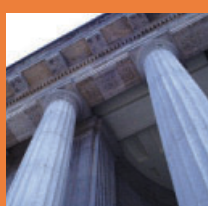
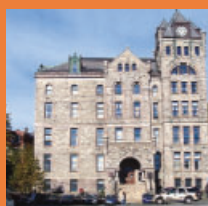
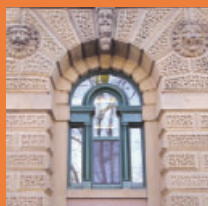


*“a full
and candid
account”*



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

BOOK

7

Children & Teenagers Testifying in Domestic Violence Cases

*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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From his earliest memory, 10-year-old Josh has heard and seen loud arguments and violence in his home. Many times he saw his father hurt his mother and almost every day would hear him insult and demean her. Josh knew well how she felt. His father used a belt to “punish” him. Both Josh and his mother were intimidated by his anger and afraid of the repercussions if they did not comply with his increasingly irrational demands.

The charges now before the court include assault with a weapon (a chair) and uttering death threats. A neighbour overheard shouting and called the police. Josh and his mother reluctantly gave statements. Josh's video-recorded statement documented that he heard his father threaten to kill his mother. Josh's older brother Albert was angry when he learned about the charges and blames both Josh and his mother.

Mr. H. will not plead guilty.

Ms. H. tearfully tells the prosecutor that she cannot remember the incident. The prosecutor reluctantly decides that Josh's evidence is essential to the case. She will arrange for Josh to testify via closed-circuit television and ensure he has a support person. If necessary, she will use his video-recorded evidence. When Josh's mother learns that Josh will be testifying, she is upset and angry that the system is meddling in “our own personal business.” Josh is there to witness her outburst. He is already worried and confused about his role in the prosecution. He knows he should tell the truth but worries about the consequences for his family and himself if he does. Clearly his mother does not want him to testify. His brother said that it will be his fault if their father were to go to jail. He is not sure if he wants his father to return home, but is very worried about his reaction to seeing him testify. Josh feels confused and alone.

Children testifying in domestic violence cases include (1) those who witnessed inter-parental offences, (2) those who witnessed inter-parental offences but also were assaulted by a parent; and (3) teenaged victims of intimate partner assault.

The focus here is on children who are potential witnesses in domestic violence cases. Their names may be on a witness list because they gave a police statement during the investigation. We also discuss teenaged complainants in intimate violence cases, who are another type of “child witnesses.” For the children and teenagers, these cases present both the typical challenges for court witnesses as well as pressures unique to offences occurring within the family context.

Children Testifying in Domestic Violence Cases:

Introduction

The prosecution of domestic violence cases increasingly involves enhanced techniques of evidence collection and the use of specialized court processes. Police officers are trained to look for children when responding to domestic violence calls and to take statements from them where appropriate. In consequence, it is increasingly common to find children's names on witness lists, mostly as prosecution witnesses but also potentially as defence witnesses. Children can be called as witnesses in domestic violence cases when they:

- witness an alleged crime committed by an intimate partner against a parent (usually a mother), such as assault, threats, harassment, forcible confinement, etc.
- witness bail violations or violations of probation or parole conditions

They will testify as complainants in cases where:

- they have been directly threatened or harmed by a parent and will testify about what they experienced
- they are victims of an alleged crime in their own intimate relationships



Among cases referred to the Child Witness Project in London, Ontario, 14% involve children who are potential witnesses in domestic violence cases. In cases where a child witnessed inter-parental violence, 25% also involved charges for assaulting the child. These children are both complainants and witnesses in the criminal proceedings.

Domestic violence cases take many forms, from long-term chronic violence through to an isolated incident in the context of an argument. The intimate relationships can have lasted for decades, or for a few weeks. Increasingly, women are being charged along with men (called dual charging) or on their own if police see them as the “primary aggressor.” Parallel proceedings in family court are common and child protection involvement is possible as well. Whether your community has a designated domestic violence court, or whether domestic violence cases are prosecuted through the standard process, people working in the criminal court system must understand the unique needs of children in domestic violence cases.

Individual assessment is key

There is no prescriptive approach, given the great variability of circumstances you will see among domestic violence cases in your community. Each case must be assessed individually and each child's unique situation in the family must be considered. Family history and a child's perspective on the prosecution have implications for how to solicit a full and candid account in the courtroom.

Understanding family dynamics is also important

Children who may be witnesses in domestic violence cases can face painful dilemmas and stressful family dynamics. They can feel divided loyalties, guilt, and pressure not to testify. Some of these children experience ongoing trauma reactions traceable to multiple incidents of violence or to witnessing a sudden violent assault where they feared for their own life or the life of a parent. On the other hand, children will have little or no attachment to a man only recently or casually involved in their mother's life. His absence could have no impact on the family in an emotional sense.

