

6 Evidentiary material and responses to allegations

The previous chapter examined the proportion of FCoA and FMC case files that contained allegations of family violence or child abuse, and the proportion of applicant and respondent parents who made such allegations. In this chapter, we investigate the total number of allegations raised and the evidence filed in support of those allegations.¹¹⁷ We also explore the apparent strength of evidence for and responses to allegations.¹¹⁸

The following questions guide the chapter:

- How many allegations were generally raised in a case?
- How specific were the allegations and responses?
- How often did the alleging party provide corroborative evidence, and what form did this evidence take?
- How often were allegations denied, admitted or left unanswered?
- Were certain types of allegations more likely than other types of allegations to be admitted or denied?
- Over the life of the case, what other (if any) evidentiary material emerged?
- To what extent was the apparent severity of allegations linked with the existence of evidentiary material and any response to allegations?

Results are presented in six sections. First, a brief snapshot of the number of allegations raised by parties is offered. Second, the extent of the corroboration provided by the alleging party is described. The third section examines responses to the allegations. Next, the extent to which evidentiary material was provided in Family Reports is set out. Fifth, the overall weight of evidence is assessed. Finally, the level of detail of the allegations and responses are compared.

6.1 Technical preface

A single allegation may refer to a single event or multiple events of differing duration. For example, an allegation that a spouse had been physically violent on multiple occasions over 6 months might be presented by a litigant in their affidavit as a single allegation. The way in which allegations were documented in affidavit material may, in part, be a reflection of both the nature of the disclosure by a litigant and the framing of this information on the advice of a lawyer representing that party. For instance, one lawyer might adopt a “less is more” strategy, and suggest that the client report two or three critical events, but combine a longer-term pattern of behaviour as a single allegation. Another lawyer may suggest a “more is more” approach, and advise that every instance of perceived abuse be documented as a separate allegation. This means that the number of allegations documented in a court file is not necessarily a measure of the frequency and duration of specific types of abuse. The same issue applies to responses by the other party to these allegations, since the responding party may elect to reply to several

117 This chapter focuses on allegations of child abuse made against the other parent (“parental child abuse”) and excludes allegations made against others.

118 As noted in Chapter 4, the study did not track the corroboration of denials, on the grounds that: (a) it is frequently difficult to corroborate a denial, as it involves proving a negative; and (b) allegations are unlikely to be falsely made when they can be easily disproved (e.g., “I wasn’t there. I was with ...”). However, the level of detail of denials is noted to help clarify the situation. Presumably, any Family Report that drew conclusions about the veracity of allegations would have taken into account the arguments of both parties. Chapter 6 includes an examination of conclusions made in Family Reports.

allegations in a collective manner. This highlights the importance of examining the data at both the case and litigant levels, an approach adopted here.

6.2 Number of allegations

Whereas Chapter 5 focused on allegations at the case level, this section examines the number of allegations within each case. This approach is a useful springboard into an examination of the extent to which individual allegations were accompanied by supporting evidence and/or denied (allegation level data).

Table 6.1 shows the number of allegations of spousal violence and child abuse found within individual court files in the FCoA and FMC, in both the general litigants and the judicial determination samples. So, for example, the table shows that 53% of cases in the FCoA general litigants sub-sample contained no allegations of spousal violence, while 14% contained one such allegation. (Allegations of child abuse raised in the judicial determination sample are not shown because there were fewer than 20 cases containing such allegations in the FCoA and FMC sub-samples combined.)

Table 6.1 Number of allegations about spousal violence and parental child abuse raised by litigants in the FCoA and FMC by sample: Couple cases

Number of allegations	Allegations of spousal violence				Allegations of parental child abuse	
	General litigants		Judicial determination		General litigants	
	FCoA (224 allegations) [109 cases]	FMC (330 allegations) [116 cases]	FCoA (161 allegations) [28 cases]	FMC (93 allegations) [27 cases]	FCoA (56 allegations) [109 cases]	FMC (50 allegations) [116 cases]
	% of cases	% of cases	% of cases	% of cases	% of cases	% of cases
None	53.2	46.6	21.4	37.0	78.0	75.9
1	13.8	10.3	3.6	7.4	9.2	13.8
2	7.3	7.8	21.4	11.1	6.4	6.9
3	3.7	5.2	3.6	14.8	3.7	1.7
4 or more	22.0	30.1	50.0	29.6	2.7	1.7
<i>Total</i>	100.0	100.0	100.0	100.0	100.0	100.0
Mean no. of allegations (where at least 1 allegation was made)	4.4	5.3	7.3	5.4	2.3	1.8
Number of case files in which an allegation was made	51	62	22	18	24	28

It has already been shown in Chapter 5 that allegations of spousal violence were more likely to be made in the judicial determination sample than in the general litigants sample, and over 70% of cases in the general litigants sample did not contain any allegations of child abuse.

Table 6.1 suggests that, where allegations of spousal violence were made, several tended to be raised (average: 4–7 allegations), particularly in FCoA cases requiring a judicial determination. In fact, half of the FCoA cases in the judicial determination sample contained four or more allegations, compared with only 22–30% in the other sample. By contrast, in the small proportion of cases containing allegations of parental child abuse in the general litigants sample, an average of only two such allegations were raised.

Given that only 18 of the 27 cases in the FMC judicial determination sub-sample contained allegations of spousal violence, these data are combined with those for the FCoA judicial determination sub-sample in subsequent tables.¹¹⁹

6.3 Corroboration provided by the alleging party

This section focuses on the material provided by alleging parties in support of their allegations of spousal violence and parental child abuse (respectively). Patterns for cases within the two courts are first compared, followed by patterns for litigants.

As noted in Chapter 1, it is not possible to directly determine the prevalence of “true” and “false” allegations of family violence or child abuse within the confines of this study. However, one way in which we can begin to approach that question is to note the extent to which such allegations were corroborated. For this purpose, we defined “corroboration” as *evidence that tends to confirm or give support to a statement made as to the occurrence of family violence or child abuse in the proceedings*.

