

A decision pathway analysis of consent-seeking procedures in responsibility and rights cases characterized by child sexual abuse allegations.

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ABSTRACT

The purpose of the study was to obtain the perception of forensic social workers on consent, specifically in care and contact cases characterized by sexual abuse allegations where one party withholds consent. Furthermore, to formulate a consent-seeking pathway or 'decision-making-pathway' to assist forensic social workers in cases where consent is withheld. The findings indicated that there are various factors that influence decision-making. These factors include (1) who is the primary caregiver of the child(ren) concerned; (2) What is the source of the referral; (3) What is the child's best interest; (4) What is the possibility of obtaining a court order, and (5) What are the chances of the possible sexual abuse continuing. The study shows that the above-mentioned are the most significant factors that could influence various decision-making processes, and should consequently be taken into account when deciding to proceed with court procedure. The leading correlation that stood out was the best interest of the child principle. It seems that it is the defining influence factor in the process. Additionally, it was indicated that what is the best interest of the child in one case might not be the same in another case. The decision-making-pathway was constructed with four decision-making blocks where questions are presented to the forensic social worker with four possible solution blocks as a response to these questions. Each decision block can be answered by a 'yes' or a 'no'. The answer either leads the forensic social worker to a solution or another question. This pathway can be followed until the forensic social worker ultimately has a solution on how to proceed with the case. The data analysis, findings, and decision-pathways are discussed throughout this article.

KEYWORDS:

Consent; forensic assessment; court; parental rights and responsibility; Care and Contact, sexual abuse allegations; pathway analysis

SUMMARY

A universally accepted parental rights principle states that both parents should provide consent in cases of important decisions regarding their children, such as who should care for them, and what should and should not happen to them. Joint decision-making becomes complicated in parental dispute cases, where parents are in the process of a contested divorce, and when either parent is presented with allegations of juvenile sexual abuse in which the other parent is the alleged perpetrator. Such allegations need to be managed effectively by the forensic social workers investigating allegations of child sexual abuse, whilst considering both parent's positions and the child's best interest. This study aimed to map the views from forensic practitioners pertaining the manner in which they proceeded in obtaining dual consent or circumnavigate legal issues associated with "one parent", or "no-parent" consent. This research provides a guideline to practitioners in similar cases to optimize their decision making regarding the proposed assessment.

Keywords:

Consent; forensic assessment; court; parental rights and responsibility; Care and Contact, sexual abuse allegations; pathway analysis

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SECTION A: INTRODUCTION

1.1 BACKGROUND AND RATIONALE FOR THE STUDY

Parental rights and responsibilities evaluation (formerly, Care and Contact) is a particularly dynamic, and complex field of social work practice, specifically for forensic social workers (FSW) who are tasked with assessing allegations of sexual abuse in instances where children are concerned. Not only does the evaluation itself identify multiple conflictual, controversial, and sometimes 'negative' psychosocial factors, but the detrimental effects of the divorce itself, on both divorcing parents and their children have been well documented. Complex and controversial issues that are frequently investigated include parental alienation, domestic violence (including sexual abuse), and parental psychopathology (APA 2013; NOSFW, 2011; Keuvecamp & Galpin 2014). Parental rights and responsibilities investigations inform the court about the behaviors and capacities of the adults regarding their abilities to separately and jointly take care of their children in the post-divorce period, as well as what custody arrangement would be in the best interest of the child (Luftman, Veltkamp, Clark, Lannacone, & Snooks, 2005). The South African court may then use this information in order to establish the least detrimental care alternative that is encapsulated in the divorce settlement order (Joubert & Van Wyk, 2014). Considering the fact that these investigations occur within an adversarial context, it can be expected that social work findings are often disputed and discredited by divorcing parties and their attorneys in instances where such investigations may identify and expose sensitive issues such as domestic violence, child abuse, and/or child sexual abuse (Joubert & Van Wyk, 2014).

According to Butters & Vaughan (2011), social work in forensic practice is a specialist field within social work services. Furthermore, Butters (2011;61) defines this service as "social work activities involving criminal or civil court proceedings, criminal offenders, victims of crime, or other systems of justice". Furthermore, Butters & Vaughan (2011) explains that social workers in forensic practice are mostly involved in confrontational court cases and emotionally charged cases that require unique consideration. Thus he indicated that special attention should be given to ethical issues; dilemmas and codes of ethics for social workers within forensic practise (Butters & Vaughan; 2011). Butters (2011) indicated that the National Organization of Forensic Social Workers (NOFSW) has directed practice for social workers in forensic practice in America. However, South Africa, currently, does not have an ethical committee specifically for social workers within forensic practise to help guide when ethical dilemmas or decisions occur.

As forensic social work is not yet a recognized field in South Africa (Joubert & Van Wyk, 2014; Fouche & Fouche, 2015) and guided by its code of ethics for practice, practitioners must rely on

the code of ethics of general social work, thus it is a general ethical requirement of practice in this field that all assessments must be conducted with the informed consent of the parties involved, particularly the parents (Code of Ethics SACSSP, 2012). It is further required that these services would be explained in a concise manner through easily understood language prior to obtaining informed consent (Luftman et al., 2005: 334). Issues of informed consent have been thoroughly discussed in older social work literature, addressing aspects such as the clarity of the information to be shared with parties, potential coercive influences such as the role of the social worker as the expert, and the importance of a 'therapeutic alliance' within which such assessments should occur (Regehr & Antle, 1997). However, anecdotal evidence from local forensic private practice contexts indicates uncertainty regarding the sufficiency of dual informed consent requirements in cases where one parent alleges sexual abuse by the other parent. In disputed parental rights and responsibilities investigations, sexual abuse allegations are frequently presented – either as real concerns or as attempts to discredit or alienate the other parent in order to secure the care of the child with the complaining parent (Cummings & Willis, 2018). In such contentious cases, consent to perform a full forensic assessment mostly by social workers in private practice becomes a complex issue, most often only settled by the court in an order (Neoh & Mellor, 2009). Moreover, forensic assessments done without dual consent are frequently discarded by the court based on the argument that both parents did not consent to the assessment as confirmed by several practicing attorneys dealing with such cases (Barnard, 2017; Monaledi, 2019; Steyn 2020; Van Der Merwe, 2020). It appears that, within a South African local context, the court would expect the forensic social worker in private practice to have followed dual consent procedures when the case makes it to court (Monaledi 2019; Steyn 2020). Louw (2015), confirms this while also admitting to the complexities of consent in such instances where parents do not agree about the assessment or where a pending assessment may discredit a parent and further damage the parental relationship as a result

1.2 Court-mandated assessment

Forensic assessments are usually mandated by court appointment if allegations of sexual abuse persistently surface during court proceedings or may be required in cases where an agreement was reached amongst the parties involved or instances where one of the parties unreasonably withholds care (Behnke & Conell, 2005). Allegations of sexual abuse are frequently made prior to the commencement of court proceedings and a concerned party (a parent, advocate, family member) will appoint the forensic social worker to do an investigation without a court mandate or consent from the other parent. In many divorce cases, advocates attempt to settle outside the court, and if negotiations finally fail court settlement is considered a last resort. In such cases, all possible evidence, such as a confirmation or disconfirmation that sexual abuse took place would

significantly strengthen a case. However, the lack of informed consent is frequently contested in cases where pre-court forensic investigation occurred, meaning the assessment took place before the court was approached, and often contribute to the invalidation of such forensic assessments (Barnard; 2017). Attorneys often debate that the forensic social worker was unable to obtain consent from both parents which leads to the claim that the found evidence was illegally obtained and as such cannot be used in a court of law (Barnard, 2017). Attorneys would argue that said forensic social worker had no ethical, legal or academic ground to support acting without the consent of both parents (Barnard, 2017; Steyn 2020). Thus, attorneys discredit the forensic social worker and his or her findings. However, it is left for the court to decide whether to use the evidence compiled by forensic social workers and if deemed untrustworthy in the eyes of the court the evidence would be dismissed regardless of the evidence found (Barnard, 2017; Fouche & Fouche 2015). This correlates with earlier studies that urged for the progression of consistent and objective processes to improve consistency and quality decision-making amongst forensic social workers (Fouche & Fouche; 2015).

1.3 Guidelines for obtaining informed consent

According to Butters and Vaughan-Eden (2011), ethical codes help define a profession and guide resolutions for challenging dilemmas such as consent-seeking procedures. Designed for guiding generic practice, the current Code of Ethics for social services in South Africa for the Profession of Social Work does not include guidelines for forensic practice or the ethics of consent seeking in cases of alleged sexually abused children (Meintjies, 2002; Faller, 2007; Fouche & Fouche 2015). The current Code explains procedures for the disclosing of confidential information in such cases as it was commanded in a court mandate and explains procedures, as stipulated in Section 5.2.1 (c) Access to records, for the mandatory disclosure of confidential information. The code is not clear on procedures for the obtaining of informed consent as required by the Children's Act (see later discussion).

Given the lack of dedicated ethical guidelines for decisions regarding forensic assessments, the stakes become high for forensic social workers, as the risk for professional board ethical complaints and potential malpractice suits increase (Bow et al, 2002). Internationally, consent dilemmas are not uncommon as variation exists in the way parental consent is dealt with (Anderson, Barenberg, & Tremblay, 2007; Forgey & Colarrosi, 2003). The US National Organisation for Forensic Social Workers (NOFSW) profession-specific code of ethics states that written consent should precede any form of videotaping or recording and that the client must be informed about the nature of an investigation and the processes involved (NOFSW, 2011). Although the parent or guardian of a child needs to be given sufficient information about the forensic processes, no consent is needed to begin the process itself (NOFSW, 2011). Meintjies

Van Der Walt (2002), in a similar vein, confirms the need for a profession-specific ethical guideline to achieve professional autonomy in decision-making regarding forensic assessments, this is also supported by Fouche & Fouche (2015). In contrast, the American Psychological Association (APA, 2013) states that both parents' consent should be obtained excepting instances of withheld consent, which practitioners should consider as the postponement of services until an agreement is reached on the matter. The issue about a person's right to withhold consent and the court's right to overrule such withholding received considerable attention in psychiatry literature (Regehr & Antle, 1997). In a water-shedding case in New Zealand, the court overruled withheld-consent of a health assessment, stating that forensic assessors are representatives of the court, and are bestowed similar rights (to the court) that allow them to perform assessments without pertinent consent from persons involved (Kumar, Reuvecamp & Galpin, 2014). The court further ruled that assessors only had to inform the parties in the case about the intention to assess. The Human Rights Commission, 2002 advised that in the case of withheld consent the court should be approached for consent. It is not clear whether this guideline that refers to medical assessment holds for parental rights and responsibilities investigations, as this field was not developed at the time and is characterized by various complexities as indicated above. The Australian Association of Social Workers' code of ethics (AASW, 2010) requires both parents' consent, the children themselves (provided their age and development are assessed sufficient to understand what they are consenting to), or the court. The Children's Act 38 of 2005 is not of much help either regarding the issue of consent and parental rights and responsibilities Whereas it is a parent's right to consent or withhold consent, to anything that will affect a child's wellbeing or contact between a parent and the child, section 30(b) (ii) (iv) (2) (b) of the Children's Act 38 of 2005 recognizes the following: (1) that more than one person may hold parental responsibilities and rights in respect of the same child; (2) that each of the co-holders of these rights may act without the consent of the other co-holder, except where this Act states otherwise; (3) rights may be transferred to the other co-holder by agreement; (4) co-holders do not divest their rights in such cases. In contradiction, Section 31 stipulates consideration of the other co-holder with respect to any decision to be taken regarding the child's care, or a situation that may negatively impact the child's well-being in any way. Paragraph (b) stipulates that the decision-maker should have considered the views and wishes of the other co-holder before taking a decision. Furthermore, Section 35 of the mentioned Act states that if one party refuses to let the other party practice their parental rights and responsibility the said party is guilty of an offense. Whereas in instances where both parents or guardians give or withhold consent is regarded as the practice of their rights and responsibilities of parents. Another part of the act allows medical practitioners to do their assessment and evaluation on a child without the consent of either parent (including assessments for sexual abuse) (Section 129 of the Children's Act 38 of 2005). This could be held parallel to a social worker's forensic investigation, as both fields want to either prove or disproof that sexual

abuse took place. However, a forensic assessment in the local context, cannot be regarded as a medical assessment, since the activities and assessments of forensic social workers are not regulated by the HPCSA, but by the SACSSP. However, none of these Acts refers to procedures specific to forensic assessments, and as such, the question remains: which right must be considered superior? Although some professionals may argue that the best interest of the child as stipulated in section 9 should be sufficient to continue with an assessment, the implementation of this regulation has its limitations that will be discussed later on in section (Nevondwe; Odeku & Raligilia, 2015).

In lieu of the above, it can be concluded that the Act is not clear on the matter of parental consent in terms of one party withholding consent, and the quoted sections are likely to be interpreted differently by either party. Although a parent is entitled to take decisions regarding the child, including the decision to have an assessment done regarding sexual abuse allegations, and although such a decision may be taken independently, such a decision is unlikely to succeed if the other parent has not been informed of the undertaking to perform an investigation and subsequently has not given consent. An example is a case between S.B.B V State (2013) the social worker's report was rejected by the court as she did not have both parties' consent. It should also be mentioned her report was not rejected on the consent alone, but also because of contradictions. Another example is the case of M(...) J(...) P(...) V State (2014) where evidence was only expected by the court with "both parties consent". The presence of sexual abuse allegations makes child custody evaluations even more difficult (Bow et al., 2002). "Given the absence of relevant practice guidelines and the controversy surrounding assessment in this area, it is not surprising that evaluators have been strongly criticized" (Myers, 1997; Zorza, 1999, as referenced in Bow et al, 2002: 567; Fouche & Fouche 2015. A study by Bow et al (2002) found that the infrequent use of formal guidelines with alleged victims of sexual abuse and alleged offenders raised critical questions regards the defensibility of practices and forensic findings in a court of law, despite such findings being regarded as the most important data source.

It is therefore concluded that on the one hand Social Work practitioners who are approached to conduct alleged child sexual abuse allegations in divorce mitigation cases, maybe unduly exposed to potentially unethical practice by not obtaining dual parental consent, or on the other hand may proceed and risk unnecessary discrediting by the court.

1.4 The complexity of relationship factors during forensic assessments

Forensic assessments are intrusive by nature in that detailed information is gathered about every intimate aspect of a person or family's life, including disconcerting features and occurrences that are not strictly illegal, but which may raise concern and as such warrant further investigation

(Faller, 2007). Perceptibly a person who is sexually abusing a child or whose new partner (or someone they care for) is sexually abusing the child and wants to protect that person is more likely to withhold consent. Young (2012), concludes that contested abuse allegations are muddled by underlying relationship pathology or dynamics where one side is overly concerned with protecting the child and the other is more troubled with his/her rights as an accused (Young, 2012).

1.5 The best interest of the child

Although the best interest of the child principle is paramount in any investigation or court proceeding that involves children, Reed (2014) indicated that the best interest of the child standard is not necessarily used to make the “right” decision, but as a shield to protect against “wrong” decisions.

