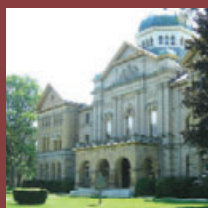
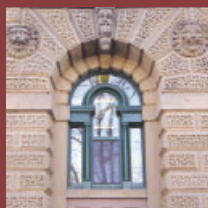


*“a full
and candid
account”*



Using Special Accommodations and Testimonial
Aids to Facilitate the Testimony of Children

BOOK

1

Overview of Issues Related to Child Testimony

*by Alison Cunningham
and Pamela Hurley*

The opinions expressed herein are those of the authors and do not necessarily reflect those of the Department of Justice Canada or the Government of Canada.

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Recours à des arrangements spéciaux et aux aides au témoignage pour faciliter le témoignage des enfants : Aperçu de questions concernant le témoignage d'un enfant.

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About the Handbook Series

This is the first in a series of seven handbooks to aid front-line justice personnel using special accommodations and testimonial aids for young witnesses in criminal proceedings. The series title – “A Full and Candid Account” – reflects the legislative imperative of facilitating the conditions whereby a child witness can best communicate his or her evidence to the Court. The seven topics covered in the series are:

1. Overview of issues related to child testimony
2. Testimony outside the courtroom
3. Witness screens
4. Video-recorded evidence
5. Designated support person
6. Hearsay evidence and children
7. Children and teenagers testifying in domestic violence cases

The handbooks provide a concise and convenient summary of legislation, operational and logistical issues, FAQs, and helpful tips for working with children. You will find tips for understanding the needs of the developmentally delayed witness, the attention deficit witness, and witnesses who use sign language. The basic components of pre-court preparation services are described.



The information, references and guidelines in this handbook focus on witnesses under age 18, although some material will be relevant for some adults contemplated in the provisions for vulnerable witnesses.

There is wide variation in the frequency of use of the special accommodations and testimonial aids now provided for in the Criminal Code. To a great extent, this situation reflects how justice is administered in 13 very different jurisdictions across a vast country. East to west, north to south, courthouses and related infrastructure for testimonial aids vary from child-centred courtrooms in some large urban areas to the “fly-in” circuit courts of the far North. Usage patterns are also affected by case volume, local practice and preference, provincial/territorial policy, funding, and availability of victim support programs. Attitudes about testimonial aids, local judicial opinion, workload, and logistical factors will also play a role in when and how often testimonial aids are used.

Over two decades, our research and experience at the Child Witness Project in London, Ontario, have clearly demonstrated how the stressful aspects of testifying can be ameliorated to maximize a child's ability to give “a full and candid account.” Special accommodations and testimonial aids are important tools available for this purpose. The amendments brought about by Bill C-2 (*An Act to Amend the Criminal Code (Protection of Children and Other Vulnerable Persons) and the Canada Evidence Act*), all proclaimed into force by January, 2006, strengthened existing protections and extended them to a larger number of young witnesses.

“The goal of the court process is truth-seeking and, to that end, the evidence of all those involved in judicial proceedings must be given in a way that is most favourable to eliciting the truth.”

Madame Justice L'Heureux-Dubé, R. v. Levogiannis (1993)

Another feature of the current context is the spread of specialized domestic violence courts in Canada. Children and teens who witness or experience crimes at home are called to court in increasing numbers. These young people face unique dilemmas in terms of their (typically) reluctant involvement in the justice system, struggles with divided loyalties, and stressful family dynamics. They are also dealing with the impact of violence on their lives. In addition, teenagers who are themselves victims of intimate partner assault will be called to testify. These young people require pre-court support as would any child witness. It is incumbent upon us, as justice personnel, to be sensitive to the special issues involved in domestic violence cases.

All young witnesses deserve an informed and coordinated response on our part, to ensure they are not traumatized by their experiences in the justice system. It is our hope in writing these handbooks that no Canadian child or teenager is denied access to an appropriate accommodation or testimonial aid only for want of awareness or knowledge. By creating these practical and concise resources, we seek to fulfill the promise of special protections made available by Parliament.

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For over 20 years we have benefited from the support and counsel of the members of the Child Witness Project Local Advisory Committee. The following organizations are represented: Victim/Witness Assistance Program, London Police Service, Strathroy-Caradoc Police Service, Ontario Provincial Police, Crown Attorney's Office (in both Middlesex and Elgin counties) and the Children's Aid Society of London and Middlesex.

We extend our sincere thanks also to colleagues and friends who generously agreed to pose for the cover photographs: Karen Bellehumeur, Assistant Crown Attorney; Adam Campbell, Assistant Crown Attorney (then defence counsel); Laurel Catton, King's University College; Lindsay Knowles (age 10); Tammy Riley, Centre for Children & Families in the Justice System; Brooklyn Riley (age 6); and our colleague at the Child Witness Project, Lynda Stevens.

Finally, we acknowledge the thousands of child witnesses who, over the last 20 years, have shared their special perspectives and experiences with us.

Emily is an 11-year old girl who alleged sexual assault by an older male cousin. The incident came to light after she told her best friend Jessica and Jessica told their school principal. Emily is bright and mature but also shy and hesitant when speaking with people she doesn't know.

What happens next depends on where in Canada Emily lives.

City A

If Emily lives in City A, the police immediately refer her case to the agency in charge of victim support, which contacts her family to introduce the program and explain the next steps in the process.

- As the trial date nears, Emily attends three or four sessions with a victim support worker in anticipation of her testimony.
- She meets the Crown prosecutor twice before the day of court.
- She is shown the available testimonial aids and asked her choice.
- On the day of court, she feels safe and protected from her cousin and his supporters as she waits to be called.
- If the defence attorney becomes aggressive during cross-examination or asks questions designed to confuse her, the judge intervenes.
- If the case ends in an acquittal, Emily is disappointed but knows she did her best and understands that many factors contribute to a verdict.

