hurt before separation were male; and 48% (almost one in two) victims of emotional abuse before or during separation were male.

“Up until dad left, she held the reins in the house. It was unbearable; her pedantic scrutinies were like police interrogations. He practically made the bloody money, he would give her the lot and than beg for pocket money. Everyone knew of her moods, and dad played always by ear and we managed to get by with little disruption on her part. But there were times when it didn't work. Then... poor dad. I had seen him walking naked in the back yard at night all upset and embarrassed; and I had seen him crawling under the bed to escape her vicious attacks, and I have seen him nursing his fresh wounds in the toilet, and he would say no word against her... When he left mom, I was very sad because I knew that I would miss him, but I felt also happy, because I knew that he was a decent man and that he deserved better.”

(Son talking about his parents)¹³

These 14 authoritative sources agree that up to one in three victims of sexual assault and at least one in three victims of family violence is male (perhaps as many as one in two). Yet the current government appears unable to acknowledge or offer any services for these victims. This conscious neglect is in itself a form of social violence – the Australian Government's human rights obligations require it to cater equitably for the needs of all, regardless of gender. One in three is enough to reject the politics of ideology. It is time to care for all those in need, whether male or female.

To send a message to the Australian Government that *all* victims of violence deserve services and support, go to oneinthree.com.au/action.

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ONE IN THREE VICTIMS OF FAMILY VIOLENCE IS MALE



Fact Sheet No.2

Is men's intimate partner violence (IPV) more severe, and more likely to inflict severe injury?

International studies show that, on average

- Overall, women are injured more than men, but men are injured too, and often seriously²
- The overall physical and psychological effects of IPV are similar for men and women^{1 2 5}

“The authors concluded that their findings argued against theories of greater female vulnerability to pathological outcomes.”⁸

“we also observe evidence that contradicts the idea that violence by male partners tends to be more serious”⁴

- Women and men who use IPV hurt their partners in similar ways (kicking, biting, punching, choking, stabbing, burning, etc), however men are as likely or significantly more likely than women to experience assaults using a weapon^{2 5 6}
- Male perpetrators are more likely to produce minor injuries, but less likely to produce severe injuries²
- Male victims are more likely to suffer serious injuries, while female victims are more likely to suffer minor injuries^{1 2}
- Women are slightly more likely than men to seek medical treatment for their injuries²
- Men and women bear similar intentions when using IPV, leading to similar results when their average differences in physical strength are taken into account (such as when weapons are used)^{3 7}
- Men, having greater strength on average, are more likely to use direct physical violence, while women are more likely to use a weapon to compensate for their lack of strength²
- Women are more likely than men to retaliate to IPV¹⁰

- Reducing women's use of violence will reduce women's rates of injury from violence because a woman's perpetration of IPV is the strongest predictor of her being a victim^{7 11 12}
- Children witnessing IPV by either their fathers or their mothers are more likely to grow up to use violence themselves⁷.

Is focusing on the severity of physical injuries the best approach to reducing violence?

- If men are injured less than women, is this a reason to deny them protection?
- Don't all victims of IPV deserve protection, not just those who are physically injured?
- Does only addressing the outcome of violence (physical injury) distract from addressing the process of violence which can include verbal, emotional, psychological, financial, and other forms of control and abuse?
- Does a focus upon injury ignore the fact that people who use IPV do so to control their partner, not necessarily to injure them? In fact, control of one's partner is often achieved without the use of violence.

“Concentrating on ‘severe’ violence only ignores the fact that the primary intent of fighting spouses is not to injure their partner... but to hurt... Their focus is on getting their way... and making the partner comply with their demands rather than on causing physical injury.”⁹

- Does a focus upon injury ignore the fact that victims of IPV are often hurt more by the violation of the bond of trust and love between them and their partner, than by the physical injury itself?
- Does a focus upon injury in effect give a ‘hitting license’ to weaker partners, who may eventually be severely injured, should their stronger partner retaliate (regardless of the gender of the partners)?

