



PREPARING AND SUPPORTING YOUNG WITNESSES AN ESSENTIALS GUIDE



London Family
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Professional Services for Families in Court



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PREPARING AND SUPPORTING YOUNG WITNESSES:

AN ESSENTIALS GUIDE

The aim of this Guide is to provide justice professionals with clear, concise and practical information in their work with young victims and witnesses of crime. The materials presented here are in a quick reference format, with essential information on court preparation, identifying and meeting the needs of young witnesses, the use of testimonial aids, the impact of trauma, and other relevant topics. Resources and related research are noted for readers who wish to read further on a particular topic. The material is not prescriptive, and it can be adapted for use in various jurisdictions.

Who can use this Guide?

This Guide was created primarily for justice practitioners who work directly with children and youth, including court preparation workers, crown prosecutors, and police officers. Additionally, social workers and mental health practitioners whose clients are potential court witnesses may find this Guide useful. Parents, guardians and educators may also find the information helpful.

Philosophy

Many aspects of the justice system are stressful – and they can sometimes be traumatic for young witnesses. Special accommodations and support services have been put in place to decrease stress and help young witnesses provide the best evidence that they can. Specialist training for justice practitioners, as well as a coordinated approach, can increase a young person’s access to justice. Sensitivity to the unique needs and individual differences of young witnesses can help to make each young person’s experience in the legal process a positive one.

Note: The term ‘young witness’ used in this resource refers to children and youth under age 18 who are victims and/or witnesses of crime.

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INTRODUCTION

AIM OF THIS RESOURCE

The aim of this Guide is to provide justice professionals with concise and practical information to help in their work with young victims and witnesses. The resource includes detailed information about: the ‘essentials’ of understanding the experience of young witnesses in the justice process; the core components of court preparation; the individual needs and supports required by young witnesses; testimonial aids; and the impact of trauma. The material in this resource can be adapted for use in various jurisdictions. It was developed for those working directly with young victims and/or witnesses of crime, but parents, guardians and educators may also find the resource helpful.

Beginning in 1988, a series of legislative reforms addressed the needs of young witnesses in Canadian criminal courts. In 2006, further amendments to the *Criminal Code* created a presumption that all witnesses under age 18 can, upon application, use testimonial aids. Section 16.1 of the *Canada Evidence Act*, which came into force in 2006, created the presumption that children are competent to testify.

Concerns about the re-victimization of young witnesses in the legal process continue to be raised by researchers and practitioners. Young witnesses are testifying in increasing numbers in Canadian criminal courts, as well as internationally. National statistics reflect that more than half of reported sexual assault cases involve children and youth under age 18. There are many factors that can cause the legal process to be highly stressful for young witnesses, including delays and adjournments, facing the accused in court, cross-examination, and testifying in an adult-orientated adversarial system. Enhanced supports, including court preparation and the use of testimonial aids, can help facilitate better quality evidence and ameliorate some of the negative aspects of the legal system for young witnesses. These supports can help young witnesses to have a more positive experience in the legal process.

The *Canadian Victims Bill of Rights* (CVBR) came into force in July 2015. It gives victims a more effective voice in the criminal justice system, with enforceable rights to information, protection, participation and restitution. (s.c.2015, c13,s.2). You can download the CVBR here: <http://laws-lois.justice.gc.ca/eng/acts/c-23.7/FullText.html>

PERCEPTIONS AND EXPERIENCES OF YOUNG WITNESSES

IN THE LEGAL PROCESS

Researchers have gained valuable insight and information through speaking with young witnesses about their experiences in the justice process. Learning about what helped and about the difficulties that they faced, as well as listening to their recommendations, helps to inform and improve services for young witnesses.

What 'made a difference' for young witnesses?

- Court preparation is helpful. Having the same person throughout the process is comforting. In the words of one young person, “*You get to know them – they get to know you.*”
- The use of closed-circuit television (CCTV)/video-link, and having a support person while testifying makes a positive difference. In fact, many young witnesses report that they could not have testified without CCTV.
- Meeting with the Crown before court is reassuring. Young witnesses have an opportunity to ask questions and learn about what to expect.

Stressful aspects of the legal process for young witnesses

Despite the supports and protections in place, a number of negative aspects of the legal system continue to cause considerable stress for young witnesses, including:

- **Delays and adjournments**, which can cause significant distress for young witnesses and their families.
- **Testifying more than once**. This can exacerbate stress and prolong the length of time spent in the legal process.
- **Cross-examination**. Questions that are suggestive, misleading or developmentally inappropriate can pose a challenge for young witnesses to understand and answer accurately. The tone of the questioner, as well as the pace of questions, can also be challenging for a young witness.
- **Problems with CCTV equipment**, which can cause frustration and distress, as well as delays and adjournments.

Research examining the experiences of young witnesses

Hayes, D., Bunting, L., Lazenbatt, A., Carr, N., & Duffy, J. (2011). *The experiences of young witnesses in criminal proceedings in Northern Ireland*. Retrieved from Department of Justice (NI) website: <https://www.justice-ni.gov.uk/publications/experiences-young-witnesses-criminal-proceedings-northern-ireland>

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>

Plotnikoff, J., & Woolfson, R. (2009). *Measuring Up? Evaluating implementation of Government commitments to young witnesses in criminal proceedings*. Retrieved from Nuffield Foundation website: <http://www.nuffieldfoundation.org/young-witnesses-criminal-cases>

Troxel, N., Ogle, C., Cordon, I., Lawler, M., & Goodman, G. (2009). Chapter 8: Child witnesses in criminal court. In B. L. Bottoms, C. J. Najdowski, & G. S. Goodman (Eds.), *Children as victims, witnesses, & offenders: Psychological sciences and the law* (pp. 150-166). New York, NY: Guilford Press.



Case example: Delays/adjournments cause distress and hardship

Mae was age 13 when sexual assault charges were laid against her stepfather. She was placed in foster care. Mae used CCTV and had a support person when she testified at the preliminary hearing. Fifteen months later, she received a subpoena for the trial. On the day of trial, she waited anxiously from 9 a.m. until 3 p.m. before being called to give her evidence. Following the examination-in-chief, the case was adjourned - there was not enough time for her to finish testifying. Mae was distressed and did not want to have anything more to do with the case. However, five months later, now age 15, Mae returned to be cross-examined. Her involvement in the criminal process totaled 27 months. Delays and adjournments created hardship for this young witness.

Lessons learned: What, if anything, could have made a difference?

- Priority on the docket: When cases involving young witnesses are given priority, hours of anxious waiting can be avoided.
- Testifying early in the day may also prevent the witness from having to return for a second day.
- Where an adjournment cannot be avoided, a short adjournment period is preferable for a young witness.

Delays can cause stress and frustration for young witnesses

In a 2015 study, 15 young witnesses were interviewed about their experiences and perceptions about testifying in courts located in the West Region of Ontario. CCTV was available to the majority of the witnesses, who were under age 18 when they testified. Just over half of them testified twice. The lengthy period of waiting and multiple delays caused stress and frustration. Their cases ranged from 11 to 38 months to reach completion. One young person commented that she had “wasted two years” of her life stressing about the case. Another noted that it took so long that she did not want to “do it anymore.”

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#2-9>



THE ROLE OF THE PRACTITIONER:

WORKING WITH YOUNG WITNESSES

Working with young victims and witnesses of crime requires specialized skills and training, combined with a good measure of flexibility, commitment and creativity.

The professional role: Who provides court preparation?

Across Canada, there is no specific title or professional accreditation for the person who provides court preparation services to young witnesses. The majority of practitioners in this field have backgrounds in social work, psychology, advocacy or child and youth work. Titles for this role vary and can include: victim/witness worker, child witness specialist, victim advocate, or crown witness coordinator. In many programs, the child witness 'worker' often acts as the court-approved support person when the young witness testifies.

Skills and competencies

The skills and competencies required for the role of providing court preparation services include knowledge, understanding and awareness of the following:

- Child development and individual differences
- Effective communication skills with children and youth
- Impact of victimization and trauma
- Criminal justice system and community services
- Socially inclusive and anti-oppressive practice
- Cultural competency
- Disabilities
- Relevant legislation and guidelines

Maintaining professional resilience

Working with young witnesses can be rewarding, but it can also exact an emotional toll on practitioners. Access to peer consultation and support, supervision, and wellness and mental health care are key to maintaining personal and professional resilience.

Record keeping

Case notes and documents can potentially be subpoenaed. So, ensure to file notes that include: time, place and number of meetings; the focus of each meeting; and the persons present.