What children can feel and think after charges are laid

Children can experience a range of complicated feelings about themselves, their parents and their family. The range of feelings includes: worry, fear, guilt, relief, sadness, anger, helplessness, powerlessness, blame, shame, embarrassment, anxiety and stigmatization.



PRACTICE TIP: Early screening by the prosecution can usually identify the need to call the child. If yes, victim services can immediately contact the victim/parent. If no, informing the parent (and child if he or she is aware) can reduce anticipatory anxiety.

Children struggle with stressful family dynamics and worries

Feeling “in the middle” of parental conflict is difficult. Children can face loyalty conflicts, believing they must take sides. Different children in the same family may have different opinions and experiences. Some children feel safe knowing an abusive parent is out of the home. Others yearn for his return. You may find children quietly worry about issues such as these:

- a sibling who remained silent about family secrets may be angry at a sibling who called 911 or gave a statement to the police;
- a child who wants the accused parent to return home can be isolated with those feelings if other family members are glad he's gone;
- a child who is afraid of the accused parent can be isolated with those feelings if other family members want his return;
- a child who called the police may blame him or herself for financial struggles the family experiences with the absence of a breadwinner;
- a child may doubt his or her mother's ability to keep the family safe;
- laying a charge may have been an unwanted outcome for the family (e.g., they called the police to have the violence stop, not have charges laid); or,
- children may feel pressured by one or both parents not to talk about private family matters - what should they do if called to testify?

In the aftermath of criminal charges, some families move residences, often causing disruptions for children like a new school and loss of contact with old friends.

Child can have complicated feelings about the accused

Feelings about the accused can range from intense hatred through to panicked concern for his well-being. You can see that range of emotions among siblings, and even in the same child over time. A criminal prosecution focuses on one incident (usually) but that incident will have taken place against a backdrop of daily family life. Chances are there are many cherished memories of happy times, intertwined with scary memories of conflict and abuse. Especially young children can:

- worry about anger or rejection by the accused parent;
- miss the daily contact and support of the accused parent; or,
- worry that the accused parent may be suffering in prison, in danger, or lonely without his family.

You will also see children who double check the locks in case he tries to break in and who lie awake at night worrying about that possibility.

Children usually dread testifying

As in any criminal case, children are rarely keen on the prospect of testifying. You will see the full range of testimony-related worries normally seen in child witnesses plus others associated with intra-familial offences.

According to research at the Child Witness Project, the testimony-related worries most frequently reported by child witnesses in domestic violence cases are:

- accused will lie and be believed
- accused will be found not guilty
- accused will hurt me or come after me when court is over
- I will feel sick in the witness box
- accused will hurt my family [because I testified]



PRACTICE TIP: *Children testifying in domestic violence cases are entitled to the special protections available to all testifying children. Don't assume that children don't want or need protection from seeing an accused person they know well.*

Referral brokerage is an important feature of victim support

Victim support personnel can help by giving case information, reducing testimony-related anxiety, and providing child-centred advocacy for issues such as testimonial aids. To address family dynamics and impact of exposure to violence, a referral can be made to a family-servicing agency or children's mental health centre.

Living with Domestic Violence

The effects of living with inter-parental violence are diverse and vary according to factors such as age of the child, gender, emotional closeness to the abuser, and characteristics of the violence including intensity and duration. These points help us understand how a child might approach the possibility of testifying in a domestic violence case.

- Children can have distorted ideas about attribution for the violence, often blaming themselves or their mother.
- Children can love a father who is abusive to them or their mother.
- On the other hand, in some families, the father is a terrifying and unpredictable figure.
- Some coping strategies used by children and teenagers can impair their perceived credibility as a court witness (e.g., running away, substance abuse).
- Siblings in the same family can have dramatically different perceptions of the violence and separate allegiances to family members: one sibling might support the father and one might support the mother.
- In families characterized by inter-parental violence, it is common to find co-existing stressors affecting children, including parental substance use, poverty, compromised mental health, and residential instability.
- Children can be taught or know instinctively that revealing family secrets is a betrayal to the family and will get people “in trouble.”
- If the violence against a mother is severe and/or frequent, it is likely that children will be physically maltreated themselves.
- A father's arrest and departure from the home can trigger unwanted disruptions and losses for children and the desire for family reunification can be intense.
- On the other hand, a father's arrest and departure from the home can be met with relief and fear about his possible return.



Alison Cunningham & Linda Baker (2007). *Little Eyes, Little Ears: How Violence Against a Mothers Shapes Children as they Grow*. London ON: Centre for Children & Families in the Justice System.

Misapprehensions Common Among Children in Domestic Violence Cases

In the months leading up to case resolution, children can blame themselves or blame their victimized parent for the incident. They may excuse the accused's violent actions, perhaps adopting rationalizations he himself voiced, such as “I warned her about spending too much money” or “she never stops complaining and she knows I'm under a lot of stress at work.” Children may disagree with the justice system response, believing it to be unfair or extreme.

