“Bold new path on domestic violence” (Horin, 2007), and “Exposing the anti-male myth” (Arndt, 2007) are examples of the headlines that the Australian Institute of Family Studies Allocations of Family Violence and Child Abuse in Family Law Children’s Proceedings report (Moloney, et al., 2007) generated. A recent radio interview heard the principal researcher, Lawrie Moloney, trying to highlight key findings, only to be steered towards a discussion about the notion of ‘situational violence’ (Moloney & Bagshaw, 2007). It seems that while a mass of data has been examined to try and make sense of allegations of family violence and child abuse in family law proceedings, what is newsworthy is the idea that there is a need to differentiate forms of domestic violence. It is important, therefore, that the domestic violence sector responds not only to the key findings in this research, but also to the debate about definitions of family violence. This essay will begin with a review of some of the central findings in the report and their implications for improved practice in responding to allegations of family violence, and will then consider the reinvigorated debate about when domestic violence is really domestic violence.

**Allegations of family violence and implications for parenting arrangements**

The report found that more than half the cases sampled contained allegations of family violence and/or child abuse, and that in most of these cases allegations were considered by the researchers to be severe. In the relatively few cases in which strong evidence was provided, it was more likely to be supplied by mothers. Importantly, in most cases where family violence was alleged, there was either no response, or respondents made denials but provided no evidence. Contact was rarely denied by the Family Court, and orders for overnight stays were common, even where there were serious allegations of family violence. However, where there was strong evidence of severe violence, contact was more likely to be restricted to daytime only.

These findings are important, given the context in which this research was commissioned. There is a widespread belief in the community that women frequently make up allegations of family violence to influence family court proceedings (VicHealth, 2006, p. 24). Fuelled by fathers’ rights groups, and despite research to the contrary, even federal politicians have accepted the myth that in many cases allegations of violence are false. According to Jaffe and colleagues, this is an internationally widespread belief which, although erroneous, has significant implications for the way in which domestic violence allegations are dealt with in the family law system (Jaffe, Crooks, & Bala, 2006; Jaffe, Lemon, & Poisson, 2003). The Institute’s research, while not able to assess the veracity of allegations, reviews research (e.g. Bala, Jaffe, & Crooks, 2007) that concludes that in most cases allegations are true, and that in many more cases denials of family violence are likely to be false. Of most concern in this report are the findings that suggest that, even where violence is alleged, unless it is accompanied by strong evidentiary material it has little impact on post-separation contact arrangements. While the data in this research were collected before the Family Law Amendment (Shared Parental Responsibility) Act 2006, there is clearly concern that when some form of shared care is considered the default position, allegations of family violence will continue to be minimised and overlooked.

This report clearly identifies that where there is any risk of violence or abuse to children or a caregiver, safety must take precedence over contact, particularly in interim hearings. It argues that “the core need here is the early identification of those cases that suggest a significant present or future risk to former partners and/or their children. Once identified, such cases require the speedy endorsement … of interim arrangements that, in the short term, prioritise safety over parent-child relationships” (p. 121). Within the current legislation, the obvious dilemma is how to balance the two primary considerations of a child’s right to know and be cared for by both parents, with a child’s right to be safe from harm when, in many of the cases before the Family Court, these two considerations may be incompatible.

**Differentiating family violence**

More widely, this report has already generated great interest in its discussion of discriminating between forms of family violence. For workers within the domestic violence sector, the notion that domestic violence includes many different kinds of behaviour, which have widely diverse and individual impacts on victims, is well understood. There are tensions that this debate will touch on that are extremely important. In the context of a strongly pro-contact culture that often minimises safety considerations, and vociferous lobbying by various men’s groups that insist on de-gendering family violence, any discussion about how to differentiate between kinds of violence is one in which the domestic violence sector must be involved. Furthermore, it is clear that the theoretical and empirical lack of differentiation of family violence in all aspects of the legal system, including screening, risk assessment and judgements made, compromise effective and sophisticated responses to family violence when determining parenting arrangements.

The authors of this report examined US sociologist Michael Johnson’s typology, which discriminates between ‘situational couple violence’, ‘violent resistance’ and ‘domestic terrorism’ (Johnson & Ferraro, 2000). We understand that family violence comes in different shapes and sizes, but we know that in everyday relationships power can shift between partners and, in some relationships, men and women may act abusively on occasions. This behaviour does not generate the kind of ongoing power imbalance, fear or risks to safety that we understand to be the defining features of ‘domestic violence’. According to Johnson (1995), ‘situational couple violence’ is largely non-gendered, and arises in specific situations of stress or conflict. It is often reciprocal or ‘mutual’. This category has been useful to help us understand the results of large-scale...
Moving beyond the ‘situational’: A more complex differentiation of family violence

Discrimination between forms of violence must include a range of dimensions that extend beyond physical types and the frequency of incidents. It must include assessments of non-physical forms of abuse, aspects of power and control, levels of restriction, levels of fear, the impact of violence on partners and children, and the client’s own assessment of future risk. In the context of determining post-separation parenting arrangements, a thorough understanding of future risk is imperative. Furthermore, any classification of family violence must take into account the context in which the violence occurs, that family violence is both a gendered and an individual experience. These nuances are understood in non-legal disciplines, but as Behrens (2006) argues, “we need to ... find better ways to translate that knowledge into legal decision-making, legal processes and legal instruments” (p. 232).

The work of Jaffe et al. (2006), cited extensively towards the end of the report, is extremely useful in thinking about complex ways of differentiating violence in the context of developing parenting arrangements. Jaffe et al. argue that in fact there are three broad dimensions that need to be considered in parenting arrangements after family violence. The first is a continuum measuring the nature, frequency and severity of family violence. The second continuum that must be also be assessed is that of ‘situational violence’, which ranges from high to low and will determine the kind of parenting arrangement, from co-parenting through to no visitation. What is clear in the Institute’s report, and is recognised internationally, is that there needs to be a more formally structured approach to information gathering, with the use of well-recognised and validated assessment protocols (p. 122). Alongside this, a wide range of professionals working in the family law system, including those in Family Relationship Centres and other Family Dispute Resolution Services, require training and skills development in understanding family violence and assessing risk.

To conclude, the Institute’s report provides evidence that challenges some community misconceptions. It reviews evidence that suggests that false denials are considerably more common than false allegations. It demonstrates that where violence is alleged, within a climate of pro-contact, it had only a very modest bearing on determinations of parenting arrangements. It also highlights the fact that allegations of family violence are not an aberration, but are the core business of the Family Court. As the report argues, “the core challenge facing the response of contemporary family law to matters involving children is this: can non-adversarial, child-sensitive dispute resolution and decision-making processes that begin with a presumption of sharing post-separation parenting arrangements work in tandem with the formal assessment and management of the risks associated with family violence?” (p. 121). DVIRC strongly support the need for different paths through the legal system for families where violence is alleged (Jaffe et al., 2006). Behrens (2006) argues that we need separate pathways for cases involving what she calls “controlling domestic violence”. A separate pathway should be one where the “pro-contact ethos” has no place ... and where women’s and children’s safety is given the highest priority” (p. 233). To do this, we need appropriate screening, training and expertise, a well-resourced and integrated systemic response, and a cultural shift that recognises that allegations of violence and the experience of violence must be paramount when considering parenting arrangements.

References