

# COMMENT: THINKING ABOUT DOMESTIC VIOLENCE IN GAY MALE RELATIONSHIPS

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## *1. Introduction*

On 1 July 1996, the Domestic Violence Act 1995 came into effect. Under this Act, homosexuals in New Zealand are able to obtain protection orders against their intimate partners for the first time. This comment is a brief introduction into issues of gay male domestic violence and will hopefully serve as a catalyst for further discussion and research into these issues. It is also hoped that it will encourage lesbians and others to research and theorise about violence within the wide spectrum of same sex relationships in New Zealand.

While this comment does not provide any definitive answers for solving the problems inherent in gay male domestic violence, it attempts to outline tactics of power and control which may arise within a specifically gay male context. It then discusses the question of whether gay men are likely to turn to the law for protection, given the history of homophobia that has pervaded much of the legal jurisprudence to date. This comment is meant to be a tool both for family lawyers and for members of the gay men's community concerned about domestic violence. It is, therefore, purposely written in an informal style to ensure its accessibility to non-legally trained readers.

## *2. The Dominant Paradigm of Domestic Violence*

There has been little writing about same-sex domestic violence in any jurisdiction. To date, domestic violence has been viewed primarily as a social ill perpetrated predominantly against women by men and occurring within adult heterosexual relationships. Other forms of domestic violence (ie elder abuse, teen dating abuse, and same sex abuse) have largely been ignored, partly because few, if any, legal remedies have existed to afford protection to those victims not involved in live-in, marriage-like relationships. The awareness of violence within other domestic settings is only now beginning to surface.

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While it has been estimated that violence between gay male domestic partners occurs at about the same rate as in heterosexual domestic relationships,<sup>1</sup> there appear to be two main reasons for the paucity of legal scholarship on this subject. First, recent theories of domestic violence have focussed on heterosexual relationships where the batterers are male and the victims female.<sup>2</sup> These theories have suggested that individual power and control tactics are legitimised by social constructs which support male dominance, especially where those tactics are displayed by a man in his role as the head of the family.<sup>3</sup> It is clear, however, that such theories with their emphasis on gender power imbalances cannot provide an explanation for domestic violence within gay male relationships.

Second, and probably most importantly, there are historical and social factors which have worked to invisibilise the experiences of gay men and the very existence of committed gay relationships. There have been various attempts to relate or compare gay male relationships with heterosexual relationships by attributing "gender-equivalent" roles to gay male partners.<sup>4</sup> This approach, however, attempts to force gay relationships into heterosexual moulds. To say that all gay male relationships consist of a "masculine-dominant" partner and a "feminine-subservient" partner is to artificially caricature those relationships and impose homophobic stereotypes which imply that homosexual relationships simply mimic heterosexuality. In reality, there is a diversity of gay male relationships, and much evidence to support Peplau's contention that most homosexual couples "actively reject heterosexual sex roles as models for their own relationships."<sup>5</sup>

### 3. *The Invisibilisation of Gay Male Relationships*

Until the last decade, the law itself functioned to keep gay men "invisible". It punished gay men for their sexual behaviour and allowed discrimination based on sexual orientation. For instance, until 1986 in New Zealand,

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<sup>1</sup> Dutton, "Patriarchy and Wife Assault: the Ecological Fallacy" [1994] 9 *Violence and Victims* 167, 172. Dutton uses the figures of 27.8% for "any kind of violence occurring at any time in their [heterosexual] marriage" and 26% for gay male relationships.

<sup>2</sup> Letellier, "Gay and Bisexual Male Domestic Violence Victimization: Challenges to Feminist Theory and Responses to Violence," (1994) 9 *Violence and Victims* 95, 97.

<sup>3</sup> Pence and Paymar, *Power and Control: Tactics of Men Who Batter* (1990).

<sup>4</sup> Peplau, "Lesbian and Gay Relationships", in Gonsiorek, J and Weinrich, J (eds.), *Homosexuality: Implications For Public Policy* (1991): cited in Letellier, supra n. 2, at 97.