Robinson (2015) wrote that the application of the above principle has limited application in local courts. Robinson (2015) echo’s Reed’s (2014) notion that the principle is at times applied to protect a “wrong” decision. In addition, that a decision can be manipulated into seeming to be in the best interest of the child (Reed, 2014; Robison. 2015) According to Nevondwe; Odeku, and Raligilia (105; 2015) “when deciding what is in child’s best interests, the court must guard against relying on factors which infringe the constitutional rights of the child’s parent (s) unless it can be shown that those factors actually go some way towards establishing what is or what is not in the child’s best interests” Although the court can be approached for consent when a parent withholds it, its practical feasibility is questionable within the divorce litigation field (Gomes et al, 2017; Naidoo, 2006 as referenced in Matthias 2010). Gomes, Guimaraes, and Akutsu (2017) argued that delays in obtaining court consent on request may be due to high caseloads and the available practitioners’ inability to deal with requests from various professions in time (Gomes et al, 2017; Naidoo, 2006 as referenced in Matthias 2010). Naidoo (2006) in Matthias (2010) recorded delays in requests at Johannesburg courts of between two weeks and six months, a statistic that is not in the best interest of the child or his safety. Although Section 18 (4) confirms the right of either parent to take decisions independently, and without the consent of the other, the court recognizes the need for consent of all that have guardianship of a child in cases of important decisions regarding the child. It appears that the only valid request for forensic assessment of sexual abuse allegations in parental rights and responsibilities cases will be a request made by the court, as a request for such assessment made by either party involved in the case, likely introduces a plethora of vested interests and variables, undermining the validity of the assessment, and highlighting the lack of joint consent issue. Currently, there is a clear lack of guidance to practitioners regarding: (1) Whether parental consent for assessment should be sought a (2), whether both parent’s consent should be a pre-requisite for the approval of such an assessment,

or whether a single parent's consent is adequate and (3), whether, and to what extent the decision to assess considers the best interest of the child principle.

These inherent difficulties regarding the consent issue were confirmed by Potchefstroom child-advocate Barnard (2017) and forensic social worker in private practice, Brits-Bosch (2017) during interviews. There appears to be paucity in South African literature regarding clear, court-acceptable practice guidelines to structure consent seeking processes in forensic practice that will protect social workers from unknowingly erring whilst acting in good faith. It would be questionable practice for social workers to agree to an assessment knowingly that a one-sided assessment may be discarded by the court. The forensic social worker involving themselves in the complex dynamics of care and contact investigations in divorce cases appears to be in the crucible of complex high-risk and high-stakes decision-making processes for which no clear practice guidelines exist at present. Thorough understanding of the pathways towards decision making followed by current practitioners in the forensic field may precede the development of pertinent guidelines for forensic social workers to confirm: (a) that appropriate and adequate consent seeking procedures were followed in a case; and (b) that sufficient consent has been obtained to safely proceed with the forensic assessment. Such understanding can be achieved by analysis of those pathways followed by practicing forensic social workers in seeking and evaluating adequacy, appropriateness, and sufficiency of that consent. Do practitioners need answers to questions such as (a) whose consent should be sufficient to underpin a mandate for social workers to conduct a forensic assessment prior to the court case? (b) what circumstantial factors and, (c) what legal factors influence the mandate to assess allegations of sexual abuse in complex parental rights and responsibilities disputes at a specific moment? The research seeks to fill this gap in practice but does not aim to draw legal opinions but to draw on best practice perspectives that will ensure appropriate, ethically correct actions by social workers in circumnavigating the dynamics of divorce proceedings in future forensic assessments. The problem to be researched in this study concerns the lack of available best practice guidelines for privately practicing social workers who perform forensic investigations within the complexity of the civil divorce mitigation context. In this section, an overview of the study is given as well as details regarding the design of choice. Further sections of this study include the literature review, the article written for publication in the Journal of Social Work as well as conclusions, recommendations, and limitations found in the study. Additional relevant materials are attached as annexures.

1.6 Statement of the research problem

The current need for practice is a clear guideline regarding the approach of parental or guardian consent as an issue where children or minors are concerned, whilst awaiting the formulation of a

dedicated ethical code. This study does not aim to develop an ethical code, as this is a task to be performed by the SA Council for Social Service Professions as a legislative body, but rather to seek different practitioners' perceptions and views regarding two of the central concepts of this study – namely the principle of informed consent, and how social work practitioners navigate the legislative need for informed consent by both parents of a child in cases where sexual abuse allegations are made during civil divorce cases that make it to court.

If these perceptions could be obtained, the researcher would be enabled to identify themes from the verbal accounts of social workers, which in turn would enable them to map patterns of decision making (decision pathways), from which recommendations could be formulated for guiding consenting processes to enable forensic assessment in parental rights and responsibilities investigations. The research problem to be addressed concerns the lack of clear, well-defined practice guidelines on how to approach consent seeking in a logically, ethically, and professionally appropriate manner that will hold against scrutiny in subsequent court proceedings. The proposed research, therefore, has contextual relevance, in that it aims to address a practice-based decision-making problem that has resulted from the absence of adequate societal guidelines.

1.7 Research questions

The primary research question underpinning this study is: According to forensic experts who perform forensic investigations in the field of divorce and parental rights and responsibilities, what are the processes followed by these practitioners in obtaining parental consent in forensic investigations where allegations of sexual abuse are made?

1.8 Aim and objectives of the study

The aim of the study was to gain an understanding of the decision pathways followed by forensic social workers seeking informed consent in parental rights and responsibilities assessment, characterized by allegations of sexual abuse. The study would gain an understanding of the decision pathways followed by forensic social workers who regularly perform child sexual abuse investigations in divorce cases. A decision pathway was described as a process followed of getting both parents in a divorce cases to provide their consent for the assessment of alleged sexual abuse by one of the parents in the case in which the other parent is implied.

This study furthermore had one objective:

- 1) To create on the basis of the identified pathways, a consent-seeking-decision-pathway-model through decisions used by forensic social workers who regularly perform child sexual abuse investigations in divorce cases, seeking informed consent

in parental rights and responsibilities assessment, characterized by allegations of sexual abuse.

1.9 Research methodology

1.9.1 Research approach and design

Consistent with the aim of the study, the overall research approach was qualitative. Qualitative studies are more concerned with understanding an occurrence, rather than explaining occurrence (Fouche & Schurink, 2011). In this study, the researcher wanted to understand, from the accounts of experts (professionals in the field of social work with a minimum of two years' experience in the field), how they went about the issue of obtaining dual parental consent before proceeding with the assessment of children where one of the parents is implied in allegations of sexual abuse during parental rights and responsibilities investigations and how these issues are navigated and decided upon. These professionals were used due to their knowledge and experience with the challenges of consent. They were able to identify aspects that are possibly unknown to the researcher. This understanding assisted in the construction of decision pathways as the core components of a practice guideline. By gathering rich, narrative perceptual data from interviews with forensic practitioners, the researcher was able to identify, through analysis, certain decision pathways that minimize risks of error in consent-seeking processes. Decision pathway analysis is derived from decision analysis, defined as a systematic, quantitative, and transparent approach to making decisions under conditions of uncertainty. The fundamental tool in such analysis was the decision tree or Markov model. A decision model/tree is a visualization of a sequence of events or behaviours that can occur following alternative decisions (or actions) in a logical framework, and with the health outcomes associated with each possible pathway. The goal of a decision model was to assist with decision making and not to make statements about the truth (Kuntz et al., 2013). Although the method is associated with quantitative, mathematical processes, less formal models were first created qualitatively, by utilizing expert knowledge rather than hard data (Eldabi et al., 2002). To enable the construction of pathways, practitioners experienced in parental rights and responsibilities cases, with the forensic background were asked to retrospectively reflect on their decision-making experiences in such cases, specifically regarding their cognitions, contextual and other factors that influenced how they derived a decision in those cases. From these accounts, the researcher analyzed and identified certain patterns of decision making, and mapped these out in a decision tree.

Therefore, the study consisted of multiple individual interviews concerning the perceptions of forensic social workers about consent seeking and rejection of forensic assessments in contested cases. Greeff (2011) explained that semi-structured interviews can be timely as the interviewer needs to explore the answers of the interviewee and this can be an important tool in this case. Having an interview schedule helped the interviewer to focus on what the interviewee said and was when requested, shared with interviewees beforehand to assist with interview preparation (Greeff, 2011). With consideration to specific the topic of this study, the questions for an interview schedule should ensure that; (a) accounts of actual decision-making scenarios are elicited and explored, (b) that exploration was done on a case-by-case basis or collectively, (c) that participants were able to reflect on their perceptions of these scenarios, think about and identify those factors that influenced them towards deciding on forensic assessment, and (d) that the temporal, sequential influences of their decisions in such instances could be reflected upon (Greeff, 2011). The following interview questions were formulated through consultation between student and study leader, utilizing the above body of literature on decision pathways as guideline.

1.9.2 Interview schedule

The primary question asked in this research was: From your experience, in dealing with parental rights and responsibilities assessment where sexual abuse allegations are made, what are your views regarding ways of managing consent in these situations where the consent of both parents is required?

In order to point the conversation, the researcher used the following probing questions:

1. *Tell me about a specific case, or cases where allegations regarding sexual abuse existed, and where you had to take a decision regarding proceeding with a forensic assessment without the consent of both parents. (Retrospective information question)*
2. *What factors or events complicated decision-making at the time? (Retrospective factor information question)*
3. *How did the above factors influence your perceptions regarding taking the decision to proceed or not proceed with forensic assessment? (Retrospective reflective question)*
4. *What was the outcome of the case? What influence did your decision to proceed or not proceed to have on the outcome? (Temporal reflection question)*
5. *What will you do differently in a future similar case? (Prospective reflection question)*

The researcher believed these questions facilitated adequate exploration of the topic and provided sufficient information for identifying decision sequences or pathways.

To ensure adequate preparation, the interview schedule was sent to participants before the interview. This assisted both the interviewer and interviewee in stay on the topic, and explore known content.

1.9.3 Population and sampling

The population consisted of all forensic social workers in practice. The current numbers of this population are still unknown. This population is however not easily accessible as its members are dispersed throughout society and working in various capacities. Therefore, a sample was drawn purposively, based on known elements, obtained by reference from other elements.

Some elements of the population were social workers who only performed occasional forensic assessments and were not necessarily listed as forensic social workers. Other elements of the population were forensic social workers in private practice who were not easily identifiable from existing databases but had a high tendency to be hired for conducting forensic investigations in specifically divorce cases where child sexual abuse was often alleged during the divorce mitigation process. However, since the forensic social work community is diminutive, professionals had created various social media platforms to communicate with one another. The researcher placed the advertisement for research on these platforms to recruit potential participants. Consent from group administrators was obtained before the researcher placed the advertisement. Since the exact size of the population was unknown and the method for accessing the population was equally unknown. Snowball sampling was used as a strategy for identifying participants. This strategy was appropriate when the components in the population could not be independently identified (Fouche & De Vos, 2011 in Kumar, 2014). Sampling had a distinct purposive character in that the researcher sought specific candidates who had experienced the decision challenges outlined in this proposal as the main inclusion criterion (See inclusion/exclusion criteria below). The purposive character of the intended sample was enhanced using snowball sampling. The researcher first compiled an initial list of names of persons that qualified for participation from consultation with those two persons interviewed for this research and referenced in this proposal (Ms. E Brits-Bosch- forensic practitioner and Judge Barnard). The researcher approached one forensic participant from the list by e-mail or telephone, ask them if they have questions about the project, answer these questions about the study, send the participant an ICF (Please view addendum 1 for example of one), and gave them 5 (working) days to consider participation. She then asked that participant for referrals of other potential participants according to stipulated inclusion criteria. Inclusion criteria: Only participants that

worked regularly (average of one forensic case or more per month) on parental rights and responsibilities cases and performed forensic investigations would be included in this study. Furthermore, to participate, potential participants had to respond affirmatively to the question of whether they had experienced a situation where they had to take a decision regarding the performance of a forensic assessment or not, as described in this proposal. For purposes of this research, the decision scenario was regarded as a critical incident, enabling a person to participate in the research. The participants also had to practice in South-Africa with a minimum of two years' experience in the field of social work. The participants had to be actively practicing and be registered with the SACSSP for the year 2018/2019. Participants that were not working on cases of parental rights and responsibilities on a regular basis were excluded from this study. For this purpose, participants that had not conducted a forensic assessment within the field of parental rights and responsibilities investigations for the past two years, were also excluded. This study also excluded social workers who did not practice forensic social work, and specifically investigation of child sexual abuse allegations. Participants that practised outside of South Africa were also excluded. Retired social workers or social workers who had chosen a different field of practice were similarly excluded from this study. Social workers who were not registered with the SACSSP for 2018/2019 were excluded from this study. Furthermore, participants who went through a process of divorce themselves or had experienced divorce themselves within two years prior to the research were excluded as they were too close to the event, and this might have influenced them. The researchers wanted to maintain and ensure optimal objectivity. A) being the first contacted participant, after this participant was contacted and agreed to the study he/she will refer the researcher/ send a research advert to another B) professional who qualifies for the study. The researcher will contact said B) professional. After the B) professional agreed to the study he/she will refer the researcher/ send the research advert to another C) known professional. This sequence would be repeated until a saturation point was reached in recurring themes. This snowball sequence is outlined in Figure 1.

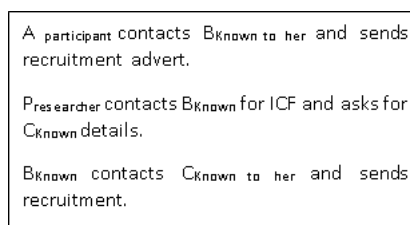


Figure 1-1 Schematic of snowball sampling process

These names were used to expand the name list, whilst the recruited participant was followed-up by the researcher, who arranged an appointment and conducted the interview at a place that was

convenient for the participant. At that meeting, the participant signed the Informed consent form (ICF) in the presence of the researcher, who signed the form as well. In the case of participants wishing to be interviewed via Skype or electronic media, the consent form was file-transferred by the independent person who sets up the Skype interview, to the participant to sign in her presence, via Skype. The participant then scanned and file transferred the signed ICF back to the independent person, who would, upon receipt hand the camera to the researcher to conduct the interview. When this strategy did not render sufficient participants, the strategy was supplemented by placing an advertisement on social work social media platforms with an invitation to respond, after obtaining permission from a relevant site administrator. Sampling continued until the researcher recruited a minimum of 10 participants in forensic practice. She continued sampling until topic saturation was identified from preliminary analysis after each interview (Fouche & De Vos, 2011 in Kumar, 2014). The analysis process outlined was emerging in nature, and the researcher assessed saturation after each interview and added it to the analysis. Once thematic saturation was confirmed, recruitment was stopped.

1.10 Data collection and measurements used in the study

An interview schedule (please view point 1.5.1 for the specific interview questions) was used as designed elsewhere in the proposal. Interviews were conducted via Skype or in person. Depending on the participants, the researcher conducted the interviews herself. She had received basic interview skills training from the supervisor and was guided in the process by her supervisor, who was an experienced qualitative interviewer. The supervisor viewed a digitally recorded Skype interview to monitor the interview performance and provided feedback to the researcher. Skype interview data was recorded by means of a free Skype call recorder device for later transcription (<https://voipcallrecording.com/>). The interviews lasted between 15 minutes to 40 minutes, depending on the amount of information given by the participants. In addition, the interviews were conducted in a reserved room where only the participant and interviewer were present. Field notes were made whilst the interview was conducted. This assisted in ensuring the dependability of the study (Fouche & De Vos, 2011 in Kumar, 2014). At the end of the interview, arrangements were made with the participant to check the final pathways for comment. This was done by means of the file transfer option in Skype. Their comments were qualitative and in response to the question: Does the identified pathway represent a valid reflection of what you have shared during the Skype interview? Video recorded data was transferred to the researcher's password-protected PC and recordings were deleted from the Skype recorder device. Once all the raw data was collected it was transcribed by the researcher into Word format text files that was checked by the supervisor for accuracy as part of monitoring. Any recorded data was deleted from recording devices as soon as transcripts have been verified by the researcher's supervisor. The data would appear only in

electronic format and all files were stored on the supervisor's password-protected computer, from where it was made available to the researcher for analysis purposes by means of Atlas.ti.

1.11 Participant experience and risk-benefit analysis

The nature of the topic was removed from the participant's circumstances; hence the contribution by the participant is about his/her professional activities or functions. It was not expected that the line of questioning was beyond the participant's normal experiences, therefore the risk for participants was considered low. Participants did not receive direct benefits from the study. The scientific community in general and specifically the field of forensic assessment may indirectly benefit from the guidelines that may emanate from this research. The benefits of the study were more than the risks. This study did not include vulnerable participants.

