



CALLING A YOUNG WITNESS

AN ESSENTIALS GUIDE



London Family
Court Clinic

Est. 1974

Professional Services for Families in Court



Authors

Vanessa Decker, B.Sc. (Hons.), J.D.

Bianca DiBiase, B.J. (Hons.), J.D.

Rachel Braden, M.S.W, R.S.W

Contributors

Heather Palin, B.A. (Hons.), LL.B, J.D.

Mary Potter, Crown Attorney, London

Pamela Hurley, M.Ed

Chelsea Quick, M.S.W, R.S.W

This new publication is an addendum to “Helping a Child be a Witness in Court: The Essentials,” and was written specifically for Crown Attorneys.

DELTA Series Team

Rachel Braden, author; Todd Devlin, editor; Michelle Foster, graphic designer; Heather Fredin, author; Kimberly Harris, author; Pamela Hurley, author; Alicia Lean, communications assistant; Jenny Poon, researcher.

Other publications in this Series include:

Helping an Abused Woman: An Essentials Guide

Helping Children Exposed to Violence at Home: An Essentials Guide

Online Abuse: Virtual violence and its impact on young women and girls

Preparing and Supporting Young Witnesses: An Essentials Guide

Rethinking Resiliency: How understanding our world can help us bounce back

Library and Archives Canada Cataloguing in Publication

Decker, Vanessa, author

Calling a young witness : an essentials guide.

Authors: Vanessa Decker, B.Sc. (Hons.), J.D., Bianca DiBiase,

B.J. (Hons.), J.D., Rachel Braden, M.S.W, R.S.W ; contributors,

Heather Palin, B.A. (Hons.), LL.B, J.D., Mary Potter, Crown

Attorney, London, Pamela Hurley, M.Ed, Chelsea Quick, M.S.W, R.S.W.

Issued also in print and electronic formats.

ISBN 978-1-988275-00-0 (softcover).--ISBN 978-1-988275-07-9 (PDF)

1. Child witnesses--Canada. 2. Examination of witnesses--Canada--
Trial practice. I. DiBiase, Bianca, author II. Braden, Rachel, author
III. London Family Court Clinic, issuing body IV. Title.

KE8460 D43 2017

347.71'066083

C2017-904712-4

KF8950 D43 2017

C2017-904713-2



Professional Services for Families in Court

200 - 254 Pall Mall St.
London, ON N6A 5P6
Canada
info@lfcc.on.ca • www.lfcc.on.ca

We gratefully acknowledge funding from the Department of Justice Canada.



The opinions expressed herein are of the authors and do not necessarily reflect those of the Department of Justice or the Government of Canada.

2017 © London Family Court Clinic, Inc.
All Rights Reserved. Do not reproduce without written permission of the authors.

CALLING A YOUNG WITNESS

AN ESSENTIALS GUIDE

The aim of this Guide is to provide Crown Attorneys with clear, concise, and practical information to guide their work with young witnesses.* The Guide includes: the 'essentials' of understanding the experience of young witnesses and their families throughout the justice process; the core components of what young witnesses learn during court preparation; common key worries and concerns of young witnesses; how trauma and development influence testimony; relevant legislation; and principles for pre-trial, trial and post-trial interactions with young witnesses. The material can be adapted for use in various jurisdictions. The Guide was developed primarily for Crown Attorneys who prosecute cases involving children and youth, but others who provide support to young witnesses may also find this Guide helpful.

Young people are being called to testify about their own victimization, or about violence that they have witnessed, in increasing numbers. This Guide reviews the needs, challenges, and vulnerabilities of young witnesses, and addresses the flexible, coordinated and skilled approach required by Crown Attorneys when a young witness is involved in the prosecution. Advanced planning by the prosecution can help to minimize any unnecessary stress for the young witness, and court preparation can help the witness provide a full and candid account of their evidence to the court. Additionally, liaising with court preparation providers can lead to more efficient and effective interactions between the Crown and the young witness.

* The term 'young witness' used in this Guide refers to children and youth under the age of 18 who are victims and/or witnesses of crimes.

Why an Essentials Guide?

The concept of an Essentials Guide reflects the London Family Court Clinic's commitment to producing training material to help busy people learn and/or upgrade their skills in a convenient way, while being respectful of the multiple commitments in their lives. There is no one recipe or cookie-cutter prescription for working with young witnesses. There is a lot to know when it comes to young witnesses, and formal legal training rarely covers everything people wish to learn. Each young witness is unique. Instead of prescriptions, we offer information and principles to guide your work with young witnesses, and we provide case scenarios to help demonstrate concepts.

Who can use this Guide?

This Guide can be used by any Crown who is calling a young witness in criminal court. Additionally, this Guide will be useful for those who work with victims and who can share and disseminate the information provided within this Guide to the legal professionals with whom they engage. If you are experienced in this field, the material in this Guide should reinforce your observations and the knowledge that you've gained through working with young witnesses. If you are new to this field, the material in this Guide will help you understand the experience of a young witness, and the creative and flexible approach that will be required. We have aimed to make this Guide useful and relevant across many countries and legal jurisdictions.

Philosophy

Each young witness is unique and deserves advocacy and support that matches and meets their individual needs. Acknowledging that each young witness, each case, and each jurisdiction is distinct, we provide principles rather than prescriptions to help guide practice.

CONTENTS

CALLING A YOUNG WITNESS: AN ESSENTIALS GUIDE

INTRODUCTION	i
WHAT TO EXPECT FROM A COURT PREPARATION PROGRAM	4
WORRIES AND CONCERNS - KEY STRESSORS FOR YOUNG WITNESSES	6
DEVELOPMENT, TRAUMA AND TESTIMONY	9
PARENTS AND GUARDIANS - SUPPORTING AND UNDERSTANDING	19
CALLING A YOUNG WITNESS	22
LEGISLATION REVIEW	30

WHAT TO EXPECT

FROM A COURT PREPARATION PROGRAM

The agencies responsible for providing court orientation, preparation and support to a young witness vary between jurisdictions. Some organizations and their programs are dedicated solely to young witness court preparation, while many victim/witness programs provide preparation and support to both adults and young witnesses.

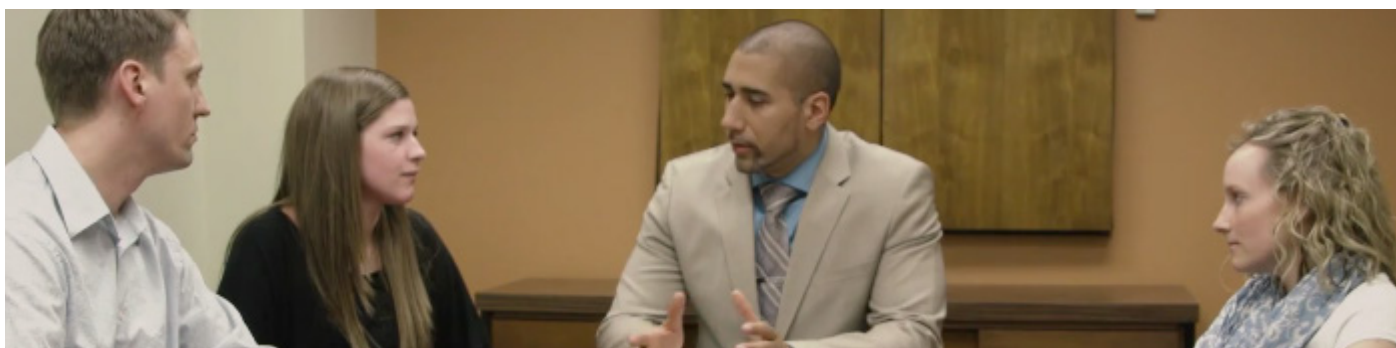
Court preparation for young witnesses generally consists of four core components:

- 1) Education
- 2) Court orientation
- 3) Role play: Practice listening to and answering questions
- 4) Stress reduction/anxiety management

Education

The young witness learns the following:

- The role of a witness
- What a preliminary hearing/inquiry is
- What a trial is
- The rules around the discussion of evidence with the court preparation provider
- The different roles of court personnel (i.e., Judge, Crown, Defence, Reporter, Clerk, Accused, Security/Sheriff, Jury)
- The preliminary hearing or trial process (i.e., what the day will look like)
- The testimonial aids available
- What it means to take an oath or affirmation
- What examination-in-chief and cross-examination are
- How examination-in-chief and cross-examination differ (i.e., open vs. closed-ended questioning, suggestive questioning, double-barrelled questions)
- The rules for witnesses
- The burden of proof - what is it?
- Potential outcomes (i.e., 'Guilty' vs. 'Not guilty,' 'Withdrawn,' 'Stayed,' etc.)



Court orientation

Court orientation can include the following:

- A tour of the court location (this is not always a courtroom - rural areas may use halls or legions). When a physical tour is not possible, using online tools, visual aids or model courtrooms can be helpful
- Pointing out or describing where key personnel will be located (where the accused will be located is *not* identified)
- Pointing out safe waiting areas for the young witness
- A tour of the closed-circuit television (CCTV) suite (if applicable)
- Orientation to other applicable testimonial aids
- Safety planning for entering and exiting the courthouse or court location

Role play: Practice listening to and answering questions

- Practice questions do not relate to the young person's evidence
- Provides an opportunity for the young witness to practice listening to questions. This helps identify any misunderstandings and/or confusion on behalf of the young witness, and allows for him or her to practice asking for clarification
- Provides an opportunity for the young witness to practice listening and responding to the types of questions often used in cross-examination (i.e., suggestive or double-barrelled questions)
- Provides an opportunity to practice being appropriately assertive when faced with confusing, poorly-worded, or suggestive questions

Stress reduction/anxiety management

- Worries and/or concerns are addressed with the young witness.
- Young witnesses learn how to manage court-related anxiety.

** For a more detailed review of court preparation protocol and case scenarios, see the resource 'Preparing and Supporting Young Witnesses: An Essentials Guide,' which is also part of the DELTA series.

If possible, liaise with victim services/court preparation provider

The court preparation provider can give insight into any special needs, concerns or testimonial aid requirements and preferences of the young witness, as well as strategies to best engage with the young witness.

Case Example:

A 15-year-old female attended a court preparation session. She was timid and shy. Her responses to questions and inquiries were limited. Recognizing after several minutes that the young witness was not engaged, the provider began asking her about topics unrelated to court preparation. Through this process, the provider learned that the young witness had a keen interest in dogs. After approximately five minutes of conversation relating to animals, the provider was able to engage the young witness in a much more effective conversation about court preparation. When the Crown approached the provider prior to her first meeting with the young witness, the provider was able to share this information with the Crown, who subsequently started her meeting with the young witness with a discussion about pets. As a result, the young witness opened up almost immediately, which resulted in a more efficient and effective meeting.

WORRIES AND CONCERNS

KEY STRESSORS FOR YOUNG WITNESSES

Children/youth and their parents/guardians may worry about many things during the months or years waiting for court to proceed. Fortunately, many of their worries or concerns can be identified and addressed during court preparation. The person providing court preparation will have had an opportunity to explore what testimonial aids might help in addressing some of the young witness' particular worries or concerns. If the young witness has been unable to receive court preparation, a decision around which testimonial aids (if any) are required may need to be made on the day of court. Testimonial aids can be helpful for young witnesses in addressing many of the general worries and concerns that they may have. As the young witness learns more about the court process, their concerns may decrease.