Corroboration can take many different forms. The probative weight, or tendency of such weight to prove the allegation of violence or abuse, also varies depending on the type of corroboration. For example, if a family law litigant had previously been convicted in criminal law proceedings for the assault of their former spouse, that conviction would constitute corroborative evidence of very high probative weight in family law proceedings. At the other extreme, an affidavit from a third party confirming that a family law litigant had once told them of an experience of family violence (hearsay evidence) would have little, if any, probative weight, if indeed the court was prepared to consider such evidence at all.

In order to understand court outcomes, it is clear that we must recognise that corroboration entails a spectrum of probative weight. And yet, it is not possible to place different types of corroboration into an absolute hierarchy of probative weight. These are matters upon which reasonable minds may differ, and indeed courts and lawyers alike are engaged daily in such a weighing exercise from one case to the next. With these caveats in mind, different forms of corroboration were grouped into two categories. The first comprised corroborative evidence of *relatively strong probative weight*; the second, corroborative evidence of less probative weight. The specific types of evidence within each category are listed in Appendix E.

It should be noted at the outset that a lack of corroborative evidence should not be interpreted to mean that an allegation is “false”. Evidence can be hard to come by (Jaffe, Lemon, & Poisson, 2003), with abuse often occurring behind closed doors (Straus, Gelles, & Steinmetz, 1980) and not necessarily leaving any physical marks. Moreover, a victim of violence or abuse may be extremely reluctant to disclose abuse; indeed, she or he may stay silent about the experience of abuse for months or years, given the significant ramifications that may occur upon disclosure. Furthermore, he or she may remain silent about the abuse for so long that it eventually becomes difficult or impossible to corroborate an allegation at a later date.¹²⁰

Table 6.2 indicates the extent of corroboration provided by the alleging party.¹²¹ The table has three panels of data. (We use the term “panel” to refer to the space between the shaded headings.) The first panel summarises the number of pieces of evidence for each allegation raised; the second panel relates to the apparent probative weight of the evidence for each allegation; and the third panel looks at the overall weight of corroborative evidence for allegations raised in a case.

So, for example, in the first panel we see that 82% of allegations of spousal violence in the general population of Family Court cases were not supported by any form of corroborative evidence, while 14% of allegations in that group were supported by one piece of corroborative evidence.

119 No percentages are derived where allegations are based on fewer than 20 cases in a sample, with the exception of Table 6.14 ($n = 19$).

120 A related methodological issue is that the corroboration of allegations through subpoenaed documents could not be noted since such documents were not available for inspection as part of our research.

121 There were only a sufficient number of cases in the general population sample to allow an examination of the evidence provided in relation to allegations of parental child abuse.

Table 6.2 Extent of corroborative evidence of spousal violence and parental child abuse provided by the alleging party by court and sample: Couple cases

Number of pieces of corroborative evidence	Evidence in support of allegations of spousal violence and child abuse					
	Allegations of spousal violence				Allegations of child abuse	
	General litigants		Judicial determination		General litigants	
	FCoA (224 allegations) [51 cases]	FMC (330 allegations) [62 cases]	FCoA (161 allegations) [22 cases]	FMC & FCoA (254 allegations) [39 cases]	FCoA (56 allegations) [24 cases]	FMC (50 allegations) [28 cases]
	% of allegations	% of allegations	% of allegations	% of allegations	% of allegations	% of allegations
None	81.7	78.2	78.3	71.3	75.0	92.0
1	14.3	18.2	21.1	27.6	21.4	6.0
2	4.0	3.3	0.6	1.2	3.6	2.0
3 or more	0	0.3	0	0	0	0
<i>Total</i>	100.0	100.0	100.0	100.0	100.0	100.0
Apparent weight of corroborative evidence	% of allegations	% of allegations	% of allegations	% of allegations	% of allegations	% of allegations
No evidence	81.7	78.2	78.3	71.3	75.0	92.0
Relatively strong probative weight	10.7	13.9	11.2	11.4	17.9	2.0
Of less probative weight	7.6	7.9	10.6	17.3	7.1	6.0
<i>Total</i>	100.0	100.0	100.0	100.0	100.0	100.0
Cases containing allegations: weight of corroborative evidence	% of cases	% of cases	% of cases	% of cases	% of cases	% of cases
All strong ^a	2.0	8.0	4.5	7.7	12.5	0
Some strong	17.6	21.0	36.4	28.2	12.5	3.6
Relatively weak only ^b	15.7	9.7	18.2	25.6	12.5	10.7
<i>Total providing evidence</i>	35.3	38.8	59.1	61.5	37.5	14.3
<i>No information</i>	64.7	61.2	40.9	38.5	62.5	85.7
<i>Total</i>	100.0	100.0	100.0	100.0	100.0	100.0

Note. ^a“All strong” means that all of the allegations were supported by strong evidence. ^b“Relatively weak only” refers to such things as hearsay reports, interim *ex parte* orders, or evidence by a relative (see Appendix E).

Most individual allegations of spousal violence and child abuse were made in the absence of any information that may support them (top row, top panel in Table 6.2). This absence was especially pronounced for allegations of child abuse raised in the FMC general litigants sample (92% vs 71–82%). Where any evidence was raised, usually only one piece of evidence was cited.

It is difficult to comment conclusively upon the apparently high rate of unsupported allegations. The subpoena process is often a useful method of corroborating an allegation. For example, a party might subpoena police records to corroborate police attendance at a domestic violence incident, or one might subpoena medical or child welfare records to corroborate allegations of child abuse. Yet it was not possible to use such records as part of the study since these would ordinarily be returned to their source or be destroyed following the conclusion of the case. It would be clearly wrong to conclude that an allegation that is not corroborated is “false”; however, what does appear to emerge is that the family law system is required to process children’s cases amidst a high volume of allegations and denials of violence and abuse without the benefit of any independent corroboration of greater or lesser probative weight. This is one of several layers of ambiguity that shadow the analyses in this chapter.

The third panel in Table 6.2 suggests that cases involving allegations of spousal violence were more likely to contain evidence with apparently strong probative weight than to contain only

relatively weak evidence. This is most pronounced in the FCoA judicial determination sample, where 41% of relevant cases contained evidence of potentially convincing probative weight (“all strong” and “some strong” categories), and only 18% contained only relatively weak evidence.