When the case concludes, Emily and her parents are asked for feedback. Emily didn't like waiting three hours before testifying, but was prepared for this possibility and brought snacks and a book to read. Her parents said the case took too long because Emily spent months worrying about it. Their feedback is collated with that of other people for review by the multi-sectoral operations committee. Many past clients have spoken of the stress of delays for children. Committee members agree to work on strategies to expedite child witnesses cases.

City B

If Emily lives in City B, her case might not be referred to victim services until late in the process. Responsibility for making the referral is not clearly defined and there is no system to flag cases in which children are potential witnesses.

- After several months, Emily and her family are confused and call the police to find if maybe the charges were dropped.
- A subpoena arrives defining a court date the following week and Emily's parents have to scramble to get time off work with such short notice.
- A week before the trial, a prosecuting attorney leaves several frantic voice-mail messages about meeting with Emily, stressing the urgency.

- At their hurried meeting, the prosecutor never mentions testimonial aids because she knows the local judges have never used them before.
- A victim services worker gives Emily a quick court tour without mentioning testimonial aids. She knows the prosecutors never apply for them.
- On the day of court, Emily sits among a throng of accused persons, witnesses and their family and friends all waiting for cases to commence.
- The defence attorney becomes aggressive during cross-examination and asks questions designed to confuse Emily, but the judge says nothing.
- If the case ends in an acquittal, Emily assumes the judge believes she lied and she wishes she never told anyone what happened.

No one asks Emily or her parents for feedback. Had they been asked, they would describe anxiety, confusion and disappointment, all heightened by lack of information.

Uneven access

There is no City B, but each problem listed is a real example. Depending upon where you are in Canada, the experience of any two child witnesses can be dramatically different. There are areas without an inter-agency protocol to identify child witness cases and link their families with supportive services early in the process. There are barriers to information sharing (or timely information sharing) and pre-court meetings with children are few in number or rushed.

In cities where testimonial aids are not used, one may find these attitudes:

- belief that the live, unobstructed testimony of children is needed to gain convictions;
- concern the local defence-bar members would oppose any measure potentially facilitating the complete testimony of young witnesses;
- concern that the judiciary would not support changes to traditional local practice; and/or
- assumption that children who don't appear upset in pre-court interviews are not traumatized by the offence and/or can testify easily.

Software versus Hardware

There are many communities like City A. Are they all urban areas? No. Some people believe effective protection for child witnesses is achieved only with a closed-circuit television system. That's not true. Focussing on the “hardware” detracts attention from the most important ways to support children – the “software”: the actions and words that help children prepare for their role as witness. In places like City A, key actors work together, develop cooperative protocols, are clear on roles and responsibilities, and identify and rectify service gaps. There is a prevailing attitude that children can and must be protected from at least some stressful aspects of testimony. Children whose feedback is solicited will remember supportive words and kind gestures: “you did a great job!” and “your testimony really helped the judge.”

A “Full and Candid Account”

As reflected in the laws of Canada, the protections discussed here address the unique needs of child and teenaged witnesses. These protections are not available, as some assume, solely as a benefit for children. *They are available to aid the administration of justice by encouraging a “full and candid account” of the evidence.* Only with a complete and accurate rendition from each witness will the trier of fact come to a just verdict. When a witness cannot testify or gives an incomplete account, the administration of justice suffers and our legal system fails.



A small but national sample of child and vulnerable victims was asked if they were told about protections available to them as they testify. Their answers suggest wide variability in this practice across Canada.

Prairie Research Associates (2005). Multi-site Survey of Victims of Crime and Criminal Justice Professionals Across Canada. Ottawa ON: Department of Justice Canada.

Who is this handbook written for?

We know it's the software - the human component - that makes the difference for children. This overview booklet, like all seven in the series, is written for them: professionals and volunteers working across Canada in criminal cases where children are witnesses. This includes those working in the courts such as prosecutors, victim support workers, court administrators, and members of the defence bar and the judiciary. Much of this material will also be helpful for police investigators, child protection workers and therapists. We have endeavoured to make these handbooks useful in places with ready access to the full range of testimonial aids and in locations with none.

Features of the Handbooks

These handbooks offer concise overviews of key topics, giving the reader a quick survey of issues that may arise and enhancing their understanding of the needs of their youngest clients. We use diagrams, where applicable, and present suggestions for helpful resources and further reading. You will also find good practice guidance and learn what children may be thinking and feeling.



Where you see this icon, you find cross-references to topics addressed in other handbooks in the series.



These “practice tips” are suggestions for the front-line professional or volunteer, to augment your work or focus your interventions.



Where you see this symbol, a suggested further reading is cited, for anyone wanting more detailed information.



In the “research files,” we quickly summarize pertinent findings from the most relevant research.

This overview handbook, the first in the series, concentrates on these topics:

- brief introduction to the testimonial aids and concessions available to child and teenaged witnesses in Canada;
- overview of issues important to take into account when helping children testify, including some pre-court preparation strategies for children; and,
- guidance on understanding the court system from a child's point of view.

The other six handbooks are called:

- Testimony Outside the Courtroom
- Witness Screens
- Video-recorded Evidence
- Designated Support Person
- Hearsay Evidence and Children
- Children and Teenagers Testifying in Domestic Violence Cases



Find in handbook No. 2 a discussion of how trauma can compromise the ability of a child to testify. In handbook No. 3, we present guidance on working with the intellectually delayed witness and witnesses who have limited attention spans.

The Child Witness Project

This year marks the 20th anniversary of the Child Witness Project at the Centre for Children and Families in the Justice System (formerly the London Family Court Clinic). Each year, about 200 children and teenagers find help in the stressful period after a criminal victimization and its disclosure but before resolution of the case in court. Over the 20 years, we have seen thousands of youngsters and the field of victim services has evolved greatly.

The team at the Child Witness Project helps child and adolescent witnesses to communicate their evidence without being traumatized by the challenging process of testifying. We serve young people from ages four to 17 called to testify in criminal or youth justice court, usually in cases of physical or sexual assault but also in domestic violence and a variety of other criminal offences such as robbery and Internet luring.