1.12 Venues

In the interests of cost-saving, Skype interviews were the preferred mode of interviewing. Skype interviews are cheap and require only internet connectivity and the privacy of an office at the NWU, or the researcher's office such meetings with the location of choice. However, face-to-face interviews were also held at the request of the participant.

1.13 Reimbursement

1.13.1 Analysis of interview data

This study does not follow the conventional qualitative analysis methodology since it requires adapted techniques. In addition to conventional thematic analysis, data analysis in this study was driven by an adaptation of a method known as Decision Pathway Analysis (DPA), a method frequently used in health studies and social work studies to map and systematize treatment regimens and decision making regarding the optimal management of treatments (Kattan, 2009). Decision pathways are normally captured in clinical algorithms and practice guidelines (Kattan, 2009:135-137). According to this procedure, algorithmic flow diagrams were constructed based on findings as branching logical pathways with decision points represented as yes/no nodes. In this study, the analysis was divided into two stages: Stage 1 was a general qualitative thematic analysis, stage 2 was algorithm construction, and stage 3 was validation.

1. Stage 1 thematic analysis

The analysis followed the five stages of thematic analysis as indicated by Braun and Clarke (2013). Each interview transcript was analysed by means of line-by-line coding to be performed by the researcher within Atlas.ti version 8, to assist in identifying main decision themes, causes

(factors), and relations in the findings. Loosely listed, the five stages were data management, familiarisation, initial coding, identification of themes, reviewing of themes, and defining and naming themes. The analysis was performed one transcript at a time, each time saturation likelihood was assessed before the next interview was conducted. This process continued until the researcher and the consultative panel reached a consensus regarding saturation of the research question by the obtaining of a research sample.

From this initial level of coding, the researcher developed a family function or tree within Atlas.ti consisting of the interrelationships between codes, graphically indicated by means of different Atlas operators. The family tree is a graphical representation of themed decision pathways participants take in managing critical incidents. In Atlas.ti software, coding was simply the procedure of connecting code words with assortments of data. Each code that was created could be connected to another (Rambaree, 2007). Each connected code was categorized by a function indicating the nature and direction of the linkage. For example, code A was connected to code B and was categorized or linked as “result of”, thus meaning that code B was a result of code A (Rambaree, 2007). Thus, by connecting and categorizing or labelling each code, a “family tree” was created. Furthermore, Atlas.ti allows for relative quantitative weighting to be added to family trees based on the strength or support of codes by participant elicitations. This facility was used to gain a sense of hierarchy or importance in each decision strand. The family tree was developed consultatively by means of a consultative three-person panel and confirmed by participants as indicated further on in the study. The family tree was sorted by the researcher and placed into a decision flowchart as a further step, graphically displaying research findings as a way of constructing the pathway. Below is an example family tree as developed within Atlas.ti family function or family tree:

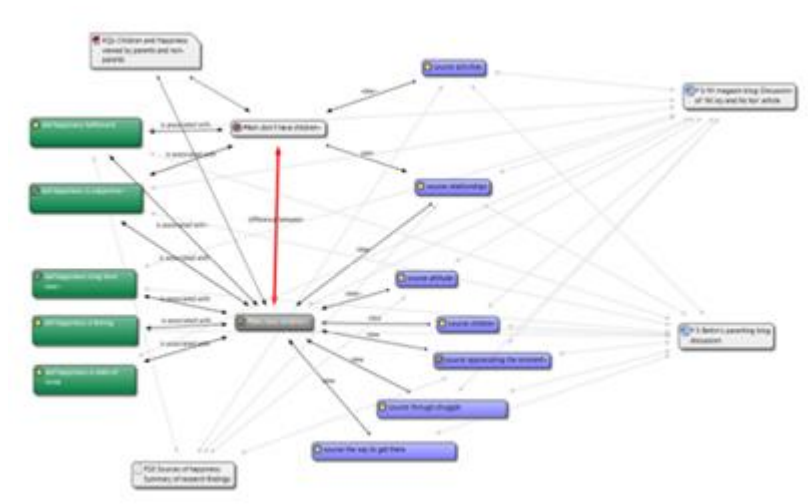


Figure 1-2 Example of family tree pathway (Image : <http://atlasti.com/atlasti-alternative-to-other-programs/>)

- Triangulation

The researcher contrasted empirical findings against relevant literature, case studies, or theory regarding decision making, factors that could influence decision making as was relevant in order to determine whether empirical decision options were consistent with legislation, literary, or theoretical trends (Rambaree, 2007). The triangulation approach was considered a literature control that was deemed most appropriate for a study that emphasized practice responses to the research question. It was not considered relevant to seek a legal opinion regarding the findings in this study as this could be a post-study objective and the study did not aim to interpret the data from a legal perspective as this was beyond the scope of the current study.

Ethics-storage and archiving of data: The researcher kept all the data collected (including consent forms; field noted and other forms of data in electronic format) in a file on a password-protected laptop. Hard copy Informed Consent Forms and physical documentation were kept in a folder in the researcher's lock-away cabinet and transferred to COMPRES at end of the study where it would be kept for five years. In addition, the data was also backed-up on the researcher's Google drive account which was password protected. At the completion of the study, digital recordings were deleted and electronic data would then be stored at the COMPRES office for a period of five years.

2. Stage 2 of analysis

Algorithm mapping: Using a sequential decision flowchart simplified the mapping of the decision pathway and made it easier for professionals to understand. Mahdi (2013) described a flowchart as steps to a process, which proposed a flowchart as a sequence map of decision pathways.

Mahdi (2013) explained that each shape depicted a step in the process or decision to be made. The arrows symbolized the process which needed to be followed (Mahdi, 2013). Below is an outline of the flow chart the researcher created in this study:

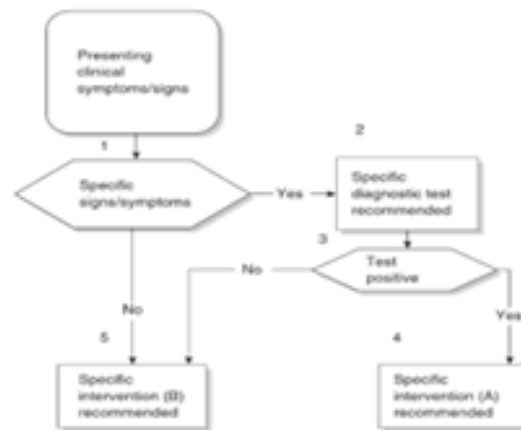


Figure 1 Schematic model of a management clinical algorithm

Note: Management algorithm for a patient with a hypothetical set of presenting symptoms/signs.

Figure 1-3 Decision pathway example using Markov principles (Source: (Kattan, 2009:136))

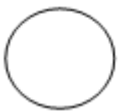
The following key to symbols assists in interpreting the above decision pathway diagrams.



Indicates a Scenario



Indicates a possible decision



Indicates the solution reached (Explains the solution)



Indicates a process

Mahdi (2013) states that a sequential flow chart (algorithm) is helpful in the illustration of complex processes and assists in distinguishing areas of obstruction or opportunities. Obstruction areas were derived from the factors that influence decision making, and this enabled the development

of options in decision making. The position and meaning of decision options, the length, and the complexity of the flow chart depended on the findings of the study, in this case, the density and strength of the emerging themes, and the direction of derived relationships between themes. This part, the mapping activity that represents the output of this research, was performed by the student researcher, her supervisor, and an expert in Child Justice and presiding officer (magistrate) at the court

3. Stage 3 of analysis: Validation

In addition, the finalized decision map was sent electronically to participants for verification as a form of member checking (Rambaree, 2007) to ensure the proposed decision-making sequences were (a) a valid reflection of what participants advised the researcher on, and (b) whether the map confirms the logic of problem assessment and decision making the participant would have followed. This verification was by a qualitative appraisal, not utilizing a specific pre-designed tool, but by asking three questions: (a) Does the proposed decision-making map and associated explanation accurately reflect the decision options you would have followed? (b) Does it exhaustively reflect all possible options in decision making within the current legislation circumstances? (c) Are there any changes you want to propose in the decision-making sequence? Please specify. The researcher went back to all the participants for feedback. Participants had to respond in a Word document that was returned to the researcher via e-mail.

The researcher then incorporated the proposed changes in the sequential flow chart. The flow chart was completed, once no new inputs were received from the feedback. The completed flow-chart was then disseminated to participants in the form of a brief booklet for their own use and convenience. The finalized booklet was also offered to other Forensic practitioners upon request for educational and research purposes and to be used in practice (Please view addendum 2 for example of the booklet).

1.14 Ethical aspects

The research design, implementation and reporting of findings complied with the North-West University's guidelines for ethical research (HREC: reference number: NWU-00360-15-S1). The researcher took into account and gave ethical consideration to the following:

- The value of voluntary participation (Strydom, 2011:117). The respondents were informed on the first contact that their participation was voluntary. In addition, on the first page of the consent form (which were gone through with every participant), it was stipulated that their involvement was voluntary and that they were allowed to leave the study without any negative consequences for them.

- (i) The informed consent form which every participant signed indicated the purpose of this study as well as what was expected of each participant's involvement.
- (ii) Avoidance of harm to respondents was a fundamental ethical rule in the research (Strydom, 2011:115). This study posed no harm physically; mentally or emotionally to the participants. However, to ensure that no harm came to their professional status all participants were asked to remain anonymous
- (iii) The research was supervised and guided by a competent supervisor, Prof. W.J.H Roestenburg who had more than 15 years of demonstrated experience in statistical analysis in a social science research context.

1.15 PROVISIONAL CHAPTER DIVISION

In accordance with the rules and regulations of the North-West University for mini-dissertation in article format, this manuscript does not contain chapters but consists of four sections. Section A, as already described provided an overview of the study and examined detail regarding the design of choice and measures used in the study. Section B focused on a literature review exploring the key concepts of this study. Section C provides a draft manuscript of the research article that will be published from this research and follows the format provided for the Journal of Social Work, which is APA. Readers need to note that some material provided in the other sections might be duplicated in the research article as this was the actual submission to the Journal as indicated. Section D provides more information on the final conclusions, limitations; and recommendations of the study. The next section gives attention to the literature review exploring the significant concepts of this study

1.16 Conclusion

The above section of the report provided an account of the research plan and design that was to be used in the study. With the design clearly demarcated and the procedures outlined for data collection and analysis, the research project could be implemented and managed to completion. The following section provides a report of the research captured in an article format, as per the requirements of the NWU article format for research.

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SECTION B LITERATURE REVIEW

This section covers the literature review of the study. Readers need to note that some material provided in the other sections may be duplicated in the research article as this is the actual submission to the Journal as indicated

2.1 Introduction

The notion of consent has been vastly researched within Psychology, Medicine, and Law. Some social work authors have likewise discussed consent and how important it is in a profession that works with people. However, the complexity of consent to assessments in instances where children or minors are involved is still a topic that remains mostly untouched. With conflicting laws and professional views on consent, it is understandable that social workers tread carefully when deciding between their professional obligations and the life of a child where the obtaining of consent from parents or guardians are required. This section of the study will shortly discuss literature and South African Law opinion on consent.

2.2 Consent

Competence, informed consent, and confidentiality descended from the value of autonomy (Dhai & Payne-James, 2012). These three concepts define the pillars on which human rights are based. These concepts are used in many professions as a guideline to assist in decision-making and practicing. Dhai et al. (2012), define consent as a course of information sharing and decision making founded on mutual understanding and participation.

Kinscherff and Latham (2014), stated that informed consent is a fundamental principle to any professional service. In addition, Kinscherff and Latham (2014:01) described informed consent as a process and should be respected as such instead of a moment. Kinscheff and Latham (2014) acknowledge in their article 'Informed Consent or Assent for Assessment, Treatment, and Releases of Information' that consent is far more complex than what is accredited. In their article, they describe that the biggest ethical client is those under the age of 18 and cannot legally give consent to assessments. This does not mean that professionals can let their ethical obligation slide (Kinscheff & Latham, 2014: 03). This is where the notion of consent becomes more complex as the door is opened for the third party or legal clients such as parents or legal guardians (Kinscheff & Latham, 2014:03).

2.3 Third-party or legal client

South African law defines a child as anyone under the age of 18 years. Therefore, consent to assessments cannot be obtained from any person under the age of 18 years. Therefore, consent needs to be obtained from a third party or legal client. Informed consent can only be obtained from a person or entity that has the legal right and authorization to do so (Kinscheff and Latham: 2014) such as parents; legal-guardians or the court. Intriguingly, Kinscheff and Latham (2014: 03) are of the opinion that even if it is a court-mandated assessment, efforts should be made to obtain the consent of the parents or legal guardians as this is the professional's ethical obligation. According to Kinscheff and Latham (2014), high risk is associated with instances where the obtaining of a parent or legal guardian consent was not successful, such as court-mandated assessments in those parents or legal guardians may encourage children not to participate in the assessment.

Kincheff and Latham (2014:12) address the scenario briefly stipulating scenarios where one parent gives consent and the other withholds it. They are of the opinion that this is a “red-flag” and should be avoided (Kincheff & Latham, 2014:12). Thus, the practitioner should not conduct the assessment at all or until both parents agree to the assessment. They are of the opinion that the legal side of such a matter holds a stronger weight (Kincheff & Latham, 2014:13). Alternatively, Kincheff and Latham (2014: 12) advises that the practitioner can approach the court for consent in such instances where parents do not submit to mutual consent.

It is a characteristic of modern social work practice that social workers, from time to time, reflect or think about what they are doing with clients and what the impact is of what they do with clients. Sometimes practicing social workers not only reflect by themselves, but share these reflections with colleagues, or their supervisors, to gain new insights about the case, obtain clarity on the direction of intervention, or evaluate the impact of their actions. This sharing helps them gain insight and direction regarding future actions but also gives them a sense of being supported in their work (Meintjies, 2002). As shown in the subsequent discussion, social workers, as a result of their exposure to modern technology, increasingly use internet-based technologies such as social media and networking, for self-reflection purposes. Evidence suggests they derive significant social support from the use of social networking sites and this helps them cope in practice. Thus, three concepts, potentially related, emerge that are worthwhile for further study. Section A indicated a paucity in the literature relating the three concepts to each other. In this section, a literature review reveals the connections between these concepts and how it features within the helping professions, such as Nursing, Psychology and Social Work.

2.4 Court-mandated assessment

Forensic assessments are usually mandated by court appointment, if allegations of sexual abuse surface during court proceedings, or where an agreement was reached amongst the parties involved, or where one of the parties withholds care (Behnke & Conell, 2005). Frequently, allegations of sexual abuse are made before court proceedings have begun and a concerned party (a parent, advocate, family member) will appoint the forensic social worker to do an investigation, thus without court mandate or consent from the other parent. In many divorce cases, advocates attempt to settle outside court, and if negotiations finally fail, court settlement is considered a last resort. In such cases, all possible evidence, such as a confirmation or disconfirmation that sexual abuse took place would significantly strengthen a case. However, the lack of informed consent is frequently contested in cases where pre-court forensic investigation occurred, and more often contributes to invalidation of such forensic assessments. Attorneys often debate that since the forensic social worker was unable to obtain consent from both parents, the evidence found was illegally obtained and can't be used in a court of law (Barnard, 2017; Steyn, 2020). Attorneys would argue that said forensic social worker had no ethical, legal or academic ground to support acting without the consent of both parents (Barnard, 2017). Thus, attorneys discredit the forensic social worker and his or her findings. Said social worker is then deemed untrustworthy in the eyes of the court regardless of the evidence found (Barnard, 2017).

2.5 CONCLUSION

According to the literature review consent is a concept that is used in most fields including medical; law; social and financial fields. However, consent has its limitations. With the conflicting views on consent, it is understandable that in difficult cases consent becomes more of a grey area and practitioners are unsure of which route to follow while maintaining ethical guidelines. Thus constructing a decision pathway is essential as it can make it easier for practitioners to ensure that the correct ethical decision is made whilst ensuring the safety of the child.

