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Allegations of Child Sexual Abuse in Family Court Cases:

A Qualitative Analysis of Psychiatric Evidence

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### Abstract

Allegations of child sexual abuse in Family Court cases have gained increasing attention. The study investigates factors involved in Family Court cases involving allegations of child sexual abuse. A qualitative methodology was employed to examine Records of Judgement and Psychiatric Reports for 20 cases distilled from the data corpus of 102 cases. A seven-stage methodology was developed utilising a thematic analysis process informed by principles of grounded theory and phenomenology. The explication of eight thematic clusters was undertaken. The findings point to complex issues and dynamics in which child sexual abuse allegations have been raised. The alleging parent's allegations of sexual abuse against their ex-partner may be: the expression of unconscious deep fears for their children's welfare, or an action to meet their needs for personal affirmation in the context of the painful upheaval of a relationship break-up. Implications of the findings are discussed.

*Key words:* sexual abuse allegations, false allegations, psychiatric evidence, Family Court, custody disputes, expert testimony.

Allegations of Child Sexual Abuse in Family Court Cases: A Qualitative Analysis of  
Psychiatric Evidence

“Truth makes on the surface of nature no one track of light – every eye looking on finds its own” (Bulwer Lytton, 1864).

There is no greater problem in family law today than that of adequately addressing child protection concerns in Family Court proceedings (Parkinson, 2003). There is significant concern among the general public, experts, litigants, and interest groups about the likelihood of false allegations of child sexual abuse being raised in Family Court cases. However, there is little understanding of the issues involved in these cases. The Family Court is obliged to protect children against risks in the future, while concurrently fostering family relationships – a task made infinitely more complicated when one parent accuses the other of sexually abusing their child. The verification of sexual abuse allegations is notoriously difficult in any forum, but perhaps particularly in custody disputes brought before the Family Court. Expert testimony is routinely sought to aid judges in making difficult decisions pertaining to the veracity of allegations, and the consequent implications for custody and contact arrangements of the children involved.

The current research examined expert testimony in Family Court cases in which allegations of child sexual abuse were raised. The findings will assist in increasing the understanding of the phenomenology of allegations of child sexual abuse in custody disputes. Greater understanding is necessary in order for the Family Court to more effectively deal with these cases, providing optimal outcomes for the families and children involved.

*Child Sexual Abuse Allegations in the Family Court*

Cases involving risk to children, particularly risk of sexual abuse, pose a set of challenges for the Family Court (Brown et al., 1998; Fogarty, 2006; Varghese, 2004). In custody disputes, when one parent accuses the other of sexually abusing their child, the

consequences can be devastating. Once an allegation has been made, it cannot be ignored, and the results in terms of residence and contact for the accuser, the accused, and of course the child, are serious (Varghese, 2004). Should the Court unwittingly rule that the child is to have ongoing contact with an abusive parent, the very authority that is expected to provide protection becomes complicit in the abuse (Brooks & Milchman, 1991). Further, the child continues to be subject to the abuse, and the accusing parent is outraged, feeling helpless and desperate in the Court's decision not to protect the child (Brooks & Milchman, 1991). Alternatively, should the Court exclude an innocent parent from maintaining a relationship with the child, that parent may suffer shame and humiliation, their bond with the child being disrupted, if not severed (Brooks & Milchman, 1991).

Child protection is a fundamental responsibility of government, its obligation being to ensure that no children are endangered because of preventable harm arising from system failure (Parkinson, 2003). It is evident that the Family Court has become part of the child protection system, and plays an integral role in Australia's child protection framework (Brown et al., 1998). Child abuse cases now comprise the core business of the Family Court. They are extremely time- and resource-intensive, and are further complicated by split responsibility between Federal and State authorities (Brown et al., 1998). The Family Court is obliged to protect children against risks in the future, while concurrently fostering family relationships, requiring a careful understanding and application of the principles which govern the decision-making process (Fogarty, 2006).

*The Case of M v M.*

In 1988, the High Court of Australia handed down what is still the definitive judgement in the area of child sexual abuse allegations in Family Court proceedings: *M v M*. It was held that the Family Court's role was not to determine whether or not child sexual abuse had actually occurred, but that it should not grant custody or contact to a parent if such

would expose the child to an unacceptable risk of sexual abuse. The Full Family Court later added that if there was a positive finding of abuse, only in the most extraordinary cases would contact with the perpetrator not be seen as exposing the child to an unacceptable risk of abuse.

The Court acknowledged, in *M v M* (1988), that the existence and magnitude of the risk of sexual abuse is a fundamental matter to be taken into account in deciding issues of custody and contact. It was also acknowledged that in consideration of the issue of risk, the Court is striving for a greater degree of definition than is possible, with the variety of formulations including: risk of serious harm; an element of risk; an appreciable risk; a real possibility; a real risk; and an unacceptable risk (*M v M*, 1988). Further understanding of the dynamics of these cases is necessary in order to clarify the decision-making process.