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ONE IN THREE VICTIMS OF FAMILY VIOLENCE IS MALE



Fact Sheet No.3

Is women's intimate partner violence (IPV) more likely to be self-defence or a pre-emptive strike against a violent male partner?

Although it cannot be denied that there are cases in which women and men abuse their partner in self-defence, international studies have found that

- Self-defence is cited by women as the reason for their use of IPV (including severe violence such as homicide) in a small minority of cases (from 5 to 20 per cent)^{1 2 3 5 6 7 9 10 12}

“Studies... found that a relatively low percentage of women endorsed self-defence as a primary motive for violence.”¹³

“Women report using violence against male partners repeatedly, using it against non-violent male partners, and using it for reasons other than self-defence.”³

- In a study where self-defence was given as a reason for women's use of IPV in a large number of cases (42%), it was cited as a reason for men's IPV more often (56%)¹²
- Rather than self-defence, reasons commonly given by both women and men for their use of IPV include
 - ✦ coercion (dominance and control)
 - ✦ anger
 - ✦ punishing a partner's misbehaviour
 - ✦ jealousy
 - ✦ confusion
 - ✦ “to get through” (to one's partner)
 - ✦ to retaliate
 - ✦ frustration^{6 7 8 9 12}
- Rather than self-defence, reasons commonly given by women for their use of IPV include
 - ✦ disbelief that their male victims would be injured or retaliate

- ✦ they wished to engage their partner's attention (particularly emotionally)
- ✦ their partner not being sensitive to their needs
- ✦ their partner being verbally abusive to them
- ✦ their partner not listening to them^{3 8 9}
- Reciprocal partner violence (which makes up approximately 50 per cent of all IPV and is the most injurious to women) does not appear to be only comprised of self-defensive acts of violence^{2 3 13}
- Men and women initiate IPV (both minor and severe) at around the same rates and women are equally likely or more likely to perpetrate violence against a non-violent partner^{2 3 11}
- Women are more likely than men to hit back in response to provocation²
- Women are more likely than men to kill their partner in self-defence, however overall, only 10 to 20 per cent of women's partner homicides are carried out in self-defence or in response to prior abuse^{4 11}

“Important is the finding that women's allegations of DV were proven to be false. In most cases, the initial allegations of DV were modified considerably by them during the course of the study, particularly when they were faced with the accounts of their children and mothers, admitting in the end that they were neither victims of violence nor acting in self-defence.”¹⁰

- Women's use of IPV, rather than being reactive to male violence, is predictable by kindergarten age, and certainly by the teenage years. Aggressive girls grow up to be aggressive adults. High incidence rates of personality disorders are found in both male and female court-mandated samples of IPV perpetrators. Women who kill their husbands are just as likely to have criminal records as women who kill in other circumstances.^{2 4 11 12}

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ONE IN THREE VICTIMS OF FAMILY VIOLENCE IS MALE



Fact Sheet No.4

Is men's violence towards women most often an attempt to control, coerce, humiliate or dominate by generating fear and intimidation, while women's intimate partner violence (IPV) is more often an expression of frustration in response to their dependence or stress, or their refusal to accept a less powerful position?

International studies show that,

- Dominance by either partner is a risk factor for IPV (both minor & severe). It is the injustices and power struggles that are associated with inequality in relationships that give rise to violence, not just the inequality of male dominance^{1 2 9 13}

“The results of this study suggest important conclusions about two widely held beliefs: that partner violence is an almost uniquely male crime and that when men hit their partners, it is primarily to dominate women, whereas partner violence by women is an act of self-defence or an act of desperation in response to male dominance and brutality. These beliefs were not supported by the results of this study.”⁹

- Empirical research on American couples has found that the vast majority of relationships involve equal power between partners. Relationships in which one partner is dominant are in the minority, and are just as likely to be female-dominant as male-dominant⁹.
- Egalitarian couples are the least violent, while both male and female dominance are associated with increased IPV¹³
- Both husbands and wives who are controlling are more likely to produce injury and engage in repeated violence⁵
- Coercion (control and domination) is a frequently cited reason by women for their own use of IPV, and by male victims for their partner's use of IPV⁹