Regarding allegations of child abuse, while 25% of relevant cases in the FCoA general litigants sample contained at least some evidence of apparently strong probative weight, 13% appeared to provide relatively weak evidence only (third panel). The opposite pattern was evident for the relevant cases in the FMC general litigants sample: only 4% contained apparently strong evidence, while 11% appeared to contain relatively weak evidence only. So, a greater proportion of cases involving allegations of parental child abuse raised in the FCoA seem to have stronger evidentiary value than relevant cases in the FMC.

Table 6.3 focuses on the parties who made allegations about spousal violence and indicates the proportion who provided corroborative evidence and the overall apparent probative weight of this evidence. Three categories of the overall strength of evidence for all allegations were derived using the same ranking system as adopted in Table 6.2. For example, Table 6.3 shows that 7% of mothers in the FCoA general litigants sample only filed corroborative evidence of strong probative weight in support of their allegations of spousal violence, while none of the fathers in this group did so.

Table 6.3 Extent of corroborative evidence of spousal violence provided by the alleging party by court and sample: Couple cases

Presence and apparent weight of evidence	Evidence in support of allegations of spousal violence					
	General litigants				Judicial determination	
	FCoA		FMC		FCoA & FMC combined	
	Mother alleges (43 mothers)	Father alleges (21 fathers)	Mother alleges (60 mothers)	Father alleges (24 fathers)	Mother alleges (34 mothers)	Father alleges (24 fathers)
	%	%	%	%	%	
All strong probative weight	7.0	0.0	8.3	0	8.8	8.3
Some strong probative weight ^a	14.0	4.8	20.0	12.5	14.7	20.8
Relatively weak probative weight only	14.0	9.5	10.0	4.2	32.4	4.2
<i>Total providing evidence</i>	34.9	14.3	38.3	16.7	55.9	33.3
<i>No information</i>	65.1	85.7	61.7	83.3	44.1	66.7
<i>Total</i>	100.0	100.0	100.0	100.0	100.0	100.0

Note. ^a“Some strong” includes a combination of strong evidence for one or more allegations, and either relatively weak or no information for others. This table excludes “associated allegations” (e.g., mental illness, substance abuse, etc.).

Most alleging parties, except those in the combined judicial determination sample, did not provide any evidence to support their claims of spousal violence. Mothers in each group were more likely than fathers in the same group to provide evidence to support their allegations (general litigants sample—mothers: 35–38%; fathers: 14–17%; judicial determination combined sample—mothers: 56%; fathers: 33%).

Differences also emerged between the general litigants and judicial determination samples. Mothers in the combined judicial determination sample were more likely to provide some evidence to support their allegations than mothers in the general litigants sample (56% vs 35–38%). The same pattern of results appeared to hold for fathers (33% vs 14–17%).

While fathers in the judicial determination sample were less likely than mothers in the same sample to provide supporting evidence, when they did so their evidence was more likely to have strong—rather than relatively weak—probative weight. Specifically, 29% of all fathers in this sample provided evidence of some strong probative weight, whereas only 4% provided only relatively weak evidence; the respective proportions for mothers were 24% (“strong”) and 32% (“relatively weak”).

Less can be said about allegations of parental child abuse because of the small number of cases that included such allegations. As a consequence, Table 6.4 combines the data for the two courts in the general litigants sample. It focuses only on the 41 mothers who made allegations of parental child abuse and compares the extent of the corroborative evidence in this domain with the extent of corroborative evidence put forward when spousal violence was alleged. (Only 16 fathers made allegations of child abuse by their former partners.)

Table 6.4 Extent of corroborative evidence provided by mothers who alleged spousal violence or parental child abuse in the general litigants sample (FCoA and FMC combined): Couple cases

Presence and apparent weight of evidence	Evidence in support of allegations of spousal violence and parental child abuse	
	General litigants: FCoA & FMC combined	
	Mothers who make allegations	
	Spousal violence (103 mothers)	Child abuse (41 mothers)
	%	%
All strong probative weight	7.8	4.9
Some strong probative weight ^a	17.5	7.3
Relatively weak probative weight only	11.7	14.6
<i>Total providing evidence</i>	36.9	26.8
<i>No information</i>	63.1	73.2
<i>Total</i>	100.0	100.0

Note. ^aThe “some strong” category includes a combination of strong evidence for one or more allegations, and either relatively weak or no information for others. This table excludes association allegations (e.g., mental illness, substance abuse, etc.).

Mothers were less likely to provide evidence in support of allegations of parental child abuse than to provide evidence in support of allegations of spousal violence (27% vs 37%). Furthermore, mothers were more likely to provide at least some apparently strong evidence (rather than only relatively weak evidence) for their allegations of spousal violence than for their allegations of child abuse: spousal violence: 25% “all strong” or “some strong”, compared with 12% “relatively weak”; child abuse: 12% “all strong” or “some strong”, compared with 15% “relatively weak”).

To sum up: most alleging parties—more so fathers than mothers—did not provide any material in support of their allegations. But where fathers in the judicial determination sample provided information about allegations of spousal violence, it appeared more likely to carry strong probative weight compared with the material provided by mothers in that sample. More broadly, cases in the FCoA that required judicial determination were more likely to contain corroborative evidence of spousal violence that appeared to have some strong probative weight than only relatively weak evidence; unlike cases in the general litigants sample. Only a small number of cases included allegations of parental child abuse (made mostly by mothers). Mothers’ allegations of such abuse were less likely to be accompanied by evidence than was the case for mothers’ allegations of spousal violence. Of course, such evidence may be much harder to come by.

6.4 Response to allegations

This section compares the pattern of responses to allegations of spousal violence and parental child abuse across groups. Some allegations raised against one party may be fully denied, others may be partially denied (and therefore partially admitted), and others may be fully admitted. Alternatively, allegations may go unanswered (that is, the evidence is “silent”), but whether this means a “silent admission” or “silent denial” in any given case cannot be determined. In the present study, a prototypical example of “partial denial/partial admission” was the claim by an accused litigant that the allegation represented an exaggeration of what transpired.

Table 6.5 indicates the pattern of responses to allegations of spousal violence and parental child abuse in each court and sample.¹²² The top panel refers to the nature of responses to each allegation, while the bottom panel refers to the overall set of responses *within each case*. So, for example, Table 6.5 shows that in the FMC general litigants sample, 10% of allegations were fully admitted, 6% were partially admitted, 36% were fully denied, while 48% were not the subject of a written response. Given the small number of cases containing allegations of child abuse, responses to these allegations can only be compared for the two general litigants sub-samples.

