

*“a full  
and candid  
account”*



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

BOOK

2

## Testimony Outside the Courtroom

*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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**Starr, age 17, was scheduled to testify against Mr. Smith who was charged with living on the avails of prostitution of a person under the age of 18. The offence came to light when he viciously assaulted her on the street and a bystander called the police. At the hospital, Starr only reluctantly gave a statement to the police. Starr was an unpredictable client for victim services, missing scheduled appointments only to show up days later in a state of agitation. While wanting to see him “behind bars,” she was terrified of this dangerous man, her former pimp. Mention of seeing him in the courtroom sent her into waves of panic. Despite being older than most child witnesses, it was evident she would need a testimonial aid. There was also the cumulative effect of prior abuse and sexual victimizations from her childhood. She had run away from her small and remote home town to the provincial capital and was soon drawn into the sex trade for survival. As the trial approached, she had no family support and her living arrangements were unstable. When advised she could give evidence without being in the courtroom, she was visibly relieved. Kim the victim services worker could then focus her on other aspects of pre-court education and support. Starr chose Kim as her support person to be in the CCTV testimony room. With these protections, Starr gave a complete account of her evidence.**

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*According to s. 486.2 of the Criminal Code, witnesses under the age of 18 can testify outside the courtroom using closed-circuit television (CCTV) or by testifying remotely from a separate location, perhaps in another city or town.*

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The focus here is on testimony outside the courtroom, including the use of CCTV to enable a child to testify from elsewhere in the courthouse. The topic of remote testimony is also discussed. In this approach, testimony is transmitted “live” from a location outside the courthouse, using secure electronic transmission supported by a fast-evolving menu of options. That remote location could be as close as an adjacent building or as far away as another country. You also find here a discussion of trauma in young crime victims and witnesses. As in all handbooks in this series, the goal is to help court personnel help children give a complete and accurate account of evidence to the Court.



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*Section 486.2 also applies to testimony from behind a screen or other protective device. Handbook No. 3 in this series addresses the use of witness screens.*

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# Testimony Outside the Courtroom: Introduction

There are circumstances in which a witness under 18 should not or cannot testify in a courtroom. Closed-circuit video systems and other forms of tele-testimony can introduce a child's live evidence to the Court when it would otherwise not be heard. The child is also available for cross-examination. The required technology is rapidly evolving in sophistication, availability and convenience. The constitutionality of s. 486.2 was confirmed in *R. v. Levogiannis*, [1993] 4 S.C.R. 475, a decision which continues to be cited in relation to testimony outside the courtroom.

## Outside the courtroom but inside the courthouse

In Canada, closed-circuit television (CCTV) systems are used in a rapidly increasing number of courthouses in one of three forms:

- a CCTV system integrated into the infrastructure of the building at the time of design and construction;
- a CCTV system retrofitted into the building; or,
- portable systems brought in as needed.

Advances in technology, year after year, have led to improved CCTV systems and decreased costs. The user friendliness has also increased. This testimonial aid has been legislatively available since 1988 but its use has spread slowly and unevenly across the country. The availability of portable/mobile systems means this aid is hypothetically available for use almost anywhere in Canada.

## Remote testimony

Testimony from a site distant from the courthouse is considered when a witness cannot travel to testify in person, for reasons that may include living in another province, travel hardship, weather conditions or medical restrictions. Several technologies make remote testimony possible, including the Internet, intranets, video-conferencing, and satellite transmission.

## Presumption

As with most testimonial aids discussed in this series of handbooks, a presumption exists that a child can testify outside the courtroom upon application. The exception would be if the presiding judge or justice ruled that using such a measure would interfere with the proper administration of justice.



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*Testimony outside the courtroom will not eliminate all testimony-related stresses. Children can feel distress when describing the details of the offence, for example. In handbook No. 1 in this series, we examine the subject of testimony-related stress.*

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Graham Davies and Elizabeth Noon observed the testimony of 154 children. Those using CCTV were rated as more forthcoming and less unhappy compared with children who testified in open court. Judges, barristers and court administrators reported positive views of CCTV.

G. Davies & E. Noon (1993). *Video Links: Their Impact on Child Witness Trials*. *Issues in Criminological & Legal Psychology*, 20: 22-26.

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### Points to consider...

- Reducing testimony-related stress helps children focus and increases the likelihood they will return to testify after a recess or adjournment.
- For children traumatized by the offence, features of the court process can trigger a trauma reaction that, in the extreme, can include a full panic attack.
- Common testimony-related triggers for trauma reactions include seeing the accused and being forced to think about painful events when testifying.
- The witness is “virtually present” in the courtroom. The judge, jury, court personnel, accused and gallery can see and hear the child testify. The child's demeanour can be observed clearly, particularly on large monitors.
- Most children are familiar and comfortable with concepts associated with video transmission, electronic communication, and the related equipment.
- Many courthouses are already equipped for video remand.
- In our experience, parents of children who testified via CCTV strongly support its use and believe it helped their children to testify.
- Children who testified using CCTV tell us they found it helpful and many believe they could not have testified in the courtroom.
- Many people assume only young children need to testify outside the courtroom, but some older children and teenagers also benefit.
- The imperative of face-to-face confrontation in the adversarial system is incompatible with the traditional aboriginal notion of non-confrontation.

# Why Some Children Should Testify From Outside the Courtroom

Being in close proximity to the accused prevents some children from giving complete evidence or even from testifying at all. In addition, testifying in front of strangers or supporters of the accused can generate distress, anxiety and even fear. Why is it important to address testimony-related stressors in children?

- Feeling distressed and afraid causes some children to lose focus, compromising their abilities to listen and respond to questions.
- When frightened, some children become overly compliant (e.g., answering “yes” to every question) and some become non-responsive.
- Stress causes some children to experience physical reactions that include feeling shaky, faint or physically ill when in the witness box.
- If their experience in the courtroom is too stressful, children may refuse to return to complete their testimony after a recess or adjournment.

When considering testimony outside the courtroom, look for these factors.

## Potential for intimidation by the accused

- Facial expressions, looks, gestures or body language of the accused can intimidate a child into silence.
- The child may have been threatened with dire consequences for “telling” and continue to worry about those eventualities (e.g., pet being hurt).

## Distractions in a large courtroom

- Activities, such as people entering and exiting or side-bar discussions among lawyers, distract children who have limited attention spans.