“Abuse was not just a sum of violent acts, but in almost all cases it constituted a system that was imposed upon the abused spouse, that dominated his whole life. The study reported that abusive women assumed total control of the relationship, e.g. by getting hold of power producing resources, imposing themselves upon the husband by enforcing authority over him or indirectly making serious threats to frighten him into submission.”¹⁰

- Even in research samples selected for high rates of male aggression (such as shelter samples), women sometimes report using comparative frequencies of controlling behaviour^{7 9}

“Partner violence is more a gender-inclusive systemic problem than it is a problem of a patriarchal social system which enforces male dominance by violence.”¹³

- Risk factors for IPV for both women and men include dominance, but also include youthfulness, self-defence, angry and antisocial personalities; alcohol and illicit drug use; conflict with partner; communication problems; criminal history; jealousy; negative attributions about the partner; partner abuse, sexual abuse and neglect histories; relationship satisfaction; stressful conditions; depression; traditional sex-role ideology and violence approval^{2 9 11}.
- Factors associated with the use of controlling behaviours include socioeconomic status, ethnicity, education level, age and length of marriage (but not gender)⁵
- Female IPV is not a response to male aggression but, like male IPV, follows developmental trajectories including crystallising into personality disorders. Aggressive girls grow up to be aggressive adults (as do aggressive boys)¹
- After analysing for verbal aggression, fear, violence and control by each gender, husbands are found to be no more controlling than wives^{1 2 7 9 13}. Men and women may differ in their methods of control, but not their motivation to control⁵. Men are more likely to prevent their partner from knowing about or having access to family income even when they ask; and prevent their partner from working outside the home. Women are more likely to insist on knowing who their partner is with at all times; insist on changing residences even when their partner doesn't want or need to; and try to limit their partner's contact with family and friends. Relatively few men or women engage in any of these controlling behaviours⁴.

“The... hypothesis that dominance by either partner, not just the male partner, is a risk factor for violence was also supported. In fact, this study found that dominance by the female partner is even more closely related to violence by women than is male-dominance. The results on dominance as a risk factor for violence, like the results on symmetry and asymmetry in perpetration, apply to both minor violence and severe violence. This contradicts the belief that when women hit, the motives are different, and that male-dominance is the root cause of partner violence. Thus, the results in this paper call into question another basic assumption of most prevention and treatment programs.”¹³



ONE IN THREE VICTIMS OF FAMILY VIOLENCE IS MALE



“The same distortion of the scientific evidence by selective citation applies to discussion of dominance and control. Only studies showing male use of violence to coerce, dominate, and control are cited despite a number of studies showing that this also applies to violence by female partners.”³

- Controlling behaviours exhibited by abusive women include
 - ♦ the use of threats and coercion (threatening to kill themselves or their husbands, threatening to call the police and have the husband falsely arrested, threatening to leave the husband)
 - ♦ emotional abuse (making the victim feel bad about himself, calling him names, making him think he is crazy, playing mind games, humiliating him, making him feel guilty)
 - ♦ intimidation (making him feel afraid by smashing things, destroying his property, abusing pets, displaying weapons)
 - ♦ blaming the men for their own abuse or minimising the abuse
 - ♦ using the court system to gain sole custody of the children or falsely obtain a restraining order against the victim
 - ♦ isolating the victim by keeping him away from his family and friends, using jealousy to justify these actions
 - ♦ controlling all of the money and not allowing the victim to see or use the chequebook or credit cards⁹
- In a large recent Canadian study, victimisation by repeated, severe, fear-inducing, instrumental violence (often called intimate terrorism) was reported by 2.6% of men and 4.2% of women in the last five years. Equivalent injuries, use of medical services, and fear of the abuser were also discovered, regardless of the gender of the perpetrator and the victim¹.

Do men who are violent in intimate relationships typically underreport their violence?

International studies show that,

- Both sexes tend to over-report minor acts of violence they commit, under-report serious acts they commit, and over-report serious acts they suffer²
- The same results are obtained regarding the relative frequency of men’s and women’s violence regardless of whether men or women are the ones being questioned².