Whether or not they make such statements out loud, these distorted thoughts and feelings are common in children scheduled as witnesses in domestic violence cases:

- “It was my fault he got mad and hit my mom” (e.g., I should have been better behaved that day).
- “My parents wouldn't fight so much if I were a better kid or if they loved me more.”
- “Because I called the police, what's happening to my dad is all my fault.”
- “I should have stepped up and protected my mother.”
- “If I testify, it means I'm choosing my mom over my dad.”
- “If I testify for my dad, he'll come home and everything will be good again.”
- “What's happening to my dad is unfair and it's all Mom's fault.”
- “If I say too much, I'll be taken away [by child protective services].”
- “The police have no right to come into someone's house and take someone's dad away just because he lost his temper.”
- “If I don't do a good job in court, my dad will get out and hurt my mom.”

Expect to see different opinions among siblings, especially when they are far apart in age or have different degrees of emotional closeness with the accused (e.g., biological father versus step-father). The situation will also be different when the accused has been present for the child's entire life or only a few months.



PRACTICE TIP: A counselling program is available for children of parents participating in the Domestic Violence Treatment Option Court in Yukon. Consult partner agencies in your community to determine if such a service could be a welcome adjunct to existing services.

Factors Exacerbating a Child's Distress in Domestic Violence Cases

Testimony is stressful for most children, but dynamics in domestic violence cases can amplify the typical stresses associated with testifying. Each child is unique, but finding these features in a case may suggest that children need extra support in the pre-court period.

Characteristics of the offence

- visible injury to the non-offending parent
- child tending to an injured parent while help arrives
- child being injured him or herself during the incident
- incident is latest in a historical pattern of violence
- sudden escalation of violence in a historical pattern of violence
- element of surprise, horror or feeling helpless (e.g., confined)
- presence of a potentially lethal weapon / lethal violence / death threats

The child's role in the incident

- child called the police, neighbour or extended family for help
- child disclosed to someone outside the home (e.g., social worker, teacher)
- child gave a statement to the police during the investigative process not realizing consequences (e.g., arrest, prosecution)
- child gave a statement to police against wishes of other family members

Emotional closeness to the accused

- accused is a biological parent or a long-term step-parent
- there is a close emotional bond between the child and the accused that is valued by the child and which he or she wants to continue
- accused is the parent who takes care of the child on a daily basis

Available support in post-charge/pre-court period

- caregiver is unsupportive or hostile to the prosecution, perhaps out of fear
- caregiver is distracted/stressed out/unable to discern the child's needs

Characteristics of the system response

- seeing a parent arrested / having first responders in the home
- accused parent not permitted contact with child (against child's wishes)
- accused parent permitted access visits with child (against child's wishes)
- child put in the position of language interpreter for the family
- lengthy time to case resolution / having many adjournments



PRACTICE TIP: Our interventions can be unintentionally stressful for children. From a child's point of view, police responding to a domestic violence call can be perceived as strangers in uniform invading their home, taking away a member of the family.

When to Call Children as Witnesses

There is a general reluctance to rely on child witnesses in inter-parental violence cases and most prosecutors would call a child only in special circumstances and as a “last resort.” At the same time, many Canadian jurisdictions have pro-prosecution (or “no drop”) policies for domestic violence. A child's evidence might be crucial in these types of cases:

- the child has unique or essential information;
- the credibility of other witnesses can be drawn into question;
- the complainant recants, minimizes, or cannot recall key events; or,
- the complainant is unavailable to testify or has died.

When a child is also a complainant in the case, as when he or she was allegedly assaulted by the same accused, the details of that incident may be inextricably combined with the offence against the parent complainant. In such a case, the child testifies *ipso facto* about the adult domestic violence.



PRACTICE TIP: In rare circumstances, a child has witnessed the homicide or attempted homicide of one parent by the other. Components of an assessment include: impact of trauma, current adjustment, developmental level, ability to testify, perception of safety, consideration of potential harm of testifying on the child, and recommendations for special protections. You can find more information in handbook No. 6 about hearsay evidence.

Where a case would fail without a child's testimony, factors considered in the decision to pursue a prosecution would include the age and emotional vulnerability of the child, the seriousness of the alleged offence, evidence of a historical pattern, parallel protections already in place (e.g., child protection involvement), availability of appropriate support services, and the priority of ensuring the on-going safety of a child. Wishes of the adult complainant could also play an important role.



Debra Whitcomb (2000) surveyed 128 American prosecutors about child-related challenges faced in domestic violence cases. Respondents said it was common for complainants to withdraw cooperation with the prosecution, leaving little evidence except that of the child. However, prosecutors were reluctant to call children as witnesses, especially when their mothers opposed this move. Placing a child's name on a witness list could encourage a guilty plea, some noted. Others concluded that some cases are best dealt with through the child protection system rather than by laying a criminal charge.