## Factors associated with observers in the gallery

- The presence of family and friends of the accused in the courtroom is threatening to some witnesses.
- Some high-profile cases attract much public and media scrutiny.

## Innate characteristics of the child

- Seeing the accused can trigger trauma reactions in emotionally fragile and vulnerable children.
- Children who are timid or shy have difficulty being the focus of attention and some will “clam up” when in the witness box.

## Using Tele-testimony

The rubric of “tele-testimony” includes several techniques for live transmission of two-way, simultaneous, visual and oral communication. The transmission must be secure and reliable whether using a closed-circuit video link, local area network, telephone lines, cable lines, broadband Internet connection, or satellite. Where systems are in place, people assembled in a courtroom can hear evidence delivered from down the hall, across the street, in another province or territory or from outside Canada. These technologies are routinely used for video remand, among other court-related purposes, in many parts of the country.



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*Take care not to confuse different concepts with similar names such as video-conferencing and video-recorded evidence (a topic addressed in handbook No. 4).*

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## Video-conferencing

Video-conferencing permits visual and audio communication between any two locations with compatible equipment, nearby or far away. A witness who cannot travel to court could testify using video-conferencing technology from a suitable secondary location, perhaps in his or her community. A child could testify remotely from another courthouse, police station, hospital or community centre. Especially in the far north, this technology may well revolutionize how courts receive the evidence of children. It can also be used in circuit-court or satellite-court jurisdictions.



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Ricardo Ramírez et al. (2004). *Harnessing ICTS: A Canadian First Nations Experience*. Sioux Lookout ON: K-Net Services. [[www.knet.ca](http://www.knet.ca)]

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**PRACTICE TIP:** Video-conferencing technology can be used for “virtual meetings” in the months and weeks before court. For example, children can remain in their home communities yet have meetings with the Crown and also receive victim-support services from a distance. The need for testimonial aids could be determined and application made in a timely manner even though the child travels to the courthouse only on dates when testimony is required.

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## Closed-circuit television (CCTV)

A CCTV system should be called closed-circuit “video” because there is no actual broadcasting as implied by the word “television.” In England, the terms “video-link” or “live-link” testimony are used to describe the same technology. Coaxial cable connects monitors and cameras in the courtroom with monitors and cameras in a separate room somewhere in the courthouse. This is the “closed circuit.”



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**PRACTICE TIP:** Point out to the child that the closed-circuit “television” system does not broadcast the testimony for people to watch on television in their homes.

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There are many variations, but these are common or required features of CCTV and remote testimony setups:

- Everyone in the courtroom including the judge, jury, accused and members of the public must see and hear the witness on the monitor(s).
- The witness must see and hear the judge (and Crown and defence counsel, if they are in the courtroom).
- While testifying, the child does not see or hear the accused (or people in the public gallery).
- The Court must be assured that no one coaches or prompts the child from “off camera.” A trustworthy person such as a victim support worker can sit with the child and normally this person's face must be viewed on camera.
- When the child is testifying via CCTV, Crown and defence counsel will sit either in the testimony room or in the courtroom. The choice is a matter of local practice or dictated by the child's needs, the size of the testimony room or the preference of the Court.
- The accused must be able to confer with his or her counsel (see page 20).
- Provision must be made to accommodate the possibility that a child is asked to view and adopt the contents of a video-recorded statement.



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*Remote testimony need not involve transmission of evidence over a great distance. In this English study, children gave evidence via a video link from a nearby building. Not being in the courthouse removed most of the negative issues related to giving evidence either from the witness box or even in a video-link from within the courthouse. This set up “softens the traditional adversarial nature of the criminal justice system.”*

Richard Applegate (2006). *Taking Child Witnesses Out of the Crown Court: A Live Link Initiative*. *International Review of Victimology*, 13(2): 179-200.

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## Configuration of Equipment in the Courtroom

Equipment for the courtroom includes microphones, at least one camera, at least one monitor, and the necessary cables and cords. Find a diagram on the next page.

### Monitors

- If using one monitor, ensure it is positioned to be seen by all present, including the judge, accused, lawyers, jury and people in the gallery.
- The bigger the better (27" is recommended as a minimum size) to permit viewing of the child's facial expressions and demeanour by all present.
- The number of monitors is limited only by resource constraints - ideally a courtroom could have one monitor each for the judge, the jury, the accused, the Crown, the defence counsel, the court clerk and the public gallery.
- A split screen monitor has several uses to show more than one person at the same time (e.g., the child and the judge).
- Plasma screens are now found in some courthouses.

### Cameras

- One camera in the courtroom is sufficient (angled at the judge's face).
- Children must see the face of the person who is asking them questions, so position a camera to pivot between the Crown and defence, if they will be asking their questions from the courtroom.
- Position the camera to avoid an accidental sighting of the accused (except when the camera must pan the courtroom when identification of the accused is required: see page 20).

### Microphones

- Have one microphone for the judge and one each for the two lawyers if they will be asking questions from the courtroom.
- Investing in high-quality microphones pays off with high-quality sound.

### Special contingencies for portable (mobile) systems

Portable systems can be hired, borrowed or sent from provincial/territorial centres. In remote areas, transportation can be a problem. Circuit-court teams may be able to travel with portable systems.



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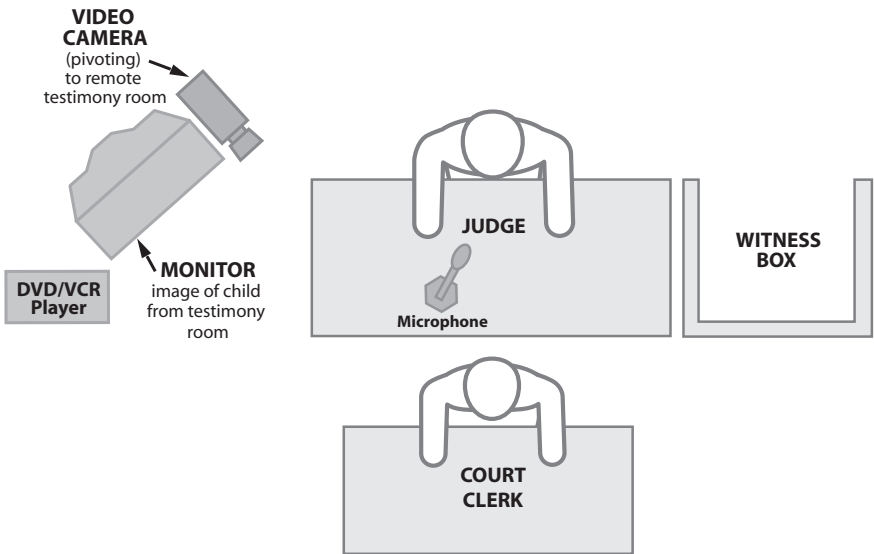
**PRACTICE TIP:** Where the weight and size of equipment is a concern (e.g., it exceeds the weight limit of small planes or is too large for snow-mobile transport), ascertain whether monitors or other components are available locally to reduce the amount of equipment you must carry.