“The rate of minor assaults by wives was 78 per 1,000 couples, and the rate of minor assaults by husbands was 72 per 1,000. The Severe assault rate was 46 per 1,000 couples for assaults by wives and 50 per 1,000 for assaults by husbands. Neither difference is statistically significant. As these rates are based exclusively on information provided by women respondents, the near equality in assault rates cannot be attributed to a gender bias in reporting.”¹²



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ONE IN THREE VICTIMS OF FAMILY VIOLENCE IS MALE



Fact Sheet No.5

Are male victims of intimate partner violence (IPV) far less likely to be afraid or intimidated than female victims?

International studies demonstrate that

- Males are taught by sex-role conditioning not to admit fear, making it appear that women are more fearful simply because they report fear more freely than men^{1 2}

“In most cases, the wife's intent to control and dominate the husband entailed efforts to induce fear in him relating to his personal safety as well as the fate of the children and property in general. She would often threaten to burn the house down, hurt the children or animals, or kill herself, him or the children: she would often drive dangerously to frighten him, and make him realise how serious and dangerous she could be. This generated intimidation, insecurity, and fear in the husbands and the family members in general.”⁵

- Women and men have different perceptions of danger and use fear-scales quite differently. Women are twice as likely as men to fear death from a partner, when the actual probability of being killed is the same. Women may over-react to objective threat, while men probably under-react^{1 2}.

“Men reported also symptoms such as tightness in the stomach, muscular pain, racing pulse, thought distortion, and panic attacks. Perpetual fear and being 'on guard' were experienced by most participants. Other commonly expressed reactions were, feelings of lack of control and inadequacy and constant denigration of the man, which often caused him to accept his partner's view of him, and to lose self esteem.”⁵

- Women's greater fear of male violence, where it exists, could also simply stem from the greater average size and strength of men, rather than from any difference in motives between men and women who use IPV⁴.

- Men have rarely had their fear of female violence assessed. One of the few studies to do this found that a substantial minority of male victims of IPV feared their partner's violence and were stalked. Over half the men were fearful that their partners would cause them serious injury if they found out that he had called the domestic violence helpline^{2 3}.

“The feminist view is that all male violence is designed to generate fear to enable coercion. The data suggest a motivational profile for use of violence by either gender is far more complex. The question for feminists remains given that research indicates high levels of female violence, much of it against non-violent males and hence not in self-defence; how is that violence any different from male violence? How can male violence still be depicted as being in pursuit of power and control when female violence is also frequent and, according to the women themselves, not defensive?”²

- Another such study of male victims of IPV found that “perpetual fear and being ‘on guard’ were experienced by most participants”⁵ It is important to note that men's fear is often internalised and thus invisible to the outside observer.
- There is little evidence to support the assertion that all male violence is designed to generate fear in women to enable coercion. In fact the data shows that both men and women have much more complex motives behind their use of IPV².

“Analog studies of fear induction in response to intimate conflicts found that women would report more fear even when exposure to the stimulus (a videotaped conflict between others) could not possibly be threatening or endangering... Men use fear scales differently and are less likely to report fear as opposed to other emotions. Creating police responses based on who is most afraid means perpetrators can be arrested based on reported internal reactions that cannot be corroborated.”¹

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Family Law Legislation Amendment (Family Violence) Bill 2011

Submission to Senate Committee on Legal and Constitutional Affairs

Prof. Patrick Parkinson, University of Sydney

There are many features of this Bill which I consider will lead to an improvement of the law as it affects victims of violence. In particular, I support the removal of the friendly parent provision in s.60CC(3) and the costs provision in s.117AB, not because I think the courts have improperly applied these provisions over the past four years but because advocacy groups have been worried by them and these groups have offered anecdotal evidence to the effect that lawyers have advised clients not to raise domestic violence issues because of these provisions. The removal of such provisions will not in any way impair the capacity of the courts to resolve cases justly, but will have benefits in terms of community understanding of the legislation.