Third party records: The *Criminal Code of Canada* s. 278.1 – 278.9 deals with the disclosure of third party records in sexual offences. A written application must be made to the trial judge. The application must identify the specific record(s) and their relevancy to the issue at trial. The leading decision regarding applications for third party records is: Supreme Court of Canada R. v. Mills [1999] 3 S.C.R. 668, 139 C.C.C. (3rd) 321. See <http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/tpfact-dtfiche/fact3-fiche3.html#wb-info>

Victim witness workers should keep an updated curriculum vitae which includes: name, title, organization, role description, and length of time in current position. Professional education and qualifications, training, certificates, and relevant work experience should also be included.

Further reading:

Perry, B. D. (2014). *The cost of caring: Secondary traumatic stress and the impact of working with high-risk children and families*. Retrieved from The ChildTrauma Academy website: https://childtrauma.org/wp-content/uploads/2014/01/Cost_of_Caring_Secondary_Traumatic_Stress_Perry_s.pdf

Hill, J. K. (2009). *Working with victims of crime: A manual applying research to clinical practice* (2nd ed.). Retrieved from Department of Justice website: <http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/res-rech/>

Figley, C. R. (Ed.). (1995). *Compassion fatigue: Coping with secondary traumatic stress disorder in those who treat the traumatized*. New York, NY: Taylor & Francis Group.

COURT PREPARATION

THE ESSENTIALS

Court preparation services make a significant difference to facilitating participation, reducing stress, and improving the experience of young witnesses. An informed and well-prepared witness can provide more effective evidence.

Demands of the legal process on young witnesses:

- To participate in an adversarial, adult-orientated environment
- To recall, describe, and recount details of an event, often distressing or traumatic, that occurred months, or sometimes even years before the trial
- To respond truthfully and accurately to complex and leading questions; to identify non-comprehension; to have enough confidence to ask for clarification
- To concentrate and remain focused – often for long periods, or when emotionally upset
- To cope with delays and adjournments
- To understand and come to terms with a verdict of ‘not guilty’ because of ‘reasonable doubt’

Court preparation should start well in advance of the preliminary hearing or trial. **Timely referrals** and flagging of cases are key to ensuring that each young witness receives the support he or she needs. Court preparation ensures that witnesses are informed and understand what to expect. The **number of sessions** depends on each child or youth and can be tailored to their individual needs and circumstances - three or four prep sessions are typical for most young witnesses. Younger children and vulnerable victims will need more time. Individual **concerns about testifying** are identified and addressed during the court

preparation process. Simple **stress management** techniques are taught, and **advance arrangements** can be made for testimonial aids and any other identified accommodations. This will help to avoid adjournments.

Parents/guardians can participate in court preparation sessions, especially for younger witnesses and those with special needs. Parents can provide valuable background information and insight on how to communicate with their child.

Evidence is never discussed with the young witness during the court preparation process (Note: The exception here is the role of Crown Witness Coordinators, who work alongside Crown prosecutors in the three Territories).

Although the outcome may not be the one hoped for, young witnesses who are well-supported throughout the legal process can feel empowered and positive after their experience. One youth who was interviewed about her experience testifying reflected that she was “*proud*” of herself. “*Even though he got off, I showed him that I could stand up and was not afraid of him anymore.*”*

Reference:

* 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>

INTRODUCTORY MEETING WITH THE YOUNG WITNESS

This first meeting will inform, reassure and build a relationship with the young witness, as well as identify any concerns and/or testimonial needs. The introductory meeting includes:

- Introductions
- Rapport building - Young witnesses are typically anxious. The focus is to help them feel comfortable and reassured
- The court preparation process is explained. Young witnesses, parents and guardians sign informed consents to participate in the program

Note: When in-person meetings with a young witness are not possible, consider 'distance' court preparation using video-conferencing (e.g., Skype or FaceTime).

Court Preparation – Four Core Components

1. Education: Learning about court and the role of a witness
2. Court orientation
3. Roleplaying: Learning testimony-related skills
4. Stress reduction: Managing court-related anxiety

COURT PREP - CORE COMPONENT 1

LEARNING ABOUT COURT AND THE ROLE OF A WITNESS

The reason for participating in court preparation may not have been clearly explained to the young witness, and their parent or guardian may not fully understand what is involved. The topic of court may not have been addressed since the investigative interview. Perhaps the subpoena has just been delivered.

Often, young witnesses have misconceptions about the legal system. Some ask why they must testify (e.g., “I already told the police.”). Others believe that when they testify and tell the truth, the accused “will be put in jail.” It is difficult for many young witnesses to understand the adversarial nature of cross-examination, and it can be hard to understand the concept of ‘reasonable doubt.’ Court preparation can help explain and clarify. Young witnesses are often relieved to hear that details of what happened are never discussed during court preparation.

Explaining the role of a witness

‘Some time ago, you talked to the police about something that happened. Now, you are being asked to go to court to tell the judge. Here is some information about witnesses ...’

- In court, witnesses are asked questions about what happened. This is called ‘testifying’ or giving evidence.
- The judge does not know about what happened until the witness testifies. It is important for the witness to say everything about what happened.
- The job of a witness is to tell the truth.
- The titles and roles of court personnel are explained on page 11 of this resource.
- The Crown asks questions about what happened. This is called ‘examination-in-chief.’
- The defence lawyer(s) then asks more questions about what happened. This is called ‘cross-examination.’
- The judge listens carefully to everything that the witness says, and sometimes he/she asks the witness questions.

Note: In cases where there is more than one accused, more than one defence lawyer can question the witness. Prepare the young witness for this situation.

Note: Young witnesses called to testify by the defence counsel will also benefit from court preparation services and testimonial aids.

PEOPLE WHO WORK IN THE COURTROOM



The Judge is the person in charge of the courtroom. The judge is called '*Your Honour*' in court. He/she listens carefully to what the witnesses say in court. It is the judge's job to decide if the law has been broken. The judge needs to be *absolutely* sure before finding a person guilty.

The Crown (can also be called a 'Prosecutor,' 'Crown Attorney,' or 'Crown Counsel'). The crown will ask you questions about what happened. These questions will help you tell the judge what you know. This is called 'examination-in-chief.'

The Defence lawyer works for the accused (the person who has been charged). The defence lawyer will also ask you questions about what happened – this is called 'cross-examination.'

The Court Clerk helps the judge in court. The clerk says, "*All rise*" when the judge enters the courtroom.

The clerk reads out the charges at the beginning of the trial (or at the preliminary hearing).

The Court Reporter records everything that is said in court. Remember to speak clearly so that your words can be recorded correctly.

The Court Security Officer is there to keep everyone safe in the courtroom. In some courts, this person is called the **Sheriff**.

The Police Officer who is involved in the investigation may sit beside the crown during the trial.

The Jury - Twelve people are on a jury. They decide if the accused person is guilty or not. Sometimes there is a jury at a trial. Sometimes there is only a judge at a trial.

GLOSSARY OF TERMS (EXPLANATIONS TO USE DURING COURT PREPARATION)

Accused: The person who is charged with breaking the law. This person is also called the 'defendant.'

Acquittal: When the Judge (or judge and jury) find the accused person not guilty of the crime.

Adjournment: The court hearing (trial) is changed to another date.

Affirmation: Witnesses who do not wish to swear on the Bible or other religious book can affirm. A solemn affirmation to tell the truth has the same effect as an oath.

Charge: An allegation that a person has committed a specific crime. For example, the accused is charged with _____.

Conviction: When the accused person is found guilty of the charge(s).

Evidence: Information that is provided to the court. A witness gives evidence about what they saw, heard or experienced. Written statements, documents, and photographs can be used as evidence.

Objection: When the Crown or Defence lawyer believes that the question is not fair or appropriate, they can object. The Judge decides whether or not the witness has to answer the question

Preliminary Hearing (preliminary inquiry): A court hearing where the judge decides whether there is enough evidence to hold a trial. Witnesses can be called to testify at this hearing.

Sentence: Punishment that the judge gives to the person who is found guilty of breaking the law.

Statement: Written (or video-recorded) information that the witness gives to police about what they saw, heard or experienced.

Subpoena: A court order to make a witness come to court to give evidence.

Testimony: What a witness says in court.

Transcript: A typed copy of what was said in court.

Trial: The judge (or judge and jury) hears all of the evidence and then makes a decision if the person is guilty or not guilty.

Verdict: The decision in a criminal trial (e.g., guilty or not guilty).