---

# Minimum Requirements for a Courtroom Necessary to Receive Tele-testimony

Figure 1

Courtroom equipment varies greatly depending upon local resources, vintage of the equipment, and available space. This diagram illustrates the minimum equipment required to support testimony outside the courtroom, using either a CCTV system or remote link. At minimum, you require one video camera, a microphone, and a monitor visible to all present including the accused and the public gallery (perhaps suspended from the ceiling or placed on a movable cart). If the Crown and defence counsel remain in the courtroom to ask the child questions, they too will need a monitor, microphone(s), and a camera that pivots for sharing.



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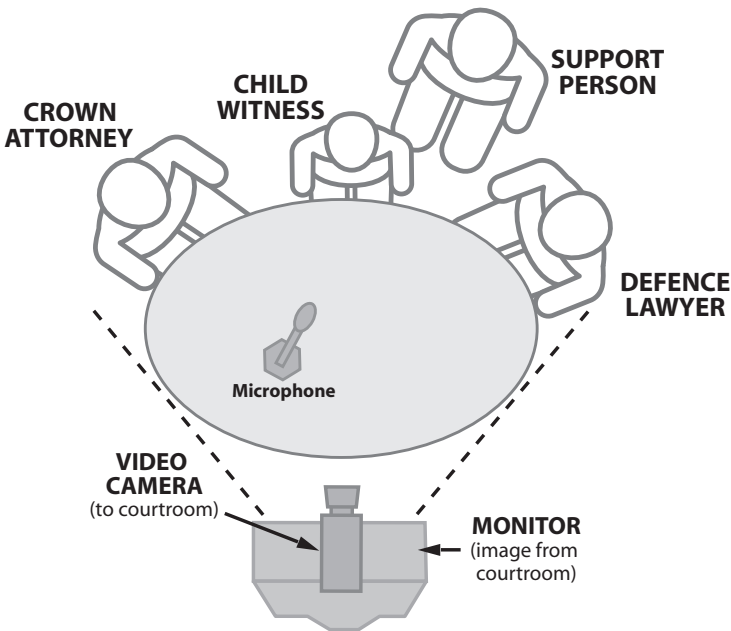
When a video-recorded statement will be introduced as per s. 715.1 of the Criminal Code, arrangements must be made for the child to watch the recording in the testimony room. The Court simultaneously watches the same statement. Some judges want to observe the child's demeanour while viewing the statement. See handbook No. 4 in this series for further discussion of this issue.

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## Diagrams of Testimony Rooms

Figure 2

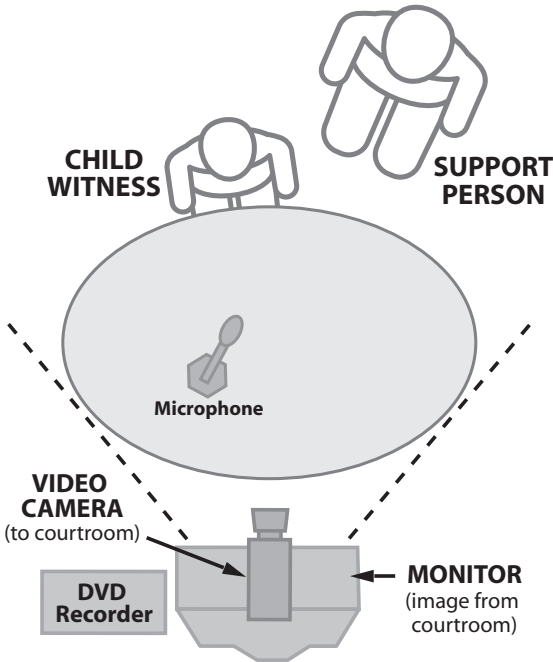
Across Canada, from east to west and north to south, court personnel find creative ways to craft comfortable and safe places for child witnesses within cramped and over-crowded courthouses. In handbook No. 3., we provide guidance on the optimal arrangement of a testimony suite. At minimum, a testimony room itself has a table, chairs, monitor, camera and microphone as illustrated here. A DVD/VCR player, to view a video-recorded statement, should be available. In this diagram, the lawyers sit in the testimony room. Have all the equipment turned on and tested before you invite the child into the testimony room.



In some courthouses, you find a novel arrangement using CCTV-assisted testimony inside the courtroom. In these setups, the child is in the courtroom but sitting in a screened off area, often facing the judge. The accused views the child's testimony on a monitor. This arrangement is discussed in handbook No. 3 about witness screens.

**Figure 3**

Sometimes lawyers stay in the courtroom to ask their questions of the child, a decision dictated by space constraints, local practice or judicial preference. This arrangement is also used when the testimony is accomplished remotely. It is important to use a support person, so the child is not alone in the testimony room.



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*Space permitting, have a support person in the testimony room, as per s. 486.1 of the Criminal Code. Application for both measures can be made concurrently. Seat the support person in camera range so observers in the courtroom can be assured of his or her neutrality and absence of communication. Handbook No. 5 in this series describes the use of a designated support person.*