The Bill is greatly improved from the Exposure Draft and some of my comments on that Draft have been taken on board by the Attorney-General's Department. There are a few matters nonetheless that I think I need to draw to the attention of the Committee. In summary, my recommendations are

Recommendation 1

Item 8:

(a) Rewrite the opening words of the definition of family violence in s.4AB(1) as follows:

“family violence means aggressive, threatening or other such behaviour by a person that is intended to coerce or control a member of the person's family (the *family member*), or that causes the family member to be fearful.”

(b) In s.4AB(2), delete subsection (g).

Recommendation 2

Item 19: Change to:

Repeal the paragraph, substitute:

“(k) any concerns a parent has for the child’s safety.”

Recommendation 3

Item 21: Proposed section 60CI. Delete all references to ‘notifications’ or ‘reports’ with the effect that the duty is to inform the court if they know that a matter has actually been investigated by the prescribed State or Territory agency.

1. *Definition of family violence*

This definition is greatly improved from the version in the Exposure Bill. A few problems remain.

a) The problem of tortology

The Department has gone with a formulation that was used by the Australian and New South Wales Law Reform Commissions. As it has been translated into the Bill, the definition now reads in part: “*family violence* means violent, threatening or other behaviour....”

In my view, it is not a good idea to include in a definition the word that one is defining, or a slight variant of it. To say that violence means ‘violent’ behaviour indicates that the word ‘violent’ in the definition is being given some more limited meaning than ‘family violence’ as a whole, without stating what is meant by ‘violent’ in this more limited sense. Given the level of definition inflation associated with the word ‘violent’ these

days, I suggest the opening words be amended to: “aggressive, threatening or other such behaviour.”

b) The issue of coercion and control

The opening words of the definition require that the behaviour complained of “coerces or controls” a family member. It does not specifically say that the person accused of such behaviour needs to have the intention of coercing or controlling. It would certainly be problematic if someone could be held to have engaged in ‘violent’ behaviour without intending to do so, because his or her former partner felt coerced or controlled.

It is also not clear how to prove that the behaviour had the effect of coercing or controlling. Does the person complaining of the behaviour need to demonstrate that she would have made different choices about something but for the alleged coercive or controlling behaviours, or is it sufficient that a person *says* that they felt coerced or controlled by the behaviour? If the latter, what if no reasonable person would have felt coerced or controlled?

I think it would be helpful for the Parliament to refine the definition further to indicate what needs to be proven here. In my view, it would make the law clearest to focus on intent, because intent can be inferred from the behaviour and this resolves the other problems of interpretation. For this reason I recommend the following formulation:

“...behaviour by a person that is intended to coerce or control a member of the person’s family (the *family member*), or that causes the family member to be fearful.”

c) Financial autonomy

The proposed subsection (g) is as follows:

“unreasonably denying the family member the financial autonomy that he or she would otherwise have had”.

The literature on coercive, controlling violence indicates that one aspect of coercion and control is ‘financial abuse’ or ‘economic abuse’. The central meaning is that perpetrators

use financial control as a form of subjugation, along with physical violence or the threat of it, verbal abuse, social isolation and other intimidatory and controlling strategies. While that is what people generally mean by 'financial abuse', defining it is not straightforward.

I am concerned that subsection (g) is far too broad, even though it must also be shown that this behaviour was a form of coercion or control. The proposed clause raises all sorts of issues about control of finances in domestic relationships - what is reasonable, what is unreasonable, and what is 'violence'. Many women control the family finances and deprive men of the financial autonomy that they would have had by so doing. Many men control the family finances as well. It is very often one partner who takes responsibility for meeting the bills. While I have no doubt that the judges will do their best to try to interpret this provision sensibly, in my view it is preferable if the legislation does not open up endless arguments by self-represented litigants on such issues. In my view, this provision in the legislation has very little potential to be helpful and much potential for the opposite, and I would delete it.

The issue of financial abuse is addressed again in subsection (h), and this ought to be adequate as a way of including an example of financial abuse in this section of the Act.