Initially, the idea of “preparing” children for court testimony was met with scepticism and suspicion. Would this be “coaching” the witness or tainting the evidence? Could it actually improve the quality of evidence, or would it be a wasted effort? As these fears abated with time and experience, the idea of supporting child witnesses spread across Canada, as it has done in most countries with similar legal systems. In 1987, children periodically testified but it was a rare event. Today, a child in the witness box is a common sight in courthouses across Canada.

The hallmark of the Child Witness Project is the integration of research and practice to continually refine the service and respond to changes in legal context and client profile. We work collaboratively in our community, notably with the police, the Crown Attorney's office, the Victim Witness Assistance Program, and the Children's Aid Society, which is mandated to provide child protection services in Ontario.

The goals of the intervention are to:

- increase knowledge of court terminology and procedures;
- reduce anxieties related to testifying;
- provide strategic assistance on how to be a good witness;
- consult with prosecutors about children's needs;
- assist children to prepare victim-impact statements; and,
- refer families to appropriate services for longer-term involvement.

The key service components are education about the justice system, role play and practice, relaxation and stress reduction, court orientation and support, and debriefing. The intervention developed and evaluated at the Child Witness Project is described in manuals for child witness specialists, prosecutors, police, educators, and parents. It is summarized here on pages 16 to 21.

System Stressors for Children

The Child Witness Project and programs like it exist because some stressful features of the court process can be ameliorated for children. Some other stressful features are immutable but you can prepare children (and their families) to know what to expect and be prepared to do their best. These aspects of the legal process can be stressful for witnesses of any age.

Lack of information or understanding

- Families may get misleading court information from televised crime dramas, giving them unrealistic expectations.
- Being “in the dark” on case developments is uncomfortable and confusing.
- First meeting with the prosecutor on the day of court is too late for a child.

Adjournments, changes and delay

- Some cases transpire over a full school year or straddle two school years.
- It is frustrating to appear at court expecting to testify - sometimes waiting for hours- only to see the matter adjourned.
- Many aspects of a prosecution are unpredictable or change unexpectedly.
- Changes in assigned prosecutor can be unsettling.

Public exposure

- Speaking in public is a fear common to many people.
- The content of testimony is often emotionally charged and sometimes embarrassing, as in sexual assault.
- There can be strangers watching from the courtroom gallery.

Facing the accused

- This is the most stressful aspect of testifying for most children.
- If an accused has hurt a child in the past, it's natural to be afraid.
- An accused may have threatened consequences for telling.
- An intimidating glance or penetrating look can silence a child.

Cross-examination

- Some lawyers try on purpose to confuse or trick children (e.g., double negatives, meandering sentences, esoteric vocabulary).
- The tone of questions can imply the child is lying or mistaken.

Exclusion of supportive people from courtroom

- Family members who are excluded witnesses are not present as support for the testifying child.

Child Witness Project Statement of Basic Principles of Justice for Child Witnesses

The Federal / Provincial / Territorial Ministers Responsible for Justice endorsed a *Canadian Statement of Basic Principles of Justice for Victims of Crime 2003* to guide the development of policies, programs and legislation related to crime victims. In addition to those 10 principles for all victims in Canada, we propose these 10 principles to promote fair treatment of child and teenaged witnesses.

1. Every child is to be treated with due regard to his or her age and with recognition of the vulnerabilities inherent in being a child and with consideration of his or her unique needs and stage of physical and emotional development.
2. Every child has the right to victim-support services tailored to him or her as an individual and delivered in a timely way prior to court.
3. Every child and his or her caregivers will be informed about the testimonial aids that are legislatively available to them. Their input and preferences should be sought.
4. Every child will have access to the accommodations and support to best facilitate a full and candid account of his or her evidence.
5. Every child has the right to feel safe in a courtroom, while waiting for court, and while entering and leaving the courthouse.
6. Every child should be questioned by adults who use age-appropriate language, who adapt their communication to the developmental level of the child, and who continually monitor the child's comprehension.
7. His or her impending role as a witness should not be a bar to a child's access to counselling.
8. The special role of parents and caregivers should be recognized and their needs addressed, so they can support their children as appropriate.
9. Given that victims have the right to be informed, information should be relayed to children using words and language they can understand.
10. Efforts to expedite or fast track cases involving child witnesses must be a priority.



International Bureau for Children's Rights (2003). Guidelines on Justice for Child Victims and Witnesses of Crime. Montreal QC: IBCR.

Bill C-2 and Testimonial Aids

Since 1988, the Parliament of Canada has made a series of amendments to the *Criminal Code* and the *Canada Evidence Act* addressing the unique needs of children called upon to testify in criminal and youth justice courts. The most recent of these amendments came into effect in January of 2006 (*An Act to Amend the Criminal Code (Protection of Children and Other Vulnerable Persons) and the Canada Evidence Act*). Where testimonial aids are concerned, the cumulative effects of these changes have been to:

- expand the number of offences for which child witnesses can qualify for testimonial aids;
- increase and standardize the maximum age for children to qualify for testimonial aids (age 17); and,
- move from a case-by-case test to a presumption that all children can qualify.

Put another way, it is now presumed that any child who testifies in any proceedings can use testimonial aids, if wanted.

Other changes created by Bill C-2 include the following.

- Permits a Court, in deciding whether to exclude people from the courtroom, to consider the need to “safeguard the interests” of witnesses under 18 in all proceedings (not only proceedings involving listed sexual or personal injury offences).
- Extends existing restrictions on a self-represented accused cross-examining a child witness to apply for all types of alleged offences.
- Clarifies the provision requiring the Court to order a mandatory publication ban for witnesses under 18 years (in proceedings involving enumerated sexual offences) by adding the words “transmitted in any way” to ensure that the information is not made public through the Internet or other electronic means.
- Eliminates the need for a competency inquiry prior to the admission of testimony from a child under 14 (i.e., presumes children under 14 have the capacity to testify).
- Creates a new test to enable children under 14 to testify in any proceedings if they can understand and respond to questions and upon promising to tell the truth.
- Eliminates the distinction between sworn and unsworn testimony for children.