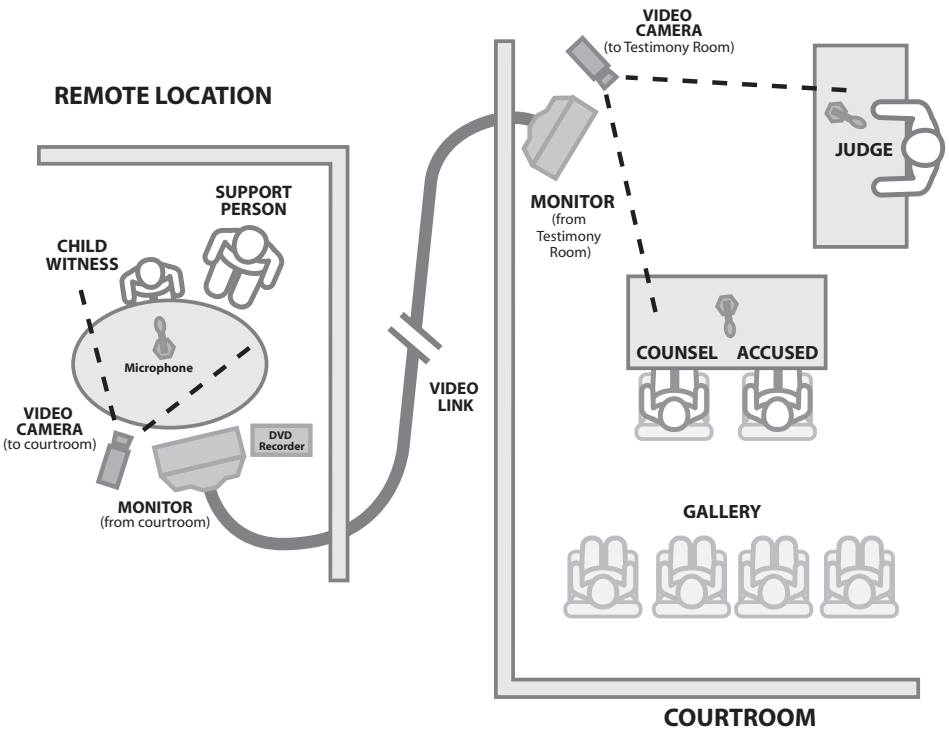
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# Remote Testimony

The technologies permitting remote testimony are fast evolving. Secure transmission of testimony can be sent via telephone lines, cable, satellite, or using the Internet, as long as both sites have compatible systems.

**Figure 4**

Here the child testifies from a location outside the courthouse, possibly in another building or another part of the province/territory. The remote location could be another courthouse, a community centre, a social service agency, a health facility or a police station.



## Criminal Code Section 486.2

Selected excerpts from s. 486.2† as amended by Bill C-2.

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|   |  |
|---|--|
| Testimony outside courtroom – witnesses under 18 or who have a disability | (1) Despite section 650 [Accused to be Present in Court], in any proceedings against an accused, the judge or justice shall, on application of the prosecutor, of a witness who is under age of eighteen years or of a witness who is able to communicate evidence but may have difficulty doing so by reason of a mental or physical disability, order that the witness testify outside of the court room or behind a screen or other device that would allow the witness not to see the accused, unless the judge or justice is of the opinion that the order would interfere with the proper administration of justice. |
| Application   | (2.1) An application referred to in subsection (1) or (2) may be made, during the proceedings, to the presiding judge or justice or, before the proceedings begin, to the judge or justice who will preside at the proceedings.  |
| Conditions of Exclusion   | (7) A witness shall not testify outside the court room under subsection (1), (2), (4) or (6) unless arrangements are made for the accused, the judge or justice and the jury to watch the testimony of the witness by means of closed-circuit television or otherwise and the accused is permitted to communicate with counsel while watching the testimony.   |
| No Adverse Inference  | (8) No adverse inference may be drawn from the fact that an order is, or is not, made under this section.  |

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† Sections 486.2(2) and (3) to (6) have been omitted.

## Bill C-2: What's the Same? What's Changed?

Bill C-2 created the latest in a series of amendments to the *Criminal Code* and the *Canada Evidence Act* pertaining to child witnesses. When the Bill C-2 amendments came into force in January of 2006, these features of the provisions for testimony outside the courtroom changed.

### NEW

- no restriction on type of offence
- any witness under age 18
- presumptively available, unless testimony outside the courtroom would interfere with the proper administration of justice

### PREVIOUS

- use was restricted to specified offences, mainly sexual offences and offences in which violence was used, threatened, or attempted
- only available to qualifying witness under age 18
- available at the discretion of the Court

These features did not change:

- application is made by the Crown prosecutor (or the witness).
- arrangements must be made for the accused, the judge or justice and the jury to watch the testimony of the witness;
- the accused must be able to communicate with counsel while watching the testimony, even if counsel is sitting in the testimony room to question the child; and,
- no adverse inference should be drawn from the fact that an order is or is not made for testimony outside the courtroom.



For more information on the Bill C-2 amendments, see the handbook in the series called *Overview of Issues Related to Child Testimony*.

Legislative provision for shielding a child witness has been available in Canada since 1988. However, the first reported use of such a measure was in England in 1919, when a child was permitted to testify outside of the sight of her father.

*R. v. Smellie* (1919), 14 C.A.R. 128.

# Basic Facts About Testimony Outside the Courtroom

## Who qualifies for testimony outside the courtroom?

Any witness under the age of 18 who wants to (subject to judicial approval).



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*PRACTICE TIP: Availability of the requisite equipment varies. However, portable CCTV equipment can be acquired and used virtually anywhere, with enough notice and planning.*

---

## In what type of proceedings can a child testify outside the courtroom?

In any criminal court or youth justice court proceeding.

## When can the Crown prosecutor make an application?

At any point, to the presiding judge or justice, ideally as early as possible prior to the day the child will testify.

## Can the judge or justice refuse to permit testimony outside the courtroom?

No, unless he or she is “of the opinion that the order would interfere with the proper administration of justice.”



---

*Davies noted the key arguments against the use of CCTV with child witnesses: it is easier to lie when not sitting face-to-face with the accused, triers of fact cannot assess as readily non-verbal cues of lying, and that a stressed witness is more credible to the jury (especially if crying). He reviewed the international literature on CCTV-use and concluded that these ideas were not empirically supported. Evaluations in the U.K. and Australia show CCTV has a neutral or positive impact on the quality of evidence, that court personnel accept its use, and that children have more positive experiences as witnesses. Experimental studies of mock jurors indicate that video-link testimony does not impair jurors' abilities to assess witness credibility (an ability which is not very accurate in the first place).*

*Graham Davies (1999). The Impact of Television on the Presentation and Reception of Children's Testimony. International Journal of Law & Psychiatry, 22(3-4): 241-256.*

---

## Who sits in the testimony room?

The child and, ideally, a designated support person. The defence and Crown counsel may sit there to ask their questions. Unless he or she is the designated support person, it is neither typical nor recommended for a parent to be in the room. An interpreter would have to be present if required, as might a camera operator or technician.

## How does the child make an oath/affirmation or promise to tell the truth?

The court clerk can briefly visit the room or address the child via the CCTV link.

