

Practical Issues for Investigators

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2009 Symposium
Working together: advancing
child protection in the workplace

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Practical Issues for Investigators

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Practical Issues for Investigators

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- Do rules of evidence apply?
- What burden of proof really applies?
- Can we rely on memories?
- How relevant is prior misconduct?
- What is neglect?
- Do I exhaust every avenue of inquiry?

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Rules of evidence

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- Not binding in investigations
- But prudent to follow them where possible

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Hearsay

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Normally, evidence by one person of what another person said happened is not allowed to prove that the thing happened.

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The standard of proof required

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- The civil standard: on the balance of probabilities
- *Briginshaw v Briginshaw*
"it is enough that the affirmative of an allegation is made out to the reasonable satisfaction of the tribunal"

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Her word against his

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- In criminal trials, while warnings may be given about the dangers of doing so, a person can be convicted on the uncorroborated evidence of the person on whom the offence was committed.
- Therefore, an investigator may make a finding of "sustained" based on the uncorroborated evidence of the person on whom the offence was committed.

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Her word against his

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Consider all the circumstances, such as:

- The nature of the allegations
- The age of the complainant at the time of the alleged events
- The absence of complaint and any reasons for this
- Potential improper motives for the making of the complaint

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Memories

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- True memories
 - Recovered memories
- False memories
 - Common
 - May be sincerely believed
- Fabricated memories

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Memories

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"the memory even of
an honest witness
might become
contaminated"

Kirby J

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Ancient Allegations

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- Why are they ancient?
- Memory problems
- Disadvantage to accused
in addressing allegations

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Previous misconduct and good character

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- Previous misconduct must not be considered if it is not relevant to present allegations
- Good character may be relevant to show unlikelihood of person doing what is alleged
- Don't allow knowledge of previous misconduct to lead to prejudice

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Neglect

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A person ... who, without reasonable excuse, neglects to provide adequate and proper food, nursing, clothing, medical aid or lodging for a child or young person in his or her care, is guilty of an offence.

*S 228 Children and Young Persons
(Care and Protection) Act*

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<p>Neglect occurs when a child is harmed by the failure of a person whose job includes care responsibilities towards a child, to provide basic physical and emotional necessities of life, including failure of such a person to provide or arrange for the provision of adequate and proper food, nursing, clothing, med. attention or lodging for a child in that person's care.</p>		

EMIL FORD EDUCATION	Neglect	EMIL FORD & CO - LAWYERS
<p>Neglect can also occur as a single significant incident where a caregiver fails to fulfil a duty or obligation resulting in actual or potential harm to a child.</p>		

EMIL FORD EDUCATION	Rabbit holes	EMIL FORD & CO - LAWYERS
<p>There must be some realistic assessment of the value and importance to the investigation of following a particular line of inquiry.</p>		