The common worries and concerns of young witnesses can be grouped into six general categories, including: The accused; support; time; lack of understanding; communication; and embarrassment.



Accused	<p>Worries/Concerns:</p> <ul style="list-style-type: none"> ● Seeing the accused ● Retaliation by the accused (or by his/her supporters) during or after court. This fear is often amplified among younger witnesses and among those who were threatened by the accused to not disclose the alleged offence ● Seeing the accused's family and friends <p><i>** Remember that there are exceptions. Not every young witness will be concerned with seeing the accused. Some young witnesses want to testify in the courtroom and face the accused.</i></p>
Support	<p>Worries/Concerns:</p> <ul style="list-style-type: none"> ● Fear of not being believed. This is a fear among many young witnesses, and it can be a major impediment to disclosure (Concerns about not being believed are also entangled with worries about the accused lying in court and being believed) ● Being denied their ideal support person due to a witness exclusion order
Time	<p>Worries/Concerns:</p> <ul style="list-style-type: none"> ● Testifying repeatedly (i.e., at a preliminary hearing as well as at a trial) ● Long waits for court dates ● Multiple adjournments (Adjournments prolong involvement in the justice system and deny the young witness the opportunity to move forward with her/his life. A last-minute adjournment can wreak havoc on the life of the young witness, especially if he/she was experiencing anticipatory anxiety)
Lack of understanding	<p>Worries/Concerns:</p> <ul style="list-style-type: none"> ● Not understanding legal procedures, roles and terminology (A young person might worry about something that an adult may see as trivial, such as where they are going to sit) ● Other common worries or concerns that can result from an incomplete and/or inaccurate understanding of the judicial system include: Being sent to jail; being on trial themselves; disappointing adults; appearing incompetent; getting yelled at
Communication	<p>Worries/Concerns:</p> <ul style="list-style-type: none"> ● Getting mixed up while answering questions or forgetting details ● Not understanding the questions ● Complex terminology, abstract concepts (Not knowing the answers to the questions)
Embarrassment	<p>Worries/Concerns:</p> <ul style="list-style-type: none"> ● Getting upset or crying ● Testifying in public ● Describing details of the alleged offence (Reluctance to say out loud certain body parts or swear words.) ● People finding out about the offence (Young persons are often worried about who is in the courtroom and who is hearing their testimony.)

Court-related worries or concerns of a young witness may be seen by a legal professional as odd or unusual, but they simply reflect an inaccurate understanding of the legal system. A young witness can be in a better position to provide a full and candid account if their concerns are understood, are validated as being normal, and are addressed appropriately through education, court orientation and role play.

References and related reading

1. Ahern, E. C., Stolzenberg, S. N., & Lyon, T. D. (2015). Do prosecutors use interview instructions or build rapport with child witnesses? *Behavioral Sciences & the Law*, 33(4), 476-492. doi:10.1002/bsl.2183
2. Bala, N. (1999). Child witnesses in the Canadian criminal courts: Recognizing their capacities and needs. *Psychology, Public Policy, and Law*, 5(2), 323-354. doi:10.1037//1076-8971.5.2.323
3. Bala, N., Lee J., & McNamara, E. (2001). Children as witnesses: Understanding their capacities, needs, and experiences. *Journal of Social Distress and the Homeless*, 10(1), 41-68. doi:10.1023/A:1009429602266
4. Burrows, K. S., & Powell, M. (2014). Prosecutors' recommendations for improving child witness statements about sexual abuse. *Policing & Society*, 24(2), 189-207. doi:10.1080/10439463.2013.784305
5. Cederborg, A.-C. (2004). Factors influencing child witnesses. *Scandinavian Journal of Psychology*, 45(3), 197-205. doi:10.1111/j.1467-9450.2004.00395.x
6. Cowan, B. M. (2013). Children in the courtroom: Essential strategies for effective testimony by child victims of sexual abuse. *The Army Lawyer*, 4-16. Retrieved from https://www.loc.gov/rr/frd/Military_Law/pdf/02-2013.pdf
7. Freshwater, K., & Aldridge, J. (1994). The knowledge and fears about court of child witnesses, schoolchildren and adults. *Child Abuse Review*, 3(3), 183-195. doi:10.1002/car.2380030307
8. Lipovsky, J. A. (1994). The impact of court on children: Research findings and practical recommendations. *Journal of Interpersonal Violence*, 9(2), 238-257. doi:10.1177/088626094009002007
9. Lipovsky, J., & Stern, P. (1997). Preparing children for court: An interdisciplinary view. *Child Maltreatment*, 2(2), 150-163. doi:10.1177/1077559597002002008
10. London Family Court Clinic. (1993). Three years after the verdict: A longitudinal study of the social and psychological adjustment of child witnesses referred to the Child Witness Project. Retrieved from <http://www.lfcc.on.ca/3yrsexecsum.pdf>
11. London Family Court Clinic. (2002). Child witnesses in Canada: Where we've been, where we're going. Retrieved from http://www.lfcc.on.ca/CW_in_Canada.html
12. McWilliams, K., Augusti, E.-M., Dion, J., Block, S. D., Melinder, A., Cashmore, J., & Goodman, G. S. (2014). Children as witnesses. In G. B. Melton, A. Ben-Arieh, J. Cashmore, G. S. Goodman, & N. K. Worley (Eds.), *The SAGE handbook of child research* (pp. 285-299). Retrieved from <https://us.sagepub.com/en-us/nam/the-sage-handbook-of-child-research/book230449#contents>
13. Nathanson, R., & Saywitz, K. J. (2015). Preparing children for court: Effects of a model court education program on children's anticipatory anxiety. *Behavioral Sciences and the Law*, 33(4), 459-475. doi:10.1002/bsl.2191
14. Powell, M. B. (2013). An overview of current initiatives to improve child witness interviews about sexual abuse. *Current Issues in Criminal Justice*, 25(2), 711-720. Retrieved from <http://www.austlii.edu.au/au/journals/CICrimJust/2013/30.pdf>
15. Sas, L. D., Wolfe, D. A., & Gowdey, K. (1996). Children and the courts in Canada. *Criminal Justice and Behavior*, 23(2), 338-357. doi:10.1177/0093854896023002006
16. Saywitz, K., & Camparo, L. (1998). Interviewing child witnesses: A developmental perspective. *Child Abuse & Neglect*, 22(8), 825-843. doi:10.1016/S0145-2134(98)00054-4

DEVELOPMENT, TRAUMA AND TESTIMONY

As a result of Bill C-2, An Act to Amend the Criminal Code (Protection of Children and Other Vulnerable Persons), section 16.1 of the Canada Evidence Act states that: “a person under 14 years of age is presumed to have the capacity to testify.” - Canada Evidence Act, R.S.C., c. C-5 (1985). Persons under 14 years of age are no longer subject to a competency inquiry. As a result, younger children are more able to participate as witnesses.

It is well accepted that a young witness can be a competent witness when asked questions they are capable of understanding. However, throughout the court process, in particular during cross-examination, young witnesses are often subjected to questions that are confusing and developmentally-inappropriate. This can hinder their ability to present their best evidence. Young witnesses can provide more complete information when simple language is used and when questions are asked in a way that they can comprehend.

Development is not a straightforward process

Development is a process that varies from child to child, and there are a number of factors that influence development. It cannot be assumed that a young witness is at a particular developmental stage simply based on their chronological age. One factor in particular that can influence a child’s development is trauma.



Trauma and development

Traumatic experiences can have an overwhelming impact on a child/youth, which can affect their physical, emotional, cognitive and social development. It is not unusual for a young witness who has experienced a traumatic event to show a decrease in previous functioning, or a slower rate of achieving new developmental tasks. In cases where the trauma is not the result of a single incident, but rather of repeated traumatic events or experiences (also referred to as ‘complex trauma’), the outcome can involve more significant and pervasive symptoms. While it is important to recognize that a young person’s development may have been impacted if they have experienced an event(s) as traumatic, it should also be recognized that not all young witnesses will have been traumatized by their negative life experiences.

Definition of Trauma (DSM-5)

Many events might be experienced as traumatic by a young person. For example, the Diagnostic and Statistical Manual of Mental Disorders (DSM-5) lists the following:

- Person experienced, witnessed, or was confronted with an event that involved actual or threatened death, serious injury, or sexual violence in the following ways:
 - Directly experiencing the event;
 - Witnessing, in person, the event(s) as it occurred to others;
 - Learning that the traumatic event(s) occurred to a close family member or close friend. In cases of actual or threatened death of a family member or friend, the event(s) must have been violent or accidental;
 - Experiencing repeated or extreme exposure to aversive details of the traumatic event(s) (i.e., police officers repeatedly exposed to details of child abuse through forensic interviews).

American Psychiatric Association. (2013). *Diagnostic and statistical manual of mental disorders* (5th ed.). Arlington, VA: American Psychiatric Publishing.

A traumatic event can impact an individual in a variety of ways, and the severity of the event may not be a true indicator of the impact it will have on the individual. There are several factors that can play a role in how an individual will react to an event, some of which include: an individual's temperament; the presence or absence of supportive adults and institutions; victimization history; and the existence of additional stressors (which can compromise the ability to cope).

Case Examples:

Ann, a 15-year-old female, has been victimized multiple times throughout her life. Most recently, she was the victim of a sexual assault by a stranger at a party. Ann has had many foster placements. She has limited peer and family support, and she struggles to make healthy attachments with the adults and friends in her life. Since the assault, Ann has had trouble attending school. She has trouble falling asleep and staying asleep. She has increased her alcohol intake, and she refuses to speak to anyone about her experience. Her foster mother reports that she has to wake Ann up on a regular basis, as she is agitated in her sleep and appears to be having nightmares. Her foster mother also reports that Ann appears to be acting "younger than she actually is" since the assault.

Jane, a 16-year-old female, was also the victim of a sexual assault by a stranger at a party. Jane resides with her mother and two sisters. Her mother attended the hospital right after the assault and has supported Jane throughout the process. Jane received counselling immediately after the assault, and all members of her family continue to attend ongoing counselling sessions. Currently, Jane reports no trauma symptoms.

Key points to remember

Justice professionals working with young witnesses can benefit from being aware that:

- A) A young witness may have experienced the incident that brought them before the courts as traumatic.
- B) The young witness' reaction may seem disproportionate to the severity of the alleged offence, but it may be congruent to the child's past adverse experience.
- C) The traumatic experience has the potential to lead to delays in attaining new developmental tasks, or it may trigger a developmental regression, which must be kept in mind when addressing the young witness.

Trauma and testimony

When communicating with a young witness, in addition to asking questions that are age appropriate and developmentally appropriate, the questioner needs to be sensitive to the potential

trauma reaction resulting from the event, and/or emotional vulnerability from prior victimization or adverse life events.

