

# **CHILD ABUSE IN THE CONTEXT OF PARENTAL SEPARATION AND DIVORCE: NEW REALITY AND A NEW INTERVENTION MODEL**

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## **ABSTRACT**

Child abuse in the context of parental separation has been seen as a weapon manufactured by parents to gain a tactical advantage in their private divorce war. Thus, it has long been regarded as fictitious and unreal. Researchers, even when they encountered it, felt free to ignore it, committed to the prevailing view that it was different from child abuse in other circumstances. Services shared the same view. They gave it a low priority as a problem in comparison with virtually all other kinds of child abuse. It represented only the fight between two adults breaking up a high conflict partnership.

This paper will present new Australian research that is leading the way internationally in showing that child abuse in this context is real, that it is serious, that it is growing and that interventions have been inadequate. What has been assumed to work does not; what does work has not been acknowledged.

The paper will show how much of the inadequacy in intervention comes from a poor understanding of child abuse in this context, one that is based on a widespread myth and not on any reality. The research findings put forward in this paper challenge the idea of child abuse as a tactic and an irrelevancy in parental separation. Instead the research positions child abuse as a critical event in the pathway to separation and parental separation as a critical event in the pathway to child abuse. The research shows that child abuse causes parental separation and parental separation causes child abuse.

The paper will report on the outcomes of a new interventive model now being piloted by a collaborative program between a group of socio-legal and human service organisations. These comprise the Family Court of Australia, a number of state child protection services, the state police, several state Legal Aid Commissions and the federal Attorney General's Department. The model is based on the reality of child abuse in this context and is tailored to what the research shows works best in dealing with child abuse in this context. The paper shows that what works best is quite different from what has been assumed to be best practice.

## **INTRODUCTION**

Recently, a counselling agency for abused children contacted the author of this paper about a subpoena the agency had just received. The subpoena required a staff member to give evidence in court regarding a child they had assessed and were continuing to see as a result of allegations of sexual abuse inflicted by his father. The agency did not want to appear in court. They saw the dispute, a residence and contact dispute being heard in the Family Court of Australia, as a private dispute between two parents in the process of separating. They saw no reason to attend. This example typifies a strongly held myth about child abuse allegations in the context of parental separation and divorce. Believers in the myth argue that such allegations are merely weapons manufactured by parents to gain a tactical advantage in their personal divorce war. Being a part of a private dispute between parents, they are not real. Therefore services should avoid them if possible.

## **BACKGROUND**

This myth has many sources. The original source may be the research of the pioneering USA team of

Wallerstein and Kelly who commenced the first longitudinal study on separation and divorce some twenty years ago (Wallerstein and Kelly, 1980). They saw and noted partnership violence and child abuse in their 60 separating families, but dismissed it interpreting it a temporary phenomenon caused by the stress of the disintegration of the partnership. Subsequently the USA clinician Gardner propounded a view, based on nothing but personal preference, that most allegations of child sexual abuse in the context of partnership separation and divorce were fictitious. He argued the allegations were concocted by mothers as part of their strategy in alienating their former partners from their children permanently (Kay and Tolmie, 1998). This view found ready acceptance among men's rights groups, in Australia as well as overseas. It remains firmly entrenched in their thinking even now, judging from the views expressed by men to the author in face to face consultations and in written submissions to the Family Law Pathways Advisory Group (FLPAG, 2001).

## **RESEARCH**

Consequently the first research in this area was constructed to test this view. Were the allegations true or not? How many were true and how many were false? Initially the research supported the prevailing view. However, further studies returned contradictory results and it soon became clear that the studies were all so small they were unreliable (Schudson, 1992; Toth, 1992). When larger studies were carried out, beginning with the study commissioned by a USA national centre for child abuse (Thoennes and Pearson, 1988) and progressing to recent UK, Australian, Canadian and further USA research (Hester and Radford, 1996; Hume, 1997; Brown, Frederico, Hewitt and Sheehan, 1998; Bala, 1999; Wilson, 2000; Brown et al, 2001), these studies showed a very different picture.

The recent research, to which Australia has been the major contributor, shows the new reality. It shows that child abuse allegations in this context should not be classed as a red herring, or a diversion stemming from the dispute, but as a red light, an indicator of serious family problems. Child abuse in this context is real and it is serious. Child abuse is a critical event on the way to parental separation and parental separation is a critical event on the pathway to child abuse.

## **THE REALITY OF CHILD ABUSE IN THIS CONTEXT**

A number of Australian studies have now shown that child abuse causes parents to separate (Brown et al, 1998). If partnership violence is included in the definition of child abuse, and it should be noted that the Family Court of Australia regards the existence of partnership violence whether witnessed by the child or not as child abuse, then some 43% of parents leave their spouse for reasons of child abuse or serious partnership violence, (Brown et al, 1998; FLPAG, 2001).

Sadly, research shows that the act of leaving the abusive partner does not bring the abuse of the children to an end (Hester and Radford, 1996, Brown et al, 1998). Mostly, in around some 80% of families where the non-abusive parent leaves, it continues. Parents have rights to contact with their children after separation. To stop the abuse many parents have to stop contact by taking action in a family or an equivalent court.

