

Child Sexual Abuse Allegations in the Family Court

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Philosophy in Social Work**

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Author's declaration

This is to certify that:

- I. This thesis comprises only my original work towards the degree of Doctor of Philosophy in social work.
- II. Due acknowledgement has been made in the text to all other material used.
- III The thesis does not exceed the word length for this degree.
- IV. No part of this work had been used for the award of another degree.
- V. This thesis meets the *University of Sydney's Human Research Ethics Committee (HREC) requirements for the conduct of research.*

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ABSTRACT

This research is concerned with decision-making in judgments made in the Family Court of Australia where there are allegations of child sexual abuse. The focus of the research is the identification of the concepts that are relied on in the assessment of these allegations by professionals providing evidence to the court and how judges determine what evidence should be given weight and relied on. This research was undertaken against a historical and current backdrop of scepticism about the veracity of child sexual abuse allegations in family law disputes, despite the heightened risk to children, and in particular to girls, after their parents separate and/or divorce. In this context the Family Court is also increasingly becoming a part of the child protection system as allegations of abuse are raised in hearings. This research has taken place in the period of time after the Reform Act (1995) and before new proposed legislation for 2006 was proclaimed.

This research is based on a detailed thematic analysis of 21 judgments of first instance trials between 1997 and 2001 that were selected for the presence of a child sexual abuse allegation and at least two professionals disputing some aspect of the allegation. Twenty-five family members, including 18 mothers and four maternal grandmothers, made allegations about 28 family members, 21 of whom were fathers. Professionals who gave evidence included 11 child protection officers and 20 court-ordered private assessors (including 17 child and family psychiatrists, three clinical psychologists and 11 court counsellors).

This research found that the context of the allegation, the family law litigation, had a dominant influence on how the allegations were assessed and interpreted: the impact of two influential paradigms, the separation and divorce and the legal/psychiatric paradigms, resulted in a reticence to test out the allegations of child sexual abuse made against fathers. Concepts from these paradigms were applied by court-ordered assessors and represented the sceptical conceptualisation of allegations of child sexual abuse as the product of the parental conflict, associated maternal anxiety and mental illness. In contrast, fathers were not scrutinised as closely against criteria for sex offending even when they made admissions relating to the allegations. Evidence from and about children was not central to the hearings and professionals who were in a position to present assessments of the child sexual abuse allegations to the court were discredited as a result of concerns about ‘contamination’ relating to criticisms of investigation and other methodological errors. In addition, allegations from children were frequently not fully examined or analysed by assessors or the judiciary.

There were glimpses of a child-focused approach in a small number of hearings and, while there was no specialist assessment of the child sexual abuse allegations, there was evidence of specialist knowledge pertaining to domestic violence in cases in which there was a high level of evidence relating to serious domestic violence.

This research has shown that there is a continuing influence of a sceptical paradigm in relation to the assessment of child sexual abuse allegations in the Family Court. It

suggests that the scope of assessments needs to go beyond the usual scope of parental competencies to include an assessment of the propensity for child sexual abuse perpetration and the dynamics and effects of incest.

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