Trauma triggers

Triggers are reminders of traumatic experiences that can provoke reactions similar to those that were present during the original traumatic event (i.e., increased heart rate, blood pressure, respiration, hypervigilance, dissociation). Triggers can be external stimuli, such as sights, sounds or smells. Some young witnesses will have attempted to avoid these triggers in an effort to cope. Those who have used avoidance as a coping strategy may not have developed the strategies necessary to manage their reactions, and they may be ill-prepared when confronted during examination with questions that force them to directly acknowledge the event. The young witness may become overwhelmed to the point that their ability to provide a full and candid account is adversely impacted.

Trauma triggers and testimony

Theory to practice: Avoiding triggers during examination-in-chief and cross-examination can be challenging, particularly when the questioner does not know what will trigger the witness. Being aware of the reaction that a trigger can cause is important so that a Crown can assist in mitigating the impact on testimony by implementing certain strategies, such as requesting that a break be taken, so that the young witness can collect him or herself.

Trauma and coping

Dissociation is a mental coping mechanism where an individual withdraws attention from the outside world and focuses on his or her own inner world. Dissociation can be used during a traumatic event, and also after a traumatic event, particularly when an individual has not developed effective coping strategies. Dissociation is an involuntary act. In other words, people do not decide or plan to dissociate. During examination-in-chief or cross-examination, the young witness may find themselves in a situation where they are faced with reminders of the event and may use dissociation to manage their reaction. A young witness who is dissociating may appear detached, numb to the experience, 'spacey' and/or overly compliant (i.e., agreeing with inaccurate suggestions simply because they are not able to process questions accurately). In contrast to the hyperarousal that some people experience when faced with triggers, dissociation will slow the heart rate, and the young person may appear disconnected from their environment.

Coping and testimony

Theory to practice: If you sense that a young witness is withdrawing or dissociating (they will often appear as though they are staring off into nowhere, or answering questions in a monotone or robotic manner), simply request a break. A break can allow the young witness to once again become connected to the present moment, which will allow them to be in a better position to respond to questions more accurately.

Coping and the perception of the trier(s) of fact

Some coping strategies may reduce the credibility of the young witness in the eyes of the triers of fact, particularly if the triers are unfamiliar with the impact of trauma. The behaviour of a young witness can appear counterintuitive to how the average person might think that a victim *should* act. For example, the young witness may describe a sexual assault using a flat, unemotional tone, as if they were recounting an ordinary event. If a jury member believes that emotional upset should be the appropriate response, he or she may think that the young witness is not credible.

Similarly, the average person may believe that secrecy and delayed reporting about a sexual assault means that it did not happen, especially when the young person has supportive adults in their life that they could turn to. But the average person may not be aware of the well-established literature that indicates that victims of sexual assault often do not disclose the assault for many months or years after (if ever). There is now case law that has addressed the issue of delayed or incremental disclosure, which can be drawn on during submissions, if necessary.

Delayed and Incremental Disclosure

R. v. D.D., [2000] 2 S.C.R. 275 at para. 65

R. v. L.K., [2011] O.J. No. 2553 (Ont. Sup. Ct) at paras 23-24

Misconceptions and testimony

Theory to practice: It may be helpful – or even necessary – to call an expert to discuss the impact of trauma and provide a context for the triers of fact to evaluate the victim's behaviour.

Key points to remember

It is important to remember the following factors when dealing with a young witness who has experienced a traumatic event:

- A) The young witness may be experiencing a trauma reaction.
- B) The examination process may present triggers that can lead to both physical and emotional reactions, and ultimately impact the ability of the young witness to provide a full and candid account.
- C) Triers of fact may need to be educated about the impact of trauma.

General capabilities and limitations of each developmental stage

In dealing with young witnesses, it is beneficial to understand the linguistic, cognitive and emotional tasks and milestones associated with each stage

of a child/youth's development. While it is important to keep in mind that individual differences exist, awareness of the general capabilities and limitations of each particular developmental stage will assist Crown Attorneys to develop an effective examination for each young witness that will elicit a full and candid account of their experiences.

Development and testimony

Theory to Practice: If your witness is working with court preparation services, it is beneficial to speak to the service provider to get a better understanding of the child and his or her capabilities. Parents or guardians can also assist in providing an understanding of the current developmental stage of the young witness, as well as any special needs or challenges that he or she may face.

Age: 4-6 yrs	Abilities and Limitations	Suggested Approaches
Language and Communication	<p>Language and communication abilities are in the process of development.</p> <p>Vocabulary rapidly increases during this period.</p> <p>Typically, children in this age group have not yet learned that words can have more than one meaning (i.e., [court] case / [pencil] case, [criminal] court / [basketball] court).</p> <p>Difficulty distinguishing words that sound the same (i.e., sun/son).</p> <p>Prepositions confuse.</p> <p>Difficulty with abstract concepts (i.e., an idea or something that is not concrete).</p> <p>Comprehension monitoring is limited. Child may be unaware that they have misunderstood the meaning of a word/sentence/phrase.</p>	<p>Keep questions short and clear.</p> <p>Use simple words (one to two syllables).</p> <p>Avoid legal terminology. It is likely that the child will know the meaning of the word only in its non-legal sense.</p> <p>Be specific. Use a person's name (avoid 'he'/'she'), and name the object (avoid 'it').</p> <p>Avoid prepositions (i.e. 'on', 'beside', 'near').</p> <p>Ongoing: check for comprehension – both the witness' and your own.</p> <p>Keep in mind individual differences, personalities, and temperament.</p>

Age: 4-6 yrs	Abilities and Limitations	Suggested Approaches
<p>Relevant Conceptual Knowledge</p>	<p>Concept of time is not yet developed.</p> <p>Difficulty using past and future tenses correctly (i.e., ‘yesterday’ may be used to describe any time in the past).</p> <p>Around age 5, children begin to distinguish between ‘today’ and ‘tomorrow.’</p> <p>Terms such as ‘before,’ ‘after,’ ‘first,’ and ‘last’ have not yet been grasped.</p> <p>Can count by rote. Can provide you with a number, but the number may not have an accurate meaning.</p> <p>Unable to estimate the duration or frequency of events, or when (in time) the event occurred.</p>	<p>Use other resources (parents, for example) to establish information like timeframes.</p> <p>Avoid questions that ask the child to estimate how many times an event occurred. A child may answer with a number, but because they have not learned the concept of numbers, the number they provide may not be meaningful.</p> <p>Avoid questions that ask the child to estimate duration or frequency (for the same reasons as above).</p>
<p>Memory</p>	<p>Can remember central details of a distinctive/unusual event, an event that was personally experienced, or an event that was of high interest.</p> <p>When describing the event, peripheral details may be omitted.</p>	<p>Use of open-ended questions can avoid suggestibility (i.e., “Tell me why your mom brought you here today.”)</p> <p>More open-ended questions and prompts may be required to get the details.</p>
<p>Suggestibility</p>	<p>Children in this age group are vulnerable to suggestive or leading questions.</p> <p>May have a desire to please adults, and have generally been taught to be compliant with authority. This can make the child vulnerable to changing his/her answer with repeated questioning, because they assume that their original answer was wrong.</p> <p>An inability to monitor one's own comprehension increases vulnerability to suggestions.</p>	<p>Ensure that the child witness understands the question or the instruction accurately. Explore understanding and clarify in re-examination, if necessary.</p> <p>Discuss repeated questions during pre-trial meetings with the young witness. Reinforce the fact that as long as their answers are truthful, they do not need to change them.</p> <p>Object if/when appropriate.</p>
<p>Attention Span</p>	<p>Limited attention span.</p>	<p>When meeting with young witnesses of this age group, keep meetings short. Several short meetings will be more productive than a single long meeting.</p> <p>Monitor the witness’ attention and focus during testimony. They may be tired. Several breaks may be needed. The young witness may not have the language or confidence to ask for a break themselves, or they may not have the awareness that one is needed.</p>

Age: 7-10 yrs	Abilities and Limitations	Suggested Approaches
<p>Language and Communication</p>	<p>Narrative skills continue to develop. Children can provide more detailed accounts of events.</p> <p>Hypothetical ("What if") and abstract questions are difficult.</p> <p>Questions in statement form and use of negatives (i.e., "You didn't go there, did you?") are confusing.</p> <p>Increasing ability to use pronouns and prepositions. Can better track the use of pronouns around age 10.</p> <p>Comprehension monitoring is still a challenge.</p>	<p>Continue to provide clear explanations and specific instructions.</p> <p>Keep questions simple, short and clear.</p> <p>Use proper names as opposed to pronouns. It helps keep the child on track.</p> <p>Continue to check comprehension. Ask the young witness to clarify what a particular word or phrase means to them if you suspect that something has been misunderstood.</p>
<p>Relevant Conceptual Knowledge</p>	<p>Able to estimate time related to personal routines, daytime or nighttime, seasons, or special events.</p> <p>Tasks involving estimates of duration, frequency of events, or historical time are still difficult.</p> <p>Ages 8 and under may know the names of the months by rote, but will still struggle to identify dates or months in a meaningful way.</p> <p>This age group is not yet able to estimate height, weight, measurement, or age.</p>	<p>Television shows, special activities or meal times may help establish timeframes (i.e., "I think it was after school because I was having a snack and my favourite show was on the TV:").</p> <p>Avoid questions that ask the child to estimate something beyond their ability (i.e., Do not ask if the child can identify how tall the alleged offender is. They may give an answer, but it may not be meaningful).</p> <p>Use other resources to get details if possible (i.e., parents).</p>
<p>Memory</p>	<p>Memory strategies are learned and used at school.</p> <p>Memory for central details of distinctive or unusual events can be strong.</p>	<p>Use of open-ended questioning can access the most accurate information.</p>
<p>Suggestibility</p>	<p>Remain vulnerable to suggestive questioning.</p>	<p>Continue to ensure that the child understands the question or the instruction accurately. Clarify in re-examination if necessary.</p> <p>Encourage "I don't know" and/or "I don't understand" responses to interview questions. Be mindful of comprehension monitoring – the child must first identify that they don't understand if they are going to verbally express that they don't understand.</p>

Age: 7-10 yrs	Abilities and Limitations	Suggested Approaches
Attention span	Between 30 to 60 minutes, depending on the activity.	<p>Monitor for fatigue.</p> <p>Check with the young witness- would he/ she like a break? They may continue to lack the confidence to ask for themselves.</p> <p>A young witness who is distressed may find it difficult to focus and may need a break.</p>

Age: 11-17 yrs	Abilities and Limitations	Suggested Approaches
Language and Communication	<p>Narrative skills are well-developed; this age group (especially in later stages) can discuss events in detail.</p> <p>Double negatives and tag questions continue to be confusing (i.e., “You said that you didn’t go there, but you did, didn’t you?”).</p> <p>Able to deal with abstract and hypothetical questions ('What ifs'); Can draw inferences.</p> <p>Reluctance to communicate may be caused by feelings of distress or embarrassment about what happened. Trust in adults may have been compromised by victimization.</p> <p>Vulnerability may be masked by a presentation of indifference.</p>	<p>Engage the young witness. Ask their opinion. Is there anything they would like to tell you about themselves?</p> <p>Open-ended questions encourage more accurate information.</p> <p>Check comprehension. At this stage, they will likely recognize when they do not understand, but may be reluctant to admit that they don’t understand.</p> <p>Explain that they will likely have to say “I don’t understand” several times, since language used in court can be confusing – explain that they will not be seen as ‘dumb’ or ‘stupid.’</p>
Relevant Conceptual Knowledge	<p>Able to estimate more accurately time and duration of events (i.e., how long ago something happened).</p> <p>Can estimate height, weight, distance and dates with more accuracy.</p>	<p>Emphasize that reviewing police statements can assist with date recollection – many young witnesses worry about the outcome if they don’t remember the exact date off the top of their head.</p> <p>Emphasize the meaning of “estimate.” A young witness may stress about being exact.</p> <p>Accuracy is going to depend on the individual. Their ability to understand these concepts is influenced by factors like their level of education.</p>

