

**STALKING, SEXUAL ASSAULT, DOMESTIC VIOLENCE:
WHAT'S IN A NAME?**

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Earlier this year Judith Durham was stalked by a business associate over a period of several months. While, from the media reports there appeared to be no threats to physical safety, the stalking obviously caused Ms Durham considerable distress and the media followed the unfolding events, giving it front page and headline coverage and discussing the issue of stalking. The woman stalking Ms Durham was eventually charged and convicted.

A few years earlier a woman, Lucy, sought escape from her violent husband by going to a women's refuge with her four young daughters. Her husband went to great lengths to follow her, so that Lucy had to be accommodated in three different refuges in succession because her husband found where she was. Finally her husband found the country town where Lucy's last refuge was, through manipulating a bank teller into showing him Lucy's bank statement. He then staked out the local school and eventually found the refuge where Lucy was staying. He followed her when she left the refuge and he stabbed her and killed her. He killed her. But Lucy's death rated a small box in the Age newspaper saying a woman had been stabbed in a park. Her husband's behaviour was never described as stalking, yet he had caused her to live in a state of constant fear. He ensured that she had no place of safety. He stalked her. But his behaviour was fitted under the all inclusive term 'domestic violence' and even when he was convicted of her murder it did not rate front page coverage.

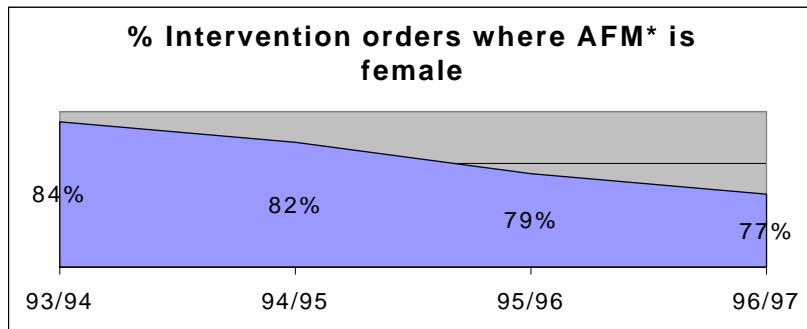
What we want to do in this paper is explore whether the introduction of the crime of stalking and the ability to apply for intervention orders on the basis of stalking regardless of the relationship with the stalker, has hidden the reality of women's experiences of violence. We want to explore the 'gendered nature' of stalking and place behaviours identified as stalking firmly in the context of part of the continuum of violence perpetrated by men against women. By placing the behaviours as part of the continuum we can recognise that the behaviour is not solely the province of those with intellectual or psychiatric disabilities.

We will do this by considering the Victorian statistics on intervention orders. We will also bring you the reality of women's experiences of violence from our perspective of listening to the thousands of women's voices who contact our service for support around sexual violence each year.

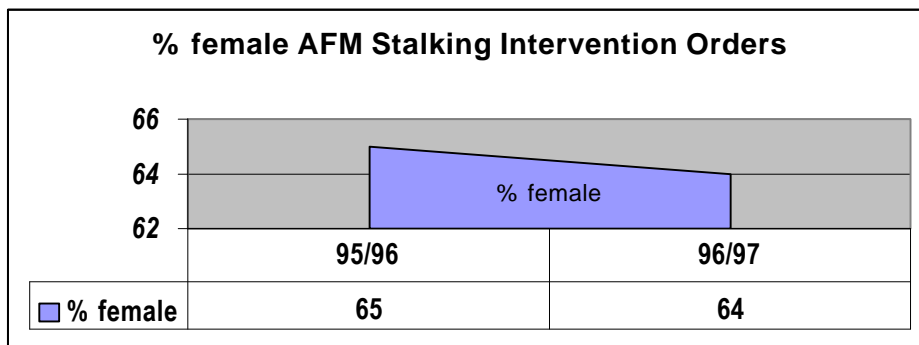
Victorian statistics under the Crimes (Family Violence) Act

Since 1995, the Victorian Crimes (Family Violence) Act which allows a person to apply for an intervention order to place restrictions on family members to prevent them from harassing, threatening and assaulting them, has allowed for an intervention order to be applied for on the grounds of stalking. The intention, according to the Attorney General at the time of the introduction of the legislation, was to protect women from intimidating and threatening behaviour, regardless of their relationship with the person responsible for that behaviour. The impetus was the number of reports to police and services, mainly by women, who were being 'stalked' by ex boyfriends, work colleagues, acquaintance and, occasionally strangers. Generally the response, while supportive at times, was that there was little that could be done. At the same time, the Attorney General also introduced the offence of stalking into the Crimes Act.