*Veracity of Allegations.*

Popular opinion seems to be that the rate of allegations of child sexual abuse in Family Court cases is commonplace, and on the rise (e.g. McIntosh & Prinz, 1993). However, the actual research figures vary widely among studies. A US study in the early 1990s found that, during the preceding decade, the percentage of custody and visitation assessments that involved sexual abuse allegations increased from almost zero to approximately 20 percent of the cases seen by the American Custody and Access Team at the Family Court Clinic (Awad & McDonough, 1991). The most recent Australian research found that the rate of child sexual abuse allegations in disputed custody cases is approximately two to six percent, which is considered to be low, but is greater in high-conflict cases, with up to 23 percent of cases alleging child sexual abuse (Higgins, 2007). These findings are similar to those in the non-Australian studies of Thoennes and Tjaden (1990), and McIntosh and Prinz (1993).

It has been suggested that false allegations are rife in the Family Court (Hirst, 2005; Jenkins, 2002; Varghese, 2004), with a fervour reminiscent of hysteria. Vindictive,

prevaricating adults, usually women, are claimed to routinely make false allegations (Faller, 2005). This idea is not supported by research. It has been suggested that there is a widespread misperception that intentionally false allegations of child abuse are made by mothers in order to gain a tactical advantage in custody battles, or to seek revenge upon their estranged partners (Trocmé & Bala, 2005). The implications of such a myth have been highlighted, with one author warning that it functions to protect sexual abusers at the expense of children's safety (Jenkins, 2002). Further, it has been posited that the dominant belief within the legal and psychiatric communities is that of a deeply-held scepticism that women and children who make allegations of sexual abuse are likely hysterical, mentally ill, or vindictive liars; a view which informs contemporary forensic assessment models used by experts in Family Court disputes (Foote, 2006).

In a contentious and complicated subject area such as allegations of sexual abuse in custody battles in Australia, perhaps it is understandable that even empirical research itself is inconsistent and disputed. It has been found that child abuse allegations in the Family Court were no more frequently false than abuse allegations made in other circumstances, the rate being about nine percent (Brown et al., 1998). However, that study has been criticised by Hirst (2005), who states that this figure was incorrect and the more accurate estimation is that only 22 percent of the allegations studied were substantiated by the child protection agency. Allegations considered to be deliberately false are not common, at one to two percent (Higgins, 2007).

When considering the veracity of allegations, definitional distinction is important. In the literature, the terms 'false' and 'unsubstantiated' have been used both interchangeably, and in contrast, depending on the discipline of the research and the cultural trends. Generally, false allegations are understood to be intentional fabrications (Trocmé & Bala, 2005), whereas unsubstantiated allegations are those the Court considers to be not verified, but with

no speculation as to the intent behind the allegation. Cases in which abuse is judged to have more than likely occurred, allegations may be substantiated. There is yet another category of allegations, where abuse cannot be substantiated, but remains suspected (Trocmé & Bala, 2005).

The phenomenology of false allegations of child sexual abuse in the context of Family Court matters is an area of research that, to date, has had little attention. Authors in the area have pointed to the need to distinguish false allegations evolving from efforts by a partner to taint the image of the accused, from unconscious action taken by an emotionally compromised parent (Barker & Howell, 1994). A major concern in Family Court cases involving child sexual abuse allegations is the potential that mothers may use false accusations against fathers as ‘weapons’ in fighting for custody and contact (Jenkins, 2002). Some research has found that those who make false allegations of child sexual abuse are usually female and usually the mother (Barker & Howell, 1994). This gender-bias has been noted by other authors (eg Hirst, 2005; Varghese, 2004); however this issue is also contentious. A recent study found that it is more likely that a non-custodial parent, usually the father, will deliberately fabricate an allegation of abuse than for custodial parents, usually mothers, to fabricate such an allegation (Trocmé & Bala, 2005). Regarding psychopathology, a greater incidence of personality disorder or factitious disorder has also been found in those who make false allegations of child sexual abuse in custody disputes, as well as a history of eating disorder and childhood abuse (Barker & Howell, 1994).

There is much speculation as to motives for allegations of child sexual abuse that are found to be unsubstantiated. Firstly, that the allegation is an outright lie; the product of a parent intending to mar the reputation of their ex-partner with the idea of securing custody. Although logically a likely explanation, authors tend to agree that deliberate falsification is less common than other reasons for allegations to be unsubstantiated (e.g. Hirst, 2005;



Varghese, 2004). Secondly, that the alleging partner has come to genuinely believe that the sexual abuse has occurred, despite little or no objective supporting evidence. This scenario is most curious from a phenomenological perspective – how these ideas are formed and experienced may be of greater importance clinically than the content and truth or otherwise of the allegations (Varghese, 2004). As a judge interviewed by Higgins (2007:97) stated:

By far, there are rare cases of deliberate falsity... Some people can be quite reckless in the accusations they make. But they're quite happy for that consequence, because they are they'll be (sic) the beneficiary of it. They might not deliberately make it up, but they'll be quite happy to be wilfully loose with the truth... What parents do is that they impose their own desires on the children....