### Guidelines for setting-up a testimony room

As new courthouses are built and old ones retro-fitted, court administration staff are faced with the opportunity - and challenge - of designing and decorating a testimony room and related facilities. These are some guidelines.

- The testimony room can be brightly painted but minimally decorated.
- Toys, stuffed animals and games are best kept in the waiting room because they will distract the child.
- Lawyers appreciate adequate table surface to fit their papers and files.
- A high-quality microphone is a necessity.
- The testimony room ideally will be sound proofed to avoid the distractions of corridor noise and the courthouse public-address system.
- Where possible, an adjacent waiting room and private washroom is best.

Because a child may wait hours before testifying, a welcoming waiting room is appreciated, as we describe in handbook No 3.



Researchers questioned jurors at the conclusion of 25 criminal trials for child sexual abuse, a total of 277 jurors in all. All the child complainants testified using CCTV. The majority of jurors (88%) saw the use of CCTV as either “very fair” or “quite fair” to the accused.

Judy Cashmore & Lily Trimboli (2006). *Child Sexual Assault Trials: A Survey of Juror Perceptions*. Sydney AU: New South Wales Bureau of Crime Statistics & Research.

# What Prosecutors Should Know About Trauma

You may wonder why we include here a discussion about trauma. Isn't that the domain of therapists and doctors? Consider these facts:

- witnesses who saw or experienced a criminal act(s) were traumatized to a greater or lesser extent;
- some coping strategies in trauma survivors reduce their perceived credibility as witnesses (e.g., drug use);
- some features of the court process can trigger trauma reactions in people already experiencing post-trauma distress; and,
- some features of the court process can themselves be traumatizing for vulnerable children, such as harsh cross-examination.

Understanding trauma helps us focus children on the task of testifying rather than on their worries and feelings.

## A few key facts about trauma and trauma reactions

- “Trauma” can be a single event or an accumulation of repeated events during which you fear for your safety or that of another person.
- During the traumatic event(s), the victim is flooded with feelings of terror, loss of control and especially helplessness.
- Sexual victimization can also cause feelings of guilt and shame.
- These intense feelings come back if “triggered” - even years after the initial trauma - by encountering a vivid reminder.
- Triggering reminders can be sights, smells or thoughts.

Traumatized individuals try to avoid “triggers” they know will overwhelm them with intense emotions and possibly panic. This avoidance can take the form of avoiding certain people, places or objects (e.g., knives). A traumatized person tries to avoid thinking about the event, which can be difficult when unwanted thoughts unpredictably pop into consciousness. These are called “intrusive thoughts.”

## How and when can court involvement trigger trauma reactions?

- By reviewing a written or video-recorded statement before court.
- That first glimpse of the accused can be extremely “triggering” for some.
- During examination in-chief, thinking about the events associated with the traumatic event can trigger a flood of emotions.
- During cross-examination, the witness may have to go over those events again (children find this frustrating at the best of times) and possibly in greater detail.
- Also in cross-examination, the witness may feel blamed for being victimized or feel cast in the role of liar.

A verdict of acquittal may trigger feelings of helplessness and the fear that no one believes them (often associated with delayed disclosure in children) or feelings of guilt and self-blame for the offence (sometimes ideas planted on purpose by the accused to prevent disclosure).



---

**PRACTICE TIP:** *Think about something that terrifies you, like big deadly snakes. What would it take to get you to enter a room where you knew a big snake was? How would you feel entering the room and coming face-to-face with a big snake? If someone were asking you questions, wouldn't you continue to focus on the snake? Those thoughts and feelings approximate what a child thinks and feels when in a courtroom with someone who traumatized them. The fear may not be rational, but it's real. This example also helps explain the different reactions of people, which varies from mild anxiety to full-blown panic depending on their level of fear.*

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Different people exposed to the same trauma can have dramatically different reactions over the short- and long-term. Not all people exposed to a trauma will go on to experience post-traumatic reactions. Or a person can manage fine on a day-to-day basis but be overwhelmed when suddenly encountering a trigger, such as a seemingly harmless comment from another person or a smell of cologne.

### **The role of coping as a reaction to trauma**

No one can tolerate being constantly in a state of agitation and anxiety so each traumatized person seeks ways to feel better, called “coping strategies.” Coping can be healthy and positive, like doing yoga or getting therapy. Coping can be unhealthy or negative, like taking drugs or cutting your body to numb feelings. Whether objectively positive or unhealthy, each person's individual coping strategies are important because they help them get through the day.

### **What coping with trauma can look like in children**

Children can't access some of the healthier coping strategies without adult help. For example, a child needs adult help to enter therapy. Children's coping can be inside, where it's hard for us to see unless it shows in troubling behaviours. The following reactions, some of which could be caused by other stressors, can be signs of trauma in children:

- sleep problems including nightmares;
- unexplained tummy aches or head aches;
- separation anxiety or sudden displays of crying and panic;
- regression in previous developmental advances, such as bed wetting; or,
- inability to concentrate or remember things.

## What coping with trauma can look like in teens

Teenagers use a wider array of coping strategies than children, but many are not healthy ones. It can be difficult to tease out trauma-related coping from normal aspects of adolescence, such as mood swings. Reactions to the current offence may be intertwined with earlier traumas such as child abuse or neglect. However, this list reflects some trauma-related coping strategies seen in teen victims of crime:

- minimization of the offence (e.g., “I don't know why everyone is making such a big deal about this”);
- running away from home (especially when home is abusive);
- using drugs or alcohol to quell intense anxieties;
- working in the sex trade to create an illusion of control over sexual contact or having multiple sexual partners for the same reason;
- self-isolation and loss of contact with friends;
- obsessive use of video games or music (to block thoughts and feelings);
- detachment or apparent absence of emotions (also to block thoughts); or,
- self-harm such as carving (also to block thoughts and feelings).

Because of these coping strategies, the most vulnerable young people can be seen as the least credible witnesses and they are challenging clients for prosecutors and victim support workers.

## Physical and psychological avoidance in traumatized witnesses

In prospective witnesses, avoidance can manifest by not appearing in court to testify. This act is rare. More commonly you see psychological avoidance, which can take several forms in the witness box: choosing not to relate details of the offence which are too painful to think about; or, traumatic forgetting in which they genuinely cannot recall into consciousness details of the offence.