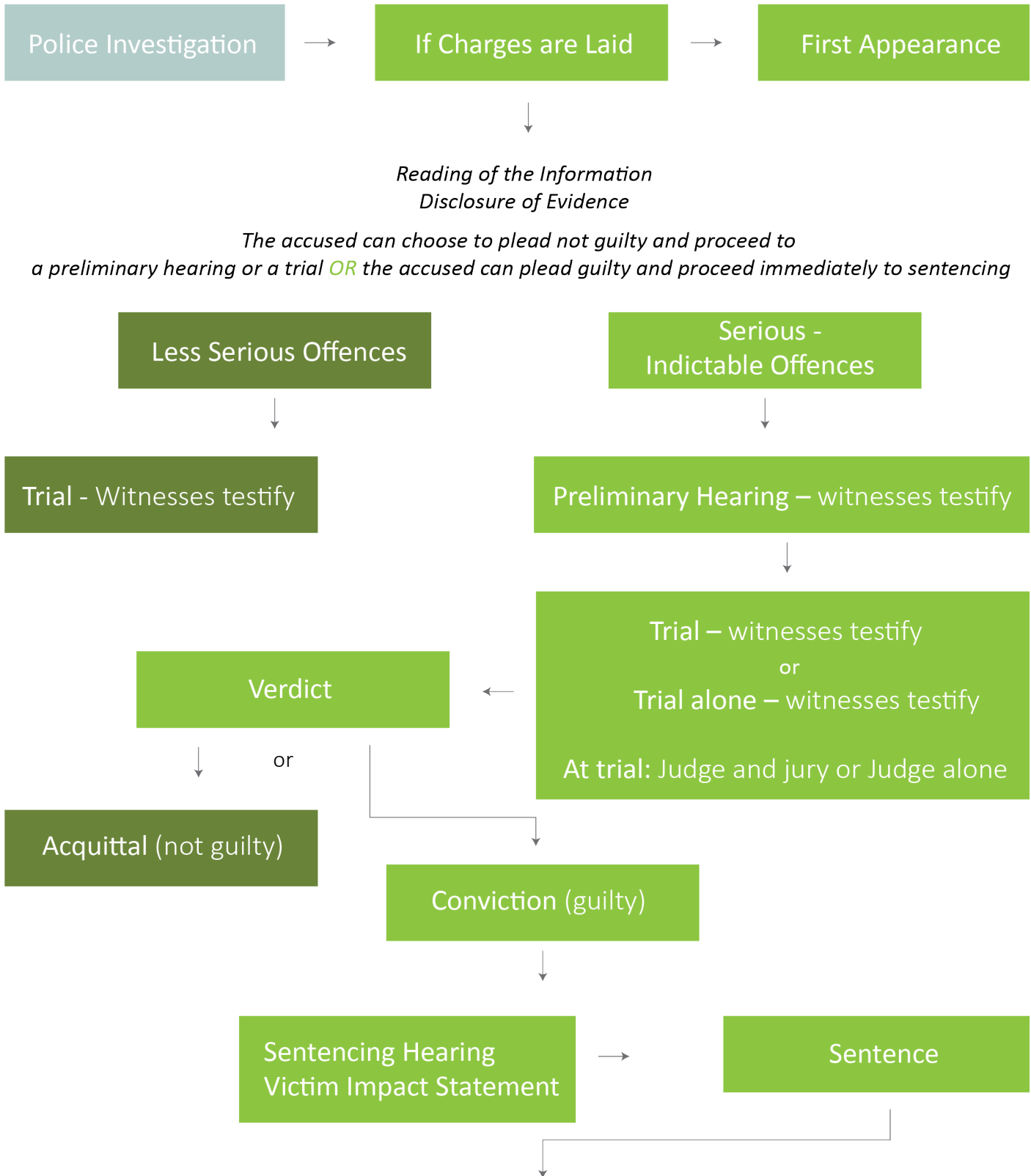
Victim: The person who has been hurt or affected by a crime.

Victim Impact Statement: Victims can write a statement to let the judge know how the crime affected them.

Voir dire: A legal argument about the admissibility of a piece of evidence in court. The witness (and jury) are usually sent out of court while this legal argument takes place.

Witness: A person who answers questions in court, in front of a judge (or judge and jury).

EXPLAINING THE COURT PROCESS



Examples of sentences include: a fine; probation; conditional discharge; suspended sentence; probation order; sentence of imprisonment

EXPLAINING TESTIMONIAL AIDS TO YOUNG WITNESSES

Testimonial aids



- Knowing that aids are available helps relieve some worries for a young witness about testifying.
- Use of testimonial aids can decrease stress and help improve the quality of evidence.
- Age is not a factor. Teenaged witnesses as well as younger children benefit from using testimonial aids.
- The benefit of giving witnesses a choice on the use, or not, of the testimonial aids has been highlighted in research.
- Although presumptively available to all witnesses under age 18, the young witness should understand that the judge makes the final decision about allowing a testimonial aid.

Note: See page 32 in this Guide for further information on testimonial aids.

Exclusion of the Public (s. 486 (2))

There is a provision to protect the interests of a witness under age 18 in all proceedings. The court may make an order to exclude all, or any, members of the public from the courtroom.

Appointment of Counsel (s. 486.3 (1))

When an accused is self-represented, the Judge shall appoint counsel to question a witness under age 18.

Publication Ban (s. 486.4): The order is mandatory for any witness under 18. Court shall order a ban on the publication of the name of the witness or any information that could identify the witness where the charge(s) involve sexual offences. For any other offences, the Court may order a ban on publication.

Further reading:

Cunningham, A., & Hurley, P. (2007). *"A full and candid account"*: Using special accommodations and testimonial aids to facilitate the testimony of children (Vols. 1-7). Retrieved from London Family Court Clinic website: http://www.lfcc.on.ca/full_and_candid_account.html

Explaining testimony outside the courtroom to a young witness (CCTV/video-links)

Some witnesses do not want to be in the courtroom, and so instead they can testify from a special room, where they don't have to see the accused, his or her supporters, and members of the public. In some courthouses, there are CCTV testimony rooms; other courts use video-link where the young witness testifies from a separate location.

- The witness can hear and see the judge on the TV screen in the testimony room.
- People in the courtroom can see and hear the witness on the courtroom monitors.
- In some courthouses, the crown and the defence are in the courtroom and ask the questions from there. In other courthouses, the crown and defence lawyer are in the testimony room.
- A support person usually sits with the young witness in the testimony room.
- Sometimes judges come into the testimony room to introduce themselves and meet the witness.

Explaining a screen to a young witness

A screen shields the witness from seeing the accused and other people in the courtroom. It is helpful to set up the screen during court orientation. The young witness can sit in the witness box to experience what it is like, and then look at it from the other side. This demonstration helps clarify that the screen blocks the witness' view of the courtroom, and to understand that the accused, and others in the courtroom, can see the witness. Knowing that they can have a support person beside them when using a screen provides reassurance.



In court locations where there is no access to CCTV, other accommodations can be considered to help make it easier for young witnesses, including:

- Testifying facing the judge – and not the accused or public gallery.
- Using an opaque screen and a web camera. The accused can see the witness on the courtroom monitor.

Explaining the role of a support person to young witnesses

- A **support person** sits or stands close to the witness during testimony. The support person is not allowed to communicate with the witness. This means that the support person cannot talk to or touch the witness, unless the judge says that they can.

Note: Help the young witness understand this rule through demonstration of this role during court preparation.

- The support person usually stays with the witness during the recess and lunch breaks. Testimony, or anything that went on in the courtroom, cannot be discussed.
- Witnesses can choose their support person. The court preparation worker often does this job.
- Other witnesses in the case cannot be the support person (unless the judge decides differently).

AGES AND STAGES OF DEVELOPMENT TO CONSIDER



Young children undergo significant cognitive changes during their preschool and early elementary school years, and their language development expands rapidly. Children’s communicative competence can be influenced by the competence of the adult questioner and by establishing an environment in which they feel safe. Younger children have a more limited vocabulary, a literal understanding of words, and a difficulty with abstract concepts. They may not be aware that a word can have more than one meaning (e.g., ‘Crown,’ as in Crown Attorney/ Prosecutor, and ‘crown,’ as in something a king or queen wears on their head.) Around ages six to seven, a new dimension develops in children’s thinking and speech.

In general, young children are better at memory tasks that involve recognition and are less competent at tasks that involve deliberate recall memory. Young children are also more likely to make errors of omission.

The concept of time is being learned at this age, and correct use of past tense can be difficult for young children. For example, ‘yesterday’ may be used by the child to describe a week ago. They are likely unable to estimate time, duration or frequency of events. However, younger children can provide good, factual information when the questions are short and the meaning is clear. In other words, when simple language is used. Several meetings may be necessary for a child to feel comfortable with adults who are unfamiliar to them, and in settings that are new.