Judges, expert witnesses, and litigants themselves have ideas as to the motivations of parties who make allegations of child sexual abuse; however, little empirical research has been conducted. The Family Court would benefit from greater knowledge of the factors involved in these cases, particularly so for allegations that are found to be unsubstantiated, in order to deal more effectively with child sexual abuse allegations and the implications for custody and contact with parents.

#### *Expert Witnesses in the Family Court*

In parenting matters before the Family Court that involve allegations of child sexual abuse, decision-making often occurs in the context of a lack of evidence to either support or refute the allegations (Higgins, 2007). The assessment of allegations of sexual abuse is complex, and is further complicated in the Family Court arena. On the background of problematic family dynamics, motives of involved parties may range from genuine safety concerns and a need to protect the child, to vengeance, vindictiveness, and hostility relating to the marital break-up (Bow, Quinnell, Zaroff & Assemany, 2002). Also, there is overlap in the types of symptoms exhibited by children from high-conflict divorces and children who

have been sexually abused, making it difficult to distinguish between the groups on a clinical level (Bow et al., 2002).

Depending on the timing of the sexual abuse allegations, contact with the alleged perpetrator is often supervised or suspended, and the Family Court can become perplexed and overwhelmed by the complex decisions required in such cases. As a result, the expertise of mental health professionals is commonly sought by the Court (Bow et al., 2002).

Psychological and/or psychiatric evaluation and testimony play a critical role in child sexual abuse cases, in assessment of allegations, evaluation of the involved parties, and in conveying children's wishes.

Although expert testimony plays a pivotal role in deciding issues of custody and contact in Family Court cases, to date it has escaped research attention. The content and style of expert reports prepared for cases of custody disputes represent a wealth of clinical information, and unique insight into an important influence in Court proceedings. No studies have focussed on the contribution of expert witnesses in Family Court matters in Australia, nor examined their testimony thoroughly. Investigation of expert witnesses' input in Family Court cases involving allegations of child sexual abuse would provide valuable understanding of the Court processes and the phenomenon of allegations.

The current study aimed to gain an in-depth understanding of factors involved in Family Court proceedings in which allegations of child sexual abuse have been raised by a parent. The study also aimed to identify unique themes which may be associated with cases in which child sexual abuse allegations have been substantiated or not substantiated, with a view to better understanding the nature of such allegations.

## Method

The study was exploratory in nature, and drew upon Psychiatric Reports pertaining to the litigants, and Family Court Records of Judgement. Themes were identified and explicated, and examined in the context of the literature reviewed.

### *Data*

Identification of themes was achieved through the examination of archival data: official Records of Judgement (which includes details of the case, reasons for residence and contact decisions, and judgement of veracity of allegations of abuse) and Psychiatric Reports (based on separate interviews with the parents, including factual information as reported by the interviewee, the psychiatrist's inferences, and behavioural/clinical observations) presented during Court proceedings. Records of Judgement informed the researcher as to the substantiation of sexual abuse allegations, and were categorised accordingly. Psychiatric Report data were analysed and explicated using qualitative analysis.

Substantiation of allegations of sexual abuse was ascertained from the Records of Judgement. Regarding the veracity of sexual abuse allegations, the terms 'substantiated' and 'not substantiated' have been defined for the purposes of the current study. These are not represented as legal terms.

For the purposes of the current study, the Family Court's judgement of the veracity of the child sexual abuse allegations raised is taken as an objective representation of reality. It could be argued that the Court's judgement may be erroneous; however, there is no viable alternative in the judgement of the veracity of allegations. The judgement of the Family Court is considered to be the most appropriate.

### *Data Analysis*

The current study was conducted using a seven-stage methodology, adapted from Braun and Clarke's (2006) description of the thematic analysis process utilised in their

research. The seven stages were: 1) identification of key themes in the literature; 2) de-identification of Records of Judgement; 3) categorisation of records of judgement; 4) selection of Psychiatric Reports for data analysis; 5) textual analysis (which comprised four steps: familiarisation with the data; creation of an initial data capture process; generating initial codes; and reviewing codes); 6) creation of thematic clusters; and 7) explication of themes (which comprised four steps: examination of thematic clusters; matching Psychiatric Reports with Records of Judgement; searching for themes; and review and explication of themes).

Stages One through Three pertain to the Records of Judgement, and Four through Seven to the Psychiatric Reports. Analysis of the Psychiatric Report data utilised an inductive approach, adopting a thematic analysis process, informed by grounded theory. Thematic analysis is traditionally used with transcripts of direct quotations from participants. The data analysed in this study was content of reports; which is a unique feature of the current study. A full copy of the methodology can be obtained from the first-named author.

### Results and Discussion

The current study conducted an in-depth qualitative analysis of Psychiatric reports authored by a single expert witness in Family Court cases involving allegations of child sexual abuse.