The next section provides a draft manuscript of the research article that is to be published from this research and follows the format provided for the Journal of Social Work, which is APA. Readers need to note that some material provided in the other sections may be duplicated in the research article as this is the actual submission to the Journal as indicated.

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SECTION C RESEARCH ARTICLE

A DECISION PATHWAY ANALYSIS OF CONSENT SEEKING PROCEDURES IN FORENSIC INVESTIGATIONS

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Abstract

The purpose of the study was to obtain forensic social workers' perceptions of consent, specifically in care and contact cases characterised by sexual abuse allegations where one party withholds consent. Furthermore, to formulate a consent-seeking pathway or decision-making-pathway to assist forensic social workers in cases where consent is withheld. The findings indicated that there are various factors that influence decision-making. The leading correlation that stood out was the best interest of the child principle. It seems that it was the defining influence factor in the process. The decision-making-pathway was constructed with four decision-making blocks where questions were presented to the forensic social worker and four possible solution blocks. Each decision block was then answered by a 'yes' or a 'no'. The answer either led the forensic social worker to a solution or another question. This pathway was followed until the forensic social worker ultimately had a solution on how to proceed with the case. The data analysis, findings, and decision-pathways are discussed throughout this article.

Keywords

Consent; forensic assessment; court; parental rights and responsibility; Care and Contact, sexual abuse allegations; pathway analysis

3.1 introduction

Care and Contact evaluation is a particularly dynamic, and complex field of social work practice, and specifically for forensic social workers (FSW), who are tasked with assessing allegations of sexual abuse, specifically pertaining to legal procedures (Meintjies, 2002). Not only does the evaluation itself identify multiple conflicting, controversial, and sometimes negative psychosocial

factors, but the detrimental effects of divorce itself on the divorcing parents and their children have been well documented. Complex and controversial issues that are frequently investigated include aspects such as, parental alienation, domestic violence (including sexual abuse), and parental psychopathology. Care and contact investigations inform the court about the behaviors and capacities of the concerned adults, and may include guidelines as to suggested custody arrangements would be, maintaining an action in the child's best interest (Luftman, et al., 2005). This information is then used by the court to establish the least detrimental alternative care (Jevne and Andenæs, 2017) Considering that these investigations may occur within an adversarial context, it can be expected that social work findings are often disputed and discredited by divorcing parties and their attorneys, especially when such investigations identify sensitive issues such as domestic violence, child abuse and/or child sexual abuse. A general ethical requirement of practice in this field is that all assessments have to be made with the informed consent of the parties involved (Louw. 2015). It is further a general ethical requirement to explain services in concise and easily understood language prior to obtaining informed consent (Luftman et al., 2005: 334).

Issues of informed consent have been thoroughly discussed in older social work literature, addressing aspects such as the clarity of the information to be shared with parties, potential coercive influences such as the role of the social worker as the expert, and the importance of a 'therapeutic alliance' within which such assessments should occur. (Regehr & Antle, 1997). However, anecdotal evidence from forensic private practice contexts indicates uncertainty regarding the sufficiency of informed consent procedures in cases of alleged sexual abuse by a parent. In disputed care and contact investigations, sexual abuse allegations are frequently presented either as real concerns or as attempts to discredit or alienate the other parent and secure care of a child with the complaining parent. In such contentious cases, consent to perform a full forensic assessment in private practice becomes a complex issue, most often only settled by the court. Frequently, forensic assessments are discarded by the court on the strength of the argument that both parents did not consent to the assessment and are therefore invalid (Barnard, 2017). It appears that, in South African local context, the court would expect the forensic social worker in private practice to have followed dual consent procedures when the case makes it to court. Louw (2015) confirms this idea while admitting to the complexities of consent that may arise in instances where parents do not agree about the assessment.

3.2 AN OVERVIEW OF INFLUENCES RELATING TO CONSENT

When considering the term consent in social work practice, one must recognise the influences that have an impact on the term. These influences include court-mandated assessments, guidelines for the obtaining of consent, the complexity of relationship factors, and the best interest of the child. All the above-mentioned aspects may influence consent.

3.2.1 Court-mandated assessment

Forensic assessments are usually mandated by court appointment if allegations of sexual abuse surface during court proceedings or may be required in cases where an agreement was reached amongst the parties involved or instances where one of the parties withholds care (Behnke & Conell, 2005). Allegations of sexual abuse are frequently made prior to the commencement of court proceedings and a concerned party (a parent, advocate, family member) will appoint the forensic social worker to do an investigation without a court mandate or consent from the other parent. In many divorce cases, advocates attempt to settle outside the court, and if negotiations finally fail court settlement is considered a last resort. In such cases, all possible evidence, such as a confirmation or disconfirmation that sexual abuse took place would significantly strengthen a case. However, the lack of informed consent is frequently contested in cases where pre-court forensic investigation occurred, meaning the assessment took place before the court was approached, and often contribute to the invalidation of such forensic assessments (Barnard 2019; Steyn, 2020). Attorneys often debate that the forensic social worker was unable to obtain consent from both parents which leads to the claim that the found evidence was illegally obtained and as such cannot be used in a court of law (Barnard, 2017; Steyn 2020). Attorneys would argue that said forensic social worker had no ethical, legal or academic ground to support acting without the consent of both parents (Barnard, 2017). Thus, attorneys discredit the forensic social worker and his or her findings. According to Steyn (2020), an advocate registered with the High Court, she is currently dealing with a case where her clients' consent was not obtained for the forensic assessment. She stated that the social workers' report was rejected as they argued that her report is biased and unethical as she did not respect the parent's rights (Steyn, 2020). Steyn (2020) did admit she understood the difficulties in this regard, however, stated there should be an overall guideline on how to approach the matter. Unfortunately, Ms. Steyn is unable to provide the researcher with the reference of this case as it is still an ongoing matter. However, it is left for the court to decide whether to use the evidence compiled by forensic social workers and if deemed untrustworthy in the eyes of the court the evidence would be dismissed regardless of the evidence found (Barnard, 2017; Fouche & Fouche 2015; Steyn 2020). This correlates with earlier studies that urged for the progression of consistent and objective processes to improve consistency and quality decision-making amongst forensic social workers (Fouche & Fouche; 2015).

3.2.2 Guidelines for obtaining informed consent

According to Butters and Vaughan-Eden (2011), ethical codes help define a profession and guide resolutions for challenging dilemmas such as consent-seeking procedures. Designed for guiding generic practice, the current Code of Ethics for the Profession of Social Work does not include guidelines for forensic practice or ethics for consent-seeking in cases of alleged sexually abused children (Meintjies, 2002). The current Code explains procedures for the disclosing of confidential information in court-mandated cases and explains in Section 5.2.1 (c) Access to records, those procedures to be adhered to for the mandatory disclosure of confidential information. The code is not clear on procedures for the obtaining of informed consent as required by the Children's Act (see later discussion). Given the lack of a dedicated ethical guideline for decisions regarding forensic assessments, the stakes become high for forensic social workers as the risk for professional board ethical complaints and potential malpractice suits increase (Bow et al, 2002). Internationally, consent dilemmas are not uncommon as variations have been discussed at length by authors such as Forgey & Colarrosi, (2003) and Anderson, et al., (2007). The US National Organisation for Forensic Social Workers' (NOFSW) profession-specific code of ethics states that written consent should precede any form of videotaping or recording and that the client must be informed about the nature of an investigation as well as the processes involved (NOFSW, 2011). Although the parent or guardian of a child needs to be given sufficient information about the forensic processes, no consent is needed to begin the process itself (NOFSW, 2011). Meintjies & Van Der Walt (2002), in a similar vein, confirms the need for a profession-specific ethical guideline to achieve professional autonomy in decision-making regarding forensic assessments (Van Der Walt, 2002). In contrast, the American Psychological Association (APA, 2013) states that similar to South Africa, both parents' consent should be obtained, excepting instances of withheld consent in which case practitioners should consider as a postponement of services until an agreement is reached.

The issue of a person's right to withhold consent and the court's right to overrule such withholding received considerable attention in psychiatry literature (Regehr & Antle, 1997). In a water-shedding case in New Zealand, the court overruled withheld-consent for a health assessment to be performed, stating that forensic assessors are representatives of the court, and are bestowed similar rights (to the court) that allow them to perform assessments without pertinent consent from persons involved (Kumar et al., 2014). The court further ruled that assessors only had to inform involved parties of the intention to perform such an assessment. Locally, at an early stage of forensic assessment development, the Human Rights Commission (2002), advised that in such instances of withheld consent the court should be approached for the obtaining of consent to perform an investigation. It is not clear whether this guideline, which specifically refers to medical

assessment, holds for care and contact investigations as this field was not developed at the time, and is characterized by various complexities.

The Australian Association of Social Workers' (AASW) (2010) code of ethics requires consent by both parents, the children themselves (provided their age and development are assessed to be sufficient to an understanding of what they are consenting to) or the court. The Children's Act 38 of 2005 is not of much help either, as several contradictions have been observed regarding the issue of consent (See discussion below). Such contradictions leave forensic social workers open to act on their own accord, which is perilous in forensic social work (Meintjies-Van der Walt, 2002). These contradictions include a parent's right to consent, or withhold consent, to anything that may affect a child's wellbeing or influence positive and constructive contact between a parent and the child (section 30(b) (ii) (iv) (2) (b) of the Children's Act 38 of 2005).

These sub-sections recognize the following: (1) that more than one person may hold parental responsibilities and rights in respect of the same child, (2) that each of the co-holders of these rights may act without the consent of the other co-holder, except where this Act states otherwise, (3) rights may be transferred to the other co-holder by agreement, (4) co-holders do not divest their rights in such cases. In contradiction, Section 31 stipulates consideration of the other co-holder with respect to any decision to be taken regarding the child's care, or a situation that may negatively impact the child's well-being in any way. Sub-section B stipulates that the decision-maker should have considered the views and wishes of the other co-holder before taking a decision. Furthermore, section 35 of the mentioned Act states that if one party refuses to let the other party practice their parental rights and responsibilities, the said party is guilty of an offense. Whereas both giving and withholding consent is viewed as rights and responsibilities of parents. Another part of the Act allows medical practitioners to do their assessment and evaluation of a child without the consent of either parent (including assessments for sexual abuse) (Section 129 of the Children Act 38 of 2005). In this instance, a medical examination is considered an exception to the dual consent requirement that seems to hold for all other situations, including forensic assessment. It could be argued that a medical assessment is held equivalent to a social worker's forensic investigation, as both fields want to either prove or disprove that sexual abuse took place. However, a forensic assessment in the local context, cannot be regarded as a medical assessment, since the activities and assessments of forensic social workers are not regulated by the HPCSA, but by the SACSSP. It is furthermore possible that, unlike a medical assessment that has more objective qualities, a forensic assessment, especially those requested by one of the parties that hold the joint parental right and imply the other party that holds the right, introduces a dynamic that is easily exploited in court. We must also take into account section 63(1) (3) of the Act, where the findings in reports may be dismissed if the involved parties' rights are being

abused. However, none of these Acts specifically refer to procedures relating to forensic assessments, and as such, the question remains: which right must be viewed higher than the other?

Considering the above, it is concluded that the Act is not clear on the matter of parental consent and that the quoted sections are likely to be interpreted differently by either party. Although a parent is entitled to take decisions regarding the child, including the decision to have an assessment done pertaining to allegations of sexual abuse, and although such decision may be taken independently, such decision is unlikely to succeed if the other parent has not been informed and not given consent. The presence of sexual abuse allegations makes child custody evaluations even more difficult (Bow, et al., 2002). "Given the absence of relevant practice guidelines and the controversy surrounding assessment in this area, it is not surprising that evaluators have been strongly criticized" (Myers, 1997; Zorza, 1999 as referenced in Bow et al, 2002; 567).

Bow et al. (2002), found that the infrequent use of formal guidelines with alleged victims of sexual abuse and alleged offenders raised critical questions regards the defensibility of practices and forensic findings in a court of law, despite such findings being regarded as the most important data source. Bow's proposed model, therefore advises dual informed consent.

3.2.3 The complexity of Relationship factors

Forensic assessments are intrusive by nature in that detailed information is gathered about every intimate aspect of a person or family's life, including disconcerting features and occurrences that are not necessarily illegal, but raise a concern and warrant further investigation (Faller, 2007). Perceptibly a person who is sexually abusing a child or whose new partner (or someone they care for) is sexually abusing the child and wants to protect that person is more likely to withhold consent. Young, (2012) concludes that contested abuse allegations are muddled by underlying relationship pathology or dynamics where one side is overly concerned with protecting the child and the other is more troubled with his/her rights as an accused (Young, 2012). Considering this, and conclusions drawn regarding reported sexual abuse allegations by parents who are battling parental rights and the care of their children, and that involve the other parent; it is further concluded that assessments under these circumstances become treacherous.

3.2.4 The best interest of the child

The best interest of the child is paramount in any investigation or court proceedings that involve children (Reed, 2014). The best interest of the child is not only adopted by South-African courts but by other courts around the world as well, such as the US. Studies done by Reed (2014)

showcased in his article: “the façade of the best interest of the child: Moving past the presumption to ensure decisions are made for the right reasons” that even in developed countries such as America courts and attorneys have used the best interest of the child standard to not necessarily make the right decision, but as a shield to protect their “wrong” decision.

Robinson (2015) wrote that the best interest of the child can only be applied to some extent in South African courts and limitations still exist regarding the best interest of the child in courts. Although some speculate that the court can be approached for consent when a parent withholds it, theoretically this is the best option, however, its practical implementation is questionable. Gomes, Guimaraes, and Akutsu (2017) argued that delays in obtaining court consent on request may be due to high caseloads and inability to deal with requests from various professions in time. (Naidoo, 2006 as referenced in Matthias 2010; Gomes et al, 2017). Naidoo (2006) in Matthias (2010) recorded delays in requests at Johannesburg courts of between two weeks and six months, a statistic that is not in the best interest of the child or his safety. Section 7 of the Children’s Act, 38 of 2005 indicates a range of considerations pertaining the relationship, contact arrangements and rights involving primary caregivers that influence the consideration of removing a child from a family, an act that cannot be performed without Court order. Although Section 18 (4) confirms the right of either parent to exercise independently, and without consent of the other any right or responsibility arising from his/her position as guardian, the court recognizes the need for consent of all the persons that have guardianship of a child. Currently, there is a clear lack of guidance regarding: (1) Whether parental consent should be sought at all? (2) Whether both parent’s consent should be a pre-requisite to assessment, or single parent consent is adequate and (3) whether, and to what extent the decision to assess considers the best interest of the child principle?

These inherent difficulties regarding the consent issue were confirmed by Potchefstroom child-advocate Barnard (2017) and forensic social worker, Brits-Bosch (2017) during interviews. There appears to be paucity in South African literature regarding clear, court-acceptable practice guidelines to guide consent-seeking processes in forensic practice. The forensic social worker appears to be in the crucible of complex high-risk decision-making for which no clear guidelines exist at present.

3.3 RESEARCH PROBLEM

The research problem addressed concerns due to the lack of clear, well-defined practice guidelines stipulating the practitioner’s approach to seeking parental or guardian consent in a logical, ethical and professional manner that will stand against scrutiny in subsequent court proceedings. In short, the question is: What ethically and legally correct “decision support

pathways” can be delineated from practitioner experiences in the field, guiding forensic social workers to determine(a) that appropriate and adequate consent seeking procedures were followed in a case (Termed - decision support pathway analysis), (b) that sufficient consent has been obtained to safely proceed with forensic assessment (Termed - consent rejection risk-assessment)? Practitioners need answers to questions such as, (a) whose consent should be sufficient to underpin a mandate for social workers to conduct a forensic assessment prior to the court case? (b) what circumstantial, and (c) what legal factors influence the mandate to assess allegations of sexual abuse in complex care and contact disputes at a specific moment?