Children ages 7 – 10 continue to improve their language skills. They can provide quite detailed accounts of events, and they can participate efficiently in conversation. They have also developed an understanding of right and wrong, and fairness is important to them. Hypothetical questions such as, “*What if you were to ...?*” can be problematic. Estimating duration, frequency and time of events is difficult for this age group. Most can indicate if an event happened during the morning or the evening, during winter or summer, and on the weekend or a school day. Memory strategies are learned at school, and recall memory improves. The attention span within this age group is between 30 to 60 minutes, depending on the type of task (and their level of interest).

Youth ages 11 – 17 are in transition from childhood to adulthood. They can discuss events and provide detailed information. Unlike younger children, they can deal with hypothetical questions (e.g., “*What if?*”) They can estimate time and duration, and they can focus their attention for between 60 and 90 minutes. Around age 12, a child’s memory ability is almost equal to that of an adult. An attitude of defensiveness may be used to mask feelings of distress or cover learning difficulties. Be alert to any history of trauma. This age group will welcome being asked for their input about how they would like to give their evidence.

MEMORY AND YOUNG WITNESSES



- It is well-recognized that children’s memory abilities develop significantly throughout childhood.
- Researchers understand memory as a three-stage process that involves encoding information, storage, and retrieval of information.
- Recognition memory is the simplest form of remembering (e.g., when a person, or an object, previously seen, is recognized).
- Recall memory is the most complex form of memory. This is when memory is accessed from storage (with no prompt or cue). For example, a young witness is asked during an interview: “Tell me what happened ...” This is the form of memory retrieval which is most often required of witnesses.
- Episodic memory is understood as a person’s recollection of a specific event (e.g., the *what*, *where* and *when* of past personal experiences).
- Semantic memory involves the long-term memory for information or concepts that are commonly known (not personally experienced events).
- The terms ‘eyewitness memory’, ‘event memory’, ‘autobiographical memory,’ and ‘episodic memory’ can be used somewhat interchangeably to describe memory for our experiences.

Reference:

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.

INVOLVING PARENTS IN COURT PREP



Parents can play a critical role in supporting their child through the legal system. Parents will feel more reassured about their child's welfare in the justice process knowing that court prep services are available. Parents themselves may be a witness in the case and may be anxious about the prospect of testifying. They can also benefit from court preparation.

- Parents can provide relevant background information and offer insight as to how best to communicate with, or accommodate, their child, especially children with special needs.
- Parents need to understand and know what to expect when their child is a witness.
- Parents appreciate being kept informed of relevant dates and being updated about any changes. They need to be made aware that cases are often adjourned and that participation in the justice system is often a prolonged experience.
- A parent's reaction to their child's victimization and their ability to provide support can differ significantly.
- Parents can be included in court preparation sessions with younger children and with witnesses with special needs. Parents can help reinforce the learning. It is important to assess the wishes of the child about the presence of their parent during a session.
- Parents who are witnesses may not be permitted to be in court while their child testifies. This is concerning for many parents, and they may wish to discuss such a situation with the crown prosecutor.
- Flexible appointment times are important to parents who may be unable to take time away from work to attend court preparation or other meetings.
- The length of time it takes for a case to reach completion can take a toll on parents, siblings and extended family members. Parents have particularly described the stress of being unable to talk to their child about the offence until the case is over.
- Parents sometimes write a Victim Impact Statement (VIS) for the sentencing hearing (when their child is a victim). Some parents choose to read this statement in court themselves.

COURT PREP - CORE COMPONENT 2

COURT ORIENTATION



A **court visit** can decrease the anticipatory anxiety felt by the young witness about testifying. The young witness becomes familiar with the layout of the courtroom, the CCTV testimony room, waiting areas, and entrances and exits, and has an opportunity to see courthouse personnel. This is an opportunity to practice has been learned during court preparation (e.g., answering questions, relaxation techniques). Familiarization will make court less intimidating. During a court visit:

- Explore a courtroom. Identify where court personnel sit.
(*Note: where the accused will be seated is not pointed out*).
- Point out CCTV monitors. Point out safety features, such as door security and emergency buttons.
- Introduce the CCTV testimony room. Explain how CCTV works (if there is in the courthouse).
- Identify waiting areas, exits and entrances.

When a physical visit to a courthouse is not possible, for instance in jurisdictions where circuit courts are operating, or if the family is unable to travel, there are many available resources used to orient the child to the courtroom setting.

Meeting the Crown: Coordinate a visit to the courthouse with a crown meeting, when possible. It can be difficult for families to take time off work, or for young people to miss school to attend multiple meetings.

Meeting the crown ahead of the court date benefits both the young witness and the crown. The witness will be more comfortable and relaxed. The crown has an opportunity to build rapport, become familiar with the witness' communication abilities, plan a questioning style for that individual witness, and make decisions about the type of testimonial aids needed or requested.

Resources for court orientation:

<http://www.courtprep.ca>

<http://www.childcourtprep.com/island>

<http://www.coryscourthouse.ca>

Yukon's '**Toolkit**' in a case - useful for jurisdictions with circuit courts

Planning for the 'day of court'

Waiting: Prepare the witness for a lengthy wait on 'the day of court.' Time in the waiting area can be tiring and tedious. Ask the young witness if they'd like to bring snacks/lunch, or if they want to bring books, games, or other activities.

Security screening: Provide reminders that all bags are examined and that no sharp objects are allowed. Prepare the child/family for the possibility of an unplanned encounter with the accused and his/her supporters when entering or leaving the courthouse or in the open waiting areas. Plan an arrival time to avoid this situation. Is there a need to arrange for an alternative entrance?

Transportation: Identify parking and public transportation. Parking near a courthouse can be expensive and spaces can be difficult to find. Identify bus routes and the nearest stops to the courthouse. Address issues like: Financial hardship? No means of transportation? Living in a rural area with no access to transportation? Does the child/family need assistance with transportation? Who can provide this?

“What to wear”? The temperature in courtrooms can be cool; wearing an outfit with sleeves is a good idea.

Cell phones: Reminder to turn off phones in the courtroom and in the CCTV testimony room.

COURT PREP - CORE COMPONENT 3

ROLEPLAYING: LEARNING TESTIMONY-RELATED SKILLS

This activity helps young witnesses cope with cross-examination. In many instances, the questions asked do not match the child’s stage of comprehension. Developing listening and answering skills builds confidence and helps young witnesses provide more complete and accurate evidence.

The use of complex language and suggestive questioning can confuse both child and adolescent witnesses. ‘Tag questions’ have been identified as particularly problematic (e.g., “*You didn’t ever like him, did you?*”).

A loud voice or a harsh tone of voice can intimidate a young witness. The pace of the questions can sometimes be too fast. Repetitive questioning can wear down the witness. Multiple questions can confuse.

Role-play question and answer practice helps build confidence. Young witnesses learn that it is important to say when they don’t understand or are confused. The judge will then be aware that they are listening carefully.

During role-play, young witnesses learn to: (1) differentiate between not understanding the question, not knowing the answer, or not remembering the information; (2) practice asking for a question to be repeated; (3) practice asking for clarification; and (4) practice correcting incorrect statements or misunderstandings.

Narrative skills are practiced to encourage more

complete answers. For example, you might say to the young witness, “*You said you have a pet dog, Sammy. Tell me more about Sammy.*” This encourages descriptive details about the dog.

Speaking aloud and clearly is reinforced during role-play. Neutral topics are the focus. Evidence is never discussed. This can be a fun activity. A judge’s robe can be used as a prop. A parent can participate.

Reminders for young witnesses: ensuring accuracy

- Listen carefully to the question. If you don't understand a word, or if the question is confusing, say so. It's important not to guess.
- Take your time – think before you answer. You don't have to rush.
- Do you need to hear the question again? Just ask.
- Speak clearly. It is important that everyone can hear you.
- You can ask for a break if you are tired or if you are upset.
- During breaks (recess, lunch), remember not to talk to anyone about what you said (or what any other person said or did) in court (exception: you can talk to the Crown).

Developing listening and answering skills

Below are some question types to practice with young witnesses. The purpose of the practice is to: (1) improve listening skills; and (2) identify if the question is confusing or not understood.

- Questions that highlight the difference between *“I don't understand,” “I don't know,”* and *“I don't remember.”*

Practice and repetition help the young witness distinguish between not knowing, not understanding, and not remembering. Remind the witness to: (1) listen carefully; (2) be sure that he or she understands the question before answering; and (3) say when they don't understand. Praise the young witness during the practice. You can also exchange roles. Have the young witness ask you these types of questions. This can reinforce learning and be a fun activity.