Robin MacKay (2005). Bill C-2: An Act to Amend the Criminal Code (Protection of Children and Other Vulnerable Persons) and the Canada Evidence Act: Legislative Summary 480E. Ottawa ON: Library of Parliament.

Overview of Accommodations for Child Witnesses in Canada

Understanding the need to solicit a full and candid account from all witnesses, the Parliament of Canada made available these measures to accommodate the needs of witnesses under the age of 18 years.

Exclusion of public from the courtroom

The Court may order the exclusion of all or any members of the public from the courtroom if such an order is in the interest of public morals, the maintenance of order or the proper administration of justice, which includes the need to ensure that the interests of witnesses under the age of 18 are safeguarded. This provision comes into play when a child testifies in an open courtroom but the presence of people in the gallery would inhibit a full and candid account. See s. 486 of the *Criminal Code* and s. 132(1)(b) of the *Youth Criminal Justice Act*.

Hearsay evidence

Where child witnesses are concerned, this topic usually comes into play when a child made a “spontaneous” disclosure but cannot testify in court, because he or she is very young or traumatized or both. The person hearing the disclosure may be permitted to repeat the statement in court, if that evidence is deemed both reliable and necessary.



Handbook No. 6 in this series describes issues related to the admissibility of hearsay as evidence.

Presumption of capacity to testify

Children under 14 are presumed to have the capacity to testify. They must, however, be able to understand and respond to questions (and promise to tell the truth).

Publication ban

If at least one charge before the Court involves a sexual offence, any witness under 18 years (or the prosecutor on their behalf) can ask for a publication ban and the Court shall make the order. In all other offences, the Court may ban publication of the witness's name or any information that could serve to identify the witness.

Screen

A device positioned on, near or above the witness box to block the child's view of the accused while permitting the accused to view the witness as he or she testifies. It is also called a witness screen or a sequestration screen.



Handbook No. 3 describes issues related to using a witness screen in the courtroom.

Self-represented accused not to cross-examine child

Upon application by the prosecutor or the witness, an accused without a lawyer will not be permitted to personally cross-examine a witness under 18 years of age (unless the Court believes that “the proper administration of justice requires the accused to personally conduct the cross-examination”). The Court may appoint counsel for this task. No adverse inference is to be drawn from the fact that counsel is, or is not, appointed. See s. 486.3 of the *Criminal Code*.

Support person

A person permitted by the judge or justice, upon application, to sit or stand near a child who is testifying, whether that testimony is in open court, given behind a screen, or given via CCTV or remotely. In many parts of Canada, victim support staff perform this role. This is perhaps the easiest protective measure for child witnesses. However, using a support person does not eliminate the need for pre-court preparation services nor eliminate all testimony-related stressors.



Handbook No. 5 describes how best to use a designated support person.

Testimony outside the courtroom

Where the technology is in place or can be acquired, children testify in a special room linked to the courtroom with a video link. Other technology is used when a child testifies from a distant location, maybe his or her home community, and the testimony is seen and heard in the courtroom possibly thousands of kilometres away. This is called “remote testimony.”



Handbook No. 2 describes issues related to testifying outside the courtroom including remote testimony and the use of CCTV for testimony in the courthouse.

Video-recorded evidence

This accommodation is used when a child's statement to police (or sometimes child protection officials) is recorded on video tape or in a digital manner as on a DVD. The recording of the statement may be played in court as per s. 715.1 of the *Criminal Code*. The child will then be asked if he or she “adopt the contents” of the statement. If so, cross-examination proceeds.



Handbook No. 4 in this series describes issues related to the introduction of video-recorded evidence into a criminal proceeding.

“What was the Full Totality of Your Understanding of the Events that Transpired on July 11th?”

We once saw a lawyer ask this very question to a child witness. With good support and preparation, children as young as four can tell a judge what they experienced or saw. But we need to do our part and make a few adjustments to how we speak.

Despite our best efforts, the legal system remains ill-designed to solicit testimony from children and even teenagers find the experience difficult. The level of discourse in a courtroom, with long words and esoteric terminology, confuses most adults. Lawyers are well educated and use sophisticated vocabulary and complex sentence structure. People well versed in the work-a-day world of legal procedures and court rules rarely stop to explain their thoughts or decisions.

Each child witness experienced or saw something and had previously been able to make a statement about it. Now, in the courtroom many months later, adults use questions to re-create that statement. Some questions posed to children will elicit a full and candid account. Some questions do the opposite, resulting in an incomplete account. Refer again to the question at the top of this page for an example.

Don't underestimate how difficult it is to elicit a “full and candid account” from a child. One crucial fact cannot be underestimated. A courtroom is virtually the opposite from the optimum conditions of eliciting accurate and complete statements from children (see Table 1). A criminal case often focuses on an isolated event from the past. Children may be asked to relate peripheral details now fading from memory, or embarrassing events like sexual touching. Those experiencing post-trauma distress will be trying hard not to think of events associated with the offence. Tasks required may be beyond a child's developmental capacity, like some types of time estimates (see handbook No. 6). All this in a room full of strangers.



People may adjust their language when speaking with children, but the language limitations of teenagers are not so readily apparent and addressed. In this study, 111 high-school students were asked to define 16 legal terms. Words commonly misunderstood were cross-examination, summons, allegation, prosecution lawyer, and defendant. For example, a defendant was often thought to be someone who defended people. Older teenagers had a higher rate of accuracy than younger ones.

Emma Crawford & Ray Bull (2006). Teenagers' Difficulties with Key Words Regarding the Criminal Process. Psychology, Crime & Law, 12(6): 653-667.

