



CHILD WITNESSES IN CANADA: **Where we've been, Where we're going**

Child Witness Project
Centre for Children and Families in the Justice System
London Family Court Clinic
May 2002

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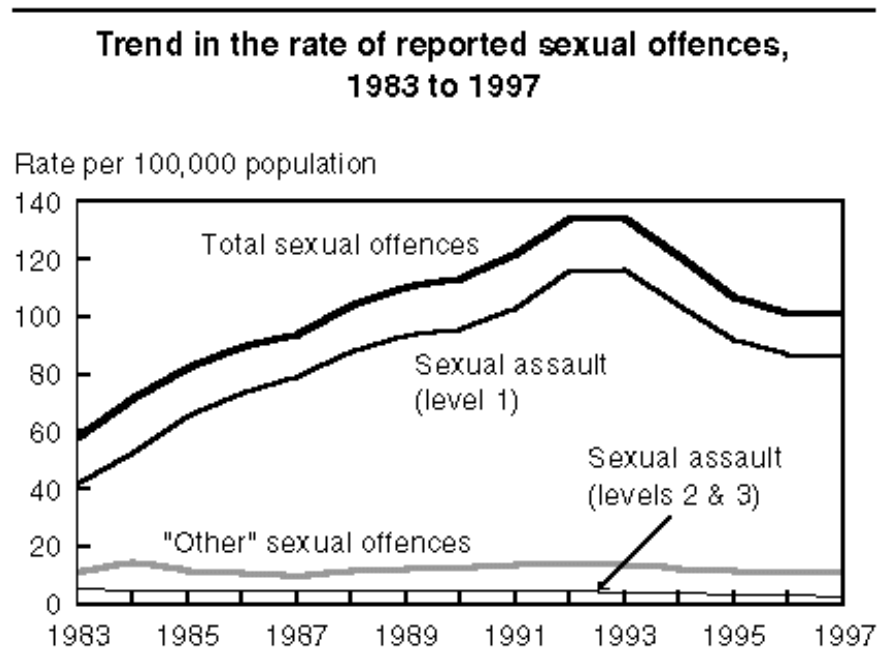
Child sexual abuse is a pernicious societal problem that demands our attention at multiple levels in a variety of sectors that include public awareness, child protection, and children's mental health services. In the 1980s, armed with a fresh appreciation for the scope of the problem, Canada undertook a series of dramatic law reforms that removed barriers to the prosecution of child sexual abuse. In effect, the legal system became an instrument of social policy. Criminal prosecutions were aimed at deterring, punishing, or treating offenders or simply expressing societal denunciation of this behaviour. The consequence was that thousands of children across Canada found themselves in a witness boxes testifying to their own victimization.

Recognizing that children would need assistance with this challenging task, the Child Witness Project was created in 1987 with funding from Health and Welfare Canada. With 15 years of experience now, we are reflecting on our past to define a future vision and chart a course for our next decade of work. The Project is strong and viable and we continue to benefit from the community coordination of children's, woman abuse and justice services in the London area. Our experience has confirmed the need for a child-centred court preparation service with specialized knowledge on child development and the effects of trauma. Indeed, we are viewed as an essential service locally and serve as a model for other areas as they develop and implement child witness programs. Our experience is being shared with an increasingly wider array of similar projects now starting in countries on several continents.

The purpose of this project, funded by Health Canada, is to assess where we are, how far we've come, and where we need to direct our future program development, advocacy and research. This review starts in the 1980s and concludes with recommendations for the first decade of the 21st century. We note with great satisfaction the increased sensitivity to child witnesses evidenced by many criminal justice officials. These efforts -- including both formal training and informal knowledge transfer through case involvement -- are necessarily on-going as new people join the police and Crown attorney ranks.

Context for Child Witness Reform of the 1980s

To understand where we are today, we must start by examining the legal and policy developments of the 1980s. The Child Witness 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 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. It was initially a demonstration project, funded by Health and Welfare Canada, with a built-in evaluation component. A key concern at the time was that requiring testimony from children in open court could constitute a secondary trauma that re-victimized them.



Source: Statistics Canada (1999). *Sex Offenders 1997*. The Daily, 29 March.

Indeed, a review of police data shows that the number of cases reported to the police and declared founded by them rose steadily to a peak in 1993 of 135 incidents per 100,000 population before beginning a period of decline which has been observed across all crime categories.¹ The increase of reported sexual offences began in 1983 when the sexual offence provisions of the *Criminal Code* were dramatically re-vamped.² These amendments had responded to long-standing criticisms of the existing laws.³ Rape, attempted rape and the indecent assaults were repealed and replaced with three levels of "sexual assault," gender-neutral offences. The evidentiary requirement for penetration was thus abolished and, arguably, a wider array of behaviours fell under the purview of the criminal law.⁴

In addition, several evidentiary rules were changed. First, the rule of recent complaint was effectively abolished. This would have importance for child victims because of the delayed disclosure that characterizes child sexual abuse cases. Second, the need for corroboration was abolished. Prior to this, the trier of fact had to consider that it was unsafe to convict solely on the basis of the uncorroborated testimony of a rape complainant. Sexual abuse is rarely witnessed by third parties. Third, the so-called rape shield laws were put into place, limiting the admissibility of most evidence about a complainant's sexual history.⁵