<sup>5</sup> Idem.

sexual acts between consenting adult males were criminal per se. The New Zealand Criminal Code Act 1893 made sodomy punishable by life imprisonment and indecency between males punishable by 10 years imprisonment with flogging or whipping. Under the Crimes Act 1961, the punishment for consensual sexual contact between men was “reduced” to seven years for sodomy and five years for homosexual indecencies. With the passage of the Homosexual Law Reform Act in 1986, sexual behaviour between gay men was de-criminalised but it was only in 1993, with the passage of the Human Rights Amendment Act, that discrimination against gays in terms of access to public services, housing, and employment was outlawed.

Lack of legal recognition has contributed to the invisibilisation of domestic violence in gay relationships. I believe that there is still a widespread misconception that intimate relationships among gays are only about casual and frequent sex, and not about committed relationships worthy of recognition. For example, the majority of family law statutes do not provide for the legal rights of gay partners. Same sex relationships are not included under the counselling provisions of the Family Proceedings Act and there is no provision for gays to enter into property agreements under section 40A of the Property Law Act. The High Court has recently held that despite section 19 of the Bill of Rights Act, gays cannot marry.<sup>6</sup> Most relevant in terms of domestic violence law, while the long title of the Domestic Protection Act stated that it was an Act “to mitigate the effects of violence within the domestic sphere,” the definition of “the domestic sphere” was specifically limited to married couples or cohabiting heterosexual de facto ones. The idea that gay couples could live together in relationships in the nature of marriage was a virtual oxymoron until the recent passage of the Domestic Violence Act 1995.

In my opinion, gay men as well have tended to pretend (or hope) that somehow gay relationships were different and violence-free. We ourselves had a stake in the male/female intimate violence paradigm and the view that violence was an incident of traditional patriarchally based power dynamics. As well, I believe that homophobic societal discourses have led gay men to hide the incidence of domestic violence in our communities. As a result of all too prevalent forms of anti-homosexual discrimination, we wanted to present only positive images of ourselves to the wider community. We feared that an acknowledgment of domestic violence in

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<sup>6</sup> *Quilter v. Attorney-General* [1996] NZFLR 481. The High Court decision is currently under appeal.

our relationships might be used by anti-gay decision-makers to subvert our attempts to gain increased civil rights.

An education theorist of the mid 20th century, Maslow,<sup>7</sup> states that so long as we are striving to deal with matters of survival and basic need, we are unable to deal with higher-level concerns. For homosexuals this means that where homosexual activity is criminalised, or where discrimination against homosexuals is still sanctioned (either legally or in fact), then energies must firstly go into remedying these matters. Gays are constantly bombarded with negative descriptions of themselves and their "lifestyles" by other disapproving groups in society. Gays in relationships generally remain hidden behind closed doors. So long as homophobic responses by the dominant culture continue to exist, there is no accurate frame of reference within which the gay victim of domestic violence is able to evaluate the dynamics of his own relationship in the context of gay relationships in general.

It is clear that many victims of heterosexual domestic violence do not come forward and report the occurrence of such violence. They may have many good reasons for not doing so, such as the fear that their partner will become even more violent, the shame of admitting that they have "got themselves" into a violent situation, the lack of knowledge about or fear of facing "the system", among others. It can be assumed that if a partner in a gay relationship becomes a victim of domestic violence these reasons may also subsist. There may as well be other reasons, unique to gay relationships, for why a gay victim may not come forward.

The gay victim of domestic violence may not actually see himself as a victim. Much of the information that has been circulated about domestic violence is that it involves male control of female partners, reinforced by social constructs privileging men's power over women in many areas. A gay relationship is more likely, but not necessarily accurately, to be seen as a relationship of equals. This view is often one held not only by the partners to the relationship, but also by agencies called upon in a time of crisis. But as Island and Letellier state, "[d]omestic violence is not a gender issue. It is a power issue, a legal issue, and a mental health issue. The truth is that men can be victims of domestic violence."<sup>8</sup>

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<sup>7</sup> Maslow, A, *Toward a Psychology of Being* (1962).

<sup>8</sup> Island, D, and Letellier, P, *Men Who Beat The Men Who Love Them: Battered Gay Men and Domestic Violence*, (1991), 16.

Many battered women in heterosexual relationships do not see themselves as abuse victims because they do not see themselves as lacking in free will.<sup>9</sup> Just as the paradigm of “the poor victim” keeps women from identifying themselves as battered, this is no less true of men. A man may not see himself as a victim because he does not want to see himself in that way. To admit to being a victim is to admit that one is “less of a man”. This is as true of the gay male as it is of the heterosexual male. Given the pejorative stereotype which paints a picture of gay men as being, by virtue of their sexuality, less masculine and more feminine than heterosexual men, perceived vulnerability is not a trait that many gay men would ordinarily strive to achieve.