The final data set comprised 20 cases: 16 involved allegations of child sexual abuse that were not substantiated; one involved allegations of child sexual abuse that was substantiated; and the remaining three involved no allegations of child sexual abuse having been made during the Family Court proceedings (refer to *Stage Four* of the *Data Analysis* for more detail). The data were generally treated as a single set; however, where there were themes or patterns unique to a sub-group in terms of substantiation of allegations, lack of allegations, or which parent made the allegations or was alleged against, these were noted.

### *Demographics*

The mean age of mothers and fathers was 32.6 years and 37.8 years respectively, at the time the psychiatric interview was conducted. For the general population, the median age of females and males at divorce was 41.1 years and 43.9 years, respectively (Australian Bureau of Statistics, 2006). The individuals in the current study were thus younger than the Australian average of divorcing people. The mean number of children of the partnership was two. This was consistent with Australian statistics: 43.0% of divorces involving children involved two children (Australian Bureau of Statistics, 2006). Eleven of 20 mothers (55%) and four of 20 fathers (20%) in the current study were unemployed, indicating that the rate of employment of the individuals in the current study was lower than for the general population.

### *Themes*

Ten thematic clusters were created in the data analysis process. A number of these were collapsed into similar clusters, which resulted in eight thematic clusters that were explicated: Mother; Father; Experience of the focal relationship; Parties' views of each other; Children; Sexual abuse allegations; Psychiatric opinion; and Involvement of third party. The thematic clusters with most pertinent themes are outlined in the current paper, and are organised into four sections: The Mothers; The Fathers; The Allegations; and The Psychiatric Reports. For the purposes of the article, the terms, 'mother' and 'father' are used in reference to the female and male litigants in each Family Court case. For the sake of consistency, these terms are used when referring to the litigants in their capacities as parents, and also as individuals.

#### *The mothers.*

Within the thematic cluster of 'Mother', a number of common experiences were found. Mothers reported unhappiness and perceived hardship when growing up, and tended to have polarised adult relationships with their families of origin; either close and supportive

(for those cases in which sexual abuse allegations were not made or were substantiated); or distant or conflictual (for those cases in which sexual abuse allegations were not substantiated). Mothers experienced depression and anxiety, often described as being strongly linked to difficulties within the focal relationship or with child-rearing. Since the break-up of the focal relationship, mothers reported they were stronger for having overcome adversity, and better able to recognise positive personal characteristics in themselves. Mothers also spoke of being not interested in romantic relationship since the break-up of the focal relationship.

“She described her mother as ‘violent’ and as somebody who ‘hated me’. She states however that there were no beatings from her mother ‘after I resisted her when I was ten or twelve’. ‘Then she claimed I hit her’. She states that as a result of this her brothers and sisters ‘ganged up on me’”. (Case AQ – sexual abuse allegations not substantiated).

“...her own description of the relationship history indicates engaging with males who have significant problems”. (Case AJ – sexual abuse allegations not substantiated)

The results of the current study point to the importance of understanding the developmental and relational contexts of mothers in Family Court custody disputes involving allegations of sexual abuse of children. The findings provide a picture of these mothers as women who suffered unhappiness and hardship in childhood, and whose early experiences have adversely affected their development of sense of self and relational patterns. Their experiences of the focal relationship were powerfully negative, and they described their ex-partners as controlling and manipulative. The sexual relationship with their ex-partners were reportedly toxic. In the context of a painful family atmosphere, experience of their partners as untrustworthy and uncaring, pervasive self-doubt, difficulty in feeling confident in the role of mother, and suffering anxiety and depression, many mothers were in a profoundly vulnerable

space. It is hypothesised that mothers developed suspicion that their partners were unpredictable and capable of severe hurt to the family, including sexual abuse of their children.

*The fathers.*

Within the thematic cluster of ‘Father’, a number of common experiences were found. Fathers spoke of nurturing childhoods and close familial relationships. However, others experienced trauma and abuse in their youth, and in these cases, such experiences were explained as impacting their own identity as fathers. Fathers experienced depression, often described as occurring in the context of problems within the focal relationship. Fathers reported varying experiences of romantic relationships prior to the focal relationship, but none spoke of hostility or discord in their previous relationships. Regarding intimate involvement subsequent to the break-up of the focal relationship, fathers described being in committed and satisfying relationships. Fathers tended to view themselves as stable and dependable, and committed to their family. This was true of father across cases (independent of substantiation of sexual abuse allegations).