Table 1

Optimum Conditions for Questioning Children Versus Courtroom Conditions

	Optimum Conditions	Courtroom Conditions
TIMING	Typically soon after the event or at least soon after the disclosure.	Months and sometimes years after the event or disclosure.
LOCATION	Small room with few distractions and perhaps some child-friendly features.	Often imposing, cavernous rooms with novel features and many distractions, including people entering and exiting.
QUESTIONER TRAINING	Training in child development, children's language comprehension and techniques of interviewing children.	Often no training in child interviewing, who might use legal terminology, double negatives, double-barrelled questions, etc.
TONE	Supportive and kind.	Possibly harsh or accusatory.
AUDIENCE	Usually none but possibly one observer or co-questioner.	Possibly many people in the gallery, usually strangers and sometimes people there to support the accused.
RAPPORT	Opportunity to chat about innocuous subjects to ease tension and build rapport.	Questioner must focus quickly on the subject of the evidence.
PACING	Appropriate for age (e.g., in terms of length of interview)	Restricted by the structure of the court schedule.
PURPOSE	To elicit complete and accurate information about an event.	In cross-examination, to demonstrate that the child is lying or mistaken.
TYPE OF QUESTIONS	Open-ended and age appropriate. Child can say things spontaneously as they come to mind	Cross-examination can involve leading and manipulative questions sometimes designed to confuse. Child can bring up a subject only in response to a direct question.
PROBING	Opportunity to follow-up and say "tell me more"	Prosecutor is limited by rules of evidence.

Cross-examination may involve rapid delivery of questions, the same question asked repeatedly, or an accusatory tone implying a witness is lying or mistaken. The grandeur of many courtrooms, designed to inspire respect and awe, dwarfs the child and contains a variety of interesting and novel things to distract one's attention. And we the adults, charged with keeping children safe, we bring a child into close proximity with someone of whom they will probably be afraid - the accused.

The content and context of the testimony is also a factor. A child witness might be reluctant to describe some or all aspects of the alleged offence because:

- this event may have been traumatic, embarrassing or frightening;
- there may have been threats about consequences for “telling”;
- the child may have emotional or other allegiances to the accused;
- if the event happened some time ago, peripheral details are fading from memory;
- the child may have incorrect yet unresolved worries about testifying such as being blamed for an unfavourable case outcome;
- a traumatized child may have tried hard to forget the incident in an effort to cope and avoid overwhelming emotions; or,
- “telling” the first time may have had negative consequences such as apprehension by a child protection authority or parental separation/divorce.

Some young witnesses are so afraid that they fail to give complete evidence.

Communicating with Children: A Quick Overview

- Introduce yourself and describe your role.
- Explain the purpose of the interview in a way the child can understand.
- Explain that you were not there and need to know what happened.
- Be aware of how your facial expression, tone of voice and body language may be perceived by the child.
- Sit at the child's physical level.
- Wait - give the child time to respond to your question.
- Monitor the child's comprehension of your questions and information.
- Re-phrase rather than repeat a question that is not understood.
- Clarify your understanding of the child's response.
- Ask the child if he or she has any questions to ask you.
- Thank the child at the conclusion of your questioning.



Anne Graffam Walker (1999). *Handbook on Questioning Children: A Linguistic Perspective*, 2nd Ed. Washington DC: American Bar Association Center on Children and the Law.

Tips for Questioning Children as New English Speakers

When speaking with a person learning English, we adapt our language to match his or her level of comprehension. Guidelines for speaking with new English speakers apply equally to children. Children are, after all, learning English. They don't have an extensive vocabulary, can't follow complicated sentences, and don't understand idiomatic expressions.

Modifying your speech for a child

- Speak slowly and clearly enunciate each word.
- Avoid double negatives.
- Avoid slang, jargon or any legal term you have not explained.
- Use names of people rather than pronouns.
- Keep sentence length short, maybe five or six words for a young child.
- Use simple sentences with a subject at the beginning and a simple verb form (e.g., “did you go?” rather than “had you been able to go?”)
- Use the simplest word to describe a concept, like “need” instead of “require” or “think” rather than “contemplate.”
- Wait. Give the child time to understand the question and formulate an answer.



PRACTICE TIP: Most Canadians learned a second language at some point in their lives. Remember the words you first learned. For those who learned a language in school but don't consider themselves fluent, ask yourself this question: “could I understand this sentence if said to me in that language?”

Modifying your questions for a child

- Be careful using questions requiring a “yes” or “no” answer: people who don't understand a question tend to answer “yes.”
- The question “do you understand?” should be avoided because many children believe they do understand when in reality they do not.
- Check the child's comprehension before you move on to the next issue.
- Questions about time, size, position, quantity and direction can be problematic for children.
- Children are poor at accurately estimating someone's age, height or weight.
- If your question is not understood, re-phrase rather than repeat it. When asked the same question twice, some children assume the first answer was bad so they must say something different.



PRACTICE TIP: Most people who use sign language are speaking English or French as a second language. Find a tip sheet for helping the deaf witness in handbook No. 5.

Common Testimony-related Worries in Children and Teenagers

Between the laying of a charge and the day a child testifies, as much as one year can elapse. During that time, worries and thoughts can pre-occupy the child. Some worries are based on real stressors and some are distorted but age-appropriate misunderstandings.

Embarrassing themselves while testifying

- crying or being upset, especially during cross-examination
- getting physically sick in the witness box
- not understanding or being unable to answer the questions
- forgetting details of the offence when asked
- having a panic attack when forced to recall details of the offence
- having to recount details of sexual assault and name body parts

Loss of privacy

- having family or friends hear details of the offence
- having strangers hear details of the offence
- having their names or identifying information in the newspapers

Belief they will be responsible for an undesirable case outcome

- the judge will acquit the accused because of not believing the child
- the judge will acquit the accused because the child testified poorly

Fear of retaliation if they give complete evidence

- accused will come and hurt child or family after court is over
- accused will carry out the threatened consequence for “telling” (e.g., “I’ll kill your mother if you tell anyone about this”)

Some common misapprehensions to be identified and corrected

- that a child witness might be sent to prison
- that the accused can jump up and hurt the child in the witness box
- that people will shout at them and be angry

Some worries are allayed by giving the correct information. Emphasize how witnesses are not responsible for case outcome. Assure them people will keep them safe and demonstrate the safety features of your courthouse such as the private waiting room.