#### 4. “Outing”

I suggest that another reason why gay male victims of domestic violence may not come forward is that they may carry a fear of being “outed”. “Coming out” is the process whereby a gay person acknowledges his gayness, usually “coming out” firstly to himself and subsequently to others. “Coming out” to others can take a tremendous build up of courage and determination and is usually the end result of a good deal of thinking and planning. To be put in a position whereby one has to admit that one is both gay and in a violent relationship can have significant consequences for one’s personal interactions with family, workmates and friends. To be put in this situation at a time of crisis is even less attractive. Not only does seeking help mean that one is going to be forced into coming out to police or to family or criminal court personnel, it may mean that employers, clients, and colleagues may all get to know.

In an ideal society, this should not be an issue. New Zealand has laws which state that it is illegal to discriminate against a person on the grounds of sexual orientation. However, while the theory is that there should be no discrimination, the reality is that homophobic attitudes are still prevalent. “People who have been stigmatized as deviant all of their lives do not immediately get over it ... nor is society willing at once to abandon past attitudes”.<sup>10</sup> Were an employer determined to rid the workplace of a gay employee, it is likely that a way could be found without actually breaching the anti-discrimination laws. As importantly, domestic violence may accentuate a gay victim’s feelings of internalised homophobia.

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<sup>9</sup> Mahoney, “Legal Images of Battered Women: Redefining the Issue of Separation” (1991) 90 Mich LR 1.

<sup>10</sup> Bullough, V., *Homosexuality: A History* (1979), 150-1.

### 5. *Partners as Equals*

Gay domestic violence has often been characterised by gays as well as the heterosexual community as disagreements, nothing more than “lovers’ tiffs”. This is analogous to the view that domestic violence in the heterosexual context is a relationship problem, a two-to-tango scenario. There are three major problems with this concept. First, the misconception that domestic violence is only physical violence ignores the existence of emotional, psychological and verbal violence which can be equally destructive, as recognised in the Domestic Violence Act 1995.<sup>11</sup> Second, while it is important to accept that disagreements can be healthy within a relationship and can be the means of correcting misunderstandings, it is equally important to understand that violence is not an acceptable way to resolve a quarrel, no matter how severe or intense the disagreement. Third, the “lovers’ tiffs” concept perpetuates a stereotypical image of gays as being argumentative and “bitchy”.

It has been mooted by Island and Letellier<sup>12</sup> that gay domestic violence is often seen as no more than an extension of sexual play. Unfortunately, in my experience this is a belief held not only by people outside the gay community but also within. However, whatever one’s sexual orientation, there is a vast difference between taking part in consensual sexual behaviour such as sado-masochism and being the victim of domestic violence. Unlike consensual sexual acts, “domestic violence is abuse, manipulation and control that is *unwanted* by the victim.”<sup>13</sup>

### 6. *Shortcomings in the Procedures for Seeking Help*

Avenues available for dealing with domestic violence have been overwhelmingly directed at heterosexual communities. In spite of the recognition of homosexual violence in the Domestic Violence Act, there is no reason to expect that this situation will change markedly in the near future. As well, governmental agencies like the police have historically been distrusted by gay men. Despite the efforts that are now being made by police organisations to improve the attitudes of their officers,<sup>14</sup> legacy police departments are generally viewed as repositories of

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<sup>11</sup> Section 3.

<sup>12</sup> *Supra* n. 8, at 19.

<sup>13</sup> *Idem*.

<sup>14</sup> For example, the Police in Wellington, New Zealand have appointed a Liaison Officer whose role it is to work with gays as victims, and with Police Officers dealing with these cases. The role is thus seen as being supportive and educative.

“institutionalized homophobia and heterosexism.”<sup>15</sup> Many gays would not willingly call the police for assistance in a domestic violence situation and consequently, the invisibilisation of gay domestic violence cases (or at least its under-reporting) is likely to continue.

