Paedophile Contact with Victim Children in the Family Courts of Australia

1976

In 1976 McCall J, at 7 D'Agostini v D'Agostini, stated "The conviction of the husband was admitted by him; however an affidavit sworn by the eldest daughter upon whom the sexual assault took place was to the effect that the assault was not an isolated act and had occurred on at least three occasions." [1]

McCall in 12 he states "I also accept that, following the sexual incidents referred to earlier this year, there has been some difficulty with the children settling down."

McCall J, at 24.2 makes orders that "The husband is to have access to the three said children on alternate Saturdays and Sundays".

This is the beginning of the judicial attack on women and children in that it is one of the very first cases used to make excuses so that a paedohile can have access to their "child victim".

1986

(1986) FLC 91-758 pn 19 December 1984 in at 4 & 5 the husband pleaded guilty before Loveday J. in the District Court to a charge of committing an act of indecency involving the child, who deferred the sentence. At 21 The husband agreed that there were three occasions when he behaved in an indecent manner in relation to the child J. [2]

At 27 Bee J stated "I am not reasonably satisfied that the wife has established that on 12 July 1984 the husband sexually interfered with J to the extent alleged by her and I am not satisfied that he sexually interfered with the children otherwise than as admitted by him in evidence yesterday".

This case is used to discredit the mothers opinion that the children have been sexually abused and to label children's statements of sexual abuse as children's imaginations are sensitive and immature instruments, for good or ill and that they were so forced to believe they were sexually abused when in reality it was "nothing as extreme as stated" and was because of the mothers beliefs that had turned into "reality"at 32.

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[1] http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FamCA/1976/79.html
[2] http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/FamCA/1986/52.html?query=

Bee J, also stated that the psychologist report that supported the children and the mother's evidence was not as preferred as other psychologists – because he didn't interview the father. Please note here that the father had already admitted it the previous day in cross examination and to the Loveday J, when he was first charged.

No contact was ordered however this is another case where magistrates are minimising sexual abuse of a child that the perpetrator has already admitted to and parts of this judgement are used for that specific purpose.

1988

In 1988 Nicholson CJ in M & M[3], quotes "In *Hinch* v. *The Attorney-General (Vic.)* [1987] HCA 56; (1987) 61 A.L.J.R. 556. *Mason* CJ in referring to the requirement that a publication must be shown to have a tendency to interfere with the administration of justice expressed himself in terms of the necessity for showing that there was a *real risk* of it doing so (p. 560). Although the case involved a different subject matter, it is clear that his Honour considered that in that context it was necessary to qualify the word ``risk''.

The M & M case is interesting in that it orders custody to the mother and supervised access to the father – but throughout the statements backing up the sexual abuse of the child, Nicholson CJ routinely claims there is no evidence which he sees gives him the opinion that there was definitely sexual abuse. There was medical evidence, there were psychologists and doctors evidence, there was the child's disclosures, there was the child's regressing into bed wetting, etc. But the magistrate keeps coming back to there wasn't enough evidence to substantiate the child sexual abuse.

The first references to Hinch may be of use in the argument of defeating justice as it can be proven that there's a pattern of judges sending kids to either live with or spend time unsupervised with their child victims – including when there are child sex offences.

It is in the public interest that we know that judges and their "court experts" routinely recommend contact between child victims and their fathers.

2001

In 2001 W and W FamCA 216 14 March before Nicholson CJ, Kay and O'Ryan JJ,

The Department of Family and Children's Services sought to intervene in this case, seeking leave to admit into evidence of an affidavit sworn by a counsellor who had interviewed the Husband. The Department said that the evidence of the Counsellor contained alleged admissions by the husband of "inappropriate sexual behaviour"

[3] http://www9.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FamCA/1988/47.html

Nicholson CJ stated "The fact that the husband may have made admissions of inappropriate sexual behaviour to Mr Katsibardis" at 47 and "The evidence of Dr Cecchini supports the view that the husband had made admissions of some inappropriate sexual behaviour" at 50.

Nicholson CJ then states "The problem with this submission is that it overlooks the fact, that the wife did not provide anyone with the complete picture. In particular the wife did not acquaint anyone with the fact, that both she and the child had entertained belief systems which, on her own admission, were in some respect bizarre."