Here are some examples (develop your own questions for individual young witnesses that you work with):

Q. “How many people live in Africa?”
A. “I don't know.”

Q. “Were the ramifications of that particular statement pompous and verbose?”
A. “I don't understand the question.”

Q. “What did you have for dinner on September 22, 2015?”
A. “I don't remember.”

- Multiple questions – identifying the question

Q. “Tell me about what you did in Grade 5. What subject did you like best? Gym? Was your teacher nice?”

A. “Yes.”

Q. “What did I just ask you?”

A. “About my teacher, I'm not sure what else.”

Practice point: I asked you three questions altogether. That's confusing. Remember to say: “Please repeat the question,” or “I don't understand.”

Be aware that some children and youth will find it difficult to speak up (to say that they don't understand or need clarification). It is helpful for them to know that lawyers sometimes forget they are talking to young witnesses, and they sometimes use ‘big’ words or ask complicated questions. Emphasize to the young witness that he or she needs to understand the question in order to tell the truth.

- Difficult vocabulary questions

Q. “You vacillated all that week and entrenched yourself in those innocuous and unproductive activities. Why did you do that?”

A. “I don't understand what you said.”

- Leading questions

Q. “While you were waiting for the bus to come, you said that the light was green, but you know that that didn't happen, because the light turned red, did it not?”

A. “I don't understand the question.”

Practice point: Good. You remembered to say when you didn't understand.

- Tag questions, which confuse the witness

Q. “When you began the journey to Sudbury, it was mid-afternoon and you slept didn’t you, and you expected the weather to be good when you arrived, and you weren’t happy when it was inclement, don’t you agree?”

A. “Yes.”

Q. “Can you please tell me what I just asked you?”

A. “I don’t know.”

Practice point: Reinforce that it is important to understand the entire question – *all* of the question. If they are confused or unsure, they should say so. The person can ask the question in a different way – in a way that they can understand.

- Questions with incorrect information/mistakes that need to be identified

Q. “So, John, you are eight years old.”

A. “No, I turned nine last week.”

Q. “You will agree that you don’t like school and you dislike your teacher.”

A. “No, I like school – my teacher is nice.”

References:

Cross-examination:

Spencer, J. R., & Lamb, M. E. (Eds.). (2012). *Children and cross-examination: Time to change the rules?* Oxford, UK: Hart Publishing.

Questioning children:

Walker, A. G. (2013). *Handbook on questioning children: A linguistic perspective* (3rd ed.). Washington, D.C.: ABA Centre on Children and the Law.

COURT PREP - CORE COMPONENT 4

STRESS REDUCTION: MANAGING COURT-RELATED ANXIETY



Most young witnesses are anxious about going to court. Some experience significant worries or fears, while others may only have a few concerns. Identifying worries or concerns during the first court preparation meeting will help tailor case planning. (See page 24 in this text)

Complete the Checklist together with the young witness. Discuss and explore each response. Provide reassurance about their identified worries, and explain how court preparation can help. Describe the supports that can be put in place. Talk about safety in the courthouse. Some concerns can be immediately addressed. Testimonial aids can be planned. The young witness can learn strategies to manage anxiety related to testifying to help them manage stress on the day of court. Concerns can decrease during court preparation when specific worries have been addressed and confidence increases.

Worries and concerns about testifying can include:

- Not knowing what to do, or what to expect
- Seeing the accused
- Testifying in public: in front of supporters of the accused; school peers; community members; or strangers
- Understanding the questions
- Fear of retaliation
- Worry about not being believed
- Concern that everyone will know what happened

CHECKLIST: WORRIES ABOUT COURT

ARE YOU WORRIED ABOUT GOING TO COURT?

Explanation to the young witness:

"Our job is to help you get ready for court. To help us do that, we want to know if you have any worries or concerns about being a witness and going to court. Some kids are worried a little bit about having to testify. Some kids worry a lot, and some kids don't have any worries. We have some questions to help us find out."

| | Not Worried | A Little Worried | Very Worried | Action |
|--|-------------|---|---|--|
| Are you worried about going to court? If yes, what are you most worried about? | | | <i>Yes. Worried about everything. I don't know anything about court. I don't want to testify.</i> | Explain about court preparation, testimonial aids, meeting the crown. |
| Is there any person, or people, you are worried about seeing at court? If yes, who is that? | | | <i>Yes, my step-dad</i> | Use CCTV (or screen, if CCTV is not available); Support person; Describe security; Plan times of arrival. |
| Are you worried about knowing what to do in court? If yes, what worries you? | | <i>Yes, I don't know anything about court – I might make mistakes.</i> | | Court orientation visit; Meet the crown; Interactive court prep sites. |
| Are you worried about understanding questions that people will ask you in court? | | <i>Yes, I might not understand the words. I might be confused.</i> | | Role-play: Listening to and answering questions. |
| Do you worry about remembering everything that happened? | | <i>Yes, it was a long time ago.</i> | | Reminder that video statement can be reviewed. |
| Do you have any <u>other</u> worries or concerns about going to court? | | <i>My mom is worried. I don't want anyone in school to find out.</i> | <i>My step-dad is mad at me for telling – I am really worried about that.</i> | May include parent in some prep – talk about safety; Can talk to investigating officer; Discuss publication ban. |

STRATEGIES FOR MANAGING TESTIMONY-RELATED STRESS

The young witness can use the following strategies at any time. They can help to feel 'more in control.'

Breath practice

This exercise helps the young person manage their feelings of anxiety or nervousness before going to court.

Directions:

Find a comfortable position.

Inhale slowly - fill your lungs with *air – count – one, two, three, four, five.*

Exhale slowly - breathe *out – count – one, two, three, four, five.*

Repeat several times. Practice anywhere, anytime.

Muscle relaxation:

Directions:

Find a comfortable position.

'Squeeze a lemon' in each fist – counting to 5 – breathing normally.

'Release.' Slowly, let go of the lemon - counting to 5 – let your hands go floppy.

Repeat.*

There are many relaxation exercises that can help the young witness feel less stressed and more 'in charge.' Ask if they have already learned relaxation strategies in another context.

Positive self-statements:

Ask the young witness to identify past events where he or she has successfully managed to complete a task that was difficult for them (e.g., giving a speech in school, diving into a pool, learning a new skill). What helped them to be successful? How did they feel afterwards?

Link this to testifying – how can these strategies and skills be linked to testifying?

Treatment/counselling

- The wellbeing of a young person is of primary concern. Access to treatment/counselling services should not be deferred until after their case is completed, as the legal process can take many months (and often years).
- Parents can benefit from the support of a mental health practitioner to help them support their child who has been sexually abused.
- Parents who have a history of abuse may need to engage in personal counselling.
- Family therapy may also be indicated for children, parents and extended family members who may be impacted by the victimization.
- Traditional healing can benefit child victims and family members who have experienced intergenerational trauma.
- Children who have been sexually exploited on the internet can require specialized intervention.

(For more information about online abuse, including sexual violence, see the resource 'Online Abuse: Virtual violence and its impact on young women and girls,' which is also part of the DELTA series).

References:

*Koeppen, A. S. (1974). Relaxation training for children. *Elementary School Guidance and Counselling*, 9(1), 14-21. Retrieved from <http://psycnet.apa.org/psycinfo/1975-26402-001>

Sas, L., Hurley, P., Austin, G., & Wolfe, D. (1991). *Reducing the system-induced trauma for child sexual abuse victims through court preparation, assessment and follow-up*. London, ON: London Family Court Clinic.

TIME FOR ONLY ONE COURT PREP MEETING?

THE ESSENTIALS

For some young witnesses and families, a one-time meeting for court prep is all that they can manage. Or there are times when a referral is 'last minute.' These are the *essentials* to cover when time is of the essence:

- Emphasize the importance of telling the truth. Witnesses age 13 or younger promise to tell the truth. Witnesses age 14 or older swear, or affirm, to tell the truth in court.
- The crown first asks the witness questions, then the defence lawyer asks questions. The judge may also ask some questions.
- Although the police know what happened, the judge does not know, until he or she hears about it in court. It is important that witnesses tell everything that they remember.
- Reminders: (1) *"Listen carefully to the questions."* (2) *"Don't guess. Say if you don't understand, or if you don't remember, or if you don't know the answer."* (3) *"If you are confused, or if you did not hear the question, say so. The person can ask you again."*
- Managing anxiety
Sometimes witnesses feel a bit shaky or anxious – doing these exercises can help:
 - *Breathe in slowly through your nose. Let the air out slowly through your mouth. Repeat.*
 - *Squeeze your fists as tightly as you can. Hold. Remember to breathe! Release – slowly. Let your hands go loose. Repeat.*



Case example – Younger children: A case for specialized court preparation and enhanced, coordinated supports

Connor (8) and Britt (6) were referred for court preparation services. Their mother was charged with physical assault of the children. The co-accused, their stepfather, was charged with physical assault and sexual assault. The children had been exposed to violence in the home; the parents abused drugs and alcohol. Connor and Britt were both present when their parents were arrested. Police interviews of the children were video-recorded. The children were referred to a court preparation program at the time the charges were laid.