Domestic Violence Courts in Canada

The first specialized domestic violence court opened in Winnipeg in 1990 and the most recent, Fredericton, New Brunswick, began operation in April of 2007. Ontario has 54 domestic violence courts or sites using a domestic violence court process. Yukon has a Domestic Violence Treatment Option court. Domestic violence courts also exist in Alberta and Saskatchewan. Common components include:

- community over-sight committees;
- specialized evidence gathering procedures;
- fast-tracking of cases;
- integrated treatment component for offenders; and
- enhanced victim support.

Common goals are to encourage guilty pleas and timely case resolutions, increase victim satisfaction and cooperation with the prosecution, bring sentences in line with severity of the offence, and increase rates of both entry into and completion of offender treatment programs. In many places, there is a dual emphasis on early intervention for first-time offenders and vigorous prosecution of repeat offenders.



PRACTICE TIP: Because children are present at many domestic violence offences, training for all personnel in domestic violence courts should include information on child development, dynamics of child abuse, and guidance on how to communicate with children.

You don't need a formally designated domestic violence court to successfully and effectively process these cases. The key elements of the approach can be replicated in most jurisdictions. Operational principles include:

- victim focus (safety, support, advocacy);
- offender accountability;
- coordinated prosecution and collaborative approach;
- special training for all involved parties, from police to judges;
- using 911 tapes, medical reports and recording victim statements on video;
- solicitation of victim input at key decision-making junctures;
- early assignment of cases to prosecutor and expedited processing;
- access to treatment programs for offenders; and,
- timely referral for victims to on-going counselling if necessary.



Federal-Provincial-Territorial Ministers Responsible for Justice (2003). Final Report of the Ad Hoc Federal-Provincial-Territorial Working Group Reviewing Spousal Abuse Policies and Legislation.

Overview of Special Accommodations and Testimonial Aids

The Parliament of Canada made available these measures to all witnesses under the age of 18 years.



PRACTICE TIP: Most of these protections are also available to vulnerable adult witnesses, such as those with developmental delay.

All the measures listed here are available to child witnesses in domestic violence cases, including teenagers testifying in cases of intimate partner assault.

Closed-circuit television (CCTV)

Upon application, and where the technology is in place, child witnesses can testify in a room electronically linked to the courtroom, often using a closed-circuit video system. Similar technology is used when a child testifies from one 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 in this series describes CCTV and other ways to testify from outside the courtroom.

Exclusion of people from the courtroom

The Court may exclude 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.

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, usually because they are very young or traumatized or both. The person who heard the disclosure may be permitted to repeat the disclosure in court if that evidence is deemed to be both reliable and necessary.



Handbook No. 6 in this series described issues related to the introduction of hearsay evidence in child witness cases.

Publication ban

In cases of non-sexual domestic violence, the Court may ban publication of the witness's name or any information that could serve to identify the witness. If one of the charges involves a sexual offence, any witness under 18 years of age (or the prosecutor on their behalf) can ask for a publication ban and the Court shall make the order.



PRACTICE TIP: In the absence of a publication ban, media outlets can report the names of complainants and accused persons in domestic violence cases. Their names can be enough to identify any children to neighbours and school-mates, whether or not the children testify. Work with your local news agencies to encourage their reporting on the issue of domestic violence while being sensitive to the need of women and children to heal in private.

Screen

A device used to block the view of the accused by a testifying child. It can also be called a witness screen or a sequestration screen. Its use is possible upon application to the judge or justice.



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

Self-represented accused not to cross-examine child witness

An accused will, in most cases, not be permitted to personally conduct the cross-examination of a witness under 18 years of age. See s. 486.3 of the *Criminal Code*.

Support Person

Someone permitted by the judge or justice, upon application, to sit or stand near a child while he or she testifies, whether that testimony is in open court, is given from behind a screen, or is given via CCTV or remotely.



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

Video-recorded evidence

Used when a statement made to police is recorded on video tape or in a digital manner. If the recording is played in court, the child must “adopt the contents” of the statement and be available for cross-examination.