If the accused is a family member, a prosecution may have implications for family dynamics. We discuss family-related stressors in handbook No. 7 about domestic violence cases.

Components of Pre-court Preparation and Support for Children

Over 20 years, the court preparation procedures used at the Child Witness Project were developed and continually refined. When children are fully prepared to testify, they understand their role as witnesses and are more confident giving evidence. They don't feel responsible for any court-imposed consequence for the accused and feel safe and protected while in the courthouse.

Principles of pre-court preparation services	
individualized	• some children come for one or two sessions and some have 10
flexible and adaptable	• emphasize different components depending upon your identification of each child's unique needs
holistic understanding	• a child is more than a witness and comes to the task with a history perhaps including prior abuse and needs such as learning disabilities
timely	• contact the family early in the process and start services as the court date approaches, allowing for enough time to complete all necessary components of the service (unless a guilty plea seems likely)
collaborative	• share information and consult as necessary among police, prosecutor and victim support services

Five core components of pre-court preparation services

- Education
- Role playing
- Relaxation training and anxiety management
- Court orientation and support
- Debriefing and follow-up

The process begins with a thorough intake to look for any special needs and learn each child's worries about testifying. Pre-court preparation can be used anywhere, by victim-support workers, prosecutors, child protection workers, or therapists. For more detail on the techniques, see the full manual.



Pamela Hurley, Karen Scarth & Lynda Stevens (2002). *Children as Witnesses: Helping Young People Give Their Evidence in Court, Helping Courts Hear the Evidence of Children*. London ON: Centre for Children & Families in the Justice System.

Component 1: Education

Education is usually delivered in individual sessions but also, where numbers permit, in a group format. The goal is to familiarize the child with these features of the legal process:

- the rules of the courtroom (e.g., no gum chewing);
- the rules for witnesses;
- the role of each person present, especially the judge, prosecutor and defence counsel;
- key terminology (e.g., subpoena, cross-examination, adjournment);
- key stages in the court process, including verdict and sentencing; and,
- what to expect on the day of court (e.g., there is likely to be a wait).

Tailor your discussions to the age and intellectual capacity of the child. What you say to a five-year old will be different from how you speak with a teenager. For the younger ages, a play courtroom can be helpful, with small dolls taking the role of all participants including the child. For older ages, you will find a number of videos. Three Canadian web sites are listed later under “further readings.” Many provinces/territories have developed educational booklets for children.

Key points to emphasize

- A witnesses's job is to answer the questions and tell the judge what happened in his or her own words.
- The judge knows nothing about the alleged offence before you tell her.
- It's the judge's job to listen to everyone and make the final decision.
- Testimonial aids are available if the child wants or needs to use them.

Rules for Witnesses

- listen carefully
- tell the truth and only say what you remember
- speak loudly and clearly
- answer out loud (e.g., say “yes” instead of nodding your head)
- say when you don't know the answer to a question
- say when you don't understand a question



PRACTICE TIP: The person providing pre-court preparation services must not discuss any details of the offence with the child (unless that person is the prosecutor). Make this clear at your first meeting. Most children are relieved to learn they don't have to tell yet another person about the offence.

Component 2: Role Playing

The goal here is to enhance a child's skill at answering questions and coping with cross-examination. Children practise listening to questions, thinking out responses, and being appropriately assertive, as when they ask for rephrasing of a question. This is an opportunity to practise and reinforce the “rules for witnesses.” Emphasize that the judge knows nothing about the alleged offence (many children assume he or she does).

Select a scenario unrelated to the evidence, perhaps a school event or a recent family holiday. Find a location with few distractions. For young children, a parent can be present, but ensure they don't jump in and “help” the child answer your questions. Start with a few simple questions, using short sentences. Ask about times and dates. Then insert some intentionally confusing questions, to see if the child asks for clarification. Use double negatives, sophisticated vocabulary, double-barrelled questions, or ask several questions in a row without pausing for an answer. Suggest these responses when appropriate:

- I don't know.
- I can't remember.
- That word you used “perfunctory,” I don't know what it means.
- I don't understand what you're asking. Can you please say that again?
- You asked me too many questions in a row. I can't remember them all.

Ideally, the courtroom questioners will adapt their communication to a child's level, but you are never guaranteed this will happen. No one can prepare a child to answer questions beyond their abilities to grasp. But they can learn question and answer skills.



PRACTICE TIP: Ask a judge to donate an old gown. Children enjoy donning such legal garb during the role play.



Forty kindergarteners watched a short movie clip about a man and a dog. The children then answered 25 standardized questions, including open-ended free recall, unbiased-leading questions and misleading questions, some designed to implicate a woman who was not in the clip. Twenty children were told beforehand that the interviewer would try to trick them to say things that were not real. These children had an accuracy rate almost twice as high as the other children did.

Lisa Chan & Yukari Okamoto (2006). *Resisting Suggestive Questions: Can Theory of Mind Help?* Journal of Research in Childhood Education, 20(3): 159-174.

Component 3: Relaxation Training and Anxiety Management

Education and role play are helpful, but they don't alleviate all worries or eliminate all testimony-related stressors. The day of testifying is enormously stressful. But most children experience some level of anticipatory anxiety in the months before a case resolution. The objective severity of the offence is not always a good indicator of the level of pre-court anxiety. Signs of worry seen in children include concentration problems in school, decline in academic performance, self-imposed isolation from friends and families, and trouble sleeping or falling asleep.

Several relaxation techniques can be used in this context:

- deep breathing exercises;
- muscle relaxation;
- guided imagery; or,
- positive self-statements.

Demonstrate the techniques in your office, but encourage practise at home in real circumstances, perhaps before a big exam.