Court preparation was tailored to the assessed needs of the children, with a focus on learning about court and understanding the role of the witness.

Britt's language ability was delayed – she had difficulty attending and sitting still. She was not worried about testifying. Court preparation took place in the CCTV testimony suite. She understood that the Crown and the defence lawyers would ask her questions in the CCTV room, with which she was familiar. Role-play focused on listening and answering skills. *"I don't understand"* was emphasized. Repetition and practice was needed.

Connor had conflicted feelings about his mother and was fearful of his stepfather. He was reluctant to testify. Over time, he settled into his foster home and his new school, and he was benefitting from therapeutic interventions. Through court preparation, he became more reassured about testifying. He understood that his job was to tell the judge about what had happened, and that the judge's role was to make decisions. He was relieved that he could use CCTV and not see his mother or stepfather while testifying.

The children attended six individual sessions before the preliminary hearing and three sessions before trial. The child witness worker provided the crown with relevant information about each child.

Meeting the crown: The crown met with the young witnesses three times before the preliminary hearing and twice before the trial. The short meetings focused on developing rapport – the children became comfortable with the crown. The crown prepared questions to match the children's language ability, level of comprehension, and attention span.

Investigating officer: The officer met with the children in their foster home on several occasions and developed a good rapport with them. This was important, as the children had been frightened when police had arrested their parents and later were significantly distressed upon seeing officers in the courthouse.

Therapeutic interventions were put in place immediately for both children.

Foster mother: The Foster mother accompanied the children to court preparation meetings and provided updates on their progress.

Testimonial aids: The children testified using CCTV. The court-approved support person was their court preparation worker. Connor's video-recorded statement was introduced as evidence-in-chief.

The judge came into the testimony room and introduced himself to the children.

Court facility dog: The dog provided comfort – he was a reassuring presence during courthouse visits and meetings.

Entering the courthouse: The children were permitted to use a side entrance, thus avoiding unwanted encounters with their mother or stepfather.

In summary, the children's court experience was positive. They were well-prepared, protected and supported throughout the process. Individual needs were identified and addressed. They testified outside of the courtroom. Their 'biggest' memory was the court facility dog that they saw again at the debriefing meeting.

COURT PREPARATION: CHECKLIST

| Component 1 Education | Component 2 Court orientation | Component 3 Role-playing (listening and answering skills) | Component 4 Managing testimony-related stress |
|--|---|--|--|
| <input type="checkbox"/> Learn the role of the witness | <input type="checkbox"/> Courthouse tour: See courtroom <input type="checkbox"/> See CCTV testimony room (where available) | <input type="checkbox"/> Practice identifying: "I don't know," "I don't understand," "I don't remember." | <input type="checkbox"/> Complete the Worries about Court Checklist (See page 24) <input type="checkbox"/> Review any court-related concerns or worries |
| <input type="checkbox"/> Roles of people in the Courtroom: Judge, Crown, Defence, Clerk, Reporter, Security, Sheriff | <input type="checkbox"/> Court Familiarization Tools: Video-interactive website model court | <input type="checkbox"/> Explain the process of cross-examination | <input type="checkbox"/> Breathing techniques |
| <input type="checkbox"/> The court process <input type="checkbox"/> Key terms (glossary) | <input type="checkbox"/> Meeting with Crown | <input type="checkbox"/> Practice asking for clarification <input type="checkbox"/> Practice asking for a question to be repeated | <input type="checkbox"/> Muscle relaxation |
| <input type="checkbox"/> Testimonial aids: Introduce and explain court outcomes. Witness not responsible for outcome and 'reasonable doubt.' | <input type="checkbox"/> Planning for 'day of court' | <input type="checkbox"/> Speaking aloud and clearly | <input type="checkbox"/> Positive self-statements |

AFTER COURT

THE ESSENTIALS

A **debriefing meeting** provides an opportunity for closure. Young witnesses may need help in understanding the verdict, the sentence, or bail conditions. Meanwhile, support may be needed to deal with the outcome – either a guilt verdict or an acquittal. Referrals for the young person and family to a counselling service can be helpful at this time, if not already in place. This is also a time to thank the young witness and acknowledge their courage.

A **Victim Impact Statement (VIS)** provides victims of crime the opportunity to have input in the sentencing process. An impact statement lets the judge, lawyers and the offender know how the crime affected them. The young witness should be aware that the offender can read the statement.

Some provinces and territories have VIS forms with questions designed for young victims. A child witness worker can support a young witness with a VIS. Younger children may have the choice to express their thoughts and feelings through drawings.

A victim can read her or his statement at the sentencing hearing, either in the courtroom or from another room using CCTV. Parents can write a VIS. In many instances, it is the Crown who reads out the VIS to the court.

Criminal Injuries Compensation

Victims of crime should be aware that they can apply for financial compensation to help offset medical, counselling, and other crime-related expenses. Some court preparation programs assist young witnesses to complete the forms. In Ontario, applications are made to the Criminal Injuries Compensation Board under the Compensation for Victims of Crime Act.

Feedback/program evaluation

Information provided by young witnesses and their parents can help to improve service delivery and provide valuable insights for professional education programs.

TRAUMA AND YOUNG WITNESSES

In order to work effectively with young witnesses, it is important to understand the impact of trauma and how trauma can affect a witness in the courtroom environment.

Traumatic experiences affect children and youth in different ways and at different developmental stages in their lives. Trauma can cause overwhelming emotions, including fear, powerlessness and helplessness. These responses can continue long after the event has passed. Previous victimization can intensify the impact of trauma and exacerbate the victim's emotional response during legal proceedings. The task of recalling and describing details of a traumatic experience can be overwhelming for victims who have used avoidance as a way of dealing with distressing reminders of the experience. In the courtroom, seeing the accused may trigger trauma reactions or potentially silence a fearful witness.

Emotional shutting down and dissociative defenses are common responses to chronic sexual or physical abuse. In the courtroom, a witness may appear as emotionally detached while recounting terrifying events that they experienced. Feelings of helplessness and powerlessness can be re-experienced during cross-examination. Waiting to testify can also be highly stressful.

Victimization

Young witnesses called to testify may already be vulnerable because of prior traumas and abuse. Enhanced supports and testimonial aids can help minimize the potential for further re-traumatization in the legal process.

Young witnesses and complex needs

Many young victims and witnesses referred for court preparation come with complex needs. The following references may be useful in providing further understanding when working with more vulnerable victims and witnesses:

References (and suggested further reading):

Hill, J. K. (2009). Victimization, resilience and meaning-making: Moving forward in strength. In S. McDonald (Ed.), *Victims of crime: Research digest* (Issue 2, pp. 3-9). Retrieved from Department of Justice website: http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd09_2-rr09_2/index.html

Hill, J. K. (2003). *Victims' response to trauma and implications for interventions: A selected review and synthesis of the literature*. Retrieved from Department of Justice website: http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rr03_vic2/rr03_vic2.pdf

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>

www.childtrauma.org.

See also:

www.ChildTraumaAcademy.com

van der Kolk, B. (2014). *The body keeps the score: Mind, brain and body in the transformation of trauma*. New York, NY: Viking Books.

van der Kolk, B., Roth, S., Pelcovitz, D., Sunday, S., & Spinazzola, J. (2005). Disorders of extreme stress: The empirical foundation of a complex adaptation to trauma. *Journal of Traumatic Stress*, 18(5), 389-399. doi:10.1002/jts.20047

Babchishin, L. K., & Romano, E. (2014). Evaluating the frequency, co-occurrence, and psychosocial correlates of childhood multiple victimization. *Canadian Journal of Community Mental Health*, 33(2) 47-65. doi:10.7870/cjcmh-2014-015

Finkelhor, D., Turner, H., Hamby, S., & Ormrod, R. (2011). *Polyvictimization: Children's exposure to multiple types of violence, crime, and abuse*. In *Juvenile justice bulletin* (pp. 1-11). Retrieved from National Criminal Justice Reference Service website: <https://www.ncjrs.gov/pdffiles1/ojdp/235504.pdf>

Truth and Reconciliation Commission of Canada. (2015). *Calls to action*. Retrieved from http://nctr.ca/assets/reports/Calls_to_Action_English2.pdf

HEARSAY EVIDENCE

Case Example

Joy, age 7, witnessed her father kill her mother. She was interviewed by police and gave a statement about what she saw. The interview was video-recorded. Joy was placed in a foster home. She has never spoken about the incident since that night. Her foster mother reports that Joy has frequent nightmares and describes her as withdrawn and sad. The Crown wants to call her as a witness, but there is concern about her emotional and psychological wellbeing. The Crown arranged for an assessment to support a 'Khan' application.