2. Family Violence Orders

The proposed s.60CC(3)(k) is as follows:

(k) any family violence order that applies to the child or a member of the child's family;

This reverts the subsection to what it was prior to 2006.

In his report on family violence, Prof. Chisholm recommended the deletion of this paragraph on family violence orders entirely. He considered that while the Court needs to know about the existence of a family violence order, "what is important is that the court should learn about the *factual circumstances* that might suggest a risk to the child or other person, regardless of what was the basis of a previous family violence order."¹

¹ The Hon. Richard Chisholm, *Family Courts Violence Review* (Canberra: Attorney-General's Department, 2009) at p.140.

I made a similar recommendation in my response to the Exposure Draft.

The Attorney-General's Department has not accepted Prof. Chisholm's recommendation, or mine, but I respectfully suggest this needs to be reconsidered by the Parliament. Indeed, I think it is very important to delete s.60CC(3)(k) in order to increase public confidence in state and territory family violence orders.

There is now a very widespread view in the community that some family violence orders are sought for tactical or collateral reasons to do with family law disputes. People have become very cynical about them. A national survey conducted in 2009, with over 12,500 respondents, found that 49% of respondents agreed with the proposition that 'women going through custody battles often make up or exaggerate claims of domestic violence in order to improve their case', and only 28% disagreed. While it might be expected that men would be inclined to believe this, 42% of women did so as well.

The view that some family violence order applications are unjustified appears to be shared by state magistrates in New South Wales and Queensland. Hickey and Cumines in a survey of 68 NSW magistrates concerning apprehended violence orders (AVOs) found that 90% agreed that some AVOs were sought as a tactic to aid their case in order to deprive a former partner of contact with the children. About a third of those who thought AVOs were used tactically indicated that it did not occur 'often', but one in six believed it occurred 'all the time'.² A similar survey of 38 Queensland magistrates found that 74% agreed with the proposition that protection orders are used in Family Court proceedings as a tactic to aid a parent's case and to deprive their partner of contact with their children.³

In research that our research team recently published on the views of 40 family lawyers in NSW, almost all solicitors thought that tactical applications for AVOs occurred, with

² J Hickey and S Cumines, *Apprehended Violence Orders: A Survey of Magistrates*, Judicial Commission of New South Wales, Sydney, 1999, p 37.

³ B Carpenter, S Currie and R Field, 'Domestic Violence: Views of Queensland Magistrates' (2001) 3 *Nuance* 17 at 21.

the majority considering it happened often.⁴ In another study based upon interviews with 181 parents who have been involved in family law disputes, we found a strong perception from respondents to family violence orders (both women and men) that their former partners sought a family violence order in order to help win their family law case.⁵ This is a quote from one of the women in our study. Her former husband, who we also interviewed, sought an apprehended violence order (AVO) to keep her away from the house after she had left it. She said this:

I thought this is ridiculous. What's he giving me an AVO for? I haven't done anything to him. I haven't hit him, kicked him. We never had any violence in our marriage. Why have I got an AVO? And apparently the AVO was ... you can put an AVO on someone and say that they're violent, and the only way you can get a child off their mother is because they're violent. And that's why I think he gave me the AVO.

The belief that family violence orders are a weapon in the war between parents is fuelled by the fact that judges are required under the Family Law Act to consider such family violence orders in determining the best interests of the child. The proposed clause in this Bill takes the law back to what it was before 2006, without any explanation for why Parliament should reverse its previous decision at least to limit the provision. It really doesn't matter whether this belief that family violence orders are used tactically is true or not. The fact is that the perception is out there and it is held by state magistrates and family lawyers, as well as the wider community. The retention of this provision in the Family Law Act simply fuels the suspicion that family violence orders are being misused. This is damaging to the credibility of the family violence order system and the courts.

The second reason why the requirement to consider family violence orders ought to be removed is that this serves absolutely no purpose. Yes, the court needs to know about the existence of a current family violence order in order to consider how to frame its

⁴ Parkinson, P, Cashmore J and Webster A, "The Views of Family Lawyers on Apprehended Violence Orders after Parental Separation" (2010) 24 *Australian Journal of Family Law* 313.