PRACTICE TIP: Find the “What I Think About Testifying in Court” questionnaire on our web site to assess a child’s worries and focus your intervention.

The highly anxious child

For very anxious children, establish a fear hierarchy. With you for support, he can practise a relaxation technique while imagining the sources of greatest worry. Some children find it helpful to mentally “walk through” the day of court. In such a guided imagery exercise, describe each step in sequence and remind the child to breathe and use a relaxation technique for steps or images producing anxiety. Picturing his support team there reminds him he will not be alone.

Cognitive strategies

How you think about something determines in great measure how you feel about it.

Help each child feel competent and confident in the role of witness. Ask her to identify a past situation when she managed her fears, like that first jump off the diving board or the speech she made in class. What helped her then? How did she feel when it was over? Link that success with testifying to help apply the same “fear busting” strategies for court. Involve a supportive caregiver in the plan, someone available for comfort during high-stress moments.



Trauma and how it affects the task of testifying is discussed in handbook No. 2. Most children experiencing post-trauma distress will benefit from relaxation training as a coping strategy.

Component 4: Court Orientation and Support

In the end, most witnesses never testify because of guilty pleas and other factors. But many witnesses go to the courthouse at least once expecting to testify.



Of the 500 children referred to the Child Witness Project in 2006, 150 received full pre-court services because it was expected they would testify. In the end, about 100 children did testify at least once.

The courthouse tour

A courthouse tour (or visit to the building where the child will testify) should not be left to the day of court. It's an important component of pre-court preparation. The child will visualize the locations about which you speak, such as the waiting area, the witness box and, if available, the testimony room. Let the child sit in the judge's chair and demonstrate the workings of the CCTV system if one is available.

Preparing for the day of testimony

Having realistic expectations helps avert frustrations. Be forthright about the likely wait, lack of amenities in the courthouse, and the need to bring activities and snacks. Suggest that parents not bring the child's siblings, so they can devote full attention to the testifying child. An adult who smokes might bring nicotine gum. Avoiding the accused can be difficult when accessing the smoking area.

Clarifying responsibilities

As you wait for the child to be called, take the opportunity to re-emphasize the role of a witness: to tell the truth about what they saw or experienced. Some children are pre-occupied with the idea they are responsible for any court-imposed consequence that will befall the accused. Reinforce the fact that they did not get the accused into trouble by telling the police what happened. The accused alone is responsible for his or her behaviour. Neither is the child responsible for case outcome because the judge (or jury) chooses a verdict after listening to everyone. Some children grasp this idea easily and some have a more difficult time accepting it as true.



PRACTICE TIP: *Here's a tip passed along from Wendy Harvey, a pioneer in this field. Get the child to think about a jigsaw puzzle where many pieces fit together to make the whole. Take a sheet of paper and rip it up into 6 or 8 pieces. Re-assemble the sheet and take one piece of paper. It represents the child's role/responsibility and the others belong to the judge, the prosecutor, defence counsel, etc.*

Component 5: Debriefing and Follow-up

The case conclusion is time to reflect on the accomplishment of the witness and answer questions the family may have about the outcome. The focus here is more on the child's completion of a difficult task and less on the verdict or sentence.



PRACTICE TIP: If the accused is now to serve a prison sentence, many families want notification of his release. The Correctional Service of Canada (for prison sentences of two years or greater) has informational material describing victim rights within the federal correctional process (e.g., how to attend parole hearings). The correctional systems in many provinces and territories produce similar material. Have information on hand or know the name of the correctional staff member to whom you can refer them.

Explaining a verdict of acquittal

Preparing for an acquittal begins early in the pre-court preparation process. An acquittal can shake their trust in the justice system and make the world seem unfair. You can point out these factors:

- you did your job and it was up to the judge to make the final decision;
- don't assume the judge did not believe you: in our legal system, a judge or jury convicts only if 99% sure a crime was committed;
- some behaviour is bad and wrong but not necessarily a “crime”;
- a verdict of “not guilty” is not the same as saying the accused is innocent;
- by coming forward, you showed the accused that he cannot hurt people without consequence;
- by testifying, you stood up and told everyone what he did; and,
- your coming forward may encourage other victims to call the police.

As always, tailor your language to the age of the child.

Post-court feedback

Letting people have their say is important. It's also a good way to identify features of the court-support process needing improvement. Solicit feedback from all witnesses and their parents, not only those who testified in the end. To facilitate candour, ensure responses are anonymous by, for example, providing an addressed, stamped envelope.



PRACTICE TIP: Feel welcome to use the feedback forms produced by the Child Witness Project and found on our web site.

Good Practice Principles for Communities

For each testimonial aid, you find good practice guidance in later handbooks. In handbook No. 3, we describe the courtroom designed with children in mind. The principles on this page are for agencies working together to investigate and prosecute the criminal victimizations of children and support court witnesses and their families.

Talk with each other

While one individual is ultimately responsible for supporting a child witness, that person is a member of a multi-agency response triggered when a crime against a child comes to light. Meet regularly as a group to examine problems that arise, address service gaps, discuss difficult cases, and review client feedback.



PRACTICE TIP: Since its inception in 1987, the local advisory committee of the Child Witness Project meets four times per year. Representation comes from the three police services in our catchment area, the Crown Attorney's office, the child protection authority, and the court-based Victim Witness Assistance Program. Consider forming a multi-sectoral committee in your jurisdiction.

Ensure early identification of cases where children are witnesses

Discuss how best to identify cases where children may be witnesses so the family is contacted early in the process and informed of the next steps. For example, the police can develop a policy to notify the victim-support agency when charges are laid. Negotiation of information-sharing protocols may be needed.

Be clear on roles and responsibilities

Don't let children fall through the cracks because of role confusion. Who does what and when?

Advocate for local availability of testimonial aids

If not already available, harness the energy and connections of your multi-sectoral advisory committee to acquire a closed-circuit testimony system or remote testimony technology.