“He states he had a good relationship with his father although ‘I did not see much of him’. As to how he reacted to his father’s death, he says that when he died it was a ‘shock because there was no time to mourn’... ‘I now realise how important fathers are’”. (Case AJ, sexual abuse allegations not substantiated)

“...he sees himself as focused and determined and as somebody who is diligent and conscientious and respectable. He says he values hard work and loves children and other people”. (Case AK2, sexual abuse allegations not substantiated)

Fathers explained the sexual abuse allegations made against them in the context of mothers’ emotional instability. Those fathers who were falsely accused were likely to have experienced profound emotional reactions, which affected their views of themselves as

fathers. The results point to the importance of understanding the developmental and relational contexts of fathers in Family Court custody disputes involving allegations of sexual abuse of children. The findings provide a picture of these fathers as men who suffered some difficulties in their youth, but who viewed these experiences as positively shaping their identities as fathers. Overall their early experiences were caring and nurturing, which likely benefited their development of self esteem. Fathers' experiences of the focal relationship were mainly negative, and they described their ex-partners as irrational and unstable; however, they were able to identify some favourable aspects of the relationship and their ex-partners. Fathers experienced problems in the focal relationship and break-up differently from mothers, though they also spoke of suffering from depression related to these issues. Fathers' capacity for emotional relatedness, and gender differences in attitudes to marriage and reaction to relationship issues emerged as important in understanding fathers' experiences of the situation leading to Family Court custody disputes.

*The allegations.*

The thematic cluster of 'Sexual abuse allegations' included a number of commonalities. In all but two cases, the alleged perpetrating parent was the father. In the case in which the sexual abuse allegations were substantiated, the alleged perpetrating parent was also the father. In almost all cases in which sexual abuse allegations were not substantiated, as well as the case in which sexual abuse allegations were substantiated, the accusing parent expressed some doubt as to whether sexual abuse had occurred or not. Despite these doubts, no parents retracted their allegations in cases in which sexual abuse allegations were made. Parents, particularly mothers, spoke of incidents and behaviours that at the time of occurrence did not raise particular suspicion, but were interpreted retrospectively as evidence that sexual abuse of their children had occurred. Parents who alleged that their ex-partner had sexually abused their children offered children's accounts as evidence to support their claims. Alleged



perpetrating parents offered explanations as to why they had been accused of sexual abuse: either that the alleging parent was motivated by vindictiveness or manipulation; or that the alleging parent was mentally unstable. A tendency for accused parents to speak in a detached manner of the allegations of sexual abuse was noted.

“(Child’s name) was observed when sitting next to a male of putting her hand on the male’s thigh and ‘looking up for approval’. This was observed on three different occasions and the friend’s opinion was that ‘she must have learnt that behaviour’. He (father) is also accused of ‘tongue kissing’ and ‘playing licking games’ with the daughter”. (Case AJ, sexual abuse allegations not substantiated)

“‘At this time there was something wrong with the children’. There was a ‘sudden change in their behaviour’. ‘I did not know what was going on’. The children were screaming at night. They also became very ‘clingy’. ‘They had to be with me in their sight’. ‘I knew it was something to do with contact’ but ‘I was not sure what’”. (Case AN, sexual abuse allegations not substantiated)

“As to whether she believes the sexual abuse has occurred she says ‘I don’t know if sexual abuse occurred or not’... She goes on to say that ‘(Father’s name) can be heavy handed but I doubt if he would sexually abuse the children but I can’t doubt my daughter’. ‘I have to protect her’”. (Case AC, sexual abuse allegations not substantiated)

The results point to the importance of considering the nature and development of sexual abuse allegations in Family Court custody disputes. The challenges posed to the Family Court in considering such allegations, and their implications for custody and contact decisions are significant for the mothers, fathers, and children involved. The verification of sexual abuse allegations is particularly difficult in the Family Court due to evidence usually being insufficiently clear to warrant criminal prosecution, or even intervention by child safety

authorities. Custody disputes brought before the Family Court inherently involve intense emotions from all parties. Motives are questioned, family dynamics are scrutinised, and individuals' personal issues are laid bare. Vengeance, fear, vindictiveness, hostility, concern, and anxiety are displayed. The Family Court is in the unenviable position of evaluating evidence in this emotive atmosphere, knowing that the absence of physical, behavioural and emotional indicators of abuse does not mean it did not occur. The current study found that many alleging parents experienced doubt in their own suspicions of sexual abuse. Their concerns were found to have developed in the context of emotional vulnerability and anxiety for their children's welfare, and were reinforced by retrospective interpretation of behaviour as indicating that abuse occurred. Input sought from health care professionals served to validate alleging parents' concerns. It is suggested that for the alleging parents, their allegations of sexual abuse against their ex-partners unconsciously expressed deep fears for their children's welfare and acted to meet their needs for personal affirmation, in the context of the painful upheaval of a relationship break-up.

*Psychiatric opinion.*

Within the thematic cluster of 'Psychiatric opinion', a number of common accounts were found. The vast majority of mothers and fathers were considered to not be suffering any major mental disorder, their cognitive functions were intact, and they were of normal intelligence. Concern expressed about parents' psychiatric states was more common for mothers than for fathers. For these mothers, a strong theme of depression was evident, regardless of substantiation or otherwise of sexual abuse allegations. Many mothers and fathers were described as having personality vulnerabilities, or personality disorders. Pathological personality traits observed in parents included histrionic, obsessional, narcissistic, paranoid, and dependent. For mothers, these traits were common across cases. For fathers, these traits were common among cases in which sexual abuse allegations were

not substantiated and those in which sexual abuse allegations were not made. For the case in which sexual abuse allegations were substantiated, the father (alleged perpetrator) was not considered to have any personality pathology.