Badgley Report (1984)

In 2001, we learned for the first time the national rates of *reported* child abuse in Canada.⁶ The *actual* incidence and prevalence of child sexual abuse in Canada remains unknown, but we now generally recognized how widespread a phenomenon it may be. By 1997, an astonishing 62% of sexual assault complainants were under 18.⁷ In the early 1980s, however, the assumption was that sexual offences against children were rare. The Committee on Sexual Offences Against Children and Youth,⁸ popularly known as the Badgley Committee, commissioned a survey of 2,008 adults to investigate retroactively the prevalence of child sexual abuse in Canada. A key conclusion was that child sexual abuse is far more common than previously imagined and often unreported by its victims. The male victims were much less likely than the female victims to have reported the incident (11 versus 24 percent respectively). The Badgley survey also revealed that the vast majority of the unwanted sexual contacts experienced by the respondents had occurred when they were under the age of 18.

Although some cases of child sexual abuse did go to court in the 1980s,⁹ the Committee identified significant obstacles to the prosecution of people who sexually victimized children and adolescents. These barriers, as identified by the Committee, included the fact that children were not usually seen as having the capacity to take an oath and that courts could not convict on the uncorroborated testimony of a child who had not sworn an oath to tell the truth.

Bill C-15 (1988)

Based largely upon the Badgley recommendations, in 1987, Parliament amended the *Criminal Code* and the *Canada Evidence Act* with a package of reforms known as Bill C-15.¹⁰ These Canadian developments were contemporaneous with similar legal reforms in most American states,¹¹ Australia, and the United Kingdom.¹² As articulated by its proponents in the House of Commons, the goals of Bill C-15 were the following:

- 1) to provide better protection to child sexual abuse victim/witnesses;
- 2) to enhance the successful prosecution of child sexual abuse cases;
- 3) to improve the experience of child victim/witnesses; and,

4) to bring sentencing in line with the severity of the offence.

There were three principal changes. First, it became possible to convict an accused on the basis of the unsworn evidence of a child. Previously, a child judicially considered to be too young to understand the nature of an oath would probably not have testified because, in the absence of corroborating evidence, the accused could not have been convicted. Today, the trier of fact can hear a child's evidence and assess its credibility and how much weight it deserves. This amendment was significant because child sexual abuse is characterized by its covert nature and there are rarely eyewitnesses or other types of corroborative evidence.

Second, the difficulty child victims of sexual abuse could experience testifying in open court against their alleged abusers was recognized. Provision was made for children to testify from behind a one-way screen or to testify from a separate room with a closed-circuit television link. A video tape of a child's statement made soon after disclosure could be admitted into evidence; but, in all but a few cases, this would not obviate the need for the child to testify.

Third, several new sex offence categories were created. One intent was to respond to a wider range of sexually abusive behaviours than was possible using the existing law. For example, exposure and a request to sexually touch a perpetrator are behaviours common in the early, or 'grooming,' stage of the sexual abuse of a child. Officials were empowered to intervene before this initiatory behaviour escalates into more intrusive sexual abuse. The new offences were sexual touching, invitation to sexual touching, and exposure of genitals to a person under 14 years of age. In addition, the sexual abuse of adolescents by people in positions of trust or authority was addressed in the new offence of sexual exploitation.

Review of Bill C-15 (1993)

As part of the reform process, the amendments created by Bill C-15 were reviewed by a Parliamentary committee in 1993, after five years of experience with the changes. In preparation for the review, the Department of Justice commissioned a series of research reports to aid the committee. The Child Witness Project made a submission to the Committee in which three general directions were recommended:

- 1) codify the techniques that we know help child witnesses testify;
- 2) make them available routinely in all cases; and,
- 3) reduce the number of times children have to testify.

Specifically, we were concerned that many of the special protections provided for by law were discretionary and not being used in all cases where they should have been. We were also concerned that the special protections applied to a limited range of child witnesses and so were denied to many deserving children such as those who had witnessed violence. Nine specific recommendations were offered:

1. The option of testifying from behind a screen or via closed-circuit video should be routinely extended to all child complainants of sexual abuse but it should not be mandatory
2. The option of testifying from behind a screen or via closed-circuit video should be routinely extended to all child complainants of physical abuse and those who have witnessed violence
3. A hearsay exception should be codified recognizing the admissibility of testimony by those who have received sexual abuse disclosures from children
4. Hearsay statements, depositions and video-taped statements from children should be admissible, and encouraged, for preliminary inquiries
5. Expedited hearings when children are witnesses should be mandatory
6. Child witnesses should be permitted to have a neutral person accompany them to the witness stand and stay with them during their testimony
7. When children are testifying, the court should be closed in all cases
8. The accused should be prohibited from conducting cross-examination of child witnesses
9. The s.150.1 provisions regarding consent should be extended to include s.159 [anal intercourse].

In later reforms, recommendations 6 and 8 were adopted. Recommendation 9 was rendered moot when the anal intercourse provisions were nullified by judicial precedent.

Effects of Court Involvement and Testifying on Children

Many children experience great anxiety about their roles as witnesses and the prospect of testifying. Anticipatory fears related to testifying and anxiety about facing the accused person in court can interfere, at least on a temporary basis, with the ability of many children to function well in their daily lives during the pre-court period. In general, the literature suggests that there are short-term negative effects on children's emotional health and that many children remember testifying as an unpleasant and frightening experience.