Not only does separation not stop child abuse and partnership violence, but current research suggests also that parental separation is likely to cause abuse to occur. Wilson, in an analysis of all research on children's welfare post separation and divorce (Wilson, 2000), concluded that the loss of the protection gained from two parents living together rendered children vulnerable to abuse, no matter what parenting arrangements were put in place post separation. She suggested female children were the more vulnerable and that they were vulnerable to sexual abuse in particular.

Recent research (Brown et al, 2001) shows that those responsible for the abuse are the same people who are responsible in other circumstances. Fathers were most commonly responsible, 53%, then mothers and fathers together, 11%, a group of people such as a father and a grandfather, 11%, then mothers, 8%, then stepmothers, 5%, and step fathers, 5%, and finally siblings and step siblings, 7% together. Allegations of sexual abuse made against stepmothers, stepfathers, mothers, grandfathers, siblings and stepsiblings were the most likely to be true. Surprisingly mutual allegations of any kind of abuse made by both parents simultaneously were highly likely to be true. Other allegations were often but not always true, such as

allegations of physical and sexual abuse against fathers, true in 56% of cases; allegations against mothers of physical abuse were the least likely to be true. While allegations against some perpetrators were invariably found to be true, such as allegations in respect to grandparents, siblings and stepsiblings, no allegation against any one category of person was found to be always untrue.

The implications of these findings are that on the one hand some allegations are very likely to be true, no allegation is invariably false. Moreover, when allegations were directed against a former partner and they were found to be untrue, on some occasions the allegations were correct but someone else in the family was the perpetrator. In addition parents who alleged their former partner or another family member had abused the child were found, on occasions, to have been the perpetrator themselves.

Similarly all kinds of abuse were found to occur (Brown et al, 1998; Hume, 1998; Brown et al, 2001), physical abuse, sexual abuse, neglect and emotional abuse. However, neglect was not as common as in the profile of abuse that is notified to the state child protection services or the profile of abuse over which action is taken in the Children's Court. Sexual abuse in the context of parental separation and divorce was more common than in the profiles of abuse relating to notifications to the state child protection services. This fact probably flows from the likelihood of a parent leaving their partner following the discovery of sexual abuse and their subsequent need to seek orders protecting the child during a contact visit from the family court. The most common form of abuse was found to be multiple forms of abuse.

## **OLD MODEL OF INTERVENTION**

The last fifteen years of research have shown that the customary model of intervention has not been successful. A major problem identified was the inadequacy of the child protection service's and family court interface. The flow of information between family courts and child protection services and back again was poor (Thoennes and Pearson, 1988; Brown et al, 1998) and coordinated action, especially required in child protection (Hallett, 1995), did not occur. Counselling was ineffective, cases drifted for very long periods of time, many court hearings took place, and the children's position remained unchanged except that their emotional distress escalated. Some interventions did work. These were good initial child protection investigations, court ordered Family Reports, legal representation for children and the bringing together of all three for consideration in the one court hearing.

## **A NEW MODEL OF INTERVENTION**

The Family Court of Australia decided to implement a new model of intervention in residence and contact disputes involving child abuse allegations on an experimental basis. The model was based on a series of new principles derived from the previous research. The principles underpinning the program were as follows:

- A child focused approach that included automatic legal representation for the child funded by the state legal aid authority,
  - A judge lead, tightly managed, fixed time program with pre-set steps,
  - Early intervention with full intervention resources made available at the outset,
  - Use of expert authority in investigations and assessments, using child protection and court counsellor professionals,
  - Clear information about program processes and progress for families, including circulation of expert reports to families,
  - Tight collaboration between the various services involved in the program located at multiple coordination points in the program.
- Ongoing monitoring of program by judge led sponsoring inter-organisational committee.

## **OUTCOMES OF THE NEW MODEL OF INTERVENTION**

The new program brought together the Family Court of Australia, Victorian Legal Aid, the Victorian state child protection service, the Victorian Police, the Law Council of Australia (Family Law Section), the Commonwealth Attorney General and the Family Violence and Family Court Research Program team. The program began in June 1998 and finished in December 2000. It ran in the Melbourne and Dandenong

Registries of the Family Court, taking 100 families into the program altogether.

The evaluation of the program has shown it to be very successful. The disputes were resolved far earlier, with more agreed resolutions, with fewer breakdowns of resolutions and with fewer court hearings than previously (Brown et al, 2001). Thus cost savings were considerable. Moreover the proportion of children highly distressed fell considerably. The conclusions of the evaluation were that all components of the program were necessary to its success; no one should be removed if the program were to be reproduced elsewhere. In this paper one component is given some detailed consideration. The component selected is the use of expert investigations of the abuse and expert assessments of the family.

## **EXPERT INVESTIGATION OF THE ABUSE AND EXPERT ASSESSMENT OF THE FAMILY**

In the past much emphasis was placed on counselling with such families. In this program the social workers and psychologists were used as expert investigators and assessors rather than as counsellors, although counselling did occur.