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

FAQs about Children and Domestic Violence Cases

- Q.** *Do you need closed-circuit or a witness screen if the accused is a parent?*
- A.** Facing the accused is the biggest testimony-related worry for children. A menacing look or facial expression is enough to silence a child, more likely true for a parent than a stranger.
- Q.** *If the child is a witness in a domestic violence case but not a complainant, can a self-represented accused cross-examine him or her?*
- A.** Under current legislation, the Crown prosecutor can ask for an order that the accused not personally cross-examine any witness under age 18.
- Q.** *Can adult complainants apply for a testimonial aid?*
- A.** Yes, they can apply. The Court can deny or approve such a request for adult witnesses. (Note that the situation is different for mentally or physically disabled adults.) The Crown must show that the testimonial aid is necessary to obtain a full and candid account. The witness's personal vulnerabilities, level of fear, relationship with the accused and the nature of the offence might be considered in the decision.
- Q.** *Can a complainant parent act as a support person for her child who will testify?*
- A.** A witness may not act as a support person unless it is “necessary for the proper administration of justice.” So it is remotely possible but highly unlikely. Even if a parent were not a witness, it is best to have a support person who is not emotionally close to the child. It's a difficult task for any parent to appear neutral when a child is testifying.
- Q.** *In my case, the child is a witness but not a direct victim. As the prosecutor, do I need to meet with the child ahead of the court date?*
- A.** Yes. Children who live with violence can be traumatized by what they saw, heard or discovered. They may be afraid for their own safety and worried about other family members. They may be reluctant witnesses, concerned about the implications of testifying against a parent. An early meeting can help develop rapport, alert you to any special needs or challenges, and allow time to apply for testimonial aids if needed.

Q. *I'm providing court support to a child in a domestic violence case. Is there anything special I should know or do?*

A. Domestic violence cases can be challenging cases for victim support workers. Refer to the Overview booklet in this series for information on pre-court preparation services for children. The *What I Think About Testifying in Court* questionnaire helps identify features to emphasize. Children may worry about negative consequences for the accused and erroneously believe their testimony alone determines case outcome. As suggested in handbook No. 1, clarify responsibilities by explaining the “job” of a witness. Emphasize the role of the judge as the person responsible for making decisions about verdict and sentence. For children who lack confidence or self-esteem, developing assertiveness skills during role play activities reinforces basic testimony skills, like admitting when they do not understand a question. Stress reduction strategies help quell anxieties. For children who may be intimidated or silenced by the harsh tone of the cross-examiner, emphasize that the lawyer is just doing his or her job and it is not personal. For all children, practising question and answer activities is helpful, as described in handbook No. 1.

If the complainant parent is an ambivalent or reluctant witness, the child may intuit those feelings. An important part of your support to the child will be the support you provide the complainant parent. Ensure she has someone to help with her worries instead of sharing them with her child.



PRACTICE TIP: *Children who lived with violence can be extra vigilant about their safety. A courthouse tour is especially helpful. If available, point out the protected waiting area and information on court security. When age appropriate, children usually welcome information about no-contact orders or other release conditions in place to protect the family.*

Q. *I work with a complainant who repeatedly asks me “what happens if I don't show up to testify?”*

A. Maybe this person is scared and needs more time and support than court-related personnel can provide. Provide her with the information about local advocacy services for abused women including the services offered at the local shelter (many shelters offer counselling services to women who are not in the residential program). Supporting mothers is often the best way to help children.

What Children Say About their Role in Domestic Violence Cases

Children involved in domestic violence cases have thoughts and feelings similar to those of all child witnesses, such as thinking the wait for court is too long. They can feel the pull of divided loyalties if they want to continue a relationship with both parents. Some children harbour intense fears about their on-going safety.



"I was glad when the police came but I didn't know they would take him away."

The goal of pro-charging policies is clearly to help, but children don't always see arrest as "helpful."

- a child can welcome removal of the accused by police
- a child can have mixed feelings and be confused and upset
- a child can be traumatized by watching the arrest of a parent

Children can feel caught in the middle

"I don't think kids should have to go to court to testify about their moms and their dads." (Ari, age 8)

"It's too hard on a child. It's about the parents." (Joe, age 12, who misses his father and the weekends spent fishing together)

Adjournments and delays extend a difficult period and prevent closure

"I'm glad it's over - it's a thing of the past." (Gavin, age 11, who was a victim as well as a witness to the assault of his mother)

"I waited and waited for months. I was really worried." (Ali, age 16)

Children appreciate testimonial aids

"I didn't want to see my dad in court -- I'm still afraid of him. I think he is angry with me for talking to the police." (Mel, age 10)

"I wanted the judge to know that he hurt me and he hurt my mom. I was able to testify from behind a screen. I had a support person with me and that helped me feel safe." (Misha, age 11)