Table 6.5 Response to allegations of spousal violence and parental child abuse raised in each court by sample: Couple cases

Response to allegations	Response to allegations of spousal violence				Response to allegations of child abuse	
	General litigants		Judicial determination		General litigants	
	FCoA (224 allegations) [51 cases]	FMC (330 allegations) [62 cases]	FCoA (161 allegations) [22 cases]	FMC & FCoA (254 allegations) [39 cases]	FCoA (56 allegations) [24 cases]	FMC (50 allegations) [28 cases]
	% of allegations	% of allegations	% of allegations	% of allegations	% of allegations	% of allegations
Full admission	7.1	10.0	9.3	11.4	5.4	8.0
Partial admission/partial denial	6.3	6.1	13.0	9.4	1.8	6.0
Full denial	23.2	36.4	31.1	26.4	39.3	54.0
No response	63.4	47.5	46.6	52.8	53.6	32.0
<i>Total</i>	100.0	100.0	100.0	100.0	100.0	100.0
	% of cases	% of cases	% of cases	% of cases	% of cases	% of cases
Mostly full admission	2.0	1.6	4.5	5.1	0	3.6
Mostly partial admission/partial denial	2.0	3.2	4.5	2.6	0	3.6
Mostly denial	17.6	30.6	22.7	17.9	45.8	35.7
Mixture ^a	31.4	24.2	45.5	33.3	12.5	21.4
<i>Response to at least one allegation</i>	53.0	59.6	77.2	58.9	58.3	64.3
<i>No response to all allegations</i>	47.0	40.4	22.8	41.1	41.7	35.7
<i>Total</i>	100.0	100.0	100.0	100.0	100.0	100.0

Note. This table excludes associated allegations of substance abuse, mental illness, child neglect and child abduction.

^a“Mixture” refers to cases where neither full nor partial admissions or denials predominated. Non-responses were taken into account (for example, two admissions and three non-responses would equal a “mixture” of responses).

Table 6.5 (top panel) suggests that by far the majority of individual allegations were either fully denied or were not the subject of a written response. Full and partial admissions were both relatively uncommon.

It is noteworthy that, in relation to the general litigants sample, allegations of child abuse were more likely to be fully denied than those of spousal violence (FCoA: 39% vs 23%; FMC: 54% vs 36%). Further, in the general litigants sample, allegations of spousal violence and of child abuse were more likely to be left unanswered in the FCoA than in the FMC (allegations of spousal violence: 63% vs 48%; allegations of child abuse: 54% vs 32%). It is difficult to comment conclusively about the remarkably high proportion of non-responses.

While parties to proceedings in the FCoA and FMC are required to file their evidence and sworn affidavit, and the rules of natural justice would traditionally afford a litigant the opportunity to respond to an allegation by the other party before the case is decided, in practice, several factors limit the likelihood of such a response being recorded in writing on the court file. One

122 Data for the judicial determination are not provided in relation to allegations of parental child abuse because such allegations ($n = 45$) were raised in only 16 case files.

party, particularly the applicant, may not have (or exercise) the opportunity to file an affidavit responding to the allegations of the other party before the hearing. It may be financially or strategically prohibitive to adjourn the case so as to prepare a responding affidavit. At an interim hearing, the court may be told orally of a person’s response to particular allegations, yet such responses may not be recorded on the court file.

Moreover, in the case of a final hearing, a litigant might only respond to an allegation by giving oral evidence in court rather than in a written form.¹²³ Such a response is unlikely to be evident on examination of the court file. These aspects of court procedure go part of the way to explain why such a high proportion of allegations do not receive a sworn written response in the course of the litigation. However, even bearing these caveats in mind, the number of allegations that are not the subject of a formal response still appears to be strikingly high across all categories, augmenting the difficulties faced by the presiding judicial officer.

Returning to Table 6.5, the bottom panel presents the data at the case level. “Mostly” refers to more than half the presence of each attribute, whereas “mixture” refers to cases where neither full nor partial admissions or denials predominated. “Mixture” includes non-responses; for example, two admissions and three non-responses would equal a “mixture” of responses.

More than half the cases provided a response to at least one allegation, with the FCoA judicial determination cases being more likely than other cases to contain a response to at least one allegation of spousal violence (77% vs 53–60%). Further, almost all responses were either mostly denials or a mixture of responses (with no single type of response predominating).¹²⁴

It is important to point out that each of these categories included the possibility that some allegations went unanswered. The extent to which these “non-responses” implied an admission of the allegation is unable to be determined. Table 6.6 summarises the pattern of responses to allegations of spousal violence by litigants.¹²⁵

Table 6.6 Response of litigant to allegations of spousal violence raised in each court by sample: Couple cases

Response to allegations	Response to allegations of spousal violence					
	General litigants				Judicial determination	
	FCoA		FMC		FCoA & FMC combined	
	Mothers’ reply (n = 21)	Fathers’ reply (n = 43)	Mothers’ reply (n = 24)	Fathers’ reply (n = 60)	Mothers’ reply (n = 24)	Fathers’ reply (n = 34)
	%	%	%	%	%	
Mostly full admission	4.8	4.7	8.3	3.3	4.2	8.8
Mostly partial admission/partial denial	9.5	2.3	0.0	5.0	0.0	5.9
Mostly denial	14.3	25.6	33.3	30.0	16.7	20.6
Mixture	14.3	23.3	12.5	16.7	16.7	20.6
Response to at least one allegation	42.9	45.8	54.2	55.0	37.5	55.9
No response to all allegations	57.1	44.2	45.8	45.0	62.5	44.1
Total	100.0	100.0	100.0	100.0	100.0	100.0

Note. “Mostly full admission” and “mostly full denial” mean that more than half of the responses related to full admissions and full denials respectively. “Mostly part admissions/part denials” means that more than half of the responses provided represented some acknowledgement of the alleged behaviour—typically with the statement that the allegation represented an exaggeration. “Mixture” refers to a combination of full admission, part admission/part denial, and denial, and responses that did not fall in the first three categories where no type of response set predominated.

