

Brief Concerning Bill C-2

An Act to amend the Criminal Code (protection of children and other vulnerable persons) and the Canada Evidence Act

Submitted to the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness

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Introduction

Every year thousands of children in Canada are called upon to testify about their own victimization or about acts of violence they witnessed. The requirement to testify in an adversarial system is intimidating and places a huge emotional burden on children. Research and clinical practice have contributed to a better understanding of what special measures are needed to benefit child witnesses and what factors impede children from providing a complete account of their evidence.

In Canada, since 1988, innovative legal reforms have been made with respect to the participation of children in the justice system and, as a result, the system has become less intimidating and more accommodating to the needs of children. There are, however, considerable limitations to the current legislation as it relates to children and vulnerable adults. There is a concern that, because many of the special protections are discretionary, they are under utilized. In addition, these evidentiary provisions only apply to specific offences in the *Criminal Code*. This means that a group of vulnerable and traumatized children are denied access to testimonial aids, for example in matters involving witnessing murder and attempt murder.

Evidentiary accommodations and testimonial aids alleviate fears and reduce a child's anxiety about testifying and create the conditions whereby court witnesses can provide effective evidence. It is therefore our opinion that protective measures should be a readily available option for all children.

Bill C-2 recognizes the vulnerability of children to exploitation, abuse and neglect. The proposed bill underscores Canada's obligation, under the United Nations Convention on the Rights of the Child, to protect children from all forms of sexual exploitation and abuse.

The progressive procedural reforms contained in this bill will ensure that the necessary protective measures and special accommodations for children and other vulnerable witnesses in the criminal justice system will be routinely available to the

Bill C-2

The Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness has sought comments on Bill C-2, an Act to amend the *Criminal Code* and the *Canada Evidence Act*.

Based on over eighteen years of research and clinical work with child victims and witnesses of crime, the Child Witness Project of the Centre for Children and Families in the Justice System (See appendix 1) respectfully offers comments on Bill C-2.

This brief will focus on the procedural reforms proposed in Bill C-2 and, in particular, will address and the proposed changes to section 486 of the *Criminal Code*.

Comments on Bill C-2

Special Procedure and Powers – Clause 15

Section 486 -

1) Exclusion of the Public

This section recognizes that testifying in an open courtroom is extremely difficult for child witnesses. Many children have expressed their intense discomfort testifying in a courtroom filled with strangers or hostile observers. Their feelings of shame and humiliation may inhibit them from providing details of their abuse to the court. The presence of grade school and high school students making observation visits in the courtroom is also distressing and can compromise a young person's right to dignity and privacy. Despite this, it is our experience that it is extremely rare for the public to be excluded from the courtroom.

We are glad that Bill C-2 will give the courts broader authority to limit public attendance when young people are testifying.

2) Support Person

This proposed section clearly recognizes the importance of emotional support for witnesses by extending this provision to include persons under 18 testifying in any proceedings. The existing provisions are limited to children under age 14, or for those with a mental or physical disability.

Being in a witness box can be a frightening and intimidating experience. Children are often fearful for their own safety. The reassurance of having a support person close by can help reduce anxiety and thus facilitate the witness being able to provide a more complete account of their evidence for the court.

Having a support person with a witness does not obviate the need for a testimonial aid. Children benefit by having a support person accompany them while they testify via closed circuit television or from behind a screen.

3) Remote testimony – testifying via closed circuit television (CCTV)

Testifying in the presence of the accused person has been recognized as the most significant stressor for child witnesses. Young and vulnerable witnesses are frequently intimidated by seeing the accused and, as a result, are unable to provide a complete account of their evidence.

Research, court observation and feedback from young witnesses have shown that children who testify via CCTV are less anxious and are more effective witnesses. The devices provide children with a sense of safety and security and shield them from seeing the accused. Testimonial aids create the conditions that reduce stress and help maximize the quality and effectiveness of a child’s evidence. The accused person, judge and jury still have the opportunity to observe the demeanor of the child during his or her testimony.

Testimonial aids are used infrequently and inconsistently across the country and the experiences of children testifying in court vary greatly. Factors contributing to this situation include the limitations of the legislation, as it now exists, as well as the attitudes of justice personnel and availability of equipment.

We applaud this section as it creates a presumption that closed circuit television and the screen will be available to children under age 18 and to vulnerable witnesses in any proceeding. The change will provide more consistency in jurisdictions.

4) Cross-examination by the Accused

We are pleased to see that this section provides protection to witnesses under age 18 in any proceeding.

Canada Evidence Act

We support the changes set out in this section whereby a person under 14 years of age is presumed to have the capacity to testify. We applaud that children under age 14 will not be required to take an oath or make a solemn promise, but instead will be required to promise to tell the truth.

Appendix 1

The Centre for Children and Families in the Justice System of the London Family Court Clinic, established in 1974, is committed to advocate for the special needs of children and families involved in the justice system. The Centre integrates research and clinical practice and is internationally known for work on family violence and child abuse.

The Centre's Child Witness Project (CWP) is recognized as a national authority on the issue of children and the legal system. The Project was initiated in 1987 in anticipation of amendments to the *Criminal Code* and the *Canada Evidence Act* that, in 1988 would trigger an enormous increase in the number of sexual offence prosecutions where children were called upon to testify. The CWP developed and evaluated different models of court preparation. The goal of the Project was to provide clinical court preparation services to children who had to testify, as victims or witnesses, in cases of child sexual abuse. A key concern at the time was that requiring testimony from children in open court could constitute a secondary trauma that re-victimized them.

- **Since 1987 the CWP has received over 3,000 child witness referrals. The Project has maintained a database of information that captures a child's experience in the justice system from the time a charge is laid until court outcome.**
- **The CWP is committed to research endeavours that continue to contribute to a better understanding of child witnesses. Research projects have include program evaluation; prospective follow-up studies of children, three years and twelve years after they testified justice system.**
- **The CWP has provided professional training and consultation on child witness issues both nationally and internationally**

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