Questions You May Hear from Children

- Q.** *I don't want my mom's ex-boyfriend to know where I live or where I go to school. We moved after he got charged. What do I say if I'm asked about that in court?*
- A.** I understand why you don't want him to know. When you meet with the Crown, tell him or her that you don't want to give that information out loud in court.
- Q.** *I can't fall asleep at night because I worry so much that my old step-dad might break in and hurt my mom again. Can you help me?*
- A.** If you say it's okay, we'll go talk to your mom about that. She can tell you all the ways she is making sure you are safe. I can tell you the ways the police and judges are helping with that, like making it a big rule that he stay away from your house. If he breaks that rule, the police and the judges will put him in the jail.
- Q.** *My dad will be mad at me if I testify and my mom will be sad if I don't tell the judge what happened. I love them both. The people here tell me I have to testify, that I have no choice. What can I do?*
- A.** This must be a very difficult situation for you. It's hard to be in the middle of your parents when they both want something different. So concentrate on what your job is in court. Your job is to answer the questions of the lawyers and maybe the judge will have some questions as well. The judge will listen to you, and to other people like the police officer. Your mom and your dad can also tell the judge what happened. Once the judge hears all the information, he or she decides what to do next. Only the judge decides what will happen in court. So it's important for the judge to have all the information and that everybody tells the truth in court.



PRACTICE TIP: *Explain your job in court: “My job is to help people tell the truth in court, especially if they are scared to tell the truth. Are there things making you scared to tell the truth in court?” Help children talk about hidden worries and mis-understandings such as those discussed on page 6. Look also on page 4 for a list of common worries among children in domestic violence cases. Other testimony-related worries are discussed in Handbook No. 1. Addressing these thoughts and feelings does not touch upon evidentiary matters and helps relieve testimony-related anxieties.*

Working with Complainant Parents

Supporting the adult complainant – usually a mother – is an important way to help any children who are expected to testify. There are several goals:

- alleviating her court-related fears and anxieties, so they are not communicated to the children;
- ensuring she has someone to speak with about her own worries and fears, so she does not use a child as a confidante;
- helping her understand how her children may be thinking and feeling; and,
- giving her some strategies to help alleviate their worries and fears.

Refer to the handbook No. 1 where we discuss the core components of preparing children for court testimony. They are education, role play, relaxation training and anxiety management, court orientation, and post-court debriefing. Involve the child's caregiver in at least some of these components of intervention. As a prospective witness herself, this information is useful. Her presence also helps her to understand and respond to the needs and concerns of her children.



Lisa Goodman and her colleagues studied the cases of 92 women in Washington D.C. Women who had children in common with the accused were over three times more likely to cooperate with the prosecution (e.g., appear to testify) than other women.

Lisa Goodman, Lauren Bennet & M.A. Dutton (1999). *Obstacles to Victims' Cooperation with the Criminal Prosecution of their Abusers: The Role of Social Support*. *Violence & Victims*, 14(4): 427-444.

Mothers can feel guilty and blame themselves

"I felt guilty. I felt it was because of me and how I handled things [with my partner]."

"He's just a kid. He shouldn't have to go to court about his parents' business."

Mothers can feel anxious and concerned for their children

"It was nerve wracking for my child."

"He didn't say much. I worried about the impact on him."

"He was really worried about what his dad would do."



PRACTICE TIP: *While this scenario is rare, sometimes the caregiver bringing the child for pre-court appointments is also the accused. In an information session, describe the court preparation process. The caregiver is usually relieved to learn that the child will get support. Emphasize that there is never any discussion of the child's evidence.*

Especially for young children, it is imperative that the caregiver understand key details of the case (such as court dates). A child will be comforted by a caregiver who can confidently relay correct information about court without conveying an underlying sense of confusion and anxiety.

Questions you may hear from caregivers

- Q.** *How do I talk to my son about his having to testify?*
- A.** You cannot talk with him about his evidence but you can talk about his thoughts and feelings about the legal process and his role in it. Reassure him that he is not responsible for the decision the police made to lay a charge nor any decisions the judge will make. Emphasize also that no child is responsible for the actions of a parent. When adults have problems, the adults must fix them. Sometimes adults need to ask a judge to listen to what happened and make a decision about how to help. Your child's "job" is to help the judge understand what happened. He will be asked questions about what he saw or heard, and he just has to tell the truth. Here are some other factors to consider:
- it is good policy to avoid telling children negative things about the accused parent
 - ensure children understand that nothing that happened between their parents was their fault and that nobody blames them
 - ensure children know that you love them, no matter what, and will keep them safe
- Q.** *My child will be a witness in my ex-partner's assault of me. But the family court forces me to send her on weekend visits anyway. What can I do?*
- A.** Sometimes the people who work in one type of court do not know what is happening in another type of court. Tell the prosecutor and he or she can take the appropriate action, possibly by asking a judge to restrict contact with your daughter. An order from a criminal court will override the access order, at least until the criminal case is over. So it's a good idea to consult a family lawyer about your long-term options.

Good Practice Guidance for Domestic Violence Cases with Child Witnesses

The reality of working in the criminal court system includes time pressures and high case volume. Where feasible, these features of case processing represent “good practice.”