Age: 11-17 yrs	Abilities and Limitations	Suggested Approaches
Memory	<p>Around age 12, a young person’s memory can be as complete as that of an adult.</p> <p>Where there is repeated abuse, victims may still have difficulty identifying specific incidents or recalling the number of times the abuse occurred.</p> <p>Distinctive incidents may be recalled in more detail (i.e., the first or last assault; if violence was used; a specific/different location).</p>	<p>Use open-ended questions.</p> <p>Asking about the “first time,” the “last time,” and any times “in between” can assist.</p>
Suggestibility	<p>For young teens, suggestive questioning remains a challenge.</p>	<p>Continue to ensure that the young witness understands the question or instruction accurately.</p> <p>Encourage “I don’t know” and “I don’t understand” as responses to interview questions, but be mindful that the young witness may not wish to admit that he/she does not understand. Reiterate that it is normal for a witness to have to admit this.</p>
Attention span	<p>Between 60 to 90 minutes (varies).</p>	<p>Be aware of any attention difficulties or of physical needs that may impact the witness’ ability to concentrate for long periods of time.</p> <p>Monitor for emotional fatigue.</p>

References and related reading

Chart: References and further reading

1. La Rooy, D. J., Malloy, L. C., & Lamb, M. E. (2011). The development of memory in childhood. In M. E. Lamb, D. J. La Rooy, L. C. Malloy, & C. Katz (Eds.), *Children's testimony: A handbook of psychological research and forensic practice* (2nd ed., pp. 49-68). West Sussex, UK: John Wiley & Sons Ltd.
2. Peterson, C., & Whalen, N. (2001). Five years later: Children's memory for medical emergencies. *Applied Cognitive Psychology, 15*(7), S7-S24. doi:10.1002/acp.832
3. Saywitz, K. J. (2002). Developmental underpinnings of children's testimony. In H. L. Westcott, G. M. Davies, & R. H. C. Bull (Eds.), *Children's testimony: A handbook of psychological research and forensic practice* (pp. 5-20). West Sussex, UK: John Wiley & Sons Ltd.
4. Walker, A. G. (1999). *Handbook on questioning children: A linguistic perspective* (2nd ed.). Washington, D.C.: ABA Centre on Children and the Law.

Trauma and Testimony: References and further reading

5. Arnold, C., & Fisch, R. (2011). *The impact of complex trauma on development*. Lanham, MD: Jason Aronson.
6. Bettenay, C., Ridley, A. M., Henry, L. A., & Crane, L. (2015). Changed responses under cross-examination: The role of anxiety and individual differences in child witnesses. *Applied Cognitive Psychology, 29*(3), 485-491. doi:10.1002/acp.3125
7. Courtois, C. A. (2012). Complex trauma. In C. R. Figley (Ed.), *Encyclopedia of trauma: An interdisciplinary guide* (pp. 140-142). doi:10.4135/9781452218595.n47
8. Cunningham, A., & Stevens, L. (2011). *Helping a child be a witness in court: 101 things to know, say and do*. Retrieved from London Family Court Clinic website: http://www.lfcc.on.ca/Helping_a_Child_Witness.pdf
9. Greenwald, R. (2012). Child and adolescent trauma: An overview. In C. R. Figley (Ed.), *Encyclopedia of trauma: An interdisciplinary guide* (pp. 75-77). doi:10.4135/9781452218595.n25
10. Jones, L. K., & Cureton, J. L. (2014). Trauma redefined in the DSM-5: Rationale and implications for counseling

practice. *The Professional Counsellor, 4*(3), 257-271. Retrieved from <http://tpcjournal.nbcc.org/wp-content/uploads/2014/07/TPC-Volume-4-Issue-3-Complete-Issue.pdf>

11. Levin, A. P., Kleinman, S. B., & Adler, J. S. (2014). DSM-5 and posttraumatic stress disorder. *Journal of the American Academy of Psychiatry and the Law Online, 42*(2), 146-158. Retrieved from <http://jaapl.org/content/42/2/146>
12. Long, J. G. (2007). *Introducing expert testimony to explain victim behaviour in sexual and domestic violence prosecutions*. Alexandria, VA: American Prosecutors Research Institute.
13. Matsakis, A. (1996). *I can't get over it: A handbook for trauma survivors* (2nd ed.). Oakland, CA: New Harbinger Publications.
14. Perry, B. D. (2007). Stress, trauma and post-traumatic stress disorders in children. *The ChildTrauma Academy, 1*-11. Retrieved from https://childtrauma.org/wp-content/uploads/2013/11/PTSD_Caregivers.pdf
15. Perry, B. D. (2004, September). *Maltreatment and the developing child: How early childhood experience shapes child and culture*. Inaugural lecture presented at The Margaret McCain Lecture Series, London, ON. Retrieved from London Family Court Clinic website: <http://www.lfcc.on.ca/mccain/perry.pdf>
16. Perry, B. D. (2003). Effects of traumatic events on children. *The ChildTrauma Academy, 1*-18. Retrieved from <http://traumebevisst.no/edukasjon/filer/perry-handout-effects-of-trauma.pdf>
17. Putnam, F. W. (2006). The impact of trauma on child development. *Juvenile and Family Court Journal, 57*(1), 1-11. doi:10.1111/j.1755-6988.2006.tb00110.x
18. Waelde, L. C. (2012). Trauma triggers. In C. R. Figley (Ed.), *Encyclopedia of trauma: An interdisciplinary guide* (pp. 739-741). doi:10.4135/9781452218595.n254
19. Wild, J. (2012). Brain and memory. In C. R. Figley (Ed.), *Encyclopedia of trauma: An interdisciplinary guide* (pp. 62-66). doi:10.4135/9781452218595.n21

Development and Testimony:
References and further reading

20. Bala, N. (1999). Child witnesses in the Canadian criminal courts: Recognizing their capacities and needs. *Psychology, Public Policy, and Law*, 5(2), 323-354. doi:10.1037//1076-8971.5.2.323
21. Bala, N., Paetsch, J. J., Bertrand, L. D., & Thomas, M. (2011). *Testimonial support provisions for children and vulnerable adults (Bill C-2): Case law review and perceptions of the judiciary*. (Catalogue No. J2-367/2011F-PDF) See below:
Retrieved from Department of Justice website: http://www.justice.gc.ca/eng/rp-pr/fl-lf/famil/rr10_vic3/rr10_vic3.pdf Retrieved from Department of Justice website: http://www.justice.gc.ca/eng/rp-pr/fl-lf/famil/rr10_vic3/index.html
22. Canada Evidence Act, R.S.C., c. C-5 (1985).
23. Lamb, M. E. (2015). Toward developmentally aware practices in the legal system: Progress, challenge, and promise. *American Psychologist*, 70(8), 686-693. doi:10.1037/a0039634.
24. Maunsell, C., Smith, H. V., & Stevenson, C. (2000). What happens in court? The development of understanding of the legal system in a sample of Irish children and adults. *The Irish Journal of Psychology*, 21(3-4), 215-226. doi:10.1080/03033910.2000.10558254
25. Sas, L. (2002). *The interaction between children's developmental capabilities and the courtroom environment: The impact on testimonial competency*. Retrieved from Department of Justice website: http://www.justice.gc.ca/eng/rp-pr/csj-sjc/ccs-ajc/rr02_6/toc-tdm.html
26. Schuman, J. P., Bala, N., & Lee, K. (1999). Developmentally appropriate questions for child witnesses. *Queen's Law Journal*, 25(1), 251-304. Retrieved from <http://www.devrylaw.ca/wp-content/uploads/2011/05/Developmentally-Appropriate-Questions-for-Child-Witnesses.pdf>
27. Schuman, J. P. (1999). *Questions for child witnesses* (Master's Thesis. Queen's University). Retrieved from http://www.collectionscanada.gc.ca/obj/s4/f2/dsk1/tape9/PQDD_0005/MQ42686.pdf
28. Walker, N. E., & Nguyen, M. (1996). Interviewing the child witness: The do's and the don'ts, the how's and the why's. *Creighton Law Review*, 29, 1587-1617. Retrieved from <http://dspace.creighton.edu:8080/xmlui/handle/10504/40156>
29. Zajac, R., O'Neill, S., & Hayne, H. (2012). Disorder in the courtroom? Child witnesses under cross-examination. *Developmental Review*, 32(3), 181-204. doi:10.1016/j.dr.2012.06.006

PARENTS AND GUARDIANS

SUPPORTING AND UNDERSTANDING

The level of parent/guardian involvement in a young witness' court preparation process will vary by case. Some parents/guardians will attend every meeting. Others may never be present. Some will offer a great deal of information, while others will contribute very little. If a parent/guardian is involved in the life of the young witness, he or she can be one of the most valuable resources for a Crown looking to gain a thorough understanding of the young witness. Parents/guardians can also be helpful when it comes to reinforcing information and skills learned by the young witness throughout the court preparation process.

What information can parents/guardians provide?

- Words or terms commonly used by the child/youth
- Strengths or difficulties relating to the child/youth's speech, language, learning, hearing or sight
- Emotional or behavioural difficulties that the child/youth has experienced in the past or is currently experiencing
- Medications that the young person is taking. For example, knowing that a child is taking ADHD medication is helpful when planning the child/youth's testimony (i.e., notifying all parties that the child/youth may require frequent breaks to re-focus).

Victimization - Not just an individual experience ...

The young witness is not the only person who is impacted by victimization; rather, parents, guardians and family members of children/youth who have been victimized can also experience crisis. Parents/guardians can carry a heavy load, as they not only have to deal with the child/youth's reaction to the victimization but also with their own reactions, such as anger, self-blame and feeling overwhelmed. Parents/guardians often describe feeling as though they have to shield their child from their own reactions, or that they simply try to put on a brave face.

When working with parents/guardians, it is important to remember that, just like with the young witness, there will be a multitude of factors that will influence how the parent/guardian responds to the victimization. No two parents/guardians will respond in an identical manner.

Factors that can contribute to how a parent/guardian will react to their child's victimization can include:

- His/her own past victimization or history of trauma
- Her/his relationship with the accused
- Her/his dependence on the accused (i.e., financial stability)
- His/her cognitive capability and emotional capacity
- His/her family response, as well as community response to the abuse
- Her/his own support systems (pre-, during, and post-disclosure)

Given the multiple factors that can influence how a parent/guardian responds, there may be some disparity between what you believe a parent/guardian's reactions should be and how the parent/guardian is actually reacting. You may believe that the offence is relatively minor, but it could be incredibly distressing and overwhelming to a particular parent/guardian. Conversely, you may perceive a case to be particularly aggravating, but then be surprised if/when a parent/guardian presents with a passive, ambivalent or apathetic response.