In rare circumstances, when a child is unable to testify in court (e.g., provide *viva voce*/'live' evidence), the Court may permit the person who heard the child's information to repeat to the court what the child said. This is known as hearsay evidence.

In a landmark case (*R. v. Khan* [1990] 2 S.C.R. 53), the Supreme Court of Canada ruled that a child's out-of-court statement is admissible when two requirements are met: necessity and reliability.

Reasons that a child/youth may be unable or unavailable to testify include:

- Too traumatized to testify
- Testifying would be emotionally harmful

- Unable to speak about (or unable to remember) the incident
- Too immature to testify

The Crown presents evidence to the court to support a 'Khan' application. An assessment of the child by a qualified mental health practitioner may be used to support the application. The assessment involves interviews with the child and his or her primary caregivers, and includes collateral information. A report is written for the court. The assessor may be called to testify.



TESTIMONIAL AIDS AND SPECIAL ACCOMMODATIONS

Testimonial aids can decrease testimony-related stress and help improve the quality of evidence. Seeing the accused and testifying in public are two of the most stressful aspects of testifying. Witnesses who are less stressed are better able to focus on the task of testifying. Awareness of the availability of aids can encourage witness participation and reduce anticipatory anxiety about going to court.

In Canada, all witnesses under age 18 are eligible to use testimonial aids. The 2006 amendments to the *Criminal Code* created a presumption that children can testify from outside the courtroom, or use a screen, and have a support person close to them while testifying. The constitutionality of Bill C-2 provisions was upheld by the Supreme Court of Canada in *R. v. J.Z.S.*, 2010 SCC 1

s. 486.2(1) stipulates that the judge shall, on application of the prosecutor for a witness under age 18 or, on application of the witness, order that the witness testify outside the court room or behind a screen or other device, that would allow the witness not to see the accused.

s. 482.5 stipulates that arrangements must be made for the accused, judge, justice and jury to watch the testimony and that the accused is permitted to communicate with counsel while watching the testimony. An application for a testimonial aid(s) may be made before, or during, the proceedings.

Upon application, the order is mandatory, unless the judge or justice is of the opinion that the order would “*interfere with the proper administration of justice.*”

No adverse inference may be drawn from the fact that an order for the testimonial aid is, or is not, made.

The *Victims Bill of Rights Act 2015* (Bill C-32) provides that testimonial aids can be used to present victim impact statements.

*s. 486 also applies to witnesses who may have difficulty communicating the evidence because of a mental or physical disability.

Support person (s.486.1)

Young witnesses can feel isolated and vulnerable while testifying in court. The presence of a support person can provide reassurance and help the witness to feel safe and secure. When anxiety is reduced, the witness is better able to focus.

most courtrooms, the screen is placed in front of the witness; in some court setups, the accused is seated behind the screen.

The constitutionality of the screen provision was upheld by the Supreme Court of Canada in *R. v. Levogiannis* [1993] 4 S.C.R. 475.

Witness screens s.486.2

A witness screen is used to shield the witness from seeing the accused in the courtroom. The accused can see the witness through a one-way screen. In

CCTV- TESTIMONY OUTSIDE OF THE COURTROOM

A CRITICAL LENS

| | |
|--|--|
| <p>Arguments raised in support of testifying in the courtroom:</p> <ul style="list-style-type: none"> • Emotional impact. The evidence of a distressed witness is more compelling. • The demeanour of the witness is difficult to see on smaller courtroom monitors. • The young witness appears composed – is this the demeanour of a victim? | <p>However, <u>without</u> CCTV:</p> <ul style="list-style-type: none"> • The witness may freeze and be unable to testify at all. • It is difficult to think clearly when highly stressed. • Seeing the accused, or their supporters, can silence a witness. In some Northern communities, the pressure put on victims and witnesses is a significant concern. |
| <p style="text-align: center;">Influence the decision-making of judge and jury. Fairness to the accused?</p> <p>Research with juries: 277 jurors were questioned at the conclusion of 25 trials involving child sexual abuse. All children testified using CCTV. The majority of jurors, 88%, considered the use of CCTV as either “very fair” or “quite fair” to the accused.</p> <p>Cashmore, J., & Trimboli, L. (2006). Child sexual assault trials: A survey of juror perceptions. <i>In Crime and justice bulletin: Contemporary issues in crime and justice</i> (Number 102). Retrieved from the NSW Bureau of Crime Statistics and Research website: http://www.bocsar.nsw.gov.au/Documents/CJB/cjb102.pdf</p> <p>Fairness to the accused: s.486.2 (8) The judge directs the jury that <i>no adverse inference may be drawn</i> from the fact that an order (for testimony outside the courtroom) is, or is not, made.</p> | |

Problems with CCTV equipment can cause delays and result in frustration for the Court, the lawyers and young witnesses.

- Test the CCTV equipment – both before and on the day of court
- Have trained staff operate the equipment
- Update old and problematic equipment

Canadian research on CCTV and the use of testimonial aids:

Ainslie, M. T. (2013). *Testimonial support for vulnerable adults* (Bill C-2): Case law review (2009-2012) (Catalogue No. J4-19/2013E-PDF). Retrieved from Department of Justice website: http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rr13_15b/rr13_15b.pdf

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). Retrieved from Department of Justice website: http://www.justice.gc.ca/eng/rp-pr/fl-lf/famil/rr10_vic3/rr10_vic3.pdf

Hurley, P. M. (2013). *Vulnerable adult witnesses: The perceptions and experiences of crown prosecutors and victim services providers in the use of testimonial support provisions* (Catalogue No. J4-18/2013E-PDF). Retrieved from Department of Justice website: http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rr13_15a/rr13_15a.pdf

Hickey, S. (2016). The use of closed circuit television: The experiences of crown prosecutors and victim-service 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>

Canadian research on CCTV and the use of testimonial aids (continued)

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>

Case Example: Young witness called to testify during a CCTV application

Amber was age 15 when she testified. The accused, an acquaintance, was charged with sexual offences. Amber was unable/unwilling to attend court preparation and she did not meet the crown ahead of the trial. She arrived at the courthouse highly anxious about testifying, and she had misconceptions about the court process. She requested to use CCTV, as she was fearful of the accused. The crown made an application before the presiding judge. The court observed that a written application was not filed. The crown noted that an application was presumptive for witnesses under age 18. The defence objected to the application, citing that prior notice of the application was not received.

The witness was called into the courtroom to testify as to her date of birth. While walking to the witness box, she had to pass close to the accused. The crown questioned Amber about her age and date of birth. The defence was permitted to question the witness - the questions addressed the witness' mental health, not her age. Amber was significantly distressed after this experience.

The CCTV application was allowed. An application for a support person was not made.

What, if anything, could have made a difference?

- **Questions:** When the age of a young witness is an issue for the court, how can the date of birth be established without the witness having to testify in open court? Could a parent testify about their child's age? Could the police report be used? Could other documents be submitted?
- **Practice:** Where possible, advising defence counsel of an application for testimonial aids in advance can avoid delays or adjournments.
- **Questions:** How can a reluctant witness be encouraged to attend court prep? Who can help facilitate meetings when a witness does not have access to transportation? Who can assist in finding new contact information when the witness has changed her or his address or telephone service? Who does this in your jurisdiction? Police? Family members?

USEFUL FORMS

YOUNG WITNESS INFORMATION - FOR CROWNS

Name: _____ Age: _____ Date of Birth: _____

R.v. _____ Prelim/trial date: _____

Comments

Ability to understand and answer questions: _____

Attention span: _____

First language: _____

Cultural information: _____

Interpreter needs: _____

Physical needs: _____

Other: _____

Testimonial aid(s) or accommodations requested/recommended

- Child/Youth Name:
- Age: _____ • Date of Birth: _____
- Relationship to accused:
- Charge(s):
- Preliminary Hearing/Trial:
- Court Date:

- Support person: _____ (name)
- CCTV/video-link YES/NO
- Screen YES/NO
- Video-recorded evidence YES/NO
- Other accommodation(s): YES/NO
- _____
- _____



EXAMPLE: COURT PREP FILE INFORMATION SHEET

Name: _____ Age: _____ Date of Birth: _____

R.v. _____ Prelim/trial date: _____

Crown: _____

Background/special information/identified needs:

Meeting Date: _____ Location: _____ Persons present: _____

Intake:

Court Prep – Focus:

Courthouse tour:

Meeting with Crown:

Follow-up:

Victim Impact Statement:

DEVELOPMENTS ACROSS CANADA AND INTERNATIONALLY

Courthouse facility dogs

Courthouse facility dogs are specially trained to accompany young witnesses to court. The dogs can provide comfort and support for young witnesses throughout their court experience. The calming and soothing presence of a facility dog can be experienced by children and youth during the investigative interview, during court prep sessions, while reviewing a statement, and when meeting the crown and visiting the courthouse.