The Psychiatric Report author expressed firm opinions regarding mothers' and fathers' personality characteristics, and tended to use diagnostic labels in description. The author outlined particular issues (regarding psychiatric concerns and/or sexual abuse allegations) for the Court to consider in deciding residence and contact arrangements for the children involved, but refrained from making explicit recommendations or judgement of fact. Issues highlighted by the Psychiatric Report author included: that a mother's personality vulnerabilities could potentially affect her ability to parent effectively; and that a mother's psychiatric illness could account for her conviction in sexual abuse allegations if those allegations were found to be not substantiated. More broadly, we hypothesised that in some cases, the alleging parents' (mothers') pursuit of an exclusive relationship with their children may have instigated the sexual abuse allegations on a subconscious level; that is, that personality vulnerabilities and fear of loss of relationship with their children may have facilitated development of allegations in the absence of solid evidence. One of the cases in which this was hypothesised involved sexual abuse allegations that were substantiated in the Court process.

“I consider that it is very likely that (mother's name) suffers from a depressive illness, and it is possible that the eating disorder is symptomatic of this, although it is not unlikely that there are two independent disorders. (Mother's name) certainly has symptoms of depression which she attributes to somatic illness”. (Case A2, sexual abuse allegations not substantiated)

“With respect to the father, (father's name), there are significant personality vulnerabilities that have presumably arisen out of the more unfortunate aspects of the

developmental history... He is also highly obsessional and controlled with difficulty in accessing his emotions and expressing them". (Case AJ, sexual abuse allegations not substantiated)

For psychiatric reports prepared for expert testimony in Family Court cases involving allegations of sexual abuse, the report author is in the difficult position of evaluating individuals whose desires are incompatible. The gathering and presentation of assessment of these individuals informs a legal process which is independent of psychology or psychiatry, yet the decisions based on such yield significant psychological ramifications for the individuals the psychiatrist assessed. The author of psychiatric reports needs to be mindful of the psychodynamic perspective of assessment, as distinct from a diagnostic perspective. The psychodynamic approach has a clinical focus, and is undertaken with the basic goal of understanding a person as thoroughly, individually, and in-depth as possible, so that understanding can then be used as a basis for making decisions and planning interventions that will be beneficial to that person (Lerner & Lerner, 2007).

The themes explicated in this study are taken from the text of a single author. The question must be asked: to what extent does the data reflect the Psychiatric Report author's potential biases in the collection and presentation of clinical information? This question may best be answered comparatively. In the absence of reports prepared by other authors, the current study allows only speculation as to possible issues. The author of the Psychiatric Reports examined was noted to rely heavily on the use of interview quotations in the text of the Report. This permitted the reader a close association with the content of the psychiatric interview, and with the interviewee themselves. However, the disadvantage of this style is that at times the Report read like a transcript, and the reader had difficulty extracting the pertinent clinical information. The author of the Psychiatric Reports, in-keeping with current practice, did not conduct any psychometric testing. Although much relevant information was

presented, the use of carefully selected psychological tests or inventories may aid in the support of clinical impressions. The argument could be made that this would be more appropriately included in a complementary psychological report to be presented in the Court process. Operationalisation, standardisation, and quantification distinguish psychology from other mental health professions in its contribution to assessment (Grisso, 1987). It has been argued that the expert witness' principal role is to describe the examinee's capacities and deficits relevant to the legal issue at hand, and reasoning as to the causes of the observed deficits (Nicholson & Norwood, 2000). In focusing on legally relevant functional abilities, psycholegal measures can structure evaluations and improve communication with members of the legal profession, thereby increasing the relevance of oral and written testimony (Nicholson & Norwood, 2000). In Family Court cases, tests quantifying such issues as personality traits, attachment style, and coping mechanisms may be a useful addition to the Court process.

There is no research into the issue of what constitutes a useful and good quality psychiatric report in relation to child custody disputes. The process of explicating Psychiatric Reports elucidated a number of issues relevant to the role of expert testimony in Family Court cases. The horrendous nature of child sexual abuse and the alarming possibility inherent in an erroneous decision may tempt judges to look to the mental health expert witness for ultimate conclusions of fact (Brooks & Milchman, 1991). While understandable, this would be inappropriate, as the expert witness should only act to inform the Court's decision-making (Brooks & Milchman, 1991). Judges may rely heavily on expert testimony to make critical determinations, as usually there is little training given to them in highly specialised areas such as familial sexual abuse (Behnke & Connell, 2005). Without mental health training of their own, Family Court Judges are in the position of trusting the processes of the experts they consult, and expecting that the testimony given is of an appropriately high

standard. However, for the experts themselves, no guidelines are available as to how such specialised assessments are to be conducted. While it is not feasible to suggest that psychiatric reports prepared for legal purposes should achieve the kind of formal validity ascribed to psychometric testing, they should be critically evaluated and universal standards upheld.