Develop the role of child witness specialist

In a small but growing number of Canadian cities, specialized court preparation services for children work collaboratively with local victim support services. If such a service is not available, consider designating one position as a child witness specialist and fill the role with a person whose training and background include child development and understanding the impact of trauma and abuse on children.

Aboriginal Families and Court Testimony

Among families needing support before court, you will encounter families of aboriginal ancestry, including First Nation peoples, Métis, and Inuit. In the many unique nations across the country, there is wide variation in language, cultural norms, history and traditions. Families who migrated to urban areas may have evolved different lifestyles compared with relatives who live on the band's homelands. Some individuals move back and forth between the two settings.

If there is a significant presence of aboriginal peoples in your area, chances are that the local legal system has been grappling with how better to meet the needs of aboriginal peoples accused of criminal offences. Less thought has been devoted to adapting the legal system to be culturally appropriate for victims of aboriginal ancestry and their families. Among families served by victim-support programs, two groups will be found:

- those who look to the legal system for safety and a just response to counter the harm done; and,
- those who seek healing and a restoration of balance in individuals, family and community.

Some modifications to consider

- If the distance from their home community to the courthouse is great, work with that community to find local options for remote testimony.
- The technology permitting remote testimony can also be used for meetings with the prosecutor and pre-court preparation sessions with the child.
- Be prepared to travel to deliver pre-court support in the child's area.
- Ask if there is a religiously or culturally significant symbol to use in swearing an oath or in place of a solemn affirmation.
- Adjust your criteria for assessing children (e.g., where bravery and stoicism are valued, children may appear devoid of emotion: do not equate this presentation with absence of trauma or fear).
- Face-to-face testimony is inconsistent with the imperative of non-confrontation: use a screen or testimony outside the courtroom.
- Consider a respected community member as a potential support person.
- Use a trained and independent interpreter for both language and culture.
- Listen, consult and don't make assumptions.



Rupert Ross (2006). *Returning to the Teachings: Exploring Aboriginal Justice*. Toronto ON: Penguin Canada.

Glossary of Terms

Capacity to testify

Being able to understand and respond to questions. Capacity to testify is presumed, even if the child is under 14 years old, unless the defence challenges that capacity under s. 16 of the *Canada Evidence Act*.

Child witness

A person under 18 years of age called to testify in a criminal or youth justice court. Some “child” witnesses are teenagers and some child “witnesses” are complainants (i.e., victims) but they are all referred to as “child witnesses.”

Child witness specialist

A person employed by a child witness program or a victim support program who has training in child development, the impact of trauma and abuse on children, and how children are shaped by domestic violence.

Closed-circuit televised testimony (CCTV)

Where the technology is in place, and with judicial approval, witnesses can testify in a room electronically linked to the courtroom by a video link.

Competency inquiry

An inquiry into competency is limited to witnesses of any age whose capacity to testify is questioned, usually because of an intellectual disability. The person who challenges capacity has the burden of proof, on a balance of probabilities.

Crown attorney / Crown prosecutor / Crown counsel

The lawyer who prosecutes the case on behalf of the government by introducing evidence gathered by the police, calling witnesses such as the complainant, and cross-examining any defence witnesses.

Exclusion of public from the courtroom

The Court may order the exclusion of the public if such an order is in the interest of public morals, the maintenance of order or the proper administration of justice, which includes the need to safeguard the interests of witnesses under the age of 18.

Hearsay evidence

Witnesses can testify only about first-hand knowledge and not repeat what others told them. Second-hand evidence is “hearsay.” Hearsay is not admissible in court but there are recognized exceptions.

Pre-court preparation and court support

Services designed to help witnesses give a full and candid account without being traumatized. Service components could include education, role playing, relaxation training and anxiety management, court orientation, and debriefing.

Promise to tell the truth

A witness under 14 with the capacity to testify may do so after promising to tell the truth. Evidence given by a child who promises to tell the truth has the same effect as if it were given under oath.

Publication ban

An order by the Court to prohibit any media outlet from printing or broadcasting the name of a witness or any information that could identify the witness.

Remote testimony

When viva voce evidence is transmitted electronically and simultaneously from a remote location to a courthouse, using video-conferencing or other technology.

Screen / witness screen

A device designed to block the witness's view of the accused while permitting the accused to see the witness. It is sometimes called a sequestration screen.

Solemn affirmation

A witness who does not make a religious oath before testifying can say instead: "I solemnly affirm that the evidence to be given by me shall be the truth, the whole truth and nothing but the truth." An affirmation has the same effect as an oath.

Support person

Someone permitted by the judge, upon application, to sit or stand close to a child while he or she testifies in the witness box or in a testimony room.

Testimonial aid

A measure helping a child give a full and candid account of evidence, including a witness screen, a designated support person or any technology permitting a child to testify outside the courtroom.

Testimony room

The room in which the child sits to give testimony when testifying outside the courtroom, as when remote testimony or CCTV testimony is used.

Testimony suite

Adjoined rooms in a courthouse that includes a testimony room and private waiting room, ideally with private washroom facilities and activities to entertain children of all ages as they wait to testify.

Video-recorded evidence

When the forensic statement of a child is recorded on video tape or in a digital manner and presented as evidence in court. The child is asked to adopt the contents of the statement and, if so, is subject to cross-examination.

Further Readings

In addition to sources already cited, these articles and resources may be helpful. Sources marked with † are available on the Internet.

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British Columbia Association of Specialized Victim Assistance & Counselling Programs (2006). *An Easy Reference Guide to Bill C-2 Amendments to the Criminal Code and Canada Evidence Act: An Act for the Protection of Children and Other Vulnerable Witnesses*. Vancouver BC: BCASVACP. †

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Schuman, J., N. Bala & K. Lee (1999). Developmentally Appropriate Questions for Child Witnesses. *Queen's Law Journal*, 25: 251 -304.

Web sites for children and teenagers

Cory's Courthouse	www.coryscourthouse.ca
Court Choices: Options for Youth Testifying	www.courtchoices.ca
Courtprep.ca	www.courtprep.ca