⁵ Parkinson P, Cashmore J and Single J, 'Post-Separation Conflict and the Use of Family Violence Orders', *Sydney Law Review* (2011, in press).

own orders (s.60CG), but that is dealt with by requiring people to inform the court of such orders (s.60CF). Why consider them again in deciding what is in the best interests of a child (s.60CC(3))? The court is already required to consider the history of violence. What does it add to require the court also to consider a family violence order? The impression given by the legislation is that these orders are somehow evidence that there has been violence. However, that is a misunderstanding.

Family violence orders have absolutely no evidential value in the vast majority of cases. This is because, in the vast majority of cases, *they are consented to without admissions*. The hearings in these uncontested cases are very brief indeed. Prof. Rosemary Hunter, in observations in Victoria in 1996–97, found that the median hearing time for each application was only about three minutes.⁶ Applications were typically dealt with in a bureaucratic manner, with magistrates being distant and emotionally disengaged.⁷ To the extent that applicants were asked to give oral evidence, they were typically asked to confirm the content of their written application, and very little exploration of the grounds for the application took place.

Dr Jane Wangmann, in a recent analysis of court files in NSW, reached finding very similar to Hunter's. In her observations of AVO matters in 2006–7, she found, like Hunter, that cases were dealt with in three minutes or less.⁸ She also noted that the information provided in written complaints was brief and sometimes vague.⁹

It is hardly surprising, then, that judges in family law cases draw no inferences from the mere existence of a family violence order. This has been the clear view of family lawyers for the last 15 years.¹⁰ Indeed, in the research we recently published on the views of 40

⁶ Rosemary Hunter, *Domestic Violence Law Reform and Women's Experience in Court: the Implementation of Feminist Reforms in Civil Proceedings* (2008), at 77, 81–2.

⁷ Hunter, *ibid* 84–8.

⁸ Jane Wangmann, *'She said...' 'He said...': Cross Applications in NSW Apprehended Domestic Violence Order Proceedings*, PhD thesis, University of Sydney, (2009), at 98–100.

⁹ *Ibid* 104–5.

¹⁰ Rosemary Hunter, above note 6 at 256; Tom Altobelli, 'Family Violence in Children's Cases: Implications in Practice Pt I,' (1998) 13 *Australian Family Lawyer* 6 at 12; John Dewar and Stephen

family lawyers in NSW, none of the lawyers who responded to the question believed that judicial officers gave AVOs much consideration in determining parenting disputes. Judges, they indicate, want to evaluate the evidence of violence itself, not the fact that another court has made an order about it by consent and without admissions.¹¹

Thirdly, it is quite likely that many state family violence orders will have been based upon allegations of conduct that fall outside of the definition of family violence in this Bill. The grounds upon which such orders may be sought vary from one jurisdiction to another. In some states and territories, the grounds for family violence orders could cover a wide range of behaviours. In Tasmania's *Family Violence Act 2004*, for example, the definition of family violence includes "verbal abuse", which is not defined.¹² There is also no need to show that this was part of a pattern of coercive control or caused fear, as the new definition in the Family Law Act will require. Similarly, Victoria's *Family Violence Protection Act 2008* offers a broad definition of family violence which includes emotional, psychological and economic abuse.¹³ Emotional or psychological abuse includes behaviour that is 'offensive to the other person'.¹⁴ In the Australian Capital Territory, conduct which is offensive to a relevant person is also termed 'domestic violence'.¹⁵ It follows that even where a family violence order has been contested, the grounds for the application may not constitute 'family violence' under the Family Law Act.

In the light of these considerations, I think a compelling case has to be presented for the continuing inclusion of this provision about family violence orders in the Family Law Act. I recommend that this para be replaced instead with a paragraph that requires the court to consider 'any concerns a parent has for the child's safety'. This goes beyond concerns about violence and abuse to require consideration also of other threats to

Parker, 'The Impact of the New Part VII Family Law Act 1975' (1999) 13 *AJFL* 104 at 110; Rae Kaspiew, 'Violence in Contested Children's Cases: An Empirical Exploration', (2005) 19 *AJFL* 112 at 119.