### *Implications*

Interpretation of the findings of the current study has highlighted a number of themes which have practical and philosophical implications for the Family Court. These implications centre on the need for greater consideration of psychological factors in the understanding and management of Family Court cases involving allegations of child sexual abuse. The findings point to the need for more uniform, consistent, and thorough investigation of child sexual abuse allegations raised in Family Court cases. Specialised assessment services, which may involve the creation of a special investigative service (either independent or part of the Court system), would likely aid in the efficient and fair examination and resolution of child sexual abuse claims. Such a service would benefit from the use of clinical and forensic psychologists, psychiatrists, and medical doctors in evaluating the complex problems that arise when a parent suspects their child has been sexually abused, as demonstrated in this study.

The current findings are consistent with research that has suggested that a treatment-oriented approach, as opposed to an adversarial approach, is best suited to the resolution of these complex cases, and is most likely to result in more positive outcomes for the whole family. Determination of whether sexual abuse allegations in the context of custody disputes are true or false may be elusive, and a therapeutic approach that is in the best interest of the child is advocated (Awad & McDonough, 1991). It has been found that engaging families in longer-term treatment frequently proved to be a more fruitful method of assessing such

allegations, and avoided the endless unresolved disputes to which the legal process often leads (Awad & McDonough, 1991). For cases similar to those included in the current study, a clinical, rather than a legal resolution may be favoured.

Those involved in the Family Court decision-making process may benefit from specialised education in sexual abuse issues, including their use of expert opinion in this regard. Education about the issues relating to child sexual abuse, such as prevalence, short- and long-term effects, common characteristics of perpetrators, and symptomatic behaviour would aid in increasing the understanding of the complex nature of these cases. Such an understanding may act to detract from the unhelpful attitudes the Court has been accused of having, and create a new awareness that will ultimately benefit the families the Court seeks to serve. Other authors have argued that the Family Court functions to protect sexual abusers at the expense of children's safety (Jenkins, 2002), due to a dominant belief within the legal community that women and children who make allegations of sexual abuse are likely mentally ill or vindictive liars (Foote, 2006). This belief has not been supported by the current research, which found that factors more complex than either mental illness or vindictiveness alone contribute to the development of false allegations.

#### *Limitations and Future Research*

The current study adds substantially to understanding the phenomenon of unsubstantiated child sexual abuse allegations within the context of custody disputes, and highlights a number of important areas for further investigation. There are several limitations of this study which could be addressed in future research.

The data available was immense in its potential for research; the opportunities for the analysis and explication of this data were limitless. The current study utilised only one method of analysing this data, which focused on the detailed explication of 20 Psychiatric Reports. Future researchers could utilise expert testimony and court documents in many

different ways and include psychiatric evaluation for a wider variety of professionals than utilised in the current study.

This study was the first to use qualitative analysis in the explication of themes from reports, rather than direct transcripts of interviews. This was a departure from traditional methods of qualitative analysis, and required a unique methodology to be researched and devised. We believe that the methodology was successful in its goals. Ideally, the current study would be independently replicated, to allow for the emergence of other themes, the verification of themes currently identified, and for the identification of new areas of interest. Further, there is an opportunity for the application of quantitative research analysis to the current topic, in which large group numbers and equal sample sizes of cases in which allegations were made, not made, substantiated, and not substantiated, would allow for meaningful comparisons to be made.

It is recognised that the absence of substantiation of sexual abuse allegations does not mean that sexual abuse did not occur. Usually in Family Court cases, there is no objective corroboration, no strong evidence, and inconclusive medical examinations relating to the possible sexual abuse of children. This study used the Court's judgement of the veracity of sexual abuse claims as representation of the occurrence of abuse. Future research may utilise collateral information such as medical reports, children's statements, child safety investigations, and counsellors' notes to provide a more comprehensive picture of the veracity or otherwise of sexual abuse allegations.

The current study explicated themes from the Psychiatric Reports of a single expert witness. The advantage of this method was that it controlled for variation in interviewing and writing style, and provided a thorough insight into the processes of one Family Court expert witness was gained. The obvious disadvantage of this method is that potential Report author



biases are inherent in the data, and comparison between experts is unable to be made. Future research would benefit from the inclusion of multiple authors' reports in analysis.

The classification of cases as sexual abuse allegations having been made, not made, substantiated, and not substantiated represents a false distinction to some extent. Ideally, discrete groups would be easily identifiable, and comparison made more useful. However, in practice, the data available involved complicated cases in which allegations of sexual abuse were raised at different times, with differing degrees of attention paid, and accordingly were recorded differently in both the psychiatric and legal documents. Some cases with particularly vague issues relating to child sexual abuse were excluded from the current study. Each case – its Record of Judgement and the Psychiatric Reports of both the mother and the father – is ripe for psychological investigation in and of itself. Future research could adopt a case study approach.