If a gay male victim of domestic violence should wish to call the police, and proceed to prosecution, the next step is to face the criminal court system. Unfortunately, the ways in which these courts have historically dealt with issues relating to homosexuality does not necessarily inspire confidence.<sup>16</sup> It may be that gay domestic violence victims will be more willing to apply to the Family Court for protection orders because of the confidentiality of its proceedings. Fears about “outing” may be diminished by the Family Court’s emphasis on the privacy of the parties. However, even in the Family Court, judicial education about gay relationships and power and control tactics will be necessary if gay applicants are to achieve protection under the provisions of the Domestic Violence Act.

It is not merely police officers or judges who have a role to play in the development of appropriate methods of providing protection in gay domestic violence cases. From Family Court Counsellors to probation officers, there is a range of people who will be challenged to implement the new Act with sensitivity and balance.

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<sup>15</sup> Herek, G M, “The Context of Anti-Gay Violence: Notes on Cultural and Psychological Heterosexism” [1990] 5 *Journal of Interpersonal Violence* 315: cited by Letellier, *supra* n. 2, at 102. “According to studies on anti-gay violence, the median number of gay men and lesbians who experienced anti-gay victimization by the police was 20%”.

<sup>16</sup> For example, in his recent decision on the same-sex marriage issue (*supra* n. 6), Judge Kerr reviewed what he characterised as “the modern view” about homosexuality. He stated:

The starting point is probably the Homosexual Law Reform Act 1986 which amended the Crimes Act 1961 provisions relating to indecencies between males. It is still an offence to indecently assault a boy under 12. It is still an offence to indecently assault a boy between the ages of 12 and 16. It is no longer an offence for males of 16 years or over to *commit indecencies with each other* which are consensual, consent not being obtained by false or fraudulent representations. (at 491, emphasis added).

The fact that the Judge considers gay sex between consenting adults to involve “indecencies” is remarkable. As well, it is against the law for men to indecently assault girls under the age of 16 but this is not mentioned. To a gay person, the Judge’s comments reflect and reinforce the homophobic belief that many gay men are paedophiles, a belief which is demonstrably untrue from the literature on child sexual abuse .

Assuming gays utilise the statutory provisions available to them, the next problem is the lack of appropriate counselling and support services. Because to date gay domestic violence has not been acknowledged as a problem, such services have yet to be put in place.<sup>17</sup> There are no refuges for gay men. There are few, if any, counsellors qualified specifically to deal with gay domestic violence as an issue in its own right. There are no gay men's "stopping violence" programmes. There are no gay victims' advocacy programmes. There may be counselling services which offer, as part of an over-all service, counselling for men as victims, or counselling for gays as victims of anti-gay violence, but not for gay men as victims of domestic violence in same-sex relationships.

As well, it is difficult to see the power and control analysis as being totally appropriate to an analysis of gay male domestic violence. While many of the tactics of power and control (eg intimidation, denial and victim-blaming) may be apparent in gay male relationships, other tactics (like the use of male privilege) seem irrelevant. More importantly, it is difficult to see how societal discourses operate to legitimise a gay male batterer's use of violence against his partner. The social constructs which reinforce and justify (or at least excuse) domestic violence in heterosexual intimate violence situations are less apparent, except for the "two-to-tango" relationship formulation. On the other hand, it may be that the gay domestic violence victim may be even more likely than his heterosexual counterpart to experience the systemic use of the tactics of trivialisation, minimisation and victim blaming.

### *Conclusion*

Domestic violence does occur in gay male relationships. Estimates put the level of this violence at about the same as that in heterosexual relationships.<sup>18</sup> However, because gay male relationships have not been recognised as valid relationships within society generally, few resources have been put in place to deal with this form of domestic violence.

If it is to take advantage of newly available legal remedies, it is essential that gay communities are shown that the implementation and interpretation of these provisions will not reflect the homophobia of the dominant culture.

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<sup>17</sup> While gay counselling is apparently excluded under the Family Proceedings Act, Hamilton Family Court, e.g., does provide state-funded counselling for parties in gay and lesbian relationships.

<sup>18</sup> See *supra* n. 1.



As well the gay community is becoming more mainstream. While not ignoring the role that generalised homophobia and institutionalised discrimination can play in terms of individual self-worth, gays must accept responsibility for the violence that is perpetrated within their communities and take initiatives to ensure that appropriate steps are taken to deal with that violence.