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**PRACTICE TIP:** *A child or teen can appear calm and unaffected in pre-court interviews, only to panic when entering the courtroom or hold back on describing key elements of the offence when testifying. It's impossible for you to predict in all cases. In fact, it's impossible for them to predict. Even adults cannot predict in advance how testifying will affect them. Offer all available protections to every young witness.*

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*People who work with trauma victims must take care of themselves too.*

Jan Richardson (2001). *Guidebook on Vicarious Trauma: Recommended Solutions for Anti-violence Workers*. Ottawa ON: Public Health Agency of Canada.

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## FAQs about Trauma and the Child Witness

- Q.** *When the charge before the court involves a relatively minor offence, why would CCTV testimony be considered?*
- A.** When assessing the impact of trauma on a child, offence seriousness is not the only - or even the best - indicator. Children can be emotionally vulnerable because of a prior victimization, mental health issues or developmental delays. The relationship between the child and accused is also an important factor to consider.
- Q.** *Some people want the child to start out by testifying in the witness box to assess the need for testimony outside the courtroom. If the child reacts negatively, the aid can then be used. Is this reasonable?*
- A.** This approach is not recommended. Some children will freeze or become highly distressed or agitated. Once badly shaken, a child may refuse to testify. You cannot always predict this reaction, nor can they.
- Q.** *Some young witnesses live on the streets and seem to be “tough as nails.” I assume they don't need testimonial aids. Correct?*
- A.** No. Young people cut adrift from the care and guidance of nurturing adults can be the most vulnerable clients you encounter. Bravado is a common defence mechanism in teenagers, as they seek to appear more mature and able to cope than they really are. With street youth, their arsenal of survival skills may include distrust of adults, hiding any fears, and appearing “tough as nails.” This appearance can mask the stereotypical symptoms of trauma such as panic attacks. That's why it's important to understand the concept of “trigger.”
- Q.** *The teenage witness in a sexual abuse case describes the offence in an oddly dispassionate way. Does that mean she is lying?*
- A.** You are probably seeing a coping strategy. She may be afraid of getting too close to the emotions associated with the offence, lest she lose control. She could be coping by distancing herself from the emotional content of the memory, recounting it as something that happened to someone else. You may hear victims say, “it was no big deal.” By minimizing the offence, they retain a sense of themselves as “okay” and in control.

## FAQs About Testimony Outside the Courtroom

- Q.** *The accused must be able to communicate with defence counsel while the child testifies. When counsel is in the testimony room with the child, how can this be arranged?*
- A.** A number of creative solutions are used. For example, the accused can give a pre-arranged signal such as raising a hand or standing up. A recess is then ordered. Some judges routinely order a recess between examination-in-chief and cross-examination, to ensure the accused has ample time to consult with counsel. A more sophisticated, but costly, system is to outfit both parties with earphones and microphones or to install a telephone link.
- Q.** *If a witness must identify a piece of evidence such as a diary or other document, how can this be managed?*
- A.** A common practice is for the court clerk to take the item to the testimony room for the witness's review. Again, there is a more costly alternative. Some courthouses have special document cameras for this purpose.
- Q.** *In our courthouse, we can use either the screen or CCTV. How do we decide which measure to use?*
- A.** Demonstrate both options to the witness and let him or her decide. Involving children in the decision helps encourage participation and provides the young witness with a sense of control. Some children prefer the screen, so don't assume it is the inferior option in all cases. There are some cases, however, where your professional judgment suggests the CCTV option will be necessary.



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*In handbook No. 3, we list reasons that some children don't like to use the screen. On page 23, we describe some research findings on what children don't like about CCTV.*

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- Q.** *When the witness is asked to identify the accused, how is this accomplished?*
- A.** Allow the child to testify first. Then have the camera pan the courtroom so the child can see everyone present on the monitor in the testimony room.

- Q.** Should witnesses know that the accused sees and hears them as they testify?
- A.** Yes. The court orientation visit is an opportunity for the child to view the courtroom and the testimony room. When demonstrating the CCTV, explain that the accused will see them. Reassure children that they will not be able to see or hear the accused on their monitor in the testimony room.
- Q.** What happens when a video-recorded statement is introduced as evidence?
- A.** The child views the statement on a DVD/VCR player in the testimony room. Everyone assembled in the courtroom must view the statement more-or-less simultaneously. If the child adopts the contents of the statement, cross-examination ensues.




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*Handbook No. 4 explains issues associated with video-recorded statements.*

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- Q.** Can the witness meet the judge when testifying via CCTV?
- A.** Most judges introduce themselves to the child via the CCTV. Some judges introduce themselves in the testimony room. This interaction gives the judge an opportunity to meet and observe the child in person. The camera and microphone are turned on so the meeting is viewed on the courtroom monitor. The location of the CCTV room could be an obstacle for such meetings and it is not possible in remote testimony situations.
- Q.** If a witness testifies outside the courtroom for the preliminary hearing, is it assumed that the same situation will apply at trial?
- A.** Not necessarily. The need should be ascertained each time a child testifies. Some children testify at preliminary hearing without the benefit of a testimonial aid, but will need CCTV or a screen at trial (or vice versa).
- Q.** Who operates the CCTV equipment?
- A.** In some places, technicians operate (and sometimes set up) the equipment. In other places, the court clerk operates (and sometimes sets up) the equipment. When equipment is rented, technicians can be hired.

# What Children Say About Testifying Outside the Courtroom

It's important to ask children their opinions about testifying via CCTV because some children prefer to be in the courtroom. More commonly, children appreciate the opportunity to testify outside the courtroom. Here are some things children in our jurisdiction told us, both pro and con.

## Seeing the accused can be distressing

*"I'm a very shy person. Seeing him would make me very nervous and I would stutter. I couldn't have talked to the judge."* (Sam, age 8)

## Certain "looks" or facial expressions can silence a child

*"I was afraid to see him and I didn't know what would happen if I saw his mean stare."* (Cara, age 9)

## Being in the presence of the accused can heighten concerns about safety

*"I would not feel safe in the same room as him. He said he would hurt me if I told anyone."* (Aaron, age 11)

## Children can be intimidated by seeing supporters of the accused

*"I didn't have to see him and all his family and friends staring at me when I was talking to the judge."* (Amina, age 13)

## The child is distanced from the formal environment of the courtroom

*"It's a good way to talk to the judge. I just talked into the microphone and told the truth."* (Moon-shing, age 9)

## Seeing the accused may trigger trauma reactions

*"I'd freak if I saw him. For months I had nightmares of him coming after me. They got worse near the court date. I couldn't have testified if I'd been in the courtroom with him."* (Mae, age 14)



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**PRACTICE TIP:** The court day is often long and exhausting for children. Delays caused by technical problems just increase frustrations and fatigue, making it difficult to get some kids to focus. Test the cameras and sound systems the day before and again on the morning of court.