Children do not know what to expect nor what is expected of them. Anticipatory anxiety is exacerbated by the length of the criminal justice process, a period that is typically one year's duration often punctuated by many hearing and last minute adjournments. Parents often find it difficult to allay their child's worries as they share the anxiety. Moreover, children may have mistaken ideas of court from watching "Judge Judy" or other television shows where drama and tension provide amusement.

In discussing concerns about court, the majority of child witnesses endorse that facing the accused is a significant fear for them. Another factor affecting a children's ability and willingness to testify is their relationship with the accused. Children must also overcome worries about not being believed by the judge. Young children sometimes worry that they will be sent to jail. Victimized children, struggling to deal with the effects of trauma, also have to cope with feelings of shame and embarrassment about having to recount the details in a public forum. Other stressors include concerns about personal safety and of being questioned by the defence lawyer.

The Child Witness Project developed a Fears of Court Questionnaire to help identify and measure the child's personal fears related to testifying. The instrument focusses on three areas of a child's worries about testifying: concerns about the accused; personal competency issues; and, distress and shame about public exposure. Where applicable, a child's concerns regarding the impact of their testimony on family members is also examined. The questionnaire is used during the course of court preparation, where the individual child's fears and anxieties can be addressed. It has been well documented that a child's effectiveness as a witness is linked to their fears. Court preparation helps to reduce a children's anxiety and alleviate their fears, thus serving the administration of justice.

In addition to anticipatory anxiety, children may have to deal with many other stressors related to the case. Compounding their distress may be multiple interviews and having to recount their experiences to many different people. There may be conflict in their family regarding the charges before the court, or changes to their home situation. Children may also have to miss school because of appointments; some may face rejection or ridicule by peers at school. Some children, as a result of their victimization, may have difficulty concentrating, experience sleep disturbance or have other symptoms associated with the impact of trauma.

While disclosure and testimony are stressful, it is generally believed that they themselves have no lasting negative consequence for children. This is not to say that the victimization and family tension from disclosure may not themselves have far reaching and long-term effects. In our follow-up study, *Three Years After the Verdict*, the majority of children interviewed did not have positive memories of testifying. However, with respect to their general emotional and social adjustment, we found no discernable differences between those who testified and those who did not have to testify. (due to guilty pleas). We did find, however, that court outcome, in cases where there was an acquittal, resulted in children continuing to experience more emotional distress and to have poorer adjustment.

Overview of the Child Witness Project

The Centre for Children and Families in the Justice System of the London Family Court Clinic is a non-profit social service agency committed to advocate for the special needs of children and families involved in the justice system. It is internationally known for work on family violence, woman abuse, young offenders, custody of and access to children after marital breakdown, and child abuse. The vision of the Centre for Children and Families in the Justice System is to integrate research and

practice to promote violence-free communities. To this end, we develop programs where gaps in service are observed and undertake research projects which are suggested by our clinical work with children. The dual purpose of our research is to inform our own service delivery and share our results with families, other practitioners, policy makers and legislators.

The Child Witness Project

The Project helps children and adolescents who must testify in criminal court, usually in cases of physical or sexual abuse. The multi-disciplinary team at the Child Witness Project is committed to providing sensitive, informed, and effective service to child, adolescent and other vulnerable witnesses to ensure they can communicate their evidence to the court without being traumatized by the challenging process of being a witness.

Staff of the project are experienced therapists and the process begins with a thorough intake to assess a youth's individual situation, special needs, and personal concerns related to testifying. Questionnaires developed by the Project help identify the children's most salient fears about court and their knowledge of the legal process. An in-depth interview with parents, as well as standardized psychometric tests, assist in assessing current emotional functioning of the youth.

The education component of court preparation centres on court procedure and etiquette, oath taking and legal terminology. Innovative aides such as a model courtroom, puppets, a judge's gown, books, and videos are used, in particular with the younger children. The stress reduction component includes deep breathing exercises, deep muscle relaxation and cognitive restructuring. There are two overarching goals of court preparation:

- to facilitate the conditions necessary for a victim/witness to provide a full and candid account of the evidence without compromising a defendant's right to a fair trial
- to ensure that young and vulnerable witnesses are not traumatized by the legal process

Other goals of the project are to develop and refine an innovative service model, provide a high-quality service, identify the individual needs of each youth, work cooperatively with other involved agencies, provide advocacy for individual youth on issues such as testimonial aids, make referrals to appropriate services, work collaboratively in our community, share information and experience with other agencies, conduct training, and provide useful resources.

The Child Witness Project has provided services to over 1,000 children. Since January, 1991, the Project has been funded by the Ministry of the Attorney General of Ontario. Referrals are accepted for court preparation, capacity assessments, victim impact statements, criminal injuries compensation reports, expert testimony and Crown consultation. Preparation ranges from three to

eight sessions, to suit the needs of each individual child. The protocol includes education, stress reduction, coping strategies, emotional support and advocacy. Project members also provide training and speak to academic and professional groups.