In 1996/97 there were 18,662 intervention orders made, 2,711 of which were applied for on the grounds of stalking.



(* AFM – Aggrieved Family Member – title for the person seeking protection under the Crimes (Family Violence) Act)



The two charts indicate that since the introduction of stalking as grounds for an intervention order, the percentage of women as aggrieved family members has significantly decreased. Conversely, the percentage of women as defendants has significantly increased from 17% in 94/95 to 22% in 96/97. For intervention orders issued on the grounds of stalking, the percentage of female defendants is 40%.

The statistics indicate that intervention orders granted on the grounds of stalking are significantly different from other intervention orders in terms of the gender balance of aggrieved family members and defendants. On first glance this could indicate that men are more likely to be stalked than they are to experience other forms of violence or harassment as defined under the Crimes (Family Violence) Act and women are more likely to use stalking as a form of violence. However, a consideration of some of the cases where orders are granted under the stalking provisions indicate that such orders are granted when the behaviour would not commonly fit under the offence of stalking but rather they are being used as a mechanism to resolve neighbourhood disputes.

Examples include:

- *An elderly couple who have a vacant block of land next to them, owned by the local council. Young people use the land to play on and their behaviour is perceived by the older couple to be threatening. When they seek help from police they are advised there is little they can do and they should take out an intervention order.*
- *A dispute between neighbours over the hosing of a driveway escalates to the point where the woman hosing the driveway (A) sprays the woman complaining (B) with a hose. B then jumps the fence and attacks A. A applies for and is granted an intervention order against her neighbour.*
- *A group of young girls in a school are constantly fighting with another group. The school is unable to resolve it so the parents of some of the girls in the first group complain to the police who advise them to take out an intervention order. An intervention order is granted.*

(cases provided by Court Network Intervention Order Program Manager, Anne Marsh)

While such disputes are capable of causing extreme distress and require some resolution and protection mechanism, recording them as 'stalking' is something of a misnomer which runs the risk of masking the reality and impact of stalking.

Reality of women's experiences

Mullen et al have defined stalking:

Stalking refers to a constellation of behaviours involving repeated and persistent attempts to impose on another person unwanted communication and/or contact. Communication can be by means of telephone calls, letters, e-mail, and graffiti, with contact by means of approaching the victim and following and maintaining surveillance. Associated behaviours include ordering goods on the victim's behalf and initiating spurious legal actions. Threats, property damage and assault may accompany stalking. (Mullen, Pathe, Purcell, Stuart, 1999: 1245)

Mullen et al conducted a study of 'stalkers referred to a forensic psychiatry centre for treatment'. (Mullen, Pathe, Purcell, Stuart, 1999: 1244) They found:

- 79% of the stalkers were male
- 30% of the stalkers were ex partners of the victims
- 86% had some form of relationship with the victim, including ex-partners (36%), professional relationship (23%) fellow employees or customers (11%) and casual acquaintances (19%)
- 36% (52) of the stalkers attacked their victims, 14 involved sexual assault
- the stalkers who assaulted were most likely to be rejected ex partners.

There are some difficulties with Mullen's study as it involved a group of stalkers identified as requiring psychiatric treatment. Yet the range of behaviours identified by Mullen's definition would commonly be identified by victim/survivors of domestic violence who are subjected to continuing threats, violence and harassment when they attempt to leave the relationship and whose partners would rarely be considered as requiring psychiatric treatment. The behaviours identified by Mullen would often reflect the experience of women who are sexually harassed in the workforce. When does sexual harassment stop begin sexual harassment and become stalking?

To provide some examples of stalking as part of domestic violence:

We had a lot of problems with the court, he kept making applications about access and things like that. One time he made an application to stop me taking the kids to ... for four days. I wanted to go for a holiday with mum and the kids for four days and he tried to stop me. ... Him and his family were hassling me and ringing me up at all hours of the night. One night he rang me and told me he was committing suicide so I rang the police and they found him just sitting there drinking.

One time he came back and the neighbour said she doesn't want to see you just go away and he did, but the next day she came back to the house. He'd try to kick the door in and one time succeeded in it really bowed, another time one of the bolts came off and shot across the floor. Other times he'd come around and say he wanted to see the baby, but wouldn't take any notice of the baby, just talk and talk. He often used to quote bits out of the bible. Now, often when I go out he's waiting out the front.