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**PRACTICE TIP:** Some teenagers decline CCTV lest they appear “uncool” or “like a wuss.” Reassure them that CCTV is for all young people under 18, and that even some adults prefer to use it. It is the law.

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### **Confronting the accused is empowering for some children**

*“I wanted to face my fear and tell what happened in front of everyone.”  
(Alek, age 12)*

*“I wanted him to know that I am not afraid of him any more.”  
(Tanya, age 15)*

### **Knowing their video image is seen by the accused is unsettling for some children**

*“It would be weird if he was watching me and I couldn't see him, so I testified in the courtroom.” (Pierre, age 14)*

### **CCTV may not be the best aid for witnesses in child pornography cases**

*“He [the accused] took photographs of me when I didn't know. So I didn't want a camera used when I testified.” (Bianca, age 15)*

### **Seeing a supportive parent can outweigh concerns about seeing the accused**

*“If I had used CCTV I wouldn't have had my mom and my dad there when I testified.” (Birget, age 11)*



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*In this English study, 44 young people who testified with CCTV were asked to describe anything they didn't like. The most common complaint was about the testimony room, including constrained space, uncomfortable chairs, drab decor, and poor ventilation. Less common issues were seeing the accused on the monitor (a rare but disturbing accident), delays caused by technical difficulties, and the distress of learning that the accused saw them while they testified (among youth who had been told otherwise).*

Joyce Plotnikoff & Richard Woolfson (2004). *In Their Own Words: The Experiences of 50 Young Witnesses in Criminal Proceedings*. London UK: National Society for the Prevention of Cruelty to Children.

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# Good Practice Guidance for Tele-testimony

These points represent the optimal use of testimony outside the courtroom. Local contingencies and resource availability may necessitate some modifications.

1. Ensure each child witness and his or her family are aware of the testimonial aids available to them by law.
2. All child witnesses should be considered as candidates for testimony outside the courtroom, regardless of age or type of offence.
3. As with all testimonial aids, make the decision to use testimony outside the courtroom early in the process. This leaves adequate time to notify the defence, make application to the Court, and reserve access to the equipment. Also, when witnesses know they will use a testimonial aid, it is a great relief.
4. When age-appropriate, ask for the child's preference about CCTV and explain the other options available. Provide a demonstration if possible to help them decide.
5. Courtroom orientation and demonstration of aids is recommended several weeks before the court date.
6. Knowing a witness will testify outside the court does not obviate the need for victim support services, including the features of pre-court preparation discussed in overview handbook No. 1. Ensure each witness receives the benefit of victim support in the weeks prior and on the day of court.
7. A young witness appreciates the presence of a support person with him or her in the testimony room. Apply for both measures at the same time.
8. Be very careful using CCTV in cases involving child pornography.



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**PRACTICE TIP:** An accidental encounter in a security line-up or a sighting of the accused in a public waiting area can cause significant distress or trigger a trauma reaction. Better safe than sorry. Arrange for the child to arrive early to avoid any contact or sightings of the accused or his supporters. Escort the family into the courthouse and provide a secure waiting area. When necessary, provide an escort to the washroom or (for adults) the smoking area.

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## Situations that May Arise

To be prepared for all eventualities, we list here examples of situations you may encounter.

- Technology glitches are to be expected so test and re-test the system and then test it again before bringing the child into the testimony room.
- Those of us with little technical savvy can underestimate the challenges of remote communication and may not be aware, for example, of potential system incompatibility (e.g., IP and ISDN protocols). Always seek the advice of experts.
- CCTV tends to be available in the provincial or territorial courts. Increasingly, superior courts are being outfitted with CCTV. Where this arrangement is not available, some judges have heard a child's testimony at the lower level. This may mean temporarily moving the jury.
- Portable CCTV units are vulnerable to “missing pieces” and cables that wear out. Checking equipment at both the packing and unpacking stages is crucial. Local stores may stock the missing part. Consider the option (if available) of telephone consultation with a technician.
- Despite advance setup and testing, the equipment may malfunction on the day it is needed. Have a contingency plan. Check whether the child could testify using a screen or if the case could be adjourned.
- Remind everyone to turn off telephones and similar devices. Some electronic transmissions interfere with the operation of some types of CCTV equipment, most obviously manifested in screechy feedback.



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*In a recent U.K. study, over 40% of young or vulnerable witnesses reported seeing the accused on the day of court, despite that fact that separate waiting rooms were almost universally available. The most common locations of sightings were in the corridor outside the courtroom, in the washrooms, in the cafeteria, or on their journey to or from the courthouse.*

Becky Hamlyn et al. (2004). *Are Special Measures Working? Evidence from Surveys of Vulnerable and Intimidated Witnesses.* London UK: The Home Office.

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# Explaining CCTV to Children

Young children need things explained in simple, concrete terms.

## Key points to emphasize

- There is no broadcast of the testimony to anywhere except the courtroom.
- No one makes a videotape of (or records) the testimony.
- The accused will view the witness on a screen in the courtroom.
- It is possible that the judge will not agree to use the CCTV or technical difficulties will arise: you cannot guarantee that a child will use CCTV.

## Explaining CCTV to children

- You don't go into the big courtroom - you talk to the judge from a special witness room.
- Closed-circuit is not the same as your TV at home - it's not real TV.
- The people in the courtroom see and hear you on their monitor.
- The microphone here is how the people in the courtroom hear you.
- The camera here is how the people in the courtroom see you.
- You see and talk to the judge whose face will be on your monitor.

Explain who will be in the room with the child once you know the identity of any support person and whether or not the lawyers will be present. Inform children of any local contingency that you expect such as if the judge is likely to enter the testimony room to introduce him or herself.

## “Tips” to give children

- Once you are in the testimony room, everything you say or do is seen in the courtroom (so act properly and don't be silly).
- Speak toward the microphone and look at the monitor so the judge hears you.
- The witness room is like a special courtroom so it has the same rules, like no chewing gum or wearing hats.
- Just like if you were in the big courtroom, you have to tell the truth.
- Speak clearly: don't nod or shake your head but say “yes” or “no” instead.
- If the chair is too low, ask for a cushion to make you higher.