3.4 MOTIVATION FOR THE RESEARCH STUDY

According to Butters & Vaughan (2011), social work in forensic practice is a specialist field within social work services. Furthermore, Butters (2011;61) defines this service as “social work activities involving criminal or civil court proceedings, criminal offenders, victims of crime, or other systems of justice”. Furthermore, Butters & Vaughan (2011) explain that social workers in forensic practice are mostly involved in confrontational court cases and emotionally charged cases that require unique consideration. Thus he indicated that special attention should be given to ethical issues; dilemmas and codes of ethics for social workers within the forensic practice (Butters & Vaughan; 2011). Butters (2011) indicated that the National Organization of Forensic Social Workers (NOFSW) has directed practice for social workers in forensic practice in America. However, South Africa, currently, does not have an ethical committee specifically for social workers within forensic practice to help guide when ethical dilemmas or decisions occur.

The current need for practice is for a clear guideline regarding how to approach the consent issue whilst awaiting the formulation of a dedicated ethical code. This is strengthened by Butters Vaughan (2011) who indicated that social workers in forensic practice often find themselves in legal and ethical ties within the different expectations of reporting; mandate; protocols and law systems. In addition, Butters and Vaughan (2011) stated that informed consent is an ethical issue that most social workers in forensic practice struggle with, even with court-mandated practice. According to Butters and Vaughan (2011), the definition of informed consent should be enhanced and approaches of how to handle ethical dilemmas should be indicated.

This study did not aim to develop an ethical code, as this task should be performed by the South African Council for Social Service Professions (SACSSP), as a legislative body, but sought to identify from practitioners, a guideline for practice that can assist the forensic assessor in deciding about conducting a forensic assessment in the Care and Contact investigation practice context. The study rather intended to map out the decision pathways of forensic social workers needing to make decisions regarding forensic assessment of alleged sexual abuse in children

when one parent withholds consent. An example is a case between S.B.B V State (2013) the social worker's report was rejected by the court as she did not have both parties' consent. It should also be mentioned her report was not rejected on the consent alone, but also because of contradictions. Another example is the case of M(...) J(...) P(...) V State (2011) where evidence was only expected by the court with "both parties consent".

3.5 RESEARCH QUESTIONS

The primary research question underpinning this study was: According to forensic workers, what decision support guidelines can be formulated regarding the obtaining of consent in forensic investigations?

3.6 ETHICAL APPROVAL

The project was approved by the North-West University Health Research Ethics Committee with Ethics number: NWU-00101-18-S1. The nature of the topic was removed from the participant's personal circumstances; hence the contribution of the participant was about his professional activities or functions. It was not expected that the line of questioning would be beyond the participant's normal, everyday experiences, therefore the risk for participants was considered low.

3.7 RESEARCH METHODOLOGY

Consistent with the aim of the study, the overall research approach was qualitative. Qualitative studies are more concerned with understanding an occurrence, rather than explaining occurrence (Fouche & Schurink, 2011). In this study, the researcher wanted to understand, from the accounts of experts (professionals in the field of social work with a minimum of two years' experience in the field, how they perceived the issue of dual parental consent for assessment of allegations of sexual abuse in parental rights and responsibilities investigation, and how these issues were navigated and decided upon by these practitioners. These professionals were used due to their knowledge and experience with the challenges of consent. They were able to identify aspects that are possibly unknown to the researcher.

This understanding assisted in the construction of decision pathways as the core components of a practice guideline. By gathering rich, narrative perceptual data from interviews with forensic practitioners, the researcher was able to identify, through analysis, certain decision pathways that minimize risks of error in consent-seeking processes. Decision pathway analysis was derived from decision analysis, defined as a systematic, quantitative, and transparent approach to making decisions under conditions of uncertainty. The fundamental tool in such analysis was the decision tree or Markov model. A decision model/tree is a visualization of a sequence of events or

behaviors that can occur following alternative decisions (or actions) in a logical framework, and with the health outcomes associated with each possible pathway. The goal of a decision model was to assist with decision making and not to make statements about the truth (Kuntz et al., 2013).

Although the method was associated with quantitative, mathematical processes, less formal models were first created qualitatively, by utilizing expert knowledge rather than hard data (Eldabi et al., 2002). To enable the construction of pathways, practitioners experienced in parental rights and responsibilities cases, with the forensic background were asked to retrospectively reflect on their decision-making experiences in such cases, specifically regarding their cognitions, contextual and other factors that influenced how they derived a decision in those cases. From these accounts, the researcher analyzed and identified certain patterns of decision making, and mapped these out in a decision tree.

Therefore, the study consisted of multiple individual interviews concerning the perceptions of forensic social workers about consent seeking and rejection of forensic assessments in contested cases. Greeff (2011) explained that semi-structured interviews can be timely as the interviewer needs to explore the answers of the interviewee and this can be an important tool in this case. Having an interview schedule helped the interviewer to focus on what the interviewee said and was when requested, shared with interviewees beforehand in order to assist with interview preparation (Greeff, 2011). With consideration to specifically the topic of this study, the questions for an interview schedule had to ensure that; (a) accounts of actual decision-making scenarios were elicited and explored, (b) that exploration was done on a case-by-case basis or collectively, (c) that participants were able to reflect on their perceptions of these scenarios, think about and identify those factors that influenced them towards taking a decision about forensic assessment, and (d) that the temporal, sequential influences of their decisions in such instances would be reflected upon (Greeff, 2011). The following interview questions were formulated by consultation between student and study leader, utilizing the above body of literature on decision pathways.

3.7.1 Interview schedule

4. Tell me about a specific case, or cases where allegations regarding sexual abuse existed, and where you had to take a decision regarding proceeding with a forensic assessment without the consent of both parents. (Retrospective information question)
5. What factors or events complicated decision-making at the time? (Retrospective factor information question)
6. How did the above factors influence your thoughts in taking the decision to proceed or not proceed with forensic assessment? (Retrospective reflective question)

7. What was the outcome of the case? What influence did your decision to proceed or not proceed to have on the outcome? (Temporal reflection question)
8. What will you do differently in a future similar case? (Prospective reflection question)

The researcher believed these questions would facilitate adequate exploration of the topic and provide sufficient information for establishing a decision support guideline.

To ensure adequate preparation the interview schedule was sent to participants before the interview. This assisted both the interviewer and interviewee to stay on point and explore known content

3.8 METHOD OF DATA COLLECTION

Some elements of the population were social workers who only performed occasional forensic assessments and were not necessarily listed as forensic social workers. Other elements of the population were forensic social workers in private practice who were not easily identifiable from existing databases. However, since the forensic social work community was diminutive, professionals were likely to have contact with one another. Since the exact size of the population was unknown and the method for accessing the population was equally unknown, snowball sampling was used as a strategy for identifying participants. The researcher compiled an initial list of names of persons that were qualified for participation from consultation with those referenced in this proposal.

The researcher approached one of the forensic participants from the list via telephone, sent this participant the project advertisement; and answered questions about the study. After which the researcher gave the participant an ICF and 5 days to consider participation. In addition, the researcher requested referrals to other potential participants according to stipulated inclusion criteria. These names were used to expand the name list, whilst the recruited participant was followed – up by the researcher, who arranged an appointment and conducted the interview at a place that was convenient for the participant or a skype meeting, depending on the participant. At that meeting, the participant signed the ICF in the presence of the researcher, who, in addition, signed the form as well.

When participants requested to be interviewed via Skype, the consent form was file-transferred at the start of the interview for signature in the presence of the researcher. In addition, an advertisement was placed on social work- social media platforms with an invitation to respond. Sampling was continued until the researcher had recruited 11 participants in forensic practice. One participant withdrew from the study before completing their ICF. After which two more

participants decided not to complete the study during the initial interview. Five participants were from the Mpumalanga region; two from Gauteng and one from Limpopo. Overall 8 participants took part in this study.

3.9 DESCRIPTION OF PROCEDURES/TECHNIQUES/METHODS

An interview schedule (please view point 6.1 for the specific interview questions) that was used in this study. Interviews were conducted either via face-to-face interviews or Skype, whichever suited the participants best. The researcher conducted the interviews herself. The researcher experienced some delays with skype-interviews due to insufficient Internet signal. Interview data for live interviews were recorded by means of a digital recording device for later transcription, whilst Skype interview data was recorded by means of a free Skype call recorder device for later transcription (<https://voipcallrecording.com/>). Two out of the eight participants were interviewed via Skype call and the remaining six participants were interviewed face to face.

Five of the face-to-face participants requested that the interviews be conducted in their offices. The offices were all private and not shared with others. One participant requested to be interviewed at her home. During the interview, it was only the researcher and the participant present in the house. Once all the raw data was collected it was transcribed by the researcher into Word format text files that are checked by the supervisor for accuracy as part of monitoring. The data appeared only in electronic format and all files were stored on the researcher's password-protected computer. The transcribed data was then transferred to atlas.ti for analysis.

3.10 METHOD OF DATA ANALYSIS

3.10.1 Analysis of interview data

Data analysis in this study was driven by an adaptation of a qualitative analysis method known as Decision Pathway Analysis (DPA), a method frequently used in health studies and social work studies to map and systematize treatment regimens and decision making regarding the optimal management of treatments (Kattan, 2009). According to this procedure, algorithmic flow diagrams were constructed based on findings as branching logical pathways with decision points represented as yes/no nodes.

In this study, the analysis was divided into two stages: Stage 1 was a classical thematic analysis and stage 2 was algorithm construction.

Stage 1 thematic analysis: The analysis followed the five stages of thematic analysis as indicated by Braun and Clarke (2013). Each interview transcript was analyzed by means of line-by-line coding that was performed by the researcher within Atlas.ti. This assisted in identifying main decision themes; causes (factors) and relations in the findings. Roughly the five stages were (1) data management, where all the transcribed data and available literature was transferred into Atlas.ti. (2) Familiarisation, where the data was divided between usable and unusable data. (3) initial coding, where codes were created for the usable data. (4) Identification of themes, where repeated themes were identified and sorted, reviewing of themes, and (5) defining and naming themes. The analysis was performed one transcript at a time, each time saturation likelihood was assessed. This process continued until the researcher reached a conclusion regarding saturation. The data and findings were discussed between the researcher and the study leader throughout the process.

From this initial level coding, the researcher developed a “family function or tree” within Atlas.ti:

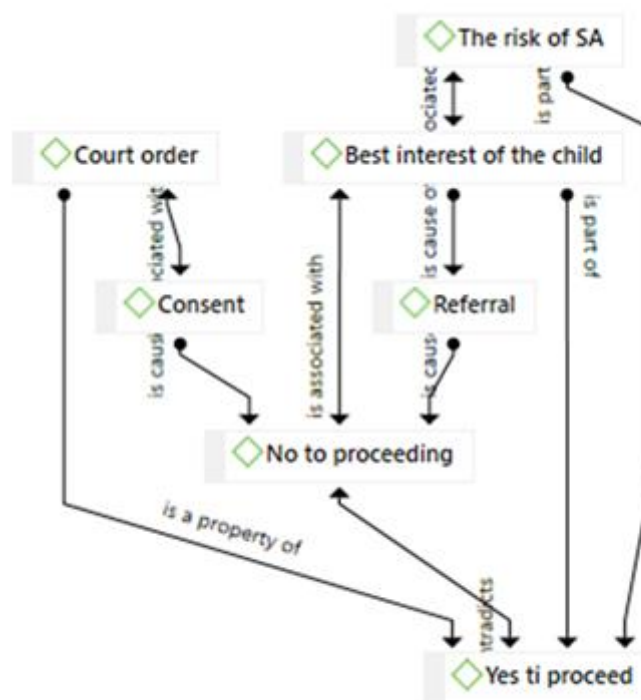


Figure 3-1 Example of Atlas ti family tree

This ‘family tree’ consisted of the interrelationships between codes, graphically indicated by means of different Atlas operators. The family tree was a graphical representation of the themed paths taken by participants in managing the critical incident. In Atlas.ti coding was simply the

procedure of connecting code words with assortments of data. Each code that was created was connected to another code. Each code was connected and each connection was categorized by a function. Thus, by connecting and categorising or labelling each code a “family tree” was created as can be seen in the above graph. Out of the family tree that was developed and confirmed by participants a decision flow chart was created which graphically displayed the research findings which were displayed in stage 2 of the analysis.

Stage 2 of analysis: Algorithm mapping: The researcher used a sequential decision flowchart to simplify the mapping of the decision pathway. This pathway was followed and made it easier for professionals to understand. Mahdi (2013) explains that each shape depicts a step in the process or decision to be made. The arrows symbolize the process which needs to be followed (Mahdi, 2013). Below is the flow chart that was created out of the family tree:

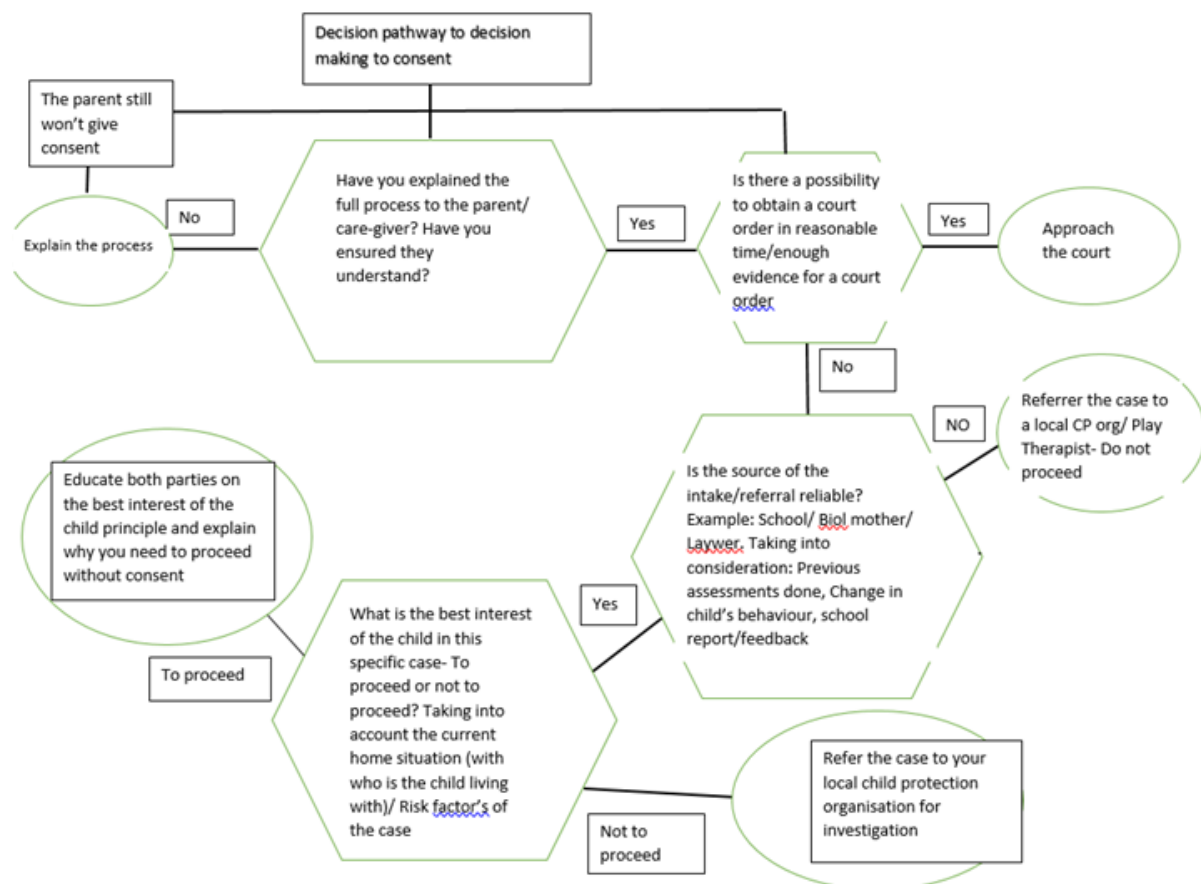


Figure 3-2 Resulting Decision pathway

At this stage, the mapping activity that represents the output of this research was performed by the student researcher, her supervisor, and presiding officer (magistrate) at the children's court, to ensure adequate levels of triangulation in the logic of decision making expected from such

activity. In addition, the finalized decision map was sent to participants for verification as a form of member checking, to ensure the proposed decision-making sequences was (a) a valid reflection of what participants advised the researcher on, and (b) confirmed the logic of the problem assessment and decision making the participant would have followed.

