

# The Use of a Courthouse Facility Dog Program in Supporting Child Witnesses during Criminal Proceedings

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In Canada in the mid 1980s increasing attention was being paid to developing a means to support child victims of crime required to testify during the court process against their alleged perpetrator. Bala (1999) noted that, prior to this time, child witnesses were viewed as inherently unreliable with no accommodations made to support their ability to provide testimony. However, as Bala cites, legislation from 1988 (S.C. 1987 c. 24) permitted children to testify without being sworn if they had the "ability to communicate" or "promising to tell the truth."

Coincidental with this increasing realization of the importance of a child's testimony was recognition that stress on a child in telling their story within the court and withstanding cross-examination was untenable. Hence, changes in Canada's evidentiary procedures attempted to minimize the psychological impact on child witness without influencing their credibility. This included the use of placing a screen between the child and the alleged perpetrator, videotaping testimony, or having a child testify in an adjoining room (Holder, 2012). Despite these attempts, child and youth witnesses continued to suffer secondary trauma to their initial victimization (Quas, Goodman et al., 2005).

The use of a courthouse facility dog is the most recent initiative in attempting to lessen the trauma and allow the child or youth to feel safe in describing the details to the court regarding their victimization.

## Utilizing the Courthouse Facility Dog Program in Support of Child Witnesses

Courthouse facility dogs [CFDs] are uniquely trained service dogs that accompany individuals who are taking part in court proceedings. They are a source of comfort for vulnerable witnesses before, during, and after their trial (McDonald & Rooney, 2016). Courthouse facility dogs have only recently been implemented, and their presence reflects more productive court hearings, and more productive and accurate face-to-face testimonies, while also reducing secondary trauma for the witnesses (Dellinger, 2009).

*Preparation of the service dog.* CFDs come from an accredited service dog agency through Assistance Dogs International (ADI). Standards call for a CFD to respond to commands at least 90% of the time on the first request in public places and in home environments. They must display obedience by responding to voice and/or hand gestures for commands such as sitting, staying in place, and lying down. They must walk near the handler in a controlled fashion while responding to commands (Assistance Dogs International, 2018).

*What is the Function of a CFD? CFDs are* viewed as being “most effective if the witness has had an opportunity to bond and interact with the dog during pre-trial interviews” (Sandoval, 2010, p. 21). The role of a CFD is to invoke support and comfort during a potentially psychologically distressing event (Courthouse Dogs Foundation, 2018). The dog must be emotionally available to the witness, whether that is reflected in the dog placing their head on the individuals lap or being touched, often for a prolonged period of time. The witness may “hold the dog’s leash while testifying or use the dog as an opportunity to look or speak to the dog instead of to the examiner, who may be extremely intimidating” (Sandoval, 2010, p. 17). The dog’s calming presence is meant to help ground the witness during the court hearing.

However, the use of CFDs is not without controversy, as their presence may be viewed



as compromising the integrity of the court process. The purpose of the current study was to understand the role of a CFD in the context of the perceptions of court officials regarding the program.

*What About the Defense’s Rights?* The defendant’s right to a fair trial and the potential violation of their Charter of Rights and Freedoms is a significant concern when using a CFD or any alternative method for child or youth witnesses in court. It may be construed that any attempt to mitigate the trauma for the child creates prejudice against the defendant by highlighting the vulnerabilities of the child. Defendants and defense lawyers have registered their concern that a jury or judge may form a bias against the defendant, as these alternative approaches display a sense of weakness, innocence and construct themes around victimization in the accused (Dellinger, 2009).

The presence of a CFD may create prejudicial influence (Dellinger, 2009). Conversely, when dogs are “kept out of the jury’s sight, they probably have less impact than if a young witness is clutching a stuffed animal or has a person nearby for support” (Johansson, 2012, para. 23). In decreasing bias towards the perpetrator, the CFD should not be a visual distraction or reminder for the jury or judge of the nature of the child’s vulnerability. Judges also have the duty to instruct jurors not to exhibit bias when a CFD is providing support to the witness. Research has shown that “allowing

a dog to assist a testifying child is less prejudicial and has a lesser effect on a jury than an adult accompanying the child to the stand” (Dellinger, 2009, p. 186).

### **The Current Study**

The current study examined, within one specific jurisdiction, court officials’ views and attitudes regarding the use of CFDs. It was also the focus of the present study to gain an appreciation from court personnel regarding the relative value of CFDs in comparison to other child witness assistive approaches.

*Participants.* Seven participants were involved in the study. These participants reflected a range of disciplines involved in the court process including crown attorneys (3), defense counsels (3), and an employee from the Child Witness Project (1).

*Measures.* The qualitative component of this study consisted of a structured interview that elicited the perceptions and attitudes in the use of a CFD. Thematic analysis was used to examine the narrative content in the interviews (Creswell, Hanson, Clark Plano & Morales, 2007). The quantitative component included participant’s rank ordering the use of a facility dog in comparison with other child witness supports through completion of a questionnaire.

