

RESEARCH IMPACT

Jury Reasoning in Child Sexual Abuse Trials

Changing what we know about jury reasoning



The Hon Justice Peter McClellan, Chair of the Royal Commission

Challenge

The Royal Commission into Institutional Responses to Child Sexual Abuse has recognised challenges in the way cases are prosecuted when a person is accused by multiple victims. Separate trials are usually ordered, based mainly on assumptions about the way juries reason when deliberating on evidence from multiple accusers. There is a concern that separate trials have meant abusers escape conviction, partly because the jury never hears the full story.

Discovery

Charles Sturt University's Professor Jane Goodman-Delahunty and colleagues investigated the reasoning processes of juries in ninety realistic simulated joint and separate trials of child sexual abuse. Mock jurors were more likely to convict a defendant in a joint trial compared to a separate trial involving a single complainant, but their reasoning processes showed no evidence of unfair prejudice. Instead, they were more careful about the burden of proof in joint trials.

Impact

This research is being discussed in the legal community, and is informing the Royal Commission, which is currently putting together recommendations about our criminal justice system's response to child sexual abuse in institutional contexts. Initial steps have been taken which may, in time, see changes in the way in which complex child sexual abuse cases are prosecuted.



Charles Sturt University

The Royal Commission into Institutional Responses to Child Abuse is raising public awareness of a deeply significant social issue in Australia and elsewhere. Its Terms of Reference cover a wide range of matters. Charles Sturt University researcher Professor Jane Goodman-Delahunty, along with Professor Annie Cossins (UNSW), and Charles Sturt University Research Associate Natalie Martschuk have been researching this complex topic encompassing psychological and legal issues to contribute to the work of the Commission.

Their research responds to an issue identified by the Royal Commission: that single offenders often abuse multiple victims, especially in the context of institutions. When such cases are prosecuted, they are often divided into separate trials for different complainants, based on assumptions about how juries think and process evidence.

The main assumption about juries tested in this research was whether joint trials (with multiple complainants) or tendency evidence (evidence that a person has a tendency to act or think in a particular way) result in unfair prejudice towards the defendant. The research tested the reasoning of juries while deliberating about multiple counts of child sexual abuse. Using ninety mock juries and a professionally acted trial involving charges of child sexual abuse in an institutional setting, they examined whether evidence of multiple offences (presented in joint trials or as tendency evidence) affects the ability of juries to make fair decisions.

Informing the Royal Commission

The Royal Commission into Institutional Response to Child Sexual Abuse has an extensive research program as part of its Terms of Reference. One area of research is about the criminal justice system's response to child sexual abuse in institutional contexts. A consultation paper published by the Commission stated that:

One of the most significant issues we have identified in our criminal justice work to date is the issue of how the criminal justice system deals with allegations against an individual of sexual offending against more than one child.

Evidence from survivors of abuse to the Commission has raised concern about this issue. Child sexual abuse offences generally occur with no eyewitnesses, and often the only direct evidence of abuse is the testimony of the accusers and the accused. When this evidence is the word of one person against another, it can be difficult for juries to be satisfied 'beyond reasonable doubt'. This has implications for how such cases are prosecuted.

Having identified this as an issue, the Royal Commission will need to form an opinion, and make recommendations about any changes that should be made to the criminal justice system. In its consultation paper, the Royal Commission stated that the research by Professor Goodman-Delahunty and her colleagues is "particularly relevant to our understanding of these issues."

Robert Hughes Case

This research was cited in legal proceedings in the High Court of Australia, in the well-publicised case of Robert Hughes, a former Australian actor. Hughes was convicted by a jury of ten child sexual offences involving four young girls and sentenced to ten years and nine months imprisonment. He appealed both his conviction and sentence in the New South Wales Court of Criminal Appeal (NSWCCA). The appeal was dismissed by the NSWCCA, upholding the original verdict and sentence. A further appeal was then made in the High Court. Grounds for appeal included several points on the application and admissibility of tendency evidence.

In its response to the appeal in the High Court, the New South Wales Office of the Director for Public Prosecutions referred to this research. In particular, it made note of the findings of the “jury reasoning research commissioned by the Commission” on the ability of juries to comply with directions about tendency evidence, and to deliberate the evidence presented without unfair prejudice against a defendant.

More information about this case can be found at http://www.hcourt.gov.au/cases/case_s226-2016.



Program Highlights

- Large-scale jury research producing the most realistic results possible.
- Looking at the laws of evidence as they are applied in the New South Wales context, with relevance to other jurisdictions nationally and globally.
- This research has been widely circulated and discussed in the legal community.

Funding and Collaborators

Collaboration with Professor Annie Cossins (UNSW) and Research Associate Natalie Martschuk (Charles Sturt University). Funded by the Royal Commission into Institutional Responses to Child Sexual Abuse.



“There are concerns that juries will base their decision on impressions rather than on a logical analysis of the evidence, or that they’ll be overwhelmed by the large number of counts against the defendant. And we found that was not the case”.

Professor Jane Goodman-Delahunty

Informing debate on a contentious issue

According to Leigh Sanderson, Special Counsel to the Royal Commission, “Tendency and coincidence evidence, and when it should be admitted, is a contentious issue within the legal profession”. The main issues of contention focus on how juries might use this evidence, and whether it would cause a trial to be unfair to a defendant. One of the long-held assumptions is that when juries hear about multiple victims of the same offender, they will engage in impermissible reasoning (reasoning that is logically unrelated to the evidence) and assume the offender is guilty without considering each count separately.

By conducting large-scale empirical research, Professor Goodman-Delahunty and her colleagues tested this assumption about how juries reason about this type of evidence. Through their presentation of the research findings and engagement in the ongoing debate in the legal community, the researchers are contributing an evidence-base for others to assess and possibly re-evaluate assumptions.

“I think [the research findings apply] across the board to multi-charge trials...any case where you’d look at tendency evidence...We do it in fraud trials, we do it in drug trials, we do it in robbery trials”.

Kara Sheard SC, Deputy Director of Public Prosecutions,
Director's Chambers Office of the Director of Public
Prosecutions New South Wales

More information is available at:

<http://www.childabuseroyalcommission.gov.au/policy-and-research/our-research/published-research/jury-reasoning-in-join-and-separate-trials>

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