Early in the process

- timely review of cases by prosecution team to identify those where children may be witnesses
- victim services alerted that case may involve child testimony
- timely notification of family if prosecutor determines the child will not be called as a witness
- or timely referral of child to local victim support program
- initial meeting set up with adult complainant



PRACTICE TIP: If the family speaks neither English nor French, never use a child as a language interpreter. In all interviews, secure the services of a trained interpreter. Languages can have many dialects, so determine their country/region of origin as well as the language.

The weeks before the court date

- adult complainant receives information and support
- court preparation sessions begin for the child
- information sharing with other involved agencies, as required
- referral of parent and/or child to community agencies, where necessary
- on-going information sharing and consultation between victim services and prosecutor
- assessment of need for a testimonial aid or other concession
- timely application to the court for testimonial aid
- court orientation visit and meeting with prosecutor
- opportunity for child to review statement

The day of court

- parent and child assisted to enter courthouse to avoid contact with the accused or his supporters
- opportunity for child to review statement
- secure waiting area
- child accompanied during waiting period and while in the courtroom or testimony room

After disposition of the case by the court

- debriefing session for child and parent

Teenage Complainants in Intimate Partner Assault Cases

Typically this group is comprised of girls between the ages of 15 and 17 years who allege assault by an intimate partner. Their needs are similar to but different from those of adult victims of domestic violence. It can be easy to treat them as adults because they are victims in a “domestic violence” case but, developmentally, they are still children. Whether living independently, in a common-law relationship, group home or at home, teenagers will benefit from the same services you would arrange for any child witness, including enhanced victim support tailored to their needs.



PRACTICE TIP: As court witnesses under age 18, teenage victims of intimate partner violence qualify, upon application, for testimonial aids and special accommodations, including testimony outside the courtroom, a witness screen or having a support person.

Be aware of these challenges faced by teenage victims of partner assault:

- Understanding the dynamics of their own abusive relationships is often difficult for teenagers.
- Some teenage witnesses are young mothers or pregnant at the time of the assault or testimony.
- The teenager may be involved simultaneously in family court proceedings with the accused (e.g., custody and access issues) or regarding child protection.
- Young mothers who acknowledge violence in a relationship may find themselves under scrutiny of a child protection agency.
- Some teenage victims don't want their parents to find out about the charges.
- As in all domestic violence cases, a complainant can experience an escalation in the violence during or after separation from the accused.



PRACTICE TIP: When working with teenaged victims of intimate partner violence, you may see co-occurring or historical stressors that accentuate the impact of abuse and/or indicate extra support is required in the pre-court period. They may have little or ineffective family support, unsafe or unstable living situations, be pregnant and/or parenting an infant, and have little or a poor connection with support through school. See the discussion in handbook No. 2 about “trauma” and how it can affect witnesses.

What Teenagers Say About Testifying as Victims of Intimate Partner Violence

You will see a range of opinions among teenaged complainants. Some young women fully co-operate with the prosecution while others lobby vigorously to have charges dropped. Some are reassured by bail conditions of non-association, some continue to be afraid, while others are frustrated with a no-contact order. Generally, however, this group of witnesses has similar opinions that you see in many witnesses.

They can appreciate the assistance in ending an abusive relationship

*“It's good to charge someone to stop the violence.”
(Siu Mai, age 16, who was stalked by an ex-boyfriend)*

*“The restraining order helped me feel safe. I wish it could have been for longer.”
(Svetlana, age 17, who continued to be afraid of her ex-boyfriend as the case was processed through court)*

They can have mixed feelings about the prosecution

*“I was glad the police came, but I didn't expect to go to court.”
(Sophie, age 15, called 911 when threatened by her ex-boyfriend)*

They can be hostile to the prosecution

*“I didn't want him charged -- he's my baby's father.”
(Cara, age 16, whose mother called the police)*

They can be frustrated at features of the court process

*“It took too long to get to court. I just wanted to forget about it.”
(Kayla, age 17)*

*“The part I hated most was waiting on the day of court.”
(Cheyenne, age 16, who waited four hours before testifying)*

*“He pled guilty on the day of the trial. He could have done that many months before then.”
(Tia, age 16, who felt unable to get on with her life because of the impending court date)*

They can appreciate testimonial aids

*“I could not have said anything if I had to see him again – CCTV really helped.”
(Tonya, age 16, who experienced traumatic-stress reactions after her ex-boyfriend broke into her home to assault her)*



PRACTICE TIP: Many communities use extra-judicial sanctions for intimate partner violence when the accused is under 18 years of age. Women's advocates caution against using these measures for intimate partner violence if the victim is expected to participate at, for example, a sentencing circle. If these measures are used for intimate partner violence, ensure the complainants have access to the same level of victim support as do complainants whose cases are processed through the courts.

Tips for working with teenage victims of intimate partner violence

The vulnerabilities of teenaged witnesses may go unrecognized because of their adult-like physical appearance. Some have had very grown-up life experiences as well that can obscure their true needs as children.