Consistent with the Centre's goal of integrating research and practice, we conduct research that helps us understand better the needs of our clients and that aids policy makers and legislators. Research efforts of the Child Witness Project have included an evaluation of the utility of court preparation for children and the relative efficacy of different models of preparation;¹³ a prospective follow-up study of children who testified in court;¹⁴ examination of all sexual abuse allegations made to the local Children's Aid Society in one year;¹⁵ an examination of the process whereby sexually-abused children come forward to reveal their victimizations to authorities;¹⁶ and, on-going collection of information on all child witness referrals. The Project was also one of six child witness programs in Ontario that collectively studied 900 cases where children were called as witnesses.¹⁷

Origins of the Child Witness Project

The Child Witness Project began with a 1987 grant proposal to the federal department then called Health and Welfare Canada (now Health Canada). The proposal represented nearly a decade of interest and concern on the part of Clinic staff over the plight of child sexual abuse victims in the criminal justice system. The community impetus for pursuing the grant had its origins in 1983, in the formation of the Sexual Abuse Task Force in London and Middlesex County. The London Family Court Clinic, as a member of the Steering Committee, recommended significant improvements to the investigative and court intervention phases of the local child abuse protocol. One of the recommendations was that children be better prepared for court so as to reduce the potential for secondary traumatization. A grant from the Ontario Ministry of Community and Social Services (in 1985) funded the development of a resource library and another grant from the Laidlaw foundation (in 1986) funded a pilot project which conducted community consultation, developed a preparation protocol, and serviced a small number of child witnesses.

Opportunity to expand the service and to operationalize some of these concerns came with the 1988 passage of federal criminal law amendments which liberalized the reception of children's evidence, most specifically in sexual abuse cases. Coincidental with the passage of these far-reaching and progressive amendments, the federal government devoted a great deal of funding to the topic of child sexual abuse. The Clinic, believing that the implementation of these reforms should be studied, sought funding under the "Sexual Abuse Initiatives Program" of Health and Welfare Canada. These funds were earmarked for the development of programs for child sexual abuse victims in the areas of assessment, treatment and criminal prosecution. With funding to create a demonstration project, the Child Witness Project began accepting all referrals made to it by law enforcement, child welfare and victim assistance agencies.

In 1987, the London Family Court Clinic received funding from the Sexual Abuse Initiatives

Program of Health and Welfare Canada for a three-year demonstration project on child witness court preparation. The goal of the Child Witness Project was to prepare child witnesses for their court experience in an effort to reduce the potential trauma caused by the criminal justice system when children are required to testify as a result of a sexual abuse victimization. There was a built-in evaluation component, the overall objective of which was to assess different methods of preparing children to testify in court. A secondary goal was to monitor the implementation of the federal Bill C-15 provisions in Middlesex County.

Evaluation of the Project

Probably the most important impetus of the Project involved the desire to improve qualitatively the experience of child witnesses in our jurisdiction. Direct observations of the handling of child sexual abuse cases by the criminal justice system, in particular the treatment of child victims by the court, had led to the development of the research proposal. The overriding goal of this proposal was to examine the potential effectiveness in reducing trauma of different methods of court preparation for child witnesses. Along with the demonstration role of the Project, therefore, there was a strong research component.

The Project evaluation, documented in the 1991 publication *Reducing the System Induced Trauma*, identified a significant number of system stressors, such as delays, difficult cross-examination, complex proceedings, etc., which negatively affected children who became involved in the criminal justice system as witnesses. Although some children did see testifying as cathartic, most experienced feelings of helplessness as they were propelled through a system they did not understand. Two models of court preparation were compared. One model offered stress reduction and education about court, administered in individual sessions, and the other model provided the *status quo* court orientation and tour offered by the Victim Witness Assistance Programme.

The study identified four benefits of individual court preparation for child witnesses: an increased knowledge about court procedures which enabled them to understand better the process; a reduction in their anxiety related to testifying, making them feel less afraid about going into the courtroom; strategic assistance on how to be a good witness which better enabled them to tell their accounts of what happened on the witness stand; and attention to personal needs and advocacy on their behalf with other involved agencies and the criminal justice system.

Follow-up of Child Witnesses

The next question addressed was the longer-term impact of prosecution on children. A prospective follow-up study, *Three Years After The Verdict*, focused on the 126 child victims of sexual offences who had been referred during the evaluation stage. The goal was to document the long-term impact of the criminal justice involvement on the children's life circumstances, and to assess their current emotional and social adjustment. Children and parents were interviewed on average three years after

court and were asked to recall how the victimization was discovered by the authorities, their impressions of the criminal justice system, what it was like to testify, and their experiences and life events since their court cases ended.

The results suggested that the children, who had the advantage of every support service then available, had a difficult experience being court witnesses to their own victimization. In the court room, few concessions had been made to accommodate for their age or vulnerability. Despite their difficulties, there did not appear to be any long-term effect of testifying *per se* that we could measure. The children's lives, however, were characterized by many stressful circumstances and events, before, during and after court. The most difficult cases appeared to be the ones involving victims abused by someone in their family. These children were more likely to suffer a permanent change to the composition of their family once the abuse was disclosed. Their residential situations, schooling, standard of living, peer relationships and, most importantly, their familial support was negatively affected.