This verification was by a qualitative appraisal, not utilizing a specific pre-designed tool, but three questions were asked: (a) Does the proposed decision-making map and associated explanation accurately reflect the decision options you would have followed?; (b) Does it exhaustively reflect all of the possible options in decision making within the current legislation circumstances?; (c) Are there any changes you want to propose in the decision-making sequence? Please specify. Unfortunately, not all of the participants gave feedback. Only 5 participants gave their feedback. However, the feedback that was given by participants indicated that they all agreed with (a) that the proposed decision-making map and associated explanation accurately reflected the decision options that they would have followed; (b) that it did reflect possible options in decision making within the current legislation circumstances? and (c), none of them wanted to make any changes to the flow chart. Since there were no proposed changes, the flow chart was completed. The completed flow-chart was then disseminated to participants in the form of a brief booklet for their own use and convenience. The finalized booklet was also offered to Forensic practitioners upon request. This graph will be discussed later in this section.

3.11 FINDINGS OF THE DATA ANALYSIS

Seven main concepts were identified during data analyses. These 7 main concepts being (1) yes to proceed; (2) no to proceed; (3) consent; (4) court order; (5) Best interest of the child; (6) The risk of SA (The risk of sexual abuse continuing) and (7) referrals. These factors are discussed in this section of the study.

3.11.1 Factors take into consideration in decisions regarding consent

(a) Who is the primary caregiver?

. Some care and contact cases were already divorced parents going to court as one parent wanted more/all contact since some time had passed since the original care and contact order was formulated (Participant 2, Interview 2). According to Ms. Monaledi (2019), the presiding officer of the children's court in the Mbombela district these cases were becoming more frequent and some were characterized by allegations of sexual abuse.

According to participant 2 (Interview 2) In these cases, the participants indicated that they would only obtain the consent of the parent or caregiver who is primary care. Participant 1 (interview 1)

indicated that she always began her decision-making process with who the primary-care giver was. Participant 1 (interview 1) stated that “by law, the parent who was the primary caregiver holds the right to make the decision and therefore the other parent consent was not needed”. Participant 2 (interview 2) stated that even though one parent was the primary caregiver she would still not continue without obtaining consent from both parents. Stating that *“these cases are far more complex and lawyers become difficult. I would still follow the route of obtaining both parents consent”*

(b) Source of referral

Participants indicated that the source of referral played a role in decision making. Participant 1, Interview 1 stated that she proceeded with caution in care and contact cases when the referral came directly from a biological parent. She indicated that in these cases there existed a “probability that these allegations were fabricated in order to get primary custody”. Literature supported this statement and it has been a vastly researched area in child sexual abuse (Khuele, 1995; Faller, 1991; Kristine & Masilla, 2015). Referrals that emanate from a school-based source seem to hold more significance (Participant 5; interview5). Participant 1 (Interview 1); Participant 2 (Interview 2); Participant 5 (Interview 5) and Participant 7 (Interview 7) indicated that they were willing to proceed with the consent of one parent or approach the court for a court order when the referral stemmed from a school-related source. Literature indicates that most teachers had very limited knowledge on sexual abuse (Márquez-Flores, Márquez-Hernándezb & Granados-Gámez; 2016). Thus making it an interesting factor that most participants found to be a more reliable source and were willing to proceed with the assessment without the consent of both biological parents. All participants indicated that the most credible source of referrals was from welfare organisations. Participant 2 (Interview 2) indicated that cases referred to them by welfare workers were already statutory cases due to most welfare workers opening children’s court proceedings immediately when allegations of sexual abuse were made. Participant 8 (interview 8) even indicated that they did not take on cases that had not been referred either by the court or a welfare organisation as these had “less ethical issues”.

(c) Best interest of the child

The best interest of the child is a fundamental principle on which most social service practitioners base decisions. It is an important section with the children’s act 38 of 2005 as amended and plays a vital role in cases surrounding children. Most participants indicate that their decision would most likely be based on ‘what would be in the best interest of the child?’ Some even stating that they were not willing to take the risk of a child possibly being a victim of continuous sexual abuse if they waited for the consent of either parent or court order. However, participant 2 (interview 2)

stated that they would never proceed without consent or court order. Participant 2 (interview 2) stated that working in care and contact cases was difficult and in the past, she had the experience where her report was rejected by the court because she had “proceeded without the consent of both parents or a court order”. In contrast participant 6 (interview 6) indicated that “as long as they are able to motivate strongly in court why it was in the best interest of the child to proceed” their report was accepted. In addition, participant 3 (interview 3) and participant 5 (interview 5) indicated that what was the best interest of the child in one case might not be the same for another child and thus, each case characteristics needed to be assessed according to the best interest of the child principle. Participant 6 (interview 6) supported the notion and stated that “the family dynamics are so fragile during the period of assessment that it would rather be in the best interest of the child to follow a therapeutic-intervention rather than an assessment”. Participant 4 (interview 4) stated that “...as a social worker I have to act on what is the best interest of the child and do the assessment, because the act I think mandates us as social work practitioners to do what is best despite of what the parents are saying...”.

(d) The possibility of a court order

All participants stated that if they were unable to obtain the consent of both biological parents they would approach the court for a court order. Participant 5 (interview 5); Participant 3 (interview 3) and participant 7 (interview 7) stated that they would submit their request for an order, however, if not received within a week they would proceed with the assessment. This would then form part of their argument stating *“I have submitted my request for an order and waited a period of two weeks, I’ve received no reply and could not risk waiting longer”* (Participant 4, Interview 4). Participant 1 (interview 1) stated that she would not proceed without the consent of both legal-parties and court order as she experienced that the report would be thrown out of court and *“all the effort would be for nothing”*. Participant 6 (interview 6) indicated that in her experience court-districts response rates were different and in smaller communities you were able to obtain a court order within a week. However according to participant 4 (interview 4) she *“had waited for a court order for over two months”*. Participant 6 (interview 6) also indicated that in one court-district she waited over a month before the court order was issued.

It appeared from these reports that the time issue in obtaining a court order was pertinent in the decision to proceed. Practitioners appeared to be in conflict whether to follow their instincts regarding the protection of the child’s interest or waiting for court orders.

(e) The risk of possible sexual abuse continuing

Most participants indicated that they were not willing to take the risk of possible sexual abuse continuing. They were willing to proceed with the forensic assessment without the consent of both parents to ensure the safety of a child. In addition, some participants indicated that they were not willing to take the risk and together with the best interest of the child principle they had to consider their options. Participant 6 (interview 6) stated that she would not be able to “*live with herself*” if something was to happen to a child where she decided not to proceed with the assessment.

3.11.2 Decision pathway figure

As indicated by the data analyses the above findings were used to construct a decision pathway. All the above factors and how they influence one another was used to create a logical and ‘user-friendly’ flow-chart so that all forensic social workers would be able to use it with no importance of their years of experience in the field:

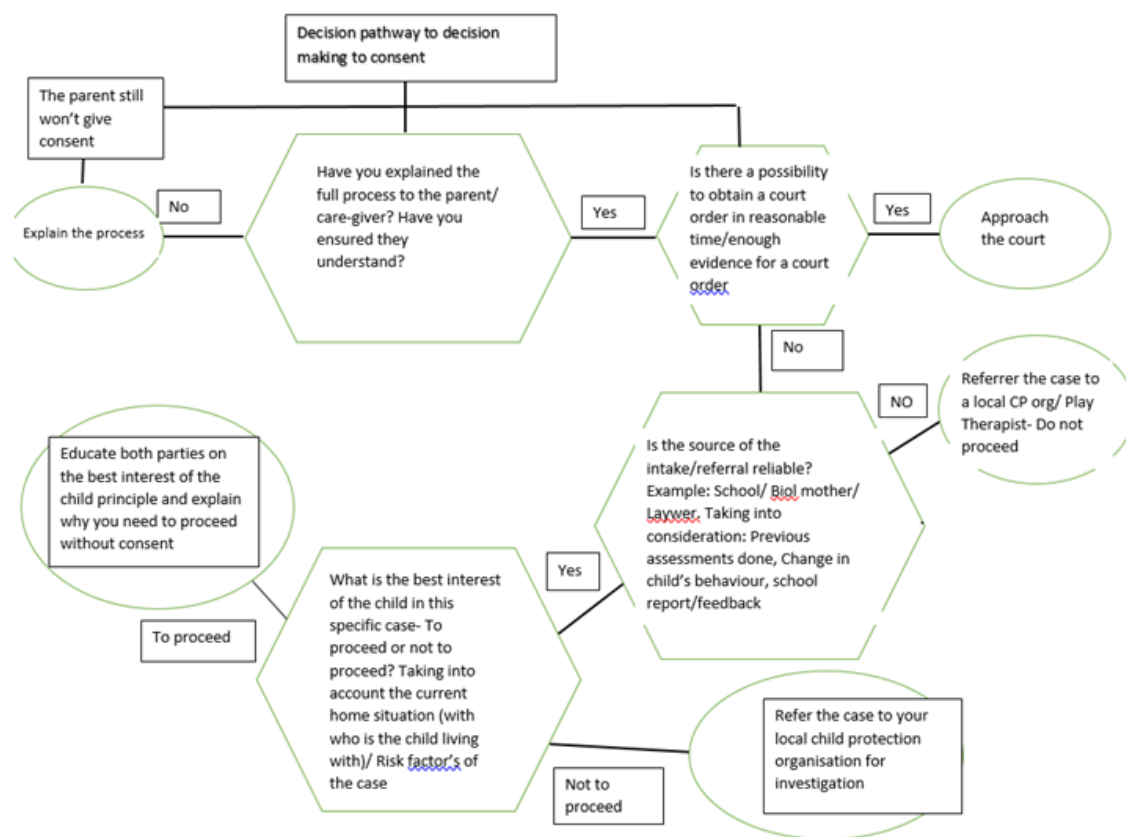


Figure 3-3 Decision Pathway for obtaining parental consent

The decision pathway or flowchart was constructed with 4 decision blocks and four solution blocks. The first block started with a decision block. The forensic social worker would have to answer ‘yes’ or ‘no’. Depending on the answer they were led to either a solution or additional

decision block. This flow was followed until the forensic social worker had reached an appropriate conclusion. Below is the explanation of each decision- and solution block. Some of the concepts below had already been discussed in the above section of this study and will only be briefly discussed.

3.11.3 Decision blocks explained

1. Have you explained the full process to the parties Involved-Decision block?

Participants indicated that most times parents didn't understand the procedure of a forensic assessment and that the word 'forensic' might be a foreign concept to some. Participant 6 (interview 6) stated that parents, upon hearing the word 'forensic' immediately thought about "jail; criminals and police". In addition, participant 6 (interview 6) stated that "some parents are afraid that false accusations would be seen as the 'truth' and that they don't fully understand how forensic social workers can be trained to identify false accusations". Participant 8 (interview 8) indicated sometimes the process was explained in a "professional language with concepts and words that the general public does not understand and once it is explained to a level of his or her level of understanding most parents agree to the assessment". In addition, most participants indicated by going through the process with the parties involved and having an open discussion most parents or care-givers felt part of the process and was more likely to give consent.

2. Possibility of a court order

Participants indicated that following the route of obtaining a court order or at least attempting to obtain said order was the safest. Participant 2 (interview 2) strongly felt that assessments should not proceed without a court order, stating that "parents have a right to withdraw consent in the middle of the assessment, it is therefore always the best route to obtain a court order". However, not all court districts had the same reaction times when it comes to submitting requests to the court as some had higher caseloads than others (Participant 6; interview 6). However, many participants indicated reluctance to wait for a court order, but would rather proceed with the assessment without a court order as they were not willing to risk the safety of a child.

3. Was the source of the intake/referral reliable?

Participants indicated with regard to cases of care and contact that they were always cautious. "Parental alienation is common in cases of care and contact and allegations regarding sexual abuse" (Participant 2: interview2). Some participants indicated that they were less reluctant

to proceed if the referral came from a third party outside the parental subsystem, such as a school teacher or non-related person. Participant 5 (interview 5) stated that a school-based source has more to lose than to gain from reporting suspicion of sexual abuse, especially if the investigation concludes that the allegations were false. According to participant 3 (interview 3) schools rarely report as they were afraid of tarnishing the school's name, whereas one parent might want the other parent to be viewed as inadequate and was a strong reason for reporting.

4. What is in the best interest of the child?

Some participants indicated that it would be in the best interest of the child to proceed with the assessment due to the risk factors involved in sexual abuse cases, such as the possible abuse continuing. Other participants indicated that it would not be in the best interest of the child to proceed with the assessment. Participant 3 (interview 3); Participant 4 (interview 4) and participant 5 (interview 5) indicated that they would continue with the assessment, on the notion that it would be in the best interest of the child to investigate the allegations, because if they were found to be true the child needed to be removed out of that situation and be protected. Participant 6 (interview 6) indicated that it would not always be in the best interest of the child to proceed with the assessment as it might worsen home conflict circumstances. Participant 2 (interview 2) Participant 6 (interview 6) and participant 8 (interview 8) indicated that they had experienced that their evidence of the assessment was thrown out of court, because they did not have both parents consent or a court order. These participants had experienced that it was more suitable to rather refer the case either to a play therapist or a local child protection organisation. However participant 8 (interview 8) stated that "I have learned through those experiences to motivate more strongly why it was in the best interest of the child to proceed. Not all cases have enough motivation to proceed, but some do and them must be motivated strongly with collateral sources. This is where the referral and other things plays a role in the motivation thereof".

3.11.3.1 Solutions explained

1. Explain the process

Participants indicated by going through the process with the parties involved and having an open discussion most parents or caregivers felt part of the process and were more likely to give consent. Participant 6 (interview 6) indicated that she would have more than one session with the parents in explaining the process to them as it was "a lot of information to take in and so many concepts which they don't understand". Participant 4 (interview 4); Participant 6 (interview 6) and participant 7 (interview 7) indicated that once parents or caregivers felt part of the process they felt that they had more power towards the investigation. Participant 3 (interview 3) and

participant 6 (interview 6) indicated that parents or caregivers were scared that the child had been manipulated and didn't necessarily know or understand that the assessment would reveal manipulation.

2. Approach the court

Most participants indicated that they would approach the court to assist them. As stated in point 3.10.2.1 not all court districts had the same reaction times when it came to submitting requests to the court as some had higher caseloads than others. Furthermore, multiple participants indicated that they would not wait for the court order to be issued, however recommended submitting the request and proceeded with the assessment as they were not willing to risk the safety of a child. Participant 8 (interview 8) stated that by doing so the *"court will see an effort from your side to follow the 'correct' proceedings, however still thinking of the child's best interest and that is ultimately what your work is"*. Participant 8 (interview 8) indicated that this had assisted in some cases, however, stated that *"it should always be explained that you have done so for the best interest of the child"*.

3. Refer the case to your local child protection organisation or play therapist (before proceeding without consent)

Participants stated that it was beneficial to refer the case to other organisations or relevant professions. Participant 1 (interview 1) indicated that even though general social workers were by no means specialists in sexual abuse assessments, that they were able to monitor the child's behavior and home circumstances. Participant 2 (interview 2) even stated that she would use the welfare organisation to assist her in obtaining consent from the biological parents or caregivers as they *"generally listen to third-party more because you are already seen as the enemy"*. Participant 6 (interview 6) indicated that she would refer the case to a play therapist as it was a more *"familiar profession"* and parents or caregivers were more likely to give consent for play therapy. Participant 6 (interview 6) stated that *"in my experience sexual abuse can be assessed through play therapy, but it is not always thorough"*. Participant 1 (interview 1) stated that sometimes it was in the best interest of the child to rather refer to the case. In addition, participant 8 (interview 8) stated that *"referring the case sometimes quickens the process and I will refer the case when I can see there is not enough motivation why it would be in the best interest of the child to proceed"*.