123 Although a litigant would be expected to respond by way of affidavit to an allegation of which they are aware, in practice this may not occur; for example, where a respondent in the proceedings alleges misconduct by the applicant. Such unanswered allegations would need to be addressed by oral evidence during the trial.

124 This mixture includes no response.

125 Data for neither of the courts in the judicial determination sample were presented separately because there were fewer than 20 mothers and fathers in each group.

Table 6.8 Responses of fathers to mothers' allegations of spousal violence or parental child abuse, according to the existence and "quality" of evidence provided by mothers: Couple cases

Fathers' responses	Evidence provided by mothers		
	Relatively strong probative weight (77 allegations) [28 cases]	Of less probative weight (50 allegations) [21 cases]	No evidence (456 allegations) [96 cases]
	% of allegations	% of allegations	% of allegations
Admission	9.1	14.0	7.0
Partial admission	16.9	6.0	4.8
Denial	36.4	52.0	34.6
Evidence silent	37.7	28.0	53.5
<i>Total</i>	100.0	100.0	100.0

In relation to allegations of spousal violence, the most common specific "response" for all groups was to leave all allegations unanswered.¹²⁶ Most other responses either contained a predominance of denials, or a mixture of responses with no particular type of response prevailing. The group most likely to provide a predominance of denials, rather than a mixture, were mothers and fathers in the FMC general litigants sample (mothers: 33% vs 13%; fathers: 30% vs 17%).

Again, less can be said about allegations of child abuse because of the small number of cases that included such allegations, as shown in Table 6.7. This table compares the responses of fathers in the general litigants sample (FCoA and FMC combined) to allegations of spousal violence and child abuse.¹²⁷

Table 6.7 Responses of fathers in the general litigants sample (FCoA and FMC combined) to allegations of spousal violence and parental child abuse: Couple cases

Response to allegations	Response to allegations of spousal violence and parental child abuse	
	General litigants: FCoA & FMC combined	
	Fathers' reply	
	Spousal violence (103 fathers)	Child abuse (41 fathers)
	%	%
Mostly full admission	3.9	0.0
Mostly partial admission/partial denial	3.9	0.0
Mostly denial	28.2	46.3
Mixture	19.4	17.0
<i>Response to at least one allegation</i>	55.4	63.4
<i>No response to all allegations</i>	44.6	36.6
<i>Total</i>	100.0	100.0

Note. "Mostly full admission" and "mostly full denial" mean that more than half of the responses related to full admissions and full denials respectively. "Mostly part admissions/part denials" means that more than half of the responses provided represented some acknowledgement of the alleged behaviour, typically with the statement that the allegation represented an exaggeration. "Mixture" refers to a combination of full admission, part admission/part denial, and denial, and responses that did not fall in the first three categories where no type of response set predominated.

Table 6.7 indicates that the fathers in the general litigants sample were more likely to deny allegations of parental child abuse than allegations of spousal violence (46% vs 28%). None of the fathers provided even partial admission to allegations of child abuse, whereas 8% of fathers fully or partly admitted to spousal violence.

126 The fathers in the FCoA judicial determination sample appeared to be an exception: only 5 of the 18 fathers in this group left all of the allegations unanswered (data not shown).

127 This table focuses exclusively on fathers because there were only 16 mothers against whom allegations of child abuse were made by their former partners.

Before moving to the next section, it is useful to assess the extent to which responses to allegations may be linked with the existence and apparent weight of evidence provided by the alleging party. Table 6.8 shows the relationship between responses of fathers and evidence provided by mothers. Because of the small number of fathers who provided evidence in support of their allegations, this table focuses on fathers' responses to mothers' allegations.

Regardless of the existence or apparent weight of evidence provided by mothers, most allegations were either denied or left unanswered by fathers. Allegations that were not accompanied by evidence were more likely to be left unanswered than denied (54% vs 35%), while the opposite was the case when there was evidence that appeared to be of weaker rather than stronger probative weight (52% of allegations were denied, while 28% were left unanswered). Where the evidence appeared to be relatively strong, denials were just as likely as non-responses (36–38%). In addition, 17% of allegations with apparently strong probative weight elicited partial admission/partial denials, compared with only 5–6% where evidence appeared to be weaker or non-existent.

In summary, across the courts and samples examined, allegations were most commonly denied or left unanswered. Those most likely to deny the majority of allegations of spousal violence made against them were mothers and fathers in the FMC general litigants sample. Allegations of child abuse against fathers were more likely to yield a response and to be denied than allegations of spousal violence. Finally, there appeared to be a relationship between the evidence for allegations made by mothers and fathers' responses to these allegations: denials were more likely to occur where the evidence appeared to be of a less probative weight than where the evidence was either stronger, on the one hand, or non-existent, on the other.

6.5 Evidentiary material in Family Reports

In order to assist the court to make a decision about the welfare of children, the court may request that a Family Report be prepared.¹²⁸ At the time, this report was usually prepared by a Family Court counsellor or a private individual appointed under the legislation to provide such an independent report. The purpose of the Family Report is not to make findings about disputed facts, but to focus on a wide range of issues that relate to the welfare of the child(ren) and, where appropriate, to make recommendations that the report writer considers will advance the welfare of the child(ren). Although a Family Report is clearly not the appropriate vehicle for findings about disputed facts, the report writer may nonetheless remark on the apparent veracity of allegations. She or he may, for example, raise allegations with the alleged perpetrator or victim or the children and record any admissions, inconsistencies or other reflections upon the disputed facts.

In this section, we focus on the proportion of cases involving a Family Report in which allegations of spousal violence and/or parental child abuse were raised, and the extent to which any allegations were corroborated or discredited by this report (see Table 6.9).

Table 6.9 indicates that, apart from the FCoA and FMC judicial determination samples, most cases containing an allegation did not involve a Family Report (top panel, bottom two rows). Across all groups, no views were generally expressed in Family Reports about specific allegations. Of all allegations raised, no more than 10% in any group were fully or partially corroborated by a Family Report, and no more than 2% were fully or partially discredited. There were so few cases containing an allegation of spousal violence or parental child abuse that included a Family Report that no further analysis of this issue was conducted ($n = 8–21$ in all groups except the FMC general litigants sub-sample, which contained 25 cases).