The study also found that cases involving female complainants were less well served in the system, in that they were more likely to have suffered long-term abuse, received less support, were more likely to have had a negative court outcome and, if their cases did end in conviction, a lesser sentence was handed down to the offenders. The study noted that there was an overlap between sexual abuse and physical violence within the home, which appeared to suggest that child victims of familial violence might be at a greater risk for sexual abuse. Further research into this relationship was recommended. Importantly, however, when the abuser's identify, family history variables and life stressors were taken into account, the link between the sexual abuse and later emotional problems was not established.

Political Advocacy

The work with children, the research results and the contact with other projects inform on-going efforts to make the criminal justice process more accommodating to the needs and interests of child victims and their families. Recommendations for reform have previously been made to both the federal¹⁸ and provincial¹⁹ governments. More recently, we submitted to the Department of Justice a response to the consultation paper call *Child Victims and the Criminal Justice System*.²⁰

Public Education

An early pioneer in this specialized field, the Project is recognized as a national authority on the issue of children and the legal system. With start-up funding from Health Canada, the Project publishes *VIVA VOCE: A National Newsletter About Child Victims and Witnesses*. The seventh issue is now being circulated. Also nationally distributed is a bilingual information booklet for after court, for the families of child witnesses.²¹ The need for information after the court stage was identified during follow-up contact with victims and their families. We are also developing a web site (www.childwitnesses.org)

that will serve as a resource for both families and practitioners.

Professional Training

Project staff have always been actively involved with training for a wide variety of professional groups. Beside the various facets of court preparation, topics addressed include interviewing of children, trauma assessment in children, and the impact of domestic violence on children. Five court preparation manuals (for parents, Crown attorneys, police, educators, and victim/witness assistants) are now in press with funding from the Ministry of Attorney General. Topics include the effect of trauma of children and the assessment of court-related fears in children.

Current Operation

In the last full fiscal year of operation (2001/02), over 500 young people were referred to the Child Witness Project from London/Middlesex County. When cases end in an early guilty plea, the court preparation process is not required. However, almost 200 youth received court preparation last year.²² In addition, at least 80% of clients are accompanied to the courthouse for preliminary hearings and/or trial. All young people who testify via closed-circuit television (CCTV) are accompanied by a clinician as a support person. This has proven to facilitate the whole experience of testifying for both child and parents. Even in cases of peer assault, where adolescents and their parents fear retaliation, court accompaniment eases anxiety and facilitates the involvement of these young witnesses in the judicial system.

Any child/youth under the age of 18 may be referred for court preparation. The average age is 13. In a dramatic change since the inception of the project, a large percentage of our referrals now involve young adolescent witnesses in peer-to-peer assault cases. The majority of referrals (72%) involved victims and defendants who were unrelated to one another. Peers and friends figured most prominently as abusers (45%), followed by biological parents (16%), strangers (11%), and adult acquaintances (8%). This pattern was more consistent with that observed for physical abuse than victims of sexual abuse. Examination of the relationship between defendants and young witnesses showed similar patterns as those observed for victims (e.g., intrafamilial = 14% and extrafamilial = 86%).

Referrals come from the various police services within the London-Middlesex area, mostly (91%) the London Police Service. A small percentage of referrals, approximately 1%, involve children who reside in the London-Middlesex area but are required to testify in another jurisdiction.

We are tracking changes in the nature of abuse either experienced or witnessed by our referrals. In part, we are interested in understanding why we have received a significant increase in the number of referrals over the past few years. In addition, we are interested in determining whether there are any decreases in the proportion of sexual abuse cases referred to the Project. Several reports in

Canada and the United States suggest that there may be a decline in the number of sexual abuse cases being reported.

In stark contrast to previous years, more children are referred because of physical abuse than sexual abuse. As observed in previous years, in cases of sexual abuse, the victim is more likely to be female (78%) than male (22%). In cases of physical abuse, the opposite pattern exists with proportionately more males (55%) than females (45%) involved in physical abuse matters. Overall, therefore, our referrals are only slightly more likely to involve females (59%) than males (41%).

Compared with previous years, there has been a significant increase in the use of closed-circuit television as a testimonial aid, because of the creation of a child-friendly courtroom with the technology integrated into the courthouse. Reports are written by a clinician, following an assessment of the child's vulnerability, to support the application for CCTV made by the Crown Attorney. Children have been observed to be more effective witnesses, as well, observations indicate that children experience less stress when they testify under these conditions, and ultimately avoid the risk of being re-traumatized.

Another change has been brought about by the introduction of a Domestic Violence Court in London. In the past year, the Project received an increasing number of referrals regarding these matters. Referrals typically fall into three categories:

- Children and adolescents who witness domestic violence
- Children and adolescents who witness domestic violence and who are also victims of assault by the same accused
- Adolescents who are victims of domestic violence by intimate partners

Referrals have been made by the police for 52 cases. Contact letters are sent by the Project and the case is monitored in the system. Court preparation has been provided in eleven cases. None of these child or adolescent witnesses have testified, as most of the cases have been resolved with a guilty plea, often on the day of trial. Others continue to be outstanding and could still go to trial.

The Child Witness Project collaborates closely with Victim/Witness Services regarding domestic violence cases to ensure that child and adult witnesses alike receive thorough court preparation and support. At times, collaboration includes child protection services, staff from shelters and treatment agencies.