4. Proceed with the investigation on the best interest of the child principle

All participants indicated that the best interest of the child principle was one of the pillars in which social workers base practice and by eliminating what would be in the best interest of the

child because one parent did not give consent was by nature eliminating social work practice. Participant 4 (Interview 4) stated *“as a social worker I have to act on what is the best interest of the child and do the assessment, because the act I think mandates us as social work practitioners to do what is best regardless of what the parents are saying, if we think that the child has gone through abuse then I think you sort of have that right as a social worker to oversee what the parents are saying and take the child through assessment and get to the bottom of the matter if the child has been abused or has not been abused”*. Most participants indicated that their decision to proceed with the investigation would most likely rest on this principle and would be what guided them in court as well. Participant 6 (interview 6) stated that *“it is difficult to sometimes know what is in the best interest of the child and that is why each case should be measured against its own influencing factors”*. Participant 8 (interview 8) indicated that when deciding on the best interest of the child influences such as *“is this a first-reporting or have this been reported before; with who is the child staying- the alleged offender or with the other parent and other things, it is difficult to name all of them as each case is unique with its own unique family dynamics”*

3.12 CONCLUSION

The best interest of the child principle was most prominent in the findings of this study. The best interest of the child holds extensive weight and was viewed as the main deciding factor on whether to proceed with the assessment or not. It was evident in the study that the best interest of the child principle did not necessarily indicate that the forensic social worker should proceed with the assessment, however, that it would be most effective not to proceed. Nevertheless, not proceeding does not automatically indicate that the case would be left unresolved, but rather that a different method or execution of ‘assessment’ would be followed. Even though participants indicated that other routes or methods were not as effective it would still produce some results. The decision pathway or flowchart was constructed with the main concepts that were produced by the data analyses. The decision blocks could assist forensic social workers by them evaluating the unique factors of each case against the against the decision blocks of the Markov model. This would either lead the forensic social worker to a either a different question or a solution. The decision pathway or flow-chart was evaluated as a practical guideline that was user-friendly for most forensic social workers regardless their level of experience in the field.

3.13 RECOMMENDATIONS

The researcher recommends that this study should be replicated on a larger scale so that the assumptions of the decision-making process could be tested within different contexts. Furthermore, the researcher recommends that future studies consider the opportunities for cross-

referencing between different fields of social work in these instances. For instance, certain subgroups of professionals within social work would have different courses of action with respect to the management of sexual abuse cases, such as social workers in private practice; police forensic workers, and other areas. As this could influence the decisions each of these groups have to take within their context, it would be worthwhile to test the decision pathways in different contexts. Lastly, the researcher recommends that this study should be expanded by discussing the various ways in which the Markov model applied to and was relevant to management of cases in children's court cases versus those in criminal court cases. It would also be advantageous to test the validity of the new Markov decision framework with magistrates in order to determine whether the studied decision pathway would obtain legal support and whether the decisions taken would withstand legal scrutiny under different court contexts.

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SECTION D: FINAL CONCLUSIONS, LIMITATIONS AND RECOMMENDATIONS

4.1 Introduction

This section provides the conclusions to the study based on the findings of the study and the relevance of the Markov decision pathway model that was developed in this study. This study was titled:

A decision pathway analysis of consent seeking procedures in responsibility and rights cases characterized by child sexual abuse allegations.

The question that was addressed in this study was:

According to forensic experts, what were their perceptions on obtaining parental consent in forensic investigations where allegations of sexual abuse are made?

The study wanted to establish whether decision making about child sexual abuse assessments in divorce cases following allegations of such abuse by either party in such cases, followed certain pathways. The findings of this study suggested that in the views of most participants, a strong relationship existed between the best interest of the child principle and the decision-making process. This meant that this principle significantly influenced the decision whether to assess or not. Furthermore, the findings suggested that the best interest of the child principle should be viewed as of higher priority than the consent of one or ideally both biological parents. In addition, the results indicated that what was considered the best interest for the child in one specific case might not be the same or similar in another case. Therefore, the developed decision-making-pathway should be viewed against each specific case's specific influences and risk factors. The pathway (as seen below) can assist forensic social workers when making decisions regarding whether to proceed with or without the consent of parents. The decision pathway graph was designed in such a way that both advanced practitioners and generic social workers would be able to utilize it in their fields of practice. In addition, the graph could be adapted to fit different contexts involving consent outside the sexual abuse assessments context or forensic assessments. Each block in the decision pathway was a decision that needed to be made and either led to a decision or to another decision box. This would assist forensic social workers and even generic social workers to take all factors into consideration before making a decision.

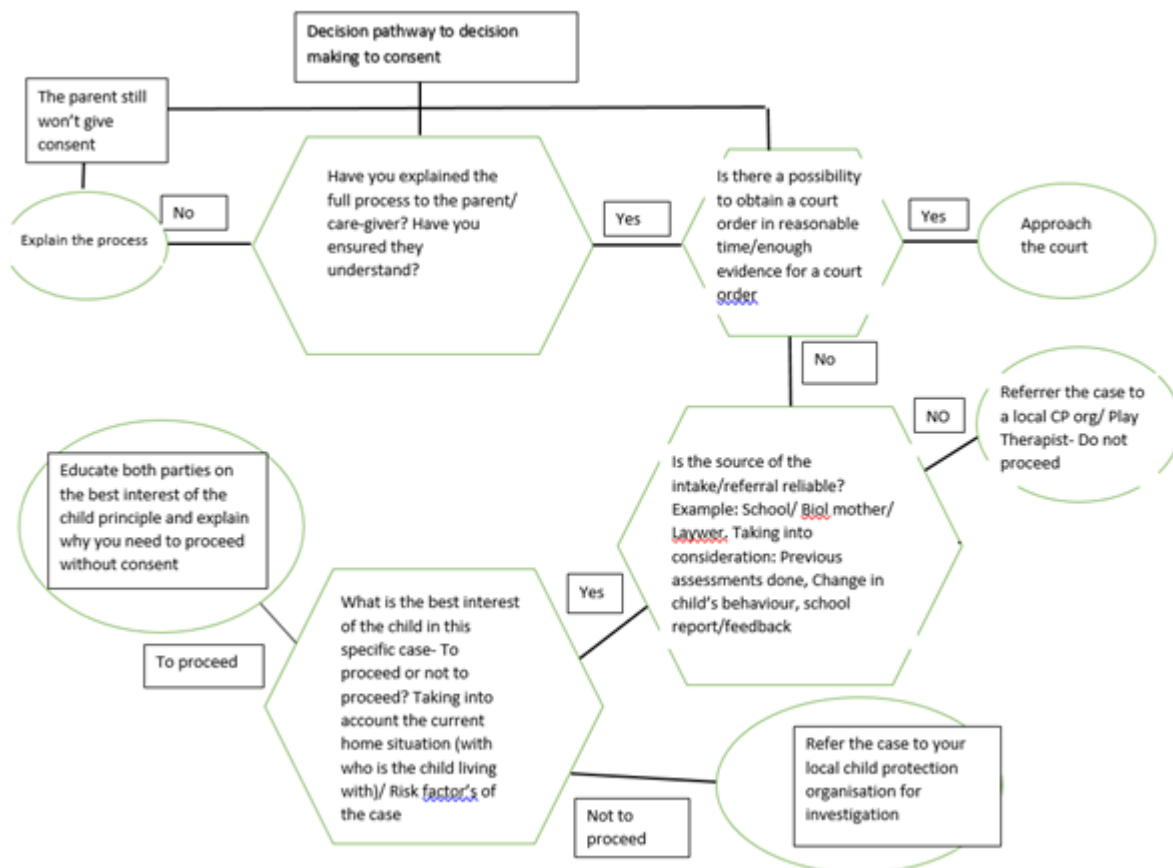


Figure 4-1 Decision pathway

4.2 Limitations of the study

This study was intended to reach an understanding of the dilemmas faced by the forensic social worker in obtaining consent of both parents in care and contact cases characterized by sexual abuse allegations. This study contributed to this understanding and contrinuted towards the development of a suitable decision making tool that could be used by forensic and other social workers as a guideline for decision making when they are faced with the difficulties associated with making decisions about whether to assess the allegations or not, and whether this should be done with, or without the consent of both parents. This is relevant to practice in the South African context where parents are protected from unilateral decision making regarding the assessment of child sexual abuse allegations in civil matters. However, this study was conducted on a small scale. In addition, some participants decided to withdraw from the study, in addition, not all participants responded to feedback on the decision pathway, therefore the limited quantity of forensic social workers that participated in this study made it difficult to generalize the findings of this study to this specific field of social work. Despite this limitation, the findings do suggest

valuable considerations that may assist in forensic social work decision making as a new specialty in the social work profession for cases that are complicated by consent.

Duplicating this study on a larger scale is warranted to confirm the Markov decision options in practice with a larger sample of social workers. A larger-scale study would carry more weight and would enable validation of the decision-making framework that contributes to its standardization as a procedure/tool for use not only in care and contact cases characterized by sexual abuse but also in other cases complicated by consent.

Despite the limitations of this study, the study extended the knowledge base that pertains to the procedure of obtaining consent. In addition to the findings, the formulation of a decision-pathway was still possible despite the low levels of participation that were encountered. The resulting decision framework holds potential to assist not only forensic social workers but also generic social workers when working with cases that are complex due to withholding of consent.

4.3 FURTHER CONCLUSIONS AND RECOMMENDATIONS

From this study the following conclusions can be drawn:

1. The finding of this study seemed to indicate that most forensic social workers rely on the best interest of the child principle to guide them when making decisions. However, this study also showed that the best interest of the child was a very lucid concept that was approached differently in each case. However, the best interest of the child was paramount in any investigation or court proceedings that involved children and this was viewed positive as it indicated adherence to this principle, as confirmed by Reed, (2014). Furthermore, Robinson (2015) wrote that the extent to which the best interest of the child was applied in South African courts was rather limited. The decision-pathway could possibly assist forensic social workers in broadening the view of how the best interest of the child was applied by utilizing the factors that were discussed in this study either in their arguments or recommendations to the court.
2. Given that forensic social work was a fairly new specialty within South Africa, forensic social workers, therefore, needed more guidance. Thus, the decision-making pathway could assist many forensic social workers with difficult cases regarding consent. Moreover, the pathway was designed in such a manner that it could also assist generic social workers in practice. Furthermore, the decision-making pathway was not only limited to care and contact cases characterized by sexual abuse allegations but other cases where parents withheld consent for various types of assessment, treatment, or therapy.

3. It is recommended that this study be duplicated on a larger scale. This would make the study more accurate and contribute towards further validation of the proposed pathways for decision making. Furthermore, the findings should be sorted in the different fields in which forensic social workers operate, for example, the office of the family advocate, the police, child protection, the Department of social development, and private practice. The reason was to ascertain whether there were any differences in how these social workers approached consent or whether there was any 'built-in' protection for the forensic social workers in their different policies that were there to protect them. This enabled the researcher to adapt the decision-making-pathway to become more effective.
4. Lastly, it is recommended that the decision-making-pathway model (as seen below) be examined by children's court and criminal court magistrates to confirm its decision making properties and validity. These are the two main courts that forensic social workers function in. This will allow the researcher to develop the pathway to accommodate a 'legalized' element of practice. If the decision-making pathway was approved by most children's and criminal court magistrates it would not only add to the pathway's validity but would open up the possibility of the pathway becoming a part of general practice for forensic social workers.

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ADDENDUM 1: INFORMED CONSENT FORM



Private Bag X1290, Potchefstroom
South Africa 2520

Tel: +2718 299-1111/2222

Fax: +2718 299-4910

Web: <http://www.nwu.ac.za>

HREC Stamp

INFORMED CONSENT DOCUMENTATION FOR FORENSIC SOCIAL WORKERS

TITLE OF THE RESEARCH STUDY: A decision pathway analysis of consent seeking procedures in responsibility and rights cases characterized by child sexual abuse allegations

ETHICS REFERENCE NUMBERS: NWU-00101-18-S1

PRINCIPAL INVESTIGATOR: Prof WJH Roestenburg

POST GRADUATE STUDENT: Ms Christel Van Zyl

ADDRESS: School for Psychosocial Health

Building E8, Potchefstroom campus

Potchefstroom

CONTACT NUMBER: 018 2852270

You are being invited to take part in a **research study** that forms part of my/our Master degree. Please take some time to read the information presented here, which will explain the details of this study. Please ask the researcher or person explaining the research to you any questions about any part of this study that you do not fully understand. It is very important that you are fully satisfied that you clearly understand what this research is about and how you might be involved. Also, your participation is **entirely voluntary** and you are free to say no to participate. If you say no, this will not affect you negatively in any way whatsoever. You are also free to withdraw from the study at any point, even if you do agree to take part now.

This study has been approved by the **Health Research Ethics Committee of the Faculty of Health Sciences of the North-West University (NWU-00101-18-S1)**

and will be conducted according to the ethical guidelines and principles of Ethics in Health Research: Principles, Processes and Structures (DoH, 2015) and other international ethical guidelines applicable to this study. It might be necessary for the research ethics committee members or other relevant people to inspect the research records.

5 What is this research study all about?

6 *Consistent with the universal principle of dual consent with regard to matters involving children, this principle is often not adhered to in cases of parental dispute where parents are involved in high Court divorce proceedings, and exacerbated in cases where either parent presents allegations of child sexual abuse in which the other parent is the alleged perpetrator. This research focuses upon the experiences and opinions of forensic social workers and law practitioners regarding those mechanisms for obtaining dual consent, or how to circumnavigate legal issues associated with one-parent or no-parent consent. We intend to construct decision pathways that can enhance consent seeking processes in the practice of forensic social work.*

7 Why have you been invited to participate?

- *You have been invited to be part of this research because you have experience in sexual abuse assessments and have been confronted with similar practice challenges*
- *You also fit the research because you are registered with the SACSSP for the period of 2018/2019*
- *You will not be able to take part in this research if you do not have experience in sexual abuse assessments and is not registered with the SACSSP for the period of 2018/2019*

8 What will be expected of you?

- *You will be expected to participate in an interview via Skype of approximately 40 min to 60 min where you will be asked 5 questions. Afterwards a document with our findings will be sent to you via Skype to obtain your comments about the validity of our findings.*

9 Will you gain anything from taking part in this research?

- *The gains for you if you take part in this study will be a decision guideline that can assist you in the future in your area of practise.*
- *The other gains of the study is for forensic social workers in practise.*

10 Are there risks involved in you taking part in this research and what will be done to prevent them?

- *This study has limited risk. Each participant's identity will be anonymous.*

11 How will we protect your confidentiality and who will see your findings?

- *Anonymity of your findings will be protected by locked cabinets and password protected laptop. Your privacy will be respected by not using your real name and surname. Your results will be kept confidential by the researcher. Only the researchers and her study leader will be able to look at your findings. Findings will be kept safe by locking hard copies in locked cupboards in the researcher's office and for electronic data it will be password protected. As soon as data has been transcribed it will be deleted from the recorders) Data will be stored for 5 years.*

What will happen with the findings or samples?

- *The findings of this study will only be used for this study*

How will you know about the results of this research?

We will give you the results of this research when it has been completed and reviewed by the study leader through email correspondence. You will be informed of any new relevant findings by the researcher through email correspondence

Will you be paid to take part in this study and are there any costs for you?

There will thus be no costs involved for you, if you do take part in this study

Is there anything else that you should know or do?

- You can contact Christel Van Zyl. at christelvanzyl24247820@nwu.ac.za if you have any further questions or have any problems.
- You can also contact the Health Research Ethics Committee via Mrs Carolien van Zyl at 018 299 1206 or carolien.vanzyl@nwu.ac.za if you have any concerns that were not answered about the research or if you have complaints about the research.
- You will receive a copy of this information and consent form for your own purposes.