- Teenagers are typically slow to share their feelings and you may gain an incorrect impression of their true levels of anxiety.
- Teenagers can be frustrating clients who fail to show at scheduled appointments only to pop in when not expected, or who are obsessed with something one day only to have forgotten about it the next.
- Don't assume that teenagers are too old to need testimonial aids - they are older than child victims but teenaged victims can be extremely afraid of testifying and afraid of seeing the accused.
- Ensure they have the literacy capacity to read necessary documents, as in when they review their written statement.
- Follow the guidelines about questioning children discussed in the Overview handbook (e.g., use short sentences and simpler words).
- As with children, consider the possibility that a teenager has special needs that may affect ability to testify (e.g., developmental delays, auditory processing disabilities, hearing limitations, etc.).
- Some teenagers are reluctant to reveal a lack of knowledge about the justice system process - explain everything clearly and clarify their understanding at each step of the process.



Find two-page fact sheets on working with teen victims on the Internet at www.lfcc.on.ca: *When Teens Hurt Teens: Helping the Victims of Youth-on-Youth Criminal Violence* (2006).

Working with Families New to Canada

You can read good information about meeting the needs of new Canadian clients, but the best teacher is experience. Listen more than talk. Ask what they need from you instead of making assumptions. And seek to understand their testimony-related worries. Some people have a well-founded fear or distrust of police and the judicial process imported from their countries of origin. In some countries, publicly reporting a sexual victimization places a woman at risk for imprisonment as an adulterer. Her marriage prospects or those of her daughters could suffer. Words such as rape or incest don't exist in some languages, which can complicate testifying.



PRACTICE TIP: *Asking how their case would be dealt with back home could reveal hidden worries and, perhaps, misunderstandings about our legal system. For example, newcomers from the United States may believe they can “drop” the charges and be feeling enormous pressure to do so.*

Immigration issues

The immigration status of victims and accused persons comes into play in several ways once a prosecution is launched. These are a few.

- Because a non-citizen convicted of a criminal offence may be deported, his conviction may have implications for family members who are complainants (e.g., he may be the breadwinner or his experiences in their home country are the basis for the family's refugee claim).
- A woman assaulted by her immigration sponsor may worry about the implications of the prosecution for her ability to remain in Canada.
- An undocumented (i.e., illegal) resident will worry about deportation, if her status is revealed by the accused

These and other legal issues, such as those about child custody after divorce, may pre-occupy complainants and colour their views of the prosecution. Your giving of accurate information can relieve a great deal of anxiety. For example, a “permanent resident” of Canada cannot lose that status or be removed from Canada only because she leaves an abusive relationship. This is true even if her abusive partner is her sponsor. Other situations are more complicated.



At www.hotpeachpages.net you find links to information on domestic violence in over 75 languages. For example, see *Abuse is Wrong in Any Language* by the Department of Justice Canada.

Further Reading

In addition to sources already cited, these resources may be helpful.

Baker, Linda & Alison Cunningham (2005). *Learning to Listen, Learning to Help: Understanding Woman Abuse and its Effects on Children*. London ON: Centre for Children & Families in the Justice System. †

Canadian Research Institute for Law and the Family (2005). *The Domestic Violence Treatment Option (DVTO), Whitehorse, Yukon: Final Evaluation Report*. Calgary AB: CRILF.†

Centre for Children & Families in the Justice System (2004). *A Handbook for Police Responding to Domestic Violence: Promoting Safer Communities by Integrating Research and Practice*. London ON: Centre for Children & Families in the Justice System.†

Eley, Susan (2005). Changing Practices: The Specialized Domestic Violence Court Process. *The Howard Journal*, 44(2): 113-124.

Hoffart, Irene & Michelle Clarke (2004). *HomeFront Evaluation: Final Report*. Calgary AB: HomeFront Evaluation Committee.†

Pacey, Katrina (2003). *A Guide for Service Providers Assisting Immigrant and Refugee Women Abused by their Sponsors*. Vancouver BC: B.C. Institute Against Family Violence.†

Mazur, Robyn & Liberty Aldrich (2003). What Makes a Domestic Violence Court Work? Lessons from New York. *Judges' Journal*, 4: 5-11.†

Stewart, Julie (2005). *Specialist Domestic/Family Violence Courts Within the Australian Context: Issues Paper 10*. Sydney AU: Australian Domestic & Family Violence Clearinghouse.†

Whitcomb, Debra (2000). *Children and Domestic Violence Challenges for Prosecutors*. Washington DC: Department of Justice (NIJ Journal, No. 248).†

Statistics Canada (2006). *Measuring Violence Against Women: Statistical Trends, 2006*. Ottawa ON: Minister of Industry.†

† These documents are available on the Internet.

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.



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.

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 which include closed-circuit or remote testimony, witness 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 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.