Parents/guardians of victimized young persons are a diverse group that vary widely in terms of their levels of belief, supportiveness and protectiveness, and the distress that they exhibit. Never expect a 'typical' response from a parent/guardian, because a 'typical' response simply does not exist. A Crown should approach all conversations with parents/guardians with the understanding that: (a) there is no 'typical' reaction; and (b) the parent/guardian may be experiencing the same, if not greater, anxiety than the young witness.

Parents/guardians as witnesses – They also need preparation

When a parent or guardian is also a witness, preparing them for court is just as important as preparing the young witness themselves. When a young witness is involved in the prosecution, they are often the focus of everyone's attention, and it is easy to forget that the parent/guardian needs to be prepared as well. Court preparation looks different for young witnesses than it does for adult witnesses, so listening in on their child's court preparation is often not enough. In a study done by Hurley (2015), parents expressed that they appreciated the support provided for their children and noted that they could also benefit from enhanced supports themselves. Parents/guardians may have questions that they do not want to ask in front of their child, so giving them their own time to ask questions and address their concerns is important.

The benefit of informed parents/guardians

The literature clearly indicates that young victims who have the benefit of parental or guardian support following victimization fare better than those who do not. But a parent/guardian can only be in a position to support the young witness through the court process if they are informed themselves. A parent/guardian who has clear expectations can help a young witness know what to expect. Likewise, if a parent/guardian is confused, worried, or scared themselves, they may transfer those feelings onto the young witness. Equipping parents/guardians with the skills they need to support and prepare the young witness can strengthen and extend the preparation provided by the Crown and the court preparation provider.

Adequate preparation for parents/guardians will lead to a greater likelihood that: (a) a parent/guardian will portray confidence and have the knowledge to support the young witness; and (b) a parent/guardian will reinforce the skills and information learned at court in the home (if they have received the same, accurate information that the young witness has received). To accomplish these goals, a supportive parent/guardian should be included in the process as much as possible.

Caveat: Not all young witnesses will have the benefit of a positive parent/guardian support system. If a parent/guardian is present and you suspect that the young witness does not consider him or her to be a positive support, ask the young witness how much he or she wants that parent/guardian involved in the process. Do not make promises that information will be kept from a parent/guardian, but do let the young witness know that you are aware of their feelings and preferences, and that you will respect them as much as possible.

Parents'/guardians' experience of the justice process

Despite the fact that positive support from parents/guardians is associated with a child/youth's successful healing, very few studies have explored the experiences of parents/guardians within the justice system. There is one Canadian study, however, that focused specifically on this topic and found that many parents/guardians viewed their child's experience with the justice system as being predominantly negative

In the study, several themes emerged from the feedback that parents/guardians provided:

- Loss of control (i.e., the decision to proceed was out of the hands of the parents/guardians)
- Lack of information and insufficient communication
- Inconsistencies within the system (i.e., not all police or Crowns treated cases the same way)
- Children being treated as adults despite their developmental capabilities and vulnerabilities
- Dissatisfaction with outcomes
- No therapeutic gains through the justice system

While some of the feedback relates to larger structural barriers that are out of the control of any one particular Crown, other concerns – such as lack of information and insufficient communication – could be addressed with small changes in practice. A parent/guardian cannot provide adequate support to the child/youth if their own wellbeing is compromised. Thus, taking steps to address the needs of the parent/guardian can be just as important as addressing the needs of the child/youth.

References and related reading

1. Alaggia, R., Lambert, E., & Regehr, C. (2009). Where is the justice? Parental experiences of the Canadian justice system in cases of child sexual abuse. *Family Court Review*, 47(4), 634-649. doi:10.1111/j.1744-1617.2009.01278.x
2. Crawford, E., & Bull, R. (2006). Child witness support and preparation: Are parents/caregivers ignored? *Child Abuse Review*, 15(4), 243-256. doi:10.1002/car.946
3. Cunningham, A., & Stevens, L. (2011). *Helping a child be a witness in court: 101 things to know, say and do*. Retrieved from London Family Court Clinic website: http://www.lfcc.on.ca/Helping_a_Child_Witness.pdf
4. Elliott, A. N., & Carnes, C. N. (2001). Reactions of nonoffending parents to the sexual abuse of their child: A review of the literature. *Child Maltreatment*, 6(4), 314-331. doi:10.1177/1077559501006004005
5. Fuller, G. (2016). Trends & issues in crime and criminal justice: Non-offending parents as secondary victims of child sexual assault. *Australian Institute of Criminology*, 500, 1-7. Retrieved from http://www.aic.gov.au/media_library/publications/tandi_pdf/tandi500.pdf
6. Hurley, P., Scarth, K., & Stevens, L. (2002). *Children as witnesses: Helping young people give their evidence in court; helping courts hear the evidence of children* (Vols. 1-5). London, ON: Centre for Children and Families in the Justice System.
7. Hurley, P. (2015). The use of closed-circuit television: The experiences of child and youth witnesses in Ontario's West region. In S. McDonald (Ed.), *Victims of crime: Research digest* (Issue 8, pp. 2-9). Retrieved from Department of Justice website: <http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd8-rr8/toc-tdm.html>
8. Kouyoumdjian, H., Perry, A. R., & Hansen, D. J. (2009). Nonoffending parent expectations of sexually abused children: Predictive factors and influence on children's recovery. *Journal of Child Sexual Abuse*, 18(1), 40-60. doi:10.1080/10538710802584627
9. Lovett, B. B. (2004). Child sexual abuse disclosure: Maternal response and other variables impacting the victim. *Child and Adolescent Social Work Journal*, 21(4), 355-371. doi:10.1023/B:CASW.0000035221.78729.d6
10. Tavkar, P. (2010). *Psychological and support characteristics of parents of child sexual abuse victims: Relationship with child functioning and treatment* (Doctoral dissertation, University of Nebraska). Retrieved from <http://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1017&context=psychdiss>
11. Walsh, W. A., Cross, T. P., & Jones, L. M. (2012). Do parents blame or doubt their child more when sexually abused by adolescents versus adults? *Journal of Interpersonal Violence*, 27(3), 453-470. doi:10.1177/0886260511421671

CALLING A YOUNG WITNESS

PRE-TRIAL, TRIAL AND POST-TRIAL INTERACTIONS

Prosecuting crimes that involve young witnesses requires a high degree of sensitivity, as well as a creative and flexible approach. Young witnesses have unique needs and vulnerabilities compared to adults. Advanced planning on the part of the Crown can help minimize a young witness' stress and anxiety, which can help facilitate more effective testimony.

Interactions with young witnesses

A Crown's interactions with a young witness can be divided into three stages: (1) Pre-Trial Interactions; (2) Trial Interactions; and (3) Post-Trial Interactions. While not ideal, it is often the reality that the pre-trial interactions and trial interactions occur on the same day.

1. Pre-Trial Interactions

The importance of an early Crown meeting

The initial Crown meeting will set the tone for the relationship between the Crown and the young witness. During the initial meeting, if time permits, the focus should be on building rapport with the young witness rather than on legal processes. It is important to have cases involving young witnesses assigned promptly. This allows for a meeting with the assigned Crown early in the prosecution, and it provides time for the Crown to schedule additional follow-up meetings if necessary.

Benefits of an early Crown meeting:

- Allows time for rapport building, which benefits both the Crown and the young witness
- Provides an opportunity for the Crown to assess any communication difficulties that the young witness may have
- Provides an opportunity for the Crown to explore and consider the need for special applications that relate to testimonial aids (i.e., CCTV, support person, etc.)
- Allows young witnesses to become oriented with the examination-in-chief and cross-examination process

Keeping it consistent

One of the greatest benefits of an early Crown meeting is the opportunity to build rapport with the young witness. Because of this, it is best to avoid, if at all possible, introducing a new Crown in the middle of the judicial process, as this can diminish any progress that has been made with regards to rapport building. If a young witness develops trust in one particular Crown, the introduction of another Crown can serve to disorient the young witness, which can be unproductive to the prosecution.

Strategies for building rapport:

- Meet in a quiet, private, and non-threatening space.
- Introduce yourself by name.
- Call the young witness by his or her name, and ask what he or she prefers to be called.
- Decrease the power differential (tone, simple language, body position). For example, sit in a position other than directly across the table.
- Give the young witness some time to become familiar with you and the environment.
- Explain your role. Trust will not be built if the young witness has misconceptions.*
- Begin with neutral, non-threatening topics. Find common ground.
- Topic suggestions for finding neutral ground and building rapport include birthday parties, sports or other extracurricular activities, school, friends, or pets. Topics will vary depending on age.
- If a court preparation worker has already met with the young witness, ask them ahead of time if the young witness has any particular interests.

* It is likely that a young witness will know the word 'Crown,' but only in its non-legal sense. Starting the conversation with, "I am the Crown Attorney who will be prosecuting the case" will leave the young witness confused. Instead, explain your role using simple language, such as, "I am a Crown Attorney, and my job is to help you do your job as a witness. I do that by asking you questions so that the judge can listen to your answers and understand what happened." At this time, it may be beneficial to review with the young witness the job of the Judge, the Defence lawyer, and any other relevant court personnel. For more information on how to explain the roles of court personnel, see the 'Court preparation' section in the resource 'Preparing and Supporting Young Witnesses: An Essentials Guide,' which is also part of the DELTA series.

Building rapport through narrative practice

Because time is often limited in Crown meetings, any rapport-building efforts must be efficient and effective. Narrative practice, which involves asking the young witness open-ended questions about a neutral event, can be a useful strategy during the rapport-building stage. Narrative practice is designed to make young witnesses comfortable answering questions.

Benefits of using narrative practice during rapport building:

- The child is immediately acknowledged as the expert. They begin to realize that the adults are looking to them for information, not looking to test them on information that the adult already knows. These conversations allow the child to practice this unfamiliar conversation pattern — in which they are the holder of information.
- Prompting the young witness to elaborate or further describe key elements of their initial limited description of an event (i.e., a birthday party) helps the young witness understand what the Crown means when he or she says, "Start from the beginning, and tell me everything that happened ..."
- Provides the opportunity to establish a baseline of linguistic functioning.
- Allows the Crown to learn about the question formats that elicit the most narrative from the young witness.

Steele, L. C. (2010). *Narrative practice (What is it and why is it important?): A research-to-practice summary*. Retrieved from National Children's Advocacy Center website: <http://calio.org/images/narrative-practice-rev.2015.pdf>

Example of Narrative Practice:

The young witness tells you that he or she visited their grandma last week. Ask them to tell you everything about their visit with their grandma — from start to finish. Follow up with prompts, such as, “Tell me more ...” or, “What happened next?” You can also ask follow-up questions, such as, “Was anyone else at grandma’s house?” Or “How did you get to grandma’s house?”

Keeping it neutral

A Crown once reflected, “I never ask a young witness about evidence during a Crown meeting. I find it often leads to less detail during the examination-in-chief process, as the young witness believes they have already told you the details once and therefore do not need to do so.”