## **CHILD PROTECTION INVESTIGATIONS AND REPORTS**

Child protection investigations of child abuse allegations in the circumstances of parental separation and divorce have received little attention. Informal discussions with child protection services in Australia as part of the evaluation of the new model suggested workers found such notifications very common at certain times of the week or year but less common otherwise. These times were weekends or school holidays when children are going to or returning from contact visits. Thus these families were not a large group in child protection service's workload, a growing group but not a huge one.

Workers reported they found the parents difficult to deal with, more aggressive than was usually the case. Since the abuse was framed within a context of separated parents it presented as a marital dispute with allegations of child abuse, rather than as allegations of child abuse alone. The dispute and the parent's distrusting relationship tended to occupy centre stage rather than the abuse allegations.

The evaluation showed that workers needed to see past the dispute and to keep a very open mind in the investigation. All types of abuse were found to occur, all types of perpetrators were found to be responsible, the families had extremely complex structures that were difficult to discern, they had longstanding problems and histories of past childhood abuse. Family information was concealed from one or another family member quite frequently.

In the experimental program every family was referred for an investigation and report concerning the allegations of child abuse at the first court event. The child protection workers had five weeks to undertake the investigation and make a report to the court. They achieved this deadline with ease. Almost half of the allegations, 48%, were substantiated, with no one type showing up as more likely to be substantiated. The reports provided to the court were usually two to three pages with the process of the investigations documented as well as the conclusions and recommendations. Over time, the reports incorporated a view of the future risks to the child so as to take account of the fact that Family Court orders are long term. They stand until changed by the court.

The child protection workers provided more than just an investigation service to almost all of the families, to some 89%. They gave short term counselling services, referred children and families to other counselling services, provided a combination of both or, occasionally, provided a long term service themselves. The investigation and report aided resolution. Where abuse was substantiated those families resolved the dispute immediately.

## **COURT COUNSELLORS ASSESSMENTS OF THE FAMILY AND REPORTS**

While little has been written about child protection investigations and reports in the context of parental separation and divorce, more has been written about Family Reports or family assessments for residence and

contact evaluations when undertaken by court counsellors (Brown, 1995). These assessments focus on each member of the family and their relationship to the child, the care they can provide, their attitude to the child's functioning and the child's view of their own situation. Counsellors see the parents, the grandparents on occasions, the children with and without their parents and have contacts with community agencies such as schools and counselling services.

In the experimental program the Family Report was an automatic intervention ordered by the judge at the second court event and after the family and the court had received the child protection report. As many cases resolved before the Family Report was ordered reports were undertaken in only some 59% of cases.

In doing these particular reports counsellors estimated they took a few more hours per report in than they had with such reports previously. They commented that they greatly appreciated the prior child protection report, commenting that the existence of an up to date child protection investigation gave them an opportunity to work with families at a more advanced stage of potential resolution. Since the abuse had been carefully investigated by the child protection service, the counsellors could move on to the next step, that is the long term parenting arrangements.

Counsellors did identify additional children at risk, in an additional 16% of cases. However, the identification of that extra group came more from the differences in definition of child abuse as between the Family Court and the child protection services than from any overlooking of abuse by the state child protection service. The Family Court has a broader definition of child abuse than the child protection service, for instance it includes partnership violence and the state child protection service does not. The Family Court uses the concept of *unacceptable degree of risk* in relation to the child's best interests as opposed to concept of the child protection service, *has suffered or is likely to suffer harm* (Sheehan, 2001).

## **FAMILY'S VIEWS OF SUCH EXPERT REPORTS**

The evaluation of the program sought parents' views of these reports and the reporting process. However, the evaluation did not succeed in gaining as much feedback from parents as anticipated. Parents who did not gain what they wanted returned surveys more commonly than those who did. Thus the results might be different if a more representative groups of parents had replied. Some 50% of these parents were satisfied with the child protection reports and the same proportion were satisfied with the Family Reports. Neither report was identified as being one of the worst features of the program. Indeed some 10% of parents identified either one or other of the reports as the best feature of the program.

Considering the type of parent who responded, those who were most disappointed, these results were surprisingly positive. Although no parent mentioned the transparency of the reports in terms of the process and the results, this could have been an influence on parents' responses. Presumably the experience of the reports for the parents, in terms of time given, care taken, commitment to the children and empathy with children and parents, would be important in determining their views of the child protection and counsellor assessments. Parents were not asked about these issues in detail. Another study is underway investigating parents' and children's experiences in such reporting processes (Hay, 2001). It will be an invaluable addition to our knowledge base when completed.

## **CONCLUSION**

Child abuse in the context of parental separation and divorce requires more attention. Current research, to which Australia is the largest contributor at the moment, shows it is a cause of partnership breakdown and that it may be a consequence as well. Australian research shows the incidence of such abuse, its nature, its victims, the perpetrators and the complexity of the various family situations. The work undertaken by a collaborative group of agencies in a new pilot program in Melbourne shows some successful intervention strategies. Hopefully, now we know more about such abuse, further experimental programs will develop, adding to the strategies we have today.

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