This study has raised a number of questions and highlighted the paucity of research in a number of areas. Obvious opportunities for research with a similar data set include: the explication of themes in Records of Judgement; analysis of factors such as the timing of allegations; and the involvement of other family members (e.g. in-laws) in the development of the allegations. More broadly, the analysis of direct transcripts of psychiatric interviews would allow for interesting insight into the psychiatric report-writing process, and the investigation of Family Court Judges' attitudes and insights into cases involving sexual abuse allegations would be valuable.

Family Court resources are being spent investigating the veracity of allegations without an optimal procedure for doing so, and cases in which allegations of child sexual abuse are genuine are potentially being overlooked. It has been suggested that false allegations of abuse can actually be as traumatising as actual abuse (Savvidou, Bozikas, & Karavatos, 2002). The findings of the current study, and future research in the area, will aid

in the development of strategies of how best to deal with child custody cases involving allegations of abuse.

### *Conclusions*

The current study was the first to conduct an in-depth examination of psychiatric evidence presented in Family Court cases involving allegations of child sexual abuse. Themes from Psychiatric Reports were identified and explicated, and a rich account of the meaning structures that emerged from these cases was presented in the context of the limited literature in the area. The current findings have highlighted the complicated nature of unsubstantiated allegations, consistent with the idea that they are less often the result of deliberate vindictive action, and more often evolve from unconscious action taken by an emotionally compromised parent (Barker & Howell, 1994). The allegations themselves may well represent the manifestation of a number of complicated contributing factors.

There were several key findings of the study. The developmental and relational backgrounds of parents were found to be important in understanding mothers' and fathers' experience of their relationship, their break-up, and of the custody dispute. The Psychiatric Report author's identification of personality pathology in both parties affirms the importance of understanding parents' formative experiences in explaining their experiences of the Family Court case, and the development of the sexual abuse allegations. The majority of key themes were common among cases, regardless of the substantiation or otherwise of sexual abuse allegations.

The current findings provide a picture of the mothers involved in these Family Court cases as women who were in a profoundly vulnerable space. Mothers described a painful family atmosphere, experience of their ex-partners as untrustworthy and uncaring, experience of the sexual relationship as toxic, pervasive self-doubt, lack of confidence in the role of mother, and suffering anxiety and depression. It is hypothesised this context was conducive

to mothers having developed suspicion that their ex-partners were unpredictable and capable of severe hurt to the family, including sexual abuse of their children.

Fathers who were falsely accused of sexually abusing their children are likely to have experienced profound emotional reactions, which in turn affected their views of themselves as fathers. The current findings provide a picture of the fathers involved in Family Court cases in which allegations of sexual abuse were raised as men who identified strongly with the role of father. Fathers described their ex-partners as irrational and unstable, and their relationship as mainly negative, though they were able to identify some favourable aspects. Fathers' capacity for emotional relatedness, and gender differences in attitudes to marriage and reaction to relationship issues emerged as important in understanding fathers' experience of the situation leading to Family Court custody disputes.

The challenges posed to the Family Court in considering allegations of sexual abuse, and their implications for custody and contact decisions, are significant for the mothers, fathers, and children involved. The current study found that many alleging parents doubted their own suspicions of abuse, which developed in the context of emotional vulnerability and anxiety for their children's welfare. Retrospective interpretation of behaviour as indicating that abuse had occurred and input sought from health care professionals served to validate and reinforce alleging parents' concerns. For the alleging parents, their allegations of sexual abuse against their ex-partner might be seen as an unconscious expression of deep fears for their children's welfare and acted to meet their needs for personal affirmation, in the context of the painful upheaval of a relationship break-up.

The examination of the Psychiatric Reports in the current analysis revealed issues relating to diagnostic labelling, quantitative testing, and more broadly, approaches to interviewing and report-writing. The psychodynamic approach to assessment was advocated, which emphasises a clinical focus, undertaken with the basic goal of understanding a person

as thoroughly, individually, and in-depth as possible. This approach is suggested to be most appropriate for the use of expert testimony in Family Court cases in which allegations of child sexual abuse have been raised.

Expert testimony plays a pivotal role in deciding issues of custody and contact in Family Court cases. The current study is the first to have examined the content and style of these reports.

The phenomenon of allegations of child sexual abuse that are submitted to scrutiny in the Family Court process is enormously complex. The difficulty of determining the facts of a matter has been highlighted. The current research has found that verification of allegations may remain elusive, and may not necessarily be the most important issue. Each person carries with them intricacies of personal history and character that shape their experience. To understand this experience may be of greater import than the truth or otherwise of their accounts.

#### Authors' note

The paper does not seek to minimise the suffering that can be caused by sexual abuse. Sexual abuse of children is an horrendous act, and its victims frequently suffer in silence. Increased understanding of the nature of allegations and substantiation thereof is sought in order to improve the processes of the Family Court system, with the ultimate intention of producing better outcomes for the men, women, and children it serves.

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