Court Outcomes

Court outcomes are tracked in an effort to identify and monitor patterns in court decisions and sentencing. Examination of court outcomes for the past five years shows that the percentage of guilty pleas has been steadily rising whereas the number of findings of guilt and acquittals has been decreasing. The increase in the proportion of guilty pleas is both positive and negative. A guilty plea

spares the victim and witnesses from testifying. However, a large proportion of guilty pleas are not entered until either the trial or close to the trial date (approximately 50%). Given we are not certain whether a guilty plea will be made until closer to the court date, children must be prepared to testify. In some cases, children do not learn of the plea until they arrive at the court house. Although they may not testify, children still experience the anxiety associated with "thinking" they will be called upon to give evidence.

This past year we have seen a slight increase in the number of withdrawn charges. In an effort to understand changes in the number of withdrawn cases, we have changed the way we follow these cases. Beginning this year we began to track the number of cases where charges were withdrawn in favour of alternative solutions namely peace bonds, alternative measures or Domestic Violence Court early intervention. The preliminary information demonstrates that in about 20% of the cases that were withdrawn, parties involved in the matter sought solutions other than pursuing the matter through the court system.

Most individuals found guilty of a crime were given probation. This likely reflects the fact that a large number of defendants were young offenders or found guilty of summary conviction offences and therefore, were given either probation or short jail sentences with probation following custody or incarceration.

Best Practice Approaches

Child witnesses have unique and special needs that are different from adults who have to testify. In most cases, adults have made conscious choices that bring them to the legal system, to meet needs that can include safety, redress, and recognition of harm. Children typically are involuntarily involved in the legal system and have fewer choices. The system is adversarial, alien and frightening to them. As victims they need immediate support to deal with the impact of their abusive experiences. As witnesses, they require enhanced and specialized support and preparation to testify in court. As well as addressing a child's anxieties about testifying, court preparation helps young people cope in an adult world, to learn the language and how to behave and conform. Adults who interact with child witness in the justice system need assistance to understand a child's world and the ways they communicate. An important goal is to help the child go through the system with integrity and respect and emerge from the experience feeling intact.

Major legislative changes and concessions to child witnesses have been made in order that they not be re-victimized in the justice system and that they are enabled to provide effective testimony. Research and practice has informed us what child witnesses find stressful and what benefits them. Yet, the system is slow and reluctant to implement change. The Child Witness Project in London continues to advocate for many of the same recommendations the program first made in 1991. Colleagues and other programs identify and highlight these issues.

Much of our knowledge about the needs of child witnesses has been learned from the children themselves. Their recommendations are simple and easily implemented. Their insights and wisdom remind us that children have different needs. What works for one child may not meet the needs of the next child. We consider on-going monitoring of the system and consultation with the 'experts,' the child witnesses, essential to our work.

The goal of court preparation is to foster the probability of a full and candid account from the witness without traumatizing the child and without compromising the right of an accused to a fair trial. Because children are different, traditional victim services must be augmented with specialized interventions. The features of case processing which we have identified as assisting children are:

- ! interviewing only by police officers with specialized training on the dynamics of child victimization and child development
- ! cooperation between law enforcement and child welfare officials that, for example, reduces the number of times a child has to be interviewed
- ! video taping of statements
- ! sharing of information among mandated agencies that facilitate coordinated responses to each case
- ! timely referral of the case to a specialized child witness service, providing enough time to conduct an individual assessment, court preparation, and Crown consultation where needed
- ! red flagging of cases so that one Crown is assigned to follow the case to completion;
- ! expedited hearings with a minimization of adjournments and delay
- ! early meetings between the Crown and the child, and enough meetings to establish rapport
- ! age-appropriate support from victim/witness personnel
- ! provision of information and support to parents/guardians
- ! courtroom orientation for children and their families
- ! accompaniment on the day of court
- ! witness-only waiting rooms and a segregated area of the courthouse designated to victim/witness services

- ! the option of a support person to accompany the child into the witness box
- ! age appropriate questioning by judges and prosecutors
- ! concessions to the children such as being permitted to sit during testimony, booster seats, and periodic breaks
- ! availability of child witness specialists to testify as needed regarding issues such as hearsay and the need for testimonial aids
- ! preparation of victim impact statements that are informed by a knowledge of child victimization and its impact
- ! post-court debriefing and assistance with victim impact statements, criminal injuries compensation applications, and contact with paroling authorities; and
- ! advocacy and referral to social services and therapeutic resources.

We had an opportunity to review trends in service delivery models and program expansion across Canada when the Department of Justice provided funding to compile a national directory of child witness services. A worrisome trend is that the initially promising expansion of specialty programs, begun in the 1990s, has stopped. Generic victim/witness service is becoming the norm.