He used to turn up in the middle of the night, bashing on my door. Once he was really drunk and I rang the police and they said, we could lock him up but he'll be back anyway.
(Victim/survivors of domestic violence discussing their ex partner's behaviour after separation)

The United States Department of Justice identifies that 'stalking most often occurs in an intimate partner context' and that a significant number of domestic homicides 'are believed to be preceded by stalking'. (US Department of Justice 1998)

No-one who has done any work with women who have experienced violence would be surprised by these findings. The US Department of Justice report places the understanding of stalking clearly within a feminist framework, when it notes that 'victims cited the desire to control them as the most frequent reason for the stalking behaviour'. Only a small number cited mental illness as the explanation.

Women's experience with reporting and court processes

Research constantly reiterates the way in which the criminal justice system is manifestly inadequate in providing justice, particularly for women who are physically or sexually assaulted or threatened by men that are known to them.

As Patricia Easteal notes in a discussion on the courts treatment of rape within marriage:

Estrangement and extreme violence with physical force, resistance and injury appear to be necessary elements for the rape either to be reported or deemed as a criminal act by the criminal justice system.(Easteal 1997: 26)

The anecdotal evidence from our experience with women victim/survivors of sexual violence accessing CASA House indicates that police are less likely to charge and prosecute offenders where the victim/survivor has a relationship with the perpetrator. Similarly, the experience of workers in the field of domestic violence is that it is precisely those women who are in most danger, that is, those whose ex partners continue to stalk them after separation are the ones where police are least likely to act.

To provide one example:

A woman in her early 20s contacted CASA House for support after being raped by an ex boyfriend who has constantly harassed and threatened her since their relationship broke up. She is from a relatively small community and he moves in the same social circles. He has phoned her repeatedly, stands out the front of her house waiting as she goes to work. He follows her when she leaves social functions they have both been at and constantly rings her friends and work colleagues to ask if they know what she is doing. On the night she contacted us she had been out at a community event the night before with a group of friends and had gone outside for a cigarette when he followed her, dragged her into his car, drove to an alley and raped her. She was very keen to have the rape reported, so the police attended and arranged for a forensic examination. After some months she was informed that the charges would not be proceeded with because there simply was not enough evidence, he claimed that they had consensual sex, no-one had witnessed him forcing her into the car and the forensic examination did not provide supporting evidence.

So what's in a name?

The response to the above could be, what does a name matter? Clearly those people seeking intervention orders as a result of neighbourhood disputes are in need of a mechanism to resolve their concerns. And yes, that is correct, however, calling it stalking provides us with a false picture of who is stalked and how can stalking be resolved. Naming the behaviour as stalking may not be

the best way of resolving disputes where neighbours continue to live alongside each other, where young people continue to go to school together and where young people continue to take up space in a way that is perceived as threatening by older people.

The only major study that has been done in Victoria on stalking focuses on stalkers who are identified as requiring psychiatric treatment. These two elements together mean we are in danger of getting a particularly skewed picture of stalking. It is a picture that ignores the reality of women's everyday experience. It ignores the experience of the thousands of women who applied for intervention orders because they live in constant fear of their partner or ex partner. It ignores the reality of those women and men who are stalked by strangers to the point where they have to change their lives to find a safe place. It ignores the element of control that is part and parcel of the stalking behaviour of partners and ex partners. It ignores the reality of the women who constantly tell us that their attempts to get police support in finding safety are of no avail because the police will not charge their stalkers with breaching intervention orders.

We ignore that reality at a high price. Mullen's study, despite its flaws, acknowledges that those stalkers who are most likely to use violence are those who have previously been in a relationship with the victim of their stalking. The US Department of Justice found that:

Stalkers are violent toward their victims between 25 and 35% of the time, and the group most likely to be violent is composed of those who have had an intimate relationship with the victim. Nearly one-third of all women killed in this country die at the hands of a current or former intimate. A significant number of murders and attempted murders are believed to be preceded by stalking.

Finally, it ignores the reality of women like Lucy who desperately try to find safety and who are stalked to their death. We cannot afford to do that.

It is important therefore that the issue of stalking be the subject of a detailed study, similar to that undertaken by the US Department of Justice. The study must involve not just an analysis of statistics but listening to the voices of the women who are stalked, and particularly those who are stalked by partners or ex-partners.

References

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The voices of women victim/survivors of domestic violence