6.6 Overall evidence

In this section, we attempt to combine all the pieces of information into a single measure. This evidentiary material was ranked from full admission (the strongest evidence) to full or partial discreditation in a Family Report.

¹²⁸ Reports may also be ordered from other sources, such as psychiatrists, paediatricians and child welfare authorities.

Table 6.9 Apparent extent of corroboration in final or interim Family Report for each allegation raised in each court by sample: Couple cases

Apparent extent of corroboration	Allegations of spousal violence				Allegations of child abuse	
	General litigants		Judicial determination		General litigants	
	FCoA (224 allegations) [51 cases]	FMC (330 allegations) [62 cases]	FCoA (161 allegations) [22 cases]	FMC & FCoA (254 allegations) [39 cases]	FCoA (56 allegations) [24 cases]	FMC (50 allegations) [28 cases]
	% of allegations	% of allegations	% of allegations	% of allegations	% of allegations	% of allegations
Fully corroborated	2.7	2.4	3.8	2.4	5.4	0
Partially corroborated	1.3	4.2	0	0	1.8	10.0
Fully/partially discredited	0	0.6	1.2	0.8	1.8	0
No view expressed	33.5	40.1	70.8	57.6	30.4	42.0
<i>Total with Family Report</i>	37.5	47.3	75.8	60.6	39.3	52.0
<i>No Family Report</i>	62.5	52.7	24.2	39.4	60.7	48.0
<i>Total</i>	100.0	100.0	100.0	100.0	100.0	100.0
% of all cases containing an allegation that included a Family Report	21.6	40.3	77.3	53.9	33.3	39.3
Number of all cases containing an allegation that included a Family Report	11	25	17	21	8	13

Note. In the FMC judicial determination sample, fewer than 20 cases contained allegations. Accordingly, data for both the FCoA and FMC in the judicial determination sample are combined.

Table 6.10 Overall evidence for allegations of spousal violence and parental child abuse raised in each court by sample: Couple cases

Overall corroborative evidence	Allegations of spousal violence				Allegations of parental child abuse	
	General litigants		Judicial determination		General litigants	
	FCoA (224 allegations) [51 cases]	FMC (330 allegations) [62 cases]	FCoA (161 allegations) [22 cases]	FMC & FCoA (254 allegations) [39 cases]	FCoA (56 allegations) [24 cases]	FMC (50 allegations) [28 cases]
	% of allegations	% of allegations	% of allegations	% of allegations	% of allegations	% of allegations
Full admission	7.1	10.0	9.3	11.4	5.4	8.0
Relatively strong evidence	17.9	17.3	23.6	19.7	19.6	16.0
Relatively weak evidence	4.9	6.1	5.6	13.0	5.4	6.0
Full or partial discreditation in interim or final Family Report	0	0.6	1.2	0.8	1.8	0
<i>Some evidentiary material</i>	29.9	33.9	39.8	44.9	32.1	30.0
<i>No information</i>	70.1	66.1	60.2	55.1	67.9	70.0
<i>Total</i>	100.0	100.0	100.0	100.0	100.0	100.0
Overall corroborative evidence	% of cases	% of cases	% of cases	% of cases	% of cases	% of cases
Full admission or relatively strong evidence for at least one allegation	45.1	46.8	63.6	56.4	37.5	32.1
Relatively weak evidence only	7.8	8.1	9.1	17.9	8.3	10.7
Full or partial discreditation in interim or final Family Report	0	1.6	4.5	2.6	4.2	0
<i>Some evidentiary material</i>	52.9	56.5	77.2	76.9	50	42.8
<i>No information</i>	47.1	43.5	22.8	23.1	50	57.2
<i>Total</i>	100.0	100.0	100.0	100.0	100.0	100.0

In Table 6.10, the upper panel shows the apparent extent of overall evidence for each allegation of spousal violence and parental child abuse. The lower panel shows the extent of overall evidence in case files made across the courts and samples. It is important to note that the “full admission” category in the lower panel is combined with “relatively strong evidence” because there were such low rates of full admission at the case level.

Even when all the different sources of potential evidence were combined, only 30–45% of all allegations of spousal violence elicited any evidentiary material (top panel). However, of all the cases that contained allegations of spousal violence, 53–77% were accompanied with evidentiary material (bottom panel), especially cases that required a judicial determination.

Where there was evidentiary material, it was inclined to be of a strong probative weight for at least one of the allegations raised.

Only 30–32% of all allegations of parental child abuse raised in the general litigants sample elicited evidentiary material; 43–50% of all cases containing such allegations were accompanied with evidentiary material. Again, where evidentiary material was present, it tended to have relatively strong probative weight. Table 6.11 shows the apparent overall evidence for allegations made by each parent in each sample.

Table 6.11 Overall evidence for allegations of spousal violence by alleging party, by court and sample: Couple cases

Overall corroborative evidence	Allegations of spousal violence					
	General litigants				Judicial determination	
	FCoA		FMC		FCoA & FMC	
	Mother alleges (n = 43)	Fathers alleges (n = 21)	Mother alleges (n = 60)	Father alleges (n = 24)	Mother alleges (n = 34)	Father alleges (n = 24)
	%	%	%	%	%	
Full admission or relatively strong evidence	48.8	33.3	46.7	25.0	52.9	41.7
Relatively weak evidence only	7.0	4.8	8.3	4.2	23.5	4.2
Full or partial discreditation in interim or final Family Report	0	0	1.7	0	2.9	0
<i>Some evidentiary material</i>	53.8	38.1	56.7	29.2	79.3	45.9
<i>No information</i>	44.2	61.9	43.3	70.8	20.7	54.1
<i>Total</i>	100.0	100.0	100.0	100.0	100.0	100.0

Note. “Mostly full admission” and “mostly full denial” mean that more than half of the responses related to full admissions and full denials respectively. “Mostly part admissions/part denials” means that more than half of the responses provided represented some acknowledgement of the alleged behaviour, typically with the statement that the allegation represented an exaggeration. “Mixture” refers to a combination of full admission, part admission/part denial, and denial, and responses that did not fall in the first three categories where no type of response set predominated.