*Procedure* Participants completed a consent form and a 30 minute structured interview. Following the formal interview, a short self-report questionnaire was completed.

### **Results**

*Thematic Analysis.* Seven overall themes were identified that focused on the overall challenge of working with children and youth within the court process. Additional themes reflected both the ways in which youth react to stressful court related situations, while still understanding the court official’s perception of the CFD. The common factor in each participant’s report revealed they identified positive aspects of using the CFD program. Nevertheless, defense counsels were more forthcoming regarding their

concerns in the potential compromise and bias in the use of the CFD.

*Rank Order Measure Results.* The first question asked court officials to rank on a six point Likert scale how important various testimonial aids were. These aids included the use of the screen, video recordings, adjoining rooms, comfort objects, courthouse facility dog, and support persons. Placing a child in an adjoining room was ranked as being most effective, followed by the use of the CFD. In descending order, use of the screen, videotaped testimony, and lastly the use of a comfort object were ranked as being least effective in the process.

The second question on the rank order measure asked court officials how concerned they were with the use of testimonial aids during the trial. Use of the screen was ranked as having the most prejudicial impact on the trial process followed by videotaped evidence, use of an adjoining room, and the presence of a comfort object. More than half of the participants viewed the use of a CFD as among the least prejudicial.

### **Discussion**

Use of the CFD program is a recent innovation to the criminal justice process involving child and youth witnesses. The current study was a preliminary exploration of the potential impact of CFDs on the court process, specifically as it relates to its use in potentially biasing the process. Reports from court personnel suggested that while there is the potential for bias, it was not as prominent as what was first thought at the beginning of the study by the investigators. However, it was the perception of the defense counsels who registered the most reservations relative to the crown attorneys and child witness worker, where the potential for bias was rated higher than the use of other testimonial aids. Defense counsel also identified the potential for distraction within the court process due to the dog’s presence. Certain participants also reported that younger children would find the dog’s presence more distracting. This aligns with Quas and Goodman’s (2012) understanding regarding how different age

groups react differentially to the court process and may lead to the conclusion that older children may benefit more from the use of a CFD.

*The Concern for Bias.* Although the potential for bias in the use of the program was identified, the thematic analysis also revealed that the benefits of the CFD reflected in a child/youth increased sense of safety, support during sentencing, companionship, a reduction in physiological symptoms related to anxiety and stress were of greater importance. These effects in the use of the CFD appeared to far outweigh the concerns for bias. Thus, the majority of the subthemes reflected the potential of the CFD to provide emotional support to child and youth witness. This conclusion coincides with the work of Dietz, Davis and Pennings (2012), who reported that the use of animal-assisted therapy, specifically for children who had experienced sexual assault such as with the majority of the children who are supported through the children witness program, can significantly contribute to helping increase feelings of safety, trust, and acceptance.

*Clinical Relevance.* Lawyers who work with children and youth witnesses use certain strategies both in court preparation as well as throughout the trial process in addressing the stress placed on child and youth witnesses. In the current study, court officials expressed their awareness of the emotional challenges that child and youth witnesses experience. Some participants noted their awareness of the potential for secondary trauma that many children and youth experience in preparation for their court hearing. This awareness speaks to the degree to which some young witnesses are already traumatized before they even get to court. Such concerns add credence to the use of the CFD in helping to create a safe space in which to allow the child or youth to both prepare for and present their evidence to the judge or jury.

All court officials noted that the use of live

testimony is the most accurate way to attain candid results. It is why the use of adjoining rooms or videotaped testimony is universally viewed as the least preferred option. While again, use of the CFD is at an early stage, Dellinger (2009) has noted that the use of CFDs “may prove to be the previously missing link that would enable some children and other emotionally frail witnesses to be present and testify in open court while protecting them from the emotional trauma the law seeks to avoid” (Dellinger, 2009, p. 178).

### **Summary**

This study is among the first to address how the use of a CFD as a testimonial aid may be beneficial in helping child and youth witnesses who are experiencing emotional difficulties while testifying in court. The focus was on the perceptions of court related personnel who interact with the CFD program. Through the use of structured interviews and completion of questionnaires, it would appear that a CFD program is viewed as a potential benefit for youth victims and witnesses without biasing the court process. However, it must be reiterated that certain themes, mostly emanating from defense counsel, highlighted areas of potential biasing of the process and speaks to the need to monitor the ways in which the use of CFDs can reduce the potential bias while still implementing the program. This could include keeping the dog out of the judge or jury’s sight or providing additional instructions to address prejudicial concerns of the accused to jury members (Dellinger, 2009). Again however, while promising, the use of CFDs is in its infancy and additional research is needed to monitor its effectiveness in order to track the potential for its role in the court process.

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