Instructions for young witnesses

Young witnesses are often reluctant to say, “I don’t know,” or to acknowledge that they do not unders-

tand. This can be problematic for both examination-in-chief and cross-examination. Additionally, young witnesses will often defer to authoritative interviewers. Research has demonstrated that providing the following instructions (or ones similar) to those in the box below, prior to an investigative interview, can help to mitigate these challenges. Given the similarities between an investigative interview and examination-in-chief, evidence suggests that it can be beneficial to reinforce these instructions with the young witness during the court preparation and rapport building stage.¹

Don’t Know Instruction:

“If I or the defence lawyer ask you a question and you don’t know the answer, then just say, ‘I don’t know.’”

Crown: “So, if I ask you, ‘Do I have a sister?’, what do you say?”

Witness: “I don’t know.”

Crown: “Yes, that’s right, because you don’t know. But what if I ask you, ‘Do you have a sister?’”

Witness: “I do.”

Don’t Understand Instruction:

“If I or the defence lawyer ask you a question and you don’t know what we mean or what we’re saying, you can say, ‘I don’t know what you mean.’ Then we will ask it in a different way.”

Crown: “So, if I ask you ... ‘Tell me about the complexity of the interrogation?’ What do you say?”

Witness: “I don’t understand what you mean.”

Crown: “That’s right, because ‘complexity’ and ‘interrogation’ are hard words. So, I will ask in a different way.”

You’re Wrong Instruction:

“Sometimes, myself or the defence lawyer will make a mistake, or say the wrong thing. When we do, you can tell us that we are wrong.”

Crown: “So, if I say, ‘You are 30 years old.’ What do you say?”

Witness: “No.”

Crown: “Okay, so how old are you?”

Witness: “12.”

Adapted from Thomas Lyon’s 10-Step Investigative Interview Protocol

Lyon, T. D. (2005). *Ten step investigative interview*. Retrieved from <https://works.bepress.com/thomaslyon/5/>

Preparation of a young witness for cross-examination - Prepare yourself!

The cross-examination process is challenging for young witnesses. It can involve rapid-fire questions that leave little time for thought between questions and answers. As well, questions are often asked in ways that make it difficult for the young witness to fully comprehend. The tone of the cross-examination can lead the young witness to believe that the defence lawyer thinks they are not telling the truth, or that they do not accurately remember what happened. Additionally, the young witness has developed no rapport with the cross-examiner. Providing the, “I don’t know,” “I don’t understand,” or “You’re wrong” instructions can help to mitigate these challenges, but ultimately the best way to prepare a young witness for the cross-examination process is to prepare yourself.

As a Crown, you can use your ability as an officer of

the court to object to inappropriate lines of questioning. For example, if a defence lawyer asks the same question multiple times, simply object. Similarly, object if the defence lawyer asks questions that are too complicated for the young witness to understand. At this point, you may ask the court to clarify with the young witness as to what a particular word or phrase means to them. No amount of court preparation can protect a young witness from an inappropriate question, so ensure that you are not only focused on how the young witness is answering questions, but also on how you or the defence are asking the questions.



Example:

If the defence lawyer asks the young witness, “Did you dispose of the obsolete cell phone?”, and the young witness appears to be confused, you can object and ask the court to inquire if the young person can describe what the words “dispose” and/or “obsolete” mean. This is preferred over the question, “Do you know what ‘dispose’ means?” because that question allows for a yes or no answer. You can also object and ask that a question be rephrased.



2. Trial Interactions - The morning of a court appearance

Wherever possible, meet with the young witness and his or her support system on the morning of the preliminary hearing or trial. This meeting is particularly important if circumstances have made it impossible for you to meet prior to the preliminary hearing or trial date. In a study conducted by Hurley (2015), young witnesses who did not have an opportunity to meet with the Crown in advance of their court proceedings described the lack of meeting as “upsetting,” and reflected feelings that the Crown “did not know me.” A meeting on the morning of a court proceeding, even if it is short, can be beneficial for both the young witness and the Crown.

Timing is important

Wherever possible, criminal cases involving a young witness should be given priority on the docket.

Benefits of giving priority to cases involving young witnesses:

- Children experience time differently. Time can pass much slower for them, especially if they are anxiously waiting to testify.
- Anticipatory anxiety is often high on the day of the preliminary hearing or trial. Anxiety can build during the hours of waiting.
- A delay in starting can often lead to an adjournment, which can have much larger implications for a young witness compared to an adult witness.

Examination-in-Chief

Avoid closed-ended, yes/no and option-style questions

Avoiding these types of questions can prove difficult, as closed-ended questions are common in normal conversations with young people. But the best practice with young witnesses during examination-in-chief is to ask open-ended questions. Practicing during early Crown meetings can help the Crown adapt to the questioning style, just as much as it can help the young witness understand what level of detail and participation will be expected of them. This practice is reinforced in court preparation. For further reading or examples, see the section 'Role playing: Learning testimony-related skills' in the resource 'Preparing and Supporting Young Witnesses: An Essentials Guide,' which is also part of the DELTA series.

Example:

Crown: "Tell me why you are here today."

Witness: "To talk about something that my aunt did."

Crown: "Tell me more about that."

Witness: "My aunt hit me."

Crown: "Okay, tell me everything about what happened when your aunt hit you."

Why minimize closed-ended questions?

Young witnesses often face closed-ended, or 'yes' and 'no' questions during examination-in-chief and cross-examination. During examination-in-chief,

this is likely done unintentionally. For example, a very productive question might be: "Tell me everything that happened." But without even noticing, you may have added, "Can you" to the front of the question, therefore turning it into a 'yes' or 'no' question that the young witness may simply answer "yes" to instead of providing details. Young witnesses will often respond to closed-ended questions with no more information than the question requires. This will lead to short, uninformative responses.

Examples of effective open-ended questions:

"Tell me everything that you remember..."

"What happened next...?"

"You said X, tell me more about X..."

"You said Y, what happened next?"

Phrases to avoid:

Questions that start with "Did" or "Was"

- i.e., "Was your dad home?"
Replace with: "Who was home?"

- i.e., "Did you see your aunt?"
Replace with: "What or who did you see?"

Questions that start with "Can you tell me...?"

- i.e., "Can you tell me how old you are?"
Replace with: "How old are you?"

Forced-choice questions

- i.e., "Was it inside or outside?"

* Forced-choice questions assume that the response must be one of two options. This limits the answer that the young witness can provide. For instance, an incident may have occurred inside a shed, but the young witness may answer “outside” because they think that is the best response of the two options given.



Learn to tolerate silence

It is important to become comfortable with silence or ‘dead air.’ Quite often, the questioner asks one or two open-ended questions, and then moves on to more direct questions when the young witness does not answer immediately. Young witnesses need time to think, and interruptions can inhibit the spontaneity of a young witness’ testimony.

Ensure that questions are age and developmentally-appropriate

Research has demonstrated that young witnesses, if questioned appropriately, can provide significant amounts of accurate and productive information. See the section ‘Development, trauma and testimony’ in this Guide for developmentally-appropriate questions and considerations.

Introducing tough topics

When children do not spontaneously talk about the circumstance that brought them to court, it can be difficult to introduce the topic without leading the witness. In the APSAC Handbook on Child Maltreatment (3rd ed.), Saywitz, Lyon and Goodman (2011) provide the following suggestions to introduce the topic during investigative interviews, which can also be applied during examination-in-chief if the information does not come spontaneously. You can start the conversation by asking the young witness, “Tell me why you came to talk to us today.” If this does not prompt the young witness to mention the offence, you can follow up with, “It is important for us to understand why you came to talk to us today.” You can

become increasingly more specific, if necessary. Ask the young witness if they talked to a police officer about what happened. Then, ask the child what he or she told the officer. You can also try, “Tell me why you think your [mom, dad, grandma, grandpa] brought you here today.” Once the young witness starts testifying about the alleged incident, then revert back to your narrative-type questions and ask the child, “Tell me everything that happened.” Follow this question with, “Tell me more about [detail mentioned by child],” “What happened next?” and “Tell me even the little things that you might think are not important.”

3. Post-Trial Interactions

It's not over for the victim

Young witnesses and their families will have many questions following the completion of their testimony. Wherever possible, even if for a brief period of time, meet with the young witness after their testimony is complete. Often, a simple 5 to 10-minute meeting can be enough to answer any questions arising from the process. It also makes the young witness feel as though they are important, and that they are not just there to serve a function for the prosecution. A brief meeting also allows an opportunity to plan who is going to keep the young witness and his or her family up to date with further information (i.e., court preparation provider, police officer, Crown, etc.).

Formal debriefs

In some cases, a formal debrief can be beneficial. From the time when charges are laid until the time

of disposition, the matter has likely loomed large for the young witness and their family. Throughout the process, they would have been notified, consulted for input, and prepared for 'next steps' on numerous occasions. They would have had the support of professionals around them throughout that process. But once the matter has concluded, whether the result is an acquittal or a conviction, the formal process suddenly ends for them. However, the emotional impact carries on, which is why a debrief can help ease the transition.

Additionally, a debrief can help de-mystify any questions that the young witness or their family may have about the process. Particularly, a debriefing may abate any distressing aspects of the court experience that have left a young witness wondering whether they could have done something differently. This could include questions about why the defence lawyer asked the young witness a particular line of questioning, or why a judge made a particular comment. The debrief provides an opportunity to reframe the events so that any negative thoughts can be placed in a more positive perspective.

Case Example:

A serious child sexual assault matter is resolved by way of a guilty plea. Leading up to the matter, the Crown had the opportunity to meet with the parents of the young witness, but not the young witness herself. As the matter appeared to be set for resolution, the parents sheltered their child from the criminal process because of their own fears about the impact that it would have on the young child. Once the matter had concluded, the parents wanted to know why the particular sentence was imposed, and what the implications were of the offender's sentence. Additionally, the parents wondered what to tell their child about the outcome of the matter. The debrief provided an opportunity for the parents to learn the legal parameters of the sentence imposed, and for all parties to agree that the Crown could meet with the young witness to provide information about the outcome and the process.