In addition to helping young witnesses, courthouse dogs can benefit vulnerable adult witnesses. The dogs also have a calming effect on youth living with mental health problems who have anxiety about going into a courtroom regarding their own charges.

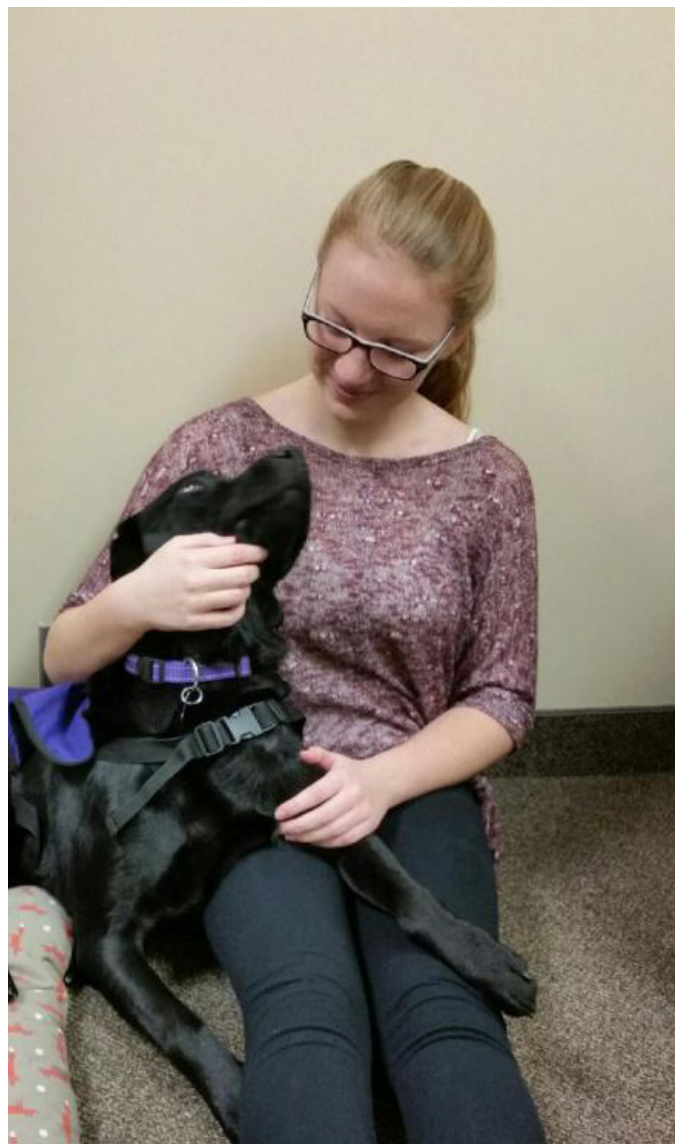


There is growing acceptance for accredited courthouse dogs to support young witnesses in Canadian courthouses. In December 2014 in Calgary, Alberta, a courthouse dog was officially used for the first time in Canada. The presiding judge permitted "Hawk" to be in the witness box with two young witnesses. The defence counsel raised no objection. In 2015, "Wren" from the Zebra Child Advocacy Centre supported a child in court, and shortly after the Provincial Court of British Columbia permitted a witness to have "Caber" beside her while she testified. Many organizations working with young witnesses are awaiting dogs to complete training and become part of the support team.

A Courthouse dog's life: In October 2016, the Child Witness Project (CWP) in London, Ontario received

"Merel", their first courthouse dog. During her first week of work, Merel met with several young witnesses at the courthouse. She was welcomed by the Crowns, met with defence lawyers, visited a judge in chambers, and was photographed by the media. It is anticipated that Merel will support between 150 to 200 young witnesses each year. Courthouse dogs know when they are working, and they wear a special coat when they are "on." Merel lives with Rachel, the CWP coordinator, who received specialized training for this role.

A mother of one young witness reflected that Merel had been "the biggest support for my daughter ... she could not have done it without her."



Further reading:

McDonald, S., & Rooney, L. (2014). Let's "paws" to consider the possibility: Using support dogs with victims of crime. In S. McDonald (Ed.), *Victims of crime: Research digest* (Issue 7, pp. 17-25). Retrieved from Department of Justice website: <http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd7-rr7/index.html>

McQuiston, D. E., Burd, K., & Hayton, C. G. (2016, July). Utilizing courthouse dogs and comfort items to assist vulnerable witnesses during trial. *AP-LS News*. Retrieved from <http://www.apadivisions.org/division-41/>

Child Advocacy Centres/Child and Youth Advocacy Centres (CACs/CYACs)

Child Advocacy/Child and Youth Advocacy Centres provide a coordinated, multidisciplinary, and collaborative approach in a safe and friendly environment to address the needs of young victims and witnesses of crime. The CAC model was developed in the USA more than 20 years ago. CACs/CYACs adhere to standards of practice. In recent years, CACs/CYACs have been developing in communities across Canada with over 30 Centres fully operating or in development. There can be variability in CACs/CYACs in terms of structure, community characteristics, and community partners.

References:

Walsh, W., Jones, L., & Cross, T. (2003). Children's advocacy centers: One philosophy, many models. *American Professional Society on the Abuse of Children Advisor*, 15(3), 3-7. Retrieved from <http://www.unh.edu/ccrc/pdf/cv80.pdf>

McDonald, S., Scrim, K., & Rooney, L. (2013). Building our capacity: Children's advocacy centres in Canada. In S. McDonald (Ed.), *Victims of crime: Research digest* (Issue 6, pp. 2-11). Retrieved from Department of Justice website: <http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd6-rr6/index.html>

Websites:

The National Child Advocacy Centre is in Huntsville Alabama. Their online library service, CALiO, can be accessed on their website: www.nationalcac.org

<http://cac-cae.ca>

Information on established and developing CACs/CYACs in Canada. Websites for individual CACs/CYACs across Canada can be found online.

Investigative Interviews (forensic interviews)

There have been rapid changes in the knowledge base and practice of interviewing techniques in recent years, and the research continues to evolve.

There is no one interviewing model or technique that is considered '*the best*.' Common principles underlie each model. Recently, professionals from leading forensic training programs on interviewing children summarized and consolidated current knowledge and best practices. They concluded that effective communication with children includes: rapport building, the use of age-appropriate language, and the use of open-ended questions.

In *Child Forensic Interviewing: Best Practices*, the authors highlighted these points:

- Many evidence-based interview models exist. The interviewer should adapt the model to suit the needs of the individual child.
- All interview models include these phases: rapport building; a substantive phase; a closure phase.

References:

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>

National Children's Advocacy Center. (2016). *Position paper on documenting forensic interviews*. Retrieved from <http://calio.org/images/position-paper-documenting-fi.pdf>

Intermediaries

(address miscommunication and minimize the stress of cross-examination)

Intermediaries are communication specialists used in several common-law jurisdictions, including the UK, South Africa, Ireland and Australia. Their role is to facilitate accurate communication and to avoid miscommunication. They ensure that young witnesses understand questions. They help minimize the stress of cross-examination.

South Africa

Intermediaries have been used in South Africa since the 1990's. Their role is to sit with the young witness in the CCTV testimony room and convey the lawyers' questions in a way that the witness can understand. The young witness' responses are then conveyed to the court.

England and Wales

Intermediaries are available to young witnesses and vulnerable adults. In the UK, intermediaries are independent officers of the court and come from a range of professions, including psychology, social work, and speech and language therapy. Most are communication specialists. The intermediary role includes assessing communicative competence. They provide a report to the court. They are used during investigative interviews and for court testimony.

References:

Plotnikoff, J., & Woolfson, R. (2007). *The 'go-between': Evaluation of intermediary pathfinder projects*. Retrieved from Lexicon Limited website: http://lexiconlimited.co.uk/wp-content/uploads/2013/01/Intermediaries_study_report.pdf

Müller, K., & Hollely, K. (2000, September). *The intermediary: A view from South Africa*. Paper presented at the 13th International Conference on Child Abuse and Neglect, Durban, South Africa.