Research Agenda

Continuing with our strong history of research-informed practice, we have defined several directions for the next steps in terms of research. These areas should be addressed in Canada:

- examination of the role of children as witnesses, and potential witnesses, in domestic violence court, with the goal of revising our existing protocol for the special and growing group
- investigation of the reasons families decline to participate in the criminal process, sometimes by not calling the police and sometimes by requesting that charges not be laid. This reluctance could partially explain the apparent drop in criminal cases involving child victims.
- evaluation of the effectiveness of various models of court preparation, both in terms of their impact on the administration of justice and the impact on children
- survey of attitudes of key players in the justice process, including police, Crown attorneys and judges

- evaluation of the use of the closed-circuit television technology, both in terms of its impact on the administration of justice and the impact on children
- investigation of the special needs of new Canadian families who find themselves in the court process and suggestions for outreach and program modification
- the special needs of Aboriginal children and adolescents as witnesses
- a study of child witnesses grown up, focussing on their recollections of the statement-taking process. Did they say everything that happened? Did they add information that wasn't true? How could the interview have been done better to solicit the best information?
- national survey of key operational issues for child witness programs providers, Crown attorneys and other key players

Finally, we would like to develop a program logic model for the Project which would suggest an evaluation strategy that includes as data sources consumer and stakeholder feedback. This would lead to a needs analysis and possible re-design of the intervention protocol. We believe we could design “best practice” benchmarks for programs, policies and laws, disseminated through our web site. This package would include an evaluation strategy that can be adopted by other programs.

Operational Issues

In the 1980s, sexually victimized children were identified as in need of special support and protection during their involvement in the criminal justice system. Court preparation programs with protocol to help meet those needs were developed. Changes in evidentiary burdens and allowance for testimonial aids were revolutionary changes to the system. Today, as more and more children are called upon to testify, their involvement in the justice system is growing routine, no longer noted as being a rare occurrence or one that requires specialized intervention. Their special needs, therefore, can go unnoticed without the necessary response to reduce secondary trauma.

Other operation challenges noted during this review include lack of preparation time for Crown attorneys, unevenness of training for key players such as police and judges, and inconsistency in terms of making timely referrals to court preparation programs. These and others problems centre on uneven availability of resources across all parts of Canada, some local idiosyncracies in terms of their use, and attitudes that can be barriers to effective service. Two child witnesses in different parts of Canada might have very different experiences. In great measure, a standardized training and service delivery protocol would assist in extending what we know about best practices across the country.

12 Years After the Verdict

We augmented this analysis by re-interviewing 12 of the original clients of the Child Witness Project. This *Twelve Years Later - Child Witnesses then and now*, allowed us to interview former child witnesses who had participated in both our original evaluation study and in *Three Years after the Verdict*. We were interested in gaining further insight about learning their recollections of being involved in the justice system as witnesses; of having the opportunity to learn what had occurred in their lives since that time; and, of requesting their input on how testifying could be made easier for children.

Project files from 1988 to 1991 were reviewed. From these an initial list of 50 potential participants was developed. These people were contacted by letter resulting in twelve former child witnesses and one mother agreeing to be interviewed. They were advised ahead of time that participation was voluntary, that the information provided would be confidential and that they would each receive \$50.00 in appreciation for taking the time to meet with us. The interviews were approximately two to three hours in length and were conducted by a project clinician. They semi-structured in format, focussing on several key areas with respect to recollections about participating in the child witness project, and their memories about testifying. They were also asked about what was helpful to them and who was helpful to them. Their reflections about court outcome and sentencing was requested as well as their input with respect to recommendations for child witnesses currently involved in the system.

These former child witnesses ranged in age from 6 to 16 years at the time of first referral to the Child Witness Project. At the time of the interviews they were all adults, eight females and four males who were aged from 19 to 29 years. Participants reported that they were glad to be contacted and following completion of the interviews reported that they found it beneficial and were willing to be interviewed again at some point in the future.

All had clear recollections of participating in court preparation and could describe particular components of the protocol such as role play, breathing techniques, and learning about court through activities with the model court room and orientation tours in the court house. Positive and negative comments and recollections about the investigating officers and prosecutors were requested. Police officers and Crown attorneys were remembered as helpful and kind - several participants remembered these individuals by their first names. Information, explanations and patience were appreciated. One person had a change in Crown attorney and found that to be upsetting.

Negative memories of testifying included harsh and aggressive cross-examination and of attempts by the defence to confuse the witness.. Testifying in open court and recounting details of the abuse was recalled as “embarrassing” and “degrading.” Facing the accused was distressing for most.. Some of the witnesses indicated that they were able to cope with their fear of facing the accused. One young woman described it as “facing her fear which helped with her healing” and another found it to be therapeutic.

Their memories of testifying remain vivid. Facing the accused, harsh cross-examinations and testifying in an open courtroom were some of the negative recollections. Where there were convictions, the sentences were viewed as being inadequate. Kind words and actions by criminal justice personnel helped ameliorate the distress of many young witnesses. Many described the negative consequences of their victimization on their lives. Several of those interviewed are currently, or have been, involved in therapeutic counselling related to their victimization and other negative life events..

All of the child witnesses in the original study had been sexually abused. The participants in the current interviews had been victimized by perpetrators including parents and other family members, neighbours, a teacher and by strangers. The abusive acts ranged from fondling to vaginal and anal penetration. Those who had been abused by family members or in cases where the abuse had been severe, were continuing to struggle with the emotional and psychological sequelae of the abuse. The young man who had been abused by a teacher chose education as his career and strives to be a good role model to his students unlike his teacher who, he says, “took his position of trust and respect and used it as a weapon.” He recently discovered that one of his friends, also abused by this teacher committed suicide. We also learned that another victim of this teacher has been charged with sexual abuse of his own children.