And then gives custody to the father – whom admitted inappropriate behaviour, stating *"13.6 In the result I conclude that the husband, more likely than the wife, to be able to promote a positive relationship between the children and the non-residence parent."*

And *15.6 For so long as the wife continues to maintain her beliefs in relation to sexual abuse of the child [T], not only is it unlikely she will do anything to persuade the child from believing she had been sexually abused, I think it more likely than not, that she will provide positive reinforcement for the child's beliefs.*

At 212 Dr W thought the child [T] was desperately in need of attention. The child liked being in a fantasy world, or having an active fantasy life. Dr. W thought it remarkable, the extent to which the child [T] had been drawn into the wife's beliefs concerning New Age philosophies.

*** This case is quoted many times to discredit child sex abuse and enforcing that because a mother will not adopt an idea that the judges have come up with (ie the child was not abused), that she will harm the child in the meantime and as such custody is awarded to the abuser. [4]

This W and W case been referred over 50 times presumably to discredit allegations of child sexual abuse. [5]

What is interesting though is there is an Austlii report by the Melbourne University that state 24% of family court claims where there are claims of abuse, are of sexual abuse. This resonates with the statistics that roughly one in four girls are sexually assaulted / or abused before they turn 15. [6] It also gives rise to the fact that discrediting mothers whose children have disclosed sexual abuse is spiteful and vindictive because the governments own figures back up what the mothers and children are claiming anyway.

[4] http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FamCA/2001/216.html
[5] http://www8.austlii.edu.au/cgi-bin/LawCite?cit=[2001]%20FamCA%20216
[6] http://www.austlii.edu.au/au/journals/MULR/1999/15.html#fn7

2007

In 2007 Carmody J, at 86 in the Murphy and Murphy case of 2007, stated that "There is no presumption or a priori rule that even gross misbehaviour such as child sexual abuse or family violence disqualifies the offending parent or puts up an insurmountable barrier in the way of having contact with a child victim". [7] He also rambled on and referred to an unpublished report about "false accusations of child sex abuse" at 154. [i]

Carmody J then states "I doubt that either of the girls could be persuaded to make false accusations against him at the instance of the mother or anyone else," at 600.

Carmody J then states "Despite the possibility of past abuse and therefore the risk of future harm, there is no best interests basis for a finding justifying the termination of contact between these children and their father" at 603.

In this case M and A made statements to the mother, police, departmental officers, M's paternal grandmother and the maternal grandmother about sexual abuse by the father.

However the two family reporters and a psychiatrist recommended increased time with the father in the event of a no risk or negative finding on the abuse issue.

Carmody J then stated "The best interests solution was a graduated re-introduction of unsupervised time with safeguards including a short period of supervised contact and post-order monitoring and review".

Carmody J at 388 also ignorantly stated "Child sexual abuse is a crime and thrives in the darkness of childhood silence. Once detected the crime is much harder to repeat".

Statistics show that 48% of paedophiles reoffend within four years of being released, and the AIC stated 52 percent of child sex offenders reoffended during the 25 year at-risk period. [8]

It further stated the 52% recidivist figure should be considered as a conservative approximation of the true base rate for sex offense recidivism in previously convicted child molesters...[it]...represents the lowest approximation for extrafamilial child molester sexual recidivism.[9]

His judgements and statements are made on absolutely incorrect statements about paedophiles and his thoughts on the crime and as such this case should not be referred to at all.

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[7] http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/FamCA/2007/795.html?query=%2272%20Australian%20Law%20Journal%20434%22
[8] https://aic.gov.au/publications/tandi/tandi429
[9] ibid

This case refers to M & M and W & W and B & B and D'Agostino – which all support contact with child victim.

2010

Rivas and Rivas before FM Roberts LNC 795 of 2007 [10]

Child X disclosed to the mother about the father sexually assaulting her, and not long after she [mother] found child pornography photos taken by one sibling of another on her phone. She brought this to the attention of the solicitors and shortly after at 29 Roberts FM made orders restraining the parties and [X] from discussing the existence of the child pornography photographs found on the child X's camera.