¹¹ Patrick Parkinson, Judy Cashmore & Atlanta Webster, 'The Views of Family Lawyers on Apprehended Violence Orders after Parental Separation' (2010) 24 *AJFL* 313.

¹² *Family Violence Act 2004* (Tas) s 7.

¹³ *Family Violence Protection Act 2008* (Vic) s 5.

¹⁴ *Ibid* s 7.

¹⁵ *Domestic Violence and Protection Orders Act 2008* (ACT) s 13(1).

safety as a consequence of mental illness, drug and alcohol abuse or even concerns about issues such as driving. The source of the threat is less important than the fact of it, and parents may be particularly concerned about safety issues with young children, as a parent's protective instincts are very strong.

Reporting notifications of abuse

Proposed section 60CI provides that the Court be informed about notifications of abuse as well as investigations of abuse. It seems to me that what the court really needs to know is whether there has been a child protection investigation, not whether there has been a notification. In Australia, hundreds of thousands of notifications or reports now occur each year (339,454 in 2008-09). Only about half are investigated and in some cases even that investigation may be cursory. There is a great deal of room for argument about what is a notification and what is not. Does it have to meet the statutory criteria to be classified as a notification or report? Is any phonecall expressing concern about a child a notification or report? I think it is best to avoid that conundrum and also avoid swamping the court with information it may be able to do little with. Often one parent has made a report about the other, and there is no shortage of complaints of abuse in parents' affidavits. They will tell the court without being mandated.

I trust this is of assistance.

Patrick Parkinson
April 2011

False abuse claims are the new court weapon, retiring judge says

Harriet Alexander

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Allegations of child sexual abuse are being increasingly invented by mothers to stop fathers from seeing their children, says a retiring Family Court judge.

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.

"When you have heard the evidence, you realise that this is a person who's so determined to win that he or she will say anything. I'm satisfied that a number of people who have appeared before me have known that it is one of the ways of completely shutting husbands out of the child's life.

"It's a horrible weapon."

Such cases are fraught for Family Court judges. Once an allegation has been made it is impossible to ignore. The court must deem whether there is an "unacceptable risk" of abuse occurring in the father's care.

Sometimes the allegations are obviously fabricated, other times they are probably true.

"It's that grey area in the middle that you lose sleep over at night, and you do lose sleep," Justice Collier said.

"They're difficult to disprove. The allegation lingers there."

Barrister Esther Lawson, who sits on the family law committee at the NSW Bar Association, said anecdotally there appeared to be an increase in allegations of sexual abuse coming before the court, but the reasons were unclear.

She also warned that the consequence of false allegations could return to haunt the accuser, including the loss of time with their children.

"Clearly there are cases where there is reliable evidence that sexual abuse has taken place and these matters need to be properly ventilated," Ms Lawson said.

"But if the court finds that allegations have been maliciously motivated then there may be potential consequences, including a change in the child's primary residence."

It is rare for Family Court judges to speak publicly about their views. Many are still haunted by the 1980 murder of Justice David Opas and 1984 bombings of the Parramatta Family Court building and homes of two judges.

Judgments are now more involved, partly so the losing party can understand the reasoning behind decisions. Justice Collier said the cases were also more complicated, as litigants raise more matters and run each of them to earth. Facebook pages are frequently called into evidence.

"A mother declares she lives a chaste and modest life and then on Facebook says, 'Guess what I did last night', and Dad's only too happy to put it before you."

He puts much of the venom down to a generation of people more assertive of their rights, and now entering relationships.

But it disheartens him to leave the court so, after a satisfying career. He used to keep a magic wand, which he has now passed on to his colleague Justice Bill Johnson.

"I wished I could wave that magic wand and say, 'Be nice to each other'," Justice Collier said. "That's the only order I would have to make."

This story was found at: <http://www.smh.com.au/national/false-abuse-claims-are-the-new-court-weapon-retiring-judge-says-20130705-2phao.html>