It is significant that kind words and actions by police officers and Crown attorneys were clearly recalled 12 years later. They eased the task of testifying and lessened the negative impact of the experience. While we may rightly decry the uneven availability of resources such as closed-circuit television systems, it is important to recognize that the simplest gesture of kindness may be the most important commodity we can provide as children face what they will later describe as one of the most difficult experiences of their lives.

The “Bill of Rights” for Child Witnesses

1. Every child has the right to court preparation tailored to his or her individual needs.
2. Every child should have easy access to testimonial aids.
3. Every child has the right to be treated with respect during his or her involvement in the criminal justice system.
4. Every child has the right to feel safe and protected in a courtroom.
5. A child should be questioned by adults who adapt their communication to his or her developmental age and linguistic ability
6. A child should have the opportunity to meet with the Crown well in advance of the court date.

7. A child and his or her family should be advised of all court dates, adjournments and guilty pleas immediately that information is available
8. A child's special needs and vulnerabilities should be addressed
9. A child-friendly courtroom, or routine accommodations, should be made available for every child who is called upon to testify
10. Expedited case should be the norm when children are witnesses

Endnotes

1. Statistics Canada (1999). Sex Offenders 1997. *Canadian Centre for Justice Statistics: Juristat*, 19(3).
2. *Criminal Law Amendment Act*, S.C. 1980-81-82, c. 125.
3. See, for example, L. Clark & D. Lewis (1977). *Rape: The Price of Coercive Sexuality*. Toronto: University of Toronto Press.
4. See, generally, C. Boyle (1985). *Sexual Assault*. Toronto: Carswell; and, J. Osborne (1984). Rape Law Reform: The New Cosmetic for Canadian Women. *Women & Politics*, 4: 49-64.
5. This protection was weakened with a 1991 decision of the Supreme Court of Canada in a case involving a child victim, but replacement provisions were proclaimed into force in August of 1992.
6. Trocmé, N.; B. MacLaurin, B. Fallon, et al. (2001). *Canadian Incidence Study of Reported Child Sexual Abuse and Neglect: Final Report*. Ottawa: Minister of Public Works and Government Services Canada.
7. Fitzgerald, R. (1997). Assaults Against Children and Youth in the Family, 1996. *Canadian Centre for Justice Statistics: Juristat*, 17(11).
8. Committee on Sexual Offences Against Children and Youth (1984). *Report of the Committee on Sexual Offences Against Children and Youth, Volumes I and II*. Ottawa: Minister of Supply and Services Canada. See also W. Glackman (1991). The Treatment of Sex Offenders. In M.A. Jackson & C.T. Griffiths, eds., *Canadian Criminology: Perspectives on Crime and Criminality*. Toronto: Harcourt Brace Jovanovich, pp. 239-55.
9. L. Biesenthal (1991). *Child Sexual Abuse Prior to Bill C-15: A Synthesis Report*. Ottawa: Research Section, Department of Justice.
10. *An Act to Amend the Criminal Code and Canada Evidence Act*, S.C. 1986-87, c. C-15 (passed by the House of Commons on June 23, 1987), now R.S.C. 1985, c. 19 (3rd Supp.).
11. D. Whitcomb (1992). *When the Victim is a Child, 2nd edition*. Washington: National Institute of Justice.

12. See, generally, H. Dent & R. Flin (eds.), *Children as Witnesses*. London: John Wiley & Sons.
13. Child Witness Project (1991). *Reducing the System-Induced Trauma for Child Sexual Abuse Victims Through Court Preparation, Assessment and Follow-up*. London: London Family Court Clinic. This project was funded by the National Welfare Grants Division, Health and Welfare Canada, through the Family Violence Initiative: Project No. 4555-1-125.
14. Child Witness Project (1993). *Three Years After the Verdict: A Longitudinal Study of the Social and Psychological Adjustment of Child Witnesses Referred to the Child Witness Project*. London: London Family Court Clinic. The research was funded by the Family Violence Prevention Division of Health Canada, under the Family Violence Initiative, FVDS #4887-06-91-026.
15. Child Witness Project (1994). *Allegations of Child Sexual Abuse Reported in 1992 to the Children's Aid Society of London and Middlesex*. London: Child Witness Project, London Family Court Clinic.
16. Child Witness Project (1995). *Tipping the Balance to Tell the Secret: The Public Discovery of Child Sexual Abuse (Primary and Secondary Prevention Strategies for Child Sexual Abuse: Developing a Prediction Model Based in the Facilitators and Inhibitors of Child Disclosures)*. FVPD #4887-05-92-017, funded by Health Canada.
17. Child Witness Network (1999). *I'm Doing my Job in Court, Are You? Questions for the Criminal Justice System*.
18. Child Witness Project (March 1993). *Brief Concerning Bill C-15: Submitted to the Standing Committee on Justice and the Solicitor General*. London: London Family Court Clinic.
19. Child Witness Project (May, 1993). *Brief Concerning Child Victims of Crime: Submitted to the Standing Committee on Administration of Justice*. London: London Family Court Clinic; and, Child Witness Project (September, 1993), *Comments on Attorney General's Consultation Paper Regarding the Ontario Evidence Act Reforms for Child and Vulnerable Adult Witnesses*. London: London Family Court Clinic.
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22. For complete information on the current operation of the Child Witness Project, see (2002), *Child Witness Project 2001-2002 Annual Report*. London: Centre for Children and Families in the Justice System.