Table 6.11 suggests that the alleging party tended to have either relatively strong support (including full admission) for some of their allegations of spousal violence or no information at all for any of their allegations. Mothers in all groups most commonly appeared to provide or elicit relatively strong evidence for their allegations (47–53%).

More than half the fathers in all groups had no information in support of their allegations of spousal violence. This situation was most marked for those in the general litigants sub-groups (62–71%). But where some information about fathers’ allegations was available, it typically appeared to offer strong support. Table 6.12 shows the apparent weight of evidence provided for mothers’ allegations of spousal violence and parental child abuse (general litigants sample).

Mothers were more likely to have relatively strong evidence for their allegations of spousal violence than for allegations of child abuse (48% vs 32%). By contrast, more than half the mothers (56%)

Table 6.12 Overall evidence provided by mothers who alleged spousal violence and parental child abuse in the general litigants sample (FCoA and FMC combined): Couple cases

Overall corroborative evidence	Allegations of spousal violence and parental child abuse	
	General litigants: FCoA & FMC combined	
	Mothers who make allegations	
	Spousal violence (103 mothers)	Child abuse (41 mothers)
	%	%
Full admission or relatively strong evidence	47.6	31.7
Relatively weak evidence only	7.8	12.2
Full or partial discreditation in interim or final Family Report	1.0	0
<i>Some evidentiary material</i>	56.3	43.9
<i>No information</i>	43.7	56.1
<i>Total</i>	100.0	100.0

Note. "Mostly full admission" and "mostly full denial" mean that more than half of the responses related to full admissions and full denials respectively. "Mostly part admissions/part denials" means that more than half of the responses provided represented some acknowledgement of the alleged behaviour, typically with the statement that the allegation represented an exaggeration. "Mixture" refers to a combination of full admission, part admission/part denial, and denial, and responses that did not fall in the first three categories where no type of response set predominated.

had no corroborative information regarding any of their allegations of child abuse, compared with 44% regarding spousal violence allegations.

Are the cases containing allegations that were classified as the most severe in nature (Category C cases) the most likely to elicit evidentiary material, and is this evidence most likely to support those allegations? The data presented in Table 6.13 shed light on this question.

Table 6.13 Severity of allegations by extent of overall corroborative evidence (general litigants sample): Couple cases

Overall corroborative evidence	Allegations of spousal violence			Allegations of parental child abuse		
	Category A (20 cases)	Category B (31 cases)	Category C (62 cases)	Category A (4 cases)	Category B (13 cases)	Category C (35 cases)
	% of cases	% of cases	% of cases	% of cases	% of cases	% of cases
Full admission or relatively strong evidence	25.0	32.3	59.7	–	–	34.6
Relatively weak evidence only	20.0	9.7	3.2	–	–	9.6
Full or partial discreditation in interim or final Family Report	0	0	1.6	–	–	1.9
<i>Some evidentiary material</i>	45.0	42.0	64.5	–	–	46.1
<i>No information</i>	55.0	58.0	35.5	–	–	53.9
<i>Total</i>	100.0	100.0	100.0	–	–	100.0

Note. No percentages are reported where there were fewer than 20 cases (depicted by "–"). Category A refers to the most ambiguous allegations, and to allegations that did not seem as serious as those contained in Category B or C. By contrast, Category C allegations appeared to be particularly serious.

Cases classified as containing the most severe allegations of spousal violence were more likely than other cases to be accompanied by evidentiary material (65% vs 42–45%). Indeed, virtually all of this material seemed to be of relatively strong probative weight. Two-thirds of cases containing allegations of parental child abuse were classified into the Category C grouping (the most severe sets of allegations). A lower proportion of these Category C cases contained evidentiary material compared with Category C cases of spousal violence allegations.

In summary, when all the pieces of evidence were taken together, most individual allegations of spousal violence across the courts and samples received no corroborative evidence. This was less marked for allegations of spousal violence raised in the judicial determination sample than in the general litigants sample. Nevertheless, most case files contained information about some of the allegations. As might be expected, case files in the judicial determination sample seemed the more likely of those in the general litigants samples to contain such information, and the FCoA judicial determination cases were more likely to contain strong support for the allegations raised.

Mothers in all groups most commonly appeared to achieve relatively strong evidence for their allegations, whereas fathers were less likely than mothers to provide any evidence. But where some information about fathers' allegations was available, it typically appeared to offer relatively strong support.

Mothers in the general litigants sample were more likely to elicit evidence for their allegations of spousal violence than of child abuse. There were too few fathers who raised allegations of child abuse to make a similar comparison. Cases that seemed to contain the most severe allegations of spousal violence were especially likely to be accompanied by evidentiary material.

6.7 Level of detail

Another issue of potential interest concerns the specificity of allegations and responses. How common are non-specific allegations and responses? Do highly detailed allegations elicit highly detailed responses?

The level of detail of each response to an allegation was coded as: *high* (indicated by a "comprehensive response addressing the particulars of the allegation in detail"); *medium* (indicated by a "less comprehensive response but providing some detail to rebut the particulars of the allegation"); or *low* (indicated by a "blanket denial without detail").¹²⁹

Table 6.14 shows the level of detail of allegations cross-tabulated by the level of specificity of response to each allegation (for example, the proportions of allegations of low specificity that elicited responses of low, medium or high specificity). Allegations of spousal violence and child abuse are combined to maximise the number of cases in each sub-sample of interest.

Table 6.14 Level of detail of each allegation by level of detail of response (general litigants sample): Couple cases

Response	Allegations of spousal violence or parental child abuse			Total (326 allegations)
	Low detail (156 allegations) [48 cases]	Medium detail (151 allegations) [48 cases]	High detail (55 allegations) [19 cases]	
	% of total allegations	% of total allegations	% of total allegations	
Low detail	33.1	24.8	8.3	66.3
Medium detail	8.9	13.5	6.4	28.8
High detail	0.3	3.7	0.9	4.9
<i>Total</i>	42.3	42.0	15.6	100.0
Response	% of low detail allegations	% of medium detail allegations	% of highly detailed allegations	
Low detail	78.3	59.1	52.9	N/A
Medium detail	21.0	32.1	41.2	N/A
High detail	0.7	8.8	5.9	N/A
<i>Total</i>	100.0	100.0	100.0	N/A

Note. N/A = Not applicable.