Declaration by participant

By signing below, I agree to take part in the research study titled: A decision pathway analysis of consent seeking procedures in responsibility and rights cases characterized by child sexual abuse allegations

I declare that:

- I have read this information/it was explained to me by a trusted person in a language with which I am fluent and comfortable.
- The research was clearly explained to me.
- I have had a chance to ask questions to both the person getting the consent from me, as well as the researcher and all my questions have been answered.
- I understand that taking part in this study is **voluntary** and I have not been pressurised to take part.
- I may choose to leave the study at any time and will not be handled in a negative way if I do so.
- I may be asked to leave the study before it has finished, if the researcher feels it is in the best interest, or if I do not follow the study plan, as agreed to.

Signed at (*place*) on (*date*) 20....

Signature of participant Signature of witness

12 Declaration by person obtaining consent

I (*name*) declare that:

- I clearly and in detail explained the information in this document to

.....

- I did/did not use an interpreter.
- I encouraged him/her to ask questions and took adequate time to answer them.
- I am satisfied that he/she adequately understands all aspects of the research, as discussed above
- I gave him/her time to discuss it with others if he/she wished to do so.

Signed at (*place*) on (*date*) 20....

Signature of person obtaining consent

13 Declaration by researcher

I, *Christel Van Zyl* declare that:

- I explained the information in this document to **or** I had it explained by who I trained for this purpose.
- I did/did not use an interpreter
- I encouraged him/her to ask questions and took adequate time to answer them

or I was available should he/she want to ask any further questions.

- The informed consent was obtained by an independent person.
- I am satisfied that he/she adequately understands all aspects of the research, as described above.
- I am satisfied that he/she had time to discuss it with others if he/she wished to do so.

Signed at (*place*) on (*date*) 20....

Signature of researcher

Current details: (23239522) G:\My Drive\9. Research and Postgraduate Education\9.1.5.6
Forms\HREC\9.1.5.6_HREC_ICF_Template_Apr2018.docm

25 April 2018

File reference: 9.1.5.6

ADDENDUM 2: BOOKLET



DISCLAIMER

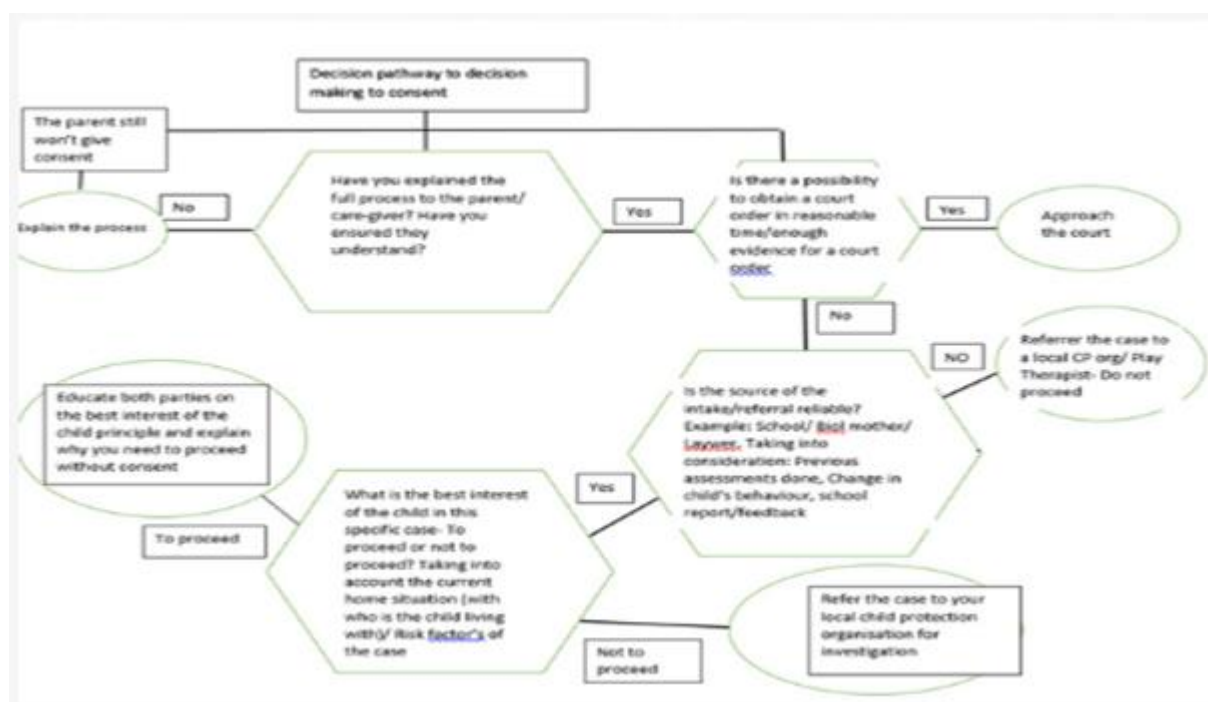
***THIS BOOKLET AND IT'S CONTENT IS
THE INTELLECTUAL PROPPERTY OF
CHRISTEL VAN ZYL***

*THIS BOOKLET IS FOR ACADEMIC AND
RESEARCH PURPOSES ONLY.*



Why a consent guideline

**to assist forensic social
workers in cases where one
parent withholds consent
to an assessment and the
court is not yet involved**



Decision blocks explained

1) Have you explained the full process to the parties Involved-Decision block?

Participants indicated that most times parents don't understand the procedure of a forensic assessment and that the word 'forensic' might be a foreign concept to some. Participant 6 (interview 6) stated that parents hear the word 'forensic' and immediately their thoughts are "jail; criminals and police". In addition, participant 6 (interview 6) stated that "some parents are afraid that false accusations would be seen as the 'truth' and that they don't fully understand how forensic social workers can be trained to identify false accusations". Participant 8 (interview 8) indicated sometimes the process is explained in a "professional language with concepts and words that the general public does not understand and once it is explained to a level of his or her level of understanding most parents agree to the assessment". In addition, most participants indicated by going through the process with the parties involved and having an open discussion most parents or care-givers feel part of the process and is more likely to give consent.

3) Is the source of the intake/referral reliable?

Participants indicated in regards to cases of care and contact they are always cautious. "Parental alienation is common in cases of care and contact and allegations regarding sexual abuse" (Participant 2: interview2). Some participants indicated that they find it more reliable of the referral came from a school-based source rather than from a parent. Participant 5 (interview 5) stated that a school-based source has more to lose than to gain from reporting suspicion of sexual abuse, especially if the investigation concludes that the allegations were false. According to participant 3 (interview 3) schools rarely report as they are afraid of the school's name would be "made bad", where as one parent might want the other parent to be viewed as inadequate and is a strong reason for reporting.

4) What is in the best interest of the child?

Some participants indicated that it would be in the best interest of the child to proceed with the assessment due to the risk factors involved in sexual abuse cases, such as the possible abuse continuing. Other participants indicated that it would not be in the best interest of the child to proceed with the assessment. Participant 3 (interview 3); Participant 4 (interview 4) and participant 5 (interview 5) indicated that they would continue with the assessment, on the notion that it would be in the best interest of the child to investigate the allegations, because if they are found to be true the child needs to be removed out of that situation and be protected. Participant 6 (interview 6) indicated that it would not always be in the best interest of the child to proceed with the assessment as it might worsen home conflict circumstances. Participant 2 (interview 2) Participant 6 (interview 6) and participant 8 (interview 8) indicated that they have experienced that their evidence of the assessment was thrown out of court, because they did not have both parents consent or a court order. These participants have experienced that it is more suitable to rather refer the case either to a play therapist or a local child protection organisation. However participant 8 (interview 8) stated that "I have learned through those experiences to motivate more strongly why it was in the best interest of the child to proceed. Not all cases have enough motivation to proceed, but some do and them must be motivated strongly with collateral sources. This is where the referral and other things plays a role in the motivation thereof".

Solutions explained

a) Explain the process

Participants indicated by going through the process with the parties involved and having an open discussion most parents or care-givers feel part of the process and is more likely to give consent. Participant 6 (interview 6) indicated that she would have more than one session with the parents in explaining the process to them as it is "a lot of information to take in and so many concepts which they don't understand".

Participant 4 (interview 4); Participant 6 (interview 6) and participant 7 (interview 7) indicated that once parents or care-givers felt part of the process they felt that they had more power towards the investigation. Participant 3 (interview 3) and participant 6 (interview 6) indicated that parents or care-givers are scared that the child has been manipulated and doesn't necessarily know or understand that the assessment will reveal manipulation.

b) Approach the court

Most participants indicated that they would approach the court to assist them. As stated in point 3.10.2.1 not all courts districts have the same reaction times when it comes to submitting requests to the court as some have higher caseloads than others. Furthermore, multiple participants indicated that they would not wait for the court order to be issued, however recommended submitting the request and proceed with the assessment as they are not willing to risk the safety of a child. Participant 8 (interview 8) stated that by doing so the "court will see an effort from your side to follow the 'correct' proceedings, however still thinking of the child best interest and that is ultimately what your work is". Participant 8 (interview 8) indicated that this has assisted in some cases, however stated that "it should always be explained that you have done so for the best interest of the child".

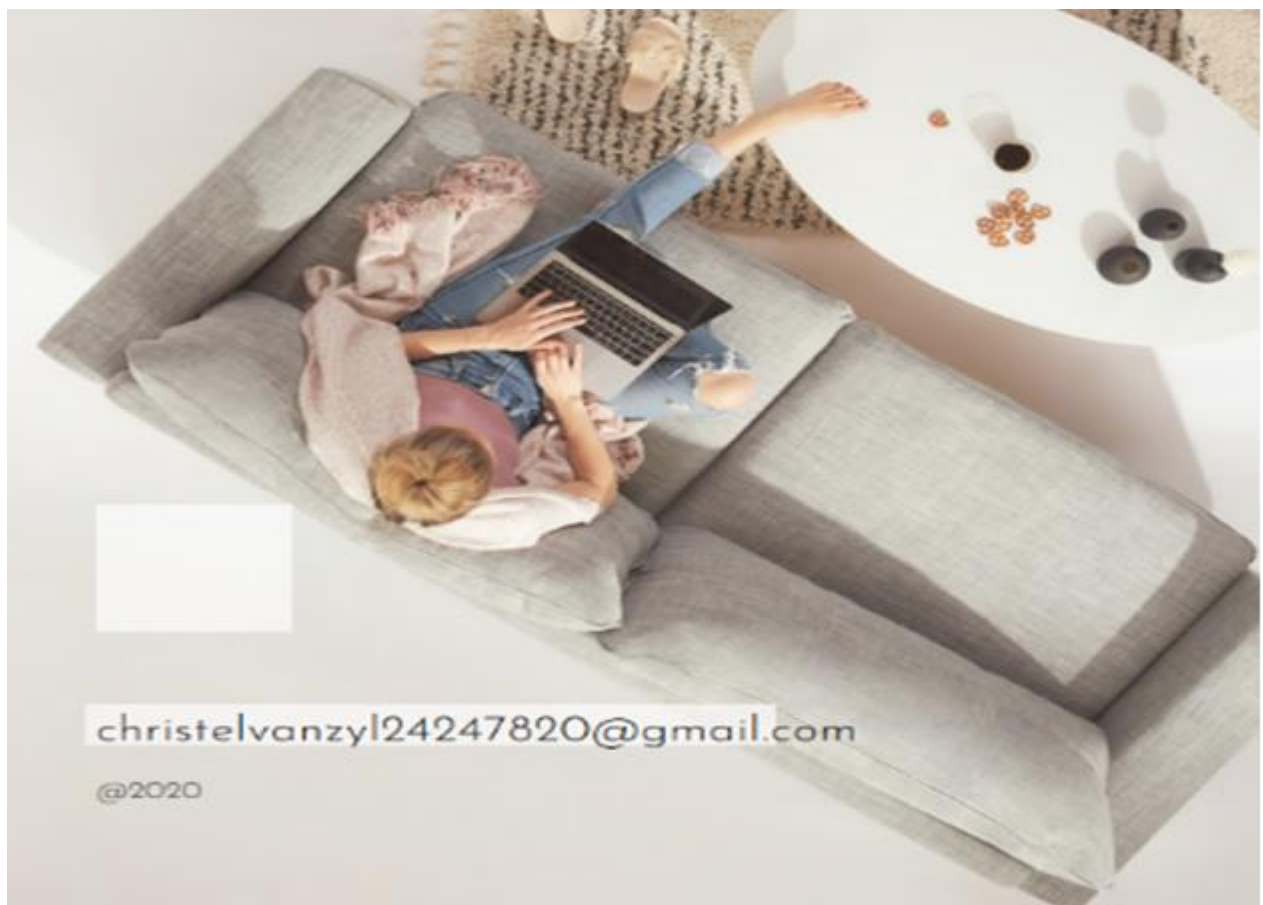
- c) Refer the case to your local child protection organisation or play therapist (before proceeding without consent)

Participants stated that it is beneficial to refer the case to other organisations or relevant professions. Participant 1 (interview 1) indicated that even though general social workers are by no means specialist in sexual abuse assessments, that they are able to monitor the child's behaviour and home circumstances. Participant 2 (interview 2) even stated that she would use the welfare organisation to assist her in obtaining consent from the biological parents or care-givers as they "generally listen to third-party more, because you are already seen as the enemy". Participant 6 (interview 6) indicated that she would refer the case to a play therapist as it is more "familiar profession" and parents or care givers are more likely to give consent for play therapy. Participant 6 (interview 6) stated that "in my experience sexual abuse can be assessed through play therapy, but it is not always thorough". Participant 1 (interview 1) stated that sometimes it is in the best interest of the child to rather refer the case. In addition participant 8 (interview 8) stated that "referring the case sometimes quickens the process and I will refer the case when I can see there is not enough motivation why it would be in the best interest of the child to proceed".

- d) Proceed with the investigation on the best interest of the child principle

All participants indicated that the best interest of the child principle is one of the pillars in which social workers base practice and by eliminating what would be in the best interest of the child because one parent did not give consent is by nature eliminating social work practise. Participant 4 (Interview 4) stated "as a social worker I have to act on what is the best interest of the child and do the assessment, because the act I think mandates us as social work practitioners to do what is best despite of what the parents are saying, if we think that the child has gone through abuse then I think you sort of have that right as a social worker to oversee what the parents are saying and take the child through assessment and get to the bottom of the matter if the child has really been abused or has not been abused".

Most participants indicated that their decision to proceed with the investigation would most likely rest on this principle and would be what guides them in court as well. Participant 6 (interview 6) stated that “it is difficult to sometimes know what is in the best interest of the child and that is why each case should be measured against its own influencing factors”. Participant 8 (interview 8) indicated that when deciding on the best interest of the child influences such as “is this a first-reporting or have this been reported before; with who is the child staying- the alleged offender or with the other parent and other things, it is difficult to name all of them as each case is unique with its own unique family dynamics”



ADDENDUM 3: ADVERTISEMENT

The advertisement is presented on a dark blue background with a subtle pattern of vertical lines. The text is white and yellow. A central light blue box with a yellow border contains the main question and a sub-question. To the right, a list of qualifications is provided. At the bottom left, contact information is given.

You are invited to participate in a research study that aims to develop a guideline for consent seeking in contested rights and responsibilities assessments

Are you a social worker conducting forensic assessments or parental right cases?

What is expected of participants? To answer a few questions on procedures for obtaining dual parental consent in parental rights assessments

Want to participate in this study? If you have any questions please contact Christel van Zyl 072 101 3981 or Prof. W. Roestenburg: 083 675 8054 for more information

To qualify to be part of this study:

- Forensic social workers that perform forensic child sexual abuse assessments regularly (Minimum one case per month) on parental rights and responsibilities cases.
- Has experience of getting dual parental consent for such assessments.
- Minimum 2-years working experience in the field of social work
- Social Workers registered with the SACSSP for the year 2018/2019.