References and related reading

1. Ahern, E. C., Stolzenberg, S. N., & Lyon, T. D. (2015). Do prosecutors use interview instructions or build rapport with child witnesses? *Behavioral Sciences & the Law*, 33(4), 476-492. doi:10.1002/bsl.2183
2. Cunningham, A., & Stevens, L. (2011). *Helping a child be a witness in court: 101 things to know, say and do*. Retrieved from London Family Court Clinic website: http://www.lfcc.on.ca/Helping_a_Child_Witness.pdf
3. Cunningham, A., & Hurley, P. (2007). "A full and candid account": Overview of issues related to child testimony (Vol. 1). Retrieved from London Family Court Clinic website: http://www.lfcc.on.ca/1_Overview.pdf
4. Hickey, S. (2016). The use of closed circuit television: The experiences of crown prosecutors and victim-services workers in the Ontario West region. In S. McDonald (Ed.), *Victims of crime: Research digest* (Issue 9, pp. 24-29). Retrieved from Department of Justice website: <http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd9-rr9/index.html>
5. Hurley, P., Scarth, K., & Stevens, L. (2002). *Children as witnesses: Helping young people give their evidence in court; helping courts hear the evidence of children* (Vols. 1-5). London, ON: Centre for Children and Families in the Justice System.
6. Hurley, P. (2015). The use of closed-circuit television: The experiences of child and youth witnesses in Ontario's West region. In S. McDonald (Ed.), *Victims of crime: Research digest* (Issue 8, pp. 2-9). Retrieved from Department of Justice website: <http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd8-rr8/toc-tdm.html>
7. Lyon, T. D., Wandrey, L., Ahern, E., Licht, R., Sim, M. P. Y., & Quas, J. A. (2014). Eliciting maltreated and nonmaltreated children's transgression disclosures: Narrative practice rapport building and a putative confession. *Child Development*, 85(4), 1756-1769. doi:10.1111/cdev.12223
8. Lyon, T. D. (2014). Interviewing children. *Annual Review of Law and Social Science*, 10, 73-89. doi:10.1146/annurev-lawsocsci-110413-030913
9. Lyon, T. D. (2005). *Ten step investigative interview*. Retrieved from <https://works.bepress.com/thomaslyon/5/>
10. Newlin, C., Steele, L. C., Chamberlin, A., Anderson, J., Kenniston, J., Russell, A., ... Vaughan-Eden, V. (2015). Child forensic interviewing: Best practices. *In Juvenile justice bulletin* (pp. 1-17). Retrieved from Office of Juvenile Justice and Delinquency Prevention website: <https://www.ojjdp.gov/pubs/248749.pdf>
11. Saywitz, K. J., Lyon, T. D., & Goodman, G. S. (2011). Interviewing children. In J. E. B. Myers (Ed.), *The APSAC handbook on child maltreatment* (3rd ed., pp. 337-360). Thousand Oaks, CA: SAGE Publications, Inc.
12. Steele, L. C. (2010). *Narrative practice (What is it and why is it important?): A research-to-practice summary*. Retrieved from National Children's Advocacy Center website: <http://calio.org/images/narrative-practice-rev.2015.pdf>

LEGISLATION REVIEW

RELEVANT LEGISLATION

Legislation	Overview	Objective	Key Changes
<p>Bill C-2 (2006)</p>	<p>Bill C-2, An Act to Amend the Criminal Code (Protection of Children and Other Vulnerable Persons) received Royal Assent on July 21, 2005. The Bill proposed a variety of procedural reforms to the Criminal Code and the Canada Evidence Act intended to facilitate the participation of children and other vulnerable witnesses in the criminal justice system through the use of protective measures that also respect the rights of accused persons (Bill C-2, preamble). The Bill came into force on January 2, 2006.</p>	<p>“Parliament’s purpose and objective in enacting Bill C-2 was to make testimonial aids more readily available to young or vulnerable witnesses in criminal matters, and in particular to minimize the stress and trauma to children and adolescent witnesses by ensuring greater certainty prior to the hearing as to the mode of giving testimony”: <i>R v H(CN)</i>, 2006 BCPC 119 at para 17.</p>	<p>Use of testimonial aids, such as closed-circuit television (CCTV), witness screens, and a support person, are now <i>mandatory</i> (instead of discretionary) upon application in any criminal proceeding for persons under 18 years of age, unless the testimonial aid would interfere with the proper administration of justice.</p> <p>The Court may order the exclusion of the public from the courtroom if it is in the interest of public morals, the maintenance of order or the proper administration of justice: s. 486(1)</p> <p>Upon application, an accused may be prohibited from personally cross-examining a witness of <i>any age</i>, in <i>any</i> proceeding if personal cross-examination would prevent a full and candid account from the witness. Section 486.3(2) states that in such circumstances, the court must appoint counsel to conduct the cross-examination unless it would interfere with the proper administration of justice.</p> <p>A competency hearing is no longer required prior to the admission of testimony from a child under 14. Section 16.1 of the Canada Evidence Act creates a presumption that children under the age of 14 have the capacity to testify. Further, the section creates a new legal test for the admission of a child’s evidence: the child must be able to understand and respond to questions. See below for further details.</p> <p>A child under 14 is no longer required to take an oath or make a solemn affirmation. Instead, children/youth under the age of 18 will be required to promise to tell the truth. No inquiry will be permitted into a child’s understanding of the nature of such a promise.</p> <p>The distinction between sworn and unsworn child testimony is eliminated. Evidence given by a child promising to tell the truth will have the same effect as if it were taken under oath.</p>

Legislation	Overview	Objective	Key Changes
<p>Canadian Victims Bill of Rights (2015)</p>	<p>The Victim Bill of Rights Act was introduced in the House of Commons as Bill C-32 in April 2014 and received Royal Assent on April 23, 2015. The legislation created the Canadian Victims Bill of Rights (CVBR) and amended other existing laws, including the Criminal Code and the Corrections and Conditional Release Act. The CVBR came into force on July 23, 2015. It gives victims of crime a more effective voice in the criminal justice system.</p>	<p>The <i>Canadian Victims Bill of Rights</i> provides clear rights for victims of crime at the federal level and creates the following statutory rights for victims of crime:</p> <ul style="list-style-type: none"> · The right to information · The right to participation · The right to protection · The right to restitution 	<p>Definition of “victim” – now defined as an individual who has suffered physical or emotional harm, property damage or economic loss as the result of an offence committed under the Criminal Code, the Youth Criminal Justice Act, and the Crimes Against Humanity and War Crimes Act; the definition also applies to some offences under the Controlled Drugs and Substances Act and parts of the Immigration and Refugee Protection Act.</p> <p>A victim may prepare a <i>Victim Impact Statement</i>. The Court must take the statement into account when an offender is sentenced.</p> <p>The following individuals may exercise a victim’s rights when a victim is dead or incapable of acting on his or her behalf:</p> <ul style="list-style-type: none"> ○ The victim’s spouse; ○ An individual cohabiting with the victim in a conjugal relationship for at least one year; ○ A relative or dependant of the victim; ○ Anyone who has custody of the victim or of the victim’s dependant. <p>A victim can exercise his or her rights while an offence is being investigated or prosecuted and while the offender is subject to the corrections or conditional release process. For cases in which an accused has been found unfit to stand trial or not criminally responsible on account of mental disorder, the victim can exercise his or her rights while the accused is under the jurisdiction of a court or Review Board.</p> <p>The Act includes a limitation clause to ensure that the rights are applied in a reasonable manner so they do not interfere with police or prosecutorial discretion, cause excessive delay, compromise an investigation or prosecution, or cause a stay of proceedings.</p>

REVIEW OF ACCOMMODATIONS FOR CHILD WITNESSES IN CANADA

Applications for testimonial aids should be submitted early in the process so as to decrease the potential for delays on the day of the proceeding.

ACCOMMODATION	Description	Enabling Statute	Discretionary or Mandatory	Process	Limitations
Exclusion of public from courtroom	There is a presumption that proceedings will be held in open court, unless the criteria set out in s. 486(1) of the Code are met.	s. 486 CC	Discretionary	<p>The Court <i>may</i> order the exclusion of all or any 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. This exclusion is rare.</p> <p>The proper administration of justice includes ensuring that the interests of witnesses under the age of 18 are safeguarded in all proceedings.</p>	
Support Person	<p>An individual permitted by the judge or justice, upon application, to sit or stand close to a witness under 18 years of age while he or she testifies, either in the witness box or in a CCTV room.</p> <p>The hope is that the presence of the support person reduces stress and anxiety so that the child/youth witness can provide a full and candid account of the evidence to the court.</p>	486.1 CC	<p>Presumptively available for witnesses under 18 years of age, and for witnesses with mental and/or physical disabilities.</p> <p>Discretionary for all other witnesses.</p>	<p>Where the witness is under the age of 18 or has a mental or physical disability, the order <i>must</i> be made where the prosecutor or witness applies for it, unless the judge or justice is of the opinion that the order would interfere with the proper administration of justice: s. 486.1(1)</p>	<p>Ordinarily, another witness cannot be the support person except where it is necessary for the proper administration of justice: 486.1(4)</p> <p>The judge or justice may order the witness and the support person not to communicate while the witness testifies: 486.1(5)</p> <p>No adverse inference may be drawn from the fact that an order is or is not made: 486.1(6)</p>

ACCOMMODATION	Description	Enabling Statute	Discretionary or Mandatory	Process	Limitations
Closed-circuit television (CCTV)	<p>A cable connects monitors and cameras in the courtroom with monitors and cameras in a separate room in the courthouse. The young witness testifies from the separate room.</p> <p>This set-up is designed to help a young witness focus on providing a full and candid account of their evidence by increasing their feelings of safety.</p>	486.2 CC	<p>Presumptively available for witnesses under 18 years of age and for witnesses with mental or physical disabilities</p> <p>Discretionary for all other witnesses</p>	<p>Where the witness is under the age of 18 or has a mental or physical disability, the order <i>must</i> be made where the prosecutor or witness applies for it, unless the judge or justice is of the opinion that the order would interfere with the proper administration of justice: administration of justice: 486.2(1). This exclusion is rare.</p>	<p>If it is necessary to hear from the witness to decide whether an order should be made, the witness may testify on that inquiry outside the courtroom or behind a screen: s. 286.2(6)</p> <p>A witness must not testify outside the courtroom unless facilities are available to allow the accused, the judge and the jury to watch the testimony: s. 286.2(7)</p> <p>No adverse inference may be drawn from the fact that an order is or is not made: s. 286.2(8)</p>
Screens	<p>A one-way screen is placed in front of the witness box, or in front of the accused, to block the young witness' view of the accused.</p> <p>The screen allows a young witness the opportunity to focus on providing evidence, rather than on his or her anxieties of facing the accused in open court.</p>	486.2 CC	<p>Presumptively available for witnesses under 18 and witnesses with mental and/or physical disabilities.</p> <p>Discretionary for all other witnesses.</p>	<p>Where the witness is under the age of 18 or has a mental or physical disability, the order must be made where the prosecutor or witness applies for it, unless the judge or justice is of the opinion that the order would interfere with the proper administration of justice: 486.2(1)</p>	<p>If it is necessary to hear from the witness to decide whether an order should be made, the witness may testify on that inquiry outside the courtroom or from behind the screen: s. 286.2(6)</p> <p>A witness must not testify outside the courtroom unless facilities are available to allow the accused, the judge, and the jury to watch the testimony: s. 286.2(7)</p> <p>No adverse inference may be drawn from the fact that an order is or is not made: s. 286.2(8)</p>

ACCOMMODATION	Description	Enabling Statute	Discretionary or Mandatory	Process	Limitations
Self-represented accused not to cross-examine witness under 18	Upon application, an accused may be prohibited from personally cross-examining a witness if personal cross-examination would inhibit the witness' ability to provide a full and candid account of their evidence.	486.3 CC	Presumptively available for witnesses under the age of 18. Discretionary for all other witnesses.	Upon application by the prosecutor or a witness under 18, the order must be made unless the judge is of the opinion that the proper administration of justice requires the accused to personally conduct the cross-examination. The Court must appoint counsel to conduct the cross-examination if the accused does not personally conduct it: s. 486.3(1)	No adverse inference may be drawn from the fact that an order is or is not made: s. 486.3(5)
Publication ban	A court order prohibiting anyone from publishing, broadcasting or transmitting, in any way, a complainant's name, the name of a witness, or any other identifying information.	486.4 CC (1) Sexual offences (2.1) Other offences (3) Child pornography offences	Mandatory upon application: 486.4(2) Mandatory upon application: 486.4(2.2) Mandatory	If at least one charge before the Court involves a sexual offence, upon application by the complainant, the prosecutor or any witness, the Court must make an order. For non-sexual offences, upon application by the complainant or the prosecutor, the court must make an order if the complainant is under the age of 18. For an offence under s. 163.1, a judge or a justice must make an order directing that any information that could identify a witness under 18 or any person who is the subject of a representation, written material or recording that constitutes child pornography, must not be published or broadcast in any way.	Subsection administration of justice, where disclosure is not for the purpose of making it known to the community.