129 The level of detail of responses was only coded for the following options: "Complete denial", "Confess and avoid" (e.g., I did it, but it was mutual/provoked), "Partial denial" (e.g., exaggeration) and "Deny and counter-allegation". Coding other response options for the level of detail was not appropriate.

This table is unlike all preceding tables because the percentages in each cell of the top panel represent the joint conditions of the level of detail of both the allegations and responses to them as a proportion of all allegations. So, for example, the top left percentage (33.1%) means that 33% of all allegations were low in detail and yielded a low detailed response.

Only 16% of allegations were coded as containing a high level of detail. Roughly equal proportions of all other allegations were of low or medium detail (42% each). This result may seem inconsistent with the high rate of Category C (i.e., apparently severe) classifications (applying to 48–68% of cases, see Table 5.4). However, the severity classification is based on all allegations at the case level or party level, whereas the amount of detail is coded at the allegation level. The far-right column of the top panel shows that most responses were of low detail (66%). Only 5% of responses were coded as highly detailed.

While one third (33%) of allegations and responses to them contained little detail, nearly one quarter (23%) contained medium detail and elicited a low detail response. Only 1% of allegations along with their associated responses were rated as highly detailed.

The bottom panel of Table 6.14 shows that of all non-specific allegations raised, 78% elicited a non-specific response. More than half (53–59%) the responses to allegations containing medium or high levels of detail were also accompanied by non-specific responses. Table 6.15 extends this line of investigation by showing the relationship between specificity of allegations and the overall apparent probative weight of evidence.

Table 6.15 Level of detail of each allegation, by whether alleging party had provided corroborative evidence (general litigants sample): Couple cases

Evidence	Allegations of spousal violence or parental child abuse			
	Low detail (310 allegations) [103 cases]	Medium detail (311 allegations) [91 cases]	High detail (125 allegations) [51 cases]	Total (746 allegations)
	% of total allegations	% of total allegations	% of total allegations	
Full admission	3.5	4.0	1.1	8.6
Relatively strong evidence	5.4	6.2	5.8	17.3
Relatively weak evidence	2.3	2.3	0.7	5.2
Full or partial discreditation in interim or final Family Report	0.4	0	0	0.4
<i>No information</i>	30.0	29.3	9.2	68.5
<i>Total</i>	41.6	41.7	16.8	100.0
Response	% of low detail allegations	% of medium detail allegations	% of highly detailed allegations	
Full admission	8.4	9.6	6.4	N/A
Relatively strong evidence	12.9	14.8	34.4	N/A
Relatively weak evidence	5.5	5.5	4.0	N/A
Full or partial discreditation in interim or final Family Report	1.0	0	0	N/A
<i>Some evidentiary material</i>	28.7	19.9	44.5	N/A
<i>No information</i>	72.3	70.1	55.5	N/A
<i>Total</i>	100.0	100.0	100.0	N/A

The top panel of Table 6.15 indicates that 30% of all allegations were non-specific and were not accompanied by any evidentiary material, while a similar proportion (29%) had a medium level of detail but also lacked any evidentiary material. The lower panel indicates that highly detailed allegations were more likely than other allegations to elicit some evidentiary material (45% compared with 20–29%). Most of this evidence appeared to have relatively strong probative weight.

6.8 Summary

This chapter examined the existence and apparent strength of evidence for and responses to allegations of spousal violence and parental child abuse.

Where allegations of spousal violence are made, an average of 4–5 allegations were made in cases in the general litigants sample, while an average of 5–7 allegations were raised in cases requiring a judicial determination. Where allegations of parental child abuse are made, an average of 2 allegations were raised in cases in the general litigants sample.

Most alleging parties, especially fathers, did not provide any material in support of their allegations. But where fathers in the judicial determination sample provided information about allegations of spousal violence, it appeared more likely to carry relatively strong probative weight compared with the material provided by mothers in that sample.

Cases in the FCoA that required judicial determination were more likely to contain evidence of spousal violence that appeared to have some strong probative weight than only relatively weak evidence, unlike cases in the general litigants sample. Only a small number of cases included allegations of parental child abuse (made mostly by mothers). Mothers' allegations of such abuse were less likely to be accompanied by evidence than was the case for mothers' allegations of spousal violence.

Across the courts and samples examined, allegations were most commonly denied or left unanswered. Admissions or partial admissions (or partial denials) were uncommon. Denials were more likely to occur where the evidence appeared to be of a less probative weight than where the evidence was stronger or non-existent. Those most likely to deny the majority of allegations of spousal violence made against them were mothers and fathers in the FMC general litigants sample. Allegations of child abuse against fathers were more likely to yield a response and to be denied than allegations of spousal violence.

When all the pieces of evidence were taken together, most individual allegations of spousal violence across the courts and samples received no corroborative evidence. This was less marked for allegations of spousal violence raised in the judicial determination sample than in the general litigants sample. Nevertheless, most case files contained information about some of the allegations of spousal violence. As might be expected, case files in the FCoA judicial determination sample seemed the most likely of all sub-samples to contain such information, and to provide strong support for the allegations raised. Cases that seemed to contain the most severe allegations of spousal violence were especially likely to be accompanied by evidentiary material. Many of these cases required a judicial determination.

Mothers in all groups were more likely than fathers to achieve relatively strong evidence for their allegations of spousal violence. More than half the fathers in all groups had no supporting information. But where some information about fathers' allegations was available, it typically appeared to offer relatively strong support. Mothers in the general litigants sample were more likely to elicit evidence for their allegations of spousal violence than of child abuse. (There were insufficient numbers of fathers to make a similar comparison.)

Three layers of ambiguity are suggested by these data: (a) little evidentiary material to support allegations (especially in the general litigants sample); (b) fairly high rates of non-response to allegations of spousal violence, except for cases in the FCoA requiring a judicial determination; and (c) generally low levels of detail in the allegations and low levels of detail when responses are made.

The dynamics underlying these apparent ambiguities are clearly complex and somewhat puzzling. The lack of supporting evidence suggests legal decision-making may often be taking place in the context of widespread factual uncertainty. We explore some of the implications of this apparent uncertainty in Chapter 8.