At 97 the psychologist stated "A factor mitigating against the risk of harm described above is the possibility that, because the father formed an attachment relationship with [Y] and [Z], he may be less likely to incorporate them in any sexualised ideas. A further factor reducing the risk of harm is the likelihood that, once detected, sexual abuse is much harder to repeat. The direct attention to the father's sexualised behaviour in these proceedings may be a powerful deterrent to any further inappropriate sexualised behaviour".

At 151 Roberts FM states he "accepts that the father has abused [X] at a time when she was a member of the family".

And at 162 Roberts FM orders the father to have (supervised) contact with the younger two children.

This case again refers to M & M and B & B

Statistics to backup claims of child sex abuse

A review of over 700 cases awaiting pre-hearing conferences in the Melbourne registry of the Family Court in 1997 found that more than 40 percent of children's cases involved allegations of some form of child abuse.[4] Research by Professor Thea Brown and her colleagues in Melbourne and Canberra found a similar pattern. Their analysis of cases in Melbourne and Canberra between January 1994 and June 1995 found that one half of all the cases which went to a pre-hearing conference involved allegations of some form of child abuse.[5] Of the cases which went to court, one quarter involved allegations of child abuse. In their detailed analysis of cases in Melbourne and Canberra, the researchers found that of all the cases in which child abuse was alleged, 24.1 percent involved allegations of sexual abuse. In Canberra, the percentage was 48.6.[6]

[10] http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FMCAfam/2010/55.html?context=1;query=rivas;mask_path=au/cases/cth/FMCAfam#fnB4

This would almost certainly backup the evidence of Professor Freda Briggs' claim that "1 in 3 girls are sexually abused before they leave school". [11]

Abuse is a major health issue :

•70% of mental illness is due to child sex abuse - depression, self-harm, anorexia, bulimia, PTSD, suicide, substance abuse and related crimes (Glaser 2005)

•Trauma from abuse affects the immune system, increases physical illness & lifespan is shortened by 20 years (Felliti)

•Costs $30 billion a year (Monash Uni research)

[i] "In an unpublished University of Queensland paper entitled "Psychiatry in the Family court - Mad, Bad, Sad or Fad?", Dr Frank Varghese[97] identifies some of the characteristics suggesting false allegations as:
- Indications of envy on the part of the mother about the closeness of the child's relationship with the father.
- Retrospective accounts of the meaning of certain events and observations which at the time meant little but is now of great significance.
- The interpretation of normal child behaviour as abnormal and indicating sexual abuse and nothing else.
- Inability to recognise that one's own behaviour has contributed to the abnormal behaviour.
- Attributing to the child's statements that are age appropriate.
- Escalation in the nature of the allegations over time.
- Refusal to be reassured by opinions of people who have investigated the allegations, indicating a string need to believe that the sexual abuse has occurred.
- A curious lack of emotion about what they say has happened to the child.
- Reliance on photographs or videos often taken by the accuser which were of no significance at the time but subsequently takes on great importance.
- Reliance on non-specific drawing or writings of the child.
- Reliance of smells of the father or finding hair of the father on the child's clothing as indicative of sexual abuse.
- Insisting that sexual abuse has occurred even during supervised contact.
- The involvement of a therapist who reinforces the belief system. Escalation of the accusations can sometimes be traced to the beginning of "therapy".
- Focus on the father's sexual behaviours towards the mother during the relationship as indicative of a tendency to sexual abuse.
- Focus on a verbal statement which is sometimes an inappropriate comment by the father about the child.
- A willingness to accept that child sexual abuse has not occurred but insisting that it will occur on the basis that the child is being "groomed" for sexual abuse as indicated by various behaviours.
- An "apophanous" experience where various strands both past and present suddenly come together to indicate sexual abuse.
- A history indicating chronic underlying low self-esteem and fear that the child would prefer the father or the father's new partner.
- A wish for a highly enmeshed relationship with the child or children to the exclusion of other relationships.
- The accusation emerges *en passant* to other less serious reasons to deny contact."
http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/FamCA/2007/795.html?query=%2272%20Australian%20Law%20Journal%20434%22 at 154

[11] www.generationnext.com.au/wp-content/uploads/2015/06/Child-Sexual-Abuse.pdf