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*Emphasize also the other “rules for witnesses” listed on page 17 of handbook No. 1.*

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## Ascertaining the Child's Opinion



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*PRACTICE TIP: Children may be testifying about traumatic events they saw or experienced. The act of testifying itself can also be traumatic. Witnesses traumatized by the court process will give poor evidence, or no evidence. Consider each child as a candidate for testimony outside the courtroom*

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Research suggests, confirming common sense, that children should play a role in deciding about testimonial aids. Asking for their input gives them some small sense of control and feeling of involvement. Demonstrate the options available locally and help them understand the pros and cons of each. Some children prefer to testify in the courtroom with no barrier, as we described earlier, to confront the accused and show they are no longer afraid. Some children like the screen, but many do not.

Although you may learn their opinions early in the process, check again as the court date approaches because a child's concerns may change over time. Children (especially young children) cannot anticipate how they will react when actually faced with the task of testifying. If they decline an aid, have one available as backup.



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*PRACTICE TIP: Seeing something is better than hearing or reading about it. An orientation visit to the courthouse with CCTV demonstration is the most effective way to prepare children for the experience of testimony outside the courtroom. When this is not feasible, showing a video depiction of CCTV is helpful. There are also several web sites for children, cited later under "further readings."*

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*This much-cited Australian study concluded that children fared best when given a choice to use (or forego) the CCTV option. Children who declined the option of CCTV did as well as children who accepted the option and better than children for whom the option was not available.*

Judy Cashmore (1991). *The Use of Closed-circuit Television for Child Witnesses in the ACT*. Sydney AU: Australian Law Reform Commission.

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## **Delivering Service in the Remote Court Location**

Canada is a large country and the administration of justice extends to every corner. In great part, this is accomplished by circuit-court teams travelling through northern and other remote areas on a regular basis. Victim support workers are essential team members. When the “courthouse” is a legion hall or recreation centre, supporting a child witness before and on the day of court is challenging but not impossible. Where the catchment area of an urban courthouse includes remote communities, some strategies used to deliver pre-court preparation services include:

- contracting with a resident of the remote community to deliver victim-support services as-needed;
- travelling to remote communities to meet with families;
- scheduling meetings when the circuit-court team is in town for other cases (if time permits);
- telephone contact and tele-conferences; or,
- “virtual meetings” linking court-based personnel with a remote location as described on page 5.

Send information booklets in the mail and encourage the use of Internet sites designed for children and teenagers. These strategies are also useful when children will testify remotely from their home communities. Generally, apply these principles.

### **Establish communication early in the process**

Initiate communication with the family soon after charges are laid and keep them apprised of case developments, as you would with any family.

### **Harness technology for communication**

Explore available options for video-conferencing. For example, many health facilities have equipment for tele-health services.

### **Provide pre-court preparation services**

The basic components of pre-court preparation for children are described in handbook No. 1.

### **Protect the child from seeing the accused while waiting**

This could mean waiting in a local coffee shop (with a cell phone) or in a car in the parking lot.

### **Protect the child from seeing the accused while testifying (if necessary)**

This could mean improvising a room divider as a barrier or renting video equipment to facilitate a testimony from another room in the building. Circuit-court teams could travel with portable CCTV equipment or it can be delivered ahead of time. Some witness screens are portable.

## Further Readings

In addition to studies and reports already cited, these sources will be informative.

Doherty-Sneddon, Gwyneth & Sandra McAuley (2000). Influence of Video-mediation on Adult-Child Interviews: Implications for the Use of the Live Link with Child Witnesses. *Applied Cognitive Psychology*, 14: 379-392.

Eth, S. & R.S. Pynoos, eds. (1985). *Post-Traumatic Stress Disorder in Children*. Washington DC: American Psychiatric Press.

Murray, Kathleen (1995). *Live Television Link: An Evaluation of its use by Child Witnesses in Scottish Criminal Trials*. Edinburgh UK: Central Research Unit, The Scottish Office.

Orcutt, Holly K., Gail Goodman et al. (2001). Detecting Deception in Children's Testimony: Factfinders' Abilities to Reach the Truth in Open Court and Closed-Circuit Trials. *Law & Human Behavior*, 25(4): 339-372.

*R. v. Levogiannis*, [1993] 4 S.C.R. 475. †

Review of Child Evidence Working Group (2007). *Improving the Criminal Trial Process for Young Witnesses: A Consultation Paper*. London UK: Office for Criminal Justice Reform, The Home Office. †

Taylor, Natalie & Jacqueline Joudo (2005). *The Impact of Pre-recorded Video and Closed Circuit Television Testimony by Adult Sexual Assault Complainants on Jury Decision-making: An Experimental Study*. Canberra AU: Australian Institute of Criminology. †

van der Kolk, B.A., A.C. McFarlane & L. Weisaeth, eds. (1996). *Traumatic Stress - The Effects of Overwhelming Experience on Mind, Body and Society*. New York NY: The Guilford Press.

† These resources are available on the Internet.

### Web sites for children and teenagers

|   |  |
|---|--|
| Cory's Courthouse                           | <a href="http://www.coryscourthouse.ca">www.coryscourthouse.ca</a> |
| Court Choices: Options for Youth Testifying | <a href="http://www.courtchoices.ca">www.courtchoices.ca</a>       |
| Courtprep.ca                                | <a href="http://www.courtprep.ca">www.courtprep.ca</a>             |

## About the Handbook Series

This is one of seven handbooks written to aid front-line justice personnel who use special accommodations and testimonial aids for young victims and 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

These handbooks provide a concise and convenient summary of legislation, operational and logistical issues, FAQs, and helpful tips for working with children and teenagers.



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*The information, references and guidelines in this handbook focus on child witnesses (under age 18), although material may be relevant for some adult witnesses contemplated in the provisions for vulnerable witnesses.*

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Over two decades, our own research and experience at the Child Witness Project 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” of his or her evidence. Special accommodations and testimonial aids are important tools available for this purpose.

Every child witness in Canada has the right to ask for measures including closed-circuit or remote testimony, screens, and recourse to a support person while testifying. Yet, there is wide variation in the frequency of use of the special accommodations and testimonial aids now provided for in the *Criminal Code*. The overarching goal of this handbook series is to ensure that no child is denied access to the appropriate accommodation or testimonial aid only for want of awareness, knowledge or understanding. By creating these practical handbooks, we hope to fulfill the promise of special protections made available by Parliament so children and young people will not be traumatized by their experiences as witnesses.