ACCOMMODATION	Description	Enabling Statute	Discretionary or Mandatory	Process	Limitations
Video-recorded evidence	<p>A video statement may be available when a child/youth's statement to police and/or child protection officials was video recorded. This evidence may be admitted in certain circumstances.</p> <p>The objective of this accommodation is two-fold: (1) To create a record of what is probably the best recollection of the event that will be of inestimable assistance in ascertaining the truth; and (2) To prevent or materially reduce the likelihood of inflicting further injury upon a child/youth as a result of participating in court proceedings: R v F(CC), [1997] 3 SCR 1183.</p>	715.1 CC	Discretionary	<p>Section 715.1(1) allows for the admission of videotaped evidence where the victim or other witness was under 18 years of age at the time of the alleged offence.</p> <p><i>A voir dire</i> is held to determine if the video recording is admissible.</p> <p>To be admissible, the video recording must describe the acts complained of, must be adopted in the testimony of the witness at trial, and must have been taped within a reasonable time after the alleged offence.</p> <p>The judge or justice <i>may</i> exclude the video recording if admission of it into evidence would interfere with the proper administration of justice.</p>	<p>The judge or justice may prohibit any other use of a video recording: s. 715.1(2)</p> <p>When s. 715.1 is invoked and a prior videotaped statement is ruled to be admissible, the Crown must still make the child witness available for cross-examination purposes in order to eliminate any hearsay concerns about reliability.</p>
Admission of hearsay evidence – i.e., <i>Khan</i> application	<p>For various reasons (the witness' young age, emotional trauma or the passage of time), some children cannot give direct evidence. In <i>R v Khan</i>, [1990] 2 SCR 531, the Supreme Court of Canada created the principled approach to hearsay, allowing hearsay statements to be admitted if they are sufficiently reliable and necessary.</p>	N/A	Discretionary	<p><i>A voir dire</i> is held to determine whether the out-of-court-statement(s) meet(s) the threshold test of "necessity and reliability" set out by the Supreme Court of Canada in <i>Khan</i>.</p> <p>Necessity must be interpreted as "reasonably necessary." The inadmissibility of the child's evidence might be one basis for a finding of necessity. But sound evidence based on psychological assessments that testimony in court might be traumatic for the child or harm the child might also serve: <i>Khan, supra</i> at para 31.</p>	<p>In determining the admissibility of the evidence, the judge must have regard for the need to safeguard the interests of the accused. In most cases, a right to cross-examination would not be available, and the concerns of the accused as to credibility will remain to be addressed by submissions as to the weight to be accorded to the evidence and as to the quality of</p>

ACCOMMODATION	Description	Enabling Statute	Discretionary or Mandatory	Process	Limitations
Admission of hearsay evidence – i.e., Khan application CONTINUED				With respect to reliability, considerations such as timing, demeanour, the personality of the child, the intelligence and understanding of the child, and the absence of any reason to expect fabrication in the statement may be relevant on the issue of reliability: <i>Khan, supra</i> at para 32.	any corroborating evidence: <i>Khan, supra</i> at para 33.

INNOVATIVE PRACTICES

	Description	Enabling Statute	Discretionary or Mandatory	Process	Purpose
Expert opinion evidence	<p>If permitted, an expert can testify about general behaviour patterns of abused children to assist the trier of fact in assessing whether the behaviour of a child complainant is consistent with someone who has experienced abuse.</p> <p>Expert testimony may also explain delayed disclosure, recantation, suggestibility, and a young person's memory.</p> <p>Furthermore, they may support the application for the exclusion of the public by explaining the impact of the presence of supporters of the accused or members of the public on the young witness' emotional wellbeing (Bala, N. (1999). <i>Child Witnesses in Canadian Criminal Courts: Recognizing their Capabilities and Needs. Psychology, Public Policy and Law.</i> 5:2, 323-354).</p>	N/A	Discretionary	<p>Such evidence <i>may</i> be admissible following a <i>Mohan voir dire</i>.</p> <p>Admission of expert evidence depends on the application of the following criteria set out by the Supreme Court of Canada in <i>Rv Mohan</i>, [1994] 2 SCR 9 at para 17:</p> <p>Relevance; Necessity in assisting the trier of fact; The absence of any exclusionary rule; A properly qualified expert.</p>	<p>To support the witness' testimony.</p> <p>In <i>R v J(FE)</i>, [1989] OJ No 2724 (CA), the Ontario Court of Appeal held that although expert evidence cannot be used to bolster credibility, it can be admitted to show that certain psychological and physical conditions seen in the complainant were consistent with sexual abuse.</p>

	Description	Enabling Statute	Discretionary or Mandatory	Process	Purpose
Facility Dog	<p>Instead of (or in addition to) a support person, a dog will accompany the young witness to court and sit with the witness, offering support and comfort during their testimony. In Canada, these dogs are often referred to as 'facility dogs'. There is a clear distinction between a facility dog and a service dog. While service dogs belong to and service an individual, facility dogs tend to belong to an organization or professional, and will work with many different persons or groups.</p> <p>Best practice guidelines indicate that any dog being utilized within a courtroom should be a certified facility dog from an accredited service dog agency.</p> <p>Currently, facility dogs are being utilized in six provinces in Canada.</p> <p>Facility dogs are widely used in at least 21 states across the United States.</p> <p>Applications are made by the prosecutor, and are granted on general provisions allowing for a support person during testimony.</p> <p>McDonald, S, Rooney, L. (2014). Let's "Paws" to Consider the Possibility: Using support Dogs with Victim of Crime. <i>Victims of Crime Research Digest</i>. (Issue 7, pp 17-25).</p>	486.7 CC	Discretionary	A request can be made as a pre-trial application under s. 486.1.	<p>Studies have shown the psychological benefits of dogs in areas such as depression, aggression, stress and anxiety. Social science research provides evidence that animal companions have positive impacts on physiological symptoms of stress and anxiety, such as high heart rate, high blood pressure, rapid, shallow breathing, and dissociation. Research suggests that animals may be able to calm people down and can have a positive impact on their emotions. If a young witness is calm, the opportunity to elicit a full and candid account increases substantially.</p> <p>McDonald, S, Rooney, L. (2014). Let's "Paws" to Consider the Possibility: Using support Dogs with Victim of Crime. <i>Victims of Crime Research Digest</i>. (Issue 7, pp 17-25).</p>

The Importance of Choice

From the point of initial disclosure or exposure, to the endpoint of a trial, young witnesses are involuntarily thrust into a confusing, adversarial system wherein they are powerless participants. It is for good reason that young witnesses do not have control over legal processes and decisions, but the whole experience can be an incredibly disempowering one for a young person. As such, when choice is available, it should be provided. One should never assume that a young witness does not require the protections allowed to them because of their age, or because of the confidence that the young witness exudes. Conversely, one should never assume, based on the objective seriousness of the offence, that a young witness will desire to use the testimonial aids available to them. It is the right of a young witness to utilize the special accommodations set out in Bill C-2, so it is important to approach the conversation in an unbiased nature, present the options, and respect the decision of the young witness.



Capacity to testify – s. 16.1, Canada Evidence Act

In 2005, Bill C-2 passed and amended the Canada Evidence Act by adding section 16.1. Section 16.1 governs testimonial competence for witnesses under 14 years of age. It substantially reduces the complexity of rules preventing the testimony of children. Most significantly, children under 14 years of age are now presumed to have the capacity to testify. Children's evidence must be received if they can understand and respond to questions. A witness under 14 is not sworn or affirmed, but instead testifies on a promise to tell the truth.

16.1 (1) A person under 14 years old is *presumed to have the capacity to testify*.

(2) A witness under 14 must *not take an oath or make a solemn affirmation*.

(3) The evidence of a witness under 14 must be

received if he or she is able to *understand and respond to questions*.

(4) Any party who *challenges the capacity* of a witness under 14 has the burden of satisfying the court that there is an issue as to the capacity of the witness to understand and respond to questions.

(5) If the court is satisfied that there is an issue as to the capacity of the witness under 14, it must, before permitting the witness to give evidence, *conduct an inquiry* to determine whether they are able to understand and respond to questions.

(6) The court must require the witness under 14 to *promise to tell the truth* before permitting the witness to give evidence.

(7) No witness under 14 will be asked any questions regarding their *understanding of the nature of the promise to tell the truth* for the purpose of determining whether the court will receive his or her evidence.

(8) If the court receives the evidence of a witness under 14, it must have the *same effect as if it were taken under oath*.

Canada Evidence Act, R.S.C., c. C-5 (1985).

Assessing the credibility of young witnesses

Historically, Canadian courts viewed children's evidence as inherently suspect and unreliable. Children were presumptively considered to lack the capacity and mental maturity to give reliable testimony: *R v Kendall*, [1962] SCR 469 at para 13. Today, children's evidence is no longer regarded as inherently unreliable, and courts have lessened the strict standards of oath-taking and corroboration that was formerly required: *R v B(G)*, [1990] 2 SCR 30 at para 48.

The standard to be applied in assessing the credibility of a child witness is not necessarily the same as that applied to a reasonable adult giving evidence. Instead, the court should take a "common sense" approach to assessing the credibility of a child's evidence, having regard to the age of the child, the child's mental development, and the child's ability to communicate: *R v W(R)*, [1992] 2 SCR 122 at paras 24-25. While children may not be able to recount precise details and communicate the when and where of an event with exactitude, this does not mean that they have misconceived what happened to them and who did it. Inconsistencies, particularly those concerning peripheral matters, such as time or place, should not have the same adverse effect on the credibility of a child as it might in the case of an adult: *R v HC*, 2009 ONCA 56 at para 42. As the Supreme Court held in *R v W(R)*, *supra*, the peculiar perspectives of children can affect their recollection of events, and the presence of inconsistencies – especially those related to peripheral matters – should be assessed in context. If such inconsistencies are found to be determinative, it will affect the weight of the evidence and not its admissibility: *R v CCF*, [1997] 3 SCR 1183 at para 48.

The evidence of children is not held to a lower standard of proof. Rather, the evidence of child witnesses should be assessed according to the strengths and weaknesses of the evidence in the particular case. Every person giving testimony in

court, of whatever age, is an individual whose credibility and evidence must be assessed by reference to criteria appropriate to his or her mental development, understanding and ability to communicate.

